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Friday
April 19, 1996

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[THREE SESSIONS]

WHEN: April 23, 1996 at 9:00 am
May 14, 1996 at 9:00 am
May 21, 1996 at 9:00 am

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Presidential Documents

Title 3—

The President

Executive Order 12999 of April 17, 1996

Educational Technology: Ensuring Opportunity for All Children in the Next Century

In order to ensure that American children have the skills they need to succeed in the information-intensive 21st century, the Federal Government is committed to working with the private sector to promote four major developments in American education: making modern computer technology an integral part of every classroom; providing teachers with the professional development they need to use new technologies effectively; connecting classrooms to the National Information Infrastructure; and encouraging the creation of excellent educational software. This Executive order streamlines the transfer of excess and surplus Federal computer equipment to our Nation's classrooms and encourages Federal employees to volunteer their time and expertise to assist teachers and to connect classrooms.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the provisions of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701 *et seq.*), the Federal Property and Administrative Services Act of 1949, ch. 288, 63 Stat. 377, and the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, it is hereby ordered as follows:

Section 1. *Protection of Educationally Useful Federal Equipment.* (a) Educationally useful Federal equipment is a vital national resource. To the extent such equipment can be used as is, separated into parts for other computers, or upgraded—either by professional technicians, students, or other recycling efforts—educationally useful Federal equipment is a valuable tool for computer education. Therefore, to the extent possible, all executive departments and agencies (hereinafter referred to as ''agencies'') shall protect and safeguard such equipment, particularly when declared excess or surplus, so that it may be recycled and transferred, if appropriate, pursuant to this order.

Sec. 2. *Efficient Transfer of Educationally Useful Federal Equipment to Schools and Nonprofit Organizations.* (a) To the extent permitted by law, all agencies shall give highest preference to schools and nonprofit organizations, including community-based educational organizations, (''schools and nonprofit organizations'') in the transfer, through gift or donation, of educationally useful Federal equipment.

(b) Agencies shall attempt to give particular preference to schools and nonprofit organizations located in the Federal enterprise communities and empowerment zones established in the Omnibus Reconciliation Act of 1993, Public Law 103–66.

(c) Each agency shall, to the extent permitted by law and where appropriate, identify educationally useful Federal equipment that it no longer needs and transfer it to a school or nonprofit organization by:

(1) conveying research equipment directly to the school or organization pursuant to 15 U.S.C. 3710(i); or

(2) reporting excess equipment to the General Services Administration (GSA) for donation when declared surplus in accordance with section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 484(j). Agencies shall report such equipment as far as possible

in advance of the date the equipment becomes excess, so that GSA may attempt to arrange direct transfers from the donating agency to recipients eligible under this order.

(d) In transfers made pursuant to paragraph (c)(1) of this section, title shall transfer directly from the agency to the schools or nonprofit organizations as required by 15 U.S.C. 3710(i). All such transfers shall be reported to the GSA. At the direction of the recipient institution or organization, and if appropriate, transferred equipment may be conveyed initially to a nonprofit reuse or recycling program that will upgrade it before transfer to the school or nonprofit organization holding title.

(e) All transfers to schools or nonprofit organizations, whether made directly or through GSA, shall be made at the lowest cost to the school or nonprofit organization permitted by law.

(f) The availability of educationally useful Federal equipment shall be made known to eligible recipients under this order by all practicable means, including newspaper, community announcements, and the Internet.

(g) The regional Federal Executive Boards shall help facilitate the transfer of educationally useful Federal equipment from the agencies they represent to recipients eligible under this order.

Sec. 3. *Assisting Teachers' Professional Development: Connecting Classrooms.* (a) Each agency that has employees who have computer expertise shall, to the extent permitted by law and in accordance with the guidelines of the Office of Personnel Management, encourage those employees to:

(1) help connect America's classrooms to the National Information Infrastructure;

(2) assist teachers in learning to use computers to teach; and

(3) provide ongoing maintenance of and technical support for the educationally useful Federal equipment transferred pursuant to this order.

(b) Each agency described in subsection (a) shall submit to the Office of Science and Technology Policy, within 6 months of the date of this order, an implementation plan to advance the developments described in this order, particularly those required in this section. The plan shall be consistent with approved agency budget totals and shall be coordinated through the Office of Science and Technology Policy.

(c) Nothing in this order shall be interpreted to bar a recipient of educationally useful Federal equipment from lending that equipment, whether on a permanent or temporary basis, to a teacher, administrator, student, employee, or other designated person in furtherance of educational goals.

Sec. 4. *Definitions.* For the purposes of this order: (a) ''Schools'' means individual public or private education institutions encompassing prekindergarten through twelfth grade, as well as public school districts.

(b) ''Community-based educational organizations'' means nonprofit entities that are engaged in collaborative projects with schools or that have education as their primary focus. Such organizations shall qualify as nonprofit educational institutions or organizations for purposes of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended.

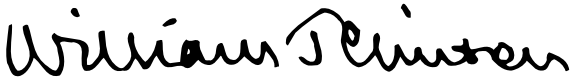
(c) ''Educationally useful Federal equipment'' means computers and related peripheral tools (e.g., printers, modems, routers, and servers), including telecommunications and research equipment, that are appropriate for use in prekindergarten, elementary, middle, or secondary school education. It shall also include computer software, where the transfer of licenses is permitted.

(d) ''Nonprofit reuse or recycling program'' means a 501(c) organization able to upgrade computer equipment at no or low cost to the school or nonprofit organization taking title to it.

(e) ''Federal Executive Boards,'' as defined in 5 C.F.R. Part 960, are regional organizations of each Federal agency's highest local officials.

Sec. 5. This order shall supersede Executive Order No. 12821 of November 16, 1992.

Sec. 6. *Judicial Review.* This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.



THE WHITE HOUSE,
April 17, 1996.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 98

[Docket No. 94–085–3]

Importation of Sheep and Goats and Germ Plasm From Sheep and Goats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations to revise who may issue health certificates for ruminants offered for importation. This amendment will make the regulations more consistent with regard to different animals and countries and will provide an alternative method of issuing health certificates.

We are also amending the animal importation regulations to revise the conditions for importing sheep and goats. We are similarly amending the animal germ plasm regulations to revise the conditions for importing germ plasm from sheep and goats. These changes appear necessary to prevent the importation of sheep and goats, and germ plasm from sheep and goats, that may be affected with scrapie.

We are also amending the animal importation regulations to allow imported goats to be quarantined in privately operated quarantine facilities that meet the requirements that now apply to privately operated quarantine facilities for sheep. This amendment will provide uniform rules for the quarantine of animals which pose a similar disease risk.

In addition, we are removing from the regulations health certificate requirements that apply specifically to the importation of sheep from New Zealand. Since sheep from New Zealand pose no greater disease risk than sheep from other countries, there is no longer a need to retain separate health certification requirements for sheep imported from New Zealand.

Lastly, we are adopting as a final rule, without change, an interim rule that amended the regulations for importing sheep and goats from Canada and Mexico. The rule requires that, with the exception of sheep and goats imported through land border ports for immediate slaughter, and wethers imported through land border ports, all sheep and goats imported into the United States from Canada and Mexico be accompanied by an import permit. This requirement is necessary to prevent the importation of sheep and goats that may be affected with scrapie.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling or Dr. Roger Perkins, Staff Veterinarian, Import Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1228, (301) 734–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 govern the importation into the United States of live animals, including sheep and goats, which are regulated in part to prevent those infected with scrapie from transmitting the disease to livestock in the United States. The regulations in 9 CFR part 98 govern the importation into the United States of germ plasm (semen and embryos), including germ plasm from sheep and goats.

Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. Scrapie occurs more often in certain flocks and certain bloodlines, indicating that these animals may be genetically predisposed to become infected with or develop the disease. Scrapie may be transmitted through contact with the placenta or bodily fluids of infected animals which have just given birth.

The disease develops slowly, with an incubation period lasting up to 5 years. The signs which then become manifest may include nervousness, incoordination, slight muscular tremors, visible weight loss, lack of luster in the animals' wool, and itching. Affected animals become debilitated and die. There is no diagnostic test for confirming the presence of the disease in a live animal or in germ plasm. Therefore, presence of the disease cannot be detected until an animal becomes clinically ill. There is no known treatment for the disease. The impact of the disease in the United States could increase if spread of the disease is not controlled, or if incidence of the disease increases. For these reasons, our regulations are intended to prevent the importation of animals and germ plasm that could transmit scrapie, while controlling spread of the disease as it exists in the United States and eliminating foci of infection.

The regulations in 9 CFR parts 92 and 98 are designed, in part, to prevent the importation of scrapie-infected animals and germ plasm into the United States. Other regulations concerning scrapie are contained in 9 CFR parts 54 and 79. The regulations in part 54 deal with controlling scrapie in the United States, and include, among other things, the Voluntary Scrapie Flock Certification Program. The regulations in part 79 concern identification of sheep and goats in the United States that are or may be affected with scrapie, and restrict the interstate movement of sheep and goats so as to prevent the interstate spread of scrapie.

In an interim rule effective and published in the Federal Register on March 15, 1995 (60 FR 13898–13900, Docket No. 94–085–1), we amended the regulations in part 92 to require that, with the exception of sheep and goats imported through land border ports for immediate slaughter, and wethers imported through land border ports, all sheep and goats imported into the United States from Canada and Mexico be accompanied by an import permit. This action was necessary to prevent the importation of sheep and goats that may be affected with scrapie.

We solicited comments concerning the interim rule for 60 days ending May 15, 1995. We received 4 comments by that date. They were from one foreign government, and from industry representatives and businesses.

On May 11, 1995, we published in the Federal Register (60 FR 25151–25162, Docket No. 94–085–2) a proposal to amend the regulations in parts 92 and 98 by: (1) Revising who may issue health certificates for ruminants offered for importation; (2) revising the conditions for importing sheep and goats; (3) revising the conditions for

importing germ plasm from sheep and goats; (4) allowing imported goats to be quarantined in privately operated quarantine facilities that meet the requirements that now apply to privately operated quarantine facilities for sheep; and (5) removing health certificate requirements that apply specifically to the importation of sheep from New Zealand.

We solicited comments concerning the proposed rule for 60 days ending July 10, 1995. We received 15 comments by that date. They were from foreign governments, Federal and State government agencies, industry representatives, livestock producers, and private individuals.

Of the comments received in response to the interim rule, one addressed issues which were not contained in the interim rule, but which were contained in the proposed rule. Although we did not count this comment as being received in response to the proposed rule, we did consider suggestions made in the comment when we determined changes necessary in the proposed rule.

Two comments received in response to the interim rule failed to address any issue raised by either the interim rule or the proposed rule. One commenter discussed the importation of washed and frozen embryos, a topic not relevant to either the interim rule or the proposed rule. The other comment contained the results of an industry association member survey concerning the importation of animal genetics. However, the survey, as described in the comment, did not appear to have addressed the specific provisions of either the interim or the proposed rule. For these reasons, we did not consider either of these comments when determining changes necessary in the interim and proposed rules.

We have carefully considered all of the relevant comments we received in response to both the interim rule and the proposed rule. Issues raised by the comments are discussed below by topic. In our discussion, we refer to the regulations in both parts 92 and 98 as ''the regulations.''

Scientific Basis of Regulations

Two commenters objected to our statement, in the background of both the interim rule and the proposed rule, that scrapie is transmitted by breeding. The commenters are correct—breeding, itself, does not appear to transmit scrapie. Scrapie is also not a hereditary disease. However, it does appear that scrapie can be transmitted through contact with the placenta or bodily fluids of infected animals which have just given birth. In addition, there is a tendency to develop the disease which appears to follow bloodlines. Therefore, we have amended the background information in this document concerning scrapie transmission so that it more accurately reflects current scientific knowledge about this disease.

One commenter objected to proposed § 92.405(b)(2), which would have required the certificate accompanying imported sheep or goats to state that none of the female sheep or goats in the flock or herd from which the sheep or goats will be imported was impregnated, during the 5 years immediately preceding shipment of the sheep or goats to the United States, with embryos or semen from another country other than the United States or from a flock or herd of unknown scrapie status. The commenter maintained that it is scientifically unjustified to restrict the importation of sheep and goats from flock or herds in which females have been impregnated with germ plasm from Australia or New Zealand. We agree with this comment, and we have made two changes to this provision, as discussed below.

Our proposed rule and this document allow the importation of sheep from countries other than Australia, Canada, or New Zealand, provided such sheep enter a flock participating in the Voluntary Scrapie Flock Certification Program (VSFCP). It was never our intention to be more restrictive with regard to sheep from flocks in which any female has been impregnated with germ plasm from (1) a country other than the United States or (2) a flock of unknown scrapie status, provided such sheep enter a flock participating in the VSFCP. Any risk of scrapie presented by such sheep would be mitigated by placing them in a flock participating in the VSFCP. Therefore, we are removing the requirement that the certificate state that none of the female sheep in the flock from which the sheep will be imported has been impregnated with germ plasm from a country other than the United States or from a flock of unknown scrapie status.

Additionally, sheep imported from Australia, Canada, and New Zealand will be required to enter a flock participating in the VSFCP if any of the females in the flock from which the sheep will be imported has been impregnated, during the 5 years immediately preceding shipment of the sheep to the United States, with germ plasm from a country other than Australia, Canada, New Zealand, or the United States. Any risk of scrapie presented by such sheep would be mitigated by placing them in a flock participating in the VSFCP. As the commenter indicated, Australia and New Zealand are free of scrapie. Germ plasm from sheep in Australia and New Zealand can therefore be used to impregnate animals without fear of transmitting scrapie. Although Canada is not free of scrapie, Canada employs reporting and surveillance requirements equivalent to those of the United States. Germ plasm from sheep in Canada can likewise be utilized under the conditions set forth above without fear of transmitting scrapie into the United States.

We are not making any specific changes on this issue with regard to goats. This is because, as explained elsewhere in this document, we are amending § 92.405 to exempt goats under certain circumstances from many of the requirements of this section. Together, we believe these amendments impose the fewest restrictions on importers while still protecting U.S. livestock from the importation of scrapie.

We are also amending § 92.405 to clarify that sheep and goats must be accompanied by a certificate stating that none of the female sheep or goats in the flock or herd from which the sheep or goats will be imported has been impregnated, during the 5 years immediately preceding shipment of the sheep or goats to the United States, with germ plasm from a flock or herd known to be infected with scrapie. This requirement, along with restrictions on progeny of scrapie-infected animals, is designed to prohibit importation into the United States of animals most likely to be infected with scrapie. This requirement was implied in our proposed regulations. However, as we are completely revising § 92.405 in this final rule, we are taking this opportunity to include a clear statement of this requirement.

Compliance With International Agreements

One commenter stated that requiring a permit for sheep and goats imported from Canada is ''contrary to the domestic regulatory position currently in effect and, therefore, not consistent with the principles of the Treaty of the World Trade Organization [WTO].'' The commenter did not explain how our proposal is ''inconsistent.'' The same commenter also stated that imposing a permit requirement would be ''counterproductive to our mutual commitment under the North American Free Trade Agreement [NAFTA] Animal Health Technical Working Group to facilitate trade through shared risk assessments and common import policies.'' Again, the commenter did not

explain how our proposal is ''counterproductive.''

We do not agree with either assertion. If the comment is interpreted literally, no WTO signatory country would be permitted to substantively amend its regulations, because substantive amendments would always be ''contrary to the domestic regulatory position currently in effect.'' This is clearly not the intention of the WTO. The WTO clearly maintains, in Article 2, the right of countries to take any sanitary (animal) and phytosanitary (plant) measure necessary to protect human, animal, and plant life and health. Furthermore, the WTO requires, in Article 5, that signatory countries base their SPS, that is, sanitary and phytosanitary requirements, on an assessment of the risks. If, according to this assessment, the level of risk changes, a country may adjust its requirements. We agree with the commenter that NAFTA obligates Canada, Mexico and the United States to work towards common import policies. However, that commitment is secondary to each country's biosecurity needs.

In the case of Canada, there has been an increase in the level of risk of transmitting scrapie into the United States. Until 1994, Canada did not generally import animals or germ plasm from countries where scrapie exists. The few importations that did occur were rare and easily traced. However, this is no longer true. Canada now frequently imports germ plasm from countries where the United States believes scrapie exists. For example, germ plasm from France and the United Kingdom has recently been imported into Canada. This has increased the risk that scrapie will be transmitted into the United States by animals and germ plasm from Canada. Our proposal to require that animals and germ plasm from Canada be accompanied by an import permit is a response to the increase in disease risk brought about by this change in Canadian imports.

One commenter stated that we should, to fulfill the ''rights and obligations of the United States as a signatory to the Sanitary/Phyto-Sanitary (SPS) Chapter of the World Trade Organization, * * * recognize the use of [germ plasm] from sources which provide equivalent assurances to those achieved under the Voluntary Scrapie Flock Certification Program.'' Implementation of this SPS concept (i.e., equivalency), depends, to a large extent, on an official recognition of the exporting country's procedures or systems as being equivalent. We believe our proposed regulations recognize the use of germ plasm from equivalent sources. Sections 92.435, 98.10a, and 98.37 of the regulations specifically provide for importation of sheep, goats, and sheep germ plasm in programs determined by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to be equivalent to the VSFCP. Countries must make an official request for U.S. recognition of equivalency in these matters. If the Administrator determines that a country's programs are equivalent, animals from that country will then be allowed to be imported into the United States into a flock or herd that participates in the VSFCP, and will be required to remain in such a flock or herd until they reach Certified status. However, the time required for them to reach Certified status will take into account the time spent by them in an equivalent program in the country of origin.

Classification of Countries

One commenter suggested that the Republic of South Africa be classified as scrapie-free. We are not making any changes based on this comment at this time. Currently, Australia and New Zealand are recognized by the United States and the World Health Organization as scrapie-free countries. However, we are constantly reevaluating the disease status of countries. If we determine that the status of any country should be changed, we will publish a proposal for public comment in the Federal Register.

Imports From Canada

One commenter stated that the disease situation in Canada has not changed, and there is therefore no justification to require permits for animals imported from Canada. Two commenters stated that import permits for sheep and goats and germ plasm from sheep and goats from Canada are unnecessary.

We have not made any changes based on this comment. As explained above, until 1994, Canada did not generally import animals or germ plasm from countries where scrapie exists. The few importations that did occur were rare and easily traced. However, this is no longer true. Canada now frequently imports germ plasm from countries where the United States believes scrapie exists. To ensure that there is no risk of transmitting scrapie to livestock in the United States, we need to be able to trace the movements of this germ plasm and animals resulting from the germ plasm. To obtain the information needed to make tracing possible, we are requiring that animals and germ plasm from Canada be accompanied by an import permit.

Several commenters stated that sheep and goats imported from Canada should be handled differently under the regulations (i.e., be subject to more stringent requirements) than sheep and goats imported from Australia and New Zealand. Commenters also suggested that Canada could serve as a ''back door'' into the United States for sheep and goats from third countries.

We had proposed to exempt sheep and goats and germ plasm of sheep and goats from Canada, Australia and New Zealand from proposed §§ 92.435, 98.10a, and 98.37, which would require such animals and germ plasm to enter a flock or herd in the United States that participates in the VSFCP. It is true that Australia and New Zealand are free of scrapie, while Canada is not. However, the Canadian government has an effective system to report, trace, and destroy infected animals. Canada employs reporting and surveillance requirements equivalent to the United States. Such requirements include, but are not limited to: (1) Reporting incidence of scrapie; (2) restriction of animal movement within the country because of scrapie; (3) identification of flocks or herds with scrapie; and (4) depopulation mechanisms for scrapie (i.e., removal of high-risk animals). Canadian regulations are distinctly designed to control the spread of scrapie within that country. Furthermore, APHIS and Canadian animal health authorities closely coordinate scrapie control efforts. For these reasons, we consider the risk of scrapie from animals and germ plasm from Canada to be negligible, provided that certain requirements are met. As explained above, we are requiring that importers obtain an import permit for sheep, goats, and germ plasm from Canada. The permit application process is designed to provide us with the information we need to ensure that animals and germ plasm to be imported meet our requirements and that they are not exposed or infected with any disease or pest of concern. This includes not only scrapie, but other diseases and pests. The permit requirement applies to animals and germ plasm from all countries, including Australia and New Zealand.

As to whether Canada could serve as a ''back door'' for infected animals or germ plasm to enter the United States, we believe the permit requirements imposed by our interim rule should close the ''back door'' that now exists. With these requirements in place, animals and germ plasm from Canada may enter the United States only when

APHIS has been alerted to their health history. The application for an import permit gives us specific information on the scrapie status of animals and germ plasm to be imported, including the genetic history of germ plasm donors. These requirements, along with certificate requirements we proposed (see §§ 92.405, 98.5, and 98.35 in this final rule), will help ensure that animals and germ plasm are imported into this country only under conditions designed to prevent the importation and spread of scrapie. For example, pregnant sheep imported from Canada will be required to enter VSFCP flocks if they have been impregnated with germ plasm from any country other than Australia, Canada, New Zealand or the United States.

One commenter also stated that it is ''unfair'' to treat subsequent generations of animals differently, depending on whether they were born in the United States or in Canada. We have carefully considered this comment and we are not making any changes based on this comment. We believe the commenter attempts to compare two dissimilar issues: The treatment of animals to be imported into the United States and the treatment of animals already in the United States. We believe these issues require different approaches. Our intention in both the interim rule and the proposed rule was to protect livestock in the United States from being exposed to scrapie through imported animals and germ plasm. The regulations in part 92 and 98 were not designed to reduce the spread of scrapie within the United States. To accomplish that goal we have established the VSFCP (see 9 CFR part 54). That program is designed to encourage sheep and goats owners to eliminate scrapie within their herds and flocks and thereby help prevent spread of the disease within the United States. We believe the final regulations contained in this document will encourage participation in the VSFCP.

Exemptions From Permit Requirement

Commenters suggested that certain animals or germ plasm be exempted from the permit requirements contained in the interim rule. Suggestions were made to exempt feeder lambs imported into the United States from Canada and sheep and goats imported into the United States from Canada for temporary exhibition. A suggestion was also made that sheep and goats from flocks or herds in Canada where the only genetic material imported into the flock or herd was semen or embryos should not be subject to permit ''restrictions.''

We have carefully considered the suggestion that we exempt from the permit requirement sheep and goats imported from Canada for temporary exhibition in the United States. We need to know where these animals are located and when and where they are moved after they enter the United States. This information is necessary to help ensure that these animals do not come into contact with livestock in the United States under circumstances where they could transmit scrapie. We obtain this information through the import permit process and therefore cannot exempt these animals from this requirement.

We have also carefully considered the suggestion that we exempt feeder lambs from Canada from the permit requirement. We agree that feeder lambs are generally kept in confinement. However, we do not agree that they pose no greater risk of transmitting scrapie than do slaughter animals simply because they are normally kept in confinement. On the contrary, we believe feeder lambs pose considerable risk. Feeder lambs are usually shipped in mixed loads of ewe lambs and wether lambs. At the time they cross into the United States, they have entered U.S. commerce. Unlike wethers, which have no value other than slaughter, and which in any case are unlikely to transmit scrapie, feeder ewes are bought and sold for other purposes. Many are sold directly from feedlots for use as breeding ewes. It is not illegal to sell and buy feeder lambs for this purpose. Under these circumstances, we do not believe that exempting feeder lambs from Canada from the permit requirement is appropriate. We are therefore making no changes based on this comment.

The comment requesting that permit ''restrictions'' not be placed on animals from flocks or herds in Canada where the only genetic material imported into the flock or herd was semen or embryos was also carefully considered. It has been theorized that scrapie is not transmitted through germ plasm. However, at this time there is insufficient data or research to support this theory. While the topic is under study, we believe the most prudent course is to monitor through the VSFCP importation of animals from Canada that are from flocks where semen or embryos have been imported into the flock from a country other than Australia, Canada, New Zealand, or the United States. Therefore, we are making no changes based on this comment.

Who May Issue Health Certificates

One commenter suggested that we simplify the proposed regulations to allow licensed veterinarians to certify source flocks as free of scrapie. We are not making any changes based on this comment. We require government certification to ensure that the information on certificates is reliable. If we allowed any licensed veterinarian to certify animals, we would have no means of ensuring that the information was accurate, and no recourse if it were not.

Additional Restrictions

Commenters also suggested that certain animals or germ plasm be placed under greater restrictions than provided in the interim and proposed requirements. The suggestions were to: (1) Prohibit importation of live animals born in the same flock during the same lambing or kidding season as progeny of scrapie-positive dams; (2) require that sheep or goats remain for a minimum of 5 years in a flock or herd participating in a disease prevention program; (3) restrict movement of animals located in zoos in the United States; (4) require identification of certain progeny; and (5) require necropsy of certain imported animals that die before they have been in the United States for 5 years.

We have determined that no changes are needed in response to the suggestion that we prohibit importation of live animals born in the same flock during the same lambing or kidding season as progeny of scrapie-positive dams. These animals would be prohibited importation under § 92.405. That section requires that, with limited exceptions, all ruminants intended for importation be accompanied by certificates. The certificates for sheep and goats (except for those animals from Australia, Canada, or New Zealand) must, in addition, specifically state that the animals have not been in any flock or herd nor had contact with sheep or goats which have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years immediately prior to shipment. Also under § 92.405(a), ruminants, including sheep or goats, would have to be accompanied by a certificate stating that the animals are not in quarantine in the country of origin. This is a new requirement in this final rule and is discussed below under ''Animals in quarantine in New Zealand.'' These requirements would have the practical effect of prohibiting the importation of live animals born in the same flock during the same lambing or kidding season as progeny of scrapie-positive dams.

We have carefully considered the comment that we should require sheep and goats to participate in a scrapie

control program for a minimum of 5 years. We have determined that no changes are necessary in response to this comment. Except for limited exemptions discussed elsewhere in this document, our requirements will allow the unrestricted importation of sheep and goats and sheep germ plasm only from countries which are free of scrapie or, in the case of Canada, which employ reporting and surveillance requirements equivalent to the United States and have regulations distinctly designed to control the spread of scrapie within the country. All imported sheep and goats and germ plasm of sheep and goats must be accompanied by a certificate. With the exception of sheep and goats from Australia, Canada, and New Zealand, the certificate accompanying animals must specifically state that the sheep and goats have not been in contact with other sheep and goats, during the 5 years previous to importation, such that they could have been exposed to scrapie (see § 92.405). The certificate accompanying germ plasm must specifically state that, in the case of embryos, the donor animals, and in the case of semen, the donor sire, have not been in contact with other sheep and goats, during the 5 years previous to collection of the germ plasm, such that they could have been exposed to scrapie (see §§ 98.5(b)(1) and 98.35(e)(1)). Except as explained later in this document (see the discussion below headed ''Goats''), sheep, goats, and sheep germ plasm from countries other than Canada, Australia, and New Zealand may enter the United States only into a flock or herd participating in the VSFCP (see §§ 92.435, 98.10a and 98.37).[1] These imported animals and all first generation progeny resulting from the imported germ plasm must remain in a participating flock or herd until the flock or herd qualifies as ''Certified.'' If the flock or herd is a level ''C'' flock or herd when the animals or germ plasm enter it, the process of attaining ''Certified'' status takes a minimum of 5 years. Animals and germ plasm may qualify to enter a flock or herd of higher status if they have been imported from a source flock or herd participating in a program which the Administrator has determined is equivalent to the APHIS VSFCP. In that situation, the animals and any first generation progeny resulting from the imported germ plasm may have to remain in a participating flock or herd for fewer than 5 years. However, the animals (or donor animals, in the case of imported germ plasm) would have been in a participating flock or herd, or in an equivalent flock or herd in the country of origin, for at least 5 years.

We are also not making any changes in response to the comment that we place additional restrictions on the movement of animals from zoos in the United States. Very few animals are imported to zoos, and those which are imported are mainly from other zoos. Most zoo animals are captive-bred and rarely moved from their home zoo. Under these circumstances, we believe the disease risk presented by zoo animals to be very slight. Under our current regulations, animals moving from a zoo in the United States must be accompanied by a permit. The information provided as part of the permit process—when and where and under what conditions the animal is being moved—is sufficient to allow us to trace the animal and ensure that it does not come into contact with livestock under circumstances where it could transmit scrapie. We believe these requirements are adequate to prevent the spread of scrapie.

We have carefully considered the comment that we require progeny of imported sheep and goats to be permanently identified, and that we require a necropsy on animals which die less than 5 years after importation. The ''Uniform Methods and Rules—Voluntary Scrapie Flock Certification'' (UM&R), governs the VSFCP. The UM&R requires all animals in the flock or herd, including animals born into the flock or herd, to be permanently identified. The UM&R also requires that a necropsy be performed on any animals that die under suspicious circumstances. Sheep and goats imported into the United States under this final rule, with certain exceptions, will be required to enter a participating flock or herd. They would therefore be required to be permanently identified. They would also have to be necropsied should they die under suspicious circumstances. We believe these requirements are adequate to prevent the spread of disease, should it occur. The only sheep and goats imported into the United States not subject to these requirements would be animals which are exempt from entering a participating herd because they present no risk of disease. Each category of exempt animals is explained elsewhere in this document, or in the proposed rule.

Goats

Several commenters suggested that sheep and goats should be treated differently under the regulations, as scrapie rarely occurs in goats.

We have carefully reviewed these comments and have determined that some changes in the regulations with regard to goats are warranted. It is true that goats are susceptible to scrapie. However, since 1947 in the United States there have been only 5 reported cases of scrapie in goats. All occurred in goats which had been in contact with scrapie-infected sheep. As goats are not normally kept in contact with sheep, and as the incubation period for scrapie can last up to 5 years, we believe goats that have had no contact with sheep for a period of at least 5 years would pose an insignificant risk of scrapie. Therefore, under this final rule, goats will not be subject to § 92.435 if they are certified as having had no contact with sheep for at least the previous 5 years. Further, goats from Australia, Canada, and New Zealand would not be subject to § 92.435 even if they have had contact with sheep. Australia and New Zealand are free of scrapie. Contact with sheep in New Zealand and Australia would therefore not result in potential exposure to scrapie. Canada employs reporting and surveillance requirements equivalent to those of the United States and has regulations distinctly designed to control the spread of scrapie within the country. Therefore, under the conditions set forth in this final rule, we consider the risk of scrapie from goats in Canada to be negligible.

Under this final rule, goats, regardless of the country of origin, will not need to be certified as coming from a herd in which none of the female goats has been impregnated, during the 5 years immediately preceding shipment of the goats to the United States, with germ plasm from a country other than Australia, Canada, New Zealand, or the United States, or with germ plasm from a herd of unknown scrapie status. In addition, goat germ plasm, regardless of the country of origin, will be required to meet certification requirements, but will not be required to be placed in a herd that participates in the VSFCP. We believe these changes are warranted due to the low risk of transmitting scrapie posed by goats.

Enforcing the Regulations

Several commenters expressed concern about enforcement of our regulations. We are not making any changes based on these comments. We believe these regulations are enforceable

[1] Note: Under this final rule, although it is not required (except in one instance), sheep and goats and sheep germ plasm from Australia, Canada, and New Zealand may be imported into the United States into flocks and herds participating in the VSFCP. Likewise, goat germ plasm, regardless of the country of origin, may be imported into the United States into herds participating in the VSFCP. These importations must, of course, meet the necessary certification, permit, and quarantine requirements.

and that we have adequate manpower to enforce them.

Animals in Quarantine in New Zealand

As pointed out by one commenter, there are sheep currently in quarantine in New Zealand in a Scrapie Free Accreditation Program. These sheep were imported into a New Zealand quarantine facility from a country which the United States does not consider scrapie free. The commenter asks what the ''status'' of these animals is under our proposed rule.

Under this final rule, imported sheep must be accompanied by a certificate issued under § 92.405. Among other things, § 92.405 requires the certificate to contain a statement that the sheep are not in quarantine in the country of origin. Therefore, as long as the sheep are in quarantine in New Zealand, they cannot be imported into the United States.

As a matter of policy, we do not accept any ruminants from any country which are in quarantine in the source country. To clarify that this requirement applies to all ruminants from all countries, we are amending § 92.405 to include this requirement.

Clarify Regulations

Several commenters asked that different provisions of the proposed regulations be clarified.

The first commenter of this group asked that we clarify whether we are proposing to remove all import requirements for sheep from New Zealand, or whether only some health certificate requirements would be removed. As explained elsewhere in this document, we are removing certain health certificate requirements that apply specifically to sheep imported from New Zealand. In addition, depending upon the circumstances of each individual animal, sheep from New Zealand would not be required to enter a flock participating in the VSFCP. Import permits would still need to be obtained for sheep from New Zealand, and sheep from New Zealand would still need to be accompanied by a certificate, and be quarantined upon arrival in the United States.

The second commenter asked us to clarify the meaning of ''suspect.'' By ''suspect,'' we mean any animal which displays signs that could indicate it is infected with scrapie. There is no live animal test for scrapie, and a positive diagnosis can be made only after the animal dies.

Several commenters asked for clarification of ''progeny'' when the term is used to refer to animals required to remain in a herd or flock in the VSFCP. In this connection, we intended the term ''progeny'' to mean only the first generation of animals resulting from natural breeding, artificial insemination, or embryo transfer. To eliminate any confusion as to the meaning of ''progeny,'' we are amending the proposed regulations to read ''first generation progeny'' where appropriate. It would be impractical to require progeny beyond the first generation of animals to remain in a VSFCP herd or flock. All VSFCP herds and flocks are maintained under surveillance. In addition, except for animals moving to slaughter, all sheep and goats in participating herds or flocks must be permanently identified, and herd and flock owners must maintain certain records for a minimum of 5 years after an animal dies or has otherwise been removed from the herd or flock. These records, along with the individual animal identification, allows us to trace animals which leave the herd or flock.

One commenter approved of the proposed requirement that progeny resulting from germ plasm imported under the regulations remain in a flock or herd participating in the VSFCP until that flock or herd qualifies as ''Certified.'' The commenter asked if the proposed requirement would apply to each importation of germ plasm. Our response is yes, each importation of germ plasm would be subject to this requirement.

Regulatory Flexibility Act Analysis

One commenter stated that the Regulatory Flexibility Act analysis needed to clarify that it costs ''something'' to participate in the VSFCP. Flock and herd owners who elect to participate in the VSFCP do incur the costs of making and maintaining records on the animals in their flock or herd. However, the program is completely voluntary, and in most cases any recordkeeping costs would be inconsequential. In addition, the increased value of animals in VSFCP herds and flocks would offset any recordkeeping cost.

Questions

One commenter asked if Boer goats were bred especially to sell in the United States. The term ''Boer goat'' was used in the 19th century in South Africa to mean farm goat. The term was apparently used to distinguish indigenous goats from imported Angora goats. The present-day Boer goat, bred from native stock, was developed in the early 20th century for meat production.

A couple of other commenters asked for clarification of the length of time under our proposed rule that various animals would have to remain in a flock or herd that is participating in the VSFCP. All animals must remain in a flock or herd participating in the Program until the flock or herd reaches ''Certified'' status. This usually takes a minimum of 5 years. If a live animal is imported into the United States, APHIS may give ''credit'' for years the animal's flock or herd of origin participated in a program which the Administrator of APHIS determines is equivalent to the VSFCP. If germ plasm is imported, the first generation of animals resulting from that germ plasm must remain in a participating flock in the United States until the flock reaches ''Certified'' status.

Miscellaneous Comments

One commenter suggested that APHIS should certify animals for importation only if they come from a country where scrapie exists. According to the comment, animals from such countries would have some immunity to the disease. Unfortunately, we are not aware of any evidence demonstrating that animals can develop immunity to scrapie. For this reason we are not making any changes based on this comment.

Miscellaneous

Since we published the proposed rule, the regulations in part 98, subpart B, which concern embryos from countries where rinderpest or foot-and-mouth disease (FMD) exists, have been amended (see 61 FR 15180 *et seq.*, Docket No. 94–006–2). Among other things, the regulations were amended so they apply not only to certain cattle embryos, but to all ruminant embryos, including sheep and goat embryos. Therefore, we are amending part 98, subpart B, at this time to add the same health certificate requirements concerning scrapie as are included in this final rule for sheep and goat embryos from countries free of rinderpest and FMD. This amendment will make the requirements consistent in subparts A and B of part 98. We are also amending the language in § 98.14(a), stating who may issue health certificates, to make it consistent with similar language in §§ 92.405, 98.5, and 98.35, as we proposed.

We have also made minor, nonsubstantive changes to correct punctuation and to maintain consistent wording. In addition, in some parts of this final rule, we have set out current regulatory text that did not appear in the proposed rule. This has been done in places where less than an entire sentence appeared in the proposed rule

so that readers will have an easier time understanding the text.

We have also updated our Regulatory Flexibility Act analysis to include the latest available data.

Therefore, based on the rationale set forth in the interim rule of March 11, 1995, and in this document, we are affirming the provisions of the interim rule without change. In addition, based on the rationale set forth in the proposed rule of May 11, 1995, and in this document, we are adopting the provisions of the proposed rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule requires an import permit for certain sheep and goats imported into the United States from Canada and Mexico through a land border port. In 1994, 28,357 sheep and 527 goats were imported from Canada through a land border port; none were imported from Mexico through a land border port. Over 97 percent of these sheep and goats were wethers or were imported for immediate slaughter. Wethers and sheep and goats imported through land border ports for immediate slaughter continue to be exempt from the requirement for an import permit. Based on these numbers, we expect that only 3 percent of sheep and goats imported from Canada or Mexico through land border ports will be required to be accompanied by an import permit under this rule. APHIS does not charge a user fee specifically for the import permit. However, APHIS does charge a user fee for import or entry services provided at all ports of entry, including land border ports along the United States-Mexico border. These user fees may need to be adjusted to account for the cost of issuing import permits required under this final rule. If this is necessary, a proposed rule will be published for public comment in the Federal Register.

This rule also requires additional certification information for sheep, goats, and germ plasm. However, no direct charges or user fees will be assessed by APHIS as these certificates are issued in foreign countries. The cost impact will be minimal.

In addition, under this rule: (1) Sheep and goat imports from New Zealand will no longer be required to meet special health certification requirements, and (2) regulations governing privately operated quarantine facilities for imported sheep will apply to privately operated quarantine facilities for imported goats as well. These changes will not have a significant impact on importers or producers. We believe any impact will be positive, in that the changes will facilitate importation of sheep and goats.

Our economic analysis indicates that these amendments will have a positive economic impact on U.S. importers of sheep, goats, and their germ plasm, since importation into the United States will be easier. The current requirements surrounding the importation of sheep, goats, and their germ plasm are confusing and considered by many interested parties to be too restrictive.

In 1995, there were 82,120 agricultural operations with sheep in the United States. Under Small Business Administration criteria, 99 percent of them are believed to be small entities (having less than $0.5 million in gross annual receipts for domestic producers and fewer than 100 employees for importers). No information is available on the number or U.S. agricultural operations with goats.

We anticipate that participation in the VSFCP will increase, as sheep germ plasm and breeding stock from countries other than Australia, Canada, and New Zealand, will be allowed to be introduced only into VSFCP flocks and herds. Because of the termination by the U.S. government of the subsidy to wool and mohair growers, the expected shift from wool and mohair production to meat production in sheep and goats should create additional demand for breeding stock and germ plasm imports. Wider participation in the Program will better safeguard the U.S. sheep and goat industry against a scrapie outbreak. Participation requires operations to maintain records on their animals, although it is likely that potential importers of breeding animals or germ plasm are already keeping such records. There will be no increase in costs for sheep and goat operations if they participate in the VSFCP.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control numbers 0579–0040 and 0579–0101.

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 92.400, 92.417, and 92.424, and that was published at 60 FR 13898–13900 on March 15, 1995.

Accordingly, 9 CFR parts 92 and 98 are amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 92.400 is amended by revising the definition of *Herd* and by adding a definition for *Flock*, in alphabetical order, to read as follows:

§ 92.400 Definitions.

* * * * *

Flock. A herd.

Herd. All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.

* * * * *

3. Section 92.405 is amended as follows:

a. By revising paragraphs (a) and (b) to read as set forth below.

b. By redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c) to read as set forth below.

c. In newly designated paragraph (d), by removing the words ‘‘paragraphs (a)

and (b)'' and adding in their place the words ''paragraphs (a), (b), and (c)''.

d. By adding a parenthetical at the end of the section to read as set forth below.

§ 92.405 Certificate for ruminants.

(a) All ruminants intended for importation from any part of the world, except as provided in §§ 92.418(a), 92.419(a), 92.423(c), and 92.428(d), shall be accompanied by a certificate issued by a full-time salaried veterinary officer of the national government of the country of origin, or issued by a veterinarian designated or accredited by the national government of the country of origin and endorsed by a full-time salaried veterinary officer of the national government of the country of origin, representing that the veterinarian issuing the certificate was authorized to do so. The certificate shall state:

(1) That the ruminants have been kept in that country during the last 60 days immediately preceding the date of shipment to the United States, and that during this time the country has been entirely free from foot-and-mouth disease, rinderpest, contagious pleuropneumonia, and surra; *provided, however,* that for wild ruminants for exhibition purposes, the certificate need specify only that the district of origin has been free from the listed diseases; *and provided further,* that for sheep and goats, with respect to contagious pleuropneumonia, the certificate may specify only that the district of origin has been free from this disease; and

(2) That the ruminants are not in quarantine in the country of origin.

(b) *Goats.* (1) In addition to the statements required by paragraph (a) of this section, the certificate accompanying goats intended for importation from any part of the world must state:

(i) That none of the goats in the herd from which the goats will be imported is the progeny of a sire or dam that has been affected with scrapie or that has produced offspring that have been affected with scrapie;

(ii) That none of the female goats in the herd from which the goats will be imported has been impregnated, during the 5 years immediately preceding shipment of the goats to the United States, with germ plasm from a herd known to be infected with scrapie;

(iii) That the veterinarian issuing the certificate has inspected the goats in the herd from which the animals will be imported and found the herd to be free of any evidence of infectious or contagious disease; and

(iv) That as far as it is possible for the veterinarian who inspects the animals to determine, none of the goats in the herd from which the animals will be imported has been exposed to any infectious or contagious disease during the 60 days immediately preceding shipment to the United States.

(2) In addition, the certificate accompanying goats intended for importation from any part of the world except Australia, Canada, and New Zealand must state:

(i) That the goats have not been in any herd nor had contact with sheep or goats that have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years immediately prior to shipment; and

(ii) That the goats have not had any contact with sheep during the 5 years immediately prior to shipment; *provided that,* this statement is not required if the goats are imported in accordance with § 92.435(a) into a herd in the United States that participates in the Voluntary Scrapie Flock Certification Program.

(c) *Sheep.* (1) In addition to the statements required by paragraph (a) of this section, the certificate accompanying sheep intended for importation from any part of the world must state:

(i) That none of the sheep in the flock from which the sheep will be imported is the progeny of a sire or dam that has been affected with scrapie or that has produced offspring that have been affected with scrapie;

(ii) That none of the female sheep in the flock from which the sheep will be imported has been impregnated, during the 5 years immediately preceding shipment of the sheep to the United States, with germ plasm from a flock known to be infected with scrapie;

(iii) That the veterinarian issuing the certificate has inspected the sheep in the flock from which the animals will be imported and found the flock to be free of any evidence of infectious or contagious disease; and

(iv) That as far as it is possible for the veterinarian who inspects the animals to determine, none of the sheep in the flock from which the animals will be imported has been exposed to any infectious or contagious disease during the 60 days immediately preceding shipment to the United States.

(2) In addition, the certificate accompanying sheep intended for importation from any part of the world except Australia, Canada, and New Zealand must state that the sheep have not been in any flock nor had contact with sheep or goats that have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years immediately prior to shipment.

(3) In addition, the certificate accompanying sheep intended for importation from Australia, Canada, and New Zealand must state that none of the female sheep in the flock from which the sheep will be imported has been impregnated, during the 5 years immediately preceding shipment of the sheep to the United States, with germ plasm from a country other than Australia, Canada, New Zealand, or the United States, or from a flock of unknown scrapie status; *provided that,* this statement is not required if the sheep are imported in accordance with § 92.435(a) into a flock in the United States that participates in the Voluntary Scrapie Flock Certification Program.

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0040)

4. Section 92.411 is revised to read as follows:

§ 92.411 Quarantine requirements.

(a) Except for cattle from Central America and the West Indies, and except for ruminants from Canada and Mexico, all ruminants imported into the United States shall be quarantined for not less than 30 days counting from the date of arrival at the port of entry.

(b) Wild ruminants shall be subject, during their quarantine, to such inspections, disinfection, blood tests, or other tests as may be required by the Administrator to determine their freedom from disease.

5. In § 92.418, paragraph (a) is revised to read as follows:

§ 92.418 Cattle from Canada.

(a) *Health certificates.* Except for cattle imported for immediate slaughter in accordance with § 92.420, cattle intended for importation from Canada shall be accompanied by a certificate issued in accordance with § 92.405(a). The certificate shall state that the cattle have been inspected and found to be free from any evidence of communicable disease and that, as far as can be determined, they have not been exposed to any such disease during the preceding 60 days. Cattle found unqualified upon inspection at the port of entry will be refused entry into the United States.

* * * * *

6. Section 92.419 is amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. By adding a parenthetical at the end of the section to read as set forth below.

§ 92.419 Sheep and goats from Canada.

(a) Except for sheep and goats imported for immediate slaughter in accordance with § 92.420, sheep and goats intended for importation from Canada shall be accompanied by a certificate issued in accordance with § 92.405.

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0040)

7. Section 92.423 is amended as follows:

a. In paragraph (a), by revising the first sentence to read as set forth below.

b. By revising paragraph (b) to read as set forth below.

c. By adding a parenthetical at the end of the section to read as set forth below.

§ 92.423 Ruminants from Central America and the West Indies.

(a) Ruminants intended for importation from Central America and the West Indies, except as provided in paragraph (c) of this section, must be accompanied by a certificate issued in accordance with § 92.405(a) stating that the animals have been in that country at least 60 days immediately preceding the date of shipment to the United States; that he or she has inspected the ruminants on the premises of origin and found them free from evidence of any communicable disease; and that, as far as it has been possible to determine, the ruminants have not been exposed to any communicable disease during the preceding 60 days. * * *

(b) The certificate accompanying sheep and goats intended for importation from Central America and the West Indies must, in addition to the statements required by paragraph (a) of this section, meet all of the requirements of § 92.405.

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0040)

8. Section 92.427 is amended as follows:

a. In paragraph (b)(1), by revising the first sentence to read as set forth below.

b. By revising paragraphs (b)(2)(i) and (b)(2)(ii) to read as set forth below.

c. In paragraph (c)(1), by revising the last sentence to read as set forth below.

d. By revising paragraph (d)(1) introductory text, to read as set forth below.

§ 92.427 Cattle from Mexico.

* * * * *

(b) *Fever ticks.* (1) Except as provided in paragraph (b)(2) of this section, all cattle intended for importation from Mexico, for purposes other than immediate slaughter, shall be accompanied by a certificate issued in accordance with § 92.405(a), and showing that the veterinarian issuing the certificate inspected the cattle at the time of movement to the port of entry and found them free from any evidence of communicable disease and that, as far as it has been possible to determine, they have not been exposed to any such disease, including splenetic, southern or tick fever, during the preceding 60 days and, if shipped by rail or truck, the certificate shall further specify that the cattle were loaded into clean and disinfected cars or trucks for transportation direct to the port of entry. * * *

(2) * * *

(i) The cattle shall be accompanied by a certificate issued in accordance with § 92.405(a), and showing that the veterinarian issuing the certificate has inspected the cattle and found them free from fever ticks and any evidence of communicable disease, and that, as far as it has been possible to determine, they have not been exposed to any such disease, except splenetic, southern, or tick fever, during the 60 days immediately preceding their movement to the port of entry.

(ii) The cattle shall be shown by a certificate issued in accordance with § 92.405(a) to have been dipped in a tickicidal dip within 7 to 12 days before being offered for entry.

* * * * *

(c) * * *

(1) * * * However, cattle, including steers, that originated in herds declared to be tuberculosis-accredited by the Government of Mexico in accordance with that country's standards do not have to comply with the other provisions of this paragraph if they are moved directly to the U.S. port of entry from their herd of origin without having commingled with cattle from any herd not so accredited enroute to the port of entry, and they are accompanied by a health certificate, issued in accordance with § 92.405(a), stating that the cattle originated in such a tuberculosis-accredited herd and identifying the animals by official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag and tattoo numbers.

* * * * *

(d) * * *

(1) Are accompanied by a certificate issued in accordance with § 92.405(a) stating:

* * * * *

9. Section 92.428 is amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. By adding a parenthetical at the end of the section to read as set forth below.

§ 92.428 Sheep and goats and wild ruminants from Mexico.

(a) Sheep and goats intended for importation from Mexico shall be accompanied by a certificate issued in accordance with § 92.405 and stating, if such sheep and goats are shipped by rail or truck, that such animals were loaded into cleaned and disinfected cars or trucks for transportation direct to the port of entry. Notwithstanding such certificate, such sheep and goats shall be detained as provided in § 92.427(a) and shall be dipped at least once in a permitted scabies dip under supervision of an inspector.

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0040)

10. In § 92.429, the first sentence is revised to read as follows:

§ 92.429 Ruminants for immediate slaughter.

Ruminants, other than sheep and goats, may be imported from Mexico, subject to the applicable provisions of §§ 92.424, 92.425, 92.426, and 92.427(b)(2) for immediate slaughter if accompanied by a certificate issued in accordance with § 92.405(a) and stating that the veterinarian who issued the certificate has inspected the animals in the herd from which the ruminants will be imported and found them free of evidence of communicable disease, and that, so far as it has been possible to determine, they have not been exposed to any such disease common to animals of their kind during the preceding 60 days, and if the ruminants are shipped by rail or truck, the certificate shall further specify that the ruminants were loaded into cleaned and disinfected cars or trucks for transportation directly to the port of entry. * * *

§ 92.433 [Removed and Reserved]

11. Section 92.433, *Sheep from New Zealand,* is removed and reserved.

§ 92.434 [Amended]

12. Section 92.434 is amended as follows:

a. By revising the heading to read as follows:

§ 92.434 Standards for approval of privately operated quarantine facilities for sheep or goats, and handling procedures for the importation of sheep or goats.

* * * * *

b. In paragraph (b) introductory text, by redesignating footnote 19 and the reference to it as footnote 15.

c. In paragraph (d)(1), by redesignating footnote 20 and the reference to it as footnote 16.

d. By adding the words ''or goats'' after the word ''sheep'' in the following places:

i. In paragraph (a).

ii. In paragraph (b)(2)(i)(B).

iii. In paragraph (b)(2)(ii)(A).

iv. In paragraph (b)(2)(ii)(B).

v. In paragraph (b)(2)(ii)(D) each time it appears.

vi. In paragraph (b)(2)(ii)(E).

vii. In paragraph (b)(2)(ii)(F) each time it appears.

viii. In paragraph (b)(2)(iii)(G), after only the third time ''sheep'' appears.

ix. In paragraph (b)(2)(iii)(K).

x. In paragraph (b)(2)(iii)(L).

xi. In paragraph (b)(3)(i)(A)(*5*).

xii. In paragraph (b)(3)(ii).

xiii. In paragraph (b)(3)(iv), in the heading and text.

xiv. In paragraph (b)(3)(iv)(A), in the first sentence.

xv. In paragraph (b)(3)(iv)(B).

xvi. In paragraph (b)(3)(v) each time it appears.

xvii. In paragraph (b)(5) each time it appears.

xviii. In paragraph (c).

xix. In paragraph (d)(2) introductory text.

xx. In paragraph (d)(2)(iv).

xxi. In paragraph (d)(4).

e. by adding the words ''or goat'' after the word ''sheep'' in the following places:

i. In paragraph (b)(2)(iii)(G), after the first and second time ''sheep'' appears.

ii. In paragraph (b)(3)(iv)(A), in the second sentence.

f. By removing the word ''sheep-holding'' and adding the words ''sheep- or goat-holding'' in the following places:

i. In paragraph (b)(2)(ii)(K).

ii. In paragraph (b)(2)(iii)(J).

iii. In paragraph (b)(3)(i)(A) introductory text.

iv. In paragraph (b)(3)(i)(A)(*1*).

v. In paragraph (b)(3)(i)(A)(*3*).

vi. In paragraph (b)(3)(ii).

13. A new § 92.435 is added to read as follows:

§ 92.435 Sheep and goats.

(a) Except as provided in paragraph (b) of this section, all sheep and goats imported into the United States must be placed in a flock or herd in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B) and:

(1) The flock or herd qualifies as a ''Certified'' flock or herd; or

(2) The flock or herd owner has agreed, in writing, to maintain the flock or herd in compliance with all requirements of the Voluntary Scrapie Flock Certification Program until the flock or herd qualifies as a ''Certified'' flock or herd.

(b) The following sheep and goats are not subject to paragraph (a) of this section:

(1) Goats intended for importation from Australia, Canada, or New Zealand;

(2) Goats intended for importation from any country other than Australia, Canada, or New Zealand, provided that such goats have not had any contact with sheep during the 5 years immediately prior to shipment, in accordance with § 92.405(b)(2)(ii);

(3) Sheep intended for importation from Australia, Canada, or New Zealand, provided that none of the female sheep in the flock from which the sheep will be imported has been impregnated, during the 5 years immediately preceding shipment of the sheep to the United States, with germ plasm from a country other than Australia, Canada, New Zealand, or the United States, in accordance with § 92.405(c)(3);

(4) Wethers;

(5) Sheep or goats imported for immediate slaughter; and

(6) Wild sheep or goats imported for exhibition purposes to an approved zoological park in accordance with § 92.404(c).

(c) Sheep or goats may be imported under paragraph (a) of this section only if the importer provides the Voluntary Scrapie Flock Certification Program identification number of the receiving flock or herd as part of the application for an import permit.

(d) Sheep and goats may be imported under paragraph (a)(1) of this section only if they come from a flock or herd in the country of origin that participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, and the flock or herd has been determined by the Administrator to be at a level equivalent to ''Certified'' in the Voluntary Scrapie Flock Certification Program.

(e) Sheep and goats may be imported under paragraph (a)(2) of this section only if they are placed in a Certifiable Class C flock or herd participating in the Voluntary Scrapie Flock Certification Program; *except*, that if the sheep and goats come from a flock or herd in the country of origin that participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, then the sheep and goats may be placed in a herd or flock in the United States which would be classified at a level equivalent to or lower (i.e., at a greater risk) than the certification level, as determined by the Administrator, of the flock or herd from which the sheep or goats are to be imported.

(f) Sheep and goats imported under paragraph (a)(2) of this section must be monitored for scrapie disease until the flock or herd qualifies as a ''Certified'' flock or herd.

(g) Except for imported sheep and goats placed in Certifiable Class C flocks or herds, the certificate accompanying sheep or goats imported under paragraph (a) of this section must contain the following statement: ''The animals identified on this certificate have been monitored by a salaried veterinary officer of [*name of country of origin*], for [*number of months*], in the same source flock or herd which had been determined by the Administrator, APHIS, prior to the exportation of these animals to the United States, to be equivalent to [*certification level*] of the Voluntary Scrapie Flock Certification Program authorized under 9 CFR part 54, subpart B.''

(1) The Administrator will determine, based upon information supplied by the importer, whether the flock or herd from which the animals are to be imported participates in a program in the country of origin that is equivalent to the Voluntary Scrapie Flock Certification Program, and if so, at what level the source flock or herd should be classified.

(2) In order for the Administrator to make a determination, the importer must supply the following information with the application for an import permit no less than 1 month prior to the anticipated date of importation:

(i) The name, title, and address of a knowledgeable official in the veterinary services of the country of origin;

(ii) The details of scrapie control programs in the country of origin, including information on disease surveillance and border control activities and the length of time such activities have been in effect;

(iii) Any available information concerning additions, within the 5 years immediately preceding shipment to the United States, to the flock or herd from which the sheep and goats will be imported;

(iv) Any available data concerning disease incidence, within the 5 years immediately preceding shipment to the United States, in the flock or herd from which the sheep or goats are to be imported, including, but not limited to, the results of diagnostic tests, especially histopathology tests, conducted on any animals in the flock or herd;

(v) Information concerning the health, within the 5 years immediately preceding shipment to the United States, of other ruminants, flocks, and herds with which the imported sheep and goats, and with which animals in the sheep or goats' flock or herd might have had physical contact, and a description of the type and frequency of such physical contact; and

(vi) Any other information requested by the Administrator in specific cases as needed to make a determination.

(Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0101)

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

14. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

15. Section 98.2 is amended by adding definitions for *flock* and *herd*, in alphabetical order, to read as follows:

§ 98.2 Definitions.

* * * * *

Flock. A herd.

Herd. All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.

* * * * *

16. Section 98.5 is amended as follows:

a. By redesignating the introductory text of the section and paragraphs (a), (b), (c), (d), and (e) as paragraph (a) introductory text and paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5), respectively.

b. By revising newly designated paragraph (a) introductory text to read as set forth below.

c. By adding a new paragraph (b) to read as set forth below.

§ 98.5 Health certificate.

(a) Except as provided in subpart B of this part, an animal embryo shall not be imported into the United States unless it is accompanied by a certificate issued by a full-time salaried veterinary officer of the national government of the country of origin, or issued by a veterinarian designated or accredited by the national government of the country of origin and endorsed by a full-time salaried veterinary officer of the national government of the country of origin, representing that the veterinarian issuing the certificate was authorized to do so. The certificate shall state:

* * * * *

(b) The certificate accompanying sheep or goat embryos intended for importation from any part of the world shall, in addition to the statements required by paragraph (a) of this section, state that:

(1) The embryos' sire and dam have not been in any flock or herd nor had contact with sheep or goats which have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years prior to the date of collection of the embryos;

(2) The embryos' sire and dam showed no evidence of scrapie at the time the embryos were collected;

(3) Scrapie has not been suspected nor confirmed in any progeny of the embryos' donor dam; and

(4) The parents of the embryos' sire and dam are not, nor were not, affected with scrapie.

17. In part 98, subpart A, a new § 98.10a is added to read as follows:

§ 98.10a Embryos from sheep in countries other than Australia, Canada, and New Zealand.

(a) Except for embryos from sheep in Australia, Canada, or New Zealand, embryos from sheep may only be imported into the United States if they comply with all applicable provisions of this subpart and one of the following conditions:

(1) The embryos are transferred to females in a flock in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B) and qualifies as a ''Certified'' flock; or

(2) The embryos are transferred to females in a flock in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B) and the flock owner has agreed, in writing, to maintain the flock, and all first generation progeny resulting from embryos imported in accordance with this section, in compliance with all requirements of the Voluntary Scrapie Flock Certification Program until the flock, including all first generation progeny resulting from embryos imported in accordance with this section, qualifies as a ''Certified'' flock.

(b) Sheep embryos may be imported under paragraph (a) of this section only if the importer provides the Voluntary Scrapie Flock Certification Program identification number of the receiving flock as part of the application for an import permit.

(c) Sheep embryos may be imported under paragraph (a)(1) of this section only if they are the progeny of a dam and sire that are part of flocks in the country of origin that participate in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, and the flocks have been determined by the Administrator to be at a level equivalent to ''Certified'' in the Voluntary Scrapie Flock Certification Program.

(d) Sheep embryos may be imported under paragraph (a)(2) of this section only if they are transferred to animals in a Certifiable Class C flock participating in the Voluntary Scrapie Flock Certification Program; *except*, that if the embryos are the progeny of a dam and sire whose flock in the country of origin participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, then the embryos may be placed in a flock in the United States which would be classified at a level equivalent to or lower (i.e., at a greater risk) than the certification level, as determined by the Administrator, of either the flock of the dam or the flock of the sire, whichever one presents the greater risk.

(e) The flock to which the sheep embryos are transferred pursuant to paragraph (a)(2) of this section must be monitored for scrapie disease until the flock, and all first generation progeny resulting from the embryos imported in accordance with this section, qualifies as a ''Certified'' flock.

(f) Except for sheep embryos being placed in Certifiable Class C flocks, the certificate accompanying sheep embryos imported under paragraph (a) of this section must contain the following statement: ''The embryos identified on this certificate are the progeny of a dam and sire that have been monitored by a salaried veterinary officer of [*name of country of origin*], for [*number of months*], in the same source flock which had been determined by the Administrator, APHIS, prior to the exportation of these embryos to the United States, to be equivalent to [*certification level (of dam or sire) presenting greater risk*] of the Voluntary Scrapie Flock Certification Program authorized under 9 CFR part 54, subpart B.''

(1) The Administrator will determine, based upon information supplied by the importer, whether the flock of the embryos' dam and sire participates in a program in the country of origin that is equivalent to the Voluntary Scrapie Flock Certification Program, and if so, at

what level the source flock would be classified.

(2) In order for the Administrator to make a determination, the importer must supply the following information with the application for an import permit, no less than 1 month prior to the anticipated date of importation:

(i) The name, title, and address of a knowledgeable official in the veterinary services of the country of origin;

(ii) The details of scrapie control programs in the country of origin, including information on disease surveillance and border control activities and the length of time such activities have been in effect;

(iii) Any available information concerning additions, within the 5 years immediately preceding collection of the embryos, to the flock of the embryos' sire and dam;

(iv) Any available data concerning disease incidence, within the 5 years immediately preceding collection of the embryos, in the flock of the embryos' sire and dam, including, but not limited to, the results of diagnostic tests, especially histopathology tests, conducted on any animals in the flock;

(v) Information concerning the health, within the 5 years immediately preceding collection of the embryos, of other ruminants, flocks, and herds with which the embryos' sire and dam and the flock of the embryos' sire and dam might have had physical contact, and a description of the type and frequency of the physical contact; and

(vi) Any other information requested by the Administrator in specific cases as needed to make a determination.

(g) All first generation progeny resulting from embryos imported under this section are subject to the requirements of 9 CFR part 54 and all other applicable regulations.

(Approved by the Office of Management and Budget under control numbers 0579–00040 and 0579–0101)

18. In part 98, subpart B, § 98.14 is amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. By redesignating paragraph (d) as paragraph (e).

c. By adding a new paragraph (d) to read as set forth below.

§ 98.14 Health certificate.

(a) Ruminant and swine embryos shall not be imported into the United States unless they are accompanied by a certificate issued by a full-time salaried veterinary officer of the national government of the country of origin, or issued by a veterinarian designated or accredited by the national government of the country of origin and endorsed by a full-time salaried veterinary officer of the national government of the country of origin, representing that the veterinarian issuing the certificate was authorized to do so.

* * * * *

(d) The health certificate accompanying sheep or goat embryos intended for importation from any part of the world shall, in addition to the statements required by paragraph (b) of this section, state that:

(1) The embryos' sire and dam have not been in any flock or herd nor had contact with sheep or goats which have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years prior to the date of collection of the embryos;

(2) The embryos' sire and dam showed no evidence of scrapie at the time the embryos were collected;

(3) Scrapie has not been suspected nor confirmed in any progeny of the embryos' donor dam; and

(4) The parents of the embryos' sire and dam are not, nor were not, affected with scrapie.

* * * * *

19. In part 98, subpart B, a new § 98.21 is added to read as follows:

§ 98.21 Embryos from sheep in countries other than Australia, Canada, and New Zealand.

Except for embryos from sheep in Australia, Canada, or New Zealand, embryos from sheep may only be imported into the United States if they comply with all applicable provisions of this subpart and with § 98.10a.

(Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0101)

20. In part 98, subpart C, § 98.30 is amended by adding definitions for flock and herd, in alphabetical order, to read as follows:

§ 98.30 Definitions.

* * * * *

Flock. A herd.

Herd. All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.

* * * * *

21. Section § 98.35 is amended as follows:

a. By revising paragraph (c) to read as set forth below.

b. By adding a new paragraph (e) to read as set forth below.

c. By adding a parenthetical at the end of the section to read as set forth below.

§ 98.35 Declaration, health certificate, and other documents for animal semen.

* * * * *

(c) All animal semen intended for importation into the United States shall be accompanied by a health certificate issued by a full-time salaried veterinary officer of the national government of the country of origin, or issued by a veterinarian designated or accredited by the national government of the country of origin and endorsed by a full-time salaried veterinary officer of the national government of the country of origin, representing that the veterinarian issuing the certificate was authorized to do so.

* * * * *

(e) The certificate accompanying sheep or goat semen intended for importation from any part of the world shall, in addition to the statements required by paragraph (d) of this section, state that:

(1) The semen donor has not been in any flock or herd nor had contact with sheep or goats which have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years prior to the date of collection of the semen;

(2) The semen donor showed no evidence of scrapie at the time the semen was collected; and

(3) The parents of the semen donor are not, nor were not, affected with scrapie.

(Approved by the Office of Management and Budget under control number 0579–0040)

§ 98.36 [Amended]

22. In § 98.36, paragraph (a), introductory text is amended by adding the words ''is not a sheep or goat and'' immediately before the colon.

23. A new § 98.37 is added to read as follows:

§ 98.37 Semen from sheep in countries other than Australia, Canada, and New Zealand.

(a) Except for semen from sheep in Australia, Canada, or New Zealand, semen from sheep may only be imported into the United States if it complies with all applicable provisions of this subpart and one of the following conditions:

(1) The semen is transferred to females in a flock in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B) and qualifies as a ''Certified'' flock; or

(2) The semen is transferred to females in a flock in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B), and the flock

owner has agreed, in writing, to maintain the flock, and all first generation progeny resulting from semen imported in accordance with this section, in compliance with all requirements of the Voluntary Scrapie Flock Certification Program until the flock, including all first generation progeny resulting from semen imported in accordance with this section, qualifies as a ''Certified'' flock.

(b) Sheep semen may be imported under paragraph (a) of this section only if the importer provides the Voluntary Scrapie Flock Certification Program identification number of the receiving flock as part of the application for an import permit.

(c) Sheep semen may be imported under paragraph (a)(1) of this section only if it comes from a donor animal in a flock in the country of origin that participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, and the flock has been determined by the Administrator to be at a level equivalent to ''Certified'' in the Voluntary Scrapie Flock Certification Program.

(d) Sheep semen may be imported under paragraph (a)(2) of this section only if it is transferred to animals in a Certifiable Class C flock participating in the Voluntary Scrapie Flock Certification Program; except, that if the semen comes from a donor animal whose flock in the country of origin participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, then the semen may be used in a flock in the United States which would be classified at a level equivalent to or lower (i.e., at greater risk) than the certification level, as determined by the Administrator, of the flock of the donor animal.

(e) The flock to which the sheep semen is transferred pursuant to paragraph (a)(2) of this section must be monitored for scrapie disease until the flock, and all first generation progeny resulting from the semen imported in accordance with this section, qualifies as a ''Certified'' flock.

(f) Except for sheep semen being placed in Certifiable Class C flocks, the certificate accompanying the sheep semen imported under paragraph (a) of this section must contain the following statement: ''The semen identified on this certificate has been collected from a sire that has been monitored by a salaried veterinary officer of [*name of country of origin*], for [*number of months*], in the same source flock which had been determined by the Administrator, APHIS, prior to the exportation of the semen to the United States, to be equivalent to [*certification level*] of the Voluntary Scrapie Flock Certification Program authorized under 9 CFR part 54, subpart B.''

(1) The Administrator will determine, based upon information supplied by the importer, whether the donor animal's flock participates in a program in the country of origin that is equivalent to the Voluntary Scrapie Flock Certification Program, and if so, at what level the source flock would be classified.

(2) In order for the Administrator to make a determination, the importer must supply the following information with the application for an import permit, no less than 1 month prior to the anticipated date of importation:

(i) The name, title, and address of a knowledgeable official in the veterinary services of the country of origin;

(ii) The details of scrapie control programs in the country of origin, including information on disease surveillance and border control activities and the length of time these activities have been in effect;

(iii) Any available information concerning additions, within the 5 years immediately preceding collection of the semen, to the flock of the semen donor;

(iv) Any available data concerning disease incidence, within the 5 years immediately preceding collection of the semen in the donor animal's flock, including, but not limited to, the results of diagnostic tests, especially histopathology tests, conducted on any animals in the flock;

(v) Information concerning the health, within the 5 years immediately preceding collection of the semen, of other ruminants, flocks, and herds with which the donor animal and the donor animal's flock might have had physical contact, and a description of the type and frequency of the physical contact; and

(vi) Any other information requested by the Administrator in specific cases as needed to make a determination.

(g) All first generation progeny resulting from semen imported under this section are subject to the requirements of 9 CFR part 54 and all other applicable regulations.

(Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0101)

Done in Washington, DC, this 9th day of April 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–9266 Filed 4–18–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket 95–21]

RIN 2125–AD61

General Material Requirements; Warranty Clauses

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting, as final, a current interim final rule that revises the use of guaranty and warranty clauses on Federal-aid highway construction contracts. This final rule permits greater use of warranties in Federal-aid highway construction contracts within prescribed limits.

EFFECTIVE DATE: August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. James Daves, Office of Engineering, (202) 366–0355 or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On August 25, 1995, the FHWA published in the Federal Register (60 FR 44271) an interim final rule along with a request for comments, revising its regulation regarding warranty clauses on Federal-aid highway construction contracts. That action permitted the greater use of warranties in Federal-aid highway construction contracts within prescribed limits.

Discussion of Comments

The public comment period for the interim final rule closed on October 24, 1995. The FHWA received 20 written responses from 19 organizations including 11 associations, six State Departments of Transportation (DOTs), and two private companies. The responses concerning this interim final rule are available for review at the Federal Highway Administration, Public Docket Room 4232, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590.

Of the 20 responses received, 13 comments did not support the interim final rule and seven did support the interim final rule. The significant comments are summarized in the following discussion.

Requiring Warranties

An association responding to the interim final rule stated that by revising its regulation the FHWA was requiring

the use of warranty clauses on Federal-aid highway construction contracts. This statement, however, is inaccurate. The FHWA removed its regulation prohibiting the use of warranty clauses, but left it to the State DOTs to decide when or if they will use warranty clauses. If warranty clauses are used on Federal-aid highway construction contracts, it will be because the State DOT chooses to use them, with FHWA concurrence.

Bonding Capacity

Four associations, two private companies and one DOT commented on the effect of warranty provisions on bonding capacity, particularly on smaller contractors. They noted that requiring warranties of several years typically requires the contractor to provide a performance bond for that period of time. The size of the performance bond could be quite large and, particularly in the case of smaller contractors, the effect on their overall bonding capacity could affect their ability to obtain work. The seven commenters argue that this would effectively stifle competition for contracts and ultimately increase the cost to the taxpayers. One commenter felt that the effect on smaller contractors violates the Regulatory Flexibility Act. Discussion of that comment is included in the following paragraphs, and later under the heading ''Regulatory Flexibility Act.''

The FHWA believes that removing the restriction on warranty clauses will not stifle competition or negatively affect smaller contractors' overall bonding capacity and ability to obtain work. In the first place, experience to date has shown no negative effect on the bonding capacity of small businesses. State DOTs have been following their own procedures regarding the inclusion of warranties in non-NHS Federal-aid contracts since the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914). These non-NHS projects constitute approximately one-third of the FHWA's Federal-aid highway program, and have amounted to several billions of dollars worth of construction each fiscal year. The FHWA has not observed any problem with the bonding capacity of smaller contractors who perform work eligible for such warranties. This regulation allows the FHWA simply to extend the option to use such warranty clauses by the State DOTs on the remaining two-thirds of the program, and the FHWA does not believe that this added flexibility will be used to an extent or in such a way as to negatively impact the bonding capacity of small businesses.

Secondly, the warranties allowed by this regulation are limited to a specific construction product or feature. This regulation does not apply to design engineering or full project warranties. The FHWA believes that this fact will limit the warranties given and, in turn, the contractor's exposure.

Thirdly, the FHWA anticipates these warranties will be primarily applied to small specialty or experimental item contracts. As a result, some small businesses may benefit from the ability to offer warranties on specialty or experimental items, either included as one element of the contract or as the main element of the contract. When warranties are prohibited, such items are often limited to experimental item contracts because the contracting agent (State DOT) has no assurance of the item's effectiveness. By removing the restriction on such warranties, the FHWA believes the smaller contractors may in fact have greater opportunity to enter the market with their experimental items because they can be guaranteed by a warranty.

Finally, the FHWA believes that the concern over this regulation's effect on the bonding capacity of smaller contractors is overstated. These warranties are expected to be relatively short term—five years or less. Given the type of contracts involved (relatively short term and for a specific product or item), the FHWA expects that the bonding capacity of smaller contractors will not be adversely affected.

Since publication of the interim final rule, one State DOT has proposed a warranty contract provision which eliminates the need for a long term bond and, in turn, the criticism that warranties affect bonding capacity. In this State's proposal, a portion of the contractor's bid amount is retained and paid to the contractor on an annual cycle based on satisfactory performance of the item which has been warranted. Using such an approach, no long term bond is required by the contractor. The FHWA sees this as a possible alternative to bonding warranties, which deserves monitoring to determine if it is effective.

Increased Flexibility

Six State DOTs (one DOT responded twice) responding to the interim final rule commented on the increased flexibility afforded to contracting agencies by the revision of the FHWA regulation. These commenters saw this as a positive change, and generally supported allowing contracting agencies to decide when to use warranty clauses within the framework of the revised regulation, with concurrence by the FHWA.

Design Liability

Four associations and one private company stated that they opposed the contractor being liable for the design of a project under the umbrella of a warranty. They felt that such design exposure was outside the control of the construction contractor and, therefore, inappropriate. The warranty regulation as revised by the FHWA states that the warranty provision shall be for a specific construction product or feature. There is no mention in the regulation of design being warranted, as these commenters assert. Furthermore, the warranty regulation states that the construction contractor will not be obligated for items over which the contractor has no control. A construction contractor does not typically have any control over the design of a project, therefore a warranty provision could not bind them to the project design.

Administrative Procedure Act

One association commenting on the interim final rule discussed the publication of an interim final rule as it relates to the Administrative Procedure Act (APA). That commenter criticized the FHWA's decision to waive the notice and comment requirements of the APA, 5 U.S.C. 553, and proceed directly to an interim final rule. The commenter stated that the interim final rule imposes ''significant new obligations on the States by granting the government the authority to mandate greater use of warranties on Federal-aid highway projects.'' In fact, the interim final rule relieves a restriction and imposes no new obligation or requirement on the States. It merely enables the States to include warranty clauses in Federal-aid highway construction contracts if they find such clauses would be beneficial. Warranty clauses have been found to enhance the quality of highway construction projects, so proceeding to an interim final rule in this instance was in the public interest. Moreover, the FHWA did solicit comments on this rulemaking and is considering and responding to those comments to the same extent it would be in the case of a notice of proposed rulemaking.

Semiannual Regulatory Agenda

One association commenting on the interim final rule noted its objection to the FHWA's failure to publish this rulemaking in the DOT's Semiannual Regulatory Agenda (Agenda) prior to publication of the interim final rule. (The current rulemaking was published

in the DOT's Semiannual Regulatory Agenda on November 28, 1995.) While the commenter is correct in noting that Executive Order 12866 and the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) require the DOT to prepare a semiannual regulations agenda for publication in the Federal Register, neither the Executive Order nor the RFA prevent the FHWA from publishing a rulemaking document which has not previously been listed in the Agenda. Section 602(d) explicitly provides that the requirement to publish such an agenda does not preclude the agency from considering or acting on any matter not listed in such agenda.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Policies and Procedures) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The revisions would merely accommodate expanded use of warranty clauses on Federal-aid construction contracts. Therefore, it is anticipated that the economic impact of this rulemaking will be minimal and a full regulatory evaluation is not required.

This final rule makes no changes to the interim final rule and merely informs the public that the interim final rule remains unchanged. Therefore, the FHWA finds that good cause exists to dispense with the 30-day delayed effective date requirement under 5 U.S.C. 553(d).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–345, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As stated above, the FHWA made this determination based on the fact that: (1) experience to date with non-NHS Federal-aid projects that allow the use of warranties has shown no negative effect on the bonding capacity of small businesses for non-NHS Federal-aid projects; (2) some small businesses may benefit from the ability to enter the market with specialty or experimental items, either included as one element of the contract or as the main element of the contract; and (3) given the type of contracts involved (relatively short term and for a specific product or item), the FHWA expects that the bonding capacity of smaller contractors will not experience any significant adverse effect.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a separate Federalism assessment. Nothing in this document preempts any State law or regulation, and no new requirements or obligations are imposed on States or local governments by this action. Instead, this interim final rule provides States with additional discretion to determine for themselves whether to include warranty clauses in Federal-aid highway construction contracts for projects on the National Highway System.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

This rulemaking does not have any effect on the environment. It does not constitute a major action having a significant effect on the environment, and therefore does not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

In consideration of the foregoing and under the authority of 23 U.S.C. 315, the interim final rule amending the authority for 23 CFR part 635 and revising § 635.413 which was published at 60 FR 44271, August 25, 1995 is adopted as final without change.

Issued on: April 3, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–9558 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 583

[Docket No. FR–3379–C–02]

RIN A506–AB45

Office of the Assistant Secretary for Community Planning and Development; Supportive Housing Program; Technical Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Technical correction.

SUMMARY: This document corrects the Department's regulations for the Supportive Housing Program. The definitions for the terms ''*Supportive housing*'' and ''*Supportive services*'' were incorrectly codified in the 1995 edition of the Code of Federal Regulations. This document will correct those definitions.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Jean Whaley, Program Development Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7260, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–2140. (This is not a toll-free number.) Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The regulations in 24 CFR part 583 implement the Department's Supportive Housing Program, which provides assistance for housing and supportive services for homeless persons, as authorized by section 1403 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved

October 28, 1992). The Department established these regulations through an interim rule published on March 15, 1993 (58 FR 13870). This interim rule, in § 583.5, provided definitions for the terms ''*Supportive housing*'' and ''*Supportive services*''.

In a final rule published on July 19, 1994 (59 FR 36886), the Department revised the introductory text for the definition of ''*Supportive services*''. However, this revision was incorrectly codified in the 1995 edition of the Department's regulations in the Code of Federal Regulations (CFR). The revision was reflected in the definition for ''*Supportive housing*'', rather than in the definition for ''*Supportive services*'' as intended. Therefore, this document corrects § 583.5 so that it accurately reflects the definitions of ''*Supportive housing*'' and ''*Supportive services*'' as established in the May 15, 1993 interim rule, and as revised in the July 19, 1994 final rule.

The effective date of this technical correction, August 18, 1994, reflects the effective date of the July 19, 1994 final rule. The July 19, 1994 rule was the last revision of § 583.5 prior to the 1995 codification.

List of Subjects in 24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

PART 583—SUPPORTIVE HOUSING PROGRAM

Accordingly, 24 CFR part 583 is corrected as follows:

1. The authority citation for 24 CFR part 583 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

2. In subpart A, § 583.5 is corrected by removing the two definitions for ''*Supportive services*'', and by adding, in alphabetical order, definitions for ''*Supportive housing*'' and ''*Supportive services*'', to read as follows:

§ 583.5 Definitions.

* * * * *

Supportive housing means housing in conjunction with which supportive services are provided for homeless persons if:

(1) The housing is safe and sanitary and meets any applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located and the requirements of this part; and

(2) The housing is:

(i) Transitional housing;

(ii) Permanent housing for homeless persons with disabilities; or

(iii) Is, or is a part of, a particularly innovative project for, or alternative method of, meeting the immediate and long-term needs of homeless persons.

Supportive services means services, which may be designed by the recipient or program participants, designed to address the special needs of the homeless persons to be served by the project. Supportive services include, but are not limited to:

(1) Establishing and operating a child care services program for homeless families;

(2) Establishing and operating an employment assistance program;

(3) Providing outpatient health services, food, and case management;

(4) Providing assistance in obtaining permanent housing, employment counseling, and nutritional counseling;

(5) Providing security arrangements necessary for the protection of residents of supportive housing and for homeless persons using the housing or services;

(6) Providing assistance in obtaining other Federal, State, and local assistance available for such residents including mental health benefits, employment counseling, Veterans' benefits, medical assistance, but not including major medical equipment, and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and

(7) Other services as appropriate.

* * * * *

Dated: April 12, 1996.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 96–9716 Filed 4–18–96; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–023]

RIN 2115–AE46

Special Local Regulations; City of Lake Worth, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Lake Worth Sunfest 96. The event will be held on May 1st and 2nd, 1996 from 6 p.m. to 10 p.m. EDT (Eastern Daylight Time), on May 3rd, 1996 from 12 p.m. to 10 p.m. EDT, on May 4th and 5th, 1996 from 9 a.m. to 10 p.m. EDT on the Intracoastal Waterway, Lake Worth, Florida. These regulations are necessary to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: This section is effective between 5:30 p.m. and 10:30 p.m. EDT on May 1st, and 2nd, 1996 between 11:30 a.m. and 10:30 p.m. EDT on May 3rd 1996; and between 8:30 a.m. and 10:30 p.m. EDT, on May 4th and 5th 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for copying and inspection at U.S. Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, FL 33139, between 8 a.m. and 3 p.m. EDT, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: QMC T. Kjerulff, Operations Center Supervisor, U.S. Coast Guard Group Miami at (305) 535–4448.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations. Following normal rulemaking procedures would have been impracticable. The information necessary to hold the event was not received until January 29, 1996 and there was not sufficient time remaining to published proposed rules in advance of the event or to provide for a delayed effective date.

Discussion of Regulations

These temporary special local regulations are being adopted for the Lake Worth Sunfest 96. The event will be held on May 1st and 2nd, 1996 from 6 p.m. to 10 p.m., on May 3rd, 1996 from 12 p.m. to 10 p.m., on May 4th and 5th, 1996 from 9 a.m. to 10 p.m. on the intracoastal waterway, Lake Worth, Florida. There will be approximately 20 racers in ski boats, jet skis, and canoes, ranging in size from 12 to 17 feet, participating in the Lake Worth Sunfest 96. Due to concentration of participant and spectator vessels, these regulations are necessary to provide for the safety of life on navigable waters during the event. The event will take place in the Lake Worth Intracoastal Waterway between the Royal Palm Bridge and the Flagler Memorial Bridge. There will be a no wake zone between these two bridges.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs

and benefits under section 6(a)(f) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulated area encompasses less than ¾ nautical mile on the Intracostal Waterway between Flagler and Memorial bridges. Vessels entering the regulated area will only be required to proceed at no wake speed for 5 hours on May 1st and 2nd 1996, 11 hours on May 3rd 1996 and 14 hours on May 4th and 5th 1996.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.).*

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for inspection and copying at the address listed under **ADDRESSES**. As a condition to the permit, the applicant is required to educate the operators of spectator craft and parade participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.T07–023 is added as follows:

§ 100.T07–023 Special Local Regulations; Intracoastal Waterway at Lake Worth, FL.

(a) *Definitions.* (1) *Regulated area.* A regulated area is established in the Lake Worth Intracoastal Waterway (ICW) between the Royal Palm Bridge and the Flagler Memorial Bridge, for the Width of the ICW.

(2) *Coastal Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Miami, Florida.

(b) *Special Local Regulations.* (1) The regulated area is a no wake zone. All transiting vessels shall operate a speed so as to not cause a wake or at five (5) knots, whichever is slower.

(2) All vessels shall immediately follow any specific instructions given by event patrol craft and exercise extreme caution while operating in or near the regulated area. A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) After the termination of the Sunfest 96 event for each respective day and the regulated area, all vessels may resume normal operations.

(c) *Effective Dates.* These regulations are effective on May 1st and 2nd 1996 at 5:30 p.m. EDT and terminate at 10:30 p.m.; on May 3rd 1996 at 11:30 a.m. and terminate at 10:30 p.m.; and on May 4th and 5th 1996 at 8:30 a.m. and terminate at 10:30 p.m.. These times are effective unless the regulated area is sooner terminated by the Patrol Commander.

Dated: March 21, 1996.

Roger T. Rufe, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 96–9654 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD11–95–02]

RIN–2115–AE47

Drawbridge Operation Regulations; Little Potato Slough

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the California Department of Transportation, the Coast Guard is amending the regulation for the Highway 12 Swing Bridge crossing over Little Potato Slough, mile 1.0, at Terminous, near Stockton, California. The amended regulation stipulates that the draw must open on 4 hours advance notice at all times. This amendment will allow the bridge owner to reduce operating expenses, and will provide for the reasonable needs of navigation.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Christian G. Cerles, Bridge Section, Eleventh Coast Guard District, Building 10, Room 214, Coast Guard Island, Alameda, CA. 94501–5100. The telephone number is (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Discussion of the Amendment

Regulatory History

On February 10, 1995, the Coast Guard published a Notice of Proposed Rulemaking for these regulations in the Federal Register (60 FR 7928). Interested parties were given until April 11, 1995 to submit comments. The Coast Guard received 40 comments on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The Coast Guard is changing the operating regulation for the Little Potato Slough swing bridge to require 4 hours advance notice at all times. The Little Potato Slough swing bridge was rebuilt at a higher elevation in 1991. Prior to its reconstruction, the bridge provided only 9 feet vertical clearance at Mean High Water and opened more than 3,000 times each year for vessel passage. After reconstruction, it provides 35 feet vertical clearance and opens much less frequently. In 1993 it opened only 239 times, an average of less than one opening each day. The Little Potato Slough Bridge can now pass most vessels without an opening, and the remaining vessels can be accommodated with openings provided on advanced notice.

Discussion of comments

One marina owner and one recreational mariner wrote in support of the regulation. The Coast Guard received 29 postcards and 1 letter indicating general opposition to any change in the regulations for Sacramento and San Joaquin River Delta drawbridges. No specific information was provided in those postcards and letter. The owners of the Tower Park Marina, adjacent to the bridge, opposed the change on the basis that it would be an inconvenience to their customers and would result in a loss of business. They recommended that the existing regulation be revised slightly to begin the winter operation schedule one month earlier. Five recreational mariners who moor at, or frequent Tower Park Marina also opposed the change as an inconvenience to their use of the waterway. One of them recommended a shorter summer attended schedule and one recommended openings on the hour or at other predetermined times. The owner of the Steamboat Resort opposed any reduced drawbridge service, and recommended providing attended service during high use periods.

Although the advance notice will be less convenient for mariners than attended service, it will accommodate all requests for bridge openings. The number of openings averages less than one per day year-round (1.3 openings per day during the summer months), thus the regulation should meet the reasonable needs of navigation. The 4 hour notice requirement is consistent with the notice requirements for other bridges in this area, and has been used successfully in the past during the unattended periods.

Two recreational mariners pointed out that a shoal at the mouth of the Mokelumne River, the alternate waterway route, limits the access for deeper draft recreational vessels. The new regulation will provide for bridge openings at any time-with 4 hours advance notice, thus deeper draft recreational vessels and commercial vessels will continue to have access through Little Potato Slough.

The Dutra Dredging Company (Dutra) opposed the change as a restriction on their operations including emergency response. As noted above, although the advance notice will be less convenient for mariners than attended service, it will accommodate all requests for bridge openings. Second, emergency bridge openings must be provided at all drawbridges ''as soon as possible'' for vessels in distress or commercial vessels engaged in rescue or emergency salvage operations, under 33 CFR 117.31. Dutra questioned whether openings would be provided on 4 hour notice and believed that openings would be very numerous on summer weekends. The applicant reaffirmed that openings would be provided on 4 hours advance notice and provided bridge logs which showed that there was no significant difference between openings on summer weekdays or summer weekend days. Dutra also questioned whether the operators called to open the bridge would be adequately trained. The applicant advised that all personnel involved in operating the bridge would be appropriately trained. Dutra noted that there have been incidents of high-masted vessels losing power near the bridge and if there was no one available to open the bridge promptly, there would be damage to both the bridge and vessel. That is a possibility, however, under those circumstances, the presence of a bridge operator would not guarantee the safety of either the vessel or bridge, nor would the absence of a bridge operator guarantee damage to either the vessel or bridge.

Small Entities

Currently, the number of bridge openings averages less than one per day year-round. Since the number of affected vessels is small, and the regulation will still provide access for them, the economic impact to the adjacent marina should also be small. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of costs under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 117 as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; CFR 1.46; and 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.167 is revised to read as follows:

§ 117.167 Little Potato Slough.

The draw of the California Department of Transportation highway bridge, mile 0.1, at Terminus, shall open on signal if at least 4 hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

Dated: March 6, 1996.

R.A. Appelbaum,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 96–9656 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD11–96–005]

RIN 2115–AE47

Drawbridge Operation Regulations; San Leandro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulation for the bridge over San Leandro Bay to reflect the construction of a new bicycle bridge. The city of Alameda has built a bascule bicycle

bridge adjacent to the bascule highway bridge over the entrance to San Leandro Bay between Bay Farm Island and Alameda, California. The new bridge is adjacent to the highway bridge, provides the same clearances, and is operated by the bridgetender at the highway bridge on the same schedule as the highway bridge. This amendment updates the existing regulation to include reference to the new bicycle bridge.

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT: Jerry P. Olmes, Bridge Section, Eleventh Coast Guard District, at (510) 437–3514.

SUPPLEMENTARY INFORMATION: Under the authority of 5 U.S.C. 553(b)(3)(B), the Coast Guard has for good cause determined that it is unnecessary to publish a notice of proposed rulemaking for this revision. There is no substantive change to the existing rule. The new bridge will be operated by the drawtender at the Bay Farm Island highway bridge, and will have the same hours of operation. There is no change to the navigational clearances. When the Coast Guard advertised the proposed issuance of a permit for the bridge, they described the intended method of operation, and received no comment about the method of operation.

Since there is no substantive change, there is no reason to delay the effective date beyond the date of publication in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Jerry P. Olmes, Project Manager, and Lieutenant Anita Abbott, Project Attorney.

Background and Purpose

The City of Alameda has built a bascule bicycle bridge adjacent to the California Department of Transportation bascule highway bridge between Bay Farm Island and Alameda, California. Construction is nearing completion. The bicycle bridge provides the same clearances as the highway bridge, and will be operated by the bridgetender at the highway bridge on the same schedule as the highway bridge. The amendment makes editorial changes to the regulation to reflect construction of the new bicycle bridge.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of costs under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1.The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.193 is revised to read as follows:

§ 117.193 San Leandro Bay.

The draws of the California Department of Transportation highway bridge, mile 0.0 (kilometer 0.0) and the City of Alameda bicycle bridge, mile 0.1 (kilometer 0.2) between Alameda and Bay Farm Island, shall open on signal; except that, from 5 a.m. to 8 a.m. and 5 p.m. to 9 p.m., the draws shall open on signal if at least 12 hours notice is given. Notice shall be given to the drawtender of the Bay Farm Island bridges from 8 a.m. to 5 p.m. and to the drawtender of the Park Street bridge at Alameda at all other times. The draws need not be opened for the passage of vessels from 9 p.m. to 5 a.m.

Dated: April 2, 1996.

R. A. Appelaum,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 96–9655 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD 05–96–008]

RIN 2115–AA97

Safety Zones: Elizabeth River and York River, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones on the Elizabeth and York Rivers during the dismantling and replacement of the Coleman Bridge. The safety zones will include moving zones around the tugs and tows carrying the bridge spans as they transit the thirty miles between Norfolk International Terminals (NIT) and the Coleman Bridge, a stationary zone in the Elizabeth River at NIT, and a stationary zone in the York River at the Coleman Bridge. The safety zones are needed to ensure the safety of mariners operating in the vicinity and to ensure the safety of all personnel involved with the movement of the bridge spans.

DATES: This rule is effective from 10 p.m. on April 24, 1996 to 10 p.m. May 30, 1996, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant Katherine Weathers, Chief, Port Safety and Security Branch, Coast Guard Marine Safety Office Norfolk, VA, (804) 441–3290.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A notice of proposed rulemaking (NPRM) for this temporary rule was published on Thursday, March 14, 1996 (61 FR 10493). The comment period for the NPRM ended April 3, 1996. No comments were received.

Changes from Proposed Rule

The Coast Guard adopts the proposed rule as a temporary rule except that it is changing the effective date of the temporary rule. This temporary rule will become effective on April 24, 1996 instead of April 26, 1996 as proposed in the NPRM. The first replacement bridge span was moved from Norfolk to the area of the Coleman Bridge on March 27, 1996. To ensure safety of that movement, the Coast Guard Captain of

the Port Hampton Roads issued a temporary rule [CGD 05–96–015] establishing moving safety zones effective from March 26, 1996 through April 24, 1996. This temporary rule will become effective upon expiration of that existing temporary rule.

Discussion of Temporary Rule

The Coast Guard is establishing a 500-yard moving safety zone around the tugs and tows transporting the bridge spans being used in the Coleman Bridge Replacement Project. Tows consisting of two or three barges abreast connected by pipe bracing and tension rods will be pushed by two tugs attached at the hip. The bridge spans will sit perpendicular to the barges atop steel towers simulating the height of the bridge piers. The barges are specially configured for the carriage of these spans and will be severely restricted in their ability to maneuver and susceptible to wake damage. Therefore, these moving safety zones will be in effect while the vessels transit each way between NIT and the Coleman Bridge in both loaded and unloaded conditions.

The stationary zones will be in effect at both the Coleman Bridge and at NIT where the new spans are currently located. The safety zone at the Coleman Bridge will extend west upstream 500 yards and east downstream 500 yards from the bridge, stretching from shore to shore. This safety zone will be in effect during the entire dismantling and replacement evolution. The safety zone at NIT will include all waters within a line connecting red buoy 12 to red buoy 14, from buoy 12 due east across the Norfolk Harbor Reach of the Elizabeth River to land, and from buoy 14 due east across the reach to land. This safety zone will only be enforced during the loading and unloading of the spans.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because of the limited duration and location of the zones established under this rule, the Coast Guard expects the impact of this temporary rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612 and has determined that this temporary rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary rule and concluded that under paragraph 2.B.2.e(34) of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this temporary rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160–5; 49 CFR 1.46.

2. Temporary Section 165.T05–008 is added to read as follows:

§ 165.T05–008 Safety Zone: James River, Elizabeth River, Chesapeake Bay, Port of Hampton Roads, VA.

(a) *Location.* The following areas are safety zones:

(1) All waters within 500 yards of any tug and tow involved in moving the Coleman Bridge spans while in both loaded and unloaded condition while transiting in either direction between Norfolk International Terminals (NIT) located on the Elizabeth River at the Norfolk Harbor Reach and the Coleman Bridge, which crosses the York River connecting Yorktown, Virginia with Gloucester Point, Virginia.

(2) All waters within 500 yards upstream and 500 yards downstream of the Coleman Bridge in the York River.

(3) All waters within a line connecting red buoy 12 to red buoy 14, and a line drawn due east from buoy 12 due east across the Norfolk Harbor Reach of the Elizabeth River to land, and from buoy 14 due east across the reach to land. This zone will be enforced during the loading and unloading of the bridge spans at NIT.

(b) *Definitions. Captain of the Port* means the Captain of the Port of Hampton Roads, VA. or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Hampton Roads to act on his behalf.

(c) (1) In accordance with the general provisions in §§ 165.23 and 165.501, entry into the zones described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port. The general requirements of §§ 165.23 and 165.501 also apply to this section.

(2) Persons or vessels requiring entry into or passage through the safety zones must first request authorization from the Captain of the Port. The Coast Guard vessels enforcing the safety zones can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port may be contacted at telephone number (804) 441–3314 or at the Marine Safety Office, Hampton Roads, VA.

(d) The Captain of the Port will notify the public of vessel movements and changes in the status of these zones by Marine Safety Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: April 12, 1996.

Dennis A. Sande,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 96–9652 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7174]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Calhoun	Unincorporated areas.	March 6, 1996, March 13, 1996, *The Anniston Star*.	Mr. Kenneth Joiner, Calhoun County Administrator, 1702 Noble Street, Suite 103, Anniston, Alabama 36201.	Feb. 28, 1996	010013C
Alabama: Calhoun and Talladega.	Oxford (City)	March 6, 1996, March 13, 1996, *The Anniston Star*.	The Honorable Leon Smith, Mayor of the City of Oxford, P.O. Box 3383, 100 Choccolocco Street, Oxford, Alabama 36203.	Feb. 28, 1996	010023C
Florida: Broward	Hillsboro Beach (Town).	February 1, 1996, February 8, 1996, *Observer*.	The Honorable Howard Sussman, Mayor of the Town of Hillsboro Beach, 1210 Hillsboro Mile, Hillsboro Beach, Florida 33062.	Jan. 24, 1996	120040F

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Duval	Jacksonville (City)	February 1, 1996, February 8, 1996, *The Florida Times-Union*.	The Honorable John Delaney, Mayor of the City of Jacksonville, 220 East Bay Street, 14th Floor, Jacksonville, Florida 32202–3495.	Jan. 25, 1996	120077E
Florida: Pinellas	St. Petersburg (City).	January 26, 1996, February 2, 1996, *St. Petersburg Times*.	The Honorable David J. Fisher, Mayor of the City of St. Petersburg, P.O. Box 2842, St. Petersburg, Florida 33731.	Jan. 19, 1996	125148C
Georgia: Fulton	Fairburn (City)	February 29, 1996, March 7, 1996, *The South Fulton Neighbor*.	The Honorable Betty Hannah, Mayor of the City of Fairburn, P.O. Box 145, Fairburn, Georgia 30213.	June 5, 1996	130314B
Georgia: Fulton	Unincorporated areas.	February 8, 1996, February 15, 1996, *Daily Report*.	Mr. Mitchell Skandalakis, Chairman of the Fulton County Board of Commissioners, 141 Pryor Street, S.W., Atlanta, Georgia 30303.	May 15, 1996	135160B
Illinois: Marion and Clinton.	Centralia (City)	February 23, 1996, March 1, 1996, *Centralia Sentinel*.	Ms. Becky Roeckeman, Community Development Director, 222 South Poplar Street, Centralia, Illinois 62801.	Aug. 16, 1996	170453C
Illinois: Cook	Village of Matteson	February 8, 1996, February 15, 1996, *The Matteson—Richton Park Star*.	Mr. Mark Stricker, Matteson Village President, 3625 West 215th Street, Matteson, Illinois 60443.	Feb. 1, 1996	170123C
Illinois: Tazewell	Morton (Village)	March 6, 1996, March 13, 1996, *Tazewell News*.	Robert D. Hertenstein, M.D., President of the Village of Morton Board of Trustees, P.O. Box 28, 120 North Main Street, Morton, Illinois 61550–0028.	Feb. 28, 1996	170652D
Indiana: Hamilton	Town of Westfield	February 13, 1996, February 20, 1996, *Noblesville Daily Ledger*.	Mr. Mike McDonald, Westfield Town Council President, 130 Penn Street, Westfield, Indiana 46074.	May 20, 1996	180083C
Massachusetts: Bristol.	Mansfield (Town)	January 26, 1996, February 2, 1996, *Mansfield News*.	Mr. William F. Williams, Mansfield Town Manager, 50 West Street, Mansfield, Massachusetts 02048.	May 2, 1996	250057
New Jersey: Middlesex.	Township of East Brunswick.	February 9, 1996, February 16, 1996, *The Home News and Tribune*.	The Honorable Ira Oskowsky, Mayor of the Township of East Brunswick, P.O. Box 1081, East Brunswick, New Jersey 08816.	Feb. 2, 1996	340260C
New York: Erie	Amherst (Town)	January 31, 1996, February 7, 1996, *Amherst Bee*.	Mr. Thomas Ahern, Town of Amherst Supervisor, Amherst Municipal Building, 5583 Main Street, Williamsville, New York 14221.	May 8, 1996	360226D
New York: Allegany	Wellsville (Town)	March 14, 1996, March 21, 1996, *The Wellsville Daily Reporter*.	Mr. Michael T. Baldwin, Supervisor of the Town of Wellsville, Municipal Building, 156 North Main Street, Wellsville, New York 14895.	Sept. 6, 1996	360035B
New York: Allegany	Wellsville (Village)	March 14, 1996, March 21, 1996, *The Wellsville Daily Reporter*.	The Honorable Susan C. Goetschius, Mayor of the Village of Wellsville, Municipal Building, 156 North Main Street, Wellsville, New York 14895.	Sept. 6, 1996	360036B
New York: Erie	Willamsville (Village).	January 31, 1996, February 7, 1996, *Amherst Bee*.	The Honorable Basil Piazza, Mayor of the Village of Williamsville, P.O. Box 1557, Williamsville, New York 14231–1557.	May 8, 1996	360263B
North Carolina: Haywood.	Unincorporated areas.	January 31, 1996, February 7, 1996, *The Mountaineer*.	Mr. Ed Russell, Chairman of the Haywood County Board of Commissioners, 420 North Main Street, Waynesville, North Carolina 28786.	Jan. 24, 1996	370120B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: April 9, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–9606 Filed 4–18–96; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC–96–2]

RIN 2125–AD73

Qualification of Drivers; Vision and Diabetes; Limited Exemptions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical correction.

SUMMARY: This document corrects the amendatory language for 49 CFR 391.2 in the issue of March 26, 1996, in FR Doc. 96–7226 on page 13346 (61 FR 13338). The March 26 document contained, among other things, a technical amendment to relocate an existing provision on exemptions for intracity zone drivers, found at 49 CFR 391.2(d), to 49 CFR 391.62 so that all limited exemptions from driver qualification standards could be found in the same subpart. Paragraphs 391.2(a), (b), and (c), were to remain unchanged.

Inadvertently, the paragraph designation for § 391.2(d) was omitted in the amendatory language where the text of this paragraph only was redesignated as § 391.62, thereby deleting § 391.2 (a), (b), and (c). This document technically corrects that amendatory language to include the omitted paragraph designation and thereby reinstate the text of § 391.2 (a), (b), and (c).

EFFECTIVE DATE: March 31, 1996.

FOR FURTHER INFORMATION CONTACT: For information regarding program issues: Ms. Sandra Zywokarte, Office of Motor Carrier Research and Standards, (202) 366–4001. For information regarding legal issues: Mr. Paul Brennan, Office of Chief Counsel, (202) 366–0834. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

The FHWA hereby corrects the amendatory language for 49 CFR 391.2 as published on March 26, 1996, in FR Doc. 96–7226 on page 13346 to read as follows:

§ 391.2(d) [Redesignated as § 391.62]

2. Part 391 is amended by redesignating § 391.2(d) as § 391.62 and revising it to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

Issued on: April 8, 1996.

Edward V.A. Kussy,

Acting Chief Counsel.

[FR Doc. 96–9557 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. 92–64; Notice 08]

RIN 2127–AG03

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for reconsideration.

SUMMARY: The American Automobile Labeling Act requires passenger motor vehicles (passenger cars and other light vehicles) to be labeled with information about their domestic and foreign parts content. NHTSA issued a final rule in July 1994 to implement that statute. In September 1995, in response to petitions for reconsideration, the agency issued a final rule modifying that final rule. This document responds to a petition for reconsideration of the September 1995 final rule. Upon review, the agency is denying the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Planning and Consumer Programs, National Highway Traffic Safety Administration, Room 5313, 400 Seventh Street SW., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1994, NHTSA published in the Federal Register (59 FR 37294) a new regulation, 49 CFR Part 583, Automobile Parts Content Labeling, to implement the American Automobile Labeling Act (Labeling Act). That Act, which is codified at 49 U.S.C. 32304, requires passenger motor vehicles to be labeled with information about their domestic and foreign parts content.

Under the Labeling Act and Part 583, vehicle manufacturers are required to affix to all new passenger motor vehicles a label which provides the following information: U.S./Canadian Parts Content, Major Sources of Foreign Parts Content, Final Assembly Point, Country of Origin for the Engine, and Country of Origin for the Transmission. Vehicle manufacturers must calculate the information for the label, relying on information provided to them by suppliers. Under the 1994 final rule, manufacturers and allied suppliers are required to request their suppliers to provide the relevant content information specified in Part 583, and the suppliers are required to provide the specified information in response to such requests.

NHTSA received a number of petitions for reconsideration of the 1994 final rule, including one from the American Automobile Manufacturers Association (AAMA). NHTSA issued two notices in response to those petitions.

In a final rule published in the Federal Register (60 FR 14228) on March 16, 1995, NHTSA partially responded to the petitions for reconsideration by extending, for an additional year, a temporary alternative approach for data collection and calculations. This approach permits manufacturers and suppliers to use procedures that are expected to yield similar results to the full procedures set forth in Part 583. NHTSA provided this temporary alternative approach in the 1994 final rule because there was insufficient remaining time, before the statutory date for beginning to provide labeling information, for manufacturers to complete the full procedures. The agency provided the one-year extension of the temporary approach in light of a substantial number of complex issues raised about the full procedures in the petitions for reconsideration and the time needed by the agency to address those issues.

The agency completed its response to the petitions in a final rule published in the Federal Register (60 FR 47878) on September 15, 1995. The agency made a number of changes to reduce the burdens associated with making content calculations and to produce more accurate information.

The agency received one petition for reconsideration of the September 1995 final rule. AAMA re-raised an issue that it had raised in its first petition, concerning a provision in Part 583 which specifies that the U.S./Canadian content of components must be defaulted to zero if suppliers fail to respond to a manufacturer's or allied supplier's request for content information. In initially adopting this provision in the July 1994 final rule, the agency stated that it did not believe that this situation will occur very often and that the provision will ensure that U.S./

Canadian content is not overstated as a result of the manufacturer or allied supplier simply assuming that equipment is of U.S./Canadian origin in the absence of information from the supplier.

AAMA's First Petition and NHTSA's Response

In its first petition for reconsideration, AAMA argued that the agency's expectation that few suppliers will fail to report is unreasonable, especially within the first few years of implementation of Part 583. For purposes of comparison, that organization stated that requests by one of its members for data from suppliers for NAFTA certificates of origin had yielded a response rate of only 50 to 60 percent. (In later information provided to the agency, AAMA indicated that the percentage of suppliers reporting under NAFTA ranged from 60 to 65 percent for GM, Ford and Chrysler.)

AAMA argued in its first petition that the content information ultimately provided to consumers will be more accurate if manufacturers are permitted to establish the U.S./Canadian content of components by other means when a supplier fails to respond. That organization recommended that if a manufacturer or allied supplier does not receive a response to its request for information, the manufacturer or allied supplier should be permitted to use the information in its records to determine the U.S./Canadian content. The determination could be made by such means as examining the customs marking country, applying the substantial transformation test, or other methodologies used for customs purposes.

After considering AAMA's request in its petition for reconsideration of the July 1994 final rule, NHTSA concluded that it would be inappropriate under the statute to make the requested change. The agency provided the following explanation:

* * * the Labeling Act provides that passenger motor vehicle equipment supplied by outside suppliers is considered U.S./Canadian if at least 70 percent of its value is added in the U.S./Canada. See 49 U.S.C. 32304(a)(9). The Labeling Act also provides that outside suppliers are required to certify, among other things, whether their equipment is of U.S./Canadian origin.

While it might appear at first glance to be reasonable to permit manufacturers and allied suppliers to make origin determinations concerning equipment provided by an outside supplier in the event that the outside supplier fails to do so, the problem is that the manufacturers and allied suppliers will not possess the information needed to make the required determination. The agency assumes that this is why AAMA suggests that manufacturers and allied suppliers be permitted to determine whether equipment is U.S./Canadian based on methods other than the value added approach specified in the statute. However, the results that would be obtained from those other methods would not necessarily be consistent with the value added approach.

NHTSA also notes that the most likely instance in which an outside supplier would not want to provide the required information is when the U.S./Canadian content was below 70 percent. In such an instance, it would be particularly inappropriate to permit the manufacturer to use alternative methods for determining whether the equipment was U.S./Canadian.

Moreover, the agency believes that vehicle manufacturers can obtain the required information from suppliers, assuming that the manufacturers and suppliers have the time to make any necessary arrangements. Apart from the fact that outside suppliers are required by Federal law to provide the information to manufacturers and allied suppliers, the outside suppliers are dependent on the auto manufacturers for their business. While NHTSA understands that there may be some confusion at the time a new program is first implemented, it does not believe that suppliers will deliberately refuse to provide the information in response to manufacturers' and allied suppliers' requests. The agency notes that the manufacturers can put specific provisions in their purchase agreements to ensure that they receive the required information.

In its March 1995 initial response to petitions, NHTSA extended by one year the temporary alternative approach for data collection and calculations which permits manufacturers and suppliers to use procedures that are expected to yield similar results. For a more complete discussion of this alternative, see 59 FR 37324–25, July 21, 1994.

The extension of this temporary alternative gives an extra year for manufacturers and suppliers to work out any arrangements that are necessary to ensure that suppliers provide the necessary information to manufacturers. The agency believes that this should provide appropriate flexibility in light of AAMA's concerns.

60 FR 47888.

AAMA's Second Petition and NHTSA's Response

AAMA continues to be concerned about the provision in Part 583 which specifies that the U.S./Canadian content of components must be defaulted to zero if suppliers fail to respond to a manufacturer's or allied supplier's request for content information. In its new petition for reconsideration, AAMA noted that the September 1995 final rule provided outside suppliers additional flexibility for determining U.S./Canadian content and argued that the same flexibility should be provided for vehicle manufacturers in situations where suppliers fail to respond to requests for content information. AAMA argued that NHTSA's expectation that simple contractual provisions can resolve problems in gathering required data is incorrect and that the existing ''default-to-zero'' provision will result in inaccurate information being provided to consumers.

NHTSA has carefully considered AAMA's arguments. For reasons discussed below, the agency continues to believe that it would be inappropriate under the statute to make the requested change.

The purported need to change the current provision rests on the assumption that the vehicle manufacturers will be unable to obtain the necessary content information from outside suppliers, notwithstanding that Federal law requires the suppliers to provide this information. Further, as discussed above, NHTSA noted in the September 1995 notice that the vehicle manufacturers can put specific provisions in their purchase agreements to ensure that they receive the required information.

AAMA stated in its new petition for reconsideration that while NHTSA assumes that all problems in gathering the required data can be resolved by simple contractual provisions, its member companies' extensive real-world experience refutes this notion. AAMA stated that the elements of cost that lead to the ultimate price of a product are considered by most business entities to be proprietary and are not shared with the customer. AAMA stated that the industry's experience demonstrates that, even with protracted efforts to obtain the data from suppliers and multiple follow-up contacts, not all suppliers will respond. According to AAMA, ''best efforts'' for one manufacturer have resulted in response rates of approximately 70 percent. AAMA also argued that in an age of increased single-sourcing and reliance on just-in-time delivery, it is unrealistic for the agency to believe a nonresponsive supplier could or would be replaced by a manufacturer simply for not providing content data.

NHTSA notes that AAMA's petition did not discuss whether its member companies experienced difficulty in obtaining content information from suppliers in the presence or absence of specific contractual provisions intended to ensure the provision of content information by suppliers. As stated in the September 1995 notice, outside suppliers are dependent on the vehicle manufacturers for their business. Therefore, the agency believed, and continues to believe, that the ability to obtain the necessary content

information is within the control of the vehicle manufacturers.

The purpose of including any specific provision in a business contract is to make observance of the terms of that provision a required element of the business relationship. Just as such things as meeting material specifications, strength requirements and specified time of delivery are a necessary part of a supplier's doing business with a vehicle manufacturer and are ensured by provisions included in contractual agreements, the providing of content information can also be made a necessary part of that business relationship and be reflected in the purchase contract.

Moreover, just as liquidated damages clauses can be inserted in a contract for failure to comply with any other part of the contract, so can such a provision be included for failure to provide timely content reports. If a supplier knows that it will be paid less money if it fails to provide content information, it will have a strong incentive to provide the information.

The agency also notes that the supplier industry is highly competitive. If one supplier is unwilling to agree to provide content information (an agreement to do no more than comply with existing Federal law), other suppliers would step in to take advantage of the opportunity for new business.

For the above reasons, including those presented in the September 1995 notice, NHTSA continues to believe that the vehicle manufacturers will be able to obtain the required content information from their suppliers. While the rest of AAMA's arguments appear to be premised on the manufacturers' inability to obtain that information, the agency will nonetheless discuss those arguments.

AAMA argued that substantial nonreporting, such as the 30 percent experienced despite the ''best efforts'' of one of its members, would result in inaccurate labeling. However, NHTSA believes that substantial nonreporting can be avoided if the vehicle manufacturers utilize the types of contractual provisions discussed above. Moreover, as suppliers become familiar with the content labeling program, those providing parts having at least 70 percent U.S./Canadian content have an additional incentive to report that information. To the extent that vehicle manufacturers wish to adverse their vehicles with as high a domestic percentage as possible, it is to the competitive advantage of suppliers with parts having at least 70 percent U.S./Canadian content to provide the necessary information to the vehicle manufacturers. For this reason, and the others discussed above and in the September 1995 notice, the agency believes that these suppliers will not refuse to provide information to the vehicle manufacturers. Therefore, substantial nonreporting will not result in inaccurate labeling.

AAMA also argued that NHTSA should not assume that the vehicle manufacturers have insufficient knowledge of their suppliers to make reliable content estimates. As indicated above, AAMA noted that the September 1995 final rule provided outside suppliers additional flexibility for determining U.S./Canadian content and argued that the same flexibility should be provided for vehicle manufacturers in situations where suppliers fail to respond to requests for content information.

The November 1994 final rule specified that outside suppliers could only count the materials they used in producing equipment as U.S./Canada to the extent that they had ''traced'' value added in the U.S./Canadian to the extent that they had ''traced'' value added in the U.S./Canada, back to raw materials. In the September 1995 final rule, the agency provided additional flexibility to suppliers by permitting them to base their estimate of value added in the U.S./Canada on all information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc. AAMA argued that the nonresponsive supplier issue is essentially the ''same basic issue at the manufacturers' level'' as the tracing issue was at the supplier level and that the agency should not have treated the issues differently.

NHTSA believes that there are fundamental differences between the tracing issue and the nonresponsive supplier issue. The agency decided to permit greater flexibility with respect to how suppliers determine the U.S./Canadian value of the materials they use to produce equipment primarily to avoid unnecessary burdens on suppliers. Tracing would have been costly, and potentially impossible at production stages far removed from the supplier. The nonresponsive supplier issue is not related to regulatory burdens and, as discussed above, the agency believes vehicle manufacturers have the ability to obtain the required information from suppliers.

The agency also notes that there appears to be a paradox in AAMA's suggesting that vehicle manufacturers have sufficient knowledge of their suppliers to make reliable content estimates, while at the same time stating that suppliers consider the elements of cost that lead to the ultimate price of a product to be proprietary information not to be shared with the customer. The content determination at issue is whether a particular item of equipment has, or does not have, at least 70 percent value added in the U.S./Canada. To make this determination, it is necessary to know a great deal about the value added by the supplier and the source of materials used by the supplier. The supplier is obviously in a much better position to make this determination about its own equipment than the vehicle manufacturer because, for one thing, the supplier knows how much value it added to the equipment.

While AAMA's petition focused on the nonresponsive supplier issue, that organization also raised an issue concerning the specified procedures for outside suppliers to use in estimating the U.S./Canadian content of materials they purchase to produce items of passenger motor vehicle equipment. Under the September 1995 final rule, the suppliers are to make a good faith estimate of the value added in the U.S. or Canada (to the extent necessary to make required determinations concerning the value added in the U.S./Canada of their passenger motor vehicle equipment), based on ''information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc.'' See § 583.6(c)(4)(ii). AAMA stated that when applying any of the optional methods, outside suppliers should not be required to obtain value information from suppliers that have no responsibility under the statute to respond.

NHTSA notes that the Labeling Act (§ 32304(e)) required the agency to issue regulations which include provisions requiring outside suppliers to certify whether their passenger motor vehicle equipment is of U.S./Canadian origin. Moreover, as indicated above, the Labeling Act provides that this determination must be based on whether the equipment has at least 70 percent value added in the U.S./Canada. Therefore, the content of the materials used to produce the equipment is a significant factor in determining whether the equipment is U.S./Canadian.

The agency decided not to include requirements for lower-tier suppliers in Part 583, as part of an effort to avoid unnecessary costs and keep the regulatory scheme as simple as possible. This does not, however, change the fact

that ''first-tier'' outside suppliers must certify whether their equipment has at least 70 percent value added in the U.S./Canada. It also does not change the fact that lower-tier suppliers, especially the ones with which the outside suppliers deal directly, are a reliable source for obtaining information that is relevant to making that determination.

NHTSA believes it is reasonable to require outside suppliers to make good faith estimates based on the information that is available to them, and reliable information may well be available from their suppliers. Therefore, the agency believes the current requirement is reasonable.

Upon review, based on the reasons discussed above, NHTSA denies AAMA's petition for reconsideration.

(Authority: 49 U.S.C. 32304; delegation of authority at 49 CFR 1.50.)

Issued on: April 15, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–9705 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 960129018–6018–01; I.D. 041296C]

Groundfish of the Gulf of Alaska; Deep-water Species Fishery by Vessels using Trawl Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 15, 1996, until 12 noon, A.l.t., July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(f)(1)(i) the deep-water species fishery, which is defined at § 672.20(f)(1)(i)(B)(2) was apportioned 300 mt of Pacific halibut prohibited species catch for the second season, the period April 1, 1996, through June 30, 1996 (61 FR 4304, February 5, 1996).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(3)(i), that vessels participating in the trawl deep-water species fishery in the GOA have caught the second seasonal bycatch allowance of Pacific halibut apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, Rex sole, arrowtooth flounder, and sablefish.

After the effective date of this closure the maximum retainable bycatch amounts, calculated using the retainable percentages at § 672.20(g), apply at any time during a trip.

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–9712 Filed 4–16–96; 3:34 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 041596A]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Ocean Perch in the Western Aleutian District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific ocean perch in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 15, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC of Pacific ocean perch for the Western Aleutian District was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI as 5,143 metric tons (mt). The Western Aleutian District was closed to directed fishing for Pacific ocean perch on March 20, 1996 (58 FR 12041, March 25, 1996). As of March 30, 1996, 1,465 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1996 TAC for Pacific ocean perch in the Western Aleutian District has not been reached. Therefore, NMFS is terminating the previous closure and is reopening directed fishing for Pacific ocean perch in the Western Aleutian District.

All other closures remain in full force and effect.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–9618 Filed 4–15–96; 4:16 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 77
Friday, April 19, 1996

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.

DEPARTMENT OF ENERGY

10 CFR Part 1021

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Notice of reopening comment period and notice of public hearing.

SUMMARY: The Department of Energy (DOE) reopens the comment period and schedules a public hearing on its notice of proposed rulemaking to amend its implementing procedures under the National Environmental Policy Act (NEPA).

DATES: The public hearing will take place on May 6, 1996, from 1:00 pm to 4:00 pm. The comment period is being reopened until May 10, 1996, and comments must be received by that date to ensure consideration. Late comments will be considered to the extent practicable. Persons interested in participating in the hearing by telephone conference must make advance arrangements by contacting the person in the **FOR FURTHER INFORMATION CONTACT** section of this notice by April 29, 1996.

ADDRESSES: Comments on the proposed rule should be addressed to Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119. Comments may be hand-delivered to room 3E–080 at the Forrestal Building on workdays between the hours of 8:00 a.m. and 4:30 p.m. Comments may also be sent by facsimile to (202) 586–7031 or by electronic mail to the following internet address: neparule@spok.eh.doe.gov. The public hearing will take place in Washington, D.C. For information on obtaining a transcript of the hearing, see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: John Pulliam, Office of NEPA Policy and Assistance, at the above address, or telephone (202) 586–4600 or leave a message at (800) 472–2756. Persons interested in participating in the hearing by telephone conference must make advance arrangements by calling one of the above numbers for instructions.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking to amend DOE's NEPA implementing procedures indicated that DOE would hold a public meeting if there were public interest in an opportunity to present oral comments (61 FR 6414, February 20, 1996). The written comment period closed on April 5, 1996. DOE has received comments from 25 individuals and organizations. One commenter requested public hearings in various locations around the Nation. None of the other commenters indicated an interest in amplifying their written comments through an oral presentation. In view of the lack of widespread interest in an opportunity for public hearings at regional locations, DOE has decided to reopen the comment period and schedule a single public hearing in Washington, D.C.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with the informal rulemaking procedural requirements under the Administrative Procedure Act, 5 U.S.C. 553, and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. The length of each presentation will be limited to ten minutes, or as determined by the presiding officer based on the number of persons who request an opportunity to speak at the outset of the hearing. DOE will make arrangements upon request for public participation in the hearing by telephone conference call from various DOE regional offices. If you wish to present comments at the hearing via telephone, you must call one of the numbers listed above by April 29, 1996, to make arrangements for a time to speak. The presiding officer may establish additional procedures governing the conduct of the hearing.

A transcript of the hearing will be prepared and made available for public inspection at the U.S. Department of Energy Freedom of Information Reading Room, room 1E–110 Forrestal Building, 1000 Independence Avenue S.W., Washington, D.C. 20585–0119, phone (202) 586–6020.

Issued in Washington, D.C., April 15, 1996.

Peter Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 96–9565 Filed 4–18–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–249–AD]

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes. This proposal would require visual inspections to detect cracks of the fittings of the pressurized floor at frame 36, and renewal of the zone protective finish or replacement of fittings with new fittings, if necessary. This proposal is prompted by a report of fatigue cracking found on the pressurized floor fitting at frame 36 under the lower surface panel. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in failure of a floor fitting and subsequent depressurization of the fuselage.

DATES: Comments must be received by May 31, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–249–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–249–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–249–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111, –211, and –231 series airplanes. The DGAC advises that, during a full-scale fatigue test on a center fuselage test article, cracking occurred on the pressurized floor fitting at frame 36 under the lower surface pane after the accumulation of 102,560 simulated flights. The cracking has been attributed to fatigue. Such fatigue cracking, if not detected and corrected in a timely manner, could result in failure of a fitting and subsequent depressurization of the fuselage.

Airbus has issued Service Bulletin A320–57–1028, dated August 12, 1991, which describes procedures for visual inspections to detect cracks of the six fittings of the pressurized floor at frame 36 under the lower surface panel, and renewal of the zone protective finish, if necessary. For cases where the length of the cracking is outside certain limits, the service bulletin describes procedures for replacement of all cracked fittings with new fittings. However, the service bulletin permits further flight, under certain conditions, with a fitting(s) that is cracked and the length of the cracking within certain limits. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 95–099–067(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require visual inspection(s) to detect cracks of the six fittings of the pressurized floor at frame 36 under the lower surface panel, and renewing the zone protective finish or replacement of the fittings with new fittings, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that, unlike the procedures described in the referenced service bulletin, this proposed AD would not permit further flight with cracking detected in any fitting. The FAA has determined that, due to safety implications and consequences associated with such cracking, the subject fittings that are found to be cracked must be replaced. Therefore, for cases where one fitting is cracked and the length of the cracking is outside certain limits, or where two or more fittings are cracked, the proposed AD would require replacement of all six fittings with new fittings. For cases where one fitting is cracked and the length of the cracking is within certain limits, the proposed AD would require replacement of that fitting prior to further flight, and eventual replacement of the remaining five fittings. The replacement procedures are provided in the service bulletin described previously.

The FAA estimates that 22 Airbus Model A320–111, –211, and –231 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,960, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–249–AD.

Applicability: Model A320–111, -211, and -231 series airplanes; manufacturer's serial numbers 002 through 008 inclusive, 010 through 014 inclusive, 016 through 078 inclusive, and 080 through 104 inclusive; on which Airbus Modification 21282P01497 (reference Airbus Service Bulletin A320–57–1029) has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking on the pressurized floor fitting at frame 36 under the lower surface panel, which could result in failure of a fitting and subsequent depressurization of the fuselage, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, perform a visual inspection to detect cracks of the 6 fittings of the pressurized floor at frame 36 under the lower surface panel, in accordance with Airbus Service Bulletin A320–57–1028, dated August 12, 1991.

(1) If no cracking is found, prior to further flight, renew the zone protective finish in accordance with the service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 12,000 landings.

(2) If only 1 of the 6 fittings is found to be cracked and that crack is less than or equal to 0.59 inch (15 mm) in length, prior to further flight, replace the cracked fitting with a new fitting in accordance with the service bulletin. Thereafter, prior to the accumulation of 500 landings following accomplishment of this replacement, replace the remaining 5 fittings with new fittings in accordance with the service bulletin.

(3) If only 1 of the 6 fittings is found to be cracked and that crack is greater than 0.59 inch (15 mm) in length, prior to further flight, replace all six fittings with new fittings in accordance with the service bulletin.

(4) If 2 or more fittings are found to be cracked, prior to further flight, replace all 6 fittings with new fittings in accordance with the service bulletin.

(b) Replacement of all 6 fittings with new fittings in accordance with Airbus Service Bulletin A320–57–1028, dated August 12, 1991, constitutes terminating action for the inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 15, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–9692 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–211–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require either replacement or modification of the inboard and outboard flap actuators. This proposal is prompted by a report of failure of the piston rod of the inboard flap actuator due a manufacturing process error. The actions specified by the proposed AD are intended to prevent failure of the piston rod, which could result in uncommanded flap extension and could lead to an asymmetric flap configuration, which could reduce controllability of the airplane.

DATES: Comments must be received by May 31, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–211–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–211–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–211–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of failure of the piston rod of the inboard flap actuator on a Model MD–11 series airplane. This failure occurred on the ground as the pilot was commanding the flaps to retract. Analysis of the incident determined that hydraulic fluid flowed through the broken piston rod and forced the flap to extend. The extending inboard piston rod and flap had enough power to drive the two outboard flaps to the extend position by way of the linking cables used to keep the flaps symmetrical. Initial investigation revealed that the apparent cause of this failure was an isolated case of a manufacturing process error. However, further review revealed that the existing design of the subject area is such that a broken piston rod is a single-point failure of the flight control system that can drive a flap to the extend position during any phase of flight. Such an uncommanded flap extension, if not corrected, could cause an asymmetric flap condition in the airplane and possibly could result in an uncommanded roll. In addition, if this situation were to occur at altitude on an extended overwater flight, the flap extension would cause increased drag and decrease the airplane's range so that it may be unable to reach its final destination.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–27A057, dated August 31, 1995, which describes procedures for:

- Option 1: replacement of the inboard and outboard flap actuators with new actuators; or
- Option 2: modification and reidentification of the inboard and outboard flap actuators; or
- Option 3: modification and reidentification of the inboard flap inboard actuator, the inboard flap outboard actuator, and the outboard flap actuators.

The modification of the actuators involves drilling a hole in the rod assembly and installing a rivet blow-out plug.

Accomplishment of any one of these options will minimize the possibility of uncommanded flap extension in the event of a piston rod failure.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require either the replacement or modification of the flap actuators in accordance with either Option 1, Option 2, or Option 3, as described in the alert service bulletin discussed previously.

There are approximately 143 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 52 airplanes of U.S. registry would be affected by this proposed AD.

To accomplish the proposed actions associated with Option 1 (replacement of flap actuators) would take approximately 9 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of Option 1 proposed by this AD on U.S. operators is estimated to be $540 per airplane.

To accomplish the proposed action associated with Option 2 (modification and reidentification of the inboard and outboard flap actuators) would take approximately 25 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of Option 2 proposed by this AD on U.S. operators is estimated to be $1,500 per airplane.

To accomplish the proposed actions associated with Option 3 (modification and reidentification of the inboard flap inboard actuator, the inboard flap outboard actuator, and the outboard flap actuators) would take approximately 27 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of Option 3 proposed by this AD on U.S. operators is estimated to be $1,620 per airplane.

Based on the figures discussed above, the cost impact of this proposed AD action on U.S. operators is estimated to be between $28,080 and $82,240 for the affected fleet. These cost impact figures are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 95–NM–211–AD.

Applicability: Model MD–11 series airplanes, manufacturer's fuselage numbers 0447 through 0589 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the piston rod, which could result in uncommanded flap extension and resultant asymmetric flap configuration, which could reduce controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish either paragraph (a)(1), (a)(2), or (a)(3) of this AD, in accordance with McDonnell Douglas Alert Service Bulletin MD11–27A057, dated August 31, 1995.

(1) Accomplish the actions specified as Option 1 (replacement of the inboard and outboard flap actuators) in the Accomplishment Instructions of the alert service bulletin; or

(2) Accomplish the actions specified as Option 2 (modification and reidentification of the inboard and outboard flap actuators) in the Accomplishment Instructions of the alert service bulletin; or

(3) Accomplish the actions specified as Option 3 (modification and reidentification of the inboard flap inboard actuator, inboard flap outboard actuator, and outboard flap actuators) in the Accomplishment Instructions of the alert service bulletin

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 15, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–9691 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–212–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 and MD–11 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10 and MD–11 series airplanes and KC–10A (military) airplanes. This proposal would require repetitive inspections to detect corrosion or failure of the steel Hi-Lok fasteners at the inboard flap inboard track, and replacement of corroded/failed steel Hi-Lok fasteners with inconel Hi-Lok fasteners. The proposed AD also provides for termination of the repetitive inspections by replacing all of the steel Hi-Lok fasteners with inconel Hi-Lok fasteners. This proposal is prompted by reports of failed and/or corroded steel fasteners found in the inboard flap inboard track due to stress corrosion. The actions specified by the proposed AD are intended to prevent such stress corrosion, which could result in binding of the flap and inability of the flap to extend or retract; this situation may lead to asymmetric flap deployment and subsequent reduced controllability of the airplane during flight.

DATES: Comments must be received by May 31, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–212–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5224; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–212–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–212–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion of Service History

The FAA has received several reports of failed and/or corroded fasteners found in the inboard flap inboard track on Model DC–10 series airplanes. The failed fasteners were found on two airplanes, which had accumulated 18,357 and 23,901 total landings, respectively. Investigation revealed that the fasteners on these airplanes are made of H–11 steel, which is susceptible to stress corrosion. Stress corrosion in the fasteners in the inboard flap inboard track could result in binding of the flap and inability of the flap to extend or retract. If the flap fails to extend or retract, the resultant asymmetric flap deployment could

result in reduced controllability of the airplane during flight.

The fasteners in the flap tracks on the Model DC–10 series airplanes are identical to those installed on Model MD–11 series airplanes. Therefore, the FAA has determined that Model MD–11 series airplanes may be subject to the same failed/corroded fastener problem.

Discussion of Relevant Service Documents

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC10–57–134, dated August 15, 1995 [for Model DC–10 series airplanes and KC–10 (military) airplanes], and McDonnell Douglas Service Bulletin MD11–57–031, dated August 15, 1995 (for Model MD–11 series airplanes). These service bulletins describe procedures for repetitive visual inspections to detect corrosion or failure of the steel Hi-Lok fasteners at the inboard flap inboard track; and replacement of corroded/failed steel Hi-Lok fasteners with Hi-Lok fasteners made of inconel.

These service bulletins also provide instructions for replacing all steel Hi-Lok fasteners with inconel Hi-Lok fasteners, which, if accomplished, eliminates the need for the repetitive inspections. Replacement of steel fasteners with corrosion-resistant inconel fasteners will minimize the possibility of fastener failure.

Discussion of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive visual inspections to detect corrosion or failure of the steel Hi-Lok fasteners at the inboard flap inboard track. The proposed AD also would require replacement of corroded/failed steel Hi-Lok fasteners with inconel Hi-Lok fasteners. In addition, the proposed AD provides for an optional terminating action for the repetitive inspection requirements by replacing all the steel Hi-Lok fasteners with Hi-Lok fasteners made of inconel. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA is not proposing to mandate the replacement of all steel Hi-Lok fasteners for several reasons:

1. Accessing the inboard flap inboard track area for inspection is easily accomplished.

2. The corroded/failed fasteners are easily detectable by means of a visual inspection.

3. The failure of a fastener may adversely affect the controllability of the airplane; however, the visual inspections will preclude the potential occurrence of multiple failed fasteners, which could result in a catastrophic failure.

Differences Between the Proposed Rule and Relevant Service Documents

Operators should note that the proposed compliance time of 18 months for the initial and repetitive inspections differs from the compliance times recommended in both of the referenced McDonnell Douglas service bulletins:

- Service Bulletin DC10–57–134 (for Model DC–10 series airplanes) recommends a compliance time of 24 months.
- Service Bulletin MD11–57–031 (for Model MD–11 series airplanes) recommends a compliance time of 15 months. (The manufacturer advised the FAA that it inadvertently specified a 15-month compliance time in this service bulletin, and had intended that it be consistent with the 24-month compliance time recommended in Service Bulletin DC10–57–134.)

In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the susceptibility of the subject area to stress corrosion cracking. In addition, the FAA finds a compliance time of 18 months will allow the inspection to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. In consideration of these items, the FAA finds that the initial and repetitive visual inspections conducted at the proposed compliance time of 18 months will better ensure that any detrimental effect associated with stress corrosion will be identified and corrected prior to the time that it could adversely affect the fasteners in the inboard flap inboard track.

Cost Impact

There are approximately 514 McDonnell Douglas Model DC–10 and Model MD–11 series airplanes, and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 276 airplanes of U.S. registry would be affected by the inspection requirements proposed in this AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection requirements on U.S. operators is estimated to be $33,120, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 95–NM–212–AD.

Applicability: All Model DC–10 and MD–11 series airplanes, and KC–10A (military) airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent stress corrosion cracking in the fasteners in the inboard flap inboard track, which could result in binding of the flap and inability of the flap to extend or retract, accomplish the following:

(a) For Model DC–10 series airplanes and KC–10A (military) airplanes: Within 18 months after the effective date of this AD, perform a visual inspection to detect corrosion or failure of the steel Hi-Lok fasteners at the inboard flap inboard track in accordance with McDonnell Douglas Service Bulletin DC–10–57–134, dated August 15, 1995.

(1) If no corrosion or failure is detected, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months until paragraph (a)(1)(ii) of this AD is accomplished.

(ii) Replace all steel Hi-Lok fasteners with inconel Hi-Lok fasteners in accordance with McDonnell Douglas Service Bulletin DC–10–57–134, dated August 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD.

(2) If any corrosion or failure is detected, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, in accordance with McDonnell Douglas Service Bulletin DC–10–57–134, dated August 15, 1995.

(i) Replace all corroded/failed steel Hi-Lok fasteners with inconel Hi-Lok fasteners in accordance with the service bulletin. Repeat the visual inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months until paragraph (a)(2)(ii) of this AD is accomplished

(ii) Replace all steel Hi-Lok fasteners with inconel Hi-Lok fasteners, in accordance with McDonnell Douglas Service Bulletin DC–10–57–134, dated August 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a)(2)(i) of this AD.

(b) For Model MD–11 series airplanes: Within 18 months after the effective date of this AD, perform a visual inspection to detect corrosion or failures of the steel Hi-Lok fasteners at the inboard flap inboard track in accordance with McDonnell Douglas Service Bulletin MD11–57–031, dated August 15, 1995.

(1) If no corrosion or failures are detected, accomplish either paragraph (b)(1)(i) or (b)(2)(ii) of this AD.

(i) Repeat the inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 18 months until paragraph (b)(1)(ii) of this AD is accomplished.

(ii) Replace all steel Hi-Lok fasteners with inconel Hi-Lok fasteners in accordance with McDonnell Douglas Service Bulletin MD11–57–031, dated August 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1)(i) of this AD.

(2) If any corrosion or failure is detected during the inspection required by paragraph (b) of this AD, prior to further flight, accomplish either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, in accordance with McDonnell Douglas Service Bulletin MD11–57–031, dated August 15, 1995.

(i) Replace all corroded/failed steel Hi-Lok fasteners with inconel Hi-Lok fasteners in accordance with the service bulletin. Repeat the visual inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 18 months until paragraph (b)(2)(ii) of this AD is accomplished.

(ii) Replace all steel Hi-Lok fasteners with inconel Hi-Lok fasteners in accordance with McDonnell Douglas Service Bulletin MD11–57–031, dated August 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(2)(i) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 15, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–9690 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–000 and RM94–7–001]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities; Availability of Final Environmental Impact Statement

April 12, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule; availability of final environmental impact statement.

SUMMARY: The staff of the Federal Energy Regulatory Commission has prepared a final environmental impact statement (FEIS) for the proposed rulemaking published April 7, 1995, providing for open access non-discriminatory transmission services by public utilities to satisfy the requirements of the National Environmental Policy Act. The FEIS also addresses the comments received on the Draft Environmental Impact Statement.

DATES: The FEIS was made available on April 12, 1996.

ADDRESSES: Public Reference Room, 888 First Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Public Reference Room staff at (202) 208–1371.

SUPPLEMENTARY INFORMATION: The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (FEIS) for the proposed rulemaking referenced above to satisfy the requirements of the National Environmental Policy Act. The FEIS also addresses the comments received on the Draft Environmental Impact Statement (DEIS) issued by the

Commission on November 17, 1995 (60 FR 58304, November 27, 1995).

On July 18, 1995, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement for the Notice of Proposed Rulemaking and Request for Comments on Environmental Issues (NOI).[1] The NOI described proposed cases for examination and established a procedure for public comments. Thirty-six comments were received in response to the NOI. A public meeting was held on September 8, 1995, in Washington, D.C. The most frequently raised issue involves air quality impacts, particularly the possible transport of nitrogen oxides (NO_X) emissions by Midwestern generating plants to airsheds in the Northeast and the resulting impacts on ozone non-attainment areas in the Northeast.

Based on the responses to the NOI, comments on the DEIS, and a careful analysis of the major issues, the staff developed a study that addresses the key potential environmental impacts of the rulemaking. The staff used a modeling approach that includes a detailed representation of the transmission grid. The model results and other analyses allow the staff to examine a series of other issues, including visibility; impacts on land, water and waste; and some potential mitigation options. The modeling took into account comments from the U.S. Department of Energy and the U.S. Environmental Protection Agency.

The FEIS finds, among other things, that the relative price of coal and natural gas has a larger effect on NO_X emissions than any impacts of the rule. The proposed rules are projected to have only slight impacts on NO_X emissions, and the impacts are as likely to be beneficial as harmful.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426, (202) 208–1371.

Copies of the FEIS have been mailed to Federal and State agencies and individuals who requested copies of the FEIS in response to the NOI and the DEIS.

The FEIS is available to the public on the Commission Posting System (CIPS). CIPS is an electronic bulletin board service which provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dailing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. For further assistance, call the CIPS Hotline at (202) 208–2474.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9572 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[1] 60 FR 36752, July 18, 1995. The proposed rule in this proceeding was issued March 29, 1995 (60 FR 17662, April 7, 1995).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 230

[FHWA Docket No. 81–9]

RIN 2125–AD56

Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The FHWA is withdrawing an advance notice of proposed rulemaking (ANPRM) published on February 1, 1982, at 47 FR 4536. Current FHWA Equal Employment Opportunity regulations include provisions for supportive services which are intended to improve the effectiveness of on-the-job training by Federal-aid highway construction contractors. The 1982 ANPRM sought comments on these supportive services provisions in an attempt to determine whether they should be eliminated from current regulations or whether and how they should be modified. The data and information received during the comment period, as well as analysis initiated by the FHWA, indicate that continuation of the provision would greatly assist in strengthening the FHWA skills training program.

FOR FURTHER INFORMATION CONTACT: Linda J. Brown, Chief, Policy and Program Development Division, Office of Civil Rights, 202–366–0471, or Wilbert Baccus, Office of the Chief Counsel, 202–366–1396, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On February 1, 1982, the FHWA published an ANPRM in the Federal Register (47 FR 4536) seeking public comment on: (1) the effectiveness or lack of effectiveness of the provisions currently set forth in 23 CFR 230 subpart A; (2) whether they should be eliminated; (3) whether and how they should be restructured; and (4) whether an interagency agreement should be sought to obtain supportive services through the U.S. Department of Labor's Targeted Outreach Programs. The FHWA docket received 157 comments. State transportation agencies, contractors, contractors' associations, unions, women and minorities organizations, and other interested parties that commented to the docket overwhelmingly supported the continuation of the supportive services provisions. Nevertheless, all commenters agreed that the program needed to be restructured to effectively benefit the FHWA skills training program. Also, none of the commenters were in favor of entering into an interagency agreement with the U.S. Department of Labor to administer the On-the-Job Training/Supportive Services (OJT/SS) program.

The FHWA agrees with the commenters, since FHWA's goal is to increase the effectiveness of the OJT/SS program and the agency does not propose to eliminate the OJT/SS program. Instead, the FHWA believes that restructuring the program to permit recipients greater flexibility in designing and implementing training programs is the most effective way to strengthen the program.

Additionally, the FHWA has convened an implementation team on civil rights regulations. The team consists of representatives from FHWA's headquarters and field offices, whose goal is to review, streamline, and simplify civil rights regulations and to integrate civil rights requirements with other program requirements. As a result of the team effort an NPRM will be published in 1996 to solicit comments on the proposed revisions to the civil rights regulations.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation's 1982 regulatory policies and procedures. Because this action simply withdraws a 1982 ANPRM, it will have no economic

effect. Therefore, a full regulatory evaluation has not been prepared.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. The FHWA hereby certifies that this withdrawal of a proposed action will not have significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the withdrawal of the advance notice of proposed rulemaking will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12374 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This advance notice of proposed rulemaking did not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 230

Equal employment opportunity, Grant programs— transportation, Highways and roads, Minority businesses, Reporting and recordkeeping requirements.

(23 U.S.C. 140 and 315; 49 CFR 1.48)

Issued on: April 3, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–9560 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL–001–96]

RIN 1545–AU01

Authority to Modify or Rescind Taxpayer Assistance Orders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding taxpayer assistance orders. The proposed regulations provide that the authority to modify or rescind taxpayer assistance orders is limited to the Commissioner, the Deputy Commissioner, or the Ombudsman. The proposed regulations affect all taxpayers with respect to whom a taxpayer assistance order is issued.

DATES: Written comments and requests for a public hearing must be received by July 18, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (GL–001–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (GL–001–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert A. Miller, (202) 622–3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Explanation of Provisions

This document contains a proposed amendment to the Procedure and Administration Regulations (26 CFR part 301) under section 7811 of the Internal Revenue Code. In Announcement 96–5 (1996–4 I.R.B. 99), Administrative Initiatives to Enhance Taxpayer Rights, IRS indicated it was increasing the power of the Ombudsman to assist taxpayers by affording greater protection for taxpayer assistance orders. Effective on the date of the Announcement 96–5, January 4, 1996, the power to modify or rescind a taxpayer assistance order issued under section 7811 is limited to the Commissioner, Deputy Commissioner, or the Ombudsman.

The current regulations provide that taxpayer assistance orders may be modified or rescinded by the Commissioner, Deputy Commissioner, or Ombudsman and, additionally, the following IRS officials: a district director, a service center director, a compliance center director, a regional director of appeals, or the superiors of those officials. Announcement 96–5 indicates that proposed regulations would be published in early 1996 to reflect the policy restriction in authority to modify or rescind taxpayer assistance orders. Under the proposed regulations, officials other than the Commissioner, Deputy Commissioner, or the Ombudsman may modify or rescind a taxpayer assistance order only with the specific written authorization of the Commissioner, Deputy Commissioner, or Ombudsman.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Robert A. Miller, Office of Assistant Chief Counsel (General

Litigation), CC:EL:GL. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7811–1 is amended by revising paragraphs (d) and (h) to read as follows:

§ 301.7811–1 Taxpayer Assistance Orders.

* * * * *

(d) *Authority to modify or rescind limited to Commissioner, Deputy Commissioner, or Taxpayer Ombudsman.* The Commissioner, the Deputy Commissioner, and the Ombudsman may modify or rescind a taxpayer assistance order. A district director, a service center director, a compliance center director, a regional director of appeals, or the superiors of those officials, may modify or rescind a taxpayer assistance order only with the specific written authorization of the Commissioner, Deputy Commissioner, or the Ombudsman.

* * * * *

(h) *Effective dates.* This section is effective on March 20, 1992, except paragraph (d) of this section which is effective on the date 90 days after the date of publication of these regulations as final regulations in the Federal Register.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–8241 Filed 4–18–96; 8:45am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

RIN 1010–AB57

Meetings of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established an Indian Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Indian gas valuation under its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA. This document announces meetings of the Committee.

DATES: The Committee will have meetings on the dates and the times shown below:

Wednesday, May 22, 1996—9:30 a.m. to 5 p.m.

Thursday, May 23, 1996—8 a.m. to 5 p.m.

Friday, May 24, 1996—8 a.m. to 5 p.m.

ADDRESSES: The meetings will be held in the Building 85 Auditorium at the Denver Federal Center, located at West 6th Avenue and Kipling Streets, Lakewood, Colorado.

Written statements may be submitted to Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3100, Denver, CO 80225–0165, telephone number (303) 231–3899, fax number (303) 231–3194.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the Federal Register. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days after each meeting at the Denver Federal Center address. In addition, the materials received to date during the input sessions are available for inspection and copying at the Denver Federal Center address.

Dated: April 12, 1996.

Robert E. Brown,

Acting Associate Director for Royalty Management.

[FR Doc. 96–9684 Filed 4–18–96; 8:45 am]

BILLING CODE 4310–MR–P

30 CFR Part 218

RIN 1010–AC01

Amendments to Regulations Governing Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rulemaking.

SUMMARY: MMS proposes to amend its regulations that specify how payments are made for mineral lease royalties, rentals, and bonuses. The changes are needed to incorporate revised U.S. Treasury requirements. Also, MMS proposes clearer language for other parts of this regulation.

DATES: Comments must be submitted on or before June 18, 1996.

ADDRESSES: Written comments, suggestions, or objections regarding this proposed amendment should be sent to the following addresses.

For comments sent via the U.S. Postal Service use: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165 MS 3101, Denver, Colorado 80225–0165.

For comments via courier or overnight delivery service use: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, MS 3101, Building 85, Denver Federal Center, Room A–212, Denver, Colorado 80225–0165.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, phone (303) 231–3432, FAX (303) 231–3194, e-Mail David____Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are David J. Menard of the Royalty Accounting Division, General Ledger Branch, Jim McNamee of the Office of Policy and Management Improvement, and David

S. Guzy of the Rules and Procedures Staff, Lakewood, Colorado.

I. Background

Section 218.51 of Title 30 of the Code of Federal Regulations, ''Method of payment,'' regulates the types of payments MMS accepts for royalty and other payments due on Federal and Indian mineral leases. The current regulation was published on September 21, 1984 (49 FR 37336). The regulation was amended on June 25, 1987 (52 FR 23812). The amendment lowered the payment threshold from $50,000 to $10,000 for royalty payments that must be made by Electronic Funds Transfer (EFT), extended the EFT requirements to include deferred bonus payments from successful bidders in competitive lease sales, and revised the references on payment method in Part 218 to be consistent with the amendment. An amendment published on October 26, 1988, changed the reference to the U.S. Treasury's electronic communications system used to process electronic funds transfers from ''Treasury Financial Communication System'' to ''Financial Management Service Fedwire Deposit System'' (53 FR 43200).

On January 31, 1994, the U.S. Treasury published a final rule amending 31 CFR Part 206, Management of Federal Agency Receipts, Disbursements, and Operation of the Cash Management Improvements Fund (59 FR 4536). The rule requires executive agencies to use effective, efficient disbursement mechanisms, principally EFT, in making their payments. The rule also requires executive agencies to use EFT for collecting funds.

The new U.S. Treasury requirement will have a minimal effect on MMS' Royalty Management Program collection and disbursement system because MMS has been using EFT since September 1984. Also, MMS has increased EFT usage throughout the past several years. Although the U.S. Treasury rule requires using EFT as the principal collection and disbursement system whenever it is cost effective, practicable, and consistent with current statutory authority, the U.S. Treasury will allow other methods to be used. MMS will work with and encourage all companies to use EFT to the extent it is cost effective and practicable. However, some of MMS' collections and disbursements may not lend themselves to using EFT.

II. Discussion of Proposed Rule

Because of the new U.S. Treasury requirement, MMS proposes to revise the entire section at § 218.51 to incorporate the new requirement. To clarify the section, MMS proposes rewriting it in plain English as Executive Order No. 12866, Regulatory Planning and Review, requires. MMS intends for the rewritten rule to be easy to understand and specifically requests comments on its format and clarity. This rule affects only the Royalty Management Program.

The proposed regulation changes the title of § 218.51 from ''Method of Payment'' to ''How To Make Payments.'' This change makes it easier to understand what information this section covers and assists the reader in locating payment instructions for Federal and Indian mineral lease royalties and other payments.

Section 218.51(a) of the proposed regulation defines relevant terms used in the succeeding paragraphs of payment instructions. We added definitions to avoid confusion about the meaning of significant terms used in the payment instructions. Unclear language can cause delays in receiving and depositing mineral lease payments sent to MMS.

Section 218.51(b) of the proposed regulation contains general instructions that apply to all persons who pay money to MMS or to an Indian Tribe or allottee. This revision presents the requirements for all payments in one place rather than in the many paragraphs under the existing regulation. This consolidation should assist persons in locating the general payment requirements. MMS urges everyone to use EFT for payments. When you want to begin using EFT and MMS has not contacted you, contact MMS and we will provide the appropriate instructions.

Section 218.51(c) contains specific instructions for persons making non-EFT payments for each different category of payment. This format will help people find the instructions that apply to the payment they are concerned about.

Proposed §§ 218.51(d) and 218.51(e) provide the addresses for sending payments to MMS using the U.S. Postal Service, courier, or overnight delivery service. This is a consolidation of information now dispersed throughout the existing regulation and will make it easier to find the correct address for sending payments to MMS.

Proposed § 218.51(f) specifies what a person making a payment must include on a payment. The information required varies by the reason for the payment. This revised format would make it easier to determine what is required for each category of payment.

Paragraph (g) of § 218.51 explains when a payment to MMS is due. It covers payments sent by EFT, the U.S. Postal Service, courier, and overnight mail. It states that all payments are due to MMS at the time required by law, regulation or lease terms, unless MMS approves a change. It also states that if the requirement to submit payment is suspended pending an appeal under 30 CFR 243.2, the original due date for that payment does not change for purposes such as calculating late payment interest. This rule would not effect any change in the existing rules governing suspension of MMS orders pending appeal.

Paragraph (h) of § 218.51 explains what happens if payments are received late. MMS will impose late-payment interest charges and may assess civil penalties.

Section 218.155(b) is proposed to be amended by changing the word ''cannot'' to ''may'' in the last sentence.

III. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The proposed rule is needed to comply with U.S. Treasury requirements.

Executive Order 12630

The Department certifies that the proposed rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Governmental Action and Interference with Constitutionally Protected Property Rights.''

Executive Order 12778

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

We have determined that this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332 (2)(C)] is not required.

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Oil and gas exploration, Public lands-mineral resources.

Dated: March 13, 1996.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Part 218 is proposed to be amended as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3335; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

2. Section 218.51 is revised to read as follows:

§ 218.51 How to make payments.

(a) *Definitions.*

ACH. Automated Clearing House. A type of EFT using the ACH network.

Courtesy notice. An MMS-issued notice of rental or bonus due.

Deferred bonus payment. Lease bonus paid in equal annual installments over a specified number of years.

EFT. Electronic Funds Transfer. Any paperless transfer of funds a bank initiates through an electronic terminal. For MMS purposes, EFT is limited to FEDWIRE and ACH transfers.

FEDWIRE. A type of EFT using the Federal Reserve Wire network.

Invoice document identification. The MMS-assigned invoice document identification (four alpha and eight numeric characters).

Payment. Any monies for royalty, bonus, rental, late payment charge, assessment, penalty, or other money sent to MMS.

Person. Any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity). The term does not include Federal agencies.

Report. Form MMS–2014, *Report of Sales and Royalty Remittance.*

RIK. Royalty in kind.

(b) *Gneral instructions.* You must make all payments to MMS electronically to the extent it is cost effective and practicable. If you pay money to MMS or to an Indian Tribe or allottee, you must follow these procedures:

(1) If MMS instructs you to use EFT, you must use EFT for all payments.

(2) Contact MMS before using EFT. MMS will provide you with EFT payment instructions.

(3) Separate any payments on a Federal lease from any payments on an Indian lease.

(4) If you are not required to use EFT, use one of the following types of payment documents. MMS prefers you to use these payment documents in the order presented:

(i) Commercial check drawn on a solvent bank;

(ii) Certified check;

(iii) Cashier's check;

(iv) Money order;

(v) Bank draft drawn on a solvent bank; or

(vi) Federal Reserve check.

(5) You must include your payor code on all payments.

(6) You must pay in U.S. dollars.

(c) *How to complete a non-EFT payment.* This paragraph explains to whom you must make your payment payable when you do not use EFT.

(1) Make any payment on a Federal lease payable to: ''Department of the Interior-Minerals Management Service'' or ''DOI–MMS.''

(2) For an Indian allottee payment, send a separate payment for each Bureau of Indian Affairs (BIA) agency or area office represented by the leases on your report or invoice document. You must include the name of the applicable Bureau of Indian Affairs agency or area office on your payment. Make it payable to: ''Department of the Interior-Minerals Management Service for BIA [Name] Agency (allotted)'' or ''DOI–MMS for BIA [Name] Agency (allotted).''

(3) For an Indian tribal payment other than a lockbox payment, send a separate payment for each tribe represented by the leases on your report or invoice document. You must include the name of the Indian tribe on your payment. Make it payable to: ''Department of the Interior-Minerals Management Service for BIA [Name of Tribe]'' or ''DOI–MMS for BIA [Name of Tribe]''.

(4) For an Indian tribal lockbox payment, follow the instructions MMS provides you on how to report and make the lockbox payment. These instructions are specific to each tribe's lockbox written agreement with the bank authorized to receive payments on the tribe's mineral leases. You will receive these instructions from MMS when you are required to use a tribal lockbox for reports and payments.

(d) *Where to send a non-EFT payment when you use the U.S. Postal Service.* This paragraph explains how to send a payment document using the U.S. Postal Service.

(1) for a payment to an Indian tribal lockbox, send it to the lockbox address the tribe provides.

(2) For a Federal non-producing lease rental or deferred bonus payment, send it to: Minerals Management Service, Royalty Management Program, PO Box 5640, Denver, CO 80217–5640.

(3) For all other Federal and Indian lease payments other than those going to an Indian tribal lockbox, send them to: Minerals Management Service, Royalty Management Program, PO Box 5810, Denver, CO 80217–5810.

(e) *Where to send a non-EFT payment when you use a courier or overnight delivery service.* This paragraph explains how to send a payment document using a courier or overnight delivery service for all Federal and Indian payments. You should send this type of payment to: Minerals Management Service, Royalty Management Program, Building 85, Denver Federal Center, Room A–212, Denver, CO 80225–0165.

(f) *What to include on your payment.* (1) If you are making a payment for a Form MMS–2014, you must include both your payor code and your payor-assigned document (3a) number.

(2) If you are paying an invoice, including RIK invoices, you must include both your payor code and invoice document identification (four-letter prefix and eight-digit number).

(3) If you are paying a bonus you must:

(i) See the Notice of Lease Offering for instructions on how to pay the one-fifth bonus bid deposit for offshore oil, gas, and sulphur lease bids;

(ii) See § 218.155(c) for instructions on how to pay the four-fifths bonus for an offshore lease. Use EFT and follow MMS instructions;

(iii) See the sale terms of the Notice of Competitive Lease Sale for instructions on how to pay the successful bidder's bonus in the competitive sale of a coal, geothermal, or offshore mineral (other than oil, gas or sulfur) lease; and

(iv) Use EFT for installment payments of deferred bonuses.

(4) If you are paying a lease rental you must:

(i) See § 218.155(c) for instructions on how to pay first-year rentals of an offshore oil, gas, or sulfur lease;

(ii) See the Notice of Lease Offering for instructions on how to pay first-year rentals other than those covered in paragraph (f)(4)(i) of this section; and

(iii) Include the MMS Courtesy Notice, when provided, or write your payor code and government-assigned lease number on the payment document when paying a rental that is not reported on Form MMS–2014 and not paid by EFT.

(g) *When is a payment to MMS due?* (1) All payments are due to MMS at the time law, regulation, or lease terms require unless MMS approves a change according to 30 CFR 243.2 ''Suspensions of orders or decisions pending appeal.'' If you file an appeal, and the requirement to submit payment is suspended, the original payment due date for purposes such as calculating late payment interest is not changed.

(2) If you use the U.S. Postal Service, courier, or overnight mail to send your payment, it is due at the MMS addresses in paragraphs (d) and (e) of this section before 4 p.m. Mountain Time on the due date, regardless of when you sent it.

(3) If you use EFT to send your payment, it is due in the MMS account by the payment due date. You are responsible for your actions or your bank's actions that cause a late or incorrect payment. You will not be held responsible for mechanical or system failures of EFT payments.

(h) *What happens if payments are late or overdue?* (1) If MMS receives your payment late, MMS will impose a late-payment interest charge under § 218.54.

(2) If you do not pay an amount you owe, MMS may assess civil penalties under 30 CFR 241.20 and 241.51 or other applicable regulations.

3. Paragraph (b)(1) of § 218.155 is amended by revising the last sentence to read as follows:

§ 218.155 Method of payment.

* * * * *

(b) * * * (1) * * * EFT may be used as a method of payment for the one-fifth bonus bid amount.

* * * * *

[FR Doc. 96–9525 Filed 4–18–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–020]

RIN 2115–AE46

Special Local Regulations; Beaufort Water Festival; Beaufort, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the Beaufort Water Festival. This event will be held annually on the last two weekends of July, between 7:30 a.m. and 7 p.m. Eastern Daylight Time. Historically, the raft races, sailboat regattas, aerial demonstrations, power boat races, and a parade of ships have drawn approximately 600–1000 participants and 100–150 spectator craft to the Beaufort River each day of the event. The anticipated concentration of spectator and participant vessels associated with the Beaufort Water Festival poses a safety concern. Furthermore, the nature of the events and the closure of the Beaufort River between the Ladys Island swing bridge and Spanish Point creates an extra or unusual hazard in the navigable waters. These proposed regulations are necessary to provide for the safety of life on navigable waters during the event. By establishing these proposed permanent regulations, the Coast Guard expects to give better notice of requirements related to marine events, and also avoid the recurring costs of publication related with temporary regulations. However, the establishment of these proposed permanent regulations would not relieve the event organizers from applying for an annual marine event permit.

DATES: Comments must be received on or before May 20, 1996.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to operations office at the same address between 7:30 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (803) 724–7621. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: ENS M. J. DaPonte, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify the notice (CGD07–96–020) and the specific section of this proposal to which their comments apply, and give reasons for each comment. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if the written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Discussion of Proposed Regulations

The proposed regulations are needed to provide for the safety of life during the Beaufort Water Festival. These regulations are intended to promote safe navigation on the waters of the Beaufort River between the Ladys Island swing bridge and Spanish Point by controlling the traffic entering, exiting, and traveling within these waters. Historically, the raft races, sailboat regattas, aerial demonstrations, power boat races, and a parade of ships have drawn approximately 600–1000 participants and 100–150 spectator craft to the Beaufort River each day of the event. The anticipated concentration of spectator and participant vessels associated with the Beaufort Water Festival poses a safety concern, which is addressed in these proposed special local regulations. The proposed regulations would not permit movement of spectator vessels and other nonparticipating vessel traffic within the regulated area, between the Ladys Island swing bridge (032°25′40″ N, 080°40′10″ W) and a line drawn directly across the Beaufort River at Spanish Point, on the 032°24′00″ N parallel from 7:30 a.m. to 7 p.m., annually on the last two weekends of July. All coordinates referenced use Datum: NAD 1983. However, the proposed regulations would permit the movement of spectator vessels and other non-participants between scheduled events and at the termination of the last scheduled event, at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The proposed regulation would last for only 11 and one-half hours each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this proposed action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.715 is added to read as follows:

§ 100.715 Annual Beaufort Water Festival; Beaufort River, Beaufort, SC.

(a) *Definitions.* (1) *Regulated Area.* A regulated area is established on that portion of the Beaufort River, between the Ladys Island swing bridge at 032°25′40″ N, 080°40′10″ W and a line drawn directly across the Beaufort River at Spanish Point on the 032°24′00″ N parallel. All coordinates referenced use Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, South Carolina.

(b) *Special local regulations.* (1) Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander.

(2) Between scheduled events during the last two weekends of July, the Patrol Commander may authorize vessels to resume normal operations

(3) After termination of the Beaufort Water Festival events on the last two weekends of July, all vessels may resume normal operation at the discretion of the Patrol Commander.

(c) *Effective Dates.* These regulations are effective annually from 7:30 a.m. to 7 p.m. Eastern Daylight Time, on the last two weekends of July, unless otherwise specified in the local notice to mariners.

Dated: March 25, 1996.

P.J. Cardaci,

Captain U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 96–9602 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 09–96–001]

Special Local Regulation; Idle Hour South Channel Challenge, St. Clair River, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation for the United States waters of the St. Clair River South Channel during the Idle Hour South Channel Challenge. This event will be held on the St. Clair River South Channel, MI, from Saturday June 8, through Monday June 10, 1996, on the St. Clair River South Channel. This event will have an estimated 25 race boats racing a closed course on the St. Clair River South Channel which could pose hazards to navigation in the area. This regulation will restrict general navigation between the St. Clair Flats Canal Lighted Buoy 7 and Harsens Island Light 11. This regulation is needed to provide for the safety of life, limb, and property on navigable waters during the event.

DATE: Comments must be received on or before May 20, 1996.

ADDRESSES: Comments should be mailed to Commander (oan), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060. The comments will be available for inspection and copying at the Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East 9th Street, Cleveland, Ohio. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant F.J. Milbry, Ninth Coast Guard District, Recreational Boating Safety Affairs Branch, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, (216) 522–3932.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD09–96–001] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments

received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Discussion of Proposed Regulations

The Coast Guard proposes to establish a special local regulation on specified waters of the St. Clair River South Channel, MI during the Idle Hour South Channel Challenge. This event will have an estimated 25 high performance power boats racing a closed course race on St. Clair River South Channel which could pose hazards to navigation in the area. This event is expected to draw an estimated 200–300 spectator craft. Pleasure craft will be able to transit the area on the north side of the Channel during the event. Commercial vessels transit the St. Clair Cutoff and will not be affected. This regulation is necessary to ensure the protection of life, limb and property during this event.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment.

The Coast Guard is conducting an environmental analysis for this event pursuant to section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at 59 FR 38654; July 29, 1994.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Commercial vessel traffic will not be affected by any restrictions because they transit a different area then that affected by this proposal. Pleasure craft will be able to transit the area on the north side of the Channel during the event. Therefore, because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation will impose no collection information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T09–001 is added to read as follows:

§ 100.35–T09–001 Idle Hour South Channel Challenge, St. Clair River, MI.

(a) *Regulated area.* That portion of the St. Clair River South Channel, in United States waters, between the St. Clair Flats Canal Lighted Buoy 7 and Harsens Island Light 11. (NAD 83).

(b) *Special local regulation.* This section restricts general navigation in the regulated area for the safety of spectators and participants. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander.

(c) *Patrol Commander.* (1) The Coast Guard will patrol the regulated areas under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard St. Clair Shores, MI). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.''

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated areas. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(4) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective date.* This section is effective from 11:30 a.m. until 2:30 p.m., June 8, 9, and 10, 1996, unless extended or terminated sooner by Coast Guard Group Commander Detroit, MI.

Dated: April 10, 1996.

G. F. Woolever,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 96–9657 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–14–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Play Facilities; Notice of Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered play facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the times and

location of the next meeting of the committee, which is open to the public.

DATES: The next meeting of the committee will be on May 8–10, 1996, beginning at 9:00 a.m. each day. The meeting will end at 4:30 p.m. on May 8 and 9, 1996 and at 12:30 p.m. on May 10, 1996.

ADDRESSES: The next meeting of the committee will be held at the Federal Mediation and Conciliation Services, 2100 K Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC. 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: In February 1996, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered play facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act. (61 FR 5723, February 14, 1996). The committee will hold its next meeting on the dates and at the location announced in this notice. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by May 1, 1996, by calling (202) 272–5434 extension 34 (voice) or (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 96–9714 Filed 4–18–96; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50598A; FRL–5355–5]

Substituted Cyclohexyldiamino Ethyl Esters; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for substituted cyclohexyldiamino ethyl esters based on receipt of new data. Based on the data the Agency determined that it could no longer support a finding that activities not described in the PMN may result in significant changes in environmental exposure.

DATES: Written comments must be received by May 20, 1996.

ADDRESSES: Each comment must bear the docket control number OPPTS–50598A (FRL–5355–5). All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit III of this preamble contains additional information on submitting comments containing CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by (OPPTS–50598A) (FRL–5355–5). No CBI should be submitted through e-mail. Electronic comment on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under Unit IV of this preamble.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 8, 1992 (57 FR 46458), EPA issued a SNUR (FRL–3934–7) establishing significant new uses for substituted cyclohexyldiamino ethyl esters. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for the substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced in Unit IV of this preamble.

PMN Number P–91–1243

Chemical name: (generic) Substituted cyclohexyldiamino ethyl esters.
CAS number: Not available.
Basis for revocation of SNUR: The SNUR was issued based on the fact that releases to water could occur that may present an unreasonable risk of injury to the environment. The PMN submitter provided data demonstrating that even small quantities of water would render the formulation containing the PMN substance unusable. Therefore any manufacturing, processing or use of the substance would not involve releases to water. EPA can no longer make the required finding under § 721.170(b)(4)(ii).
CFR Number: 40 CFR 721.2980.

II. Background and Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under § 721.170(b)(4)(ii) based on the fact that activities not described in the PMN may result in significant changes in environmental exposure. Based on these findings, a SNUR was promulgated.

EPA has determined that it could no longer support a finding that activities not described in the PMN may result in significant changes in environmental exposure. The proposed revocation of SNUR provisions for this substance designated herein is consistent with this finding.

In light of the above EPA is proposing to revoke the SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as ''confidential,'' ''trade secret,'' or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

A record has been established for this rulemaking under docket number OPPTS 50598A (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

V. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 11, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2980 [Removed]

2. By removing § 721.2980.

[FR Doc. 96–9708 Filed 4–18–96; 8:45 am]

BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 61, No. 77
Friday, April 19, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resource Conservation Service

Orchard Mesa Project, Mesa County, Colorado

AGENCY: Natural Resource Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Soil Conservation Service Regulations (7 CFR Part 650); the Natural Resource Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Orchards Mesa Project, Mesa county, Colorado.

FOR FURTHER INFORMATION CONTACT: Duane L. Johnson, State Conservationist, Natural Resource Conservation Service, 655 Parfet St., Lakewood, Colorado, 80215–5517, telephone (303) 236–2886 ext. 202.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Duane L. Johnson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to reduce salt loading of the Colorado River due to seepage from irrigation laterals. The planned works of improvement include the replacement of 34 miles of laterals.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and Local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Duane L. Johnson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Duane L. Johnson,
State Conservationist.

[FR Doc. 96–9678 Filed 4–18–96; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of the Census

1997 Economic Census Covering Auxiliary Establishments

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 18, 1996.

ADDRESS: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jack Moody, Bureau of the Census, Room 2665, Building 3, Washington, DC 20233 on (301) 457–2689.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public. The 1997 Economic Census will cover virtually every sector of the U. S. economy, including approximately 48,000 auxiliary establishments as described below.

II. Method of Collection

Establishments covered in this submission will be selected for mailout from a frame given by the Census Bureau's Standard Statistical Establishment List. To be eligible for selection, an establishment must: (I) be an auxiliary establishment, defined as an establishment primarily engaged in performing management, supervision, general administrative functions and supporting services for other establishments of the same company, rather than for the general public or other business firms; (ii) have been in operation during any part of 1997; and (iii) be located in one of the 50 states or the District of Columbia. We estimate that the census mail canvass for 1997 will include approximately 48,000 auxiliary establishments.

III. Data

This information collected from auxiliary establishments will produce basic statistics for principal activity; sales, operating receipts, and revenues to other companies; employment; and payroll. It also will yield a variety of statistics on related topics, including employment by function and expenses by type.

OMB Number: Not Available.

Form Number: ES–9200.

Type of Review: Regular Review.

Affected Public: Businesses or Other for Profit Institution, Non-profit Institutions, Small Businesses or Organizations, and State or Local Governments.

Estimated Number of Respondents: 48,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 48,000.

Estimated Total Annual Cost: The cost to the government for this work is included in the total cost of the 1997 Economic Census, estimated to be $218 million.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 15, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–9726 Filed 4–18–96; 8:45 am]

Billing Code 3510–07–P

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The National Weather Service is publishing proposed certifications for the proposed consolidations of:

(1) Residual Minneapolis Weather Service Office (RWSO) into the future Minneapolis WFO;

(2) Columbus Weather Service Office (WSO) into the future Birmingham, Tallahassee, and Atlanta Weather Forecast Offices (WFOs);

(3) Residual Lubbock WSO into the future Lubbock WFO;

(4) Macon WSO into the future Atlanta and Tallahassee WFOs;

(5) Residual Portland, OR WSO into the future Portland, OR WFO; and

(6) Salem, OR WSO into the future Portland, OR WFO.

In accordance with Pub. L. 102–567, the public will have 60-days in which to comment on these proposed consolidation certifications.

DATES: Comments are requested by June 18, 1996.

ADDRESSES: Requests for copies of the proposed consolidation packages should be sent to Janet Gilmer, Room 12316, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0276. All comments should be sent to Janet Gilmer at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413.

SUPPLEMENTARY INFORMATION: NWS anticipates consolidating:

(1) the Residual Indianapolis Weather Service Office (RWSO) with the future Indianapolis WFO;

(2)the Residual Minneapolis Weather Service Office (RWSO) with the future Minneapolis WFO;

(3) the Columbus Weather Service Office (WSO) with the future Birmingham, Tallahassee, and Atlanta Weather Forecast Offices (WFOs);

(4) the Residual Lubbock WSO with the future Lubbock WFO;

(5) the Macon WSO with the future Atlanta and Tallahassee WFOs;

(6) the Residual Portland, OR WSO with the future Portland, OR WFO; and

(7) the Salem, OR WSO with the future Portland, OR WFO. In accordance with section 706 of Pub. L. 102–567, the Secretary of Commerce must certify that these consolidations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) a draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) a comparison of the services provided within the service area and the services to be provided after such action;

(4) a description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) an identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable); and

(7) a letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. L. 102–567. At their December 14, 1995 meeting the members ''. . . resolved that the MTC modify its procedure to eliminate proposed certification consultations of noncontroversial closings, consolidations, relocations, and automation certifications but will provide final consultation on certifications after public comment and before final submission to the Secretary of Commerce.''

Documentation supporting the proposed certifications is too voluminous to publish in its entirety. Copies of the supporting documentation can be obtained through the contact listed above.

Draft memoranda by the respective meteorologists-in-charge recommending the certifications are being published as an appendix to this notice.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating the offices.

Dated: April 12, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Appendix—Draft Memoranda

Memorandum For: Richard P. Augulis, Director, Central Region

From: Craig M. Edwards, MIC, NWSFO Minneapolis, MN

Subject: Recommendation for Consolidation Certification.

In March 1995, a change of operations occurred when most personnel and most services provided by the WSFO at Minneapolis were transferred to the future

WFO site in Chanhassen, Minnesota. At that time, a Residual Weather Service Office (RWSO) was left in Minneapolis to continue the surface and radar observational programs. Since that time, the WSR–57 radar was decommissioned.

After reviewing the attached documentation and responding to all clients concerned about consolidation of services, I have determined, in my professional judgement, consolidation of the RWSO Minneapolis Office with the future Minneapolis Weather Forecast Office (WFO) at Chanhassen will not result in any degradation in weather services to the Minneapolis service area. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the pre-modernized service area is included as Attachment A.

2. A detailed list of the services currently provided within the Minneapolis, Minnesota service area from the Minneapolis RWSO location and a list of services to be provided from the future Minneapolis WFO location after the proposed consolidation is included as Attachment B. Comparison of these service shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the pre-modernized WSO Minneapolis Area of Responsibility (i.e., ''Affected Service Area'') and the future WFO Minneapolis Area of Responsibility. As discussed below, I find that there will be no degradation of the quality of those services as a result of consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the RWSO Minneapolis, Minnesota, service area is included as Attachment C. The new technology (i.e., ASOS, WSR–88D, and AWIPS) has or will be installed, and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Minnesota is included as Attachment D. NSW operational radar coverage for the Minneapolis service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D Radar Commissioning Report, Attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site.

B. The User Confirmation of Services, Attachment F, documents that all comments have been answered to the satisfaction of the commentors as stated in the Service Confirmation Report. Three negative comments pertained to the vendors, one pertained to less personal service now, one referred to the teletype hard copy of a warning and one comment when the WSR–88D went down. All negative comments were discussed and addressed to the customers' satisfaction. There were no local work-arounds, but one national work-around remains in effect which will not degrade services.

C. The Decommissioning Readiness Report, Attachment G, validates that the existing Minneapolis, Minnesota, WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the RWSO Minneapolis service area is included as Attachment H.

I have considered recommendations of the Modernization Transition Committee (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Richard P. Augulis, Director, Central Region, endorse this consolidation certification.

_____

Richard P. Augulis

Date _____

Attachments are not published in the Federal Register.

465 Weathervane Road, Alabaster, AL 35007–5079,

Date _____

Memorandum For: Harry S. Hassel, Director, Southern Region

From:

Gary S. Petti, MIC/Area Manager, NWSFO Birmingham, AL

Carlos Garza, Jr., MIC/Area Manager, NWSFO Atlanta, GA

Paul Duval, MIC, NWSO Tallahassee, FL

Subject: Recommendation for Consolidation Certification, Columbus, GA

After reviewing the attached documentation, we have determined, in our professional judgement, that consolidation of the Columbus Weather Service Office (WSO) with the future Birmingham, Atlanta, and Tallahassee Weather Forecast Offices (WFOs) will not result in any degradation in weather services to the Columbus service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, we are recommending you approve this action in accordance with Section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

Our recommendation is based on our review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Columbus service area is included as Attachment A. As discussed below, we find that providing the services, which address these characteristics and concerns, from future WFOs Birmingham, Atlanta, and Tallahassee will not degrade these services.

2. A detailed list of the services currently provided within the Columbus service area from the WSO Columbus location and a list of services to be provided from the future WFO Birmingham, Atlanta, and Tallahassee locations after consolidation is included as Attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Columbus area of responsibility (i.e., ''affected service area'') and the future WFO Birmingham area of responsibility. As discussed below, we find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Columbus service area is included as Attachment C. The new technology (i.e., ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. Maps showing planned NEXRAD coverage at an elevation of 10,000 feet for Georgia and Alabama are included as Attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

a. The WSR–88D Radar Commissioning Reports for NWSFOs Birmingham and Atlanta and NWSO Tallahassee, Attachment E, validate that the WSR–88Ds meet technical specifications (acceptance test) and are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services), service back-up capabilities are functioning properly, a full set of operations and maintenance documentation is available, and spare parts and test equipment and trained operations and maintenance personnel are available on site. Two national work-arounds remain in effect.

b. The User Confirmation of Services for NWSFOs Birmingham and Atlanta and

NWSO Tallahassee, Attachment F, document that no negative comments were received from the WSO Columbus service area.

c. The Decommissioning Readiness Report, Attachment G, verifies that the existing Columbus WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Columbus service area is included in Attachment H.

We have considered recommendations of the Modernization Transition Committee (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). We believe all negative comments have been addressed to the satisfaction of our customers and we continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

Dates _____

Attachments are not published in the Federal Register.

2579 S. Loop 289, Suite 100, Lubbock, TX 79423–1400

Date _____

Memorandum For: Harry S. Hassel, Director, Southern Region

From: Walter R. Anderson, AM/MIC NWSFO Lubbock, TX

Subject: Recommendation for Consolidation Certification

A change of operations occurred at the Lubbock Weather Service Forecast Office (WSFO) in December 1993 when most of the personnel were transferred to the facility of the WSR–88D and assumption of forecast and warning responsibility for the Lubbock service area. The office at the original WSFO location was designated a Residual Weather Service Office (RWSO) and continued to be the site for recording surface observations and operating the WSR–74C.

Based on the attached documentation and my professional judgment, I have determined that consolidation of RWSO Lubbock with the future WFO Lubbock will not result in any degradation in weather services to the Lubbock area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending that you approve this action in accordance with Section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Lubbock service area is included as Attachment A. As discussed below, I find that providing the services from WFO Lubbock which address these characteristics and concerns will not degrade these services.

2. A detailed list of services currently provided within the Lubbock service area from the RWSO Lubbock location and a list of services to be provided from the WFO Lubbock location after consolidation is included in Attachment B. Comparison of these services shows that all services will continue to be provided after the proposed consolidation. Also, the enclosed map shows the RWSO Lubbock area of responsibility (i.e., ''affected service area'') and the future WFO Lubbock area of responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the Lubbock service area is included as Attachment C. The new technology (i.e., ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned WSR–88D radar coverage at an elevation of 10,000 feet over the Texas South Plains and surrounding area is included as Attachment D. NWS operational radar coverage is complete for the specific service area and no area will be missed in coverage.

5. The following evidence, based on operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

a. The WSR–88D Radar Commissioning Report, Attachment E, validates that the WSR–88D meets technical specifications (acceptance test) and is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services), service back-up capabilities are functioning properly, and a full set of spare parts and test equipment and trained operations and maintenance personnel are available on site. Two national work-arounds remain in effect.

b. The User Confirmation of Services, Attachment F, documents that no negative comments were received.

c. The Decommissioning Readiness Report, Attachment G, verifies that the existing Lubbock WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the RWSO Lubbock service area is included as Attachment H.

I have considered recommendations of the Modernization Transition Committee (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

Dates _____

Attachments are not published in the Federal Register.

Four Falcon Drive, Peachtree City, GA 30269

Date _____

Memorandum For: Harry S. Hassel, Director, Southern Region

From:

Carlos Garza, Jr., MIC/Area Manager, NWSFO Atlanta, GA

Paul Duval, MIC, NWSO Tallahassee, FL

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, we have determined, in our professional judgment, that consolidation of the Macon Weather Service Office (WSO) with the future Atlanta and Tallahassee Weather Forecast Offices (WFOs) will not result in any degradation in weather services to the Macon service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, we are recommending you approve this action in accordance with Section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

Our recommendation is based on our review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Macon service area is included as Attachment A. As discussed below, we find that providing the services which address these characteristics and concerns from future WFOs Atlanta and Tallahassee will not degrade these services.

2. A detailed list of the services currently provided within the Macon service area from WSO Macon and a list of services to be provided from the future WFO Atlanta and Tallahassee locations after consolidation is included as Attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Macon area of responsibility (i.e., ''affected service area'') and the future WFO Atlanta area of responsibility. As discussed below, we find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Macon service area is included as Attachment C. The new technology (i.e., ASOS, WSR–88D, and

AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Georgia is included as Attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

a. The WSR–88D Radar Commissioning Reports for NWSFO Atlanta and NWSO Tallahassee, Attachment E, validate that the WSR–88Ds meet technical specifications (acceptance test) and are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services), service back-up capabilities are functioning properly, and a full set of spare parts and test equipment and trained operations and maintenance personnel are available on site. Two national work-arounds remain in effect.

b. The User Confirmation of Services for NWSFO Atlanta and NWSO Tallahassee, Attachment F, document that two negative comments were received from the Macon service area. The negative comments have been answered to the satisfaction of the commenters as stated in the Service Confirmation Report.

c. The Decommissioning Readiness Report, Attachment G, verifies that the existing Macon WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Macon service area is included as Attachment H.

We have considered recommendations of the Modernization Transition Committee (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). We believe all negative comments have been addressed to the satisfaction of our customers and we continue to recommend this certification.

ENDORSEMENT

I, Harry S. Hasssel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

Dates _____

Attachments are not published in the Federal Register.

Forecast Office, 5241 NE 122nd Avenue, Portland, OR 97230–1089

Memorandum For: W/WR—Thomas D. Potter, Director, Western Region

From: Stephen K. Todd, Area Manager/MIC, NWSFP Portland, OR

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgment, consolidation of the Salem Weather Service Office (WSO) with the future Portland, OR Weather Forecast Office (WFO) will not result in any degradation in weather services to the Salem service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Salem service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Portland, OR WFO will not degrade these services.

2. A detailed list of the services currently provided within the Salem service area from the Salem WSO location and a list of services to be provided from the future San Joaquin Valley WFO after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Salem Area of Responsibility (i.e. ''Affected Service Area''), and the future WFO Portland, OR Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Salem service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for California is included as attachment D. NWS operational radar coverage for the Salem service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed, but one national work around remains in effect.

B. The final User Confirmation of Services, attachment F, documents that no negative comments were received. All users were satisfied.

C. The Decommissioning Readiness Report, attachment G, is not needed as there is no radar to decommission at Salem.

6. A memorandum assigning the liaison officer for the Salem service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comments received during the comment period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Thomas D. Potter, Director, Western Region, endorse this consolidation certification.

_____

Thomas D. Potter

Date _____

Attachments are not published in the Federal Register.

Forecast Office, 5241 NE 122nd Avenue, Portland, OR 97230–1089

Memorandum For: Thomas D. Potter, Director, Western Region

From: Stephen K. Todd, Area Manager/MIC, NWSFO Portland, OR

Subject: Recommendation for Consolidation Certification

A change in operations occurred at the Portland, OR Weather Service Forecast Office (WSO) in August 1994. During this month, most personnel were transferred to the future Portland Weather Forecast Office (WFO) in Portland, Oregon to operate the WSR–88D, and assume forecast and warning responsibility for the Portland service area. At the same time, the original WSFO office was designated a Residual Weather Service Office (RWSO) to continue operating the WSR–74C, and maintain the surface observations.

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Portland Residual Weather Service Office (RWSO) with the future Portland Weather Forecast Office (WFO) will not result in any degradation in weather services to the Portland service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Portland service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Portland WFO will not degrade these services.

2. A detailed list of the services currently provided within the Portland service area from the Portland RWSO location and a list of services to be provided from the future Portland WFO after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the RWSO Portland Area of Responsibility (i.e. ''Affected Service Area''), and the future WFO Portland Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the RWSO Portland service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Oregon is included as attachment D. NWS operational radar coverage for the Portland service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and maintenance personnel are available on site. Coordination was completed with one national work-around remaining in effect.

B. The Partial and Final User Confirmation of Services, attachment F, documents that two negative comments were received. Both negative comments addressed the same concern which was a valid problem. This problem has since been corrected to the satisfaction of each individual, as stated in the service Confirmation Report.

6. A memorandum assigning the liaison officer for the Portland service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comments received during the comment period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Thomas D. Potter, Director, Western Region, endorse this consolidation certification.

Thomas D. Potter

Date _____

Attachments are not published in the Federal Register.

[FR Doc. 96–9497 Filed 4–18–96; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 040996C]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for an experimental fishing permit.

SUMMARY: This notice announces receipt of an application from Mr. David Fraser (applicant) for an experimental fishing permit (EFP). If granted, the EFP would authorize an investigation about the viability of using pelagic trawl gear to conduct directed fisheries on rockfish species in the Gulf of Alaska. It is intended to promote the objectives of the North Pacific Fishery Management Council (Council).

ADDRESSES: Copies of the EFP application are available by writing to Steven Pennoyer, Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska and its implementing regulations at 50 CFR part 672 authorizes issuance of EFPs to allow fishing that would otherwise be prohibited. The procedures for issuing EFPs are contained in the regulations at § 675.6. NMFS received a request from the applicant on December 26, 1995, that, if approved would provide specified amounts of groundfish species for purposes of being harvested with pelagic trawl gear to demonstrate the feasibility of catching certain rockfish which otherwise are harvested with bottom trawl gear. The requested amounts are as follows:

Pacific ocean perch - 75 metric tons (mt),

Yellowtail rockfish - 75 mt,

Widow rockfish - 150 mt, and

Other rockfish - 75 mt.

In accordance with regulations, NMFS has determined that the proposal warrants further consideration and has initiated consultation with the Council by forwarding the application to it. The Council will consider the EFP application during its April 17–22, 1996, meeting and has invited the applicant to appear in support of the application if the applicant desires. The meeting will be held at the Anchorage Hilton Hotel, Anchorage, Alaska under agenda item D–1(d).

A copy of the application is available for review from the NMFS Regional Director (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seg.*

Dated: April 12, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–9713 Filed 4–18–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations with the Government of the Ukraine on Certain Cotton and Man-Made Fiber Textile Products

April 15, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On March 29, 1996, in accordance with Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of the Ukraine with respect to cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in the Ukraine.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Ukraine, the

Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of man-made fiber textile products in Categories 340/640, produced or manufactured in the Ukraine and exported during the twelve-month period which began on March 29, 1996 and extends through March 28, 1997, at a level of not less than 406,469 dozen.

A statement of serious damage concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the Ukraine.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of the Ukraine, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage—Ukraine

Cotton and Manmade Fiber Men's and Boys' Woven Shirts—Category 340/640

March 1996

Import Situation and Conclusion

U.S. imports of cotton and manmade fiber men's and boys' woven shirts, Category 340/640, from the Ukraine reached 406,469 dozen in 1995, more than double the 185,803 dozen imported in 1994. Imports from the Ukraine were 1.1 percent of total U.S. imports of Category 340/640 in 1995, and were equivalent to 3.1 percent of U.S. production of Category 340/640 for the year-ending September 1995.

U.S. imports of cotton and manmade fiber men's and boys' woven shirts, Category 340/640, from the Ukraine entered the U.S. at an average landed duty-paid value of $60.62 per dozen in 1995, 58 percent below the average U.S. producers' price for cotton and manmade fiber men's and boys' woven shirts.

The sharp and substantial increase of low-valued Category 340/640 imports from the Ukraine is causing serious damage to the U.S. industry producing cotton and manmade fiber men's and boys' woven shirts.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and manmade fiber men's and boys' woven shirts, Category 340/640, fell from 13,880,000 dozen in 1992 to 13,292,000 dozen in 1993, a decline of 4 percent. Domestic production increased by 2 percent in 1994 to 13,589,000 dozen but remained 2 percent below the 1992 level. Domestic production of cotton and manmade fiber men's and boys' woven shirts declined in 1995, falling to 9,459,000 dozen in the first nine months of 1995, 5 percent below the January-September 1994 level. The year-ending September 1995 production level at 13,096,000 dozen was 4 percent below the calendar year 1994 level and 6 percent below the 1992 level. In contrast, imports of Category 340/640 increased every year since 1992, rising from 30,395,000 dozen in 1992 to 35,908,000 dozen in 1995, 18 percent above the 1992 level.

The ratio of imports to domestic production increased from 219 percent in 1992 to 242 percent in 1994 and reached 295 percent in the first nine months of 1995. The share of the U.S. market for cotton and manmade fiber men's and boys' woven shirts held by domestic manufacturers fell from 27 percent in 1992 to 22 percent in 1994, and to 18 percent during January-September 1995.

[FR Doc. 96–9619 Filed 4–18–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 20, 1996

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: On July 14, November 3, 1995, February 9, 16, 23, March 1 and 8, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 36266, 55835, 61 F.R. 4962, 6234, 6977, 8045 and 9439) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the

commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Wipes, Scrubber

M.R. 588

Gloves, Patient Examining

6515–01–364–8553

Bag, Paper, Grocer's

8105–00–281–1158
8105–00–281–1163
8105–00–281–1425
8105–00–271–1485
8105–00–286–7308
8105–00–281–1156
8105–00–281–1429
8105–00–579–9161
8105–00–022–1319
8105–00–543–7169
8105–00–262–7363
8105–00–130–4586

Box, Shipping

8115–00–516–0242
8115–00–519–1825
8115–00–550–3558
8115–00–550–3574

Services

Janitiorial/Custodial, U.S. Army Health Clinic, Buildings 100, 101, 105, 162, 163, 165, 170, 170A and 170B, Fort McPherson, Georgia
Janitorial/Custodial, Basewide, McGuire Air Force Base, New Jersey
Janitorial/Custodial, Lenkalis USARC, 250 Washington Avenue, West Hazelton, Pennsylvania
Laundry Service, Fort Lewis & Madigan Army Medical Center, Fort Lewis, Washington
Linen Management, Basewide, Fort Hood, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–9732 Filed 4–18–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 20, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Case, Life Raft

4220–00–254–2170
NPA: North Bay Rehabilitation Services, Inc. San Rafael, California at its facility in Rohnert Park, California

Sponge, Cellulose

7920–00–559–8462
7920–00–559–8463
7920–00–559–8464
NPA: Mississippi Industries for the Blind Jackson, Mississippi

Services

Administrative Services, GSA, Federal Supply Service Bureau, Fleet Management Division, Washington, DC, NPA: Columbia Lighthouse for the Blind, Washington, DC
Document Processing, Defense Reutilization and Marketing Office, McClellan Air Force Base, California, NPA: PRIDE Industries, Roseville, California
Grounds Maintenance, Lenkalis USARC, 250 Washington Avenue, West Hazelton, Pennsylvania, NPA: White Haven Center, White Haven, Pennsylvania
Janitorial/Custodial, Marine Corps Reserve Center, West Trenton, New Jersey, NPA: Occupational Training Center of Burlington County, Mt. Holly, New Jersey
Mailroom Operation, Department of Veterans Affairs Medical Center, Syracuse, New York, NPA: Consolidated Industries of Greater Syracuse, Inc., Syracuse, New York.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–9731 Filed 4–18–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 20, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Jersey, Flight Deck, Crewman's

8415–00–914–0312
8415–00–914–0313
8415–00–914–0314
8415–00–914–0315
8415–00–914–0316
8415–00–914–0317
8415–00–914–0318
8415–00–914–0319
8415–00–914–0321
8415–00–914–0323
8415–00–914–0324
8415–00–914–0325
8415–00–914–0326
8415–00–914–0327
8415–00–914–0328
8415–00–914–0329
8415–00–914–0331
8415–00–914–0333
8415–00–914–0334
8415–00–914–0335
8415–00–914–0322
8415–00–914–0336
8415–00–914–0337
8415–00–914–0338
8415–00–914–0339
8415–00–914–0340
8415–00–914–4143
8415–00–914–9481
(50% of the Government's requirement)
NPA: Westmoreland County Branch, PAB, Greensburg, Pennsylvania

Towel, Paper
8540–00–262–7178
8540–01–359–0799
NPA: Signature Works, Inc., Hazlehurst, Mississippi

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–9733 Filed 4–18–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board.

Dates and Times: Wednesday, May 8, 1996, 8:00 a.m.–5:30 p.m.

Place: Sheraton National Hotel, Columbia Pike & Washington Boulevard, Arlington, Virginia 22204, (703) 521–1900.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director, Environmental Management Advisory Board, EM–5, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov

SUPPLEMENTARY INFORMATION: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Wednesday, May 8, 1996

8:00 a.m.—Co-Chairmen Open Public Meeting
8:05 a.m.—Opening Remarks Assistant Secretary for Environmental Management
9:00 a.m.—Presentation and Discussion of the Tank Waste EIS
9:30 a.m.—Status of New Committees
12:00 p.m.—Lunch
1:00 p.m.—Progress Report on Charge Back Issues Recommended by the Board
1:15 p.m.—Progress Report of the Worker Health and Safety Committee
1:45 p.m.—Progress Report of the Formerly Utilized Site Remedial Action Program (FUSRAP) Committee
2:00 p.m.—Presentation and Discussion of the Final Report of the Programmatic Environmental Impact Statement (PEIS) Committee
2:30 p.m.—Presentation and Discussion of the Findings of the Technology Development Committee
3:15 p.m.—Presentation and Discussion of the Final Report of the Cost-Effective Cleanup Committee
3:45 p.m.—Presentation and Discussion of Departmental Responses to Board Recommendations on National Environmental Policy Act (NEPA) Issues
4:15 p.m.—Board Business
4:45 p.m.—Public Comment Session
5:30 p.m.—Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should either contact James T. Melillo at the address or telephone number listed above, or call 1-(800) 736–3282, the Center for Environmental Management Information and register to speak during the public comment session of the meeting. Individuals may also register on May 8, 1996 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W.,

Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 10, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer

[FR Doc. 96–9567 Filed 4–18–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

American Electric Power Service; Notice of Filing

[Docket No. ER96–1297–000]

April 15, 1996.

Take notice that on April 5, 1996, the American Electric Power Service Corporation (AEPSC) tendered for filing a request to transfer Service Agreements under the AEP Companies' Power Sales Tariff from Docket No. ER95–1596–000 to the above-referenced docket.

The Power Sales Tariff has been designated in Docket No. ER95–1596–000 as AEPSC FERC Electric Tariff Original Volume No. 2, effective October 1, 1995. AEPSC requests waiver of notice to permit the Service Agreements to be made effective as of January 1, 1996.

A copy of the filing has been served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 25, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9625 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–310–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

April 15, 1996.

Take notice that on April 11, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP96–310–000. Pursuant to Sections 157.205 and 157.212 the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point for delivery of natural gas for an existing customer, in Fulton County, Ohio, authorized in blanket certificate issued in Docket No. CP82–480–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to construct and operate an interconnection between ANR and West Ohio Gas Company (West Ohio), in Dover Township, Fulton County, Ohio. The proposed interconnection would enable West Ohio to provide deliveries of natural gas to North Star BHP Steel LTD. ANR states that the interconnection would consist of two six-inch taps and an electronic measurement system. The estimated cost of the facilities would be approximately $75,000. The quantities of natural gas to be delivered would be 12,000 to 15,000 Mcf per day.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9624 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–209–000]

Koch Gateway Pipeline Company; Notice of Filing

April 15, 1996.

Take notice that on April 11, 1996, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing its report of the net revenues attributable to the operation of its cash-in, cash-out program.

Koch Gateway states that this filing is Koch Gateway's first Cash-in, Cash-out Report and covers the period November 1, 1993 to December 31, 1995. Koch Gateway's cash-out report shows a negative cumulative position that will continue to be carried forward and applied to the next quarter as provided in Section 20.1(D) of the GT&C of Koch Gateway's tariff until it is eliminated.

Koch Gateway states that copies of the filing have been served on all affected customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests must be filed on or before April 23, 1996. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9634 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–302–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

April 15, 1996.

Take notice that on April 8, 1996, Natural Gas Pipeline Company of America (Natural), located at 701 East 22nd Street, Lombard, Illinois 60148, filed, in the above docket, a request for approval, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) and pursuant to its Part 284, Subpart G blanket certificate issued in Docket No.

CP86–582–000, for authority to construct and operate facilities in Cabot (Lonoke County), Arkansas, as a new delivery point to deliver natural gas transported for Arkla, a Division of Noram Energy Corp. (Arkla), a local distribution company, transportation contract between Natural and Arkla. Arkla will use the gas received for its system supply, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Natural proposes to install a 2-inch meter and a 2-inch side tap facilities for an interconnect with Arkla. Natural states that these facilities will be constructed to deliver approximately 1,000 MMBtu per day of natural gas to Arkla in Cabot, Arkansas. Natural states that it has sufficient capacity to provide these services at the proposed delivery point without detriment or disadvantage to its peak day and annual delivery capacity.

Natural states that by means of these facilities, it will provide self-implementing transportation service pursuant to Subpart G of Part 284 of the Commission's Regulations. Natural states that Subpart G service is provided pursuant to its blanket transportation certificate. Once certificated and in service, Natural states that this delivery point will be available for other self-implementing transportation service arrangements that might be entered into in the future.

Natural states that the facilities are estimated to cost $38,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9623 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–65–001 and RP95–69–001]

Northern Natural Gas Company; Notice of Compliance Filing

April 15, 1996.

Take notice that on March 29, 1996, Northern Natural Gas Company (Northern), tendered for filing schedules recomputing certain charges to comply with the Commission's Order issued March 15, 1996 in the above referenced Docket Nos. RP95–65–000 and RP95–69–000, pursuant to which Order Northern was directed to recompute its GSR price differentials according to the requirements of Section 25.G of its tariff and to file tariff sheets and supporting workpapers reflecting that recomputation, within 15 days of the issuance of the order.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9628 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–207–000]

Northern Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

April 15, 1996.

Take notice that on April 10, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective May 10, 1996:

Second Revised Sheet No. 66
First Revised Sheet No. 279
First Revised Sheet No. 280

Northern states that the above tariff sheets are being filed to reflect the termination of the process for collecting the PGA surcharge as well as final resolution of Northern's PGA mechanism.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9632 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–220–013]

Northwest Pipeline Corporation; Notice of Compliance Filing

April 15, 1996.

Take notice that on April 10, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective as indicated:

	Effective date
Third Revised Volume No. 1	
Sub 3rd Rev Sixth Revised Sheet No. 5	January 1, 1996.
Sub 2nd Rev Sixth Revised Sheet No. 5	November 1, 1995.
Sub 1st Rev Sixth Revised Sheet No. 5	October 1, 1995.
Sub Sixth Revised Sheet No. 5	April 1, 1995.
Sub Fifth Revised Sheet No. 5	November 6, 1994.
2nd Sub Fourth Rev Sheet No. 5	November 1, 1994.
Sub 1st Rev Fifth Rev. Sheet No. 5–A	November 1, 1995.
Sub Fifth Revised Sheet No. 5–A	April 1, 1995.
2nd Sub Fourth Revised Sheet No. 5–A	November 1, 1994.
Sub Second Revised Sheet No. 6	November 1, 1994.
Sub Second Revised Sheet No. 7	November 1, 1995.
Sub 2nd Rev Fifth Revised Sheet No. 8	November 1, 1995.
Sub 1st Rev Fifth Revised Sheet No. 8	October 1, 1995.
Sub Fifth Revised Sheet No. 8	April 1, 1995.
2nd Sub Fourth Revised Sheet No. 8	November 1, 1994.
1st Rev Sub First Revised Sheet No. 8.1	November 1, 1995.
Sub First Revised Sheet No. 8.1	November 1, 1994
Original Volume No. 2	
Sub 2nd Rev Twentieth Rev Sheet No. 2	November 1, 1995.
Sub 1st Rev Twentieth Rev Sheet No. 2	October 12, 1995.
Sub Twentieth Revised Sheet No. 2	April 1, 1995.
2nd Sub Nineteenth Rev Sheet No. 2	November 1, 1994.
Sub 1st Rev Fifteenth Rev Sheet No. 2.1	November 1, 1995.
Sub Fifteenth Rev Sheet No. 2.1	April 1, 1995.
Sub Fourteenth Rev Sheet No. 2.1	April 1, 1995.
2nd Sub Twelfth Rev Sheet No. 2.1	November 1, 1994.
Sub 1st Rev Nineteenth Rev Sheet No. 2–A	November 1, 1995.
Sub Nineteenth Rev Sheet No. 2–A	April 1, 1995.
2nd Sub Eighteenth Rev Sheet No. 2–A	November 1, 1994.

Northwest states that the purpose of this filing is to comply with the Commission's February 16, 1996 Letter Order approving the Offer of Settlement filed in the referenced proceeding on November 14, 1995. Northwest states that the rates included in this compliance filing are for a fifteen month locked-in period broken into two separate rate periods. The First Period rates are for November 1, 1994 through October 31, 1995. The Second Period rates are for November 1, 1995 through January 31, 1996. Northwest states that the base rates for the entire period have been restated in the new proposed tariff sheets in Appendix A to the filing. Workpapers supporting the derivation of the rates for the First Period and Second Periods are attached thereto in Appendix B and Appendix C, respectively. Northwest states that all rates have been derived in the manner agreed to in the Settlement. All affected rate schedule tariff sheets that were in effect during the locked-in period have been changed. The proposed tariff sheets reflect these changes.

Pursuant to Section 2.1 of the Settlement, Northwest has requested that this filing be noticed for initial and reply comments. Initial comments are to be filed within twenty days of the date of the filing and reply comments are to be filed within ten days thereafter.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9627 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP96–206–000]

Questar Pipeline Company; Notice of Tariff Filing

April 15, 1996.

Take notice that on April 10, 1996, Questar Pipeline Company (Questar), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet Nos. 21 and 182, Second Revised Sheet No. 20, and Third Revised Sheet No. 51, to become effective May 10, 1996.

Questar states that the proposed tariff sheets revise its tariff to more clearly explain that the level of service specified in a shipper's No-Notice Transportation (NNT) Service Agreement may be nominated, on any day, under any or all of the shipper's Rate Schedule T–1 (firm) Transportation Service agreements so long as the NNT nomination does not exceed either (1) the shipper's level of NNT service or (2) the level of firm transportation service specified in the transportation service agreement to which the NNT service is nominated.

Questar explains further that the proposed tariff revisions, which are being tendered in response to customer requests, more clearly set forth the true intent of NNT service.

Questar states that a copy of this filing has been served upon its transportation customers, the Public Service Commission of Utah, and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9631 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–90–002]

Tennessee Gas Pipeline Company; Notice of Interruptible Services Revenue Report Filed

April 15, 1996.

Take notice that on April 9, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its interruptible services revenue report for the September 1993 through August 1994 period.

Tennessee states that the report indicates that Tennessee has recovered the $8.959 million of GSR costs allocated to interruptible services. In addition, the report indicates a net gain of $1.128 million for the annual period. Ninety percent of the net gain, or $1.015 million, will be credited to Tennessee's Demand GSR Account, consistent with Section 6 of Rate Schedule IT and Section 5.4 of Article XXVI of the General Terms and Conditions of Tennessee's FERC Gas Tariff. The report also shows that Tennessee has continued to meet the at-risk condition imposed by the Commission for the September 1993–April 1994 period.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 19, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9629 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–396–011 and RP96–160–001]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

April 15, 1996.

Take notice that on April 11, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective April 1, 1996:

Substitute Fourth Revised Sheet No. 205A
Second Substitute Original Sheet No. 209C

Tennessee states that it is filing the instant tariff sheets to comply with the Commission's March 27, 1996 order issued in Tennessee Gas Pipeline Company, 74 FERC ¶ 61,323 (1996).

Any person desiring to make any protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9630 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–208–000]

Trunkline Gas Company; Notice of Proposed Changes In FERC Gas Tariff

April 15, 1996.

Take notice that on April 10, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to be effective May 11, 1996.

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.202 of the Commission's Regulations, is to implement Rate Schedule QNIT for Quick Notice Interruptible Transportation service pursuant to Trunkline's blanket certificate authorization under Section 284.211 of the Commission's Regulations. Trunkline is proposing this interruptible transportation service, as defined in Section 284.9(b), to assist its customers in meeting needs which may vary due to fluctuating daily load requirements. This rate schedule is provided to offer, on an interruptible basis, the same basic service characteristics which Trunkline currently offers on a firm basis under Rate Schedule QNT, Quick Notice Transportation.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9633 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP83–251–011]

The Washington Water Power Company; Notice of Application

April 15, 1996.

Take notice that on April 10, 1996, The Washington Water Power Company (''Water Power''), East 1411 Mission Avenue, Spokane, Washington 99202, filed an application under Section 7 of the Natural Gas Act for authority to amend its existing certificate to allow for the continuation of a release of a portion of its Jackson Prairie Underground Storage Project (Jackson Prairie) deliverability and capacity to BC Gas Utility, Ltd. (''BC Gas''), as successor-in-interest to B.C. Gas Inc., and to permit abandonment of such service to B.C. Gas Inc., all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Water Power states that it is a local distribution company engaged in the business of distributing natural gas within the states of Washington, Oregon, California and Idaho. Water Power explains that it is a one-third owner of Jackson Prairie, a natural storage field located in Lewis County, Washington. Water Power explains that the remaining undivided ownership interests belong to Northwest Pipeline Corporation and Washington Natural Gas Company, with the latter designated as the Project Operator.

Water Power explains that B.C. Gas Inc. and Water Power previously entered into an Agreement dated April 21, 1989, entitled ''Release of Jackson Prairie Storage Capacity'' (Release

Agreement). Water Power explains that the Release Agreement calls for the release of 630,000 therms per day of firm deliverability and 22,680,000 therms per day of seasonal capacity to B.C. Gas Inc. Water Power states that the Release Agreement provided for an initial term expiring on April 30, 1996. The Release Agreement superseded an earlier agreement dated November 4, 1982, between Water Power and B.C. Gas Inc.'s predecessor-in-interest, British Columbia Hydro & Power Authority.

Water Power proposes to continue the release of Jackson Prairie deliverability and capacity to BC Gas Utility Ltd. through April 30, 2000, and year-to-year thereafter. Water Power states that the release would be on the same terms and conditions as previously approved by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 6, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Water Power to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9622 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Projects Nos. 2404 & 2419–Michigan]

Thunder Bay Power Company; Notice of 10 (j) Meeting

April 15, 1996.

a. Date and Time of Meeting: May 14, 1996 at 9:00 to 4:30.

b. Place: U.S. Fish and Wildlife Service's offices at 2651 Coolidge Road East Lansing, Michigan (USFWS contacts: Burr Fisher at (517) 351–8273 or John Cooper at (517) 351–8286).

c. FERC Contact: Patrick Murphy (202) 219–2659; Ed Lee (202) 219–2809.

d. Purpose of the Meeting: The Federal Energy Regulatory Commission, the Michigan Department of Natural Resources, and the Department of the Interior, Fish and Wildlife Service, intend to have a Section 10 (j) discussion and negotiation for the Thunder Bay River Hydro Projects, FERC Nos. 2404 and 2419.

e. Proposed Agenda:

A. Introduction
   Recognition of meeting participants
   Teleconference procedures
B. Section 10(j) issues discussions
C. Section 10(j) negotiations
D. Issues outside of 10(j) discussion
E. Follow up actions

f. All local, state and Federal agencies, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants. If you want to participate by teleconference, please contact Pat Murphy and Ed Lee at the numbers listed above no later than May 10, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9626 Filed 4–18–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

[Case No. DH–004]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Vented Home Heating Equipment Test Procedure to CFM International Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. DH–004) granting a Waiver to CFM International Inc. (CFM) from the existing Department of Energy (DOE or Department) test procedure for vented home heating equipment. The Department is granting CFM's Petition for Waiver regarding pilot light energy consumption for manually controlled heaters in the calculation of Annual Fuel Utilization Efficiency (AFUE), and calculation procedure for weighted average steady state efficiency for manually controlled heaters with various input rates for its models DV32, DV34, DV36, DV40, DVS2, DVS3, HEDV30, HEDV30–1, FSDV30, FS30, FA20, HE30, HEB30, FADV20, and HE40 manually controlled vented heaters.

FOR FURTHER INFORMATION CONTACT:

William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9145

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with Title 10 CFR 430.27(j), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, CFM has been granted a Waiver for its models DV32, DV34, DV36, DV40, DVS2, DVS3, HEDV30, HEDV30–1, FSDV30, FS30, FA20, HE30, HEB30, FADV20, and HE40 manually controlled vented heaters, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, D.C., on April 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: CFM International Inc. (Case No. DH–004).

Background:

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 917, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a

comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding Title 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

CFM filed a ''Petition for Waiver,'' dated October 2, 1995, and subsequently, a second letter, dated October 30, 1995, which amended the original list of models, in accordance with section 430.27 of Title 10 CFR Part 430. The Department published in the Federal Register on December 28, 1995, CFM's Petition and solicited comments, data and information respecting the Petition. 60 FR 67127, December 28, 1995. CFM also filed an ''Application for Interim Waiver'' under section 430.27(b)(2), which DOE granted on December 21, 1995. 60 FR 67127, December 28, 1995.

No comments were received concerning either the ''Petition for Waiver'' or the ''Interim Waiver.'' The Department consulted with The Federal Trade Commission (FTC) concerning the CFM Petition. The FTC did not have any objections to the issuance of the waiver to CFM.

Assertions and Determination:

CFM's Petition seeks a waiver from the DOE test provisions regarding (a) pilot light energy consumption for manually controlled heaters in the calculation of AFUE and (b) calculation procedure for weighted average steady state efficiency for manually controlled heaters with various input rates. The DOE test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O requires measurement of energy input rate to the pilot light (Q_P) with an error no greater than 3 percent for vented heaters, and use of this data in section 4.2.6 for the calculation of AFUE using the formula: AFUE = $[4400\eta_{SS}\eta_u Q_{in\text{-}max}]/[4400\eta_{SS}Q_{in\text{-}max} + 2.5(4600)\eta_u Q_P]$. CFM requests the allowance to delete the $[2.5(4600)\eta_u Q_P]$ term in the denominator in the calculation of AFUE when testing its models DV32, DV34, DV36, DV40, DVS2, DVS3, HEDV30, HEDV30–1, FSDV30, FS30, FA20, HE30, HEB30, FADV20, and HE40 manually controlled vented heaters. CFM states that its models DV32, DV34, DV36, DV40, DVS2, DVS3, HEDV30, HEDV30–1, FSDV30, FS30, FA20, HE30, HEB30, FADV20, and HE40 manually controlled vented heaters are designed with a transient pilot which is to be turned off by the user when the heater is not in use. The control knob on the combination gas control in these heaters has three positions: ''OFF,'' ''PILOT'' and ''ON''. Gas flow to the pilot is obtained by rotating the control knob from ''OFF'' to ''PILOT,'' depressing the knob, holding in, pressing the piezo igniter. When the pilot heats a thermocouple element, sufficient voltage is supplied to the combination gas control for the pilot to remain lit when the knob is released and turned to the ''ON'' position. The main burner can then be ignited by moving an ON/OFF switch to the ''ON'' position. Instructions to instruct users to turn the gas control knob to the ''OFF'' position when the heater is not in use, which automatically turns off the pilot, are provided in the User's Instruction Manual and on a label adjacent to the gas control knob. If the manufacturer's instructions are observed by the user, the pilot light will not be left on. This will result in a lower energy consumption, and in turn a higher efficiency than calculated by the current DOE test procedure. Since the current DOE test procedure does not address this issue, CFM asks that the Waiver be granted.

Based on DOE's review of how CFM's models DV32, DV34, DV36, DV40, DVS2, DVS3, HEDV30, HEDV30–1, FSDV30, FS30, FA20, HE30, HEB30, FADV20, and HE40 manually controlled vented heaters operate and the fact that if the manufacturer's instructions are followed, the pilot light will not be left on, DOE grants CFM a Petition for Waiver to exclude the assumed pilot light energy input term in the calculation of AFUE.

This decision is subject to the condition that the heaters shall have an easily read label near the gas control knob instructing the user to turn the valve to the off-position when the heaters are not in use be maintained.

CFM also seeks a Waiver from the DOE test provisions in section 3.1.1 of Title 10 CFR Part 430, Subpart B, Appendix O that require steady state efficiency for manually controlled heaters with various flow rates to be determined at a fuel input rate that is within ±5 percent of 50 percent of the maximum fuel input rate, and the use of this data in section 4.2.4 to determine the weighted average steady state efficiency in the calculation of AFUE.

CFM states that its manually controlled heaters utilize a gas control with a variable pressure regulator control that allows the user to select various fuel input rates by varying the range of pressures of the heaters, and request that it be allowed to determine steady state efficiency and weighted average steady state efficiency in the calculation of AFUE at a minimum fuel input rate of no greater than two-thirds of the maximum fuel input rate instead of the specified ±5 percent of 50 percent of the maximum fuel input rate. Also, previous Petitions for Waiver to exclude the pilot light energy input term in the calculation of AFUE for home heating equipment with a manual transient pilot control and allowance to determine steady state efficiency and weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of 65.3 percent of the maximum fuel input rate have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991, and Valor Inc., 56 FR 51714, October 15, 1991.

Based on DOE having granted similar waivers in the past to heaters utilizing a variable pressure regulator control that allows a user to set various fuel input rates, DOE agrees that a waiver should be granted to allow the determination of steady state efficiency and weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of no greater than two-thirds of the maximum fuel input rate instead of the specified ±5 percent of 50 percent of the maximum fuel input rate for CFM models DV32, DV34, DV36, DV40, DVS2, DVS3, HEDV30, HEDV30–1, FSDV30, FS30, FA20, HE30, HEB30, FADV20, and HE40 manually controlled vented heaters.

It is therefore, ordered that:

(1) The ''Petition for Waiver'' filed by CFM International Inc. (Case No. DH–

004) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix O of Title 10 CFR Part 430, Subpart B, CFM International Inc. shall be permitted to test its models DV32, DV34, DV36, DV40, DVS2, DVS3, HEDV30, HEDV30–1, FSDV30, FS30, FA20, HE30, HEB30, FADV20, and HE40 manually controlled vented heaters on the basis of the test procedure specified in Title 10 CFR Part 430, with modifications set forth below:

(i) Delete paragraph 3.5 of Appendix O.

(ii) The last paragraph of 3.1.1 of Appendix O is revised to read as follows:

3.1.1 (a) For manually controlled gas fueled vented heaters, with various input rates determine the steady-state efficiency at:

(1) A fuel input rate within ± 5 percent of 50 percent of the maximum fuel input rate or,

(2) The minimum fuel input rate if the design of the heater is such that ± 5 percent of 50 percent of the maximum fuel input rate can not be set, provided this minimum input rate is no greater than two-thirds of the maximum input rate of the heater.

(b) If the heater is designed to use a control that precludes operation at other than maximum output (single firing rate) determine the steady state efficiency at the maximum input rate only.

(iii) Delete paragraph 4.2.4 of Appendix O and replace with the following paragraph:

4.2.4 Weighted Average Steady-State Efficiency. (a) For manually controlled heaters with various input rates, the weighted average steady-state efficiency (η_{ss-wT}) is:

(1) At ±5 percent of 50 percent of the maximum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters, or

(2) At the minimum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters if the design of the heater is such that ± 5 percent of 50 percent of the maximum fuel input rate can not be set, provided the tested input rate is no greater than two-thirds of maximum input rate of the heater.

(b) For manually controlled heater with one single firing rate, the weighted average steady-state efficiency is the steady-state efficiency measured at the single firing rate.

(iv) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$AFUE = \eta_u$

Where:

η_u = as defined in section 4.2.5 of this appendix.

(v) With the exception of the modification set forth above, CFM International Inc. shall comply in all respects with the test procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to models DV32, DV34, DV36, DV40, DVS2, DVS3, HEDV30, HEDV30–1, FSDV30, FS30, FA20, HE30, HEB30, FADV20, and HE40 manufactured by CFM International Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that a factual basis underlying the Petition is incorrect.

(5) Effective April 4,1996, this Waiver supersedes the Interim Waiver granted CFM International Inc. on December 21, 1995. 60 FR 67127, December 28, 1995. (Case No. DH–004).

Issued in Washington, D.C., on April 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–9681 Filed 4–18–96; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–084]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Goodman Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–084) granting a Waiver to Goodman Manufacturing Company (Goodman) from the existing Department of Energy (DOE or Department) test procedure for furnaces. The Department is granting Goodman's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GSU series central furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(j), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Goodman has been granted a Waiver for its GSU series central furnaces permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on April 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Goodman Manufacturing Company (Case No. F–084).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 917, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure

requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Goodman filed a ''Petition for Waiver,'' dated July 19, 1995, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the Federal Register on January 30, 1996, Goodman's Petition and solicited comments, data and information respecting the Petition. 61 FR 3025, January 30, 1996. Goodman also filed an ''Application for Interim Waiver'' under section 430.27(b)(2), which DOE granted on January 24, 1996. 61 FR 3025, January 30, 1996.

No comments were received concerning either the ''Petition for Waiver'' or the ''Application for Interim Waiver.'' The Department consulted with The Federal Trade Commission (FTC) concerning the Goodman Petition. The FTC did not have any objections to the issuance of the waiver to Goodman.

Assertions and Determinations

Goodman's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Goodman requests the allowance to test using a 30-second blower time delay when testing its GSU series central furnaces. Goodman states that since the 30-second delay is indicative of how these models actually operate, and since such a delay results in an increase in AFUE of 1.0 percent, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Goodman indicates that it is unable to take advantage of any of these exceptions for its GSU series central furnaces.

Since the blower controls incorporated on the Goodman furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current test procedure provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Goodman GSU series central furnaces. Accordingly, with regard to testing the GSU series central furnaces, today's Decision and Order exempts Goodman from the existing test procedure provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The ''Petition for Waiver'' filed by Goodman Manufacturing Company (Case No. F–084) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Goodman Manufacturing Company, shall be permitted to test its GSU series central furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Goodman Manufacturing Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GSU series central furnaces manufactured by Goodman Manufacturing Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition is incorrect.

(5) Effective April 4, 1996, this Waiver supersedes the Interim Waiver granted Goodman Manufacturing Company on January 24, 1996. 61 FR 3025, January 30, 1996 (Case No. F–084).

Issued In Washington, DC, on April 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–9680 Filed 4–18–96; 8:45 am]

BILLING CODE 6450–01–P

(Case No. DH–003)

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Vented Home Heating Equipment Test Procedure to Vermont Castings, Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. DH–003) granting a Waiver to Vermont Castings, Inc. (Vermont Castings) from the existing Department of Energy (DOE or Department) test procedure for vented home heating equipment. The Department is granting Vermont Castings' Petition for Waiver regarding pilot light energy consumption for manually controlled heaters in the calculation of Annual Fuel Utilization

Efficiency (AFUE), and calculation procedure for weighted average steady state efficiency for manually controlled heaters with various input rates for its models DV25 and DH20 manually controlled vented heaters.

FOR FURTHER INFORMATION CONTACT:

William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9145

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with Title 10 CFR 430.27(j), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Vermont Castings has been granted a Waiver for its models DV25 and DH20 manually controlled vented heaters, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, D.C., on April 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy

Decision and Order

In the Matter of: Vermont Castings, Inc. (Case No. DH–003).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 917, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding Title 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Vermont Castings filed a ''Petition for Waiver,'' dated July 7, 1995, and subsequently, a second letter, dated October 30, 1995, which amended the model nomenclature and minimum fuel input rate of the vented heaters submitted for consideration in the July 7, 1995 Waiver request, in accordance with section 430.27 of Title 10 CFR Part 430. The Department published in the Federal Register on December 28, 1995, Vermont Castings' Petition and solicited comments, data and information respecting the Petition. 60 FR 67130, December 28, 1995. Vermont Castings also filed an ''Application for Interim Waiver'' under section 430.27(b)(2), which DOE granted on December 21, 1995. 60 FR 67130, December 28, 1995.

No comments were received concerning either the ''Petition for Waiver'' or the ''Interim Waiver.'' The Department consulted with The Federal Trade Commission (FTC) concerning the Vermont Castings Petition. The FTC did not have any objections to the issuance of the waiver to Vermont Castings.

Assertions and Determinations

Vermont Castings' Petition seeks a waiver from the DOE test provisions regarding (a) pilot light energy consumption for manually controlled heaters in the calculation of AFUE and (b) calculation procedure for weighted average steady state efficiency for manually controlled heaters with various input rates. The DOE test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O requires measurement of energy input rate to the pilot light (Q_P) with an error no greater than 3 percent for vented heaters, and use of this data in section 4.2.6 for the calculation of AFUE using the formula: $AFUE = [4400\eta_{SS}\eta_u Q_{in\text{-}max}] / [4400\eta_{SS}Q_{in\text{-}max} + 2.5(4600)\eta_u Q_P]$. Vermont Castings requests the allowance to delete the $[2.5(4600)\eta_u Q_P]$ term in the denominator in the calculation of AFUE when testing its models DV25 and DH20 manually controlled vented heaters. Vermont Castings states that its models DV25 and DH20 manually controlled vented heaters are designed with a transient pilot which is to be turned off by the user when the heater is not in use. The control knob on the combination gas control in these heaters has three positions: ''OFF,'' ''PILOT'' and ''ON''. Gas flow to the pilot is obtained by rotating the control knob from ''OFF'' to ''PILOT,'' depressing the knob, holding in, pressing the piezo igniter. When the pilot heats a thermocouple element, sufficient voltage is supplied to the combination gas control for the pilot to remain lit when the knob is released and turned to the ''ON'' position. The main burner can then be ignited by moving an ON/OFF switch to the ''ON'' position. Instructions to instruct users to turn the gas control knob to the ''OFF'' position when the heater is not in use, which automatically turns off the pilot, are provided in the User's Instruction Manual and on a label adjacent to the gas control knob. If the manufacturer's instructions are observed by the user, the pilot light will not be left on. This will result in a lower energy consumption, and in turn a higher efficiency than calculated by the current DOE test procedure. Since the current DOE test procedure does not address this issue, Vermont Castings asks that the Waiver be granted.

Based on DOE's review of how Vermont Castings' models DV25 and DH20 manually controlled vented heaters operate and the fact that if the manufacturer's instructions are followed, the pilot light will not be left on, DOE grants Vermont Castings a Petition for Waiver to exclude the assumed pilot light energy input term in the calculation of AFUE.

This decision is subject to the condition that the heaters shall have an easily read label near the gas control knob instructing the user to turn the valve to the off-position when the heaters are not in use be maintained.

Vermont Castings also seeks a Waiver from the DOE test provisions in section 3.1.1 of Title 10 CFR Part 430, Subpart B, Appendix O that require steady state efficiency for manually controlled heaters with various flow rates to be determined at a fuel input rate that is within ±5 percent of 50 percent of the maximum fuel input rate, and the use of this data in section 4.2.4 to determine the weighted average steady state efficiency in the calculation of AFUE.

Vermont Castings states that its manually controlled heaters utilize a gas control with a variable pressure regulator control that allows the user to select various fuel input rates by varying the range of pressures of the heaters, and request that it be allowed to determine steady state efficiency and weighted average steady state efficiency in the calculation of AFUE at a minimum fuel input rate of no greater than two-thirds of the maximum fuel input rate instead of the specified ±5 percent of 50 percent of the maximum fuel input rate. Also, previous Petitions for Waiver to exclude the pilot light energy input term in the calculation of AFUE for home heating equipment with a manual transient pilot control and allowance to determine steady state efficiency and weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of 65.3 percent of the maximum fuel input rate have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991, and Valor Inc., 56 FR 51714, October 15, 1991.

Based on DOE having granted similar waivers in the past to heaters utilizing a variable pressure regulator control that allows a user to set various fuel input rates, DOE agrees that a waiver should be granted to allow the determination of steady state efficiency and weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of no greater than two-thirds of the maximum fuel input rate instead of the specified ±5 percent of 50 percent of the maximum fuel input rate for Vermont Castings models DV25 and DH20 manually controlled vented heaters.

It is therefore, ordered that:

(1) The ''Petition for Waiver'' filed by Vermont Castings, Inc. (Case No. DH–003) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix O of Title 10 CFR Part 430, Subpart B, Vermont Castings, Inc. shall be permitted to test its models DV25 and DH20 manually controlled vented heaters on the basis of the test procedure specified in Title 10 CFR Part 430, with modifications set forth below:

(i) Delete paragraph 3.5 of Appendix O.

(ii) The last paragraph of 3.1.1 of Appendix O is revised to read as follows:

3.1.1 (a) For manually controlled gas fueled vented heaters, with various input rates determine the steady-state efficiency at:

(1) A fuel input rate within ±5 percent of 50 percent of the maximum fuel input rate or,

(2) The minimum fuel input rate if the design of the heater is such that ±5 percent of 50 percent of the maximum fuel input rate can not be set, provided this minimum input rate is no greater than two-thirds of the maximum input rate of the heater.

(b) If the heater is designed to use a control that precludes operation at other than maximum output (single firing rate) determine the steady state efficiency at the maximum input rate only.

(iii) Delete paragraph 4.2.4 of Appendix O and replace with the following paragraph:

4.2.4 Weighted Average Steady-State Efficiency. (a) For manually controlled heaters with various input rates, the weighted average steady-state efficiency (SS–WT) is:

(1) At ±5 percent of 50 percent of the maximum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters, or

(2) At the minimum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters if the design of the heater is such that ±5 percent of 50 percent of the maximum fuel input rate can not be set, provided the tested input rate is no greater than two-thirds of maximum input rate of the heater.

(b) For manually controlled heater with one single firing rate, the weighted average steady-state efficiency is the steady-state efficiency measured at the single firing rate.

(iv) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$$AFUE = \eta_u$$

Where:

η_u = as defined in section 4.2.5 of this appendix.

(v) With the exception of the modification set forth above, Vermont Castings, Inc. shall comply in all respects with the test procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to models DV25 and DH20 manually controlled vented heaters manufactured by Vermont Castings, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that a factual basis underlying the Petition is incorrect.

(5) Effective April 4, 1996, this Waiver supersedes the Interim Waiver granted Vermont Castings, Inc. on December 21, 1995. 60 FR 67130, December 28, 1995. (Case No. DH–003).

Issued in Washington, D.C., on April 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–9682 Filed 4–18–96; 8:45 am]

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[Docket No. EE–RM–6450–01–P]

Energy Conservation Program for Consumer Products: Energy Efficiency and Information for Office Equipment; Notice of Determination

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of preliminary determination.

SUMMARY: The purpose of this notice is to set forth DOE's preliminary determination as to whether a voluntary national testing and information program being developed for commercial office equipment will be consistent with the objectives of Section 125 of the Energy Policy Act of 1992.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Introduction
A. Authority
B. Background
II. General Discussion
III. Department's Determination

I. Introduction

A. Authority

Section 125 of the Energy Policy Act of 1992 (EPAct), Public Law 102–486, requires that the Department of Energy, after consulting with the Computer and Business Equipment Manufacturers Association (CBEMA) and other interested organizations, provide financial and technical assistance to support a voluntary national testing and information program for those types of commercial office equipment that are widely used and for which there is a potential for significant energy savings as a result of such program. The EPAct directs that such voluntary program ''shall be developed by an appropriate organization (composed of interested parties) according to commonly accepted procedures for the development of national testing procedures and labeling programs.'' EPAct, Section 125(a)(3). The voluntary program shall: ''(A) determine the commercial office equipment to be covered; (B) include specifications for testing procedures that will enable purchasers of such commercial office equipment to make more informed decisions about energy efficiency and costs of alternative products; and (C) include information, which may be disseminated through catalogs, trade publications, labels, or other mechanisms, that will allow consumers to assess the energy consumption and potential cost savings of alternative products.'' EPAct, Section 125(a)(2).

EPAct also requires that the Department monitor and evaluate the efforts to develop the program, and make a determination, not later than three years after enactment, as to whether such program is consistent with the objectives of the legislation. EPAct, Section 125(b). If the program does not meet the objectives, then the Department is required, after consultation with the National Institute of Standards and Technology, to develop test procedures and prescribe labeling rules for commercial office equipment. EPAct, Section 125(c)(1–2).

B. Background

Since the passage of EPAct, the Department of Energy has monitored the efforts of the commercial office equipment industry to develop a testing and information program through the Council on Office Products Energy Efficiency (COPEE), a membership organization composed of office equipment manufacturers, with an advisory group representing environmental organizations, designers, national laboratories, state and Federal agencies, and office equipment professionals. COPEE was set up by The Information Technology Industries Council (ITI, formerly CBEMA).

In the initial phase of the program development, COPEE identified five types of office equipment that are widely used and offer significant potential for energy savings. The types of commercial office equipment to be included in the program are: (1) Micro computers; (2) Page printers (ink jet and laser); (3) Low-speed, plain paper copiers (1–24 copies per minute); (4) Medium-speed, plain paper copiers (25–39 copies per minute); and (5) Facsimile equipment. Category (1) also includes computer monitors, whether sold separately or with a micro computer system. COPEE set up five subcommittees to develop energy testing methods for the types of equipment mentioned above and a subcommittee to conduct a market study to assess buyers' present understanding of energy use by office equipment and develop an information program. DOE contracted with the Massachusetts Institute of Technology (MIT) to assist COPEE in the development of the test procedures. The test procedures for each of the products were drafted and revised through an iterative process.

On May 26, 1994, DOE held a public meeting, at which interested persons were invited to offer suggestions concerning methods of evaluating the voluntary program, and to provide updates on the progress of the voluntary program. A transcript of the meeting was made available to the public, and subsequent comments were invited through June 15, 1994. Workshop comments centered on the need for the verification of coverage of the program, data collection as to energy efficiency of office products, and the ability to evaluate whether the new energy efficiency information is reaching its target audiences. COPEE also provided a schedule for the program's development.

In the subsequent months COPEE continued in the development of the test procedures for the five products. To assist in developing the information program, COPEE contracted with American Opinion Research, Inc. to conduct quantitative and qualitative research of office equipment decision makers. Only those people having a significant role in the decision of which types of electronic equipment to purchase in their companies were surveyed. The study was conducted primarily to determine: (1) The interest in purchasing electronic office equipment which is more energy efficient; (2) the factors most important in the decision to buy office equipment; (3) the importance of energy efficient office equipment; (4) the messages that are most effective in ''convincing'' decision makers to buy or recommend energy efficient equipment; (5) the means through which decision makers prefer to receive those messages. The research was completed and presented to COPEE in November 1994. The results indicated that a significant number of respondents would purchase energy efficient office equipment over other types of equipment, provided that there was neither an increase in cost nor any loss of performance. The study also found that the information presented to buyers about energy efficient equipment should include the cost savings achieved through energy efficiency, should link energy conservation to the environment, and must be simple and easy to understand. The COPEE study also identified very low levels of buyer awareness (under 10 percent) of the Energy Star program and logo, which is described below.

While developing the test procedures for the five products, COPEE pointed out the difficulty in developing test procedures for computers. The test procedures being developed would not provide buyers with simple and relevant information on the energy usage of the machines due to the multiple functions of the Central Processing Unit and the various configurations and designs of the computers to be tested for energy consumption. The subcommittee also identified problems with replicating and verifying the energy usage during the active or working mode. The subcommittee recommended to COPEE that test procedures for computers only address the stand-by or ''sleep'' mode, using the Energy Star program methods. In subsequent meetings, COPEE proposed separate test procedures for computers and monitors. Efforts were focused on completing the test procedures for monitors, printers, both types of copiers, and facsimile equipment and developing an information dissemination plan. The test procedures for these four products have developed at different paces. The only test procedure that has been finalized is for copiers, which updates an energy test method first issued by the American Society for Testing and Materials (ASTM) in 1982. ASTM has published this revised test procedure and has designated it: F757–94, ''Standard Test Method for Determining Energy Consumption of Copier and Copier-Duplicating Equipment.''

Based on progress as of early 1995, DOE developed evaluation criteria for the program, disseminated the draft

criteria and held a public meeting on March 28, 1995, to discuss the evaluation criteria for the office equipment program. Comments were received through April 14, 1995. ITI urged at the public meeting and in its letter dated April 14, 1995, that the Department of Energy should make a determination that the Environmental Protection Agency's (EPA) Energy Star Program meets the requirements of Section 125 of EPAct, and that any additional voluntary program would be redundant. ITI states that the Energy Star Program is a voluntary Federal energy conservation program, and has been successfully applied to commercial office equipment.

In 1992 EPA established a voluntary energy efficiency program for personal computers and monitors, called the Energy Star Computers Program. The program is a partnership effort between EPA and individual members of the information technology industry to promote the manufacturing and marketing of energy-efficient equipment. The program was expanded in 1993 to include printers, in 1994 to include facsimile machines and, in 1995 to include copiers.

Currently, there are over 400 manufacturers of computers, monitors, printers, facsimile machines, copiers and controlling devices (hardware or software that enable the equipment to enter a sleep mode) participating in the program and producing over 2,000 Energy Star compliant products. In April 1993, President Clinton signed Executive Order 12845 requiring all Federal agencies to purchase Energy Star computers, monitors, and printers where commercially available.

Memoranda of Understanding (MOUs) are signed between the EPA and manufacturers of office equipment. These firms are referred to as ''partners'' in the Energy Star Program. Each MOU specifies the partner's responsibilities, the product qualification requirements, and the EPA's responsibilities.

The EPA establishes a power threshold for each product type, computers, monitors, printers, facsimile machines and copiers. Products qualify for the program if they ''sleep'' at or below their corresponding threshold level. For example, Energy Star monitors that use 30 watts or less in the ''sleep'' mode qualify. Additionally, equipment qualifies if it maintains a level of power consumption at or below the threshold when in the active mode. For example, monitors that operate at or below 30 watts qualify. In the case of copiers another energy-saving feature (default duplexing—routine production of two sided rather than one sided copies—for certain sizes) is also required to qualify for the program.

EPA has developed an Energy Star Logo to help identify Energy Star equipment. The logo may be used as a product label to designate specific models of equipment that qualify for the program. Partners shall consider placing the Energy Star logo on all qualifying products, as well as on their associated shipping cartons, brochures, data sheets and advertisements.

In addition to setting power thresholds, EPA also provides testing protocols that should be followed when measuring power in the ''sleep'' mode for the Energy Star Products. The Energy Star Program does not provide testing procedures for measuring power consumption in the active mode.

Additionally, the program accepts test data and other product data, including ''sleep'' mode values on products that qualify. The data is then compiled in an Energy Star Compliant Product Database. The database is available to interested parties in two versions. The first is a complete version that contains the full product description and other information such as power consumption in the ''sleep'' mode, network compatibility and monitor control protocol. This version is available from the EPA as a hard copy or on disk. The second version is an abbreviated version that contains a listing of compliant products by type and by manufacturer without further product description. This version is available from EPA by facsimile. Additionally, both versions of the database are available on the World Wide Web.

Energy Star partners agree to introduce Energy Star compliant equipment, perform tests to determine if products comply with the EPA specifications, and provide general information to users/purchasers regarding the Energy Star features of the equipment. This information might include a description of the Energy Star program, a discussion of the savings associated with using power-management features, and the method for changing the time before the equipment goes into a ''sleep'' mode. Partners may determine the best manner through which to disseminate this general information to users. Energy Star partners also agree to provide information about the Energy Star Program to all of its employees whose jobs are relevant to the development, marketing, sales, and service of Energy Star products. Since October 1995, computer partners have been required to ship their products with the energy savings features enabled. Printer, facsimile machine and copier manufacturers have been shipping their products enabled since the inception of their individual programs. The energy savings features can be disabled by the user.

EPA commits, in the Energy Star MOUs, to encourage acceptance of products bearing the Energy Star logo, to promote energy efficient equipment and to inform consumers about the Energy Star Program by writing articles and/or cooperating with news media by sharing information. EPA also agrees to provide partners with recognition for public service in protecting the environment and to work with partners, independently or in conjunction with other partners, to coordinate the placement of advertisements to promote energy efficient equipment, and educate consumers about the program.

The American Council for an Energy-Efficient Economy (ACEEE), through its written comments, dated April 17, 1995, stated that the EPA Energy Star program does not meet the requirements of Section 125 of EPAct. ACEEE argued that the EPA Energy Star program does not include '''specifications for test procedures that will enable purchasers of such commercial office equipment to make more informed decisions about energy efficiency and costs of alternative products' and 'information, which may be disseminated through catalogs, trade publications, labels, or other mechanisms, that will allow consumers to assess the energy consumption and potential cost savings of alternative products''' as required by EPAct.

On September 26, 1995, ITI submitted a letter to the Department of Energy as a supplement to its April 14, 1995, letter. The letter encloses materials that cite the member companies' commitment to the Energy Star program as well as other voluntary efforts to disclose information about energy consumption to their customers. ITI also states in the letter, ''In addition to the enclosed documentation of the ongoing energy conservation efforts of computer manufacturers, individual member companies which manufacture other business equipment with significant peak power requirements will voluntarily undertake to provide energy consumption information along with sales literature that is given to institutional consumers.''

II. Discussion

Since the enactment of the EPAct, DOE has consulted with ITI and other interested organizations, and provided financial and technical assistance to support a voluntary national testing and information program for commercial

office equipment. DOE contracted with MIT and Lawrence Berkeley National Laboratory to help COPEE develop test procedures and information dissemination strategies. While the COPEE program was developing, the EPA Energy Star program was growing in participating partners and in covered products. The program has been expanded to include all of the products identified by COPEE to be included in its program. During the development of the testing procedures for office equipment, industry noted that the majority of the energy savings for office equipment could be achieved by having the products enter a ''sleep'' mode. The Energy Star program provides manufacturers with testing conditions and protocols to be followed when measuring power in the ''sleep'' mode. The Energy Star Logo lets the consumer know that the particular office equipment product qualifies for the Energy Star Program. If the product qualifies for the program and the energy saving features are enabled, the product will consume less energy than a similar model that does not qualify for the program (based on average usage patterns).

ITI commented in its letter dated April 14, 1995, that the Department of Energy ''should conclude that: (1) The Energy Star Program of the Environmental Protection Agency qualifies as a voluntary national energy efficiency testing and information program; (2) Efforts to develop an energy efficiency program, mandatory or voluntary, for commercial office equipment should be discontinued in light of the relatively insignificant energy savings as a result of such DOE program and the substantial energy savings achieved under the * * * Energy Star program; and (3) The Secretary of Energy, under Section 125(a) of EPAct, has sufficient authority to make such a determination.'' On January 5, 1996, ITI further commented ''that the program would be the Environmental Protection Agency's (EPA) Energy Star program, not an ITI program.''

Additionally, COPEE's manufacturer members tested a sample of computers using the draft test procedures developed by the technical task groups. The results were then submitted to ITI. ITI reported that the testing of several manufacturers' products indicates that Non-Energy Star computers cost between $16.43 and $9.86 to operate annually, averaging $13.52 total usage costs per year. When power management is properly enabled (excluding energy use of the monitor), Energy Star computers cost between $9.45 and $3.95 to operate annually, averaging $6.53 per year. ITI further concluded that the tests do not show significant potential for greater energy savings through a separate consumer information program.

The American Council for an Energy-Efficient Economy (ACEEE), through its written comments, dated April 17, 1995, stated that the ITI proposal to adopt the EPA Energy Star program does not meet the requirements of Section 125 of EPAct. ACEEE indicated that it ''do[es] not believe that it is within the current scope of the EPA Energy Star program to develop robust testing procedures for office equipment as specified in Section 125.'' ACEEE also challenged ''the ITI notion that the energy use differences between Energy Star and Non-Energy Star equipment types are significant while the differences within these ''categories' [are] insignificant.''

ACEEE further disagreed with ITI's proposal that the EPA Energy Star program fulfills the requirements of Section 125(a) of EPAct for a voluntary information program for consumers on office equipment energy use. ACEEE commented that ''it is not clear from the ITI proposal that DOE could be assured of manufacturers' increased, sustained support of Energy Star which would, in our opinion, be required to have Energy Star fully meet the intent of this provision of Section 125.'' ACEEE also stated that ''the brevity of the EPA [testing] guidelines may make comparisons between various manufacturers energy use figures inaccurate.'' ACEEE opposed the proposal from ITI that DOE accept the Energy Star program as fulfilling the requirements of Section 125 of EPAct.

ITI argues that industry, through Energy Star, is meeting the objectives of Section 125 of EPAct, and that there would be little additional benefit to either consumers or to the environment from a redundant program. ITI stated that consumers can rely on the Energy Star logo as a simple, easy-to-understand method of ensuring that they are purchasing energy efficient products.

DOE has monitored the efforts and progress of the COPEE program and the Energy Star program. The two programs, although created for different reasons, have become very similar in nature and form.

DOE acknowledges that although the Energy Star Program is not an ''industry based'' program, the commercial office equipment industry appears to be actively supporting and participating in the program. The Energy Star test procedures recommended by EPA appear to be generally used by industry to determine if products qualify for the Energy Star Program and Logo. However, the Energy Star Program, although comprehensive, does not provide consumers with the ability to determine and compare the annual energy consumption and potential cost savings of competing products. DOE believes that this increases the need for manufacturers, EPA and DOE to educate consumers about the Energy Star program, the advantages of power management, and the use of the Energy Star Logo to distinguish Energy Star compliant products from non-Energy Star products. DOE also believes there is a need for continued commitment by industry to manufacture Energy Star products.

III. Department's Determination

Based on the Department's evaluation of COPEE/ITI's efforts and the EPA Energy Star program, the Department believes that critical elements of a voluntary national testing and information program for commercial office equipment are operational or under development, and that the program can mature to a level consistent with the objectives of EPAct within three years. The critical elements now operational include the successful development and industry support of the EPA Energy Star program for computers, monitors, printers, facsimile machines and copiers, and the commitment by manufacturers to participate in the Energy Star Program and to voluntarily provide energy consumption information along with sales literature that is given to institutional consumers for monitors, printers, facsimile machines and copiers. As the program develops and matures, DOE expects that the current shortcomings of the program will be addressed by providing consumers with more information that enables comparison of the potential cost savings of alternative products; educating consumers about the program; and disseminating more broadly the information on ''sleep'' mode values gathered by the EPA. Ultimately, manufacturer participation in, and information dissemination associated with, the program need to be sufficient to ensure that a substantial majority of the purchasers of covered products have ready access to the types of information on energy use envisioned by Section 125 of EPAct.

Because ITI and its member manufacturers appear generally committed to these objectives, the Department has made a provisional determination that a voluntary labeling and information program built upon the

EPA Energy Star program for office equipment will likely meet the requirements of Section 125 of EPAct if it is fully developed and implemented. The Department will continue to monitor, evaluate and provide periodic assessments of the progress in developing the voluntary testing and labeling program for office equipment. DOE will also work with the industry and with EPA to encourage ongoing efforts to monitor energy use, savings, operating practices, and user satisfaction with energy-efficient office equipment in actual use.

In order for the Department to evaluate progress in these areas, close collaboration among ITI, the Department and EPA should be maintained to facilitate exchange of information and program updates. No later than July 15, 1998, the Department must receive data and documentation on the achievements of industry efforts in this area, including information as to whether the above objectives have been met, so that DOE can make its final determination. The Department expects to make a final determination within three years.

Issued in Washington, DC, April 11, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–9566 Filed 4–18–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5415–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 1, 1996 Through April 5, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D–AFS–L65256–ID Rating, NC, Salmon River Corridor, Implementation, Sawtooth National Recreation Area (SNRA), Sawtooth Forest Land and Resource Management Plan (FLRMP), Custer County, ID.

Summary: Due to the Federal Furlough of December 18, 1995, through January 5, 1996, the Environmental Protection Agency did not review/rate this EIS.

ERP No. D–FHW–E40767–FL Rating EC2, Tampa Interstate Project, Funding, I–275 to just north of Cypress Street and I–275 from the Howard Frankland Bridge/Kennedy Boulevard ramps north to Dr. Martin Luther King, Jr. Boulevard and I–4 from I–275, Hillsborough County, FL.

Summary: EPA expressed environmental concerns that the noise analysis included in the documentation is insufficient and that wetlands mitigation plans should be better described in the final EIS. Also, the additional noise and wetland impacts and mitigation information requested above should be included in the final EIS.

ERP No. D–FHW–K40216–AZ Rating LO, AZ-260 Transportation Improvements, between Payson and Heber, Funding, NPDES and COE Section 404 Permits, Gila, Coconino and Navajo Counties, AZ.

Summary: EPA expressed a lack of objection to the project as proposed.

ERP No. D–USN–C10003–00 Rating EC2, Relocatable Over The Horizon Radar (ROTHR) System Construction and Operation, Commonwealth of Puerto Rico and Chesapeake, VA.

Summary: EPA expressed environmental concerns regarding potential impacts to wetlands, to a natural resource conservation zone, as well as impacts from radiofrequency exposure. EPA requested that a ''no action'' alternative be addressed in the final EIS, and that a preferred location be identified for the proposed receiver facility.

ERP No. D–USN–L11029–WA Rating LO, Disposal of Decommissioned, Defueled Cruiser, Ohio Class and Los Angeles Class Naval Reactor Plants, Site Selection, Hanford Site, Benton, Franklin and Grant Counties, WA.

Summary: EPA expressed a lack of objection to this document.

Final EISs

ERP No. F–AFS–L60099–ID Upper Swiftwater Timber Sale and Road Construction, Implementation, Selway Rangers District, Nez Perce National Forest, Idaho County, ID.

Summary: Due to the Federal Furlough of December 18, 1995, through January 5, 1996, the Environmental Protection Agency did not review/rate this EIS.

ERP No. F–AFS–L65233–OR Sandy River Delta Plan, Implementation, Special Management Area (SMA), Columbia River Gorge National Scenic Area (NSA), Several Permits for Approval, US Coast Guard Bridge Permit and COE Section 404 Permit, Multnomah County, OR.

Summary: Due to the Federal Furlough of December 18, 1995, through January 5, 1996, the Environmental Protection Agency did not review/rate this EIS.

ERP No. F–BLM–J60016–WY Kenetech/PacifiCorp Windpower Development Project, Construction of a 500–MW Windplant and 230-kV Transmission Line between Arlington and Hanna, Right-of-Way Grant, COE Section 404 Permit and Special-Use-Permit Issuance, Carbon County, WY.

Summary: EPA had no further comments or questions.

ERP No. F–FHW–E40332–FL FL–312 Extension Project, Construction, FL–207 to US 1/FL–5 north of the City of St. Augustine, Funding, Right-of-Way Permit, COE Section 404 and NPDES Permits, St. John County, FL.

Summary: EPA expressed continued environmental concerns regarding wetland impacts. A detailed wetland mitigation plan is still needed.

ERP No. F–FHW–K40188–CA CA–180 Freeway and Expressway Construction, Chestnut Avenue to Temperance Avenue, Funding and Possible COE Section 404 Permit, Fresno County, CA.

Summary: EPA expressed continued concerns regarding air quality impacts. FHWA satisfactorily addressed other environmental concerns in the draft EIS.

ERP No. F–FHW–K50005–CA Twin Bridges Replacement across Chorro Creek, South Bay Boulevard, Funding and 404 Permit, City of Morro Bay, San Luis Obispo County, CA.

Summary: EPA requested that FHWA's Record of Decision reflect the conditions in the Army Corps' Section 404 permit for the project.

ERP No. F–TVA–E09801–00 Programmatic EIS—Energy Vision 2020, Integrated Resource Plan, Implementation of Long-Term Plan and Short-Term Action, TN, AL, KY, GA, MS, NC and VA.

Summary: EPA requested additional information regarding hydroelectric power, human health, water quality and global warming.

ERP No. F–UAF–C11011–NY Griffis Air Force Base (AFB) Disposal and Reuse, Implementation, Oneida County, NY.

Summary: EPA had no objection to the final EIS.

ERP No. F–UAF–C11019–NY Plattsburgh Air Force Base (AFB) Disposal and Reuse, Implementation, Clinton County, NY.

Summary: EPA had no objection to the final EIS.

ERP No. F–AF–L11025–AK Alaska Military Operations Areas (MOAs) Temporary MOAs Conversion to Permanent MOAs; New MOAs Creation; MOAs Modification; Supersonic Aircraft Operations and Routine Flying Training, Joint/Combined Flying Training and Major Flying Exercises Activities, Elmendorf Air Force Base, AK.

Summary: Due to the Federal Furlough of December 18, 1995, through January 5, 1996, the Environmental Protection Agency did not complete its review of the final EIS. No comment letter was sent to the preparing agency.

Dated: April 16, 1996.

William D. Dickerson,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 96–9728 Filed 4–18–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5415–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed April 08, 1996 Through April 12, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960164, DRAFT EIS, IBR, ND, Arrowwood National Wildlife Refuge, Implementation, Water Management Capability to Mitigate for Past, Present and Future Impacts of Jamestown Reservoir, Stutsman and Foster Counties, ND, Due: June 18, 1996, Contact: Greg Hiemenz (701) 250–4242.

EIS No. 960165, FINAL SUPPLEMENT, COE, AK, Chignik Small Boat Harbor Development and Construction, Updated Information concerning Selected Alternative Site 2, Anchorage Bay, Alaska Peninsula, AK, Due: May 20, 1996, Contact: Guy R. McConnell (907) 753–2640.

EIS No. 960166, DRAFT EIS, EPA, CA, San Francisco Bay Region, Long-Term Management Strategy (LTMS) for the Placement of Dredged Material for Disposal, several counties, CA, Due: July 19, 1996, Contact: Brian Ross (415) 744–1979.

EIS No. 960167, FINAL EIS, ICC, MT, Tongue River Railroad Additional Rail Line Construction and Operation, Ashland to Decker, Approval, Rosebud and Big Horn Counties, MT, Due: May 20, 1996, Contact: Elaine K. Kurser (202) 927–6213.

EIS No. 960168, FINAL SUPPLEMENT, OSM, NM, AZ, Fence Lake Federal Coal Project, Mining Plan, Permit Application and Federal Permit Approval or Disapproval, Updated Information concerning the Salt River Project Improvement and Power District's (SRP) Proposed Fence Lake Mine, Apache County, AZ and Catron and Cibola Counties, NM, Due: May 20, 1996, Contact: Richard J. Seibel (303) 672–5610.

EIS No. 960169, DRAFT EIS, FHW, IN, IN–145 New Road Construction, Funding, IN–37 and the existing I–64 Interchange near St. Croix in Perry County to the east junction of IN–64 and IN–145 in Crawford County, IN, Due: June 15, 1996, Contact: Arthur A. Fendrick (317) 226–7475.

EIS No. 960170, FINAL EIS, AFS, CA, Pilot Creek Watershed Land Management Plan, Implementation, Hayfork Adaptive Management Area, Six Rivers National Forest, Mad River Ranger District, Humboldt and Trinty Counties, CA, Due: May 20, 1996, Contact: Janice Stevenson (707) 574–6233.

EIS No. 960171, DRAFT EIS, FHW, ID, Southwest Indiana Highway Corridor, Evansville to Bloomington, I–29 of I–64 with I–164/ID–57, Improvements, Gibson, Pike, Warrick, Monroe, Greene and Daviess Counties, ID, Due: August 01, 1996, Contact: Arthur A. Fendrick (317) 226–7475.

EIS No. 960172, DRAFT EIS, UAF, AZ, Luke Air Force Base, Construction and Operation of 18–Hole Golf Course, In a Detention Basin to Prevent Flood Damage, Dysart Drain Improvement Project, Maricopa County, AZ, Due: June 03, 1996, Contact: Robert Maxwell (602) 856–3823.

EIS No. 960173, DRAFT SUPPLEMENT, AFS, WA, OR, Pacific Northwest Region National Forests, Nursery Pest Control Management Plan, Additional Information concerning Changes to a List of Chemical Pesticides and Streamlining the Process for Future Changes Approved for Use at J. Herbert Stone, Bend Pine and Wind River Nurseries and Dorena Tree Improvement Center, WA and OR, Due: June 03, 1996, Contact: Diane Hildebrand (503) 326–6697.

EIS No. 960174, FINAL EIS, FHW, MN, US 14/52 Transportation Corridor, Reconstruction between Olmsted CSAH 14 (75th Street NW) and TH–63 (Broadway) Funding, COE Section 404 Permit and NPDES Permit, City of Rochester, Olmsted County, MN, Due: May 20, 1996, Contact: Graig Lenz (507) 285–7124.

EIS No. 960175, FINAL EIS, FRC, Promoting Wholesale Competition through Open Access Non-Discriminatory Transmission Service by Public Utilities (RM95–8–000) and Recovery of Strandred Costs by Public Utilities and Transmitting Utilities (Docket No. RM–94–7–001, Proposed Rulemaking, Due: May 20, 1996, Contact: William A. Meroney (202) 208–1069.

EIS No. 960176, DRAFT EIS, GSA, CA, New San Francisco Federal Building Office Building Construction, Implementation, City and County of San Francisco, CA, Due: June 05, 1996, Contact: Joan Byrens (415) 522–3495.

Dated: April 16, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–9729 Filed 4–18–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5460–5]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Printing, Automobile Manufacturing, Iron and Steel, and Computers and Electronics Sectors Subcommittee Meetings; Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that, pending resolution of EPA's FY 1996 appropriation, the Printing, Automobile Manufacturing, Iron and Steel, and Computers and Electronics Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the four Sector Subcommittee announcements below.

(1) Printing Sector Subcommittee—May 8, 1996

Notice is hereby given that the Environmental Protection Agency, pending resolution of it's FY 1996 appropriation, will hold an open meeting of the Printing Sector Subcommittee on Wednesday, May 8, 1996, from 8:30 a.m. edt to 12:00 noon edt. The Printing Sector's Workgroups will meet on Tuesday, May 7, 1996, from approximately 10:00 a.m. edt until

about 5:30 p.m., edt. The workgroups will also meet on May 8, 1996, from approximately 12:30 p.m. edt until about 3:00 p.m., edt. All meetings will be at the Sheraton Hotel, 11810 Sunrise Valley Drive, Reston,Virginia 22091. The telephone number is 703–620–9000.

The Compliance Tools Workgroup is working on the Multi-Media Flexible Permitting Project, and the New York City Education Workgroup is moving ahead with plans for pollution prevention Education for small printers. The purpose of the workgroup meetings is to discuss the status of and plan future work for these projects. The purpose of the Subcommittee Meeting is to discuss the status of these projects undertaken by the Subcommittee. Agendas will be available April 30, 1996. Seating will be on a first come first served basis. Limited time will be provided for public comment.

For further information concerning this meeting of the Printing Sector Subcommittee, please contact Ginger Gotliffe of EPA's Office of Enforcement and Compliance Assurance at 202–564–7072, or Nancy Cichowicz, EPA, Region III, at 215–597–2030.

(2) Automobile Manufacturing Sector Subcommittee Meeting—May 10, 1996

Notice is hereby given that the Environmental Protection Agency, pending resolution of it's FY 1996 appropriation, will hold an open meeting of the Automobile Manufacturing Sector Subcommittee on Friday, May 10, 1996, from approximately 9:00 a.m. edt to 4:00 p.m. edt. The meeting will be held at the Lake Michigan Conference Room, 12th Floor, 77 West Jackson Boulevard, Ralph Metcalfe Federal Building, Chicago, Illinois. Picture identification will be required for entry into the building. The three project teams (Alternative Sector Regulatory System/Community Technical Assistance, Life Cycle Management/Supplier Partnership and Regulatory Initiative) will report on progress, identify short and long term deliverables and provide an assessment of the teams' resource needs. The Common Sense Initiative Council Automobile Manufacturing Sector Subcommittee will also discuss sector communications and interlinks between the project team activities. An agenda will be available May 3, 1996. Seating may be limited; therefore, advance registration is recommended. Any person or organization interested in attending the meeting should contact Ms. Carol Kemker, Designated Federal Officer (DFO), no later than May 7, 1996, at (404) 347–3555 extension 4222. Each individual or group wishing to make an oral presentation will be provided a total of three minutes.

For further information concerning this meeting of the Automobile Manufacturing Sector Subcommittee, please contact Carol Kemker, DFO, at the above number; Keith Mason, Alternate DFO, at (202) 260–1360; or Julie Lynch, Alternate DFO at (202) 260–4000.

(3) Iron and Steel Sector Subcommittee Meeting—May 16, 1996

Notice is hereby given that the Environmental Protection Agency, pending resolution of its FY 1996 appropriation, will hold an open meeting of the Iron and Steel Sector Subcommittee on Thursday, May 16, 1996. The meeting will begin at 8:00 a.m. edt and will run until 4:00 p.m. edt. The meeting will be held at the Metcalf Federal Building, Great Lakes Conference Center, 12th floor, 77 West Jackson Boulevard, Chicago, Illinois 60604. Picture identification will be required for entry into the building. Seating will be available on a first come, first served basis. Limited time will be provided for public comment.

The Iron and Steel Sector Subcommittee has created four work groups which are responsible for proposing to the full Subcommittee for its review and approval potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects once approved. The subcommittee has approved seven projects and their work plans.

The purpose of this meeting is to discuss the status of projects sponsored by the workgroups and to review recommendations that the workgroups propose, particularly several recommendations that have been presented by the Permits Work Group. Additionally, the American Iron and Steel Institute will give a brief presentation on its role in supporting research on innovative technology in the industry. The Subcommittee's four workgroups will be meeting the preceding day, Wednesday, May 15, 1996, from approximately 10:00 a.m. cdt to 5:00 p.m. cdt.

For further information concerning this Iron and Steel Sector Subcommittee Meeting, please call either Ms. Mary Byrne at 312–353–2315 in Chicago, Illinois or Ms. Judith Hecht at 202–260–5682 in Washington, DC.

(4) Computers and Electronics Sector Subcommittee—May 23 and 24, 1996

Notice is hereby given that the Environmental Protection Agency, pending resolution of its FY 1996 appropriation, will hold an open meeting of the Computers and Electronics Sector Subcommittee on Thursday, May 23, 1996, from 8:30 a.m. edt until 5:00 p.m. edt, and Friday, May 24, 1996, from 8:30 a.m., edt to 3:00 p.m., edt, at the Washington Marriott, 1221 22nd Street, Washington, DC. Seating will be available on a first come, first serve basis. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

The first day of the meeting, May 23, will be devoted partly to breakout sessions for the three subcommittee workgroups (Reporting and Information Access; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling; and Integrated and Sustainable Alternative Strategies for Electronics) and partly to plenary session; the second day, May 24, will also consist of both workgroup and plenary sessions.

For further information regarding this Computers and Electronics Sector Subcommittee Meeting, please contact Gina Bushong at (202) 260–1096 or by mail at U.S. EPA (MC 7405), 401 M Street SW., Washington, DC 20460; Mark Mahoney, U.S. EPA Region 1, (617) 565–1155; or David Jones, at U.S. EPA Region 9, (415) 744–2266.

Inspection of Subcommittee Documents

Documents relating to the above Sector Subcommittee announcements, will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street SW., Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at brown.katherine@epamail.gov.

Dated: April 16, 1996.

Prudence Goforth,

Designated Federal Officer.

[FR Doc. 96–9710 Filed 4–18–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00431; FRL–5363–4]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Enforcement-Certification & Registration-Classification; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Enforcement-Certification and Registration-Classification will hold a 3–day meeting, beginning on Monday, April 29, 1996 and ending on Wednesday, May 1, 1996. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Enforcement-Certification will meet alone on Monday, April 29, 1996 from 8:30 a.m. to 4:30 p.m., the two Working Committees will meet together on Tuesday, April 30, 1996 from 8:30 a.m. to 5:00 p.m. The Working Committee on Registration-Classification will meet alone on Wednesday, May 1, 1996 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the DoubleTree Hotel, 300 Army-Navy Drive, Crystal City, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

Office location and telephone number: Rm. 1100, Crystal Mall #2, 1921 Jefferson-Davis Highway, Arlington, VA, 22202 (703) 305–5306. e-mail: howard.shirleym@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Enforcement-Certification includes the following:

1. Update on Certification and Training issues.
2. Status of the Worker Protection Standards .
3. Update on laboratory communication.
4. Discussion of the Office of Enforcement and Compliance Assurance policies.
5. Discussion of geographic regional restrictions on labels.
6. Other topics as appropriate.

The agenda for the joint session of the SFIREG Working Committees on Enforcement-Certification and Registration-Classification includes the following:

1. Discussion of the State FIFRA Issues Research and Evaluation Group (SFIREG) functions.
2. Update on the Federal Insecticide Fungicide Rodenticide Act (FIFRA) section 2(ee).
3. Delegation of FIFRA sections 18 and 24(c) authority to regions and states.
4. Update on the import of unregistered pesticide products.
5. Label advisory statements report.
6. Status of the enforcement of products label for Roundup Soybeans.
7. Other topics as appropriate.

The agenda for the SFIREG Working Committee on Registration-Classification includes the following:

1. Update on consumer labeling initiatives.
2. Status of the bee labeling issues.
3. Discussion on the co-pack pesticide products.
4. Update on electronic commerce: label submission and other plans.
5. California's HomePage demonstration report.
7. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: April 8, 1996.

William L. Jordan,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 96–9709 Filed 4–18–96; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT SYSTEM INSURANCE CORPORATION

[BM–28–MAR–96–02]

Policy Statement Concerning Stand-Alone Assistance

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Policy statement.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) announces that it is publishing a new Policy Statement Concerning Stand-Alone Assistance. This policy statement establishes the circumstances under which financial assistance will be considered for an insured bank. It conforms to the provisions of the Farm Credit System Reform Act of 1996 (Pub. L. 104–105, 110 Stat. 162 (Feb. 10, 1996)) amending section 5.61 of the Farm Credit Act of 1971; 12 U.S.C. 2277a–10.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: Dorothy L. Nichols, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883–4380, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The text of the Corporation's policy statement concerning stand-alone assistance is set forth below in its entirety:

Policy Statement Concerning Stand-Alone Assistance

Effective Date: March 28, 1996.

Effect on Previous Action: Revises Policy Statement Concerning Financial Assistance to Operating Insured Banks, No. BM–27–APR–93–02.

Source of Authority: Section 5.61 of the Farm Credit Act of 1971, as Amended (the Act); 12 U.S.C. 2277a–10.

Whereas, under section 5.61 of the Act, the Farm Credit System Insurance Corporation (Corporation) may provide financial assistance to insured banks:[1] (1) To prevent the placing of the bank in receivership or to assist a bank in danger of being placed in receivership, or (2) when severe financial conditions exist that threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources, to lessen the risk to the Corporation posed by insured System banks under such threat of instability.

Therefore, the Farm Credit System Insurance Corporation's Board of Directors (Board) adopts the following policy statement:

In order for the Corporation to provide assistance to any insured bank, the Corporation's Board of Directors must determine that providing assistance is the least costly means of all possible alternatives available to the Corporation, including liquidation of the bank (including paying the insured obligations issued on behalf of the bank), or assistance pursuant to a merger of the insured bank with one or more System institutions. Before making a least-cost determination the Corporation shall accord such other insured System banks as the Corporation determines to be appropriate the opportunity to submit information relating to the determination.

In determining the least costly alternative the Corporation shall:

1. Evaluate alternatives on a present-value basis, using a reasonable discount rate;
2. Document the evaluation and the assumptions on which the evaluation is based; and
3. Retain the documentation for not less than 5 years.

An estimate of the costs of providing any assistance to any insured System bank shall be made within thirty days prior to the date on which the

[1] As used in section 5.61, the terms ''insured System bank'' and ''bank'' include Production Credit Associations and other Associations making direct loans under the authority provided under section 7.6 of the Farm Credit Act of 1971, as amended.

Corporation makes the determination to provide the assistance to the institution under this section, and the least cost determination shall be made as of the date on which the Corporation intends to provide assistance to the institution.

The determination of the costs of liquidation of any insured System bank shall be made as of the earliest of:

1. The date on which a conservator is appointed for the insured System bank;

2. The date on which a receiver is appointed for the insured System bank; or

3. The date on which the Corporation makes any determination to provide assistance under this section with respect to the insured System bank.

Assistance to operating insured banks may be provided directly to the troubled bank, or to another insured bank qualified to merge with or acquire the failing bank.

The Corporation believes that proposals for assistance to operating insured banks under section 5.61 of the Act should be reviewed by the Corporation utilizing the following criteria:

1. The proposal must reasonably anticipate the viability of the recipient, including provisions for the attainment of an adequate level of capitalization within a reasonable period of time.

2. The proposal should provide for the eventual repayment of the assistance.

3. The proposal must provide for adequate managerial resources, and the Corporation's approval of business plans. The continued service of any director or senior officer serving the assisted institution in a policymaking role, as determined by the Corporation, will be subject to approval of the Corporation. In addition, compensation arrangements covering directors and senior officers must be approved by the Corporation.

4. The Corporation will consider on a case-by-case basis the nature of the financial assistance requested. Generally, assistance proposals should not anticipate the acquisition and servicing of assets from the assisted institution by the Corporation.

5. Fee arrangements with attorneys, accountants, consultants, and other parties incident to requests for financial assistance must be disclosed to the Corporation. Excessive fees are unnecessary and must be avoided; fee arrangements will be considered in evaluating the cost of the assistance request.

6. The Corporation retains the option of evaluating the assistance proposal within the context of a competitive bidding process and will consider soliciting interest from qualified acquirers.

7. An institution seeking operating institution assistance must consent to unrestricted on-site due diligence review by any potential acquirer that is determined by the Corporation to be qualified after consultation with the Farm Credit Administration.

8. The proposal must contain quantifiable limits on all financial items in the request.

9. The Corporation will evaluate the potential financial effect of the proposal on shareholders, uninsured creditors and the financial markets.

As provided in Section 5.61(a)(3)(E), any determination the Corporation makes under this policy shall be in the sole discretion of the Corporation.

Adopted this 28th day of March, 1996 by order of the Corporation Board.

Dated: April 15, 1996.

Floyd Fithian,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 96–9700 Filed 4–18–96; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the Emergency Management Institute.

Dates of Meeting: May 7–8, 1996.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, Maryland 21727.

Time: Tuesday, May 7, 1996, 8:30 a.m.–5:00 p.m.; Wednesday, May 8, 1996, 8:30 a.m.–12:00 noon.

Proposed Agenda: FEMA's response to the Board's 1995 Annual Report, status briefings on EMI's programs, and refinement of the Board's 1996 Workplan.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1286.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: April 5, 1996.

Kay C. Goss,

Associate Director, Preparedness, Training, and Exercises Directorate.

[FR Doc. 96–9722 Filed 4–18–96; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011541.

Title: Maersk/Sea-Land Mediterranean Agreement.

Parties A.P. Moller-Maersk Line (''Maersk''); Sea-Land Service, Inc. (''Sea-Land'').

Synopsis: The proposed Agreement authorizes the parties to charter vessels to and from each other or from third parties, to charter or exchange space form or to one another, to discuss and agree on rates on a voluntary and non-binding basis subject to the terms and conditions of any conference, rate discussion or other agreement to which the parties are members , and to provide for related cooperative arrangements and administrative matters in the Agreement trade between United States

ports in the Portland, Maine/Brownsville, Texas range inclusive and U.S. inland and coastal points served via such ports, and ports on the Mediterranean and Black Seas, ports on the Atlantic Coast of the Iberian peninsula, and inland and coastal points served via such Mediterranean, Black Sea and Atlantic Coast ports. The parties have requested a shortened review period.

Dated: April 16, 1996.

By Order of the Federal Maritime Commission.

[FR Doc. 96–9696 Filed 4–18–96; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. § 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Holland America Line-Westours, Inc. (d/b/a Holland America Line), HAL Cruises Limited, Wind Surf Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: VEENDAM

Palm Beach Cruises, S.A. and Gulfstream Management, Inc., 2790 North Federal Highway, Boca Raton, Florida 33431

Vessel: VIKING PRINCESS

Dated: April 15, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–9698 Filed 4–18–96; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Palm Beach Cruises, S.A., 2790 North Federal Highway, Boca Raton, Florida 33431

Vessel: VIKING PRINCESS

Dated: April 15, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–9699 Filed 4–18–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Interglobo Morra N.A., Inc., d/b/a Interglobo Morra North America, 600 Sylvan Avenue, Englewood Cliffs, NJ 07632, Officers: Fabrizio Parodi, President; Roberta Parodi, Vice President

Southern Cargon Logistics, 3445 N. Causeway Blvd., #301, Metairie, LA 70002, Barbara G. Chopin, Sole Proprietor

Hanjin Intermodal America, Inc., 261 E. Redondo Beach Blvd., Gardena, CA 90248, Officers: Hee Tae Hwang, President; Hyung Kap Kim, Vice President

Clover International, Inc., 15431 Vantage Parkway West, Suite 200, Houston, TX 77032, Officers: Luis Angel Rincon, President; Ana H. Pena, Assistant Secretary

Ark International Shipping, 116 E. Edgebrook, Suite 1114, Houston, TX 77034, Nabil Tamini, Sole Proprietor

Excel Cargo Services, Inc., 312 Orville Wright Drive, Greensboro, NC 27409, Officers: John Ford, Chief Executive Officer; Paul Canovai, Vice President

SST International, Inc., 10415 S. La Cienega Blvd., Los Angeles, CA 90045, Officers: Alan J. Tanaka, President; Robert S. Uyesato, Vice President

Denham International, 6443 Meadow Rue Drive, Norcross, GA 30092, Donald C. Denham, Katherine Lynn Brooks, Partnership

Dated: April 16, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–9697 Filed 4–18–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 3, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Murray D. Lull Trust, and Murray D. Lull, Grantor, Smith Center, Kansas; to retain a total of approximately 21.01 percent of the voting shares of SCB Financial Corporation, Smith Center, Kansas, and thereby indirectly acquire Smith County State Bank and Trust Company, Smith Center, Kansas.

Board of Governors of the Federal Reserve System, April 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–9642 Filed 4–18–96; 8:45 am]

BILLING CODE 6210–01–F

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-8444) published on page 15263 of the issue for April 5, 1996.

Under the Federal Reserve Bank of Atlanta heading, the entry for Leo A. Greenblatt, III, is revised to read as follows:

1. Leo A. Greenblatt, III, Chicago, Illinois; Andrew Alvin Jahelka, Hinsdale, Illinois; and Richard Owen

Nichols, Oakbrook, Illinois; to collectively retain, directly and indirectly, 24.65 percent of the voting shares of St. James Bancorporation, Inc., Lutcher, Louisana, and thereby indirectly acquire The St. James Bank & Trust Company, Lutcher, Louisiana.

Comments on this application must be received by April 25, 1996.

Board of Governors of the Federal Reserve System, April 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–9641 Filed 4–18–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 14, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Mitchell Bancorp, Inc., Spruce Pine, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Mitchell Savings Bank, SSB, Spruce Pine, North Carolina.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with Financial Bancorp, Inc., Trinidad, Colorado, and thereby indirectly acquire Trinidad National Bank, Trinidad, Colorado.

Board of Governors of the Federal Reserve System, April 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–9643 Filed 4–18–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 3, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, C.M.H. Mortgage Company, Westerville, Ohio, in residential mortgage lending business, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The co-venturers will be Norwest Ventures, Inc., and Full Service Real Estate Company, d/b/a Coldwell Banker Grand Traditions, Westerville, Ohio.

Board of Governors of the Federal Reserve System, April 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–9644 Filed 4–18–96; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, April 24, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Proposed revisions to the Federal Reserve System's cash access policy concerning Federal Reserve Bank cash service levels.

2. Publication for comment of proposed amendments to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) to remove certain restrictions that apply to extensions of credit by a bank to executive officers and directors of the bank's affiliates.

Discussion Agenda:

3. (a) Proposed amendments to Regulation T (Credit by Brokers and Dealers) (proposed earlier for public comment; Docket No. R–0772), and (b) publication for comment of proposed additional amendments to Regulation T.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 17, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–9807 Filed 4–17–96; 11:52 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:00 a.m., Wednesday, April 24, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's renovation.

2. Proposed acquisition of property within the Federal Reserve System.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 17, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-9808 Filed 4-17-96; 11:52 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Meeting of the Inter-Tribal Council on Hanford Health Projects (ICHHP), in Association With the Meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

The Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following four meetings.

Name: Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP), in association with the meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Date: May 1, 1996.

Time: 9 a.m.–4:30 p.m.

Place: Cavanaugh's at Columbia Center, 1101 Columbia Center Boulevard, Kennewick, Washington 99336.

Tel: 509/783–0611.

Fax: 509/735–3087.

Date: July 10, 1996.

Time: 9 a.m.–4:30 p.m.

Place: Red Lion Hotel/Columbia River, 1401 North Hayden Island Drive, Portland, Oregon 97217.

Tel: 503/283–2111.

Fax: 503/283–4718.

Date: September 18, 1996.

Time: 9 a.m.–4:30 p.m.

Place: Westcoast Ridpath Hotel, 515 West Sprague Avenue, Spokane, Washington 99204.

Tel: 509/838–2711.

Fax: 509/747–6970.

Date: December 4, 1996.

Time: 9 a.m.–4:30 p.m.

Place: Edgewater Inn, 2411 Alaskan Way-Pier 67, Seattle, Washington 98121.

Tel: 206/728–7000.

Fax: 206/441–4119.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 50 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on Native American health effects at the Hanford, Washington, site.

Purpose: The purpose of these meetings is to address issues that are unique to tribal involvement with the HHES, including considerations regarding a proposed medical monitoring program and explorations of options and alternatives to providing support for tribal involvement in the HHES.

Matters to be Discussed: Agenda items will include a dialogue around issues that are unique to tribal involvement with the HHES. This will include exploring options and alternatives to providing support for tribal involvement in HHES and a discussion of tribal representation on HHES.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda A. Carnes, Health Council Advisor, ATSDR, E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0730, FAX 404/639–0759.

Dated: April 15, 1996.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–9658 Filed 4–18–96; 8:45 am]

BILLING CODE 4163–70–M

Citizens Advisory Committee on Public Health Service Activities and Research and Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following four meetings.

NAME: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Dates: May 2, 1996.
Times: 9 a.m.–5 p.m.; 7 p.m.–8:30 p.m.
Place: Cavanaugh's at Columbia Center, 1101 Columbia Center Boulevard, Kennewick, Washington 99336.
Tel: 509/783–0611.
Fax: 509/735–3087.

Dates: May 3, 1996.
Times: 9:30 a.m.–3:30 p.m.
Place: Same Location.

Dates: July 11, 1996.
Times: 9 a.m.–5 p.m.; 7 p.m.–8:30 p.m.
Place: Red Lion Hotel/Columbia River, 1401 North Haydon Island Drive, Portland, Oregon 97217.
Tel: 503/283–2111.
Fax: 503/283–4718.

Dates: July 12, 1996.
Times: 9:30 a.m.–3:30 p.m.
Place: Same Location.

Dates: September 19, 1996.
Times: 9 a.m.–5 p.m.; 7 p.m.–8:30 p.m.
Place: Westcoast Ridpath Hotel, 515 West Sprague Avenue, Spokane, Washington 99204.
Tel: 509/838–2711.
Fax: 509/747–6970.

Dates: September 20, 1996.
Times: 9:30 a.m.–3:30 p.m.
Place: Same Location.

Dates: December 5, 1996.
Times: 9 a.m.–5 p.m.; 7 p.m.–8:30 p.m.
Place: Edgewater Inn, 2411 Alaskan Way-Pier 67, Seattle, Washington 98121.
Tel: 206/728–7000.
Fax: 206/441–4119.

Dates: December 6, 1996.
Times: 9:30 a.m.–3:30 p.m.
Place: Same Location.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 150 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and proceudres for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

Purpose: The Subcommittee will receive updates from the Inter-tribal Council on Hanford Health Projects; reports from the Outreach, Public Health Activities, and Health Studies Work Groups; and address other issues and topics as necessary.

Matters to be Discussed: The Subcommittee will consider a number of items including ATSDR's medical monitoring options, ATSDR's planning for a medical assistance program, and solicitation of concerns the Subcommittee wants ATSDR and CDC to address.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda A. Carnes, Health Council Advisor, ATSDR, E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0730, FAX 404/639–0759.

Dated: April 15, 1996.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

Centers for Disease Control and Prevention

Hospital Infection Control Practices Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hospital Infection Control Practices Advisory Committee (HICPAC).

Times and Dates: 8:30 a.m.–5 p.m., June 10, 1996. 8:30 a.m.–3 p.m., June 11, 1996.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals and updating of guidelines and other policy statements regarding prevention of nosocomial infections.

Matters to be Discussed: Agenda items will include a review of the second draft of the Guideline for Infection Control in Hospital Personnel, the HICPAC Guideline Evaluation Proposal, the CDC Hospital Infections Program Strategic Plan, the Committee Strategic Plan, and an update on CDC activities of interest to the Committee.

Agenda items are subject to change as priorities dictate.

Contact Person for more Information: Julia S. Garner, Nurse Consultant, Hospital Infections Program, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/639–6408.

Dated: April 12, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–9686 Filed 4–18–96; 8:45 am]

BILLING CODE 4163–18–M

National Vaccine Advisory Committee (NVAC), Subcommittee on Vaccine Safety and the Advisory Commission on Childhood Vaccines (ACCV) Subcommittee on Vaccine Safety; Subcommittee on Immunization Coverage; and Subcommittee on Future Vaccines: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 8:30 a.m–2 p.m., May 6, 1996; 8:30 a.m.–1 p.m., May 7, 1996.

Place: Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 and 8:30 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Purpose: The Committee shall advise and make recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be Discussed: The Committee will receive a report from the Subcommittee on Immunization Coverage on how responsibility for immunization is shared, accountability for immunization under managed care, and assimilating additions to the vaccine schedule; a report from the joint Subcommittee on Vaccine Safety on adverse

events in adults; Vaccine Adverse Effects Registry update; varicella vaccine; hepatitis A vaccine post-marketing surveillance; long-term stable funding for the Large-Linked Database; discussion of the draft NVAC paper on Vaccine Research Partnerships; serologic correlates of DTaP protection; update on NVAC funding of unmet needs; children's vaccine initiative; the immunization registry; the NVPO directorship; and the NVAC committee nominations.

Name: Subcommittee on Vaccine Safety and the Advisory Commission on Childhood Vaccines Subcommittee on Vaccine Safety.

Time and Date: 2:30 p.m.–5 p.m., May 6, 1996.

Place: Hubert H. Humphrey Building, Room 425A., 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This joint ACCV/NVAC subcommittee will review issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: The Subcommittee will discuss the report from the Task Force on Safer Childhood Vaccines interagency working group; expanding the Vaccine Injury Compensation Program to include adult immunizations and immunizations in special populations; visibility of a trust fund and administrative resources; and lessons from the swine flue experience.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2:30 p.m.–5 p.m., May 6, 1996.

Place: Hubert H. Humphrey Building, Room 423A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Immunization Coverage will identify strategies and policy options by which to further improve the levels of immunization coverage.

Matters to be Discussed: The Subcommittee will discuss financing of an immunizations forum and prioritize findings from the forum, and previous committee work.

Name: Subcommittee on Future Vaccines.

Time and Date: 2:30 p.m.–5 p.m., May 6, 1996.

Place: Hubert H. Humphrey Building, Room 405A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Future Vaccines will develop policy options and guide national activities which will lead to accelerated development, licensure, and best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: The Subcommittee will identify the matrix of interactions and partnerships, via specific case studies; describe the process of priority-setting by each of the members of the vaccine research and development community, and define barriers to new vaccine development.

Agenda items for each meeting are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Committee Management Specialist, National Vaccine Program Office, CDC, 1600 Clifton Road, NE, M/S D50, Atlanta, Georgia 30333, telephone 404/639–7250.

Dated: April 15, 1996.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–9688 Filed 4–18–96; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics Subcommittee on Mental Health Statistics Meeting: Date Change

Federal Register Citation of Previous Announcement 61 FR 13504—dated March 27, 1996.

Summary: Notice is given that the meeting and date for the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics, of the Centers for Disease Control and Prevention (CDC) has changed. The meeting time, place, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

Original Date: May 2, 1996.

New Date: May 22, 1996.

Contact Person for More Information: Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: April 12, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–9660 Filed 4–18–96; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Disability and Long-Term Care Statistics and NCVHS Subcommittee on Mental Health Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on Disability and Long-Term Care Statistics and NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9 a.m.–5 p.m., May 21, 1996.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee on Disability and Long-Term Care Statistics and the Subcommittee on Mental Health Statistics will meet jointly to conduct a fact finding meeting to discuss disability and long-term care data needs with representatives from States, educational and trade organizations.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: April 12, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–9687 Filed 4–18–96; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on State and Community Health Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following subcommittee meeting.

Name: NCVHS Subcommittee on State and Community Health Statistics.

Time and Date: 9 a.m.–5 p.m., May 8, 1996.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will conduct a fact finding meeting with State and private sector health professionals to learn the status of information available to influence public health and health care decisions. In particular, data availability and needs for community health assessment will be discussed.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/435–7050.

Dated: April 12, 1996.

Carolyn J. Russel,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–9689 Filed 4–18–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96N–0069]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish a notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the approval of investigational new drug applications and subsequent reporting and recordkeeping requirements.

DATES: Submit written comments on the collection of information by June 18, 1996.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Investigational New Drug (IND) Regulations (21 CFR 312) (OMB Control Number 0910–0014—Extension)

FDA has the responsibility under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355 (i)) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs can be conducted. The IND information requirements are needed to ensure the safe and ethical investigation of the safety and effectiveness of new drugs.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective and be properly manufactured and properly labeled for their intended uses. The act provides in 21 U.S.C. 355(a) that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts.

The IND regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other agency scientific reviewers assigned responsibility for overseeing the specific study.

The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements is dictated by the scientific procedures and human subject safeguards which must be followed in the clinical tests of IND's. FDA estimates the burden of the information collection provisions of the IND regulations as follows:

Estimated Annual Reporting Burden					
21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
312.7	7	1	7	24 hours	168
312.10	?	?	?	?	?
312.23	1,623	1	1,623	100 hours	162,300
312.30	1,201	9	10,809	84 hours	907,956
312.31	880	5.64	4,963	8 hours	39,704
312.32	440	8	3,520	20 hours	70,400
312.33	1,517	2.6	3,944	450 hours	1,774,800
312.35	5	1	5	260 hours	1,300
312.36	300	1	300	5 hours	1,500
312.38	579	1.2	695	45 minutes	521
312.44	?	?	?	?	?
312.45	205	1.4	287	5 hours	1,435
312.47	?	?	?	?	?
312.55	?	?	?	?	?
312.56	560	2.4	1,344	84 hours	112,896
312.58	260	2.6	676	84 hours	56,784
312.64	?	?	?	?	?
312.66	?	?	?	?	?
312.83	5	1	5	160 hours	800
312.85	260	2.6	676	960 hours	648,960
312.110	30	11.6	348	24 hours	8,352
312.120(b)	560	2.4	1,344	100 hours	134,000
312.120(c)(3)	560	2.4	1,344	3 hours	4,032

There are no capital costs or operating and maintenance costs associated with this collection. Where question marks appear in the burden estimate, FDA does not have current information available. Public comments will be greatly appreciated.

Estimated Annual Recordkeeping Burden					
21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.52	280	1	280	30 minutes	140
312.53	4,000	1	4,000	84 hours	336,000
312.57	560	2.4	1,344	100 hours	134,400
312.59	250	2.4	600	8 hours	4,800
312.62(a)	4,000	1	4,000	40 hours	160,000
312.62(b)	4,000	10	40,000	40 hours	1,600,000
312.160(a)	250	40	10,000	30 minutes	5,000
312.160(c)	250	30	7,500	30 minutes	3,750
Total Burden Hours					6,170,398

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: April 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–9674 Filed 4–18–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0118]

Drug Export; ORTHO™ HIV–1/HIV–2 Ab–Capture ELISA Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the human biological product ORTHO™ HIV–1/HIV–2 Ab–Capture ELISA Test System to Australia, Austria, Belgium, Canada, Denmark, The Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the

United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., 1001 U.S. Hwy. 202, Raritan, NJ 08869, has filed an application requesting approval for the export of the human biological product ORTHO™ HIV–1/HIV–2 Ab–Capture ELISA Test System to Australia, Austria, Belgium, Canada, Denmark, The Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The ORTHO™ HIV–1/HIV–2 Ab–Capture ELISA Test System is a qualitative, enzyme-linked, immunosorbent assay for the detection of antibodies to human immunodeficiency virus types 1 and/or (HIV–1 and HIV–2) in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on March 18, 1996, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 29, 1996, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: March 26, 1996.

James C. Simmons,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 96–9673 Filed 4–18–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94F–0431]

Asahi Chemical Industry Co., Ltd.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a food additive petition (FAP 3B4396) proposing that the food additive regulations be amended to provide for the safe use of two grades of dimethylpolysiloxane with viscosities of 100 centistokes and 50 centistokes, intended for use as release agents in the manufacture of thermoplastic elastomers.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of May 19, 1995 (60 FR 26891), FDA announced that a food additive petition (FAP 3B4396) had been filed by Asahi Chemical Industry Co., Ltd., Hibiya-Mitsui Bldg., 1–2, Yuraku-cho 1–Chome, Chiyoda-ku, Tokyo, T100, Japan. The petition proposed to amend the food additive regulations to provide for the safe use of two grades of dimethylpolysiloxane with viscosities of 100 centistokes and 50 centistokes, intended for use as release agents in the manufacture of thermoplastic elastomers. Asahi Chemical Industry Co., Ltd. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 26, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–9672 Filed 4–18–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0421]

Determination of Regulatory Review Period for Purposes of Patent Extension; CASODEX®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CASODEX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CASODEX®

(bicalutamide). CASODEX® is indicated for use in combination therapy with a luteinizing hormone-releasing hormone (LHRH) analogue for the treatment of advanced prostate cancer. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CASODEX® (U.S. Patent No. 4,636,505) from Zeneca Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 8, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CASODEX® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CASODEX® is 3,059 days. Of this time, 2,673 days occurred during the testing phase of the regulatory review period, while 386 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: May 22, 1987. FDA has verified the applicant's claim that the date that the investigational new drug application (IND) became effective was on May 22, 1987.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: September 14, 1994. FDA has verified the applicant's claim that the new drug application (NDA) for CASODEX® (NDA 20–498) was initially submitted on September 14, 1994.

3. *The date the application was approved*: October 14, 1995. FDA has verified the applicant's claim that NDA 20–498 was approved on October 14, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,721 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 18, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 16, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 5, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–9671 Filed 4–18–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Annual Space Utilization Report (OMB No. 0915–0056)—Extension No Change—The Annual Space Utilization Report form is used to monitor recipients of constructions funds under the Health Professions and Nurse Training Facilities Grant Programs (Titles VII and VIII of the Public Health Service Act). Recipients report annually whether grant-supported space is being utilized according to the terms of the original grant. Average annual burden estimates are as follows:

Type of respondent	No. of respondents	Annual responses per respondent	Avg. burden/response (hour)	Total burden hours
Nursing and Health Professions Schools	98	1	1	98

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 15, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–9675 Filed 4–18–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious

commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting the indicated licensing specialist at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7057; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Test Of HIV-Specific T Lymphocyte Function That Detects Exposure to HIV Antigens and Possibly Early HIV Infection

Shearer, G.M., Berzofsky, J.A., Clerici, M. (NCI)
Filed 7 Jun 95
Serial No. 08/488,435 (CIP of 08/229,108)
Licensing Contact: George Keller, 301/496–7735 ext 246

This new diagnostic test is designed for early detection of exposure to HIV or HIV antigens. The test measures activation of peripheral blood mononuclear cells following incubation of those cells with one or more synthetic epitopes of HIV. The test can detect HIV exposure prior to seroconversion and is superior to standard HIV antibody tests and PCR amplification of viral DNA. The new test may be especially useful in screening the blood supply, and may also prove useful as a diagnostic capable of detecting exposure of individuals to HIV sooner after that exposure than current detection methods. (portfolio: Infectious Diseases—Diagnostics, viral, AIDS)

Oligomeric HIV–1 Envelope Glycoproteins

Earl, P.L., Broder, C.C., Doms, R.W., Moss,B. (NIAID)
Filed 10 Dec 93
Serial No. 08/165,314
Licensing Contact: Cindy K. Fuchs, 301/496–7735 ext 232

This invention embodies a method for generating antibodies to HIV–1 envelope glycoproteins, which could hold powerful implications toward both the diagnosis and the treatment of AIDS. Specifically, the method involves the expression of a soluble protein, gp140, and the generation of antibodies to this protein. gp140 is a recombinant version of gp160, a protein which normally is cleaved *in vivo* to generate two glycoprotein subunits which are expressed on the surface of the HIV–1 envelope. Unlike previously isolated versions of gp160, gp140 is purified in a manner which preserves the quaternary structural elements of the protein. Due to the conserved nature of these structural elements, antibodies generated against gp140 may be more broadly reactive against various forms of AIDS than other antibodies generated to date. (portfolio: Infectious Diseases—Vaccines, viral, AIDS)

Pre-Binding of Retroviral Vector Particles With Complement Components To Enable the Performance of Human Gene Therapy In Vivo

Mason, J.M., Safer, B., Anderson, W.F. (NHLBI)
Filed 28 Jul 93
Serial No. 08/098,944
Licensing Contact: Carol Lavrich, 301/496–7735 ext 287

This invention relates to an improvement in the use of retroviral vectors in gene therapy. The invention specifically relates to the use of C1 complement subcomponents and antibody fragments to protect retroviral vector particles produced in non-primate packaging lines from attack by primate complement systems *in vivo.* Pharmaceutical compositions containing retroviral vector particles prebound with C1 complement subcomponents, as well as gene therapy methods, are part of this invention. (portfolio: Gene-Based Therapies—Therapeutics, viral vectors)

Cosalane and Related Compounds Having Activity Against AIDS and AIDS-Related Infections

Cushman, M., Golebiewski, M., Haugwitz, R. (NCI)
Serial No. 08/029,415
Patent Issued 8 Aug 95
U.S. Patent No. 5,439,899
Licensing Contact: Cindy K. Fuchs, 301/496–7735 ext 232

A new series of potential anti-viral agents based upon the chemical cosalane and its related derivatives may be the basis of a new treatment for AIDS. Cosalane was developed by combining a fragment of aurintricarboxylic acid (ATA), a compound originally used in the Swiss dye industry, with cholestane, a steriod related to cholesterol. The cholestane fragment is used to direct the drug to the T cell membrane with the ATA fragment subsequently blocking binding of HIV gp120 to the CD4 receptor site on the cell surface. Laboratory tests of cosalane suggest it is effective in inhibiting both HIV–1 and HIV–2 infection and is very effective at concentrations too weak to harm the T cells. Other studies also suggest that cosalane may be able to suppress HIV virus reproduction in patients without the toxic side effects associated with current AIDS treatments. (portfolio: Infectious Diseases—Therapeutics, antivirals, AIDS)

Glycosides of Cyclodextrin, and Processes for Their Preparation

Pitha, J., Wimmer, T. (NIA)
Serial No. 08/016,449
U.S. Patent 5,426,184 issued 20 Jun 95
Licensing Contact: Carol Lavrich, 301/496–7735 ext 287

A novel method for preparing cyclodextrin glycosides is particularly useful for solubilizing substances that are sparingly soluble in water. Previous methods for preparing cyclodextrin derivatives have been hampered by the high reaction temperature used, which leads to unwanted by-products and makes working up and purification of the reaction products quite difficult. This new process employs an anhydrous acid medium with subsequent treatment of the reaction products with a mild base. The reaction takes place at relatively low temperatures (between 40°C and 80°C), providing a high yield of desired products. It also is much easier to prepare the reaction compared to previous processes, and purification of products is accomplished through standard methods. (portfolio: Internal Medicine—Miscellaneous)

Novel Serine Protease Inhibitors and Genes Encoding Same

Kotwal, G.J., Moss, B. (NIAID)
Serial No. 07/906,983
U.S. Patent 5,187,268 issued 16 Feb 93 (DIV of 07/285,510, U.S. Patent 5,151,509 issued 29 Sep 92; CIP of 07/239,208, U.S. Patent 5,257,110 issued 20 Oct 92)
Licensing Contact: Carol Lavrich, 301/496–7735 ext 287

Novel proteins having a substantial degree of homology to the serine protease inhibitor superfamily could be valuable for treating conditions such as emphysema, cirrhosis, and liver cancer. Serine protease activity has been associated with the accelerated failure of certain diseased organs and tissues. There have previously been no known synthetic or microbial proteins capable of specifically inhibiting serine proteases. (portfolio: Internal Medicine—Therapeutics, cardiology, antithrombotic)

Adenovirus Mediated Transfer of Genes to the Gastrointestinal Tract

Crystal, R.G. (NHLBI)
Filed 16 Oct 91
Serial No. 07/776,057
Licensing Contact: Larry Tiffany, 301/496–7056 ext 206

A novel method of producing a chosen protein in the gastrointestinal tract of a human has been invented by and is available for licensing from the Public Health Service. The technology allows for the systemic long-term administration of a therapeutic protein to a patient without the need for periodic injections or suppositories. In comparison to alternative delivery systems, such as retroviral vectors, this methodology allows the gene of interest to be directly transferred to targeted cells even if these cells are not actively dividing. The technology is the subject of a pending patent application. (portfolio: Gene-Based Therapies—Therapeutics, vectors, viral; Gene-Based Therapies—Therapeutics, therapeutic genes)

Cytosine Deaminase Negative Selection System for Gene Transfer Techniques and Therapies

Mullen, C.A., Blaese, R.M. (NCI)
Serial No. 07/725,076
U.S. Patent No. 5,358,866 issued 25 Nov 94
Licensing Contact: Larry Tiffany, 301/496–7056 ext 206

A DNA construct has been developed which permits efficient expression of a modified bacterial cytosine deaminase (CD) gene in mammalian cells. The presence and expression of the gene has no apparent deleterious effects upon the transfected cells unless they are exposed to 5-fluorocytosine (5FC). Because CD has the ability to convert 5FC to a toxic antimetabolite, 5-fluorouracil, cells which have been transformed with the DNA construct can be selectively killed by treating them with 5FC. By modifying the specifity or method of delivering the DNA construct to cells, or by modifying the vector carrying the DNA construct to correspond to a tissue-specific promoter, specific cell or tissue types may be selectively eliminated from a subject.

Potential uses of the CD negative selective system (CDNSS) include gene therapy, immunotherapy, and bone marrow transplant applications.

The CDNSS could be used to regulate the biological activity of a transformed cell type as a part of a gene therapy application. For example, the CDNSS might be incorporated within a transformed cell type which also expresses a gene of therapeutic interest. The transformed cell type could then be administered to a subject. The biological activity expressed by the transformed cell type might be regulated by administering a measured dose of 5FC to the subject such that a portion of the transformed cell type is eliminated. Alternately, the transformed cell type might be eliminated from the subject by administering to the subject a dose of 5FC that would be toxic to the transformed cell type.

The CDNSS could also be used to impart immunity against a virus or a specific cell type, including a bacterium, a protozoan, or a type of tumor cell. For example, a cell type or virus harboring the CDNSS might be introduced into a subject to elicit an immune response against that cell type or virus. The introduced cell type or cells harboring the virus might be selectively killed after an immune response was elicited by administering 5FC to the subject.

The CDNSS could be used in conjunction with bone marrow transplant procedures to eliminate a specific cell type or virus from the bone marrow. For example, bone marrow cells from a subject might be transduced with a vector which harbors the CDNSS and which is specific for a certain cell type or for cells harboring a specific virus. The transformed bone marrow cells might then be treated with 5FC to selectively eliminate (or purge) the transduced cells, after which the treated bone marrow could be introduced into a subject.

Other uses for the CDNSS are not fully described here, including its use as a double negative selection vector and its use as a diagnostic indicator of homologous recombination. Further information regarding these and other applications is available.

A corresponding group of divisional patent applications claiming different aspects of this technology (e.g. a vaccine for mammals against tumors) have also been filed and are available for licensing. (portfolio: Gene-Based Therapies—Therapeutics, vectors, control sequences/genes; Gene-Based Therapies—Therapeutics, vectors, viral)

Dominant Negative Transcription Regulatory Proteins Created by Acidic Amphipathic Alpha-Helical Extension of the Leucine Zipper

Vinson, C.R. (NCI)
Filed 31 Jul 95
Serial No. 60/001,654
Licensing Contact: Allan Kiang, 301/496–7735 ext 270

Members of the transcription factor family of molecules termed basic-region leucine zipper (bZIP) proteins are characterized by the fact that they contain two regions—a hepted repeat of leucine residues (the leucine zipper) and a region rich in basic amino acids. Dimerization with other protein molecules occurs by interactions with the leucine zipper domains allowing interaction of DNA regulatory sequences with the basic domain, thereby stabilizing the dimer. This invention embodies the creation of dominant negative (DN) transcription factors modified to increase the stability of the dimerization reaction between the leucine zipper regions of the bZIP proteins. This results in a DN factor that has the ability to inhibit DNA binding and then transactivation, thereby preventing the production of other proteins or the expression of genes that are detrimental. A transgenic animal model has been produced expressing a DN factor that interacts and inhibits a cellular factor indicating the utility of this approach. (portfolio: Gene-Based Therapies—Therapeutics, other)

Method of Identifying Inhibitors of the Jak-STAT Signal Transduction Pathway

Leonard, W.J. (NHLBI)
DHHS Reference No. E–176–95/0
Licensing Contact: Allan Kiang, 301/496–7735 ext 270

The invention provides identification methods for agents which inhibit the Jak–STAT signaling transduction pathway. Drugs identified by these methods are candidates for the treatment of proliferative disorders dependent on the Jak–STAT pathway, including those caused by HTLV–1. In addition, such agents may be potent immunosuppressive drugs with potential applications not only for organ transplantation but also for treatment of autoimmune diseases. (portfolio: Cancer—Therapeutics, miscellaneous; Internal Medicine—Miscellaneous)

Dated: April 11, 1996.

Barbara M. McGarey, J.D.,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–9614 Filed 4–18–96; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious

commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7075; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Gene Encoding a Human Reduced Folate Carrier (RFC) and Methods for the Treatment of Methotrexate-Resistant, Transport-Deficient Cancer Cells

Moscow, J., Cowan, K.H., He, R. (NCI)
Filed 7 Jun 95
Serial Nos. 08/484,840 and 08/483,094
Licensing Contact: Allan Kiang, 301/496–7735 ext 270

Methotrexate (MTX), a folate agonist that inhibits the cellular enzyme dihydrofolate reductase, is effective for the treatment of several types of cancer including non-Hodgkin's lymphoma, childhood acute lymphoblastic leukemia, osteosarcoma, and breast cancer. A major drawback of MTX therapy, however, is that previously responsible tumor cells may become resistant to MTX after continued exposure. Increased expression of the reduced folate carrier (RFC) protein can restore sensitivity to MTX. This intention embodies methods to treat various forms of cancer that have become resistant to MTX by increasing expression of RFC protein in tumor cells via gene therapy, thereby restoring MTX sensitivity. Methods for determining the level of RFC expression, employing antibodies or specific nucleic acid probes, are also described. (portfolio: Cancer—Therapeutics, conventional chemotherapy, other)

Hepatocellular Carcinoma Oncogene

Yang, S.S. (NCI)
Filed 6 Jun 95
Serial No. 08/471,540 [DIV of 08/324,445 which is FWC of 07/575,524 (Aban) which is CIP of 07/451,953 (Aban in favor of FWC 07/774,156, which issued as U.S. Patent No. 5,403,926 4 Apr 95)]
Licensing Contact: Ken Hemby, 301/496–7735 ext 265

Hepatocellular carcinoma is a liver cancer which has high levels of incidence in Asian populations, e.g., China, Korea. Incidence of hepatocellular carcinoma is greater among chronic carriers of hepatitis. A transforming sequence or oncoprotein, hhc^M has been identified which is the amplified gene expression product of hepatoma. Antibodies to the hhc^M product or the cDNA itself can be used for diagnostic, therapeutic, and screening tests. They may also be used as research tools in studying hepatocellular carcinoma. (portfolio: Cancer—Diagnostics; Cancer—Research Reagents)

Antiproliferative Protein

Nuell, M.J., McClung, J.K., Danner, D.B., Stuart, D. (NIA)
Filed 5 June 95
Serial No. 08/466,762 (CON of 07/612,674)
Licensing Contact: Ken Hemby, 301/496–7056 ext 265

Controlled division is central to proper cellular function. Inability to regulate cell division can lead to uncontrolled growth, such as cancer, or cell death, apoptosis. Cellular proteins that are involved in inhibiting tumor growth, the tumor suppressor genes, have been identified. A second class of negative regulatory genes that when mutated lead to cell death also exist. This invention embodies a member, prohibition, of this second class of genes. Prohibition may be useful for the treatment of unregulated cell growth, cancer. In addition, inactivation of the prohibition gene or its product may be useful for conditions characterized by insufficient cellular proliferation, such as osteoporosis, fragile skin, and poor wound healing. (portfolio: Cancer—Therapeutics)

Method for Treatment of Kaposi's Sarcoma (KS) by Antisense Olingonucleotides

Ensoli, B., Gallo, R.C. (NCI)
Filed 5 Jun 95
Serial No. 08/463,978 (DIV of 08/072,575)
Licensing Contact: Cindy K. Fuchs, 301/496–7735 ext 232

A novel method of blocking the growth of Kaposi's Sarcoma (KS) lesions using antisense oligonucleotides has been developed. This method offers a means to significantly improve the treatment of this condition. KS is a proliferation disease of vascular origin frequently seen in patients infected with the human immunodeficiency virus type-I (HIV–I), the etiologic agent of acquired immunodeficiency syndrome (AIDS). It typically occurs as lesions in the skin and, in more advanced stages, the lesions appear as multiple purplish to brown subcutaneous plaques or nodules. Supernatants from AIDS–KS derived (AIDS–KS) cells have been shown to induce normal endothelial cells to proliferate, degrade and cross the membrane basement, following by migration and organization into tube-like structures. These are the same events that are required for the formation of new blood vessels, or angiogenesis. Furthermore, molecular analysis of the factors produced by AIDS–KS cells revealed that, in particular, mRNA encoding basic fibroblast growth factor (bFGF) is expressed in relatively high quantities and bFGF is indeed responsible for the growth and proliferation of AIDS–KS cells. A number of unique antisense oligonucleotides with high binding affinity for bFGF mRNA are provided which effectively inhibit the progression of AIDS–KS cells in patients. This invention includes a method for administering the treatment as well as for monitoring the progress of KS in a patient. (portfolio: Gene-Based Therapies—Therapeutics, oligonucleotide-base therapies, antisense; Infectious Diseases—Therapeutics, antivirals, AIDS)

Human-Derived Monocyte Attracting Purified Protein Product Useful in a Method of Treating Infection and Neoplasms in a Human Body, and the Cloning of a Full-Length cDNA Thereof

Yoshimura, T., Robinson, E.A., Appella, E., Leonard, E.J. (NCI)
Filed 24 May 95
Serial No. 08/449,552 (DIV of 07/686,264, CON of 07/304,234)
Licensing Contact: Jaconda Wagner, 301/496–7735 ext 284

A novel class of human-derived peptide products offers an important new tool for the treatment of a variety of infections and neoplasms in the human body. Macrophages, which are derived from monocytes, play a central role in human immune response and defense against infection. Previously, no pure human leukocyte-derived monocyte-attracting substance has been isolated. These newly isolated peptide products, which exhibit potent monocyte chemotactic activity, may be helpful in enhancing immune response to a variety of infections as well as cancers. (portfolio: Cancer—Therapeutics)

Retrovirus Vectors Derived From Avian Sarcoma Leukosis Viruses Permitting Transfer of Genes Into Mammalian Cells and Therapeutic Uses Thereof

Barsov, E., Hughes, S.H. (NCI)
Filed 22 may 95

Serial No. 08/445,462
Licensing Contact: Larry Tiffany, 301/496–7056 ext 206

For sensitive applications (like human gene therapy) it has been relatively difficult to develop high titer defective retroviral vector stocks that are routinely and reliably free of recombinant replication competent virus. The new invention, which is based on an avian leukosis virus (ALV) vector, addresses this issue. The new ALV vector has an envelope gene derived from a mammalian retrovirus. The new vector is replication competent in avian cells, so that high titer viral stocks can be prepared simply and rapidly. Although the new vector can efficiently infect mammalian cells, including human cells, the vector is constitutively replication defective in mammalian cells. Since these vectors are incapable of replicating in mammalian cells, they should be safe for a number of sensitive applications, including human gene therapy. (portfolio: Gene-Based Therapies—Therapeutics, vectors, viral)

Human B Lymphotropic Virus (HBLV) Isolation and Products

Salahuddin, S.Z., Ablashi, D.V., Josephs, S.F., Saxinger, W.C., Wong-Staal, F., Gallo, R.C. (NCI)
Filed 22 Feb 95 (priority to 4 Aug 86)
Serial No. 08/392,674
Licensing Contact: George Keller, 301/496–7735 ext 246

This invention concerns the isolation of a new human virus, originally called Human B Lymphotropic Virus (HBLV), now known as Human Herpes Virus Type 6 (HHV–6). HHV–6 causes the common childhood disease roseola. It has been linked to other diseases in persons in an immune deficient state, including those who are HIV infected. Recently it has been linked to multiple sclerosis. The claims cover the virus itself, nucleic acid sequences from the virus and proteins they encode, cell cultures infected with the virus, and detection of the virus by DNA hybridization and immunoassay means. The application was foreign filed, PCT/US87/01815, and has been granted in Europe. (portfolio: Infectious Diseases—Diagnostics, viral; Infectious Diseases—Vaccines, viral; Infectious Diseases—Reagents)

Bistriazenes As Chemotherapeutic Agents

Michejda, C., Blumenstein, J. (NCI)
Filed 12 Sep 94
Serial No. 08/302,480 [CON of 07/786,001, which is CIP of 07/527,915 (both Aban); also related to 08/082,902 filed 28 Jun 93, which is a FWC of 07/527,915]
Licensing Contact: Joseph Contrera, 301/496–7056 ext 244

The bistriazenes are novel alkylating agents which are structurally similar to polyamines, e.g., spermine, which interact with DNA. Most currently employed chemotherapeutic alkylating agents interact with DNA, after which a crosslinking reaction may occur. The bistriazene compounds appear to interact with the DNA, while maintaining structural integrity, only to subsequently decompose on the surface of DNA forming a highly reactive species capable of multi-strand breaks and interstrand crosslinks. This reactivity can be modulated depending on chemical modifications to the bistriazene molecule. These drugs are highly cytotoxic, but their chemical reactivity can be modulated in a highly predictable way. Thus, the bistriazene compounds of this invention represent an entirely novel class of chemotherapeutic alkylating agents, which hold promise for greater specificity and lower toxicity compared to other alkylating agents. (portfolio: Cancer—Therapeutics, vaccines)

Substituted O^6-Benzylguanines and 6(4)-Benzyloxypyrimidines

Moschel, R.C., Pegg, A.E., Dolan, M.E., Chae,M-Y. (NCI)
Filed 1 Aug 94
Serial No. 08/283,953
Licensing Contact: Joseph Contrera, 301/496–7056, ext 244

Inactivation of the human DNA repair protein, O^6-alkylguanine-DNA alkyltransferase leads to a dramatic enhancement in the cytotoxic response of human tumor cells and tumor xenografts to chlorethylating antitumor drugs. This invention embodies a series of compounds that effectively inactivate the alkyltransferase protein. In addition, the claims of this invention provide methods to enhance the chemotherapeutic treatment of tumor cells by treatment with substitutedO^6-benzylguanines and 6(4)-benzyloxypyrimidine derivatives. Invention is co-owned with The University of Illinois at Chicago and Pennsylvania State University. (portfolio: Cancer—Therapeutics, conventional chemotherapy, alkylating agents; Cancer—Therapeutics, conventional chemotherapy, other)

O^6-Substituted Guanine Compositions, and Methods for Depleting O^6-Alkylguanine-DNA Alkyltransferase

Moschel, R.C. (NCI), Dolan, M.E. (Univ. Chicago), Pegg, A.E. (Penn State)
Filed 7 June 94
Serial No. 08/255,190 (CIP of 07/875,438, CIP of 07/805,634, DIV of 07/492,468)
Licensing Contact: Joseph Contrera, 301/496–7056 ext 244

NCI researchers have developed a number of unique derivatives of the purine base, guanine base, guanine, which are particularly useful for increasing the anticancer effects of a wide variety of chemotherapeutic agents. Chemotherapeutic alkylating agents (e.g., chlorethylating nitrosoureas) have some clinical utility against a number of neoplasms but in general have only limited effectiveness in killing tumor cells. This resistance of tumors to the effects of alkylating agents is due in part to the activity of the DNA repair protein, 0^6-alkylguanine-DNA alkyltransferase (AGT), which repairs alkylation damage to the O^6 position of DNA guanine residues. A number of O^6-benzylguanine derivatives have been shown to be effective in depleting AGT. This invention provides additional O^6-benzylguanine compositions which have been shown effective in reducing AGT levels in tumor cell cultures and in enhancing the effectiveness of alkylating agents in tumor-bearing mice. These compounds can be administered with any chemotherapeutic agents with a mechanism of action that involves modification of the O^6 position of DNA quanine residues. (portfolio: Cancer—Therapeutics, conventional chemotherapy, alkylating agents; Cancer—Therapeutics, conventional chemotherapy, other)

ERBB2 Promoter Binding Protein in Neoplastic Disease

Raziuddin and Sarkar, F. (NCI)
Filed 19 Apr 94
Serial No. 08/229,515
Licensing Contact: Susan Rucker, 301/496–7735 ext 245

Isolation of a novel ERBB2 promoter binding protein offers to improve the diagnosis and, specifically, the detection and monitoring of neoplastic diseases. This invention has particular application for the early detection of breast cancer. The HER–2/neu (ERBB2/c-erbB–2), or ERBB2, gene sequence appears to be one of the primary genes responsible for the transition of normal epithelial cells toward carcinoma and the subsequent development of invasive and metastatic cancer. For women, early detection of breast cancer is crucial for survival; however, by the time the gene product of ERBB2 is measurable by current methods, the prognosis of patients is not good. This invention improves on earlier methods for

detecting and treating breast cancer by providing a purified and isolated DNA binding protein that specifically binds to the promoter region of the c-ERBB2 (HER–2/neu) gene sequence (hence the term HER–2 promoter binding protein, HPBF). Antibodies specific for this DNA binding protein, called HPBF, can be used to assay for the presence of HPBF in a biological sample and, thus, detect the presence of cancer. The purified HPBF also can be used to test the ability of substances to inhibit the activity of HPBF and thus potentially halt or reverse growth of the cancer. This invention includes antisense nucleotides that effectively prevent HPBF from binding to the promoter. (portfolio: Cancer—Therapeutics, biological response modifiers, growth factors)

Acridone-Derived Bisintercalators as Chemotherapeutic Agents

Michejda, C.J., Cholody, W.M. Hernandez, L. (NCI)
Filed 14 Mar 94
Serial No. 08/213,315
Licensing Contact: Joseph Contrera, 301/496–7056 ext 244

This invention describes a noval class of acridone-derived intercalating agents that offer to improve the treatment of certain cancers. Presently available anti-tumor agents often have great toxicity for normal cells as well as tumor cells. Therefore, there is a great need for new chemotherapeutic agents that selectively kill tumor cells while sparing healthy cells. A number of acridine-based compounds have recently been discovered that exhibit high anti-tumor activity. This newly developed class of acridone-derived agents, which bind strongly to nucleic acids, have potent cytotoxic activity which is selective for solid tumor cells, especially for colon and prostatic tumors. Because some of these compounds exhibit enhanced fluorescence when bound to DNA, they also may be used in assays for the detection of DNA. (portfolio: Cancer—Therapeutics)

Dated: April 11, 1996.

Barbara M. McGarey,

Office of Technology Transfer.

[FR Doc. 96–9615 Filed 4–18–96; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the NIH Director's Advisory Panel on Clinical Research

Notice is hereby given that the NIH Director's Advisory Panel on Clinical Research, a group reporting to the Advisory Committee to the Director (ACD), National Institutes of Health (NIH), will meet in public session in Wilson Hall, third floor of the Shannon Building (Building 1) National Institutes of Health, Bethesda, Maryland 20892, on May 16, 1996 from 8:30 a.m. until approximately noon.

The goal of the Panel is to review the status of clinical research in the United States, and to make recommendations to the ACD about how to ensure its effective continuance. Topics to be considered at this meeting are subcommittee progress reports and a discussion of the proposed NIH Clinical Research Center.

Attendance may be limited to seat availability. If you plan to attend the meeting as an observer or if you wish additional information, please contact Mrs. Janet Smith, National Institutes of Health, Building 10, Room 1C–116, 10 Center Drive, MSC 1154, Bethesda, Maryland 10892–1154, telephone (301) 402–3444, fax (301) 402–3443, by May 6, 1996. Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact Ms. Smith in advance of the meeting.

Dated: April 10, 1996.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 96–9616 Filed 4–18–96; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors' Biennial Report on Carcinogens (BRC) Subcommittee Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors' Biennial Report on Carcinogens (BRC) Subcommittee, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina, on May 8, 1996.

The primary agenda topic will be concerned with the discussion of the process for listing or delisting substances in the Biennial Report on Carcinogens (BRC) (formerly Annual Report on Carcinogens (ARC)).

The preliminary agenda topics with approximate times are as follows:

8:30 a.m.–8:45 a.m.—Report of the Director, NTP
8:45 a.m.–9:00 a.m.—Report of the Director, Environmental Toxicology Program (ETP)
9:00 a.m.–10:00 a.m.—Report on the background history of the BRC
10:15 a.m.–11:15 a.m.—Presentation and discussion of the process for listing or delisting substances in the BRC
11:15 a.m.–11:35 a.m.—Report from the NIEHS/NTP BRC Review Group
11:35 a.m.–12:00 p.m.—Report from the NTP Executive Committee Working Group for the BRC
1:00 p.m. –2:00 p.m.—Subcommittee discussion of BRC presentations
2:00 p.m.–3:00 p.m.—Presentation of select chemicals previously approved for listing in the 8th and 9th BRC to compare application of proposed BRC criteria with previous ARC selection criteria
3:15 p.m.–4:30 p.m.—Subcommittee discussion of BRC review responsibilities
Adjournment

Public Comments Encouraged

The meeting is open to the public. A brief summary of the review of the BRC criteria for listing or delisting substances is available on request from the NTP Liaison Office, P.O. Box 12233, MD B3–01, Research Triangle Park, NC 27709, phone: (919) 541–0530, FAX: (919) 541–0295. Brief public oral comments will be allowed at appropriate times during the meeting. Registration to attend is not required; however, to ensure adequate seating, we ask that those planning to attend let us know. To register, receive information on the agenda, or be put on the mailing list for summary minutes subsequent to the meeting, please contact: Dr. L.G. Hart, P.O. Box 12233, Research Triangle Park, NC 27709; telephone: (919) 541–3971; FAX: (919) 541–0719.

Dated: April 12, 1996.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 96–9617 Filed 4–18–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3917–N–66]

Office of the Assistant Secretary for Public and Indian Housing: Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* June 18, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451–7th Street SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202)–708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of response.

This Notice also lists the following information:

Title of Proposal: Campus of Learners Initiative.

OMB Control Number: 2577–-0207.

Description of the need for the information and proposed use: Certain information is needed by HUD to appropriately determine which Public Housing Agencies (PHAs) should be awarded Campus of Learners designations. The criteria for designation will be PHAs that 91) are in partnership with local education agencies, State education agencies, institutions of higher education, telecommunications and other businesses, other private-sector partners, child-care providers, community-based organizations, etc., and (2) demonstrate a comprehensive plan for transforming at-risk communities through living and learning opportunities in a range of education, technology, academic learning, skills, enhancement, leadership and self-esteem development, employment, and entrepreneurial positions for children, youth and families. The purpose of the information is to assess which PHAs should be awarded Campus of Learners designation.

Agency form numbers, if applicable: None.

Members of affected public: PHA's.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 75 respondents, 1 response per respondent, 75 total responses, 563 total burden hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 12, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–9718 Filed 4–18–96; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. FR–3917–N–67]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* June 18, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451–7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ken Crandall, Telephone number (202) 708–2121 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Systems for approval of Single Family Housing in new subdivisions.

OMB Control Number: 2502–0496.

Description of the need for the information and the proposed use: The information on the Builder Certification will be reviewed by HUD, on a sampling of cases, to assure that the siting/location factors have been properly considered by the lender during the underwriting of the loan. The form can also be used by a borrower and their attorney who has a complaint against the builder for not properly mitigating the problems of the site. If this form was not used and the collection of information was not conducted it could pose a health and/or safety risk to the borrowers and increase the risk of borrower default.

Agency form numbers: HUD–92541.

Members of affected public: Business or other for-profit.

Estimation of the total numbers of hours needed to prepare the information collection: 16,400; *number of respondents:* 800; *frequency response:* dependent upon the occasion of the application process; *hour of response:* 0.25 of an hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 12, 1996.

Nicolas P. Retsinas,

A/S Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–9719 Filed 4–18–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3917–N–68]

Office of Lead-Based Paint Abatement and Poisoning Prevention; Notice of Proposed Information Collection: Comment Request

AGENCY: Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* June 18, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Ms. Melanie Tyree, Reports Liaison Officer, Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, 451–7th Street, SW, Room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Barbara A. Haley, (202) 755–1805 ext. 126 (this is not a toll-free number), for copies of the proposed data collection instruments.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Evaluation of Environmental Interventions Conducted Under the HUD Lead-Based Paint Hazard Reduction Grant Program.

OMB Control Number, if applicable: 2539–0004.

Description of the need for the information and proposed use: HUD and other Federal agencies wish to extend data collection for an additional 36 months. This additional data will enhance the precision and accuracy of estimates of the effectiveness of different strategies for reducing lead in housedust and blood of young children. The results will affect Federal regulations and guidelines, State, local and private-sector actions, and the health of American children.

Agency form numbers, if applicable: None.

Members of affected public: Beneficiaries of HUD grants to 14 States, cities and counties.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 14 State and local government grant recipients

Frequency of response: occasional

Average number of responses per respondent per year: 1,791

Average number of response hours per respondent per year: 1,218

Total number of response hours per year: 13,162

Status of the proposed information collection: Renewal.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 4, 1996.

David E. Jacobs,

Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 96–9720 Filed 4–18–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3778–N–81]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 12, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–9612 Filed 4–18–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4001–N–02]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Funding Availability for the Traditional Indian Housing Development Program for Fiscal Year 1996

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA); technical correction.

SUMMARY: On March 29, 1996, HUD published a Notice of Funding Availability for the Traditional Indian

Housing Development for FY 1996, 61 FR 14218. This document corrects the application due date and makes two minor corrections to the notice.

DATES: The application due date is May 13, 1996.

FOR FURTHER INFORMATION CONTACT: Applicants may contact the appropriate area Office of the Native American Programs (ONAP) for further information. Refer to Appendix 1, which was published with the NOFA, for a complete list of ONAPs and telephone numbers.

SUPPLEMENTARY INFORMATION: On March 29, 1996, HUD published a Notice of Funding Availability to announce the potential availability of up to $160,000,000 in Fiscal Year 1996 funding for the development of new Indian Housing units and provides the applicable criteria, processing requirements, and action timetable.

This document changes the application deadline from April 13, 1996 to May 13, 1996. It also changes FY 1994 to FY 1995 in the Supplementary Information section.

Accordingly, a NOFA published in the Federal Register on March 29, 1996, 61 FR 14218, is corrected as follows:

1. On page 14218, in column 1, Date section, the application deadline is corrected to read May 13, 1996.

2. On page 14218, Supplementary Information, in column 2, paragraph E, the term ''FY 1994'' is corrected to read ''FY 1995''.

3. On page 14220, Supplementary Information, in column 2, paragraph C, the term ''FY 1994'' is corrected to read ''FY 1995''.

Dated: April 15, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–9721 Filed 4–18–96; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–4210–01; FL–ES–047709]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice corrects the section number of the legal description previously published on page 65354 of Vol. 60, No. 243 of the Federal Register on December 19, 1995 (FR Doc. 95–30739) for conveyance of 0.17 acres to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida under the provisions of the Recreation & Public Purposes Act, as amended, 43 U.S.C. 869, et seq. The section number should read section 6.

EFFECTIVE DATE: February 17, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Weaver, (601) 977–5400.

Dated: April 12, 1996.

Bruce Dawson,

District Manager.

[FR Doc. 96–9620 Filed 4–18–96; 8:45 am]

BILLING CODE 4310–GJ–M

[ID–957–1030–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. April 10, 1996.

The plat representing the dependent resurvey of portions of the boundaries of certain mineral surveys and the descriptions of certain mineral survey corners in partially surveyed T. 48 N., R. 5 E., Boise Meridian, Idaho, Group No. 940, was accepted, April 10, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: April 10, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–9621 Filed 4–18–96; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., April 10, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and subdivision of section 8, and the survey of certain lots in section 8, T. 21 N., R. 22 E., Boise Meridian, Idaho, Group No. 936, was accepted April 10, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: April 10, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–9772 Filed 4–18–96; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–1150–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. April 10, 1996.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, the subdivision of section 4, and a metes-and-bounds survey in section 4, T. 16N., R. 21 E., Boise Meridian, Idaho, Group No. 926, was accepted, April 10, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: April 10, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–9773 Filed 4–18–96; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Endangered and Threatened Species Permits

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that Region 1 of the U.S. Fish and Wildlife Service has issued the following permits, between October 1, 1995, and March 31, 1996, for incidental take of threatened or endangered species from applications duly received according to section 10 of the Endangered Species Act of 1973, as amended (Act). Each permit listed as issued was granted only after it was determined to be applied for in good faith, and that it was consistent with the Act and applicable regulations.

Name	Permit No.	Issuance date
Oregon Department of Forestry	803344	10/3/95
City of Colton	805901	11/29/95
Metropolitan Water District of Southern California and Riverside County Habitat Conservation Agency	805839	12/5/95
San Diego Gas and Electric Co.	809637	12/18/95
Chevron U.S.A.	768386	1/8/96
Atlantic Richfield Corporation-Western Energy	809228	3/1/96

FOR FURTHER INFORMATION CONTACT: Chief, Division of Consultation and Conservation Planning, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503–231–6241). Environmental documentation associated with these permits, developed pursuant to the Act and the National Environmental Policy Act, is available upon request. Please refer to the permit number listed above when requesting information.

Dated: April 12, 1996.

William F. Shake,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–9685 Filed 4–18–96; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. (PST) on Friday, April 26, 1996 at the County of Inyo Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including the preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Mr. William Michael, Acting Chairperson
Mr. Ronald Izumita
Ms. Sue Embrey
Mr. Mas Okui
Mr. Keith Bright
Mr. Glenn Singley
Mr. Richard Stewart
Mr. Vernon Miller
Mr. Gann Matsuda
Ms. Rose Ochi
Ms. Martha Davis

The main agenda items at this initial meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) Review of the comments received to date on the draft park General Management Plan.

(3) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(4) Public comment period.

This meeting is open to the public. It will be recorded for documentation, and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after May 31, 1996. For a copy of the minutes contact the Superintendent, Manzanar National Historic Site, P.O. Box 426, Independence, California 93526.

Dated: April 4, 1996.

Ross R. Hopkins,

Superintendent, Manzanar National Park.

[FR Doc. 96–9598 Filed 4–18–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Meeting of National Landmarks Committee of National Park System Advisory Board

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the National Landmarks Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9:00 a.m. on the following date and at the following location.

DATES: May 6, 1996.

LOCATION: Department of the Interior, Conference Room 7000 A, Main Interior Building, 1849 C Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Register, History, and Education, National Park Service, P.O. Box 37127, Suite 310, Washington, DC 20013–7127. Telephone (202) 343–8163.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the National Landmarks Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on May 8, 1996, of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the full board those properties that the committee finds meet the criteria for designation for the National Historic Landmarks Program. The members of the History Areas Committee are:

Dr. Holly Anglin Robinson, Co-Chair
Mr. Parker Westbrook, Co-Chair
Dr. David Warren
Dr. Shereen Lerner
Mr. Jerry L. Rogers
Dr. John Vlach
Dr. Richard Guy Wilson
Dr. James Horton, *ex officio*

The meeting will include presentations and discussions on the national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file for consideration by the committee written comments concerning nominations and matters to be discussed pursuant to 36 CFR Part 65. Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey, and Keeper of the National Register of Historic Places, National Register, History and Education, National Park Service, P.O. Box 37127, Suite 310, Washington, DC 20013–7127.

The nominations to be considered are:

Alabama
Yuchi Town Site, Richmond vicinity
Arkansas
Eaker Site, Blytheville vicinity
Connecticut
Nathaniel Palmer House, 40 Palmer Street, Stonington
District of Columbia
Anderson House, 2118 Massachusetts Avenue, NW
Franklin School, 925 13th Street, NW
Florida
Miami Biltmore Hotel, 120 Anastasia Ave., Coral Gables
Georgia
Old Medical College, 598 Telfair Street, Augusta
Illinois
John Farson House, 217 Home Ave., Oak Park

Iowa
Woodbury County Courthouse, 620 Douglas St., Sioux City
Kentucky
Fort Boonesborough Site, Richmond Vicinity
Louisiana
St. Alphonsus, 2054 Constance St. New Orleans
Massachusetts
Hoosac Tunnel, Berkshire County
Mississippi
Dancing Rabbit Creek Treaty Site, Macon Vicinity
New York
69th Regiment Armory, 68 Lexington Ave., New York
Eldridge Street Synagogue, 12–16 Eldridge Street, New York
North Carolina
Bentonville Battlefield, Along State Routes 1008 and 1009, Bentonville Vicinity
Pinehurst Historic District, Vicinity of junction NC 5 and NC 2, Pinehurst, North Carolina
Pennsylvania
St. Peter's Church, Third and Pine Streets, Philadelphia
Church Of The Advocate, 18th and Diamond Streets, Philadelphia
Leap-The-Dips, 700 Park Avenue, Altoona
Rhode Island
The Elms, Bellevue Avenue, Newport
Kingscote, Bellevue Avenue, Newport
Texas
Palmito Ranch Battlefield, South of State Highway 4, Brownsville vicinity
Vermont
Round Church, Bridge Street, Richfield
St. Johnsbury Athenaeum, 30 Main St., St. Johnsbury
Virginia
George C. Marshall House, 217 Edwards Ferry Rd, Leesburg
Wisconsin
Turner Hall, 1034 N. 4th. St., Milwaukee,
Wyoming
Obsidian Cliff, Yellowstone National Park,

And one boundary increase:

Davis and Elkins Historic District, Davis and Elkins College Campus, Elkins, West Virginia

Also, should the necessary waivers be received, the committee will also be considering an additional property:

Spring Hill Ranch, Chase County, Kansas

The committee will also be given an introduction and overview to two upcoming theme studies.

Landscape Architecture in the Parks theme study, Nationwide

Middle Missouri Trench theme study, North and South Dakota

Dated: April 9, 1996.

Carol D. Shull,

Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places, National Park Service, Washington Office.

[FR Doc. 96–9599 Filed 4–18–96; 8:45 am]

BILLING CODE 4310–70–P

Office of Surface Mining Reclamation and Enforcement

Availability of Final Supplemental Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice of availability of a final supplemental environmental impact statement (EIS) for the proposed mining plan and permit application, Fence Lake Mine, Catron and Cibola Counties, New Mexico and Apache County, Arizona, OSM–EIS–31.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available a final supplemental environmental impact statement (EIS) on the proposed mining plan and permit application for the Fence Lake mine. This is a supplemental EIS to the 1990 Bureau of Land Management EIS, and it updates the identified impacts and analyzes any new probable impacts of mining at the proposed Fence Lake mine. The supplemental EIS has been prepared to assist the Department of the Interior in making a decision on the mining plan and permit application submitted by Salt River Project (SRP) for a surface coal mining operation located approximately 14 miles northwest of Quemado, New Mexico; and for 13 miles of railroad in the State of Arizona.

ADDRESSES: Copies of the final supplemental EIS may be obtained from Richard J. Seibel, Regional Director, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733, Attn: Dr. Robert H. Block.

FOR FURTHER INFORMATION CONTACT: Dr. Robert H. Block, Project Manager and EIS Team Leader at the Denver, Colorado, location given under **ADDRESSES** (telephone: 303–672–5610).

SUPPLEMENTARY INFORMATION: SRP's proposed Fence Lake mine consists of Federal, State and private coal leases situated on approximately 18,000 acres northwest of Quemado, New Mexico. The proposed mine would remove approximately 81.3 million tons of coal, by surface methods, over the 50 year life-of-mine. Approximately 1.8 million tons of coal would be removed each year from year 2 through year 28 and about 3 million tons of coal per year would be removed each year from year 29 through year 40. The project also includes a proposed 44-mile railroad corridor that would be constructed west from the mine to supply coal to the existing Coronado Generating Station, located approximately 6 miles from St. Johns, Arizona.

OSM has prepared the supplemental EIS to evaluate the alternative actions that the Department could take on the mining plan in the state of New Mexico and the permitting of the 13 miles of railroad corridor in the State of Arizona. In accordance with the New Mexico State Program, the New Mexico Mining and Minerals Department must take permitting actions on the proposed surface coal mining operation and 31 miles of railroad corridor within the State of New Mexico. Two alternatives are evaluated in the supplemental EIS: (1) approval of the mining plan and permit application with conditions, and (2) disapproval of the mining plan and permit application. OSM has identified ''approval of the proposed mining plan and permit application package with conditions'' as the preferred alternative.

Dated: March 22, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 96–9528 Filed 4–18–96; 8:45 am]

BILLING CODE 4310–05–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

Certain Cold-Rolled Carbon Steel Flat Products From Germany and the Netherlands; Dismissal of Request for Institution of Section 751(b) Review Investigations

AGENCY: United States International Trade Commission.

ACTION: Dismissal of a request to institute section 751(b) investigations concerning the Commission's affirmative determinations in Invs. Nos. 701–TA–340, 731–TA–604, & 731–TA–608 (Final), Certain Cold-Rolled Carbon Steel Flat Products from Germany and the Netherlands.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (the Act)(19 U.S.C. 1675(b)) and Commission rule 207.45 (19 CFR 207.45), that the subject request does not show changed circumstances sufficient to warrant institution of an

investigation to review the Commission's affirmative determinations in Investigations Nos. 701–TA–340, 731–TA–604, & 731–TA–608 (Final), regarding certain cold-rolled carbon steel flat products (cold-rolled steel) from Germany and the Netherlands. Cold-rolled steel is provided for in subheadings 7209.15.00, 7209.16.00, 7209.17.00, 7209.18.15, 7209.18.25, 7209.18.60, 7209.25.00, 7209.26.00, 7209.27.00, 7209.28.00, 7209.90.00, 7210.70.30, 7210.90.90, 7211.23.15, 7211.23.20, 7211.23.30, 7211.23.45, 7211.23.60, 7211.29.20, 7211.29.45, 7211.29.60, 7211.90.00, 7212.40.10, 7212.40.50, 7212.50.00, 7217.10.10, 7217.10.20, 7217.10.30, 7217.10.70, 7217.90.10, and 7218.90.50 of the Harmonized Tariff Schedule of the United States.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

BACKGROUND INFORMATION: On November 28, 1995, the Commission received a request to review its affirmative threat determinations with respect to Germany and the Netherlands in the light of changed circumstances (the request), pursuant to section 751(b) of the Act (19 U.S.C. 1675(b)). The request was filed by counsel on behalf of Krupp Hoesch Stahl AG, Preussag Stahl AG, Thyssen Stahl AG, and Hoogovens Groep BV, producers of the subject merchandise in Germany and the Netherlands, and N.V.W. (USA), Inc., an importer of the subject merchandise from the Netherlands.

Pursuant to section 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission published a notice in the Federal Register on January 25, 1996 (61 F.R. 2263) requesting comments as to whether the alleged changed circumstances warranted the institution of a review investigation. The Commission received comments both in opposition to and in support of the request.

ANALYSIS: After consideration of the request for review and the responses to the notice inviting comments, the Commission has determined, pursuant to section 751(b) of the Act (19 U.S.C. 1675(b)) and Commission rule 207.45 (19 CFR 207.45), that the information of record, including the petitioner's request, does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determinations in Investigations Nos. 701–TA–340, 731–TA–604, & 731–TA–608 (Final).

As a preliminary matter, the request alleges that the Uruguay Round Agreements Act of 1994 (the URAA) created a lower standard for institution of review investigations under section 751(b); i.e., that the Commission should question actively the continued need for the orders, rather than place the burden of proof on the party seeking revocation. The request claims, for example, that the fact that Congress provided for sunset reviews under 751(c) indicates that Congress intended a lower standard. Contrary to the request, the Commission does not find that the standard for institution of a 751(b) review investigation has changed following the passage of the URAA. First, the URAA did not amend the statutory language governing the institution of a changed circumstances review. Second, the Statement of Administrative Action provides no discussion of the standard for instituting a *review*, stating only that the ''new substantive standard'' for judging the *merits* of a changed circumstances review is ''consistent with current Commission practice.'' SAA at 878. Third, the Commission finds no legal basis for concluding that the URAA provisions on sunset reviews were intended to effect any change in the standard for institution of a 751(b) review.

The Commission also notes that its reviewing courts have observed that ''a review investigation of an outstanding antidumping order does not begin on a clean slate just as though it were an original investigation.'' *See Matsushita Elec. Indus. Co.* v. *United States*, 750 F.2d 927, 932 (Fed. Cir. 1984). Congress set forth ''very strict controls'' on the exercise of the Commission's authority to conduct an investigation to determine whether to revoke or modify an outstanding dumping order, demonstrating that it did not want prior Commission injury determinations ''to remain in a state of flux.'' ''Royal Business Machines, Inc. v. *United States*, 507 F. Supp. 1007, 1014, n. 18 (Ct. Int'l Trade 1980), *aff'd*, 659 F.2d 692 (CCPA 1982). The statutory requirements for instituting Section 751 reviews clearly demonstrate the intent of Congress that the ''underlying finding of injury. . . . . is entitled to deference and should not be disturbed lightly.'' *Avesta AB* v. *United States*, 689 F. Supp. 1173, 1180 (Ct. Int'l Trade 1988)(*Avesta I*); *see also Matsushita Elec. Indus. Co., Ltd.* v. *United States*, 750 F.2d 927, 932 (Fed. Cir. 1984). In order for a review investigation to be instituted, the information available to the Commission, after notice and comment from all interested parties, must be sufficient to persuade the Commission:

(1) That there have been significant changed circumstances from those in existence at the time of the original investigation;

(2) That those changed circumstances are not the natural and direct result of the imposition of the antidumping or countervailing duty order, and

(3) That the changed circumstances indicate that the domestic industry would be materially injured should the order be revoked, thereby warranting a full investigation.

See A. Hirsh, Inc. v. *United States, 737 F. Supp. 1186 (CIT 1990) (Hirsh II*); *Avesta AB* v. *United States*, 724 F. Supp. 974 (CIT 1989), aff'd 914 F.2d 232 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 1308 (1991) (*Avesta II*).

The request alleged five changed circumstances warranting review: (1) Restructuring of the European steel industry, together with other changes in global market conditions; (2) surges in non-subject imports of cold-rolled steel; (3) the sharp decline of the U.S. dollar against both the Dutch guilder and the German mark; (4) the sharp and unanticipated growth in U.S. production of corrosion-resistant steel subsequent to the imposition of antidumping and countervailing duty orders on corrosion-resistant steel, and; (5) the fact that the orders on Germany and the Netherlands resulted from affirmative threat determinations of three Commissioners who cumulated imports from the Netherlands, Germany, and Korea with far greater volumes from other countries. The information available on the record does not persuade us that a full investigation is warranted for any of the five allegations.

First, the requesting parties argue that changes in the European steel industry, along with other changes in the world market for steel, make it unlikely that the U.S. industry will suffer material injury if the orders are revoked. They point to decreased excess capacity in Europe, to increases in captive consumption of cold-rolled steel by

European steel producers, and to privatization of European steel companies as contributing to a tighter supply situation for cold-rolled steel. Notwithstanding these developments, however, there is evidence of an oversupply of steel and falling steel prices in Europe. Further, the petition does not provide any basis for its claim that privatization has led to tighter steel supplies in general. Nor does the request show a sufficient correlation between increases in captive production of cold-rolled steel in Germany and the Netherlands and decreases in exports to the United States.

Second, the requesting parties contend that imports from Germany and the Netherlands have fallen off and that non-subject imports, particularly from Eastern Europe, have taken their place. The request cites *Birch Three-Ply Door Skins from Japan* as constituting a similar set of facts that formed the basis for a changed circumstances review. Replacement of subject imports by non-subject imports, alone, does not, however, necessarily constitute changed circumstances. The changes in volumes of subject versus non-subject imports at issue here are likely attributable to the effects of the orders. More importantly, there is no evidence that U.S. market share held by the subject imports since the imposition of the order has changed significantly. Finally, there is no evidence indicating that there is a decline in the capacity of the domestic industry rendering it unable to supply the market demand previously supplied by the subject imports. *Compare Birch Three-Ply Door Skins from Japan,* Inv. No. 751–TA–6 (Review), USITC Pub. 1271 (July 1982) (Facilities of domestic producer who accounted for majority of domestic production were sold and devoted to production of other products, while other domestic producers had ceased operations, such that market share held by subject imports shifted to non-subject imports, rather than domestic industry).

Third, the request alleges that since the date of the orders, the U.S. dollar has weakened against the German mark and Dutch guilder, and that accordingly imports from those sources are now less price-competitive and less likely to cause injury. The requesting parties contend that this realignment in exchange rates has led to increased domestic shipments of U.S. steel, and that this trend is likely to increase. Recent history shows, however, that exchange rates between the Netherlands, or Germany, and the United States have fluctuated within a fairly narrow band. Finally, since the request was filed, the U.S. dollar has actually strengthened against the two currencies.

Next, the request claims that as a result of existing AD/CVD orders on corrosion-resistant steel, U.S. demand for cold-rolled steel for use in the production of corrosion-resistant steel has greatly increased, making the industry less vulnerable to imports. This is, however, not a changed circumstance in terms of being a change in the conditions of competition. Moreover, the fact that there is a large captive component to cold-rolled steel production is not a new development. Further, the Commission does not consider the increase in captive consumption of U.S. cold-rolled steel for corrosion-resistant production reported in the request to be of sufficient magnitude to constitute a changed circumstance in the context of this industry. In addition, there is some evidence that the increase in corrosion-resistant steel production has peaked.

The request further asserts that because of the way the Commission voted on the investigations concerning the Netherlands and Germany (with different Commissioners cumulating different combinations of imports), there are now fewer imports at issue than there were at the time of the original investigation, and that such instances have, in the past, warranted institution of 751(b) review investigations. Those cases, however, are distinguishable, as they involved subsequent partial revocations or changed (narrowed) scope determinations by Commerce. See, e.g., Potassium Chloride from Canada, 751–TA–3; Stainless Steel Plate from Sweden, 751–TA–15. In this case, however, all of the facts and circumstances upon which the requesting parties base their claim were known to the Commission at the time of its vote in the original investigations. There is nothing anomalous about imposing an order on imports from countries as to which three or four Commissioners made affirmative determinations. Rather, that is a function of the cumulation and threat provisions of the statute.

In sum, the changed circumstances alleged in the request do not warrant institution of a review. Evidence contained in the request and in responses opposing the request shows either that the alleged changes have not, in fact, had a significant impact on the conditions of competition in this industry or on subject imports, or that the changes have reversed themselves.

In light of the above analysis, the Commission determines that institution of a review investigation under section 751(b) of the Act concerning the Commission's affirmative determinations in Investigations Nos. 701–TA–340, 731–TA–604, & 731–TA–608 (Final), regarding cold-rolled steel from Germany and the Netherlands, is not warranted.

By order of the Commission.

Issued: April 16, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–9730 Filed 4–18–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Tej Pal Singh Jowhal, M.D.; Revocation of Registration

On August 28, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Tej Pal Singh Jowhal, M.D., (Respondent), of South Miami, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BJ3506170, under 21 U.S.C. 824(a)(3), and deny any pending applications for registration pursuant to 21 U.S.C. 824(a)(4), because the Florida Board of Medicine suspended his state license to practice medicine, leaving him without state authorization to handle controlled substances. Further, the Order asserted that the Respondent's continued registration was not in the public interest, as that term is used in 21 U.S.C. 823(f), due to his failure to abide by the terms of a Memorandum of Agreement entered into between him and the DEA in February of 1993.

The Order was mailed in the U.S. Mail, and a signed receipt dated September 1, 1995, was returned to DEA. However, neither the Respondent nor anyone purporting to represent him has replied to the Order to Show Cause. More than thirty days have passed since the Order was served upon the Respondent. Therefore, pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that the Respondent has waived his opportunity for a hearing on the issues raised by the Order to Show Cause, and, after considering the investigative file, enters his final order in this matter without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that the Respondent was issued DEA Certificate of Registration BJ3506170, a restricted registration, for his practice in Florida, after entering into a

Memorandum of Agreement wit DEA in February of 1993. Per the terms of the agreement, the Respondent agreed to abide by all Federal, state and local laws and regulations relating to controlled substances. He also agreed that a violation of any provision of the agreement would result in the initiation of proceedings to revoke the DEA Certificate of Registration issued to him. Subsequently, the DEA received a copy of a Final Order from the State of Florida, Agency for Health Care Administration, Board of Medicine (Medical Board) dated April 26, 1995, finding that the Respondent had engaged in conduct which violated Florida law when he (1) provided substandard patient care by administering excessive amounts of Nubain to a patient he knew was addicted to the substance; and (2) improperly prepared prescriptions for controlled substances on numerous occasions. As a result, the Medical Board ordered, among other things, that the Respondent's license to practice medicine in the State of Florida be suspended for a period of five years.

The Deputy Administrator notes that the DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992); Myong S. Yi, M.D., 54 FR 30,618 (1989); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear that the Respondent is not currently authorized to practice medicine in the State of Florida. From this fact, the Deputy Administrator infers that the Respondent lacks authorization to handle controlled substances in Florida. Therefore, the Respondent currently is not entitled to a DEA registration.

Also, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration, or deny a pending application for registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, factors one, two, four, and five are relevant in determining whether the Respondent's certificate should be revoked and any pending application denied as being inconsistent with the public interest. As to factor one, the Medical Board found that the Respondent's acts of misconduct warranted suspension of his state medical license for five years.

As to factors two, four, and five, the Deputy Administrator finds relevant that, after reviewing the Respondent's conduct, the Medical Board found that the Respondent had violated state law by improperly preparing controlled substance prescriptions on numerous occasions, and by providing substandard patient care, to include administering Nubian, a non-controlled substance noted for having a low potential for abuse, to a patient he knew was addicted to the drug. By engaging in conduct which violated state law, the Respondent also violated provisions of his Memorandum of Agreement with the DEA. As a result of this conduct, the Deputy Administrator also finds that the public interest is best served by revoking the Respondent's DEA Certificate of Registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BJ3506170, issued to Tej Pal Singh Jowhal, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective May 20, 1996.

Dated: April 12, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–9725 Filed 4–18–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 22, 1995, Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application, which was received for processing on March 13, 1996, to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance hydromorphone (9150).

The firm plans to produce hydromorphone bulk product and finished dosage units of dilaudid for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 18, 1996.

Dated: April 9, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–9723 Filed 4–18 –96; 8:45 am]

BILLING CODE 4410–09–M

Walter William Stoll, Jr., M.D., Revocation of Registration

On October 19, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Walter William Stoll, Jr., M.D., (Respondent), of Nicholasville, Kentucky, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AS5639286, under 21 U.S.C. 824(a)(3), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f), because the Commonwealth of Kentucky, State Board of Medical Licensure, had revoked his Kentucky medical license

by Order dated November 17, 1994. By letter dated November 15, 1995, the Respondent waived a hearing in this matter and submitted a copy of a letter dated October 16, 1995, which he had previously filed with the American Board of Family Practice.

Therefore, the Deputy Administrator, after considering the investigative file and the letters submitted by the Respondent, enters his final order in this matter without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that the Respondent was issued DEA Certificate of Registration AS5639286 for his practice in Nicholasville, Kentucky, and that this registration is due to expire on February 28, 1997. However, DEA received a copy of a Final Order of Revocation from the Kentucky Board of Medical Licensure (Medical Board) dated November 17, 1994, revoking the Respondent's medical license. The final order accepted and incorporated a Hearing Officer's Findings of Fact and Conclusions of Law reached after a hearing was held on August 23, 1994. Also, by order dated January 3, 1995, the Jefferson Circuit Court, Division Eight, Commonwealth of Kentucky, dismissed the Respondent's appeal of the Medical Board's action, finding that the Respondent had failed to perfect his appeal.

In these proceedings, the Respondent has not challenged the authenticity of the Medical Board's final revocation order or the court's dismissal order.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992); Myong S. Yi, M.D., 54 FR 30,618 (1989); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear that the Respondent is not currently authorized to practice medicine in the Commonwealth of Kentucky. From this fact, the Deputy Administrator infers that, since the Respondent is not authorized to practice medicine, he also is not authorized to handle controlled substances. Therefore, because the Respondent lacks state authority to handle controlled substances, he currently is not entitled to a DEA registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AS5639286, issued to Walter William Stoll, Jr., M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective May 20, 1996.

Dated: April 5, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–9724 Filed 4–18–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 16, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Office, Theresa M. O'Malley (202 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202 219–4720) between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10235, Washington, DC 20503 (202 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Consumer Price Index Commodities and Services Survey.

OMB Number: 1220–0039.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Form #	Respondents	Frequency	Average time per response
BLS 3400	15,340	once	4 minutes
BLS 3400A.2	15,340	once	36 minutes
BLS 3400B	15,340	once	22.8 minutes
BLS 3400C	4,075	once	4 minutes
BLS 3401	36,764	Monthly bimonthly	13.8 minutes

Total Burden Hours: 91,487.

Total Annualized capital/startup costs: $0.

Total annual cost (operating/maintaining systems or purchasing services): $0.

Description: The collection of prices directly from a wide spectrum of retain establishments and government agencies is essential for the timely and accurate calculation of the Commodities and Services component of the Consumer Price Index.

Agency: Bureau of Labor Statistics.
Title: Response Analysis Survey of BLS 790 and ES–202 Reports.
OMB Number: 1220–0089.
Agency Number: CES/UI RAS.
Frequency: On occasion.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 8.000.
Estimated Time Per Respondent: 30 minutes.
Total Burden Hours: 4,000.
Total Annualized capital/startup costs: $0.
Total annual cost (operating/maintaining systems or purchasing services): $0.
Description: The Current Employment Statistics Survey and Employment and Wages Program are the primary sources of employment and wage information used to measure economic performance. The Response Analysis Survey (RAS) continues the Bureau of Labor Statistics' efforts to review the sources of information available to respondents, to better match available records to program definitions, and to improve the quality of the data.

Agency: Employment Standards Administration.
Title: Payment of Compensation Without Award.
OMB Number: 1215–0022.
Agency Number: LS–206.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 34,200.
Estimated Time Per Respondent: 15 minutes.
Total Burden Hours: 8,550.
Total Annualized capital/startup costs: $0.
Total annual costs (operating/maintaining systems or purchasing services): $12,000.
Description: The Longshore and Harbor Workers' Compensation Act requires an insurance carrier or self-insured employer to pay compensation within 14 days after the employer has knowledge of the injury or death. Upon making the first payment, the employer or carrier shall immediately notify the deputy commissioner of the payment. The LS–206 is the form on which report of payment is made.

Agency: Employment Standards Administration.
Title: Notice of Controversion of Right to Compensation.
OMB Number: 1215–0023.
Agency Number: LS–207.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 900.
Estimated Time Per Respondent: 15 minutes.
Total Burden Hours: 18,900.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $7,000.
Description: The Longshore and Harbor Workers' Compensation Act provides benefits to workers injured in maritime employment on the navigable waters of the Untied States or adjoining areas. Under the Act, if an employer controverts the right to compensation, he must file with the deputy commissioner a notice that the right to compensation is controverted. The information is used by the Office of Workers' Compensation Programs district office to determine the basis for not payment benefits in a case.

Agency: Employment Standards Administration.
Title: Certificaiton of Funeral Expenses.
OMB Number: 1215–0027.
Agency Number: LS–265.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 195.
Estimated Time Per Respondent: 15 minutes.
Total Burden Hours: 49.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $68.
Description: Under the Longshore and Harbor Workers' Compensation Act, reasonable funeral expenses not to exceed $3,000 are payable in all compensable death cases. The LS–265 is used to certify these expenses.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.

[FR Doc. 96–9715 Filed 4–18–96; 8:45 am]
BILLING CODE 4510–27–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modification issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this date may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

VOLUME I

MASSACHUSETTS
MA960001 (APR. 19, 1996)
MA960002 (APR. 19, 1996)
MA960009 (APR. 19, 1996)
MA960017 (APR. 19, 1996)
MA960019 (APR. 19, 1996)
NEW YORK
NY960011 (APR. 19, 1996)

VOLUME II

DELAWARE
DE960009 (APR. 19, 1996)
MARYLAND
MD960056 (APR. 19, 1996)
PENNSYLVANIA
PA960008 (APR. 19, 1996)
VIRGINIA
VA960005 (APR. 19, 1996)
VA960008 (APR. 19, 1996)
VA960022 (APR. 19, 1996)
VA960023 (APR. 19, 1996)
VA960033 (APR. 19, 1996)
VA960034 (APR. 19, 1996)
VA960036 (APR. 19, 1996)
VA960036 (APR. 19, 1996)
VA960039 (APR. 19, 1996)
VA960046 (APR. 19, 1996)
VA960051 (APR. 19, 1996)
VA960085 (APR. 19, 1996)
VA960087 (APR. 19, 1996)
VA960088 (APR. 19, 1996)

VOLUME III

GEORGIA
GA960031 (APR. 19, 1996)
GA960032 (APR. 19, 1996)
GA960033 (APR. 19, 1996)
GA960050 (APR. 19, 1996)
GA960073 (APR. 19, 1996)

VOLUME IV

INDIANA
IN960003 (APR. 19, 1996)
IN960004 (APR. 19, 1996)
IN960006 (APR. 19, 1996)
IN960017 (APR. 19, 1996)
MICHIGAN
MI960001 (APR. 19, 1996)
MI960002 (APR. 19, 1996)
MI960004 (APR. 19, 1996)
MI960005 (APR. 19, 1996)
MI960007 (APR. 19, 1996)
MI960012 (APR. 19, 1996)
MI960017 (APR. 19, 1996)
MI960030 (APR. 19, 1996)
MI960031 (APR. 19, 1996)
MI960046 (APR. 19, 1996)
MI960047 (APR. 19, 1996)
MI960059 (APR. 19, 1996)
MI960062 (APR. 19, 1996)
MI960064 (APR. 19, 1996)

VOLUME V

NEBRASKA
NE960001 (APR. 19, 1996)
NE960003 (APR. 19, 1996)
NE960005 (APR. 19, 1996)
NE960009 (APR. 19, 1996)
NE960010 (APR. 19, 1996)
NE960011 (APR. 19, 1996)
NE960058 (APR. 19, 1996)
NE960059 (APR. 19, 1996)

VOLUME VI

CALIFORNIA
CA960072 (APR. 19, 1996)
WYOMING
WY960001 (APR. 19, 1996)
WY960002 (APR. 19, 1996)
WY960003 (APR. 19, 1996)
WY960005 (APR. 19, 1996)
WY960006 (APR. 19, 1996)
WY960007 (APR. 19, 1996)
WY960008 (APR. 19, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure of specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 12th day of April 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determination.

[FR Doc. 96–9438 Filed 4–18–96; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL INSTITUTE FOR LITERACY

Agency Information Collection Activities

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), this notice announces an Information Collection Request (ICR) by the NIFL. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 21, 1996.

FOR FURTHER INFORMATION CONTACT: Jaleh Behroozi Soroui at (202) 632–1506 or e-mail: Jaleh@nifl.gov.

SUPPLEMENTARY INFORMATION:

Title

Application for Technology Award to Governors' State Literacy Resource Centers to build a national electronic information and communication network for literacy by establishing regional hubs on the Internet in Region I designated by the Department of Education's Office of Vocational and Adult Education.

Abstract

The National Literacy Act of 1991 established the National Institute for Literacy and required that the Institute conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. This form will be used by State Governors' State Literacy Resource Centers to apply for funding to create regional electronic information and communication hubs for literacy that will build technological capacity for electronic exchange across the literacy community. Evaluations to determine successful applicants will be made by a panel of literacy experts using the

published criteria. The Institute will use this information to make a maximum of one cooperative agreement award for a period of up to 2 years.

Burden Statement: The burden for this collection of information is estimated at 55 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Governors of States in Region I and Trust Territories.

Estimated Number of Respondents: 5.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 275 hours.

Frequency of Collection: One time. Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden to: Jaleh Behroozi Soroui, National Institute for Literacy, 800 Connecticut Ave., NW, Suite 200, Washington, DC 20006.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 96–9867 Filed 4–18–96; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Council on the Arts Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held from 9:45 a.m. to 12:00 p.m. on May 3, 1995, at The Century Association, #7 West 43rd Street, New York, NY.

This meeting is for the purpose of reviewing nominations for the National Medal of Arts. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from the Office of Communications at the National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5570.

Dated: April 12, 1996

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations, National Endowment for the Arts.

[FR Doc. 96–9639 Filed 4–18–96; 8:45 am]

BILLING CODE 7537–01–M

President's Committee on the Arts and the Humanities: Meeting XXXVI

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on April 25–26, 1996, from 2:00 p.m. to 5:00 p.m. on April 25 and from 9:00 a.m to 2:00 p.m. on April 26. The meeting will be held in the Cash Room, at the Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, D.C. Dates and times of the meeting are subject to change in response to the White House schedule.

This meeting will be open to the public on a space available basis and will feature a briefing on April 25, from 2:00 p.m. to 5:00 p.m. of *Coming Up Taller: Arts and Humanities Programs for Children and Youth At-Risk* and a discussion of the Report to the President. A review of recommendations for the Report to the President will be discussed on April 26 from 9:00 a.m. to 2:00 p.m.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the IMS on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend the meeting as observers, on a space available basis, but seating is limited in meeting rooms and it is suggested that individuals wishing to attend notify the staff of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: April 12, 1996.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 96–9640 Filed 4–18–96; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05712, License No. 34–6398–01EA 95–227]

The Duriron Company, Inc.,) Dayton, Ohio; Order Imposing Civil Monetary Penalty

I

The Duriron Company, Inc. (Licensee) is the holder of Materials License No. 34–06398–01 which was first issued by the Nuclear Regulatory Commission (NRC or Commission) on May 17, 1969. The license was last renewed on November 15, 1994, and is scheduled to expire on November 30, 1999. The license authorizes the Licensee to possess cobalt-60 and iridium-192, in sealed sources, to perform industrial radiography at the Licensee's facility at 450 North Findlay Street, Dayton, Ohio, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted from September 11 to September 29, 1995. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 5, 1996. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated February 19, 1996, and admitted the violation. In its response, the Licensee contested the characterization of the violation as being ''willful'' or representing ''careless disregard,'' and requested that the severity level of the violation be reduced. The Licensee also requested that the civil penalty be partially or fully mitigated.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the

Appendix to this Order, that the violation was correctly characterized as representing careless disregard and was willful in nature, and the severity level of the violation was properly categorized at Severity Level III. Furthermore, the amount of the civil penalty was correctly affixed, the civil penalty should not be partially or fully mitigated, and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the attention of Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be: Whether, on the basis of the violation admitted by the Licensee, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 12th day of April, 1996.

James Lieberman,

Director, Office of Enforcement.

Appendix

Evaluation and Conclusion

On February 5, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during a September 1995, NRC inspection. The Duriron Company, Inc. (Licensee) responded to the Notice on February 19, 1996. The Licensee admitted Violation A, the violation assessed a civil penalty.[1] The Licensee contended that Violation A was caused by, at the most, the negligence of the Radiation Safety Officer (RSO) and was not a result of careless disregard or willfulness as described in the NRC's February 5, 1996 letter transmitting the Notice to the Licensee. The Licensee requested that the severity level of the violation be reduced from III to IV. The Licensee also requested that the civil penalty be partially or fully mitigated because: the violation was not willful or a result of careless disregard; the Licensee has a good performance history; and, the extensive corrective actions implemented by the Licensee after the violation was identified. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Violation A

10 CFR 34.25(b) requires that each sealed source be tested for leakage at intervals not to exceed six months.

Contrary to the above, the Licensee did not leak test its sealed sources at intervals not to exceed six months. Specifically:

1. A nominal 33 curie (1.22 TBq) cobalt-60 sealed source (serial number 2146) was not leak tested from January 7, 1994, to September 11, 1995, and

2. Two nominal 100 curie (3.7 TBq) iridium-192 sealed sources (serial numbers A3872 and A3873) were not tested for leakage from January 26, 1994, to September 11, 1995.

This is a Severity Level III violation (Supplement VI). Civil Penalty—$2,500.

Summary of Licensee's Response to Violation A

In the response letter dated February 19, 1996, the Licensee admitted the violation and requested the NRC reconsider the Severity Level III categorization of the violation because the violation represented neither willfulness nor careless disregard.

The Licensee stated that the NRC informed it that the Notice of Violation and Proposed Imposition of Civil Penalty—$2,500 was processed under the 1992 (emphasis added) edition of the NRC Enforcement Policy, and under that edition, ''a willful violation involves 'careless disregard of requirements, deception, or other indication of willfulness,' 10 CFR Part 2, Appendix C, Section IV.C.'' Citing the same paragraph from the 1992 edition, the Licensee stated that the reference to negligence was deleted since negligence is not willful. The Licensee also pointed out that daily radiation surveys were made and stated that the daily surveys have not detected any contamination. The Licensee further stated that records of daily surveys indicate compliance with NRC requirements.

As an additional example of an attempt to show that the RSO did not act with careless disregard, the Licensee discussed an attempt to make required leak tests of sealed sources, stating some samples were collected, but inadvertently were not submitted for analysis in a timely fashion.

In conclusion, the Licensee contended that without willful conduct, the violation is correctly categorized at Severity Level IV rather than Severity Level III.

NRC Evaluation of Licensee's Response to Violation A

The Licensee is in error in its statement that the NRC informed it that the enforcement action was processed under the 1992 edition of the NRC Enforcement Policy. The two examples of Violation A began on January 7 and January 26, 1994, respectively. Therefore, the controlling edition of the NRC Enforcement Policy was published in 10 CFR Part 2, Appendix C, effective on January 1, 1994, which was the Enforcement Policy in effect for a significant duration of the violation, as stated by the NRC in its February 5, 1996 letter to the Licensee. Nevertheless, the Licensee is correct in the assertion that mere negligence is not a form of willfulness for purposes of the NRC Enforcement Policy.

The 1994 Enforcement Policy, Section IV.C, provides that the severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard or other indication of willfulness. Further, the term ''willfulness'' embraces a spectrum of violations including careless disregard. Also, the position and responsibilities of the individual involved in the violation, e.g., licensee official,[2] will be considered in assessing the severity level of a violation.

In any NRC-licensed radiation safety program, the RSO is a licensee's focal point

[1] A second violation, Violation B, was identified during the inspection. Violation B concerned the Licensee's failure to inventory sealed sources at the intervals specified by 10 CFR 34.26. The licensee also contested Violation B. The NRC's evaluation of the Licensee's request for withdrawing Violation B is contained in the ''Evaluation of Violation Not Assessed a Civil Penalty'' which follows the evaluation of Violation A.

[2] 10 CFR Part 2, Appendix C, Paragraph IV.C, Footnote 7, provides that for purposes of the NRC Enforcement Policy, a Radiation Safety Officer is considered a licensee official.

for radiation safety activities. The RSO and senior managers of a licensee are considered by the NRC to be responsible for implementing and maintaining the radiation safety program. In this case, the Licensee's current RSO was approved when License Amendment No. 14 was issued by the NRC on May 18, 1988.

The Licensee's NRC-licensed program was operated in a safe manner with a minimum of violations from May 18, 1988, until January 1994, at which time the leak tests of sealed sources was stopped. The RSO attributed this turn of events to increased demands on his time as a supervisory radiographer. The NRC inspection established that the RSO knew the Licensee was required to perform leak tests at specified intervals because the RSO told the NRC inspector that he understood the requirement. Discussions with the RSO and a review of records indicated that leak tests were not performed after January 1994. Further, the RSO told the NRC inspector that: (1) He knew the NRC required sealed sources to be leak tested; (2) he knew the leak test requirement was not being fulfilled; (3) he did not promptly implement corrective action to insure that leak tests were performed; and, (4) he had not informed Licensee managers of his need for assistance in either production radiography or the radiation safety program. Considering the RSO's statements to the NRC inspector, along with the position and responsibilities of the RSO for implementing the Licensee's radiation safety program, the NRC considers the RSO's actions to represent willful misconduct. The RSO demonstrated at least careless disregard of NRC requirements, not merely negligent conduct as advanced by the Licensee.

The Licensee also argues that daily radiation surveys would identify any leakage from a sealed source and the Licensee had not identified any loss of containment through daily surveys. The Licensee is incorrect in this statement as a direct radiation survey would not identify leakage since it does not distinguish between the radiation field emitted from an unbreached sealed source or that from a leaking source. Therefore, daily surveys are not a substitute for required leak tests.

The Licensee's discussion of an attempt to make required leak tests of sealed sources to demonstrate that the RSO was not acting with careless disregard is not persuasive when the Licensee stated that some samples were collected, but inadvertently were not submitted for analysis. It is true that leak test samples were gathered. However, the samples were not marked with the identity of the source tested. Therefore, the RSO was unable to correlate a sealed source with a specific sample. Based on a lack of identity of the samples and inability to correlate samples to sources, test samples were not submitted for analysis. It appears that the RSO's decision not to submit the test samples was based on the problems with the samples and not an inadvertent error on the part of the RSO as contended by the Licensee.

In conclusion, the Licensee did not offer any new information that would cause the NRC to withdraw Violation A or reduce the severity level of the violation.

Summary of Licensee's Request for Mitigation

The Licensee contended that the civil penalty should be mitigated because of the Licensee's demonstrated good performance, having had only one minor recordkeeping violation during the previous 11 NRC inspections. The Licensee further stated that the acknowledged cooperation of the Licensee's Radiation Safety Officer (RSO) during the inspection signifies that there was no attempt to conceal any violations from the inspector and that records the RSO provided to the inspector demonstrate compliance with NRC requirements. Finally, the Licensee asks the NRC to reconsider the civil penalty because of the corrective actions implemented to prevent recurrence of the violations.

NRC Evaluation of Licensee's Request for Mitigation

The Licensee's good performance was considered in assessing the civil penalty adjustment factor for past performance. However, the NRC does not expect its licensees to willfully violate its requirements; therefore, it is inappropriate to make any adjustment for a licensee's good past performance when assessing a potential civil penalty for a willful violation.

The Licensee argued that the civil penalty should also be mitigated because the RSO cooperated with the NRC inspector and he did not attempt to conceal any violations from the inspector. The NRC acknowledged the RSO's cooperation. However, the NRC expects its licensees and their employees to act with complete candor when dealing with the NRC; thus mitigation is not warranted. A basis for mitigation would only be associated with self-identification of the violation by a licensee or prompt and extensive corrective actions. Mitigating credit was given to the Licensee in assessing the civil penalty adjustment factor for self-identification of a violation. Corrective action is discussed in the following paragraph.

The Licensee also asked the NRC to consider mitigating the civil penalty because of the corrective actions that have been implemented to prevent recurrence of the violation. The NRC considered the Licensee's long term corrective action in assessing the civil penalty adjustment factor for corrective action. The NRC recognized that the actions to prevent recurrence were comprehensive and the NRC would normally mitigate a civil penalty for such corrective measures. However, the Licensee's RSO was aware of the violation for more than one year and he did not take any action to promptly correct the violation. A failure to take immediate corrective action would normally be considered as an escalating factor in assessing a civil penalty. In this case, escalation for failing to perform immediate corrective actions is offset by equal mitigation for the long term actions. Therefore, the amount of the base civil penalty was not adjusted for the corrective action factor.

The Licensee did not offer any new information that would cause the NRC to mitigate or remit the civil penalty for Violation A.

NRC Conclusion

The NRC has concluded that this violation occurred as stated and the Licensee has not provided an adequate basis for a reduction of the severity level or for mitigation or remission of the civil penalty. Consequently, the proposed civil penalty in the amount of $2,500 is imposed.

Evaluation of Violation Not Assessed a Civil Penalty

On February 5, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for two violations identified during an NRC inspection. One violation, Violation A, was assessed a civil penalty. (See the Appendix, ''Evaluation and Conclusion,'' to the accompanying Order Imposing Civil Penalty for the details associated with Violation A.)

The second violation, Violation B, was cited for the Licensee's failure to conduct the quarterly inventory of all sealed sources, as required by 10 CFR 34.26. Violation B was categorized at Severity Level IV and was not assessed a civil penalty. The Duriron Company, Inc. (Licensee) responded to the Notice on February 19, 1996, and denied Violation B. The NRC's evaluation and conclusion regarding the Licensee's denial of Violation B are as follows:

Restatement of Violation B

10 CFR 34.26 requires, in part, that the Licensee conduct a quarterly inventory to account for all sealed sources.

Contrary to the above, from June 10, 1994, to September 11, 1995, an interval encompassing at least four quarterly periods, the Licensee did not conduct an inventory to account for all of its sealed sources. Specifically, five iridium-192 sealed sources that were in storage were not included in the quarterly inventory.

This is a Severity Level IV violation (Supplement VI).

Summary of Licensee's Response to Violation B

The Licensee states that the inventories were conducted by visual surveys, but notes of these surveys were not completed or transcribed in the correct format. The Licensee claims that the RSO was embarrassed by his failure to maintain his inventory records and did not show the records to the NRC inspector because of his embarrassment. The Licensee attached two pages of records to the February 19, 1996 response and indicated that the information on those pages demonstrated compliance with the NRC inventory requirement.

NRC Evaluation of Licensee's Response

The Licensee claims in the February 19, 1996 letter that inventories were conducted by visual survey. However, the RSO told the NRC inspector that he last inventoried the NRC-licensed materials on January 7 and June 10, 1994. The RSO attributed his failure to inventory the sources to the constraints placed on his time as a supervisory radiographer and RSO.

As of the date of the inspection, the Licensee possessed eight sealed sources consisting of one cobalt-60 source and seven

iridium-192 sources. (The cobalt-60 source and two iridium-192 sources are used almost every day. The five remaining iridium-192 sources are in storage.) In citing the violation, the NRC credited the Licensee with having complied with the inventory requirement for the three sources that are in virtually daily use and cited the Licensee for failing to conduct the quarterly inventory of the sealed sources that were in storage.

The Licensee copied four records onto the first page attached to the February 19, 1996 letter and represented those copies as examples of inventory records. None of the records list the source by serial number or indicate the date the inventory was made. Therefore, with the exception of the record for one cobalt-60 source, the records submitted with the Licensee's February 19, 1996 letter do not show that an inventory was made and cannot be used in evaluating the Licensee's response to the NOV.

The second page attached to the Licensee's February 19, 1996 letter shows three sealed sources by serial number and isotope were inventoried on June 10, 1994. The NRC considered that inventory while assessing the violation and did not cite the Licensee for that inventory. Rather, the cited violation was for the quarterly inventories that were not performed from June 11, 1994, to the September 1995 inspection. The Licensee's February 19, 1996 letter did not provide any information to show that quarterly inventories were made from June 11, 1994, to September 11, 1995.

NRC Conclusion

The Licensee has not provided an adequate basis for withdrawal of the violation. Therefore, NRC concludes that the violation occurred as stated in the Notice.

[FR Doc. 96–9666 Filed 4–18–96; 8:45 am]

BILLING CODE 7590–01–P

Commonwealth Edison Company; LaSalle County Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–373 and 50–374]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–11 and NPF–18, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application dated February 20, 1996, for an exemption from certain requirements of 10 CFR 73.55, ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage.'' The requested exemption would allow the implementation of a hand geometry biometric system of site access control in conjunction with photograph identification badges and would allow the badges to be taken off site.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55(a), the licensee is required to establish and maintain an onsite physical protection system and security organization.

In 10 CFR 73.55(d), ''Access Requirements,'' it specifies in part that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' In 10 CFR 73.55(d)(5), it specifies in part that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It further indicates that an individual not employed by the licensee (e.g., contractors) may be authorized access to protected areas without an escort provided the individual, ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area.''

Currently, unescorted access for both employee and contractor personnel into the LaSalle County Station, Units 1 and 2, is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into the protected areas is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. The picture badges are issued, stored, and retrieved at the entrance/exit location to the protected area. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site. The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area. The proposal would also allow contractors who have unescorted access to keep their picture badges in their possession when departing the LaSalle site. In addition, the site security plans will be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the LaSalle site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed exemption would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. Under the proposed system, all individuals with authorized unescorted access will have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system in addition to their picture badges. Therefore, all authorized individuals must not only have their picture badges to gain access into the protected area, but must also have their hand geometry confirmed.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. The proposed system is only for individuals with authorized unescorted access and will not be used for individuals requiring escorts.

The underlying purpose for requiring that individuals not employed by the licensee must receive and return their picture badges at the entrance/exit is to provide reasonable assurance that the access badges could not be compromised or stolen with a resulting risk that an unauthorized individual could potentially enter the protected area. Although the proposed exemption will allow individuals to take their picture badges off site, the proposed measures require not only that the picture badge be provided for access to the protected area, but also that verification of the hand geometry registered with the badge be performed as discussed above. Thus, the proposed system provides an identity verification process that is equivalent to the existing process.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as

defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Denial of the requested action would not significantly enhance the environment in that the proposed action will result in a process that is equivalent to the existing identification verification process.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated November 1978, related to the operation of the LaSalle County Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on March 22, 1996, the NRC staff consulted with the Illinois State official, Mr. Frank Niziolek, Head, Reactor Safety Section, Division of Engineering, Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 20, 1996, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Jacobs Memorial Library, Illinois Valley Community College, Oglesby Illinois 61348.

Dated at Rockville, Maryland, this 16th day of April, 1996.

For the Nuclear Regulatory Commission.

Donna M. Skay,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–9668 Filed 4–18–96; 8:45 am]

BILLING CODE 7590–01–P

Issuance of Bulletin; NRC Bulletin 96–02, Movement of Heavy Loads Over Spent Fuel, Over Fuel in the Reactor Core, or Over Safety-Related Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued NRC Bulletin 96–02 to holders of operating licenses for nuclear power reactors to verify that licensees are complying with the current licensing basis for each of their facilities with respect to the proper handling and control of heavy loads at nuclear power plants when the plant is operating (in all modes other than cold shutdown, refueling and defueled). The issuance of this bulletin is justified on the basis of the need to ensure compliance with the current licensing basis regarding the weight of heavy loads being moved over spent fuel, over fuel in the reactor core, or over safety-related equipment, and the potentially severe consequences that can result if a load is dropped. Although this bulletin is particularly concerned with heavy load movements while the reactor is operating, the NRC staff is considering further generic actions on the issue of handling heavy loads both while the reactor is operating and during shutdown. This bulletin is available in the NRC Public Document Room under accession number 9604080259. This bulletin is discussed in Commission information paper SECY–96–073 which is also available in the NRC Public Document Room.

DATES: The bulletin was issued on April 11, 1996.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Brian E. Thomas, (301) 415–1210 (or Internet:BET@NRC.GOV).

SUPPLEMENTARY INFORMATION: The NRC has determined that some licensees have engaged in, or are planning to engage in, heavy load handling activities that may not be within the current licensing basis of their respective facilities. As defined in Title 10 of the Code of Federal Regulations, under Section 50.59(c), if an activity is found to involve an unreviewed safety question, an application for a license amendment must be filed with the Commission pursuant to 10 CFR 50.90. Consequently, the NRC has requested that holders of operating licenses for nuclear power reactors review their plans and capabilities for handling heavy loads in accordance with existing regulatory guidelines, determine whether the activities are within their licensing basis as previously analyzed in the final safety analysis report (and, as appropriate, submit a license amendment request), and determine whether changes to Technical Specifications will be required. All licensees that are planning to implement activities involving the handling of heavy loads during reactor operation (i.e., other than when the reactor is in cold shutdown, refueling or defueled), within the next 2 years from the date of this bulletin, are required to submit a report that addresses the information requested above, and to submit license amendment requests 6–9 months in advance of the planned heavy load movements to give the NRC sufficient time to perform an appropriate safety review.

Dated at Rockville, Maryland, this 11th day of April, 1996.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–9667 Filed 4–18–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21894; File No. 812–9970]

Equitable Life Insurance Company of Iowa, et al.

April 15, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Equitable Life Insurance Company of Iowa (''Equitable'') and Equitable Life Insurance Company of Iowa Separate Account A (the ''Account'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 26(b) of the 1940 Act approving the proposed substitution of securities and pursuant to Section 17(b) of the 1940 Act exempting the proposed transaction from the provisions of Section 17(a) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order approving the proposed substitution of shares of the Advantage Portfolio of the Equi-Select Series Trust (the ''Trust'') for shares of the Government Securities Portfolio (the ''GS Portfolio'') and the Short-Term Bond Portfolio (the ''STB Portfolio'') (collectively, with the Advantage Portfolio and the GS Portfolio, the ''Portfolios'') of the Trust. Applicants also seek an order exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit Applicants to carry out the above-referenced substitution by redeeming shares of the GS Portfolio and of the STB Portfolio in kind or partly in kind and using the redemption proceeds to purchase shares of the Advantage Portfolio.

FILING DATE: The application was filed on January 31, 1996. Applicants represent that an amendment to the application will be filed during the notice period and that such amendment will include the representations as contained herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 10, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, John A. Merriman, General Counsel, Equitable Life Insurance Company of Iowa, 604 Locust Street, Des Moines, Iowa 50309.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Counsel, Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

1. Applicants' Representations

Equitable, a stock life insurance company organized under Iowa law in 1867, serves as the sponsor and the depositor of the Account. Equitable is a wholly-owned subsidiary of Equitable of Iowa Companies, a publicly held company.

2. The Account, established by Equitable under Iowa law on January 24, 1994, is registered with the Commission as a unit investment trust. The Account funds certain individual flexible purchase payment deferred variable annuity contracts issued by Equitable (the ''Contracts''). The Account currently has fourteen subaccounts, each of which invests in and reflects the performance of a corresponding series of the Trust or of another underlying mutual fund. The Trust is registered with the Commission as an open-end management investment company.

3. The GS Portfolio seeks total return by investing for a high level of current income with a moderate degree of share-price fluctuation. During normal market conditions, the GS Portfolio invests at least 80% of its total assets in U.S. government securities. The STB Portfolio seeks total return by investing for a high level of current income with a low degree of share-price fluctuation. The STB Portfolio invests primarily in short and intermediate term investment grade debt obligations. The Advantage Portfolio seeks current income with a very low degree of share-price fluctuation. The Advantage Portfolio invests primarily in short-term investment grade obligations. Shares of the GS Portfolio and the STB Portfolio are purchased without sales charge by separate subaccounts of the Account at the net asset value next determined following receipt of a purchase payment by the respective subaccount. Applicants state that any dividend or capital gain distributions received from the Portfolios are reinvested in additional shares of the Portfolios and retained as assets of the applicable subaccounts. Shares of the Portfolios are redeemed without charge to the extent necessary for Equitable to make annuity or other payments under the Contracts.

4. Equitable Investment Services, Inc. (''EISI''), the investment adviser to the Trust, is a registered investment adviser, a wholly owned subsidiary of Equitable of Iowa Companies and an affiliate of Equitable. As investment adviser to the Trust, EISI provides overall management of the investment strategies and policies of the Portfolios. EISI entered into a subadvisory agreement with Strong Capital Management, Inc. (''Strong'') pursuant to which Strong served as subadvisor to the Portfolios. Strong is not affiliated with Equitable. Applicants state that, effective April 1, 1996, the subadvisroy agreement terminated and EISI assumed the portfolio management functions for the Portfolios. Upon termination of the subadvisory agreement, Applicants state that the fees payable to EISI from the Portfolios did not change.

5. Prior to October 6, 1995, EISI and Strong waived the advisory fees for each of the Portfolios. EISI also undertook to bear all operating expenses of each of the Portfolios in excess of .75% of each Portfolio's average daily net assets, excluding the advisory fees payable to EISI. Beginning October 6, 1995, EISI and Strong began to accrue advisory fees from the Portfolios. EISI did undertake, however, to reimburse the Advantage Portfolio, the STB Portfolio and the GS Portfolio for all operating expenses, excluding advisory fees, in excess of .30%, .30% and .50% respectively, of each Portfolio's average daily net assets. This undertaking may terminate at any time, without notice to the Portfolios' shareholders. For the year ended December 31, 1995, Applicants state that the advisory fee waivers attributed to the Portfolios amounted to $33,430 and EISI had reimbursed the Trust $175,284 for the Portfolios' expenses in excess of the then current expense limitations.

6. Applicants propose to substitute shares of the Advantage Portfolio for all shares of the GS Portfolio and the STB Portfolio attributable to the Contracts (the ''Removed Funds''). The application states that, soon after its filing, Equitable will supplement the prospectus for the Account to reflect the proposed substitution. The application further states that the substitution will occur as soon as practicable after receipt of the order requested in the application.

The Proposed Substitution

1. Applicants state that, upon receipt of the order requested in the application, Equitable will redeem shares of each of the Removed Funds. Simultaneously, Equitable will use the proceeds of the redemption to purchase the applicable number of shares of the Advantage Portfolio. Applicants state that the substitution will occur at relative net asset values of the Portfolios with no change in the amount of any Contract owner's Contract value. Further, there will be no imposition of a transfer or similar charge.

2. Applicants note that, in connection with the proposed redemption by Equitable of the Removed Funds, certain brokerage fees and expenses will be incurred. The expenses will be charged to the appropriate Portfolio but borne by Equitable as described in the application. To alleviate the impact of the brokerage fees and expenses upon the Removed Funds and ultimately

upon Equitable, the Trust and EISI propose that the redemption of the Removed Funds be accomplished, in part, by in kind payments.

3. Applicants state that, on the date of the substitution, the Trust will transfer to Equitable cash and/or securities held by the Removed Funds. Equitable will then use such cash and/or securities to purchase shares of the Advantage Portfolio. Applicants state that the valuation of any in kind transfers will be on a basis consistent with the valuation procedures for the assets of the Removed Funds and for the Advantage Portfolio.

4. Applicants state that all expenses and transaction costs incurred in connection with the proposed substitution, including legal and accounting fees and brokerage commissions, will be paid by Equitable. Applicants also state that the proposed substitution will not alter the tax or insurance benefits available to owners under the Contracts. Furthermore, the proposed substitution will not alter the contractual obligations of Equitable.

5. In addition to the prospectus supplements distributed to Contract owners, Applicants represent that, within 5 days after the proposed substitution, Equitable will send to the Contract owners a written notice (the ''Notice'') informing them that shares of the Removed Funds have been eliminated and that shares of the Advantage Portfolio have been substituted. With the Notice, Equitable will include the prospectus supplement of the Account which describes the substitution. The Notice will advise owners of the Contracts that, for a period of thirty days from the mailing date of the Notice, they may transfer all assets, as substituted, to any other available subaccount of the Account. This transfer may be made without limitation and without charge. Applicants represent that after the substitution, Contract owners will be afforded the same Contract rights, including those of surrender and transfer, that the owners currently have. At present, there are no surrender fees or redemption charges imposed under the Contracts; however, applicable deferred sales charges are imposed. These charges will remain after the substitution.

Applicants' Legal Analysis

Request for an Order Under Section 26(b)

1. Section 26(b) of the 1940 Act provides in pertinent part that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent nonscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants represent that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants assert that the purposes, terms and conditions of the proposed substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that the Section is designed to prevent. Applicants assert that the substitution is an appropriate solution to the limited Contract owner interest and investment in the Removed Funds. Applicants state that this interest is, and in the future can be expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

3. Applicants state that the substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against. Applicants note that the objectives, policies and restrictions of the Removed Funds are substantially similar to the objectives, policies and restrictions of the Advantage Portfolio, thereby continuing to fulfill the Contract owners' objectives and risk expectations. Additionally, Applicants note that the advisory fees incurred by the Advantage Portfolio are 33% less than those incurred by the GS Portfolio and 23% less than those incurred by the STB Portfolio with respect to the first $100 million of assets under management and remain lower through all breakpoints after $100 million. Finally, Applicants represent that the substitution is expected to confer certain modest economic benefits on Contract owners by virtue of enhanced asset size.

4. Applicants note that the total expenses of each of the Removed Funds as a percentage of the net assets of each Portfolio have remained relatively high for these types of portfolios (4.92% for the GS Portfolio and 6.18% for the STB Portfolio for the year ended December 31, 1995). Applicants state that a large portion of these expenses is fixed. Because the size of each of the Removed Funds is relatively small, and unlikely to grow significantly, Applicants note that the current expenses represent and may continue to represent a relatively large percentage of the Removed Funds' average net assets. The total expense ratio for the year ended December 31, 1995 for the Advantage Portfolio was 2.13% of average net assets. Applicants note that, because the Advantage Portfolio's growth would be enhanced by the substitution, greater economies of scale would be expected. Contract owners should, therefore, benefit after the substitution from the lower expense ratio of the Advantage Portfolio.

5. Applicants note that the relatively small size of the Removed Funds hampers the ability to maintain optimal diversification. Applicants maintain that the larger size of the Advantage Portfolio lends itself to greater flexibility in purchasing attractive securities. Accordingly, the Advantage Portfolio can achieve greater diversification and more readily react to changes in market conditions. Further, Contract owners will benefit through the more effective management of a larger portfolio such as the Advantage Portfolio.

Request for an Order Under Section 17(b)

1. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, acting as principal, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of such affiliated persons, acting as principal, from purchasing any security or other property from such registered investment company.

2. The proposed substitution may be deemed to entail one or more purchases or sales of securities between and among affiliated persons as a result of the purchase by the subaccounts of the Account of shares of the Advantage Portfolio with proceeds from the redemption of shares in kind of the Removed Funds. Applicants state that the proposed substitution could come within the scope of Section 17(a) of the 1940 Act. Applicants therefore request an exemption from Section 17(a) of the 1940 Act under Section 17(b).

3. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a transaction prohibited by Section 17(a) upon application if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicants assert that the facts and circumstances of the proposed substitution meet the standards set forth in Section 17(b).

4. Applicants note that the Contracts reserve to Equitable the right to replace shares of the Portfolios held by the Account with shares of another portfolio if: (a) Shares of the Portfolios should no longer be available for investment by the Account; or (b) in Equitable's judgment, further investment in the Portfolios should become inappropriate in view of the purpose of the Contracts, provided any such substitution is approved by the Commission and is in compliance with the applicable rules and regulations. Applicants state that Equitable believes further investment in the Removed Funds is no longer appropriate in light of the Contracts' purposes.

Applicants' Conclusions

1. Applicants assert that, for the reasons and upon the facts set forth in the application, the requested order approving the proposed substitution under Section 26(b) should be approved as consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants assert that the requested order pursuant to Section 17(b) exempting Applicants from the provisions of Section 17(a) in connection with the proposed substitution is appropriate because the terms of the proposed substitution are reasonable and fair and do not involve overreaching. Applicants also assert that the proposed substitution is consistent with the investment policy of each investment company concerned and with the purposes of the 1940 Act. Furthermore, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9695 Filed 4–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No.35–26503]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

April 12, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. ALl interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 6, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corp., et al. (70–8469)

Central and South West Corporation (''CSW''), a registered holding company, CSW Energy, Inc. (''CSW Energy''), a wholly-owned non-utility subsidiary company of CSW, and four special-purpose, wholly-owned subsidiary companies of CSW Energy—CSW Sweeny GP, Inc. (''Sweeney GP I''), CSW Sweeny GP II, Inc. (''Sweeney GP II''), CSW Sweeny LP, Inc. (''Sweeny LP I''), and CSW Sweeny LP II, Inc. (''Sweeny LP II'')—all of 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas, 75202, have filed a post-effective amendment, under sections 6, 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 42, 43, 45, and 51 thereunder, to an application-declaration filed under sections 6, 7, 9(a), 10, and 12(b)(of the Act and rules 45 and 51 thereunder.

By order dated December 9, 1994 (HCAR No. 26184) (''Order''), CSW and CSW Energy were authorized to invest in and develop, construct, own, and operate qualifying congeneration facility—the Sweeny Congeneration Project (''Project'')—through a special purpose limited partnership, the Sweeny Generation Limited Partnership (''Partnership''). CSW Energy was authorized to invest in the Partnership through several general and limited partnership—Sweeney GP I, Sweeney GP II, Sweeny LP I and Sweeny LP II (''Sweeny Subsidiaries'').

The Order authorized CSW Energy and the Partnership to incur up to $20 million in development expenses for the Project (''Development Expenses''), which would be funded by equity contributions, loans, or open account advances from CSW to CSW Energy, from CSW Energy to the Sweeny Subsidiaries, and from the Sweeny Subsidiaries to the Partnership.

CSW, CSW Energy, and the Sweeny Subsidiaries (''Applicants'') now purpose (i) to obtain third-party construction and term financing, of up to $250 million, through a credit facility (''Credit Facility''); (ii) to provide advances (''Advances'') to the Partnership in an amount not to exceed $250 million in the event construction financing has not been secured as of the commencement of construction; (iii) to obtain or arrange for irrevocable standby letters of credit (''Letters'') and a revolving working capital credit line of up to $50 million; and (iv) to provide up to $300 million in equity support to the Project.

Applicants propose that the Partnership obtain the Credit Facility through one or more third-party lending institutions (''Project Lender''). The Credit Facility would include a construction loan of up to $250 million. The construction loan would have a term of up to five years and thereafter would be converted to, or refinanced by, a term loan or a combination of a term loan and equity contributions from CSW Energy and one or more non-associate companies (''New Partner'') prior to or upon the completion of the Project, which is expected to occur before December 31, 2000.

It is anticipated that the term loan would be repaid over a term of up to 25 years. The interest cost to the Applicants under the Credit Facility is not anticipated to exceed the prime

commercial lending rate of Mellon Bank in effect from time to time plus 4%.

To meet project milestones and completion deadlines, the Partnership might be required to begin construction prior to acquisition of the third-party construction financing. Thus CSW or CSW Energy, directly or indirectly through the Sweeny Subsidiaries, might make the Advances in the form of loans, open account advances or additional contributions to the Partnership in an aggregate amount not to exceed $250 million.

The Advances would be used for construction and operation of the Project. If the Advances are in the form of additional contributions, then the Advances would be repaid out of the proceeds of the Credit Facility or out of revenues from the Project. If the Advances are made in the form of loans or open account advances, then the Advances would be made on the same terms as the loans or open account advances which have been made in respect of the Development Expenses. It is anticipated that the Advances would be refinanced by the Credit Facility or the equity contribution of the New Partner.

Independent of the Credit Facility and Advances, CSW and CSW Energy request authorization to issue corporate guaranties (''Guaranties'') and to arrange with a third-party lender (''Issuer'') for the Letters in an aggregate amount not to exceed $50 million. CSW, CSW Energy, the New Partner or the Partnership would be the account party (''Account Party'') under the Letters.

The Guaranties and Letters would support certain payment obligations of the Partnership required by third parties under project documents. The Letters would be issued for renewable terms not to exceed 10 years for the duration of the project documents to which such Letters relate. Funds drawn under the Letters would be reimbursable to the Issuer by the Account party and, upon such reimbursement, the Letters might be reinstated to the face amount. Fees payable to the Issuer by the Account Party for the Letters would not exceed 2% per annum of the face amount of the Letters, and the interest rate payable per annum on unreimbursed funds drawn under the Letters would not exceed the prime rate of the Issuer plus four percentage points.

Finally, the Project Lender might request that CSW, CSW Energy or the New Partner provide some assurance that up to $300 million of equity contributions will be made to the Project in the form of an equity support agreement, guarantee or letter of credit. Such equity support agreement, guarantee or letter of credit shall be substantially on the terms of, and reimbursable in the manner of, the Credit Facility, Advances, Guarantees or Letters. Any funds drawn under such equity support agreement, guarantee or letter of credit would be applied to amounts outstanding under the Credit Facility and would not increase the exposure of the Applicants above the amount of the Credit Facility.

Jersey Central Power & Light Company, et al. (70–8805)

Jersey Central Power & Light Company (''JCP&L''), 300 Madison Avenue Morristown, New Jersey 07960, Metropolitan Edison Company (''Met-Ed''), 2800 Pottsville Pike, Reading, Pennsylvania 19640, and Pennsylvania Electric Company (''Penelec''), 2800 Pottsville Pike, Reading, Pennsylvania 19640, all of which are electric public utility subsidiaries of General Public Utilities Corporation (''GPU''), a registered holding company, and GPU Service Corporation (together with JCP&L, Met-Ed and Penelec, ''Applicants''), 100 Interspace Parkway, Parsippany, New Jersey 07054, a service company subsidiary of GPU, have filed an application under sections 9(a) and 10 of the Act.

Applicants propose to provide (i) meter reading, billing and collection services, and customer call-center services (''Services'') for non-affiliated water and gas utility entities, including the utility agencies of cities, municipalities, counties and governmental entities (''Non-Affiliated Utilities''); (ii) billing and collection and call-center services (''Billing and Marketing Services'') to other businesses such as commercial service providers and retailers (''Non-Utility Businesses''); and (iii) consolidated electric, water and gas bills, consolidated remittance processing of electric, water and gas utility accounts and consolidated account services (''Consolidated Services'') for both Non-Affiliated Utilities and Non-Utility Businesses.

Applicants propose to provide the Services, Billing & Marketing Services, and the Consolidated Services (collectively, the ''Proposed New Services'') whether or not the Non-Utility Businesses or the customers of the Non-Affiliated Utilities are also customers of JCP&L, Met-Ed or Penelec. Agreements for the provision of the Proposed New Services will be negotiated and entered into on an arm's length basis.

Applicants propose to offer the Proposed New Services described herein from time to time through December 31, 2001; however, it is proposed that the term of any contracts to provide such services which are entered into before that date may extend beyond that date in accordance with the terms of such contracts.

Central and South West Corporation, et al. (70–8809)

Central and South West Corporation (''CSW''), a registered holding company, CSW International, Inc. (''CSWI''), and CSW Energy, Inc. (''Energy''), both wholly-owned nonutility subsidiary companies of CSW (collectively ''Applicants''), all located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, have filed an application-declaration under sections 6(a), 7, 12(b), 32 and 33 of the Act and rules 45, 53, and 54 thereunder.

Since 1990, CSW, directly or through Energy, has engaged in development activities (including preliminary studies, research, investigation and consulting) pertaining to the construction (subject to further Commission authorization) of independent power facilities, including, among other things, exempt wholesale generators (''EWGs''), as defined in section 32 of the Act. Since 1994, CSW, directly or through CSWI, has engaged in development and investment activities with respect to, among other things, EWGs and foreign utility companies (''FUCOs''), as defined in section 33 of the Act.

CSW is currently authorized under the terms of orders and supplemental orders issued under File Nos. 70–7758 [HCAR Nos. 25162 (September 28, 1990), 25414 (November 22, 1991), 25728 (December 31, 1992), and 26417 (November 28, 1995)], 70–8205 [HCAR Nos. 25866 (August 6, 1993) and 26416 (November 28, 1995)], and 70–8423 [HCAR Nos. 26156 (November 3, 1994) and 26383 (September 27, 1995)] (collectively, the ''Financing Orders'') to finance the operations of CSW, Energy and CSWI, and their respective subsidiaries, by issuing and selling debt and equity securities and by issuing guarantees of the obligations of certain subsidiaries.[1]

[1] The order and supplemental order in File No. 70–8423 [HCAR Nos. 26156 (November 3, 1994) and 26383 (September 27, 1995)] also authorize CSW, directly or through CSWI or their respective subsidiaries, to provide a variety of services (including design, construction, engineering, operation, maintenance, management, administration, employment, tax, accounting, economic, financial, fuel, environmental, communications, energy conservation, demand side management, overhead efficiency, utility performance and electronic data processing, and software development and support services in connection therewith) to EWGs, FUCOs and certain foreign electric utility enterprises that are not EWGS or FUCOs.

Under the terms of the Financing Orders, CSW, among other things, may use the proceeds of common stock sales and borrowings to finance the acquisition of the securities of, or other interests in, one or more EWGs or FUCOs, as defined in sections 32 and 33 of the Act, and may issue guarantees of the obligations of such entities, provided that the sum of the guarantees at any time outstanding and the net proceeds of common stock sales and borrowings by CSW that may at any time be used by CSW to fund investments in EWGs or FUCOs (or in Energy, CSWI or project parents to facilitate investments in EWGs or FUCOs) shall not, when added to CSW's ''aggregate investment'' (as defined in rule 53(a) under the Act) in all EWGs and FUCOs, exceed 50% of CSW's ''consolidated retained earnings'' (as defined in rule 53(a)). This investment limitation is consistent with the investment limitation contained in rule 53(a)(1).

Applicants request the Commission to modify this limitation, and exempt them from the requirements of rule 53(a)(1), to permit CSW to use the net proceeds of common stock sales and borrowings to acquire, directly or indirectly, the securities of, or other interests in, EWGs and FUCOs, and to issue guarantees of the obligations of such entities (all as authorized by and in accordance with the terms of the Financing Orders) in an aggregate amount that, when added to CSW's direct and indirect ''aggregate investment,'' as defined, in all EWGs and FUCOs, would not at any time exceed 100% of CSW's ''consolidated retained earnings,'' as defined. The current amount of CSW's ''aggregate investment,'' as defined, in EWGs and FUCOs (approximately $825 million as of February 1, 1996) represents approximately 45% of its ''consolidated retained earnings,'' as defined (approximately $1.85 billion as of December 31, 1995). Increasing this limitation as Applicants propose would allow financing of additional investments in EWGs and FUCOs of approximately $1.022 billion.[2]

Applicants state that CSW is committed to making additional investments in EWGs and FUCOs, primarily because (1) for over ten years there has been, and for at least the next three years there is projected to be, no need for CSW to make new equity investment in any of its utility subsidiaries; (2) acquisitions of EWGs and FUCOs give CSW the opportunity to continue to grow through reinvestment of retained earnings in an industry sector that CSW has decades of experience in, while at the same time diversifying overall asset risk; and (3) CSW has purposely invested in utility systems in foreign countries where deregulation of and competition in retail and wholesale electricity markets is more fully developed than in the United States in order to gain valuable experience with deregulated markets that will enhance CSW's ability to make its core domestic utility operations more competitive and efficient in the future as the United States moves toward deregulation and increased competition. Applicants also describe comprehensive procedures that CSW has established to identify and address risks involved in EWG and FUCO investments.

CSW states that the use of financing proceeds and guarantees to make investments in EWGs and FUCOs to the proposed increased level will not have a substantial adverse impact on the financial integrity of the CSW system or an adverse impact on any utility subsidiary of CSW or its customers or on the ability of the affected state commissions to protect such customers. Applicants also state that CSW will not seek recovery through higher rates to its utility subsidiaries' customers in order to compensate CSW for any possible losses that it may sustain on investments in EWGs and FUCOs or for any inadequate returns on such investments.

General Pubic Utilities Corporation, et al. (70–8817)

General Pubic Utilities Corporation (''GPU''), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its subsidiary companies, Jersey Central Power & Light Company (''JCP&L''), 300 Madison Avenue, Morristown, New Jersey 07962, Metropolitan Edison Company (''Met-Ed''), P.O. Box 16001, Reading, Pennsylvania 19640, Pennsylvania Electric Company (''Penelec''), P.O. Box 16001, Reading, Pennsylvania 19640, and Energy Initiatives, Inc. (''EI''), One Upper Pond Road, Parsippany, New Jersey 07054 (collectively, GPU, JCP&L, Met-Ed, EI and Penelec, ''ENCON Applicants''), and GPU Service Corporation (''Service''), 100 Interpace Parkway, Parsippany, New Jersey 07054, have filed an application-declaration under sections 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 90 and 91 thereunder.

Pursuant to state authorizations, JCP&L, Met-Ed and Penelec currently provide certain engineering and consulting services to their own electric utility customers within their respective service territories as part of their utility businesses. These previously authorized activities relate to what GPU calls conditioned power services, which are designed to prevent, control or mitigate the adverse effects of power disturbances in a customer's electrical system to ensure the power quality required by customers. particularly for their sensitive electronic equipment.

The ENCON Applicants now propose to engage in the provision of energy-related engineering services, as well as technical and analytical consulting services in connection with energy-related matters. Such activities may also entail the marketing, installation, operation and maintenance of various products and systems, designed to implement the energy management, demand-side management and load management solutions recommended in the course of providing these services (collectively, referred to as ''ENCON Services'').

Specifically, ENCON Services will, include the following activities: (1) The identification of energy and other resource (water, labor, maintenance, materials, etc.) cost reduction and/or efficiency opportunities; (2) the design of facility and process modifications and/or enhancements to realize such opportunities; (3) the management of, or the direct construction or installation of energy conservation or energy efficiency equipment; (4) the training of client personnel in the operation of equipment; (5) the maintenance of energy systems; (6) the design and/or management of and/or the direct construction or installation of new and retrofit heating, ventilating and air conditioning, electrical and power systems, motors, pumps, lighting, waster and plumbing systems, and related structures, to realize energy and other resource efficiency goals or to otherwise meet a customer's energy needs; (7) system commissioning (i.e. observing the operation of the installed system to insure that it meets the design specifications; (8) the reporting of system results; (9) the design of energy conservation programs; (10) the implementation of energy conservation programs; (11) the provision of conditioned power services and related

[2] Applicants note that additional investments in EWGs and FUCOs totaling approximately $1.215 billion are contemplated and acknowledge that the additional financing authority requested will not be sufficient, as of December 31, 1995, to enable CSW to make investments in all EWG and FUCO projects it is presently investigating or developing. Applicants anticipate, however, that such limitations will be abated to the extent that the development of all projects currently under consideration is not consummated and that CSW's ''consolidated retained earnings,'' as defined, increase prior to consummation of the contemplated investments.

equipment; and (12) other similar or related activities.

The ENCON Applicants propose to: (1) Invest, through December 31, 1998, up to an aggregate principal amount of $25 million in the engineering and consulting business; (2) expand the scope of their engineering and consulting services beyond conditioned power services so as to encompass the ENCON Services listed above; and (3) provide such ENCON Services both within and beyond the boundaries of the service territories of JCP&L, Met-Ed and Penelec.

One or more of the ENCON Applicants have been engaged in discussions with non-affiliated engineering and consulting companies (''ENCONCo'') which are actively providing ENCON Services (''ENCON Business''). One or more the ENCON Applicants may acquire an interest in the ENCON Business directly or through: (1) The acquisition of securities of an ENCONCo; (2) new wholly owned or partly owned subsidiary companies to be formed (each, an ''ENCON Subsidiary''); and/or (3) a joint venture involving any of the foregoing and an ENCONCo or its affiliate (each, an ''ENCON JV''). Notwithstanding the foregoing, GPU will not acquire a direct interest in the ENCON Business other than through the acquisition of securities of an ENCONCo.

The ENCON Applicants request authorization for: (1) EI, ENCON Subsidiaries or ENCON JVs to provide goods and services to JCP&L, Met-Ed and Penelec; and (2) Service to provide services to ENCON Subsidiaries and ECON JVs at cost. Each ENCON Applicant, ENCON Subsidiary and ENCON JV will maintain separate financial records relating to the ENCON Business.

General Public Utilities Corporation, et al. (70–8827)

General Public Utilities Corporation (''GPU''), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered public utility holding company, and its subsidiary companies Jersey Central Power & Light Company (''JCP&L''), 300 Madison Avenue, Morristown, New Jersey 07960, Metropolitan Edison Company (''Met-Ed'') and Pennsylvania Electric Company (''Penelec''), each at P.O. Box 16001, Reading, Pennsylvania 19640, Energy Initiatives, Inc. (''EII''), One Upper Pond Road, Parsippany, New Jersey 07054, and GPU Service Corporation (''GPUSC''), 100 Interpace Parkway, Parsippany, New Jersey 07054, (collectively, ''Applicants'') have filed an application-declaration under sections 9(a), 10, 12 and 13 of the Act and rules 90 and 91 thereunder.

GPU, JCP&L, Met-Ed, Penelec and EII (each, a ''TPS Applicant'') propose to provide power to the telecommunications industry. JCP&L has been engaged in discussions with non-affiliated telecommunications companies (each, a ''Telco'') concerning the Telco's need for a mechanism to deliver power on a reliable basis to the local distribution points disbursed throughout the Telco's telecommunications network. These local distribution points, known as optical network units (''ONUs''), may be ground-based or located on utility poles, with each ONU serving a number of customer locations, depending upon the particular configuration. The ONUs, which will replace the Telco's existing wire-based power supply system, convert the lightwave signal which travels over the Telco's fiber optic network into an electrical signal which travels down a coaxial cable into the customer's premises and delivers the ultimate telecommunications services. JCP&L has developed an ONU power service unit (''ONU Power Unit'') which would be installed on the same utility pole as an ONU. The ONU Power Unit would draw power from the existing electric utility wire, convert it to the direct current required by the ONU and deliver such converted power to the ONU. The ONU Power Unit would also contain a battery backup to assure reliable service, as well as a communications device to allow remote monitoring.

The TPS Applicants propose that ONU Power Units be marketed, installed, operated and maintained in one or more Telco's service territories (which may overlap, in whole or in part, the boundaries JCP&L's, Met-Ed's or Penelec's respective service territories) and in the service territories of other telecommunications providers, regardless of location. In addition, one or more of the TPS Applicants may also seek to develop, market, install, operate and maintain other products and systems designed to address the power requirements of telecommunications providers. Such other products and systems may employ technology comparable to the ONU Power Unit or other technologies, such as photovoltaics, fuel cells, wind and flywheels. In addition, such activities may include providing other telecommunications infra-structure services which may not utilize any of these technologies. (These telecommunications power services activities are collectively referred to as the ''TPS Business.'')

It is proposed that one or more of the TPS Applicants may acquire an interest in the TPS Business either directly, through the acquisition of securities of a Telco or otherwise, or, alternatively, through new wholly-owned or partly-owned subsidiary companies (each, a ''TPS Subsidiary''), or through a joint venture involving any of the foregoing and a Telco or a Telco affiliate (each, a ''TPS JV''). GPU states that, notwithstanding the foregoing, GPU will not acquire a direct interest in the TPS Business other than through the acquisition of securities of a Telco.

It is also requested that the Commission authorize the provision of goods and services relating to the TPS Business: (1) to JCP&L, Met-Ed and Penelec by EII or any TPS Subsidiaries or TPS JVs; and (2) to any TPS Subsidiaries and TPS JVs by GPUSC, all of which goods and services will be provided at cost in compliance with rules 90 and 91 under the Act.

It is presently expected that the aggregate amount of the TPS Applicants' investment in the TPS Business will not exceed $30 million through December 31, 1998.

The proposal to acquire securities of a Telco or any TPS Subsidiaries or TPS JVs shall expire upon the first to occur of (i) December 31, 1998 and (ii) the adoption by the Commission of Rule 58 (HCAR No. 35–26313, June 20, 1995) or such other rule, regulation or order as shall exempt the transactions as herein proposed from section 9(a) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9635 Filed 4–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21893/812–10002]

The Woodward Funds, et al.; Notice of Application

April 15, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Woodward Funds (''Woodward''), Prairie Institutional Funds (''Prairie''), NBD Bank (''NBD''), and First Chicago Investment Management Company (''FCIMCO'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of The Woodward Funds to acquire all of the assets of certain series of the Prairie Institutional Funds in exchange for shares of the The Woodward Funds. Because of certain affiliations, the series involved may not rely on rule 17a–8 under the Act.

FILING DATE: The application was filed on February 21, 1996 and amended on April 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 10, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, The Woodward Funds, c/o NBD Bank, Transfer Agent, P.O. Box 7058, Troy, Michigan 48007–7058; Prairie Institutional Funds, Three First National Plaza, Chicago, Illinois 60670.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or David M. Goldenberg, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Woodward is an open-end management investment company organized as a Massachusetts business trust. Woodward has created the following series of shares for the purpose of effecting the proposed reorganization described herein: Cash Management Fund, U.S. Government Securities Cash Management Fund, and Treasury Prime Cash Management Fund (collectively, the ''Acquiring Funds'').

2. Prairie is an open-end management investment company organized as a Massachusetts business trust. The following series of Prairie would be acquired in the proposed reorganization described herein: Cash Management Fund, U.S. Government Securities Cash Management Fund, and Treasury Prime Cash Management Fund (collectively, the ''Acquired Funds'').

3. NBD serves as the co-investment adviser to the Acquiring Funds. NBD is a wholly-owned subsidiary of First Chicago NBD Corporation (''FC–NBD''). FCIMCO serves as the co-investment adviser to the Acquiring Funds and the investment adviser to the Acquired Funds. FCIMCO is a wholly-owned subsidiary of The First National Bank of Chicago, which in turn is a wholly-owned subsidiary of FC–NBD.

4. As of January 31, 1996, FC–NBD and its affiliates held of record or through nominees 100% of the outstanding shares of each Acquired Fund, and they held or shared voting and/or investment discretion with respect to a portion of these shares.

5. The investment objective and policies of each Acquiring Fund are substantially similar to the investment objective and policies of its corresponding Acquired Fund. The principal differences are that certain fundamental policies of the Acquired Funds are non-fundamental policies of the Acquiring Funds and the Acquiring Funds are permitted to invest in other investment companies as permitted by the Act. These differences will be described in the proxy statement/prospectus to be delivered to shareholders of the Acquired Funds. The Acquiring Funds and the Acquired Funds both offer two classes of shares: Service Shares and Institutional Shares. Service Shares and Institutional Shares are sold without a sales charge to institutional investors. Service Shares are subject to a distribution fee, while Institutional Shares are not subject to such a fee.

6. In the proposed reorganization, each Acquiring Fund would acquire all of the assets and assume all of the liabilities of its corresponding Acquired Fund in exchange for shares of the Acquiring Fund. The aggregate net asset value of the full and fractional shares of an Acquiring Fund to be issued to shareholders of the corresponding Acquired Fund will equal the value of the aggregate net assets of such Acquired Fund as of the close of business on the business day immediately prior to the closing of the reorganization (the ''Valuation Date''). At or as soon as practicable after the closing of the reorganization, each Acquired Fund will be liquidated and distributed *pro rate* to its shareholders of record as of the close of business on the Valuation Date the full and fractional shares of its corresponding Acquiring Fund received in the reorganization. After such distribution, each of the Acquired Funds will be dissolved.

7. An agreement and plan of reorganization (the ''Reorganization Agreement'') has been approved by the Woodward and Prairie boards, including the disinterested members thereof. In the assessment of the reorganization and the terms of the Reorganization Agreement, the factors considered by the Woodward and Prairie boards included: (a) The compatibility of the investment objectives and policies of the Acquiring Funds and their corresponding Acquired Funds; (b) the tax-free nature of the proposed reorganization; (c) the costs associated with the proposed reorganization; (d) the effect of the reorganization on the investment advisory and rule 12b–1 fees charged to the former shareholders of the Acquired Funds; and (e) compliance with section 15(f) of the Act. Upon consideration of these factors, the Woodward and Prairie boards, including the disinterested members thereof, found that participation in the reorganization was in the best interests of each Acquiring Fund and each Acquired Fund, respectively, and that the interests of existing shareholders of the Acquiring Funds and Acquired Funds, respectively, would not be diluted as a result of the reorganization.

8. A prospectus/proxy statement describing the reorganization and the reasons therefor will be sent to shareholders of each Acquired Fund on or about May 1, 1996. Consummation of the reorganization with respect to each Acquired Fund is contingent upon receipt of the affirmative vote of the holders of at least a majority of the outstanding shares of such Acquired Fund entitled to vote on the matter. In addition to shareholder approval, the consummation of the reorganization is conditioned upon receipt from the SEC of the order requested in the application. Applicants agree not to make any changes to the Reorganization Agreement that would have a material adverse effect on the rights of shareholders or this application without the prior approval of the SEC staff.

9. The expenses incurred in connection with entering into and carrying out the provisions of the Reorganization Agreement will be paid by FC–NBD and/or certain of its direct or indirect subsidiaries.

Applicants' Legal Analysis

1. Section 2(a)(3) of the Act defines the term ''affiliated person'' of another person to include, in pertinent part, (i)

Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (ii) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person; (iii) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (iv) if such other person is an investment company, any investment adviser thereof.

2. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets involving registered investment companies that are affiliated persons, or affiliated persons of such affiliated persons, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

4. The proposed reorganization may not be exempt from the prohibitions of section 17(a) by reason of rule 17a–8 because the Acquiring Funds and the Acquired Funds may be affiliated for reasons other than those set forth in the rule. FC–NBD owns 100% of the outstanding voting securities of NBD, the co-investment adviser to the Acquiring Funds, and indirectly owns 100% of the outstanding voting securities of FCIMCO, the co-investment adviser to the Acquiring Funds and the investment adviser to the Acquired Funds. In addition, as of January 31, 1996, FC–NBD and its affiliates held of record in their own names or through nominees 100% of the outstanding shares of each Acquired Fund. Therefore, each Acquiring Fund may be deemed an affiliated person of an affiliated person of its corresponding Acquired Fund, and vice versa, for reasons not based solely on their common investment adviser.

5. Applicants believe that the terms of the reorganization satisfy the standards of section 17(b). The Woodward and Prairie boards, including the disinterested trustees thereof, have reviewed the terms of the reorganization and have found that participation in the reorganization as contemplated by the Reorganization Agreement is in the best interests of each Acquiring Fund and each Acquired Fund, respectively, and that the interests of existing shareholders of the Acquiring Funds and the Acquired Funds, respectively, will not be diluted as a result of the reorganization. Applicants state that the reorganization is consistent with each Fund's investment objective and policies because the investment objective and policies of each Acquired Fund are identical to those of its corresponding Acquiring Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9694 Filed 4–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37109; International Series Release No. 966; File No. SR–ISCC–96–02]

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change To Permit ISCC To Charge and To Collect From Members Charges Imposed by Certain Third Parties

April 12, 1996.

On March 19, 1996, the International Securities Clearing Corporation (''ISCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–ISCC–96–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to permit ISCC to charge and to collect from members charges imposed by certain third parties. Notice of the proposal was published in the Federal Register on March 28, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37000 (March 21, 1996), 61 FR 13908.

I. Description

The proposed rule change expands ISCC's authority to charge and to collect from its members fees imposed by certain third parties. In such situations, third parties will include all individual ISCC member charges in one invoice to ISCC, and ISCC will include the third parties' charges to individual members on the members' settlement statements.[3] ISCC's current rules permit ISCC to charge members for fees imposed by banks and trust companies in conjunction with the Global Clearance Network Service. The proposed rule change permits ISCC to include on its members' settlement statements charges imposed by entities or organizations with which ISCC has entered into agreements and which provide services or equipment to ISCC members which are integral to the services provided by ISCC. If a member does not consent to such charges or otherwise disputes such charges, ISCC will not fine the member for not paying to ISCC the third party's charges. In addition, ISCC will have no liability to any third party vendors for such charges.

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes ISCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act because it will facilitate access to ISCC's services by making it easier for ISCC members to obtain hardware, software, or related services or equipment necessary to fully utilize ISCC. Specifically, the proposed rule change allows ISCC to consolidate third party billings and ISCC payment obligations. Consolidation of members' payment obligations should not only simplify members' disbursement processes, it should facilitate ISCC

[3] From time to time, third parties which have entered into agreements with ISCC and which provide ISCC members with certain services or equipment that facilitate access to an ISCC service request that ISCC directly bill its members for the services or equipment that the third parties provide to members. For example, if ISCC members wanted to obtain computer hardware and/or software to access certain ISCC services, ISCC could make arrangements with a third party vendor to supply members with the appropriate hardware and/or software. The third party vendor would send a detailed monthly invoice directly to ISCC reflecting each individual member's charge. ISCC would then include the appropriate charge on each member's monthly statement. ISCC would remit to the vendor within the agreed upon time period the amount that ISCC actually collected from members in connection with the vendor's charges.

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

members' ability to obtain equipment or services that are integral to ISCC's services and that are provided by third parties. By enhancing the ability of ISCC's members to access ISCC's securities settlement services, the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions.

ISCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will facilitate ISCC members' ability to obtain on a timely basis certain computer hardware presently being offered by third parties in connection with certain ISCC services.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–ISCC–96–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9638 Filed 4–18–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37113; File No. SR–MCC–96–03]

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Pass-Through of Certain Fees and Charges and the Elimination of All Other Charges

April 15, 1996.

On March 1, 1996, the Midwest Clearing Corporation (''MCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MCC–96–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') relating to the pass-through of certain fees and charges and the elimination of all other charges.[1] On March 7, 1996, MCC amended the filing.[2] Notice of the proposal was published in the Federal Register on March 22, 1996.[3] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

The proposed rule change permits MCC to charge Sponsored Participants (''SPs'') and Temporary Sponsored Participants (''TSPs'') at cost the fees and charges assessed on MCC by the National Securities Clearing Corporation (''NSCC'') in connection with SPs' and TSPs' use of NSCC's services. The proposed rule change also eliminates all other existing MCC fees. MCC is eliminating its existing fee schedule in its entirety and replacing it with the following schedule.

Sponsored Participants and Temporary Sponsored Participants

Fees and Charges Assessed on MCC by the National Securities Clearing Corporation

Charge: Rebilled at Cost.

II. Discussion

Section 17A(b)(3)(D)[4] of the Act requires that the rules of a clearing agency provide for the equitable allocation of dues, fees, and other charges among MCC's participants. In addition, Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes MCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) because MCC will be charging SPs and TSPs at cost NSCC's fees and charges assessed on MCC for such SPs' and TSPs' use of NSCC's services. The Commission believes the proposal is consistent with Section 17A(b)(3)(F) in that it should foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by allowing MCC to pass through the NSCC charges to the parties utilizing NSCC's services.

MCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will allow MCC to not make charges under its existing fee schedule and to pass through charges to SPs and TSPs contemporaneously with NSCC assessing charges on MCC for its services to such participants.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MCC–96–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9693 Filed 4–18–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] MCC originally filed the proposed rule change under Section 19(b)(3)(A) of the Act. On March 7, 1996, MCC requested that the proposal be considered filed under Section 19(b)(2) of the Act. Telephone conversation between David T. Rusoff, Foley and Lardner [counsel to MCC], and Jerry W. Carpenter, Assistant Director, Peter R. Geraghty, Senior Counsel, and Cheryl O. Tumlin, Attorney, Division of Market Regulation, Commission (March 7, 1996).

[3] Securities Exchange Act Release No. 36982 (March 18, 1996), 61 FR 11913.

[4] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[6] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37112; International Series Release No. 967; File No. SR–NASD–96–13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Use of the New York Stock Exchange's Modified General Securities Representative Examination (Series 47) to Qualify as a General Securities Representative

April 12, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 3, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed a proposed change to Schedule C of the By-Laws that would allow persons in good standing with the Japanese securities regulators to qualify as general securities representatives (Series 7) by passing a modified general securities representative examination (Series 47) which was developed by the New York Stock Exchange (''NYSE''). The following is the full text of the proposed rule change to Schedule C. New language is italicized.

Schedule C to the NASD By-Laws

* * * * *

Part III Registration of Representatives

* * * * *

(2) Categories of Representative Registration

(a) General Securities Representative

* * * * *

(ii)

* * * * *

(h) A person presently registered and in good standing as a representative with any Japan stock exchange, or with any Japan Securities Dealers Association, and who has passed the Japan Module of the General Securities Registered Representative Examination, shall be qualified to be registered as a General Securities Representative except that such person's activities may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

It is the NASD's responsibility under Section 15A(g)(3) of the Act[3] to prescribe standards of training, experience, and competence for persons associated with NASD members. Pursuant to this statutory obligation, the NASD has developed examinations and administers examinations developed by other self-regulatory organizations designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge.

This proposed amendment to Schedule C is intended to coordinate with the recent SEC approval of a NYSE rule that allows a qualified registered representative[4] in good standing with the Japanese securities regulators to become qualified as a general securities representative (Series 7) by passing a modified general securities representative examination (Series 47) developed by the NYSE.[5] This amendment is also necessary because of the requirement of Section 15(b)(8) of the Act that requires most NYSE members to also be members of the NASD.[6] Thus, there is a dual registration requirement with both the NYSE and the NASD for individuals who perform certain functions with NYSE members. At the present time, the NASD has no rule that allows for NASD registration of a person who has passed the modified qualification examination. The Series 47 examination is 160 questions and is 240 minutes long.

2. Statutory Basis

The NASD believes the proposed rule change is consistent with the provisions of Section 15A(b)(6)[7] and Section 15A(g)(3)[8] of the Act in that the NASD is required to prescribe standards of training, experience, and competence for persons associated with NASD members. Pursuant to this statutory obligation, the NASD develops and administers examinations to establish that persons associated with NASD members have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD has neither solicited nor received written comments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–13 and should be submitted by May 10, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds, for the reasons set forth below, that the NASD's proposed rule change is consistent with the requirements of Section 15A of the Act[9] and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission believes the proposal is consistent with the

[2] The Commission notes, pursuant to a new rule numbering system for the NASD Manual anticipated to be effective no later than May 31, 1996, that this rule will become NASD Rule 1032(a)(2)(H).

[3] 15 U.S.C. 78*o*–3(g)(3).

[4] The Commission notes that in order to become a registered representative in Japan, all of the applicants, both foreign and domestic, who do not meet certain experiential requirements must pass the Securities Sales Representative Qualification Examination. This test is composed of the Class 1 Examination, the Class 2 Examination, and the Investment, Trust, and Bond Examination. An applicant's experience and area of interest determines which parts of the Securities Sales Representative Qualification Examination are applicable. *See* Securities Exchange Act Release No. 36514 (Nov. 27, 1995), 60 FR 62118.

[5] *See* Securities Exchange Act Release No. 36708 (Jan. 11, 1996), 61 FR 1808 (approving File No. SR–NYSE–95–36).

[6] 15 U.S.C. 78*o*(b)(8).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] 15 U.S.C. 78*o*–3.

requirements of Section 15A(b)(6) and Section 15A(g)(3)(B).[10]

The Commission believes the proposal is consistent with Section 15A(b)(6)[11] because it is designed to foster cooperation with persons engaged in regulating transactions in securities and to help perfect the mechanism of a free and open market. The Series 47 reduces duplicative qualification requirement and, at the same time, allows the NASD to ensure that the Japanese representatives desiring to become registered with the NASD are fully qualified.

The Commission believes the proposal is consistent with Section 15A(g)(3)(B)[12] because it establishes standards of training, experience, and competence for persons associated with NASD members. The Series 47 should provide comprehensive coverage of the topics contained in the Series 7 that are not covered, or are not covered in sufficient detail, in the Securities Sales Representative Qualification Examination. Accordingly, the Series 47, combined with the Securities Sales Representative Qualification Examination, should measure the qualifications of Japanese representatives adequately.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice in the Federal Register. This will enable qualified Japanese registered representatives subject to the dual registration requirement of Section 15(b)(8)[13] desiring to become registered with the NASD to immediately reap the benefits of reduced regulatory duplication. In addition, the NASD's proposal does not raise any new regulatory concerns because it is adopting the same Series 47 module previously proposed by the NYSE and approved by the Commission.[14] Therefore, the Commission finds that there is good cause, consistent with Section 15A of the Act,[15] to accelerate the approval of the NASD's proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NASD–96–13) is approved.

[10] 15 U.S.C. 78*o*–3(b)(6) and 78*o*–3(g)(3)(B).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78f(c)(3)(B).

[13] 14 U.S.C. 78*o*(b)(8).

[14] *See* Securities Exchange Act Release No. 36708 (Jan. 11, 1996), 61 FR 1808 (approving File No. SR–SR–NYSE–95–36).

[15] 15 U.S.C. 78*o*–3.

[16] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9636 Filed 4–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37110; File No. SR–NSCC–96–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change To Permit NSCC To Charge and To Collect from Members Charges Imposed by Certain Third Parties

April 12, 1996.

On March 19, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–96–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to permit NSCC to charge and to collect from members charges imposed by certain third parties. Notice of the proposal was published in the Federal Register on March 28, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

The proposed rule change expands NSCC's authority to charge and to collect from its members fees imposed by certain third parties. In such situations, third parties will include all individual NSCC member charges in one invoice to NSCC, and NSCC will include the third parties' charges to individual members on the members' settlement statements.[3] NSCC's current rules permit NSCC to charge members for fees imposed by self-regulatory organizations or other security industry organizations or entities with which NSCC has entered into agreements. The proposed rule change permits NSCC to include on its members' settlement statements charges imposed by entities or organizations with which NSCC has entered into agreements and which provide services or equipment to NSCC members which are integral to the services provided by NSCC. If a member does not consent to such charges or otherwise dispute such charges, NSCC will not fine the member for not paying to NSCC the third party's charges. In addition, NSCC will have no liability to any third party vendors for such charges.

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes NSCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act because it will facilitate access to NSCC's services by making it easier for NSCC members to obtain hardware, software, or related services or equipment necessary to fully utilize NSCC. Specifically, the proposed rule change allows NSCC to consolidate for its members third party billings and ISCC payment obligations. Consolidation of members' payment obligations should not only simplify members' disbursement processes, it should facilitate ISCC members' ability to obtain equipment or services that are integral to NSCC's services and that are provided by third parties. by enhancing the ability of NSCC's members to access NSCC's securities settlement services, the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will facilitate NSCC members' ability to obtain on a timely basis certain computer hardware presently being offered by third parties in connection with certain NSCC services.

[17] 17 CFR. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37001 (March 21, 1996), 61 FR 13912.

[3] From time to time, third parties which have entered into agreements with NSCC and which provide NSCC members with certain services or equipment that facilitate access to an NSCC service request that NSCC directly bill its members for the services or equipment that the third parties provide to members. For example, if NSCC members wanted to obtain computer hardware and/or software to access certain NSCC services, NSCC could make arrangements with a third party vendor to supply members with the appropriate hardware and/or software. The third party vendor would send a detailed monthly invoice directly to NSCC reflecting each individual member's charge. NSCC would then include the appropriate charge on each member's monthly statement. NSCC would remit to the vendor within the agreed upon time period the amount that NSCC actually collected from members in connection with the vendor's charges .

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–96–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9637 Filed 4–18–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12) (1995).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. Since the last list was published in the Federal Register on April 5, 1996, the information collections listed below have been proposed or will require extension of the current OMB approvals. (Call the SSA Reports Clearance Officer on (410) 965–4123 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections.)

1. *State Report of Incorrect BENDEX Information—0960–0517.* The information collected by form SSA–1086 is used by the Social Security Administration to correct its master database and to facilitate the electronic exchange of data. The respondents are state agencies who provide or receive incorrect information from SSA during the beneficiary data exchange operation.

Number of Respondents: 155
Frequency of Response: 2 times annually
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 52 hours

2. *Government Pension Questionnaire—0960–0160.* The information collected by form SSA–3885 is used by the Social Security Administration to determine if an individual's Social Security benefit should be reduced because of his or her receipt of a Government pension. The respondents are claimants for Social Security benefits who receive, or are qualified to receive, a Government pension.

Number of respondents: 76,000
Frequency of Response: 1
Average Burden Per Response: 12.5 minutes
Estimated Annual Burden: 15,833 hours

3. *Final Regulation Regarding Continuation of Full Benefit Standard for Persons Institutionalized—0960–0516.* The information collected by the Social Security Administration will be used to determine if a recipient of Supplemental Security Income benefits who is temporarily institutionalized is eligible to receive a full benefit. The respondents will be such recipients and their physicians.

Number of Respondents: 60,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 5,000 hours

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: April 10, 1996.

Charlotte Whitenight,

Reports Clearance Officer Social Security Administration.

[FR Doc. 96–9538 Filed 4–18–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2368]

Revised Notice of Guidelines for Determining Comparability of Foreign Programs for the Protection of Turtles in Shrimp Trawl Fishing Operations

SUMMARY: Section 609 of Public Law 101–162 (''Section 609'') provides that shrimp harvested with technology that may adversely affect certain sea turtles may not be imported into the United States unless there is an annual certification to Congress that the harvesting nation has a regulatory program and an incidental take rate comparable to that of the United States, or, alternatively, that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. This notice revises guidelines used by the Department of State in making such certifications, in accordance with an order issued by the U.S. Court of International Trade on December 29, 1995.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Hollis Summers, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520, telephone number (202) 647–3940.

SUPPLEMENTARY INFORMATION: Section 609 provides that shrimp or products from shrimp harvested with commercial fishing technology that may adversely affect certain species of sea turtles protected under U.S. laws and regulations may not be imported into the United States unless the President certifies to Congress by May 1, 1991, and annually thereafter, that:

a. The government of the harvesting nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States; and

b. The average rate of that incidental taking by vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or

c. The particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of such sea turtles in the course of such harvesting.

The President has delegated to the Secretary of State the authority to make certifications pursuant to Section 609 (Memorandum of December 19, 1990; 56 FR 357; January 4, 1991).

The relevant species of sea turtles are: loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*) and hawksbill (*Erermochelys imbricata*).

The Department of State had previously determined that Congress intended Section 609 to apply only to certain nations in the wider Caribbean/

western Atlantic region. However, on December 29, 1995, Judge Thomas J. Aquilino, Jr., of the U.S. Court of International Trade, issued an order in *Earth Island Institute* v. *Christopher* (CIT 94–06–00321) requiring that Section 609 applies to shrimp harvested in all foreign nations.

The U.S. program. The foundation of the U.S. program governing the incidental taking of sea turtles in the course of shrimp harvesting is the requirement that commercial shrimp trawl vessels use turtle excluder devices (TEDs), approved in accordance with standards established by the U.S. National Marine Fisheries Service (NMFS), in areas and at times when there is a likelihood of intercepting sea turtles. The goal of this program is to protect sea turtle populations from further decline by reducing the incidental mortality of sea turtles in commercial shrimp trawl operations.

The commercial shrimp trawl fisheries in the United States in which there is a likelihood of intercepting sea turtles occur in the temperate waters of the Gulf of Mexico and the Atlantic Ocean from North Carolina to Texas. With very limited exceptions, all U.S. commercial shrimp trawl vessels operating in these waters must use approved TEDs at all times and in all areas. The only exceptions to this requirement are as follows:

a. Vessels equipped exclusively with the following special types of gear are not required to use TEDs because the nature of their operations does not pose a threat of the incidental drowning of sea turtles: barred beam trawls and/or roller trawls, wing nets, skimmer trawls, and pusher-head trawls. Single try nets are test nets, used briefly to test for shrimp concentrations, need not have TEDs.

b. Vessels whose nets are retrieved exclusively by manual rather than mechanical means are not required to use TEDs because the lack of a mechanical retrieval system necessarily limits tow times to a short duration so as not to pose a threat of the incidental drowning of sea turtles. This exemption applies only to vessels that have no power or mechanical-advantage trawl retrieval system.

c. In exceptional circumstances, where NMFS determines that the use of TEDs would be impracticable because of special environmental conditions such as the presence of algae, seaweed, or debris, or that TEDs would be ineffective in protecting sea turtles in particular areas, vessels are permitted to restrict tow times instead of using TEDs. Such exceptions are generally limited to 30 days. In practice, NMFS has permitted such exceptions only rarely.

With these limited exceptions, all other commercial shrimp trawl vessels operating in waters subject to U.S. jurisdiction in which there is a likelihood of intercepting sea turtles must use TEDs at all times. For more information on the U.S. program governing the incidental taking of sea turtles in the course of commercial shrimp trawl harvesting, see 50 C.F.R. 227.17 and 50 C.F.R. 227.72(e).

Shrimp Harvested in a Manner Not Harmful to Sea Turtles. The Department of State has determined that import prohibitions imposed pursuant to Section 609 do not apply to shrimp or products of shrimp harvested under the following conditions, since such harvesting does not adversely affect sea turtles:

a. Shrimp harvested in an aquaculture facility in which the shrimp spend at least 30 days in ponds prior to being harvested.

b. Shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States.

c. Shrimp harvested exclusively by means that do not involve the retrieval of fishing nets by mechanical devices or by vessels using gear that, in accordance with the U.S. program described above, would not require TEDs.

d. Species of shrimp, such as the pandalid species, harvested in areas in which sea turtles do not occur.

Shrimp Exporter's Declaration. The Department of State has determined that, in order to achieve effective implementation of Section 609 on a world-wide basis, beginning May 1, 1996, all shipments of shrimp and products of shrimp into the United States must be accompanied by a declaration (DSP–121, revised) attesting that the shrimp accompanying the declaration was harvested either under conditions that do not adversely affect sea turtles (as defined above) or in waters subject to the jurisdiction of a nation currently certified pursuant to Section 609. All declaration must be signed by the exporter of the shrimp. A government official of the harvesting nation must also sign those declarations asserting that the accompanying shrimp was harvested under conditions that do not adversely affect sea turtles. The declaration must accompany the shipment through all states of the export process, including in the course of any transshipments and of any transformation of the original product. The Department of State will make copies of the declaration readily available; local reproduction of the declarations is fully acceptable.

Date of Export. The Department of State has further determined that import prohibitions imposed in 1996 pursuant to Section 609 shall not apply to shipments of shrimp and products of shrimp with a date of export prior to May 1, 1996. In subsequent years, import prohibitions shall not apply to shipments of shrimp and products of shrimp with a date of export falling at a time in which the harvesting nation is currently certified pursuant to Section 609.

Country of Origin. For purposes of implementing Section 609, the country of origin shall be deemed to be the nation in whose waters the shrimp is harvested, whether or not the harvesting vessel is flying the flag of another nation.

Guidelines For Determining Comparability

I. Certification Pursuant to Section 609(b)(2)(C)

Section 609(b)(2)(C) authorizes the Department of State to certify a harvesting nation if the particular fishing environment of the harvesting nation does not pose a threat of incidental taking of sea turtles in the course of commercial shrimp trawl harvesting. Accordingly, the Department of State shall certify any harvesting nation meeting the following criteria without the need for action on the part of the government of the harvesting nation:

a. Any harvesting nation without any of the relevant species of sea turtles occurring in waters subject to its jurisdiction;

b. Any harvesting nation that harvests shrimp exclusively by means that do not pose a threat to sea turtles, *e.g.*, any nation that harvests shrimp exclusively by artisanal means;

c. Any nation whose commercial shrimp trawling operations take place exclusively in waters subject to its jurisdiction in which sea turtles do not occur.

II. Other Certifications

The Department of State shall certify any other harvesting nation by May 1, 1996, and annually thereafter, only if the government of that nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of sea turtles in the course of commercial shrimp trawl harvesting that is comparable to that of the United States and if the average take rate of that incidental taking by vessels of the

harvesting nation is comparable to the average take rate of incidental taking of sea turtles by United States vessels in the course of such harvesting.

a. *Regulatory Program*. The Department of State shall assess regulatory programs, as described in the documentary evidence provided by the governments of harvesting nations, for comparability with the U.S. program. Certification shall be made if a program includes the following:

1. *Required Use of TEDs*—a requirement that all commercial shrimp trawl vessels operating in waters in which there is a likelihood of intercepting sea turtles use TEDs at all times. TEDs must be comparable in effectiveness to those used in the United States. Any exceptions to this requirement must be comparable to those of the U.S. program described above; and

2. *Enforcement*—a credible enforcement effort that includes monitoring for compliance and appropriate sanctions.

b. *Incidental Take.* Average incidental take rates will be deemed comparable if the harvesting nation requires the use of TEDs in a manner comparable to that of the U.S. program described above.

c. *Additional Considerations.*

1. Form—A regulatory program may be in the form of regulations promulgated by the government of the harvesting nation and having the force of law. If the legal system and industry structure of the harvesting nation permit voluntary arrangements between government and the fishing industry, such an arrangement may be acceptable so long as there is a governmental mechanism to monitor compliance with the arrangement and to impose penalties for noncompliance, and confirmation that the fishing industry is complying with the arrangement.

2. Documentary Evidence—Documentary evidence may be in the form of copies of the relevant laws, regulations or decrees. If the regulatory program is in the form of a government-industry arrangement, then a copy of the arrangement is required. Harvesting nations are encouraged to provide, to the extent practicable, information relating to the extent of shrimp harvested by means of aquaculture.

3. Additional Turtle Protection Measures—The Department of State recognizes that sea turtles require protection throughout their life cycle, not only in the course of commercial shrimp trawl harvesting. In making the comparability determination, the Department shall also take into account other measures the harvesting nation undertakes to protect sea turtles, including national programs to protect nesting beaches and other habitat, prohibitions on the directed take of sea turtles, national enforcement and compliance programs, and participation in any international agreement for the protection and conservation of sea turtles.

4. Consultations—The Department of State will engage in ongoing consultations with harvesting nations. The Department recognizes that, as turtle protection programs develop, additional information will be gained about the interaction between turtle populations and shrimp fisheries. These Guidelines may be revised in the future to take into consideration that and other information, as well as to take into account changes in the U.S. program.

IV. Related Determinations

a. Any harvesting nation that is not certified on May 1 of any year may be certified prior to the following May 1 at such time as the harvesting nation meets the criteria necessary for certification. Conversely, any harvesting nation that is certified on May 1 of any year may have its certification revoked prior to the following May 1 at such time as the harvesting nation no longer meets those criteria.

b. These Guidelines, as revised, do not represent any substantive change in criteria for certification of harvesting nations, previously determined to be covered by Section 609, that do not have waters subject to their jurisdiction outside the wider Caribbean/western Atlantic region. For harvesting nations that have waters subject to their jurisdiction both in the wider Caribbean/western Atlantic region and elsewhere (*e.g.*, in the Pacific ocean), certification will depend on application of the criteria in Sections II and III above in relation to all waters subject to their jurisdiction.

As a matter relating to the foreign affairs function, these guidelines are exempt from the notice, comment, and delayed effectiveness provisions of the Administrative Procedures Act. This action is exempt from Executive Order 12866, and is not subject to the requirements of the Regulatory Flexibility Act.

Dated: April 9, 1996.

For the Secretary of State.

Eileen B. Claussen,

Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

[FR Doc. 96–9604 Filed 4–18–96; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Recreational Trails Funding Program; Certification Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is announcing certification requirements for States to be eligible to receive allocations through the National Recreational Trails Funding Program, authorized by the National Recreational Trails Fund Act. This notice is intended to inform the public of the requirements that a State must meet to be eligible to receive an allocation under the Trails Program, and to inform the public of the allocations available to a State if the State certifies its eligibility to receive an allocation. The requirements and several attachments, which were distributed to the FHWA's regional and division offices on January 26, 1996, are included in the supplementary information section.

FOR FURTHER INFORMATION CONTACT: Christopher B. Douwes, Intermodal and Statewide Programs Division, HEP–10, Room 3222, (202) 366–5013; or Robert J. Black, Office of the Chief Counsel, HCC–31, (202) 366–1359; Federal Highway Administration, 400 Seventh St., SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. This information also is available from FHWA's regional and division offices. These addresses were published in a Federal Register notice on January 4, 1993 (58 FR 128). This information is available for public review and copying at the FHWA, Room 4232, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On January 26, 1996, FHWA issued procedures to its regional and division offices for States to certify their eligibility to receive allocations under the National Recreational Trails Fund Act (NRTFA) (Section 1301—1303 of Pub. L. 102–240, 105 Stat. 1914, 2064; Section 337 of Pub.L. 104–59, 109 Stat. 568, 602). The full text of the memorandum and attachments announcing these procedures follows.

Subject: ACTION: Certification of Eligibility for the National Recreational Trails Funding Program (Reply due: June 4, 1996).

From: Associate Administrator for Program Development.

To: Regional Administrators, Federal Lands Highway Program Administrator.

The National Recreational Trails Funding Program (Trails Program) received $15 million annually in contract authority for fiscal years (FY) 1996 and 1997 in the National Highway System (NHS) Designation Act of 1995. For FY 1996, we have retained $336,000 for administrative expenses (less than the $450,000 permitted) and we are allocating the remaining $14,664,000 to eligible States.

As specified in the National Recreational Trails Fund Act (NRTFA), as amended, (Section 1302 of ISTEA, and Section 337 of the NHS Act), a State must have a Recreational Trail Advisory Board on which both motorized and nonmotorized recreational trail users are represented to be eligible to receive an allocation under the Trails Program. The deadline for establishing this board was December 18, 1994. However, many States did not establish their boards because the Trails Program did not have any funding, and funding remained uncertain until the NHS Act was passed.

Therefore, we have established a certification procedure to provide as many States as possible with an opportunity to participate in the Trails Program and ensure that funds go to those States that are eligible consistent with the NRTFA. We are requesting that you work with the appropriate State agency to satisfy this certification requirement. Attachment A describes what is required for a State to certify eligibility to receive an allocation of obligation limitation under the Trails Program. The deadline for State certification is June 4, 1996. A copy of the certification should be forwarded to Christopher Douwes, HEP–10, so that obligation limitation may be allocated to the State.

Attachment B lists the amount of funds that will be available for allocation in FY 1996 if States certify their eligibility to receive an allocation of obligation limitation. Attachment C explains how the amounts in Attachment B were developed. If a State remains ineligible for funding after the June 4, 1996, deadline, its share of funds will be allocated to the eligible States.

The Trails Program allocations are not part of the Federal-aid highway apportionments and allocations. The Trails Program allocations do not affect a State's Minimum Allocation, Donor State Bonus, or other Federal-aid highway program apportionments or allocations.

According to the NRTFA, Trails Program allocations through the National Recreational Trails Trust Fund are available for obligation for 4 fiscal years (current year plus 3 years). However, since the FY 1996 and 1997 funds are contract authority through FHWA administrative funds, these funds, once allocated to an eligible State, are available for obligation until expended. Nevertheless, States should try to obligate their funds in a timely manner.

The NHS Act made several important changes in the Trails Program. The State fuel tax requirement was deleted. The Trails Program now provides for a 50 percent Federal share for each project, and requires a 50 percent non-Federal share. The NHS Act allows the donation of [private][1] funds, materials, and services at fair market value to be counted toward the non-Federal share.

Attachment D provides guidelines for establishing the State Recreational Trail Advisory Boards.

We are issuing program guidance for the Trails Program in a separate memorandum. If you have further questions, please contact Christopher B. Douwes, HEP–10, at (202) 366–5013; or John C. Fegan, HEP–10, at (202) 366–5007.

/s/ Kevin E. Heanue, for Thomas J. Ptak.

4 Attachments

Attachment A

National Recreational Trails Funding Program

State Certification Procedure

To receive a FY 1996 allocation through the National Recreational Trails Funding Program, a State must send a letter to the FHWA division office certifying that it meets certain requirements of the program as outlined below. The State should send this letter as soon as it can certify that it meets the criteria. The certification should be forwarded to Christopher B. Douwes, HEP–10, so that obligation limitation can be allocated to the State.

The deadline for a State's certification letter to be received by the division is on or before June 4, 1996. A State that has not certified eligibility by this date will not be allocated any funds for FY 1996, and remaining funds will be reallocated to eligible States in mid-June 1996. A State ineligible to receive an allocation in FY 1996 will be eligible to receive an allocation in FY 1997 if it certifies that it meets the criteria before September 30, 1996.

The certification letter must include the following:

1. Name the Official and Agency designated by the Governor to administer the National Recreational Trails Funding Program within the State. (In most States, this will be the State resource agency.)

2. Certify that the State has a Recreational Trail Advisory Board in existence on which both motorized and nonmotorized recreational trail users are represented.

Note: The Small State Exclusion does not exempt any State from the requirement to have both motorized and nonmotorized representation. See Attachment D for further guidance on the establishment of the Advisory Board.

3. Certify that Trails Program funds will be used on trails and trail-related projects which are identified in, or which further a specific goal of, a trail plan included or referenced in a current Statewide Comprehensive Outdoor Recreation Plan.

4. Certify that the State will conform with the Assured Access to Funds requirement—that the State will provide at least 30 percent of its trail project funds for uses relating to motorized trail use and at least 30 percent of its funds for uses relating to nonmotorized trail use.

Exceptions:

A. A State that qualifies for the Small State Exclusion (DC, RI, DE, PR, CT) may certify instead that it meets the requirements for the Small State Exclusion.

B. The NRTFA allows a State's Recreational Trail Advisory Board (with both motorized and nonmotorized recreational trail user representation) to exempt the State from the Assured Access to Funds requirement. Therefore, a State may certify that it will conform with the Assured Access to Funds requirement unless its Recreational Trail Advisory Board votes to exempt the State from this requirement. This vote must take place in a public meeting. It may take place after the State's initial certification letter. If the Advisory Board votes for the exemption, the State must certify to the division office that this vote has taken place. This certification should be forwarded to HEP–10.

5. Certify that the State will conform with the Diversified Trail Use Requirement that the State will provide at least 40 percent of its trail project funds for diversified trail use. (There are no exceptions to this requirement.)

6. Be signed by the official designated by the Governor to administer this program.

Attachment C

Development of FY 1996 NRTFA Allocations

According to the National Recreational Trails Fund Act (NRTFA),

[1] Emendation for clarification subsequent to original memorandum.

half of the funds allocated to the States are allocated equally among all States. The other half of the funds are allocated in proportion to the amount of nonhighway recreational fuel use in each State.

Explanation of Columns in Attachment B

1. Percent of National Off-Road Recreational Fuel Use: A State's percentage share of National off-road recreational fuel use. See Development of Fuel Use Information below.

2. Allocation Based on Share of Fuel Use: A State's potential allocation based on its share of National off-road recreational fuel use.

3. Equal Allocation: A State's potential allocation based on an equal allocation to all States (including the District of Columbia and Puerto Rico). This is $141,000 per State.

4. Total Potential Allocation: Total allocation potentially available to an eligible State, summing the Allocation Based on Share of Fuel Use and the Equal Allocation. This amount will be allocated after certification of eligibility.

5. 7 percent Maximum for Administration: This is the maximum amount of funds available for State administrative purposes. It is the Total Potential Allocation multiplied by 0.07, *rounded down to the nearest dollar.* This is the maximum allowable; States may use less than this amount.

6. 5 percent Maximum for Education: This is the maximum amount of funds available for State environmental protection and safety education expenses. It is the Total Potential Allocation multiplied by 0.05, *rounded down to the nearest dollar.* This is the maximum allowable; States may use less than this amount.

7. 88 percent Minimum for Trail Projects: This is the minimum that must be used for on-the-ground trail projects. It is the Total Potential Allocation less the rounded amounts for administration and education. This is the minimum allowable, and States may use more than this amount.

8. 30 percent Minimum Assured Access: This is 30 percent of the 88 percent Minimum for Trail Projects figure. States should round this figure up to the nearest dollar. If a State uses more than 88 percent of its allocation for actual trail projects, this figure must increase proportionately.

9. 40 percent Minimum Diversified Trail Use: This is 40 percent of the 88 percent Minimum for Trail Projects figure. States should round this figure up to the nearest dollar. If a State uses more than 88 percent of its allocation for actual trail projects, this figure must increase proportionately.

There may be overlap between the 30 percent minimum assured access for motorized use and the 40 percent minimum for diversified trail use. There may be overlap between the 30% minimum for nonmotorized and the 40 percent minimum for diversified trail use. Projects may be classified in one of the five following categories:

Category 1—Nonmotorized single use projects (such as pedestrian use only, or ski use only)

Category 2—Nonmotorized diversified projects (such as pedestrian, bicycle, and in-line skate use)

Category 3—Diversified use projects for both motorized and nonmotorized use (such as summer equestrian use and winter snowmobile use, or a common trailhead project serving separate ATV and bicycle trails)

Category 4—Motorized single use projects (such as snowmobile use only)

Category 5—Motorized diversified use projects (such as light utility vehicle and motorcycle use).

Projects in categories 1 and 2 count toward the 30 percent nonmotorized minimum. Use of wheelchairs by mobility-impaired people, whether manual or motorized, constitutes pedestrian use, not motorized trail use. Projects in categories 4 and 5 count toward the 30 percent motorized minimum. Projects in categories 2, 3, and 5 count toward the 40 percent diversified minimum.

Development of Fuel Use Information

Half of the funds allocated under the National Recreational Trails Funding Program are allocated in proportion to each State's share of nonhighway recreational fuel use. The FY 1996 allocations are based on a model developed by Oak Ridge National Laboratories for FHWA in July 1994. This report was distributed to all FHWA Regions, Divisions, and to States in November 1994. The Oak Ridge model allows FHWA to insert updated vehicle and fuel use information.

Some State shares of FY 1996 allocations are significantly different from the FY 1993 allocations. FHWA did not have complete fuel use information available when the FY 1993 allocations were made, especially about light utility vehicles. A major factor in the FY 1993 allocations was fuel use by snowmobiles. The Oak Ridge report found that fuel use by light utility vehicles is the predominant factor. Therefore, States with heavy snowmobile use have relatively smaller shares in FY 1996 than in FY 1993. States with more light utility vehicle use have relatively larger shares in FY 1996 than in FY 1993.

FHWA will continue to monitor off-road recreational fuel use to assure fair allocations to the States.

Attachment D

State Recreational Trail Advisory Boards

Establishment and Representation

The National Recreational Trails Fund Act (NRTFA) states that a State shall be eligible to receive moneys under this part only if * * * a recreational trail advisory board on which both motorized and nonmotorized recreational trail users are represented exists within the State.

This means that, to receive an allocation under the NRTFA:

1. The State must have a Recreational Trail Advisory Board in existence.

2. There must be representation from actual motorized recreational trail users.

3. There must be representation from actual nonmotorized recreational trail users.

The State Recreational Trail Advisory Board is not required to have the same representation as the National Recreational Trails Advisory Committee. For example, southern States are not expected to have representation from snowmobile users or skiers. However, the National Committee strongly recommended that States have fair representation of both motorized and nonmotorized recreational trail users.

States have substantial flexibility in determining the membership of the Recreational Trail Advisory Boards. The State Advisory Board may include uses not represented on the National Committee, such as in-line skating, birdwatching, or dog-sledding. It may include multiple representation from a particular mode, such as urban trail bicycling and mountain bicycling. It may have representation from local, State, or Federal agencies, from land use or natural resource groups, other trail advocacy groups, recreational businesses, etc. However, an Advisory Board consisting only of State officials and natural resource organizations would not qualify under the NRTFA, because the Board must have trail user representation.

Some States had previously existing nonmotorized trail committees and previously existing motorized trail committees. A State may combine these committees for the purposes of the NRTFA.

The Small State Exclusion [section (e)(7) as amended in the NHS Act] does not exempt any State from the requirement to have both motorized and nonmotorized recreational trail user representation. The Small State Exclusion only allows a small State to exempt itself from the requirement to meet the 30 percent minimum motorized or 30 percent minimum nonmotorized requirement. The Small State Exclusion only applies to DC, RI, DE, PR, and CT. It does not exempt a State from the 40 percent minimum diversified requirement.

Duties of the State Recreational Trail Advisory Board

The NRTFA (as amended) lists the following duties for the State Recreational Trail Advisory Board:

Section (e)(3): Provide guidance to the State for how the State may make grants to private individuals, organizations, city and county governments, and other government entities.

Section (e)(5): Issue guidance to the State to meet the new environmental mitigation requirement—a State should give consideration to project proposals that provide for the redesign, reconstruction, nonroutine maintenance, or relocation of trails in order to mitigate and minimize the impact to the natural environment.

Section (e)(6): Provide guidance to the State to determine compliance with the diversified trail use requirement—that at least 40 percent of the funds must be used for projects that provide for the greatest number of compatible recreational uses, or provide for innovative recreational trail corridor sharing to accommodate both motorized and nonmotorized recreational trail use.

Section (e)(9): May approve an exemption for the State from the Assured Access to Funds requirement—that at least 30 percent of the funds be used for projects relating to motorized use and at least 30 percent of the funds be used for projects relating to nonmotorized use.

Each State has the flexibility to determine other roles for the Advisory Board. The National Recreational Trails Advisory Committee encouraged States to involve their Advisory Boards in project selection, both for projects funded under the NRTFA, and for State-funded projects.

(Sections 1301, 1302, 1303, 8003, Pub. L. 102–240, 105 Stat. 1914, 2064, 2205; Section 337, Pub.L. 104–59, 109 Stat. 568, 602; 23 U.S.C. 315; 49 CFR 1.48)

Issued on: April 1, 1996.

Rodney E. Slater,

Federal Highway Administrator.

BILLING CODE 4910–22–P

Attachment B

National Recreational Trails Funding Program

FY 1996 Potential Allocation to Eligible States

FHWA Administration = $336,000

STATE	Percent of Natl Off-Road Rec Fuel Use	Allocation Based on Share of Fuel Use	Equal Allocation	**TOTAL POTENTIAL ALLOCATION**	Code 38B 7% Max for Administration*	Code 38C 5% Max for Education*	Code 384 88% Min for Trail Projects*	30% Min Assured Access	40% Min Diversified Trail Use
Alabama	2.1375%	$156,725	$141,000	**$297,725**	$20,840	$14,886	$261,999	$78,599.70	$104,799.60
Alaska	0.3226%	$23,654	$141,000	**$164,654**	$11,525	$8,232	$144,897	$43,469.10	$57,958.80
Arizona	1.7189%	$126,030	$141,000	**$267,030**	$18,692	$13,351	$234,987	$70,496.10	$93,994.80
Arkansas	1.8139%	$132,994	$141,000	**$273,994**	$19,179	$13,699	$241,116	$72,334.80	$96,446.40
California	12.0592%	$884,181	$141,000	**$1,025,181**	$71,762	$51,259	$902,160	$270,648.00	$360,864.00
Colorado	1.5078%	$110,551	$141,000	**$251,551**	$17,608	$12,577	$221,366	$66,409.80	$88,546.40
Connecticut	0.5284%	$38,744	$141,000	**$179,744**	$12,582	$8,987	$158,175	$47,452.50	$63,270.00
Delaware	0.2230%	$16,350	$141,000	**$157,350**	$11,014	$7,867	$138,469	$41,540.70	$55,387.60
Dist of Columbia	0.0000%	$0	$141,000	**$141,000**	$9,870	$7,050	$124,080	$37,224.00	$49,632.00
Florida	5.9407%	$435,572	$141,000	**$576,572**	$40,360	$28,828	$507,384	$152,215.20	$202,953.60
Georgia	3.5098%	$257,341	$141,000	**$398,341**	$27,883	$19,917	$350,541	$105,162.30	$140,216.40
Hawaii	0.3123%	$22,897	$141,000	**$163,897**	$11,472	$8,194	$144,231	$43,269.30	$57,692.40
Idaho	1.0067%	$73,814	$141,000	**$214,814**	$15,036	$10,740	$189,038	$56,711.40	$75,615.20
Illinois	3.2260%	$236,530	$141,000	**$377,530**	$26,427	$18,876	$332,227	$99,668.10	$132,890.80
Indiana	1.6671%	$122,229	$141,000	**$263,229**	$18,426	$13,161	$231,642	$69,492.60	$92,656.80
Iowa	1.1434%	$83,832	$141,000	**$224,832**	$15,738	$11,241	$197,853	$59,355.90	$79,141.20
Kansas	1.6202%	$118,796	$141,000	**$259,796**	$18,185	$12,989	$228,622	$68,586.60	$91,448.80
Kentucky	1.5361%	$112,624	$141,000	**$253,624**	$17,753	$12,681	$223,190	$66,957.00	$89,276.00
Louisiana	2.7563%	$202,094	$141,000	**$343,094**	$24,016	$17,154	$301,924	$90,577.20	$120,769.60
Maine	0.8349%	$61,217	$141,000	**$202,217**	$14,155	$10,110	$177,952	$53,385.60	$71,180.80
Maryland	1.2049%	$88,341	$141,000	**$229,341**	$16,053	$11,467	$201,821	$60,546.30	$80,728.40
Massachusetts	1.1685%	$85,673	$141,000	**$226,673**	$15,867	$11,333	$199,473	$59,841.90	$79,789.20
Michigan	3.3453%	$245,280	$141,000	**$386,280**	$27,039	$19,314	$339,927	$101,978.10	$135,970.80
Minnesota	2.0208%	$148,166	$141,000	**$289,166**	$20,241	$14,458	$254,467	$76,340.10	$101,786.80
Mississippi	1.6021%	$117,469	$141,000	**$258,469**	$18,092	$12,923	$227,454	$68,236.20	$90,981.60
Missouri	2.4553%	$180,020	$141,000	**$321,020**	$22,471	$16,051	$282,498	$84,749.40	$112,999.20
Montana	0.6266%	$45,941	$141,000	**$186,941**	$13,085	$9,347	$164,509	$49,352.70	$65,803.60
Nebraska	0.5396%	$39,563	$141,000	**$180,563**	$12,639	$9,028	$158,896	$47,668.80	$63,558.40
Nevada	0.6305%	$46,227	$141,000	**$187,227**	$13,105	$9,361	$164,761	$49,428.30	$65,904.40
New Hampshire	0.4182%	$30,666	$141,000	**$171,666**	$12,016	$8,583	$151,067	$45,320.10	$60,426.80
New Jersey	2.3981%	$175,830	$141,000	**$316,830**	$22,178	$15,841	$278,811	$83,643.30	$111,524.40
New Mexico	1.7316%	$126,960	$141,000	**$267,960**	$18,757	$13,398	$235,805	$70,741.50	$94,322.00
New York	2.5966%	$190,382	$141,000	**$331,382**	$23,196	$16,569	$291,617	$87,485.10	$116,646.80
North Carolina	2.8358%	$207,921	$141,000	**$348,921**	$24,424	$17,446	$307,051	$92,115.30	$122,820.40
North Dakota	0.3136%	$22,996	$141,000	**$163,996**	$11,479	$8,199	$144,318	$43,295.40	$57,727.20
Ohio	3.3842%	$248,129	$141,000	**$389,129**	$27,239	$19,456	$342,434	$102,730.20	$136,973.60
Oklahoma	1.4465%	$106,056	$141,000	**$247,056**	$17,293	$12,352	$217,411	$65,223.30	$86,964.40
Oregon	1.3341%	$97,818	$141,000	**$238,818**	$16,717	$11,940	$210,161	$63,048.30	$84,064.40
Pennsylvania	3.4290%	$251,416	$141,000	**$392,416**	$27,469	$19,620	$345,327	$103,598.10	$138,130.80
Puerto Rico	0.0000%	$0	$141,000	**$141,000**	$9,870	$7,050	$124,080	$37,224.00	$49,632.00
Rhode Island	0.2826%	$20,717	$141,000	**$161,717**	$11,320	$8,085	$142,312	$42,693.60	$56,924.80
South Carolina	1.6927%	$124,110	$141,000	**$265,110**	$18,557	$13,255	$233,298	$69,989.40	$93,319.20
South Dakota	0.4027%	$29,529	$141,000	**$170,529**	$11,937	$8,526	$150,066	$45,019.80	$60,026.40
Tennessee	1.8531%	$135,869	$141,000	**$276,869**	$19,380	$13,843	$243,646	$73,093.80	$97,458.40
Texas	7.4990%	$549,826	$141,000	**$690,826**	$48,357	$34,541	$607,928	$182,378.40	$243,171.20
Utah	0.9827%	$72,048	$141,000	**$213,048**	$14,913	$10,652	$187,483	$56,244.90	$74,993.20
Vermont	0.3369%	$24,703	$141,000	**$165,703**	$11,599	$8,285	$145,819	$43,745.70	$58,327.60
Virginia	3.8192%	$280,027	$141,000	**$421,027**	$29,471	$21,051	$370,505	$111,151.50	$148,202.00
Washington	2.0495%	$150,267	$141,000	**$291,267**	$20,388	$14,563	$256,316	$76,894.80	$102,526.40
West Virginia	1.1263%	$82,578	$141,000	**$223,578**	$15,650	$11,178	$196,750	$59,025.00	$78,700.00
Wisconsin	2.0195%	$148,067	$141,000	**$289,067**	$20,234	$14,453	$254,380	$76,314.00	$101,752.00
Wyoming	0.5896%	$43,230	$141,000	**$184,230**	$12,896	$9,211	$162,123	$48,636.90	$64,849.20
TOTAL	100.0000%	$7,332,000	$7,332,000	**$14,664,000**	$1,026,480	$733,200	$12,904,320	$3,871,310	$5,161,747

*rounded down *rounded down *rounded up

[FR Doc. 96–9561 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–22–C

Research and Special Programs Administration

[Notice No. 96–7]

Guidance for Radiation Protection Programs; Request for Comments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Request for comments.

SUMMARY: RSPA is developing guidance for the radioactive material industry to facilitate compliance with the radiation protection program requirements of the Hazardous Materials Regulations which go into effect on October 1, 1997. Through this notice, RSPA is requesting public comments on the implementation of the radiation protection program requirements.

DATES: Comments are requested by May 31, 1996.

ADDRESSES: Please address written comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments may also be faxed to (202) 366–3753. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street SW, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except on public holidays, when the office is closed.

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, (202) 366–4545, Office of Hazardous Materials Technology, RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1995, RSPA published a final rule under Docket HM–169A (60 FR 50292) which added to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) a requirement that persons who offer for transportation, accept for transportation, or transport radioactive materials must develop, implement and maintain a written radiation protection program. The effective date of this requirement is October 1, 1997. A radiation protection program must be structured such that the following requirements are met:

(a) Radiation exposures are kept as low as reasonably achievable (ALARA), taking into account economic and social factors.

(b) Radiation exposures are controlled so that:

(1) An occupationally exposed hazmat employee's annual effective dose equivalent for occupational radiation exposure may not exceed 12.5 mSv (1.25 rem) in any 3-month period or 50 milliseiverts (mSv) (5 millirem (rem)) in any 12-month period. Corresponding limits for workers under the age of 18 are 10% of the above amounts;

(2) Radiation exposures to members of the general public must be less than 0.02 mSv (2 mrem) in any one hour period, 1.0 mSv (100 mrem) in one week, or 5.0 mSv (500 mrem) in any 12-month period;

(3) The radiation dose to an unborn child of an occupationally exposed female hazmat worker who has declared her pregnancy to her employer may not exceed 5.0 mSv (500 mrem) during the pregnancy, or 0.5 mSv (50 mrem) in any one month; and

(4) the radiation doses received by occupationally exposed hazmat employees must be monitored by radiation dosimetry devices.

Exceptions to the radiation protection program requirement were provided for persons who already have in place a radiation protection program that has been approved by an appropriate Federal or State agency; persons who offer for transportation or transport less than 200 TI (transport index; see 49 CFR 173.403 for the technical definition) of packages in a 12- month period; and persons whose operations will not result in a hazmat employee receiving an exposure of 5 mSv (500 mrem) or more per year. To be able to claim the last exception, a qualified radiation protection specialist must evaluate the doses that workers might receive during a period of one year while handling radioactive materials during shipping, receiving or transportation, and be able to document that no worker would be expected to receive a dose of 5 mSv (500 mrem) or more in one year.

The final rule requires conformance with guidance in the Environmental Protection Agency report entitled ''Radiation Protection Guidance to Federal Agencies for Occupational Exposure (January 1987).'' Other recommended radiation protection program guidance includes National Council on Radiation Protection and Measurements (NCRP) Report No. 59, ''Operational Radiation Safety Program (1978)'' and NCRP Report No. 116, ''Limitation of Exposure to Ionizing Radiation (1993).''

Records which must be maintained by a hazmat employer with a radiation protection program include a written description of the program, written records of the program activities, and dosimetry records. Records must be kept of the radiation dose received by each hazmat employee, and information concerning the dose must be provided to the employee within a reasonable time after he or she requests it, and no more than three months after termination of employment.

Records must also be maintained by excepted organizations, showing that the total package TI in any 12-month period is less than 200, or that current radioactive materials transport activities are the same as the activities that were reviewed by a competent radiation protection specialist who found that no worker would receive a dose exceeding 5 mSv (500 mrem) in one year.

The Department of Transportation intends to issue guidance on the requirement for developing, implementing, and maintaining a radiation protection program, or on means for an organization to demonstrate that it is exempt from doing so. In order to take into account any concerns or suggestions of interested parties, this notice solicits public comment on the implementation of the above requirements.

Request for Comments

Issues which a reader may wish to address in his or her comments could include:

(1) The nature and extent of radioactive material transportation activities within the commentor's organization or other identified organization.

(2) The criteria which should be used to identify which persons, or which organizational units would be subject to the dosimetry requirement of the radiation protection program.

(3) The qualifications of the evaluator for determining whether an organization is exempt from establishing a radiation protection program on the basis that no hazmat employee will receive more the 5 mSv (500 mrem) in a year.

(4) Appropriate methods for determining or estimating dose to the public.

(5) Needed clarification of radiation protection program requirements, or statements about the operational problems that the commentor anticipates as a result of the radiation protection program requirements.

(6) Other issues and concerns related to radiation protection.

Issued in Washington, DC on April 10, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–9556 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

[Finance Docket No. 30186 (Sub No. 2)]

Tongue River Railroad Company—Construction and Operation of an Additional Rail Line From Ashland to Decker, in Rosebud and Big Horn Counties, Montana

The Tongue River Railroad Company (TRRC) applied to the Interstate Commerce Commission (ICC), now the Surface Transportation Board (Board),[1] for authority to construct and operate a 41-mile rail line from a point south of Ashland, MT to a point near Decker, MT. The ICC's Section of Environmental Analysis (SEA) began the environmental analysis of this proposal, considering the potential environmental impacts associated with TRRC's preferred route, the Four Mile Creek Alternative, and a ''no build'' alternative. SEA completed a Draft Environmental Impact Statement (served July 17, 1992) and a Supplemental Draft Environmental Impact Statement (served March 17, 1994).

The Board's SEA has now completed the environmental review process, and its conclusions are discussed in the Final Environmental Impact Statement (FEIS). SEA concludes that the Four Mile Creek Alternative would be environmentally preferable to the TRRC preferred route if the Board grants TRRC's proposal, because it would avoid the environmentally sensitive Tongue River Canyon. With the recommended mitigation, construction and operation of that route should meet applicant's project goals of providing more efficient service to coal shippers in this area, without having an unduly severe impact on the environment. The ''no build'' alternative, while environmentally benign, would not meet those objectives.

Copies of the FEIS have been served on representative individuals and agencies. Also, two copies are available for review at the Rosebud County Library, Forsyth, MT. For additional information about the FEIS, please contact: Elaine K. Kaiser, Chief, Section of Environmental Analysis, or Dana White at (202) 927–6213.

Copies of the FEIS are available to all persons for a fee through DC News and Data Inc. at (202) 289–4357, (assistance for the hearing impaired is available through TDD services (202) 927–5721) or by pickup from Room 2229, 1201 Constitution Avenue, NW, Washington, DC 20423. Because of limited resources, we are no longer able to make additional copies available at no cost.

Date made available to the public: April 11, 1996.

By the Surface Transportation Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 96–9227 Filed 4–18–96; 8:45 am]

BILLING CODE 4915–00–U

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), enacted December 29, 1995, and effective January 1, 1996 abolished the Interstate Commerce Commission and transferred certain rail proceedings to the Surface Transportation Board (Board) if they involve functions retained by the Act. This proceeding concerns a function, authorization of rail construction under 49 U.S.C. 10901, that has been transferred to the Board.

Surface Transportation Board [1]

[STB Docket No. AB–6 (Sub-No. 376X)]

Burlington Northern Railroad Company—Abandonment Exemption—in Saline County, NE

Burlington Northern Railroad Company (BN) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 22.91 miles of its line of railroad between milepost 0.33 near DeWitt and milepost 23.26 near Tobias, including the stations of Swanton at milepost 8.3, and Western at milepost 15.6 in Saline County, NE.[2]

BN has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted from the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 21, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29[5] must be filed by April 29, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 9, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Sarah J. Whitley, General

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] BN has proposed a consummation date for the abandonment that is four months from the date of filing of its verified notice. This proposed consummation date is based on BN's reading of 49 U.S.C. 10904. The first sentence of 10904(c) provides, ''Within 4 months after an application is filed under section 10903, any person may offer to subsidize or purchase the railroad line that is the subject of such application.''

The Board recently addressed this provision in proposing revised abandonment regulations to implement 49 U.S.C. 10903–04, as established by the ICC Termination Act. In *Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903,* STB Ex Parte No. 537 (STB served Mar. 15, 1996) slip op. at 10 [61 FR 11174, 11176 (Mar. 19, 1996)], the Board said, ''We see the 4-month statutory deadline as an outer limit, which does not require us to delay resolution of proceedings where the entire time is not needed.''

Based on the Board's statement, the exemption in this proceeding will be scheduled to become effective on May 21, 1996, or 50 days after BN's filing of its verified notice of exemption. This is consistent with the existing rules at 49 CFR 1152.50. Offers of financial assistance will be due according to deadlines established in this notice. Potential offerors will *not* have until 4 months after the notice was filed by BN with the Board to make an offer of financial assistance.

While the exemption is scheduled to take effect on May 21, 1996, BN may of course delay consummation until a later date.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[5] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

Attorney, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 24, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 12, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–9679 Filed 4–18–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collection; Comment Request: Request for Determination of Reasonable Value (Used Manufactured Home), VA Form 26–8728

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than June 18, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0241.

Title and Form Number: Request for Determination of Reasonable Value (Manufactured Home), VA Form 26–8728.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to obtain appraisal of used manufactured home units proposed for VA guaranteed financing to establish the reasonable value of such units and also serves as owner's/seller's request for liquidation of such units. Without the form, VA would have to require that requesters furnish this information by letter.

Current Actions: Section 3712 of Title 38 U.S.C., prohibits the guaranty of any loan for the purchase of a used manufactured home unless the loan amount is ''not in excess of the amount determined to be reasonable'' with respect to the value of the property, as determined by the Secretary. The form is submitted to VA by buyers, owners/sellers, and manufactured home dealers to obtain appraisals of used manufactured home units proposed for guaranteed financing. VA personnel extract data needed for the making of appraisals assignments to fee appraisers. The form is also used to request liquidation appraisals, and lenders terminating guaranteed loans on manufactured home units may forward the form to the fee appraiser designated by VA with a copy to the VA regional office of jurisdiction.

Affected Public: Individuals or households—Business or other for-profit.

Estimated Annual Burden: 117 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 700.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 9, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–9648 Filed 4–18–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than June 18, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0089.

Title and Form Number: Statement of Dependency of Parents, VA Form 21–509.

Type of Review: Reinstatement, without change, for a previously approved collection for which approval has expired.

Need and Uses: The form is needed to gather income and dependency information from applicants who are seeking payment of benefits as or for a

dependent parent. The information is necessary to determine dependency of the parent.

Current Actions: Section 102, 38 U.S.C., requires that income and dependency must be established before benefits may be paid to or for a dependent parent. Without this information, it would not be possible for VA to authorize benefits to or for dependent parents.

Affected Public: Individuals or households.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 9, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–9649 Filed 4–18–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request: Request for Supplemental Information on Medical and Nonmedical Applications, VA Form Letter 29–615

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than June 18, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0131.

Title and Form Number: Request for Supplemental Information on Medical and Nonmedical Applications, VA Form Letter 29–615.

Type of Review: Extension of a currently approved collection.

Need and Uses: This form letter is used by the policyholder to apply for new issue, reinstatement, or change of plan on National Service Life Insurance (NSLI) policies.

Current Actions: The information collected is used by the VBA to establish the insured's eligibility for reinstatement, change of plan, or a new issue of NSLI.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 9, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–9650 Filed 4–18–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request: Report of Treatment by Attending Physician, VA Form Letter 29–551A

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than June 18, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0120.

Title and Form Number: Report of Treatment by Attending Physician, VA Form Letter 29–551A.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form letter is used for collecting information from attending physicians to determine the insured's eligibility for disability insurance benefits.

Current Actions: The information collected on the form letter is used by the VBA to establish the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,069 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810

Vermont Avenue, NW, Washington, DC 20420, telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 9, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service

[FR Doc. 96–9651 Filed 4–18–96; 8:45 am]

BILLING CODE 8320–01–P

Advisory Committee on Research Realignment, Notice of Meeting

As required by Section 10(a)(2) of the Federal Advisory Committee Act, the VA hereby gives notice that a meeting of the Research Realignment Advisory Committee will be held May 28 and 29, 1996. The meeting will start at 8 a.m. and adjourn at 5 p.m. on May 28 and will start at 8 a.m. and end at 12 noon on May 29. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue NW, Washington, DC. The purpose of the meeting is to make the final revisions to the Draft Report to be presented to Dr. Kenneth W. Kizer, Under Secretary for Health, concerning the Committee's review of VA's present research programs to ensure that VA research meets the present and future healthcare needs of veterans.

The agenda for May 28 will address comments from the field concerning the Draft Report to Dr. Kizer with recommendations for a realigned research program which includes implementation of Special Emphasis Areas. There will also be discussion of the recommendations for improving policies and procedures concerning informed consent in VA research.

On May 29 the committee will make final revisions of the Draft Report to Dr. Kizer.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting should contact Efrend Z. Garcia, Chief Career Development, Department of Veterans Affairs at (202) 565–7133.

The Designated Federal Official for the Committee is Timothy Gerrity, Ph.D., Deputy Director for Medical Research Service. His phone number is (202) 565–4004.

Dated: April 4, 1996.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–9645 Filed 4–18–96; 8:45 am]

BILLING CODE 8320–01–M

Special Medical Advisory Group, Notice of Meeting

As required by the Federal Advisory Committee Act, the VA hereby gives notice that the Special Medical Advisory Group has scheduled a meeting on May 8, 1996. The meeting will convene at 8:30 a.m. and end approximately at 4:00 p.m. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, NW, Washington, DC. The purpose of the meeting is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include an update on VHA's reorganization, status of activation of Veterans Integrated Service Networks and Residency and Research Realignment Committees efforts.

All sessions will be open to the public. Those wishing to attend should contact Melinda Murphy, Office of the Under Secretary for Health, Department of Veterans Affairs. Her phone number is (202) 273–5878.

Dated: April 4, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–9646 Filed 4–18–96; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Claims Adjudication Commission, Notice of Public Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that the Veterans' Claims Adjudication Commission will conduct its seventh public meeting on Wednesday, May 8, 1996, at the Washington, D.C., office of The American Legion, 1608 K Street (7th Floor), N.W., Washington, D.C., from 9:00 a.m. to 4:30 p.m. On Thursday and Friday, May 9 and 10, the Commission will continue this public meeting at VA's Central Office, 810 Vermont Avenue N.W., Room 230, Washington, D.C. The Commission will meet from 9:00 a.m. to 4:30 p.m. on Thursday, May 9, and from 9:00 a.m. to noon on Friday, May 10.

This public meeting will focus mainly on discussion and consideration of draft findings and conclusions in the Commission's latest areas or pursuit. In addition, the Commission will discuss and begin draft recommendations based on the Commission's preliminary report.

On May 8, the Commission will discuss and consider draft findings and conclusions generated from new areas of pursuit including:

- ''Product Issues''—Analyzing the effect of VA's Compensation ''Product'' on the claims adjudication process;
- Medical Examinations and Attendant Issues—Documenting and assessing current separation examinations and initial VA compensation examinations, including VBA pilot projects in these areas;
- Veterans Service Organization (VSO) Issues—Developing cooperative strategies with VSOs to encourage the submission of fully supported claims;
- Assessing VA's Strategic Management Planning—Including VBA and BVA organizational issues, the extent of management planning, and their vision for the future; and
- Exploring the feasibility and equity of Lump Sum Compensation benefits at lower disability levels.

On May 9 the Commission will begin discussing draft recommendations based on the Commission's February 7, 1996, report of Preliminary Findings and Conclusions in the following statutory reporting areas:

- Preparation/Submission of Claims;
- Process and Procedures;
- Effect of Attorneys, VSO's, and Advocates;
- Effect of Modernizing IRM;
- Effect of Work Performance Standards;
- Extent/Effect of Blue Ribbon Panel Recommendations;
- Effectiveness of Pilot Programs; and
- Effectiveness of Quality Control/Assurance

On the morning of May 10, the Commission will discuss project management issues, including the format and the date of submission of the Commission's Final Report and possible dates for the Commission's next public meeting.

The meeting is open to the public; however, no time is allocated for the purpose of receiving oral presentations from the public. The Commission will accept appropriate written comments from interested parties on the subject matter addressed during the meeting. Such comments may be referred to the Commission at the following address: Veterans' Claims Adjudication Commission (20C), U.S. Department of Veterans Affairs, 810 Vermont Ave., N.W., Washington, D.C. 20420.

Additional information concerning this meeting may be obtained by contacting the Commission at (202) 275–2142.

Dated: April 11, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–9647 Filed 4–18–96; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 77
Friday, April 19, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT-96-45-002]

Honeoye Storage Corporation; Notice of Tariff Filing

Correction

In notice document 96–9311 appearing on page 16631 in the issue of Tuesday, April 16, 1996, the Docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Correction

In notice document 96–8793 beginning on page 15829 in the issue of Tuesday, April 9, 1996, making the following correction:On page 15830, in the third column, under OKLAHOMA, Noble County, ''Summer School'' should read ''Sumner School.''

BILLING CODE 1505–01–D

federal register

Friday
April 19, 1996

Part II

Environmental Protection Agency

40 CFR Part 60, et al.

Hazardous Waste Combustors; Revised Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, 260, 261, 264, 265, 266, 270, and 271

[FRL–5447–2]

RIN 2050–AF01

Revised Standards for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Agency is proposing revised standards for hazardous waste incinerators, hazardous waste-burning cement kilns, and hazardous waste-burning lightweight aggregate kilns. These standards are being proposed under joint authority of the Clean Air Act (CAA) and Resource Conservation and Recovery Act (RCRA). The standards limit emissions of chlorinated dioxins and furans, other toxic organic compounds, toxic metals, hydrochloric acid, chlorine gas, and particulate matter. These standards reflect the performance of Maximum Achievable Control Technologies (MACT) as specified by the Clean Air Act. The MACT standards also should result in increased protection to human health and the environment over existing RCRA standards. The nature of this proposal requires that the following actions also be proposed: proposing the addition of hazardous waste-burning lightweight aggregate kilns to the list of source categories in accordance with 112(c)(5) of the Act; exempting from RCRA emission controls secondary lead facilities subject to MACT; considering an exclusion for certain ''comparable fuels''; and revising the small quantity burner exemption under the BIF rule.

DATES: EPA will accept public comments on this proposed rule until June 18, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–RCSP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. Deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically through the Internet to: RCRA-Docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–96–RCSP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any Confidential Business Information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. The index and some supporting materials are available electronically. See the ''Supplementary Information'' section for information on accessing them.

A public hearing will be held, if requested, to discuss the proposed standards for hazardous waste combustors, in accordance with section 307(d)(5) of the Act. Persons wishing to make an oral presentation at a public hearing should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 5 minutes each, unless additional time is feasible. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the RCRA Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. F–96–RCSP–FFFFF. A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's RCRA Docket Section in Washington, D.C. (see ADDRESSES section of this preamble).

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rulemaking, contact Larry Denyer, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8770, electronic mail: Denyer.Larry@epamail.epa.gov. For more detailed information on implementation of this rulemaking, contact Val de la Fuente, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–7245, electronic mail: DeLaFuente.Val@epamail.epa.gov. For more detailed information on regulatory impact assessment of this rulemaking, contact Gary Ballard, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2429, electronic mail: Ballard.Gary@epamail.epa.gov. For more detailed information on risk analyses of this rulemaking, contact David Layland, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–4796, electronic mail: Layland.David@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The index and the following supporting materials are available on the Internet: (List documents) Follow these instructions to access the information electronically:
Gopher: gopher.epa.gov
WWW: http://www.epa.gov
Dial-up: (919) 558–0335.

This report can be accessed off the main EPA Gopher menu, in the directory: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/(consult with Communication Strategist for precise subject heading)
FTP: ftp.epa.gov
Login: anonymous
Password: Your Internet address

Files are located in /pub/gopher/OSWRCRA

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the Federal Register or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Glossary of Acronyms

APCD—Air Pollution Control Device

BDAT—Best Demonstrated Available Technology
BIFs—Boilers and Industrial Furnaces
BTF—Beyond-the-Floor
CAA—Clean Air Act
Cl_2—Chlorine
CO—Carbon Monoxide
D/F—Dioxins/Furans
D/O/M—Design/Operation/Maintenance
ESP—Electrostatic Precipitator
EU—European Union
FF—Fabric Filter
HAP—Hazardous Air Pollutant
HC—Hydrocarbons
HCl—Hydrochloric acid
Hg—Mercury
HHE—Human Health and the Environment
HON—Hazardous Organic NESHAPs
HSWA—Hazardous and Solid Waste Amendments
HWC—Hazardous Waste Combustion/Combustor
ICR—Information Collection Request
LDR—Land Disposal Restrictions
LVM—Low-volatile Metals
LWAK—Lightweight Aggregate Kiln
MACT—Maximum Achievable Control Technology
MTEC—Maximum Theoretical Emission Concentration
NESHAPs—National Emission Standards for Hazardous Air Pollutants
PM—Particulate Matter
PICs—Products of Incomplete Combustion
RCRA—Resource Conservation and Recovery Act
RIA—Regulatory Impact Assessment
SVM—Semivolatile Metals
TCLP—Toxicity Characteristic Leaching Procedure
UTS—Universal Treatment Standards

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PART ONE: BACKGROUND

I. Overview

The U.S. Environmental Protection Agency (EPA) is proposing to revise standards for hazardous waste incinerators and hazardous waste-burning cement kilns and lightweight aggregate kilns (LWAKs) under joint authority of the Clean Air Act, as amended, (CAA) and the Resource Conservation and Recovery Act, as amended (RCRA). The emission standards in today's proposal have been developed under the CAA provisions concerning the maximum level of achievable control over hazardous air pollutants (HAPs), taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. These maximum achievable control technology (MACT) standards, also referred to as National Emission Standards for Hazardous Air Pollutants (NESHAPs), are proposed in today's rule for the following HAPs: dioxins/furans, mercury, two semivolatile metals (lead and cadmium), four low volatility metals (antimony, arsenic, beryllium, and chromium), particulate matter, and hydrochloric acid/chlorine gas. Other toxic organic emissions are addressed by standards for carbon monoxide (CO) and hydrocarbons (HC).

This action is being taken for several reasons. First, this proposal is consistent with the terms of the 1993 settlement agreement between the Agency and a number of groups who challenged EPA's final RCRA rule entitled ''Burning of Hazardous Waste in Boilers and Industrial Furnaces'' (56 FR 7134, Feb. 21, 1991). These groups include the Natural Resources Defense Council, Sierra Club, Inc., Hazardous Waste Treatment Council (now the Environmental Technology Council), National Solid Waste Management Association, and a number of local citizens' groups. Under this settlement agreement, the Agency is to propose this rulemaking by September-November, 1995, and finalize it by December 1996.

Second, EPA has scheduled rulemakings to develop maximum achievable control technology (MACT) standards for hazardous waste incinerators and cement kilns. To minimize the burden on the Agency and the regulated community, the Agency has combined its efforts under the CAA and RCRA into one rulemaking to establish MACT standards, which also would satisfy the RCRA settlement agreement obligations.

Third, the Agency's Hazardous Waste Minimization and Combustion Strategy, first announced in May 1993, in addition to stressing waste minimization, also made a commitment to upgrade the emission standards for hazardous waste-burning facilities. The three categories of facilities covered in this proposal burn over 80 percent of the total amount of hazardous waste being combusted each year. [The remaining 15–20 percent is burned in industrial boilers and other types of industrial furnaces, which are to be addressed in the next rulemaking for which a proposal is to be issued by December 1998 or sooner.]

Finally, as relates to the development of revised standards under concurrent Clean Air Act and RCRA authority, most of these hazardous waste combustion facilities are major sources of HAP emissions. They therefore must be regulated under section 112(d) of the Clean Air Act. In addition, EPA noted, when promulgating the RCRA rules for boilers and industrial furnaces in 1991 and in a proposal to revise the incinerator rules, that existing standards did not fully consider the possibility of exposure via indirect (non-inhalation) exposure pathways. 56 FR at 7150, 7167, 7169–70 (Feb. 21, 1991); 54 FR at 43720–21, 43723, 43757 (Oct. 26, 1989). The Agency reiterated these concerns in the Combustion Strategy announced in 1993 as one of the major factors leading to its decision to undertake revisions to the standards for hazardous waste combustors. As also noted in the Combustion Strategy and elsewhere, site-specific RCRA omnibus authority, whereby permit writers can impose additional conditions as are necessary to protect human health and the environment, can be used to buttress the existing regulations. See, e.g., 56 FR 7145, at n.8. Nevertheless, this process is expensive, time-consuming, and not always sufficiently certain in result. The Agency thus indicated, in the Combustion Strategy, that technology-based standards could provide a superior means of control by providing certainty of operating performance.

Because of the joint authorities under which this rule is being proposed, the proposal also contains an implementation scheme that is intended to harmonize the RCRA and CAA programs to the maximum extent permissible by law. In pursuing a common-sense approach towards this objective, the proposal seeks to establish a framework that: (1) Provides for combined (or at least coordinated) CAA and RCRA permitting of these facilities; (2) allows maximum flexibility for regional, state, and local agencies to determine which of their resources will be used for permitting, compliance, and enforcement efforts; and (3) integrates the monitoring, compliance testing, and recordkeeping requirements of the CAA and RCRA so that facilities will be able

to avoid two potentially different regulatory compliance schemes.

In addition, this proposal addresses the variety of issues, to the extent appropriate at this time, raised in several petitions filed with the Agency. These petitions are from the Cement Kiln Recycling Coalition (Jan. 18, 1994), the Hazardous Waste Treatment Council (May 18, 1994), and the Chemical Manufacturers Association (Oct. 14, 1994).

II. Relationship of Today's Proposal to EPA's Waste Minimization National Plan

EPA believes that today's proposed rule will create significant incentives for source reduction and recycling by waste generators that would, in turn, help facilities achieve compliance with the MACT standards. RCRA, as well as the Pollution Prevention Act of 1990 (PPA), encourage pollution prevention at the source, and the Clean Air Act mentions pollution prevention as a specific means of achieving MACT. In § 112(d)(2) of the CAA, Congress expressly defined MACT as the ''application of measures, processes, methods, systems, or techniques including, but not limited to, measures which reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials and other modifications.''

In addition, in the Hazardous and Solid Waste Amendments of 1984 (HSWA) to RCRA, Congress established a national policy for waste minimization. Section 1003 of RCRA states that, whenever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Section 8002(r) requires EPA to explore the desirability and feasibility of establishing regulations or other incentives or disincentives for reducing or eliminating the generation of hazardous waste. In 1990, the PPA reinforced these policies by declaring it ''to be the national policy of the United States that pollution should be prevented at the source whenever feasible'' and, when not feasible, waste should be recycled, treated, or disposed of—in that order of preference.

Although the Agency has devoted significant effort to evaluation and promotion of waste minimization in the past [1], the Hazardous Waste Minimization and Combustion Strategy, first announced in May 1993, recently provided a new impetus to this effort. The Strategy had several components, among which was reducing the amount and toxicity of hazardous waste generated in the United States. Other components of the Strategy included strengthening controls on emissions from hazardous waste combustion units; enhancing public participation in facility permitting; establishing risk assessment policies with respect to facility permitting; and continued emphasis on strong compliance and enforcement.

EPA held a National Roundtable and four Regional Roundtables throughout the nation in 1993–94 to facilitate a broad dialogue on the spectrum of waste minimization and combustion issues. The major messages from these Roundtables became the building blocks for EPA's further efforts to promote source reduction and recycling and specifically for EPA's Waste Minimization National Plan, released in November 1994.

The Waste Minimization National Plan focuses on the goal of reducing persistent, bioaccumulative, and toxic constituents in hazardous waste nationally by 25 percent by the year 2000 and 50 percent by the year 2005. The central themes of the National Plan are: (1) Developing a framework for setting national priorities for the minimization of hazardous waste; (2) promoting multimedia environmental benefits and preventing cross-media transfers; (3) demonstrating a strong preference for source reduction by shifting attention to hazardous waste generators to reduce generation at its source; (4) defining and tracking progress in minimizing the generation of wastes; and (5) involving citizens in waste minimization implementation decisions. The Agency intends to continue its pursuit of hazardous waste minimization under the National Plan and other Agency initiatives in concert with the actions proposed in today's rule.

Of the 3.0 million tons of hazardous waste combusted in 1991, approximately two-thirds of that amount were combusted at on-site facilities (i.e., the same facilities at which the waste was generated). Combustion at an on-site facility therefore presents a situation in which the same facility owners and operators may have some measure of control over generation of wastes at its source and its ultimate disposition. Although close to 400 industries generated wastes destined for combustion in 1991, much of the quantity was concentrated in a few sectors. As a companion to this proposed rule, EPA is focusing its waste minimization efforts on reducing the generation and subsequent release to the environment of the most persistent, bioaccumulative, and toxic constituents in hazardous wastes (i.e., metals, halogenated organics).

Analysis of waste minimization potential suggests that generators currently burning wastes may have a number of options for eliminating or reducing these wastes. We believe that roughly 15 percent of all combusted wastes may be amenable to waste minimization. Three waste generating processes appear to have the most potential in terms of tonnage reduction: (1) Solvent and product recovery/distillation procedures, primarily in the organic chemicals industry, (2) product processing wastes, and (3) process waste removal and cleaning. In addition, preliminary analyses of Toxics Release Inventory and hazardous waste stream data indicate that over 3 million pounds of hazardous metals are contained in waste streams being combusted. The top 5 ranking metals (with respect to health risk considering persistence, bioaccumulation, and toxicity) are mercury, cadmium, lead, copper, and selenium. Additional analyses are underway to identify the industry sectors and production processes that are chief sources of these and other high priority hazardous constituents.[2]

In today's rule, EPA is soliciting comment on two options to promote the use of pollution prevention/waste minimization measures as methods for helping meet MACT standards. These options (regarding feed stream analysis and permitting requirements) are described in Part Five, Section VI, Subsection D of this preamble. EPA is also seeking comment on a proposal to consider, on a case-by-case basis, extending the compliance deadlines for this rule by one year if a facility can show that extra time is needed to implement pollution prevention/waste minimization measures in order for the facility to meet the MACT standards and that implementation cannot be practically achieved within the allotted three-year period after promulgation of this rule (see Part V, Section 1, Subsection C).

PART TWO: DEVICES THAT WOULD BE SUBJECT TO THE PROPOSED EMISSION STANDARDS

I. Hazardous Waste Incinerators

A. Overview

A hazardous waste incinerator is an enclosed, controlled flame combustion

[1] For example, EPA prepared a report to Congress, ''Minimization of Hazardous Wastes'' (October 1986), that summarized existing waste minimization activities and evaluated options for promoting waste minimization.

[2] USEPA, Office of Solid Waste, ''Setting Priorities for Hazardous Waste Minimization'', July 1994.

device, as defined in 40 CFR 260.10, and is used to treat primarily organic and/or aqueous wastes. These devices may be in situ (fixed), or consist of mobile units (such as those used for site remediation and superfund clean-ups) or may consist of units burning spent or unusable ammunition and/or chemical agents that meet the incinerator definition.

B. Summary of Major Incinerator Designs

The following is a brief description of the typical incinerator designs used in the United States.[3]

1. Rotary Kilns

Rotary kiln systems typically contain two incineration chambers: the rotary kiln and an afterburner. The kiln itself is a cylindrical refractory-lined steel shell 10–20 feet in diameter, with a length-to-diameter ratio of 2 to 10. The shell is supported by steel trundles that ride on rollers, allowing the kiln to rotate around its horizontal axis at a rate of 1–2 revolutions per minute. Wastes are fed directly at one end of the kiln and heated by primary fuels. Waste continues to heat and burn as it travels down the inclined kiln. Combustion air is provided through ports on the face of the kiln. The kiln typically operates at 50–200 percent excess air and temperatures of 1600–1800°F. Flue gas from the kiln is routed to an afterburner operating at 2000–2500°F and 100–200 percent excess air where unburnt components of the kiln flue gas are more completely combusted. Auxiliary fuel and/or pumpable liquid wastes are typically used to maintain the afterburner temperature.

Some rotary kiln incinerators, known as slagging kilns, operate at high enough temperatures such that residual materials leave the kiln in a molten slag form. The molten residue is then water-quenched. Another kiln, an ashing kiln, operates at a lower temperature, producing a residual ash, which leaves as a dry material.

2. Liquid Injection Incinerators

A liquid injection incinerator system consists of an incineration chamber, waste burner and auxiliary fuel system. The combustion chamber is a cylindrical steel shell lined with refractory material and mounted horizontally or vertically. Liquid wastes are atomized as they are fed into the combustion chamber through waste burner nozzles. Typical combustion chamber temperatures are 1300–3000°F and residence times are from 0.5 to 3 seconds.

3. Fluidized Bed Incinerators

A fluidized bed system is essentially a vertical cylinder containing a bed of granular material at the bottom. Combustion air is introduced at the bottom of the cylinder and flows up through the bed material, suspending the granular particles. Waste and auxiliary fuels are injected into the bed, where they mix with combustion air and burn at temperatures from 840–1500°F. Further reaction occurs in the volume above the bed at temperatures up to 1800°F.

4. Fixed Hearth Incinerators

Fixed hearth incinerators typically contain two furnace chambers: a primary and a secondary chamber. Some designs have two or three step hearths on which ash and waste are pushed with rams through the system. A controlled flow 'underfire' combustion air is introduced up through the hearths. The primary chamber operates in ''starved air'' mode and the temperatures are around 1000°F. The unburnt hydrocarbons reach the secondary chamber where 140–200 percent excess air is supplied and temperatures of 1400–2000°F are achieved for more complete combustion.

C. Number of Incinerator Facilities

Currently, 162 permitted or interim status incinerator facilities, having 190 units, are in operation in the U.S. Another 26 facilities are proposed[4] (i.e., new facilities under construction or permitting). Of the above 162 facilities, 21 facilities are commercial facilities that burn about 700,000 tons of hazardous waste annually. The remaining 141 are on-site or captive facilities and burn about 800,000 tons of waste annually.

D. Typical Emission Control Devices for Incinerators

Incinerators are equipped with a wide variety of air pollution control devices (APCDs), which range from no control (for devices burning low ash and low chlorine wastes) to sophisticated state-of-the-art units providing control for several pollutants. Hot flue gases from the incinerators are cooled and cleaned of the air pollutants before they exit the stack. Cooling is mostly done by water quenching, wherein atomized water is sprayed directly into the hot gases. The cooled gases are passed through various pollution control devices to control PM, metals and organic emissions to desired or required levels. Most incinerators use wet APCDs to scrub acid emissions (3 facilities use dry scrubbers). Typical APCDs used include packed towers, spray dryers, or dry scrubbers for acid gas (e.g., HCl, Cl_2) control, and venturi-scrubbers, wet or dry electrostatic precipitators (ESPs) or fabric filters for particulate control.

Activated carbon injection for controlling dioxin and mercury is being used at only one incinerator. Newer APC technologies (such as catalytic oxidizers and dioxin/furan inhibitors) have recently emerged, but have not been used on any full scale facilities in the U.S. For detailed description of APCDs, see Appendix A of ''Combustion Emissions Technical Resource Document (CETRED),'' US EPA Document #EPA530–R–94–014, May 1994.

II. Hazardous Waste-Burning Cement Kilns

A. Overview of Cement Manufacturing

Cement refers to the commodities that are produced by heating mixtures of limestone and other minerals or additives at high temperature in a rotary kiln, followed by cooling, grinding, and finish mixing. This is the manner in which the vast majority of commercially-important cementitious materials are produced in the United States. Cements are used to chemically bind different materials together. The most commonly produced cement type is ''Portland'' cement, though other standard cement types are also produced on a limited basis (e.g., sulfate-resisting, high-early-strength, masonry, waterproofed). Portland cement is a hydraulic cement, meaning that it sets and hardens by chemical interaction with water. When combined with sand, gravel, water, and other materials, Portland cement forms concrete, one of the most widely used building and construction materials in the world. Cement produced and sold in the U.S. must meet specifications established by the American Society for Testing and Materials (ASTM). Each type requires specific additives or changes in the proportions of the raw material mix to make products for specific applications.

B. Summary of Major Design and Operating Features of Cement Kilns

Cement kilns are horizontally inclined rotating cylinders, refractory-brick lined, and internally-fired, that calcine a blend of raw materials

[3] For a more detailed description of incineration technology, see ''Combustion Emissions Technical Resource Document (CETRED)'', USEPA EPA530–R–94–014, May 1994.

[4] USEPA ''List of hazardous waste incinerators,'' November 1994.

containing calcium (typically limestone), silica and alumina (typically clay, shale, slate, and/or sand), and iron (typically steel mill scale or iron ore) to produce Portland cement. Generally, there is a wet process and a dry process for producing cement. In the wet process, the limestone and shale are ground up, wetted and fed into the kiln as a slurry. In the dry process, raw materials are ground dry and fed into the kiln dry. Wet process kilns are typically longer than dry process kilns in order to facilitate water evaporation from the slurried raw material. Wet kilns can be more than 450 feet in length. Dry kilns are more thermally efficient and frequently use preheaters or precalciners to begin the calcining process (i.e., the essential function of driving CO_2 from raw materials) before the raw materials are fed into the kiln.

Combustion gases and raw materials move in a counterflow direction, with respect to each other, inside a cement kiln. The kiln is inclined, and raw materials are fed into the upper end (i.e., the ''cold'' end) while fuels are normally fired into the lower end (i.e., the ''hot'' end). Combustion gases move up the kiln counter to the flow of raw materials. The raw materials get progressively hotter as they travel down the length of the kiln. The raw materials eventually begin to soften and fuse at temperatures between 2,250 and 2,700 °F to form the clinker product. Clinker is then cooled, ground, and mixed with other materials, such as gypsum, to form cement.

Combustion gases leaving the kiln typically contain from 6 to 30 percent of the free solids as dust, which are often recycled to the kiln feed system, though the extent of recycling varies greatly among cement kilns.

Dry kilns with a preheater (PH) or precalciner (PC) often use a by-pass duct to remove from 5 to 30 percent of the kiln off-gases from the main duct. The by-pass gas is passed through a separate air pollution control system to remove particulate matter. Collected by-pass dust is not reintroduced into the kiln system to avoid a build-up of metal salts that can affect product quality.

Some cement kilns burn hazardous waste-derived fuels to replace from 25 to 100 percent of normal fossil fuels (e.g., coal). Most kilns burn liquid waste fuels but several also burn bulk solids and small (e.g., six gallon) containers of viscous or solid hazardous waste fuels. Containers are introduced either at the upper, raw material end of the kiln or at the midpoint of the kiln. EPA has also found that hazardous waste-fired precalciners can still be considered part of the cement kiln and, thus, would be part of an industrial furnace (per the definition in 40 CFR 260.10). See 56 FR at 7184–85 (February 21, 1991). This finding is codified at § 266.103(a)(5)(I)(c). This is the only time (and the only rulemaking) in which the Agency found that a device not enumerated in the list of industrial furnaces in § 260.10 can be considered part of the industrial furnace when it burns hazardous wastes separate from those burned in the main combustion device.

C. Number of Facilities

The Agency has emissions data from 26 facilities representing 49 cement kilns in the U.S. It should be noted that some facilities no longer burn or process hazardous waste since they were required to certify compliance with the BIF regulations in August 1992.

Of the hazardous waste-burning kilns for which we have emissions data, 14 facilities use a wet process, 5 facilities use a dry process, and the remaining 7 facilities employ either preheaters or preheater/precalciners in the cement manufacturing process.

D. Emissions Control Devices

All hazardous waste-burning cement kilns either use fabric filters (baghouses) or electrostatic precipitators (ESPs) as air pollution control devices. ESPs have traditionally been employed in the cement industry and are currently used at 17 of the facilities. Nine facilities use fabric filters. A detailed description of these and other air pollution control devices is contained in the technical support document.[5]

III. Hazardous Waste-Burning Lightweight Aggregate Kilns

A. Overview of Lightweight Aggregate Kilns (LWAKs)

The term lightweight aggregate refers to a wide variety of raw materials (such as clay, shale, or slate) which after thermal processing can be combined with cement to form concrete products. Lightweight aggregate concrete is produced either for structural purposes or for thermal insulation purposes. A lightweight aggregate plant is typically composed of a quarry, a raw material preparation area, a kiln, a cooler, and a product storage area. The material is taken from the quarry to the raw material preparation area and from there is fed into the rotary kiln.

B. Major Design and Operating Features

A rotary kiln consists of a long steel cylinder, lined internally with refractory bricks, which is capable of rotating about its axis and is inclined at an angle of about 5 degrees to the horizontal. The length of the kiln depends in part upon the composition of the raw material to be processed but is usually 30 to 60 meters. The prepared raw material is fed into the kiln at the higher end, while firing takes place at the lower end. The dry raw material fed into the kiln is initially preheated by hot combustion gases. Once the material is preheated, it passes into a second furnace zone where it melts to a semiplastic state and begins to generate gases which serve as the bloating or expanding agent. In this zone, specific compounds begin to decompose and form gases such as SO_2, CO_2, SO_3, and O_2 that eventually trigger the desired bloating action within the material. As temperatures reach their maximum (approximately 2100°F), the semiplastic raw material becomes viscous and entraps the expanding gases. This bloating action produces small, unconnected gas cells, which remain in the material after it cools and solidifies. The product exits the kiln and enters a section of the process where it is cooled with cold air and then conveyed to the discharge.

Kiln operating parameters such as flame temperature, excess air, feed size, material flow, and speed of rotation vary from plant to plant and are determined by the characteristics of the raw material. Maximum temperature in the rotary kiln varies from 2050 °F to 2300 °F, depending on the type of raw material being processed and its moisture content. Exit temperatures may range from 300 °F to 1200 °F, again depending on the raw material and on the kiln's internal design. Approximately 80 to 100 percent excess air is forced into the kiln to aid in expanding the raw material.

C. Number of Facilities

EPA has identified 36 lightweight aggregate kiln locations in the United States. Of these, EPA has identified seven facilities that are currently burning hazardous waste in a total of 15 kilns.

D. Air Pollution Control Devices

Lightweight aggregate kilns use one or a combination of air pollution control devices, including fabric filters, venturi scrubbers, spray dryers, cyclones and wet scrubbers. All of the facilities utilize fabric filters as the main type of emissions control, although one facility uses a spray dryer, venturi scrubber and

[5] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume I: Description of Source Categories'', February 1996.

wet scrubber in addition to a fabric filter. For detailed descriptions of these and other air pollution control devices, please see Appendix A of the draft EPA document Combustion Emissions Technical Resource Document (CETRED).[6]

PART THREE: DECISION PROCESS FOR SETTING NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPs)

I. Source of Authority for NESHAP Development

The 1990 Amendments to the Clean Air Act significantly revised the requirements for controlling emissions of hazardous air pollutants. EPA is now required to develop a list[7] of categories of major and area sources[8] of the hazardous air pollutants (HAPs) enumerated in section 112 and to develop technology-based performance standards for such sources over specified time periods. See Clean Air Act (the Act or CAA) §§ 112(c) and 112(d). Section 112 of the Act replaces the previous system of pollutant-by-pollutant health-based regulation that proved ineffective at controlling the high volumes, concentrations, and threats to human health and the environment posed by HAPs in air emissions. See generally S. Rep. No. 228, 101st Cong. 1st Sess. 128–32 (1990).

Section 112(f) also requires the Agency to report to Congress by the end of 1996 on estimated risk remaining after imposition of technology-based standards and to make recommendations as to legislation to address such risk. CAA § 112(f)(1). If Congress does not act on the recommendation, then EPA must address any significant remaining residual risks posed by sources subject to the section 112(d) technology-based standards within 8 years after promulgation of these standards. See § 112(f)(2). The Agency is required to impose additional controls if such controls are needed to protect public health with an ample margin of safety, or to prevent adverse environmental effects. *Id*. In addition, if the technology-based standards for carcinogens do not reduce the lifetime excess cancer risk for the most exposed individual to less than one in a million (1×10^{-6}), then the Agency must promulgate additional standards. See § 112(f)(2)(A).

II. Procedures and Criteria for Development of NESHAPs

NESHAPs are developed in order to control HAP emissions from both new and existing sources according to the statutory directives set out in § 112. The statute requires a NESHAP to reflect the maximum degree of reduction of HAP emissions that is achievable taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. § 112(d)(2). In regulatory parlance, these are often referred to as maximum achievable control technology (or MACT) standards.

The Clean Air Act establishes minimum levels, usually referred to as MACT floors, for the emission standards. Section 112(d)(3) requires that MACT floors be determined as follows: for existing sources in a category or sub-category with 30 or more sources, the MACT floor cannot be less stringent than the ''average emission limitation achieved by the best performing 12 percent of the existing sources * * *''; for existing sources in a category or sub-category with less than 30 sources, then the MACT floor cannot be less stringent than the ''average emission limitation achieved by the best performing 5 sources * * *''; for new sources, the MACT floor cannot be ''less stringent than the emission control that is achieved by the best controlled similar source * * *''. See § 112(d)(3)(A) and (B).

EPA must, of course, consider in all cases whether to develop standards that are more stringent than the floor (''beyond the floor'' standards). To do so, however, EPA must consider the enumerated statutory criteria such as cost, energy, and non-air environmental implications.

Emission reductions may be accomplished through application of measures, processes, methods, systems, or techniques, including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification); or (5) any combination of the above. See § 112(d)(2).

Application of techniques (1) and (2) of the previous paragraph are consistent with the definitions of pollution prevention under the Pollution Prevention Act and the definition of waste minimization under RCRA/HSWA. These terms have particular applicability in the discussion of pollution prevention/waste minimization options presented in the permitting and compliance sections of today's proposal.

To develop a NESHAP, the EPA compiles available information and in some cases collects additional information about the industry, including information on emission source quantities, types and characteristics of HAPs, pollution control technologies, data from HAP emissions tests (e.g., compliance tests, trial burn tests) at controlled and uncontrolled facilities, and information on the costs and other energy and environmental impacts of emission control techniques. EPA uses this information in analyzing and developing possible regulatory approaches. EPA, of course, does not always have or collect the same amount of information per industry, but rather bases the standard on information practically available.

Although NESHAPs are normally structured in terms of numerical emission limits—the preferred means of establishing standards—alternative approaches are sometimes necessary and appropriate. In some cases, for example, physically measuring emissions from a source may be impossible, or at least impractical, because of technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or a combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

EPA is required to develop emission standards based on performance of maximum achievable control technology for categories or sub-categories of major sources of hazardous air pollutants. § 112(d)(1). As explained more fully in the following section, a major source emits, or has the potential to emit considering controls, either 10 tons per year of any hazardous air pollutant or 25 tons or more of any combination of those pollutants. § 112(a)(1). EPA also can establish lower thresholds where appropriate. *Id*. EPA

[6] USEPA, ''Draft Combustion Emission Technical Resource Document (CETRED)'', EPA 530–R–94–014, May 1994.

[7] The Agency published an initial list of categories of major and area sources of HAPs on July 16, 1992. See 57 FR 31576.

[8] See Part Three, Section III of today's proposal for a discussion of major and area sources. Generally, a major source is a stationary source that emits, or has the potential to emit considering controls, 10 tons per year of a HAP or 25 tons per year of a combination of HAPs. CAA § 112(a)(1). An area source is generally a stationary source that is not a major source. *Id*. § 112(a)(2).

may in addition require sources emitting particularly dangerous hazardous air pollutants (such as particular chlorinated dioxins and furans) to be regulated under the MACT standards for major sources. § 112(c)(6).

Area sources are any source which is not a major source. Such sources must be regulated by technology-based standards if they are listed, pursuant to § 112(c)(3), based on the Agency's finding that these sources (individually or in the aggregate) present a threat of adverse effects to human health or the environment warranting regulation. After such a determination, the Agency has a further choice as to require technology-based standards based on MACT or on generally achievable control technology (GACT). § 112(d)(5).

In this rulemaking, EPA is proceeding pursuant to § 112(c)(6) (i.e., imposing MACT controls on area sources), because these hazardous waste combustion units emit a number of the HAPs singled out in that provision, including the enumerated dioxins and furans, mercury, and polycyclic organic matter. (See discussion below.)

III. List of Categories of Major and Area Sources

A. Clean Air Act Requirements

As just discussed, Section 112 of the CAA requires that the EPA promulgate regulations requiring the control of hazardous air pollutants emissions associated with categories or subcategories of major and area sources. These source categories and subcategories are to be listed pursuant to § 112(c)(1). EPA published an initial list of 174 categories of such major and area sources in the Federal Register on July 16, 1992 (57 FR 31576).

B. Hazardous Waste Incinerators

''Hazardous waste incinerators'' is one of the 174 categories of sources listed. The category consists of commercial and on-site (including captive) incinerating facilities. The listing was based on the Administrator's determination that at least one hazardous waste incinerator may reasonably be anticipated to emit several of the 189 listed HAPs in quantities sufficient to designate them as major sources. EPA used two emission rate values to evaluate the available hazardous waste incinerator emissions data: the maximum emission rate measured during the compliance test, and the average emission rate. The data indicate that approximately 30 percent of the facilities meet the major source criteria when using the maximum emissions rate value. When using the average emissions rate value approximately 15 percent of facilities meet the major source criteria.[9] Those facilities meeting the major source criteria do so for HCl and Cl_2 emissions, and one facility is also a major source for antimony emissions.

It should be noted that a major source and boundary for considering whether a source is a major includes all potential emission points of HAPs at that contiguous facility, including storage tanks, equipment leaks, and other hazardous waste handling facilities. The above calculations for incinerators on whether a source is a major source under § 112 do not reflect these potential emission points.

Notwithstanding the fact that most HW incinerators are not likely to meet the HAP emission thresholds for major sources, the Agency is proposing to subject all HWCs to regulation under MACT as major sources, under the authority of § 112(c)(6). See Section IV below.

C. Cement Kilns

Another of the 174 categories of major and area sources of HAPs is Portland Cement Manufacturing (cement kilns). In evaluating the emissions data for the hazardous waste-burning cement kilns, 85 percent of the cement kilns were determined to meet the major source criteria when using the maximum emission rate value. Using the average emission rate value, just over 80 percent of the hazardous waste-burning cement kilns meet the major source criteria.[10] Those facilities meeting the major source criteria do so for HCl and Cl_2 emissions, and one facility is also a major source for organic emissions. It should be noted that the calculation on whether a cement kiln is a major source did not include potential emission points of HAPs at that contiguous facility.

Notwithstanding the fact that some hazardous waste-burning cement kilns may not meet the definition of major source, the Agency is proposing to subject all HWCs to regulation under MACT, as major sources, under the authority of § 112(c)(6). See Section IV below.

D. Lightweight Aggregate Kilns

Section 112(c)(5) authorizes EPA to amend the source category list at any time to add categories or subcategories that meet the listing criteria. EPA is proposing to exercise that authority by adding HW-burning lightweight aggregate kilns to the list of source categories.

In analyzing the emissions data, EPA found that all hazardous waste-burning LWAKs met the major source criteria for two HAPs, HCl and Cl_2, using either the average or maximum emission rate value.[11] It should be noted that the calculation on whether a LWAK is a major source did not include potential emission points of HAPs at that contiguous facility. EPA is therefore proposing today the addition of hazardous waste-burning LWAKs as a source category in accordance with section 112(c)(5) of the Act. In addition, as discussed below, even if a LWAK would otherwise be an area source, EPA is proposing to subject it to the same NESHAPS as major LWAK sources.

IV. Proposal To Subject Area Sources to the NESHAPs Under Authority of Section 112(c)(6)

EPA is today proposing to subject all hazardous waste incinerators, hazardous waste-burning cement kilns, and hazardous waste-burning lightweight aggregate kilns (i.e., both area and major sources) to regulation as major sources pursuant to CAA § 112(c)(6). That provision states that, by November 15, 2000, EPA must list and promulgate § 112 (d)(2) or (d)(4) standards (i.e., standards reflecting MACT) for categories (and subcategories) of sources emitting specific pollutants, including the following HAPs emitted by HWCs: polycyclic organic matter, mercury, 2,3,7,8-tetrachlorodibenzofuran, and 2,3,7,8-tetrachlorodibenzo-p-dioxin. (Although the Agency has not prepared the list, it is the Agency's intention to include hazardous waste combustors.) EPA must assure that sources accounting for not less than 90 percent of the aggregate emissions of each enumerated pollutant are subject to MACT standards.

The chief practical effect of invoking § 112(c)(6) for this rulemaking is to subject area sources that emit 112(c)(6) pollutants to the same MACT standards as major sources, rather than to the potentially less stringent 112(d)(5) or ''GACT'' (''generally achievable control technology'') standards.[12] Today's proposal constitutes one of many EPA actions to assure that sources accounting for at least 90 percent of

[9] For further details see USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume I: Description of Source Categories'', February 1996.

[10] Ibid.

[11] Ibid.

[12] EPA also solicits comment on an alternative reading of § 112(c)(6), whereby the provision would require MACT control for the enumerated pollutants but not necessarily for other HAPs emitted by the source, which HAPs are not enumerated in § 112(c)(6).

emissions of § 112(c)(6) pollutants are subject to MACT standards.

Although § 112(c)(6) requires the Agency to regulate source categories that emit not less than 90 percent of the aggregate emissions of the high priority HAPs, the Agency will use its discretion to avoid regulating area source categories with trivial aggregate emissions of specific § 112(c)(6) HAPs. However, as an example of the emissions that are possible from the HWC source categories, it is estimated that HWCs presently emit in aggregate 11.1 tons of mercury per year. Of this quantity, 4.6 tons per year can be attributed to hazardous waste incinerators and 6.5 tons per year to hazardous waste-burning cement and lightweight aggregate kilns. Also, it is estimated that HWCs presently emit in aggregate 122 pounds of dioxins/furans (or 2.15 pounds TEQ) per year. Of this quantity, 9 pounds (or 0.2 pounds TEQ) per year can be attributed to hazardous waste incinerators and 113 pounds (or 1.95 pounds TEQ) per year to hazardous waste-burning cement and lightweight aggregate kilns. To show an example of how today's proposal constitutes an action to assure that sources accounting for at least 90 percent of emissions of § 112(c)(6) pollutants are subject to MACT standards, the document Estimating Exposure to Dioxin-Like Compounds, Vol. II: Properties, Sources, Occurrence and Background Exposures (EPA, 1994) estimates (on p. 29) that national emissions of dioxins and furans (D/F) total 4.18 pounds TEQ per year. Based on this estimation, HWCs account for 51 percent of the annual national emissions of D/F. (Consequently, EPA expects these source categories to be included in the list of sources to be controlled to achieve the requisite 90 percent reduction in aggregate emissions of section 112(c)(6) pollutants.)

Congress singled out the HAPs enumerated in § 112(c)(6) as being of ''specific concern'' not just because of their toxicity but because of their propensity to cause substantial harm to human health and the environment via indirect exposure pathways (i.e., from the air through other media, such as water, soil, food uptake, etc.). S. Rep. No. 228, 101st Cong. 1st Sess., pp. 155, 166. These pollutants have exhibited special potential to bioaccumulate, causing pervasive environmental harm in biota (and, ultimately, human health risks). *Id*. Indeed, as discussed later, the data appear to show that much of the human health risk from emissions of these HAPs from HWCs comes from these indirect exposure pathways. *Id*. at p. 166. Congress' express intention was to assure that sources emitting significant quantities of § 112(c)(6) pollutants received a stricter level of control. *Id*.

V. Selection of MACT Floor for Existing Sources

The starting point in developing MACT standards is determining floor levels, i.e. the minimum (least stringent) level at which the standard can be set.

All of the hazardous waste combustion units subject to this proposed rule are already subject to RCRA regulation under 40 CFR Parts 264, 265, or 266. As a result, the Agency has a substantial amount of data reflecting performance of these devices. These data consist largely of trial burn data for hazardous waste incinerators and data from certifications of compliance for hazardous waste-burning cement kilns and LWAKs obtained pursuant to 266.103(c). These data consist of at least three runs for any given test condition.

In using these ''short term'' test data to establish a MACT floor, the Agency has developed an approach that ensures the standards are achievable, i.e. reflect the performance over time of properly designed and operated air pollution control devices (or operating practices) taking into account intrinsic operating variability.

In addition, the Agency notes that the floor calculations were performed on individual HAPs or, in the case of metals, in two groups of HAPs that behave similarly (i.e., separate floor levels for each hazardous air pollutant or group of metal pollutants). However, for HAPs that are controlled by the same type of air pollution control device (APCD), EPA has ensured that all HAP floors are simultaneously achievable by identifying the APCD and APCD treatment train that can be used to meet all floor levels. The ultimate floor levels thus derived can be achieved using the identified technology. This approach is consistent with methods used by EPA in other rules to calculate MACT requirements where the HAP species present must be treated by a treatment train. See, e.g., MACT Rules for Secondary Lead Smelters. 60 FR 32589 (June 23, 1995).

The Agency is not, however, treating hazardous waste-burning incinerators, cement kilns, and LWAKs as a single source category for purposes of developing the MACT floor (or for any other purpose). The Agency's initial view is that there are technical differences in performance for particular HAPs among the three source categories, and therefore that the technology-based floors must reflect these operating differences.

A. Proposed Approach: Combined Technology-Statistical Approach

This analysis first identified the best performing control technology(ies) for each source category (i.e., incinerators, cement kilns, and lightweight aggregate kilns) and each HAP of concern by arraying from lowest to highest all the particular HAP emissions data from existing units within the source category by test condition averages. These technologies comprise MACT floor. In cases where a source had emissions data for a HAP from several different test conditions of a compliance test, the Agency arrayed each test condition separately. The Agency then identified the emission control technology or technologies (and normalized feedrate of metals and chlorine in hazardous waste) used by sources with emissions levels at or below the level emitted by the median of the best performing 12 percent of sources. The sources are termed ''the best performing 6 percent'' of the sources, or ''MACT pool'', and the controls they use comprise MACT floor.

The next step was to identify an emissions level that MACT floor control could achieve. Thus, emissions data from *all* sources (in the source category) that use MACT floor control were arrayed in ascending order by average emissions. [This is referred to as the ''expanded MACT pool'' or ''expanded universe''.] The Agency evaluated the control technologies used by the additional sources within the ''expanded universe'' as available data allowed to ensure that they were in fact equivalent in design to MACT floor. The Agency then selected the test condition in the expanded MACT pool with the highest mean emissions to identify the emission level that MACT floor could achieve.

Because the emissions database was comprised of ''short-term'' test data, the Agency used a statistical approach to identify an emission level that MACT floor could achieve *routinely*. The Agency then identified the test condition in the expanded MACT pool with the highest mean emissions to statistically calculate a ''design level'' and a floor standard. The design level was calculated as the log mean of the emissions for the test condition. The standard was calculated as a level that a source (that is designed and operated to routinely meet the design level) could meet 99 percent of the time if it has the average within-test-condition emissions variability of the expanded MACT pool. Although the Agency evaluated 90th and 95th percentile limits, the 99th

percentile limit was chosen to: (1) More accurately reflect the variability that could be present in emissions data, and (2) appropriately characterize this variability in light of the consequence of failing to achieve the emissions standards. Additional information on how MACT floor levels were identified is provided in the ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies''.

In accounting for operating variability, the Agency solicits comment on whether it may have overcompensated so that the identified floor levels are unduly lenient. The test data on which the proposal is based to some extent reflect worst-case performance conditions because RCRA sources try to obtain maximum operating flexibility by conducting test burns at extreme operating conditions. For example, many sources spike wastes with excess metals and chlorine during compliance testing. In addition, sources operate their emissions control devices under low efficiency conditions (while still meeting emission standards) to ensure lenient operating limits. It thus may be that the Agency's emissions database is so inflated that separate consideration of emissions variability may not be warranted. A floor level could be the highest mean of the test conditions in the expanded MACT pool.

The Agency emphasizes that it would be preferable, for purposes of setting these MACT standards, to have operational and emissions data that better reflect long-term, more routine day-to-day facility operations from all of the source categories. We believe that this type of data would enable the MACT process to articulate a set of HAP standards that would not create some of the issues raised in subsequent sections of this preamble (such as the most appropriate resolution of a variability factor, the optimum approach for considering the contribution of cement and lightweight aggregate kiln raw material feed to HAP emissions, and better identification among sources that are now in an expanded MACT pool but which, with better data, would be determined not to be employing the identified floor controls). As noted in these subsequent sections, the Agency urges commenters to submit these types of data.

B. Another Approach Considered but not Used

Although the Agency believes the proposed approach reflects a reasonable interpretation of the statute, there are other possible interpretations. One of these interpretations, termed the ''12 percent approach'', was raised and, in fact, evaluated during the process already outlined. This approach is presented here, along with the results of the process in Part Four, Section VIII, for public inspection.

This ''12 percent approach'' was evaluated in a like manner to the Agency's preferred approach just described. Again, the best performing control technology(ies) for each source category and each HAP were identified by arraying the data by test condition averages. However, the Agency identified the technology or technologies used by the best performing 12 percent of the sources. After arraying emissions data from *all* facilities in the source category that use the identified MACT floor technology(ies) (i.e., the expanded MACT pool), the Agency selected an emissions floor level based on the statistical average of the 12 percent MACT pool, to which was added the average within-test condition variability within the expanded MACT pool. The emissions floor was then calculated at a level that a source with average emissions variability would be expected to achieve 99 percent of the time. The approach was not proposed because it could not be demonstrated that sources within the expanded MACT pool using MACT floor controls could achieve the floor levels. Again, the details of the statistical methods employed are presented in the ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies''.

C. Identifying Floors as Proposed in CETRED

The discussion in the Draft Combustion Emissions Technical Resource Document (CETRED) (U.S. EPA, EPA530–R–94–014, May 1994) presented one methodology for establishing particulate matter (PM) and dioxin/furan (D/F) technology-based emission levels for hazardous waste combustors (HWCs). The document presented a procedure for establishing numerical levels which took into account the natural variability that was present in the Agency's PM and D/F emissions data. EPA received numerous comments on the document.

The approaches outlined in CETRED were an initial and preliminary attempt to apply the process by which the NESHAPs are to be established for the existing types of hazardous waste combustors. The approaches in CETRED focused solely on the performance of MACT and how to establish the ''floor'' emission level under the MACT process.

In CETRED, determination of the MACT floor involved: (1) screening unrepresentative data; (2) ranking all HWC sources based on the data average, considering variability; (3) identifying the top 12 percent of sources as the MACT pool; and (4) statistically evaluating the MACT pool to set the MACT floor. These elements and considerations are described in further detail in CETRED and the ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies''. The Agency specifically indicated the preliminary nature of the CETRED approaches and, in light of further deliberations and comments received, has considered and adopted other approaches for this proposal. The comments received are found in the docket.

In considering the use of a purely statistical approach to setting MACT floors, the Agency recognized that whether sources could actually achieve a statistically-derived MACT floor level on a regular basis was significant in determining whether a purely statistical approach could be appropriate or not. The Agency encountered difficulties in identifying an appropriate purely statistical model for the combined source category (HW incinerators, HW-burning cement kilns, and HW-burning lightweight aggregate kilns) emissions database. Consequently, the Agency abandoned a purely statistical approach and examined an approach—referred to here as the ''technology approach''—that used demonstrated technological capabilities as a key factor in selecting MACT floor levels.

D. Establishing Floors One HAP or HAP Group at a Time

EPA believes it is permissible to establish MACT floors separately for individual HAPs or group of HAPs that behave the same from a technical standpoint (i.e., based on separate MACT pools and floor controls), provided the various MACT floors are simultaneously achievable. As set out below, Congress has not spoken to this precise issue. An interpretation that allows this approach is consistent with statutory goals and policies, as well as established EPA practice in developing MACT standards.

As described earlier, Congress specified in section 112(d)(3) the minimum level of emission reduction that could satisfy the requirement to adopt MACT. For new sources, this floor level is to be ''the emission control that is achieved in practice by the best

controlled similar source''. For existing sources, the floor level is to be ''the average emission limitation achieved by the best performing 12 percent of the existing sources'' for categories and subcategories with 30 or more sources, or ''the average emission limitation achieved by the best performing 5 sources'' for categories and subcategories with fewer than 30 sources. An ''emission limitation'' is ''a requirement * * * which limits the quantity, rate, or concentration of emissions of air pollutants'' (section 302 (k)) (although the extent, if any, the section 302 definitions need to apply to the terms used in section 112 is not clear).

This language does not expressly address whether floor levels can be established HAP-by-HAP. The existing source MACT floor achieved by the average of the best performing 12 percent can reasonably be read as referring to the source as a whole or performance as to a particular HAP. The statutory definition of ''emission limitation'' (assuming it applies) likewise is ambiguous, since ''requirements limiting quantity, rate, or concentration of pollutants'' could apply to particular HAPs or all HAPs. The reference in the new source MACT floor to ''emission control achieved by the best controlled similar source'' can mean emission control as to a particular HAP or achieved by a source as a whole.

Here, Congress has not spoken to the precise question at issue, and the Agency's interpretation effectuates statutory goals and policies in a reasonable manner. See *Chevron* v. *NRDC*, 467 U.S. 837 (1984) (indicating that such interpretations must be upheld). The central purpose of the amended air toxics provisions was to apply strict technology-based emission controls on HAPs. See, e.g., H. Rep. No. 952, 101st Cong. 2d sess. 338. The floor's specific purpose was to assure that consideration of economic and other impacts not be used to ''gut the standards''. While costs are by no means irrelevant, they should by no means be the determining factors. There needs to be a minimum degree of control in relation to the control technologies that have already been attained by the best existing sources. Legislative History of the Clean Air Act *Vol. II* at 2897 (statement of Rep. Collins).

Furthermore, an alternative interpretation would tend to result in least common denominator floors where multiple HAPs are emitted, whereby floors would no longer be reflecting performance of the best performing sources. For example, if the best performing 12 percent of facilities for HAP metals did not control organics as well as a different 12 percent of facilities, the floor for organics and metals would end up *not* reflecting best performance. Indeed, under this reading, the floor would be no control, because no plant is controlling both types of HAPs.

EPA is convinced that this result is not compelled by the statutory text, and does not effectuate the evident statutory purpose of having floor levels reflect performance of an average of a group of best-performing sources. Conversely, using a HAP-by-HAP approach (or an approach that groups HAPs based on technical factors) to identify separate floors for metals and organics in this example promotes the stated purpose of the floor to provide a minimum level of control reflecting what best performing existing sources have already demonstrated an ability to do.

EPA notes, however, that if optimized performance for different HAPs is not technologically possible due to mutually inconsistent control technologies (for example, metals performance decreases if organics reduction is optimized), then this would have to be taken into account in establishing a floor (or floors). (Optimized controls for both types of HAPS would not be MACT in any case, since the standards would not be mutually achievable.) The Senate Report indicates that in such a circumstance, EPA is to optimize the part of the standard providing the most environmental protection. S. Rep. No. 228, 101st Cong. 1st sess. 168. It should be emphasized, however, that ''the fact that no plant has been shown to be able to meet all of the limitations does not demonstrate that all the limitations are not achievable''. *Chemical Manufacturers Association* v. *EPA*, 885 F. 2d at 264 (upholding technology-based standards based on best performance for each pollutant by different plants, where at least one plant met each of the limitations but no single plant met all of them).

All available data for HWCs indicate that there is no technical problem achieving the floor levels for each HAP or HAP metal group simultaneously, using the MACT floor technology. In the case of metals and PM, the characteristics of the MACT floor technology associated with the hardest-to-meet floor (e.g., the fabric filter with lowest air-to-cloth ratio) would define the MACT floor technology for purposes of determining achievability of floors and for purposes of costing out the impact of the standards. Existing data show that approximately 9 percent of existing hazardous waste incinerators, approximately 8 percent of hazardous waste-burning cement kilns, and approximately 25 percent of hazardous waste-burning LWAKs are already achieving the proposed floor standards for all HAPs.

Finally, EPA notes that the HAP-by-HAP or HAP group approach to establishing MACT floor levels is not unique to this rule. For example, the Agency has adopted it for the NESHAP for the secondary lead source category (60 FR 32589 (June 23, 1995)) and proposed the same approach for municipal waste combustors (59 FR 48198 (September 20, 1994)).

As discussed above, EPA has the authority to establish MACT floors on a HAP group by HAP group basis and has done so in this case. In doing so, EPA will ensure that such floors, taken as a whole, are reasonably achievable for facilities subject to the MACT standards.

VI. Selection of Beyond-the-Floor Levels for Existing Sources

As discussed in Section V above, the MACT floor defines the minimum level of emission control for existing sources, regardless of cost or other considerations. The process of considering emissions levels more stringent than the MACT floor for existing sources is called a ''beyond-the-floor'' (BTF) analysis and involves consideration of certain additional factors, including cost, any non-air quality health and environmental impacts and energy requirements, technologies currently in use within these industry sectors, and also other more efficient and appropriate technologies that have been demonstrated and are available on the market (e.g., carbon bed for dioxin/furan control).

Because there are virtually unlimited BTF emissions levels that the Agency could consider, the Agency used several criteria in this proposal to identify when to examine a particular beyond-the-floor emissions level in detail, and also whether to propose a MACT standard based on the beyond-the-floor emissions levels for existing sources.

The primary factor is the cost-effectiveness of setting MACT standards based upon a more efficient technology than the MACT floor technology(ies). If the Agency's economic analysis suggested that BTF levels could be cost-effectively achieved (particularly if significant health benefits would result from a lower emission level), then an applicable BTF emission level control technology was identified to achieve that level. The associated costs were then weighed along with the other criteria. Dioxin/furans is an example

where the Agency considered a BTF level because a beyond-the-floor emission level can be achieved in a cost-effective manner, achieving, in addition, significant non-air quality environmental benefits.

VII. Selection of MACT for New Sources

For new sources, the standards for a source category (or sub-category) cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. See § 112(d)(3). The following discussion summarizes the methodology used by the Agency in developing today's proposed emissions standards for new HWC sources.

The approach used to identify MACT for new sources parallels in most ways the approach used to determine the MACT floor for existing sources. For each HAP, the Agency identified the technology associated with the single best performing source (for each source category). The Agency used this best performing technology then looked at all facilities operating the control technology, and determined the achievable emission levels that represent ''the emission control that is achieved in practice by the best controlled similar source'' by using the maximum value achieved by properly-operated technology (adjusted upwards by a statistically derived variability factor). For further details, see the technical background documents [13] supporting today's proposal.

Since MACT for new sources is to reflect optimized achievable performance and is not necessarily limited to performance levels currently achieved, the Agency also considered several other factors in selecting the MACT new emissions limit. These factors included: (1) Comparisons to other emissions standards which may indicate that a technology is demonstrated and its level of performance (e.g., proposed municipal waste combustors and medical waste incinerators regulations and the European Union waste incineration standards); and (2) test condition emissions variability.

As mentioned earlier, the Agency believes that it is appropriate to compare the proposed emissions standards for new sources to other existing or recently proposed standards applicable to hazardous waste combustors or similar devices as a type of ''reality check'' that we are developing the most rigorous emissions limits for new sources based upon the best technologies available today.

The extracted data and data plots are presented in the background document [14] located in the docket.

VIII. RCRA Decision Process

It is EPA's intention to eliminate duplicative or potentially duplicative regulation wherever possible. In this section, we discuss: (1) The RCRA mandate to ensure protection of human health and the environment and how that mandate relates to the CAA technology-based MACT standards; (2) how, for RCRA purposes, we evaluated the protectiveness of the proposed MACT standards; (3) how, for RCRA purposes, the Agency intends to continue its policies with respect to site-specific risk assessments and permitting so that, in appropriate situations, additional RCRA permit conditions can be developed as necessary to protect human health and the environment; and (4) how waste minimization opportunities may be considered at individual facilities during the permitting process.

A. RCRA and CAA Mandates To Protect Human Health and the Environment

The Agency is proposing emission standards for HWCs under joint authority of the Clean Air Act Amendments of 1990 and the Resource Conservation and Recovery Act (RCRA). As noted earlier, section 3004(a) of RCRA requires the Agency to promulgate standards for hazardous waste treatment, storage, and disposal facilities as necessary to protect human health and the environment. The standards for incinerators generally rest on this authority. In addition, § 3004(q) requires the Agency to promulgate standards as necessary to protect human health and the environment specifically for facilities that burn hazardous waste fuels (e.g., cement and light-weight aggregate kilns). Using RCRA authority, the Agency has historically established emission (and other) standards for HWCs that are either entirely risk-based (e.g., site-specific standards for metals under the BIF rule), or are technology-based but determined by a generic risk assessment to be protective (e.g., the DRE standard for incinerators and BIFs).

The MACT standards proposed today implement the technology-based regime of CAA § 112. There is, however, a residual risk component to air toxics standards. Section 112(f) of the Clean Air Act requires the Agency to impose, within eight years after promulgation of the technology-based standards promulgated under § 112(d) (i.e., the authority for today's proposed standards), additional controls if needed to protect public health with an ample margin of safety or to prevent adverse environmental effect. (Cost, energy, and other relevant factors must be considered in determining whether regulation is appropriate in the case of environmental effects.)

As noted earlier, EPA's express intent is to avoid regulatory duplication. RCRA § 1006 directs that EPA ''integrate all provisions of [RCRA] for purposes of administration and enforcement and * * * avoid duplication, to the maximum extent possible, with the appropriate provisions of the Clean Air Act * * *.'' The overall thrust of the proposed rule is to have the CAA standards supplant independent RCRA standards wherever possible (i.e., to have the CAA standards, wherever possible, also serve to satisfy the RCRA mandate so that additional RCRA regulation is unnecessary).

Under RCRA, EPA must promulgate standards ''as may be necessary to protect human health and the environment.'' RCRA § 3004(a) and (q). Technology-based standards developed under CAA § 112 do not automatically satisfy this requirement, but may do so in fact. See 59 FR at 29776 (June 6, 1994) and 60 FR at 32593 (June 23, 1995) (RCRA regulation of secondary lead smelter emissions unnecessary at this time given stringency of technology-based standard and pendency of § 112(f) determination). If the MACT standards, as a factual matter, are sufficiently protective to also satisfy the RCRA mandate, then no independent RCRA standards are required. Conversely, if MACT standards are inadequate, the RCRA authorities would have to be used to fill the gap.

It should be noted that this RCRA risk evaluation can inform the MACT decision process as well. For example, the RCRA risk evaluations indicate the potential for significant risk via indirect pathways from dioxins and furans originating in today's baseline air emissions for HWCs. EPA is explicitly authorized to consider non-air environmental impacts (such as exposure to HAPS which, after emission, enter into the food chain and are eventually consumed by humans and other biota) in determining whether to adopt standards more stringent than the MACT floor. Thus, EPA can consider benefits from curbing these

[13] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

[14] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

indirect exposures as part of its beyond-the-floor determinations.

As discussed below, the Agency has conducted an evaluation, for the purposes of satisfying the RCRA statutory mandates, of the degree of protection afforded by the MACT standards being proposed today. However, the Agency's current RCRA evaluation is not intended to have any bearing on what we may or may not determine is necessary in several years to satisfy the § 112(f) provisions.

B. Evaluation of Protectiveness

To determine whether the MACT standards are consistent with the Agency's mandate under RCRA to establish standards for hazardous waste management facilities and to issue permits that are protective of human health and the environment, the Agency conducted two types of analyses to assess the extent to which potential risks from current hazardous waste combustion emissions would be reduced through implementation of MACT standards.

The first of these analyses was designed to assess the potential risks to individuals living near hazardous waste combustion facilities and to nearby aquatic ecosystems. The procedures used in this analysis are discussed in detail in the background document contained in the docket for today's proposal.[15] The results are summarized in Part Four of today's notice, ''Rationale for Selecting Proposed Standards''.

The second analysis of potential risk reduction was a more qualitative evaluation of risks at the national level for those two constituents (dioxins and mercury) which the Agency believes pose significant health risks at the national level and which are found at significant concentrations in hazardous waste combustor emissions. The results of this analysis are presented in Section Seven, ''Regulatory and Administrative Requirements'', as part of the discussion of potential costs and benefits required under Executive Order 12866.

1. Individual Risk Analysis

The Agency assessed potential risks to individuals from both direct inhalation of emissions (after dispersion in the ambient air) and indirect exposure to emissions through deposition onto soils and vegetation and subsequent uptake through the food chain. The analysis focussed primarily on dioxins and related compounds since these have been of major concern to the Agency from a risk perspective and because there is enough information about the properties of these constituents to allow for a quantitative analysis. The individual risk analysis did also include risks from inhalation of metals, hydrogen chloride, and chlorine (Cl_2).

The Agency conducted an evaluation of risks from metals through indirect exposure routes. With the exception of mercury, most of the metals are not expected to accumulate significantly in the food chain, and the risks from other indirect exposure routes (such as deposition on soil and incidental ingestion of the soil) are not projected to be significant, even with conservative assumptions.

With respect to mercury, the Agency suspects that there may be significant individual risks near hazardous waste combustion facilities, primarily through deposition, erosion to surface waters, and accumulation in fish which are then consumed. However, the current state of knowledge concerning the behavior of mercury in the environment does not allow for a meaningful quantitative risk assessment of emission sources which is precise enough to support regulatory decisions at the national level. Specifically, there is insufficient information with respect to speciation of the mercury into various forms in emissions and with respect to the deposition and cycling of mercury species in the environment to conduct a defensible national quantitative assessment of mercury deposition, erosion to surface waters, and bioaccumulation in fish. The Agency solicits comment and information on the issue of the risks posed by mercury emissions from hazardous waste combustion facilities.

The Agency also considered potential risks from emissions of non-dioxin semi-volatile organics that are products of incomplete combustion (PICs). However, the Agency was not able to conduct an appropriate analysis for several reasons. First, the limited emissions data now available to the Agency on non-dioxin PICs are not sufficiently reliable to conduct an adequate assessment of risk. Second, there is not a universally accepted set of parameter values for some non-dioxin PICs with which to assess potential exposures (e.g., the use of octanol-water partition coefficients (Kow) to predict bioaccumulation versus the use of empirical data and the extent to which bioaccumulation of compounds such as phthalates and polycyclic aromatic hydrocarbons (PAHs) occurs in domestic animals). The Agency solicits comment on these issues and, in particular, requests data on bioaccumulation of PAHs, phthalates, and other non-dioxin PICs in farm animals used for food production and in other mammals and birds. The Agency also intends to obtain a better set of data relating to the non-dioxin PIC emissions from hazardous waste combustion facilities.

2. Individual Risks From Dioxins

In order to evaluate potential risks from dioxins to individuals living near hazardous waste combustion facilities, the Agency selected eleven example facility locations, consisting of areas in which five actual cement kilns, four incinerators, and two lightweight aggregate kilns are located. The example facility locations represent a variety of environmental settings and facility characteristics. The purpose of using example facilities was to incorporate as much realism as possible into the Agency's risk assessment and to reduce the reliance on hypothetical, conservative assumptions about either location or source type characteristics. Site-specific characteristics considered in the analysis include meteorological conditions, topography, and land use as well as stack height and gas flow rates. However, the stack gas concentrations used in the modeling of the example facilities were derived from national emissions data. Therefore, while the example facility analyses are useful for providing information to evaluate national standards on a generic basis, they are not site-specific assessments of any individual facility and cannot be regarded as such.

The Agency has identified a number of indirect exposure pathways which are most likely to present significant risks. These include: consumption of locally-produced meat, eggs, and dairy products and consumption of fish from local waterways. Contamination of food occurs from deposition of toxic emissions onto plants and soil with subsequent ingestion by farm animals or, in the case of fish contamination, from deposition directly into water bodies or onto soil and runoff into surface waters with subsequent uptake in fish.

In assessing risks to the more highly exposed individuals, the Agency assumed that certain segments of the population subsisted in part on home-produced foods or fish obtained from nearby lakes or streams. In addition, the Agency assumed that these individuals were exposed in the farming and fishing areas most affected by the example facilities' emissions. In its analysis of the eleven example facilities, the

[15] ''Risk Assessment Support to the Development of Technical Standards for Emissions from Combustion Units Burning Hazardous Wastes: Background Information Document,'' February 20, 1996.

Agency attempted to identify the actual location of farms and water bodies where subsistence activities might be expected to occur. For dioxins, the highest exposures are expected to occur for individuals whose diets include significant amounts of home-produced meat and eggs or locally caught fish. Individuals likely to have high exposures include subsistence farmers that raise beef cattle, dairy cows, or chickens along with their families as well as subsistence fishers and recreational anglers and their families.

In evaluating individual risks, the Agency projected both ''high end'' and ''central tendency'' estimates of risks to the individuals of concern in the analysis. The central tendency estimates were derived by setting all emission rates, fate and transport parameters, and exposure assumptions at central tendency values, as described in the risk assessment background document. To derive high end risk estimates, the Agency set the emission levels at the 90th percentile of the distribution of available dioxin concentrations and, for most exposure scenarios, set one exposure parameter to a high end value while keeping all other parameters at central tendency values. For purposes of evaluating the protectiveness of the standards, the Agency used a target risk level of 10–5 for the high end individual risk, which is consistent with the approach taken in the 1991 BIF rule.

3. Uncertainties in the Individual Dioxin Risk Estimates

Much of the information used to derive the individual risk estimates for dioxins was taken from the Agency's draft Dioxin Reassessment documents [16] [17] [18]. Those documents discuss in considerable detail a number of the uncertainties associated with both the cancer slope factor (the dose-response descriptor) and the many parameters used in the exposure assessment. Some of these uncertainties are also discussed in the risk assessment background document for today's proposal.

In addition, there have been a large number of public comments on the Dioxin Reassessment, which the Agency is now considering. If the Agency decides to revise its assessment of either the toxicity or exposure associated with dioxins prior to the final promulgation of this rule, those revisions will be considered in the development of the final rule.

The Agency is also conducting an external peer review of its risk analysis supporting today's proposal. The results of this peer review, which are expected during the comment period, will be available in the public record for this rule and will be considered in developing the final rule.

4. Qualitative Assessments of National Risks

While the individual risk assessment discussed above provides a quantitative measure of the protectiveness of the proposed MACT standard, there are other ways of evaluating potential impacts of reducing emissions of hazardous constituents. One approach taken by the Agency is to describe to the extent practicable what is known about the national extent of risks from constituents such as dioxins and mercury. To put that information in context with respect to this rule, the relative contribution of hazardous waste combustion to other known air releases of these constituents to the environment is then presented. The Agency recognizes that it is not appropriate to quantitatively correlate emissions with risk on a national scale; nevertheless, this type of information is useful for qualitatively evaluating the potential impact of the proposed MACT rule.

C. Use of Site-Specific Risk Assessments Under RCRA

As part of the Agency's Hazardous Waste Minimization and Combustion Strategy, EPA currently has a national RCRA policy of strongly recommending to all federal and state RCRA permit writers that, under the omnibus permit provisions of RCRA § 3005(c)(3), site-specific risk assessments be performed as part of the RCRA permitting process if necessary to protect human health and the environment. Regions and authorized states have been implementing this national policy since mid-1993 under the aegis of the omnibus and other applicable authorities.

The Combustion Strategy announced this policy encouraging site-specific risk assessments as part of the overall effort to ensure that, under appropriate legal authorities, all RCRA combustion permits being issued are sufficiently protective. Specifically, these site-specific risk assessments were intended to address potential concerns about a suite of hazardous air pollutants, among them dioxins, furans, metals, and non-dioxin PICs, during the time it took for the Agency to upgrade the technical standards for hazardous waste incinerators, boilers, and industrial furnaces. This proposal is the first rulemaking that the Agency has issued in the upgrading effort.

The question has arisen as to the status of the Agency's current policy with respect to site-specific risk assessments, particularly with respect to the HAPs for which standards are being proposed today as well as for other non-dioxin PICs. As noted above, the Agency has conducted a risk evaluation under RCRA of the degree of protection afforded by the proposed MACT standards for the HAPs addressed in today's rule. However, with respect to mercury and non-dioxin PICs, the Agency does not at this time have sufficient reliable data to be able to assess, on a national basis, the magnitude of the risks that can routinely be expected from burning hazardous waste in HWCs. Although the Agency has plans to obtain extensive and detailed PIC emissions data from hazardous waste combustors in the coming months, it may be some time before the Agency is in a proper position to make any type of regulatory and policy judgment about the need, if any, for additional national standards for these toxic organics. Indeed, at several sites, the levels of some non-dioxin PICs have not previously been shown to be of concern, at least to the extent that site-specific testing revealed their presence and to the extent evaluated in site-specific risk assessments.

The Agency is continuing its policy of recommending that, if necessary to protect human health and the environment, site-specific risk assessments be conducted as part of RCRA permitting for all hazardous waste combustors (incinerators, boilers, and industrial furnaces alike) until national standards for HAPs of concern are in place. We expect that, in most situations prior to actual implementation of facility measures to appropriately control the HAPs addressed in this rule, the EPA regional and authorized state permitting officials will find there is a necessity to conduct site-specific risk assessments prior to final permit determinations. We also note that the remaining uncertainties about the risks from non-dioxin PICs and mercury would likely bear upon implementation of the national policy. However, small on-site facilities are not likely to present the same level of potential risk as other facilities. This industry segment may not warrant site specific risk assessments with the same frequency as the large on-site or

[16] ''Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds Volume I and II'', Office of Research and Development, June 1994.

[17] ''Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds Volume III'', Office of Research and Development, August 1994.

[18] ''Estimating Exposure to Dioxin-Like Compounds Volume I, II, and III'', Office of Research and Development, June 1994.

commercial facilities. Among the factors that the regions and states should consider in their evaluation of the necessity for a site-specific risk assessment are: (1) The current level of HAPs being emitted by a facility, particularly in comparison to the MACT standards being proposed and in comparison to the emissions assumptions and exposure scenarios used in the RCRA risk evaluation of the proposed MACT standards (detailed in the Background Document); (2) whether the facility is exceeding the proposed HAP standards, particularly for dioxins/furans and mercury, what immediate measures could be instituted to reduce those emissions; (3) the scope of waste minimization efforts at the facility with respect to the HAPs of concern and the status of implementation of any facility waste minimization plan; (4) particular site-specific considerations such as proximity to receptors, unique dispersion patterns, etc.; (5) the PICs most likely to be found and those most likely to pose significant risk; (6) the presence or absence of other sources of HAPs in sufficient proximity as to exert a significant influence on interpretation of a facility-specific risk assessment; (7) the presence or absence of significant ecological considerations, including for example high background levels of a particular contaminant or proximity of a particularly sensitive ecological area; and (8) the volume and types of wastes being burned. This list is by no means exhaustive, but is meant only to suggest significant factors that have thus far been identified. Others may be equally or more important.

Continuation of the site-specific risk assessment policy rests primarily on the RCRA requirement to ensure that all permits are protective of human health and the environment. Until the Agency is in a position to determine, on a national basis, whether additional standards are needed to address toxic emissions, we anticipate this policy will remain in effect. EPA's intention is to make that determination, if sufficient data is in hand, by the time of the final rule, now scheduled for issuance in December 1996. In that respect, we emphasize the importance of the submission of detailed data on non-dioxin PICs from commenters.

In the meantime, the omnibus provision in § 3005(c)(3) provides the regions and authorized states with the proper site-by-site authority to ensure that these risk assessments are completed as part of the permitting process. Other RCRA statutory and regulatory provisions may apply as well. Furthermore, we encourage individual facilities to work with their local communities in designing these risk assessments and in carrying out the testing and analysis, so that the confidence of local communities is maximized.

In addition, EPA strongly urges companies to explore waste minimization opportunities as a means to reduce risks from combustion emissions, particularly with respect to the HAPs of concern. Nearly every state provides free pollution prevention/waste minimization technical assistance. Further information on how to obtain this assistance can be furnished by state permitting agencies or by contacting the National Pollution Prevention Roundtable at (202) 466–7272. Other sources of information include Enviro$ense, an electronic library on pollution prevention, technical assistance, and environmental compliance. Access is via a system operator (703) 908–2007, via modem at (703) 908–2092, or via Internet at http://wastenot.inel.gov/enviro-sense.

PART FOUR: RATIONALE FOR SELECTING THE PROPOSED STANDARDS

This part describes the Agency's rationale for today's proposed standards and other options under consideration.

I. Selection of Source Categories and Pollutants

A. Selection of Sources and Source Categories

The Agency is proposing emissions standards for three source categories: hazardous waste incinerators, hazardous waste-burning cement kilns, and hazardous waste-burning lightweight aggregate kilns. The Agency is not proposing to regulate emissions from CKs (in this notice) or LWAKs that do not burn hazardous waste.

In this section, we discuss the Agency's analysis of subdividing incinerators by size (i.e., small and large sources) and subdividing cement kilns by process type (i.e., wet and dry). We also discuss the scope of the MACT standards for cement kilns, and the existing RCRA standards that control emissions of HAPs from equipment leaks and tanks which are used to manage hazardous waste.

1. Consideration of Subdividing Incinerators by Size

Section 112(d) allows the Administrator to distinguish among classes, types, and sizes of sources within a source category in establishing MACT floor levels. Given that the size of incinerators, as measured by gas flow rate in actual cubic feet per minute (acfm), varies substantially (i.e., from 1,000 acfm to 180,000 acfm), the Agency considered subdividing incinerators by size.

The basis for distinguishing between small and large incinerators as well as the preliminary estimates of the resultant floor levels for each category are presented in the docket and summarized below. The Agency is not proposing separate standards (at the floor) [19] for incinerators because: (1) the types and concentrations of uncontrolled HAP emissions are similar for large and small incinerators; (2) the same types of emission control devices are applicable to both small and large incinerators; and (3) the floor levels would be generally unchanged [20] (several floor levels would decrease somewhat), with the exception that the LVM standard for large incinerators would increase by more than a factor of four. We believe that the higher LVM floor level for large incinerators would not be appropriate given that approximately 80 percent of incinerators already are meeting the LVM floor without subdividing.

The Agency invites comment on its determination that subdividing incinerators by size would not be warranted. We also invite comment on whether subdividing incinerators by other classifications (e.g., commercial versus on-site units) would be appropriate for establishing MACT floor levels. Commenters should provide data and information on, in particular: (1) how the types and concentrations of uncontrolled HAP emissions are different for the suggested categorization of sources; (2) whether and why MACT emission control technology would not be applicable to a category of sources; and (3) other appropriate factors.

To investigate the effect on MACT floor levels of subdividing incinerators by size, the Agency identified a gas flow rate of 23,127 acfm as a reasonable and appropriate demarcation between small and large incinerators. This value was determined using a slope analysis approach whereby gas flow rates for each source (for which the Agency had data) were plotted in ascending order. The Agency chose the point at which the slope markedly changed as the point of demarcation between small and large incinerators. Approximately 57 percent of incinerators for which we have gas flow rate data would be classified as small using this approach.

[19] Note that we discuss in Part Four, Section III in the text whether beyond-the-floor standards for D/F, Hg, and PM (as currently proposed for all incinerators) are appropriate for small incinerators.

[20] And therefore, a level of complexity would be added to the rule without substantial benefit.

Projected MACT floor levels for small and large incinerators are compared to floor levels for combined incinerators (i.e., without subdividing) in the table below:

	Small incinerators	Large incinerators	Floor levels for all incinerators combined
	Floor level	Floor level	
D/F (ng/dscm)	0.2 TEQ or <400 °F	0.2 TEQ or <400 °F	0.2 TEQ or <400 °F.
PM (mg/dscm)	180	180	180
Hg (µg/dscm)	110	130	130
SVM (µg/dscm)	230	270	270
LVM (µg/dscm)	160	880	210
HCl + Cl_2 (ppmv)	280	260	280
CO (ppmv)	100	100	100
HC (ppmv)	12	12	12

2. Consideration of Subdividing Cement Kilns by Manufacturing Process

The Agency also considered whether to subdivide the cement kiln source category into wet and dry process kilns given that these types of kilns are designed and operated differently. (See discussion in Part Two, Section II.) MACT floor levels for wet and dry kilns are compared to floor levels for combined cement kilns (i.e., without subdividing) in the table below:

Pollutant	Wet process kilns	Dry process kilns	Floor levels for all kilns combined
	Floor level	Floor level	
D/F (ng/dscm)	0.2 TEQ or 418 °F	0.2 TEQ or 547 °F	0.2 TEQ or 418 °F.
PM (mg/dscm)	69	69	69
Hg (µg/dscm)	83	150	130
SVM (µg/dscm)	870	57	57
LVM (µg/dscm)	220	49	130
HCl + Cl_2 (ppmv)	460	340	640

Subdividing cement kilns by process type would result in a mix of impacts with varying degrees of significance. For wet kilns, the main impact would be an increase in the SVM floor from 57 to 870 µg/dscm. The mercury floor, on the other hand, would drop from 130 to 83 µg/dscm. The remainder of the floors would remain roughly the same. For dry cement kilns, the main impact would be that the LVM floor drops from 130 to 49 µg/dscm. The dioxin/furan floor would change by allowing a higher APCD temperature—547 °F rather than 418 °F.

The Agency is not proposing separate standards for wet and dry process kilns because: (1) The types and concentrations of uncontrolled HAP emissions are similar for both types of kilns; (2) the same types of emission control devices are applicable to both types of kilns; (3) for dry process kilns, the LVM floor level would drop to an extremely low level that may be difficult for many kilns to achieve because of the presence of these metals in raw materials; and (4) for wet kilns, the SVM floor would increase to 870 µg/dscm, a level much higher than the industry can achieve.[21] There may also be other factors that should be considered, and the Agency invites comment on those in addition to the factors noted above.

We note that the cement industry has asserted that it is not feasible to use a FF on wet kilns in cold climates because the ''high moisture content of the gas will clog the fabric with cement-like dust and ice.'' [22] This is not consistent with the Agency's understanding. Although wet kilns located in cold climates that operate at low flue gas temperatures (e.g., 350–400 °F) in order to minimize formation of D/F and improve performance of activated carbon injection systems may be required to improve insulation or take other measures to minimize cold spots in the baghouse to limit corrosion, we believe that appropriate measures can be readily taken. The Agency is aware of two wet kilns that currently operate fabric filters in cold climates (Thomaston, Maine, and Dundee, Michigan) at flue gas temperatures below 400 °F.[23] In addition, a wet kiln burning hazardous waste in Paulding, Ohio, is currently upgrading its PM control system to replace an ESP with a FF.

The Agency invites comment on the appropriate criteria to be used and upon its determination that subdividing cement kilns by process type is not warranted. Commenters should provide data and information on, in particular: (1) Whether the types and concentrations of uncontrolled HAP emissions are different for wet and dry kilns; (2) whether and why MACT emission control technology(ies) would not be applicable to a wet or dry kiln; and (3) other appropriate factors.

3. Scope of the MACT Standards for Cement Kilns

The proposed NESHAP for cement kilns addresses only exhaust combustion gas emissions from main stack(s), bypass stack(s), and fugitive combustion emissions (e.g., leaks from kiln seals). The cement kiln standards would not apply to process or fugitive emissions that are not affected

[21] See letter from Craig Campbell, CKRC, to James Berlow, USEPA, undated but received February 20, 1996. We note that, although the Agency is proposing a SVM standard of 57 µg/dscm, we invite comment on an alternative (and potentially preferable) approach to identify MACT floor technology which would result in a floor-based standard of 160 µg/dscm. See Part Four, Section IV in the text. Because we identified the alternative approach late in the rule development process, we are inviting comment on the higher standard rather than proposing it.

[22] See letter from Micheal O'Bannon, EOP Group, to Elliot Laws, USEPA, dated February 14, 1996, p. 3 of Attachment.

[23] See USEPA, ''Draft Technical Support Document For HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February, 1996, for further information.

by burning hazardous waste (such as emissions from raw material processing or clinker cooler emissions).[24]

4. Current RCRA Controls on Equipment Leaks and Tanks

We note that the Agency has promulgated air emission standards regulating fugitive emissions from equipment leaks (e.g., pumps, compressors, valves) and tanks which are used to manage hazardous waste. Accordingly, these devices are not addressed by today's proposal. (Tanks and equipment leaks from HW management activities at HWCs are regulated under RCRA standards. See, e.g., 40 CFR Parts 264 and 265, Subparts AA, BB, and CC. These controls are expected to be consistent with MACT and are not being reevaluated here.)

B. Selection of Pollutants

As noted earlier, section 112(b) of the Clean Air Act contains a list of 189 hazardous air pollutants for which the Administrator must promulgate regulations establishing emissions standards for designated major and area sources. The list of 189 HAPs is comprised of metallic, organic, and inorganic compounds.

Hazardous waste incinerators and hazardous waste-burning cement kilns and LWAKs emit many of the listed HAPs. Data available to the Agency indicate that metal HAP emissions include antimony, arsenic, beryllium, cadmium, chromium, lead, mercury, nickel, and selenium compounds. Organic HAPs emitted include chlorinated dioxin and furan, benzene, carbon disulfide, chloroform, chloromethane, hexachlorobenzene, methylene chloride, naphthalene, phenol, toluene, and xylene. Hydrochloric acid and chlorine gas are prevalent inorganic compounds found in stack emissions because of high chlorine content of many hazardous wastes.

Today, the Agency is proposing eight emissions standards for individual HAPs, group of HAPs, or HAP surrogates. These emission standards cover dioxin/furan, mercury, particulate matter, semivolatile HAP metals (lead and cadmium), low-volatile HAP metals (antimony, arsenic, beryllium, and chromium), carbon monoxide, hydrocarbons, and total chlorides. The following discussion presents the Agency's rationale for proposing NESHAPs for these individual HAPs, group of HAPs, or HAP surrogates.

1. Toxic Metals

In developing today's proposed rule, the Agency considered 14 toxic metals that may pose a hazard to human health and the environment when they are components of emissions from hazardous waste combustion sources. Section 112(b) of the Act contains a list of 11 metal HAPs: antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium. The list of hazardous constituents under RCRA[25] specifies three additional metals: barium, silver, and thallium. Five of these metals (or their compounds) are known or suspected carcinogens: arsenic, beryllium, cadmium, hexavalent chromium, and nickel.

To develop an implementable approach for controlling the metal HAP emission levels, the Agency grouped metal HAPs by their relative volatility and is proposing an emissions limit for the each volatility group (i.e., the sum of emissions from the metals in the group cannot exceed the limit). We selected the following three groups: (1) A high-volatile group comprised of only mercury, (2) a semivolatile group comprised of lead and cadmium, and (3) a low-volatile group consisting of antimony, arsenic, beryllium, and chromium. The Agency's proposal not to include the remaining seven toxic metals in these volatility groupings is discussed later in this section.

Our data indicate that mercury is generally in the vapor form in and downstream of the combustion chamber, including at the air pollution control device (APCD). Thus, the level of emissions is a function of the feedrate of mercury and the use of APCDs that can control Hg in the vapor form (e.g., carbon injection, wet scrubbers for some control of soluble HgCl). The semivolatile group metals typically vaporize at combustion temperatures, then condense onto fine particulate before entering the APCD. Thus, emissions of semivolatile metals are a function not only of the feedrate of the metal, but also of the efficiency of the particulate matter (PM) control device. Low-volatile metals are less apt to vaporize at combustion temperatures and therefore partition primarily to the bottom ash, residue, or clinker (in the case of cement kilns) or adsorb onto large, easy-to-control particles in the combustion gas. Thus, low-volatile metal emissions are more strongly related to the operation of the PM APCD than to the feedrate.[26]

We note that the dynamics associated with the fate of metals in a combustion device are much more complex than presented here. Numerous factors impact metals' behavior such as the presence of chlorine (higher metal volatility associated with metal chlorides than metal oxides), combustion conditions within the device (e.g., temperature profile), inter-metal relationships, physical and chemical form the metal exhibits when introduced to the device (e.g., valence state and solid versus liquid), type and efficiency of the particulate control device, and differences in the design and operation of sources (e.g., cement kiln dust recycling rate). See the technical background document supporting today's proposal for more details.[27]

Setting an emission level for a number of grouped metals has several advantages and disadvantages. One advantage is that fewer individual standards are involved, which helps implementability. Moreover, grouping allows a facility more flexibility in complying with an emissions standard based on facility-specific characteristics (e.g., special characteristic waste streams) and operation requirements (e.g., reduced spiking of numerous metals). On the other hand, a disadvantage of a group emission limit is that it potentially allows higher emissions of the more toxic metals within a group (than if an individual metal limit were established).[28]

The Agency is proposing not to regulate directly emissions of the remaining four metal HAPs (i.e., cobalt, manganese, nickel, and selenium).[29] The

[24] Today's proposal applies only to those kilns that burn or process hazardous waste irrespective of the purpose of burning or processing. The term ''burn'' means burning for energy recovery or destruction, or processing as an ingredient. The Agency is developing a NESHAP for cement kilns that do not process hazardous waste in a separate rulemaking. That NESHAP will also regulate those hazardous waste-burning cement kiln process and fugitive emissions that would not be subject to today's rule (i.e., emission sources other than the main or by-pass stack).

[25] The list of hazardous constituents is contained in appendix VIII of Part 261. Cobalt and manganese are not hazardous constituents.

[26] Although, at a given PM emission rate at a source, emissions of LMV will be affected by LVM feedrate.

[27] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume VII: Miscellaneous Technical Issues'', February 1996.

[28] We note that, for the risk assessment used to determine if RCRA concerns would be adequately addressed by the proposed MACT standards, we assumed that each metal in a volatility was emitted in turn at the emission limit for that volatility group.

[29] The Agency acknowledges that three metals (barium, silver and thallium), currently regulated by the BIF rule, would not be regulated under this MACT proposal. EPA notes that these three metals are not HAPs. The Agency believes that the combination of the proposed particulate and metals standards would adequately control emissions of these three metals.

Agency's rationale is based upon a combination of factors: (1) Inadequate emissions data for Co, Mg, Ni, and Se; and (2) relatively low toxicity of Co and Mn. The Agency specifically requests comment on whether these four metals would be adequately controlled under the MACT standards that would be provided by today's proposal.

The Agency is aware of two other approaches to group toxic metals. First, the European Union has established three groupings to control metal emissions from hazardous waste incineration units. One ''group'' includes only mercury, a second group consists of cadmium and thallium, and the third group includes antimony, arsenic, chromium, cobalt, copper, lead, manganese, nickel, tin, and vanadium. Section VII of this Part summarizes the European Union emission standards.

A rulemaking petition [30] submitted to the Agency by the Cement Kiln Recycling Coalition (CKRC) contained a report [31] (appendix D of the petition) prepared by a technical advisory board to the CKRC. Their analysis of stack emissions and cement kiln dust data suggests three volatility groupings based on metal volatility demonstrated in cement kilns. The groupings are: (1) Volatile metals including mercury and thallium; (2) semivolatile metals consisting of antimony, cadmium, lead, and selenium; and (3) low-volatile metals comprising barium, beryllium, chromium, arsenic, nickel, manganese, and silver. See the technical background document for further discussion on grouping metals by volatility.[32] The Agency requests comments on the appropriateness of grouping metals by volatility and requests supporting information and data on the appropriate composition of metal volatility groups (i.e., for the metals discussed above).

2. Toxic Organic Compounds

Burning hazardous waste that contains toxic organic compounds under poor combustion conditions can result in substantial emissions of HAPs originally present in the waste as well as other compounds, due to the partial but incomplete combustion of the constituents in the waste (known as products of incomplete combustion, or PICs). PICs can be unburned organic compounds that were present in the waste, thermal decomposition products resulting from organic constituents in the waste, or compounds synthesized during or immediately after combustion. The quantity of toxic organic compounds emitted depends on such factors as the combustion conditions under which the waste is burned (including time, temperature, and turbulence), the concentrations of the toxic compounds in the waste, and the waste firing rate.

Since the majority of the 189 enumerated HAPs are organics, the Agency has concluded (for today's proposal) that establishing individual emission limits for each of the organic HAP compounds emitted from these combustion sources would be impractical and not implementable. Measuring each compound would be very costly and would pose unreasonable compliance and monitoring burden on the regulated community while achieving little, if any, emission reduction from the approach presented in today's proposal. In addition, EPA and state compliance oversight and enforcement efforts would also be unreasonably costly without concurrent benefits. Also, the Agency does not have adequate emissions data to support development of individual organic emission limits [33] at this time. Therefore, the Agency is proposing a multi-faceted approach to control the toxic organic HAPs to be addressed under § 112: (1) Emissions limits for dioxin and furan on a toxicity equivalents (TEQ) basis; (2) limits on flue gas concentrations of hydrocarbons (HC) as a HAP surrogate; (3) limits on flue gas concentrations of carbon monoxide (CO) also as a HAP surrogate; and (4) emission limits for particulate matter (PM) to control adsorbed semivolatile organic HAPs (see separate discussion on PM below).

First, given the high toxicity of some dioxin and furan congeners and the fact that standards ensuring good operating conditions alone (i.e., temperature at the inlet of the APCD) will not always control emissions of dioxin/furans (D/F), the Agency has determined that proposing an emission standard specifically for D/F is a necessary component to the multi-faceted approach for toxic organics emissions control. The D/F standard proposed today is based on TEQ (Toxicity Equivalents).[34] TEQ is a method for assessing the risks associated with exposures to complex mixtures of chlorinated dibenzo-p-dioxin and dibenzofurans (CDDs and CDFs). The method relates the toxicity of the 209 structurally related chemical pollutants to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD).

Second, the Agency is proposing to use carbon monoxide (CO) and hydrocarbons (HC) as surrogates to control emissions of non-D/F organic HAPs. We note that limiting CO and HC emissions to levels ensuring good combustion conditions would also help minimize D/F precursors. CO and HC emissions are both recognized indicators of combustion intensity and completeness. Low CO flue gas levels are indicative of a combustion device operating at high combustion efficiency (56 FR at 7149–54). Operating at high combustion efficiency helps ensure minimum emissions of unburned (or incompletely burned) organics. However, limiting CO may not by itself absolutely minimize PIC emissions. This is because PICs can result from small pockets within the combustion zone where adequate time, temperature, turbulence, and oxygen have not been provided to completely oxidize these organics.[35] As combustion becomes less efficient or less complete, at some point, the emissions of total organics (measured as HC) will increase. A

[30] CKRC's rulemaking petition proposes to establish new technology-based combustion emissions standards and was submitted to EPA on January 18, 1994. CKRC's petition consists of four basic components. First, the stringency of current BIF Rule toxic metal limits should be increased by factors of 5 to 10 and applied to all combustion devices (i.e., both BIFs and incinerators). Second, new regulatory efforts for dioxin/furan standards should focus on a toxic equivalency approach (TEQ) rather than on a total congener approach. Third, the implementation of the new metals and dioxin/furan standards should be applied uniformly to all types of hazardous waste combustors (HWCs) and imposed at the same time. Finally, EPA should conduct a rulemaking on indirect exposure risk assessments before requiring their use. CKRC's petition has been placed in the docket supporting today's proposal.

[31] ''Scientific Advisory Board on Cement Kiln Recycling (Process Technology Workgroup), Evaluation of the Origin, Emissions and Control of Organic and Metal Compounds From Cement Kilns Co-Fired With Hazardous Wastes,'' June 8, 1993.

[32] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume VII: Miscellaneous Technical Issues,'' February 1996.

[33] The number of organic HAPs measured at each facility varies widely with some facilities reporting measurements for a large number of HAPs while other facilities measuring only a few HAPs.

[34] The TEQ approach used for today's proposal is the I–TEQ/89 approach defined in USEPA, ''Interim Procedure for Estimating Risks Associated With Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxin and -Dibenzofurans (CDDs and CDFs) and 1989 Update,'' March 1989. For a discussion of establishing D/F limits based on TEQ versus total congeners, see USEPA, ''Combustion Emissions Technical Resource Document (CETRED),'' May 1994, pp. 4–21.

[35] We note that there are emissions data indicating that even though CO levels are below 100 ppmv, HC emissions can exceed 5 ppmv (measured as propane with a heated sampling system), the upper HC level that is generally representative of operating under good combustion conditions. See 56 FR 7154, note 26 (February 21, 1991), and Energy and Environmental Research Corporation, ''Surrogate Evaluation of Thermal Treatment Systems,'' Draft Report dated October 17, 1994, Figure 2–1.

portion of the HC emission is comprised of organic HAPs. Thus, CO levels provide an indication of the potential for organic HAP emissions and CO limits are therefore proposed as a measure to help prevent these emissions. HC limits are proposed to document actual emissions of organic HAPs.[36]

Notwithstanding today's proposal to establish MACT standards for both CO and HC emissions for HWIs and LWAKs (CKs would be required to comply with either a CO or HC standard for technical reasons discussed in Section IV below), the Agency invites comment on whether standards for both CO and HC (coupled with the D/F and PM standards to also control organic HAPs) are unnecessarily redundant. Commenters should provide data and information on how either CO or HC alone (but in conjunction with D/F and PM standards) would ensure proper control of organic HAPs. In particular, commenters should address the fact that the Agency's database indicates that HC levels can exceed good combustion condition levels when CO levels are below 100 ppmv (thus suggesting that controls on both CO and HC are needed). In addition, commenters should address how the MACT standards proposed today for HC would or could ensure that sources operate under good combustion conditions and thus minimize emissions of organic HAPs.

If based on review of comments and further analysis the Agency determines that standards for both CO and HC are not warranted, we would consider, among other potential options, the following alternative regulatory approaches: (1) Give each source the option of complying with either the CO or HC standard (as proposed today for technical reasons for by-pass duct gas for cement kilns); or (2) establish a national standard for either CO or HC, but not both (the Agency would determine which parameter is more appropriate and establish a standard for that parameter). The Agency invites comment on these alternative regulatory approaches or others that would ensure proper control of organic HAP emissions.

3. Hydrochloric Acid (HCl) and Chlorine (Cl_2)

Both hydrochloric acid and chlorine are designated HAPs that are present in HWC emissions. However, the test method used to determine HCl and Cl_2 emissions (BIF methods 0050, 0051, and 9057, commonly referred to as ''Method 26A'')[37] may not be able to distinguish between HCl and Cl_2 in all situations.[38] Therefore, EPA proposes combining the two HAPs into a single HCl and Cl_2 standard. We believe this is appropriate because emissions of both of these HAPs can be controlled by limiting feedrate of chlorine in hazardous waste and wet scrubbing.[39]

4. Particulate Matter (PM)

EPA is proposing to use particulate matter (PM) as a surrogate for non-D/F organic HAPs (that are adsorbed onto the PM) and for the metal HAPs which are not specified in the metals standards (i.e., Co, Mn, Ni, and Se).[40] More than 40 semivolatile organic HAPs can be adsorbed onto PM and can, thus, be controlled by a MACT standard for PM.[41] The metal HAPs that are not directly controlled by the MACT standards for metals can also be controlled (at least partially) by a PM standard. The low volatility metals are likely to be entrained in larger particulates and the semivolatile metals are likely to be condensed onto small particulates.

The Agency notes that we are proposing to use PM also as a compliance parameter to ensure compliance with the SVM, LVM, and D/F standards. As discussed in Part V, Section II, of the preamble, a site-specific PM operating limit would be established as a surrogate for the PM control device collection efficiency. Given that we are also proposing a PM MACT emission standard, the site-specific operating limit for PM could not exceed the PM standard.

C. Applicability of the Standards Under Special Circumstances

In this section, we discuss the applicability of the proposed MACT standards under the following circumstances: (1) When a regulated metal or chlorine is not present in the hazardous waste at detectable levels; (2) when the source temporarily ceases hazardous waste burning; and (3) when the source terminates hazardous waste burning.

1. Nondetect Levels of Metals or Chlorine in All Feedstreams

If no feedstreams to a HWC (e.g., on-site incinerator) contain detectable levels of Hg, SVM, LVM, or chlorine, the source would not be subject to the emission standard associated with the metal or chlorine (e.g., if no feedstreams contain detectable levels of chlorine, the HCl/Cl_2 standard would be waived). In addition, performance testing, monitoring, notification, and recordkeeping requirements ancillary to the waived standard would also be waived. We believe that this waiver is appropriate because the source would be incompliance with the emission standard by default if it was not feeding the metal or chlorine.

To be eligible for the waiver, the source must develop and implement a feedstream sampling and analysis plan to document that no feedstream contains detectable levels of the metal or chlorine (for which a waiver is claimed).

The Agency invites comment on whether it is necessary to specify minimum detection levels (or to take other measures) to ensure that appropriate analytical procedures are used to document levels of metal or chlorine in feedstreams.

2. Nondetect Levels of Metals or Chlorine in the Hazardous Waste Feed

The proposed MACT standards for mercury, SVM, LVM, or chlorine would apply even if these constituents are not present at detectable levels in the

[36] We note that virtually all HWCs are already equipped with a CO monitor because of RCRA requirements. In addition, several incinerators, cement kilns and lightweight aggregate kilns are also equipped with a HC monitor because of RCRA or state requirements or voluntary initiative.

[37] We note that owners and operators of cement kilns have argued that this method provides measurements that are biased high because metallic salts penetrate the filter and the chloride is incorrectly reported as HCl. EPA has considered this concern and continues to believe that metallic salts do not significantly bias the results. Nonetheless, we invite comment on this issue. If, in fact, metallic salts can bias the results, we invite comment particularly on how or whether the proposed MACT standards could be adjusted given the inflated emissions database, and how compliance with an adjusted standard could be demonstrated.

[38] In the presence of other halogens (e.g., fluorine and bromine) that are often constituents of hazardous waste, fossil fuels or kiln raw materials, EPA is concerned that reactions can occur in the impinger solutions used by the stack sampling method that cause a portion of the Cl_2 to be reported as HCl. Thus, the HCl levels could be biased high, and the Cl_2 levels could be biased low. Nonetheless, the method does continue to give an accurate determination of combined HCl and Cl_2 levels in the presence of other halogens.

[39] We also note that, for purposes of determining whether the proposed MACT standard would satisfy RCRA concerns, we evaluated the level of protection that would be provided assuming (conservatively) that 10 percent of the HCl/Cl_2 standard would be emitted as the more toxic Cl_2.

[40] We note that PM 10 is a criteria pollutant under the Clean Air Act. PM can also have adverse effects on human health even if toxics are not adsorbed on the PM. Although EPA cannot control PM in and by itself under § 112(d) (it must be a surrogate for HAP control), EPA may consider reductions in criteria pollutants in assessing cost-effectiveness of MACT controls. See S. Rep. No. 228, 101st Congress, 1st Session, p. 172.

[41] See memo from Larry Gonzalez, EPA, to the docket for this rule (F–96–RCSP–FFFFF), entitled ''Semi-volatile Organic HAPs that Can Be Adsorbed onto PM'', dated February 22, 1996.

hazardous waste. This issue is relevant for cement kilns and light-weight kilns because, if these sources were not burning hazardous waste, the proposed MACT standards would not apply. Cement kilns (CKs) that do not burn hazardous waste would be subject to separate MACT standards that the Agency is developing for those sources, and light-weight aggregate kilns (LWAKs) that do not burn hazardous waste would not be subject to any MACT standards.

It could be argued that a CK or LWAK that burns hazardous waste with nondetect levels of Hg, SVM, LVM, or chlorine is not burning hazardous waste with respect to that metal or the HCl/Cl_2 standard. Accordingly, regulation should revert to any applicable MACT standard for the source when not burning hazardous waste. The Agency rejects this argument, however. A source cannot be subject to regulation under two MACT source categories. Further, such an approach would be extremely difficult to implement and enforce for CKs given that compliance procedures would be different for the two source categories.

3. Sources That Temporarily Cease Burning Hazardous Waste

Sources that temporarily cease burning hazardous waste would remain subject to today's proposed standards. Similar to the discussion above, such sources could argue that in the interim when hazardous waste is not burned, MACT regulation should revert to the MACT standards applicable to CKs or LWAKs that do not burn hazardous waste.

The Agency rejects this argument as well and for the same reasons discussed above: a source cannot be intermittently subject to MACT regulation under two source categories, and implementation and enforcement would be extremely complicated. See the discussion below regarding how to define temporary interruptions in waste burning versus termination of waste burning.

4. Sources That Terminate Hazardous Waste Burning

A source that terminates hazardous waste burning would no longer be subject to today's proposed rules. A source has terminated hazardous waste burning when it: (1) ceases burning hazardous waste (i.e., hazardous waste is not fed and hazardous waste does not remain in the combustion chamber); and (2) stops complying with the proposed standards and begins complying with other applicable MACT standards (i.e., cement kilns must comply with the MACT standards, when promulgated, for kilns that do not burn hazardous waste). In addition, today's rule would require sources that terminate hazardous waste burning to notify the Administrator in writing within 5 days of the termination.

Such sources could begin burning hazardous waste again under the following conditions: (1) The source must comply with the MACT standards applicable to new sources; (2) the source must submit a notification of compliance with the standards (based on a comprehensive performance test); and (3) prior to submitting the notification of compliance, the source cannot burn hazardous waste for more than a total of 720 hours, and hazardous waste may be burned only for purposes of emissions pretesting (i.e., in preparation for the comprehensive performance test) or comprehensive performance testing.

We are taking this position regarding termination of waste burning to avoid the implementation and enforcement complications that could result if a source could claim that it was not subject to the proposed regulations during those periods of time that it was not burning hazardous waste. Without these requirements, a source could vacillate at will between being regulated and unregulated (or for CKs, between being subject to regulation as a hazardous waste-burning kiln versus a non-hazardous waste-burning kiln). We invite comment on whether these requirements are reasonable and appropriate to address the Agency's implementation and enforcement concerns.

II. Selection of Format for the Proposed Standards

A. Format of the Standard

When EPA regulates a source, it must determine on a case-by-case basis what format the standards are. This section explains the reasons why EPA chose the format it did for this specific source category. Due to differing situations in other cases, other formats may be chosen for other source categories.

1. Units

EPA investigated four formats for use in expressing today's proposed standards: mass-based emissions; calculated mass-based emissions; percent reduction; and concentration-based. The Agency ultimately selected concentration-based standards for the reasons discussed below.

The mass-based approach would set a limit of mass emissions per unit time, i.e., kg/hr, lb/hr, etc. This approach was rejected because it is inherently incompatible with technology based standards for several reasons. First, a mass-based standard does not assure good control at small facilities. Small facilities have lower flow rates, would be allowed higher concentration of emissions, and thus could meet a standard with no or minimal technological control. Also, it produces an undue burden on larger facilities in that they would have to install controls and small facilities would not. One potential consequence is that it would cause an incentive for more small facilities, causing an increase in emissions nationally. For these reasons, this option was not chosen.

An alternate to the mass-based approach is the calculated mass-based approach. This would involve EPA determining some appropriately low level of metals and chlorine feed, multiplying that by a system removal efficiency factor, and issuing the result as a mass-based limit. One concern with this approach is EPA does not know what feedrate would be appropriate. Any feedrate could be construed as arbitrary. Also, the approach would result in a mass-based limit which does not address concerns described in the preceding paragraph. It also does not address how to set the other standards: CO, HC, PM, and dioxin/furans. For these reasons, this option was not chosen.

A third approach is to set the standards based on a specified percent reduction. This comports well with a technology-based approach because it deals directly with determining what technology performs most efficiently. However, there are problems with this approach. First, it is difficult to determine where the percent reduction should be applied: feed to stack, across the APCD train, or across a specific control device. Use of feed to stack percent reductions present a difficulty due to the measurement variability of feed samples and stack emissions. APCD train or device specific percent reductions would be difficult to implement. Facilities are not configured to sample inlet emissions to the APCD train or to a specific APCD. Thus, facilities would have to be reconfigured to allow inlet sampling. Stack sampling would be required at both the outlet and, possibly, multiple inlet points. This would significantly increase the testing burden. In addition, implementation of any approach based on percent reduction would involve substantial and expensive monitoring of operating parameters to ensure that the specified percent reduction occurs during operation. For these reasons, this approach was not chosen.

The approach that was chosen for these source categories is to set concentration-based standards. This approach is consistent with how EPA has historically based air emission standards. It favorably addresses the problems of the other options. However, it does allow larger facilities to emit higher mass emissions of HAPs. But mass-based levels would result in higher emissions nationally by encouraging more smaller facilities (see previous paragraph). This tradeoff, having higher mass emissions at larger facilities but lower emissions nationally, was considered acceptable for this proposal. Concentration based approaches are also easier to implement and do not necessarily rely on the setting of operating limits. For this reason, concentration-based standards are regarded as preferable to the other options, and was chosen on that basis.

It is possible that other units could be chosen for other source categories. As explained in the introductory paragraph this is consistent because other units might be more appropriate for other source categories.

2. Correction to 7 Percent Oxygen and 20° C

All standards are corrected to 7 percent oxygen and 20° C. This is because the data EPA used to derive the standards were corrected in this manner. This is also consistent with the correction used for BIFs, hazardous waste incinerators, MWCs, and MWIs.

3. Significant Figures and Rounding

All standards proposed here are expressed to two significant figures.

For the purposes of rounding, we propose to require the use of ASTM procedure E–29–90 or its successor. This procedure is the American standard for rounding. Rounding shall be avoided prior to rounding for the reported result.

B. Averaging Periods

Averaging periods are the time periods over which emissions or feedstream and operating parameters are set. These periods require consideration because of the inherent variability associated with the operation of complying (i.e., properly designed and operated) MACT devices. As noted above, facilities normally operate within certain limits but do have emissions above and below these normal levels due to the natural variability associated with the operation of a facility. EPA must account for this variability when promulgating technology-based standards. See, *e.g.*, *FMC Corp.* v. *Train*, 538 F.2d 973, 986 (4th Cir. 1976). If EPA were to establish a ''not-to-be-exceeded'' limit, that limit would invariably be higher than if the limit were expressed as an average emission level. That would tend to encourage higher emitting, but low variability devices since they could meet the not-to-exceed standard.

For instance, say EPA is considering establishing a standard on: an instantaneous basis; a one hour average; and a 12-hour average. Also, assume that the complying MACT facility has average emissions of 5 and short-term perturbations as high as 300. In this case equally stringent emissions levels could be: 300 on an instantaneous basis; on the order of 10 for an hourly average; or closer to 5 for the 12-hour average. If the limit were established at 300 on an instantaneous basis, this could significantly favor a facility that has high perturbations less than 300, but average emissions of 250 (assuming the facility with average emissions of 250 could meet the instantaneous limit, 300, with fewer controls.) This facility would emit 50 times more of that HAP than a facility operating at an emission average of 5, but would still comply with the standard. To address the problem of setting limits on an instantaneous basis, emissions and feedstream and operating limits are established on the average with specified averaging periods.

1. Manual Methods

The MACT standards for HWCs (except those for HC and CO) were based on the average of data from three test runs during which emissions were measured by manual methods. EPA thus proposes that compliance be based on the average of three manual methods test runs to be consistent with data used to establish the standards. *Chemical Waste Management* v. *EPA*, 976 F.2d 2, 34 (D.C. Cir. 1992) (Noting that this is an inherently reasonable approach and is consistent with the standard approach for compliance under the Part 63 MACT standards.)

The standard could be set in such a way as to require all three runs to be less than the standard. Such a standard would be derived by choosing the highest data point from three manual test runs and would result in an emission level higher than those proposed. The ''not-to-be-exceeded'' approach was considered problematic for reasons just described, so averaging was chosen.

Manual methods sample facility exhaust emissions for a period of time. The minimum length of time required to sample is specified indirectly by the manual method in the form of collection or gas flow specifications. The results of the manual method test are reported as an average over the sampling period. Therefore for manual method test runs, the averaging period is the sampling period over which the sample was collected.

EPA proposes no specific averaging period here for manual method test runs, with one caveat discussed below. Instead EPA proposes to rely on the minimum sampling volumes or collected sample (whichever the method requires) specified by the manual methods. EPA invites comment on whether minimum sampling periods for manual methods should be specified directly.

EPA is proposing a three hour minimum sampling time for method 0023A. Three hours is also the minimum sampling period stated in method 23 to Part 60, appendix A. EPA is proposing a minimum sampling time in order to ensure that each D/F run samples long enough to obtain adequate samples of the various congeners to determine compliance with the TEQ standard. This issue is important here because there is an inconsistency between air rules and RCRA rules regarding how to treat nondetected congeners when calculating the TEQ.

The document which defines the TEQ calculation, ''Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins (CDDs and CDFs) and 1989 Update'' (EPA/625/3–89/016, March 1989), uses in its examples the assumption that all non-detects are zero. Also, Method 23 of Part 60 Appendix A, the method used by air programs for determining total D/F congeners, similarly states in Section 9, titled Calculations:

> Any PCDD's or PCDF's that are reported as nondetected (below the MDL) shall be counted as zero for the purpose of calculating the total concentration of PCDD's and PCDF's in the sample.

Therefore, many assume that nondetects are zero for the purposes of calculating site specific TEQs.

Unfortunately, RCRA programs in most instances use the nondetect value, not zero, in the calculation of the TEQ. (See BIF method 23 found in Part 266, Appendix IX, section 3.4.) Since this rule would be promulgated under both RCRA and CAA authority, this issue needs to be resolved.

The Agency believes a facility will have to measure for 20 minutes per run using SW–846 method 0023a to obtain enough sample to be useful for the TEQ calculation. This leads EPA to believe that enough sample will be collected during a three hour run to assure that

nondetected congeners are indeed not present. If a source complies with the minimum sampling period and still has non-detects, then EPA proposes allowing non-detects to be assumed to be zero.

This would also apply to other methods which have passed the Method 301 validation procedures and EPA has agreed are acceptable. In the case of other methods, the facility would assume that non-detects are zero if the method accumulates the same amount or more sample than Method 0023A would in a three hour run. If a source chooses not to comply with the three hour minimum, EPA would mandate that non-detected congeners be assumed to be present at the detection level for the purposes of the TEQ calculation.

EPA specifically invites comments on the selection of the proposed minimum sampling time for the D/F method and the assumed concentration of nondetected congeners in the calculation of the TEQ.

2. Continuous Emissions Monitoring Systems (CEMS)

EPA is proposing to require the use of five CEMS—CO, HC, O_2, Hg, and PM—and to allow the use of CEMS for SVM, LVM, HCl, and Cl_2. Presently, for cement kilns and LWAKs, continuous emission monitoring of O_2 and CO (or HC) is required under the BIF rule (40 CFR 266.103(c)(1)(v)). Emission limits and their associated averaging period must be established for all of these pollutants (except for O_2) in keeping with the nature of compliance with a CEMS. (The O_2 CEMS is used to continuously correct the CEMS readings for the other pollutants to 7 percent O_2. There is no emission limit specific to O_2.) Hourly rolling average emissions data are available to establish emission limits for CO and HC on an hourly-rolling average.

Only manual method stack emissions data, however, are available to establish appropriate emission limits and averaging periods for the other standards: Hg, PM,[42] SVM, LVM, and HCl and Cl_2. This presents a unique issue for the Agency to resolve since, in most cases, EPA promulgates CEMS standards by collecting CEMS emissions data from facilities run under ''normal'' conditions. The Agency would use this CEMS data to calculate a statistically based CEMS emission standard, assuming some confidence interval and number of annual exceedances. Since no ''normal'' CEMS data exists, but worst-case manual test data from trial burns and compliance tests does, an alternate approach must be developed to derive a CEMS emission standard an its associated averaging period.

a. Approach to Establishing Averaging Periods for Hg, PM,[43] SVM, LVM, HCl and Cl_2 CEMS. One important issue concerning the data is that it was obtained from trials burn and compliance test results (similar to the comprehensive performance test, described in section III of Part Five). These are generally worst-case tests facilities used to establish operating limits under the BIF and Incinerator rules. Facilities must be in compliance with all standards at all times they are burning hazardous waste. Therefore, the emissions represented by this data are the highest emissions the facility could experience and be in compliance with the current BIF and incinerator rules. In other words, the emissions data represents a not-to-be-exceeded emission level for the given facility.

Now, let us examine how a facility would comply with today's proposed emission standards if they were *not* to use a CEMS, but by performing a comprehensive performance test and complying with the standards using operating parameter limits. As a result of today's proposed rule and as was the case in the BIF and incinerator rules, EPA believes facilities will conduct a comprehensive performance test in the same way current trial burns and compliance tests are conducted. That is they will attempt to get the widest operating envelope possible by intentionally running the facility under conditions which will maximize emissions (by practices such as maximizing feed-rates, running control devices less effectively, etc.) and yet not exceed any applicable emission standards. Facilities will use the operating data from the comprehensive test to establish and continuously monitor operating limits for feedrate and device parameters. This defines the facility's operating envelope. During normal operation, owner/operators will operate in such a way that the facility is performing better than the operating limits established during the comprehensive performance test. Since exceedances of operating limits established during the comprehensive performance test are a *de facto* violation of the corresponding standard, this means that the emissions during normal operation will at all times be lower than those during the comprehensive test.

When complying with today's proposed standards using a CEMS, it is important that facilities using a CEMS not be at a disadvantage relative to facilities using operating parameter limits. There are two ways a disadvantage could occur: when the emission standard is numerically less and/or the averaging period is shorter. In the case of manual stack tests, the averaging period is the stack sampling time. Therefore, the CEMS emission limit would be equal in stringency to the manual stack test limit if they both had the same numerical value and the CEMS averaging period were equal to the sampling period for the manual method.

Also, EPA believes facilities have a number of advantages using CEMS. First, the assumptions to assure compliance are fewer and less conservative (direct measure of the standard is the top of the monitoring hierarchy; see section II.A. of Part Five.) CEMS are less intrusive on the facility than operating parameter limits. Most importantly, CEMS mean facilities need to monitor only one emissions parameter to assure compliance rather than multiple operating limits, often relevant to more than one standard.[44]

In summary, regardless of whether CEMS or operating limits are used, both continually assure that the facility is meeting the standard(s) at all times. CEMS are an alternate, more direct, method of confirming a state of performance than are continuously monitored operating parameter limits established through a comprehensive test. A facility which complies with the standards in today's proposed rule would experience its highest emissions during a comprehensive performance test, when the facility establishes its operating envelope to ensure it is in compliance with the standards at all times. Therefore, a CEMS limit is equally stringent to a standard for a comprehensive performance test if it is numerically equal and has the same averaging period. For comprehensive performance tests, the averaging period is the sampling time for the manual method. Therefore, it is proposed that the CEMS standards be the same numerical limits established for manual method comprehensive performance tests with the averaging period equal to

[42] Note that the PM CEM is also used as an operating parameter for PM APCD efficiency and that additional averaging periods apply during normal operation. See Part Five, Section II.C.7. titled ''Particulate Matter'' for more information.

[43] Note that the PM CEM is also used as an operating parameter for PM APCD efficiency and that additional averaging periods apply during normal operation. See Part Five, Section II.C.7. titled ''Particulate Matter'' for more information.

[44] For example, an exceedance of an operating parameter limit used to ensure compliance with the dioxin, mercury, SVM, LVM, and HCl and Cl_2 standards would be a violation of all those standards. If a CEM were used for one or more of these standards, a violation would only occur if the CEM limit were exceeded.

the sampling period for three manual method test runs.

b. Averaging Periods for CO and HC CEMS. As stated previously, the data used to derive today's proposed CO and HC standards proposed are not manual methods data, but continuous emissions data based on a one-hour rolling average. To be consistent with the data used to derive the standards, it is proposed that the averaging periods for CO and HC CEMS standards remain one-hour.

c. Averaging Periods for Other CEMS. Based on the discussion of subsection I above, EPA proposes the following CEMS averaging periods for CEMS. The numerical standard is the same as those proposed in sections III through V of this part.

Three main assumptions were used in determining how long a facility would have to sample to achieve the minimum levels specified in the manual methods. They are assumptions for: sample flow rate; flue gas oxygen content; and the detection limit or specified sample collection specified in the method. For sample flow rate, EPA assumed a flow rate of 0.5 scfm because this is either what is directly stated as the flow rate in the methods or it is used by convention.

The Agency also assumed that the oxygen concentration in the flue gas was 7 percent, the basis of today's standards. Oxygen concentrations in the flue gas can change greatly, but EPA believes that the derived sampling time is elastic relative to the assumed oxygen concentration. In other words, the sampling times would change roughly five to ten per cent over the range of oxygen concentrations experienced by HWCs. This is not significant relative to other assumptions made here, so a 7 percent oxygen concentration was assumed.

Finally, each method specifies a minimum analytical detection limit or sample collection. We assumed that a test operator would collect three times what is prescribed in the method to account for facility variability, unknowns at a given site, etc. This is a conventional approach used by testing contractors. This will be referred to below as the ''collected sample.''

There are other issues which need to be addressed as well. One CEMS can be used to comply with more than one standard and standards can vary from subcategory to subcategory. Therefore, EPA proposes that the sampling time used to derive the averaging period be the longest sampling time which relates to the CEM averaging period. For an example, see the discussion on the Hg and multi-metals CEM standards, below.

Manual methods tests do not run on-the-hour, so an averaging periods with some fraction of an hour would result if rounding were not used. EPA believes it is reasonable and simpler to have integer value hourly averages. Since the direct measure of a standard at the stack is at the top of the monitoring hierarchy, a less conservative approach is warranted in this case, so EPA proposes that averaging periods for CEMS be rounded up to the nearest hour. (See section II.A. of Part Five for more information on the monitoring hierarchy.)

Also, a resulting averaging period may be inappropriately short, i.e., less than one hour. In this case EPA would establish an averaging period of one-hour. This is reasonable since the averages for operating parameters to control average emissions are one-hour. (See section II.B.1. of Part Five for a discussion of averages for operating parameters.) Monitoring of a standard continuously at the stack is at the top of the monitoring hierarchy, while establishing operating parameter limits is at the bottom. It would be inconsistent if an averaging period for CEMS were less than those for operating parameter limits, so a one-hour average will be proposed in this case.

For mercury (Hg) and multi-metal CEMS, it is proposed that the averaging period be ten hours. SW–846 method 0060 would be the manual method used to comply with these standards if a CEM were not used. Emission standards for these HAP categories vary greatly from HAP-to-HAP and within a HAP, from subcategory-to-subcategory. But the proposed SVM standard for LWAKs results in the longest sample collection time. EPA believes that an LWAK will have to sample for approximately 200 minutes per run to collect 15 μg of sample to be in compliance with the LWAK SVM standard. Three runs of 200 minute duration is 600 minutes, or ten hours.

For the HCl and Cl_2 standard, it is proposed that the CEMS averaging period be one hour. In this case, EPA has determined that a facility would have to sample less than ten minutes per run to collect the minimum amount, 300 μg, of sample specified by the method. If three times this sampling time were used to establish the averaging time, it would result in one of roughly 30 minutes. This is unreasonable for a CEMS averaging period, so EPA is proposing that the averaging period be one hour.

Finally, it is proposed that the PM CEMS averaging period be two hours. This is because a facility would have to sample for roughly 30 minutes per run to collect the minimum amount, 30 mg, of particulate specified by the method. Three times this sampling time is 1.5 hours, so after rounding an averaging period of two hours is proposed.

Table IV.2.1 summarizes the CEMS averaging period for the various CEMS emission standards.

TABLE IV.2.1.—AVERAGING PERIODS FOR CEMS STANDARDS

HAP or standard	CEMS averaging period
PM	2 hours.
Mercury (Hg)	10 hours.
SVM	10 hours.
LVM	10 hours.
HCl and Cl_2	1 hour.
CO	1 hour.
HC	1 hour.

d. All Averages are Rolling Averages. All CEMS averaging periods are on a rolling-basis. In other words, each time a sample is recorded, a new rolling average is calculated using the new sample and all previous samples obtained during the specified averaging period. If sample results are recorded every minute and the averaging period is one hour, then the most recent sample is averaged together with the results of the previous 59 samples to obtain the hourly rolling average. When there are not enough data to obtain a rolling average, one of two approaches would be used. We propose that for short-term interruptions of the rolling average that the rolling average ''pick-up'' where it left off, i.e., consider the one-minute average immediately prior to the interruption to be the one minute average that occurred prior to the current one-minute average. For longer term interruptions, all available one minute averages would be averaged together until the time period since the start of the rolling average equals the averaging period for that parameter. Then there is enough data to perform the rolling average as usual, and the rolling average would continue as normal. For more information on the use of CEMS and the rolling average, see Part Five, Section II.C. ''Compliance Monitoring Requirements'' and the proposed regulations, Appendix J to Part 60.

3. Feedstream and Operating Limits

Today, EPA is proposing specific monitoring requirements to ensure facilities are in compliance with the standards during normal operation. Some of these monitoring requirements require setting limits on feedstream or operating parameters. These limits will

be set on an average. Other limits would be instantaneous limits, such as those for fugitive process emissions.

It is proposed that four averaging periods be used for feedstream and operating limits: twelve hour, one hour, ten minutes, and instantaneous. All averages would be calculated on a rolling-average basis with measurements taken every 15 seconds to obtain a one minute average. The one minute averages are used to obtain the twelve hour, one hour or ten minute rolling average. The use of one-minute averages, i.e., the average of the previous 15 second averages within that minute, is the current practice for HWCs. ''Instantaneous'' limits are just that, values not to be exceeded at any time. Averaging does not occur for ''instantaneous'' values. These definitions supersede requirements in the Part 63 general provisions, which are less stringent. Consult chapter 5, volume IV of the Technical Background Document for more information regarding EPA's choice of the time duration for averaging periods.

For discussion on what operating limits EPA is proposing and what the averaging period will be for particular operating limits, see section II of Part Five of this preamble.

III. Incinerators: Basis and Level for the Proposed NESHAP Standards for New and Existing Sources

Today's proposal would establish maximum achievable control technology (MACT) emission standards for dioxins/furans, mercury, semivolatile metals (cadmium and lead), low volatile metals (arsenic, beryllium, chromium and antimony), hydrochloric acid and chlorine (combined), particulate matter, carbon monoxide, and hydrocarbons from existing and new hazardous waste incinerators (HWIs). See proposed § 63.1203. The following discussion addresses how MACT floor and beyond-the-floor (BTF) levels were established for each HAP, and EPA's rationale for the proposed standards. The Agency's overall procedural approach for MACT determinations has been discussed in Part Three, Sections V and VI for existing sources and in Section VII for new sources.

To conduct the MACT floor analyses presented today, the Agency compiled available data from hazardous waste-burning incinerators: both commercial as well as on-site facilities. As discussed earlier, the vast majority of these data were generated during trial burns to demonstrate compliance with existing RCRA standards at 40 CFR Part 264, Subpart O. Therefore, the data were obtained under proper QA/QC procedures. These emissions data, however, represent worse-case emissions that cannot be exceeded (because limits on operating parameters are based on operations during the trial burn). As noted earlier, the Agency invites commenters to submit data that reflect more normal, day-to-day operations and emissions. This will enable the Agency, among other things, to be better able to distinguish among facilities that are now included in the expanded MACT floor pool but which, upon closer inspection and with better data, may not be actually employing the identified floor controls.

A. Summary of MACT Standards for Existing Incinerators

This section summarizes EPA's proposed emission levels for existing incinerators for each HAP, HAP group, or HAP surrogate. The proposed emission standards for HWIs are presented in the table below:

TABLE IV.3.A.1.—PROPOSED MACT STANDARDS FOR EXISTING INCINERATORS

HAP or HAP surrogate	Proposed standards [1]
Dioxin/furans	0.20 ng/dscm TEQ.
Particulate Matter	0.030 gr/dscf. (69 mg/dscm).
Mercury	50 µg/dscm.
SVM [Cd, Pb]	270 µg/dscm.
LVM [As, Be, Cr, Sb]	210 µg/dscm.
HCl + Cl_2	280 ppmv.
CO	100 ppmv.
HC	12 ppmv.

[1] All emission levels are corrected to 7 percent O_2.

1. Dioxins and Furans (D/Fs)

a. MACT Floor. The Agency's analysis of dioxin/furan (D/F) emissions from HWCs and other combustion devices (e.g., municipal waste combustors and medical waste incinerators) indicates that temperature of combustion gas at the inlet to the particulate matter (PM) control device can have a major effect on D/F emissions.[45] D/F emissions generally decrease as the gas temperature of the PM control device decreases, and emissions are lowest when the gas temperature of the PM control device is below the optimum temperature window for D/F formation—450 to 650 °F.[46] Given that incinerators are equipped with both wet and dry PM control devices that operate under a range of temperatures, the Agency is identifying a MACT floor for D/F based on temperature control at the inlet to the PM control device.

Incinerators emitting D/F at or below levels emitted by the median of the best performing 12 percent of incinerators have combustion gas temperatures below 400° F. These best performing sources were equipped with venturi scrubbers to control PM. The gas temperature of the wet air pollution control system for one source was 163° F; gas temperature data for the other best performing sources were not available. Although gas temperatures at a wet PM control device would normally be less than 200° F, temperatures could be higher in the presence of acid gases such as HCl and SO_2. Consequently, the Agency believes that it would be reasonable and appropriate to generalize that gas temperatures of wet PM control devices are less than 400° F.

The Agency evaluated D/F emissions from all incinerators that are equipped with wet PM control systems. Average D/F emissions for test conditions ranged from 0.01 ng/dscm (TEQ) to 39 ng/dscm (TEQ). D/F emissions were as high as 3.5 ng/dscm (TEQ) for incinerators that were not burning substantial levels of known D/F precursors or were not equipped with a waste heat boiler (WHB). (It is hypothesized that WHB-equipped incinerators may have high (uncontrolled) D/F emissions because D/F may be formed on particulate attached to boiler tubes as combustion gases pass through the optimum temperature window (450–650° F) for D/F formation.) WHB-equipped incinerators using wet PM control devices had D/F emissions ranging from 0.4 to 8 ng/dscm (TEQ), and an incinerator equipped with a wet PM control device burning waste comprised of approximately 30 percent PCBs had D/F emissions of 39 ng/dscm (TEQ).

The Agency is consequently identifying temperature control to below 400° F at the PM control device as the MACT floor. Given that approximately 45 percent of test conditions in our database have average D/F emissions below 0.20 ng/dscm (TEQ), we believe that it is appropriate to express the floor as ''0.20 ng/dscm (TEQ), or temperature at the PM control device not to exceed 400° F''. This would allow sources that operate at temperatures above 400° F but that achieve the same D/F emissions as 45 percent of sources that operate below 400° F to meet the standard without incurring the expense of

[45] USEPA, ''Draft Technical Support Document For HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

[46] For example, during compliance testing of a cement kiln, D/F emissions exceeded 1.7 ng/dscm (TEQ) at a ESP temperature of 435° F.

lowering the PM control device gas temperature.

EPA estimates that 75 percent of incinerators are currently meeting the floor level. The annualized cost for the remaining incinerators to reduce D/F emissions to 0.20 ng/dscm (TEQ) or control gas temperature at the PM control device to below 400° F would be $3.0 million. Achievement of the floor levels would reduce D/F TEQ emissions nationally by 35 g/yr.

b. Beyond-the-Floor (BTF) Considerations. The Agency has identified activated carbon injection (CI) operated at gas temperatures less than 400° F as BTF control for D/F for incinerators.[47] CI is currently used by a commercial hazardous waste incinerators to achieve emission levels routinely (based on quarterly stack testing) of less than 0.20 ng/dscm (TEQ). CI is also used to reduce D/F emissions from several municipal and medical waste incinerators (MWIs) in a similar manner.

CI has been demonstrated to be routinely effective at removing greater than 95 percent of D/F and some tests have demonstrated a removal efficiency exceeding 99 percent at gas temperatures of 400° F or below.[48] To determine a BTF emission level, the Agency considered the emission levels that could result from gas temperature control to less than 400° F combined with CI.

To estimate D/F emissions with temperature control combined with CI, the Agency considered the range of emissions from sources in the MACT floor database, as discussed above. Incinerators that are not equipped with a WHB and not burning high levels of D/F precursors (the vast majority of incinerators) could be expected to achieve D/F emissions of less than 3.5 ng/dscm (TEQ) with temperature control only. These sources could be expected to achieve D/F emissions of below 0.18 ng/dscm (TEQ) when using CI assuming a fairly conservative removal efficiency of 95 percent.

There are three sources in our database equipped with WHBs. One currently uses CI to achieve D/F emissions below 0.20 ng/dscm (TEQ) when controlling PM with an ESP operating below 400° F. Another source had D/F emissions of 0.56 ng/dscm (TEQ) when controlling PM with a wet system. This source could be expected to achieve D/F emissions below 0.03 ng/dscm (TEQ) using CI at a removal efficiency of 95 percent. The third WHB-equipped incinerator in our database had D/F emissions of 8.0 ng/dscm (TEQ) when controlling PM with a wet system. This source could be expected to achieve D/F emissions below 0.40 ng/dscm using CI at a removal efficiency of 95 percent. We note, however, that the feed to this source during testing comprised approximately 10 percent hexachlorophenol, a D/F precursor.

Finally, one incinerator in the database that controlled PM with a wet system had D/F emissions of 39 ng/dscm (TEQ). This source could be expected to achieve D/F emissions below 2 ng/dscm (TEQ) when using CI at 95 percent efficiency. We note, however, that the feed to this source during testing comprised approximately 30 percent PCBs, known D/F precursors.

The Agency has considered this information and determined that it would be reasonable and appropriate to establish 0.20 ng/dscm (TEQ) as an emission level that is achievable with BTF control. Although two sources in our database that fed (during testing) high levels of D/F precursors may not have been able to achieve that level if they had been equipped with CI, we believe that those sources could achieve a level of 0.20 ng by reducing the feedrate of D/F precursors.

We note that, because we have assumed a fairly conservative CI removal efficiency of 95 percent to identify the 0.20 ng/dscm BTF level, we believe that this adequately accounts for emissions variability that would be experienced at a given source attempting to operate under constant conditions (e.g., as during a performance test). That is, because CI removal efficiency is likely to be up to or greater than 99 percent, we believe that it is not necessary to add a statistically-derived variability factor to the 0.20 ng/dscm BTF level to account for emissions variability. Accordingly, the 0.20 ng/dscm (TEQ) BTF level is proposed as the emission standard.

We invite comment on this issue, and note that if a statistically-derived variability factor were deemed appropriate, the BTF level of 0.20 ng/dscm would be expressed as a standard of 0.31 ng/dscm (TEQ). We note, however, that under this approach, it may be appropriate to use a less conservative CI removal efficiency (i.e., because emissions variability would be accounted for using statistics rather than in the engineering decision to use a conservative CI removal efficiency), thus lowering the 0.20 ng/dscm level to approximately 0.1 ng/dscm (TEQ). If so, the BTF standard would be approximately 0.21 ng/dscm (TEQ) (i.e., virtually identical to the proposed standard) after considering a statistically-derived variability factor.

EPA estimates that 50 percent of incinerators are currently meeting a BTF level of 0.20 ng/dscm (TEQ). The incremental annualized cost for the remaining incinerators to meet this BTF level rather than comply with the floor controls would be $26.2 million, and would provide an incremental national reduction of 38 g/yr in D/F TEQ emissions over the floor level. This represents an overall reduction of about 95 percent compared to baseline D/F emissions of 77 g/year.

EPA has determined that proposing a BTF MACT standard is warranted and a number of factors support the proposed BTF level of 0.20 ng/dscm (TEQ). D/F are some of the most toxic compounds known due to their bioaccumulation potential and wide range of health effects at exceedingly low doses, including carcinogenesis. Exposure via indirect pathways was in fact a chief reason Congress singled out D/F for priority MACT control in section 112(c)(6). See S. Rep. No. 228, 101st Cong. 1st Sess. at 154–155 (1990). As discussed elsewhere in today's preamble (and as qualified by the discussion below regarding small incinerators), EPA's risk analysis developed for purposes of RCRA in fact shows that D/F emissions from hazardous waste incinerators could pose significant risks by indirect exposure pathways and that these risks would be reduced by BTF controls. EPA is expressly authorized to consider this non-air environmental benefit in determining whether to adopt a BTF level. CAA section 112(d)(2).

As discussed in Part Seven of the preamble, the cost-effectiveness of the BTF level for small on-site incinerators may be high. This is because on-site incinerators are generally smaller than commercial incinerators, have lower gas flow rates, and therefore have lower mass emission rates of D/F. Thus, the cost per gram of D/F TEQ removed for small incinerators is greater than for large (on-site and commercial) incinerators. Accordingly, the Agency invites data and comment on: (1) whether the BTF level is cost-effective for small incinerators; and (2) whether the final rule should establish MACT standards at the floor level (i.e., 0.20 ng/dscm (TEQ), or 400° F) for these small

[47] We note that incinerators using wet PM control systems would need to reheat the combustion gas before injecting the carbon. This is because CI is not efficient at D/F (or Hg) removal at gas temperatures below the dew point. Gas reheating in these situations was considered in estimating the cost of compliance with the proposed standards.

[48] USEPA, ''Draft Technical Support Document For HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

incinerators.[49] [50] Under this approach, the Agency would use the same definition of small incinerator used to identify incinerators subject to less frequent performance testing—incinerators with gas flow rates less than 23,127 acfm.[51]

EPA notes further that the control technology on which the proposed BTF standard is based, carbon injection, also controls mercury. The ability and efficiencies of controlling two such high toxicity HAPs with the same highly-efficient control technology is an important factor in the Agency's decision to propose a BTF standard. The Agency notes further that the absolute cost of achieving the proposed standard is relatively low, particularly considering the toxicity of D/F (as well as mercury, which, as just noted, would also be controlled). For example, the proposed BTF levels would result in annualized costs of $27 million to all HWIs or $15 per ton of hazardous waste burned.

Finally, EPA's initial view is that it may be necessary to adopt further controls under RCRA to control D/F if it did not adopt the BTF level. This would defeat one of the purposes of this proposal—to avoid imposing emission standards under both statutes for these sources wherever possible. These risks would, however, be reduced to acceptable levels if emission levels are reduced to the proposed BTF level of 0.20 ng/dscm (TEQ).

2. Particulate Matter

a. MACT Floor. The Agency has a database for PM emissions from 74 HWIs that indicates a range (by test condition average) from 0.0003 gr/dscf to 1.9 gr/dscf. For MACT determination, the median of the best performing 12 percent of the HWIs in the MACT pool were analyzed and found to be using the following APCDs to control PM: (1) A fabric filter (with an air to cloth ratio of less than 10.0 acfm/ft^2); and (2) an ionizing wet scrubber (IWS) in combination with a venturi-scrubber. Accordingly, these APCDs were tentatively designated as the MACT floor technologies. To identify an emission level that these technologies could be expected to achieve routinely, the Agency examined the emissions from all incinerators (in the database) that were equipped with these PM control devices. A MACT floor level of 240 mg/dscm (0.107 grains/dscf) resulted from the analysis based on considerations discussed in Part Three, Section V, above.

This level, however, is higher than the current federal standard of 180 mg/dscm (0.08 grains/dscf).[52] Thus, the Agency is not proposing to use the statistically-derived approach to identify the MACT floor emission level. The Agency has regulated PM emissions from hazardous waste incinerators under RCRA (40 CFR 264.343(c)) since 1981 and all RCRA-permitted incinerators have been required to meet the federal standard of 0.08 gr/dscf (180 mg/dscm). The Agency, therefore, is identifying the MACT floor at the regulated level of 180 mg/dscm.

The APCDs commonly used at HWIs to control PM to the current RCRA standard are fabric filters, ESPs, IWSs, and venturi-scrubbers. Accordingly, we have designated these technologies as MACT floor for PM control. Approximately 95 percent of all test conditions in our database have lower average levels (average over all runs of the test condition) than the MACT floor level of 180 mg/dscm.[53] This MACT floor level will not impose any incremental burden on HWIs (except compliance and related permitting costs) since it is the currently enforceable level.

b. Beyond-the-Floor Considerations. The Agency considered two levels of more stringent BTF PM standards, 69 and 34 mg/dscm (0.03 and 0.015 gr/dscf), since well designed and well operated ESPs, IWSs, and fabric filters can routinely achieve PM control at the 69 mg/dscm level,[54] while state-of-the-art ESPs, IWSs and FFs can achieve 34 mg/dscm level. The Agency is proposing a BTF standard of 69 mg/dscm (0.03 grains/dscf) based on engineering evaluation of the emissions data from HWIs. (We note that, as discussed in Sections IV and V below, it also is consistent with the proposed standards for cement kilns and LWAKs). Most of the HWIs having PM emissions between 69 to 180 mg/dscm (0.03 to 0.08 gr/dscf) range are likely to be using older APCDs that can be upgraded to provide better PM control. Only 30 percent of all test conditions [55] in our database were found to have PM emissions greater than the proposed BTF level of 69 mg/dscm (0.03 gr/dscf). Analysis of the test data appeared to indicate that some sources operated under poor, non-normal conditions during one test condition resulting in high PM levels, while much lower PM emissions were achieved during other test conditions. As noted elsewhere, the Agency is specifically concerned that the nature of these test data (and the absence of more detailed, routine operations and emissions data) has interfered with our ability to derive MACT standards that appropriately reflect the lower, day-to-day emissions achievements of the best performing facilities. The Agency will continue to refine its analysis in this regard, and we specifically invite data and comments on this issue.

The Agency estimates that 9 percent of existing incinerators can achieve the proposed BTF levels using design, operation and maintenance upgrades of their APCDs, while 11 percent facilities would require installation of new fabric filters or other equivalent APCD (e.g., ESP or IWS). The national annualized cost to HWIs to comply with the proposed BTF level would be $2.7 million and would provide an incremental reduction of PM emissions of 839 tons/year (52 percent) from the baseline emissions level of 1606 tons/year. Accordingly, the Agency believes that a BTF level of 69 mg/dscm (0.03 gr/dscf) is appropriate.

The performance of many APCDs can be improved to achieve a more stringent PM BTF level of 34 mg/dscm by adopting good D/O/M practices; in other cases, the APCD may have to be upgraded or replaced. Upgrades include techniques for ESPs such as humidification or increasing the plate area or power input, and for FFs, increasing cloth to air ratio and pressure drop across bags, or retrofits to modern fabrics like heavy woven fiberglass. The Agency is concerned, however, that the cost of such retrofitting to achieve PM levels of 34 mg/dscm (0.015 gr/dscf)

[49] See also discussion in Part Four, Section I (Selection of Source Categories and Pollutants), regarding whether the Agency should subdivide incinerators by size and promulgate separate floor standards (and BTF standards, if warranted).

[50] If after review of comments and further analysis the Agency determines that subdividing incinerators is not appropriate but, because of cost-effectiveness considerations, BTF levels are not warranted for all types of incinerators, the Agency invites comment on whether such cost-effectiveness and BTF decisions should be based on incinerator size or whether the incinerator is a commercial or on-site unit.

[51] We also use this definition to request (elsewhere in the text) comment on whether the requirement to use Hg and PM CEMS for compliance monitoring should be relaxed or waived for small incinerators.

[52] This anomalous result is apparently attributable to: (1) inability to consider emissions from only those HWIs truly using MACT floor control (because of inadequate data to properly characterize the design, operation, and maintenance of the control device); and (2) use of a variability factor that is based on emissions variability (during trial burn testing) that may be much higher than many sources actually experience.

[53] We presume that those few test conditions that exceeded the 180 mg/dscm standard occurred during failed trial burn tests.

[54] We note also that, as discussed in the next section, cement kilns with much higher inlet particulate loadings are currently required to meet a 69 mg/dscm standard.

[55] Representing 20 percent of the sources.

could be substantial. We also note that PM is not a HAP, but rather a surrogate for non-dioxin/furan HAPs adsorbed on to PM and for metal HAPs not directly controlled by a MACT standard. These HAPS would be controlled to some extent by other proposed standards (e.g., metal-specific standards; CO and HC limits to control organic HAPs). For these reasons, we believe that controlling PM to the proposed BTF level of 69 mg/dscm (0.03 gr/dscf) is appropriate. In addition, we also note that the Agency has no information that a lower PM standard would be needed to satisfy RCRA requirements.

3. Mercury

a. MACT floor for mercury. Mercury (Hg) emissions from incinerators are currently controlled by controlling the feedrate of Hg and by using wet scrubbers (although such scrubbers are used primarily for acid gas control). Wet scrubbers can remove soluble forms of mercury species (e.g., HgCl).

The Agency's Hg emissions database from 29 HWIs indicates that baseline Hg emissions range from 0.05 µg/dscm to a high of 1,360 µg/dscm. To identify MACT floor control, EPA determined that sources with Hg emissions at or below the level emitted by the median of the best performing 12 percent of sources were controlling Hg using either: (1) Hg feedrate control expressed as a maximum theoretical emission concentration (MTEC) [56] of 19 µg/dscm; or (2) wet scrubbers coupled with an MTEC of 51 µg/dscm. Analysis of emissions from all incinerators in the database using these or better controls (i.e., lower Hg feedrates expressed as lower MTECs) resulted in a MACT floor level of 130 µg/dscm.[57] To meet this floor level 99 percent of the time, EPA estimates that a source with average emissions variability must be designed and operated to routinely meet an emission level of 57 µg/dscm.

EPA estimates that approximately 70 percent of incinerators currently meet the floor level. The annualized cost for the remaining incinerators to meet the floor level is estimated to be $29.5 million, and would reduce Hg emissions nationally by 7,166 lbs per year from the baseline emissions level of 9,193 lbs per year.

b. Beyond-the-Floor Considerations. The Agency has considered two alternative beyond-the-floor (BTF) controls for improved Hg control: flue gas temperature reduction to 400° F or less followed by either activated carbon injection (CI) or carbon bed (CB). (As discussed in the D/F section, we note that incinerators with PM control devices operating below the dew point (e.g., venturi-scrubbers, ionizing wet scrubbers) would have to reheat the combustion gas before using CI, and would need to add a FF or other PM control device to remove the injected carbon.) EPA believes that CI-controlled systems can routinely achieve Hg emission reductions of 90 percent or better and that CB-controlled systems can routinely achieve Hg emissions of 99 percent or better.[58]

For CI-controlled systems, EPA has identified a BTF emission standard of 50 µg/dscm, assuming first that a source has controlled its Hg emissions to only 300 µg/dscm using a wet scrubber and/or feed control, and second, a CI removal efficiency of 90 percent. (The BTF emission standard corresponds to a design level of 30 µg/dscm, i.e., a level that the device is designed and operated to achieve routinely.) [59] For CB systems, the BTF standard would be 5.0 µg/dscm (assuming 99 percent removal efficiency).

We note that another option for identifying BTF levels would be to consider the CI or CB system as an add on to the floor controls identified above. Under this option, emission levels prior to CI would be assumed to be the floor level, 130 µg/dscm. Thus, a CI system at 90 percent removal could be expected to achieve a standard of approximately 13 µg/dscm. A CB system at 99 percent removal could be expected to achieve a standard of approximately 1.3 µg/dscm. We specifically request comment on whether this approach of applying BTF reductions to the floor levels is appropriate.

We also note that an alternative approach to using a statistically-derived variability factor to account for emissions variability would be to assume a conservative control efficiency for the CI or CB BTF technology. We believe that using a conservative removal efficiency could adequately account for emissions variability. Under this approach, we would conservatively assume that CI-controlled systems could achieve a removal efficiency of 80 percent and that CB-controlled systems could achieve an efficiency of 90 percent. When these removal efficiencies are applied to the floor level of 130 µg/dscm (corresponding to a design level of 57 µg/dscm), this would result in emission standards of 11 µg/dscm for CI-controlled systems, and 5.7 µg/dscm for CB-controlled systems.[60] We invite comment on this alternative approach to account for emissions variability among runs within a test condition.

For the reasons discussed below, EPA believes that a BTF level based on use of CI is warranted and is proposing a MACT standard of 50 µg/dscm. The proposed standard would result in nationwide Hg emissions reductions of 757 lbs per year above the floor level and 7,922 lbs per year from baseline levels, and the incremental annualized cost to achieve the BTF level over the floor level would be $7.7 million.

EPA has considered costs in relation to emissions reductions and the special bioaccumulation potential that Hg poses and determined that proposing a BTF limit is warranted. Hg is one of the more toxic metals known due to its bioaccumulation potential and the adverse neurological health effects at low concentrations especially to the most sensitive populations at risk (i.e., unborn children, infants and young children). Congress has singled out mercury in CAA section 112(c)(6) for prioritized control. A more detailed discussion of human health benefits for mercury can be found in Part Seven of today's proposal. The chief means of control, activated carbon injection, also controls D/F so that there are distinct efficiencies in control.[61]

The Agency evaluated a more stringent standard of 8 µg/dscm for Hg emissions based on CB technology. This standard would result in additional national Hg reductions of 960 lbs per year over the proposed standard of 50

[56] MTEC is the Hg feedrate divided by the gas flow rate, and is an approach to normalize Hg feedrate across sources.

[57] As discussed above in the text, we added a within-test condition emissions variability factor to the log-mean of the runs for the test condition in the expanded MACT pool with the highest average emission.

[58] USEPA, ''Draft Technical Support Document For HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996. See also memo from Shiva Garg, EPA, to the Docket (No. F–96–RCSP–FFFFF), dated February 22, 1996, entitled ''Performance of Activated Carbon Injection On Dioxin/Furan and Mercury Emissions.''

[59] To achieve a standard of 50 µg/dscm 99 percent of the time, a source with average emissions variability must be designed and operated to achieve an emission level of 30 µg/dscm.

[60] The same approach could be applied to the previously discussed approach of applying the BTF control to an assumed emission level of 300 µg/dscm. When assuming the conservative removal efficiencies of 80 percent for CI and 90 percent for CB, this would result in BTF standards of 60 µg/dscm for CI-controlled systems and 30 µg/dscm for CB-controlled systems. A statistically-derived variability factor would not be added because emissions variability is accounted for by assuming conservative (i.e., lower-than-expected) removal efficiencies for CI and CB systems.

[61] As discussed for D/F, we invite comment on whether the final rule should establish floor levels, rather than BTF levels, for Hg for small incinerators. This is because the Agency is concerned about the cost-effectiveness of the BTF levels for small incinerators.

μg/dscm at an incremental annualized national cost of $20 million. The Agency does not believe that a CB-based emission level of 8 μg/dscm would be appropriate.

4. Semivolatile Metals (SVM) (Cadmium and Lead)

a. MACT Floor. Emissions of SVMs from HWIs are currently controlled by PM control devices. In addition, some incinerators have specific emission limits for these metals established under RCRA omnibus permit authority. The Agency has a database for SVM emissions from 42 HWIs, which indicates a range (by test condition average) from a low of 1.46 to a high of 29,800 μg/dscm. For the MACT analysis, the median of the best performing 12 percent of HWIs were found to be using: (1) a venturi-scrubber (VS)[62] with a MTEC level of 170 μg/dscm; (2) a combination of ESP and WS with a MTEC level of 5,800 μg/dscm; and (3) a combination of VS and IWS with a MTEC of 49,000 μg/dscm.[63] Accordingly, we identified these technologies as MACT floor.

To identify an emission level that these technologies could routinely achieve, we evaluated the emission levels from all HWIs equipped with these controls.[64] We identified the test condition in this expanded MACT pool with the highest average emission and used procedures discussed above in Part Three, Section V, (i.e., addition of a within-test condition emissions variability factor to the log mean of the runs for this test condition) to identify a MACT floor level 270 μg/dscm.

We estimate that approximately 65 percent of all incinerators currently meet this MACT floor level. Sources not already meeting the floor level can readily achieve it by making design, operation, or maintenance improvements to their existing PM control system or by retrofitting with a new PM control device.

The national annualized cost to HWIs to comply with the proposed floor level is estimated to be $9.9 million, and would provide a reduction in Cd and Pb emissions of 50 tons/year, a 94 percent reduction in emissions.

b. Beyond-the-Floor Considerations. The Agency is not proposing a more stringent BTF standard for SVM. We note that the floor level alone would provide for a 94 percent reduction in emissions, and emissions at the floor are not likely to trigger the need for additional control for these sources under RCRA.

5. Low Volatile Metals (Arsenic, Beryllium, Chromium and Antimony)

a. MACT floor. The Agency has a database for LVM emissions from 41 HWIs, which indicates a range (by test condition average) from a low of 3.5 to a high of 133,000 μg/dscm. For MACT analysis, the median of the best performing 12 percent of HWIs achieved the LVM emission levels using: (1) a venturi-scrubber (VS) for MTECs up to 1,000 μg/dscm; and (2) an ionizing wet scrubber (IWS) for MTECs up to 6,200 μg/dscm. Accordingly, we identified these technologies as MACT floor.

In addition, we consider any PM control device to provide equivalent LVM control to a VS. We therefore identified an ESP, IWS, or FF with a MTEC up to 1,000 μg/dscm as MACT floor control. Similarly, we consider a FF or ESP as equivalent technology to a IWS. Thus, a FF or ESP coupled with a MTEC up to 6,200 μg/dscm is also considered MACT floor control.

To identify an emission level that these technologies could routinely achieve, we considered the emissions from all HWIs in our database equipped with MACT floor control. We identified the test condition in this expanded MACT pool with the highest average emissions and added a within-test condition emissions variability factor to the log-mean of the test condition runs. See Part Three, Section V, above. Accordingly, we have identified a MACT floor level of 210 μg/dscm.

Approximately 80 percent of all test conditions in our database achieved the MACT floor level even though many HWIs were equipped with different APCDs or had higher MTECs. EPA believes that most HWIs would be able to achieve the proposed MACT floor without installing an add-on control system. The control technologies necessary to achieve the MACT floor level are already being used by many HWIs for PM and acid gas control.

The national annualized cost to HWIs to comply with the floor level would be $7.7 million and would provide an incremental reduction in LVM emissions of 25 tons/year (91 percent) from the baseline emissions level of 27.3 tons/year.

b. Beyond-the-Floor Considerations. The Agency is not proposing a more stringent LVM standard using BTF controls (i.e., better performing PM control equipment). We note that the floor level alone would provide for a 91 percent reduction in emissions, and emissions at the floor are not likely to trigger the need for additional control for these sources under RCRA.

6. Hydrochloric Acid and Chlorine

a. MACT floor for HCl/Cl_2. The Agency's database for HCl/Cl_2 emissions from 59 HWIs indicates a range (by test condition average) from a low of 0.1 to a high of 1068 ppmv (expressed as HCl equivalents). For MACT analysis, the median of the best performing 12 percent of HWIs achieving the lowest HCl/Cl_2 emission levels were found to be using some kind of scrubbing using combinations of absorber, ionizing wet scrubber, VS, packed bed scrubber (PBS), or generic wet scrubber. In addition, the best performing sources had a chlorine feedrate of up to 2.1E7 μg/dscm, expressed as a MTEC. Accordingly, we identified MACT floor control as wet scrubbing coupled with a chlorine MTEC up to 2.1E7 μg/dscm.

To identify an emission level that wet scrubbing with an MTEC up to 2.1E7 μg/dscm could routinely achieve, we considered the emissions from all HWIs in our database equipped with these controls. We identified the test condition in this expanded MACT pool with the highest average emissions and added a within-test condition emissions variability factor to the log-mean of the test condition runs. See Part Three, Section V, above. Accordingly, we have identified a MACT floor level of 280 ppmv.

Over 90 percent of all test conditions in our database achieve this MACT floor level. At current baseline levels, HWIs emit 1712 tons/year of HCl/Cl_2, and at today's proposed MACT standard, these emissions would be reduced by 592 tons/year, a reduction of 35 percent. The estimated annualized national cost to the industry to meet the proposed MACT standard would be $4.5 million.

b. Beyond the-Floor Considerations. The Agency considered whether to propose a BTF level and determined that it would not be warranted. We note that emissions at the floor are not likely to trigger the need for additional control for these sources under RCRA.

7. Carbon Monoxide and Hydrocarbons

As discussed in Section I above, the Agency believes that establishing emission limits and continuous

[62] Because virtually all other PM control devices (e.g., ESP, FF, IWS) would be expected to have a SVM collection efficiency equivalent to or better than a VS, a source equipped with any PM control device and having a MTEC less than 170 μg/dscm was considered to be using MACT floor control.

[63] We considered a FF to have equivalent (or better) SVM removal efficiency compared to an IWS. Thus, we considered a source equipped with a FF and any wet scrubber (ahead of the FF) and having a MTEC less than 49,000 μg/dscm to be using MACT floor control. A FF alone may not provide equivalent control of SVM because SVM can be volatile in stack emissions.

[64] Sources with better controls (MACT technology and lower feedrate expressed as MTEC) were also included in the expanded MACT pool.

monitoring of two surrogate compounds (hydrocarbons (HC) and carbon monoxide (CO)) will help control emissions of non-dioxin organic HAPs (in combination with PM control to control absorbed organic HAPs).

a. MACT Floor for HC. The Agency's database for HC emissions from 31 HWIs indicates a range (by test condition average) from a low of 0.2 to a high of 35.8 ppmv. Unlike certain cement kilns and LWAKs, incinerators are not required to monitor HC under RCRA regulations. Facilities generally obtained HC emissions data for their own information and often used an unheated FID detector, in which soluble volatiles and semivolatiles are condensed out before entering the detector. Also much of the data were based on run averages (as opposed to the maximum hourly rolling average format proposed today).[65] Notwithstanding these shortcomings, the Agency used these data to identify a MACT floor level.

The Agency identified MACT control for HC as operating under good combustion practices (GCPs). GCPs include techniques such as thorough air, fuel, and waste mixing, provision of adequate excess oxygen, maintenance of high temperatures to destroy organics, design of the facility to provide high enough residence times for destruction of organics, operation of the facility by qualified and certified operators, and periodic equipment maintenance to manufacturer-recommended standards.

To identify the MACT floor level, the Agency conducted a quantitative evaluation of the data combined with engineering judgment to identify test conditions that appear to be conducted under good combustion conditions. Since it is not possible to say with certainty which test conditions were conducted using GCPs absent a detailed examination of all test conditions, we conducted the analysis by arraying the entire HC database from the lowest to the highest emission levels. We then assumed that test conditions beyond a clear break-point were not operated under GCPs. Based on the above analysis and a statistical evaluation of the level that the average source can achieve 99 percent of the time, the Agency identified a MACT floor level of 12 ppmv.

We estimate that the annualized burden on HWIs to meet this floor level would be $8.5 million. An annual reduction of 49 tons of HC emissions (20 percent) is expected from the baseline levels of 239 tons/year.

EPA specifically invites comment on the approach used to identify the MACT floor level and requests HC data on a hourly rolling average basis, using heated FID monitors.

b. MACT floor for CO. RCRA regulations for HWIs were promulgated in 1981 and limit CO emissions to levels achieved during the trial burn. (As noted elsewhere, facilities typically design trial burns to maximize CO in order to provide operational flexibility.) Most of our database for CO (from 59 facilities) is based on run-averages during trial burns (rather than an hourly rolling average-basis; see discussion below). The CO levels in our database that are on a run-average basis range from 0.3 to 10,400 ppmv.

We are proposing today a maximum hourly rolling average (MHRA) format for CO (and HC), which is the same format in which a standard of 100 ppmv (Tier 1) was proposed in 1990 for HWIs (see 55 FR 17862 (April 7, 1990)) and promulgated for CKs and LWAKs in 1991 (see 56 FR 7134 (February 21, 1991)).

Although the Agency did not promulgate a final rule for CO emissions from HWIs (because of Agency resource constraints), the Agency published a guidance document[66] wherein a Tier 1 CO limit of 100 ppmv HRA was recommended for control of PIC emissions if warranted on a site-specific basis. Accordingly, subsequent trial burns for HWIs have been conducted using a HRA format for CO. Our CO database in the HRA format is comprised of 17 test conditions and has a range of 10 to 1,500 ppmv.

For MACT determination, the Agency conducted an analysis similar to that described above for HC and a CO MACT floor level of 120 ppmv resulted (e.g., MACT floor control is GCPs, and a break-point analysis was used to identify sources likely to be truly using GCPs). Nonetheless, since the Agency has previously proposed a CO limit of 100 ppmv and since this level is readily achievable by well-designed and well-operated HWIs, the Agency is proposing 100 ppmv HRA as the MACT floor.

We note that this floor level compares favorably with CO standards for other types of incinerators such as medical waste incinerators for which the proposed standard is 50 ppmv (60 FR 10654, February 27, 1995), and mass burn and fluidized bed municipal waste incinerators for which the promulgated CO standard is 100 ppmv (60 FR 65382, December 19,1995).

The Agency estimates that at a 100 ppmv standard, national CO emission reductions of 13,200 tons/year could be achieved from the baseline level of 14,080 tons/year at an annualized national cost of $17.4 million.

c. Beyond-the-Floor Considerations. The Agency considered more stringent BTF limits for CO and HC. Although state-of-the-art HWIs operating under GCPs should be able to routinely achieve levels below 100 ppmv HRA for CO and 12 ppmv HRA for HC, the Agency is concerned that the incremental compliance cost may not warrant more stringent standards.

EPA invites comments specifically on: (1) the use of CO and HC as surrogates for non-dioxin organic emissions; and (2) data and information and suggestions on an approach to identify a lower floor level for HC that more accurately reflects the levels that are being routinely achieved by HWIs operating under GCPs.

8. MACT Floor and BTF Cost Impacts

The annualized national cost to achieve the proposed standards is estimated at $486,000 for each on-site incinerator unit and $731,000 for each commercial unit. The total (pre-tax) national annualized cost is estimated to be $90 million for on-site and $25 million for commercial incinerators. These costs include a CEMS cost of $130,000 per source annually. The most expensive HAPs would be dioxins and mercury, for which BTF levels have been proposed, and would cost $3.0 million and $30 million respectively nationally at MACT floor levels, and $29.2 million and $37.2 million respectively at BTF levels. These costs include maintenance and operation of the equipment and CEMS. CEMS account for 18 percent of the total compliance cost. Details of these cost estimates have been provided in ''Second Addendum to the Regulatory Impact Assessment for Proposed Hazardous Waste Combustion Standards'' and are based on no market exit by any HWI and assuming that the facilities have only a limited ability to pass through the costs of the rule to generators.

The Agency, however, estimates that perhaps 4 of the 34 commercial facility units and up to 51 of the 184 on-site facility units would elect to cease

[65] The average of emissions over a run is lower than the maximum hourly rolling average for the run. In addition, unheated FIDs report lower HC levels than a heated FID that would be required under today's proposal. Both of these factors would lead the Agency to underestimate the cost of compliance. On the other hand, the HC levels in the database were measured during worst-case, trial burn conditions. Thus, these emissions are likely to be much higher than during normal operations. This factor has lead the Agency to overestimate compliance costs.

[66] USEPA, ''Guidance on PIC Controls For Hazardous Waste Incinerators'', April 1990, EPA/530–SW–90–040.

burning hazardous wastes as a result of today's proposals. Most of these facilities burn small quantities of hazardous wastes. These facilities would likely find it more economical to transport the hazardous wastes to other facilities, while perhaps continuing to burn other non-hazardous and industrial wastes, in lieu of incurring expenditures to upgrade their units to continue to burn that small quantity of HW under MACT standards. As such, the total quantity of wastes burned would not be affected since those wastes would be burned by other HWCs, for which there appears to be sufficient capacity available.

B. Summary of MACT Standards For New Incinerators

1. Basis for MACT New

According to Section 112 of CAA, the degree of reduction in emissions deemed achievable for new facilities may not be less stringent than the emissions control achieved in practice by the best controlled similar unit. This section summarizes EPA's rationale for establishing MACT standards for new HWIs. The methodology for determining the standards for new incinerators is similar to that for existing sources, except that MACT floor control is based on the single best performing technology, and the MACT pool is expanded to consider emissions from any source using that technology. For more details see ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies''.

The Agency is proposing the following standards for new HWIs:

TABLE IV.3.B.1—PROPOSED MACT STANDARDS FOR NEW INCINERATORS

HAP or HAP surrogate	Proposed standard [a]
Dioxins/furans	0.2 ng/dscm TEQ.
Particulate matter	69 mg/dscm (0.030 gr/dscf).
Mercury	50 µg/dscm.
SVM [Cd, Pb]	62 µg/dscm.
LVM [As, Be, Cr, Sb]	60 µg/dscm.
HCl + Cl_2	67 ppmv.
CO	100 ppmv.
HC	12 ppmv.

[a] All emission levels are corrected to 7 percent O_2.

2. MACT New for Dioxin/Furans

a. MACT New Floor. EPA examined its emissions database and identified the single best performing existing source, and found that the test condition with the lowest PCDD/F TEQ emissions had a test-condition average of 0.005 ng/dscm. This facility employs a water quench and wet scrubbing air pollution control systems (APCSs). The D/F emission control by this source is being achieved by inhibiting the formation of D/F in the APCD by rapid quench of the hot gases from the combustion chamber. Therefore, the Agency selected wet scrubbing and low APCD inlet temperature (400° F) as the MACT floor control.

To determine an emission level that this the floor control could be expected to achieve, the Agency considered data from all HWIs using the MACT floor control. Using the same methodology as used for identifying the floor level for existing sources, the Agency identified a MACT floor level of 0.20 ng/dscm TEQ or an APCD inlet temperature of 400° F.

b. Beyond-the-Floor (BTF) Considerations. As discussed above for existing sources, the Agency selected activated carbon injection (ACI) as the BTF technology. ACI is routinely effective in removing greater than 95 percent of D/F from flue gases. The Agency had identified a BTF level of 0.2 ng/dscm TEQ for the same reasons discussed above for the BTF standard for existing sources.

The Agency also consider a carbon bed as a BTF technology to achieve lower emission levels. As discussed for existing sources, however, the Agency is concerned that the cost of carbon beds may not be warranted given the incremental emissions reduction over a ACI-based BTF standard.

3. PM Standard for New HWIs

The single best performing source in our database for PM emissions was a source equipped with a FF having an air to cloth ratio of 3.8 acfm/ft^2. Thus, this technology represents MACT new floor control. When we considered emissions data from all sources equipped with this level of control (or better), we identified a floor level of 0.039 gr/dscf.

The Agency considered more efficient PM control (e.g., lower air-to-cloth ratio, better bags) as BTF control that could achieve alternative BTF levels of 0.03 or 0.015 gr/dscf. These are the same controls investigated for BTF considerations for existing sources.

The Agency is proposing the same BTF standard for new sources as it is proposing for existing sources—(69 mg/dscm or 0.03 gr/dscf). This standard is readily achievable. The Agency is not proposing a 0.015 gr/dscf standard because, as discussed for existing sources, it is not clear that the additional cost is warranted considering the incremental reduction in PM.

4. Mercury Standard for New HWIs

a. MACT New Floor. The single best performing source in our database for Hg emissions was a source equipped with a wet scrubber (WS) and having a MTEC of 51 µg/dscm. The Agency considered any wet scrubbing device an equivalent control technology (when coupled with a MTEC up to 51 µg/dscm) because of the ability to scrub soluble forms of mercury species. Thus, the Agency identified MACT new floor control as any wet scrubber coupled with a MTEC up to 51 µg/dscm. When we considered emissions data from all sources equipped with this level of control, we identified a floor level of 115 µg/dscm.

b. Beyond-the-Floor Considerations. As for existing sources, the Agency considered the use of both activated carbon injection (ACI) and carbon bed (CB) as alternative BTF technologies. We are proposing a BTF standard of 50 µg/dscm for new sources based on use of ACI for the same reasons we are proposing this standard for existing sources.

5. Semivolatile Metals Standard for New HWIs

a. MACT New Floor. The single best performing source in our database for SVM emissions was a source equipped with a VS in combination with a IWS, and having a MTEC of 49,000 µg/dscm. The Agency considered a wet scrubber in combination with a FF (coupled with a MTEC up to 49,000 µg/dscm) to provide equivalent or better control of SVM. Thus, these technologies represent MACT new floor control. When we considered emissions data from all sources equipped with this level of control, we identified a floor level of 240 µg/dscm.

b. Beyond-the-Floor Considerations. The Agency believes that state-of-the-art FFs can achieve much lower emissions of SVM. For example, the Agency has determined that MWCs equipped with a FF can achieve more than a 99 percent reduction in SVM. See 59 FR 48198 (September 20, 1994). Given that we have identified a MACT new floor (design) level for cement kilns of 35 µg/dscm (see discussion in Section IV below), we believe that a design level of 35 µg/dscm for HWIs is achievable, reasonable, and appropriate. To ensure that a source that is designed to meet a SVM level of 35 µg/dscm can meet the standard 99 percent of the time (assuming the source has average within-test condition emissions variability for sources equipped with

ESPs and FFs), the Agency has established a standard of 62 μg/dscm.

We note that SVM emissions at this level are not likely to result in additional regulation of these sources to satisfy RCRA health risk concerns.

6. Low Volatile Metals Standard for New HWIs

a. MACT New Floor. The single best performing source in our database for LVM emissions was a source equipped with a VS with an MTEC of 1,000 μg/dscm. Given the LVM collection efficiency of a VS, the Agency considered any PM control device (e.g., ESP, IWS, FF) to provide equivalent or better collection efficiency. Thus, these technologies represent MACT new floor control. When we considered emissions data from all sources equipped with this level of control, we identified a floor level of 260 μg/dscm. (We note that this floor level for new sources is higher than the floor level proposed for existing sources. Although the statistically-derived emissions variability factor was added to the same test condition for both MACT existing floor and MACT new floor, the variability factor was greater for test conditions in the MACT new expanded pool.)

b. Beyond-the-Floor Considerations. The Agency believes that state-of-the-art PM control devices (e.g., ESPs, IWS, FFs) can achieve LVM emission levels well below the floor level. Given that we have identified a floor (design) level [67] for new CKs and new LWAKs of 35 μg/dscm and 26 μg/dscm, respectively (see discussion in Sections IV and V below), we believe that a BTF design level of 35 μg/dscm is achievable, reasonable, and appropriate for new HWIs. To ensure that a source that is designed to meet a LVM level of 35 μg/dscm can meet the standard 99 percent of the time (assuming the source has average within-test condition emissions variability for sources equipped with ESPs and FFs), the Agency has established a standard of 60 μg/dscm.

We note that LVM emissions at this level are not likely to result in additional regulation of these sources to satisfy RCRA health risk concerns.

As discussed elsewhere in today's proposal, we are encouraging but not requiring sources to document compliance with the metals standard using a multi-metal continuous monitoring system (CEMS). Given that available information indicates that a multi-metal CEMS could not effectively detect LVM emissions below 80 μg/dscm, we are proposing an alternative standard of 80 μg/dscm for sources that elect to document compliance with a CEMS.

7. HCl and Cl_2 Standards for New HWIs

a. MACT New Floor. The single best performing source in our database for HCl and Cl_2 emissions was a source equipped with a wet scrubber with a MTEC of 1.7E7 μg/dscm. The Agency considered any wet scrubber to be equivalent technology. Thus, MACT new floor control is defined as wet scrubbing with a MTEC up to 1.7E7 μg/dscm. When we considered emissions data from all sources equipped with this level of control, we identified a floor level of 280 ppmv.

b. Beyond-the-Floor Considerations. The Agency believes that state-of-the-art wet scrubbers can readily achieve better than 99 percent removal of HCl and Cl_2. Applying this removal efficiency to the test condition in our database with the highest average emission (i.e., 1,100 ppmv; no emission control device) results in an emission of 11 ppmv. We do not believe, however, that it is necessary to establish a BTF (design) level [68] this low for HCl and Cl_2. Accordingly, we believe that it is reasonable and appropriate to establish a design level of 25 ppmv which corresponds to a statistically-derived standard of 67 ppmv.[69]

We note that this level is consistent with the levels we are proposing for new CKs (67 ppmv BTF level) and new LWAKs (62 ppmv floor level). Further, we note that HCl and Cl_2 emissions at this level are not likely to result in additional regulation of these sources to satisfy RCRA health risk concerns.

8. Carbon Monoxide and Hydrocarbon Standards for New HWIs

As with existing sources, CO and HC in conjunction with PM remain the parameters of choice to monitor continuously for controlling non-dioxin organics. Current regulations require continuous monitoring of CO, but not of HC, and so the database of CO from incinerators is quite extensive. However, the format of our CO data is mostly on a run average basis as explained above. The CO levels of the best performing facility in this database are less than 10 ppmv hourly rolling average (HRA). The technology to achieve low level of non-dioxin organics is ''Good Combustion Practices'', which is the same as for existing sources.

As such, we are proposing the same MACT standards for CO and HC as for existing sources, but request comments on whether more stringent standards would be more appropriate for new sources. The promulgated standard for new large MWCs ranges from 50 to 150 ppmv based on type of the device and the Agency would like to consider more stringent levels for CO and HC that are representative of good combustion practices in new HWIs in the final rule.

9. MACT New Cost Impacts

The annualized incremental costs (capital, operation and maintenance) for a small, medium and large HWI based on today's proposed control levels are estimated at $336K, $514K and $772K, respectively. Major increases are due to installing FF, activated carbon injection (for D/F and Hg control) and scrubbing devices (for acid gas control). For this analysis, it was assumed that baseline facilities can comply with existing regulations using a wet scrubber and venturi-scrubber. Since the number of new facilities starting construction every year is uncertain, total annualized incremental cost for all the new HWIs in the U.S. due to today's proposal cannot be estimated. The above costs include increased costs of APCS' needed above baseline levels, and do not include costs of the main incinerator system or the ancillary systems like fans, stack etc. Details of these costs have been provided in the ''Regulatory Impact Assessment for the Proposed Hazardous Waste Combustion MACT Standards''.

C. Evaluation of Protectiveness

In order to satisfy the Agency's mandate under the Resource Conservation and Recovery Act to establish standards for facilities that manage hazardous wastes and issue permits that are protective of human health and the environment, the Agency conducted an analysis to determine if the proposed MACT standards satisfy RCRA requirements, or whether independent RCRA standards would be needed. These analyses were designed to assess both the potential risks to individuals living near hazardous waste combustion facilities who are highly exposed and risks to other less exposed individuals living near such facilities. The Agency evaluated potential risks both from direct inhalation exposures and from indirect exposures through deposition onto soils and vegetation and

[67] That is, the log mean of runs for the test condition in the expanded MACT pool with the highest average emission. A within-test condition emissions variability factor (based on test conditions in the expanded MACT pool) is added to the log-mean for this test condition to derive the standard.

[68] An emissions variability factor would be added to the log-mean of the runs of this test condition to derive a standard.

[69] The variability factor is based on within-test condition emissions variability for incinerators equipped with wet scrubbers.

subsequent uptake through the food chain. The Agency evaluated a variety of exposure scenarios representing various populations of interest, including subsistence farmers, subsistence fishers, recreational anglers, and home gardeners.[70] In characterizing the risks within these populations of interest, both high-end and central tendency exposures were considered.

The primary exposure parameter considered in the high-end characterization was exposure duration. For the baseline, 90th percentile stack gas concentrations were also included in the high-end characterization to reflect the variability in current emissions. For dioxins at the floor, the high-end characterization also included 90th percentile stack gas concentrations to reflect the large variation in dioxin emissions using the floor technology (i.e., temperature control). For the MACT standards, the Agency used the design value which is the value the Agency expects a source would have to design in order to be assured of meeting the standard on a daily basis and hence is always a lower value than the actual standard for all HAPs controlled by a variable control technology.[71] The procedures used in the Agency's risk analyses are discussed in detail in the background document for today's proposal.[72]

The risk results for hazardous waste incinerators are summarized in Table III.C.1 for cancer effects and Table III.C.2 for non-cancer effects for the populations of greatest interest, namely subsistence farmers, subsistence fishers, recreational anglers, and home gardeners. The results are expressed as a range where the range represents the variation in exposures across the example facilities (and example water bodies for surface water pathways) for the high-end and central tendency exposure characterizations across the exposure scenarios of concern. For example, because dioxins bioaccumulate in both meat and fish, the subsistence farmer and subsistence fisher scenarios are used to determine the range.[73]

TABLE III.C.1.—INDIVIDUAL CANCER RISK ESTIMATES FOR INCINERATORS [1]

	Dioxins	Semi-volatile metals [2]	Low volatile metals [3]
Existing Sources			
Baseline	2E–9 to 9E–5	4E–9 to 7E–7	2E–10 to 4E–6
Floor	3E–9 to 5E–5 [4]	5E–8 to 5E–7	5E–8 to 8E–6
BTF	3E–9 to 2E–6 [5].		
New Sources			
Floor	3E–9 to 5E–5 [4]	5E–8 to 5E–7	5E–8 to 8E–6
BTF	3E–9 to 2E–6 [5].		
CEM Option [6]		2E–8 to 2E–7	4E–8 to 6E–6

[1] Lifetime excess cancer risk.
[2] Carcinogenic metal: cadmium.
[3] Carcinogenic metal: arsenic, beryllium, and chromium (VI).
[4] Based on 20 ng/dscm TEQ, the highest level known to be emitted at the floor.
[5] Based on 0.20 ng/dscm TEQ.
[6] Based on SVM standard of 60 μg/dscm and LVM standard of 80 μg/dscm (applicable only if the source elects to document compliance using a multi-metals CEM).

TABLE III.C.2.—INDIVIDUAL NON-CANCER RISK ESTIMATES FOR INCINERATORS [1]

	Semi-volatile metals [2]	Low volatile metals [3]	Hydrogen chloride	Chlorine
Existing Sources				
Baseline	<0.001 to 0.02	<0.001 to 0.2	0.001 to 0.05	0.008 to 0.7
Floor	<0.001 to 0.01	<0.001 to 0.09	0.02 to 0.05 [4]	0.07 to 0.3 [5]
New Sources				
Floor	<0.001 to 0.01	<0.001 to 0.09	0.02 to 0.05 [4]	0.07 to 0.3 [5]
BTF	<0.001 to 0.003	<0.001 to 0.03	0.004 to 0.01 [4]	0.02 to 0.07 [5]
CEM Option [6]	<0.001 to 0.004	<0.001 to 0.06.		

[1] Hazard quotient.
[2] Cadmium and lead.
[3] Antimony, arsenic, beryllium, and chromium.
[4] $HCl+Cl_2$ assuming 100 percent HCl.
[5] $HCl+Cl_2$ assuming 10 percent Cl_2.
[6] Based on SVM standard of 60 μg/dscm and LVM standard of 80 μg/dscm (applicable only if the source elects to document compliance using a multi-metals CEM).

[70] In addition, the Agency evaluated a ''most exposed individual'' for the purpose of assessing inhalation risks. A most exposed individual (MEI) is operationally defined as an individual who resides at the location of maximum predicted ambient air concentration.

[71] For the semi-volatile and low volatility metals categories, the Agency assumed the source could emit up to the design value for each metal in the category for the purpose of assessing protectiveness.

[72] ''Risk Assessment Support to the Development of Technical Standards for Emissions from Combustion Units Burning Hazardous Wastes: Background Information Document,'' February 20, 1996.

[73] For the semi-volatile and low volatility metals categories, the inhalation MEI scenarios are also used. For hydrogen chloride and chlorine (Cl_2) only the inhalation MEI scenarios are used.

The risk analysis indicates that for the semi-volatile and low volatility metals category, the MACT standards for incinerators are protective at the floor for both existing and new sources. The analysis indicates that the CEM compliance option for new sources is also protective. For hydrogen chloride and chlorine (Cl_2), the MACT standards for incinerators are also protective at the floor for both existing and new sources. However, the analysis indicates that for dioxins the proposed beyond the floor standards, rather than the floor levels, are protective.

IV. Cement Kilns: Basis and Level for the Proposed NESHAP Standards for New and Existing Sources

Today's proposal would establish new emission standards for dioxins/furans, mercury, semivolatile metals (cadmium and lead), low volatile metals (arsenic, beryllium, chromium and antimony), particulate matter, acid gas emissions (hydrochloric acid and chlorine), particulate matter (PM), hydrocarbons, and carbon monoxide (for the by-pass duct) from existing and new hazardous waste-burning cement kilns. See proposed § 63.1204. The following discussion addresses how MACT floor and beyond-the-floor (BTF) levels were established for each HAP, and EPA's rationale for the proposed standards. The Agency's overall methodology for MACT determinations has been discussed in Part Three, Sections V and VI for existing sources and in Section VII for new sources.

To conduct the MACT floor analyses presented today, the Agency compiled all available emissions data from hazardous waste-burning cement kilns. As noted earlier, the vast majority of this database is comprised of compliance test emissions data generated as a result of Boiler and Industrial Furnace (BIF) rule requirements.[74] The Agency is also aware that additional emissions data will become available. Sources of new data include test reports generated from compliance recertification testing (required every three years under the BIF rule for interim status facilities; see § 266.103(d)), results from voluntary industry initiatives and testing programs, supplemental emissions testing conducted by individual companies, and data from pilot-scale research by EPA's Office of Research and Development. As timely and appropriate, notice of these additional data, if used as a basis for standards in this rulemaking, will be published to allow for review. However, we emphasize again that, for purposes of setting MACT standards, it is preferable to have data that reflect the normal, day-to-day operations and emissions. In addition, the Agency believes that this type of data will substantially assist in the appropriate resolution of some of the issues (e.g., variability, proper identification of sources in MACT floor pools, raw material feed contributions to emissions) that are raised in the following sections. We invite commenters to submit this type of data and to discuss these issues in their comments.

In addition, the Agency requests comments on whether we should use emissions data from cement kilns that no longer burn hazardous waste for MACT floor determinations.[75] Even though these cement kilns subsequently decided to stop burning waste, we believe that their emissions data represent the level of emission control achieved at a kiln burning hazardous waste and are therefore appropriate for use in a MACT analysis. Moreover, the air pollution control equipment employed by these facilities is similar in type, design and operation to equipment employed by the waste-burning industry as a whole.

The Agency conducted a preliminary analysis of the effect on MACT floor levels of removing these emissions data from consideration, and found no significant impacts (see discussion later in this section on MACT floor levels) other than for semivolatile metals and hydrocarbons in the by-pass duct. The SVM floor would rise from 57 µg/dscm (today's proposed floor level) to approximately 1200 µg/dscm.[76] This level is much higher than the cement industry can achieve.[77] Also, the Agency notes that a SVM floor of 1200 µg/dscm may necessitate the need to consider adopting further controls under RCRA to address potential risks that SVMs (especially cadmium) may pose.[78]

In addition, the by-pass duct HC floor would be affected because two-thirds of the HC data available to the Agency were generated by these cement plants and would no longer be considered in the analysis. This may make calculation of the HC MACT floor problematic using the current MACT approach due to the limited remaining emissions data. The remainder of the HAP floors would remain roughly at today's proposed levels.

If EPA were to decide to exclude data from cement kilns that no longer burn hazardous waste, the Agency then believes that emission data from cement kilns that have made significant modifications or retrofits to their manufacturing process (e.g., replacing a raw material with one with different characteristics, installing new control equipment) since the earlier emissions data were generated must also be considered for exclusion from MACT analysis. The Agency requests comment on whether we should use these emissions data (i.e., the data generated prior to significant process changes) in MACT analysis. The commenter should also address how the Agency could identify cement kilns that have made significant process changes and the scope of modifications or retrofits that would significantly impact emissions. Finally, since changes can affect some HAP emissions and not others, the commenter should address whether this issue should be decided on an individual HAP basis.

A. Summary of Standards for Existing Cement Kilns

This section summarizes EPA's rationale for identifying MACT for existing cement kilns that burn hazardous waste and the proposed emission limits. The discussion of MACT includes discussions of ''floor'' controls and considerations of ''beyond-the-floor'' controls. Table IV.4.A.1 summarizes the proposed emission limits.

[74] By August 21, 1992, or by the applicable date allowed by an extension by the Regional Administrator, owners and operators of BIF facilities burning hazardous waste were required to conduct compliance testing and submit a certification of compliance with the emissions standards for individual toxic metals, HCl, Cl_2, particulate matter, and CO, and where applicable, HC and dioxin/furans. See 40 CFR § 266.103(c).

[75] Cement kilns no longer burning hazardous waste include three Southdown plants (Fairborn, OH, Knoxville, TN, and Kosmosdale, KY) and North Texas Cement (Midlothian, TX).

[76] The Agency notes that we are also taking comment on a SVM floor level of 160 µg/dscm (using an alternative approach discussed later in this section). A SVM floor level of 1200 µg/dscm appears unnecessarily high considering our proposed floor analysis and that of others (e.g., see Part Four, section 9).

[77] See letter from Craig Campbell, CKRC, to James Berlow, EPA, undated but received February 20, 1996. We note that, although the Agency is proposing a SVM standard of 57 µg/dscm, we invite comment on an alternative (and potentially preferable) approach to identify MACT floor technology which would result in a floor-based standard of 160 µg/dscm. See discussion on SVM floor later in this section. Because we identified the alternative approach late in the rule development process, we are inviting comment on the higher standard rather than proposing it.

[78] The Agency doubts that a MACT beyond-the-floor level would be warranted.

TABLE IV.4.A.1.—PROPOSED EMISSION STANDARDS FOR EXISTING CEMENT KILNS

HAP or HAP surrogate	Proposed standard [a]
Dioxin/furans (TEQ)	0.20 ng/dscm (TEQ).
Particulate Matter	69 mg/dscm (0.030 gr/dscf).
Mercury	50 µg/dscm.
SVM (Cd, Pb)	57 µg/dscm.
LVM (As, Be, Cr, Sb)	130 µg/dscm.
$HCl+Cl_2$ (total chlorides).	630 ppmv.
Hydro-carbons:	
Main Stack [b]	20 ppmv.
By-pass Stack [c]	6.7 ppmv.
Carbon Monoxide:	
Main Stack	N/A.
By-pass Stack [c]	100 ppmv.

[a] All emission levels are corrected to 7 percent O_2.

[b] Applicable only to long wet and dry process cement kilns (i.e., not applicable to preheater and/or precalciner kilns).

[c] Emissions standard applicable only for cement kilns configured with a by-pass duct (typically preheater and/or precalciner kilns). Source must comply with either the HC or CO standard in the by-pass duct. A long wet or long dry process cement kiln that has a by-pass duct has the option of meeting either the HC level in the main stack or the HC or CO limit in the by-pass duct.

1. Dioxin/Furans

a. MACT Floor. The Agency's analysis of dioxin/furan (D/F) emissions from HWCs and other combustion devices (e.g., municipal waste combustors and medical waste incinerators) indicates that temperature of flue gas at the inlet of the PM control device can have a major effect on D/F emissions.[79] D/F emissions generally decrease as the gas temperature of the PM control device decreases, and emissions are lowest when the gas temperature of the PM control device are below the optimum temperature window for D/F formation—450 °F to 650 °F.[80] Given that CKs operate their ESPs and FFs under a range of temperatures (i.e., from 350 °F to nearly 750 °F), the Agency is identifying MACT floor for D/F based on temperature control at the inlet to the ESP or FF.[81]

The emissions data for CKs includes results from 58 test conditions collected from 19 cement plants, with a total of 28 kilns being tested. The Agency's database shows that the average test condition D/F emissions ranged from 0.004 to nearly 50 ng/dscm (TEQ).

Kilns emitting D/F at or below levels emitted by the median of the best performing 12 percent of kilns had flue gas temperatures at or below 418°F at the inlet to the ESP or FF, while inlet temperatures for other kilns ranged to nearly 750°F. The Agency then evaluated D/F emissions from all kilns that operated the ESP or FF at 418°F or less and determined that 75 percent had D/F emissions less than 0.2 ng/dscm (TEQ). The other 25 percent of kilns generally had TEQs less than 0.8 ng/dscm (TEQ), although one kiln emitted 4.7 ng/dscm (TEQ).

The Agency is, therefore, identifying temperature control at the inlet to the ESP or FF at 418 °F as the MACT floor control. Given that 75 percent of sources achieve D/F emissions of 0.20 ng/dscm (TEQ) at that temperature, the Agency believes that it is appropriate to express the floor as ''0.20 ng/dscm (TEQ), or (temperature at the inlet to the ESP or FF not to exceed) 418 °F''. This would allow sources that operate at temperatures above 418 °F but that achieve the same D/F emissions as the majority of sources that operate below 418 °F (i.e., 0.20 ng/dscm (TEQ)) to meet the standard without incurring the expense of lowering the temperature at the ESP or FF.

EPA estimates that over 50 percent of CKs currently are meeting the floor level. The national annualized compliance cost[82] for CKs to reduce D/F emissions to 0.20 ng/dscm (TEQ) or control ESP or FF inlet temperature to below 418 °F would be $7.3 million for the entire hazardous waste-burning cement industry, and would reduce D/F TEQ emissions nationally by 830 grams/year (TEQ) or 96 percent from current baseline emissions.

b. Beyond-the-Floor (BTF) Considerations. The Agency has identified activated carbon injection (CI) at less than 400 °F as a BTF control for D/F for cement kilns because CI is currently used in similar applications such as hazardous waste incinerators, municipal waste combustors, and medical waste incinerators. The Agency is not aware of any CK flue gas conditions that would preclude the applicability of CI or inhibit the performance of CI that has been demonstrated for other waste combustion applications.

Carbon injection has been demonstrated to be routinely effective at removing greater than 95 percent of D/F for MWCs and MWIs and some tests have demonstrated a removal efficiency exceeding 99 percent at gas temperatures of 400 °F or less.[83] To determine a BTF emission level, the Agency considered the emission levels that would be expected to result from gas temperature control to less than 400 °F combined with CI.

To estimate emissions with temperature control only, the Agency considered the MACT floor database that indicates, as noted above, 25 percent of CKs operating the ESP or FF at temperatures above 418°F could be expected to emit D/F at levels above 0.2 ng/dscm (TEQ). Although the majority could be expected to emit levels of 0.8 ng/dscm (TEQ) or below, some could be expected to emit levels as high as 4.7 ng TEQ.

When CI is used in conjunction with temperature control, an additional 95 percent reduction in emissions could be expected. Accordingly, emissions with these BTF controls could be expected to be less than a range of 0.04 to 0.24 ng/dscm (TEQ) (i.e., 95 percent reduction from 0.8 ng and 4.7 ng, respectively). Given that CI reductions greater than 95 percent are readily feasible, the Agency believes that it is appropriate to identify 0.20 ng/dscm (TEQ) as a reasonable BTF level that could be routinely achieved.

The Agency notes that, because we have assumed a fairly conservative carbon injection removal efficiency of 95 percent to identify the 0.20 ng/dscm (TEQ) level, we believe that this approach adequately accounts for emissions variability at an individual kiln because CI removal efficiency is likely to be up to or greater than 99 percent. EPA thus believes that it is not necessary to add a statistically-derived variability factor to the 0.20 ng/dscm (TEQ) level to account for emissions variability at an individual kiln. Thus,

[79] USEPA, ''Draft Technical Support Document For HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

[80] For example, consider kiln #1 at the Ash Grove Cement Company in Chanute, Kansas. During BIF certification of compliance testing in 1992, Ash Grove dioxins/furans emissions exceeded 1.7 ng/dscm (TEQ) at a control device temperature of 435 °F. Testing in 1994 at a temperature of approximately 375 °F resulted in emissions less than 0.05 ng/dscm (TEQ).

[81] The Agency notes, however, that other factors can affect D/F emissions including presence of precursors in the feed or as a result of incomplete combustion and presence of compounds thought to inhibit surface-catalyzed formation of D/F such as sulfur. Thus, D/F emissions may be low (e.g., 0.2 ng TEQ per dcsm) even though the temperature of stack gas at the inlet to the ESP or FF may exceed 400–450 °F, and D/F emissions may be relatively high (e.g., 0.3–0.5 ng TEQ per dscm) even though the temperature may be below that range.

[82] Total annual compliance costs are before consolidation and do not incorporate market exit resulting from the proposed rule. Also, CEM costs assume that no facilities currently have a HC analyzer in place. Thus, these compliance costs may result in overstated annual compliance costs. See the ''Second Addendum to the Regulatory Impact Assessment for Proposed Hazardous Waste Combustion MACT Standards'', February 1996, for details.

[83] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

the 0.20 ng/dscm (TEQ) BTF level represents the proposed emission standard.

EPA solicits comment on this approach, and notes that if a statistically-derived variability factor were deemed appropriate with the assumed conservative CI removal efficiency, the BTF level of 0.20 ng/dscm (TEQ) would be expressed as a standard of 0.31 ng/dscm (TEQ). We note, however, that under this approach, it may be more appropriate to use a less conservative, higher CI removal efficiency of 99 percent (i.e., because emissions variability would be accounted for using statistics rather than in the engineering decision to use a conservative CI removal efficiency). Doing so would lower the 0.20 ng/dscm (TEQ) level to approximately 0.04 ng/dscm (TEQ) (i.e., 99 percent reduction from 0.8 ng and 4.7 ng results in levels of 0.008 ng to 0.047 ng/dscm (TEQ), respectively, and 0.04 ng is a reasonable value within this range). If so, the D/F standard would be about 0.15 ng/dscm (TEQ) (i.e., 0.04 ng/dscm TEQ plus the variability factor of 0.11 ng/dscm TEQ).

We note that although CI is normally a relatively inexpensive control technology to add to sources (with flue gas above the dew point) that already have PM controls at the 69 mg/dscm level, CKs present a special situation. This is because: (1) CI will remove Hg as well as D/F (see discussion below regarding BTF control for Hg); (2) CKs recycle as much collected PM as possible because it is useful raw material and doing so reduces cement kiln dust (CKD) management cost; (3) some CKs recycle the CKD by injecting it at the raw material feed end of the kiln where the D/F may not be destroyed; and (4) to remove Hg from the recycling system to ensure compliance with the Hg standard, a portion of the CKD would have to be wasted.[84]

Accordingly, EPA has assumed that CKs that have to use CI to meet the BTF standard (i.e., those that cannot achieve the standard with temperature control alone) would install the CI system after the existing ESP or FF and add a FF to remove the injected carbon with the adsorbed D/F (and Hg). Although adding a new FF in series is an expensive approach, it would enable CKs to meet both the proposed D/F and Hg standards (as well as the PM, SVM, and LVM standards). Thus, the cost of the CI and FF systems have been apportioned among these proposed standards.

EPA estimates that 40 percent of CKs are currently meeting this BTF level. The national incremental annualized compliance cost for the remaining CKs to meet this BTF level[85] rather than comply with the floor controls would be $6.6 million for the entire hazardous waste-burning cement industry, and would provide an incremental reduction in D/F (TEQ) emissions nationally beyond the MACT floor controls of 20 grams/year (TEQ).

EPA has considered costs in relation to emissions reductions and the special bioaccumulation potential that D/F pose and determined that proposing a BTF limit is warranted.[86] D/F are some of the most toxic compounds known due to their bioaccumulation potential and wide range of health effects at exceedingly low doses, including carcinogenesis. Further, as discussed elsewhere in today's preamble, EPA's risk analysis developed for purposes of RCRA shows that emissions of these compounds from hazardous waste-burning cement kilns could pose significant risks by indirect exposure pathways, and that these risks would be reduced by BTF controls. Finally, EPA is authorized to consider this non-air environmental benefit in determining whether to adopt a BTF level. As noted earlier, exposure via these types of indirect pathways was in fact a chief reason Congress singled out D/F for priority MACT control in section 112(c)(6).

Finally, EPA's initial view is that it may need to adopt further controls under RCRA to control D/F if it did not adopt the BTF MACT standard. This would defeat one of the purposes of this proposal, to avoid regulation of emissions under both statutes for these sources wherever possible. These risks would, however, be reduced to acceptable levels if emissions levels are reduced to 0.20 ng/dscm (TEQ).

For these reasons, the Agency is proposing a BTF level of 0.20 ng/dscm (TEQ) for D/F emitted from hazardous waste-burning cement kilns.

2. Particulate Matter

a. MACT Floor. Cement kilns have high particulate inlet loadings to the control device due to the nature of the cement manufacturing process; that is, a significant portion of the finely pulverized raw material fed to the kiln is entrained in the flue gas entering the control device. CKs use ESPs or FFs to control PM to a 0.08 gr/dscf standard under the BIF rule, unless the kiln is subject to the more stringent New Source Performance Standard (NSPS) (see 40 CFR 60.60 (Subpart F)) of 0.3 lb/ton of raw material feed (dry basis) to the kiln,[87] which is generally equivalent to 69 mg/dscm or 0.03 gr/dscf.

The PM emissions data for CKs includes results from 54 test conditions collected from 26 facilities, with a total of 34 units being tested. The Agency analyzed all available PM emissions data and determined that sources with emission levels at or below the level emitted by the median of the best performing 12 percent of sources used fabric filters with air-to-cloth (A/C) ratios of 2.3 acfm/ft^2 or less. Analysis of emissions data from all CKs using FFs with the 2.3 acfm/ft^2 A/C ratio or less resulted in a level of 0.065 gr/dscf.

Because the NSPS is a federally enforceable limit that many cement kilns are currently subject to, the Agency has chosen the existing NSPS standard, not the statistically-derived limit discussed above, as MACT for existing hazardous waste-burning CKs. Thus, the Agency is identifying a MACT floor for PM and is identifying the floor level as the NSPS limit of 69 mg/dscm (0.03 gr/dscf). Given that the NSPS standard was promulgated in 1971, the Agency believes that it is reasonable to consider it as the MACT floor level. We note further that 30 percent of cement kiln test conditions currently meet the 69 mg/dscm floor level.

As mentioned above, the NSPS standard for PM is expressed as 0.3 lb/ton of raw material (dry basis) feed to the kiln. Although we are proposing to establish the floor level as the MACT standard (see BTF discussion below) expressed as 69 mg/dscm (0.03 gr/dscf), we specifically invite comment on whether the standard should be expressed in terms of raw material feed. We are proposing a ''mg/dscm'' basis for the standard because a PM concentration in stack gas is commonly used for waste combustors-hazardous waste incinerators, municipal waste

[84] We note that most CKs currently dispose of a portion of CKD to control clinker quality (i.e., to control alkali salts). Nonetheless, the economics of CKD management are uncertain at this time given impending Agency action to ensure proper management. Thus, we believe that CKs will increase efforts in the future to minimize the amount of CKD that is disposed.

[85] We note that not every source with D/F emissions currently exceeding 0.20 ng TEQ per dscm would need to install CI to meet the standard. As noted previously in the text, 75 percent of sources could be expected to meet the standard with temperature control only. In estimating the cost of compliance with the standard, EPA considered the magnitude of current emissions and current operating temperatures to project whether the source could comply with the standard with temperature control only.

[86] We note that the D/F BTF control technology, CI, would also be used to control mercury emissions beyond the floor.

[87] See § 60.62 Standard for particulate matter for further details.

combustors, and medical waste incinerators. We note, however, that using a ''mg/dscm'' basis for the CK standard would penalize the more thermally efficient dry kilns (generally preheater and precalciner kilns). This is because these kilns have lower stack gas flow rates per ton of raw material feed because they do not need to provide additional heat (by burning hazardous waste and/or fossil fuel) to evaporate the water in the raw material slurry. Thus, wet kilns have higher gas flow rates per ton of raw material than dry kilns because of increased combustion gas and water vapor. This higher stack gas flow rate dilutes the PM emissions and effectively makes a concentration-based standard less stringent for wet kilns. Consequently, the Agency will consider whether the final rule should express the floor standard as 0.3 lb/ton of raw material (dry basis) feed to the kiln.

EPA estimates that 30 percent of cement kiln test conditions (in our database) are currently meeting the floor level. The national annualized compliance cost for the remaining CKs to reduce PM emissions to the floor level would be $6.5 million for the entire hazardous waste-burning cement industry, and would reduce PM emissions nationally by 2400 tons per year.

b. Beyond-the-Floor Considerations. EPA considered but is not proposing a more stringent beyond-the-floor level (e.g., 35 mg/dscm (0.015 gr/dscf)) for cement kilns. For this analysis, EPA determined that it does not have adequate data to ensure that, given the high inlet grain loading caused by entrained raw material, CKs can routinely achieve that emission level day-in and day-out with a single PM control device—ESP or FF. We note that, to ensure compliance with a 35 mg/dscm standard 99 percent of the time, a source with average emissions variability must be designed and operated to achieve an emission level of approximately 18 mg/dscm (or 0.008 gr/dscf). EPA estimates that 15 percent of CKs currently have average PM emissions below 18 mg/dscm.

Reducing the floor level from 69 mg/dscm to a BTF level of 35 mg/dscm would require an improved technology such as the use of more expensive fabric filter bags (e.g., bags backed with a teflon membrane) or the addition of a FF for kilns with ESPs. The addition or upgrade of FFs to all kilns could potentially be cost effective, since to meet the proposed floor for SVM and LVM, as well as the proposed BTF for D/Fs and Hg, addition of a new FF is projected for a majority of the kilns (about 80 percent). Thus, a PM BTF level of 18 mg/dscm may be the incremental cost between a fabric filter with conventional fiberglass bags and state-of-the-art membrane-type bags for those kilns currently employing FFs; the addition of new FFs with membrane bags for those kilns with ESPs; or new FFs with membrane bags for the remaining facilities which are not projected to need upgrades to meet the floor and proposed BTF levels.

At first glance it may seem cost effective, primarily since an improved BTF PM level would lead to added benefits with reduced SVM, LVM, and condensed organics emissions. However, the Agency is uncertain how facilities will meet the proposed SVM, LVM, D/FS, and Hg levels. For example, kilns could meet the mercury BTF level with feedrate control or carbon injection without addition of a new FF (potentially incurring the penalty of reduced or eliminated kiln dust recycle). Additionally, CKs could meet the D/F BTF level with PM control device temperature reduction instead of carbon injection with an add-on FF. Finally, kilns could meet the SVM and LVM floor levels with feedrate control.

Therefore, many of the kilns may not add new FFs to comply with proposed floor (e.g., SVM, LVM) or proposed BTF levels (e.g., D/FS, Hg) and EPA's estimated engineering cost to meet the floor has been conservatively overstated. Thus, it may not be accurate to conclude that the BTF for PM is close to the incremental cost between FF fabric types. Under this circumstance, the incremental cost is more accurately the cost of many new FF unit additions which the Agency believes would not be cost effective. For these reasons the Agency believes it is not appropriate to propose a BTF PM standard of 35 mg/dscm for existing CKs. EPA specifically invites comment on whether the final rule should establish a BTF standard for PM of 35 mg/dscm (or 0.15 lb/ton of raw material (dry basis) feed into the kiln).

3. Mercury

a. MACT Floor. Mercury emissions from CKs are currently controlled by the BIF rule, and CKs have elected to comply with the BIF standard by limiting the feedrate of Hg in the hazardous waste feed.[88] Thus, the MACT floor level is based on hazardous waste feed control.

Mercury emissions from cement kilns range from 3 μg/dscm to an estimated 600 μg/dscm. The Agency has Hg emissions data from 42 test conditions collected from 21 cement plants, with a total of 28 kilns being tested. Since mercury is a volatile compound at the typical operating temperatures of ESPs and baghouses, collection of mercury by these control devices is highly variable (e.g., Hg removal efficiencies ranged from zero to more than 90 percent). Most of the mercury exits the kiln system as volatile stack emissions, with only a small fraction partitioning to the clinker product or CKD.

To identify the floor level for hazardous waste feed control, the Agency determined that sources with Hg emissions at or below the level emitted by the median of the best performing 12 percent of sources had normalized hazardous waste Hg feedrates, or MTECs, (i.e., maximum theoretical emission rates[89]) of 110 μg/dscm or less. Analysis of all existing cement kiln sources using this hazardous waste feedrate control resulted in a MACT floor level of 130 μg/dscm. To meet this standard 99 percent of the time, EPA estimates that a source with average emissions variability[90] must be designed and operated to routinely achieve an emission level of 81 μg/dscm.

We note that raw materials and fossil fuels also contribute to cement kiln Hg feedrates and emissions. Given that all sources must be able to meet the floor level using the floor control, we investigated whether all CKs could meet the floor level by only controlling hazardous waste Hg feedrate to the MACT MTEC of 110 μg/dscm. We have determined that all CKs in the Hg emissions database, except for one kiln with apparently anomalous data on mercury in raw material, would be able to meet the floor level using floor control.[91] The one kiln reported substantially higher Hg feedrates in the raw material than other kilns. We believe that this data may either be erroneous or the kiln may have spiked Hg into the raw material during BIF compliance testing. We specifically invite data and comment on the issue of normal Hg content in raw material.

EPA estimates that nearly 80 percent of CKs could currently comply with the floor level. The total annualized compliance cost for the remaining kilns

[88] BIF Hg emission limits are implemented by establishing limits, in part, on the maximum feed rate of Hg in total feedstreams. Feedstream sources of mercury include hazardous waste, Hg spiking during compliance testing, raw material, coal and other fuels.

[89] MTEC is the hazardous waste Hg feedrate divided by the gas flow rate.

[90] This represents the variability of emissions among runs within a test condition included within the expanded MACT pool.

[91] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

to reduce Hg emissions to the floor level is estimated to be up to $7.5 million for the entire cement industry, and would reduce Hg emissions nationally by 7,200 lbs per year, or by 58 percent from baseline emissions.

b. Beyond-the-Floor Considerations. The Agency has considered two BTF control options for improved Hg control: flue gas temperature reduction to 400°F or less followed by either carbon injection (CI) or carbon bed (CB). Either control option would be implemented in conjunction with hazardous waste feedrate control of Hg. Due to the uncertainty surrounding the actions that cement kilns will undertake in achieving increased Hg control (i.e., with respect to reducing the Hg content of the hazardous waste received at the kiln versus installing the carbon injection technology to capture volatilized mercury without reducing Hg content in the hazardous waste feed), the Agency assumed a conservative emissions level attributable to feedrate control to which the Agency applied the BTF control technology (i.e., 300 µg/dscm). EPA believes that CI systems can routinely achieve Hg emission reductions of 80 to 90 percent or better[92] and that CB systems can routinely achieve Hg emissions of 90 to 99 percent or better.[93]

The BTF level under the CI-controlled option would, therefore, be 50 µg/dscm (corresponding to a design level of 30 µg/dscm), based on 90 percent reduction after the source has controlled its Hg emissions to 300 µg/dscm by limiting Hg in the hazardous waste. As discussed later, EPA is proposing a 50 µg/dscm based on this BTF option.[94]

The BTF level under the CB-controlled option would be 8 µg/dscm (corresponding to a design level of 5 µg/dscm), based on 99 percent reduction after the source has controlled its Hg emissions to 300 µg/dscm by limiting Hg in the hazardous waste.

We note that another control option for identifying BTF levels would be to consider the floor hazardous waste feedrate control—MTEC of 110 µg/dscm or less—an initial component of BTF control followed by either CI or CB. Under this approach, BTF emission levels would be identified by first assuming sources would impose only feedrate controls to meet the floor level of 130 µg/dscm (corresponding to a design level of 81 µg/dscm). Thus, a CI injection system at 90 percent removal could be expected to achieve a standard of 13 µg/dscm (corresponding to a design level of 8.1 µg/dscm). A CB system at 99 percent removal could be expected to achieve a design level of 0.8 µg/dscm to which an emissions variability factor would be added to identify the standard. EPA solicits comment on whether this option of applying BTF reduction based on CI or CB to the floor levels should be adopted.

We also note that an alternative approach to using a statistically-derived variability factor to account for emissions variability would be to assume a more conservative control efficiency for the CI or CB BTF technology. We believe that using a more conservative removal efficiency could be a means to adequately account for emissions variability given that actual emissions using the BTF control would be expected to be lower than the assumed emission level. Under this approach, we would more conservatively assume that CI-controlled systems could achieve a removal efficiency of 80 percent and that CB-controlled systems could achieve an efficiency of 90 percent. When these removal efficiencies are applied, this would result in emission standards of 16 µg/dscm for CI-controlled systems, and 8 µg/dscm for CB-controlled systems[95]. We invite comment on these alternative approaches to account for emissions variability at an individual plant.

EPA believes that CI is a cost-effective BTF control, and is proposing a 50 µg/dscm Hg emission standard based on that control in conjunction with a preceding estimated hazardous waste feedrate control resulting in an emissions level of 300 µg/dscm prior to the CI control. We estimate that 57 percent of CKs are currently meeting this level. The incremental national annualized compliance cost for the remaining CKs to meet this level rather than comply with the floor controls would be $7.8 million, and would provide an incremental reduction in Hg emissions of 2100 lbs per year nationally beyond the MACT floor controls.

We specifically are interested in comment on whether CB is a cost effective BTF control[96]. The CB-based BTF emission level would be 8 µg/dscm (assuming 90 percent removal efficiency). We estimate that 22 percent of CKs are currently meeting this level. The incremental national annualized compliance cost for the remaining CKs to meet this level rather than comply with the floor controls (and proposed CI-based level of 50 µg/dscm) is estimated to be $34.8 million and would provide an incremental reduction in Hg emissions nationally of 5,100 lbs per year from the floor.

The Agency also invites comment on whether special consideration should be given to kilns that may burn hazardous waste with non-detect levels of Hg.[97] Such kilns could be considered to be appropriately regulated, with respect to Hg emissions, by only the standards the Agency is developing for cement kilns that do not burn hazardous waste. Thus, today's proposed Hg standards for waste-burning kilns would be waived. To minimize implementation confusion and difficulties and to accommodate enforcement concerns, if a CK at any time burns hazardous waste with detectable levels of Hg, the kiln would be subject to today's proposed rules at all times, even if it subsequently burned waste with non-detect levels of Hg. Under the waiver, the owner and operator would be required to sample and analyze the hazardous waste as necessary to document that it continues to contain non-detect levels of Hg. We invite comment on whether such a deferral to another MACT standard (yet to be proposed for non-hazardous waste-burning CKs) is workable, given the potential for piece-meal permitting and enforcement.

EPA has considered costs in relation to emissions reductions and the special bioaccumulation potential that Hg poses and determined that proposing a BTF limit is warranted. Hg is one of the more toxic metals known due to its bioaccumulation potential and the adverse neurological health effects at low concentrations especially to the most sensitive populations at risk (i.e.,

[92] Memorandum from Frank Behan, USEPA, to RCRA Docket. Discussion of mercury removal efficiency with activated carbon injection during an emissions test at a Lafarge Corporation cement kiln. February 26, 1996.

[93] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

[94] To achieve a standard of 50 µg/dscm 99 percent of the time, a source with average emissions variability must be designed and operated to achieve an emission level of 30 µg/dscm.

[95] The same approach could also be utilized with the previously discussed approach of applying the BTF control to an assumed emission level of 300 µg/dscm. When assuming the conservative removal efficiencies of 80 percent for CI and 90 percent for CB, this would result in BTF standards of 60 µg/dscm for CI-controlled systems and 30 µg/dscm for CB-controlled systems. Again a statistically-derived variability factor would not be added because emissions variability is accounted for by assuming conservative removal efficiencies for CI and CB systems.

[96] We also note that, while the Agency does not have information to conclude that application of the carbon bed technology would be problematic for cement kilns, carbon beds have never been tested at a full-scale cement kiln. Thus, we invite comment on the technical feasibility of CB control of Hg emissions from CKs.

[97] We also invite comment on what minimum detection levels would be acceptable.

unborn children, infants and young children). A more detailed discussion of human health benefits for mercury can be found in Part Seven of today's proposal. The indirect exposure pathway resulting from airborne deposition of Hg is of particular concern, and a particular reason that Congress singled out Hg for priority regulation in section 112(c)(6). See S. Rep. No. 228, 101st Cong. 1st Sess. at 153–55, 166. EPA is specifically authorized to take into account such non-air environmental benefits in assessing when to adopt BTF standards. As noted below, hazardous waste-burning cement kilns are a significant source of Hg emissions, and the BTF option will control those emissions from 75 percent over baseline and 47 percent over the floor. EPA believes the cost of controlling this especially dangerous HAP to be warranted in light of the extent of control, magnitude of emissions, limited effect on cost of treating hazardous waste (and no net effect on the cost of cement), and the fact that the control technology, carbon injection, will also control dioxins and furans. Finally, EPA notes that control of Hg at the BTF level should eliminate the uncertainty presently involved in individual RCRA permitting decisions where permit writers may develop site-specific permit limits beyond those required by current regulations if necessary to protect human health and the environment.

4. Semivolatile Metals

a. MACT Floor. Emissions of SVM from CKs are currently controlled under the BIF rule. Kilns use a combination of hazardous waste feedrate control and PM control to comply with those standards. Accordingly, MACT floor control is based on a combination of hazardous waste feedrate control and PM control.

The SVM emissions data for CKs includes results from 45 test conditions collected from 26 cement plants, with a total of 34 kilns being tested. Baseline emissions of the semivolatile metals group (consisting of cadmium and lead) ranged from 3 μg/dscm to slightly over 6,000 μg/dscm. Cadmium and lead are volatile at the usual high temperatures within the cement kilns itself, but typically condense onto the fine particulate at baghouse and ESP temperatures, where they are collected. As a result, control of semivolatile emissions is associated with PM control. However, because of the potential for adsorption for these two metals onto the fine PM that is less effectively collected than larger-sized PM, the control efficiency for semivolatile metals is likely to be lower than that for total PM. As discussed earlier, all cement plants currently use either baghouses or ESPs to control particulate emissions.

The Agency analyzed all available Cd and Pb emissions data and determined that sources with emission levels at or below the level emitted by the median of the best performing 12 percent of sources used fabric filters with air-to-cloth (A/C) ratios of 2.1 acfm/ft^2 or less for a kiln system with a hazardous waste MTEC of 84,000 μg/dscm or less. Analysis of emissions data from all CKs using FFs with the 2.1 acfm/ft^2 A/C ratio and with a HW MTEC of 84,000 μg/dscm or less resulted in a floor level of 57 μg/dscm.

EPA notes that raw materials and fossil fuels also contribute to cement kiln SVM feedrates and emissions. Given that all sources must be able to meet the floor level using the floor control, EPA investigated whether all CKs could meet the floor level employing the MACT technologies without being forced to substitute raw materials. Our preliminary evaluation determined that about 10 percent of sources had raw material containing Cd and Pb in greater concentrations than sources in the expanded MACT pool; thus, these sources may not be able to achieve the floor with MACT alone.[98] Before we reach any final conclusions on this point, the Agency believes that further data are needed on the normal, day-to-day levels of Pb and Cd in raw material feed.

In addition, one approach to address this issue (of sources with higher levels of SVM metals in their raw materials than sources in the expanded MACT pool and that, therefore, cannot meet the floor level using floor control) is to: (1) identify the source with the highest normalized (by MTEC) feedrate of metals in raw material; (2) assume the source is also feeding hazardous waste with the floor control MTEC level of the metals; and (3) project SVM emissions from the source based on combined raw material and hazardous waste MTECs using a representative system removal efficiency (SRE) from the expanded MACT pool considering an appropriate variability factor (e.g., variability of emissions among runs within a test condition in the expanded MACT pool). The Agency has not yet conducted this type of analysis, but intends to do so. Again, we also believe that data reflecting normal, day-to-day levels of Cd and Pb in raw material feed is important in pursuing this avenue of analysis. We invite comment on this approach.

The Agency also notes that the MACT pool for SVM consists entirely of CKs employing FF controls; that is, no cement plants with ESPs are in the MACT pool or expanded MACT pool. EPA believes that well designed, operated, and maintained ESPs can achieve good control of SVMs. In fact several CKS employing ESPs in our database currently achieve the floor level of 57 μg/dscm. Because the Agency is concerned that the SVM floor analysis may be overly exclusive (because comparably designed and operated ESPs were not considered in the MACT floor analysis) in identifying the floor MACT level and technology, EPA specifically requests comment on the merits of the following alternative floor approach. This approach identifies comparably designed and operated ESPs (in our SVM database) equivalent to the MACT FF (and at the MACT MTEC) and includes these sources in the analysis as an ''equivalent technology'' of MACT. The Agency has identified an ESP with an SCA of 500 ft^2/kacfm or better as an equivalent technology to the MACT FF with an A/C ratio of 2.1 acfm/ft^2. The Agency conducted this analysis and determined that the floor level would increase from 57 to 160 μg/dscm using this approach. To meet this standard 99 percent of the time, EPA estimates that a source with average emissions variability must be designed and operated to routinely achieve an emission level of 99 μg/dscm. EPA investigated whether all CKs could meet the floor level employing the MACT technologies without being forced to substitute raw materials and determined that all CKs (in the SVM emissions database) with the exception of one kiln would be able to meet the 160 μg/dscm level using this less restrictive MACT definition. The Agency specifically requests comment on this alternative floor approach and floor level.

EPA recognizes that PM, SVM, and LVM emissions from cement kilns are similarly controlled, in part, by a good PM control (e.g., ESP, FF). The floor control for SVM (FF with an A/C ratio of 2.1 acfm/ft^2) offers slightly more control than the floor control for LVM (FF with an A/C ratio of 2.3 acfm/ft^2 or an ESP with a SCA of 350 ft^2/kacfm). Thus, the controls necessary to achieve the SVM MACT floor level would appear to be governing for control of these HAPs.

EPA estimates that 33 percent of CKs are currently meeting the floor level of 57 μg/dscm. The national annualized compliance cost for the cement kilns to

[98] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

reduce SVM emissions to the floor level would be $13.1 million, and would reduce national Pb and Cd emissions by 29 tons per year or 94 percent from current baseline emissions.

b. Beyond-the-Floor Considerations. The Agency considered whether to propose a more stringent level than the floor of 57 µg/dscm, but believes that it would not be appropriate. Since control of SVM emissions is associated with PM control, a more stringent BTF level would require CKs to upgrade to more expensive fabric filter bags (e.g., bags backed with a teflon membrane) or the addition of a FF for kilns with ESPs. Even though the engineering costs to comply with a BTF SVM level would be modest for CKs, the resulting incremental reduction in SVM emissions from the floor level would be minimal. Thus, the Agency believes that lowering the SVM proposed standard is not warranted based on the minimal impact on overall SVM emissions; the floor already provides substantial control by reducing baseline SVM emissions by 94 percent. Thus, the Agency is proposing a MACT floor SVM standard of 57 µg/dscm for existing cement kilns.

5. Low-Volatile Metals

a. MACT Floor. Emissions of LVM from CKs are also currently controlled under the BIF rule. Kilns use a combination of hazardous waste feedrate control and PM control to comply with those standards. Accordingly, MACT floor control is based on a combination of hazardous waste feedrate control and PM control.

The Agency has LVM emissions data which consists of 45 test conditions collected from 26 cement plants, with a total of 35 kilns being tested. Average emissions of the low volatility metals group (arsenic, antimony, beryllium, and chromium) ranged from 4 µg/dscm to 520 µg/dscm. Due to the relatively low volatility of these metals, more than 70 percent of these metals typically partition to the clinker product while the remainder typically condense onto particulate and are collected in the APCD (in this case either an ESP or baghouse). Thus, performance of the control devices is an important factor in controlling LVM emissions.

To identify MACT floor, EPA characterized the LVM controls used by kilns emitting LVM at levels at or below the level emitted by the median of the best performing 12 percent of sources. MACT floor control is thus defined as: (1) a baghouse (i.e., fabric filter) with an air-to-cloth ratio of 2.3 acfm/ft^2 or less with a hazardous waste (HW) MTEC less than 140,000 µg/dscm; or (2) an ESP with specific collection area of 350 ft^2/kacfm with a HW MTEC less than 140,000 µg/dscm. Analysis of available emissions data for all CKs employing either of these controls resulted in a floor emissions level of 130 µg/dscm.

EPA notes that raw materials and fossil fuels also contribute to cement kiln LVM feedrates and emissions. Given that all sources must be able to meet the floor level using the floor control, EPA investigated whether all CKs could meet the floor level employing the MACT controls without being forced to substitute raw material feed. EPA determined that all CKs would be able to meet the floor level using floor control without switching raw materials.[99]

EPA estimates that 80 percent of CKs are currently meeting the floor level. The national annualized compliance cost for the cement kilns to reduce LVM emissions to the floor level would be $2.8 million for the entire hazardous waste-burning cement industry, and would reduce LVM national emissions by 1.7 tons per year or 49 percent from current baseline emissions.

b. Beyond-the-Floor Considerations. The Agency considered whether to propose a more stringent level than the floor of 130 µg/dscm. We determined that proposing such a BTF level is not warranted for several reasons: (1) It would not likely be cost effective; (2) LVM are not of particular concern because they are not bioaccumulative; and (3) establishing the MACT standard at the floor would not trigger the need for a more stringent RCRA standard.

Since control of LVM emissions is associated with PM control, a more stringent BTF level would require CKs to either install new control equipment or to upgrade existing control equipment (e.g., install more expensive FF bags). Even though the engineering costs to comply with a lower LVM BTF level would be moderate, the resulting reduction in LVM emissions is minimal since CK LVM national emissions are estimated to be 1.7 tons/year for the entire industry at the floor. Thus, a LVM BTF standard is not believed to be warranted based on this limited reduction in LVM emissions.

6. Hydrochloric Acid and Chlorine

a. MACT Floor. HCl and Cl_2 (also referred to as total chlorine) emissions from CKs are currently regulated by the BIF rule. CKs use the natural alkalinity of the limestone raw material and hazardous waste feedrate control (of total chlorine and chloride) to comply with those standards. No hazardous waste-burning cement kiln currently employs a dedicated control device (e.g., wet scrubber, venturi scrubber) designed specifically to remove HCl/Cl_2 from the flue gas. Accordingly, MACT floor is based on hazardous waste feedrate control.[100]

The Agency has HCl and Cl_2 emissions data consists of 52 test conditions collected from 26 cement plants, with a total of 35 kilns being tested. Total chlorine emissions from cement kilns range from less than 0.1 ppmv to 220 ppmv. To identify MACT floor, EPA identified the highest hazardous waste feed MTEC (i.e., normalized hazardous waste feedrate of total chlorine) used by kilns emitting HCl/Cl_2 at levels at or below the level emitted by the median of the best performing 12 percent of sources—1.6 g/dscm. The analysis of all available emissions data for kilns with a hazardous waste MTEC for total chlorine of 1.6 g/dscm or less resulted in a floor emissions level of 630 ppmv. Our data indicate that 100 percent of the test conditions in the Agency's database are achieving this floor value.

This determination is confounding given that the highest average emissions from any test condition in the entire database, irrespective of hazardous waste MTEC for total chlorine, was 220 ppmv. This anomalous finding is apparently attributable to: (1) The data set having very high average within-test-condition variability; and (2) adding the average variability factor to the log mean rather than the arithmetic mean of the single test condition with the highest arithmetic mean within the expanded MACT pool (those sources using MACT floor control). If that source had unusually high emissions variability, then the log mean could be substantially higher than the arithmetic mean, resulting in an unusually high emission level to which the variability factor was added.

Because of these concerns, the Agency invites comment on alternative approaches that may identify a more reasonable floor level. One approach could be to add the average variability factor for the data set to the arithmetic mean, rather than the log mean, of the highest test condition in the expanded

[99] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

[100] Although owners and operators normally have no control over the control provided by raw material alkalinity, we note that kilns equipped with FFs appear to provide better control than kilns equipped with ESPs. This may be due to the longer time of contact between the gas stream and the alkaline dust as the gases pass through the dust bed on the bags.

MACT pool. In addition, if this still resulted in a calculated floor level greater than any emission level in the database, irrespective of hazardous waste MTEC for total chlorine, the floor level could be capped at the highest emission level in the database—220 ppmv.

As for the metals EPA notes that raw materials and fossil fuels also contribute to cement kiln chlorine feedrates and emissions. Given that all sources must be able to meet the floor level using floor control, EPA investigated whether all CKs could meet the floor level employing the MACT controls without being forced to substitute raw material. As discussed above, all CKs would be able to meet the floor level using floor control without switching raw materials.

Sources would not incur cost to comply with the proposed floor level because it is higher than any baseline emission levels in the entire database, and there would be no emissions reductions at the floor level.

b. Beyond-the-Floor Considerations. The neutralization provided naturally by alkaline raw materials essentially acts as a dry scrubber to help control HCl/Cl_2 emissions. Therefore, we do not believe that substantial further reductions could be achieved with the use of dry scrubber systems. Wet scrubbers, however, could be expected to provide 99 percent or greater removal of HCl/Cl_2.

BTF control is therefore being defined as a wet scrubber in conjunction with the floor control for hazardous waste chlorine feedrate (defined by a MTEC of 1.6 g/dscm). Given that the proposed floor level based on hazardous waste chlorine feedrate control only would be 630 ppmv, the resulting BTF level would be 6.3 ppmv (at 99 percent removal).

Selecting a more effective control technology such as a wet scrubber would be expensive and the Agency believes that a BTF level would not be appropriate. For example, in one alternate investigation, we evaluated a 25 ppmv HCl level. The Agency estimated in that case the national incremental annualized compliance cost to meet this level would be $17 million. This represents HCl/Cl_2 emissions reductions of 1,900 tons per year or a 71 percent reduction from baseline emissions. The Agency believes that the total incremental costs associated with a standard of 6.3 ppmv would be approximately equal to the incremental costs at a BTF level of 25 ppmv. We also note that, at a MACT floor standard of 630 ppmv, the Agency would not be required to establish a more stringent standard under RCRA to ensure protection of human health and the environment.

In summary, the Agency is proposing a MACT floor HCl/Cl_2 standard of 630 ppmv for existing cement kilns.

7. Carbon Monoxide and Hydrocarbons

a. MACT Floor. As discussed in Section I above, the Agency believes that control of non-dioxin organic HAP emissions can be achieved, in part, by establishing emissions limits on two surrogate compounds: (1) Carbon monoxide, and (2) hydrocarbons, and also by the presence of controls for D/F. Both CO and HCs are not listed HAPs, but the Agency is using them as surrogates for the enumerated organic HAPs of § 112(b)(1) which can be non-D/F products of incomplete combustion (PICs). The Agency is not proposing main stack MACT standards on carbon monoxide for existing cement kilns for reasons discussed below; however, those kilns with by-pass ducts would be required to either comply with a separate CO or HC limit in the by-pass duct.

i. Carbon Monoxide in the Main Stack. The Agency is not proposing a main stack CO limit because CO is not a universally reliable indicator of combustion intensity and efficiency in cement kilns due to CO generation by process chemistry and evolution from the trace organics in the raw material feedstocks.[101] These feedstocks can generate large quantities of CO emissions which are unrelated to the combustion efficiency of burning the waste and fuel. Whereas all the CO from incinerators is combustion-generated, the bulk of the CO from cement kilns can be the result of process events unrelated to the combustion conditions at the burner where the wastes are introduced, or CO can be produced from CO_2 (contained in the limestone) by dissociation at high sintering conditions. As a result, few cement kilns were able to certify compliance with the CO standard in the BIF rule (§ 266.104(b)), but instead complied with the alternative carbon monoxide standard of § 266.104(c) that allowed CO to exceed the 100 ppmv limit provided that stack gas concentrations of HCs did not exceed 20 ppmv. Thus, the Agency believes it inappropriate to establish a CO standard measured in the main stack for all cement kilns.

ii. Hydrocarbons in the Main Stack. CKs emit hydrocarbon (HC) emissions that result from incomplete combustion of fuels and desorption of trace levels or organic compounds from raw materials. These HC emissions contain organic HAPs. Organics in the raw materials are believed to be primarily from kerogen in the shale and limestone which has a porous structure allowing for organic deposits. These organics cause HC emissions because they are largely not destroyed given that combustion gases flow counter-current to the raw-materials (i.e., fuels are generally fired at the opposite end from where the raw materials are fed).

Even when a CK is operated under good combustion conditions (and thus is generating low or insignificant levels of fuel-related HC), HC levels resulting from organics in the raw materials can range from 10 to 400 ppmv. This makes it problematic to use HC as the only or the principal means to ensure good combustion efficiency of hazardous waste fuels to minimize emissions of toxic PICs (i.e., non-D/F organic HAPs).

Wet Process Kilns and Long Dry Process Kilns. The BIF rule currently limits HC levels in the main stack (i.e., the only kiln off-gas stack) of wet and long dry kilns to 20 ppmv. EPA is aware of five kilns that initially had stack HC levels exceeding the 20 ppmv limit. Four of the kilns changed the source of shale used as raw material to use a shale with lower organic content. (Shale comprises a small fraction of raw material feed.) The fifth kiln feeds limestone with (relatively) high levels of organic matter and has indicated that transporting an alternative source of limestone to the site may be prohibitively expensive. Other potential options, such as installing an afterburner to destroy organics or reconstructing the kiln system to otherwise destroy HC desorbed from the limestone, may likewise be prohibitively expensive approaches.

EPA has determined that MACT floor for HC control for wet and long dry kilns should be control based on the current federally-enforceable BIF standards (i.e., control of organics in raw materials coupled with operating under good combustion practices to minimize fuel-related HC), and the floor level should be the BIF limit of 20 ppmv HC for such kilns. We note further that the source could stop burning hazardous waste and avoid having to comply with the HC floor level.

Cement Kilns with By-pass Ducts. Kilns that are equipped with a by-pass duct (typically preheater or precalciner kilns) to divert a portion of the kiln off-gas to a separate PM control device monitor fuel-related HC separately from raw material-related HC. This is because the by-pass duct diverts the kiln gas before it enters the calcining zone where

[101] See 56 FR at 7150, 7153–55 (February 21, 1991).

the organics from the raw material are desorbed. Thus, in general, fuel-related HC can be monitored in the by-pass duct, and raw material-related HC can be monitored in the main stack. We invite comment on whether hazardous waste fuel combustion by-products (e.g., chlorine) can react with organic compounds desorbed from raw material to form organic HAPs. If the Agency determines that hazardous waste firing can substantially (adversely) affect emissions of organic HAPs from the main stack, then we will consider limiting HC to 20 ppmv. This is the limit we are proposing today for long kilns without a by-pass duct. Monitoring HC in the by-pass is discussed later in this section.

The Agency's RCRA BIF rule does not control HC in the main stack of cement kilns that comply with the BIF HC limit in the by-pass duct because, under the RCRA rule, the Agency was concerned about PICs derived from hazardous waste combustion rather than toxic organics desorbed from raw materials. Therefore, any MACT standard for HC in the main stack of these types of kilns must be a BTF standard since the floor for these sources is uncontrolled, and these CKs do not otherwise control organic HAPs in their stack emissions.

The Agency is concerned that main stack HC emissions contain HAPs for several reasons: (1) Organics desorbed from raw materials, even absent any influence from burning hazardous waste, contain HAPs; (2) it is reasonable to hypothesize that the chlorine released from burning hazardous waste can react with the organics desorbed from the raw material to form generally more toxic chlorinated HAPs; and (3) some preheater and precalciner kilns feed containers of hazardous waste at the preheater or precalciner end of the kiln near the by-pass duct entrance such that hazardous waste PICs may not have time to combust efficiently. We are concerned that these hazardous waste PICs may be emitted from the main stack, and that monitoring of the by-pass duct may not be adequate to determine if inefficient combustion occurs. This is because the by-pass duct gas may not be representative of kiln off-gas when containers of hazardous waste are fed at the off-gas end of the kiln.

However, the Agency does not now have sufficient data to quantify the contribution of hazardous waste (if there is one) to HC emissions in the main stack, and therefore to develop a MACT BTF standard for main stack HC for this class of CKs. We are thus unable to propose controls for HC from main stacks of cement kilns with by-pass stacks. We invite data to remedy this situation as well as comment on this issue. We also invite comment on an alternative of the same 20 ppmv main stack HC standard for this class of cement kilns as for the others.

iii. Emissions Standards for By-pass Ducts.[102] The Agency is proposing that cement kilns with by-pass ducts monitor and comply with either a CO or HC concentration limit in the by-pass duct because levels of CO and HC in the by-pass gas are more representative of combustion efficiency than levels in the main stack.[103] The BIF rule currently limits HC (in the by-pass duct) to 20 ppmv.[104] MACT floor control is operating under good combustion conditions, including conditions that provide adequate oxygen, temperature, turbulence, and residence time. These controls will ensure that kilns with low organic-containing raw materials are operating under good combustion conditions to control PICs formed by the combustion of hazardous waste fuel.[105]

EPA's MACT analysis of the existing by-pass duct data of the best performing sources resulted in a HC MACT floor level of 6.7 ppmv. The Agency's database for CO in the by-pass is incomplete for the purposes of calculating a statistically-derived emission limit, but we believe that it is reasonable and appropriate to establish the by-pass CO floor level at the same level allowed in the BIF rule—100 ppmv. Under this standard the facility would have the option of complying with either the CO or HC standard in the by-pass duct.

The Agency also invites comment on requiring cement kilns with by-pass ducts to comply with both the CO *and* HC standard (measured in the by-pass duct). Given that CO in the by-pass duct should be related only to fuel combustion efficiency, monitoring of CO in addition to HC may be appropriate to ensure complete combustion of organics in the kiln; however, the Agency is concerned that some CO may be generated from the CO_2 by dissociation at high sintering temperatures and thus requests information and data on this option.

Cement kiln sources would not incur costs to comply with the proposed floor level since all cement kilns with by-pass ducts (for which EPA has data) currently meet the floor level for either HC or CO. EPA also notes that approximately half of cement kilns that measured both HC and CO in the by-pass achieved the floor level.

As mentioned above, the Agency is aware of a long wet process cement kiln that is unable to comply with either the CO limit of 100 ppmv or the HC limit of 20 ppmv in the main stack. This kiln cannot achieve either of these levels due to the relatively high organic matter content in the limestone. Since the majority of the raw material fed to the kiln is limestone, substitution with an alternative source of limestone with lower organic content is not readily feasible (e.g., prohibitively expensive transportation costs of a substitute raw material). The facility attempted to retrofit the kiln with a by-pass duct thus allowing monitoring of CO or HC in the by-pass duct as permitted by current BIF regulations. However, efforts to construct and engineer this kiln with a by-pass duct were not successful due to the length of the kiln.[106]

In coordination with state and regional officials, the cement kiln was retrofitted with a mid-kiln sampling port that continuously draws off a portion of the kiln combustion gas for analysis of HC or CO. Since this sampling port does not divert a minimum of 10 percent of the kiln off-gas from the kiln, it does not meet the Agency's current definition of a by-pass duct defined in § 266.104(g). The kiln's mid-kiln sampling port diverts approximately 7 to 8 percent of the kiln off-gas. The Agency specifically invites comment on allowing sources with a mid-kiln sampling port, or other kiln gas extraction mechanism, that is capable of continuously extracting a representative sample of kiln off-gas to comply with

[102] Most precalciner and some preheater kilns are equipped with by-pass ducts where a portion (e.g., 5 to 30 percent) of the kiln exhaust is diverted to a separate APCD, and, sometimes, a separate stack. These gases are typically diverted to avoid a build-up of metal salts that can adversely affect the calcination process.

[103] Provided that: (1) hazardous waste is fired only into the kiln (i.e., not at any location downstream from the kiln exit relative to the direction of gas flow); and (2) the by-pass duct gas is representative of kiln gas. To ensure by-pass gas is representative of kiln gas, the by-pass duct must divert a minimum of 10 percent of kiln off-gas as currently required in the BIF rule. See 266.104(g).

[104] The BIF rule provides for an alternative emissions standard for CO of 100 ppmv. See § 104(f).

[105] When the by-pass duct is vented through a separate stack, compliance with limits on CO or HC would ensure application of MACT regarding fuel-related organic HAPs. When the by-pass is routed back into the main (only) stack, compliance with limits on CO or HC will likewise ensure application of MACT regarding fuel-related organic HAPs. Absent these controls on the by-pass duct, fuel-related organic HAPs could be either: (1) masked by raw material-related HAPs, if the raw material contains substantial organics; or (2) if the raw material contains low levels of organics, the kiln could comply with the main stack standard (if one were proposed) while operating under poor fuel combustion conditions.

[106] For example, the kiln experiences a substantial increase in length due to expansion during start-up as the kiln heats up to operating levels.

the same HC and CO standards proposed for kilns with by-pass ducts. Commenters should specifically address how the gas extraction system ensures that a representable sample of the kiln's fuel combustion gas would be monitored for HC or CO.

b. Beyond-the-Floor Considerations. EPA has considered BTF control for organic HAP emissions from the main stack of all CKs (including those with by-pass ducts) based on use of a combustion gas afterburner. We believe that a BTF level for CO of 50 ppmv and for HC of 6 ppmv are readily achievable with an afterburner, but not appropriate. Therefore, we are not proposing such a BTF standard. EPA has no data indicating that any cement kilns are currently meeting these BTF levels with existing controls. The annualized engineering costs for the cement kilns to meet these BTF levels is estimated to be $280 million, and would provide an incremental reduction in HC emissions nationally beyond the floor controls of approximately 1500 tons per year and 65,000 tons per year for CO.

8. MACT Floor Cost Impacts

The total national annualized compliance costs [107] for existing cement kilns to meet all the MACT floor levels are estimated to be $34 million with the cost per cement kiln averaging $777,000. On a cost per ton of hazardous waste burned, these total compliance costs equate to $40 per ton of waste. We estimate that up to 2 cement facilities will likely cease burning hazardous waste due to the compliance costs associated at the floor.

The Agency is proposing to go beyond-the-floor for two pollutants for existing cement kilns: dioxins/furans and mercury. The total national annualized compliance costs (i.e., total costs not incremental costs from the floor levels) to meet the dioxin/furan and mercury BTF levels in addition to the MACT floor levels for the remaining HAPs are estimated to be $44 million with the cost per cement kiln averaging $1.04 million. On a cost per ton of hazardous waste burned, these total compliance costs increase to $50 per ton of waste. Again, we estimate that up to 2 cement facilities will likely cease burning hazardous waste due to the compliance costs associated with the proposed standards.

[107] Compliance costs represent pre-tax compliance costs. Because compliance costs are tax-deductible, the portion of pre-tax costs borne by the firm would be between 70 and 80 percent of the values shown above, depending on the specific firm's margin tax bracket. See ''Regulatory Impact Assessment for Proposed Hazardous Waste Combustion MACT Standards'', November 13, 1995, for details.

B. MACT for New Hazardous Waste-Burning Cement Kilns

This section summarizes EPA's rationale for establishing MACT for new cement kilns for each HAP, HAP surrogate, or HAP group. Table IV.4.B.1. summarizes the proposed emissions limits for new cement kilns, which were determined using the analytical process described in Part Three, Section VII and in the technical background document.

TABLE IV.4.B.1.—PROPOSED MACT STANDARDS FOR NEW CEMENT KILNS

HAP or HAP surrogate	Proposed standard [a]
Dioxin/furans (TEQ)	0.20 ng/dscm (TEQ).
Particulate Matter	69 mg/dscm (0.030 gr/dscf).
Mercury	50 µg/dscm.
SVM (Cd, Pb)	55 µg/dscm.
LVM (As, Be, Cr, Sb)	44 µg/dscm.[b]
HCl + Cl_2 (total chlorides).	67 ppmv.
Hydrocarbons:	
Main Stack [c]	20 ppmv.
By-pass Stack [d]	6.7 ppmv.
Carbon Monoxide:	
Main Stack	N/A.
By-pass Stack [d]	100 ppmv.

[a] All emission levels are corrected to 7 percent O_2.

[b] An alternative standard of 80 µg/dscm would apply if the source elects to document compliance using a multi-metals CEM.

[c] Applicable only to long wet and dry process cement kilns (i.e., not applicable to preheater and/or precalciner kilns).

[d] Emissions standard applicable only for cement kilns configured with a by-pass duct (typically preheater and/or precalciner kilns). Source must comply with either the HC or CO standard in the by-pass stack. A long wet or long dry process cement kiln that has a by-pass duct has the option of meeting either the HC level in the main stack or the HC or CO limit in the by-pass duct.

1. MACT New for Dioxins/Furans

a. MACT New Floor. As for existing cement kilns, the Agency is identifying MACT new floor for D/F based on temperature control at the inlet to the ESP or FF. EPA characterized the single best performing source with the lowest TEQ dioxin/furan emissions and determined that the best performing source had an inlet temperature of 409°F or less.

The Agency then evaluated D/F emissions from all kilns that operated the ESP or FF at 409°F or less and determined that 75 percent had D/F emissions less than 0.2 ng/dscm (TEQ). The other 25 percent of kilns generally had TEQs less than 0.8 ng/dscm (TEQ), although one kiln emitted 4.7 ng/dscm (TEQ). The Agency notes that the MACT new expanded pool was virtually identical (with the exception of two test conditions) to the expanded pool of existing sources.

The Agency is, therefore, identifying temperature control at the inlet to the ESP or FF at 409°F as the MACT floor control. Given that 75 percent of sources achieve D/F emissions of 0.20 ng/dscm (TEQ) at that temperature, the Agency believes that it is appropriate to express the floor as ''0.20 ng/dscm (TEQ), or (temperature at the inlet to the ESP or FF not to exceed) 409°F''. This would allow sources that operate at temperatures above 409°F but that achieve the same D/F emissions as the majority of sources that operate below 409°F (i.e., 0.20 ng/dscm (TEQ)) to meet the standard without incurring the expense of lowering the temperature at the ESP or FF.

b. Beyond-The-Floor Considerations. The Agency has identified activated carbon injection (CI) at less than 400°F as a BTF control for D/F for cement kilns because CI is currently used in similar applications such as hazardous waste incinerators, municipal waste combustors, and medical waste incinerators. The Agency is not aware of any CK flue gas conditions that would preclude the applicability of CI or inhibit the performance of CI that has been demonstrated for other waste combustion applications.

Carbon injection has been demonstrated to be routinely effective at removing greater than 95 percent of D/F and some tests have demonstrated a removal efficiency exceeding 99 percent at gas temperatures of 400°F or less. To determine a BTF emission level, the Agency considered the emission levels that could result from gas temperature control to less than 400°F combined with CI.

As discussed for existing sources, when CI is used in conjunction with temperature control, an additional 95 percent reduction in emissions could be expected. Accordingly, emissions with BTF controls could be expected to be less than a range of 0.04 to 0.24 ng/dscm (TEQ) (i.e., 95 percent reduction from 0.8 ng and 4.7 ng, respectively). Given that CI reductions greater than 95 percent are readily feasible, the Agency believes that it is appropriate to identify 0.20 ng/dscm (TEQ) as a reasonable BTF level that could be routinely achieved.

The Agency notes that, because we have assumed a fairly conservative carbon injection removal efficiency of 95 percent to identify the 0.20 ng/dscm (TEQ) level, we believe that this approach adequately accounts for emissions variability at an individual kiln because CI removal efficiency is likely to be up to or greater than 99 percent. EPA thus believes that it is not

necessary to add a statistically-derived variability factor to the 0.20 ng/dscm (TEQ) level to account for emissions variability at an individual kiln. Thus, the 0.20 ng/dscm (TEQ) BTF level represents the proposed D/F emission standard for new cement kilns.

EPA solicits comment on this approach, and notes that if a statistically-derived variability factor were deemed appropriate, the BTF level of 0.20 ng/dscm (TEQ) would be expressed as a standard of 0.31 ng/dscm (TEQ). We note, however, that under this approach, it may be more appropriate to use a less conservative CI removal efficiency (i.e., because emissions variability would be accounted for using statistics rather than in the engineering decision to use a conservative CI removal efficiency), thus lowering the 0.20 ng/dscm (TEQ) level to approximately 0.04 ng/dscm (TEQ) (i.e., 99 percent reduction from 0.8 ng and 4.7 ng results in levels of 0.008 ng to 0.047 ng/dscm (TEQ), respectively, and 0.04 ng is a reasonable value within this range). If so, the D/F standard would be about 0.15 ng/dscm (TEQ) (i.e., 0.04 ng/dscm TEQ plus the variability factor of 0.11 ng/dscm TEQ).

For similar reasons as discussed for existing cement kilns, the Agency is proposing a BTF standard for D/F of 0.20 ng/dscm (TEQ) for new hazardous waste-burning cement kilns. Costs for new sources are discussed in ''Regulatory Impact Assessment for Proposed Hazardous Waste Combustion MACT Standards''.

2. MACT New for Particulate Matter

a. MACT New Floor. The Agency analyzed all available PM emissions data and determined that the control used by the single best performing source used a fabric filter with an air-to-cloth (A/C) ratio of 1.8 acfm/ft^2 or less. Analysis of emissions data from all CKs using FFs with the 1.8 acfm/ft^2 A/C ratio or less resulted in a level of 0.065 gr/dscf.

For similar reasons discussed for existing cement kilns, the Agency has chosen the existing NSPS standard (an established regulatory benchmark for PM), not the statistically-derived limit, as the MACT for existing hazardous waste-burning cement kilns. Thus, the Agency is identifying a MACT floor for PM and is identifying the floor level as the NSPS limit of 69 mg/dscm (0.03 gr/dscf) because it is the lowest federally enforceable emission standard.

b. Beyond-the-Floor Considerations. EPA considered but is not proposing a more stringent BTF level (e.g., 35 mg/dscm (0.0105 gr/dscf)) for new cement kilns. For the same reasons discussed for existing sources, the Agency believes that a more stringent level than the floor is not warranted.

3. MACT New for Mercury

a. MACT New Floor. As discussed earlier, hazardous waste-burning cement kilns control their mercury input (and therefore much of their emissions) through control of the mercury content in the hazardous waste. The Agency is defining the MACT floor technology as feedrate control with a hazardous waste MTEC less than 28 µg/dscm based on performance of the best performing source. Analysis of all existing cement kiln sources using this hazardous waste feedrate control resulted in a MACT new floor level of 82 µg/dscm. EPA estimates that a source with average emissions variability must be designed and operated to routinely achieve an emission level of 58 µg/dscm to meet this standard 99 percent of the time. Expanded MACT pools are identical. The MACT new floor analysis results in the same floor as existing sources because their respective expanded MACT pools are identical.

EPA solicits comment on an alternative method to establishing the MACT new floor. Under this alternative, the floor analysis would be similar to the approach proposed today except that the variability factor would be added to the average emissions from the single best performing source. By contrast, under the approach proposed today, the variability factor is added to the emissions of the highest emitting source in the expanded MACT pool. Thus, under this alternative the only purpose that expanding the MACT pool would serve is to identify the variability factor. EPA notes that this approach results in a MACT new floor of 53 µg/dscm (4.4 µg/dscm (average emissions from the best performing source) plus the statistically-derived variability factor of 49 µg/dscm).

b. Beyond-the-Floor Considerations. The Agency has considered the same BTF control alternatives for improved Hg control for new cement kilns: hazardous waste feedrate control of Hg in conjunction with flue gas temperature reduction to 400°F or less followed by either carbon injection (CI) or carbon bed (CB). The BTF design emission level under the CI-controlled option is 30 µg/dscm (assuming a source has controlled its Hg emissions to 300 µg/dscm controlling Hg feed in the hazardous waste). The BTF emission standard corresponding to a design level of 30 µg/dscm would be 50 µg/dscm [108]. The Agency is proposing 50 µg/dscm as the MACT standard for new cement kilns. The Agency specifically requests comment on establishing BTF emission standards based on the alternative approaches discussed for existing cement kilns.

4. MACT New for Semivolatile Metals

a. MACT New Floor. MACT new control is based on hazardous waste feedrate control and PM control. EPA characterized the single best performing source with the lowest SVM emissions and determined that the best performing source used a fabric filter with an air-to-cloth ratio of 2.1 acfm/ft^2 or less for a kiln system with a hazardous waste (HW) MTEC of 36,000 µg/dscm or less. Analysis of all sources (i.e., expanded MACT pool of facilities) using this technology or better resulted in a floor level of 55 µg/dscm for new cement kilns.

EPA solicits comment on an alternative method to establishing the MACT new floor. Under this alternative, the floor analysis would be similar to approach proposed today except that the variability factor would be added to the average emissions from the single best performing source. Thus, the expanded MACT pool serves only to identify the variability factor of the floor technology. EPA notes that this approach results in a MACT new floor of 39 µg/dscm (4 µg/dscm (average emissions from the best performing source) plus the statistically-derived variability factor of 35 µg/dscm).

b. Beyond-the-Floor Considerations. The Agency considered a more stringent level than the floor level of 55 µg/dscm based on improved collection efficiency of the MACT floor FF. Since this level is virtually identical to the floor level for existing sources and considering that EPA is not proposing standards more stringent than the floor for existing sources, the Agency believes for the same reasons that a more stringent floor level is not warranted for new sources as well. Finally, we note that establishing the MACT standard at the floor would not trigger the need for a more stringent standard under RCRA.

5. MACT New for Low-Volatile Metals

a. MACT New Floor. MACT new control is based on hazardous waste feedrate control and PM control. EPA characterized the best particulate control device, and identified the floor technology as a baghouse (i.e., fabric filter) with an air-to-cloth ratio of 2.3 acfm/ft^2 or less with a hazardous waste

[108] To achieve a standard of 50 µg/dscm 99 percent of the time, a source with average emissions variability must be designed and operated to achieve an emission level of 30 µg/dscm.

(HW) MTEC less than 25,000 μg/dscm. Analysis of the expanded MACT pool resulted in a floor emissions level of 44 μg/dscm for new cement kilns.

EPA solicits comment on an alternative method to establishing the MACT new floor. Under this alternative, the floor analysis would be similar to the approach proposed today except that the variability factor would be added to the average emissions from the single best performing source. Thus, the expanded MACT pool only serves to identify the variability factor of the floor technology. EPA notes that this approach results in a MACT new floor of 30 μg/dscm (4 μg/dscm (average emissions from the best performing source) plus the statistically-derived variability factor of 26 μg/dscm).

b. Beyond-the-Floor Considerations. The Agency considered a more stringent level than the floor of 44 μg/dscm based on improved collection efficiency of the MACT floor FF. We initially determined that selecting such a BTF level is not warranted for several reasons: (1) It would not likely be cost effective considering the small increment of LVMs removed; (2) LVM are not of particular concern because they are not bioaccumulative; (3) establishing the MACT standard at the MACT new floor would not trigger the need for a more stringent RCRA standard.

The Agency is proposing an alternative compliance option for LVMs for new cement kilns. Because the Agency anticipates the likelihood of development of a multi-metals continuous emissions monitor (CEM) in the near future and considering that the estimated detection limit for the CEM to be approximately 80 μg/dscm for the LVM metals combined, the Agency is proposing an alternative standard of 80 μg/dscm should the source elect to document compliance using a multi-metals CEM. Thus, the LVM standard is different depending on the compliance method selected.

6. MACT New for Hydrochloric Acid and Chlorine

a. MACT New Floor. Cement kilns use the natural alkalinity of the limestone used as raw material and hazardous waste feedrate control to control HCl and Cl_2 emissions. Thus, the MACT floor is based on hazardous waste feedrate control.

EPA characterized the single best performing source with the lowest HCl/Cl_2 emissions and determined that the best performing source used feedrate control with a hazardous waste (HW) MTEC of 1.6 g/dscm or less. (Combined emissions of HCl and Cl_2 were expressed as HCl equivalents.) Analysis of the expanded MACT pool of facilities resulted in a floor level of 630 μg/dscm for new cement kilns, which is the same result as for existing cement kiln sources because the expanded MACT pools are identical for both existing and new cement kilns.

Again, as discussed for existing cement kilns, this determination is confounding given that the highest average emissions from any test condition in the entire database, irrespective of hazardous waste MTEC for total chlorine, was 220 ppmv. This anomalous finding is apparently attributable to: (1) The data set having very high average within-test-condition variability; and (2) adding the average variability factor to the log mean rather than the arithmetic mean of the test condition within the expanded MACT pool (those sources using MACT floor control) with the highest arithmetic mean. If that source had unusually high emissions variability, then the log mean could be substantially higher than the arithmetic mean, resulting in an unusually high emission level to which the variability factor was added.

Because of these concerns, the Agency invites comment on alternative approaches that may identify a more reasonable floor level. One approach could be to add the average variability factor for the data set to the arithmetic mean, rather than the log mean, of the highest test condition in the expanded MACT pool. In addition, if this still resulted in a calculated floor level greater than any emission level in the database, irrespective of hazardous waste MTEC for total chlorine, the floor level could be capped at the highest emission level in the database—220 ppmv.

b. Beyond-the-Floor Considerations. BTF control is being defined as a wet scrubber in conjunction with the floor control for hazardous waste chlorine feedrate. As discussed earlier for existing systems, more stringent HCl and Cl_2 control based on use of wet scrubbers is readily achievable. The Agency is aware of two cement kilns (not burning hazardous waste) that employ a wet and dry scrubber, respectively, capable of HCl/Cl_2 capture. Wet scrubber use within the hazardous waste incineration industry is well established also, often achieving capture efficiencies exceeding 99 percent. Considering that average HCl/Cl_2 emissions from existing cement kilns range from less than 1 ppmv to 220 ppmv and that a well-designed and operated wet scrubber would be expected to achieve removal efficiencies greater than 90 percent, if not higher, the Agency believes that HCl/Cl_2 control to a standard of 67 ppmv (corresponding to a design level of 25 ppmv [109]) is readily achievable.[110] Thus the Agency is proposing a HCl/Cl_2 standard of 67 ppmv for new cement kilns. See ''Regulatory Impact Assessment for Proposed Hazardous Waste Combustion MACT Standards'' for further details on the costs.

7. MACT New for Carbon Monoxide and Hydrocarbons

a. MACT Floor. The Agency believes that control of non-dioxin organic HAP emissions (i.e., non-dioxin PICs that are also HAPs) can be achieved by establishing emissions limits on hydrocarbons and carbon monoxide. As discussed earlier for existing cement kilns, the Agency is proposing a MACT standard of 20 ppmv for HCs in the main stack (not applicable for preheater and precalciner kilns), and either a CO limit of 100 in the by-pass duct or HC standard of 6.7 ppmv in the by-pass duct. Thus, the proposed standards for new cement kilns are identical to those for existing kilns.

b. Beyond-the-Floor Considerations. As for existing sources the Agency requests comment on a main stack hydrocarbon standard of 6 ppmv and a carbon monoxide standard of 50 ppmv for all new cement kilns (including those with by-pass ducts) based on performance of a combustion gas afterburner to burn-out incompletely combusted organics that escape the primary combustion zone.

8. MACT New Cost Impacts

A discussion of the costs and economic impacts for new cement kilns is presented in Part Seven of today's proposal.

C. Evaluation of Protectiveness

In order to satisfy the Agency's mandate under the RCRA to establish standards for facilities that manage hazardous wastes and issue permits that are protective of human health and the environment, the Agency conducted an analysis to assess the extent to which

[109] Considering the highest total chlorine data point of 220 ppmv with a 90 percent removal efficiency yields a design level of approximately 25 ppmv.

[110] The Agency notes that assuming a 99 percent capture efficiency would result in a design level of approximately 2.2 ppmv (corresponding to an emission level of 6.7 ppmv). Since the application of wet scrubbers is still limited in the cement industry, EPA believes that a total chlorine standard of 6.7 ppmv is unnecessarily low and is thus assuming a more conservative total chlorine removal efficiency of 90 percent. In addition, the Agency notes that further controls under RCRA would not be necessary at a level of 67 ppmv (corresponding to a design level of 25 ppmv) for new cement kilns.

potential risks from current emissions would be reduced through implementation of MACT standards. The analysis conducted for hazardous waste-burning cement kilns is similar to the one described above for hazardous waste incinerators. The procedures used in the Agency's risk analyses are described in detail in the background document for today's proposal.[111] In evaluating the MACT standards, the Agency used the design value which is the value the Agency expects a source would have to design to in order to be assured of meeting the standard on a daily basis and hence is always a lower value than the actual standard for all HAPs controlled by a variable control technology.[112]

The risk results for hazardous waste-burning cement kilns are summarized in Table IV.4.C.1 for cancer effects and Table IV.4.C.2 for non-cancer effects for the populations of greatest interest, namely subsistence farmers, subsistence fishers, recreational anglers, and home gardeners. The results are expressed as a range where the range represents the variation in exposures across the example facilities (and example waterbodies for surface water pathways) for the high-end and central tendency exposure characterizations across the exposure scenarios of concern. For example, because dioxins bioaccumulate in both meat and fish, the subsistence farmer and subsistence fisher scenarios are used to determine the range.[113]

TABLE IV.4.C.1—INDIVIDUAL CANCER RISK ESTIMATES FOR CEMENT KILNS [1]

	Dioxins	Semi-volatile metals [2]	Low volatile metals [3]
Existing Sources			
Baseline	1E–8 to 9E–5	1E–9 to 4E–7	5E–11 to 5E–7
Floor	4E–9 to 2E–5 [4]	3E–9 to 1E–7	9E–9 to 4E–6
BTF	4E–9 to 2E–6 [5].		
New Sources			
Floor	4E–9 to 2E–5 [4]	3E–9 to 1E–7	3E–9 to 1E–6
BTF	4E–9 to 2E–6 [5].		
CEM Option [6]		3E–9 to 1E–7	1E–8 to 4E–6

[1] Lifetime excess cancer risk.
[2] Carcinogenic metal: cadmium.
[3] Carcinogenic metals: arsenic, beryllium, and chromium (VI).
[4] Based on 0.2 ng/dscm TEQ as a central tendency estimate and 1.4 ng/dscm TEQ as a high-end estimate.
[5] Based on 0.20 ng/dscm TEQ.
[6] Based on SVM standard of 60 μg/dscm and LVM standard of 80 μg/dscm (applicable only if the source elects to document compliance using a multi-metals CEM).

TABLE IV.4.C.2.—INDIVIDUAL NON-CANCER RISK ESTIMATES FOR CEMENT KILNS [1]

	Semi-volatile metals [2]	Low volatile metals [3]	Hydrogen chloride	Chlorine
Existing Sources				
Baseline	<0.001 to 0.06	<0.001 to 0.004	<0.001 to 0.04	<0.001 to 0.06
Floor	<0.001 to 0.004	<0.001 to 0.01	0.01 to 0.1 [4]	0.05 to 0.8 [5]
New Sources				
Floor	<0.001 to 0.004	<0.001 to 0.005	0.01 to 0.1 [4]	0.05 to 0.8 [5]
BTF			0.001 to 0.01 [4]	0.005 to 0.08 [5]
CEM Option [6]	<0.001 to 0.004	<0.001 to 0.01		

[1] Hazard quotient.
[2] Cadmium and lead.
[3] Antimony, arsenic, beryllium, and chromium.
[4] HCl + Cl_2 assuming 100 percent HCl.
[5] HCl + Cl_2 assuming 10 percent Cl_2.
[6] Based on SVM standard of 60 μg/dscm and LVM standard of 80 μg/dscm (applicable only if the source elects to document compliance using a multi-metals CEM).

The risk analysis indicates that for the semi-volatile and low-volatile metals categories, the MACT standards for cement kilns are protective at the floor for both existing and new sources. The analysis indicates that the CEM compliance option for new sources is also protective. For hydrogen chloride and chlorine (Cl_2), the MACT standards for cement kilns are also protective at the floor for both existing and new sources. However, the analysis indicates

[111] "Risk Assessment Support to the Development of Technical Standards for Emissions from Combustion Units Burning Hazardous Wastes: Background Information Document," February 20, 1995.

[112] For the semi-volatile and low volatility metals categories, the Agency assumed the source could emit up to the design value for each metal in the category for the purpose of assessing protectiveness.

[113] For the semi-volatile and low volatility metals categories, the inhalation MEI scenarios are also used. For hydrogen chloride and chlorine (Cl_2) only the inhalation MEI scenarios are used.

that for dioxins the proposed beyond the floor standards, rather than the floor levels, are protective.

V. Lightweight Aggregate Kilns: Basis and Level for the Proposed NESHAP Standards for New and Existing Sources

Today's proposal would establish maximum achievable control technology (MACT) emissions standards for dioxin/furans, mercury, semivolatile metals (cadmium and lead), low volatile metals (arsenic, beryllium, chromium, and antimony), particulate matter (PM), acid gas emissions (hydrochloric acid plus chlorine), hydrocarbons, and carbon monoxide from existing and new hazardous waste-burning lightweight aggregate kilns (LWAKs). See proposed § 63.1205. The following discussion addresses how MACT floor and beyond-the-floor (BTF) levels were established for each HAP and EPA's rationale for the proposed standard. The Agency's overall procedural approach for MACT determinations has been discussed in Part Three, Sections V and VI for existing sources and in Section VII for new sources.

Again, the Agency wishes to emphasize that these standards were developed using a database that contains primarily short-term certification of compliance data that may not adequately reflect more normal, day-to-day operations and emissions. As noted earlier, EPA believes it preferable to use long-term, more normal operating emissions data for MACT standard-setting purposes and specifically invites commenters to submit this type of data.

A. Summary of MACT Standards for Existing LWAKs

This section summarizes EPA's rationale for establishing the MACT floor emission level and choosing MACT for existing LWAKs for each HAP, HAP surrogate, or HAP group.

Table IV.5.A.1 summarizes the MACT standards for existing LWAKs. The basis for the floor level and BTF considerations for each HAP or HAP surrogate is then discussed.

Table IV.5.A.1.—PROPOSED MACT STANDARDS FOR EXISTING LWAKS

HAP or HAP surrogate	Proposed standards [1]
Dioxin/furans	0.20 ng/dscm TEQ.
Particulate Matter	0.030 gr/dscf (69 mg/dscm)
Mercury	72 µg/dscm.
SVM [Cd, Pb]	12 µg/dscm.[2]
LVM [As, Be, Cr, Sb]	340 µg/dscm.
HCl + Cl_2	450 ppmv.
CO	100 ppmv.
HC	14 ppmv.

[1] All emission levels are corrected to 7 percent O_2.

[2] An alternative standard of 60 µg/dscm would apply if the source elects to document compliance using a multi-metals CEM.

1. Dioxin/Furans

a. MACT Floor. EPA has obtained dioxin/furan (D/F) emissions data for only one LWAK. The data indicated an average test condition D/F emission of 0.04 ng/dscm (TEQ). Based on the Agency's data on the performance of D/F control technology, the Agency is identifying the MACT floor for D/F based on temperature control at the inlet to the fabric filter. EPA is therefore identifying the MACT floor level for D/F emissions from LWAKs as 0.20 ng/dscm (TEQ) or (temperature at the PM control device not to exceed) 418° F.

Given that EPA is not aware of any LWAKs that exceed the floor level, the rule would not require these sources to incur costs to achieve compliance.

The Agency recognizes that its data on dioxin/furan emissions from LWAKs is limited. Therefore, the Agency is inviting commenters to submit additional performance data on LWAK D/F emissions.

b. Beyond-The-Floor Considerations. The BTF considerations for LWAKs were the same as for CKs. Therefore, EPA is proposing a BTF standard of 0.20 ng/dscm (TEQ) for the same reasons applicable to CKs. As noted above, given that EPA is not aware of any LWAKs that exceed the proposed BTF standard, LWAKs should not have to incur costs to achieve compliance. EPA notes, however, that LWAKs would nonetheless be required to comply with operating limits established during performance testing and conduct periodic D/F testing to document compliance with the rule. These costs are relatively low when compared to the cost of complying with other provisions of today's rule.

2. Particulate Matter

a. MACT Floor. LWAKs, like cement kilns, have high particulate inlet loadings to the particulate control device due to the nature of the lightweight aggregate manufacturing process; that is, a significant portion of the finely pulverized raw material fed to the kiln is entrained in the flue gas entering the control device. LWAKs are equipped with fabric filters, although one facility is equipped with a spray dryer, venturi scrubber and wet scrubber, in addition to the fabric filter, to control PM to a 0.08 gr/dscf standard under the BIF rule. The PM data for LWAKs include results from 15 test conditions collected from 6 facilities, with a total of 12 units being tested. The Agency's database shows that the average controlled PM emissions ranged from 0.0005 gr/dscf to 0.02 gr/dscf, corrected to 7 percent oxygen, dry basis.

The Agency analyzed all available PM emissions data and determined that sources with emission levels at or below the level emitted by the median of the best performing 12 percent of sources used a fabric filter with an air-to-cloth ratio of 2.8 acfm/ft2 or less. EPA's analysis of all LWAKs employing this floor technology resulted in a MACT floor emissions level of 110 mg/dscm (0.049 gr/dscf). EPA estimates that 100 percent of LWAKs are currently meeting the floor level. The national annualized compliance cost for LWAKs to meet the floor level is estimated to be $290,000 for the entire LWAK industry.

b. Beyond-The-Floor Considerations. EPA is proposing a more stringent beyond-the-floor (BTF) level of 69 mg/dscm (0.03 gr/dscf) for LWAKs. As mentioned above, since 1971, some cement kilns have been subject to the more stringent NSPS (see 40 CFR 60.60, Subpart F) of 0.3 lb/ton of raw material feed (dry basis) to the kiln, which is generally equivalent to 69 mg/dscm (0.03 gr/dscf). Because of design and process similarities between LWAKs and cement kilns, such as high inlet grain loading and similar APCDs, the Agency believes that 69 mg/dscm is achievable for LWAKs.

EPA estimates that 80 percent of LWAKs are currently meeting this BTF level. The Agency estimates that there would be no national incremental annualized compliance cost for the remaining LWAKs to meet the BTF level rather than comply with the floor controls. This is because sources are already meeting the BTF level, or they would be able to meet it with the upgrades or retrofits needed to meet the floor level. The BTF level would provide an incremental reduction of 4 tons per year, or 9 percent, in PM emissions nationally beyond that achieved with floor controls. (Note that emissions reductions estimates are based on the design level, not the standard.) Therefore, the Agency is proposing a MACT standard of 69 mg/dscm (0.030 gr/dscf) for existing LWAKs.

EPA considered but is not proposing an alternative more stringent beyond-

the-floor level (e.g., 35 mg/dscm (0.015 gr/dscf)) for LWAKs. EPA notes that, to ensure compliance with a 35 mg/dscm standard 99 percent of the time, a source with average emissions variability must be designed and operated to achieve an emission level of approximately 18 mg/dscm. EPA estimates that 60 percent of LWAKs currently have average PM emissions below 18 mg/dscm.

All of the remaining LWAKs may require the installation of new fabric filters to comply with the proposed standards for all HAPs discussed in today's rule. The average emissions level for the 40 percent of LWAKs that do not meet a PM emission level of 18 mg/dscm is 28 mg/dscm. All of these LWAKs would require an upgrade from fiberglass bags to improved performance filter media on the newly installed fabric filters. Although the engineering costs to comply with a PM design level of 18 mg/dscm is modest for LWAKs, the resulting reduction in PM emissions is minimal because 40 percent of the kilns are emitting at an average emission level slightly above the BTF level. Lowering the PM design level to 18 mg/dscm may not be appropriate based on this minimal impact on overall PM emissions.

Thus, EPA specifically invites comment on whether the final rule should establish BTF standard for PM of 35 mg/dscm (or 0.15 lb/ton of raw material (dry basis) feed into the kiln).

3. MACT for Mercury

a. MACT Floor. Mercury emissions from LWAKs are currently controlled by the BIF rule, and LWAKs have elected to comply with the BIF standard by limiting the feedrate of Hg in the hazardous waste.[114] Thus, the MACT floor is based on hazardous waste feed control.

The LWAK mercury emissions data reflect results from 13 test conditions collected from 6 facilities, with a total of 10 kilns being tested. The average mercury emissions for the test conditions ranged from 0.4 µg/dscm to 560 µg/dscm.

To identify the floor level for hazardous waste feed control, the Agency determined that sources with Hg emissions at or below the level emitted by the median of the best performing 12 percent of sources had normalized hazardous waste feedrates (i.e., MTECs)[115] of Hg of 17 µg/dscm or less. Analysis of all LWAKs using this level of hazardous waste feedrate of Hg, or less (i.e., sources having a MTEC of 17 µg/dscm or less), resulted in a MACT floor level of 72 µg/dscm. To meet this standard 99 percent of the time, EPA estimates that a source with average emissions variability among runs of a test condition would need to design and operate the kiln to meet a level of 36 µg/dscm.

EPA estimates that approximately 70 percent of LWAKs can meet this floor level. The national annualized compliance cost of the remaining LWAKs to reduce mercury emissions to the floor level is estimated to be $1.6 million for the entire hazardous waste-burning LWAK industry, and would reduce mercury emissions by 540 pounds per year or by 86 percent from current baseline emissions.

EPA notes that it considered whether all LWAKs would be likely to be able to meet the floor level of 72 µg/dscm using control of hazardous waste feed for Hg at an MTEC of 17 µg/dscm, given that Hg emissions also result from Hg in the raw material feed. EPA has determined that all LWAKs should be able to meet the floor level using the floor control without substituting raw material.

b. Beyond-The-Floor Considerations. The Agency has considered beyond-the-floor (BTF) control for Hg using carbon injection (CI) in combustion gas at temperatures below 400°F, coupled with the MACT floor level control of Hg in the hazardous waste feed. As discussed for CKs, EPA believes that CI can control Hg emissions at or above 90 percent removal efficiency.

To identify a BTF level, EPA considered two approaches that would result in virtually the same BTF standard—6 µg/dscm. Under one approach, EPA would apply a 90 percent removal efficiency for CI to the floor design level of 36 µg/dscm to identify a BTF standard of 6 µg/dscm, which includes a statistically-derived variability factor.

Under a second approach, EPA could account for emissions variability by using a conservative CI removal efficiency of 80 percent to identify a BTF emission standard of 7.2 µg/dscm (based on a design floor level of 36 µg/dscm). Under this approach, a statistically-derived variability factor would not be added.

EPA invites comment on which approach would be more appropriate for identifying a BTF level. EPA, however, is not proposing a BTF standard.

In conjunction with earlier evaluations, the Agency has evaluated the cost and emissions reductions associated with an emission standard of 8 µg/dscm. Although the BTF levels presented above are somewhat different, EPA does not believe that the difference is large enough to significantly affect the information presented below.

One of 11 LWAKs in the database would be able to meet a BTF level of 8 µg/dscm currently. The national annualized compliance cost for the remaining LWAKs to meet the BTF level is estimated to be $4.4 million for the entire hazardous waste-burning LWAK industry. The BTF level would provide an incremental reduction of 60 pounds per year (72 percent) in Hg emissions nationally beyond that achieved with floor controls.

EPA has considered the costs in relation to emissions reductions and the special bioaccumulation potential that Hg poses and has decided that the floor level of 72 µg/dscm best balances those factors. Mercury is one of the more toxic metals known due to its bioaccumulation potential and the neurological health effects at low concentrations. For further discussion see the mercury benefits discussion in Section VII of today's preamble. EPA invites comment, however, on whether there are cost-effectiveness or other factors that would lead the Agency to promulgate a final rule based on the BTF level.

4. Semivolatile Metals

a. MACT Floor. Emissions of SVM from LWAKs are currently controlled under the BIF rule. LWAKs use a combination of hazardous waste feedrate control and PM control to comply with those standards. Accordingly, MACT floor control is based on hazardous waste feedrate control and PM control.

The LWAK semivolatile metals (SVM) (consisting of cadmium and lead) data reflect results from 13 test conditions collected from 6 facilities, with a total of 10 units being tested. Average emissions of the SVM group ranged from 1 µg/dscm to 1670 µg/dscm. Control of semivolatile emissions is associated with PM control (see discussion of SVM control for existing cement kilns). All LWAKs are equipped with a fabric filter as the air pollution control device, although one facility is equipped with a spray dryer, venturi scrubber and wet scrubber in addition to the fabric filter.

The Agency analyzed all available lead and cadmium emissions data and determined that sources with emission levels at or below the level emitted by

[114] EPA notes that one LWAK is equipped with a venturi scrubber that can provide control of Hg. That kiln, however, is the highest Hg-emitting kiln in our database because, EPA believes, it burns waste with high levels of Hg.

[115] MTEC, or maximum theoretical emission concentration, is calculated as the feedrate of (Hg) divided by the gas flow rate. It is used to normalize feedrates of Hg (and other metals and chlorine) across sources with different waste (or fuel) burning capacities.

the median of the best 12 percent of sources employed either: (1) A fabric filter with an air-to-cloth ratio of 1.5 acfm/ft^2 or less with a hazardous waste MTEC less than 270,000 µg/dscm; or (2) a fabric filter and venturi scrubber with an air-to-cloth ratio of 4.2 acfm/ft^2 or less with a hazardous waste MTEC less than 54,000 µg/dscm. Analysis of emissions data from all LWAKs using these MACT technologies resulted in a floor level of 12 µg/dscm.

EPA notes that raw materials and fossil fuels also contribute to LWAK SVM feedrates and emissions. Given that all sources must be able to meet the floor level using the floor control, EPA investigated whether all LWAKs could meet the floor level employing the MACT floor technologies without being forced to substitute raw material. EPA preliminary evaluation determined that 25 percent of sources in the SVM emissions database had raw material containing Cd and Pb in greater concentrations than sources in the expanded MACT pool; thus, these sources may not be able to achieve the floor with MACT alone.[116] However, the Agency believes that the data on which this preliminary finding is based may not reflect the normal, day-to-day Pb and Cd levels in raw material feed.

As noted in the earlier section on cement kilns, one approach to address this issue (of sources with higher levels of SVM metals in their raw materials than sources in the expanded MACT pool and that, therefore, cannot meet the floor level using floor control) is to: (1) Identify the source with the highest normalized (by MTEC) feedrate of metals in raw material; (2) assume the source is also feeding hazardous waste with the floor control MTEC level of the metals; and (3) project SVM emissions from the source based on combined raw material and hazardous waste MTECs using a representative system removal efficiency (SRE) from the expanded MACT pool considering an appropriate variability factor (e.g., variability of emissions among runs within a test condition in the expanded MACT pool). The Agency has not yet conducted this type of analysis, but intends to do so in the near future. EPA also believes that data reflecting normal, day-to-day levels of Pb and Cd in raw materials would be important for this type of analysis, and specifically invites commenters to submit such data as well as their views on the approach suggested above.

EPA estimates that 38 percent of LWAKs are currently meeting the floor level. The national annualized compliance cost of the remaining LWAKs to reduce SVM emissions to the floor level is estimated to be $2.1 million for the entire LWAK industry, and would reduce lead and cadmium emissions nationally by 0.66 tons per year, or by 97 percent from current baseline emissions.

The Agency is proposing an alternative compliance option for SVMs. Since the Agency anticipates the likelihood of development of a multi-metals continuous emissions monitor (CEM) in the near future, the Agency is proposing establishing a higher standard for sources using a properly designed and operated multi-metals CEM. This alternative compliance option would be based on the minimum detection limit of the device, which is estimated to be 60 µg/dscm for SVMs combined.

b. Beyond-The-Floor Considerations. The Agency considered whether to propose a more stringent level than the floor of 12 µg/dscm. EPA has determined that a BTF standard would not be appropriate. Since control of semivolatile emissions is associated with PM control, a more stringent SVM BTF level would require LWAKs to upgrade to more expensive fiberglass bags (e.g., bags backed with teflon membranes) or the addition of newly installed FFs with improved performance media. Although the engineering costs to comply with a BTF SVM level are moderate, the resulting incremental reduction in SVM emissions from the floor level is minimal because the floor level already provides substantial control by reducing baseline emissions by 97 percent. Thus, the Agency believes a SVM BTF standard is not appropriate and is proposing a SVM MACT standard of 12 µg/dscm for existing LWAKs.

5. Low-Volatility Metals

a. MACT Floor. Emissions of LVM from LWAKs are also currently controlled under the BIF rule. LWAKs use a combination of hazardous waste feedrate control and PM control to comply with those standards. Accordingly, MACT floor control is based on hazardous waste feedrate control and PM control.

The low volatility metals (LVM) (consisting of arsenic, antimony, beryllium, and chromium) data reflect results from 13 test conditions collected from 6 facilities, with a total of 10 units being tested. Average emissions of the LVM group ranged from 10 µg/dscm to 289 µg/dscm. Due to the relatively low volatility of these metals, performance of the APCD is the most important factor in controlling LVM emissions.

The Agency analyzed all available LVM emissions data and determined that sources with emission levels at or below the level emitted by the median of the best 12 percent of sources used a fabric filter with an air-to-cloth ratio of 1.8 acfm/ft^2 or less with a hazardous waste MTEC less than 46,000 µg/dscm. Analysis of available emissions data for all LWAKs employing these controls resulted in a floor emission level of 340 µg/dscm.

EPA notes that raw materials and fossil fuels also contribute to LWAK LVM feedrates and emissions. Given that all sources must be able to meet the floor level using the floor control, EPA investigated whether all LWAKs could meet the floor level employing the MACT floor technologies without being forced to substitute raw material. EPA's preliminary evaluation determined that one of the sources in the LVM emissions database had raw material containing LVM in greater concentrations than sources in the expanded MACT pool; thus, this sources may not be able to achieve the floor with MACT alone.[117] EPA requests comments on addressing this issue.

One approach to address this issue (of sources with higher levels of LVM metals in their raw materials than sources in the expanded MACT pool and that, therefore, cannot meet the floor level using floor control) is to: (1) Identify the source with the highest normalized (by MTEC) feedrate of metals in raw material; (2) assume the source is also feeding hazardous waste with the floor control MTEC level of the metals; and (3) project LVM emissions from the source based on combined raw material and hazardous waste MTECs using a representative system removal efficiency (SRE) from the expanded MACT pool considering an appropriate variability factor (e.g., variability of emissions among runs within a test condition in the expanded MACT pool). The Agency has not yet conducted this type of analysis but intends to do so in the near future. EPA also believes that data reflecting normal, day-to-day levels of LVM in raw materials would be important for this type of analysis and specifically invites commenters to submit such data as well as their views on the approach suggested above.

EPA estimates that 92 percent of LWAKs are currently meeting the floor level. The national annualized cost of

[116] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

[117] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

the remaining LWAKs to reduce LVM emissions to the floor level is estimated to be $380,000 for the entire hazardous waste-burning LWAK industry; this would reduce LVM emissions nationally by 0.011 ton per year or by 5 percent from current baseline emissions.

b. Beyond-The-Floor Considerations. The Agency considered whether to propose a more stringent level than the floor of 340 µg/dscm. Since control of low-volatile emissions is associated with PM control, a more stringent LVM BTF level would require LWAKs to upgrade to more expensive fiberglass bags (e.g., bags backed with teflon membranes) or the addition of newly installed FFs with improved performance media. Although the engineering costs to comply with a BTF LVM level are moderate, the resulting reduction in LVM emissions is minimal since LWAK LVM national emissions are estimated to be 0.2 tons per year for the entire industry at the floor level. Thus, the Agency believes a LVM BTF standard is not appropriate and is proposing a LVM MACT standard of 340 µg/dscm for existing LWAKs.

6. Hydrochloric Acid and Chlorine

a. MACT Floor. HCl and Cl_2 emissions from LWAKs are currently regulated by the BIF rule. Only one LWAK facility currently utilizes a venturi scrubber, which is a dedicated control device, designed specifically to remove HCl/Cl_2 (referred to as total chlorine where combined HCl and Cl_2 levels are expressed as HCl equivalents) from the flue gas.

The total chlorine emission database reflects results from 13 test conditions collected from 6 facilities, with a total of 10 units being tested. Average total chlorine emissions range from 13 ppmv to 2080 ppmv. The Agency analyzed all available total chlorine emissions data and determined that sources with emission levels at or below the level emitted by the median of the best 12 percent of sources used either: (1) Hazardous waste feedrate control of total chlorine with a MTEC less than 1.5 g/dscm; or (2) venturi scrubber with hazardous waste MTEC less than 14 g/dscm. The analysis of all available emissions data for LWAKs using these technologies resulted in a floor emissions level of 2100 ppmv, which the Agency has identified as the MACT floor level. To meet this standard 99 percent of the time, a source with average within test condition emission variability would need to be designed and operated to achieve an emission level of 1400 ppmv.

EPA notes that raw materials and fossil fuels also contribute to LWAK chlorine feedrates and emissions. Given that all sources must be able to meet the floor level using the floor control, EPA investigated whether all LWAKs could meet the floor level employing the MACT floor technologies without being forced to substitute raw material. EPA determined that all LWAKs in the total chlorine emissions database would be able to meet the floor level using floor control [118] without switching raw material.

EPA estimates that 85 percent of LWAKs are currently meeting the floor level. The national annualized compliance cost of the remaining LWAKs to reduce total chlorine emissions to the floor level is estimated to be $890,000 for the entire hazardous waste-burning LWAK industry; this would reduce total chlorine emissions nationally by 190 tons per year or 6 percent from current baseline emissions.

b. Beyond-The-Floor Considerations. The Agency has considered BTF controls for improved total chlorine control using a dry scrubber or spray tower scrubber. A dry scrubber should achieve a total chlorine removal efficiency of 90 percent, and a spray tower scrubber should achieve a removal efficiency of 99 percent. Applying the 90 percent removal factor (the more conservative of the two removal efficiencies) [119] to the highest test condition in the database resulted in a BTF standard of 450 ppmv. To meet this standard 99 percent of the time, EPA estimates that a source with average emissions variability (among runs within a test condition) would need to meet a design level of 210 ppmv.

EPA believes that dry scrubbers or spray tower scrubbers are appropriate controls and is proposing a 450 ppmv total chlorine emission standard based on these controls. EPA estimates that 38 percent of LWAKs are currently meeting this BTF level. The national annualized compliance cost for the remaining LWAKs to meet this BTF level rather than comply with the floor controls is estimated to be $5.0 million for the entire hazardous waste-burning LWAK industry. This BTF level would provide an incremental reduction of 2200 tons per year (80 percent) in total chlorine emissions nationally beyond that achieved with the floor controls.

The Agency believes that both wet and dry scrubbing control techniques are applicable to LWAKs for chlorine control. Dry scrubbing is being used at some hazardous waste-burning LWAKs. Control efficiency and outlet chlorine emissions levels are unclear due to conflicting trial burn results, however. One potential problem with the application of dry scrubbing to LWAKs is contamination of the captured LWAK dust with dry sorbent. This may affect whether captured dust can be recycled back into the kiln or incorporated into the final light weight aggregate product. The addition of dry scrubbing could force some kilns either to add a separate, additional FF dedicated to capturing the dry sorbent or dispose of the mixed sorbent and LWAK dust. The Agency invites comment on the effectiveness (and implications on dust management) of dry scrubbing for control of chlorine in hazardous waste-burning LWAKs.

The Agency also considered an additional BTF level of 25 ppmv for LWAKs based on wet scrubbing alone. A further reduction from the proposed BTF design level of 210 ppmv (based on dry scrubbing or spray tower scrubbing) to 25 ppmv would require all thirteen LWAK sources to either install new control equipment, or modify existing control equipment. The incremental cost of this enhanced control would be moderate to high for each of the individual LWAK sources. Although the engineering cost for each facility is moderate to high, the overall cost for LWAKs as a group is high since upgrades are required by every facility. The Agency believes that the resulting moderate decrease in total chlorine emissions may not justify this relatively high engineering cost.

Based on cost-effectiveness considerations, EPA has determined that proposing a BTF standard of 450 ppmv is warranted. As discussed elsewhere in today's preamble, EPA's risk analysis developed for purposes of RCRA shows that the emissions of total chlorine from hazardous waste-burning LWAKs could pose significant risks by direct inhalation, and these risks would be reduced by BTF controls.[120] Thus, the BTF controls would make separate RCRA standards unnecessary.

Additionally, the Agency requests comments on an alternative option to identify the BTF level. Under this

[118] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies'', February 1996.

[119] The Agency believes that many, but not all, LWAKs could use a dry scrubber without adversely affecting the quality of the LWAK dust (which is primarily raw material) for incorporation into products or recycling back into the kiln. See discussion in the text below.

[120] EPA notes that under the BIF regulations, LWAKs are currently subject to site-specific, risk-based emissions standards for HCl/Cl_2. EPA is uncertain why our risk assessment to consider RCRA concerns under today's proposed rule shows that baseline emissions for some LWAKs can pose significant risk.

option the 90 percent reduction in emissions provided by a dry scrubber or spray tower scrubber would be applied to the floor level resulting from hazardous waste feedrate control of total chlorine—2100 ppmv. Thus, at 90 percent control efficiency, the BTF emission standard would be 210 ppmv. To comply with this standard 99 percent of the time, a source with average within test condition emissions variability would need to be designed and operated to meet an emission level of approximately 140 ppmv. EPA invites comment on whether this option is more appropriate to establish the BTF level than applying the BTF percent reduction to the test condition in the database with the highest emissions.

As discussed above, EPA believes that a dry scrubber or spray tower scrubber (in conjunction with the levels achieved using MACT floor controls) are appropriate alternative controls. EPA estimates that 38 percent of LWAKs are currently meeting this alternative BTF level of 210 ppmv. EPA estimates that this BTF level would provide a further incremental reduction in total chlorine emissions nationally beyond that achieved with the proposed BTF standard of 450 ppmv. EPA invites comment on this alternative approach to identify the BTF level.

7. Carbon Monoxide and Hydrocarbons

The Agency is proposing to use carbon monoxide (CO) and hydrocarbons (HC) as surrogates for non-D/F organic HAPs.[121]

a. MACT Floor.

i. Carbon Monoxide. The BIF rule currently limits CO emissions from LWAKs to 100 ppmv on an hourly rolling average (HRA). See § 266.104(b). However, the BIF rule provides an alternative standard that allows higher CO levels if HC levels are less than 20 ppmv.

LWAKs generally have low CO levels (i.e., less than 100 ppmv HRA) achieved by operating under good combustion practices. Good combustion practices include techniques such as thorough fuel, air, and waste mixing; adequate excess oxygen; maintenance of adequate combustion temperature; and blending of waste fuels to minimize combustion perturbations. Accordingly, operating under good combustion practices is identified as the floor control.

Given that 10 of 12 LWAKs for which EPA has CO emissions data have maximum hourly rolling averages for the test condition of less than 100 ppmv, EPA believes it is reasonable and appropriate to identify the floor level as the BIF limit of 100 ppmv. Two LWAKs have CO levels exceeding the 100 ppmv level, however, and these higher levels (i.e., 190 ppmv and 1900 ppmv) are allowed under the BIF rule. EPA is not sure whether these elevated CO levels were caused by operating under poor combustion conditions, or by trace levels of organics desorbing from the raw materials.

If the CO were caused by organics desorbing from raw material, EPA would consider this situation analogous to CKs that do not have a by-pass duct (and thus stack emissions are affected by organics desorbed from raw material). Accordingly, such LWAKs would be exempt from the CO limit (and would be subject to a HC limit of 20 ppmv). (In this situation, floor control (i.e., good combustion practices) could not be used to meet the floor level.) EPA invites comment on how to distinguish between LWAKs that have elevated CO levels because of poor combustion (and that should be subject to the 100 ppmv floor level) and LWAKs that have elevated CO levels because of desorption of organics from raw material (and that should be exempt from the 100 ppmv floor level). If an effective approach to distinguish between these situations is developed, the final rule could distinguish among LWAKs based on those high levels of organics in raw material versus those with low levels.

EPA estimates that over 80 percent of LWAKs are currently meeting the proposed standard. The national annualized compliance cost of the remaining LWAKs to reduce carbon monoxide emissions to the floor level[122] is estimated to be $1.4 million for the entire LWAK industry; this would reduce carbon monoxide emissions nationally by 600 tons per year, or 81 percent from current baseline emissions.

ii. Hydrocarbons. As discussed above, the BIF rule limits HC levels to 20 ppmv HRA when CO exceeds 100 ppmv HRA. As with CO, floor control is operating under good combustion practices. EPA believes it is appropriate to establish the floor level at the lower of the BIF emission limit or the levels that sources actually achieved. An analysis of the available HC data determined that sources with emission levels at or below the level emitted by the median of the best 12 percent of sources used good combustion practices as the control technology. The analysis of all available emissions data for LWAKs believed to be using good combustion practices resulted in a floor emissions level of 14 ppmv.[123]

EPA estimates that 86 percent of LWAKs are currently meeting the floor HC level. The national annualized compliance cost of the remaining LWAKs to reduce hydrocarbon emissions to the floor level is estimated to be $760,000 for the entire LWAK industry; this would reduce hydrocarbon emissions nationally by 14 tons per year, or 31 percent from current baseline emissions.

b. Beyond-The-Floor Considerations. EPA considered BTF levels for CO of 50 ppmv and for HC of 6 ppmv. Control of organic HAP emissions would require the use of a combustion gas afterburner. Addition of an afterburner to a LWAK would be expensive due to the requirement of a large amount of auxiliary fuel to reheat the kiln exit flue gas to temperatures required for organics burnout. Preliminary estimates suggest that going beyond-the-floor for CO and HC would more than double the national costs of complying with the proposed rule. EPA believes that a BTF standard is not appropriate.

EPA estimates that 29 percent of LWAKs are currently meeting the BTF level of 6 ppmv for HC and that 46 percent of LWAKs are currently meeting the BTF levels of 50 ppmv for CO. The Agency has determined that selecting these BTF levels is not appropriate. Therefore, the Agency is proposing a MACT standard for hydrocarbons of 14 ppmv HRA and for carbon monoxide of 100 ppmv HRA.

8. MACT Floor Cost Impacts

The total national annualized compliance costs for existing LWAKs to meet all the MACT floor levels are estimated to be $3 million with the cost per kiln averaging $390,000. These total compliance costs equate to $39 per ton of hazardous waste burned. EPA estimates that one LWAK facility may cease burning hazardous waste due to the compliance costs associated at the floor.

[121] This is in addition to controlling PM as a surrogate for (condensed) semivolatile HAPs.

[122] EPA assumed that the LWAK with CO levels of 1900 ppmv would need to install an afterburner to meet the floor level. EPA acknowledges that this is inappropriate because all sources must be able to meet the floor level using floor control—good combustion practices. As discussed in the text, EPA invites comment on how to identify appropriate MACT floor levels for sources that may have elevated CO levels due to desorption of organics from raw material.

[123] EPA notes that one of seven LWAKs in the HC database had substantially higher test condition maximum HC levels (i.e., 13 ppmv HRA) than the other sources (i.e., 6 to 8 ppmv HRA). As discussed in the text above for CO, it is not clear whether the elevated HC levels were caused by operating under poor combustion conditions or desorption of organics from raw material. EPA invites comment on how to address this situation.

The Agency is proposing to go beyond-the-floor for three pollutants for existing LWAKs: dioxin/furans, mercury, and total chlorine. The total national annualized compliance costs to meet the dioxin/furan, mercury and total chlorine BTF standards in addition to the MACT floor standards for the remaining HAPs are estimated to be $4 million with the cost per kiln averaging $670,000. These total compliance costs increase the cost per ton of hazardous waste burned to $56. EPA estimated that one LWAK facility may cease burning hazardous waste due to the compliance costs associated with this suite of floor and BTF standards.

B. MACT for New Sources

This section summarizes EPA's rationale for establishing MACT for new LWAKs for each HAP, HAP surrogate, or HAP group. Table V.5.B.1 summarizes the proposed MACT standards for new LWAKs, which were determined using the analytical process described in Part Three, Section VII and in ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards and Technologies''.

TABLE IV.5.B.1.—PROPOSED EMISSION LEVELS FOR NEW LWAKS

HAP or HAP Surrogate	Proposed Standards [1]
Dioxin/furans	0.20 ng/dscm TEQ.
Particulate Matter	0.030 gr/dscf (69 mg/dscm).
Mercury	72 µg/dscm.
SVM [Cd, Pb]	5.2 µg/dscm [2].
LVM [As, Be, Cr, Sb]	55 µg/dscm [3].
HCl + Cl_2	62 ppmv.
CO	100 ppmv.
HC	14 ppmv.

[1] All emission levels are corrected to 7 percent O_2.
[2] An alternative standard of 60 µg/dscm would apply if the source elects to document compliance using a multi-metals CEM.
[3] An alternative standard of 80 µg/dscm would apply if the source elects to document compliance using a multi-metals CEM.

1. MACT New for Dioxin/Furan

a. MACT NEW Floor. EPA used the Agency's data on the performance of D/F control technology to identify MACT floor controls and the floor level for new facilities. The MACT floor level for D/F emissions from LWAKs is 0.20 ng/dscm (TEQ) or (temperature at the PM control device not to exceed) 418 °F.

b. Beyond-The-Floor Considerations. The BTF considerations for new LWAKs were the same as for CKs. Therefore, EPA is proposing a BTF standard for new LWAKs of 0.20 ng/dscm (TEQ) for the same reasons applicable to CKs.

2. MACT New for Particulate Matter

a. MACT New Floor. EPA's analysis of available PM data shows that the single best APCD for controlling particulate emissions is a fabric filter with an air-to-cloth ratio less than 1.5 acfm/ft^2 which represents MACT technology for new sources. An evaluation of all sources employing this technology shows that this technology can consistently achieve a PM emission of 0.054 gr/dscf.

b. Beyond-The-Floor Considerations. For the same reasons as discussed for existing LWAKs, the Agency is proposing a lower BTF standard for new LWAKs. Therefore, the Agency is proposing the MACT standard of 69 mg/dscm (0.03 gr/dscf) for new LWAKs.

As discussed above for existing LWAKs, EPA specifically invites comment on whether the final rule should establish an alternative BTF standard for PM of 35 mg/dscm (or 0.15 lb/ton of raw material (dry basis) feed into the kiln).

3. MACT New for Mercury

a. MACT New Floor. The MACT new floor analysis is the same as existing sources because the expanded pools for each, based on the single best performing source, are identical. As discussed earlier, LWAKs control their mercury input (and therefore much of their emissions) through the control of the mercury content in the hazardous waste. The Agency is defining the MACT floor technology as feedrate control with a hazardous waste MTEC less than 17 µg/dscm based on performance of the single best performing source. Analysis of all existing LWAK sources using this hazardous feedrate control resulted in a MACT floor level of 72 µg/dscm.

b. Beyond-the-Floor Consideration. The Agency is considering the same two BTF options for new LWAKs as discussed for existing sources—Option 1 is 6 µg/dscm, and Option 2 is 7.2 µg/dscm. The Option 1 mercury BTF level of 6 µg/dscm is achievable based on the use of some degree of hazardous waste feedrate control and/or add-on mercury control with injection of activated carbon, assuming a 90 percent reduction. The Option 2 level of 7.2 µg/dscm represents an achievable level based on both achievement of floor levels and use of carbon injection, assuming conservative 80 percent reduction.

Therefore, EPA is proposing a mercury MACT standard of 72 µg/dscm for existing LWAKs and requesting comments on possible BTF standard of 6 µg/dscm and 7.2 µg/dscm.

4. MACT New for Semivolatile Metals

a. MACT New Floor. EPA characterized the single best performing source with the lowest SVM emissions and determined that the best performing source used a fabric filter with an air-to-cloth ratio of 1.5 acfm/ft^2 or less for a kiln system with a hazardous waste (HW) MTEC of 270,000 µg/dscm or less. Analysis of all sources using this technology or better (i.e., expanded MACT pool of facilities) resulted in a floor level of 5.2 µg/dscm for new LWAKs.

The Agency recognizes that 5.2 µg/dscm is a low floor level and is concerned about potential problems in its approach to setting the MACT floor level. The expanded MACT pool included only one other test condition besides the single best source, and EPA is concerned that this low data set resulted in a low floor level. In addition, EPA is concerned that the single best performing source may have low SVM feedrates in the raw material, which could result in a floor level that is unachievable. EPA invites comment on how to address these potential issues.

The Agency is proposing an alternative compliance option for SVMs. Since the Agency anticipates the likelihood of development of a multi-metals continuous emissions monitor (CEM) in the near future, the Agency is proposing establishing a higher standard for sources using a properly designed and operated multi-metals CEM. This alternative compliance option would be based on the minimum detection limit of the device which is estimated to be 60 µg/dscm for SVMs combined.

b. Beyond-the-Floor Considerations. EPA has determined that proposing a BTF standard is not warranted for the same reasons that a more stringent level was not proposed for existing sources. Therefore, the Agency is proposing a semivolatile metals MACT standard of 5.2 µg/dscm for new LWAKs.

5. MACT New for Low-Volatile Metals

a. MACT New Floor. EPA characterized the best particulate control device and identified the floor technology as a fabric filter with an air-to-cloth ratio of 1.3 acfm/ft^2 or less with a hazardous waste (HW) MTEC less than 37,000 µg/dscm. Analysis of all existing LWAK sources employing either of these technologies resulted in a floor emissions level of 55 µg/dscm for new LWAKs.

The Agency is proposing an alternative compliance option for LVMs. Since the Agency anticipates the likelihood of development of a multi-metals continuous emissions monitor

(CEM) in the near future, the Agency is proposing establishing a higher standard for new sources using a properly designed and operated multi-metals CEM. This alternative compliance option would be based on the minimum detection limit of the device which is estimated to be 80 µg/dscm for these LVM metals combined.

b. Beyond-the-Floor Considerations. EPA has determined that proposing a BTF standard is not warranted for the same reasons that a more stringent level was not proposed for existing sources. Therefore, the Agency is proposing a low-volatile metals MACT standard of 55 µg/dscm for new LWAKs.

6. MACT New for Hydrochloric Acid and Chlorine

a. MACT New Floor. EPA characterized the single best performing source with the lowest HCl/Cl_2 (total chlorine) emissions and determined that the best performing source used a venturi scrubber with a hazardous waste (HW) MTEC of 14 g/dscm or less. Analysis of all sources using this technology or better (i.e., expanded MACT pool of facilities) resulted in a floor level of 62 ppmv for new LWAKs.

b. Beyond-the-Floor Considerations. The MACT floor is characterized by a technology that is able to achieve a 99 percent removal efficiency. A BTF level is not warranted because the floor level is based on a technology that is able to achieve the highest removal efficiency for HCl/Cl_2. Therefore, the Agency is proposing a HCl/Cl_2 MACT standard of 62 ppmv for new LWAKs.

7. MACT New for Carbon Monoxide and Hydrocarbons

a. MACT New Floor. The Agency believes that control of non-dioxin organic emissions can be achieved by establishing emissions limits on hydrocarbons and carbon monoxide. As discussed earlier for existing LWAKs, the Agency is proposing a MACT standard of 14 ppmv for HC and of 100 ppmv for CO, based on floor levels

b. Beyond-the-Floor Considerations. EPA considered control for organic HAP emissions based on the use of a combustion gas afterburner. Even though EPA believes that BTF levels for CO of 50 ppmv and for HC of 6 ppmv are achievable with an afterburner, using these values for a BTF standard is not appropriate and is not warranted at this time (see discussion for existing LWAKs). Therefore, EPA is proposing a MACT standard of 14 ppmv for HC and of 100 ppmv for CO for new LWAKs.

8. MACT New Cost Impacts

A detailed discussion of the costs and economic impacts for new LWAKs is presented in Part Seven of today's proposal and ''Regulatory Impact Assessment for Proposed Hazardous Waste Combustion MACT Standards''.

C. Evaluation of Protectiveness

In order to satisfy the Agency's mandate under the Resource Conservation and Recovery Act to establish standards for facilities that manage hazardous wastes and issue permits that are protective of human health and the environment, the Agency conducted an analysis to assess the extent to which potential risks from current emissions would be reduced through implementation of MACT standards. The analysis conducted for hazardous waste-burning LWAKs is similar to the one described above for hazardous waste incinerators and cement kilns. The procedures used in the Agency's risk analyses are discussed in detail in the background document for today's proposal.[124] In evaluating the MACT standards, the Agency used the design value which is the value the Agency expects a source would have to design to in order to be assured of meeting the standard on a daily basis and hence is always a lower value than the actual standard for all HAPs controlled by a variable control technology.[125]

The risk results for hazardous waste-burning lightweight aggregate kilns are summarized in Table V.5.C.1 for cancer effects and Table V.5.C.2 for non-cancer effects for the populations of greatest interest, namely subsistence farmers, subsistence fishers, recreational anglers, and home gardeners. The results are expressed as a range representing the variation in exposures across the example facilities (and example waterbodies for surface water pathways) for the high-end and central tendency exposure characterizations across the exposure scenarios of concern. For example, because dioxins bioaccumulate in both meat and fish, the subsistence farmer and subsistence fisher scenarios are used to determine the range.[126]

TABLE V.5.C.1.—INDIVIDUAL CANCER RISK ESTIMATES FOR LIGHTWEIGHT AGGREGATE KILNS [1]

	Dioxins	Semi-volatile metals [2]	Low volatile metals [3]
Existing Sources			
Baseline	2E–9 to 4E–7	1E–8 to 5E–7	9E–10 to 4E–7.
Floor	1E–8 to 2E–6 [4]	1E–8 to 6E–8	5E–7 to 1E–5.
BTF	1E–8 to 2E–6 [5]		
New Sources			
Floor	1E–8 to 2E–6[4]	6E–9 to 3E–8	7E–8 to 2E–6.
BTF	1E–8 to 2E–6[5]		
CEM Option [6]		6E–8 to 3E–7	2E–7 to 5E–6.

[1] Lifetime excess cancer risk.
[2] Carcinogenic metal: cadmium.
[3] Carcinogenic metals: arsenic, beryllium, and chromium (VI).
[4] Based on 0.2 ng/dscm TEQ as both a central tendency and high-end estimate.
[5] Based on 0.20 ng/dscm TEQ.
[6] Based on SVM standard of 60 µg/dscm and LVM standard of 80 µg/dscm (applicable only if the source elects to document compliance using a multimetals CEM).)

[124] ''Risk Assessment Support to the Development of Technical Standards for Emissions from Combustion Units Burning Hazardous Wastes: Background Information Document'', February 20, 1996.

[125] For the semi-volatile and low volatility metals categories, the Agency assumed the source could emit up to the design value for each metal in the category for the purpose of assessing protectiveness.

[126] For the semi-volatile and low volatility metals categories, the inhalation MEI scenarios are also

TABLE V.5.C.2—INDIVIDUAL NON-CANCER RISK ESTIMATES FOR LIGHTWEIGHT AGGREGATE KILNS [1]

	Semi-volatile metals [2]	Low volatile metals [3]	Hydrogen chloride	Chlorine
Existing Sources				
Baseline	<0.001 to 0.006	<0.001 to 0.007	0.1 to 4	0.03 to 0.3.
Floor	<0.001	<0.001 to 0.08	0.8 to 1 [4]	4 to 7 [5].
BTF			0.1 to 0.2 [4]	0.6 to 1 [5].
New Sources				
Floor	<0.001	<0.001 to 0.01	0.02 to 0.04 [4]	0.1 to 0.2 [5]
BTF			0.01 to 0.02 [4]	0.07 to 0.1 [5]
CEM Option [6]	<0.001 to 0.001	<0.001 to 0.03		

[1] Hazard quotient.
[2] Cadmium and lead.
[3] Antimony, arsenic, beryllium, and chromium.
[4] HCl + Cl_2 assuming 100 percent HCl.
[5] HCl + Cl_2 assuming 10 percent Cl_2.
[6] Based on SVM standard of 60 µg/dscm and LVM standard of 80 µg/dscm (applicable only if the source elects to document compliance using a multi-metals CEM).

The risk analysis indicates that for the semi-volatile and low volatility metals categories, the MACT standards for lightweight aggregate kilns are protective at the floor for both existing and new sources. The analysis indicates that the CEM compliance option for new sources is also protective. The analysis also indicates that for dioxins, both the floor levels and the proposed beyond the floor standards are protective. The analysis also indicates that for hydrogen chloride and chlorine (Cl_2), the proposed beyond-the-floor standards for existing sources, rather than the floor levels, are protective.

VI. Achievability of the Floor Levels

As discussed in sections III, IV, and V above, the MACT floor levels were selected for each source category by identifying the best performing sources for each individual HAP or HAP surrogate. This is the approach typically used by the Agency in establishing MACT standards.

Nonetheless, the Agency recognizes that this approach raises the question of whether the selected floor levels will be achievable simultaneously.

An alternative approach that would ensure simultaneous achievability of the floor levels would be to identify the best performing sources for a particular HAP or HAP surrogate (e.g., D/F or PM) and to consider emissions only from those sources [127] to establish floor levels for the other HAPs or HAP surrogates. EPA

To address concerns relating to the simultaneous achievability of the proposed standards, which are a combination of floor and BTF emissions levels, the Agency investigated whether sources could achieve the proposed standards without making any upgrades to existing equipment. It is important to note that, under the current approach used by the agency in establishing MACT standards (i.e. the HAP by HAP approach—utilizing the highest emitting source in the expanded MACT pool), approximately 5 to 8 percent of the facilities currently operating will meet all of the proposed standards. Furthermore, subject to the data caveats noted for certain HAPs and source categories (which the Agency believes can be resolved properly), it is the opinion of the Agency that 100 percent of the facilities who use MACT floor and beyond-the-floor technologies can meet all of the proposed standards simultaneously.

Specific information and data pertaining to the analysis of simultaneous achievability can be found in ''Regulatory Impact Assessment for Proposed Hazardous Waste Combustion MACT Standards''.

VII. Comparison of the Proposed Emission Standards With Emission Standards for Other Combustion Devices

Although not explicitly part of the MACT standard setting process, EPA believes, for perspective, it is appropriate to compare the proposed emissions standards to those of other waste-burning devices and similar devices. (In some cases, such a comparison may show that a particular technology or level of performance is demonstrated as well.) The standards used for comparison have either been proposed by EPA or are guidelines promulgated by the European Union (EU). The standards for these various type of devices will be different for reasons including: (1) Different statutory authorities and requirements; (2) different levels of emission control for existing sources; and (3) different potential to emit high levels of specific HAPs. Nonetheless, EPA believes a comparison of standards is instructive.

Tables VII.1 and VII.2 contain the standards for municipal waste combustors (MWCs), medical waste incinerators (MWIs), EU hazardous waste combustors, and the standards proposed here for existing and new facilities, respectively.

[127] Another option would be to consider emissions from other sources that employ equivalent or better control for the other HAPs or HAP surrogates. has not used this approach because it would result in establishing unreasonably high floor levels for most HAPs or HAP surrogates that arbitrarily reflect the control devices (and emission levels) that happen to be used by sources that are

TABLE VII.1.—COMPARISON OF STANDARDS FOR EXISTING SOURCES

	Large MWCs	Proposed MWIs	EU HWCs (1)	Proposed HW incinerators	Proposed HW cement kilns	Proposed HW LWAKs
Dioxin/Furan: ng/dscm TEQ and/or Total congeners.	30 Total (or 15 if testing less frequent).	1.9 TEQ or 80 Total.	0.19 TEQ	0.20 TEQ.		
PM, mg/dscm	27	30	13 24-hr avg 13-39 30-min avg (2).	69 2-hr avg		
Hg, µg/dscm	80 or 85% Reduct	470 or 85% Reduct..	130	50 10-hr avg		72 10-hr avg.
SVM, µg/dscm	Cd: 40 Pb: 49	Cd: 50 Pb: 100	Cd: 65 Tl: 65 Pb: 130 (3)	270	57	12.
LVM, µg/dscm	none	none	1170 (3)	210	130	340.
CO, ppmv	50 to 250 4 to 24 hr avg.	50 12-hr avg	52, 24 hr avg 104, 30 min avg (4). 156, 10 min avg (4).	100 1 hr avg.	Wet and Long, Dry Kilns None. Kilns with By-pass 100 in by-pass duct (or HC cannot exceed 6.7) 1 hr avg.	100 1 hr avg.
HC, ppmv	None	None	8, 24 hr avg 8–16, 30 min avg (2).	12 1 hr avg	Wet and Long, Dry Kilns 20 in main stack 1 hr avg. Kilns with By-pass 6.7 in by-pass (or CO cannot exceed 100) 1 hr avg.	14 1 hr avg.
HCl and Cl_2, ppmv as HCl equivalents (5).	31 or 95% Reduct	42 or 97% Reduct	8, 24-hr avg 8–48, 30 min avg (2).	280	630	450.

Notes: [1] The EU HWC guidelines have been corrected from the European basis of 11% O_2 and 0°C to the US basis of 7% O_2 and 20°C. Both are expressed on dry emissions.

[2] The EU HWC PM, HC, and HCl guidelines are based either 97 % compliance with the lower number or 100% compliance with the higher number on a 30-minute average over a year.

[3] The EU LVM guideline is 1300 µg/dscm and includes Sb, As, Pb, Cr, Co, Cu, Mn, Ni, V, Sn. If all metals are emitted equally, their contribution is 130 $_2$g/dscm. Pb, a SVM, was subtracted from this group, resulting in the 1170 µg/dscm level.

[4] The EU HWC CO guideline is based on either 95% compliance with the 156 ppm level on a 10 minute average or 100% compliance with the 104 ppm level on a 30-minute average in any day.

[5] The proposed MWC and MWI and the EU MWC guideline are for HCl only.

TABLE VII.2.—COMPARISON OF STANDARDS FOR NEW SOURCES

	Large MWCs	MWIs	EU HWCs [1]	Proposed HW incinerators	Proposed HW cement kilns	Proposed HW LWAKs
Dioxin/Furan: ng/dscm TEQ, and/or Total congeners	13 Total (or 7 if testing less frequent)	1.9 TEQ or 80 Total	0.19 TEQ	0.20		
PM, mg/dscm	24	30	13 24-hr avg 13–39 30-min avg [2].	69 2-hr avg		
Hg, µg/dscm	80 or 85% Reduct	470 or 85% Reduct.	6.5	50 10-hr avg		72 10-hr avg.
SVM, µg/dscm	Cd: 20 Pb: 20	Cd: 50 Pb: 100	Cd: 3.25 Tl: 3.25 Pb: 65 [3]	62	55	5.2.
LVM, µg/dscm	None	None	585 [3]	60	44	55.
CO, ppmv	50 to 150 4 to 24 hr avg.	50 12-hr avg	52, 24-hr avg 104, 30 min avg [4] 156, 10 min avg [4]	100 1 hr avg	Wet and Long, Dry Kilns None Kilns with By-pass 100 in by-pass duct (or HC cannot exceed 6.7) 1 hr avg.	100 1 hr avg.

TABLE VII.2.—COMPARISON OF STANDARDS FOR NEW SOURCES—Continued

	Large MWCs	MWIs	EU HWCs [1]	Proposed HW incinerators	Proposed HW cement kilns	Proposed HW LWAKs
HC	None	None	8, 24 hr avg 8–16, 30 min avg [2].	12 1 hr avg	Wet and Long, Dry Kilns 20 in main stack 1 hr avg Kilns with By-pass 6.7 in by-pass (or CO cannot exceed 100) 1 hr avg	14 1 hr avg.
HCl and Cl_2, ppmv as HCl equivalents [5]	25 or 95% Reduct	42 or 97% Reduct	8, 24-hr avg 8–48, 30 min avg [2]	67		62.

Notes:
[1] The EU HWC guidelines have been corrected from the European basis of 11% O_2 and 0°C to the US basis of 7% O_2 and 20°C. Both are expressed on dry emissions.
[2] The EU HWC PM, HC, and HCl guidelines are based either 97 % compliance with the lower number or 100% compliance with the higher number on a 30-minute average over a year.
[3] The EU LVM guideline is 650 µg/dscm and includes Sb, As, Pb, Cr, Co, Cu, Mn, Ni, V, Sn. If all metals are emitted equally, their contribution to the guideline is 65 µg/dscm. Pb, a SVM, was subtracted from this group, resulting in the 585 µg/dscm level.
[4] The EU HWC CO guideline is based on either 95% compliance with the 156 ppm level on a 10 minute average or 100% compliance with the 104 ppm level on a 30-minute average in any day.
[5] The proposed MWC and MWI standards and the EU HWC guideline are for HCl only.

VIII. Alternative Floor (12 Percent) Option Results and Option to Address Variability

As described in Part 3, Section 5, EPA considered another approach (termed the ''12 percent approach'') to establishing the MACT floor. In this approach, the Agency selected an emissions floor level based on the average emissions of the 12 percent MACT pool and the average variability within the pool. As in the other approaches, the standards are based on HW MTEC where appropriate, 3-run averages, and a 99th percentile confidence interval.

Through the evaluation of the emissions database using this 12 percent approach, it was determined that various sources equipped with floor controls would be unable to meet the floor emission limits. EPA believes that, if this approach is used to determine emission standards, a situation would be created that is arguably inconsistent with the spirit of the Act. Furthermore, it could subject the regulated community to an undue burden—one in which some facilities in the MACT floor pool must add control equipment in addition to the recognized floor controls in order to meet the floor levels. It could also place EPA in a position of defending a floor-based standard in which the identified floor control technology does not clearly achieve the specified floor emissions levels for all of the facilities in the MACT floor pool. Although we are inclined not to use this evaluation method due to these concerns, we invite comment on this approach versus other MACT floor approaches.

Additionally, information regarding the level of protection these standards provide can be found in U.S. EPA, ''Risk Assessment Support to the Development of Technical Standards for Emissions from Combustion Units Burning Hazardous Wastes: Background Information Document'', February 20, 1996.

A. Summary of Results of 12 Percent Analysis

Table VIII.1 shows the results of the 12 percent floor analysis for existing sources:

TABLE VIII.1.—12 PERCENT APPROACH MACT FLOOR RESULTS[1]

HAP	Units	Incinerators	Cement kilns	LWA kilns
		Stnd	Stnd	Stnd.
D/F	µg TEQ	0.25	0.23	0.23.
Hg	µg/dscm	13	32	32.
HCl/Cl_2	ppmv	23	25	1800.
SVM	µg/dscm	53	240	61.
LVM	µg/dscm	61	46	57.
PM	gr/dscf	0.024	0.03	0.012.
CO	ppmv	100	n/a	100.
HC	ppmv	12	Main [2]:20 by pass [3]:6.7 (or CO 100).	14.

[1] All emissions levels are corrected to 7 percent O_2.
[2] Applicable only to long wet and dry process cement kilns (i.e., not applicable to preheater and/or precalciner kilns).
[3] Emissions standards applicable only for cement kilns configured with a by-pass duct (typically preheater and/or precalciner kilns). Sources must comply with either the HC or CO standard in the by-pass stack.

Table VIII.2 shows the results of the 12 percent approach considering BTF analyses for select HAPs for existing sources:

TABLE VIII.2.—12 PERCENT APPROACH BTF OPTION[1]

HAP	Units	Incinerators	Cement kilns	LWA kilns
		Stnd	Stnd	Stnd
D/F	µg TEQ	0.25	0.23	0.23.
Hg.				
Hg	µg/dscm	13	8	8.
HCl/Cl_2	ppmv	23	25	67.
SVM	µg/dscm	53	240	61.
LVM	µg/dscm	61	46	57.
PM	gr/dscf	0.024	0.03	0.012.
CO	ppmv	100	n/a	100.
HC	ppmv	12	Main[2]:20 bypass[3]:6.7 (or CO 100).	14.

[1] All emissions are corrected to 7 percent O.
[2] Applicable only to long wet and dry kilns (i.e., not applicable to preheater and/or precalciner kilns).
[3] Emissions standard applicable only for cement kilns configured with a by-pass duct (typically preheater and/or precalciner kilns). Source must comply with either the HC or CO standard in the by-pass stack.

Information pertaining to the calculation of these floor emission levels can be found in U.S. EPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of Proposed MACT Standards and Technologies''.

B. Summary of MACT Floor Cost Impacts and Emissions Reductions.

Under the 12 percent approach, the total national annualized compliance costs for existing sources to meet the MACT floor levels are estimated to be: (1) for incinerators, $28 million, with the cost per facility averaging $971,000; (2) for cement kilns, $59 million, with the cost per facility averaging $879,000; and (3) for LWAKs, $3 million, with the cost per facility averaging $860,000. These total compliance costs equate to $49 per ton of hazardous waste burned for incinerators, $65 per ton of hazardous waste burned for cement kilns, and $52 per ton of hazardous waste burned for LWAKs. EPA estimates that up to four commercial incinerators will cease burning hazardous waste due to the compliance costs associated at the floor, in addition to three cement kilns and one lightweight aggregate kiln. However, we also believe that the these estimates are exaggerated because they are based on emissions levels determined during trial burns and compliance performance tests, which produce emissions far in excess of the emission levels most facilities achieve in day-to-day operation.

There would be substantial emissions reductions at the MACT floor level, compared to baseline emissions. Table VIII.3 summarizes the estimated national emissions for incinerators if the facilities were operating at a level to meet the 12 percent MACT floor level. Also, the estimated percent reduction of HAP emissions from baseline are shown. Tables VIII.4 and VIII.5 show similar results for cement and lightweight aggregate kilns.

TABLE VIII.3.—NATIONAL EMISSIONS ESTIMATES FOR INCINERATORS 12 PERCENT MACT APPROACH

HAP	Annual emissions at MACT floor level	Percent reduction from baseline emissions (percent)
Dioxin/Furans (TEQ)	3.0 grams TEQ/yr	96
Mercury	0.2 tons/year	96
SVM (Cd, Pb)	1.0 tons/year	98
LVM (As, Cr, Sb, Be)	0.8 tons/year	97
HCl/Cl_2	293 tons/year	83
Particulate Matter	650 tons/year	67

TABLE VIII.4.—NATIONAL EMISSIONS ESTIMATES FOR CEMENT KILNS 12 PERCENT MACT APPROACH

HAP	Annual emissions at MACT floor level	Percent reduction from baseline emissions (percent)
Dioxin/Furans (TEQ)	7.0 grams TEQ/yr	99
Mercury	1.7 tons/year	71
SVM (Cd, Pb)	4.0 tons/year	87
LVM (As, Cr, Sb, Be)	0.9 tons/year	73
HCl/Cl_2	761 tons/year	71
Particulate Matter	1877 tons/year	56

TABLE VIII.5.—NATIONAL EMISSIONS ESTIMATES FOR LWAKS 12 PERCENT MACT APPROACH

HAP	Annual emissions at MACT floor level	Percent reduction from baseline emissions
Dioxin/Furans (TEQ)	(not determined) [128]	(not determined)
Mercury	0.03 tons/year	91%.
SVM (Cd, Pb)	0.04 tons/year	94%.
LVM (As, Cr, Sb, Be)	0.07 tons/year	67%.
HCl/Cl_2	2760 tons/year	9%.
Particulate Matter	26 tons/year	45%.

C. Alternative Floor Option: Percent Reduction Refinement

The Agency is also considering whether to use a refinement technique in establishing the MACT floor that would modify either the 6 percent approach, used as the basis of today's proposal, or the 12 percent option discussed previously. This refinement attempts to address the unfavorable conditions (i.e. worst-case trial burn or COC testing) under which the emissions data was generated.

As discussed elsewhere, EPA is concerned that our hazardous waste emissions database is biased high due to the operating conditions that generated the data (e.g., metals and chlorine spiking, non-optimal APCD performance). Therefore, the analysis of this database results in floor levels that are artificially inflated and not adequately representative of day-to-day emissions levels. One simplified option to address this concern is to apply a ''percent reduction'' to the calculated floor levels derived from either the 6 percent or 12 percent approach. We invite comment on this approach particularly with respect to the appropriate percent reduction(s) to be applied. We also solicit information and data based on routine facility operations and emissions levels that could be used to calculate MACT floors that better reflect day-to-day operations and that would avoid the potential difficulties in attempting to determine the appropriate percent reduction(s) to be used.

IX. Additional Data for Comment

The Agency has received submissions from various stakeholders detailing alternative approaches to establish MACT floor and beyond-the-floor levels. The Agency has placed these submissions into the docket [129] for this rulemaking and specifically requests comment on the approaches used and the emission levels identified. This section provides some information on analyses conducted by the Cement Kiln Recycling Coalition and Waste Technologies Industries to determine MACT and MACT floor levels.

A. Data from Cement Kiln Recycling Coalition

The Cement Kiln Recycling Coalition (CKRC) is a trade association with a membership comprised of cement companies that burn hazardous waste fuel and related companies engaged in the processing and marketing of these fuels. CKRC conducted a technical analysis of the hazardous waste-burning cement kiln's emissions database, identified the best performing sources and MACT control technology, and determined MACT floor emission levels for dioxin and furans and six metal HAPs. CKRC's initial analysis specified separate MACT floor levels based on cement kiln process type (i.e., separate floors were developed for cement kilns employing dry production processes and wet production processes).[130] The MACT floor results are provided in Table IX.A.1 below.

TABLE IX.A.1.—CKRC'S PROPOSED MACT FLOOR EMISSION LEVELS FOR EXISTING CEMENT KILNS (BASED ON DRY AND WET PROCESS SUB-CATEGORIES)

HAP	Dry process CKs	Wet Process CKs
Arsenic	3 µg/dscm	32 µg/dscm.
Beryllium	0.3 µg/dscm	24 µg/dscm.
Cadmium	30 µg/dscm	62 µg/dscm.
Chromium	485 µg/dscm	125 µg/dscm.
Chromium (VI)	8 µg/dscm	29 µg/dscm.
Lead	143 µg/dscm	911 µg/dscm.
Mercury	NA	96 µg/dscm.
Dioxins/Furans	1.7 ng/dscm (TEQ)	2.0 ng/dscm (TEQ).

While CKRC states that sub-categorization is appropriate, they have analyzed recent data based on no sub-categorization and arrived at the floor levels and (generally) achievable beyond-the-floor (BTF) levels presented in Table IX.A.2.[131] Note that this subsequent re-analysis does not differentiate cement kilns by process type (i.e., wet and dry process). CKRC also emphasizes that the levels identified in Table IX.A.2 were derived assuming testing under normal facility operating conditions using hazardous waste as a fuel and does not reflect use

[128] The database is insufficient to make a realistic determination of the emissions at the baseline or for the 12 percent option.

[129] In addition to the submission discussed in this section, the petitions in the docket for this rulemaking include: (1) Hazardous Waste Treatment Council (now Environmental Technology Council), ''Petition for Rulemaking under the Resource Conservation and Recovery Act to Establish Uniform National Performance Standards for all Combustion Facilities based on the Best Available Technology'', May 18, 1994; and (2) Cement Kiln Recycling Coalition, ''Petition for Rulemaking under the Resource Conservation and Recovery Act to Modify the Rules for the Burning of Hazardous Waste'', January 18, 1994.

[130] Environmental Risk Sciences Incorporated (prepared for CKRC), ''An Analysis of Technical Issues Pertaining to the Determination of MACT Standards for the Waste Recycling Segment of the Cement Industry'' (Volumes I–III), May 3, 1995.

[131] Letter from Craig Campbell, CKRC, to James Berlow, U.S. EPA, undated but received February 20, 1996.

of continuous emissions monitors for PM or individual HAPs. In addition, CKRC emphasizes that, because of natural variations found in the cement industry (e.g., high levels of metals in some raw materials), not all kilns may be able to achieve these levels. CKRC believes this reinforces the need for the ability to make site-specific adjustments to the limits.

TABLE IX.A.2.—CKRC'S ALTERNATE MACT FLOOR AND BEYOND-THE-FLOOR LEVELS FOR EXISTING CEMENT KILNS (NO SUB-CATEGORIZATION)

HAP	MACT floor level	BTF levels
Particulate matter	0.030 gr/dscf	0.025 gr/dscf.
Mercury	118 μg/dscm	80 μg/dscm.
Semivolatile metals	261 μg/dscm	150 μg/dscm.
Low-volatile metals	229 μg/dscm	130 μg/dscm.

We invite comment on CKRC's approach to identify MACT floor and BTF levels.

CKRC presented this re-analysis of MACT emissions levels in tandem with a recommendation that monitoring metals levels in collected cement kiln dust (CKD) is a more effective approach to ensure compliance with metals emission standards than monitoring the feedrate of metals in all feedstreams. CKRC suggested that CKD monitoring for metals should be used until CEM technologies become a workable alternative. Although CKD monitoring for metals is currently allowed under the BIF rule in lieu of feedstream monitoring and the same methodology is incorporated into today's proposal (see proposed § 63.1210(n)(2)), CKRC has suggested revisions to the methodology to make it more workable. See Part Five, Section II.C.4.c.v of this preamble for a discussion of CKRC's recommendations.

B. Data from Waste Technologies Industries

Waste Technologies Industries (WTI) has submitted data and information to the Agency pertaining to identification of MACT floor levels for incinerators.[132] WTI raises the following issues: (1) in determining MACT floor, the Agency has not considered all of WTI's emissions data that have been submitted to the Agency; and (2) the Agency should subdivide the incinerator source category to develop separate MACT standards for commercial versus on-site incinerators.

We have investigated WTI's concern about not considering its emissions data and, based on a preliminary analysis, determined that WTI's data would not affect the MACT floor levels that the Agency has identified for existing or new incinerators.[133]

WTI is recommending that the Agency subdivide incinerators to develop separate standards for commercial and on-site sources. WTI notes that its emissions levels are substantially lower than the standards that (it believes) EPA is considering for proposal. In addition, WTI presents what it believes are appropriate MACT limitations for existing commercial, off-site incinerators.[134] The table below compares WTI's suggested MACT limitations for commercial incinerators to the Agency's proposed standards:

Pollutant	WTI's recommended standard	EPA's proposed standard
PM (mg/dscm)	33 (0.01 gr/dscf)	69 (0.03 gr/dscf).
SVM (μg/dscm)	167	270.
LVM (μg/dscm)	72	210.

We invite comment on whether incinerators should be subdivided by commercial, off-site units versus on-site units. Commenters should consider the criteria EPA uses to determine whether to subdivide a source category as discussed above in Section I of Part Four of this preamble. We also invite comment on WTI's approach to identify MACT limitations for commercial, off-site incinerators.

PART FIVE: IMPLEMENTATION

I. Selection of Compliance Dates

Sections A and B below explain when existing and new facilities, respectively, would have to document compliance with the proposed MACT standards. Section C presents a proposal for a one year compliance extension in order to institute pollution prevention/waste minimization measures.

EPA is proposing a different definition of compliance date for HWCs than is provided by existing 40 CFR § 63.2. Although that section defines compliance date as the date when a source must be in compliance with the standards, 40 CFR § 63.7 requires performance testing to document compliance with the emission standards (and performance evaluations to document compliance with requirements for continuous monitoring systems) after the compliance date. This use of the term ''compliance date'' is not consistent with the current RCRA definition and regulatory requirements for HWCs.

To achieve more consistency and to avoid potential duplication and conflict, the Agency is proposing to define compliance date for HWCs in § 63.1201 as the date when a HWC must submit the initial notification of compliance. In addition, notification of compliance would be defined as a notification in which the owner and operator certify, *after completion of performance evaluations and tests,* that the HWC meets the emissions standards, CMS, and other requirements of Subpart EEE, Part 63, including establishing operating limits to meet standards for which compliance is not based on a CEM.

[132] Letter from Barry Direnfeld, Swidler & Berlin, to Michael Shapiro, dated January 23, 1996, with an attached letter from Fred Sigg, Von Roll/WTI, to Sally Katzen, Office of Management and Budget, dated January 19, 1996.

[133] See memorandum from Bruce Springsteen, EER, to Shiva Garg, EPA, dated February 26, 1996, entitled ''Determination of the effects of the inclusion of new WTI test burn data on the MACT floors.''

[134] See letter from Gary Liberson, Environmental Risk Sciences, to Michael Shapiro, EPA, dated February 21, 1996.

For HWCs, initial compliance would thus mean that a facility has: (1) completed all modifications necessary to meet the standards; (2) conducted all emissions tests to verify compliance and set operating limits; (3) installed and satisfactorily performance tested all continuous monitoring systems (CMS) including continuous emissions monitors (CEMS); and (4) postmarked a letter to the director that transmits the (successful) emission results of the initial comprehensive performance test, performance test results for CMS, and all operating limits, and that states the facility is in compliance. Requirements to ensure compliance after the initial compliance notification are discussed in the preamble in Section II of Part Five.

A. Existing Sources

EPA proposes that a facility be in compliance with these standards within three years after the date of publication of the final rule in the Federal Register (which is also the effective date of the rule). See proposed § 63.1206(a). EPA believes that the vast majority of sources (approximately 90 to 95 percent) would require substantial modifications to operating and/or emission control equipment to comply with the proposed standards. Three years is a reasonable estimate of the time it will take for a facility to: read and analyze the final rule; conduct tests to identify cost-effective approaches to comply with the standards; complete the engineering analysis and design; fabricate, install, start up and shake down the modified facility; conduct preliminary emissions tests; conduct formal compliance testing; analyze samples and evaluate test results; prepare the notification of compliance; and obtain management certification of the results.

Nonetheless, the Agency believes that some sources would be able to comply with the rule (i.e., submit a notification of compliance) before three years after the date of publication of the final rule. For example, some sources may require only minor modifications to emission control equipment and could comply substantially sooner than sources that need a major retrofit. Accordingly, we invite comment on how such sources could be identified and strategies that could be used to encourage or require them to comply at the earliest possible date.

We note that the CAAA allows a maximum compliance period of three years (see § 112(I)(3)(A)), unless a waiver is granted on a case-specific basis. Section 63.6(i)(4)(i)(A) provides for a one year time extension ''if such additional time period is necessary for the installation of controls.'' If an owner or operator needs to modify the RCRA permit in order to allow modifications to the facility necessary to comply with the MACT standards, we believe inability to comply with the MACT standards within three years because of the need to modify the RCRA permit could constitute a valid reason for granting a time extension under § 63.6(i). See discussion below. That is, the modification to the RCRA permit would be needed ''for the installation of controls.''

Sources with RCRA permits can modify their facilities only after complying with the permit modification procedures of 40 CFR 270.42. If an owner and operator make a good faith effort to obtain the permit modification in time to submit a notification of compliance under today's proposed rule within three years of the effective date but cannot do so for reasons beyond their control (for example, the state in which the facility is located is in the process of receiving oversight authority, or the Agency is unable to respond in a timely manner to all permit modification requests), the Administrator may grant a one-year time extension.

Note also that, as discussed above, the one-year time extension provided by § 63.6(i) applies to a different definition of compliance than that proposed by today's rule for HWCs. By the date of compliance under this proposal, a HWC must have submitted a notification of compliance as defined above. Thus, although we are proposing a one-year time extension for initial compliance for HWCs using the procedures established in existing § 63.6(i), a HWC must submit a notification of compliance by the end of the time extension, if granted, while other MACT sources would continue under the current rules unamended (i.e., they would conduct their performance test after the end of the time extension). See existing § 63.7(a).

A special case for HWCs exists for an existing unit that would not be subject to regulation on the effective date of this rule because it does not burn a hazardous waste but which subsequently becomes subject to regulation under today's proposed MACT standards because one of its waste streams later becomes a newly identified or listed hazardous waste. In this case, we propose that the facility be considered an ''existing source'', since it would be inappropriate to apply new source MACT to a facility which has not altered its conduct, and which only becomes subject to this rule because of additional regulatory action taken by EPA (or an authorized state). Such a facility would have three years after the date of publication in the Federal Register of the final rule listing the waste as hazardous to come into compliance with these regulations.[135]

Finally, EPA wants to ensure that only those facilities that plan to comply with the new regulations are allowed to burn hazardous waste during the compliance period. Accordingly, the rule would provide that, if the owner or operator of an existing source did not submit a notification of compliance by the applicable date, the source must immediately stop burning hazardous waste when the owner or operator first determines that the notification will not be submitted by the applicable date (i.e., following the effective date, but well before the compliance deadline) and could not resume burning hazardous waste except under the requirements for new MACT sources. To comply with the deadline for the initial notification of compliance, a source will have had to begin making preparations well in advance of the deadline. We invite comment on strategies that could be used to determine when a source could realistically determine whether or not it will meet the notification deadline and comply with the new standards.

We note that there would also be substantial RCRA implications for a facility that does not comply with the applicable deadlines in a timely fashion. In particular, the source could not resume burning hazardous waste without being issued a RCRA operating permit. Further, if the source had already been issued a RCRA operating permit, hazardous waste could only be burned (after missing the deadline for submitting an initial notification of compliance) for a total of 720 hours and only for the purpose of pretesting or comprehensive performance testing. Finally, if a source with a RCRA operating permit failed to submit an initial notification of compliance by the deadline, the source must, within 90 days of missing the initial notification of compliance, either submit a notification of compliance with MACT new standards or begin RCRA closure procedures unless the Administrator grants an extension of time in writing prior to the 90-day deadline for good cause. Examples of good cause that the Agency would be willing to evaluate

[135] Note that in other cases, an existing source that begins to burn hazardous waste after the effective date of this rule (and therefore changes its conduct) is classified as a new source and would have to comply with today's rules when the hazardous waste is first burned. The source would also have to obtain a RCRA operating permit before commencing hazardous waste management activities since it would be ineligible for interim status (assuming it is conducting no other hazardous waste management activities).

are: the facility now must undergo significant modifications in order to comply with the more stringent MACT new standards that will take longer to complete than the deadline allows, or the facility must contract for substantial new services in order to show compliance with the new standards.

EPA believes that these requirements are necessary to ensure that owners and operators that elect not to comply with the standards do not continue to burn hazardous waste beyond the date on which the source determines that they will not comply with the promulgated standards.

B. New Sources

Section 63.6 states that new or reconstructed sources ''shall comply with such standard[s] upon startup of the source.'' See also proposed § 63.1206(b). One exception, *available only to facilities which commence construction between proposal and promulgation,* is in the instance where a standard more stringent than the one proposed is promulgated. In this instance, three years can be granted for the new source to be in compliance with the standard which is more stringent. The new source shall be in compliance upon startup with all standards which are not more stringent than those proposed. Section 63.2 defines new source as ''* * * any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard * * * .'' For discussion on reconstruction, see section VII.C. of this part of this preamble.

C. One Year Extensions for Pollution Prevention/Waste Minimization

EPA is also seeking comment on a proposal to consider extension of compliance deadlines for up to one year beyond the three year deadline from the date of promulgation of this rule, on a case-by-case basis, for facilities which request an extension to implement pollution prevention/waste minimization measures that will enable the facility to meet MACT standards and that cannot practically be implemented within the three year compliance deadline.

During development of the Hazardous Waste Minimization National Plan (released in 1994), some companies pointed out that short compliance deadlines after the promulgation of some rules have precluded them from completing necessary pollution prevention planning and implementation that would facilitate meeting compliance requirements through source reduction and environmentally sound recycling. As a result, companies opt for installing often expensive ''end-of-pipe'' pollution controls in order to meet compliance deadlines. In addition, once capital has been sunk into end-of-pipe pollution controls which are large enough to handle current and future waste volumes, there is little incentive for companies to then spend money exploring pollution prevention/waste minimization options.

EPA believes that the three year compliance deadline for meeting the MACT standards in this rulemaking should in most cases be sufficient for a facility to complete the pollution prevention planning and implementation that might be necessary to meet MACT standards. In cases where facilities can provide information that shows that additional time is necessary to complete this process, EPA is proposing to grant up to a one year extension for facilities to complete pollution prevention planning and implementation, and to satisfy all of the procedures in this rule for demonstrating compliance. This proposed extension is consistent with other portions of today's proposal, including the section on permitting procedures which describes pollution prevention/waste minimization options during the permitting process.

II. Selection of Proposed Monitoring Requirements

Section 114(a) of the CAA requires monitoring to ensure compliance with the standards and the submission of periodic compliance certifications for all major stationary sources. Given that all HWCs are subject to regulation as major sources, the proposed compliance monitoring requirements discussed below would apply to all HWCs.

In this section we discuss the following: (a) the compliance monitoring hierarchy; (b) how operations during comprehensive performance testing would be used to establish limits for operating parameters; (c) for each emission standard, requirements for continuous emissions monitors (if any) and limits on operating parameters to ensure compliance; (d) compliance with controls on fugitive combustion emissions; (e) requirements for automatic waste feed cutoffs and emergency safety vent openings; (f) quality assurance requirements for continuous monitoring systems (CMS); and (g) protocols to ensure and document compliance.

A. Monitoring Hierarchy

The proposed compliance monitoring requirements were developed by examining the hierarchy of monitoring options available for specific processes, pollutants, and control equipment. The approach involves describing, on an emission standard specific basis, what monitoring is required for a source to be in compliance. This approach was also used for the secondary lead smelter MACT (59 FR at 29772, June 9, 1994), another rule where the sources process hazardous waste.

The monitoring hierarchy is three-tiered. The top tier of the monitoring hierarchy is the use of a continuous emissions monitor system (CEMS, also known as ''CEM'') for that HAP or standard. In the absence of a CEMS for that HAP or standard, the second tier is the use of a CEMS for a surrogate of that HAP or standard and, when necessary, setting some operating limits to account for the limitations of using surrogates. Lacking a CEMS for either, EPA sets appropriate feedstream and operating parameter limits to ensure compliance and requires periodic testing of the source. In developing this proposal each tier of the hierarchy was evaluated relative to its technical feasibility, cost, ease of implementation, and relevance to its underlying process emission limit or control device.

The proposed standards for hazardous waste combustors contain monitoring requirements for process stack emissions and combustion fugitive emissions. The proposed standards require either pollutant monitoring directly through the use of a CEMS, surrogate monitoring through the use of a CEMS, and/or parameter monitoring that indicates proper operation and maintenance of a control device. Recordkeeping is also required to ensure that specific work practices are being followed. Section VI of this part discusses recordkeeping.

B. Use of Comprehensive Performance Test Data to Establish Operating Limits

Limits on operating parameters (e.g., feedrate limits, temperature limits) would be based on levels that are achieved during the comprehensive performance test. See section III of this part for the discussion on comprehensive performance tests.

1. Averaging Periods for Limits on Operating Parameters

The Agency is proposing various averaging periods for the limits on operating parameters: a ten-minute rolling average; a one-hour rolling average; and a 12-hour rolling

average.[136] To show compliance with any of these rolling averages with respect to operating parameters that are established based on levels achieved during the comprehensive performance test (rather than on manufacturer specifications), the monitor must make a measurement of the parameter at least once each 15 seconds, and four 15-second measurements must be averaged each minute to determine a one-minute average. Then, each one-minute average is considered along with the previous one-minute averages over the averaging period to calculate a new rolling average level each minute. Thus, irrespective of the averaging period, a new rolling average level is calculated each minute.

The duration of the averaging period affects the number of one-minute averages used to calculate the level. For example, if a limit is based on a 12-hour rolling average, each new one-minute average is added to the previous 719 one-minute average values to calculate a new 12-hour rolling average value each minute.

A ten-minute average is proposed when the Agency is concerned that short-term perturbations above the limit will result in high emissions that cannot be offset by lower emissions during periods of more appropriate operation.[137] Since the ten-minute average is used to control short-term perturbations and does not control average emissions, it will always be used with a one hour average designed to control average emissions. (An exception is when the 10-minute average is used to control a design specification of the APCD manufacturer. In this event, a ten-minute average may be used alone.) It could be argued that a short term averaging period other than ten minutes could be used. However, the Agency is concerned about setting the averaging period shorter than 10 minutes. Shorter averaging periods would result in more extreme (i.e., absolute maximum or minimum) limits and could lead to higher emissions. Conversely, EPA could set a short-term averaging period longer than ten minutes, but believes that ten minutes is an appropriate, achievable, conservative, and reasonable duration for the short averaging period.

A one-hour averaging period is proposed in instances where the Agency is less concerned about perturbations and/or wants to limit average emissions.[138] Hourly rolling averages are currently required under the BIF rule and are required for some incinerators. The value of one-hour averages will tend to be less extreme than 10-minute averages since perturbations are averaged out over more normal data and, thus, are better at controlling average emissions than 10-minute averages. It could be argued that an averaging period shorter than one hour would be appropriate, but EPA is selecting a ten-minute average to control perturbations and believes this is sufficient. It could be argued that averaging periods longer than one hour could also be appropriate, but setting limits on operating parameters is at the bottom of the monitoring hierarchy and, as such, a conservative approach is preferable.

The twelve-hour averages are being proposed in instances when the Agency wants to control average emissions and is concerned that the one-hour average may not be achievable or may be overly restrictive. Twelve-hour averages are proposed only for feedrates: metals and chlorine. For each of these, feedstream analysis is necessary to determine the concentration in each of the feedstreams and this makes using an averaging period shorter than twelve hours problematic. EPA could use an averaging period longer than twelve hours, but believes that twelve hours is achievable. EPA is concerned about this 12-hour average in that it may be inconsistent with averaging periods for CEMS; namely, it is longer than the metals, HCl, Cl_2, or PM averaging periods. A 12-hour average is inconsistent because, at the top of the monitoring hierarchy, CEMS averaging periods should be longer, i.e., less conservative, than feedstream monitoring, at the bottom of the hierarchy. EPA invites comment on this issue. Alternate averaging periods for chlorine and metals feedrates are discussed below in the appropriate sections.

As noted earlier, for compliance with these averaging periods, EPA proposes that averages be calculated every minute on a rolling-average basis. It is also proposed that the one-minute average be the average of the previous four measurements taken at 15-second intervals. This is the approach required by the BIF rule. All 15-second measurements would be used without smoothing, rounding, or data checks. No 15-second observations may be ''thrown out'' for any reason.

2. How Limits Would Be Established from Comprehensive Test Data

This section explains how operating limits for the averaging periods discussed above are established from the comprehensive test data. Note that all averages are rolling averages, based on a one-minute average.

Ten-minute rolling averages would be established as the average over all comprehensive test runs of the highest or lowest (as specified) ten-minute rolling average for each run.

One of two approaches would be specified to establish limits on an hourly rolling average basis: an average level or an average of the highest or lowest (as specified) hourly rolling average. In most cases, it is derived by averaging all of the one-minute averages during all the runs of the comprehensive performance test. In the few cases when an average of the maximum hourly rolling averages is specified, the limit is derived by taking the average of the highest hourly average for each run of the comprehensive performance test.

Twelve-hour rolling averages for feedstreams would be derived by averaging all of the one-minute averages during all the runs of the comprehensive performance test irrespective of the total duration of the test.[139] Separate twelve-hour averages would apply to all feed locations.

3. Example of How Limits Would Be Established

For example, if a facility were to have a fabric filter (FF), it might have a limit on maximum FF inlet temperature on a ten-minute average to ensure compliance with the dioxin and furan standard. If this is the case, during the comprehensive performance test, the facility would monitor FF inlet temperature. The facility would then take the highest single ten-minute rolling averages of FF inlet temperature from each of the three comprehensive test runs and average them together. If these single largest ten minute rolling averages from each of the three runs were 140, 150, and 160°C, then the maximum ten-minute rolling average for FF inlet temperature would be 150°C.

If the same parameter were also to have an hourly rolling average based on all data from all runs, the facility would

[136] We note that today's rule would establish an instantaneous limit, i.e., a limit where no averaging is allowed, to ensure that less than ambient pressure is maintained in the combustion system at all times to control fugitive combustion emissions.

[137] An example is for inlet temperature to dry PM APCDs to control dioxin. Dioxin increases exponentially with increasing temperature, so a short-term increase in temperature will not be offset by short-term decreases in dioxin emissions.

[138] An example is flue gas flowrate. This parameter is important, but slight increases in flow rate can be offset by proportionate decreases in flowrate. Therefore, average flowrate is important without regard to perturbations.

[139] Or, if the source elects to define different operating modes and conduct performance testing under each mode, the one-minute averages would be averaged for all runs for each test condition (representing each mode of operation).

sum up all one-minute averages occurring during the comprehensive performance test and average them together. This would become the hourly rolling average for this parameter.

Twelve-hour feedrate limits are calculated similarly. For SVM, the facility would sum the total feed from all runs of the comprehensive performance test and divide that sum by the number of minutes of all three runs of the comprehensive test. For this example, assume that both Cd and Pb are fed during the comprehensive performance test, that the feedrate for Cd was 5, 30, and 25 and for Pb was 100, 70, and 85 for each of the three runs of the comprehensive performance test and that the time duration of each run was 205, 230, and 195 minutes. The total amount of SVM fed would be 315 and the time duration of the test would be 630 minutes. Therefore, the SVM limit would be 315, divided by 630 minutes, or 0.50. During normal operation the SVM feedrate would be calculated every minute to ensure it does not exceed the 0.50 SVM limit by averaging the current and previous 719 one-minute averages.

C. Compliance Monitoring Requirements

Monitoring requirements are proposed to ensure compliance with the following emission standards: dioxin and furan (D/F), mercury (Hg), semivolatile metals (SVM), low-volatile metals (LVM), carbon monoxide (CO), hydrocarbons (HC), hydrochloric acid (HCl) and chlorine gas (Cl2) (combined and reported as HCl), and particulate matter (PM). See proposed § 63.1210. Monitoring requirements for combustion fugitive emissions are proposed as well.

Table V.2.1 summarizes today's proposed compliance monitoring requirements.

1. Continued Applicability of RCRA Omnibus Authority

When a RCRA operating permit is issued under Part 270 after a source has submitted its initial notification of compliance with the proposed MACT standards, a permit writer would continue to have the discretion currently provided by § 264.345(b)(6) of the incinerator standards and §§ 266.102(e) subparagraphs (2)(i)(G), (3)(i)(E), (4)(ii)(J), (4)(iii)(J), and (5)(i)(G) of the BIF standards to supplement these operating parameter limits as necessary to protect human health and the environment on a site-specific basis to ensure that today's proposed emission standards are being met. This means the RCRA permit writer's authority to use instantaneous limits or averaging periods other than those specified here, or require operating parameters in addition to those specified here, is maintained during the RCRA permitting process. See proposed §§ 264.340(b)(2)(iii) and 266.102(a)(2)(ii).

TABLE V.2.1.—SUMMARY TABLE OF PROPOSED MONITORING REQUIREMENTS

Device	Parameter	D/F	Hg	PM	SVM	LVM	CO & HC	HCl & Cl_2	Limits from	Avg period	Limits set as
Continuous Monitor.	Stack CEMS	.....	✔	✔	(1)	(1)	✔	(1)	CEMS Stnds.	varies	Units of Standard.
	Max Inlet Temp to Dry PM APCD.	✔	(2)	.....	✔	✔	.....	.....	Comp Test.	10 min 1 hour	Avg of Max 10 min RA. Avg over all runs.
Carbon Injection.	Min Carbon Injection Feedrate (Carbon Feed through Injector).	✔	(2)	.....	.....	.....	.....	.....	Comp Test.	10 min 1 hour	Avg of Min 10 min RA. Avg over all runs.
	Min Carrier Fluid Flowrate or Nozzle Pressure Drop.	✔	(2)	.....	.....	.....	.....	.....	Manuf Spec.	10 min	
	Carbon Specs	✔	(2)	.....	.....	.....	.....	.....	Comp Test.	n/a	Same brand and type.
Carbon Bed.	Max Age of Carbon (Time in-use).	✔	(2)	.....	.....	.....	.....	.....	Initial Comp Test.	n/a	Manuf specs (no C aging).
		.....							Conf Tests.	n/a	Normal C Change-out Schedule.
		.....							Sub. Comp. Tests.	n/a	Max C Age is the age during subsequent Comp Tests.
	Carbon Specs	✔	(2)	.....	.....	.....	.....	.....	Comp Test.	n/a	Same brand and type.
Dioxin Inhibitor.	Min Inhibitor Feedrate.	✔	.....	.....	.....	.....	.....	.....	Comp Test.	10 min 1 hour	Avg of Min 10 min RA. Avg over all runs.
	Inhibitor Specifications.	✔	.....	.....	.....	.....	.....	.....	Comp Test.	n/a	Same brand and type.

TABLE V.2.1.—SUMMARY TABLE OF PROPOSED MONITORING REQUIREMENTS—Continued

Device	Parameter	D/F	Hg	PM	SVM	LVM	CO & HC	HCl & Cl_2	Limits from	Avg period	Limits set as
Catalytic Oxidizer.	Min Fine Gas Temp at Entrance.	✔	.....	.....	.....	.....	.....	.....	Comp Test.	10 min 1 hour	Avg of Min 10 min RA. Avg over all runs.
	Max Age (Time in-use).	✔	.....	.....	.....	.....	.....	.....	Manuf Spec.	As specified..	
	Catalyst Replacement Specs:. —Catalytic Metal Loading (each metal). —Space Time —Substrate Construction (mat'ls, pore size).	✔	.....	.....	.....	.....	.....	.....	Comp Test.	n/a	Same as used during previous Comp Test.
	Max Flue Gas Temp at Entrance.	✔	.....	.....	.....	.....	.....	.....	Manuf Spec.	10 min	As specified.
Good Combustion.	Maximun Batch Size, Feeding Frequency, and Minimum Oxygen Concentration.	✔	.....	.....	.....	.....	.....	.....	Comp Test.	n/a	Lightest batch fed. Least frequent feeding Highest O_2 level.
	Max Waste Feedrate.	✔	.....	.....	.....	.....	.....	.....	Comp Test.	1 hour	Avg of Max 1 hour RA.
	Min Comb Chamber Temp (Exit of Each Chamber).	✔	.....	.....	.....	.....	.....	.....	Comp Test.	10 min 1 hour	Avg of Min 10 min. RA Avg over all runs.
Good Combustion and APCD Efficiency.	Max Flue Gas Flowrate or Production Rage.	✔	(2)	(2)	(2)	(2)	.....	✔	Comp Test.	1 hour	Avg of Max 1 hour RA.
Feed Control.	Max Total Metals Feedrate (all streams).	.....	(2)	.....	✔	✔	.....	.....	Comp Test.	12 hour	Avg over all runs.
	Max Pumpable Liquid Metals Feedrate.	.....	.....	.....	.....	✔	.....	.....			
	Max Total Ash Feedrate (all streams).	.....	.....	(2)	.....	.....	.....	.....	Comp Test.	12 hour	Avg over all runs.
	Max Total Chlorine Feedrate (all streams).	.....	.....	.....	✔	✔	.....	✔	Comp Test.	12 hour	Avg over all runs.
Wet Scrubber.	Min Press Drop Across Scrubber.	(2)	(2)	(2)	(2)	(2)	.....	✔	Comp Test.	10 min 1 hour	Avg of Min 10 min RA Avg over all runs.
	Min Liquid Feed Press.	(2)	(2)	(2)	(2)	(2)	.....	✔	Manuf Spec.	10 min	n/a
	Min Liquid pH	.....	(2)	.....	.....	.....	.....	✔	Comp Test.	10 min 1 hour	Avg of Min 10 min RA Avg over all runs.
	Min Blowdown (Liq Flowrate) or Max Solid Content in Liq.	(2)	(2)	(2)	(2)	(2)	.....	.....	Comp Test.	10 min 1 hour	Avg of Min/Max 10 min RA Avg over all runs.

TABLE V.2.1.—SUMMARY TABLE OF PROPOSED MONITORING REQUIREMENTS—Continued

Device	Parameter	D/F	Hg	PM	SVM	LVM	CO & HC	HCl & Cl_2	Limits from	Avg period	Limits set as
	Min Liq Flow to Gas Flow Ratio.	(2)	(2)	(2)	(2)	(2)	.....	✔	Comp Test.	10 min 1 hour	Avg of Min 10 min RA Avg over all runs.
Ionizing Wet Scrubber.	Min Press Drop Across Scrubber.	(2)	(2)	(2)	(2)	(2)	.....	✔	Comp Test.	10 min 1 hour	Avg of Min 10 min RA Avg over all runs.
	Min Liquid Feed Pressure.	(2)	(2)	(2)	(2)	(2)	.....	✔	Manuf Spec.	10 min	n/a
	Min Blowdown (Liq Flowrate) or Max Solid Content in Liq.	(2)	(2)	(2)	(2)	(2)	.....	.....	Comp Test.	10 min 1 hour	Avg of Min/Max 10 min RA Avg over all runs.
	Min Liq Flow to Gas Flow Ratio.	(2)	(2)	(2)	(2)	(2)	.....	✔	Comp Test.	10 min 1 hour	Avg of Min 10 min RA Avg over all runs.
	Min Power Input (kVA: current and voltage).	(2)	(2)	(2)	(2)	(2)	.....	.....	Comp Test.	10 min 1 hour	Avg of Min 10 min RA Avg over all runs.
Dry Scrubber.	Min Sorbent Feedrate.	.....	.....	.....	.....	.....	.....	✔	Comp Test.	10 min 1 hour	Avg of Min 10 min RA. Avg over all runs.
	Min Carrier Fluid Flowrate or Nozzle Pressure Drop.	.....	.....	.....	.....	.....	.....	✔	Manuf Spec.	10 min	n/a
	Sorbent Specifications.	.....	.....	.....	.....	.....	.....	✔	Comp Test.	n/a	Same brand and type.
FF	Min Press Drop Across Device.	(2)	(2)	(2)	(2)	(2)	.....	.....	Comp Test.	10 min 1 hour	Avg of Min 10 min RA. Avg over all runs.
ESPs	Min Power Input (kVA: current and voltage).	(2)	(2)	(2)	(2)	(2)	.....	.....	Comp Test.	10 min 1 hour	Avg of Min 10 min RA. Avg over all runs.

Notes:
[1]=Stack CEMS is optional for the SVM, LVM, and HCl and Cl_2 standards. If a CEMS is used for compliance, none of the feedstream and operating parameters for that HAP would apply.
(2)=If CEMS are not required in the final rule for PM and/or Hg, the operating limits for these parameters would apply.
Definitions:
"Comp Test"=Comprehensive Performance Test.
"Conf Test"=Confirmatory Performance Test.

2. Dioxin and Furan (D/F)

EPA is proposing that sources comply with the D/F standard by establishing and complying with limits on operating parameters and performing D/F test every 18 months (or 30 months for small on-site facilities). Table V.2.2 summarizes these limits. See also proposed § 63.1210(j).

TABLE V.2.2.—SUMMARY OF PROPOSED DIOXIN AND FURAN MONITORING REQUIREMENTS

	Compliance using	Limits from	Avg. period	How limit is established from comp performance test
Particulate Matter (PM) Control.	PM CEMS	Comp Test	10 min	Avg of Max 10-min RAs.
			1 hour	Avg over all runs.
Good Combustion	CO and HC CEMS	MACT Std	1 hour	N/A.
	Min comb chamber tempt: CMS at exit of each chamber.	Comp Test	10 min	Avg of Max 10-min RAs.
			11 hour	Avg over all runs.
	Max waste feedrate CMS	Comp Test	1 hour	Avg of Max 1 hour RAs.

TABLE V.2.2.—SUMMARY OF PROPOSED DIOXIN AND FURAN MONITORING REQUIREMENTS—Continued

	Compliance using	Limits from	Avg. period	How limit is established from comp performance test
	For batch fed sources: limit on batch size, feeding frequency, and minimum oxygen.	Comp Test	None	N/A.
Max Inlet Temp to Dry PM APCD.	Temp CMS	Comp Test	10 min	Avg of Max 10 min RAs.
			1 hour	Avg over all runs.
Max Flue Gas Flowrate or Production Rate.	Flowrate CMS or Production Rate.	Comp Test	1 hour	Avg of Max 1 hour RAs.
Min Carbon Injection Feed	Feedrate CMS	Comp Test	10 min	Avg of Min 10 min RAs.
			1 hour	Avg over all runs.
Min Carrier Fluid Flowrate or Nozzle Pressure Drop.	same	Manuf Spec	10 min	N/A.
Carbon Specs	Brand and Type	Comp Test	N/A	Same brand and type.
Max Carbon Age, Carbon Bed.	Max Carbon Lifetime	Initial Comp Test	N/A	Manuf Specs (no C aging).
		Conf Tests	N/A	Normal C Change-out Schedule.
		Sub. Comp Tests	N/A	Max C Age is the age during sub. Comp Tests.
Min Flue Gas Temp, Catalytic Oxidizer.	Inlet to Catalyst	Comp Test	10 min	Avg of Min 10 min RAs.
			1 hour	Avg over all runs.
Max Age, Catalytic Oxidizer	Time in use	Manuf Spec	As specified..	
Catalyst Replacement Specs.	Catalytic Metal Loading	Comp Test	N/A	Same as used during comp test.
	Space Time			
	Substrate Construct: mat'ls, pore size.			
Max Flue Gas Temperature, Catalytic Oxidizer.	Inlet to Catalyst	Manuf Spec	10 min	As specified.
Min Inhibitor Feedrate	Feedrate CMS	Comp Test	10 min	Avg of Min 10 min RAs.
			1 hour	Avg over all runs.
Inhibitor Specs	None	Comp Test	N/A	Same brand and type.

a. Evaluation of Monitoring Options. D/F partitions into two phases in stack emissions: a portion is adsorbed onto particulate and a portion is emitted as a vapor (gas). Given that there is no CEMS for D/F, the Agency is proposing to require a combination of approaches to control D/F emissions: (1) compliance with a site-specific PM limit to control adsorbed D/F; (2) operation under good combustion conditions to minimize D/F precursors; (3) temperature control at the PM control device to limit D/F formation in the control device; and (4) compliance with operating limits on D/F control equipment (e.g., carbon injection) that a source may elect to use.

b. Operating Parameter Limits. Today's proposed rule would limit the following operating parameters to satisfy the combination of approaches discussed in the previous paragraph.

i. Control of PM Emissions: To control D/F and other PICs that are adsorbed to PM, the rule would require that sources limit PM emissions to the site-specific level that occurs when demonstrating compliance with the D/F (and SVM and LVM) emission standards. The site specific operating limit for PM would be capped at (i.e., could not exceed) the proposed national MACT standard of 69 mg/dscm. See section 7 of this section for a discussion on the control of PM emissions.

ii. Good Combustion: CO and HC Limits. EPA is proposing CO and HC standards to ensure good combustion to help minimize D/F precursors. See discussion below (section 5 of this section) for the explanation of the CO and HC emission standards.

iii. Good Combustion: Maximum Waste Feedrate. An increase in waste feedrate without a corresponding increase in combustion air can cause inefficient combustion that may produce (or incompletely destroy) D/F precursors. Therefore EPA proposes to limit waste feedrate. For incinerators, waste feedrate limits would be established for each combustion chamber to minimize combustion perturbations. For CKs and LWAKs waste feedrate limits would be established for each location where waste is fed (e.g., the hot end where product is discharged, mid-kiln, and at the cold end where raw material is fed.[140]

Feedrate limits would be established on an hourly rolling average basis as the average of the highest hourly rolling average for each run. We specifically invite comment on whether it would be more appropriate to establish the limit based on the average hourly rolling average over all runs. EPA is not proposing this more stringent approach because we consider waste feedrate to be a secondary control parameter that may not require such strict control.

See also the discussion in section II.F.2 below for other requirements to document compliance with feedrate limits.

iv. Good Combustion: Combustion Zone Temperature. As combustion zone temperatures decrease, combustion efficiency can decrease resulting in an increase in formation of (or incomplete destruction of) D/F precursors. For this reason, the Agency proposes limiting combustion zone temperature in each

[140] Waste feedrate limits would also be established for waste fed into a preheater or precalciner system of a cement kiln facility.

chamber to the minimum level occurring during the comprehensive performance test documenting compliance with the D/F standard.

BIFs and incinerators are already required to monitor combustion zone temperature for compliance with metals emissions standards and destruction and removal efficiency (DRE). Monitoring of combustion zone temperature has been problematic, however, because the actual burning zone temperature cannot be measured at many units (e.g., cement kilns). For this reason, the BIF rule requires measurement of the ''combustion chamber temperature where the temperature measurement is as close to the combustion zone as possible.'' See § 266.103(c)(1)(vii).

In some cases, temperature is measured at a location quite removed from the combustion zone due to extreme temperatures and the harsh conditions at the combustion zone. We are concerned that monitoring at such remote locations may not accurately reflect changes in combustion zone temperatures. For example, a reduction in heat transfer chain in a wet cement kiln due to wear over time or decreasing raw material feedrate (at a fixed heat input) in a cement or lightweight aggregate kiln may increase temperature at the kiln outlet even if combustion conditions actually caused a decrease in combustion zone temperature.

We specifically invite comment on how to address this issue. For example, the final rule could require the owner or operator to identify a parameter that correlates with combustion zone temperature and to provide data or information to support the use of that parameter in the operating record. The final rule could also enable the Director on a case-specific basis to require the use of alternate parameters as deemed appropriate, or to determine that there is no practicable approach to ensure that minimum combustion chamber temperature is maintained. In that case, the Director may determine that the source could not comply with the regulations and, thus, could not burn hazardous waste.

Note also that, in the final rule, we would revise the existing BIF and incinerator rules to conform with the approach used in the final MACT rule. Those conforming revisions would become effective six months from the date of publication of the final rule in the Federal Register and would remain in effect until the MACT standards take effect.

The temperature limit(s) would apply to each combustion zone into which hazardous waste is fired. As examples, for incinerators with a primary and secondary chamber, separate limits would be established for the combustion zone in each chamber. For kilns, separate temperature limits would apply at each location where hazardous waste may be fired (e.g., the hot end where clinker is discharged; the mid-point of the kiln; and the cold end of the kiln where raw material is fed).

EPA proposes that a ten-minute average be used to control perturbations in combustion chamber temperature and that an hourly rolling average be used to control average combustion chamber temperature. The ten-minute average would be established as the average of the minimum ten-minute rolling average for each run of the comprehensive performance test. The hourly average would be established as the average over all runs.

v. Good Combustion: Maximum Flue Gas Rate or Production Rate. Flue gas flowrates in excess of those that occur during performance testing reduce the time that combustion gases are exposed to combustion chamber temperatures. Thus, combustion efficiency can decrease causing an increase in D/F precursors.[141] Accordingly, today's rule would limit flue gas flowrate based on levels that occur during the comprehensive performance test.

For CKs and LWAKs, the rule would allow the use of production rate as a surrogate for flue gas flowrate. This is the approach currently used for the BIF rule for these devices, given that flue gas flowrate correlates with production rate (e.g., feedrate of raw materials or rate of production of clinker or aggregate). However, production rate may not relate well to flue gas flowrate in situations where the moisture content of the feed to the combustor changes dramatically. Therefore, EPA invites comment on how to address moisture content in feeds.

The gas flowrate or production rate limit would be established as the average of the maximum hourly rolling average for each run of the comprehensive performance test.

vi. Good Combustion: Batch Size, Feeding Frequency, and Minimum Oxygen. Some HWCs burn waste or non-waste fuel in batches, such as metal drums or plastic containers. Some containerized waste can volatilize rapidly, causing a momentary oxygen-deficient condition that can result in an increase in D/F precursors.[142] To ensure that D/F precursors are not increased over levels that occur during the comprehensive performance test, the rule would establish site-specific limits on maximum batch size, batch feeding frequency, and minimum oxygen concentration at the end of the combustion chamber into which the batch is fed, at the time the batch is fed.[143]

This requirement would apply to all HWCs that burn any waste or non-waste fuel in batches (i.e., ram or equivalent feed systems) or containers. For example, incinerators that use a ram to charge batches of hazardous or nonhazardous waste would be subject to these requirements. Cement kilns that feed containers of fuel at mid-kiln or at the ''cold'', raw material feed end would also be subject to these requirements, as would hazardous waste-burning cement kilns that feed tires in batches.

The rule would provide a conditioned exemption from the (site-specific) oxygen limit, however, for cement kilns that feed up to 1-gallon containers into the ''hot'', clinker discharge of the kiln. We do not believe that it is necessary to control the oxygen content of combustion gases when these containers are fed into the hot end of the kiln given that the oxygen demand from waste in the containers would be insignificant compared to the oxygen demand from other (non-containerized) fuel burned at this location. The frequency of firing the containers would, however, be limited to the rate occurring during the performance test.

There would be no averaging period associated with the limits on these operating parameters. The maximum batch size a facility could burn during normal operations would be limited by mass and would be established based on the container or batch fired during the test having the lowest mass. The minimum batch feeding interval (i.e., the minimum period of time between batch feedings) a facility could burn

[141] We note that an increase in gas flow rate can also adversely affect the performance of a D/F emission control device (e.g., carbon injection, catalytic oxidizer). Thus, gas flow rate is controlled for this reason as well.

[142] The requirements would apply when either hazardous or non-hazardous waste fuels are batch fed because the potential for oxygen-deficient conditions and an increase in D/F precursors is present irrespective of whether the material fed is classified as a hazardous waste.

[143] EPA considered whether it would be practical to establish a national minimum oxygen level for all HWCs in this proposed rule and believes it is not practical. A limit on minimum oxygen content would have to be established on a case-specific basis given that the minimum oxygen level necessary for good combustion will vary from source to source within a given source category, and will vary within a given source over time as the type or volume of waste or fuel varies. The Agency invites comment on whether the final rule should require a case-specific limit on minimum oxygen content for all HWCs rather than as proposed for only batch-fired HWCs. If so, the limits would be established on a ten-minute and an hourly rolling average as proposed for combustion chamber temperature.

during normal operations would be established as the longest interval of time between batch feedings during the comprehensive performance test. The minimum oxygen content at which a facility would charge a containerized waste into the burner during normal operations would be the highest instantaneous oxygen level observed when any batch was fed during the comprehensive performance test.

EPA specifically invites comment on whether the bases of these three parameters are overly conservative. Rather than basing maximum batch size on the smallest container fed during the comprehensive test, EPA could establish maximum batch size based on the average container mass. Feeding frequency could be based on the average time interval between batches during the comprehensive test. Oxygen concentration could be the average oxygen level occurring during the test. To address this issue, EPA needs to know whether the proposed requirements are overly conservative and why, or conversely, whether the options described in this paragraph are not restrictive enough.

EPA specifically invites comment on other approaches to establish limits for these parameters, and whether (and how) it would be necessary to limit maximum volatility of the batch-fired material.

vii. Dry PM Collection Device Inlet Temperature. Formation of D/F emissions on particulate matter increases with increasing temperature. Above 350°F and up to approximately 700°F, emissions of D/F can increase a factor of 10 for every 125°F increase in temperature.[144] Consequently, today's rule would limit temperature at the inlet to a dry PM control device to the maximum levels that occurred during the comprehensive performance test.

It is proposed that a ten-minute rolling average be used to control perturbations in temperatures and that a one-hour rolling average be used to control the average temperature. The ten-minute rolling average limit would be established as the average of the highest ten-minute average for each run. The hourly average would be established as the average of over all runs.

viii. Carbon Injection. Facilities may use carbon injection to meet the D/F standard. Today's rule would limit the following carbon injection parameters: minimum carbon injection rate; minimum carrier fluid flowrate or nozzle pressure drop, and adsorption characteristics of the carbon.

A minimum carbon feedrate limit is necessary to ensure that facilities maintain the same D/F removal efficiency as was demonstrated during the comprehensive performance test. It is proposed that minimum carbon injection rate be maintained on a ten-minute and one-hour average. The ten-minute average would be established as the average of the minimum 10-minute rolling average for each run, and the one-hour average would be established as the average over all runs.

A carrier fluid, gas or liquid, is necessary to transport and inject the carbon into the gas stream. EPA proposes that either minimum carrier gas flowrate or pressure drop across the nozzle be maintained to ensure good flow of the injected carbon into the flue gas stream. It is proposed that either limit be established on a 10-minute rolling average and that the limit be based on the carbon injection manufacturers specifications.

Finally, to ensure that D/F removal efficiency is maintained after the performance test, carbon used after the test must have the same or better adsorption properties as carbon used during the test. Thus, the rule would require that facilities continue to use the same brand and type of carbon that was used during the comprehensive test. The rule would allow a source to obtain a waiver from this requirement from the Director, however, if the owner or operator: (1) documents by data or information key characteristics of carbon which affect removal of D/F from combustion gas; (2) documents by data or information specification levels corresponding to those characteristics; and (3) complies with the specification.

ix. Carbon Bed. Some sources may elect to use a carbon bed to control D/F. Today's rule would limit the age of the carbon and the adsorption characteristics of the carbon to ensure that D/F control is maintained.

Since carbon beds work by adsorbing certain chemicals, e.g., dioxin and mercury, and the carbon in the bed becomes less effective as the active sites for adsorption become occupied, an appropriate control parameter for carbon beds is the amount of time the carbon in use. EPA is particularly concerned about a facility's ability to know when a carbon bed is spent, i.e., when enough active sites get occupied to make the device inadequate for removing dioxin or mercury, and knowing how often carbon must be replaced from the bed to ensure this does not occur. This cannot be determined during the initial comprehensive performance test. For that reason, the Agency proposes that facilities follow the carbon bed manufacturer's specifications for the initial comprehensive performance test.

No carbon aging would be required for this initial test. For confirmatory tests, facilities would be required to follow the normal change-out schedule specified by the manufacturer. For subsequent comprehensive tests, the Agency proposes that the D/F test be conducted at maximum carbon age, i.e., at the least frequent carbon change-out, and that this age be maximum age allowable under normal operation.

Alternately, the Agency could use some form of a breakthrough calculation and use this to assure compliance with the D/F standard. A breakthrough calculation would give a theoretical minimum carbon change-out schedule which the facility could use to ensure that breakthrough, i.e., the dramatic reduction in efficiency of the carbon bed due to too make active sites being occupied, does not happen. However a breakthrough calculation can only be done after experimentation determines the relationship between incoming adsorbed chemicals and the adsorption rate of the carbon. The adsorption rate of carbon can be determined experimentally, but the speciation of adsorbed chemicals in a flue gas stream is site-specific and may vary greatly within a given site over time. Therefore, EPA proposes using this alternative only for the initial comprehensive test, when site data is not available and the carbon bed is not aged. EPA believes that, for subsequent comprehensive tests, the proposed option is preferable, since it provides for the setting of the minimum carbon change-out on subsequent D/F tests. EPA does not believe it is appropriate to use breakthrough calculations for the second and subsequent comprehensive test(s) since they do not take into account facility specific characteristics, like the concentration of adsorbed chemicals in the flue gas. EPA invites comment on an approach which would use breakthrough calculations alone, to see if it can become workable in another form than the Agency has envisioned.

An issue that is difficult to address is that carbon age is dependant not only on time in service, but also the carbon bed inlet concentration of substances (e.g., metals, PM) which adsorb or absorb onto the carbon. There may be other factors that affect D/F removal efficiency of the bed. The Agency invites comment on how to address these issues.

[144] See Chapter 7.2 of ''Draft Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the Proposed MACT Standards'', February 1996.

Another issue is whether it is necessary to control temperature at the inlet to the carbon bed. EPA does not believe this is necessary since facilities will need a PM control device upstream of a carbon bed and temperature at the inlet to dry PM APCDs is proposed to be controlled. However, the consequences of a temperature spike at the carbon bed can be severe: a temperature spike may cause adsorbed D/F and Hg to de-adsorb and re-enter the gas stream, resulting in a significant amount of D/F and Hg being emitted at the stack at once. For this reason, the Agency invites comment on whether controlling temperature at the inlet to a carbon bed is necessary.

Finally, as the case with carbon injection, to ensure that D/F removal efficiency is maintained after the performance test, carbon used post-test must have the same or better adsorption properties as carbon used during the test. Thus, the rule would require that facilities continue to use the same brand and type of carbon as was used during the comprehensive test. The rule would allow a source to obtain a waiver from this requirement, however, as discussed above.

x. Catalytic Oxidizer. Some facilities may use a catalytic oxidizer to meet the D/F standard. Catalytic oxidizers used to control stack emissions are similar to those used in automotive and industrial applications. The flue gas passes over a catalytic metals, such as palladium and platinum, supported by an alumina washcoat on some metal or ceramic substrate. When the flue gas passes through the catalyst, a reaction takes place similar to combustion, converting hydrocarbons to carbon monoxide, then carbon dioxide. Catalytic oxidizers can also be ''poisoned'' by lead and other metals just as automotive and industrial catalysts are.

The rule would require sources to establish site-specific limits on the following operating parameters for catalytic oxidizers: minimum flue gas temperature at the inlet of the catalyst, maximum age in use, catalyst replacement specifications, and maximum flue gas temperature at the inlet of the catalyst. The rule would allow a waiver from these provisions if the owner documents to the Director that establishing limits on other operating parameters would be more appropriate to ensure that the D/F destruction efficiency of the oxidizer is maintained after the performance test. The owner or operator would provide such documentation, including how limits on the alternative operating parameters would be established and appropriate averaging periods, and a request for a waiver as part of the notification to conduct the comprehensive performance test and draft test protocol. The Director would grant the waiver in writing, if warranted.

Minimum flue gas temperature at the inlet of the catalyst is necessary to ensure that the catalyst is above light-off temperature. Light-off temperature is that minimum temperature at which the catalyst is hot enough to catalyze the reactions of hydrocarbons and carbon monoxide. EPA proposes that minimum flue gas temperature be maintained on both a ten-minute and one-hour average. The ten-minute average limit would be established as the average of the minimum ten-minute rolling average for each run during the comprehensive performance test. The hourly average limit would be established as the average hourly average over all runs.

Due to poisoning and general degradation of the catalyst, manufacturers often establish a maximum time in-use for the catalyst. EPA proposes that the manufacturer's specification for maximum age be used as maximum age of the catalyst.

When a catalyst is replaced, it must be of the same design of the previous catalyst to ensure that the replacement catalyst will work as efficiently as the previous one. Therefore, EPA proposes that the following design parameters be used in specifying replacement catalysts: loading of catalytic metals; space time; and monolith substrate construction.

Catalytic metal loading is important because, without sufficient catalytic metal on the catalyst, it would not properly function. Also, some catalytic metals are more efficient than others. Therefore, EPA proposes that replacement catalysts have at least the same catalytic metal loading for each catalytic metal as the catalyst used during the comprehensive performance test.

Space time, expressed in inverse seconds (s^{-1}), is defined as the maximum rated volumetric flow through the catalyst divided by the volume of the catalyst. This is important because it is a measure of the gas flow residence time and, hence, the amount of time the flue gas is in the catalyst. The longer the gas is in the catalyst, the more time the catalyst has to cause hydrocarbons and carbon monoxide to react. It is proposed that replacement catalysts have at the same or lower space time as the one used during the comprehensive performance test.

Substrate construction is also an important parameter. Substrates for industrial applications are typically monoliths, made of rippled metal plates banded together around the circumference of the catalyst. Ceramic monoliths and pellets can also be used. Because of the many types of substrates, EPA proposes that the same materials of construction, monolith or pellets and metal or ceramic, be used as was used during the comprehensive performance test. Monoliths also form a honeycomb like structure when viewed from one end. The pore density, i.e., number of pores per square inch, is critical because they must be small enough to ensure intimate contact between the flue gas and the catalyst, but large enough to allow unrestricted flow through the catalyst. Therefore, if a monolith substrate is used, EPA proposes that the same pore density as the one used during the comprehensive performance test. Finally, catalysts are supported by a washcoat, typically alumina. EPA proposes that replacement catalysts have the same type and loading of washcoat as was on the catalyst used during the comprehensive performance test.

Finally, EPA believes it is also important to control maximum flue gas temperature into the catalyst. This is because sustained high flue gas temperature can result in sintering of the catalyst, degrading its performance. The Agency proposes that maximum flue gas temperature into the catalyst be controlled and that it be a ten-minute rolling average, based on manufacturer specifications.

xi. D/F Inhibitor. Some facilities may use a D/F inhibitor (e.g., sulfur) to meet the D/F standard. In such cases, the rule would establish a minimum inhibitor feedrate. Limits would be established on both a ten-minute and one-hour average. The ten-minute average limit would be established as the average of the minimum ten-minute rolling average for each run, and the one-hour average limit would be established as the average over all runs. See also the discussion in section II.F.2 below for other requirements to document compliance with feedrate limits.

This minimum inhibitor feedrate pertains to additives to feedstreams, not naturally occurring inhibitors that may be found in fossil fuels or hazardous waste. It is conceivable that a facility would choose to burn high sulfur fuel or waste specially during the comprehensive test and switch back to low sulfur fuels or waste after the test, thus reducing D/F emissions during the comprehensive test to levels that would not be maintained after the test. EPA invites comment on whether and how to address this concern, including whether it would be appropriate to establish

limits on the amount of naturally occurring inhibitor, either during performance testing or as an operating limit. Comments and documentation are also requested to help identify such inhibitors.

As was the case with carbon used in carbon injection and carbon beds, EPA is concerned that facilities may use a less effective, and presumably less expensive, D/F inhibitor during normal operation than was used during the comprehensive performance test. For this reason, the rule would require that facilities continue to use the same type and brand of inhibitor as was used during the comprehensive test. The rule would allow a source to obtain a waiver from this requirement from the Director, however, if the owner or operator: (1) documents by data or information key characteristics of the inhibitor which inhibit formation of D/F; (2) documents by data or information specification levels corresponding to those characteristics; and (3) complies with the specification.

xii. Rapid Quench. Some facilities may elect to use a rapid quench to lower flue gas temperature to meet the D/F standard. The rule would not establish limits on operating parameters for rapid quench systems because we believe that a maximum dry PM control device temperature is sufficient to ensure that the quench was adequate. We note, however, that a facility may use a rapid quench for control of D/F emissions yet not have a dry PM control device. One way to address this situation is to require that a maximum flue gas temperature be established at the stack.

EPA doubts, however, that there will be any facilities which use a rapid quench without a dry PM control device. Consequently, we invite comment on whether the final rule should establish a maximum flue gas temperature limit that would address such apparently hypothetical situations.

xiii. Consideration of Feed Restrictions on Metals, Halogens, and Dioxin Precursors. The rule would not establish feedrate limits on metals, halogens, or D/F precursors to ensure compliance with the D/F standard. Some research indicates that certain metals, copper for instance, in the feed may catalyze the formation of D/F. However, this research is inconclusive and there is not yet a consensus among the research community that catalytic metal in the feed necessarily causes increased D/F emissions.[145] Therefore, EPA proposes not limiting the feed of catalytic metals in the feed.

Research and common sense has also indicated that the presence of halogens, such as chlorine, in the feed may contribute to the production of halogenated D/F. While the presence of chlorine in the feed is necessary for the formation of chlorinated D/F, current science seems to support the view that there is not a clear correlation between the level of chlorine in the feed and the level of dioxin in the flue gas. In other words, increasing halogen feedrate above *de minimis* levels does not appear to cause increased emissions of chlorinated D/F.[146] Therefore, the rule would not limit the amount of chlorine fed to ensure compliance with the D/F standard, particularly in light of the suite of other compliance assurance measures.

Nonetheless, we believe that it is prudent to require that chlorine be fed at normal levels (or greater) during the D/F comprehensive performance test. This is because, while more chlorine does not necessarily form more dioxin, some chlorine is needed to form chlorinated D/F. We invite comment on how to ensure that normal levels of chlorine are fed during the comprehensive performance test. For sources that do not elect to use a CEMS for SVM, LVM, HCl and Cl_2 and, thus, must maximize chlorine feedrate during the test, this is not an issue. We believe that the vast majority of sources will be in this situation. For sources that elect to use such CEMS (assuming that multi-metal and Cl_2 CEMS become commercially available), defining normal chlorine feedrates is an issue.

Some arguments have been made that the presence of organic dioxin precursors in the feed would result in an increased level of D/F in the flue gas. EPA has briefly examined certain facilities which feed dioxin or known organic dioxin precursors (e.g., chlorophenol and chlorobenzene) to those which are known not to feed organic dioxin precursors. Although our limited study suggests that no strong correlation exists between the level of dioxins or organic dioxin precursors in the feed and D/F emissions, we do not believe the issue has been sufficiently examined in detail (indeed, other evidence suggests that a correlation might exist). EPA invites comment on whether feed restrictions on D/F and organic dioxin precursors are warranted and, if so, whether this should be an operating parameter or a feed requirement during the comprehensive test (such as proposed for chlorine).

3. Mercury (Hg)

Table V.2.3 Summarizes the proposed compliance monitoring requirements and other options being considered for Hg. See also proposed § 63.1210(k).

TABLE V.2.3.—PROPOSED HG MONITORING REQUIREMENTS AND OTHER OPTIONS BEING CONSIDERED

		Compliance using	Limits from	Avg. period	Operating limit avg pd basis
Proposed Requirement	CEMS	Total Hg or Multi-metal CEMS.	CEMS Std.	10 hour.	
Option 1: Elemental Hg CEMS.	Surrogate CEMS	Elemental Hg CEMS	Comp Test	10 hour	Avg over all runs.
	Max Flue Gas Flowrate or Production Rate.	Same	Comp Test	1 hour	Avg of Max 1 hour RAs.
	Min Press Drop, Wet Scrubber.	Pressure Drop Across Scrubber.	Comp Test	10 min	Avg of Min 10 min RAs.
				1 hour	Avg over all runs.
	Min Liq Feed Press, Wet Scrubber.	Pressure	Manuf Spec	10 min.	
	Min Liq pH	pH	Comp Test	10 min	Avg of Min 10 min RAs.

[145] See Chapter 7.2 of USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the Proposed MACT Standards'', February 1996.

[146] See Chapter 7.3 of USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the Proposed MACT Standards'', February 1996.

TABLE V.2.3.—PROPOSED HG MONITORING REQUIREMENTS AND OTHER OPTIONS BEING CONSIDERED—Continued

		Compliance using	Limits from	Avg. period	Operating limit avg pd basis
				1 hour	Avg over all runs.
	Min Liq/Gas Ratio, Wet Scrubber.	Scrubber Liquid and Flue Gas Flowrate.	Comp Test	10 min	Avg of Min 10 min RAs.
				1 hour	Avg over all runs.
Option 2: No CEMS	Max Total Hg Feedrate, all streams.	Feedstream Analysis	Comp Test	12 hour	Avg over all runs.
	Max Inlet Temp to Dry PM APCD.	Temp	Comp Test	10 min	Avg of Max 10 min RAs.
				1 hour	Avg over all runs.
	Min Carbon Injection Rate.	Feedrate CMS	Comp Test	10 min	Avg of Min 10 min RAs.
				1 hour	Avg over all runs.
	Carbon Specs	Brand and Type	Comp Test	N/A	N/A.
	Min Carrier Fluid Flowrate or Nozzle.	Same	Manuf Spec	10 min	N/A
	Max Carbon Age	Max Carbon	Initia	N/A	Manuf Specs.
			Conf Tests	N/A	Normal C Change-out Schedule.
			Subsequent Comp Tests.	N/A	Max C Age is the age during subsequent Comp Tests.
	Max Flue Gas Flowrate of Production Rate.	Flowrate CMS or Production Rate.	Comp Test	1 hour	Avg of Max 1 hour RAs.
	Min Press Drop, Wet Scrubber.	Pressure Drop Across Scrubber.	Comp Test	10 min	Avg of Min 10 min RAs.
				1 hour	Avg over all runs.
	Min Liq Feed Press, Wet Scrubber.	Pressure	Manuf Spec	10 min.	
	Min Liq pH, Wet Scrubber.	pH	Comp Test	10 min	Avg of Min 10 min RAs.
				1 hour	Avg over all runs.
	Min Liq/Gas Ratio, Wet Scrubber.	Scrubber Liquid and Flue Gas Flowrate.	Comp Test	10 min	Avg of Min 10 min RAs.
				1 hour	Avg over all runs.

a. Evaluation of Monitoring Options. Several types of CEMS exist or are under development which measure Hg. Therefore, the rule proposes use of a Hg CEMS to document compliance with the Hg standard.[147]

The rule would allow two alternative CEMS approaches: the use of a multi-metal CEMS or the use of a total Hg CEMS. (In addition, we discuss below our concerns with allowing the use of an elemental Hg CEMS.) If a facility elects to use a multi-metal (MM) CEMS for compliance with the SVM and LVM standards, the MM CEMS can be used for compliance with the Hg standard as well. See the discussion below on SVMs and LVMs for discussion on MM CEMS. If a facility elects not to use a MM CEMS, the source may use a total Hg CEMS.

[147] In February 1996, the Agency initiated a demonstration program to determine whether Hg (and PM) CEMS can comply with the performance specifications proposed today. The demonstration will also evaluate long-term durability (e.g., 6 months or longer) of the CEMS. Results of the demonstration will be made available for review and comment prior to promulgation of the final rule.

In case the final rule does not require compliance with the Hg standard using a CEMS, we also invite comment on ensuring compliance by establishing limits on operating parameters.

b. Total Mercury CEMS. The rule would require use of a CEMS to monitor Hg emissions (see below, small-on site sources could obtain a waiver from the CEMS requirement.) If a facility elects not to use a MM CEMS for compliance with all of the metals standards, EPA recommends that facilities use a total Hg CEMS.

An example of such a unit is a total Hg CEMS made by the German company Verewa and marketed in the US by Euramark. The device has recently been certified by TUV, a quasi-governmental German agency charged with approving compliance devices and methods. The CEMS uses wet chemistry techniques prior to an elemental Hg UV absorption analyzer to convert all species of Hg into elemental Hg. The analyzer then determines the total Hg in the flue gas.

The performance specification for a total Hg CEMS are proposed here as Part 60, Appendix B, Performance Specification 12. In addition, the appendix to Part 63, Subpart EEE, Quality Assurance for CEMS would require quarterly testing of the analyzer and relative accuracy testing of the total system every 3 years (or 5 years for small on-site facilities).

Also, EPA invites comments on allowing small on-site sources (defined in § 63.1208(b)(1)(ii) in the proposed regulations) to obtain a waiver from the requirement of installing Hg CEMS. If the waiver is promulgated and granted by the permitting authority, the facility would demonstrate compliance with the Hg standard by establishing operating parameter limits described in subsection d, ''Alternative to a CEMS,'' below.

c. Elemental Mercury CEMS. EPA invites comment on another approach to continuously monitor Hg emissions, the use of an elemental Hg CEMS. Although the elemental Hg CEMS may be less expensive than a total Hg CEMS, EPA has several concerns with allowing the use of an elemental Hg CEMS.

An elemental Hg CEMS does not measure species other than elemental, or metallic Hg. It does not measure Hg

salts such as mercuric chloride ($HgCl_2$). Therefore, it would be necessary for the facility to measure elemental Hg using the CEMS and elemental and Hg salts separately using manual methods during the comprehensive performance test.

Data from the comprehensive test would be used to identify the elemental Hg emission level at which the facility is considered to be in compliance with the total Hg standard. However, following the comprehensive test a facility could have higher levels of undetectable Hg salt emissions than occurred during the comprehensive test. This could happen in one of two ways: the scrubber may not be working as effectively; or the Hg and halogen feed may have increased such that, at a fixed scrubber efficiency, more Hg salts are emitted as a result. Ensuring that the scrubber efficiency is maintained at performance test levels can be accomplished using the parameters described above. However, it is difficult to determine whether the same amount of Hg salts, relative to the amount of total Hg, is being emitted. One could correlate Hg and halogen feed with scrubber efficiency at various scrubber conditions, but this would require many data points and seems infeasible from a monetary and technical standpoint. Even if an approach can be developed, the Agency is inclined to believe it would require a lot of oversight to ensure it is done properly.

If the issue of correlating total Hg emissions to an elemental Hg CEMS can be successfully addressed, establishing the site-specific limit and the averaging period for the elemental Hg standard would then have to be addressed. Facilities would be able to use the mean of the results during the test, along with a variability factor, as their site-specific elemental Hg level. The averaging period could be the time duration of three runs of the comprehensive performance test, but manual methods tests do not end on the exact hour and there may be more than one comprehensive test with, likely, different sampling periods. So, a problem would arise as to what averaging period to use.

For these reasons, EPA believes the use of an elemental Hg CEMS is infeasible to implement under self-implemented MACT standards. Nonetheless, if these issues can be resolved, the final rule may allow some use of an elemental Hg CEMS.

d. Alternative to a CEMS. If the final rule does not require that Hg emissions be continuously monitored, the rule would ensure compliance with the Hg standard by establishing limits on operating parameters. Also if the provision allowing small on-site facilities (defined in § 63.1208(b)(1)(ii) of the proposed regulations) to waive the Hg CEMS requirement is promulgated and such a facility elects not to use an Hg CEMS, the facility would have to establish these operating parameter limits to document compliance with the Hg standard. The proposed operating limits are: maximum Hg feedrate, Hg scrubber operating parameters, maximum flue gas feedrate, minimum carbon injection rate, and carbon bed operating parameters.

i. Maximum Hg Feedrates. Absent a requirement to monitor Hg emissions with a CEMS, the final rule would establish a maximum Hg feedrate limit. This is because the amount of Hg fed into the combustor directly affects emissions and the ability of control equipment to remove Hg. This maximum feedrate pertains to all feeds into the combustor: hazardous waste, raw materials, additives, and fossil fuels. Feedrate sampling and analysis protocols would be described in the facility's waste analysis plan. The limit would be based on a twelve-hour average and established as twelve times the hourly average feedrate during all runs of the comprehensive performance test. See also the discussion in section II.F.2. below for other requirements to document compliance with feedrate limits.

As mentioned above in Subsection B, this twelve-hour average is inconsistent with the ten hour averaging period for metals CEMS. CEMS should have longer averaging periods than operating parameters such as feedrates. Therefore, EPA invites comment on whether the averaging period for Hg feedrate should be promulgated at six, instead of 12, hours. EPA believes a six-hour averaging period for Hg feedrate is sufficiently conservative, relative to the CEMS averaging period and achievable.

ii. Max Inlet Temp to Dry PM APCD. High inlet temperatures to dry PM APCDs can cause low recovery of Hg in the APCD. This is because Hg volatility increases with increasing temperature. Therefore, absent a requirement to monitor Hg emissions with a CEMS, the final rule would control inlet temperature to a dry PM APCD. Limits would be based on both a 10-minute and a one-hour average. The 10-minute average would be the average of the maximum PM APCD inlet temperatures experienced during each compliance test run and the one-hour average would be the average over all runs.

iii. Carbon Injection. Some facilities may need to use carbon injection as an aftertreatment to comply with the Hg standard. Absent a Hg CEMS requirement, the final rule would establish controls on the following carbon injection operating parameters: minimum carbon injection rate, carbon specifications, and minimum carrier flowrate or nozzle pressure drop. The controls would be established under the same approach as proposed for carbon injection used for D/F control. See the previous discussion.

iv. Carbon Bed. Rather than carbon injection, some facilities may elect to use a carbon bed to control Hg emissions. Absent a requirement to monitor Hg emissions with a CEMS, the final rule would establish controls on carbon bed operating parameters under the same approach as proposed for carbon beds used for D/F control. See the previous discussion.

v. Maximum Flue Gas Flowrate or Production Rate. As discussed above for compliance with the D/F standard, an increase in flue gas flowrate can decrease collection efficiency of the emission control device. Accordingly, absent a requirement to monitor Hg emissions continuously, the final rule would limit flue gas flowrate or production rate under the same approach as proposed for D/F compliance. See the previous discussion.

vi. Wet Scrubber Parameters. The efficiency of wet scrubbers directly affects the removal of Hg salts from flue gas. Key operating parameters would include: maximum flue gas flowrate or production rate, minimum pressure drop across the wet scrubber, minimum liquid feed pressure, minimum liquid pH, and minimum liquid to gas ratio. Refer to the section below on compliance requirements for the HCl and Cl_2 standard for discussion on these parameters. Absent a requirement to monitor Hg emissions continuously, the final rule would establish limits on these parameters under the same approach as proposed for compliance with the HCl and Cl_2 standard.

4. Semivolatile Metals (SVM) and Low Volatile Metals (LVM)

Table V.2.4 Summarizes the proposed compliance monitoring requirements and other options being considered. See also proposed § 63.1210 (l) and (m).

TABLE V.2.4.—SUMMARY OF PROPOSED SVM AND LVM COMPLIANCE MONITORING REQUIREMENTS AND OTHER OPTIONS BEING CONSIDERED

		Compliance using	Limit from	Avg period	Operating limit avg pd basis
Proposed Option 1 (Facility Choice).	CEMS	Multi-metal CEMS	CEMS Std	10 hour.	
Proposed Option 2 (Facility Choice).	Good PM Control	PM CEMS (see PM for Others).	Comp Test	10 min	Avg of Max 10 min RAs.
				1 hour	Avg over all runs.
	Max Inlet Temp to Dry PM APCD.	Same	Comp Test	10 min	Avg of Max 10 min RAs.
				1 hour	Avg over all runs.
	Max Total SVM and LVM Feedrates.	Feedstream Analysis	Comp Test	12 hour	Avg over all runs.
	Max Pumpable LVM Feedrate.	Feedstream Analysis	Comp Test	12 hour	Avg over all runs.
	Max Chlorine Feedrate.	Feedstream Analysis	Comp Test	12 hour	Avg over all runs.

a. Evaluation of Monitoring Options. EPA proposes two compliance options for the SVM and LVM standards: use of a multi-metal CEMS (MM CEMS) or compliance with limits on operating parameters. A facility would be allowed to use either of these options to demonstrate compliance. We are not proposing to require the use of a CEMS because a CEMS is not commercially available for LVMs and SVMs at this time, and the Agency is uncertain whether a CEMS that could meet the proposed performance specifications discussed below would be available at promulgation of the final rule.

b. Option 1: Use of a Multi-metal CEMS to Document Compliance. EPA is proposing to allow the use of a MM CEMS for compliance with the Hg, SVM, and LVM standards. If a facility elects to use a MM CEMS, limits on operating parameters would not be required.[148]

EPA is proposing to allow the use of a MM CEMS (and may require the use of MM CEMS if they would be commercially available by the promulgation date of the final rule) because it is difficult to ensure compliance with the emission standards by limiting operating parameters. Sampling and analysis of feedstreams to monitor metals feedrate has drawbacks in that representative sampling is sometimes difficult and expensive to achieve,[149] and the available analytical methods may not extract all metals from some feedstreams (and thus metal feedrates may be higher than indicated by analysis). In addition, it is often difficult to use limits on operating parameters of the metal emission control device to ensure that collection efficiency is maintained. It is also difficult to ensure that the other major factors that can affect metals emissions are adequately addressed by operating limits. For example, factors that affect metal volatility and subsequently metals emissions may include chlorine feedrates, combustion chamber temperature, and temperature at the inlet of the emission control device. Finally, the common process of spiking metals during compliance testing to ensure an adequate operating envelope is expensive, potentially dangerous to the testing crew that must handle the toxic metals, and causes higher than normal emission rates during compliance testing. If a MM CEMS were available, there would not be a need to spike metals during compliance testing.

i. How to Address Metals that a CEMS May Not Be Able to Measure. Several MM CEMS are currently under development, and not all of them will be able to measure all metals in the SVM (Pb and Cd) and LVM (As, Be, Cr, and Sb) groupings. Clearly, a MM CEMS cannot be used to document compliance for a metal it cannot measure. For metals a MM CEMS cannot measure, it is proposed that facilities assume that all of that metal fed is emitted at the stack and that this metal feedrate be used in calculating the emissions for the metal group. Alternately, EPA could decide that a MM CEMS which does not measure all the metals could not be used as CEMS for compliance with the SVM and LVM standards. EPA invites comment on this issue.

For example, x-ray fluorescence analyzers do not measure Be. If a facility chooses to use a MM CEMS which employs an x-ray fluorescence analyzer, it would take the MM CEMS results for As, Cr, and Sb, and the mass feedrate for Be (corrected to effluent concentrations by dividing by the average gas flowrate) and sum the four together. This would constitute the LVM emissions for the averaging period that would be used to determine compliance.

ii. Performance Specifications for a MM CEMS. The performance specification for a MM CEMS is proposed here as Part 60, Appendix B, Performance Specification (PS) 10. Lacking a commercially available MM CEMS to test prior to developing the performance specification created unique challenges to developing a MM CEMS PS. The Agency's approach to developing the PS was to base performance criteria as much as possible on existing performance specifications. The Agency also worked closely with MM CEMS developers, through the American Society of Mechanical Engineers, to ensure that the MM CEMS PS would be representative of the performance of commercially available devices. EPA specifically invites comment on the performance specification.

It is also proposed that special quality assurance (QA) requirements also pertain to MM CEMS. (See subsection F.1. of this section for more information on CEMS QA requirements.) We propose that the owner/operator perform a relative accuracy test audit (RATA) on the MM CEMS at least once every three years (five years for small on-site facilities). The RATA compares the output of the MM CEMS to the reference method. For the purposes of these source categories, the reference method for stack metals determinations is the current BIF Method 0012 (SW–846 Method 0060). The QA requirements also propose that an absolute calibration audit (ACA) be conducted in years the RATA is not

[148] Although a site-specific limit on PM would also not be required for compliance with the SVM and LVM emission standards, it would be needed to comply with the D/F standard.

[149] We note that several cement and light-weight aggregate kilns have been fined because of inadequate feedstream analysis plans.

conducted. The ACA would involve making nine measurements using an NIST traceable calibration standard at three levels for each metal the CEMS measures. NIST traceable solutions of metals are currently available which challenge the analyzer device only. EPA is currently developing the NIST traceable metal standard which will challenge the entire system, not just the analyzer.

c. Option 2: Use of Limits on Operating Parameters to Document Compliance. If a source elects not to use a MM CEMS (or a CEMS is not commercially available), the rule would require the source to establish a site-specific PM limit and comply with limits on metals feedrate, chlorine feedrate, and maximum temperature at the inlet to the PM control device. These limits would be established during the comprehensive performance test when the source demonstrates compliance with the emission limits by manual stack sampling.

i. PM Limit. SVM and LVM (and adsorbed D/F) are controlled by the PM control device. To ensure that the collection efficiency of the PM device is maintained after the comprehensive performance test, EPA is proposing to require that a PM limit be established as the lower of the level occurring during the SVM, LVM, and D/F performance testing or the MACT standard. For PM monitoring requirements see section 7, below.

ii. Maximum Inlet Temperature to Dry PM APCDs. High inlet temperatures to dry PM APCDs can cause low recovery of metals in the APCD because at higher temperatures a larger portion of some metals will be in the vapor phase. (Dry PM control devices do not control vapor phase metals.) This happens because metal volatility increases with increasing temperature. Therefore, EPA proposes that the inlet temperature to a dry PM APCD be maintained at a level no higher than that during the comprehensive performance test.

The Agency proposes that maximum inlet temperature to a dry PM APCD be maintained on both a 10-minute and a one-hour average. The 10-minute average would be the average of the maximum inlet temperatures experienced during each compliance test run and the one-hour average would be the average over all runs.

iii. Maximum SVM and LVM Feedrate Limits. Given the correlation between feedrate and emission rate, the rule would limit feedrate of SVM and LVM to levels fed during the comprehensive performance test. For LVM, feedrate limits would be set on both pumpable liquids and total feedstreams separately. A separate limit is proposed for pumpable feedstreams because metals present in pumpable feedstreams may partition between the combustion gas and bottom ash (or kiln product) at a higher rate than metals in nonpumpable feedstreams.

For SVM, the feedrate limit would apply to all feedstreams. Separate limits would not be established for pumpable versus total feedstreams. This is because partitioning between the combustion gas and bottom ash or product does not appear to be affected by the physical state of the feedstream. [150]

Sources would be required to perform sampling and analysis of all feedstreams (including hazardous waste, raw materials, and other fuels and additives) for SVM and LVM content to document compliance with the feedrate limits. See also the discussion in section II.F.2. below for other requirements to document compliance with feedrate limits.

The rule would base the feedrate limit for SVM and LVM on a twelve-hour average basis. The limit would be established as twelve times the average hourly feedrate during the comprehensive performance test. Also, facilities would be required to record not only the total feed at each individual feed location for SVM and LVM, but the total sum of the SVM feed and the LVM feed at the various locations.

As mentioned above in Subsection B, this twelve-hour average is inconsistent with the ten-hour averaging period for metals CEMS. CEMS should have longer averaging periods than operating parameters such as feedrates. Therefore, EPA invites comment on whether the averaging period for all SVM and LVM feedrates should be promulgated at six, instead of 12, hours. EPA believes a six-hour averaging period for all SVM and LVM feedrates is sufficiently conservative, relative to the CEMS averaging period and achievable.

The grouping of metals by volatility means that it is possible for one metal within the volatility group to be used during performance testing as a surrogate for other metals in that volatility group. For instance, As may be used as a surrogate during the comprehensive performance test for all LVMs. Similarly, lead could be used as a surrogate for Cd, the other SVM. In addition, either SVM could be used as a surrogate for any LVM. This will help alleviate concerns facilities have voiced regarding the need to spike each metal during BIF certification of compliance testing. Facilities would not need to spike each metal to comply with today's rule, but only one metal within the group (or potentially one SVM for both categories).

iv. Maximum Chlorine Feedrate. The rule would establish a maximum feedrate for total chlorine and chloride based on the level fed during the comprehensive performance test. A limit on maximum chlorine feed is necessary because most metals are more volatile in the chlorinated form. Although most of the volatilized SVM and LVM will condense to particulate form before entering the PM control device, the metals condense in a fine particulate fume that is more difficult for most PM control devices to collect than larger particulate.

The rule would require sampling and analysis of each feedstream for total chlorine and chloride to document compliance with the feedrate limit for total feedstreams. The maximum feedrate would be based on a twelve-hour average, and would be established as twelve times the hourly average feedrate during the comprehensive performance test. Note also the requirements for documenting compliance with feedrate limits discussed in section II.F.2.

Again, this twelve-hour average is inconsistent with the one-hour averaging period for HCl and Cl_2 CEMS. CEMS should have longer averaging periods than operating parameters such as feedrates. Therefore, EPA invites comment on whether the averaging period for chlorine feedrate should be promulgated at one, instead of 12, hours. EPA believes a twelve-hour averaging period for chlorine feedrate is not be sufficiently conservative, relative to the one-hour CEMS averaging period. However, EPA also believes that a shorter averaging period for feedrates may be difficult for some facilities, particularly those with diverse feedstreams, to achieve routinely. For this reason, the twelve-hour average is proposed and comment is sought on the one hour-average.

We note that if a facility uses a CEMS for compliance with the Hg, SVM, LVM, and HCl and Cl_2 standards, there would be no need for the facility to establish a total chlorine and chloride feedrate limit.

v. Special Requirements for Cement and Lightweight Aggregate Kilns that Recycle Collected Particulate Matter. Cement kilns and lightweight aggregate kilns that recycle collected particulate matter (which is primarily raw material that is entrained in kiln gas) pose a

[150] See USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the Proposed MACT Standards'', February 1996.

special problem to ensure compliance with metals emission standards. These sources (particularly cement kilns) feed a variety of feedstocks which makes feedstream analysis problematic. Also, when these sources spike metals in feedstreams for purposes of performance testing, it may take several hours or days to reach steady-state emissions.

Under the BIF rule, these sources must comply with one of three requirements: (1) Daily monitoring of collected PM to ensure that metals levels do not exceed limits that relate concentration of the metal in the collected PM to emitted PM; (2) daily stack sampling for metals; or (3) conditioning of the furnace system prior to performance testing to ensure that metals emissions are at equilibrium with metals feedrates. See 56 FR 7176–78 (February 21, 1991), existing § 266.103(c)(6), and proposed § 63.1210(n). We propose to continue to require that these sources comply with one of the three BIF alternative approaches for compliance with the MACT metals standards.

We understand, however, that the approach of daily monitoring collected PM to document compliance with the BIF metal standards (see Section 10 of Appendix IX to Part 266, ''Alternative Methodology for Implementing Metals Controls'') is not currently being used by any facility because it is too complicated and burdensome. (The methodology involves empirically relating the concentration of each metal in the emitted PM to the concentration of the metal in collected PM (i.e., the enrichment factor).) The Cement Kiln Recycling Coalition (CKRC) has suggested several revisions to the methodology [151] including: (1) Reduced testing frequency to establish and periodically confirm the enrichment factor; (2) assuming PM emissions [152] are at normal levels rather than maximum allowable levels; (3) a less conservative approach to estimate the enrichment factor for nondetect metals in collected PM (based on new sampling and analysis techniques and improved understanding of metals behavior); and (4) allowing all kilns to comply with a revised methodology, not just kilns that recycle collected PM. (The Agency believes the approach may, in fact, be appropriate for any HWC and invites comment on this matter.) In addition, CKRC raises several questions regarding the statistical foundations of the methodology.

The Agency invites comment on CKRC's recommendations to improve the collected PM monitoring methodology and on other approaches to make the methodology a more workable but effective compliance approach in lieu of monitoring feedrates of metals in feedstreams.

5. Carbon Monoxide (CO), Hydrocarbons (HC), and Oxygen (O_2)

EPA is proposing that facilities demonstrate compliance with the CO and HC standards by using CEMS. See proposed § 63.1210(p) and (q). EPA is not proposing a standard for O^2,[153] but all of the standards are based on correction to 7 percent O^2. Therefore, EPA proposes facilities monitor O_2 by using a CEMS. Many HWCs are already equipped with these monitors to comply with the existing incinerator or BIF regulations.

EPA proposes performance specifications for CO and O_2 CEMS in Performance Specification 4B of Appendix B, Part 60. EPA proposes a total hydrocarbon (THC) CEMS performance specifications based on the use of a heated flame ionization detector (i.e., heated FID). The HC PS will be Performance Specification 8A contained in Appendix B, Part 60. Both PSs are similar to those currently used for BIFs. The minor proposed changes are discussed below.

a. Averaging Period for CO and HC CEMS. The averaging period for CO and HC CEMS is proposed to be a one-hour rolling average. This is because this a one-hour rolling average is the same averaging period currently used in the BIF rule. Changing the averaging period would necessitate changing the emission standard (see Part Four, Section II) to maintain the same stringency for the different averaging period. EPA does not believe this is warranted, so the one-hour rolling average is proposed.

b. CO and HC CEMS Performance Specifications. Performance specifications for CO and O_2 CEMS are proposed here as Performance Specification 4B. This performance specification is essentially the same as the specification for BIFs provided in Appendix IX of Part 266. This performance specification is the very similar to existing Appendix B Performance Specifications 3 (for O_2) and 4A (for CO). It references many of the provisions of the two other specifications. What the proposed specification does do is describe how the current BIF CEMS performance specifications differ from performance specifications 3 and 4A and prescribes the BIF specifications in instances when differences occur. EPA is proposing specification 4B because it believes it is important to ''grandfather'' in the current performance specifications for administrative and cost reasons. Performance specification 4B does not differ substantially from the current Part 60 specifications. Therefore, EPA invites comment on whether to not propose performance specification 4B and instead rely on the existing specifications 3 and 4A.

Also, performance specifications 3 and 4A (which performance specification 4B refers to) requires a Relative Accuracy Test Audit (RATA) be performed on the CEMS. It also allows for a waiver of the RATA requirement if an acceptable substitute is used. The Agency is currently moving away from requiring RATAs for CEMS for which cylinder gases are available. Cylinder gases are available for both CO and O^2, so we invite comment on whether the RATA requirements not be included in performance specification 4B. EPA would still require facilities to perform quarterly absolute calibration audits (ACAs) using calibration error (CE) test procedures for these CEMS. EPA invites comment on whether the RATA requirement should not be promulgated and whether just a quarterly ACA is adequate without a RATA.

HC CEMS performance specifications are proposed here as Performance Specification 8A. It is identical to the performance specification contained in section 2.2 of Appendix IX of Part 266, except the quality assurance section has been deleted and placed in the appendix to Subpart EEE, Part 63, to be consistent with the Agency's approach to Part 60 performance specifications.

There is an existing performance specification, number 8, for a volatile organic compound (VOC) CEMS. Performance specification 8 does not rely on heated sampling lines and detector. A cold VOC monitor does not measure less volatile hydrocarbons which, due to heating, are measured by a heated FID but not a cold VOC monitor. (Heavy hydrocarbons would condense out in the sampling line and in the analyzer in a VOC CEMS and not be measured as hydrocarbon emissions. Therefore, a VOC CEMS measures a subset of what a heated FID measures.) Using the VOC performance specification would be problematic because the emission standard was

[151] See letter from Craig Campbell, CKRC, to James Berlow, EPA, undated but received on February 20, 1996.

[152] Note that PM emissions from CKs are comprised primarily of raw material entrained in the kiln off-gas. The material is known as cement kiln dust (CKD).

[153] Except that batch-fired HWCs would be required to comply with a minimum combustion chamber oxygen level prior to feeding a batch to maintain compliance with the D/F standard.

established using the results from heated FIDs, not cold VOC CEMS. EPA believes allowing compliance with a CEMS that measures only a subset of the pollutants represented by the standard is inappropriate. For this reason, we decided against proposing the use of performance specification 8. EPA believes it is appropriate to propose performance specification 8A to ''grandfather'' in the current specifications and keep compliance monitoring in agreement with how the standard was derived.

One issue that has arisen during the implementation of the BIF rule is that the stated span values for the CO CEMS may lead to high error in the facility's calculated emission value. For instance, a CK may analyze for CO emissions in the bypass duct, and analyses in bypass ducts can have very high oxygen correction factors, on the order of 10. At the low range CO span of 200 ppm with an acceptable calibration drift of 3 percent, or 6 ppm, this means that error in the standard due to calibration drift would be 60 ppm if the oxygen correction factor is ten. An absolute calibration drift of 60 ppm is more than half the CO standard of 100 ppm and many believe this is unacceptable.

Therefore, EPA wishes to clarify the ranges for CEMS, stating that the spans for low and high ranges are expressed at an oxygen correction factor of 1. Facilities which normally operate at oxygen correction factors more than 2 would have to use CEMS with spans proportionately lower than the stated values, relative to the oxygen correction factor at the sampling point.

In the example above, where the oxygen correction factor is 10, the suggested value of the low range span for the CO CEMS would be 200 divided by 10, or 20 ppm. If the low CO range is 20, the oxygen correction factor is 10, and the calibration drift is 3 percent of the span of the range, then the absolute calibration drift would be 6 ppm.

Because the span value is a suggested value, the facility could use a 25 ppm span value to satisfy this requirement. This modification is contained in the CEMS Quality Assurance section of the proposed rules and would apply to the other CEMS except the oxygen CEMS, where the oxygen correction factor does not apply. It is proposed that corresponding changes be made to the BIF rule as well.

An issue which also relates to the oxygen correction factor is that it grows exponentially as oxygen levels increase, particularly at oxygen concentrations above 15 to 17 percent. Some facilities experience high oxygen correction factors at times of start-up or shut-down because combustion has just commenced or is just completing and, as a result, there is very high levels of excess oxygen in the combustor. For this reason, EPA invites comment on whether it would be appropriate to cap the oxygen correction factor at some multiplier above the facility's normal operating correction factor for a specified period of time, on the order of minutes, after a start-up or prior to a shut-down.

6. Hydrochloric Acid (HCl) and Chlorine Gas (Cl_2)

Table V.2.5 summarizes the proposed HCl/Cl_2 compliance monitoring requirements and other options being considered. See also proposed § 63.1210(o).

TABLE V.2.5.—PROPOSED HCl/Cl_2 COMPLIANCE MONITORING REQUIREMENTS AND OTHER OPTIONS BEING CONSIDERED

		Compliance using	Limits from	Avg period	Operating limit avg pd basis
Proposed Option 1 (Facility Choice).	Max Flue Gas Flowrate or Production Rate.	Same	Comp Test	1 hour	Avg of Max 1 hour RAs.
	Max Chlorine Feedrate.	Feedstream Analysis	Comp Test	12 hour	Avg over all runs.
	Min Press Drop, Wet Scrubber.	Press drop across scrubber.	Comp Test	10 min	Avg of Min 10 min RAs.
				1 hour	Avg over all runs.
	Min Liq Feed Pressure, Wet Scrubber.	Pressure	Manuf Spec	10 min.	
	Min Liq pH, Wet Scrubber.	pH	Comp Test	10 min	Avg Min 10 min RAs.
				1 hour	Avg over all runs.
	Min Liq/Gas Ratio, Wet Scrubber.	Scrubber liquid and gas flowrates.	Comp Test	10 min	Avg Min 10 min RAs.
				1 hour	Avg over all runs.
	Min Sorbent Feedrate, Dry Scrubber.	Sorbent Feedrate	Comp Test	10 min	Avg of Min 10 min RAs.
				1 hour	Avg over all runs.
	Min Carrier Fluid Flowrate or Nozzle Pressure Drop, Dry Scrubber.	Carrier fluid flowrate or pressure drop.	Manuf Spec	10 min.	
	Sorbent Specs, Dry Scrubber.	Brand and Type	Comp Test	N/A	Same brand and type.
Proposed Option 2 (Facility Choice).	CEMS	HCl and Cl2 CEMS	CEMS Std.	2 hours.	
Additional Option	Surrogate CEMS	HCl CEMS	Comp Test	2 hours	Avg over all runs.
	Factors Affecting Cl_2 Formation.	TBD	Comp Test	TBD	TBD.

a. Evaluation of Monitoring Options. The rule would allow sources the option of using separate CEMS to monitor HCl and Cl^2 emissions or to comply with limits on operating parameters.

HCl CEMS are commercially available and have been used at permitted municipal waste combustor sources and

some HWCs for many years. Cl_2 CEMS are currently being marketed by a European manufacturer. Although the Agency prefers the use of CEMS whenever they are available for compliance monitoring, we are concerned that the use of CEMS to monitor HCl and Cl_2 emissions may not be cost-effective. This is because facilities are likely to be required to monitor chlorine feed to demonstrate compliance with the SVM and LVM standards anyway, given that a multi-metal CEMS may not be commercially available for some time.[154] Accordingly, the rule would allow, but not require, the use of CEMS for HCl and Cl_2.

We note that we considered the feasibility of allowing the use of an HCl CEMS only, whereby the HCl CEMS would be used as a surrogate for the HCl/Cl^2 standard. As discussed below, we determined, however, that this approach would be more complicated, more costly, have technical problems, and/or provide less assurance of compliance. We nonetheless invite comment on whether the use of an HCl CEMS as a compliance parameter for the HCl and Cl_2 standard could be a workable approach.

b. Compliance Using Limits on Operating Parameters. If a source elects not to use separate HCl and Cl_2 CEMS to demonstrate compliance with the HCl/Cl_2 standard, the rule would require the source to establish limits on the following operating parameters based on operations during the comprehensive performance test to ensure it maintains compliance with the standard: maximum feedrate of total chlorine and chloride from all feedstreams, and limits on the acid gas APCD operating parameters discussed below.

i. Maximum Flue Gas Flowrate or Production Rate. If flue gas flowrates exceed those during the comprehensive performance test, the HCl/Cl_2 collection efficiency of the control device may not be maintained which may result in emissions that exceed the standard. Therefore, EPA proposes that maximum flue gas flowrate be controlled to levels that are no higher than those during the performance test. Alternatively, CKs and LWAKs may establish a maximum production rate (e.g., raw material feedrate or clinker or aggregate production rate) in lieu of a maximum gas flowrate given that production rate directly relates to flue gas flowrate. The limit would be based on a one-hour average and be established as the average of the maximum hourly rolling average for each run of the comprehensive performance test.

ii. Maximum Total Chlorine or Chloride Feedrate. The rule would limit the amount of total chlorine or chloride fed in all feedstreams to levels that were fed during the comprehensive performance test demonstrating compliance with the HCl/Cl_2 standard. Sources would be required to perform sampling and analysis of each feedstream for total chlorine and chloride content to document compliance with the feedrate limit for total feedstreams. See also the discussion in section II.F.2 for other requirements to document compliance with feedstream limits.

The total chlorine and chloride feedrate limit would be averaged over a twelve-hour period and would be established as twelve times the hourly feedrate during the comprehensive performance test.

We again note that there is an inconsistency between this twelve-hour feedrate average and the proposed one-hour averaging period for HCl and Cl_2 CEMS. EPA invites comment on whether the averaging period for chlorine feed should be promulgated at one, instead of twelve, hours.

Note that if a facility uses a CEMS for compliance with the HCl and Cl_2, Hg, SVM, and LVM standards, no chlorine feed monitoring would be required.

iii. Wet Scrubber Parameters. Wet scrubbers can be used to control HCl and Cl_2 emissions. To ensure that the control efficiency of a wet scrubber is maintained at levels achieved during the comprehensive performance test, the rule would require sources to establish limits on the following operating parameters: pressure drop across the scrubber; liquid feed pressure; liquid (blowdown) pH; and liquid to gas flow ratio.

Pressure drop across a wet scrubber is an important parameter because it is an indicator of good mixing of the two fluids, the scrubber liquid and the flue gas. A low pressure drop would indicate poor mixing and, hence, poor efficiency. A high pressure drop would indicate good removal efficiency. Therefore, EPA proposes that the pressure drop across the scrubber be limited to the minimum level during the comprehensive performance test. Limits would be based on both a ten-minute and a one-hour average. The ten-minute average limit would be established as the average of the lowest ten-minute rolling average for each run, and the hourly average limit would be established as the average over all runs.

Scrubber liquid feed pressure is important because it directly relates to the amount of scrubber liquid pumped into the scrubber and is easier to measure than scrubber liquid flow directly. The more scrubber liquid pumped into the scrubber, the better the removal efficiency. If liquid flow were to decrease, the removal efficiency would also decrease. EPA proposes that minimum liquid feed pressure be maintained on a ten-minute average and that the limit be the minimum value established by the scrubber manufacturer.

The pH of the scrubber liquid is also important because, at low pH, the scrubber solution is more acidic and removal efficiency of HCl decreases. We propose that the pH be determined from the blowdown liquid. This is because it is the best indicator of scrubber efficiency by measuring pH of scrubber liquid. EPA proposes that minimum pH of the scrubber water be controlled on both a ten-minute and a one-hour average. The ten-minute average limit would be established as the average of the lowest ten-minute rolling average for each run, and the hourly average limit would be the average over all runs.

EPA solicits comment on whether the alkaline reagent (such as lime) concentration in the scrubber should be a control parameter for alkaline wet-scrubbers. This parameter is closely related to the just mentioned pH since the concentration of alkaline reagent in the scrubber will keep the scrubber liquid pH high. EPA believes this parameter is important because the alkaline reagent is what removes Cl_2 and, to a lesser extent, HCl from the flue gas. pH is a secondary indicator of this parameter. EPA's concern is alkaline reagent concentrations can be low enough to lower the efficiency of wet scrubbers yet buffer the scrubber liquid enough to maintain pH. However, the concentration of alkaline reagent in the scrubber liquid can not be continuously monitored as easily as pH. We invite comment on whether the concentration of alkaline reagent in the scrubber liquid should be a control parameter for wet scrubbers, whether this parameter should be in addition to or in lieu of the pH parameter, and what averaging period(s) such a parameter should have.

In addition, EPA invites comment on whether a ten-minute average is appropriate for pH (and/or alkaline reagent concentration). Some facilities may not automate their wet scrubbers to add scrubbing solutions as needed to maintain scrubber efficiency. Such facilities make up batches of virgin scrubber solution and add it to the scrubber liquid. In this case, it might be

[154] If we determine that multi-metal CEMS are commercially available at promulgation and require their use in the final rule, we may also require the use of CEMS to monitor HCl and Cl_2 emissions.

more appropriate to establish a parameter ensuring that batches of new scrubber solution is added to the wet scrubber prior to the scrubber liquid pH (and/or possibly alkaline reagent) reaching a certain level.

Liquid to gas flow ratio is another important wet scrubber parameter. A high liquid to gas flow ratio indicates good scrubber removal, while a low liquid to gas flow ratio indicates less efficient removal. EPA proposes that the minimum scrubber liquid to flue gas flow ratio be controlled on both a ten-minute and a one-hour average. The ten-minute average limit would be established as the average of the lowest ten-minute rolling average for each run, and the hourly average limit would be established as the average over all runs.

iv. Dry Scrubber Parameters. A dry scrubber removes HCl from the flue gas by adsorbing the HCl onto some sorbent, normally an alkaline substance like limestone. To ensure that the collection efficiency of the scrubber is maintained at comprehensive performance test levels, the rule would require sources to establish limits on the following operating parameters: sorbent feedrate; carrier fluid flowrate or nozzle pressure drop; and sorbent specifications.

Sorbent feedrate is important because, when more sorbent is fed into the dry scrubber, removal efficiency for HCl and Cl_2 will increase.[155] Conversely, lower sorbent feedrates tend to cause removal efficiency to decrease. Therefore, EPA proposes that the minimum sorbent feedrate into the dry scrubber be controlled on both a ten-minute and a one-hour rolling average. The ten-minute average limit would be established as the average of the lowest ten-minute rolling average for each run, and the hourly average limit would be established as the average over all runs.

Carrier fluid is some liquid or gas (normally air or water) which transports the sorbent into the dry scrubber. Without proper carrier flow to the dry scrubber the sorbent flow into the dry scrubber will decrease, and efficiency will also decrease. Nozzle pressure drop is also an indicator of carrier gas flow into the scrubber. At a relatively high pressure drop, more sorbent is carried to the dry scrubber. At lower pressure drop, less sorbent is carried to the scrubber. Therefore, the rule would require that carrier fluid flowrate or nozzle pressure drop be maintained to the minimum levels occurring during the comprehensive performance test. Limits would be established on both a ten-minute and a one-hour rolling average. The ten-minute average limit would be established as the average of the lowest ten-minute rolling average for each run, and the hourly average limit would be established as the average over all runs.

As was the case with maintaining the quality of carbon used in carbon injection and carbon bed systems for control of D/F and Hg, the rule would require that the quality of sorbent be maintained after the comprehensive performance test. Therefore, the rule would require sources to continue to use the same sorbent brand and type as they used during the comprehensive performance test. The rule would allow a source to obtain a waiver from this requirement from the Director, however, if the owner or operator: (1) documents by data or information key characteristics of the sorbent which controls HCl and Cl_2; (2) documents by data or information specification levels corresponding to those characteristics; and (3) complies with the specification.

As was the case for pH in wet scrubbers, EPA invites comment on whether a ten-minute average is appropriate for sorbent feedrate. Some facilities may not automate their dry scrubbers to add sorbent solutions as needed to maintain scrubber efficiency. Such facilities make up batches of virgin sorbent solution and add it to a dry scrubber feed tank containing the sorbent. In this case, it might be more appropriate to establish a parameter ensuring that batches of new scrubber sorbent is added to the dry scrubber prior to the sorbent concentration in the dry scrubber reaching a certain level.

c. Compliance Using Separate HCl and Cl_2 CEMS. The rule would allow sources to use separate HCl and Cl_2 CEMS to demonstrate compliance with the HCl/Cl_2 standard. This option would allow for the direct measurement of the standard, at the top of the monitoring hierarchy, but does so at a higher cost relative to the previous option of compliance with limits on operating parameters. EPA seeks comment on whether the use of separate HCl and Cl_2 CEMS is in fact cost-effective and should be required in the final rule in lieu of allowing compliance with operating limits.

Under this option, compliance would be demonstrated by measuring HCl emissions (in ppmv) with the HCl CEMS and measuring Cl_2 emissions (in ppmv) with a Cl_2 monitor. Since the HCl and Cl_2 standard is based on equivalents of HCl, the ppmv emissions of Cl_2 must be multiplied by two and added to the HCl emissions to determine the combined emission level. If this result is lower than the emission standard, then the facility is in compliance with the HCl/Cl_2 standard.

i. HCl CEMS. HCl CEMS are proven technologies, available worldwide, and are currently required in the permits of many MWCs. Several HWCs also use HCl CEMS. HCl CEMS are not expensive; the purchase cost are $12,000 to $55,000.[156]

Performance specifications for a HCl CEMS are proposed today as Performance Specification 13 of Appendix B, Part 60. The proposed appendix to Part 63, Subpart EEE, also proposes certain RATA and ACA requirements.

ii. Cl_2 CEMS. Cl_2-specific CEMS are currently being marketed by Opsis, a European CEMS manufacturer. These devices have been certified for use in Germany and can also be used to monitor for HCl, CO, NO_X, SO_X, and NH_3. This device would likely be a cost-effective option for new facilities or existing facilities purchasing a suite of new CEMS.

Performance specifications for Cl_2 analyzers are proposed here as Performance Specification 14 of Part 60, Appendix B. The proposed appendix to Part 63, Subpart EEE, also proposes certain RATA and ACA requirements.

d. Consideration of Using an HCl CEMS Only. EPA requests comment on whether the use solely of an HCl monitor for compliance with the HCl/Cl_2 standard could be workable. If so, this approach could be allowed as an option in the final rule.

This approach would provide direct monitoring of the HCl portion of the standard and act as a surrogate monitor for the Cl_2 portion. However, EPA is concerned that poor correlation between HCl and Cl_2 emissions may result in HCl being a poor surrogate for Cl_2. For an HCl CEMS alone to be a feasible surrogate monitor for the HCl/Cl_2 standard, this and other issues discussed below must be addressed.

Cl_2 and HCl form a post-combustion equilibrium. At temperatures above 1000°F the equilibrium is quite stable and correlation is good. At lower temperatures, though, formation of Cl_2 is favored over HCl and the equilibrium no longer holds. All HWCs experience temperatures lower than 1000°F, so the HCl/Cl_2 equilibrium does not hold. The formation of Cl_2 under these circumstances is dependent on a

[155] EPA notes that sorbent to a dry scrubber should be fed in excess of the stoichiometric requirements for neutralizing the anion component in the flue gas. Lower concentration of sorbent, even above stoichiometric requirements, would limit the removal of acid gasses.

[156] See Chapter 2.6 of USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the Proposed MACT Standards'', February 1996.

number of site-specific conditions, such as the post-combustion temperature profile and hence the rate of conversion to Cl_2, and residence time from the point where Cl_2 formation is favored to the stack. In fact, these conditions may vary at any given facility depending on the circumstances at any time after combustion. Given that HCl appears to be a poor indicator of Cl_2 emissions, direct measurement of Cl_2 is desired.

If this issue can be adequately addressed, the use of only a HCl CEMS to demonstrate compliance with the standard would involve determining a site-specific HCl limit representative of the combined HCl/Cl_2 emissions. This would involve a comprehensive performance test at maximum chlorine feed and under conditions which are worst-case for Cl_2 formation and emissions and optimal for HCl removal. The resulting HCl level would become the site-specific limit to demonstrate compliance with the HCl/Cl_2 standard.

Limits on operating conditions would also be necessary to ensure that the ratio of Cl_2 to HCl emissions is not higher than experienced during the comprehensive performance test, and that HCl control equipment is *not operated more efficiently* (note emphasis) after the performance test. Otherwise, the HCl emissions during normal operations may under-predict combined HCl and Cl_2 emissions.

7. Particulate Matter (PM)

As discussed above in the sections on operating limits for compliance with the D/F, SVM, and LVM standards, a PM limit would be established as the lower of either the levels that occurred during the comprehensive performance test to demonstrate compliance with the D/F, SVM, and LVM emission standards (as a compliance parameter for those standards) or the national PM standard. Table V.2.6 below summarizes the proposed monitoring requirements and options being considered.

TABLE V.2.6.— PROPOSED PM MONITORING REQUIREMENTS AND OTHER OPTIONS BEING CONSIDERED

		Compliance using	Limits from	Avg. period	Operating limit avg. pd basis
Proposed Requirement	CEMS	PM CEMS	CEMS Std	2 hours.	
			D/F or SVM/LVM Comp Test.	10 Min	Lowest Avg Min 10 min RAs.
				1 hour	Lowest Avg over all runs.
Option: Feedstream and Operating Parameter Limits.	Max Flue Gas Flowrate or Production Rate.	Same	Comp Test	1 hour	Avg of Max 1 hour RAs.
	Max Ash Feedrate	Feedstream Analysis	Comp Test	12 hour	Avg over all runs.
	Min Press Drop, Wet Scrubber including Ionizing Wet Scrubber.	Press drop across scrubber.	Comp Test	10 min	Avg of Min 10 min RAs.
				1 hour	Avg over all runs.
	Min Scrubber Feed Press, Wet Scrubber including Ionizing Wet Scrubber.	Pressure	Manuf Specs	10 min	N/A.
	Min Blowdown or Max Solid Content in Liq, Wet Scrubber including Ionizing Wet Scrubber.	Liquid Flowrate or Solid Content.	Comp Test	10 min	Avg of Min/Max 10 min RAs.
				1 hour	Avg over all runs.
	Min Liq/Gas Ratio, Wet Scrubber including Ionizing Wet Scrubber.	Scrubber Liquid and Gas Flowrates.	Comp Test	10 min	Avg Min 10 min RAs.
				1 hour	Avg over all runs.
	Min Pressure Drop, Fabric Filter.	Pressure Drop Across Fabric Filter.	Comp Test	10 min	Avg Min 10 min RAs.
				1 hour	Avg over all runs.
	Min Power Input	Voltage	Comp	10 min	Avg Min 10.
				1 hour	Avg over all runs.

a. Evaluation of Monitoring Options. Continuous PM CEMS are commercially available and installed on stacks worldwide. EPA proposes that facilities maintain continuous compliance with the PM standard through the use of a PM CEMS. PM CEMS are installed for compliance purposes in the European Union (EU) with the EU hazardous waste combustor PM standard of 13 mg/dscm. Germany has been in the forefront in the development, certification, and application of PM CEMS.

i. Evaluation of PM CEMS feasibility and use. EPA in the past has relied on opacity monitors to indicate compliance with a PM standard. Opacity CEMS used in accordance with performance specification 1 have been a valid tool to indicate PM APCD failures and the necessity for corrective action as a result. However, opacity monitors are not, relatively speaking, very sensitive. They are typically useful down to about 45 mg/dscm. Today's proposed regulation will limit PM emissions to 69 mg/dscm. Opacity monitors would not be sufficient because to maintain compliance with 69 mg/dscm, facilities would generally need to operate around 35 mg/dscm. Thus, emissions will typically be below the detection limit of opacity monitors most of the time. While normal emission levels below the detection limits of CEMS are acceptable, facilities often desire the detection limit to be below one-tenth of the emission limit, or 7 mg/dscm for the proposed standard. This gives one sufficient

warning of how emissions are changing before the emission limit is approached, and allows the facility, based on CEMS readings, to change operations as necessary to be in compliance with the applicable standard. EPA has relied on opacity CEMS because there has not been available an acceptable quantitative monitor for continuous mass PM emissions. Opacity CEMS standards are established at a given percent opacity limit (generally 5–10 percent) over a 6-minute averaging period and, as stated, cannot distinguish particulate concentrations below 45 mg/dscm. In other words, opacity CEMS as they are currently used can be used to ensure PM APCD efficiency but not to determine mass emissions in real time.

If possible, EPA desires a quantitative, continuous measure of PM mass concentration rather than opacity. EPA has recently determined that CEMS do exist that do this: beta gauges and light scattering based CEMS. These CEMS rely on calibration of the device to manual gravimetric measurements. Therefore, EPA is proposing use of CEMS based on the availability of these newer technology PM CEMS and a related PM CEMS Performance Specification for monitoring PM mass concentration. This PS does not specify the type of CEMS used and allows the use of opacity monitors, which can also be calibrated to relate opacity to mass concentration. However, opacity is more sensitive to PM size distribution and physical properties, and has high detection limitations relative to the newer PM CEMS. As a result the calibration will be less stable for an opacity CEMS calibrated according to the proposed performance specification than one of the newer technology instruments.

EPA believes that mass emission monitoring is feasible, and opacity monitoring has borderline sensitivity relative to today's proposed PM emission limit. The newer technology PM CEMS can give a real-time quantitative measure of PM mass emissions while opacity CEMS cannot. From a cost standpoint opacity monitoring is no less expensive than the alternative proposed here. As a result, EPA proposes to require mass emission monitoring rather than opacity monitoring.

The German approach to using CEMS for PM compliance monitoring is based on the application of a practical engineering philosophy. PM CEMS are used despite the known sensitivities to various factors such as particle composition and size distribution since these devices are designed to minimize the impacts of these changes on the accurate measure of PM mass concentrations. The German experience on PM CEMS is that at controlled sources, i.e., those with low loading or equipped with PM control devices such as baghouses or ESPs, these sensitivities are not as important as they are at facilities with no control or high and/or highly varying grain loadings. The Germans have found that PM CEMS can be calibrated to manual methods to achieve a statistically reliable and enforceable calibration curve at controlled sources.[157]

At periods when the particle composition and size changes dramatically, the PM CEMS calibration is not valid. However, this occurs when fuel is changed or the PM control device fails and causes very high grain loadings to occur. To account for the PM CEMS' sensitivity to fuel type, the Germans mandate a new calibration be made whenever the fuel is changed. During times of high grain loading the PM CEMS cannot accurately determine how high the PM emissions were. But at controlled devices, this only occurs when the PM control device fails and/or otherwise exceeds the PM standard. Therefore, PM CEMS remain a reliable indicator of compliance with a PM standard.

In Germany, calibration of the PM CEMS defines a statistically derived site-specific calibration of the PM CEMS' response to various PM loadings. This is done by installing a plate in lieu of a bag in the baghouse or by varying the ESP voltage to allow various grain loadings to flow through the control device to the stack. The PM CEMS and manual methods are run simultaneously at various PM loadings to determine emissions. These PM CEMS outputs and manual methods results are used to statistically define the calibration curve for the PM CEMS.

EPA has tested several of these devices at a hazardous waste incinerator and a cement kiln and has found that PM CEMS maintain calibration, even in a water saturated flue gas.

ii. Types of PM CEMS available. The many types of PM CEMS fall into three broad categories: accumulated mass, impaction, and light scattering.

For accumulated mass PM CEMS, stack gas is extracted isokinetically and particles are deposited on a sensing surface for mass measurement. Two types of accumulated mass devices are β-radiation attenuators, commonly referred to as ''β-gauge'' devices, and loaded oscillators. EPA has tested a stack-type β-gauge but testing was inconclusive.[158] EPA knows of no available stack-type loaded oscillator device.

For impaction devices, particles impact upon a sensor surface due to the inertia imparted by the approaching gas stream. Two types of impaction PM CEMS are contact electrification, commonly referred to as ''triboelectric'', and acoustic energy. Stack-type triboelectric devices are commercially available and in widespread use in France. However, EPA has concern about triboelectric PM CEMS since the physical property of PM which they work on, contact electrification, can vary the most from particle to particle even at controlled sources. For this reason, facilities should be aware that triboelectric PM CEMS may not be quantitative enough to be used for compliance with the PM standard. Acoustic energy PM CEMS are not in widespread use.

Light scattering CEMS are preferred in Germany and are believed to be the PM CEMS most suitable for making measurements at low particulate levels typical of a well controlled source. Light scattering PM CEMS operate by sending a light beam across a path and measuring the light reflected back to a sensor at some angle from the source light. Several hundred of these devices have been certified for stack-use in the EU. EPA has also tested a time-dependant optical transmission device. Under certain circumstances, it can give results comparable to those of the light scattering device.

To be in compliance with the PM limit, facilities would comply with the performance specifications and operating practices for the CEMS proposed here. If a PM CEMS is used at a facility, no feedstream or operating parameter limits will be necessary to document compliance with the PM limit. If a PM CEMS is not used, compliance with limits on feedstream and operating parameters will be necessary.

iii. Control of PM Emissions. We are proposing to use a PM CEMS as a compliance parameter to ensure: (1) compliance with the national MACT PM standard; and (2) that the collection efficiency of the PM control device is maintained at performance test levels achieved when documenting compliance with the SVM, LVM, and D/F standards. Thus, it is necessary to

[157] See Chapter 2.1 of USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the Proposed MACT Standards'', February 1996.

[158] See Chapter 2.1 of USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the Proposed MACT Standards'', February 1996.

establish the PM limit as the lower of the level that occurs during the SVM, LVM, and D/F performance tests or the MACT standard. This is because a source could be operating well below the national PM standard during the performance test and, after the test, operate the PM control device at lower collection efficiency (e.g., to reduce operating costs, or because of reduced efficiency from ''wear and tear''). In this case, the source could continue to be in compliance with the national PM standard, yet exceed the D/F, LVM, and SVM emission limits because of increased emissions of adsorbed D/F, LVM, and SVM.

To ensure that the collection efficiency is maintained while meeting the site-specific PM limit, the rule would require that feedstocks with normal levels of ash, i.e., those levels which the facility routinely experiences during normal operations, be fed during the performance test. This would preclude a source from artificially increasing the PM loading during the performance test using high ash feedstocks to obtain a high site-specific PM limit. If this were the case, the source could meet the PM limit during normal operations when feeding feedstocks with normal ash content while operating the PM control device under less efficient conditions. This could result in an increase in emissions of metals and D/F adsorbed onto PM. We invite comments on how to ensure that feedstocks with normal ash content are fed during the comprehensive performance test.

The comprehensive performance tests would be conducted as follows. During the D/F, SVM, and LVM comprehensive performance tests, the facility would make manual measurements of D/F and metals and CEMS measurements of PM. Emissions of PM would be limited to the national standard of 69 mg/dscm during the tests. Following the tests the facility would establish two site-specific limits for PM: a ten-minute limit to control perturbations and a one-hour limit to control average emissions. The ten-minute average would be based on the highest ten-minute rolling averages occurring during each comprehensive test. The hourly average would be the average of all one-minute averages occurring during each comprehensive test. (Note that, if the facility were to perform separate D/F and metals tests, the lowest of the two PM averages would be the applicable PM limit.)

The facility need not determine or record two-hour averages to document compliance with the MACT PM standard during normal operation, only during the comprehensive test. Since the one-hour average is the average of all one-minute averages during the comprehensive performance test and the time duration of the test is longer than two hours, the one-hour average would have a numerical value lower than the two hour national standard. Demonstration of compliance with a lower numerical limit over a shorter averaging period proves compliance with a higher number over a longer averaging period.

In lieu of a site-specific PM limit, EPA could limit key operating parameters for the PM control device to ensure that the device's collection efficiency is maintained at performance test level. We are concerned, however, that limiting key operating parameters (e.g., pressure drop across a fabric filter) may not be adequate because there are many complex operating and maintenance factors that affect collection efficiency of a PM control device. We believe that continuous monitoring of a surrogate emission (i.e., PM) is far preferable to continuous monitoring of operating parameters that less effectively relate to collection efficiency. (We note, however, that if the use of a PM CEMS is not required in the final rule, the rule would establish limits on the PM control device operating parameters as the next preferable approach.)

Also, EPA invites comment on allowing small on-site sources (defined in § 63.1208(b)(1)(ii) in the proposed regulations) to obtain a waiver from the requirement of installing a PM CEMS. If the waiver is promulgated and allowed by the permitting authority, the facility would demonstrate compliance with PM by establishing operating parameter limits described in subsection b, ''Operating Parameter Limits,'' below.

iv. Proposed PM CEMS Performance and Calibration Specifications. There are existing performance specifications (PS) developed by the International Standards Organization (ISO) for PM CEMS. The ISO specifications have been modified slightly to account for the US regulatory environment. This PM CEMS PS is proposed here as Part 60, Appendix B, Performance Specification 11. EPA invites comment on this specification.

It is proposed that HWCs follow the German approach to using PM CEMS. This approach involves deriving a site-specific statistically derived calibration curve of PM CEMS response to manual methods results for each fuel type. When the facility changes fuel type or supplier, a new PM CEMS calibration would be performed.

It is proposed that PM CEMS be calibrated to the reference method, 40 CFR 60, Appendix A, Method 5. Performance specification 11 requires that at least 15 measurements be made at least three grain loadings. During calibration, Method 5 and the CEMS will be run simultaneously during each of the 15 measurements. The average output response from the CEMS is then compared to the results of each of the 15 measurements. Two calibration procedures are possible for PM CEMS: linear and quadratic. The performance specification proposes that facilities first calculate the calibration using the linear relationship, then the quadratic. If the quadratic relationship proves to be a better fit to the data, it is used. Otherwise the linear relationship is used.

The quality assurance (QA) requirements for HWC CEMS propose that an absolute calibrations audit (ACA) be performed quarterly (every three months) and a relative calibration audit (RCA) be performed every 18 months (30 months for small on-site facilities). If the calibration has drifted, a new calibration shall be performed. An absolute calibration audit would not be required during quarters when a response calibration audit is conducted.

Also, there is a concern that the suitability of a calibration curve for a PM CEMS is dependant on the type of fuel used. For the purposes of this source category it is proposed that fuel type be defined by the physical state of the fuel: gas, liquid, or solid. Therefore, a facility that burns only gas, liquid, or solid fuel would need to generate only one calibration curve. Facilities which wish to burn a combination of fuel types would need to establish a single or multiple calibration curves which encompasses all combinations of fuel mix. Facilities which use multiple curves must describe in their quality assurance plan their methodology for deriving the curves and how the proper curves will be used during normal operation. See the TBD for more information on calibration due to fuel changes.

b. Operating Parameter Limits. If the final rule does not require the use of a PM CEMS, we would rely on limits on ash feedrate and key PM APCD operating parameters to ensure continued compliance with the PM emission standard. In addition, if the provision allowing small on-site facilities (defined in § 63.1208(b)(1)(ii) of the proposed regulations) to waiver the PM CEMS requirement is promulgated and the facility elects not to use a PM CEMS, the facility would have to establish these operating parameter limits to document compliance with the PM emission limit.

i. Maximum Flue Gas Flowrate or Production Rate. EPA is concerned that flue gas flowrates exceeding those of the performance test could decrease the collection efficiency of the PM control device. For that reason, EPA proposes limiting flue gas flowrate. Alternately, CKs and LWAKs could limit production rate (e.g., production rate of clinker or aggregate, or raw material feedrate) since production rate is proportional to flue gas flowrate. Either flue gas flowrate or production rate would be established as a one hour average. The one-hour average would be the average of the maximum hourly rolling averages occurring during the comprehensive performance tests.

ii. Maximum Ash Feedrate. A portion of the ash fed into a HWC is emitted as PM. To limit the amount of PM emitted at the stack, maximum ash feedrate would be used as a compliance parameter. As set out in the BIF rule, however, EPA does not believe that an ash feedrate limit is necessary for CKs or LWAKs because entrained raw materials comprise virtually all of their PM emissions. See 266.103(c)(1)(iv) and 56 FR at 7146. Thus, for a cement or lightweight aggregate kiln, variation in ash content of the hazardous waste is not likely to have a significant effect on PM loading at the inlet to the PM control device or PM emissions. Conceptually, however, the feedrate of ash in liquid feeds and the rate at which air pollution control dust (e.g., cement kiln dust) is returned to the kiln may have significant effect on the loading of *small* particles. Absent a CEMS, EPA seeks comment on addressing this issue.

It is proposed that the limit on ash feedrate be established on a one-hour average to coincide with the other control parameters for PM. This one-hour average for ash feed is also consistent with and conservative relative to the two-hour (national) averaging period for a PM CEMS.

iii. Wet Scrubber Parameters, including Venturi and Ionizing Wet Scrubbers. Venturi and other wet scrubbers remove PM by capturing particles in liquid droplets and separating the droplets from the gas stream. The wet scrubber parameters pertinent to PM control are minimum pressure drop across the wet scrubber, minimum liquid feed pressure to the wet scrubber, minimum blowdown or solids content of the scrubber liquid, and minimum liquid to gas ratio. Ionizing wet scrubbers have the additional parameter of minimum power input. Parameters for pressure drop, liquid feed pressure, and liquid to gas ratio are described, below, in the section dealing with HCl and Cl_2 standard. Parameters for blowdown or solids content and power input to an IWS are described in the next paragraphs.

Blowdown is the amount of scrubber liquid removed from the process and not recycled back into the wet scrubber. Blowdown is an important wet scrubber parameter because, as scrubber liquid is removed and not recycled, solids are removed as well and not recycled. Alternately, solids content can be used as a direct indicator of solids content in the scrubber liquid. When the scrubber liquid contains high solids, there is a lack of a driving force for more solids to go into solution. Conversely, when little or no solids are in the scrubber liquid, there is a strong driving force for liquids to go into solution. Therefore, establishing a maximum solids content for a wet scrubber is desirable.

If a PM CEMS is not required in the final rule, we propose that either a minimum blowdown or a maximum solids content limit be established. Both would be established on both a ten-minute and a one-hour average. The ten-minute average would be the average of the minimum, for blowdown, or maximum, for solids content, ten-minute averages occurring during each run of the comprehensive performance test. The one-hour average would be the average over all runs.

Power input to an IWS is important because IWSs charge the particulate prior to it entering a packed bed wet scrubber. The charging aids in the collection of the particulate onto the packing surface in the bed. The particulate is then washed off of the packing by the scrubber liquid. Therefore, power input to an IWS is a key parameter to the proper operation of an IWS and EPA proposes that facilities establish a limit on minimum power input to an IWS. This limit would be established on both a ten-minute and one-hour average. The ten-minute average would be the average of the minimum 10 minute averages occurring during each run of the comprehensive performance test and the one-hour average would be the average across all runs.

Facilities may obtain a waiver from these requirements for wet scrubbers from the Director if they can identify other key parameters which affect good control of PM through their use and use these parameter limits during normal operation.

iv. Fabric Filters. Fabric filters (FFs), also known as baghouses, are used to filter PM from stack flue gas prior to the stack. Performance of a fabric filter directly affects PM emissions. Filter failure is typically due to filter holes, bleed-through migration of particulate through the filter and cake, and small ''pin holes'' in the filter and cake. Since low pressure drop is an indicator of one of these types of failure, pressure drop across the fabric filter is the best indicator that the fabric filter has not failed.

If the final rule does not require the use of a PM CEMS, EPA proposes that a limit on minimum pressure drop across the fabric filter be established to ensure that collection efficiency is maintained. EPA proposes that this limit be established on both a ten-minute and a one-hour average. The ten-minute average would be the average of the single lowest 10-minute rolling averages occurring during each run of the comprehensive performance test. The one-hour average would be the average over all runs.

EPA believes it would also be useful to establish other, potentially better parameters as measures of collection efficiency for the fabric filter. Collection efficiency from fabric filters is a function of filter type, face velocity (which in turn is a function of flue gas flowrate and filter material area), cake build-up on the filter, and particulate matter characteristics (primarily particulate size distribution). Unfortunately, the Agency is not aware of a way to establish parameters for these indicators of collection efficiency. Therefore, EPA invites comment on what type of parameters could be used as better indicators of collection efficiency and on what averaging period they should be established.

Facilities may obtain a waiver from these requirements for PM APCDs from the Director if they can identify key parameters which affect good control of PM through their use and use these parameter limits during normal operation.

v. Electrostatic Precipitators. Electrostatic precipitators (ESPs) capture PM by charging particulate in an electric field and collecting the charged particulate on an inversely charged collection plate. Electrical power is the product of the electrical voltage and the current. High voltage leads to high magnetic field strength which results in an increase in the saturation charge level the particle can obtain, which in turn causes an increase in charged particle migration to the collection plate. High current leads to an increased particle charging rate and increased electric field strength near the collection electrode due to a phenomena called ''ionic space charge'' and, thus, increased collection at the plate. High voltage is also important on the collection plates, since this will increase

collection of the inversely charged particles on the plates. Therefore, maximizing both voltage and current is desirable for good collection. Therefore, power input to the ESP is a direct function of ESP efficiency since, the lower the power input, the lower the collection efficiency.

For these reasons, EPA proposes that facilities establish a limit on minimum power input to the ESP to ensure that collection efficiency is maintained at performance test levels if the final rule does not require the use of a PM CEMS. This limit would be established on both a ten-minute and one-hour average. The ten-minute average would be the average of the minimum 10-minute averages for power input which occurs during each run of the comprehensive performance test. The one-hour average would be the average over all runs.

Since very high power can be supplied to either the charging or collection parts of an ESP, EPA also invites comment on whether power input to each part of the ESP should be controlled.

Facilities may obtain a waiver from these requirements for ESPs from the Director if they can identify more appropriate parameters that would ensure that collection efficiency is maintained at performance test levels.

8. Waiver of Operating Limits

We believe that a provision to waive any or all of the operating limits discussed in this section is appropriate given that many sources will employ unique and innovative combinations of emission control devices. Fixed, national monitoring and compliance requirements may not be applicable or reasonable in some situations. Accordingly, the proposed rule would allow the Director to grant a waiver from any or all of the operating limits discussed in this section if a source documents in writing that other, more appropriate operating limits would ensure compliance with the pertinent emission standard. See proposed § 63.1210(s). The documentation must include recommended averaging periods for the alternative operating limits, and the basis for establishing the limits based on operations during the comprehensive performance test.

9. Request for Comment on Waiver of CEMS Requirements for Small, On-Site Sources

We specifically invite comment on whether the final rule should allow small, on-site sources the option of not having to use a mercury and PM CEMS. Under a waiver, the source would be required to comply with the operating limits discussed above in lieu of using a CEMS. As a separate issue, EPA is proposing less stringent RATA and RCA frequencies for the mercury and PM CEMS (and testing in general, see section III of this part) for these sources.

Sources with a gas flowrate less than 23,127 acfm would be considered small. See discussion in Part Four, Section I, for the rationale for that demarcation between small and large units. See also § 63.1208(b)(1)(ii) of the proposed rule. We believe that this waiver could be warranted because small, on-site sources may be better able to effectively sample and analyze feedstreams to ensure compliance with feedrate limits, and because their emission rates (i.e., environmental loading) would be less than from large sources.

We also invite comment on basing the definition of what is small on a gas flowrate and the value proposed for defining what is a small source.

D. Combustion Fugitive Emissions

Operating parameters on combustion fugitive emissions are necessary to ensure that these emissions do not leak from the combustion device, APCDs, or any ducting connecting them. The current BIF and incinerator rules establish provisions for controlling combustion fugitive emissions (see §§ 266.102(e)(7)(I) and 264.345(d)). Today's proposed rule would require sources to comply with those requirements, with minor clarifications. See proposed § 63.1207(b). Specifically, it is proposed that sources shall:

—keep the combustion chamber and all ducting and devices from the combustion chamber to the stack totally sealed against fugitive emissions; or

—maintain the maximum pressure on an instantaneous basis in the combustion chamber and in all ducting and devices from the combustion chamber to the stack at lower than ambient pressure at all times;[159] or

—use some other means of control demonstrated to provide equivalent control. Support for such demonstration shall be included in the operating record with prior written approval obtained from the Director.

In addition, the rule would require the owner or operator to specify in the operating record the method used for fugitive emission control.

EPA continues to believe this approach (already in effect for incinerators and BIFs) is appropriate and is proposing to retain it here. There are cases, however, particularly at munitions incinerators, where combustion fugitive emissions are a problem even when less than ambient pressure is apparently being maintained. In these cases, the Director may require in the RCRA operating permit continual video surveillance of the equipment to ensure there are no leaks. If leaks occur, each occurrence is a violation, and would require an automatic waste feed cut-off (AWFCO). In addition, as with all AWFCOs, the owner or operator must identify the cause of the leak and identify remedial action taken to minimize future occurrences.

We are also proposing to make conforming changes to the existing BIF and incinerator requirements for combustion fugitive emissions. See proposed §§ 264.347(e), 265.347(c), and 266.102(e). The effective date of these conforming requirements would be 6 months after publication of the final rule in the Federal Register, and so would take effect before the MACT standard compliance date.

E. Automatic Waste Feed Cutoff (AWFCO) Requirements and Emergency Safety Vent (ESV) Openings

We explain in this section that the source must be in compliance with the CEMS-monitored emission standards and the operating limits at all times. This would be ensured by requiring that all operating parameters for which limits would be established (as discussed above) must be interactive with an automatic waste feed cutoff (AWFCO) system. Further, we also describe the periodic reporting requirements that would apply if 10 AWFCOs that result in an exceedance of a CEMS-monitored emission standard or operating limit occur during any 60-day period. Finally we explain the consequences of, and reporting requirements for, emergency safety vent openings.

1. Automatic Waste Feed Cutoff System

Sources must be in compliance with the CEMS-monitored emission standards and operating limits at all times. See proposed § 63.1207 (a)(1) and (a)(2). If a facility exceeds a standard or operating limit, today's rule proposes that the hazardous waste feed be instantaneously and automatically cut off. This requirement now exists under current incinerator permits and the Agency's BIF rules (see § 266.102(e)(7)(ii)). After an AWFCO, the source must continue to monitor all AWFCO operating parameters (and

[159] That is, on an instantaneous basis, without an averaging period. The recording system must record the instantaneous values continuously.

CEMS-monitored emissions) and cannot begin feeding hazardous waste again until all parameters come within allowable levels. Further, to minimize emissions of regulated pollutants, including products of incomplete combustion that could result from the perturbation caused by the waste feed cutoff, combustion gases must continue to be routed through the air pollution control system after a cutoff, and minimum combustion temperature must be maintained for as long as hazardous waste remains in the combustion chamber.

As currently required under the BIF rule, all AWFCO parameters must continue to be monitored after an AWFCO, and hazardous waste firing cannot resume until all parameters are within allowable levels. Thus, all rolling averages must continue to be calculated even when hazardous waste is not being burned.[160]

Today's proposed rule would require the following parameters to be AWFCO parameters:[161]

—CEMS-monitored emission standards
—All applicable feedrate limits (e.g., hazardous waste, pumpable LVM metals, total SVM and LVM metals)
—Minimum combustion chamber temperature (each chamber)
—Maximum combustion chamber temperature
—Maximum temperature at the inlet to the initial dry PM control device
—Maximum combustion chamber pressure (if used to control combustion fugitive emissions)
—Maximum flue gas flowrate (or production rate)
—Minimum flue gas flowrate (where required (e.g., under § 63.1208(h)(1)) (or production rate)
—Limits on operating parameters of the emission control equipment (e.g., carbon injection rate)
—Failure of the Automatic Waste Feed Cut-off system.
—Whenever continuous monitoring systems (CMS) or the measurement component of the CMS registers a value beyond its rated scale.

We note that the current requirements for BIFs and incinerators do not require a AWFCO whenever a measurement component of the CMS registers a value beyond its rated scale or when the AWFCO system fails. To ensure that those standards conform with today's proposal, we are proposing to add this requirement to those rules. The effective date of these conforming requirements would be six months after publication of the final rule in the Federal Register, and thus would precede the MACT standard compliance date.

If an operating limit or CEMS-monitored emission standard is exceeded after the hazardous waste feed has ceased but while hazardous waste remains in the combustion chamber, it is a violation of the relevant emission standard.[162]

As currently required for BIFs, the AWFCO system and associated alarms must be tested at least once every seven days when hazardous waste is burned to verify operability, unless the owner or operator documents in the operating record that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. At a minimum, operational testing must be conducted at least once every 30 days.

Under today's proposed rule, owners and operators would be required to document in the operating log the cause of each AWFCO that is associated with an exceedance of an operating limit or CEMS-monitored emission standard[163] and document the preventive measures taken to minimize future AWFCOs. Also, we are proposing a reporting requirement for excessive AWFCOs caused by violations to alert regulatory officials that a source is having operational problems. Thus, regulatory officials can increase frequency of inspections and review the sources operating plan. In addition, the Director may specify requirements through the RCRA permit beyond recordkeeping and reporting for addressing AWFCOs (i.e., approval to restart hazardous waste feed, etc.)

Owners or operators would be required to submit an ''Excessive AWFCO Report'' to the Administrator if more than 10 AWFCOs associated with an exceedance of an operating limit or CEMS-monitored emission standard occur during any 60 calendar-day period. After 10 such cutoffs occur, the 60 calendar-day clock would begin anew. The report would have to be postmarked within five calendar days of the tenth AWFCO associated with an exceedance, and would have to document the cause of each such cutoff and preventive measures taken to minimize future cutoffs.

We invite comments on alternative exceedance frequencies that would trigger the need to submit an Excessive AWFCO Report, such as incurring 5 cutoffs in any 30 calendar-day period. A shorter accounting period would enable enforcement officials to better identify problem facilities.

2. Emergency Safety Vent (ESV) Openings

Today's rule would require that combustion gases always pass through the emission control system in place during the comprehensive performance test. Thus, opening an emergency safety vent (ESV) (including emergency vent stacks, bypass stacks, thermal relief valves, and pressure relief valves) to bypass any part of the emission control system would be a violation of that requirement and the emission standard the by-passed control device is designed to control. See proposed § 63.1207(a)(3). We are also proposing to make conforming changes to the RCRA incinerator standards of Part 264, Subpart O, to provide consistency. While this section specifically addresses ESVs, the requirements apply to any type of air pollution control bypass stack while hazardous waste remains in the combustion chamber.

ESVs are safety devices which are designed to allow combustion gases to bypass the air pollution control equipment in order to: (1) Prevent ground-level releases which could endanger workers, in the event of an overpressure, or (2) prevent damage to the air pollution control equipment in the event of excessively high temperatures. An ESV opening allows uncontrolled emissions to directly enter the atmosphere. Some ESVs are situated prior to the secondary combustion chamber. This chamber is important for organics destruction in an incinerator. Further, since incinerators normally demonstrate compliance with the regulatory performance standards while

[160] This requirement that all parameters must continue to be monitored after a AWFCO assumes that the operator intends to begin burning hazardous waste as soon as the operating parameters return to allowable levels. If not, however, it may not be practicable to require monitoring of AWFCO parameters when hazardous waste is not burned. We specifically request comment on a reasonable interval of time after a AWFCO and before hazardous waste firing could be resumed during which the operator would not be required to monitor the AWFCO parameters. For example, if the operator did not intend to begin burning hazardous waste for 8 hours after the AWFCO, it may not be appropriate to require monitoring of AWFCO parameters during that period.

[161] We note that during the RCRA permitting process, permit writers may identify additional operating parameters they determine to be necessary on a case-specific basis in order for the source to comply with the standards. See subsection C.1. of this part, ''Continued Applicability of RCRA Omnibus Authority,'' for more information on this.

[162] If an operating limit is exceeded (when hazardous waste is in the combustion chamber), the source has violated the emission standard for which the operating limit is used to ensure compliance.

[163] Not all AWFCOs are the result of an exceedance of an emission standard or operating limit. AWFCOs which are not associated with a violation must be recorded in the operating log but need not be reported.

using their secondary combustion chambers and air pollution control devices, emissions from ESVs are expected to be in excess of levels set by the performance standards for the respective devices.

There are situations where the alternative to opening an ESV (e.g., fugitive emissions at ground level, or even an explosion) are worse from a health and environmental standpoint. Thus, EPA would like to emphasize that simply eliminating an ESV itself is one solution, but not appropriate in some cases. Rather, EPA believes that emergency (or other) situations which would cause either an ESV opening or fugitive emissions from the combustor can, and should be, prevented to the greatest extent possible.

EPA believes that most facilities can readily make changes in their operations which can reduce ESV openings. To minimize ESV openings, facilities may need to repair or replace unreliable equipment, better control the feeding of waste, or add redundant systems where necessary.

In the preamble to the proposed amendments for hazardous waste incinerators (55 FR 17890, April 27, 1990), EPA proposed to clarify the regulatory status of ESV openings. The Agency proposed that no ESV openings be allowed while hazardous waste is in the unit. In this case any ESV opening while hazardous waste remains in the unit would be a permit violation and subject to enforcement action. This is being reproposed today.

Also in the proposed rule for hazardous waste incinerators (55 FR at 17891), EPA proposed to amend § 264.345(a) to clarify that an incinerator must operate in accordance with the operating requirements specified in their permit whenever there is hazardous waste in the incinerator. Today's rule is again proposing to amend § 264.345(a) to clarify that an incinerator must be operated in accordance with the conditions specified in the permit and meet the applicable emission standards at all times that hazardous waste or hazardous waste residues remain in the chamber. (This is a conforming change.)

For BIFs, the regulations state that they must be operated in accordance with the operating limits and the applicable emission standards at all times when there is waste in the unit. § 266.103(c)(1). Further, § 266.102(e)(7)(ii)(B) requires that combustion gases must be routed through the air pollution control system as long as waste remains in the unit. The BIF final rule discusses that a BIF must be in compliance at all times that there is hazardous waste in the unit, regardless of whether an automatic waste feed cutoff has occurred. See 56 FR at 7160. The activation of the automatic waste feed cutoff system does not relieve the facility from its obligation to comply with the permit conditions while waste remains in the unit. Today's rule does not propose any changes to this regime.

Finally, today's proposed rule would require the owner or operator to record in the operating log the ESV opening, the reason for the opening, and corrective measures taken to minimize the frequency of openings. Further, the owner or operator would have to submit a written report to the Administrator within 5 calendar days of each ESV opening documenting the information provided in the operating log.

While it is understood that there can be mitigating circumstances which require the use of ESVs, these instances should be minimized. Therefore, it is proposed that the owner or operator prepare an ESV Operating Plan in which the owner or operator shall address what they will do to prevent the use of the ESV and release uncontrolled emissions into the air and what they will do to minimize the hazard from such releases (such as back-up systems, maintaining flame temperature, and combustion air to combustion organics.) This plan is analogous to the ''Preparedness and Prevention and Contingency Plan'' discussed in the 1990 proposed revisions to the hazardous waste incinerator rule (55 FR at 17890). A corresponding change to the current hazardous waste incinerator rules are proposed as well.

F. Quality Assurance for Continuous Monitoring Systems

EPA proposes specific quality assurance (QA) requirements for continuous monitoring systems (CMS). These systems can be classified as: continuous emissions monitoring systems (CEMS); analysis of feedstreams; and continuous monitoring systems to comply with limits on other operating parameters.

1. Continuous Emissions Monitoring Systems (CEMS)

The rule would require HWCs to comply with the general monitoring requirements under § 63.8 for all MACT sources except as discussed below. In addition, the rule would establish in the appendix to Part 63, Subpart EEE, specific quality assurance (QA) and quality control (QC) requirements for CEMS used by HWCs. These requirements would supersede the requirements in Appendix F of Part 60 for these sources. We are proposing an appendix to Subpart EEE in lieu of the requirements of Appendix F because the proposed appendix to Subpart EEE would incorporate various issues particularly relating to HWCs (e.g., requirements for specific CEMS not addressed by Appendix F; out-of-control periods and data reporting are not relevant to HWCs because HWCs cannot burn hazardous waste if the CEMS is not meeting performance specifications).

a. Applicability of § 63.8 Requirements. Most of the § 63.8 monitoring requirements for MACT sources would apply to HWCs including requirements for the owner and operator to develop and implement a quality control program (§ 63.8(d)(2)) and conduct a performance evaluation test in conjunction with the performance test to demonstration compliance with the emission standards (§ 63.8(d)(2) and (e)(4)). Section 63.8(f) also provides for approval of an alternative monitoring method.

Several provisions of § 63.8, however, would not apply to HWCs. They are as follows:

i. § 63.8 (c)(1)(I)–(iii), (c)(4), (c)(7), (c)(8), and (g)(5) would not apply because these paragraphs address requirements relating to operations when the CEMS is out of compliance with the relevant performance specifications. Hazardous waste cannot be fed (or remain in the combustion chamber) if the CEMS is not in compliance with performance specifications.

ii. § 63.8 (c)(4)(ii) and (g)(2) would not apply because these paragraphs define continuous operation and data reduction inconsistently with today's proposed rule. Under today's rule, the performance specifications in Appendix B to Part 60 and the data quality objectives in the appendix to Part 63, Subpart EEE, define continuous operation specific to the CEMS.

b. Quality Assurance Procedures. The proposed appendix to Part 63, Subpart EEE, defines quality assurance procedures for CEMS at HWCs. If a CEMS component is not in compliance with applicable quality assurance procedures or performance specifications (provided in Appendix B, Part 60), hazardous waste burning must cease immediately and cannot be resumed until the owner or operator documents that the CEMS meets the performance specifications.

The appendix would require owners and operators to develop and implement a quality assurance and quality control (QA/QC) program. It would define requirements for determining compliance with calibration and zero

drift specifications provided in Appendix B. It would also define requirements for performance evaluations, that is, performance audits including relative accuracy tests and absolute calibration audits.

The appendix also deals with issues specific to these source categories. It establishes specific testing intervals for CEMS for HWCs. It defines the one minute and rolling averages, the oxygen correction factor, CEMS span values, and provides a provision to allow the use of alternative span values. It provides procedures for reestablishing a rolling average after short term interruptions such as calibration and maintenance and long-term interruptions such as periodic downtime for kiln maintenance or for weekends and holidays when the facility is not being operated. It also allows up to 20 minutes of CEMS downtime for calibration purposes.

c. Conforming changes to the BIF and incinerator rules. Conforming changes are also proposed to the BIF and incinerator rules: deleting the current Part 266, Appendix IX, CEMS requirements; and, instead, requiring the use of the Part 60, Appendix B, performance specifications and the data quality specifications in the appendix to Subpart EEE.

d. Zero Drift and Zero Gas Requirements. The Agency specifically invites comment on two other issues which affect all CEMS: whether the zero drift requirements contained in the appendix to Subpart EEE (and the various performance specifications) should be promulgated, or whether the zero gas requirements should be changed from the current 0–20 percent levels to a 0–0.1 ppm level.

Many of the performance specifications require that zero gas, or zero level gas, contain between 0 to 20 per cent of the measured constituent. However, facilities often use just one zero grade gas for all their CEMS, one of ''zero-grade nitrogen.'' Therefore, EPA invites comment on whether this requirement should be changed from 0 to 20 percent to 0 to 0.1 ppm of the measured constituent.

e. EPA certification of CEMS. EPA invites comment on whether a process should be established whereby CEMS manufacturers could certify that their CEMS meet the established performance specifications. If this were promulgated, a CEMS would not be allowed for use on a hazardous waste combustor unless it has been certified by EPA. The CEMS certification would be similar to the certifications used for TUV approval in Germany and for CEMS used for compliance with EPA's acid rain program.

Issues EPA needs to address in order to promulgate such a process include: what benefits the regulated community and industry would incur as a result of such a certification; how the program would work; and whether a nongovernment agency could do this task.

vi. Correcting CEMS Readings for Moisture Content. One quality assurance issue that must be considered is how often facilities need to measure the moisture content of their flue gas. All the standards proposed today are on a dry basis, so knowing the flue gas moisture content to correct CEMS outputs to a dry basis is necessary. EPA is considering two alternative approaches to obtain the moisture content of the flue gas. One involves making periodic measurements of the moisture content of the flue gas using Method 4, found in Part 60, Appendix A. Under this scheme, a facility would take flue gas moisture measurements quarterly, while conducting the ACA. This moisture level would then be used to correct CEMS outputs for moisture throughout the next quarter.

Another alternative is that facilities make instantaneous measurements of the flue gas temperature at the CEMS sampling point. The temperature would then be used to determine the saturation water concentration of the flue gas. The saturation water concentration would then be used to correct the CEMS output for moisture.

EPA favors using the saturation water concentration as a surrogate for flue gas moisture because it is continuous, frequently conservative, and cost-effective compared to running a manual method. One issue with this approach is that facilities with wet APCS may have a water concentration higher than the saturated water concentration due to entrained water droplets in the flue gas. However, we do not have data on the amount of entrained water droplets in the flue gas and, thus, cannot determine at this point how important this issue is.

The Agency requests data and information from facilities with a wet APCS regarding the total water concentration (including water droplets) in the flue gas compared with the saturated water concentration. The Agency will evaluate data and recommendations of commenters on these or other approaches in making a determination on the best approach for the final rule.

2. Analysis of Feedstreams

In this section, we discuss the following proposed requirements for analysis of feedstreams: (1) required analysis plan; (2) requirement to submit the plan for review and approval the Director's request; (3) frequency of analysis; and (4) information that must be determined and recorded to document compliance. (We note that HWCs are already subject to these requirements under 40 CFR Parts 261, 264, 265, 266, and 270.) We also request comment on analysis of gaseous feedstreams, including natural gas. We also propose making a conforming change to the BIF and incinerator rules to clarify that constituent monitoring is required for all feedstreams.

a. Feedstream Analysis Plan. The rule would require (in § 63.1210(c)) an owner or operator to obtain an analysis of each feedstream that is sufficient to document compliance with the applicable feedrate limits. The owner or operator must obtain the analyses for each feedstream prior to feeding into the combustor. This is done in order to document compliance with the applicable feedrate limits at all times.

To ensure that the owner or operator will obtain an adequate analysis, the owner or operator would be required to develop and implement a feedstream analysis plan and record it in the operating record. The operating plan must specify at a minimum: (1) the parameters for which each feedstream will be analyzed to ensure compliance with proposed § 63.1210; (2) whether the owner or operator will obtain the analysis by performing sampling and analysis, or by other methods such as using analytical information obtained from others [164] or using other published or documented data or information; (3) how the analysis will be used to document compliance with applicable feedrate limits (e.g., if hazardous wastes are blended and analyses are obtained of the wastes prior to blending but not of the blended, as-fired, waste, the plan must describe how the owner and operator will determine the pertinent parameters of the blended waste); (4) the test methods which will be used to obtain the analyses; [165] (5) the sampling method which will be used to obtain a representative sample of each feedstream to be analyzed using sampling methods described in Appendix I, Part 261, or an equivalent method; and (6) the frequency with which the initial analysis of the feedstream will be reviewed or repeated

[164] When analytical information is provided by others, the analysis plan must document how the owner or operator will ensure it is complete and accurate.

[165] The information must be provided whether the owner or operator conducts the analyses or the analyses are obtained from others.

to ensure that the analysis is accurate and up to date.[166]

We note that guidance on developing a feedstream analysis plan is provided in *Waste Analysis At Facilities That Generate, Treat, and Dispose of Hazardous Waste*, (OSWER [Office of Solid Waste and Emergency Response] #9938.4–03, April 1994). The document is available from the National Technical Information Services (NTIS), publication # PB94–963–603. In addition, in April 1995, EPA published a Notice of Availability for public comment on *Waste Analysis Guidance for Facilities That Burn Hazardous Wastes-Draft* (Office of Enforcement and Compliance Assurance # EPA 530–R–94–019) (see 60 FR 18402). This guidance document provides assistance in developing waste analysis plans specifically for HWCs. The comment period for this document closed on June 2, 1995, and EPA is currently reviewing and evaluating the comments received.

b. Review and Approval of Analysis Plan. Under today's proposed rule, the Director could require the owner or operator to submit the analysis plan for review and approval at any time. Given that feedstream analysis is a primary compliance approach for the SVM, LVM, and HCl/Cl_2 emission standards, it is imperative that the source develop and implement an adequate analysis plan. Consequently, the Agency would like to review and approve analysis plans for each existing source at the time of initial compliance (i.e., initial notification of compliance).[167]

Because of resource constraints, however, the Agency will review analysis plans on a priority basis, considering factors such as whether the source accepts off-site waste, volume of waste burned, and compliance history.[168] Therefore, the Agency wishes to preserve flexibility on whether to require a source to submit its analysis plan for review and approval.

c. How to Comply with Feedrate Limits. To comply with the feedrate limits, the source must: (1) know the concentration of the limited parameter (e.g., SVM) in the feedstream at all times; (2) know the feedrate of the feedstream at all times; and (3) record the feedrate (the product of the concentration times the feedstream rate) in the operating record. The source would know the concentration of the parameter in the feedstream by implementing the analysis plan discussed above.

The source would know the feedrate of the feedstream by using a continuous monitor of the volumetric or mass flowrate.[169] If a volumetric flowrate monitor is used, the source must know the density of the feedstream at all times if it is necessary to know the mass per unit time feedrate.

In order for a facility to know the concentration of the parameters at all times, the source must record the feedrate in the operating record. It would be preferable to reduce the burden on regulatory inspectors to continuously record all of the parameters used to calculate the feedrate (e.g., concentration of metal, volumetric flowrate, density) as well as the feedrate itself. Other approaches may be acceptable, however, such as continuously recording only volumetric flowrate, but clearly noting in the record the concentration and density associated with that volumetric flowrate so that the inspector could readily confirm that the feedrate was not exceeded at the recorded flowrates. If a source prefers the second approach, we recommend that it informally notify the Director for concurrence.

d. Request for Comment on Monitoring Gaseous Feedstreams. We request comment here on how to address the difficulty of continuously sampling gaseous feedstreams—both natural gas and process gas—for nonvapor constituents (metals, chloride salts).

Natural gas is a primary fuel for several HWCs. Under today's rule (as well as the BIF regulations), this feedstream, like all other feedstreams, would be subject to the continuous monitoring and recording provisions, including feedstream sampling and analysis for metal and chlorine constituents.

Facilities have questioned whether it is necessary to sample and analyze natural gas for constituents they feel are not reasonably expected to be present. Therefore, the Agency is soliciting data and information on whether (and at what concentrations) the seven metals that would be regulated in today's rule are likely to be present in natural gas. Based on the information submitted by commenters, the final rule could incorporate a number of options including: (1) determine that natural gas feedstreams need not be considered in feedrate determinations because levels of metals and chlorine and chloride are not likely to be significant; (2) allow sources to make a one-time, site-specific determination of metals and chlorine levels that could be used for feedrate determinations provided that the natural gas supplier does not change; or (3) establish generic concentration levels for metals and chlorine and chloride that could be assumed to be present. We also invite comment on these or other approaches to address this issue.

Process gas feedstreams pose a similar problem. One approach for these feedstreams would be to allow sources to make a one-time determination of metals and chlorine levels (by sampling and analysis, process knowledge, or other information) that could be used for feedrate determinations until process changes or other factors occurred that could change the composition of the gas. We invite comments on this or alternative approaches to address this issue.

3. Quality Assurance for Continuous Monitoring Systems Other Than CEMS

Continuous monitoring systems (CMS) other than CEMS include the systems associated with monitors such as thermocouples, pressure transducers, stress/strain gages, flow meters, and pH meters. In addition to the requirements discussed below, we are proposing to require compliance with the general quality assurance procedures for continuous monitoring systems (CMS) provided by existing § 63.8(c)(4). See proposed § 63.1210(d). That paragraph requires owners and operators to verify the operational status of CMS by, at a minimum, complying with the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system. To make current rules consistent with the ones which will be promulgated here, EPA proposes making conforming changes to the BIF and incinerator rules to incorporate quality assurance requirements for CMS.

a. Sampling and Detection Frequency. We are proposing to require that CMS (other than CEMS)[170] sample the regulated parameter without interruption, and evaluate the detector response at least once each 15 seconds, and compute and record the average values at least every 60 seconds.

b. Exceeding CMS Span Would Trigger a AWFCO. The rule would also

[166] The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated when the owner or operator is notified or has reason to believe that the process or operation generating or producing the feedstream has changed.

[167] Analysis plans would be reviewed and approved for new sources during the RCRA permitting process (i.e., prior to commencement of construction).

[168] Note that the analysis plan will be reviewed during facility inspections as well.

[169] Quality assurance for the flowrate monitor is discussed below in the text.

[170] The proposed CEM performance specifications and data quality objectives define acceptable sampling and detection frequency.

require that the automatic waste feed cutoff (AWFCO) system be engaged if the span of any CMS (other than a CEMS) is exceeded. This is because it is not practicable to establish span values for each CMS as we have proposed for each CEMS.

The issue arises because facilities have the discretion of purchasing equipment with any span. For CMS, the span is defined as the range between the highest certifiable reading a CMS can make (the ''upper span'') and its corresponding minimum (the ''lower span.'') If a CMS were to have an upper span which is too low, say a thermocouple with a upper span of 630°C, there would be no way to document accurately a temperature higher than 630°C. This is a problem if the facility routinely operates at a temperature of, say, 750°C. For this reason, it is important to ensure that CMS are operated within their certified span.

III. MACT Performance Testing and Related Issues

Today's rule would require performance testing to demonstrate compliance with the proposed MACT emission standards. The requirements and procedures for MACT performance testing are discussed here. In addition, HWCs would continue to be subject to the existing trial burn requirements during the RCRA permitting process. The interaction between the RCRA trial burn and the MACT performance test is also discussed here. In addition, we discuss in this section the waiver for performance testing for Hg, SVM, LVM, and HCl/Cl_2 that would be provided for sources that feed de minimis levels of these metals or chlorine. Finally, we discuss in this section requirements for relative accuracy tests for CEMS.

A. MACT Performance Testing

Two types of performance testing would be required to demonstrate compliance with the proposed MACT emission standards: comprehensive performance testing and confirmatory performance testing. See proposed § 63.1208.

1. Comprehensive Performance Testing

The purpose of the comprehensive performance test is to initially and periodically thereafter: (1) demonstrate that the source is in compliance with the CEMS-monitored emission standards (e.g., PM, Hg, CO, HC); (2) conduct manual stack sampling to demonstrate compliance with the emission standards for pollutants that are not monitored with a CEMS (e.g., D/F, SVM, LVM, HCl/Cl_2); (3) establish limits on the applicable operating parameters provided by proposed § 63.1210 (Monitoring Requirements) to ensure that compliance is maintained with those emission standards for which a CEMS is not used for compliance monitoring; and (4) demonstrate performance of CMS is consistent with the requirements and quality assurance plan. Thus, the comprehensive performance test has purposes similar to the RCRA trial burn and BIF interim status compliance test. It would be more like a BIF interim status compliance test, however, because of the low level of Agency oversight and high degree of facility self-implementation, as discussed below.

a. Operations During Comprehensive Performance Testing. Given that limits will be established on operating parameters during the comprehensive performance test, sources will likely want to operate during the test at the edge of the operating envelope that they believe is both necessary to operate efficiently and comply with the emission standards. Accordingly, sources may elect to spike feedstreams with metals or chlorine, for example, to ensure that the feedrate limits are high enough to accommodate normal operations while allowing some flexibility to feed higher rates at times.

In addition, sources may identify two or more modes of operation for which separate performance tests would be conducted and for which separate limits on operating conditions would be established. In this situation, the source would be required to note in the operating record under which mode of operation it was operating at all times. An example of when two modes of operation must be identified would be a cement kiln that routes its kiln off-gas through the raw meal mill to help dry the raw meal. When the raw meal mill is not operating (perhaps one third of the time), the kiln gas bypasses the raw meal mill. Emissions of PM and other HAPs or HAP surrogates may vary substantially depending on whether the kiln gas bypasses the raw meal mill.

When conducting the comprehensive performance test, sources must also operate under representative conditions for the following parameters to ensure that emissions are representative of normal operating conditions: (1) types of organic compounds in the waste (e.g., aromatics, aliphatics, nitrogen content, halogen/carbon ratio, oxygen/carbon ratio) and volatility of wastes, when demonstrating compliance with the D/F emission standard; and (2) cleaning cycle of the PM control device (e.g., ESP rapping cycle) when demonstrating compliance with the SVM and LVM emission standard when using manual stack sampling and the D/F emission standard.

b. Frequency of Testing. The rule would require that the comprehensive performance test be performed periodically because the Agency is concerned that long-term wear-and-tear on critical components (e.g., firing systems, emission control equipment) could adversely affect emissions. Large sources (i.e., those with a stack gas flow rate greater than 23,127 acfm) and sources that accept waste from off-site would be required to perform comprehensive performance testing every three years.

Small, on-site sources would be required to perform testing every five years, unless the Director determines otherwise on a case-specific basis. The proposed testing frequency would be less for small, on-site sources because of cost-effectiveness concerns. In addition, we note that, from the RCRA perspective, small, on-site sources are more familiar with the wastes they burn, the waste may be more homogeneous and less complex, and they burn smaller volumes of waste. Thus, their emissions may not pose the same hazard as emissions from large or commercial facilities. We invite comment on this approach.

The Director may determine, however, that a small, on-site source may pose the same potential hazard as a large or off-site source because of the factors listed above, compliance history, or other reasons. Accordingly, the rule would allow discretion for the Director to require a three-year testing frequency for such small, on-site sources as warranted.

c. Agency Oversight. The proposed rule would require the owner or operator to submit a ''notification of performance test'' to the Administrator 60 days prior to the planned test date. The notification must be accompanied by a site-specific test plan for review and approval by the Administrator. This is consistent with the general provisions for MACT sources provided by § 63.7 (b) and (c). See those paragraphs for provisions regarding: (1) Agency approval of the test plan; (2) 30-day period for the Agency to approve or disapprove the test plan;[171] and (3) notwithstanding Agency approval or disapproval, or failure to approve or disapprove, the test plan, the owner or operator must comply with the applicable requirements, including the

[171] Generally, § 63.7(c)(3) provides that the source can assume the test plan is approved if the Agency does not take action within 30 days of receiving the original plan or any supplementary information.

deadline for submitting the initial and subsequent notifications of compliance.

In addition, the Agency has the option of observing the performance test.

d. Operating Conditions During Subsequent Tests. Although the rule would allow the burning of hazardous waste only under the operating limits established during the previous comprehensive performance test (to ensure compliance with emission standards not monitored with a CEMS), two types of waivers from this requirement would be provided during subsequent comprehensive performance tests: (1) an automatic waiver to exceed current operating limits up to 5 percent; and (2) a waiver that the Director may grant if warranted to allow the source to exceed the current operating limits without restriction. The rationale and implementation of these waivers is discussed below.

The rule would provide an automatic waiver because, without the waiver, the operating limits would become more and more stringent with subsequent comprehensive performance tests. This is because sources would be required to operate within the more stringent conditions to ensure that they did not exceed a current operating limit. This would result in a shrinking operating envelope over time.

Accordingly, EPA is proposing to allow sources to operate under the ''same'' operating conditions as the previous comprehensive performance test in order to duplicate the current operating limits. It is not practicable to require a source to operate under the exact same operating conditions as the previous comprehensive performance test, however. Therefore, the rule would allow sources to deviate during comprehensive performance testing by up to 5 percent from the current operating limits provided that the source accept operating limits based on the new performance test levels that are the more stringent of the current operating limits or levels achieved during the new performance test. We invite comment on whether this provision would meet our objective of ensuring that the operating envelope does not shrink over time as subsequent comprehensive performance tests are conducted. For example, an additional approach would be to provide for a site-specific waiver of the 5 percent deviation limit to allow deviations from current operating limits as warranted to ensure that the operating envelope does not shrink.

The rule also proposes a waiver that the Administrator may grant if warranted to allow the source to exceed the current operating limits without restriction. This is because the source may want to operate under less restrictive limits and believes that it can still comply with the emission standards under the less restrictive limits. For example, a source may want to burn a waste with higher metal or chlorine content, and/or the source may want to install an improved emission control device.

To accommodate such situations, the rule would allow the Administrator to grant a site-specific waiver of the operating limits if the source provides supporting documentation that it is likely to be able to meet the emission standards under less restrictive operating limits. The documentation must be submitted prior to or at the time of submittal of the notification of performance test, and must include empirical data or other data and information to support the request. If the waiver request is submitted with the notification of performance test (which must be accompanied by the test plan), the Director will approve or disapprove the waiver request under the procedures for approving or disapproving the test plan.

e. Testing Schedule and Notification of Compliance. The owner or operator must submit to the Administrator a notification of compliance under proposed § 63.1211(c) documenting compliance with the emission standards and CMS requirements, and identifying applicable operating limits. (This provision is similar to § 63.7(g).) The notification must be postmarked by the 90th day following the completion of performance testing and CMS performance evaluation.

The initial notification of compliance must be postmarked within 36 months after the date of publication of the final rule. Subsequent notifications must be submitted within 90 days after the completion of subsequent performance testing. Subsequent comprehensive performance testing must be initiated 36 months for large and off-site sources or 60 months for small, on-site sources, respectively, after initiation of the initial performance test.

Given the complexity of comprehensive performance testing and to allow for unforeseen events, however, the rule would allow the subsequent test to be initiated within a range of 30 days before or after the 36 or 60-month anniversary. The rule would require that the anniversary date remain based on the initial comprehensive performance test. This would simplify recordkeeping and preclude a source from intentionally scheduling the test toward the end of the 30-day grace period and thus effectively obtaining a 37 or 61-month testing frequency.

The rule would give a source the option of performing a comprehensive performance test at any time before the 36 or 60-month anniversary. A source may want to retrofit or add a new emission control device prior to a test anniversary date. To do so, the source would be required to conduct a new comprehensive performance test to document compliance with emission standards and to establish new operating limits. The rule would require the source to follow the same procedures for this comprehensive performance test as discussed above (e.g., submittal of notification of performance testing and test plan; review and approval of test plan). Note that conducting a comprehensive performance test prior to the normal anniversary date would establish a new anniversary date.

f. Time Extensions for Subsequent Performance Tests. The rule would allow the Administrator to grant up to a 1 year time extension for any performance test subsequent to the initial comprehensive performance test.[172] This would enable the source to consolidate, into one test, both the MACT-related performance testing and the RCRA trial burn testing, which are both required for issuance and reissuance of RCRA operating permits.[173] (Trial burn testing requirements are discussed below.)

For example, if the comprehensive performance test anniversary were a date proximate to the date scheduled for the trial burn, we believe it is reasonable to allow the source to conduct only one test to satisfy both requirements (i.e., the MACT-related performance test and the RCRA trial burn). To address this situation, the rule would allow up to a one-year time extension for the performance test.[174]

When the trial burn and performance tests are consolidated, the anniversary dates for subsequent performance tests would be correspondingly adjusted. For example, if the anniversary date for a

[172] Note that we discuss in Part Five, Section I (Selection of Compliance Dates) of the preamble that the rule would provide up to a 1-year time extension to submit the initial notification of compliance.

[173] In addition, the source may experience a major outage whereby the performance test could not be conducted within the 2-month window around the anniversary date. This time extension provision could address this situation as well.

[174] Note that, if the trial burn were scheduled before, rather than after, the performance test anniversary date, there would not be a problem because the source can conduct a comprehensive performance test at any time prior to the anniversary date. If so, the anniversary date is simply moved up.

confirmatory performance test for a large or off-site source is January 1 and the trial burn is scheduled for September 1 of that year, the source may adjust the anniversary date of the confirmatory performance test to September 1. This would also delay the anniversary date for subsequent comprehensive performance tests by 9 months. As noted above, under the proposal a maximum of 12 months delay could be granted.

The procedure for granting or denying a time extension would be the same as those for existing § 63.6(i) which allows the Administrator to grant MACT sources up to 1 additional year (in addition to the 3 years beginning with publication of applicable standards (e.g., MACT standards for HWCs) in the Federal Register) to comply with the standard.[175] (These are also the same procedures that would apply to a request for a time extension for the initial notification of compliance.)

We invite comment on alternative maximum time periods for the extension to allow sources to reasonably consolidate performance and trial burn testing, and whether the time extension should be automatic or require prior approval by the Administrator.

vi. Failure to Submit a Timely Notification of Compliance. If the owner or operator does not submit a notification of compliance by the required date, the rule would require the source to immediately stop burning hazardous waste (the same manner as applied to BIFs certifying compliance under RCRA § 266.103 in 1991). If the source wanted to burn hazardous waste in the future, it would be required to comply with the standards and permit requirements for new MACT and RCRA sources. For example, if the source were operating under RCRA interim status, it would need to obtain a RCRA operating permit and meet MACT standards for new facilities before hazardous waste burning could resume. Moreover, the rule would require the source to obtain written approval from the Administrator before hazardous waste burning could resume. (For RCRA interim status sources, issuance of a RCRA operating permit would constitute such written approval.)

g. Failure of a Comprehensive Performance Test. When a source determines (e.g., based on CEMS recordings, results of analysis of samples taken during manual stack sampling, or results of the CMS performance evaluation) that it has failed any emission standard during the performance test, it would be required to immediately stop burning hazardous waste. If, however, a source conducts the comprehensive performance test under two or more modes of operation and meets the emission standards when operating under one or more modes of operation, it would be allowed to continue burning under the modes of operation for which it has met the standards.

For sources that fail one or more emission standards during all modes of operation tested, the rule would enable the source to burn hazardous waste only for a total of 720 hours and only for the purposes of pretesting (i.e., informal testing to determine if it could meet the standards operating under modified conditions) or comprehensive performance testing under modified conditions.

Finally, failure to comply with an emission standard after initial notification of compliance would be a violation of the rule.

We note that HWCs are currently subject to virtually these same requirements under RCRA rules.

h. Applicability of Existing Part 63 General Requirements for MACT Sources. Part 63 establishes requirements for performance testing in § 63.7 and requirements for extension of compliance dates in § 63.6(i). Some of these provisions would be directly applicable to HWCs, some would be applicable in modified form, some would be superseded by today's rule, and others are not applicable.

The following § 63.7 requirements would be applicable to HWCs:

(1) Paragraph (a)(1) (Applicability) and (a)(3)

(2) Paragraphs (b) (Notification of performance test) and (c) (Quality Assurance Program), except that all sources would be required to submit the test plan for review and approval

(3) Paragraph (d) (Performance testing facilities)

(4) Paragraph (e) (Conduct of performance tests), except that operating conditions during comprehensive performance testing would be as discussed above (i.e., not normal operating conditions), and operating conditions during confirmatory performance testing discussed below would be under normal conditions as defined in that discussion. Also, emissions during startup and shutdown would be included in the performance tests, if the sources wishes to have the authority to burn hazardous waste during those periods.

(5) Paragraph (f) (Use of an alternative test method)

(6) Paragraph (g) (Data analysis, recordkeeping, and reporting), except that the test results would have to be reported 90 days after completion of the test, rather than 60 days.

The following § 63.7 requirements would not be applicable to HWCs:

(1) Paragraph (a)(2) (establishing deadlines for performance testing) because new HWCs would be required to obtain a RCRA operating permit before commencing construction. The RCRA operating permit would specify allowable periods of operation and operating conditions prior to (and following) performance testing. Existing HWCs would be required to submit a notification of compliance within 3-years of the date of publication of the final rule in the Federal Register.

(2) Paragraph (h) (Waiver of performance tests), because the bases for the waiver are not relevant to HWCs as follows: (1) the rule would allow the Administrator to grant a time extension to submit a notification of compliance; and (2) the purpose of periodic testing is to determine whether sources are meeting the standards on a continuous basis.

2. Confirmatory Performance Testing

Confirmatory performance testing for D/F would be required mid-way between the cycle required for comprehensive performance testing to determine if the source is continuing to meet the emission standard. The Agency is proposing such testing only for D/F given: (1) the health risk posed by D/F; (2) there is no CEMS for D/F; (3) there is no feedrate limit of a material that directly and unambiguously relates to D/F emissions (as opposed to, for example, metals feedrates, which directly relate to metals emissions); and (4) wear and tear on the equipment, including any emission control equipment, which over time could result in an increase in D/F emissions even though the source stays in compliance with applicable operating limits.

Confirmatory testing differs from comprehensive testing, however, in that the source would be required to operate under normal, representative conditions during confirmatory testing. This would reduce the cost of the test while providing the essential information because the source would not have to establish new operating limits based on the confirmatory test.

a. Definition of Normal Operating Conditions. Normal operating conditions would be defined as operations during which: (1) the CEMS

[175] Note, however, that § 63.6(i) applies to an entirely different situation: extension of time for initial compliance with the standard whereby performance testing is conducted after the date of compliance.

that measure parameters that could relate to D/F emissions—PM, CO, HC—are recording emission levels within the range of the average value for each CEMS (the sum of all one-minute averages, divided by the number of one minute averages) over the previous 12 months to the maximum allowed; and (2) each operating limit established to maintain compliance with the D/F emission standard (see discussion in Part Five, section II.C.1) is held within the range of the average values over the previous 12 months and the maximum or minimums, as appropriate, that are allowed. The Agency believes it is necessary to define normal operating conditions in this manner because, otherwise, sources could elect to limit levels of the regulated D/F operating parameters (e.g., hazardous waste feedrate, combustion chamber temperature, temperature at the inlet to the dry PM control device) to ensure minimum emissions. Thus, without specifying what constitutes normal conditions, EPA believes the confirmatory test could be meaningless. On the other hand, the proposed definition of normal conditions is broad enough to allow the source flexibility in operations during the test.

When conducting the confirmatory performance test for D/F, sources must also operate under representative conditions for the following parameters to ensure that emissions are representative of normal operating conditions: (1) types of organic compounds in the waste (e.g., aromatics, aliphatics, nitrogen content, halogen/carbon ratio, oxygen/carbon ratio) and volatility of wastes, when demonstrating compliance with the D/F emission standard; and (2) cleaning cycle of the PM control device (e.g., ESP rapping cycle).

Finally, when conducting the confirmatory test for D/F, the source would also be required to conduct a performance evaluation of the CMS that are required to maintain compliance with the D/F emission standard.

b. Frequency of Testing. Large and off-site sources would be required to conduct confirmatory performance testing 18 months after the previous comprehensive performance test. Small, on-site sources would be required to conduct the testing 30 months after the previous comprehensive performance test. The same 2-month testing window applicable for comprehensive tests would also apply to confirmatory tests.

c. Agency Oversight, Notification of Performance Test, Notification of Compliance, Time Extensions, and Failure to Submit a Timely Notice of Compliance. The requirements that would apply to comprehensive tests would also apply to confirmatory tests.

d. Failure of a Confirmatory Performance Test. When a source determines (e.g., based results of analysis of samples taken during manual stack sampling) that it has failed the D/F emission standard, it would have violated the rule. The source would be required to immediately stop burning hazardous waste. If, however, a source had conducted the comprehensive performance test under two or more modes of operation and met the D/F emission standards during confirmatory testing when operating under one or more modes of operation, it would be allowed to continue burning under the modes of operation for which it has met the standards.

For sources that fail one or more emission standard during all modes of operation tested, the rule would require the source to modify design or operation of the unit and conduct a new comprehensive performance test to demonstrate compliance with the D/F emission standard and establish new operating limits. Further, prior to submitting a notification of compliance based on the new comprehensive performance test, the source could burn hazardous waste only for a total of 720 hours, and only for purposes of informal pretesting or comprehensive performance testing.

B. RCRA Trial Burns

HWCs are also subject to the existing permit requirements under RCRA that are established at 40 CFR Parts 264, 266, and 270. Those rules require HWCs (among other things) to conduct a trial burn to demonstrate compliance with applicable emission standards. Operating conditions are included in the permit to ensure that compliance is maintained.

We are proposing to amend those rules today to refer to the proposed MACT requirements. Thus, the existing RCRA emission standards and ancillary requirements would be superseded by the proposed MACT standards, with one exception: destruction and removal efficiency (DRE).

1. The RCRA DRE Requirement Would Be Implemented Under RCRA Authority

The destruction and removal efficiency (DRE) requirement under the RCRA standards would continue to apply to all HWCs. Although the DRE requirement, which is statutory for incinerators, RCRA § 3004(o)(1)(B), could be proposed as a MACT surrogate parameter to minimize organic HAPs by ensuring good combustion, we are not doing so. This is because the DRE standard is complex and impracticable to self-implement.[176] Consequently, the Agency would continue to apply the DRE standard under RCRA authority alone.

2. Coordinating Trial Burns and MACT Performance Tests

As discussed above, the rule would allow a source to consolidate a trial burn test with a comprehensive or confirmatory test if the trial burn test were conducted within a year after the anniversary date for the MACT performance test.[177] If the tests are consolidated, however, the unified test must of course satisfy the objectives of both tests.

We note that the level of Agency oversight for trial burns is substantially greater than the oversight that might be provided for MACT performance tests. Accordingly, as current practice, the Agency's implementation procedures for trial burns will deviate from those proposed for the MACT performance tests. As examples, the Agency will require that the test plan be submitted more than 60 days in advance of the planned trial burn test, and extensive public participation will be provided for review of the test plan, test results, and determination of operating limits.

C. Waiver of MACT Performance Testing for HWCs Feeding De Minimis Levels of Metals or Chlorine

Today's rule would provide a waiver of performance testing requirements for Hg, SVM, LVM, or HCl/Cl_2 for HWCs that feed *de minimis* levels of these metals or chlorine.[178]. Under the waiver, a source would be required to assume that all Hg, SVM, LVM, or chlorine fed in each feedstream is emitted from the stack and to document that resulting emission concentrations do not exceed the emission standards, considering stack gas flow rate. Thus, the source would be required to: (1) establish and comply with maximum feedrate limits for total feedstreams for Hg, SVM, LVM, or chlorine; and (2) establish and comply with, as a minimum stack gas flow rate, the flow rate used to document compliance (by calculation

[176] We note that, for this reason, the Agency chose not to require BIFs operating under interim status to comply with the DRE standard even though they were subject to all other emission standards that would be applicable under a operating permit.

[177] If the trial burn were scheduled prior to the performance test, the source could elect to consolidate the tests and, thus, move up the anniversary date for the performance test.

[178] Note that the term *de minimis* means simply low concentration of metals or chlorine. It does not denote or imply low risk.

rather than emissions testing) with the emission standard.

To accommodate sources that may operate under a wide range of gas flow rates, the rule would allow a source to establish different modes of operation with corresponding minimum stack gas flow rate limits and maximum feedrates for metals or chlorine. If a source uses this approach, the operating record must clearly identify which operating mode is in effect at all times.

Sources claiming the waiver would be required to do so in the initial notification of performance test and would not be required to establish or comply with operating limits for the performance test (i.e., Hg, SVM, LVM, or HCl/Cl_2) for which the waiver is claimed. Sources eligible for a waiver from the Hg standard would not be required to install a Hg CEMS.

D. Relative Accuracy Tests for CEMS

This section describes the testing requirements for CEMS proposed today. Note that CEMS for multi-metals, HCl, and Cl_2 are proposed to be optional. Facilities need not perform tests described below for CEMS they elect not to use.

A relative accuracy test audit (RATA) for Hg and multi-metal CEMS would be required every three years (or five years for small on-site facilities). RATAs for CO and O_2 CEMS would be required annually.[179] RATAs for Hg and multi-metals involve comparing the output of the CEM to the results of manual method tests in order to determine the overall accuracy of the CEM and would be conducted in conjunction with a comprehensive test. RATAs for CO and O_2 would be conducted during a comprehensive test or on the anniversary date of the previous comprehensive test.

A relative calibration audit (RCA) for PM CEMS would be required every 18 months (30 months for small on-site facilities). These are similar to a RATA in that they involve comparing the output of the CEM to the results of manual method tests in order to verify the validity of the CEM and its calibration, and would be conducted whenever a comprehensive or confirmatory test is performed.

An absolute calibration audit (ACA) is a test which determines the calibration error (CE) associated with a CEM. These audits do so by challenging the analyzer using gas bottles or solutions of metals or particulate with known concentrations of the compound being analyzed. ACA's are conducted quarterly for all CEMS except for multi-metals, which are conducted annually.

Calibration drift (CD) and zero drift (ZD)[180] tests are conducted daily using cylinder gas bottles, filters, or internal (to the CEMS) calibration standards.

IV. Selection of Manual Stack Sampling Methods

This section discusses the manual emission test methods that would be required for emission tests and calibration of CEMS and relies heavily on the BIF methods currently in Part 266, Appendix IX. EPA previously proposed incorporating many of these methods in SW–846, *Test Methods for Evaluating Solid Wastes* (60 FR 37974, July 25, 1995). Accordingly, both the BIF and proposed SW–846 numbers are given.

The emission test method for D/F would be the proposed SW–846 Method 0023A (60 FR 37974, July 25, 1995). It is identical to the BIF Method 23 in Appendix IX of Part 266 except Method 0023A requires that collection efficiencies be determined for both the particulate and sorbent. BIF Method 23 is the same as the Air Method 23 in Part 60, Appendix A. Method 23 determines the efficiency off the sorbent only and assumes the same recovery off the particulate as from the sorbent. We are also proposing today to make a conforming change to the BIF rule to require use of Method 0023A rather than Method 23.

It is proposed that BIF Method 0012 (SW–846 method 0060) be used as the manual method test for Hg. The proposed manual emission test method for the SVM and LVM standards is BIF Method 0012 contained in section 3.1 of Appendix IX, Part 266 (SW–846 method 0060). This method is also commonly known as Air Method 29.

For compliance with the HCl/Cl_2 standard, the rule would use BIF Methods 0050, 0051, and 9057 contained in section 3.3 of Appendix IX, Part 266, as the manual test method (SW–846 would retain the same numbering). These methods are commonly known as Air Method 26A, found in Appendix A of Part 60.

Existing § 63.7 describes procedures for allowing the use of alternative test methods for MACT sources. This procedure involves using Method 301 of Part 60, Appendix A, to validate the proposed method. The data from the Method 301 validation is submitted to EPA. EPA then decides if the proposed method is acceptable. Absent this approval under § 63.7 procedures, alternate methods cannot be used.

V. Notification, Recordkeeping, Reporting, and Operator Certification Requirements

Today's proposed rule would establish several notification, recordkeeping, and reporting requirements for HWCs. This section discusses the applicability to HWCs of existing requirements in §§ 63.9 and 63.10 and Parts 264, 265, 266, and 270. In addition, we discuss in this section new requirements that would apply specifically to HWCs. Finally, we discuss whether operator certification requirements should be promulgated.

A. Notification Requirements

HWCs would be required to submit the following notifications:

- Initial notification. The initial notification requirements of existing § 63.9(b) would apply. These notifications are intended to alert regulatory officials that a source is subject to the regulations. Even though all existing HWCs have already notified the Administrator of their hazardous waste activities under RCRA requirements, and new HWCs must notify the Administrator and obtain an operating permit before commencing construction, these RCRA-required notifications will not always be received by the same regulatory officials implementing the MACT standards. For example, when a state is authorized for Title V permitting, various state regulatory authorities, including local air boards, could be the implementing authority. In contrast, RCRA regulations are implemented by Agency and state officials. Accordingly, to ensure that all appropriate regulatory officials are apprised that a HWC is subject to the MACT and RCRA regulations, we are proposing to retain the initial notification requirement under § 63.9(b).
- Notification of performance test and CMS performance evaluation. This notification includes the planned test date, performance test plan (to demonstrate compliance with emissions), CMS performance evaluation plan, and quality assurance plan. It is required by existing § 63.9(c), except that all sources must submit their test plan and CMS performance evaluation plan for review and approval.
- Notification of compliance. This notification includes results of performance test and CMS performance evaluation and certification by the owner and operator that the source is in compliance with the applicable

[179] Note that EPA invites comment on waiving the RATA requirements for CO and O_2, instead relying on quarterly calibration error tests using cylinder gasses.

[180] Note that EPA invites comment on whether the ZD requirements should be deleted.

standards. It is similar to that required by existing § 63.9(h) with several important differences. Under today's rule, a source must notify that it is actually in compliance with all applicable standards, not merely identify its status with respect to compliance as allowed by § 63.9(h). In addition, paragraphs (h)(2) (D) and (E) requiring the source to identify the type and quantity of pollutants emitted and an analysis of whether the source is a major or area source are not applicable to HWCs. This is because today's proposed rule would apply to all HWCs irrespective of whether it meets the definition of a major source. Finally, today's rule would require the notification to be submitted 90 days after completion of testing, rather than 60 days as now required by paragraph (h)(2)(ii).

- Request for extension of time to submit a notification of compliance. A notification for a time extension for initial compliance is provided by § 63.9(c). Today's rule would require sources to submit a notification of compliance after each performance test (both comprehensive and confirmatory) and allow requests for time extensions to submit those notifications.
- Request for a time extension to consolidate a performance test with a trial burn. Today's rule would allow a source to request to consolidate a trial burn with a performance test if the trial burn test date is no later than 12 months after the performance test anniversary date.

To summarize applicability of existing § 63.9 notification requirements and to assist the regulated community in understanding the applicable requirements, the following list is provided as guidance:

- Paragraph (a) (Applicability and general information) applies.
- Paragraph (b) (Initial notifications) applies as discussed above.
- Paragraph (c) (Request for extension of compliance) applies for the purposes discussed above.
- Paragraph (d) (Notification that source is subject to special compliance requirements) applies.
- Paragraph (e) (Notification of performance test) applies as discussed above.
- Paragraph (f) (Notification of opacity and visible emission observations) is not applicable because the rule would establish a PM emission standard and other compliance/monitoring requirements in lieu of opacity and visible emission standards.
- Paragraph (g) (Additional notification requirements for sources with CMS) applies.
- Paragraph (h) (Notification of compliance status) applies with the caveats discussed above.
- Paragraph (i) (Adjustments to time periods or postmark deadlines for submittal and review of required communications) applies.
- Paragraph (j) (Change in information already provided) applies. The rule would require the following additional notification requirements:
- Small quantity on-site burner exemption. See discussion in Part Six, Section II.A.1.
- Pre-trial burn period (shakedown). See discussion in Part Six, Section II.F.1.

B. Reporting Requirements

HWCs would be required to submit the following reports:

- Excessive AWFCO report. See discussion in Part Five, Section II.E.1.
- ESV opening report. See discussion in Part Five, Section II.E.1.

For guidance to the regulated community, the applicability of the existing reporting requirements under §§ 63.10(d) (General reporting requirements), 63.10(e) (Additional reporting requirements for sources with CMS), and 63.10(f) (Waiver of recordkeeping or reporting requirements) would be as follows:

- Paragraph (d)(1) applies. This paragraph references the reporting requirements in the specific standards for a source category, in this case proposed Subpart EEE.
- Paragraph (d)(2) (Reporting results of performance tests) applies, except that the report may be submitted up to 90 days after completion of the test.
- Paragraph (d)(3) (Reporting results of opacity or visible emission observations) does not apply because the rule would not regulate opacity or visible emissions.
- Paragraph (d)(4) (Progress reports) applies.
- Paragraph (d)(5) (Periodic startup, shutdown, and malfunction reports; and immediate startup, shutdown, and malfunction reports) does not apply. Given that HWCs could not burn hazardous waste under the proposed rule except in compliance with all applicable emission standards, operating limits, and CMS performance specifications, the rule would not require a startup, shutdown, and malfunction plan as required by § 63.6(e)(3) for other MACT sources. There will be no excess hazardous waste emissions during these periods (unless the HWC violates the standards) and the Agency does not need information about how quickly a HWC is able to correct a malfunction or come back into compliance again so that it may resume hazardous waste burning.[181]
- Paragraph (e)(1) (General) applies.
- Paragraph (e)(2) (Reporting results of CMS performance evaluations) applies.
- Paragraph (e)(3) (Excess emissions and CMS performance report and summary report) does not apply because HWCs cannot burn hazardous waste except in compliance with all applicable standards.
- Paragraph (e)(4) (Reporting continuous opacity monitoring system data produced during a performance test) does not apply because COMs are not required in this proposal.
- Paragraph (f) (Waiver of recordkeeping or reporting requirements) would not apply because the bases for considering the waiver are not relevant to HWCs as follows: (1) Recordkeeping and reporting should not be waived because ''the source is achieving the relevant standards'' because recordkeeping and reporting would be the primary means of compliance assurance for the HWC rules; (2) recordkeeping and reporting should not be waived during a time extension because the requirements would not apply until a HWC submitted the initial notification of compliance irrespective of whether a time extension were granted; and (3) recordkeeping and reporting should not be waived if a time extension is granted for a subsequent notification of compliance (because the source will be burning hazardous waste under the standards).

C. Recordkeeping Requirements

Existing § 63.10(b)(1) requires MACT sources to keep the records discussed below for at least five years from the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent two years of data must be retained off-site. The remaining three years of data may be retained on site. Such files may be maintained on: microfilm, a computer, computer floppy disks, optical disk, magnetic tape, or microfiche.

[181] One exception to this is the operation of cement kilns when the hazardous waste feed has been cut off and there is no hazardous waste remaining in the combustion chamber. In this situation, the HWC emission standards, operating limits, and CMS performance specifications would not apply. Given that the Agency plans to propose MACT standards for cement kilns that do not burn hazardous waste, however, a cement kiln that is temporarily not subject to today's proposed standards because the waste feed has been cutoff (and there is no hazardous waste remaining in the combustion chamber) would nonetheless remain (or become) subject to any MACT standards the Agency may promulgate.

1. Information Required in the Operating Record

The rule would require HWCs to record the following in the operating record:

- Comprehensive test results used to determine operating limits. See discussion in Part Five, Section II.B.
- All operating parameter limits established. See discussion in Part Five, Section II.C.
- Operating data which substantiates compliance, including minute-by-minute operating parameter data, including feedstream; and minute-by-minute CEM data. See discussion in Part Five, Section II.B.
- Documentation for performance test waiver. See discussion in Part Five, Section III.C.
- Description of and operating data substantiating compliance with provisions to limit combustion fugitive emissions. See discussion in Part Five, Section II.D.
- For each occurrence of an exceedance of a CEM or operating parameter limit, including what operating parameter of CEM limit was violated: the cause of the violation, and what corrective action was taken to ensure the violation will be prevented in the future. See discussion in Part Five, Section II.E.1.
- For each ESV opening: documentation that the ESV opened, the reason for the opening, and corrective measures taken to minimize the frequency of openings. See discussion Part Five, Section II.E.2.
- ESV operating plan. See discussion Part Five, Section II.E.2.
- CEM quality assurance document, including: definition of compliance with the calibration and zero drift specifications, and how relative accuracy and absolute calibration audits will be performed. See discussion Part Five, Section II.F.1.
- Feedstream Analysis Plan, including: the parameters for which each feedstream will be analyzed to ensure compliance; whether the owner or operator will obtain the analyses by performing sampling and analysis or by other methods; how the analysis will be used to document compliance; the test methods used; the sampling method used; and the frequency of testing. See discussion in Part Five, Section II.F.2.
- Other Continuous Monitoring Systems (CMS), including: manufacturer's written specifications for installation, operation, and calibration of a CMS; and technical specifications of CMS, such as spans and percent error. See discussion in Part Five, Section II.F.3.

In addition, HWCs would be required to develop and keep in the operating record a feedstream management plan that enables the source to maintain compliance with CEM-monitored emission standards. Although a facility using a CEM for compliance would not be required to comply with feedrate limits, the owner and operator would be required to develop a feedstream management plan (and include it in the operating record) that will enable the source to know the feedrate in all feedstreams of Hg (as well as other metals and chlorine if the source elects to use a CEM for compliance monitoring) at all times to minimize automatic waste feed cutoffs and exceedances of the emission standard. Knowledge of Hg (and other metals and chlorine) concentration of feedstreams can come from the waste generator, supplier, or other information, and need not be obtained by sampling and analysis by the burner. If the source experiences frequent AWFCOs or exceedances, enforcement officials will determine if a feedstream management plan is in place. If the plan is determined to be inadequate, the Director may require that it be upgraded, taking into account whether a good faith effort has been made to develop a plan, even if the plan is determined to be inadequate.

Note that RCRA/HSWA already requires the facility owner to certify no less than annually, that the facility has a waste minimization program in place, and the certification must be maintained in the facility's operating record. The facility owner is encouraged to coordinate the development of the feedstream analysis plan and the feedstream management plan with the facility's waste minimization program. EPA published Interim Final ''Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program in Place,'' (1993) and the ''Pollution Prevention Facility Planning Guide'' (1993), which provide information to facility owners on how to prepare analyses of waste streams and options for reducing wastestreams using alternative pollution prevention/waste minimization measures. Information on these documents can be requested by calling the RCRA hotline at 1–800–424–9346.

Many states provide free pollution prevention/waste minimization technical assistance that may aid facilities in the development of pollution prevention/waste minimization plans. At least 20 states have requirements for certain facilities to prepare pollution prevention/waste minimization plans. As noted elsewhere in today's rule, facilities can get further information on available technical assistance by contacting the National Pollution Prevention Roundtable in Washington, D.C. at (202) 466–7272, or from Enviro$ense, an electronic library of information on pollution prevention, technical assistance, and environmental compliance, that can be accessed by contacting a system operator at (703) 908–2007, via modem at (703) 908–2092, or on the Internet at http://wastenot.inel.gov/enviro-sense.

2. Applicability of § 63.10 Recordkeeping Requirements

The applicability of the existing recordkeeping requirements of § 63.10 would be as follows:

- Paragraph (a) (Applicability and general information) applies, except for (a)(2) that exempts sources that are operating under a compliance extension. This is because sources that receive a time extension to submit the initial notification of compliance would not be subject to any of the proposed standards. Further, sources that receive an extension for a subsequent notification of compliance need to comply with recordkeeping and reporting requirements to provide compliance assurance given that they are burning hazardous waste during the extension.
- Paragraph (b) (General recordkeeping requirements) applies, except for (b)(2) (iv)–(vi) that pertain to actions during malfunctions, and (b)(3) regarding recordkeeping for applicability determinations.
- Paragraph (c) (Additional recordkeeping requirements for sources with CMS) would apply, except for (c)(6)–(8), (c)(13), and (c)(15) that pertain to malfunctions.

3. New Recordkeeping Requirements

The rule will also require recordkeeping requirements for the following:

- Comparable fuels. Sampling and analysis plan, including revisions; and certifications from burners. Under § 261.4 records will be kept for as long as the generator manages a comparable fuel, plus five years. See discussion in Part 6, Section I.E.6.
- Comparable fuels. Results of sampling and analysis; and records of off-site shipments for five years. See discussion in Part 6, Section II.E.6.
- Small quantity on-site burner exemption. Under § 266.108, records will be kept for 3 years. See discussion in Part Six, Section II.D.
- Regulation of residues. Under § 266.112, records will be kept until

closure. See discussion in Part Six, Section II.D.

D. Operator Certification

The Agency notes that section 129 of the Clean Air Act requires EPA to develop and promulgate a model program for the training and certification of municipal waste combustor (MWC) and medical waste combustor (MWI) operators. Accordingly, the Agency has promulgated operator certification and training requirements for MWCs and has proposed requirements for MWIs. The Agency is today requesting comment on whether similar requirements are necessary and appropriate for operators of HWCs.

The MWC and MWI requirements call for (in part) full operator certification of all shift supervisors and chief facility operators by the American Society of Mechanical Engineers (ASME) or a State certification program. In addition, a least one of the following persons is required to be on duty at all times during which the unit is combusting waste: a fully certified chief facility operator; a fully certified shift supervisor; or a provisionally certified control room operator.

We note that the ASME has recently established a Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators (ASME QHO–1–1994, January 31, 1995). We request comment on whether: (1) operator certification requirements are necessary for HWCs; and (2) the ASME standard, or an equivalent State certification program) is appropriate and sufficient

The ASME standard has been developed specifically for hazardous waste incinerators. We are not aware of an equivalent standard for operators of cement kilns and lightweight aggregate kilns that burn hazardous waste. We note, however, that the Cement Kiln Recycling Coalition has stated that it is committed to the development of an operating training and certification program for its member facilities.[182] We invite comment and information from owners and operators of waste-burning kilns regarding the need for a certification standard and the status of development of a standard for such combustors.

VI. Permit Requirements

The rulemaking approach in today's proposal, to promulgate final standards under joint RCRA/CAA authority, raises some challenging implementation questions. In this section, permitting strategies are discussed. EPA requests comment on how these strategies can be further simplified while retaining basic environmental protection goals.

A. Coordination of RCRA and CAA Permitting Processes

The rulemaking approach chosen for today's proposal is to promulgate the final standards for hazardous waste combustors under joint RCRA/CAA authority. However, the standards will only appear under 40 CFR Part 63 (Clean Air Act section). The RCRA regulations in 40 CFR Parts 264 and 266 will make reference to these Part 63 standards, thereby incorporating them as RCRA standards as well. Thus, legally, the new standards will be part of both the RCRA and CAA regulations and both regulatory programs (RCRA & CAA) will have an obligation to address these standards in permits issued under their authority.

Although the Agency believes that a single permit would be ideal to implement these two programs, today's proposed approach does not always eliminate the need for two separate permits. However, it does provide a variety of options for State implementation. By using both the CAA and RCRA authorities, today's approach provides maximum flexibility for permitting authorities at the Regional, State, and/or local levels to coordinate the issuance of permits and enforcement activities in the way which most effectively addresses their particular situation.

Currently, combustion facilities are required to obtain two permits; a RCRA permit and a CAA permit. Although it is EPA's long term goal is to have one permit that would address both RCRA and CAA requirements, it is difficult because (1) different pieces of the rule rely on different authorities, and (2) significant coordination is needed between Regional, State, and local authorities. After careful consideration, EPA's goal in today's proposal is to coordinate as much as possible between the two permitting programs to avoid duplication of effort, inconsistent requirements, and redundant procedures.

EPA explored the possibility of requiring combustion facilities to have only one EPA permit issued under either RCRA authority or CAA authority. Promulgating these standards in the CAA regulations and requiring only a CAA permit looked promising because RCRA allows EPA to defer RCRA regulation to other authorities administered by EPA, if RCRA core values are covered by the other federal requirements (RCRA Section 1006(b)(1)), in this case, the CAA. However, EPA believes that several RCRA core requirements (e.g., corrective action, omnibus conditions, DRE, etc.) cannot be addressed in a CAA permit, since the CAA does not provide the legal authority to address them.

Promulgating these requirements under RCRA authority and issuing only a RCRA permit is not possible because the CAA does not allow permits for major sources to be waived. As previously discussed, all facilities covered by this rulemaking will be considered major sources. Also, CAA specific concerns (e.g., acid rain, criteria pollutants, etc.) would not be addressed in a RCRA permit.

EPA considered placing the revised air emission standards in the CAA regulations and including a RCRA permit-by-rule provision that would defer to the CAA permit. Under this option, the CAA regulations would contain the air emission requirements and the CAA permit would contain the emission standards. In addition, a separate RCRA permit would address RCRA-specific concerns (e.g., corrective action, omnibus conditions, DRE, storage, etc.). This approach would avoid duplicating air emission requirements in both permits. EPA is not proposing regulatory language that would require this approach because there is concern that it might limit the permitting flexibility of the implementing agencies by specifying which program would be required to address air emissions. Some states have expressed concerns about this approach. Many states—for example, those that regulate air emission standards under their hazardous waste program—may find it difficult to implement this option; also, some states were concerned about the ability of local permitting programs being solely responsible for the air emissions permitting for these facilities. On the other hand, the flexibility EPA is suggesting in today's proposal would not preclude states from using this permitting approach.

More broadly, EPA has not specified any one permitting approach in today's proposal. The flexibility the Agency is proposing would allow states to decide which permitting approach to take. The important things are that all substantive requirements are met and that a timely and full opportunity for public involvement is provided during the permitting process.

EPA has identified a range of possible permitting scenarios under today's proposed approach. Some examples of

[182] Letter from Craig Campbell, CKRC, to Ronald Bastian, Chairman, ASME QHO, dated January 5, 1994.

coordinated efforts between the RCRA and CAA programs include: (1) issuing a single permit using both (or either) RCRA and CAA authority, and (2) issuing two separate permits with close coordination between the two programs.

In the first example, the two permitting programs would work together to issue one permit that meets all the requirements of both programs. This joint permit would include CAA-specific items (e.g., acid rain, criteria pollutants, etc.), RCRA-specific items (e.g., corrective action, omnibus conditions, DRE, etc.), and items common to both programs (e.g., air emission standards, etc.). The permit would be issued under joint authority and signed by the Director(s) of both programs. This scenario is likely to be most appropriate where a State has authority for both programs and the two programs have experience working together. This approach could also be implemented by using the CAA in combination with the RCRA permit-by-rule provision as discussed above.

In the second example, the two permitting programs (one responsible for RCRA, and one responsible for CAA) would coordinate their permitting efforts. Each program would issue a permit. The requirements common to both programs (e.g., stack emission standards, etc.) would be included in one permit and the other permit would incorporate the common requirements by reference. This approach would avoid duplicative and conflicting requirements. In this example, each permit would go through the applicable procedures for issuance. To coordinate permit issuance, all public participation requirements (notices, comments, hearings, etc.) could be combined. Under this approach permits would be subject to applicable appeal procedures and enforcement provisions under each program; however, EPA would not expect to enforce under both permits. The appropriate enforcement response will be determined on a case-by-case basis. We invite comment on this point in particular.

EPA will work with the States to identify issues relating to streamlining the permitting programs and to develop any needed guidance materials or model processes. Additionally, EPA will continue to pursue a mechanism to issue one permit that would address both RCRA and CAA requirements.

An Agency-wide initiative led by the Permits Improvement Team (PIT) has recommended ways to improve permitting activities for all environmental programs. Under this initiative EPA continues to seek the best ways to permit facilities throughout its various media programs. The approach in today's proposal is consistent with the current direction of the PIT, which suggests avoiding duplication of effort by incorporating the air emission standards into one permitting program. EPA is committed to harmonizing these two permitting processes as much as possible for the implementation of today's proposal.

B. Permit Application Requirements

EPA reviewed information required for permit applications under both the CAA (§ 70.5) and RCRA (Part 270) to identify any duplication that could be eliminated and to determine whether any CAA or RCRA permit application requirements for hazardous waste combustors could be combined. Historically, determinations for permit approval for facilities regulated under the CAA generally focused solely on the efficiency of the air pollution control device (APCD). Conversely, the basis for permit approval under RCRA has traditionally been more specific and related to details of the combustion unit and process (for example, design characteristics of the unit, variability of the waste burned, information on the type of waste to determine the effect it may have on the quality of the operation of the unit over time, etc.). Specific information requirements are listed in §§ 270.15–270.26 (see specific technical information requirements in § 270.19 for incinerators and § 270.22 for BIFs). For these reasons, EPA has concluded that the current Part B information requirements and the information requirements in the CAA regulations are not duplicative and is proposing that both be retained under the existing regulations to assure that all RCRA and CAA concerns are addressed.

Although some of the general information required under § 270.13, Contents of Part A of the RCRA permit application, is also requested in § 70.5 of the CAA permit application requirements, EPA believes that because this information is so minimal, it would not be a burden for the applicant to duplicate it on two separate applications. Section 270.13 requires further information under the Part A, such as a scale drawing of the facility showing the location of all past, present, and future TSD areas, specifications of the hazardous waste listed or designated under 40 CFR Part 261 to be handled at the facility and a list of all permits or construction approvals received or applied for under other programs, to list a few. In addition, standards relating to the overall operation of the facility are listed under Part B (§ 270.14). These standards include, but are not limited to, chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility, description of the security procedures, contingency plans, closure and post-closure plans (including cost estimates) and a description of the continuing training programs. Such standards are not required in the application for a CAA permit. EPA has therefore concluded that it would be reasonable to keep the application requirements where they now exist and cross-reference them where appropriate.

C. Clarifications on Definitions and Permit Process Issues

Because of the incorporation of the technical standards into both the RCRA and CAA regulations, as described previously, both RCRA and CAA permitting procedures are applicable. For issues such as the meaning of the term ''construction'', there could be confusion since the definitions and interpretations under one Act differ from those under the other. Our intent is not to reconcile these issues on a national basis but to continue to let both apply. As in the past, sources regulated under both Acts will need to coordinate with both RCRA and CAA permitting authorities to see how these procedures apply to them. We note in passing that this approach means that the most restrictive limitations or processes will generally govern.

The Agency requests comment on whether these issues should be addressed at the national level. EPA's current preference is not to do so, but to leave flexibility for the states and EPA Regions to address these issues.

1. Prior Approval

RCRA and CAA are similar in that both require EPA approval before construction or reconstruction of a facility (generally) (Sections 61.07, 63.5, 270.10(f)). Both programs use hypothetical emissions data to make the construction approval decision. If a facility is existing before the effective date of the final regulation, both RCRA and CAA require notification of operation but do not require approval of the construction that has already occurred (Sections 60.7, 266.103(a)(1)(ii)). (Modification of a permitted facility also requires prior approval.)

2. 50 Percent Benchmark

RCRA and CAA both classify a modification of a facility that costs more than 50 percent of the replacement cost of the facility as ''reconstruction''. However, the significance of this term is different under the two statutes. Under

RCRA, the issue of reconstruction is relevant to interim status facilities. An interim status facility planning modifications which constitute reconstruction must receive a RCRA permit prior to construction of the modifications and operation (§ 270.72(b)). Under the CAA, reconstruction subjects the facility to standards applicable to new facilities (§§ 60.15, 60.488, and 63.5).

3. Facility Definition

RCRA and CAA define ''facility'' differently. This definition has bearing in determining the value of the facility with respect to the 50 percent rule on modifications just discussed. CAA defines facility as the entire industrial process at the site (profit making productive process and pollution control devices), while RCRA for purposes of reconstruction refers to a ''comparable entirely new hazardous waste facility'' (Section 270.72) excluding other industrial processes at the site from consideration in the cost of the existing facility. For a site where the only activities are RCRA hazardous waste activities, the two definitions are identical. However, sites with non-RCRA industrial activities will have differing cost figures for each rule. Therefore, the two programs have differing determinations of how much reconstruction can occur before the 50 percent benchmark is exceeded. However, EPA believes this difference should not constitute a problem, since the reconstruction determination has different applications under each Act. The RCRA definition should be used for the RCRA application to changes during interim status, and the CAA definition should be used when determining applicability of new versus existing MACT standards.

4. No New Eligibility for Interim Status

This joint CAA/RCRA proposed rulemaking revises emission standards for incinerators and BIFs and hence amends the original incinerator and industrial furnace rules that were finalized in 1981 and 1991, respectively. Because these rules established the date on which incinerators and BIFs were first subject to a permit requirement, the effective dates of those rules created the only opportunity for interim status eligibility. § 270.10(e)(1)(A)(ii). The interim status windows that occurred in 1981 and 1991 thus will not and legally cannot be modified by this rule. Of course, facilities currently burning wastes that become newly listed under other, future rules would still be able under existing law to qualify for interim status (§ 270.42(g)).

To avoid the possibility that readers of Part 63 might be unaware of their obligations under RCRA, EPA has inserted a note into Section written Section 63.1206 to alert them to this point. This note states: ''an owner or operator wishing to commence construction of a HWI or hazardous waste-burning equipment for a cement kiln or lightweight aggregate kiln must first obtain some type of RCRA authorization, whether it be a RCRA permit, a modification to an existing RCRA permit, or a change under already existing interim status. Please see 40 CFR Part 270.''

5. What Constitutes Construction Requiring Approval

RCRA and CAA both have restrictions requiring approval prior to construction. The definition of construction under the RCRA regulations and associated interpretations differ from the CAA approach to defining construction (case-specific call, see Sections 60.5, 61.06) Facilities need to comply with both and should be consulting with applicable permitting authorities to assure appropriate site-specific interpretations. We believe the RCRA construction definition is generally broader (more restrictive) and thus will govern in most cases. The Agency believes retaining the two differing definitions will not cause problems since they are already being applied concurrently. Also, the Agency feels that creating a third construction definition for this small subset of the RCRA and CAA facilities would create more confusion than it would eliminate.

D. Pollution Prevention/Waste Minimization Options

EPA believes pollution prevention/waste minimization measures may provide facilities additional flexibility in meeting MACT standards. Pollution prevention/waste minimization measures have been used by many companies to modify processes and install new or improved technologies which reduce or eliminate the volume and/or toxicity of hazardous wastes generation that would otherwise enter combustion unit feedstreams, or be treated or disposed of in some other fashion. EPA is soliciting comment on two pollution prevention/waste minimization options for reducing or eliminating hazardous constituents that enter on-site as well as commercial combustor feedstreams, and that can be considered in the definitions of changes in facility operating parameters and/or new or improved control technologies for meeting MACT standards.

The first option would require all facilities to provide adequate information on alternative pollution prevention/waste minimization measures that reduce hazardous constituents entering the feedstream, particularly the most persistent, bioaccumulative, and toxic constituents, in all permit applications. EPA believes this approach is consistent with the national policies of the Pollution Prevention Act of 1990, CAA, RCRA, and over 20 states who encourage or require pollution prevention plans. Facilities are encouraged to reference existing EPA documents, such as the Interim Final ''Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program in Place,'' (May 1993), which provides a guide for developing pollution prevention/waste minimization programs. Facilities are also encouraged to reference EPA's ''Pollution Prevention Facility Planning Guide'' (May 1992), ''An Introduction to Environmental Accounting As A Business Management Tool'' (June 1995), and ''Setting Priorities for Minimization of Combusted Hazardous Waste'' (November 1995), and to contact the National Pollution Prevention Roundtable, and state pollution prevention technical assistance programs for additional pollution prevention resources. These documents were published as aides to facility owners in preparing analyses of pollution prevention/waste minimization measures. EPA believes this approach provides maximum flexibility to facilities for identifying controls through the application of processes, or systems (including pollution prevention/waste minimization measures) for reducing emissions.[183]

EPA believes in many cases, facilities may already be required or encouraged to prepare this information in the more than 20 States which have pollution prevention facility planning requirements already in place. EPA believes this approach will promote consistency in States which are requiring facilities to develop pollution prevention/waste minimization plans as a basis for developing multi-media permits. This approach will enhance, without duplicating, the requirements in this proposal for facilities to prepare a feedstream analysis plan and a feedstream management plan. In cases where this information has been already developed by the facility in accord with State requirements within 18 months prior to the date of application, no

[183] Under the Clean Air Act Section 112(d)(2), MACT standards include, among other things, process changes, substitution of materials or other modifications.

additional pollution prevention/waste minimization information will be required as part of the permit application.

In the second option, EPA proposes to give EPA Regions and States discretion to make case by case determinations regarding whether a facility must provide adequate information for reducing measures, including pollution prevention/waste minimization measures, that will minimize hazardous constituents entering the feedstream. EPA believes this determination should be made based on the facility's ability to verify that they have a waste minimization program in place as required under RCRA, the extent to which the facility has reported pollution prevention information in annual Toxic Release Inventory reports (for facilities subject to TRI reporting requirements), and the extent to which information has already been prepared under existing state pollution prevention planning requirements, or in conjunction with State or local pollution prevention technical assistance programs.

EPA believes this option provides the regulated community and States broad flexibility to integrate existing pollution prevention/waste minimization programs into the objectives of this rulemaking. States, universities and local governments operate over 200 technical assistance programs that work cooperatively with companies to identify waste minimization options to reduce waste generation and management. Some states combine this approach with compliance assistance, and a few have in place enforceable waste minimization requirements ranging from mandatory waste minimization plans to incorporating waste minimization opportunities into permitting, inspection and/or enforcement activities. As noted elsewhere, facilities can contact the National Pollution Prevention Roundtable in Washington, D.C. at (202) 466–7272 for further information on technical assistance opportunities, or Enviro$ense, an electronic library of information on pollution prevention, technical assistance, and environmental compliance. Enviro$ense can be accessed by contacting a system operator at (703) 908–2007, via modem at (703) 908–2092, or on the Internet at http://wastenot.inel.gov/enviro-sense.

E. Permit Modifications Necessary To Come Into Compliance With MACT Standards

This Notice of Proposed Rulemaking would require facilities to come into compliance with a number of new MACT emission standards within three years following final promulgation of this rule. Some facilities would need to perform facility modifications to come into compliance with the MACT standards through changing operating parameters or adding new or improved control technology(ies) to reduce emissions. For example, incinerators that currently operate above the MACT PM emissions standards would potentially need to add or modify electrostatic precipitators (ESP) or baghouses to reduce emissions. Incinerators with a need to reduce dioxin emissions may need to look into establishing better controls on temperature or the use of carbon injection. LWAKs with potential exceedances in acid gas emissions may need to add control technology such as wet scrubbers. These facility changes may need to be added to a facility's existing RCRA permit through a permit modification. The facility, in this case, would need to apply for and receive approval for a permit modification (unless it is a class 1 modification) before commencing with its proposed change(s).

This rule is being proposed under both RCRA and the Clean Air Act Amendments. With regard to coming into compliance with these proposed standards, the Clean Air Act creates a mandatory compliance deadline of three years for facilities subject to these regulations (with a one year allowance for an extension granted on a case-by-case basis). The MACT standards are self-implementing in that they take effect in the absence of a CAA permit. As mentioned earlier in this notice, the Agency is also taking comment on whether it would be appropriate to move up the compliance date of this rulemaking from the proposed three year timeframe following promulgation to a timeframe closer to many RCRA-based regulations, that of six months to a year. The Agency is taking comment, as well, on any other timeframes which can be considered both technically and legally feasible.

However, these sources also hold RCRA permits (or operate under interim status) which likely would have to be modified as a result of efforts to comply with the MACT emission standards. With respect to facilities with RCRA permits, EPA is concerned that these facilities could submit a high number of Class 2 or Class 3 permit modification requests within the three year window before MACT compliance begins. This large influx could potentially lead to difficulties in timely processing of modification requests by EPA or State agencies. As a result, facilities potentially would not have conformed their RCRA permits to reflect the changes needed to meet the MACT standards. The Agency anticipates that many of the permit modification requests will contain either identical or similar proposed changes, given the similarities in incinerator, cement kiln, and LWAK design and operation. Given the large number and the potential for duplication of modification requests, and the desire to achieve timely emissions reductions, the Agency is considering options that will streamline the RCRA permit modification process to ensure that necessary modifications are made expeditiously, particularly in light of the fact that these standards could potentially become effective in a shorter period of time, depending on comments received from the public on this proposed rulemaking.

In today's proposal, we are seeking comment on five main options (referred to as modification options 1–5) which propose various mechanisms to expeditiously authorize changes made to comply with this rule. Also, the Agency is seeking comment on three approaches to address whether EPA or a state would process necessary permit modifications (referred to as implementation approaches 1–3) where a state is authorized to issue RCRA incineration and BIF permits but is not authorized to implement the new combustion rule. This situation should arise only where a state does not adopt the necessary provisions of the new rule within the time required by 40 CFR Part 271.21. EPA strongly urges states to adopt this rule, once finalized, expeditiously in order to streamline the processing of necessary modifications.

This notice seeks comment on which modification option or combination of modification options would be the most viable. The Agency is also taking comment on any combination of the above implementation approaches and options if an intermediate option and implementation approach combination seems more appropriate. Under the current RCRA permit modification scheme, a permitted facility would refer to Appendix I of 40 CFR 270.42 to determine if its proposed modification is classified in the modifications table. A modification may rank as Class 1, 2, or 3 (see 53 FR 37912 (Sept. 28, 1988)). A higher modification class signifies an increased significance of the facility change which is accompanied with a commensurate increase in the level of public participation. Facilities can proceed with most Class 1 changes without notifying the Agency, though some Class 1 modifications require prior Agency approval. Owners and operators must, in all cases, notify the public and

the authorized Agency once they have made a Class 1 modification. For cause, the Agency may reject any Class 1 modification.

Class 2 modifications provide for considerably more participation by both the facility and the public including an informational meeting between the owner and the public regarding the owner's request prior to the Agency decision. Class 3 modifications substantially alter the facility or its operations. As a result, they require the most Agency review and are subject to more public participation requirements than a Class 1 or 2 modification, including the full part 124 procedures for processing draft permit decisions.

1. Proposed Options Regarding Modifications

To provide a procedural framework that allows these facilities to make the necessary changes in RCRA permits, the Agency proposes to amend the interim status and permit modification requirements.

a. Modifications During Interim Status. Interim status facilities can make certain facility alterations with fewer procedural hurdles than apply to permitted facilities. However, many changes do require Agency approval. In addition, interim status facilities must adhere to all reconstruction requirements found in 40 CFR Part 270.72 and must revise their Part A permit applications. To ensure that facilities making changes to come into compliance with today's proposed MACT standards are not constrained by the reconstruction limits under § 270.72, the Agency is proposing to add a new sub-section as (b)(8) that would exempt those facilities from the reconstruction limitation. The Agency does not expect that the costs to come into compliance would exceed the 50 percent limit for reconstruction—defined as 50 percent of the cost of a new, comparable hazardous waste management facility. However, since the limit is cumulative for all changes at the interim status facility, there could be cases where this provision could pose problems (e.g., where the facility had invested in a number of prior changes).

b. Permit Modifications. For permitted facilities, EPA's goal is to implement a procedural system which is as streamlined as possible, but still allows for a satisfactory level of public input. The Agency believes that a streamlined process can result in earlier achievement of the more stringent MACT requirements by facilities, leading to more environmentally protective operations. The approach is consistent with general efforts within the Agency to improve environmental permits by focusing on performance standards, rather than on a detailed review of the technology requirements.

The Agency's first, most streamlined option is that the facility would be given overall self-implementing authority (as it has under the CAA) to perform all necessary facility modifications to comply with the new standards without having to obtain a permit modification from either the state or the Agency. This option provides the facility with the greatest latitude and authority since it would allow the facility the opportunity to make changes to its waste management process and to operate under conditions which are different than those which are specified in either the HSWA or base portion of its existing RCRA permit. Under this option, there would be no immediate need for the facility to request a permit modification to incorporate these operating changes into the existing permit. These changes, provided they enable the facility to meet the new CAA standards, would be incorporated into the permit at some later date (e.g. during the permit renewal process). It should be noted that this option does not provide for public participation at the time the facility is altering its process to comply with the new standards. Public involvement would instead occur as part of a later permit action, such as permit reissuance. It would also not provide for State or Federal agency oversight prior to design or operating changes. This option is based on the theory that, so long as the facility is meeting the applicable performance standards, there may be no need to review how it comes into compliance.

The Agency's second modification option would consider all modification requests due to the MACT standards to be Class 1 modifications requiring no prior approval. The basis for this option would be to ensure that facilities are capable of meeting the new standards within the three year compliance window because like Option 1, it relieves the facility of possible delays associated with obtaining prior approval for modifications needed to come into compliance. It also puts substantial compliance responsibility on the facility to make the correct changes within the allotted time.

The Agency's third option, for which rule language has been proposed, would revise Appendix I of 40 CFR 270.42 to designate as Class 1 modifications with prior Agency approval all initial requests for permit modifications made by facilities in order to comply with today's MACT standards. Appendix I of 40 CFR 270.42 would be revised to reflect this classification by adding item L(9) entitled ''Initial Technology Changes Needed to Meet MACT Standards under 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors)''. The prior approval under this option would provide for an Agency review of the proposed physical and operational changes to the facility before they are implemented in order to ensure that these changes do not lead to other undesirable consequences.

Experience suggests that steps intended to reduce emissions may not, in all cases, lead to enhanced environmental protection. On the other hand, it could be argued that it should be the responsibility of the facility, not the permitting Agency, to assure that the regulated unit meets the required performance standards. EPA requests comment on the need for Agency oversight.

The abbreviated procedures in options 1 through 3 would be limited to facilities making initial changes to existing permits in order to come into compliance with § 112 standards. The procedures would not apply to general retrofitting changes outside the framework of meeting MACT related technology changes or to subsequent changes relating to maintaining compliance with § 112 standards. The Agency is aware that the criteria for deciding on the classification of a modification request deviate from past decision making criteria used to differentiate among modification classifications in Appendix I of Part 270. Many of the changes facilities might make to conform to the new standards would likely be Class 2 or 3 modifications under the current scheme. However, the Agency believes that a streamlined approach may be justified because EPA did not consider newer, more stringent standards becoming effective under shorter timeframes when it developed the current permit modification table. Also, these changes are mandated under a different regulatory scheme for which the modification tables were not designed to account. This streamlining of the modifications process has been addressed in the past by the Agency to ensure that changes made at facilities needed to meet LDR levels for newly listed or newly identified hazardous waste could be met (see 54 FR 9596, March 7, 1989). These previous modifications needed to meet the LDR levels for newly identified wastes were redesignated as Class 1 modifications. These MACT standards impose more stringent operating standards than

current requirements; the Agency anticipates that the public will be receptive to these improvements and upgrades. Also, the Agency would still have control over the modification process under option 3 since it would still be reviewing the details of proposed new equipment or fixes to existing equipment.

The Agency's fourth modification option, like modification option 3, would consider all initial modification requests to existing permits to be Class 1 modifications requiring prior approval by the Director, but would give the Director the authority to elevate this modification to a Class 2 modification if the Director believes that additional public participation is warranted. This option to elevate a Class 1 modification requiring prior approval to a Class 2 modification would apply only to facilities requesting modifications to comply with today's proposed MACT standards. It would not apply to other class 1 modifications.

The fifth modification option represents a ''no change'' option. Most modifications requested would likely be handled as Class 2 or 3 modifications given the types of facility changes we expect in response to the MACT standards. Under this option, facilities would be urged to submit their permit modification requests as soon as possible in order to maximize the chances of completing the modification procedures, including administrative appeals, prior to the compliance deadline. EPA believes this alternative could thwart the Agency's chief objective of minimizing RCRA/CAA interface problems, and would be difficult to implement within the CAA compliance deadlines. Therefore, EPA does not favor this alternative.

Finally, the Agency realizes that many states have not yet adopted the modification table in Appendix I of 40 CFR 270.42. It hopes that states will, at a minimum, adopt the modification scheme that is promulgated in the final rule to ensure expeditious implementation of the new MACT standards. Alternatively, if option 2 or 3 is selected in the final rule, States that rely on a two-tiered system of major and minor modifications could classify these changes as ''minor modifications''.

In light of these proposed options for facilities attempting to comply with the MACT standards proposed in this notice, the Agency is, under a separate process, investigating ways to streamline the entire RCRA permit modification and renewal process for all industry categories to further reduce redundancies and inefficiencies in the process, while making sure that the public has adequate notice and involvement in the process. The Agency is in the early stages of this effort and wishes to solicit comment from the public on ways to achieve a more effective and efficient overall RCRA permit modification and renewal system.

2. Proposed Approaches To Address Potential Implementation Conflict

As mentioned earlier, the Agency is also taking comment on three companion approaches to deal with possible permit implementation conflicts which may occur in the event that a state does not become authorized to carry out the provisions of this rulemaking in time to handle necessary modifications. These approaches are relevant to modification options 2 through 5; if option 1 is chosen, no permit modification will be necessary, so the issues discussed in this section would not arise. It is important to remember that the standards in this rule would take effect automatically under the CAA. Therefore, the facility would be obligated under that statute to make the necessary changes to achieve compliance. The issue discussed herein relates to the respective roles of EPA and authorized states in processing RCRA permit modification requests.

The Agency's first approach provides a narrow interpretation of the scope of this rulemaking. Under this approach, only the numerical standards imposed by this rulemaking would be viewed as within the scope of this rule, and so, within the scope of HSWA. The manner in which facility changes are performed would be interpreted to be beyond the scope of the rule. Therefore, for those facilities needing a RCRA permit modification to reflect changes in permit conditions, the facility would be required to request the modification through the agency(ies) that implement the portion(s) of the permit to be modified.

Under the Agency's second approach, both the proposed MACT standards as well as the modification(s) needed to come into compliance with these standards would be interpreted to fall within the scope of today's HSWA rulemaking. Accordingly, the Agency would make the modifications under HSWA for facilities in states that have not yet become authorized for this rule. Although this approach would facilitate changes, the Agency does recognize that it could potentially create a possibility for conflict between state and federal permit portions. In areas where these modifications would be inconsistent with currently existing state-issued portions of the facility's permit, the State would need to perform parallel modification procedures to correct the inconsistencies. In the event that a State could not do this (e.g. there is no ''cause for modification'' under the State regulations to cover the type of change that would be necessary), EPA would attempt to secure agreement from the state that the new HSWA conditions are more stringent than any inconsistent state permit conditions and take precedence over such conditions. The state might memorialize this agreement through memorandum or letter to the facility or to the rulemaking record. This approach might require an extensive amount of communication between the State and the Agency, e.g. to come to agreement that the HSWA change is an improvement over any conflicting conditions in the state portion of the permit.

Under the Agency's third approach, in states that have not yet become authorized under RCRA for this rule, the Agency would not only modify the permit by adding conditions necessary for facilities to come into compliance with these MACT standards, but would also delete or modify conditions of the state portion of a permit if conflicts exist between the state- administered base program portion of a permit and the federally-administered HSWA portion. This approach is similar to the second approach, except that all modifications to any portion of a RCRA permit would be viewed as an integral part of EPA's role in carrying out the new HSWA requirements.

VII. State Authorization

A. Authority for Today's Rule

Today's rule is being proposed under the joint authority of the Clean Air Act (42 U.S.C. 7401 et seq.) and RCRA (42 U.S.C. 6924(o) and 6924(q)). The proposed approach would apply the new standards to both regulatory programs. Although the proposed standards would be located in 40 CFR Part 63, which addresses Clean Air Act requirements, the RCRA regulations in 40 CFR Parts 264 and 266 would incorporate these standards by reference. States may also promulgate these standards under their CAA program, and then incorporate them by reference into their RCRA regulations. Alternatively, States may promulgate these standards in both the RCRA and CAA sections of their State code for several reasons. Also, States without an approved CAA Title V permit program may promulgate these standards under their RCRA program only. Note however, that EPA strongly encourages States to adopt and apply for

authorization or delegation under both regulatory programs for today's proposed standards when finalized. (In the implementation of RCRA and the CAA by States, there is no functional distinction between the authorization of a State to implement RCRA in lieu of EPA, and the delegation to a State to administer the CAA. See the discussion below.) EPA believes that State implementation of this rule will facilitate the coordination between the RCRA and CAA regulatory programs.

B. Program Delegation Under the Clean Air Act

Section 112(l) of the Clean Air Act allows EPA to approve State rules or programs for the implementation and enforcement of emission standards and other requirements for air pollutants subject to section 112. Under this authority, EPA has developed delegation procedures and requirements located at 40 CFR Part 63, Subpart E, for NESHAPS under Title III of the CAA (See 57 FR 32250, July 21, 1992). Related requirements for permit programs under Title V are located at 40 CFR Part 70 (See 58 FR 62262, November 26, 1993).

Under 40 CFR 70.4(a) and § 502(d) of the CAA, States were required to submit to EPA a proposed Part 70 (Title V) permitting program by November 15, 1993. If a State CAA Title V program does not receive EPA approval by November 15, 1995, the Title V program must be implemented by EPA for that State.

Submission of rules or programs by States under 40 CFR Part 63 is voluntary. Once a State receives approval from EPA for a standard under section 112(l) of the CAA, the State is delegated the authority to implement and enforce the approved State rules or programs in lieu of the otherwise applicable federal rules (the approved State standard would be federally enforceable). States may also apply for a partial Title III program, such that the State is not required to adopt all rules promulgated in 40 CFR Part 63. EPA will administer any rules federally promulgated under section 112 of the CAA that have not been delegated to the State.

The section 112(l) rule for delegation under Title III (see 58 FR 62262, November 26, 1993), is currently the subject of litigation. (See *Louisiana Environmental Network* v. *Environmental Protection Agency,* No. 94–1042 (D.C. Cir., filed January 21, 1994).) The outcome of this case could severely limit the ability of States to receive delegation for air toxics standards that differ from the comparable federal standards. A decision is expected in early 1996.

C. RCRA State Authorization

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Today's rule is being proposed pursuant to sections 3004(o) and 3004(q), of RCRA (42 U.S.C. 6924(o) and 6924(q)), which are HSWA provisions. The rule would be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

2. Effect on State Authorization

Today's proposed rule is considered to be more stringent than the existing standards in 40 CFR Parts 264 and 266. Thus, because today's revised technical standards for hazardous waste combustors are being proposed under HSWA authority, when finalized, this rule would be implemented by EPA in authorized States until their programs are modified to adopt this rule and the modification is approved by EPA. Note that these standards would also apply to all covered facilities under CAA authority, regardless of whether a State has been delegated the provisions of the final rule because these standards would be largely self-implementing.

Because today's rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 2003. (See § 271.24(c) and 57 FR 60132, December 18, 1992.) In addition, note that 40 CFR Part 63, Subpart E provides for interim approvals under the CAA only in limited circumstances.

Section 271.21(e)(2) requires that States with final authorization must modify their programs to reflect Federal program changes and to subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in section 271.21(e). This deadline can be extended in certain cases (see section 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, states with existing standards could continue to administer and enforce their standards as a matter of State law pending authorization for revised standards. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In most cases, EPA expects that it will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final RCRA authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application.

However, the State must modify its RCRA program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a State must meet when submitting its final authorization application are set forth in 40 CFR 271.5.

3. Streamlined Authorization Under RCRA

Recently, EPA has initiated a series of rulemakings intended to streamline and speed the State authorization of RCRA rules. On August 22, 1995, EPA proposed abbreviated authorization procedures for certain routine Land Disposal Restrictions (LDR) provisions as part of the Phase IV LDR rule (see 60 FR 43654 and 43686). This proposal would implement streamlined authorization procedures for certain minor and routine rulemakings for those States which certify that they have authority equivalent to and no less stringent than the federal rule. EPA believes that the abbreviated authorization procedures proposed in the August 22, 1995, proposal would be appropriate for RCRA Subtitle C authorization for those States that are approved to implement this rule pursuant to 40 CFR Part 63, Subpart E, and are simply incorporating this rule into their RCRA regulations. EPA requests comment regarding the use of this proposed procedure for this authorization scenario. Note however, that EPA is not proposing to use RCRA authorization as a substitute for CAA section 112(l) approvals.

The primary reason that EPA is proposing to use an abbreviated authorization procedure when States are approved to implement this rule under the CAA, is that the delegation process and requirements in Part 63 are similar to authorization under 40 CFR 271.21. For example, section 112(l)(1) of the CAA requires that a program submitted by a State ''shall not include authority to set standards less stringent than those promulgated by the Administrator.'' Further, section 116 of the CAA precludes a State from adopting or enforcing less stringent standards than those under section 112. See 40 CFR §§ 63.12(a)(1), 271.1(h), and section 3009 of RCRA. States may also establish more stringent requirements as long as they are not inconsistent with the CAA. Further, section 112(l)(5)(A) of the CAA requires States to have adequate authorities to ensure compliance, similar to the requirement in section 3006(b) of RCRA. Thus, for EPA to approve a State rule or program, the procedures and criteria in 40 CFR 63.91(b) must be met, as well as any applicable requirements of §§ 63.92 through 63.94. These requirements are equivalent to those under RCRA. Therefore, using an abbreviated RCRA authorization procedure would prevent States from going through substantial authorization procedures under both the CAA program and the RCRA program.

EPA is also committed to streamlining the authorization process for States that would not be incorporating delegated CAA standards stemming from the final rule. EPA believes that authorized States have experience implementing sophisticated combustion regulatory programs and would have the ability to effectively implement today's proposed standards. Thus, EPA requests comment on whether all States that are authorized for the incinerator regulations under 40 CFR Part 264 and the Boiler and Industrial Furnace (BIF) regulations should use the authorization procedure proposed on August 22, 1995. EPA is also developing a second authorization procedure for those RCRA rules which have more significant impacts on State hazardous waste programs that is slightly more extensive than the procedure proposed on August 22, 1995. This second procedure is also intended to significantly streamline the authorization process, and will be described in detail in the upcoming Hazardous Waste Identification Rule (HWIR) proposal for contaminated media. EPA believes that this second procedure may be more appropriate for today's proposal, given its significance and complexity. In the upcoming HWIR-Media proposal, EPA will request comment whether this procedure should be used for RCRA authorization in this case.

VIII. Definitions

Many of the terms used in today's proposal have been defined either in the Clean Air Act or in existing § 63.2. For terms that are not already defined, we are proposing definitions in § 63.1201. In addition, we are proposing conforming definitions to the existing RCRA regulations in §§ 260.10 and 270.2.

A. Definitions Proposed in § 63.1201

We are proposing definitions for the following terms in § 63.1201: Air Pollution Control System, Automatic Waste Feed Cutoff System, Cement Kiln, Combustion Chamber, Compliance Date, Comprehensive Performance Test, Confirmatory Performance Test, Continuous Monitor, Dioxins and Furans, Feedstream, Flowrate, Fugitive Combustion Emissions, Hazardous Waste, Hazardous Waste Combustor, Hazardous Waste Incinerator, Initial Comprehensive Performance Test, Instantaneous Monitoring, Lightweight Aggregate Kiln, Low Volatility Metals, New Source, Notification of Compliance, One-Minute Average, Operating Record, Reconstruction, Rolling Average, Run, Semivolatile Metals, and TEQ.

We believe that the definitions of these terms is self-explanatory as proposed.

B. Conforming Definitions Proposed in §§ 260.10 and 270.2

To avoid confusion and ambiguity, we are proposing conforming definitions in §§ 260.10 and 270.2 for the following terms that pertain to implementation of the current RCRA requirements and RCRA requirements that would not be superseded by the proposed MACT standards: RCRA operating permit, DRE performance standard, closure and financial responsibility requirements, addition of permit conditions as warranted on a site-specific basis to protect human health and the environment.

Because these definitions pertain to existing RCRA requirements, the effective date for the definitions would be six months after the date of publication in the Federal Register.

C. Clarification of RCRA Definition of Industrial Furnace

Today's proposed rule applies to combustion units that are already subject to regulation under RCRA. These devices are presently classified as hazardous waste incinerators or hazardous waste-burning industrial furnaces, depending on their mode of operation. As discussed below, the distinctions between these classifications (i.e., incinerator and industrial furnace) are important in determining the level for Clean Air Act technology-based standards and also in applying a variety of RCRA regulatory provisions.

From the RCRA perspective, the distinction between incinerators and industrial furnaces (and boilers, for that matter) is important, among other things, for determining facility eligibility for interim status, the regulatory regime for classification of combustion residue (i.e., for example, product or non-product), and eligibility for Bevill status for combustion residue. EPA defines industrial furnaces as those designated devices that are an integral part of a manufacturing process and that use thermal treatment to recover materials or energy. 40 CFR 260.10.

Other criteria in the rule indicate what it means to be an ''integral part of a manufacturing process.'' The RCRA rules thus set out ''aspects of industrial furnaces that distinguish them from hazardous waste incinerators'', 48 FR 14472, 14483 (April 4, 1983); 50 FR 614, 626–27 (January 4, 1985). These include whether the device is designed and used ''primarily to accomplish recovery of material products'', the ''use of the device to burn or reduce raw materials to make a material product'', ''the use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks'', ''the use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product'', and ''the use of the device in common industrial practice to produce a material product. 40 CFR 260.10.

EPA interprets the regulatory definition of industrial furnace as applying only to devices that are enumerated in the rule and that also satisfy the narrative portion of the definition, that is, functions as an integral part of a manufacturing process, taking into account the narrative criteria in the rule. Thus, for example, if a device which is otherwise a cement kiln is not used as an integral component of a manufacturing process, it is not an industrial furnace. See 56 FR at 7140, 7141 (February 21, 1991) (Device-by-device application of industrial furnace regulatory definition); 48 FR at 14485 (April 4, 1983) (same). A cement kiln used primarily to burn contaminated soil from Times Beach so as to destroy dioxins thus is not an industrial furnace because it would not be an integral component of a manufacturing process but essentially a waste treatment unit. Among other things, it would not be used ''primarily for recovery of material products.'' 40 CFR 260.10(13)(I); See also Background Document for the Regulatory Definition of Boiler, Incinerator, and Industrial Furnace (October 1984), at page 6. Conversely, a cement kiln making cement from raw materials but burning some hazardous waste for destruction as an adjunct to its normal activities could be classified as an industrial furnace.

Industrial furnaces burning hazardous wastes for any purpose—energy recovery, material recovery, or destruction—are currently subject to the rules for BIFs in Part 266 subpart H. 56 FR at 7138; 40 CFR 266.100. In this regard, the BIF rule changed the previous regulatory regime whereby if a combustion device burned hazardous waste for destruction, it was regulated as an incinerator no matter what the proportion of burning for destruction to other activities. 40 CFR 264.340(a) and 265.340(a) as promulgated at 50 FR at 665–66 (January 4, 1985); 48 FR at 14484 and n. 15 (April 4, 1983). However, a device must still satisfy the regulatory definition of industrial furnace, and thus must in the first instance be an integral component of a manufacturing process. This means, among other things, that enclosed combustion devices that burn hazardous wastes for destruction may not be industrial furnaces. See 1984 Background Document for Definition of Boiler, Incinerator, and Industrial Furnace (cited above), page 6. This is because hazardous waste destruction devices may not be designing and using the device primarily to accomplish recovery of material products, may not be using the device to combust secondary materials as effective substitutes for raw materials, etc.[184]

PART SIX: MISCELLANEOUS PROVISIONS AND ISSUES

I. Comparable Fuel Exclusion

EPA is proposing to exclude from the definition of solid and hazardous waste materials that meet specification levels for concentrations of toxic constituents and physical properties that affect burning. Generators that comply with sampling and analysis, notification and certification, and recordkeeping requirements would be eligible for the exclusion.[185] See proposed § 261.4(a)(13).

Hazardous waste is burned for energy recovery in boilers and industrial furnaces in lieu of fossil fuels. There are benefits to this energy recovery in the form of diminished use of petroleum-based fossil fuels. Industry sources contend that in some cases, hazardous waste fuels can be ''as clean or cleaner'' (meaning they present less risk) than the fossil fuels they displace. This claim has not been documented with full emissions and risk analysis. Industry further contends that currently regulating these materials under normal hazardous waste regulations acts as a disincentive to using them as fuels.

EPA's goal is to develop a comparable fuel specification which is of use to the regulated community but assures that an excluded waste is similar in composition to commercially available fuel and poses no greater risk than burning fossil fuel. Accordingly, EPA is using a ''benchmark approach'' to identify a specification that would ensure that constituent concentrations and physical properties of excluded waste are comparable to those of fossil fuels. We note that this is consistent with the main approach discussed in the Dow Chemical Company petition of August 10, 1995, which also points out a number of benefits that would result from promulgating this type of exemption: (1) support for the Agency's goal of promoting beneficial energy recovery and resource conservation; (2) reduction of unnecessary regulatory burden and allowing all parties to focus resources on higher permitting and regulatory priorities; and (3) demonstration of a common-sense approach to regulation.[186]

The rationale for the Agency's approach is that if a secondary material-based fuel is comparable to a fossil fuel in terms of hazardous and other key constituents and has a heating value indicative of a fuel, EPA has ample authority to classify such material as a fuel product, not a waste. Indeed, existing rules already embody this approach to some degree. Under § 261.33, commercial chemical products such as benzene, toluene, and xylene are not considered to be wastes when burned as fuels because normal fossil fuels can contain significant fractions of these chemicals and these chemicals have a fuel value. Given that a comparable fuel would have legitimate energy value and the same hazardous constituents in comparable concentrations to those in fossil fuel, classifying such material a non-waste would promote RCRA's resource recover goals without creating any risk greater than those posed by the commonly used commercial fuels. Under these circumstances, EPA can permissibly classify a comparable fuel as a non-waste. See also 46 FR at 44971 (August 8, 1981) exempting from Subtitle C regulation spent pickle liquor used as a wastewater treatment agent in part because of its similarity in composition to the commercial acids that would be used in its place.

[184] The Administrator specifically rejects the contrary suggestion of the Agency's Environmental Appeals Board that ''the purpose for which hazardous waste is burned at the facility has little or no bearing on whether the facility meets the industrial furnace definition.'' *In re Marine Shale Processors, Inc.*, RCRA Appeal No. 94–12 (March 17, 1995) p. 25 n. 32.

[185] We note that DOW Chemical Company (Dow) in a petition to the Administrator, dated August 10, 1995, specifically requested that the Agency develop a generic exclusion for ''materials that are burned for energy recovery in on-site boilers which do not exceed the levels of fossil fuel constituents. . . .'' (Petition, at p. 3). This proposal also responds to that petition.

[186] We also note there are other details in the DOW petition that are congruent with aspects of today's proposal. The Agency specifically invites comment on the DOW petition as part of this rulemaking.

As discussed below, EPA seeks comment on a number of options including what fossil fuel or fuels should be used as a benchmark, and how to select appropriate specification limits given the range of values both within and across fuel types. EPA also requests additional data on hazardous constituents naturally occurring in commercially available fuels. (The Agency's current data on fossil fuel composition are provided in the docket to this rulemaking.)

Also, the exclusion would operate from the point of fuel generation to the point of burning. Thus, the fuel's generator would be eligible for the exclusion and could either burn the excluded comparable fuel on site or ship it off-site directly to a burner. Thus, the Agency must ensure that storage and transportation of excluded comparable fuel poses no greater hazard than fossil fuel. The Agency invites comment on whether the applicable Department of Transportation (DOT) and Office of Occupational Safety and Health (OSHA) requirements are adequate to address this concern so that separate, potentially duplicative RCRA regulation would not be needed.

Note also that, because EPA is proposing to eliminate or amend other combustion-related exemptions in this rulemaking (i.e., the exemption for incinerators for wastes that are hazardous solely because they are ignitable, corrosive, or reactive and contain no or insignificant levels of Appendix VIII, Part 261, toxic constituents; and the low-risk waste exemption under BIF), the inclusion of a comparable fuels exemption may offset the effects of these changes at a number of affected facilities.

EPA also invites comment on whether acutely hazardous wastes should be ineligible for the exemption. See the section called ''CMA Clean Fuel Proposal'', below, for what is considered an acutely hazardous waste.

A. EPA's Approach to Establishing Benchmark Constituent Levels

1. The Benchmark Approach

EPA considered using risk to human health and the environment as the way to determine the scope and levels of a ''clean fuels'' specification. However, the Agency encountered several technical and implementation problems using a purely risk-based approach. Specifically, we have insufficient data relating to the types of waste burned and the risks they pose. To pursue a risk-based ''clean fuels'' approach, EPA needs to examine emissions from a number of example facilities at which ''clean fuel'' would be burned. The Agency could then analyze risks while the facility is burning the ''clean fuel''. EPA also does not have sufficient data to determine the relationship between the amount of ''clean fuel'' burned and emissions, especially dioxins and other non-dioxin PICs. EPA also does not know how emissions relate to real individual facilities as compared to example facilities used to derive the ''clean fuel'' specification. (Emissions and/or risks at a given facility could be higher than those of the example facilities given site-specific considerations.) Without this, it is not clear how the Agency can use risk to establish a ''clean fuel'' specification. The Agency requests data and invites comment on deriving a risk based specification.

The Agency is instead proposing to develop a comparable fuel specification, based on the level of hazardous and other constituents normally found in fossil fuels. EPA calls this the ''benchmark approach''. For this approach, EPA would set a comparable fuel specification such that concentrations of hazardous constituents in the comparable fuel could be no greater than the concentration of hazardous constituents naturally occurring in commercial fossil fuels. Thus, EPA would expect that the comparable fuel would pose no greater risk when burned than a fossil fuel and would at the same time be physically comparable to a fossil fuel.

2. The Comparable Fuel Specification

EPA is proposing to use this benchmark approach to develop a series of technical specifications addressing:

(1) physical specifications:

—Kinematic viscosity (cST at 100° F),
—Flash point (°F or °C), and
—Heating value (BTU/lb);

(2) general constituent specifications for:

—Nitrogen, total (ppmw), and
—Total Halogens (ppmw, expressed as Cl^{1-}), including chlorine, bromine, and iodine; [187] and

(3) individual hazardous constituent specifications, for:

—Individual Metals (ppmw), including antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, selenium, silver, and thallium, and
—Individual Appendix VIII, Part 261, Toxic Organics and Fluorine (ppmw).

(Note that ppmw is an alternate way of expressing the units mg/kg.) The constituent specifications and heating value would apply to both gases and liquids. The flash point and kinematic viscosity would not apply to gases. EPA invites comment on whether this list of specifications should be expanded to include other parameters, specifically ash and solids content, to ensure that excluded comparable fuels have the same handling and combustion properties as fossil fuels.

There are existing specifications for fossil fuels that are developed and routinely updated by the American Society for Testing and Materials (ASTM). (See ASTM Designation D 396 for fuel oils and D 4814 for gasoline.) These requirements specify limits for physical properties of fossil fuels, such as flash point, water and sediment, distillation temperatures,[188] viscosity, ash, sulfur, corrosion, density, and pour point. The ASTM requirements do not limit specific constituents in fuel. As a result, fossil fuels are quite diverse in their hydrocarbon constituent make-up. Specific levels of hydrocarbon constituents are a function of the crude oil, the processes used to generate the fuels, and the blending that occurs. This makes ASTM requirements for fuels of no use for deriving individual hazardous constituent specifications, but useful for deriving physical specifications. EPA invites comment on whether ASTM's physical specifications for flash point and viscosity should be used instead of the results of EPA's analysis.[189] [190]

a. Standards for CAA Metal HAPs. EPA is proposing limits for two metals that are not found on Part 261, Appendix VIII: cobalt and manganese. EPA included these metals in the analysis because they are listed in the Clean Air Act (CAA) as hazardous air pollutants (HAPs). See CAA, section 112(b). These metals are included because burning does not destroy metals, and will cause the release of metals into the air. Therefore, if a comparable fuel contained more of a metal than a fossil fuel, the result would be more air emissions of that metal than would be the case if the facility burned only fossil fuels. From a CAA perspective, it would not be acceptable to increase emissions of CAA HAP metals, relative to what would be emitted if fossil fuels were burned.

[187] See discussion below concerning another halogen, fluorine.

[188] The temperature at which a certain volumetric fraction of the fuel has distilled.

[189] The issue is that all analytical results should meet ASTM's specifications. Thus, basing a specification limit on analysis of samples will result in limits more restrictive than the ASTM specification defining an acceptable fuel.

[190] ASTM does not specify a heating value requirement.

Therefore, constituent levels (or detection limits) for the two CAA HAPs are proposed as well.

b. Heating Value. With respect to heating value, the Agency is concerned with the issues of overall environmental loading and acceptability of the waste as a fuel. Comparable fuels may have a lower heating value than the fossil fuels they would displace. In these situations, more comparable fuels would be burned to achieve the same net heating loads, with the result that more of the hazardous constituents in the comparable fuel would be emitted (e.g., halogenated organic compounds and metals) than if fossil fuel were to be burned. This would lead to greater environmental loading of potentially toxic substances, which is not in keeping with the intent of the comparable fuels exclusion.

To address environmental loading, the Agency could establish a minimum heating value specification comparable to the BTU content of the benchmark fossil fuel(s). Fossil fuels have a higher heating value than most hazardous waste fuels, however; so this approach might exclude many otherwise suitable fuels. Therefore the Agency chose to establish the specification(s) for comparable fuels at a heating value of 10,000 BTU/lb.[191] EPA chose 10,000 BTU/lb because it is typical of current hazardous waste burned for energy recovery.[192] However, hazardous waste fuels have a wide range of heating values. Therefore, EPA is proposing that, when determining whether a waste meets the comparable fuel constituent specifications, a generator must first correct the constituent levels in the candidate waste to a 10,000 BTU/lb heating value basis prior to comparing them to the comparable fuel specification tables. In this way, a facility that burns a comparable fuel would not be feeding more total mass of hazardous constituents than if it burned fossil fuels.[193]

Also, EPA wants to ensure that currently defined wastes which meet the comparable fuels exclusion have a legitimate use as a fuel. Historically, the Agency has relied on a heating value of 11,500 J/g (5,000 BTU/lbm) as a minimum heating value specification for determining if a waste is being burned for energy recovery. (See § 266.103(c)(2)(ii).) EPA proposes this limit today as a minimum heating value for a comparable fuel to ensure that comparable fuels are legitimate fuels.

c. Applicability of the specifications. A separate issue is the applicability of these specifications. EPA is proposing that these specifications apply to all gases and liquids currently defined as hazardous wastes. (However as noted elsewhere, used oil, and used crude oil that is also a hazardous waste, would remain subject to regulation as used oil under 40 CFR Part 279, even if it meets the comparable fuel specifications.) The specifications for viscosity and flash point would only pertain to liquid fuels. This is because gases are inherently less viscous than liquids and flash point does not apply to gases. Therefore, EPA proposes that the specifications for viscosity and flash point not apply to gaseous comparable fuels.

d. Organic Constituent Specifications. With respect to Appendix VIII organic toxic constituents and other toxic synthetic chemicals, such as pesticides and pharmaceuticals, the Agency needs to ensure that only waste fuels comparable to fossil fuels are excluded. Therefore, the Agency proposes to limit the Appendix VIII constituents in comparable fuels to those found in the benchmark fossil fuel. These limits were calculated using a statistical analysis of individual samples EPA obtained.

If the benchmark fossil fuel has no detectable level of a particular Appendix VIII constituent, then the comparable fuel specification would be ''non-detect'' with an associated, specified maximum allowable detection limit for each compound. (Note exception in the following section.) The detection limit is a statistically derived level based on the quantification limit determined for each sample.

There are also compounds found on Appendix VIII which were not analyzed for, either because an analytical method is not available or could not be identified in time for this analysis. These compounds are not listed in today's specifications. If EPA is able to identify methods for analyzing these compounds and is able to analyze for these compounds prior to promulgation, an appropriate specification level or detection limit will be promulgated for Appendix VIII compounds missing from today's specification. If EPA is not able to analyze for compounds on Appendix VIII, we propose that the standard for these remaining Appendix VIII constituents be ''nondetect'' without a maximum detection limit proposed.

e. Specification Levels for Undetected Pure Hydrocarbons. A corollary issue is that, since fossil fuels are comprised almost entirely of pure hydrocarbons[194] in varying concentrations, it is possible that many pure hydrocarbons on Appendix VIII, Part 261, could be present in fossil fuel but below detection limits. Therefore, EPA proposes allowing pure hydrocarbons on Appendix VIII to be present up to the detection limits in EPA's analysis. Compounds on Appendix VIII which contain atoms other than hydrogen and carbon would be limited to ''non-detect'' levels as described in the previous paragraph.

f. Specification Levels for Other Fuel-like Compounds. In addition there are classes of fuel-like compounds that are not found in fossil fuels. These include oxygenates, an organic compound comprised solely of hydrogen, carbon, and oxygen above a minimum oxygen-to-carbon ratio. Examples of oxygenates which are used as fuels or fuel additives include alcohols such as methanol and ethanol, and ethers such as Methyl tert-butyl ether (MTBE).[195] However, Appendix VIII oxygenates are not routinely found in fossil fuels and were not detected in EPA's sampling and analysis program.[196] Since oxygenates can serve as fuels and are believed to burn well (i.e., may not produce significant PICs), EPA invites comment on: (1) whether these compounds should also be allowed up to the detection limits in EPA's analysis; and (2) an appropriate minimum oxygen-to-carbon ratio to identify an oxygenate.

g. Total Halogen Specification and Fluorine. Another issue is that the methods for determining total halogens do not measure fluorine, the lightest of the halogen compounds. Fluorine is, however, listed as an Appendix VIII constituent and methods are available for measuring fluorine directly. Therefore, EPA proposes that the total halogen limit pertain only to halogens other than fluorine, i.e., chlorine, bromine, and iodine. EPA also proposes that a fluorine limit be established separately from the total halogen limit. Specification values for fluorine are included in the specifications described below.

h. Specification Levels for Halogenated Compounds. EPA invites comment on whether it is necessary to

[191] Constituent levels presented in today's proposed rule have been corrected from the fuel's heating value (approximately 20,000 BTU/lb) to 10,000 BTU/lb.

[192] Consult USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume II: HWC Emissions Database'', February 1996.

[193] Note that the heating value correction would apply only to allowable constituent levels in fuels, not to detection limits. Detection limits would not be corrected for heating value.

[194] Excluding sulfur, carbon and hydrogen comprise 99.6 to 100 percent of liquid fossil fuels.

[195] A compound such as 2,3,7,8–TCDD is not an oxygenate since it contains atoms other than hydrogen, carbon, and oxygen. Compounds such as Dibenzo-p-dioxin and Dibenzofuran are not oxygenates even though they are comprised solely of hydrogen, carbon, and oxygen because the oxygen-to-carbon ratio is too low.

[196] See the appendix for this notice for the results of EPA's analysis.

specify limits for halogenated compounds found on Appendix VIII. Nondetect levels of halogens were found in EPA's fossil fuel analysis and the nondetect levels for total halogens were much less than those of the individual halogenated compounds. Therefore, a waste that meets the total halogen limit should, by default, meet the non-detect levels specified for halogenated compounds. EPA prefers this approach since it will simplify the comparable fuels specification and mean fewer and less costly sampling and analysis of comparable fuel streams for generators. We invite comment on this approach.

EPA also invites comment on whether this approach could be expanded to other Appendix VIII constituents as well (e.g., whether the total nitrogen specification level would ensure compliance with specification levels for individual compounds containing nitrogen).

3. Selection of the Benchmark Fuel

Another issue is selecting the appropriate fossil fuel(s) for the benchmark, and therefore the basis of the comparable fuel specification. Commercially available fossil fuels are diverse. They range from gases, such as natural gas and propane, to liquids, such as gasoline and fuel oils, to solids, such as coal, coke, and peat.

EPA does not believe, from an environmental standpoint, that the comparable fuel specification, which would exclude a hazardous waste fuel from RCRA subtitle C regulation, should be based on fossil fuels that have high levels of toxic constituents that may (or will) not be destroyed or detoxified by burning (e.g., metals and halogens). One would expect that solid fuels, such as coal, would have relatively high metal and possibly halogen levels. Metals and halogens are not destroyed in the combustion process and as a result can lead to increases in HAP emissions, unlike organic Appendix VIII constituents which (ideally) are destroyed or detoxified through combustion. Therefore, EPA is not inclined to include a solid fuel as a benchmark fuel. Also, we believe that basing the comparable fuel specification on a gas fuel would be overly conservative and have no utility to the regulated industry. Liquid fuels, on the other hand, are widely used by industry and do not have disadvantages of solid or gaseous fuels. Liquid fuels seem a good compromise among the fuel types. The Agency is therefore proposing to base the comparable fuel specification on benchmark liquid fuels.

However, even liquid fossil fuels are diverse and add to the complexity of selecting a benchmark fuel. For instance, gasoline has relatively higher levels of toxic organics, such as benzene and toluene but lower concentrations of metals. Conversely, we have also found and would continue to expect that typical fuel oils have lower concentrations of toxic organics and higher concentrations of metals than gasoline. We also have found that heavier fuel oils (e.g., No. 6) contain more metals than lighter fuel oils (e.g., No. 2).[197]

In addition, EPA could choose a vegetable oil-based fuel, such as ''tall oil'', rather than a fossil fuel. EPA has no data on concentrations of hazardous constituents in these fuels, however. Also, these fuels are not as widely used as commercial fuels. In keeping with the benchmark approach, EPA believes it is appropriate to base the comparable fuel specification on an appropriate and widely used type of commercial fuel, i.e., fossil fuels.

We specifically request constituent data for gasoline, automotive diesel, and No. 1 (kerosene/Jet fuel), No. 2 (different from automotive diesel), No. 4, and No. 6 fuel oils. These data should be complete and include analyses for all Appendix VIII constituents including nondetect values. When supplying data during the comment period, commenters should follow the same analytical and quality procedures EPA used. It would assist the Agency greatly if the data were supplied in electronic (1.44–MB PC or Macintosh floppy disk) as well as hard-copy form. Electronic versions should be in a spreadsheet form (for instance, Lotus 1,2,3, or Microsoft Excel) or an ASCII file with a description of how the records are classified/organized into which fields. Consult the Technical Background Document for a complete list of constituents and additional information concerning EPA's sampling and analysis and quality assurance protocols used.

B. Sampling, Analysis, and Statistical Protocols Used

This section describes the sampling, analysis, and statistical protocols used to derive the comparable fuels specifications described below. For more detailed discussion, refer to the Technical Background Document.

1. Sampling

EPA obtained a total of 27 fossil fuel samples. They were comprised of eight gasoline and eleven No. 2, one No. 4, and seven No. 6 fuel oil samples. The samples were collected at random from sources across the country: Irvine, CA; north west New Jersey; north east Connecticut; Coffeyville, KS; Fredonia, KS; Norco, LA; Hopewell, VA; and Research Triangle Park, NC.

Only one No. 4 fuel oil sample was obtained. Very little ''No. 4'' fuel oil[198] is sold in the United States. Rather, what is used as No. 4 is essentially a blend of No. 2 and 6 fuel oils. These blends vary, are contract specific, and are not No. 4 fuel oil, per se. EPA specifically requests data on (genuine) No. 4 fuel oil constituent levels.

2. Analysis of the Fuel Samples

Analytical methods have not been defined for all compounds on Part 261, Appendix VIII. Where analytical methods have not been defined, analysis of those constituent levels in fossil fuels are not possible. However, EPA is working on identifying methods for compounds on Appendix VIII which were not analyzed for during this initial analysis. If EPA is able to identify analysis methods for these compounds, constituent specifications for these compounds will be included in the final rule using the same methodology for constituent specifications described in today's notice.

After the samples were obtained, they were analyzed at a laboratory accustomed to analyzing fossil fuels. SW–846 methods were used whenever possible. Where SW–846 methods were not available, established ASTM procedures or other EPA methods for fuel analyses were used. Table VI.1.1 summarizes the analytical methods used.

TABLE VI.1.1: ANALYTICAL METHODS USED FOR COMPARABLE FUELS ANALYSIS

Property of interest	Method
Heating Value	EPA 325.3/PARR.
Kinematic Viscosity	ASTM D240.
Flash Point	SW–846 1010.
Total Nitrogen	ASTM D4629.
Total Halogens	EPA 325.3/PARR.
Antimony	SW–846 7040.
Arsenic	SW–846 7060.
Barium	SW–846 7080.
Beryllium	SW–846 7090.
Cadmium	SW–846 7130.
Chromium	SW–846 7190.
Cobalt	SW–846 7200.
Lead	SW–846 7420.
Manganese	SW–846 7460.
Mercury	SW–846 7470.
Nickel	SW–846 7520.
Selenium	SW–846 7740.
Silver	SW–846 7760.

[197] See the appendix to this notice for the results of EPA's analysis.

[198] No. 4 fuel oil is defined as fuel that meets the physical specifications established by the American Society of Testing and Materials.

TABLE VI.1.1: ANALYTICAL METHODS USED FOR COMPARABLE FUELS ANALYSIS—Continued

Property of interest	Method
Thallium	SW–846 7840.
Appendix IX Volatile Organics.	SW–846 8240.
Appendix IX Semivolatile Organics.	SW–846 8270.

In addition, the analysis was conducted in such a way as to ensure the lowest detection limits, also called ''quantification limits,'' possible. Detection limits were determined by calculating the ''method detection limit'' (MDL) for each analysis. To do this, EPA used a modified version of the procedures defined by EPA in 40 CFR 136, Appendix B, *Definition and Procedure for Determination of Method Detection Limits, Revision 1.1.* The modification involved spiking for each of the samples being analyzed instead of spiking once for all the samples, as stated by the method.

One issue concerning the analysis is that, even when attempts are made to minimize detection limits, detection limits can still be extremely high. This is particularly so for volatile organic compounds in the gasoline samples. There is no feasible analytical way to address this issue, so it is addressed when deriving the comparable fuel specification.

3. Statistical Procedures Used

Due to the small sample sizes of each fuel type, EPA used a nonparametric ''order statistics'' approach to analyze the fuel data. If enough data are received to determine the distribution of the enlarged data set, statistical procedures appropriate to the distribution, i.e., different than those described here, may be used for the promulgated specification.

''Order statistics'' involves ranking the data for each constituent from lowest to highest concentration, assigning each data point a percentile value from lowest to highest percentile, respectively. Result percentiles were then calculated from the data percentiles. Consult the Technical Background document for more information regarding the statistical approach.

EPA is considering using either the 90th or 50th percentile values to determine the comparable fuel specification. If the exclusion were to be based on specifications from one or more individual benchmark fuels (e.g., separate gasoline or fuel oil based specifications), EPA believes it is more appropriate to establish the specification(s) based on the 90th percentile rather than the 50th percentile values. The 90th percentile represents an estimate of an upper limit of what is in a particular fuel while the 50th percentile values would exclude up to 50 percent of the fossil fuel samples. For composite specifications (discussed in detail below), EPA is considering using either the 50th or 90th percentile, but the considerations differ. A 50th percentile analysis was conducted because it represents what, ''on average'', is found in all potential benchmark fuels that were studied. A 90th percentile was also conducted because it represents the upper bound of what is found in all fuels. EPA invites comment on which percentile(s) is appropriate for both the individual specifications as well as the composite specification.

C. Options for the Benchmark Approach

As just described, EPA has several options for deciding what fossil fuel(s) to use as the benchmark. The following options range from developing a suite of comparable fuel specifications based on individual benchmark fuels (i.e., gasoline, No. 2, No. 6) to basing the specification on composite values derived from the analysis of all benchmark fuels.

The Agency invites comment on which of the following options should be selected. Again, EPA desires to provide constructive relief to the regulated community by having a comparable fuel specification that can be used in practice. On the other hand, EPA needs to ensure that the release of toxic compounds is not increased significantly by burning comparable fuels in lieu of fossil fuels. For this reason, we are offering several options for comment. Commenters should also address in their comments the justification needed to support their preferred option.

The options discussed below are not the only possible options. If commenters have other options they wish the Agency to consider, they should recommend them and explain how they meet the objectives of a benchmark approach to comparability.

1. Individual Benchmark Fuel Specifications

Under this option, EPA invites comment on establishing individual specifications based on the benchmark fuels for which EPA has obtained data: gasoline, and No. 2 and No. 6 fuel oils.[199] [200] Each would have a unique set of constituent and physical specifications, based on the individual benchmark fossil fuel. A generator would use one of these specifications (after correcting for heating value) to determine if a waste qualifies for the exclusion. As mentioned in subsection A.2.B., above, heating value of a comparable fuel would have to exceed 11,500 J/g (5,000 BTU/lbm).

EPA envisions that individual fuel specification(s) could be implemented in one of two ways under this approach. First, a facility could use any of the individual benchmark specifications, without regard to what fuel it currently burns. This approach would provide flexibility for the facility in choosing which specification to use. Although this approach could allow higher emissions of certain toxic compounds at the particular site than would be the case if they burned their normal fuel(s), overall (total) emissions of hazardous constituents may be lower since a comparable fuel is unlikely to have high levels of all constituents. In addition, the amounts of excluded waste may well be small relative to the quantity of fossil fuels burned annually.

The second approach is to link the comparable fuel specification to the type of fuel burned at the facility and being displaced by the comparable fuel. In this case, if a facility burns only No. 2 fuel oil, it could only use the No. 2 fuel oil comparable fuel specification to establish whether its current waste stream is a comparable fuel. Implementation issues include the following: what specification would apply if a facility uses a gas or solid fuel, and what is the degree of inflexibility introduced?

EPA prefers the first implementation approach, but invites comment on whether a single fuel should be used to base a comparable fuel specification and if so, which implementation should be adopted.

2. A Composite Fuel as the Benchmark

One issue associated with the single fuel specification approach is that

[199] This list could be expanded, depending on the amount and quality of data received during the comment period.

[200] EPA is reluctant to propose a No. 4 oil specification at this time. As noted, EPA has been able to obtain only one sample of No. 4 oil. EPA desires more data on genuine samples of this fuel before establishing a comparable fuel specification based on No. 4 fuel oil. As is the case with other types of fuel, if a sufficient number of samples are obtained, a No. 4 fuel oil comparable fuel specification may be promulgated.

gasoline has relatively high levels of volatile organic compounds while No. 6 fuel oil has higher levels of semivolatile organic compounds and metals. If a potential comparable fuel were to have a volatile organic constituent concentration below the gasoline specification but higher than the others, and a particular metal concentration lower than the No. 6 fuel oil specification but higher than gasoline, it would not be a comparable fuel since it meets no single specification entirely. Therefore, EPA is concerned that establishing specifications under this option would limit the utility of the exclusion.

To address this issue, one option is to use a composite approach to setting the comparable fuel specification. In this option, EPA would use a variety of liquid fuels from which certain compounds would be selected to derive the complete specification.

EPA determined composite fuel specifications for this proposal by compositing the data from all fuels analyzed (gasoline and the three fuel oils individually). Compositing all the fuels has the advantage that it may better reflect the range of fuel choices and potential for fuel-switching available nationally to burners. A facility would be allowed to use the composite fuel specification regardless of which fuel(s) it burns.

One technical issue is that EPA has different number of samples for each fuel type. Therefore, the fuel with the largest number of samples would dominate the composite database. To address this issue, EPA's statistical analysis ''normalizes'' the number of samples, i.e., treat each fuel type in the composite equally without regard to the number of samples taken.

The Agency has evaluated establishing a composite specification using: (1) the 90th percentile aggregate values for the benchmark fuels; and (2) the 50th percentile aggregate values for the benchmark fuels. Under either approach, high gasoline volatile organic nondetects would be omitted from the analysis.

The 90th percentile approach has the virtue of being representative of a range of fuels that are burned nationally in combustion devices. It also provides maximum flexibility for the regulated community. However, the 90th percentile composite approach does allow for higher amounts of toxic constituents than other approaches EPA is considering. As a practical matter, though, no excluded fuel is likely to contain constituent levels at or near all of the 90th percentile composite specification level. EPA invites comment on this issue.

The 50th percentile approach ensures the comparable fuel specification is representative of a range of benchmark fuels commonly burned at combustion devices, perhaps even more so than the 90th percentile approach since it better represents an ''average'' level for fuels in general. It also provides flexibility for the regulated community, though the specification levels (and potentially the usefulness) would be lower than those resulting from the 90th percentile approach. If facilities indeed are likely to have at least several constituents near the 90th percentile composite levels, a 50th percentile composite would be more restrictive and less useful than the 90th percentile composite approach.

EPA seeks comments on whether a composite of fuels should be used to base a comparable fuel specification and, if so, whether a 90th or 50th percentile approach would be more appropriate. Further, the Agency seeks comment on whether the exclusion should be based on a suite of specifications comprised of the individual benchmark fuel-based specifications plus a composite specification. Under this approach the generator could select any specification in the suite as the basis for the exclusion.

3. Waste Minimization Approaches

By proposing this comparable fuels exemption the Agency does not wish to discourage pollution prevention/waste minimization opportunities to reduce or eliminate the generation of wastes in favor of burning wastes as comparable fuels. EPA solicits comments on the effect of today's comparable fuels proposal on facilities' efforts to promote source reduction and environmentally sound recycling (which does not include burning for energy recovery as a form of recycling in the RCRA waste management hierarchy.)

D. Comparable Fuel Specification

In this section, EPA will outline the five specifications discussed above: gasoline, No. 2 fuel oil, No. 6 fuel oil, composite 50th percentile values, and composite 90th percentile values. For reasons stated above, the individual fuel specifications were based on the 90th percentile values. EPA is not proposing any particular approach at this time, but invites comments on which approach(es) should be promulgated in a final rule. EPA is also presenting the results of the No. 4 fuel oil sample for comparison.

1. Hazardous Constituent Specifications

a. Gasoline Specification. The gasoline-based specification is presented in Table 1 of the appendix to this preamble. As stated above, gasoline contains more volatile organic compounds (such as benzene and toluene) than the other fuels. This results in detection limits for volatile organic compounds an order of magnitude higher than the other fuel specifications. EPA believes analysis of comparable fuels will more likely result in detection limits much lower than gasoline and similar to those associated with analysis of fuel oils. To address this issue, EPA has performed an analysis of a fuel oil-only composite (one which does not include gasoline in the composite) at the 90th percentile to use as a surrogate for the volatile organic gasoline non-detect values. Those values from the fuel oil-only composite are presented as the volatile organic nondetect values in Table 1. EPA invites comment on whether the approach of substituting fuel oil-only volatile organic nondetect values in lieu of those values for gasoline is appropriate.

b. Number 2 Fuel Oil Specification. The No. 2 fuel oil-based specification is presented in Table 2 of the appendix to this preamble. As suggested above, No. 2 fuel oil contains more volatile organic compounds than the other fuel oils, but less than gasoline. In addition, its metal concentrations are lower than the other fuel oils, but more than gasoline.

c. Number 4 Fuel Oil Specification. The No. 4 fuel oil-based specification is presented in Table 3 of the appendix. It follows a similar trend, having fewer organic constituents than those previous described, but more metals.

However, this specification is based on only one sample. The Agency is concerned that one sample may not be representative of true No. 4 fuel oil. As a result, EPA believes that we will not be able to promulgate a No. 4 fuel oil specification unless more data is received during the comment period.

d. Number 6 Fuel Oil Specification. The No. 6 fuel oil-based specification is presented in Table 4 of the appendix.

e. Composite Fuel Specifications. Two alternative composite fuel specifications are presented in Tables 5 and 6 of the appendix. Table 5 presents a specification based on the aggregate 50th percentile values for the benchmark fuels, and Table 6 presents a specification based on the aggregate 90th percentile values of the benchmark fuels.

As was the case with the gasoline specification, volatile organic detection

limits for gasoline are quite large. For this reason, EPA is relying on surrogate values for volatile organic detection limits, one based on the detection limits from a fuel oil-only composite. For the 50th percentile composite fuel specification, the 50th percentile fuel oil-only volatile organic nondetect values were used. The 90th percentile composite fuel specification was handled similarly, using the 90th percentile volatile organic nondetect values from the fuel oil-only composite. See the discussion for the gasoline sample for EPA's concerns regarding gasoline's high detection limits.

2. Physical Specifications (Flash Point and Kinematic Viscosity)

Alternative physical specifications for the options evaluated are presented collectively in Tables 7 and 8 of the appendix. Table 7 presents the results of the analyses EPA conducted. Table 8 presents an alternate approach, using the requirements for viscosity and flash point for fuel oil specified by ASTM. Physical specifications for viscosity and flash point for gasoline are not required by ASTM, but their upper and lower limits, respectively, are available from other reference sources.

When considering a composite physical specifications using the reference values presented in Table 8, EPA believes it is appropriate to use the second highest viscosity and second lowest flash point as the specifications. This would have the effect of not considering the extremes, No. 6 fuel oil viscosity (50.0 cSt at 100°C) and gasoline flash point (−42°C), and using as the specification the viscosity of No. 4 fuel oil (24.0 cSt at 40°C) and the flash point of No. 2 fuel oil (38°C). EPA believes this approach will result in specifications which are representative of comparable fuels and the fossil fuels they displace, and ensure adequate safety during transportation and storage.

Subsection A.2.b. discusses the proposed minimum heating value of 11,500 J/g (5,000 BTU/lbm).

E. Exclusion of Synthesis Gas Fuel

EPA is also proposing to exclude from the definition of solid waste (and, therefore regulation as hazardous waste) a particular type of hazardous waste-derived fuel, namely a type of synthesis gas (''syngas'') meeting particular, stringent specifications. The Agency believes that many fuels produced from hazardous wastes are more waste-like than fuel- or product-like, and must be regulated as such. We are aware, however, of certain fuels and products produced from hazardous waste that are more appropriately classified and managed as products rather than wastes. EPA believes that syngas meeting the requirements of the proposed exclusion is such a material. Syngas is a commercial product which has important uses in industry as both a feedstock and commercial fuel, and it may be used as both a feedstock and commercial fuel at a manufacturing facility. The Agency is therefore proposing this exclusion to clarify the distinction between syngas products meeting these stringent specifications and hazardous wastes and other waste-derived fuels. The Agency believes it is useful to provide a conditional exclusion for these particular fuels, possibly before promulgating the broader rule being proposed today. This is because, although there may be much debate about the generic comparable fuel specification levels discussed above, the syngas at issue here appears to be well within the bounds of what would be excluded, whatever the final rule levels may actually be for other comparable fuels.

The proposal applies to syngas that results from thermal reaction of hazardous wastes which is optimized to both break organic bonds and reformulate the organics into hydrogen gas (H2) and carbon monoxide (CO). This process is more similar to a chemical reaction, rather than to combustion. The process is optimized to produce an end-product, rather than merely to destroy organic matter.

EPA is aware of one such process, proposed to be operated by Molten Metals Technology (MMT). MMT intends to operate a catalytic extraction process (CEP) unit that generates certain gas streams from the thermal reaction of various hazardous wastes, including chlorinated hazardous wastes. See letter of July 21, 1995, from Molten Metal Technology to EPA. This letter and other information on the MMT process are in the docket for today's proposed rule. MMT claims that the syngas generated by the processes has legitimate fuel value (i.e., 6,000 to 7,000 Btu/lb), has a chlorine level of 1 ppmv or less, and does not contain hazardous compounds at higher than parts per billion levels. Thus, this syngas possesses standard product indicia in the form of fuel value plus being the output of a process designed to optimize these properties, and the syngas product does not contain hazardous constituents at levels higher than those present in fossil fuel.

To ensure that any excluded syngas meets these low levels of hazardous compounds relative to levels in fossil fuels in order to be excluded from the definition as a solid waste, the Agency is proposing the following syngas specifications:

—Minimum Btu value of 5,000 Btu/lb;
—Less than 1 ppmv [202] of each hazardous constituent listed in Appendix VIII of Part 261 (that could reasonably be expected to be in the gas), except the limit for hydrogen sulfide is 10 ppmv;
—Less than 1 ppmv of total chlorine; and
—Less than 1 ppmv of total nitrogen, other than diatomic nitrogen (N_2).

EPA seeks comment on whether there are other hazardous waste-derived synthesis gas fuels (i.e., other than MMT's) that meet the criteria for this proposed exclusion.

We also note that conditions imposed for exclusion of syngas fuels in no way precludes the use of syngas as an ingredient in manufacturing, which is evaluated under a different set of criteria, when the syngas is produced from hazardous waste. In other words, if the syngas were to be used as either a product in manufacturing or burned as a fuel, it would be excluded as a product when it met the criteria for use as a product and was used for that purpose and excluded as a fuel when burned.

If EPA adopts this exclusion for syngas fuel, we believe that the implementation procedures for the generic comparable fuel exclusion discussed subsequently in Section F would also be appropriate for syngas. This includes requirements for the syngas producer to notify the Regional Administrator that an excluded fuel is produced, a certification that the syngas meets the exclusion specification levels, and sampling and analysis requirements. EPA invites comment on these implementation procedures for syngases and whether any of these procedures should be modified to address any unique characteristics of syngases.

Finally, we note that in Section F below we discuss whether the burning of hazardous waste excluded under the generic comparable fuel exclusion should be restricted only to stationary sources either with air permits or that otherwise have their air emissions regulated by a federal, state, or local entity. We specifically request comment on whether this restriction would also be appropriate for excluded syngas. Given that the Agency may undertake final rulemaking to provide an exclusion for syngas before promulgating a generic exclusion for

[202] All specification levels would be documented at normal temperature and pressure of the gas at the point that the exclusion is claimed.

comparable fuels, however, we request comment on whether more restrictive requirements on burning excluded syngas would be appropriate to minimize concern about burning a hazardous waste-derived gas. For example, the exclusion could be limited to syngas which is burned in an industrial boiler, industrial furnace (as defined in 40 CFR 260.10) or incinerator. We note that these units would not necessarily have to be RCRA Subtitle C units.

F. Implementation of the Exclusion

The implementation scheme described here is adapted from the current used oil management system and is tailored to the particular characteristics of the comparable fuel universe.[203] It provides for one-time notification and certification, sampling and analysis, and recordkeeping requirements. Other issues addressed include blending, ensuring that the comparable fuel is burned, and treatment to meet the specification.

1. Notification and Certification

EPA proposes that a generator (or syngas producer[204]) who claims that a (currently defined) hazardous waste meets the specification for exclusion must submit a one-time notification and certification to the Regional Administrator. The notification would state that the generator manages a comparable fuel and certifies (through a responsible company official) that the generator is in compliance with the conditions of the exclusion regarding sampling and analysis, recordkeeping, blending, and ultimate use of the waste as a fuel. EPA understands that a ''generator'' may be a company with multiple facilities. For this reason, a single company would be allowed to submit one notification, but must specify at what facilities the comparable fuels notification applies. All other provisions apply to each stream at the point of generation.

2. Sampling and Analysis

EPA believes it is appropriate that the generator document by sampling and analysis that the hazardous waste meets the specification. Until such documentation is obtained, the waste would not be excluded. Waste analysis rules for TSDFs would apply to comparable fuel generators. Consequently, generators would implement a comparable fuels analysis plan.

The sampling and analytical procedures for determining that the waste meets the specification must be documented in a comparable fuels analysis plan. The comparable fuel analysis plan would involve sampling and analyzing for all Appendix VIII constituents initially and at least every year thereafter for constituents that the generator could have reason to believe are present in the comparable fuel. EPA specifically invites comment on whether to allow a generator to use process knowledge to determine what compounds to sample and analyze for during the first analysis, as well.

The generator would use current EPA guidance for developing waste analysis plans to derive their comparable fuel analyze plan. This will ensure that generators sample and analysis as often as necessary, i.e., more frequently than every year, for constituents present in the fuel to ensure that excluded waste meets the specification.

Analytical methods provided by SW–846 must be used, unless written approval is obtained from the Regional Administrator to use an equivalent method. EPA invites comment on establishing a procedure similar to Part 63, Appendix A, Method 301 to validate alternate analytical methods. EPA also invites comment on whether to limit the Agency's time to approve an equivalent method. In this case, the Regional Administrator would have a set period of time, such as 60 days, to respond to the request. If an approval is not received within 60 days, the alternative method is considered approved. If the Regional Administrator later rejects the method, the rejection would only pertain to analyses conducted after the rejection of the method.

3. Use as a Fuel

An integral part of the comparable fuel exclusion is that the fuel must be burned. To ensure that the comparable fuel is burned, the person who claims the exclusion must either:

—Burn the comparable fuel on-site; or
—Ship the waste off-site to a person who in turn burns the comparable fuel.

This provision would not allow any party to manage the fuel other than those who generate or burn the fuel (and other than transportation related handling). EPA is reluctant to allow persons other than the generator and the burner to manage the comparable fuel because it would likely be too difficult to ensure that the excluded fuel meets the specification and is burned. We invite comment on how to allow third party intermediaries, such as fuel blenders, to handle an excluded comparable fuel without precipitating serious enforcement and implementation difficulties.

Additionally, EPA is concerned that comparable fuel shipped directly to an off-site burner may not in fact be burned. Therefore, EPA invites comment on whether, for off-site shipments to a burner, the following information should be retained in the record for each shipment:

—Name and address of the receiving facility;
—Cross-reference to a certification from the facility certifying that the comparable fuel will be burned;
—Quantity of excluded waste shipped;
—Date of shipment; and
—A cross-reference to the analyses performed to determine that the waste meets the specification.

A comparable fuel which is not burned remains a hazardous waste and is subject to regulation cradle-to-grave.[205] This documentation would provide a paper trail to ensure that the comparable fuel is burned.

EPA invites comment on whether the burning of a comparable fuel should be restricted to only stationary sources either with air permits or that otherwise have their air emissions regulated by a federal, state, or local entity. EPA's primary concern is that excluded fuel may be burned in unregulated combustion devices. EPA believes that unregulated burners may be unaware of or unprepared to handle many unique issues related to fuels other than fossil fuels. In addition, EPA invites comment on whether comparable fuels should be allowed for use in sources other than stationary sources, i.e., mobile sources (on- and off-road automobiles, trucks, and engines) and small engines.

4. Blending To Meet the Specification

The issue of whether to allow blending to meet the comparable fuel specification also needs to be addressed. One alternative is to exclude only those comparable fuels that meet the specification as generated and which are destined for burning. The facilities would be required to demonstrate, for

[203] Note that used oil has its own separate management system, as allowed under RCRA, tailored to the unique characteristics of used oil recycling practices. The comparable fuel exclusion proposed today would not apply to used oil because it is adequately and appropriately managed under its own tailored system. Used oil will still be managed under 40 CFR Part 279. This proposal in no way reopens the used oil specification or management structure in 40 CFR Part 279.

[204] Requirements applicable to the generator of an excluded fuel would also apply to producers of excluded syngas.

[205] Note that the only disposal method for a comparable fuel is burning. Any disposal method other than burning is a RCRA violation, unless the comparable fuel is properly managed as a hazardous waste.

compliance purposes, that the waste as generated meets the specification and to certify that the waste is destined for burning.

If blending to lower the concentrations of hazardous constituents in a waste were allowed to meet the specification, EPA believes that a very extensive compliance and enforcement system would have to be instituted to ensure that blending was done properly (with any necessary storage and treatment permits) and that the resultant mixture meets the specification continually. This alternative appears to warrant a degree of oversight that may be infeasible from the industry viewpoint and unworkable from the Agency's viewpoint. EPA is also investigating whether blending removes the incentive for facilities to engage in source reduction and recycling of waste. Finally, this alternative raises the issue of whether blending is simply a form of prohibited or objectionable dilution that could result in an overall increase in environmental loading of toxic, persistent, or bioaccumulative substances.

Complicating this issue is the fact that blending to lower hazardous constituent concentrations in used oil is allowed. (40 CFR 279.50(a).) However, EPA believes it is appropriate to deviate from the approach for used oil in this case. Used oil is better defined and understood in its origins and use than currently defined hazardous wastes. Used crankcase oil is a petroleum product analogous to a thick fuel with enriched metal concentrations due to its use for lubricating metal-bearing parts in situations of tight tolerance. In the case of used oil, blending a thick fuel enriched with metals with a thinner fuel with low concentrations of metals is appropriate since the resulting mixture would be wholly a petroleum product with similar levels of metals as other petroleum fuels.

Comparable fuels, however, differ substantially from used oil in both the nature of materials to which the exclusion pertains and the scope of the exclusion. A comparable fuel is presently defined as a hazardous waste and is unlikely to be a petroleum distillate. The issue of toxic organic constituents is important for comparable fuels due to the diversity of processes and process ingredients from which potential comparable fuels may result. This is not relevant for the used oil rules since they deal with the post-use material stemming from a highly consistent and well known petroleum distillate. Therefore, blending used oil would result in a more predictable mixture, one which would be expected to contain the same organic compounds in varying concentrations. The same cannot be said for the large variety of potential comparable fuels, which can vary significantly in the constituents present.

The issue of metals in a comparable fuel is similarly different from the case of used oil. While used oil does contain enriched levels of metals relative to virgin oil or petroleum fuels, those levels are greatly understood (relative to hazardous waste in general) due to their use in only one process, the lubrication of metal-bearing parts. Therefore, there is essentially a real-world limit to the amount and type of metal that could be entrained in a used oil, so blending to meet metal specifications is more appropriate. In the case of comparable fuels if there were no prohibition on blending to meet constituent specifications, a generator would be allowed to take a predominantly metal waste, blend it into a fuel to levels lower than the constituent specification levels, and (through pure dilution) meet the exclusion. For these reasons, EPA believes the specially tailored used oil program does not provide a satisfactory model to use for addressing the issue of blending potential comparable fuels.

We also note that the LDR program specifically prohibits dilution as a form of treatment. (40 CFR 268.3.) Allowing blending to meet the specification may, in effect, allow dilution as a form of treatment contrary to the LDR prohibition for these hazardous wastes. For these reasons, EPA desires to stay consistent with other rules and policies and not allow blending to meet the comparable fuels specification.

Similarly, EPA proposes that the specification for heating value be met on an as-generated basis as well. In other words, blending would not be allowed to meet the heating value specification. If the Agency were to allow blending to meet the heating value specification, wastes with no heating value could be blended with high heating value fossil fuels and meet the comparable fuel heating value specification. EPA does not believe this approach can be justified, allowing a waste which as generated has little or no heating value to be a comparable fuel. Therefore, we propose that heating value be met on an as generated basis.

For these reasons, EPA is proposing that the comparable fuel constituent and heating value specifications be met on an ''as generated'' basis, and that blending to meet the constituent and heating value specifications not be allowed. However, if the constituent and heating value specifications have been met as generated, EPA believes it may be appropriate for a comparable fuel to be treated like any other fuel and allow it to be blended *after the constituent and heating value specifications have been met.* This includes blending for the purposes of meeting other physical specifications (flash point and viscosity), pH neutralization, etc.

After blending, generators would have to retest the prospective comparable fuel to ensure that blending did not increase the levels of constituents to above the specification levels or decrease it to below the heating value requirement. If the waste were blended with a clean fossil fuel, such as No. 2 fuel oil, it would be sufficient to document that the substance the prospective comparable fuel is being blended with has lower constituent levels and a higher heating value than the comparable fuel specification. If the waste is above constituent specifications or below the heating value requirement after blending, the waste would not be a comparable fuel.

EPA invites comment on the issue of blending only to meet the physical specifications, flash point and kinematic viscosity.

5. Treatment To Meet the Specification

It is possible, as a technical matter, for hazardous wastes to undergo treatment that destroys or removes hazardous constituents and thereby produce a comparable fuel. Likewise, it is possible to treat a waste such that the heating value of the waste is increased. For example, distillation could remove certain organic constituents from the waste matrix, thereby allowing the treated waste to meet the comparable fuel specification. Similarly, decanting to decrease the water concentration of the waste stream would increase the heating value of the waste by concentrating those compounds which are burned. The issue discussed here is whether such processes should be allowed under a comparable fuel regime, and if so, under what circumstances. The Agency is proposing to allow treatment under limited circumstances.

The Agency's concern about allowing such treatment is that it could increase the incentive and opportunity for impermissible blending or otherwise fraudulent treatment. Thus, at the least, EPA would seek to set up controls to reduce the possibility of such practices if treatment were allowed. This might be done by requiring treaters to document that the comparable fuel specification is being satisfied through treatment that destroys or removes hazardous

constituents and/or increases heating value by removing constituents from the waste, not through blending or other dilution-type activities. Second, where the treater has a RCRA permit for the storage/treatment activity (i.e., treatment of hazardous waste conducted in any unit except a 90-day generator unit not subject to permitting requirements under § 262.34), the rule could authorize permit writers to add conditions to the permit to assure the integrity of the permitted process. Such conditions could take the form of extra conditions on the treatment process, conditions on the wastes which could be treated to produce comparable fuels, and additional sampling and analysis of both incoming wastes and outgoing comparable fuels. The Agency solicits comment on what limitations or conditions should be imposed on treatment activities and whether and how to adapt such limitations or conditions to the non-permitted context of 90-day generator units.

Finally, it should be noted that if hazardous wastes are treated to produce comparable fuels, only the comparable fuel would be excluded from RCRA subtitle C regulation. The hazardous wastes would be regulated from point of generation until a comparable fuel is produced, so that generation, transport, storage, and treatment of the waste until production of the comparable fuel would remain subject to the applicable subtitle C rules. Also any residuals resulting from treatment remain hazardous wastes as a result of the derived-from rule.

6. Recordkeeping

It is proposed that documentation pertaining to verification that the waste meets the comparable fuel specification and the information on shipments be retained for three years. The sampling and analysis plan and all revisions to the plan since its inception would be retained for as long as the person claims to manage excluded waste, plus three years. Certifications from burners (if required in the final rule) would be retained for as long as the burner is shipped comparable fuels, plus three years.

The generator would retain the records supporting its claim for the exemption. For comparable fuels which are not blended, the records that must be retained are the as generated results. For comparable fuels which are blended to meet the flash point and/or kinematic viscosity specifications, the records which must be retained are those after blending.

7. Small Business Considerations: Inherently Comparable Fuel

Small businesses may, hypothetically, generate wastes (such as mineral spirits used to clean automotive parts) that could meet a comparable fuel specification. However, the Agency is concerned that the proposed implementation scheme for the comparable fuel exclusion may be overly burdensome to small businesses because of the small volume of waste each business may generate. EPA requests data on whether categories of high volume inherently comparable fuel from a large number of small generators exist. If so, EPA would consider providing an exclusion for these fuels in the final rule. For these fuels to be excluded, the Agency would need constituent data from various small generators indicating that these wastes would meet the comparable fuel exclusion levels on a routine basis.

If an inherently comparable fuel exclusion were promulgated in the final rule, the Agency would promulgate a petitioning process whereby classes of generators could document that a specific type of waste is virtually always likely to meet the comparable fuel specification. If the Agency granted the petition through rulemaking, such waste would be classified as inherently comparable fuel. As such, the generator would not be subject to the proposed implementation requirements for the comparable fuel exclusion: notification, sampling and analysis, and recordkeeping. In addition, such inherently comparable fuel could be blended, treated, and shipped off-site without restriction given that it would be excluded from regulation as generated.

EPA invites comment on whether high volumes of comparable fuel is generated from a large number of small generators. If so, the Agency requires data on whether this approach provides relief to small businesses while ensuring protection of human health and the environment. In addition, EPA invites analytical data supporting classification of particular wastes as inherently comparable fuel. The Agency would provide notice and request comment on such data prior to making a final determination that the waste is inherently comparable fuel.

G. Transportation and Storage

Waste derived fuels can pose risks during transportation and storage, not just when burned. For instance, comparable fuels could be reactive and corrosive (virgin fossil fuels are neither), more volatile than fossil fuels, or have other special properties affecting handling and storage. The Agency believes we can exempt comparable fuels from RCRA storage and transportation requirements and therefore rely on the storage and transportation regulations of other federal and state agencies. However, the affected industries may have more direct knowledge of how these requirements actually affect shipments and storage of the potential fuels, particularly with respect to the extent of state regulatory controls. We are therefore asking commenters to give EPA information on the adequacy of DOT and OSHA requirements related to storage and transportation, particularly with respect to whether a combustion facility (including an industrial boiler) will be on proper notice about the nature and behavior of the comparable fuel to allow for safe handling and burning.

In this regard, EPA believes it is appropriate to set a minimum flash point for comparable fuels. (See section A.2. for a general discussion concerning the Comparable Fuels Specification.) The flash point is defined as the minimum temperature at which a substance gives off enough flammable vapors which in contact with a spark or flame will ignite. Setting a minimum flash point would ensure that under ambient conditions the comparable fuel would not ignite during transportation and storage.

A shortcoming of this approach is that a purchaser or other off-site facility may desire a comparable fuel with a flash point lower than the comparable fuel specified flash point. EPA does not wish to preclude low flash point comparable fuels from the exemption. Therefore, the Agency is inclined to allow some waiver of the minimum flash point specification under certain circumstances.

EPA is proposing to allow low flash point comparable fuels if there is some notice to intermediate carriers and the ultimate user of what the flash point of this comparable fuel is. To do this, EPA needs to be assured that these low flash point comparable fuels can be stored, handled, and transported safely. EPA is inclined to believe current DOT and OSHA requirements for transportation and storage of hazardous or combustible liquids are adequate for this purpose, but we specifically seek comment on this issue.

H. Speculative Accumulation

EPA is also proposing that comparable fuels remain subject to the speculative accumulation test found in § 261.2(c)(4). This means that persons

generating or burning comparable fuels must actually put a given volume of the fuel to its intended use during a one-year period, namely 75 per cent of what is on hand at the beginning of each calendar year commencing on January 1. See the definition of ''accumulated speculatively'' in § 261.1(c)(8). (The rules also provide for variances to accommodate circumstances where such turnover is not legitimately practical. § 260.31(a).) EPA applies this test to other similar exclusions of recycled secondary materials in the rules (see § 261.2(e)(2)(iii).) This is because over accumulation of hazardous waste-derived recyclables has led to many of the most severe hazardous waste damage incidents. See 50 FR at 658–61 and 634–37 (January 4, 1985). There is no formal recordkeeping requirement associated with the speculative accumulation test, but the burden of proof is on the person claiming the exclusion to show that the test has been satisfied. § 261.2(f) and 50 FR at 636–37.

I. Regulatory Impacts

EPA also requests data from the regulatory community concerning the regulatory impacts of this proposed comparable fuel exclusion. Impact data includes the quantity of waste which would be excluded (by weight) and the cost savings as a result of the exclusion. Based on the data submitted, EPA will develop a full regulatory impact assessment during the final rulemaking.

J. CMA Clean Fuel Proposal

The Chemical Manufacturers Association (CMA) submitted a proposal to exempt certain ''clean'' liquid wastes from RCRA regulation [206]. Unlike EPA's benchmark-based comparable fuel proposal, the CMA approach would establish clean fuel specifications for mercury, LVM, and SVM metals based on the technology-based MACT emission standards proposed today. For mercury, CMA calculated the maximum feed rate the facility would be allowed if it had a given gas flowrate, no mercury control, and yet complied with today's proposed standards. This would establish the maximum mercury concentration of the CMA ''clean fuel'' specification. Limits would be established for LVM and SVM metals in a similar fashion. For chlorine, CMA presented a specification level based on the concentration of chlorine found in coal. Limits for ash content would be derived from No. 4 fuel oil.

The CMA proposal also appears to rely solely on adequate thermal destruction of the organics to control potential organic contamination and risks therefrom. Combustion would be limited to on-site boilers or boilers owned and operated by the clean fuel generator, where these boilers meet a 100 ppmv hourly rolling average CO limit.

CMA's clean fuel proposal would also establish limits on physical specifications. The heating value of a CMA clean fuel would have to be at least 5,000 BTU/lb, viscosity would have to be less that 26.4, and the clean fuel must be a liquid.

Acutely hazardous wastes [207] would not be eligible for CMA's proposed clean fuel exemption, nor would dioxin-listed wastes (hazardous waste numbers F020, F021, F022, F023, F026, F028.)

EPA invites comment on CMA's proposed ''clean fuels'' specification. Specifically, EPA requests commentors address the following issues and questions:

—Is reliance on the technology-based MACT emission standards approach appropriate for establishing a clean fuel exemption under RCRA, either with or without restrictions on the type of device that can be used to burn the clean fuel? How does EPA justify not establishing specific constituent limits for the other five RCRA metals?

—Does a CO limit alone ensure adequate destruction of toxic organics in a clean fuel scenario? Would additional controls, such as an HC limit, limits on inlet temperature to a dry PM APCD, DRE testing, and site-specific risk assessment also be appropriate?

—Does CMA's proposal adequately address new facilities? Would it be appropriate to allow off-site shipment to a facility not owned by the generator if the generator owns no combustion device in the vicinity? If so, how would EPA be able to ensure compliance regarding the CO emissions (and possibly other testing and operational conditions) of a combustion device not owned by the generator?

—Should CMA's clean fuel approach be expanded to include gaseous as well as liquid fuels?

—Are there wastes other than those identified by CMA (acutely toxic and dioxin-listed wastes) which should not be eligible for a ''clean fuel'' exemption? If so, what would be the practical impacts of such expanded ineligibility?

—Are data available documenting that emissions from burning a ''clean fuel'' would not pose a significant risk for the potential combustion and management scenarios in which the clean fuel exclusion from RCRA might be used?

II. Miscellaneous Revisions to the Existing Rules

This section provides several miscellaneous revisions to the RCRA hazardous waste combustion rules provided by 40 CFR Parts 260–270. We note that we are also proposing other revisions to Parts 260–270 that would be conforming revisions to ensure that the RCRA rules are consistent with similar provisions of the proposed Part 63 rules. Those proposed conforming revisions are discussed elsewhere in the preamble.

A. Revisions to the Small Quantity Burner Exemption Under the BIF Rule

The Agency is proposing to revise the small quantity burner (SQB) exemption provided by § 266.108 of the BIF rule because the current exemption may not be protective of human health and the environment. Under the exemption, BIFs could burn up to the exempt quantities absent regulation other than notification and recordkeeping requirements. Under a settlement agreement, the environmental petitioners in *Horsehead Resource Development Company, Inc.,* v. *EPA* (No. 91–1221 and Consolidated Cases), the Agency must reevaluate whether the small quantity burner exemption is sufficiently protective given that the Agency did not consider indirect exposure pathways in calculating the exemption levels. In addition, the petitioners argued that the exemption is inconsistent with the intent of RCRA § 3004(q)(2)(B) which specifically allows the Administrator to exempt facilities which burn *de minimis* quantities of hazardous waste because the exemption as promulgated would allow sources to burn up to 2,000 gallons of hazardous waste per month absent substantive emissions controls. Petitioners believe that 2,000 gallons per month is not a *de minimis* quantity.

EPA attempted to reevaluate exempt quantities considering indirect exposure pathways for, in particular, emissions of dioxins and furans (D/F). Unfortunately, we were not able to adequately predict emission levels of D/F for purposes of conducting a generic, national risk assessment to back-calculate exempt

[206] See *Revised CMA Proposal for Clean Waste Fuels Exemption to RCRA* dated March 1, 1996.

[207] That is, discarded commercial chemical products listed in § 261.33 (''P'' listed wastes), and acutely hazardous (those with ''H'' hazard codes) wastes listed in §§ 261.31 and 261.32 (hazardous wastes from non-specific and specific sources, ''F'' and ''K'' listed wastes, respectively.)

quantities. We could not effectively predict D/F emissions because: (1) There may be little relationship between quantity of hazardous waste burned and D/F emissions (i.e., other factors may result in high or low D/F emissions); and (2) there are several site-specific factors that can affect D/F emissions, including combustion efficiency (that is affected by factors such as combustion zone temperature, oxygen levels, and residence time in the combustion zone), gas temperature at the particulate matter control device, and presence of precursors such as PCBs.

In addition, we found it difficult to identify an appropriate indirect exposure scenario for purposes of assessing risk to support a generic exemption. We note that to evaluate whether the proposed MACT standards met RCRA protectiveness requirements, we analyzed 11 example facilities assuming the example facilities emitted HAPs at the regulatory option levels. We did not have site-specific stack gas properties (e.g., gas flow rate, gas temperature, stack height) and exposure information to conduct similar indirect exposure assessments for example SQB facilities.

Given these difficulties, the Agency is proposing to revise the SQB exemption to limit exempt quantities to 100 kg/mo (27 gal/mo), which is the current exemption level for small quantity generators (SQG) provided by § 261.5. We believe that this is appropriate given that SQG hazardous waste is already exempt from regulation and thus, may be burned absent emission controls. We note, however, that the SQB exemption can apply to facilities owned or operated by large quantity generators. Thus, under today's proposal, wastes not eligible for the SQG exemption could be eligible for the SQB exemption. Nonetheless, we believe that 27 gal/mo is a reasonable level for the exemption because it is truly a *de minimis* quantity and such quantities can be burned absent emission controls under existing SQG regulations.

We believe that approximately 200 boilers are currently operating under the SQB exemption. Many of these boilers are likely burning quantities in excess of 27 gallons/mo, and so would be subject to full regulation as a BIF under today's proposal. We note, however, that we are also proposing today a comparable fuels exclusion that would exclude from the definition of solid and hazardous waste any material that meets the proposed comparable fuels specification. Although we currently have no information on how many SQBs could use the comparable fuels exclusion, some heretofore SQBs are expected to be eligible for this proposed exclusion.

Sources that burn hazardous waste that do not meet the comparable fuels specification may determine that it is less expensive to send their waste to a commercial burner than comply with the BIF regulations. Those sources that choose to continue burning hazardous waste would be required to comply with the substantive requirements of the BIF rule. Since the BIF rule would subject some of these facilities to RCRA regulation for the first time (assuming no other permitted units are at the facility), these SQB facilities would be eligible for interim status. See 56 FR at 7186 (February 21, 1991) for requirements regarding permit modifications, section 3010 notifications, and Part A permit applications. Such sources would also be required to submit a certification of precompliance (required by § 266.103(b)) within 6 months of the date of publication of the final rule in the Federal Register, and a certification of compliance (required by § 266.103(c)) within 18 months of the date of publication of the final rule.

B. The Waiver of the PM Standard Under the Low Risk Waste Exemption of the BIF Rule Would Not Be Applicable to HWCs

Section 266.109 of the BIF rule provides a conditional exemption from the destruction and removal efficiency (DRE) standard and the particulate matter (PM) emission standard. The DRE standard is waived if the owner or operator complies with prescribed procedures to show that emissions of toxic organics are not likely to pose a potential hazard to human health considering the direct inhalation pathway. The PM standard is waived if the DRE standard is waived and the source complies with the Tier I or adjusted Tier I feedrate limits for metals.

We are proposing today to restrict eligibility for the waiver of the PM standard to BIFs other than cement and lightweight aggregate kilns. This is because: (1) Compliance assurance with the proposed MACT standards for D/F, SVM, and LVM is based on compliance with a CEM-monitored, site-specific PM emission limit;[208] and (2) the proposed MACT PM standard would be used to help minimize emissions of adsorbed non-D/F organic HAPs. Given that this restriction for cement and lightweight aggregate kilns is needed to ensure compliance with the proposed MACT standards, the restriction would be effective at the time that the kiln begins to comply with the MACT standard (i.e., when the source submits the initial notification of compliance).

Finally, we note that, as a practical matter, we believe that this proposed restriction of eligibility for the PM waiver for kilns will have little or no effect on the regulated community. We are not aware of any cement or lightweight aggregate kilns that both meet the conditions for the exemption and have elected or intend to elect to request the waiver.

The Agency solicits comment on the application of waste minimization to lower the volume of waste streams fed to combustors so that the combustor can meet the proposed revised SQB feed limitations. Such reductions might be achieved by meeting the proposed HWIR standards and thus removing entire streams from Subtitle C requirements. The Agency is particularly interested in technical and economic information about commercial or experimental processes to reduce stream volume.

C. The ''Low Risk Waste'' Exemption from the Emission Standards Provided by the Existing Incinerator Standards Would Be Superseded by the MACT Rules

Section 264.340(c) exempts certain incinerators from the emission standards if the hazardous waste burned contains insignificant concentrations of Appendix VIII, Part 261, hazardous constituents which would reasonably be expected to be in the waste. In implementing this provision, the Agency has used various measures of risk potential to define ''insignificant'' concentrations. We believe that a risk-based waiver is inconsistent with today's proposed technology-based MACT standards for incinerators, and in any case could not supersede those standards. Thus, we are proposing that this provision no longer be applicable to an incinerator at the time it begins complying with the MACT standards (i.e., when the initial notification of compliance is submitted).

We also note that § 264.340(b) provides the same exemption from emission standards if the hazardous waste burned does not contain any (i.e., nondetect levels) of the Appendix VIII constituents. We are proposing that this provision also be superseded by the proposed MACT standards because: (1) Detection limits may be high for some waste matrices; and (2) nontoxic organics in the waste can result in emissions of toxic organics under poor combustion conditions or conditions favorable to formation of D/F in the

[208] Not to exceed the proposed national MACT standard.

post-combustion zone (e.g., a PM control device operating at temperatures above 400°F).

D. Bevill Residues

1. Required Testing Frequency for Bevill Residues

The Agency is proposing to set a minimum sampling and analysis frequency for residues derived from the burning or processing of hazardous waste in units that may qualify for the Bevill exemption by satisfying the requirements of § 266.112 (a) and (b). The Agency believes a minimum testing frequency is necessary to prevent large quantities of hazardous residues from being managed in an environmentally unsound manner.

Current regulations require that waste derived residue be sampled and analyzed ''as often as necessary to determine whether the residue generated during each 24-hour period'' meets requirements to qualify for the Bevill exemption. Because large volumes of residue are generated in any 24-hour period, it is possible that a facility may have disposed of the residue after a sample had been taken, but before the analysis results are received. The Agency stated in the preamble to the BIF regulations (56 FR 42504 (August 27, 1991)) that ''if the waste derived residue is sampled and analyzed less often than on a daily basis, and subsequent analysis determines that the residue fails the test and is fully regulated hazardous waste, the Agency considers all residue generated since the previous successful analysis to be fully regulated hazardous waste absent documentation otherwise.'' Residue generated after the failed test may also be considered hazardous waste until the next passing test. The residue disposal area or unit would also become subject to Subtitle C requirements.

In the interest of protecting human health and the environment and avoiding the scenarios mentioned above, the Agency is today proposing that if a facility elects to sample and analyze less frequently than every day, approval must be granted by the Regional Administrator and the sampling and analysis frequency used must be based on and justified by statistical analysis. The Agency is also proposing that, in the event the Regional Administrator approves less than daily sampling at a facility, the facility must, at a minimum, sample and analyze its residues at least once every month for metals and once every six months for other compounds. A more frequent minimum sampling frequency has been proposed for metals because of the variability of metal content in feed materials and because metals cannot be destroyed in the furnace. The proposed sampling frequency will minimize the possibility of large volumes of hazardous residues being placed on the land or otherwise being stored or disposed of contrary to Subtitle C requirements. The Agency does not believe these proposed requirements will unduly burden the regulated community and requests comments on this issue.

The following factors must be considered when determining an appropriate sampling frequency:

—Selection of a statistical method and distribution of data (normal or log normal distribution)
—Feedrates of wastes and all other feed streams
—Volatility of metals in all feed streams
—Physical form of various feed streams (solid versus liquid)
—Type of feed system
—Levels and types of organic constituents in all feedstreams (for example, difficulty of destruction or formation of by-products)
—Levels and types of metals regulated under RCRA, other than those regulated by the BIF regulations (for example, selenium)
—Changes in feed streams
—Changes in operating conditions or equipment
—Operating conditions when sampling compared with those when not sampling
—Trends in partitioning of metals in fly as compared with bottom ash

Facilities with a high variability of hazardous constituents in their residues should closely examine these factors in deciding upon a sampling frequency. Facilities with residues that exhibit little or no constituent variability may be able to sample at the minimum frequency, pending approval of less than daily sampling by the Regional Administrator.

2. Dioxin Testing of Bevill Residues

a. Regulatory History. Under 40 CFR § 266.112 of the boiler/industrial furnace (BIF) rule, EPA codified procedures for owners and operators of Bevill devices to determine whether their residues retain the Bevill exemption when the facilities co-fire or co-process hazardous waste fuels along with fossil fuels or normal raw materials. These procedures were deemed necessary to ensure that the burning of hazardous waste does not alter the residues so that they are no longer the ''high volume, low hazard'' materials exempted by the Bevill amendment. This test was upheld by the D.C. Circuit in *Horsehead Resource Development Co.* v. *Browner,* 16 F. 3d 1246 (D.C. Cir. 1994).

Specifically, 40 CFR § 266.112 requires facilities that claim the Bevill exemption for residues from co-burning hazardous waste along with Bevill raw materials to conduct sampling and analysis of their residues to document that either: (1) Levels of toxic constituents in the waste-derived residue are not significantly higher than normal (i.e., when not burning hazardous waste) residues; or (2) levels of toxic constituents in waste-derived residue do not exceed health-based levels specified in the rule. This is commonly referred to as the two-part Bevill test. The constituents for which analysis must be conducted include: (1) Appendix VIII, Part 261, hazardous constituents that could reasonably be expected to be in the hazardous waste burned, and that are listed in § 268.40 for F039 non-wastewaters (see 59 FR 4982 of September 19, 1994); and (2) compounds that the Agency has determined are common products of incomplete combustion (i.e., they may be formed during combustion of the waste) and have been listed in Appendix VIII of Part 266.

b. Addition of Dioxin/Furan Compounds to the Appendix VIII, Part 266 Product of Incomplete Combustion List. The Appendix VIII, Part 266 product of incomplete combustion (PIC) list does not currently include polychlorinated dibenzo-p-dioxin (PCDD) and polychlorinated dibenzo-furan (PCDF) compounds. In addition, most BIF facilities do not burn wastes which could reasonably be expected to contain PCDD/PCDF compounds. Thus, few § 266.112 facilities have been analyzing their residues on a routine basis for PCDD/PCDF compounds to determine whether burning hazardous waste has affected the character of the residue.

EPA believes that it is important to add PCDD/PCDF compounds to the PIC list in order to make residue analysis for PCDD/PCDFs a mandatory component of the two-part Bevill test. First, dioxin/furan compounds are likely to be PICs and, as such, should rightfully be included on the PIC list. As described in Chapter 4 of the May 1994 Draft Combustion Emissions Technical Resource Document (CETRED), there is a considerable body of evidence to show that PCDD/PCDF compounds can be formed in the post-combustion regions of boilers, industrial furnaces and incinerators, even if no PCDD/PCDF compounds are fed to the combustion device. Secondly, the level of dioxins in

residues can be influenced by hazardous waste burning activities. The October 1994 Cement Kiln Dust Notice of Data Availability, which augmented the December 1993 Report to Congress on Cement Kiln Dust, provided a regression analysis to determine the impact of hazardous waste fuel use on dioxin and furan concentrations. Every one of the dioxins and furans evaluated appeared in significantly higher concentrations in cement kiln dust generated by plants that burned hazardous waste fuel in comparison with plants that did not burn any hazardous waste fuels. The Report concluded that the strength and consistency of this relationship for cement kiln dust was striking, and that it provides very strong evidence that dioxin and furan concentrations in the dust are systematically higher at plants that burn hazardous waste fuel.

Finally, it is important to note that, where the potential for excess risks were identified in the Report, the constituents of concern included metals and dioxin/furan compounds. Metals are already covered by the two-part test of § 266.112. However, it is equally important to include PCDDs/PCDFs in the two-part test to make sure that residues from hazardous waste-burning devices continue to meet the high volume, low hazard criteria presumed by the Bevill exemption.

c. Use of Land Disposal Restriction Standards as Interim Limits for PCDD/PCDFs. On November 9, 1993, EPA published an interim final rule establishing alternate concentration limits for nonmetals to be used for the health-based comparison portion of the two-part Bevill test (i.e., 40 CFR § 266.112(b)(2)). The alternate levels were based on the land disposal restriction (LDR) limits for F039 non-wastewaters pending further administrative action to determine whether more appropriate health-based levels should be developed. Although the LDR limits are not health-based levels, the Agency noted in the preamble (58 FR at 59598 (Nov. 9, 1994)) that the technology-based LDR treatment limits should serve to identify residues that have the ''low toxicity'' attribute that is one of the key bases for the temporary exemption of Bevill residues from the definition of hazardous waste. See *Horsehead Resource Development Co.* v. *Browner,* 16 F. 3d. The Agency also noted that the LDR levels are promulgated limits and so have been scrutinized and subject to public comment in previous rulemakings.

As part of today's proposal to add PCDD/PCDF constituents to the Appendix VIII, Part 266 PIC list, the Agency would continue the interim practice of basing the concentration limits for the health-based portion of the two-part Bevill test on the LDR F039 nonwastewater levels. The LDR regulation establishes concentration limits of 1 part-per-billion (ppb) for total HxPCDDs, total HxPCDFs, total PePCDDs, total PePCDFs, total TCDDs and total TCDFs. The Agency believes that these levels for dioxin/furan compounds will serve as adequate screening levels on an interim basis to ensure that residues from hazardous waste-burning devices continue to meet the ''low toxicity'' attribute presumed by the Bevill exemption.

The Report to Congress on Cement Kiln Dust provides some support for the 1 ppb PCDD/PCDF screening criteria. In baseline risk modeling for fifteen case study facilities managing CKD on-site, dioxin/furan compounds were not identified as contributors to adverse health effects for either direct or indirect exposure pathways (see Report, Exhibit 6–14). Risk from PCDD/PCDFs only reached levels of concern when the Agency performed a sensitivity analysis to examine the change in risks that would occur at five baseline facilities based on the hypothetical management of CKD containing the highest measured PCDD/PCDF concentrations found in EPA's sampling at 11 cement plants. The highest concentrations were observed in samples from a cement facility, and were at least 2½ times higher than concentrations observed at any other facility. All of the samples from that facility exceeded 1 ppb for at least one homolog listed as part of the LDR F039 criteria (i.e., total HxPCDDs, total HxPCDFs, total PePCDDs, total PePCDFs, total TCDDs or total TCDFs). Thus, the levels which showed potential for adverse health effects in the site-specific modeling would be screened by application of the 1 ppb criteria listed in the F039 LDR. By comparison, none of the samples from facilities other than the above facility had any PCDD/PCDF homologs exceeding 1 ppb.

The Agency is proposing continued use of the LDR levels because it does not believe that it is appropriate to establish a more specific health-based level for dioxin/furan compounds at this time.[209] A separate regulatory process is underway which will establish controls on management of cement kiln dust (60 FR 7366). Any health-based level established in advance of these controlled CKD management standards would quickly become obsolete because, at a minimum, the fate and transport assumptions would be different. The Agency specifically requests comment regarding whether the interim LDR F039 limits for PCDD/PCDF constituents are appropriate. Alternatively, the Agency requests information regarding an appropriate methodology for establishing more specific health-based limits.

d. Clarification of Appendix VIII, Part 266 PIC List Applicability. There has historically been some confusion regarding whether each of the constituents listed on the Appendix VIII, Part 266 list must be a mandatory component of the residue testing at every facility, or whether a facility could exclude some of the constituents on the list. Today, the Agency clarifies that the Appendix VIII, Part 266 list is applicable to every facility in its entirety, without exclusion.

3. Application of Derived From Rule to Residues From Hazardous Waste Combustion in non-Bevill Boilers and Industrial Furnaces

As part of a settlement agreement of the lawsuit over the 1991 BIF regulations, EPA agreed to reconsider the appropriateness of applying the derived from rule to residues from co-processing listed hazardous waste fuels and raw materials in non-Bevill boilers and industrial furnaces. An example would be an oil-fired boiler burning listed hazardous waste fuel and generating emission control dusts or scrubber effluents, which dusts or effluents would not be considered to be Bevill excluded. If this type of burning occurs in a boiler or furnace whose residues are otherwise within the scope of the Bevill amendment, the residues remain exempted from subtitle C (i.e. remain exempted by virtue of the Bevill amendment) so long as they are not ''significantly affected'' by burning hazardous waste. § 266.112. A residue is not significantly affected if there is no statistically significant increase between baseline, non-hazardous waste-derived residues, or if hazardous constituents in the residue do not exceed health-based (or health-based surrogate) levels. *Id.* Consistent with the settlement agreement mentioned above, EPA solicits comment as to whether this same type of test could be applied to burning of hazardous waste in non-Bevill boilers and furnaces. The logic could be that if hazardous properties are not contributed by the hazardous waste, the derived from rule should not apply.

[209] EPA notes that, by establishing LDR exemption levels for Bevill residue, the Agency is not suggesting that: (1) the technology-based treatment standards are equivalent to, or appropriate to use as, health-based limits; or (2) Bevill excluded residues should necessarily be subject to the LDR rules. See 58 FR at 59603 (November 9, 1994). These issues are the subject of other rulemakings.

EPA's inclination is not to apply any type of significantly affected test to residues at this time. The recently-proposed exit levels, and methodology, in the Hazardous Waste Identification Rule (HWIR) provide a means of automatic exit from the subtitle C system when wastes (including derived-from wastes) are no longer hazardous. Furthermore, the ''significantly affected'' test is closely linked to the Bevill amendment, and in fact defines the scope of that amendment in co-processing situations. EPA sees no persuasive reason to apply the test to non-Bevill residues, particularly when the Agency has proposed a means whereby such residues can automatically exit the system. It appears to EPA to be the better approach to make subtitle C exit determinations on the basis of hazards actually posed by the waste rather than by comparisons with a non-waste baseline. (Indeed, this is one component of the significantly affected test already. See § 266.112(b)(2).) The Agency solicits comment on this matter, however.

E. Applicability of Regulations to Cyanide Wastes

The Agency has received several inquiries regarding the applicability of § 266.100(c)(2)(i) criteria for processing cyanide wastes solely for metal recovery. Specifically, cyanide wastes do not meet the common dictionary meaning of being an organic, but can be destroyed by industrial furnaces. The Agency's intent of this exemption was to preclude burning of waste streams that contain greater than 500 ppm nonmetal compounds listed in Appendix VIII of Part 61, that are provided a level of destruction by the furnace. The Agency inappropriately chose the word 'organic' instead of 'nonmetal' in the above regulation. An amendment is being proposed to provide the needed clarification that wastes containing cyanides are eligible to be included in this exemption. We are also proposing similar amendments (i.e., revisions to use the term ''nonmetal'' rather than ''organic'') to subparagraphs (c)(2)(ii), (c)(3)(i)(B), and (c)(3)(ii).

F. Shakedown Concerns

There is a concern within the Agency that some new units do not effectively use their allotted 720 hour pre-trial burn period (commonly referred to as ''shakedown'') or extensions thereof to correct operational problems prior to the trial burn period. This ineffective use of the pretrial burn period can potentially lead to emission exceedances which pose unnecessary risks to human health and the environment. In addition, failure(s) during trial burn testing at one or more test conditions reduce a facility's flexibility to burn hazardous waste in a subsequent permit developed from the trial burn or may even lead to a need to perform other trial burns or a termination of the permit. A failure to perform adequate shakedown may also lead to difficulties in making an interpretation of trial burn data and in setting of permit conditions due to excessive variability in trial burn operation.

The Agency believes that an approach using system start-up and system problem solving with the use of a non-hazardous waste feed followed by a gradual, carefully planned introduction of hazardous waste feed is essential to avoid the potential problems which could result from the burning of hazardous waste in an undiagnosed system which may not yet be operating at steady state conditions. The absence of this type of approach has caused many previous trial burns not to be carried through to completion or has caused them to occur in a very different fashion from that prescribed in the trial burn plan. Other efforts during the trial burn have resulted in diminished operating allowances or in the need for additional trial burn testing. As a result of these occurrences, the Agency is proposing three options which center around the pretrial burn period in an attempt to enhance regulatory control over trial burn testing. The Agency is also requesting comment on the applicability of these options to interim status facilities. The shakedown period has, in the past, been applied exclusively to new facilities and has not addressed existing facilities operating under interim status. The Agency believes that these options could apply to interim status facilities if the newly proposed waste to be burned represented a very different waste than that which had been burned.

As its primary option, the Agency would require that facilities be required to show the Director prior to trial burn dates being scheduled that the facility has provided a minimum showing of operational readiness. This showing of operational readiness would be one which has been established by the Director and would be incorporated as part of the permit application process for both interim status and new devices. The manner in which this notification of readiness would occur would be determined by the Director. A trial burn could not be scheduled until this minimum showing to the Director has occurred. Criteria for trial burn readiness would include, but would not be limited to the following examples: (1) The ability of a facility to show that it has operated the device to be permitted under its planned trial burn conditions (*e.g.* temperature, feedrate) for a specified time period set by the Director, or (2) the ability of a facility to operate for a designated period of time (to be established by the Director) without an Automatic Waste Feed Cut-Off (AWFCO) occurring. To show readiness to the Director, the composition of the feed stream to the device during this showing would need to be nearly identical (if not identical) to the waste intended to be burned during the operational lifetime of the facility. This similarity should be consistent with respect to the physical, thermal, and fluid characteristics of the waste not only being burned during the trial burn tests, but also during the lifetime of the facility. It is the Agency's belief that facilities which fail their trial burn tests often fail because facilities tend to stress their devices for the first time only during trial burn testing. The system has to that point never undergone ''break point'' testing with an increased feedrate or maximum capacity feedrate. A trial burn should not be scheduled until a facility has shown the Director that it can operate without constant shutdowns at feedrates consistent with that of the trial burn.

A second option which the Agency offers for comment is a more restrictive option. This option proposes requirements on both the operations prior to and following the shakedown period. It incorporates the notification requirements found in the primary option along with an additional notification requirement which would occur prior to the beginning of shakedown. This option would require a facility to notify the Director that it has achieved steady state operation with non-hazardous waste during this period leading up to shakedown at operational levels set by Director (*e.g.* flowrates) which are comparable to that to be tested at trial burn and to certify that the device is ready to begin shakedown operations. As before, this option would also require a facility to notify the Director following shakedown that operational readiness with hazardous waste has been achieved and to certify that the device is ready for trial burn tests. Although this option would impose two more operational requirements for a facility, it would ensure that the facility has brought the device up to operational standards whereby the addition of hazardous waste would not represent an excessive risk to human health or the

environment. The Agency believes that this option would also provide for a more efficient trial burn since it has required a facility to become operational without constant shutdowns prior to the trial burn prior to shakedown and after shakedown. Portions of this option may not be directly applicable to interim status facilities since they have been burning hazardous waste to date and may have most of their operational problems worked out.

A third option upon which the Agency is requesting comment is a ''guidance only'' option. Although this option would not impose any specific regulatory requirements for a showing of operational readiness prior to or after a shakedown period, it would provide guidance to industry and permit writers on how to effectively achieve preparedness prior to a trial burn without the need of formalizing it within the constraints of the regulations. Permit writers would have the ability, as they do now, to set readiness demonstration requirements if they deem it necessary for a specific site.

G. Extensions of Time Under Certification of Compliance

The Boiler and Industrial Furnace Rule, at 40 CFR § 266.103(c)(7), allows a facility to obtain a case-by-case extension under certain circumstances when events were outside of the control of the facility. There have been questions as to whether this provision meant that after August 21, 1992, a facility could no longer apply for a case-by-case extension. The Agency wants to clarify that it never intended this restrictive interpretation and so is proposing to amend this section to provide the clarification. EPA intended the case-by-case extension to apply at any time during the certification of compliance cycle, including during Revised Certification of Compliance under § 266.103(c)(8), and during Periodic Recertifications under § 266.103(d). See 56 FR at 7182 (February 21, 1991). The basis of granting the case-by-case extension is proposed to remain unchanged by today's rule. Additionally, EPA is clarifying that the automatic one year extension is not valid for facilities which were not in existence on August 21, 1991.

H. Technical Amendments to the BIF Rule

1. Facility Requirements at Closure

EPA is today proposing to amend § 266.103(l) to stipulate that at closure, the owner or operator must remove all hazardous waste and hazardous waste residues not only from the boiler or industrial furnace, but also from its air pollution control system (APCS). Although the APCS is an integral part of the facility, this minor amendment will make it explicitly clear that no hazardous waste or residues can remain in the APCS after closure.

2. Definitions under the BIF Rule

We are adding several definitions under § 260.10 for frequently used terms in combustion regulations like fugitive emissions, automatic waste feed cutoff system, run, air pollution control system and operating record. The purpose is to clarify these technical terms of thermal treatment, expedite permit writing as well as increase the enforceability of obvious technical violations. Some of these definitions already exist in the air regulations.

I. Clarification of Regulatory Status of Fuel Blenders

EPA is proposing to revise 40 CFR 266.101 (''Management prior to burning'') to clarify that fuel blending activities, including those which constitute treatment, are regulated under RCRA. Section 266.101 (formerly 266.34) was written with the understanding that hazardous waste fuel-blending activities were traditionally performed in containers or tank systems where the storage standards of Part 264 could be applied. The Agency believes that protection of human health and the environment is accomplished when the permit addresses the containment of the waste being treated. Therefore, no direct reference to ''treatment'' was included in Section 266.34; treatment was understood to be implicit in the regulation, as shown by the reference in section 261.6 to the ''* * * applicable provisions of Part 270.'' EPA has in fact explicitly interpreted § 266.101 (formerly § 266.34) to require tank storage standards to apply to tanks in which hazardous waste fuels are blended. See 52 FR 11820 (April 13, 1987).

More recently, it has come to the Agency's attention that fuel blenders may be using devices such as microwave units and distillation columns in their hazardous waste handling operations that differ from the traditional fuel-blending practices. These practices are, in fact, hazardous waste treatment activities requiring a RCRA permit, without which the unit cannot operate. For many such operations, the ''miscellaneous unit'' requirements of Part 264, Subpart X, would apply. Due to various inquiries regarding this issue, EPA has written several policy memoranda confirming that treatment, as well as storage, conducted by fuel blenders requires a RCRA permit. These memoranda are part of the Agency's RCRA Permit Policy Compendium and are available from the RCRA Hotline. They are also included in this rulemaking docket. EPA is taking this opportunity to clarify this issue in the regulations by revising the language in § 266.101.

J. Change in Reporting Requirements for Secondary Lead Smelters Subject to MACT

EPA recently promulgated MACT standards for the secondary lead smelter source category. 60 FR 29750 (June 23, 1995). In that rule, the Agency found, with unanimous support from commenters, that RCRA emission standards were unnecessary at the present time for these sources since the MACT standards provide significant health protection, area secondary lead sources will be regulated by these MACT standards, and the ultimate issue of the protectiveness of the standard will be evaluated during the section 112(f) residual risk determination.

EPA is proposing here to modify existing § 266.100(c), which provides an exemption from RCRA air emission standards for (among other sources) industrial furnaces burning hazardous waste solely for material recovery. Secondary lead smelters complying with conditions enumerated in § 266.100(c)(l) and (3) are among this type of industrial furnace. The Agency is proposing to amend § 266.100(c)and is proposing to add a new § 266.100(g) to state that RCRA provisions for air emissions do not apply to secondary lead smelters when the MACT rule takes effect (in June, 1997), provided the smelters do not burn hazardous wastes containing greater than 500 ppm nonmetal hazardous constituents (or burn wastes enumerated in 40 CFR Part 266 Appendix XI), submit a one-time notice to EPA or an authorized state, sample and analyze as necessary to document the basis for their claim, and keep appropriate records. These amendments also could take the form of an exemption (subject to the same conditions) for such secondary lead smelters from the present proposed rule.

This proposed amendment is similar to the exemption found in the existing RCRA BIF rules but does eliminate certain recordkeeping and reporting requirements for secondary lead smelters presently required as a condition of the RCRA exemption. The Agency tentatively does not believe these extra reporting requirements are needed once the MACT standards take

effect. At the same time, secondary lead smelters choosing to burn hazardous wastes different from those evaluated in the secondary lead NESHAP (i.e. hazardous wastes with greater than 500 ppm toxic nonmetals or those hazardous waste not listed in Appendix XI to Part 266) would have to meet applicable standards for hazardous waste combustion units (i.e. either the existing BIF standards or revised standards based on MACT), as well as those for secondary lead smelters. EPA would administer this proposal by not requiring a secondary lead smelter that has already submitted a notification to EPA or an authorized state under existing 266.100(c)(l) or (3), to renotify under proposed 266.100 (g).

PART SEVEN: ANALYTICAL AND REGULATORY REQUIREMENTS

I. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether this regulatory action is ''significant.'' A determination of significance will subject this action to full OMB review and compliance under Executive Order 12866 requirements. 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, 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 entitlement, 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 terms of the Executive Order.

The Agency believes that today's proposal, represents a significant action. If adopted, the proposed rule would most likely result in a cost greater than $100 million. As a result, this rulemaking action, and supporting analyses, are subject to full OMB review under the requirements of the Executive Order. The Agency has prepared ''Regulatory Impact Assessment for Proposed Hazardous Waste Combustion MACT Standards'' and ''Addendum to the Regulatory Impact Assessment for Proposed Hazardous Waste Combustion MACT Standards'' in support of today's action; this report is available in the public docket for today's rule. A summary of this analysis and findings is presented below.

II. Regulatory Options

During the regulatory developmental phases, EPA considered seven different regulatory MACT options for existing sources. Refer to the RIA for a detailed discussion of the seven options. This preamble discusses and assesses the floor option and the Agency preferred option. For more detail on the specific methodology used in developing floor and ''beyond-the-floor'' control levels, the reader should refer to the preamble Options section, Part Four of this preamble. Below is a summary of the impact of floor levels and the preferred option 1 on the combustion industry.

III. Assessment of Potential Costs and Benefits

A. Introduction

The Agency has prepared a regulatory impact assessment to accompany today's proposed rulemaking. The Agency has evaluated cost, economic impacts, and other impacts such as environmental justice, unfunded mandates, regulatory takings, and waste minimization incentives. The focus of the economic impact assessment was on how the MACT standards may affect the hazardous waste-burning industry. The Agency would like to note that although the cement kiln industry profits are generated by two components: cement production and hazardous waste burning, the RIA only estimated the impact the MACT standards will have on hazardous waste burning. The Agency is in the process of beginning an analysis that will study the impact of today's rule on cement production, cement prices, and competition in the cement industry. The Agency would like to solicit comments and request information in this area as we begin our research.

To develop cost estimates, EPA categorized the combustion units by size, and estimated engineering costs for the air pollution control devices (APCDs) needed to achieve the standards in the regulatory options. Based on information regarding current emissions and APCD trains EPA developed assumptions regarding the type of upgrades that units would require. Because EPA's data was limited, this analysis is meant to develop estimates of national economic impacts, and not site specific impacts.

B. Analysis and Findings

Total annual compliance costs for the floor option and the Agency's proposed standards range in costs from an estimated $93 million to $136 million.

TOTAL ANNUAL COMPLIANCE COSTS

[Millions]

Options	Cement kilns	LWA kilns	Commercial incinerators	On-site incinerators	Total
6 percent Floor	$27	$2	$13	$50	$93
6 percent BTF	44	4	20	67	136

This rule will result in a significant impact to the combustion industry. The regulatory impact assessment used a number screening indicators to assess the impact of this rule. One indicator the analysis used was the average total annual compliance cost per unit. This indicator assesses the relative impact the rule has on each facility type in the combustion universe. According to this indicator, cement kilns incur the greatest average incremental cost per unit totaling $770,000 annually for the floor and $1.1 million annually for the proposed standards, which include beyond the floor standards. The cost per unit for LWAKs range from $490,000 to $825,000 and for on-site incinerators from $340,000 to $486,000. Commercial incinerators annual average cost per unit total $493,000 for the floor and $730,000 for the proposed standards. One should note however, that the per unit costs are presented assuming no market exit. Once market exit occurs, per unit should be significantly lower particularly for on-site incinerators.

Looking at the price per ton, in the baseline, cement kilns have the lowest cost ($104 per ton) to burn hazardous waste today with commercial incinerators have $800 per ton costs and on-site incinerators have $28,460 per ton costs. For compliance costs, cement kilns have the smallest impact ($40 to $50 per ton) with on-site incinerators experiencing a high compliance cost of $47 to $57 per ton.

EPA also looked at baseline cost of burning hazardous waste as a percentage of compliance cost. This indicator assesses the relative impact of facilities within the sector but it also can be a predictor for how prices might increase for burning hazardous waste. According to the table below, the floor compliance costs are 40 percent of the current baseline cost of burning hazardous waste for cement kilns and over 20 percent for LWAKs. Many on-site incinerators and commercial incinerators have existing APCDs and have larger volumes of waste to distribute compliance costs across, thus compliance costs tend to be a smaller addition to baseline costs.

AVERAGE TOTAL ANNUAL BASELINE—INCREMENTAL COMPLIANCE

[Cost per Ton]

Options	Cement kilns	LWA kilns	Commercial incinerators	On-site incinerators
Baseline	$104	$194	$806	$28,500
6 percent Floor	$40	$39	$23	$47
6 percent BTF	50	56	31	57

Note: Baseline costs were calculated by identifying all costs associated with hazardous waste burning. Thus, for commercial incinerators and on-site incinerators, all costs associated with unit construction, operation and maintenance are included. This also includes RCRA permits and existing APCDs. The costs for on-site burners are extremely high because total costs for incineration is distributed across the small amount of hazardous waste burned. For cement kilns and LWAKs, only those incremental costs associated with burning hazardous waste are included such as, permits. The cost of the actual units (which have a primary purpose of producing cement or aggregate) are not included in the baseline. Also these costs are after consolidation occurs.

Although cement kilns incur a significant impact, they still have the lowest average waste burning cost after the regulation. As the table above illustrates in the post-regulatory scenario, cement kilns cost per ton for burning waste would total $154 compared to a cost per ton for commercial incinerators of $837. EPA expects that this advantage for cement kilns in the market will allow them to continue to set the market price for waste burning.

Not all facilities however, will be able to absorb the compliance cost to this rule and remain competitive. The economic impact assessment estimates that of the facilities which are currently burning hazardous waste 3 cement kilns, 2 LWAK, 6 commercial incinerators and 85 on-site incinerators will likely stop burning waste in the long term. Most of these units are ones which burn smaller amount of hazardous waste.

C. Total Incremental Cost per Incremental Reduction in HAP Emissions

Cost effectiveness is calculated by first estimating the compliance expenditures associated with the specific hazardous air pollutant (HAP). The estimation of costs per HAP is often difficult to ascertain because the air pollution control devices usually control more than one HAP. Therefore, estimation of precise cost per HAP was not feasible. Once the compliance expenditures has been estimated, the total mass emission reduction achieved when combustion facilities comply with the standards for a given option must be estimated. With the total compliance costs and the total mass emissions, the total incremental cost per incremental reduction in HAP emissions can be estimated. For a more detailed discussion of how the cost per HAP was calculated, please see chapter 5 of ''Regulatory Impact Assessment for Proposed Hazardous Waste Combustion MACT Standards''.

Results of the cost-effectiveness calculations for each HAP for all facilities are found below. For results on a facility-type level, please see chapter 5 of the RIA. Considering all facilities as a group, the results indicate that dioxin, mercury, and metals cost per unit reduction are quite high. This is the case because small amounts of the dioxin and metals are released into the environment. For other pollutants, expenditures per ton are much lower.

COST EFFECTIVENESS FOR ALL FACILITIES

HAP	Unit	Baseline to 6 percent floor	6 percent floor to 6 percent BTF
D/F	$/g	$12,000	$560,000
Mercury	$/lb	2,600	5,400
LVM	$/Mton	407,000	NA
SVM	$/Mton	315,000	NA
Chlorine	$/Mton	7,000	2,240
Particulate.	$/Mton	4,400	3,200
CO	$/Mton	1,360	NA

COST EFFECTIVENESS FOR ALL FACILITIES—Continued

HAP	Unit	Baseline to 6 percent floor	6 percent floor to 6 percent BTF
THC	$/Mton	2,800	NA

Note: NA = Zero incremental reduction in HAP emissions (Dollars divided by zero = NA).

D. Human Health Benefits

1. Dioxin benefits

Polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans, hereafter referred to collectively as dioxins, are ubiquitous in the environment. The more highly chlorinated dioxins, which are extremely stable under environmental conditions, persist in the environment for decades and are found particularly in soils, sediments, and foods. It has been hypothesized that the primary mechanism by which dioxins enter the terrestrial food chain is through atmospheric deposition.[210] Dioxins may be emitted directly to the atmosphere by a variety of anthropogenic sources or indirectly through volatilization or particle resuspension from reservoir sources such as soils, sediments, and vegetation.

The most well known incident of environmental contamination with dioxins occurred in Seveso, Italy in an industrial accident. Symptoms of acute

[210] USEPA, ''Estimating Exposure to Dioxin-Like Compounds'', Volume I, June 1994.

exposures such as chloracne occurred immediately following the incident. Since then, significant increases in certain types of cancers have also been observed.[211] After evaluating a variety of carcinogenicity studies in human populations and laboratory animals, EPA has concluded that 2,3,7,8-tetrachlorodibenzo-p-dioxin and related compounds are probable human carcinogens.[212] EPA estimates that a dose of 0.01 picograms on a toxicity equivalent (TEQ) basis per kilogram body weight per day is associated with a plausible upper bound lifetime excess cancer risk of one in one million ($1\times10-6$).[213] Toxicity equivalence is based on the premise that a series of common biological steps are necessary for most if not all of the observed effects, including cancer, from exposures to 2,3,7,8 chlorine-substituted dibenzo-p-dioxin and dibenzofuran compounds in vertebrates, including humans. Given the levels of background TEQ exposures discussed below, as many as 600 cancer cases may be attributable to dioxin exposures each year in the United States.

EPA has also concluded that there is adequate evidence from both human populations and laboratory animals, as well as other experimental data, to support the inference that humans are likely to respond with a broad spectrum of non-cancer effects from exposure to dioxins if exposures are high enough. Although it is not possible given existing information to state exactly how or at what levels exposed humans will respond, the margin of exposure between background TEQ levels and levels where effects are detectable in humans is considerably smaller than previously thought.[214]

Dioxins are commonly found in food produced for human consumption. Consumption of dioxin contaminated food is considered the primary route of exposure in the general population. EPA evaluated data collected in four U.S. studies, three of which included analyses of all 2,3,7,8 chlorine-substituted congeners of dibenzo-p-dioxin and dibenzofuran. EPA's evaluation concluded that ''background'' levels in beef, milk, pork, chicken, and eggs are approximately 0.5, 0.07, 0.3, 0.2, and 0.1 parts per trillion fresh weight, respectively, on a toxicity equivalent (TEQ) basis.[215] EPA then used these background levels, together with information on food consumption, to estimate dietary intake in the general population. That estimate is 120 picograms TEQ per day.[216]

EPA has also collected data on dioxins in fish taken from 388 locations nationwide and found that at 89 percent of the locations, fish contained detectable levels of at least two of the dioxin and furan compounds for which analyses were conducted.[217] (Of the 2,3,7,8 chlorine-substituted congeners, only octachlorodibenzo-p-dioxin and octachlorodibenzofuran were not analyzed.) Seven of the compounds, including 2,3,7,8–TCDD, were detected at over half the locations. Detection limits were generally at or below 1 part per trillion on a toxicity equivalent basis. The median (50th percentile) concentration in fish on a toxicity equivalent basis (TEQ) was 3 parts per trillion (ppt) while the 90th percentile was approximately 30 ppt TEQ. Five percent of the sites exceeded 50 ppt TEQ. At most sites, both a composite sample of bottom feeders and a composite sample of game fish were collected. At sites considered representative of background levels, the median concentration was 0.5 ppt TEQ.

EPA has estimated that hazardous waste incinerators and hazardous waste-burning cement and lightweight aggregate kilns currently emit 0.08, 0.86, and less than 0.01 kg TEQ of dioxins per year, respectively, or a total of 0.94 kg TEQ per year. Excluding non-hazardous waste-burning cement kilns, an emission rate of approximately 9 kg TEQ per year is estimated for all other U.S. sources.[218] Therefore, hazardous waste-burning sources represent about 9 percent of total anthropogenic emissions of dioxins in the U.S. The following table shows hazardous waste-burning sources relative to other major emitters of dioxins:

Source category	Dioxin emissions (kg TEQ/ year)
Medical Waste Incinerators	5.1
Municipal Waste Incinerators	3.0
Hazardous Waste-burning Incinerators, Cement Kilns, and Lightweight Aggregate Kilns	0.9

There is information to suggest, however, that dioxin emissions nationwide from all sources are higher than have been estimated. Public comments on EPA's dioxin reassessment have identified a number of possible additional sources of dioxins, including decomposition of materials containing chlorophenols (i.e. wood treated with PCP), metals processing industries, diesel fuel and unleaded gasoline, PCB manufacturing, and re-entrainment of reservoir sources. Reservoir sources may be a significant source of vapor phase dioxins. On the other hand, emissions from at least one of the sources, medical waste incinerators, is probably significantly overestimated. Supporting the view that dioxin emissions may be higher than previously estimated are indications that deposition may be considerably greater than can be accounted for by presently identified emissions.

The impact of emissions on exposure and risk depends on the relative geographic locations of the emission sources and receptors which contribute to exposure and risk, primarily farm animals. This applies to both near field dispersion and long-range transport and it affects exposure and risk both in determining whether the trajectory of an air parcel impacts receptors of concern and in determining the chemical fate of the emissions. The fate of dioxins depends on degradation processes that can occur in the atmosphere. These processes can increase or decrease the toxicity of the original emissions through dechlorination. This process can have different effects on different emission sources, depending on the congener distributions, residence time in the atmosphere, and climatic conditions.

Considering all these factors, it is apparent that hazardous waste-burning sources contribute significantly to the overall loading of dioxins to the environment, although the relative magnitude of the contribution remains to be determined. While there is not a one-to-one relationship between emissions and risk, it may be inferred that hazardous waste-burning sources likely do contribute significantly to dioxin levels in foods used for human consumption and, to an extent as yet unknown, the estimated 600 cancer cases attributable to dioxin exposures annually.

EPA estimates that dioxin emissions from hazardous waste-burning sources will be reduced to 0.07 kg TEQ per year at the floor levels and to 0.01 kg TEQ per year at the proposed beyond the floor standard. These reductions would result in decreases of approximately 8

[211] USEPA, ''Health Assessment Document for 2,3,7,8–Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds, Volume II, June 1994.

[212] USEPA, ''Health Assessment Document for 2,3,7,8–Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds, Volume III,'' August 1994.

[213] *Ibid.*

[214] *Ibid.*

[215] USEPA, ''Estimating Exposure to Dioxin-Like Compounds,'' Volume II, June 1994.

[216] *Ibid.*

[217] USEPA, ''National Study of Chemical Residues in Fish,'' Office of Science and Technology, September 1992.

[218] USEPA, ''Estimating Exposure to Dioxin-Like Compounds'', Volume II, June 1994.

and 9 percent, respectively in total estimated anthropogenic U.S. emissions. EPA expects that reductions in dioxin emissions from hazardous waste-burning sources, in conjunction with reductions in emissions from other dioxin-emitting sources, will help reduce dioxin levels over time in foods used for human consumption and, therefore, reduce the likelihood of adverse health effects, including cancer, occurring in the general population.

2. Mercury Benefits

Mercury has long been a concern in both occupational and environmental settings. The most bioavailable form of mercury and, therefore, the form most likely to have an adverse effect, is methyl mercury. Human exposures to methyl mercury occur primarily from ingestion of fish. As a result of mercury contamination, there are currently fish consumption bans or advisories in effect for at least one waterbody in over two thirds of the States.

Nationally, about 60 percent of all fish consumption bans and advisories are due to mercury. In several States the mercury advisories are statewide, with the most widespread concerns being in the northern Great Lakes states and Florida. The bans and advisories vary from State to State with respect to the levels of concern, the recommended limits on consumption, and other factors. Therefore, it is difficult to develop a national estimate of potential risk based on this information. Nevertheless, these bans and advisories provide one indication of the extent and severity of mercury contamination.

Even low levels of mercury in surface waters can lead to high levels of mercury in fish. EPA has estimated that bioaccumulation factors, which represent the ratio of the total mercury concentration in fish tissue to the total concentration in filtered water, range from 5,000 to 10,000,000 depending on the species of fish, the age of the fish, and the waterbody the fish inhabit.

The most well known example of mercury poisoning from ingestion of fish occurred in the vicinity of Minamata Bay, Japan. Severe neurological effects resembling cerebral palsy occurred in the offspring of exposed pregnant women. EPA has estimated what it considers a safe level of exposure to methyl mercury. This level, referred to as the reference dose, is 1E–4 mg/kg-day. The reference dose is based on an evaluation of 81 maternal-infant pairs exposed to methyl mercury in an incident in Iraq in which methyl mercury treated seed grain was diverted for use in making bread. Sources of uncertainty in the reference dose are the relatively small number of maternal-infant pairs in the Iraqi study, the short duration of maternal exposure (approximately three months), latency in the appearance of effects (from as little as a month to as long as a year), possible misclassification of maternal exposures, differences in the vehicle of exposure (i.e., grain versus fish), and the selection of the neurologic and behavioral endpoints used in the analysis. EPA intends to further evaluate the reference dose for methyl mercury when the results from studies of fish-eating populations become available.

EPA collected data on chemical residues in fish taken from 388 locations nationwide and found that at 92 percent of the locations, fish contained detectable levels of mercury.[219] (Detection limits varied between 0.001 and 0.05 parts per million.) The median (50th percentile) mercury concentration in fish was 0.2 ppm while the 90th percentile was 0.6 ppm. Two percent of the sites exceeded 1 ppm. At most sites, both a composite sample of bottom feeders and a composite sample of game fish were collected. The highest concentration, 1.8 ppm, was measured at a remote site considered to represent background conditions.

Similar results have been obtained in other studies, strongly suggesting that long-range atmospheric transport and deposition of anthropogenic emissions is occurring. Air emissions of mercury contribute, then, to both regional and global deposition, as well as deposition locally. Congress, in fact, explicitly found this to be the case and required EPA to prioritize MACT controls for mercury for this reason. (See S. Rep. No. 228, 101st Cong. 1st Sess. at 153–54.)

An indication of the significance of mercury contamination in fish is illustrated by combining data on the levels of mercury in fish with data on fish consumption and comparing it to the reference dose for methyl mercury. For example, a fish consumption rate of 140 g/day (a 90th percentile rate associated with recreational fishing) in conjunction with a mercury concentration of 0.6 μg/g (a 90th percentile concentration) translates into an average daily dose of 1E–3 mg/kg-day, or 10 times the reference dose. Using the same fish concentration with a mean fish consumption rate for recreational anglers of 30 g/day gives a dose that is three times the reference dose. At the median fish concentration of 0.2 μg/g and a fish consumption rate of 30 g/day, the dose is nearly 90 percent of the reference dose. These results indicate that for persons who eat significant amounts of freshwater fish, exposures to mercury are significant when compared with EPA's estimate of the threshold at which effects may occur in susceptible individuals. However, it must be recognized that EPA's threshold estimate represents a lower bound; the true threshold may be higher than EPA's estimate.

EPA has estimated that hazardous waste incinerators and hazardous waste-burning cement and lightweight aggregate kilns currently emit 4.2, 5.6, and 0.3 Mg of mercury per year, respectively, or a total of 10.1 Mg per year. In addition, EPA estimates that approximately 230 Mg per year are emitted by all other U.S. sources. Based on these estimates, hazardous waste-burning sources represent about 4 percent of total anthropogenic emissions of mercury in the U.S. Therefore, hazardous waste-burning sources do contribute to the overall loading of mercury to the environment and, it may be inferred, to mercury levels in fish.

EPA estimates that mercury emissions from hazardous waste-burning sources will be reduced to 3.3 Mg per year at the proposed floor levels and to 2.0 Mg per year at the proposed beyond the floor standard. These reductions would result in reductions of total anthropogenic U.S. emissions of approximately 3 percent. EPA expects that reductions in mercury emissions from hazardous waste-burning sources, in conjunction with reductions in emissions from other mercury-emitting sources, will help reduce mercury levels in fish over time and, therefore, reduce the likelihood of adverse health effects occurring in fish-consuming populations.

E. Other Benefits

Other benefits that EPA investigated included ecological benefits, property value benefits, soiling and material damage, aesthetic damages and recreational and commercial fishing impacts. Overall, the analysis of the ecological risk suggest that only when assuming very high emissions water quality criteria is exceeded in the watersheds small in size and located near waste combustion facilities. These watersheds are typically located near cement kilns appear to exceed the water quality criteria. According to the property value analysis, there may be property value benefits associated with reduction in emission from combustion facilities. The property value work is on-going and is undergoing refinements. In addition, EPA investigated other benefits such as benefits received from

[219] USEPA, ''National Study of Chemical Residues in Fish,'' Office of Science and Technology, September 1992.

avoided clean-up as result of reduced particulate matter releases. For further detail, please see chapter 5 of the RIA.

IV. Other Regulatory Issues

A. Environmental Justice

The U.S. EPA completed analyses that identified demographic characteristics of populations near cement plants and commercial hazardous waste incinerators and compared them to the populations of county and state. The analysis focuses on the spatial relationship between cement plants and incinerators and minority and low income populations. The study does not describe the actual health status of these populations, and how their health might be affected proximity to facilities.

EPA used a sample of 41 cement plants was analyzed from a universe of 113 plants and a sample of 21 commercial incinerators was analyzed from a universe of 35. The complete methodology results of the analyses are found in two reports filed in the docket titled, ''Race , Ethnicity, and Poverty Status of the Populations Living Near Cement Plants in the United States and Race,'' ''Ethnicity, and Poverty Status of the Populations Living Near Commercial Incinerators.'' Below is a summary of the key results found in the studies.

The Agency looked at whether minority percentages within a one mile radius are significantly different than the minority percentages at the county for all cement plants and sample of incinerators, the results are as follows:

fl 27 percent of the universe of all cement plants (29 plants) and 37 percent of sample of incinerators (21 plants) have minority percentages within a one mile radius which exceed the corresponding county minority percentages by more than five percentage points.

fl 36 percent of the universe of all cement plants (41 plants) and 44 percent of sample of incinerators have minority percentages within a one mile radius which fall below the corresponding county minority percentages by more than five percentage points.

fl 38 percent of the universe of all cement plants (43 plants) and 20 percent of sample of incinerators minority percentages within a one mile radius which fall within five percentage points (above or below) of the corresponding county minority percentages.

With regard to the question of whether poverty percentages within a one mile radius significantly different from the poverty percentages for the county for all cement plants. The results are as follows:

fl 18 percent of the universe of all cement plants (20 plants) and 36 percent of the sample of incinerators (21 plants) have poverty percentages at a one mile radius which exceed the corresponding county poverty percentages by more than five percentage points.

fl 22 percent of the universe of all cement plants (25 plants) and 37 percent of the sample of incinerators (21 plants) have poverty percentages at a one mile radius which fall below the corresponding county poverty percentages by more than five percentage points.

fl 60 percent of the universe of all cement plants (68 plants) and 28 percent of sample of incinerators (21 plants) have poverty percentages at a one mile radius which fall within five percentage points (above or below) of the corresponding county poverty percentages.

B. Unfunded Federal Mandates

The Agency also evaluated the proposed MACT standards for compliance with the Unfunded Mandates Reform Act (UMRA) of 1995. Today's rule contains no Federal mandates under the regulatory provisions of Title II of the UMBRA for State, local or tribal governments or the private sector. The Agency concluded that the rule implements requirement specifically set forth by Congress, as stated in the Clean Air Act and the Resource Conservation Recovery Act. In addition, promulgation of these MACT standards is not expected to result in mandated costs of $100 million or more to any state, local, or tribal governments, in any one year. Finally, the MACT standards will not significantly or uniquely affect small governments.

C. Regulatory Takings

EPA found no indication that the MACT standards would be considered a ''taking,'' as defined by legislation currently being considered by Congress. Property would not be physically invaded or taken for public use without the consent of the owner. Also, the MACT standards will not deprive property owners of economically beneficial or productive use of their property, or reduce the property's value.

D. Incentives for Waste Minimization and Pollution Prevention

The RIA results do not incorporate waste minimization at this time. However, the Agency did analyze the potential for waste minimization and the preliminary results suggest that generators have a number of options for reducing or eliminating waste at a much lower cost. To evaluate whether facilities would adopt applicable waste minimization measures, a simplified pay back analysis was used. Using information on per-facility capital costs for each technology, EPA estimated the period of time required for the cost of the waste minimization measure to be returned in reduced combustion expenditures. The assessment of waste minimization yields estimates of the tonnage of combusted waste that might be eliminated. Comprehensive data to evaluate waste minimization were not available. Improved information on the capital investment and operating costs associated with waste minimization are needed.

Overall, EPA was able to estimate that 630,000 tons of waste, a significant portion of all combusted waste, may be amenable to waste minimization. Three waste generating processes account for the reduction. These processes include solvent and product recovery, product processing waste, and process waste removal and cleaning. EPA is continuing analysis of waste minimization options and requests comments and information in this area. For a complete description of the analysis, see the regulatory impact assessment.

E. Evaluation of Impacts on Certain Generators

EPA is aware of the potential impact today's proposal may have on small business hazardous waste generators. The emission standards proposed today will require many combustion facilities to install new emission control equipment, undertake expanded monitoring, and comply with additional recordkeeping and reporting requirements. Combustion facilities will incur higher capital and operating costs as a result of today's rule. Some facilities are predicted to leave the waste management business altogether. As capacity decreases and costs increase, facilities are likely to increase the waste management prices they charge generators.

EPA believes many larger generators will respond to waste management cost increases by accelerating their waste minimization efforts. By undertaking cost-effective waste minimization initiatives, companies can reduce the amount of waste requiring combustion, thereby deflecting some of the impacts of increases in waste management costs. The same waste minimization options may not be so readily available to smaller businesses. Small businesses often do not have the financial resources

to make the capital or process improvements necessary to minimize hazardous waste generation, even if such improvements will have a net cost benefit in the long run. In addition, small businesses often lack the technical expertise necessary for effective waste minimization.

Those small businesses that are unable to minimize waste generation will either incur higher costs to operate their businesses or, if allowed under federal and state regulations, manage their hazardous wastes using unregulated disposal options. Many small businesses, because they generate less than 100 kg per month or less than 10 kg of acutely hazardous waste per month, are classified as conditionally exempt small quantity generators (CESQGs). CESQGs are exempt from many of the generator requirements under 40 CFR 262 and are not required under the federal RCRA regulations to manage their wastes in TSDFs. Many CESQGs, however, send their wastes to third-party collection companies who mix CESQG waste with waste from larger generators and manage it as a fully regulated hazardous waste. Increases in waste management costs due to today's proposal could encourage some number of third-party collection companies to segregate CESQG wastes and manage them using less expensive, yet legal, alternatives, such as unpermitted boilers, space heaters, and non-TSDF cement kilns.

EPA plans to revise the Regulatory Impact Assessment (RIA) issued with today's rule to include additional analysis, as appropriate and feasible, focusing on these issues. EPA is seeking comments on any of the issues raised here.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider impact on ''small entities'' throughout the regulatory process. Section 603 of the RFA calls for an initial screening analysis to be preformed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and governmental jurisdictions subject to regulation.''

EPA used information from Dunn & Bradstreet, the American Business Directory and other sources to identify small businesses. Based on the number of employees and annual sales information, EPA identified 11 firms which may be small entities. The proposed rule is unlikely to adversely affect many small businesses for two important reasons. First, few combustion units are owned by businesses that meet the SBA definition as a small business. Furthermore, over one-third of those that are considered small have a relatively small number of employees, but have an annual sales in excess of $50 million per year.

Second, small entities most impacted by the rule are those that burn very little waste and hence face very high cost per ton burned. Those that burn very little waste in their existing units will discontinue burning hazardous waste rather than comply with the proposed rule and dispose of waste off-site. EPA looked at the costs of alternative disposal and concludes the costs of discontinuing burning wastes will not be so high as to result in a significant impact. Therefore, EPA believes that today's proposed rule will have a minor impact on small businesses.

VI. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Two Information Collection Request (ICR) documents have been prepared by EPA. One ICR document covers the reporting and recordkeeping requirements for NESHAPs from hazardous waste combustors and the other ICR document covers the new and amended reporting and recordkeeping requirements for boilers and industrial furnaces burning hazardous waste. Copies may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., SW; Washington, DC 20460 or by calling (202) 260–2740.

The annual public reporting and recordkeeping burden for the NESHAP collection of information is estimated to average 36 hours per response. The annual public reporting and recordkeeping burden for the BIF collection of information is estimated to average 2 hours per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

VII. Request for Data

EPA requests the following data to help refine the RIA:

(1) Waste Quantity Burned: data on hazardous and non-hazardous waste burned at on-site facilities (by combustion unit) broken down by quantity of liquids, sludges, and solids.

(2) Price Data: Aggregate prices by waste type and how they vary by geographic region and waste contamination level.

(3) Combustion Alternatives:

—Information on likelihood of on-site incinerators shipping waste to on-site boilers as an alternative.

—Realistic waste minimization practices. Information on how combustion and waste minimization prices become attractive.

—Information on the type of commercial incinerator most likely to receive waste from on-site facilities to ship waste off-site.

(4) Capacity: practical capacity levels for each combustion unit.

Appendix—Comparable Fuel Constituent and Physical Specifications

Note: All numbers in the tables of this appendix are expressed to *two* significant figures.

TABLE 1.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE GASOLINE SPECIFICATION

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limit (mg/kg)
Total Nitrogen as N	9.2	.....
Total Halogens as Cl	25	.....
Antimony	(1)	7.0
Arsenic	(1)	0.14
Barium	(1)	14
Beryllium	(1)	0.70
Cadmium	(1)	0.70
Chromium	(1)	1.4
Cobalt	(1)	2.8
Lead	(1)	7.0
Manganese	(1)	0.70
Mercury	(1)	0.10
Nickel	(1)	2.8
Selenium	(1)	0.14
Silver	(1)	1.4
Thallium	(1)	14
α-Naphthylamine	(1)	670
α,α-Dimethylphenethylamine	(1)	670
β-Naphthylamine	(1)	670
1,1-Dichloroethylene	(1)	34
1,1,2-Trichloroethane	(1)	34
1,1,2,2-Tetrachloroethane	(1)	34
1,2-Dibromo-3-chloropropane	(1)	34
1,2-Dichloroethylene (cis- or trans-)	(1)	34
1,2,3-Trichloropropane	(1)	34
1,2,4-Trichlorobenzene	(1)	670
1,2,4,5-Tetrachlorobenzene	(1)	670
1,3,5-Trinitrobenzene	(1)	670
1,4-Dichloro-2-butene (cis- or trans-)	(1)	34
1,4-Naphthoquinone	(1)	670
2-Acetylaminofluorene	(1)	670
2-Chloroethyl vinyl ether	(1)	34
2-Chloronaphthalene	(1)	670
2-Chlorophenol	(1)	670
2-Piccoline	(1)	670
2,3,4,6-Tetrachlorophenol	(1)	670
2,4-Dichlorophenol	(1)	670
2,4-Dimethylphenol	(1)	670
2,4-Dinitrophenol	(1)	670
2,4-Dinitrotoluene	(1)	670
2,4,5-Trichlorophenol	(1)	670
2,4,6-Trichlorophenol	(1)	670
2,6-Dichlorophenol	(1)	670
2,6-Dinitrotoluene	(1)	670
3–3′-Dimethylbenzidine	(1)	670
3–Methylcholanthrene	(1)	670
3,3′-Dichlorobenzidine	(1)	670
4-Aminobiphenyl	(1)	670
4-Bromophenyl phenyl ether	(1)	670
4,6-Dinitro-o-cresol	(1)	670
5-Nitro-o-toluidine	(1)	670
7,12-Dimethylbenz[a]anthracene	(1)	670
Acetonitrile	(1)	34
Acetophenone	(1)	670
Acrolein	(1)	34
Acrylonitrile	(1)	34
Allyl chloride	(1)	34
Aniline	(1)	670
Aramite	(1)	670
Benzene	3500	.....
Benzidine	(1)	670
Benzo [a] anthracene	340	
Benzo [a] pyrene	340	
Benzo [b] fluoranthene	(1)	670
Benzo [k] fluoranthene	(1)	670
Bromoform	(1)	34
Butyl benzyl phthalate	(1)	670

TABLE 1.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE GASOLINE SPECIFICATION—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limit (mg/kg)
Carbon disulfide	(1)	34
Carbon tetrachloride	(1)	34
Chlorobenzene	(1)	34
Chlorobenzilate	(1)	670
Chloroform	(1)	34
Chloroprene	(1)	34
Chrysene	340	.....
cis-1,3-Dichloropropene	(1)	34
Cresol (o-, m-, or p-)	(1)	670
Di-n-butyl phthalate	(1)	670
Di-n-octyl phthalate	340	.....
Diallate	(1)	670
Dibenzo [a,h] anthracene	340	
Dibenz [a,j] acridine	(1)	670
Dichlorodifluoromethane	(1)	34
Diethyl phthalate	(1)	670
Dimethoate	(1)	670
Dimethyl phthalate	(1)	670
Dinoseb	(1)	670
Diphenylamine	(1)	670
Disulfoton	(1)	670
Ethyl methacrylate	(1)	34
Ethyl methanesulfonate	(1)	670
Famphur	(1)	670
Fluoranthene	(1)	670
Fluorene	(1)	670
Hexachlorobenzene	(1)	670
Hexachlorobutadiene	(1)	670
Hexachlorocyclopentadiene	(1)	670
Hexachloroethane	(1)	670
Hexachlorophene	(1)	17000
Hexachloropropene	(1)	670
Indeno(1,2,3-cd) pyrene	(1)	670
Isobutyl alcohol	(1)	34
Isodrin	(1)	670
Isosafrole	(1)	670
Kepone	(1)	1300
m-Dichlorobenzene	(1)	670
Methacrylonitrile	(1)	34
Methapyrilene	(1)	670
Methyl bromide	(1)	34
Methyl chloride	(1)	34
Methyl ethyl ketone	(1)	34
Methyl iodide	(1)	34
Methyl methacrylate	(1)	34
Methyl methanesulfonate	(1)	670
Methyl parathion	(1)	670
Methylene chloride	(1)	34
N-Nitrosodi-n-butylamine	(1)	670
N-Nitrosodiethylamine	(1)	670
N-Nitrosomethylethylamine	(1)	670
N-Nitrosomorpholine	(1)	670
N-Nitrosopiperidine	(1)	670
N-Nitrosopyrrolidine	(1)	670
Naphthalene	2800	.....
Nitrobenzene	(1)	670
o-Dichlorobenzene	(1)	670
o-Toluidine	(1)	670
O,O-Diethyl O-pyrazinyl phospho- thioate	(1)	670
O,O,O-Triethyl phosphorothionate	(1)	670
p-(Dimethylamino) azobenzene	(1)	670
p-Chloro-m-cresol	(1)	670
p-Chloroaniline	(1)	670
p-Dichlorobenzene	(1)	670
p-Nitroaniline	(1)	670
p-Nitrophenol	(1)	670
p-Phenylenediamine	(1)	670
Parathion	(1)	670
Pentachlorobenzene	(1)	670
Pentachloroethane	(1)	34

TABLE 1.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE GASOLINE SPECIFICATION—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limit (mg/kg)
Pentachloronitrobenzene	(1)	670
Pentachlorophenol	(1)	670
Phenacetin	(1)	670
Phenol	(1)	670
Phorate	(1)	670
Pronamide	(1)	670
Pyridine	(1)	670
Safrole	(1)	670
Tetrachloroethylene	(1)	34
Tetraethyldithiopyrophosphate	(1)	670
Toluene	35000	.....
Trichloroethylene	(1)	34
Trichlorofluoromethane	(1)	34
Vinyl Chloride	(1)	34

[1] Non-detect.

TABLE 2.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE NUMBER 2 FUEL OIL SPECIFICATION

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limits (mg/kg)
Total Nitrogen as N	110	.....
Total Halogens as Cl	25	.....
Antimony	(1)	6.0
Arsenic	(1)	0.12
Barium	(1)	12
Beryllium	(1)	0.60
Cadmium	(1)	0.60
Chromium	(1)	1.2
Cobalt	(1)	2.4
Lead	6.6	.....
Manganese	(1)	0.60
Mercury	(1)	0.11
Nickel	(1)	2.4
Selenium	0.070	.....
Silver	(1)	1.2
Thallium	(1)	12
α-Naphthylamine	(1)	1200
α,α-Dimethylphenethylamine	(1)	1200
β-Naphthylamine	(1)	1200
1,1-Dichloroethylene	(1)	34
1,1,2-Trichloroethane	(1)	34
1,1,2,2-Tetrachloroethane	(1)	34
1,2-Dibromo-3-chloropropane	(1)	34
1,2-Dichloroethylene (cis- or trans-)	(1)	34
1,2,3-Trichloropropane	(1)	34
1,2,4-Trichlorobenzene	(1)	1200
1,2,4,5-Tetrachlorobenzene	(1)	1200
1,3,5-Trinitrobenzene	(1)	1200
1,4-Dichloro-2-butene (cis- or trans-)	(1)	34
1,4-Naphthoquinone	(1)	1200
2-Acetylaminofluorene	(1)	1200
2-Chloroethyl vinyl ether	(1)	34
2-Chloronaphthalene	(1)	1200
2-Chlorophenol	(1)	1200
2-Piccoline	(1)	1200
2,3,4,6-Tetrachlorophenol	(1)	1200
2,4-Dichlorophenol	(1)	1200
2,4-Dimethylphenol	(1)	1200
2,4-Dinitrophenol	(1)	1200
2,4-Dinitrotoluene	(1)	1200
2,4,5-Trichlorophenol	(1)	1200
2,4,6-Trichlorophenol	(1)	1200
2,6-Dichlorophenol	(1)	1200
2,6-Dinitrotoluene	(1)	1200
3-3′-Dimethylbenzidine	(1)	1200
3-Methylcholanthrene	(1)	1200
3,3′-Dichlorobenzidine	(1)	1200

TABLE 2.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE NUMBER 2 FUEL OIL SPECIFICATION—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limits (mg/kg)
4-Aminobiphenyl	(1)	1200
4-Bromophenyl phenyl ether	(1)	1200
4,6-Dinitro-o-cresol	(1)	1200
5-Nitro-o-toluidine	(1)	1200
7,12-Dimethylbenz[a]anthracene	(1)	1200
Acetonitrile	(1)	34
Acetophenone	(1)	1200
Acrolein	(1)	34
Acrylonitrile	(1)	34
Allyl chloride	(1)	34
Aniline	(1)	1200
Aramite	(1)	1200
Benzene	21	.....
Benzidine	(1)	1200
Benzo[a]anthracene	610	.....
Benzo[a]pyrene	610	.....
Benzo[b]fluoranthene	(1)	1200
Benzo[k]fluoranthene	(1)	1200
Bromoform	(1)	34
Butyl benzyl phthalate	(1)	1200
Carbon disulfide	(1)	34
Carbon tetrachloride	(1)	34
Chlorobenzene	(1)	34
Chlorobenzilate	(1)	1200
Chloroform	(1)	34
Chloroprene	(1)	34
Chrysene	610	.....
cis-1,3-Dichloropropene	(1)	34
Cresol (o-, n-, or p-)	(1)	1200
Di-n-butyl phthalate	(1)	1200
Di-n-octyl phthalate	610	.....
Diallate	(1)	1200
Dibenzo[a,h]anthracene	610	.....
Dibenz[a,j]acridine	(1)	1200
Dichlorodifluoromethane	(1)	34
Diethyl phthalate	(1)	1200
Dimethoate	(1)	1200
Dimethyl phthalate	(1)	1200
Dinoseb	(1)	1200
Diphenylamine	(1)	1200
Disulfoton	(1)	1200
Ethyl methacrylate	(1)	34
Ethyl methanesulfonate	(1)	1200
Famphur	(1)	1200
Fluoranthene	(1)	1200
Fluorene	(1)	1200
Hexachlorobenzene	(1)	1200
Hexachlorobutadiene	(1)	1200
Hexachlorocyclopentadiene	(1)	1200
Hexachloroethane	(1)	1200
Hexachlorophene	(1)	29000
Hexachloropropene	(1)	1200
Indeno(1,2,3-cd)pyrene	(1)	1200
Isobutyl alcohol	(1)	34
Isodrin	(1)	1200
Isosafrole	(1)	1200
Kepone	(1)	2300
m-Dichlorobenzene	(1)	1200
Methacrylonitrile	(1)	34
Methapyrilene	(1)	1200
Methyl bromide	(1)	34
Methyl chloride	(1)	34
Methyl ethyl ketone	(1)	34
Methyl iodide	(1)	34
Methyl methacrylate	(1)	34
Methyl methanesulfonate	(1)	1200
Methyl parathion	(1)	1200
Methylene chloride	(1)	34
N-Nitrosodi-n-butylamine	(1)	1200
N-Nitrosomorpholine	(1)	1200

TABLE 2.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE NUMBER 2 FUEL OIL SPECIFICATION—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limits (mg/kg)
N-Nitrosopiperidine	(1)	1200
N-Nitrosopyrrolidine	(1)	1200
N-Nitrosodiethylamine	(1)	1200
N-Nitrosomethylethylamine	(1)	1200
Naphthalene	1200	.....
Nitrobenzene	(1)	1200
o-Dichlorobenzene	(1)	1200
o-Toluidine	(1)	1200
O,O Diethyl O-pyrazinyl phospho-thioate	(1)	1200
O,O,O-Triethyl phosphorothionate	(1)	1200
p-(Dimethylamino) azobenzene	(1)	1200
p-Chloro-m-cresol	(1)	1200
p-Chloroaniline	(1)	1200
p-Dichlorobenzene	(1)	1200
p-Nitroaniline	(1)	1200
p-Nitrophenol	(1)	1200
p-Phenylenediamine	(1)	1200
Parathion	(1)	1200
Pentachlorobenzene	(1)	1200
Pentachloroethane	(1)	34
Pentachloronitrobenzene	(1)	1200
Pentachlorophenol	(1)	1200
Phenacetin	(1)	1200
Phenol	(1)	1200
Phorate	(1)	1200
Pronamide	(1)	1200
Pyridine	(1)	1200
Safrole	(1)	1200
Tetrachloroethylene	(1)	34
Tetraethyldithiopyrophosphate	(1)	1200
Toluene	150	.....
Trichloroethylene	(1)	34
Trichlorofluoromethane	(1)	34
Vinyl Chloride	(1)	34

[1] Non-detect.

TABLE 3.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE NUMBER 4 FUEL OIL SPECIFICATION

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limits (mg/kg)
Total Nitrogen as N	1500	.....
Total Halogens as Cl	10	.....
Antimony	(1)	11
Arsenic	(1)	0.23
Barium	(1)	23
Beryllium	(1)	1.1
Cadmium	(1)	1.1
Chromium	(1)	2.3
Cobalt	(1)	4.6
Lead	9.9	.....
Manganese	(1)	1.1
Mercury	(1)	0.18
Nickel	16	.....
Selenium	0.13	.....
Silver	(1)	2.3
Thallium	(1)	23
α-Naphthylamine	(1)	200
α,α-Dimethylphenethylamine	(1)	200
β-Naphthylamine	(1)	200
1,1-Dichloroethylene	(1)	17
1,1,2-Trichloroethane	(1)	17
1,1,2,2-Tetrachloroethane	(1)	17
1,2-Dibromo-3-chloropropane	(1)	17
1,2-Dichloroethylene (cis- or trans-)	(1)	17
1,2,3-Trichloropropane	(1)	17
1,2,4-Trichlorobenzene	(1)	200
1,2,4,5-Tetrachlorobenzene	(1)	200

TABLE 3.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE NUMBER 4 FUEL OIL SPECIFICATION—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limits (mg/kg)
1,3,5-Trinitrobenzene	(1)	200
1,4-Dichloro-2-butene (cis- or trans-)	(1)	17
1,4-Naphthoquinone	(1)	200
2-Acetylaminofluorene	(1)	200
2-Chloroethyl vinyl ether	(1)	17
2-Chloronaphthalene	(1)	200
2-Chlorophenol	(1)	200
2-Piccoline	(1)	200
2,3,4,6-Tetrachlorophenol	(1)	200
2,4-Dichlorophenol	(1)	200
2,4-Dimethylphenol	(1)	200
2,4-Dinitrophenol	(1)	200
2,4-Dinitrotoluene	(1)	200
2,4,5-Trichlorophenol	(1)	200
2,4,6-Trichlorophenol	(1)	200
2,6-Dichlorophenol	(1)	200
2,6-Dinitrotoluene	(1)	200
3-3′-Dimethylbenzidine	(1)	200
3-Methylcholanthrene	(1)	200
3,3′-Dichlorobenzidine	(1)	200
4-Aminobiphenyl	(1)	200
4-Bromophenyl phenyl ether	(1)	200
4,6-Dinitro-o-cresol	(1)	200
5-Nitro-o-toluidine	(1)	200
7,12-Dimethylbenz[a]anthracene	(1)	200
Acetonitrile	(1)	17
Acetophenone	(1)	200
Acrolein	(1)	17
Acrylonitrile	(1)	17
Allyl chloride	(1)	17
Aniline	(1)	200
Aramite	(1)	200
Benzene	22	
Benzidine	(1)	200
Benzo[a]anthracene	100	
Benzo[a]pyrene	100	
Benzo[b]fluoranthene	(1)	200
Benzo[k]fluoranthene	(1)	200
Bromoform	(1)	17
Butyl benzyl phthalate	(1)	200
Carbon disulfide	(1)	17
Carbon tetrachloride	(1)	17
Chlorobenzene	(1)	17
Chlorobenzilate	(1)	200
Chloroform	(1)	17
Chloroprene	(1)	17
Chrysene	100	
cis-1,3-Dichloropropene	(1)	17
Cresol (o-, m-, or p-)	(1)	200
Di-n-butyl phthalate	(1)	200
Di-n-octyl phthalate	100	
Diallate	(1)	200
Dibenzo[a,h]anthracene	100	
Dibenz[a,j]acridine	(1)	200
Dichlorodifluoromethane	(1)	17
Diethyl phthalate	(1)	200
Dimethoate	(1)	200
Dimethyl phthalate	(1)	200
Dinoseb	(1)	200
Diphenylamine	(1)	200
Disulfoton	(1)	200
Ethyl methacrylate	(1)	17
Ethyl methanesulfonate	(1)	200
Famphur	(1)	200
Fluoranthene	(1)	200
Fluorene	110	
Hexachlorobenzene	(1)	200
Hexachlorobutadiene	(1)	200
Hexachlorocyclopentadiene	(1)	200
Hexachloroethane	(1)	200

TABLE 3.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE NUMBER 4 FUEL OIL SPECIFICATION—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limits (mg/kg)
Hexachlorophene	(1)	5000
Hexachloropropene	(1)	200
Indeno(1,2,3-cd)pyrene	(1)	200
Isobutyl alcohol	(1)	17
Isodrin	(1)	200
Isosafrole	(1)	200
Kepone	(1)	400
m-Dichlorobenzene	(1)	200
Methacrylonitrile	(1)	17
Methapyrilene	(1)	200
Methyl bromide	(1)	17
Methyl chloride	(1)	17
Methyl ethyl ketone	(1)	17
Methyl iodide	(1)	17
Methyl methacrylate	(1)	17
Methyl methanesulfonate	(1)	200
Methyl parathion	(1)	200
Methylene chloride	(1)	17
N-Nitrosodi-n-butylamine	(1)	200
N-Nitrosomethylethylamine	(1)	200
N-Nitrosomorpholine	(1)	200
N-Nitrosopiperidine	(1)	200
N-Nitrosopyrrolidine	(1)	200
N-Nitrosodiethylamine	(1)	200
Naphthalene	340	
Nitrobenzene	(1)	200
o-Dichlorobenzene	(1)	200
o-Toluidine	(1)	200
O,O Diethyl O-pyrazinyl phosphoro- thioate	(1)	200
O,O,O-Triethyl phosphorothionate	(1)	200
p-(Dimethylamino)azobenzene	(1)	200
p-Chloro-m-cresol	(1)	200
p-Chloroaniline	(1)	200
p-Dichlorobenzene	(1)	200
p-Nitroaniline	(1)	200
p-Nitrophenol	(1)	200
p-Phenylenediamine	(1)	200
Parathion	(1)	200
Pentachlorobenzene	(1)	200
Pentachloroethane	(1)	17
Pentachloronitrobenzene	(1)	200
Pentachlorophenol	(1)	200
Phenacetin	(1)	200
Phenol	(1)	200
Phorate	(1)	200
Pronamide	(1)	200
Pyridine	(1)	200
Safrole	(1)	200
Tetrachloroethylene	(1)	17
Tetraethyldithiopyrophosphate	(1)	200
Toluene	110	
Trichloroethylene	(1)	17
Trichlorofluoromethane	(1)	17
Vinyl Chloride	(1)	17

[1] Non-detect.

TABLE 4.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE NUMBER 6 FUEL OIL SPECIFICATION

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection level (mg/kg)
Total Nitrogen as N	3500	.....
Total Halogens as Cl	10	.....
Antimony	6.5	.....
Arsenic	(1)	0.20
Barium	(1)	20
Beryllium	(1)	1.0
Cadmium	(1)	1.0

TABLE 4.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE NUMBER 6 FUEL OIL SPECIFICATION—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection level (mg/kg)
Chromium	(1)	2.0
Cobalt	(1)	4.1
Lead	30	.....
Manganese	(1)	1.0
Mercury	(1)	0.22
Nickel	36	.....
Selenium	0.12	.....
Silver	(1)	2.0
Thallium	(1)	20
α-Naphthylamine	(1)	640
α,α-Dimethylphenethylamine	(1)	640
β-Naphthylamine	(1)	640
1,1-Dichloroethylene	(1)	20
1,1,2-Trichloroethane	(1)	20
1,1,2,2-Tetrachloroethane	(1)	20
1,2-Dibromo-3-chloropropane	(1)	20
1,2-Dichloroethylene (cis- or trans-)	(1)	20
1,2,3-Trichloropropane	(1)	20
1,2,4-Trichlorobenzene	(1)	640
1,2,4,5-Tetrachlorobenzene	(1)	640
1,3,5-Trinitrobenzene	(1)	640
1,4-Dichloro-2-butene (cis- or trans-)	(1)	20
1,4-Naphthoquinone	(1)	640
2-Acetylaminofluorene	(1)	640
2-Chloroethyl vinyl ether	(1)	20
2-Chloronaphthalene	(1)	640
2-Chlorophenol	(1)	640
2-Piccoline	(1)	640
2,3,4,6-Tetrachlorophenol	(1)	640
2,4-Dichlorophenol	(1)	640
2,4-Dimethylphenol	(1)	640
2,4-Dinitrophenol	(1)	640
2,4-Dinitrotoluene	(1)	640
2,4,5-Trichlorophenol	(1)	640
2,4,6-Trichlorophenol	(1)	640
2,6-Dichlorophenol	(1)	640
2,6-Dinitrotoluene	(1)	640
3-3′-Dimethylbenzidine	(1)	640
3-Methylcholanthrene	(1)	640
3,3′-Dichlorobenzidine	(1)	640
4-Aminobiphenyl	(1)	640
4-Bromophenyl phenyl ether	(1)	640
4,6-Dinitro-o-cresol	(1)	640
5-Nitro-o-toluidine	(1)	640
7,12-Dimethylbenz[a]anthracene	(1)	640
Acetonitrile	(1)	20
Acetophenone	(1)	640
Acrolein	(1)	20
Acrylonitrile	(1)	20
Allyl chloride	(1)	20
Aniline	(1)	640
Aramite	(1)	640
Benzene	11	.....
Benzidine	(1)	640
Benzo[a]anthracene	930	.....
Benzo[a]pyrene	530	.....
Benzo[b]fluoranthene	420	.....
Benzo[k]fluoranthene	(1)	640
Bromoform	(1)	20
Butyl benzyl phthalate	(1)	640
Carbon disulfide	(1)	20
Carbon tetrachloride	(1)	20
Chlorobenzene	(1)	20
Chlorobenzilate	(1)	640
Chloroform	(1)	20
Chloroprene	(1)	20
Chrysene	1300	.....
cis-1,3-Dichloropropene	(1)	20
Cresol (o-, m-, p-)	(1)	640
Di-n-butylphthalate	(1)	640

TABLE 4.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE NUMBER 6 FUEL OIL SPECIFICATION—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection level (mg/kg)
Di-n-octyl phthalate	350	.....
Diallate	(1)	640
Dibenzo[a,h]anthracene	350	.....
Dibenz[a,j]acridine	(1)	640
Dichlorodifluoromethane	(1)	20
Diethyl phthalate	(1)	640
Dimethoate	(1)	640
Dimethyl phthalate	(1)	640
Dinoseb	(1)	640
Diphenylamine	(1)	640
Disulfoton	(1)	640
Ethyl methacrylate	(1)	20
Ethyl methanesulfonate	(1)	640
Famphur	(1)	640
Fluoranthene	(1)	640
Fluorene	350	.....
Hexachlorobenzene	(1)	640
Hexachlorobutadiene	(1)	640
Hexachlorocyclopentadiene	(1)	640
Hexachloroethane	(1)	640
Hexachlorophene	(1)	16000
Hexachloropropene	(1)	640
Indeno(1,2,3-cd)pyrene	350	.....
Isobutyl alcohol	(1)	20
Isodrin	(1)	640
Isosafrole	(1)	640
Kepone	(1)	1300
m-Dichlorobenzene	(1)	640
Methacrylonitrile	(1)	20
Methapyrilene	(1)	640
Methyl bromide	(1)	20
Methyl chloride	(1)	20
Methyl ethyl ketone	(1)	20
Methyl iodide	(1)	20
Methyl methacrylate	(1)	20
Methyl methanesulfonate	(1)	640
Methyl parathion	(1)	640
Methylene chloride	(1)	20
N-Nitrosodi-n-butylamine	(1)	640
N-Nitrosomethylethylamine	(1)	640
N-Nitrosomorpholine	(1)	640
N-Nitrosopiperidine	(1)	640
N-Nitrosopyrrolidine	(1)	640
N-Nitrosodiethylamine	(1)	640
Naphthalene	570	.....
Nitrobenzene	(1)	640
o-Dichlorobenzene	(1)	640
o-Toluidine	(1)	1300
O,O Diethyl O-pyrazinyl phosphothioate	(1)	640
O,O,O-Triethyl phosphorothionate	(1)	640
p-(Dimethylamino)azobenzene	(1)	640
p-Chloro-m-cresol	(1)	640
p-Chloroaniline	(1)	640
p-Dichlorobenzene	(1)	640
p-Nitroaniline	(1)	640
p-Nitrophenol	(1)	640
p-Phenylenediamine	(1)	640
Parathion	(1)	640
Pentachlorobenzene	(1)	640
Pentachloroethane	(1)	20
Pentachloronitrobenzene	(1)	640
Pentachlorophenol	(1)	640
Phenacetin	(1)	640
Phenol	(1)	640
Phorate	(1)	640
Pronamide	(1)	640
Pyridine	(1)	640
Safrole	(1)	640
Tetrachloroethylene	(1)	20
Tetraethyldithiopyrophosphate	(1)	640

TABLE 4.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE NUMBER 6 FUEL OIL SPECIFICATION—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection level (mg/kg)
Toluene	41	.....
Trichloroethylene	(1)	20
Trichlorofluoromethane	(1)	20
Vinyl Chloride	(1)	20

[1] Non-detect.

TABLE 5.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE COMPOSITE FUEL SPECIFICATION—50TH PERCENTILE ANALYSIS

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limits (mg/kg)
Total Nitrogen as N	170	.....
Total Halogens as Cl	10	.....
Antimony	4.7	.....
Arsenic	(1)	0.14
Barium	(1)	18
Beryllium	(1)	0.90
Cadmium	(1)	0.90
Chromium	(1)	1.8
Cobalt	(1)	3.6
Lead	7.0	.....
Manganese	(1)	0.90
Mercury	(1)	0.11
Nickel	2.4	.....
Selenium	0.090	.....
Silver	(1)	1.8
Thallium	(1)	18
α-Naphthylamine	(1)	220
α,α-Dimethylphenethylamine	(1)	220
β-Naphthylamine	(1)	220
1,1-Dichloroethylene	(1)	17
1,1,2-Trichloroethane	(1)	17
1,1,2,2-Tetrachloroethane	(1)	17
1,2-Dibromo-3-chloropropane	(1)	17
1,2-Dichloroethylene (cis- or trans-)	(1)	17
1,2,3-Trichloropropane	(1)	17
1,2,4-Trichlorobenzene	(1)	220
1,2,4,5-Tetrachlorobenzene	(1)	220
1,3,5-Trinitrobenzene	(1)	220
1,4-Dichloro-2-butene (cis- or trans-)	(1)	17
1,4-Naphthoquinone	(1)	220
2-Acetylaminofluorene	(1)	220
2-Chloroethyl vinyl ether	(1)	17
2-Chloronaphthalene	(1)	220
2-Chlorophenol	(1)	220
2-Piccoline	(1)	220
2,3,4,6-Tetrachlorophenol	(1)	220
2,4-Dichlorophenol	(1)	220
2,4-Dimethylphenol	(1)	220
2,4-Dinitrophenol	(1)	220
2,4-Dinitrotoluene	(1)	220
2,4,5-Trichlorophenol	(1)	220
2,4,6-Trichlorophenol	(1)	220
2,6-Dichlorophenol	(1)	220
2,6-Dinitrotoluene	(1)	220
3-3′-Dimethylbenzidine	(1)	220
3-Methylcholanthrene	(1)	220
3,3′-Dichlorobenzidine	(1)	220
4-Aminobiphenyl	(1)	220
4-Bromophenyl phenyl ether	(1)	220
4,6-Dinitro-o-cresol	(1)	220
5-Nitro-o-toluidine	(1)	220
7,12-Dimethylbenz[a]anthracene	(1)	220
Acetonitrile	(1)	17
Acetophenone	(1)	220
Acrolein	(1)	17
Acrylonitrile	(1)	17

TABLE 5.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE COMPOSITE FUEL SPECIFICATION—50TH PERCENTILE ANALYSIS—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limits (mg/kg)
Allyl chloride	(1)	17
Aniline	(1)	220
Aramite	(1)	220
Benzene	21	.....
Benzidine	(1)	220
Benzo[a]anthracene	140	.....
Benzo[a]pyrene	140	.....
Benzo[b]fluoranthene	140	.....
Benzo[k]fluoranthene	(1)	220
Bromoform	(1)	17
Butyl benzyl phthalate	(1)	220
Carbon disulfide	(1)	17
Carbon tetrachloride	(1)	17
Chlorobenzene	(1)	17
Chlorobenzilate	(1)	220
Chloroform	(1)	17
Chloroprene	(1)	17
Chrysene	140	.....
cis-1,3-Dichloropropene	(1)	17
Cresol (o-, n-, or p-)	(1)	220
Di-n-butyl phthalate	(1)	220
Di-n-octyl phthalate	120	.....
Diallate	(1)	220
Dibenzo[a,h]anthracene	140	.....
Dibenz[a,j]acridine	(1)	220
Dichlorodifluoromethane	(1)	17
Diethyl phthalate	(1)	220
Dimethoate	(1)	220
Dimethyl phthalate	(1)	220
Dinoseb	(1)	220
Diphenylamine	(1)	220
Disulfoton	(1)	220
Ethyl methacrylate	(1)	17
Ethyl methanesulfonate	(1)	220
Famphur	(1)	220
Fluoranthene	(1)	220
Fluorene	120	.....
Hexachlorobenzene	(1)	220
Hexachlorobutadiene	(1)	220
Hexachlorocyclopentadiene	(1)	220
Hexachloroethane	(1)	220
Hexachlorophene	(1)	5500
Hexachloropropene	(1)	220
Indeno(1,2,3-cd)pyrene	140	.....
Isobutyl alcohol	(1)	17
Isodrin	(1)	220
Isosafrole	(1)	220
Kepone	(1)	440
m-Dichlorobenzene	(1)	220
Methacrylonitrile	(1)	17
Methapyrilene	(1)	220
Methyl bromide	(1)	17
Methyl chloride	(1)	17
Methyl ethyl ketone	(1)	17
Methyl iodide	(1)	17
Methyl methacrylate	(1)	17
Methyl methanesulfonate	(1)	220
Methyl parathion	(1)	220
Methylene chloride	(1)	17
N-Nitrosodi-n-butylamine	(1)	220
N-Nitrosomethylethylamine	(1)	220
N-Nitrosomorpholine	(1)	220
N-Nitrosopiperidine	(1)	220
N-Nitrosopyrrolidine	(1)	220
N-Nitrosodiethylamine	(1)	220
Naphthalene	360	.....
Nitrobenzene	(1)	220
o-Dichlorobenzene	(1)	220
o-Toluidine	(1)	270

TABLE 5.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE COMPOSITE FUEL SPECIFICATION—50TH PERCENTILE ANALYSIS—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limits (mg/kg)
O,O-Diethyl O-pyrazinyl phosphothioate	(1)	220
O,O,O-Triethyl phosphorothinoate	(1)	220
p-(Dimethylamino) azobenzene	(1)	220
p-Chloro-m-cresol	(1)	220
p-Chloroaniline	(1)	220
p-Dichlorobenzene	(1)	220
p-Nitroaniline	(1)	220
p-Nitrophenol	(1)	220
p-Phenylenediamine	(1)	220
Parathion	(1)	220
Pentachlorobenzene	(1)	220
Pentachloroethane	(1)	17
Pentachloronitrobenzene	(1)	220
Pentachlorophenol	(1)	220
Phenacetin	(1)	220
Phenol	(1)	220
Phorate	(1)	220
Pronamide	(1)	220
Pyridine	(1)	220
Safrole	(1)	220
Tetrachloroethylene	(1)	17
Tetraethyldithiopyrophosphate	(1)	220
Toluene	110	.....
Trichloroethylene	(1)	17
Trichlorofluoromethane	(1)	17
Vinyl Chloride	(1)	17

[1] Non-detect.

TABLE 6.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE COMPOSITE FUEL SPECIFICATION—90TH PERCENTILE ANALYSIS

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limit (mg/kg)
Total Nitrogen as N	1800	.....
Total Halogens as Cl	25	.....
Antimony	5.8	.....
Arsenic	(1)	0.22
Barium	(1)	22
Beryllium	(1)	1.1
Cadmium	(1)	1.1
Chromium	(1)	2.2
Cobalt	(1)	4.4
Lead	22	.....
Manganese	(1)	1.1
Mercury	(1)	0.18
Nickel	18	.....
Selenium	0.12	.....
Silver	(1)	2.2
Thallium	(1)	22
α-Naphthylamine	(1)	700
α,α-Dimethylphenethylamine	(1)	700
β-Naphthylamine	(1)	700
1,1-Dichloroethylene	(1)	34
1,1,2-Trichloroethane	(1)	34
1,1,2,2-Tetrachloroethane	(1)	34
1,2-Dibromo-3-chloropropane	(1)	34
1,2-Dichloroethylene (cis- or trans-)	(1)	34
1,2,3-Trichloropropane	(1)	34
1,2,4-Trichlorobenzene	(1)	700
1,2,4,5-Tetrachlorobenzene	(1)	700
1,3,5-Trinitrobenzene	(1)	900
1,4-Dichloro-2-butene (cis- or trans-)	(1)	34
1,4-Naphthoquinone	(1)	700
2-Acetylaminofluorene	(1)	700
2-Chloroethyl vinyl ether	(1)	34
2-Chloronaphthalene	(1)	700

TABLE 6.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE COMPOSITE FUEL SPECIFICATION—90TH PERCENTILE ANALYSIS—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limit (mg/kg)
2-Chlorophenol	(1)	700
2-Piccoline	(1)	700
2,3,4,6-Tetrachlorophenol	(1)	700
2,4-Dichlorophenol	(1)	700
2,4-Dimethylphenol	(1)	700
2,4-Dinitrophenol	(1)	700
2,4-Dinitrotoluene	(1)	700
2,4,5-Trichlorophenol	(1)	700
2,4,6-Trichlorophenol	(1)	700
2,6-Dichlorophenol	(1)	700
2,6-Dinitrotoluene	(1)	700
3-3′-Dimethylbenzidine	(1)	700
3-Methylcholanthrene	(1)	700
3,3′-Dichlorobenzidine	(1)	700
4-Aminobiphenyl	(1)	700
4-Bromophenyl phenyl ether	(1)	700
4,6-Dinitro-o-cresol	(1)	700
5-Nitro-o-toluidine	(1)	700
7,12-Dimethylbenz[a]anthracene	(1)	700
Acetonitrile	(1)	34
Acetophenone	(1)	700
Acrolein	(1)	34
Acrylonitrile	(1)	34
Allyl chloride	(1)	34
Aniline	(1)	700
Aramite	(1)	700
Benzene	3300	.....
Benzidine	(1)	700
Benzo[a]anthracene	610	.....
Benzo[a]pyrene	530	.....
Benzo[b]fluoranthene	390	.....
Benzo[k]fluoranthene	(1)	700
Bromoform	(1)	34
Butyl benzyl phthalate	(1)	700
Carbon disulfide	(1)	34
Carbon tetrachloride	(1)	34
Chlorobenzene	(1)	34
Chlorobenzilate	(1)	700
Chloroform	(1)	34
Chloroprene	(1)	34
Chrysene	610	.....
cis-1,3-Dichloropropene	(1)	34
Cresol (o-, n-, or p-)	(1)	700
Di-n-butyl phthalate	(1)	700
Di-n-octyl phthalate	360	.....
Diallate	(1)	700
Dibenzo[a,h]anthracene	360	.....
Dibenz[a,j]acridine	(1)	700
Dichlorodifluoromethane	(1)	34
Diethyl phthalate	(1)	700
Dimethoate	(1)	700
Dimethyl phthalate	(1)	700
Dinoseb	(1)	700
Diphenylamine	(1)	700
Disulfoton	(1)	700
Ethyl methacrylate	(1)	34
Ethyl methanesulfonate	(1)	700
Famphur	(1)	700
Fluoranthene	(1)	700
Fluorene	360	.....
Hexachlorobenzene	(1)	700
Hexachlorobutadiene	(1)	700
Hexachlorocyclopentadiene	(1)	700
Hexachloroethane	(1)	700
Hexachlorophene	(1)	18000
Hexachloropropene	(1)	700
Indeno(1,2,3-cd)pyrene	360	.....
Isobutyl alcohol	(1)	34
Isodrin	(1)	700

TABLE 6.—DETECTION AND DETECTION LIMIT VALUES FOR A POSSIBLE COMPOSITE FUEL SPECIFICATION—90TH PERCENTILE ANALYSIS—Continued

Chemical name	Concentration limit (mg/kg at 10,000 BTU/lb)	Maximum detection limit (mg/kg)
Isosafrole	(1)	700
Kepone	(1)	1400
m-Dichlorobenzene	(1)	700
Methacrylonitrile	(1)	34
Methapyrilene	(1)	700
Methyl bromide	(1)	34
Methyl chloride	(1)	34
Methyl ethyl ketone	(1)	34
Methyl iodide	(1)	34
Methyl methacrylate	(1)	34
Methyl methanesulfonate	(1)	700
Methyl parathion	(1)	700
Methylene chloride	(1)	34
N-Nitrosodi-n-butylamine	(1)	700
N-Nitrosomethylethylamine	(1)	700
N-Nitrosomorpholine	(1)	700
N-Nitrosopiperidine	(1)	700
N-Nitrosopyrrolidine	(1)	700
N-Nitrosodiethylamine	(1)	700
Naphthalene	1300	.....
Nitrobenzene	(1)	700
o-Dichlorobenzene	(1)	700
o-Toluidine	(1)	1000
O,O-Diethyl O-pyrazinyl phophorothioate	(1)	700
O,O,O-Triethyl phosphorothionate	(1)	700
p-(Dimethylamino)azobenzene	(1)	700
p-Chloro-m-cresol	(1)	700
p-Chloroaniline	(1)	700
p-Dichlorobenzene	(1)	700
p-Nitroaniline	(1)	700
p-Nitrophenol	(1)	700
p-Phenylenediamine	(1)	700
Parathion	(1)	700
Pentachlorobenzene	(1)	700
Pentachloroethane	(1)	34
Pentachloronitrobenzene	(1)	700
Pentachlorophenol	(1)	700
Phenacetin	(1)	700
Phenol	(1)	700
Phorate	(1)	700
Pronamide	(1)	700
Pyridine	(1)	700
Safrole	(1)	700
Tetrachloroethylene	(1)	34
Tetraethyldithiopyrophosphate	(1)	700
Toluene	25,000	.....
Trichloroethylene	(1)	34
Trichlorofluoromethane	(1)	34
Vinyl Chloride	(1)	34

[1] Non-detect.

TABLE 7.—POSSIBLE PHYSICAL SPECIFICATIONS—FROM EPA'S DATA

Fuel type (physical param)	Gasoline	No. 2	No. 4	No. 6	Comp. 50th	Comp 90th
Flash Point (°C)	< 0	44	66	69	63	< 0
Kinematic viscosity (cSt @ 40°C)	.....	3.7	6.4	660	6.4	.....

Note: Kinematic viscosity for gasoline is less than measureable levels.

TABLE 8.—POSSIBLE PHYSICAL SPECIFICATIONS—FROM ASTM AND OTHER PUBLISHED LITERATURE

Fuel type [220] (parameter)	Gasoline	No. 2	No. 4	No. 6
Flashpoint (°C)	[221] – 42	38	55	60
Kinematic viscosity (cSt@40 °C)	[222] 0.6	3.4	24	50 (at 100 °C)

[220] Fuel oil specifications from ASTM Designation D 396–92, *Standard Specifications for Fuel Oils.*

[221] Felder, M.F., and R.W. Rousseau, *Elementary Principles of Chemical Processes,* John Wiley and Sons, New York, 1978, 420.
[222] Perry, Robert H., Don W. Green, and James O. Moloney, *Perry's Chemical Engineers' Handbook: Sixth Edition,* McGraw-Hill Book Co., New York, 1984, 9–13.

List of Subjects

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Dated: March 20, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

I. In part 60:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 USC 7401, 7411, 7414, 7416, 7429, and 7601.

2. Appendix B in Part 60 is amended by adding four entries to the table of contents, and by adding new performance specifications 4B, 8A, 10, 11, and 12:

Appendix B—Performance Specifications

* * * * *

Performance Specification 4B—Specifications and test procedures for carbon monoxide and oxygen continuous monitoring systems in stationary sources.

* * * * *

Performance Specification 8A—Specifications and test procedures for total hydrocarbon continuous monitoring systems in hazardous waste-burning stationary sources.

* * * * *

Performance Specification 10—Specifications and test procedures for multi-metals continuous monitoring sytems in stationary sources.

Performance Specification 11—Specifications and test procedures for particulate matter continuous monitoring systems in stationary sources.

Performance Specification 12—Specifications and test procedures for total mercury monitoring systems in stationary sources.

* * * * *

Performance Specification 4B—Specifications and test procedures for carbon monoxide and oxygen continuous monitoring systems in stationary sources.

1. Applicability and Principle

1.1 Applicability. This specification is to be used for evaluating the acceptability of carbon monoxide (CO) and oxygen (O_2) continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in the regulations. The CEMS may include, for certain stationary sources, (a) flow monitoring equipment to allow measurement

of the dry volume of stack effluent sampled, and (b) an automatic sampling system.

This specification is not designed to evaluate the installed CEMS' performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS' performance. The source owner or operator, however, is responsible to properly calibrate, maintain, and operate the CEMS. To evaluate the CEMS' performance, the Administrator may require, under Section 114 of the Act, the operator to conduct CEMS performance evaluations at other times besides the initial test.

The definitions, installation and measurement location specifications, test procedures, data reduction procedures, reporting requirements, and bibliography are the same as in PS 3 (for O_2) and PS 4A (for CO) except as otherwise noted below.

1.2 Principle. Installation and measurement location specifications, performance specifications, test procedures, and data reduction procedures are included in this specification. Reference method tests, calibration error tests, and calibration drift tests, and interferant tests are conducted to determine conformance of the CEMS with the specification.

2. Definitions

2.1 Continuous Emission Monitoring System (CEMS). This definition is the same as PS 2 Section 2.1 with the following addition. A continuous monitor is one in which the sample to be analyzed passes the measurement section of the analyzer without interruption.

2.2 Response Time. The time interval between the start of a step change in the system input and the time when the pollutant analyzer output reaches 95 percent of the final value.

2.3 Calibration Error (CE). The difference between the concentration indicated by the CEMS and the known concentration generated by a calibration source when the entire CEMS, including the sampling interface) is challenged. A CE test procedure is performed to document the accuracy and linearity of the CEMS over the entire measurement range.

3. Installation and Measurement Location Specifications

3.1 The CEMS Installation and Measurement Location. This specification is the same as PS 2 Section 3.1 with the following additions. Both the CO and O_2 monitors should be installed at the same general location. If this is not possible, they may be installed at different locations if the effluent gases at both sample locations are not stratified and there is no in-leakage of air between sampling locations.

3.1.1 Measurement Location. Same as PS 2 Section 3.1.1.

3.1.2 Point CEMS. The measurement point should be within or centrally located over the centroidal area of the stack or duct cross section.

3.1.3 Path CEMS. The effective measurement path should be (1) have at least 70 percent of the path within the inner 50 percent of the stack or duct cross sectional area, or (2) be centrally located over any part of the centroidal area.

3.2 Reference Method (RM) Measurement Location and Traverse Points. This specification is the same as PS 2 Section 3.2 with the following additions. When pollutant concentrations changes are due solely to diluent leakage and CO and O_2 are simultaneously measured at the same location, one half diameter may be used in place of two equivalent diameters.

3.3 Stratification Test Procedure. Stratification is defined as the difference in excess of 10 percent between the average concentration in the duct or stack and the concentration at any point more than 1.0 meter from the duct or stack wall. To determine whether effluent stratification exists, a dual probe system should be used to determine the average effluent concentration while measurements at each traverse point are being made. One probe, located at the stack or duct centroid, is used as a stationary reference point to indicate change in the effluent concentration over time. The second probe is used for sampling at the traverse points specified in method 1, appendix A, 40 CFR part 60. The monitoring system samples sequentially at the reference and traverse points throughout the testing period for five minutes at each point.

4. Performance and Equipment Specifications

4.1 Data Recorder Scale. For O_2, same as specified in PS 3, except that the span shall be 25 percent. The span of the O_2 may be higher if the O_2 concentration at the sampling point can be greater than 25 percent. For CO, same as specified in PS 4A, except that the low-range span shall be 200 ppm and the high range span shall be 3000 ppm. In addition, the scale for both CEMS must record all readings within a measurement range with a resolution of 0.5 percent.

4.2 Calibration Drift. For O_2, same as specified in PS 3. For CO, the same as specified in PS 4A except that the CEMS calibration must not drift from the reference value of the calibration standard by more than 3 percent of the span value on either the high or low range.

4.3 Relative Accuracy (RA). For O_2, same as specified in PS 3. For CO, the same as specified in PS 4A.

4.4 Calibration Error (CE). The mean difference between the CEMS and reference values at all three test points (see Table I) must be no greater than 5 percent of span value for CO monitors and 0.5 percent for O_2 monitors.

4.5 Response Time. The response time for the CO or O_2 monitor shall not exceed 2 minutes.

5. Performance Specification Test Procedure

5.1 Calibration Error Test and Response Time Test Periods. Conduct the CE and response time tests during the CD test period.

6.0 The CEMS Calibration Drift and Response Time Test Procedures

The response time test procedure is given in PS 4A, and must be carried out for both the CO and O_2 monitors.

7. Relative Accuracy and Calibration Error Test Procedures

7.1 Calibration Error Test Procedure. Challenge each monitor (both low and high range CO and O_2) with zero gas and EPA Protocol 1 cylinder gases at three measurement points within the ranges specified in Table I.

TABLE I.—CALIBRATION ERROR CONCENTRATION RANGES

Measurement point	CO low range (ppm)	CO high range (ppm)	O_2 (percent)
1	0–40	0–600	0–2
2	60–80	900–1200	8–10
3	140–160	2100–2400	14–16

Operate each monitor in its normal sampling mode as nearly as possible. The calibration gas shall be injected into the sample system as close to the sampling probe outlet as practical and should pass through all CEMS components used during normal sampling. Challenge the CEMS three non-consecutive times at each measurement point and record the responses. The duration of each gas injection should be sufficient to ensure that the CEMS surfaces are conditioned.

7.1.1 Calculations. Summarize the results on a data sheet. Average the differences between the instrument response and the certified cylinder gas value for each gas. Calculate the CE results according to:

$$CE = |d/FS| \times 100 \qquad (1)$$

Where d is the mean difference between the CEMS response and the known reference concentration and FS is the span value.

7.2 Relative Accuracy Test Procedure. Follow the RA test procedures in PS 3 (for O_2) section 3 and PS 4A (for CO) section 4.

7.3 Alternative RA Procedure. Under some operating conditions, it may not be possible to obtain meaningful results using the RA test procedure. This includes conditions where consistent, very low CO emission or low CO emissions interrupted periodically by short duration, high level spikes are observed. It may be appropriate in these circumstances to waive the RA test and substitute the following procedure.

Conduct a complete CEMS status check following the manufacturer's written instructions. The check should include operation of the light source, signal receiver, timing mechanism functions, data acquisition and data reduction functions, data recorders, mechanically operated functions, sample filters, sample line heaters, moisture traps, and other related functions of the CEMS, as applicable. All parts of the CEMS must be functioning properly before the RA requirement can be waived. The instrument must also successfully passed the CE and CD specifications. Substitution of the alternate procedure requires approval of the Regional Administrator.

8. Bibliography

1. 40 CFR Part 266, Appendix IX, Section 2, ''Performance Specifications for Continuous Emission Monitoring Systems.''

* * * * *

Performance Specification 8A—Specifications and test procedures for total hydrocarbon continuous monitoring systems in hazardous waste-burning stationary sources.

1. Applicability and Principle

1.1 Applicability. These performance specifications apply to hydrocarbon (HC) continuous emission monitoring systems (CEMS) installed on hazardous waste-burning stationary sources. The specifications include procedures which are intended to be used to evaluate the acceptability of the CEMS at the time of its installation or whenever specified in regulations or permits. The procedures are not designed to evaluate CEMS performance over an extended period of time. The source owner or operator is responsible for the proper calibration, maintenance, and operation of the CEMS at all times.

1.2 Principle. A gas sample is extracted from the source through a heated sample line and heated filter to a flame ionization detector (FID). Results are reported as volume concentration equivalents of propane. Installation and measurement location specifications, performance and equipment specifications, test and data reduction procedures, and brief quality assurance guidelines are included in the specifications. Calibration drift, calibration error, and response time tests are conducted to determine conformance of the CEMS with the specifications.

2. Definitions

2.1 Continuous Emission Monitoring System (CEMS). The total equipment used to acquire data, which includes sample extraction and transport hardware, analyzer, data recording and processing hardware, and software. The system consists of the following major subsystems:

2.1.1 Sample Interface. That portion of the system that is used for one or more of the following: Sample acquisition, sample transportation, sample conditioning, or protection of the analyzer from the effects of the stack effluent.

2.1.2 Organic Analyzer. That portion of the system that senses organic concentration and generates an output proportional to the gas concentration.

2.1.3 Data Recorder. That portion of the system that records a permanent record of the measurement values. The data recorder may include automatic data reduction capabilities.

2.2 Instrument Measurement Range. The difference between the minimum and maximum concentration that can be measured by a specific instrument. The minimum is often stated or assumed to be zero and the range expressed only as the maximum.

2.3 Span or Span Value. Full scale instrument measurement range. The span value shall be documented by the CEMS manufacturer with laboratory data.

2.4 Calibration Gas. A known concentration of a gas in an appropriate diluent gas.

2.5 Calibration Drift (CD). The difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment takes place. A CD test is performed to demonstrate the stability of the CEMS calibration over time.

2.6 Response Time. The time interval between the start of a step change in the system input (e.g., change of calibration gas) and the time when the data recorder displays 95 percent of the final value.

2.7 Accuracy. A measurement of agreement between a measured value and an accepted or true value, expressed as the percentage difference between the true and measured values relative to the true value. For these performance specifications, accuracy is checked by conducting a calibration error (CE) test.

2.8 Calibration Error (CE). The difference between the concentration indicated by the CEMS and the known concentration of the cylinder gas. A CE test procedure is performed to document the accuracy and linearity of the monitoring equipment over the entire measurement range.

2.9 Performance Specification Test (PST) Period. The period during which CD, CE, and response time tests are conducted.

2.10 Centroidal Area. A concentric area that is geometrically similar to the stack or duct cross section and is no greater than 1 percent of the stack or duct cross-sectional area.

3. Installation and Measurement Location Specifications

3.1 CEMS Installation and Measurement Locations. The CEMS shall be installed in a location in which measurements representative of the source's emissions can be obtained. The optimum location of the sample interface for the CEMS is determined by a number of factors, including ease of access for calibration and maintenance, the degree to which sample conditioning will be required, the degree to which it represents total emissions, and the degree to which it represents the combustion situation in the firebox. The location should be as free from in-leakage influences as possible and reasonably free from severe flow disturbances. The sample location should be at least two equivalent duct diameters downstream from the nearest control device, point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate occurs and at least 0.5 diameter upstream from the exhaust or control device. The equivalent duct diameter is calculated as per 40 CFR part 60, appendix A, method 1, section 2.1. If these criteria are not achievable or if the location is otherwise less than optimum, the possibility of stratification should be investigated as described in section 3.2. The measurement point shall be within the centroidal area of the stack or duct cross section.

3.2 Stratification Test Procedure. Stratification is defined as a difference in excess of 10 percent between the average concentration in the duct or stack and the concentration at any point more than 1.0 meter from the duct or stack wall. To determine whether effluent stratification exists, a dual probe system should be used to determine the average effluent concentration while measurements at each traverse point are being made. One probe, located at the stack or duct centroid, is used as a stationary reference point to indicate the change in effluent concentration over time. The second probe is used for sampling at the traverse points specified in 40 CFR part 60 appendix A, method 1. The monitoring system samples sequentially at the reference and traverse points throughout the testing period for five minutes at each point.

4. CEMS Performance and Equipment Specifications

If this method is applied in highly explosive areas, caution and care shall be exercised in choice of equipment and installation.

4.1 Flame Ionization Detector (FID) Analyzer. A heated FID analyzer capable of meeting or exceeding the requirements of these specifications. Heated systems shall maintain the temperature of the sample gas between 150 °C (300 °F) and 175 °C (350 °F) throughout the system. This requires all system components such as the probe, calibration valve, filter, sample lines, pump, and the FID to be kept heated at all times such that no moisture is condensed out of the system. The essential components of the measurement system are described below:

4.1.1 Sample Probe. Stainless steel, or equivalent, to collect a gas sample from the centroidal area of the stack cross-section.

4.1.2 Sample Line. Stainless steel or Teflon tubing to transport the sample to the analyzer.

Note: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

4.1.3 Calibration Valve Assembly. A heated three-way valve assembly to direct the zero and calibration gases to the analyzer is recommended. Other methods, such as quick-connect lines, to route calibration gas to the analyzers are applicable.

4.1.4 Particulate Filter. An in-stack or out-of-stack sintered stainless steel filter is recommended if exhaust gas particulate loading is significant. An out-of-stack filter must be heated.

4.1.5 Fuel. The fuel specified by the manufacturer (e.g., 40 percent hydrogen/60 percent helium, 40 percent hydrogen/60 percent nitrogen gas mixtures, or pure hydrogen) should be used.

4.1.6 Zero Gas. High purity air with less than 0.1 parts per million by volume (ppm) HC as methane or carbon equivalent or less than 0.1 percent of the span value, whichever is greater.

4.1.7 Calibration Gases. Appropriate concentrations of propane gas (in air or nitrogen). Preparation of the calibration gases should be done according to the procedures in EPA Protocol 1. In addition, the manufacturer of the cylinder gas should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change by more than ±2 percent from the certified value.

4.2 CEMS Span Value. 100 ppm propane. The span value shall be documented by the CEMS manufacturer with laboratory data.

4.3 Daily Calibration Gas Values. The owner or operator must choose calibration gas concentrations that include zero and high-level calibration values.

4.3.1 The zero level may be between zero and 0.1 ppm (zero and 0.1 percent of the span value).

4.3.2 The high-level concentration shall be between 50 and 90 ppm (50 and 90 percent of the span value).

4.4 Data Recorder Scale. The strip chart recorder, computer, or digital recorder must be capable of recording all readings within the CEMS' measurement range and shall have a resolution of 0.5 ppm (0.5 percent of span value).

4.5 Response Time. The response time for the CEMS must not exceed 2 minutes to achieve 95 percent of the final stable value.

4.6 Calibration Drift. The CEMS must allow the determination of CD at the zero and high-level values. The CEMS calibration response must not differ by more than ±3 ppm (±3 percent of the span value) after each 24-hour period of the 7-day test at both zero and high levels.

4.7 Calibration Error. The mean difference between the CEMS and reference values at all three test points listed below shall be no greater than 5 ppm (±5 percent of the span value).

4.7.1 Zero Level. Zero to 0.1 ppm (0 to 0.1 percent of span value).

4.7.2 Mid-Level. 30 to 40 ppm (30 to 40 percent of span value).

4.7.3 High-Level. 70 to 80 ppm (70 to 80 percent of span value).

4.8 Measurement and Recording Frequency. The sample to be analyzed shall pass through the measurement section of the analyzer without interruption. The detector shall measure the sample concentration at least once every 15 seconds. An average emission rate shall be computed and recorded at least once every 60 seconds.

4.9 Hourly Rolling Average Calculation. The CEMS shall calculate every minute an hourly rolling average, which is the arithmetic mean of the 60 most recent 1-minute average values.

4.10 Retest. If the CEMS produces results within the specified criteria, the test is successful. If the CEMS does not meet one or more of the criteria, necessary corrections must be made and the performance tests repeated.

5. Performance Specification Test (PST) Periods

5.1 Pretest Preparation Period. Install the CEMS, prepare the PTM test site according to the specifications in section 3, and prepare the CEMS for operation and calibration according to the manufacturer's written instructions. A pretest conditioning period similar to that of the 7-day CD test is recommended to verify the operational status of the CEMS.

5.2 Calibration Drift Test Period. While the facility is operating under normal conditions, determine the magnitude of the CD at 24-hour intervals for seven consecutive days according to the procedure given in section 6.1. All CD determinations must be made following a 24-hour period during which no unscheduled maintenance, repair, or adjustment takes place. If the combustion unit is taken out of service during the test period, record the onset and duration of the downtime and continue the CD test when the unit resumes operation.

5.3 Calibration Error Test and Response Time Test Periods. Conduct the CE and response time tests during the CD test period.

6. Performance Specification Test Procedures

6.1 Relative Accuracy Test Audit (RATA) and Absolute Calibration Audits (ACA). The test procedures described in this section are in lieu of a RATA and ACA.

6.2 Calibration Drift Test.

6.2.1 Sampling Strategy. Conduct the CD test at 24-hour intervals for seven consecutive days using calibration gases at the two daily concentration levels specified in section 4.3. Introduce the two calibration gases into the sampling system as close to the sampling probe outlet as practical. The gas shall pass through all CEM components used during normal sampling. If periodic automatic or manual adjustments are made to the CEMS zero and calibration settings, conduct the CD test immediately before these adjustments, or conduct it in such a way that the CD can be determined. Record the CEMS response and subtract this value from the reference (calibration gas) value. To meet the specification, none of the differences shall exceed 3 percent of the span of the CEM.

6.2.2 Calculations. Summarize the results on a data sheet. An example is shown in Figure 1. Calculate the differences between the CEMS responses and the reference values.

6.3 Response Time. The entire system including sample extraction and transport, sample conditioning, gas analyses, and the data recording is checked with this procedure.

6.3.1 Introduce the calibration gases at the probe as near to the sample location as possible. Introduce the zero gas into the system. When the system output has stabilized (no change greater than 1 percent of full scale for 30 sec), switch to monitor stack effluent and wait for a stable value. Record the time (upscale response time) required to reach 95 percent of the final stable value.

6.3.2 Next, introduce a high-level calibration gas and repeat the above procedure. Repeat the entire procedure three times and determine the mean upscale and downscale response times. The longer of the two means is the system response time.

6.4 Calibration Error Test Procedure.

6.4.1 Sampling Strategy. Challenge the CEMS with zero gas and EPA Protocol 1 cylinder gases at measurement points within the ranges specified in section 4.7.

6.4.1.1 The daily calibration gases, if Protocol 1, may be used for this test.

Source: _____

Monitor: _____

Serial Number: _____

Date: _____

Location: _____

Span: _____

Day	Date	Time	Calibration value	Monitor response	Difference	Percent of span ([1])
Zero/low level:						
1						
2						
3						
4						
5						
6						
7						
High level:						
1						
2						
3						
4						
5						
6						
7						

[1]=Acceptance Criteria: ≤ 3% of span each day for seven days.

Figure 1: Calibration Drift Determination

6.4.1.2 Operate the CEMS as nearly as possible in its normal sampling mode. The calibration gas should be injected into the sampling system as close to the sampling probe outlet as practical and shall pass through all filters, scrubbers, conditioners, and other monitor components used during normal sampling. Challenge the CEMS three non-consecutive times at each measurement point and record the responses. The duration of each gas injection should be for a sufficient period of time to ensure that the CEMS surfaces are conditioned.

6.4.2 Calculations. Summarize the results on a data sheet. An example data sheet is shown in Figure 2. Average the differences between the instrument response and the certified cylinder gas value for each gas. Calculate three CE results according to Equation 1. No confidence coefficient is used in CE calculations.

7. Equations

7.1 Calibration Error. Calculate CE using Equation 1.

$$CE = |d / FS| \times 100 \qquad \text{(Eq.1)}$$

Where:

d = Mean difference between CEMS response and the known reference concentration, determined using Equation 2.

$$d = \frac{1}{n}\sum_{i=1}^{n} d_i \qquad \text{(Eq.2)}$$

d_i = Individual difference between CEMS response and the known reference concentration.

8. Reporting

At a minimum, summarize in tabular form the results of the CD, response time, and CE test, as appropriate. Include all data sheets, calculations, CEMS data records, and cylinder gas or reference material certifications.

Source: _____

Monitor: _____

Serial Number: _____

Date: _____

Location: _____

Span: _____

Run No.	Calibration value	Monitor response	Difference		
			Zero/Low	Mid	High
1–Zero					
2–Mid					
3–High					
4–Mid					
5–Zero					
6–High					
7–Zero					
8–Mid					
9–High					
	Mean Difference =				
	Calibration Error =		%	%	%

Figure 2: Calibration Error Determination

9. References

1. Measurement of Volatile Organic Compounds-Guideline Series. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, EPA–450/2–78–041, June 1978.

2. Traceability Protocol for Establishing True Concentrations of Gases Used for Calibration and Audits of Continuous Source Emission Monitors (Protocol No. 1). U.S. Environmental Protection Agency ORD/EMSL, Research Triangle Park, North Carolina, 27711, June 1978.

3. Gasoline Vapor Emission Laboratory Evaluation-Part 2. U.S. Environmental Protection Agency, OAQPS, Research Triangle Park, North Carolina, 27711, EMB Report No. 76–GAS–6, August 1975.

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Performance Specification 10—Specifications and test procedures for multi-metals continuous monitoring systems in stationary sources.

1. Applicability and Principle

1.1 Applicability. This specification is to be used for evaluating the acceptability of multi-metals continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in the regulations. The CEMS may include, for certain stationary sources, (a) a diluent (O_2) monitor (which must meet its own performance specifications: 40 CFR part 60, Appendix B, Performance Specification 3), (b) flow monitoring equipment to allow measurement of the dry volume of stack effluent sampled, and (c) an automatic sampling system.

A multi-metals CEMS must be capable of measuring the total concentrations (regardless of speciation) of two or more of the following metals in both their vapor and solid forms: Antimony (Sb), Arsenic (As), Barium (Ba), Beryllium (Be), Cadmium (Cd), Chromium (Cr), Lead (Pb), Mercury (Hg), Silver (Ag), Thallium (Tl), Manganese (Mn), Cobalt (Co), Nickel (Ni), and Selenium (Se). Additional metals may be added to this list at a later date by addition of appendices to this performance specification. If a CEMS does not measure a particular metal or fails to meet the performance specifications for a particular metal, then the CEMS may not be used to determine emission compliance with the applicable regulation for that metal.

This specification is not designed to evaluate the installed CEMS' performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS' performance. The source owner or operator, however, is responsible to properly calibrate, maintain, and operate the CEMS. To evaluate the CEMS' performance, the Administrator may require, under Section 114 of the Act, the operator to conduct CEMS performance evaluations at other times besides the initial test. See Sec. 60.13 (c) and ''Quality Assurance Requirements For Multi-Metals Continuous Emission Monitoring Systems Used For Compliance Determination.''

1.2 Principle. Installation and measurement location specifications, performance specifications, test procedures, and data reduction procedures are included in this specification. Reference method tests and calibration drift tests are conducted to determine conformance of the CEMS with the specification.

2. Definitions

2.1 Continuous Emission Monitoring System (CEMS). The total equipment required for the determination of a metal concentration. The system consists of the following major subsystems:

2.1.1 Sample Interface. That portion of the CEMS used for one or more of the following: sample acquisition, sample transport, and sample conditioning, or protection of the monitor from the effects of the stack effluent.

2.1.2 Pollutant Analyzer. That portion of the CEMS that senses the metals concentrations and generates a proportional output.

2.1.3 Diluent Analyzer (if applicable). That portion of the CEMS that senses the diluent gas (O_2) and generates an output proportional to the gas concentration.

2.1.4 Data Recorder. That portion of the CEMS that provides a permanent record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.

2.2 Point CEMS. A CEMS that measures the metals concentrations either at a single point or along a path equal to or less than 10 percent of the equivalent diameter of the stack or duct cross section.

2.3 Path CEMS. A CEMS that measures the metals concentrations along a path greater than 10 percent of the equivalent diameter of the stack or duct cross section.

2.4 Span Value. The upper limit of a metals concentration measurement range defined as twenty times the applicable emission limit for each metal. The span value shall be documented by the CEMS manufacturer with laboratory data.

2.5 Relative Accuracy (RA). The absolute mean difference between the metals concentrations determined by the CEMS and the value determined by the reference method (RM) plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the RM tests or the applicable emission limit.

2.6 Calibration Drift (CD). The difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.7 Zero Drift (ZD). The difference in the CEMS output readings for zero input after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.8 Representative Results. Defined by the RA test procedure defined in this specification.

2.9 Response Time. The time interval between the start of a step change in the system input and the time when the pollutant analyzer output reaches 95 percent of the final value.

2.10 Centroidal Area. A concentric area that is geometrically similar to the stack or duct cross section and is no greater than 1 percent of the stack or duct cross sectional area.

2.11 Batch Sampling. Batch sampling refers to the technique of sampling the stack effluent continuously and concentrating the pollutant in some capture medium. Analysis is performed periodically after sufficient time has elapsed to concentrate the pollutant to levels detectable by the analyzer.

2.12 Calibration Standard. Calibration standards consist of a known amount of metal(s) that are presented to the pollutant analyzer portion of the CEMS in order to calibrate the drift or response of the analyzer. The calibration standard may be, for example, a solution containing a known metal concentration, or a filter with a known mass loading or composition.

3. Installation and Measurement Location Specifications

3.1 The CEMS Installation and measurement location. Install the CEMS at an accessible location downstream of all pollution control equipment where the metals concentrations measurements are directly representative or can be corrected so as to be representative of the total emissions from the affected facility. Then select representative measurement points or paths for monitoring in locations that the CEMS will pass the RA test (see Section 7). If the cause of failure to meet the RA test is determined to be the measurement location and a satisfactory correction technique cannot be established, the Administrator may require the CEMS to be relocated.

Measurement locations and points or paths that are most likely to provide data that will meet the RA requirements are listed below.

3.1.1 Measurement Location. The measurement location should be (1) at least eight equivalent diameters downstream of the nearest control device, point of pollutant generation, bend, or other point at which a change of pollutant concentration or flow disturbance may occur, and (2) at least two equivalent diameters upstream from the effluent exhaust. The equivalent duct diameter is calculated as per 40 CFR part 60, Appendix A, Method 1, Section 2.1.

3.1.2 Point CEMS. The measurement point should be (1) no less than 1.0 meter from the stack or duct wall or (2) within or centrally located over the centroidal area of the stack or duct cross section. Selection of traverse points to determine the representativeness of the measurement location should be made according to 40 CFR part 60, Appendix A, Method 1, Sections 2.2 and 2.3.

3.1.3 Path CEMS. The effective measurement path should be (1) totally within the inner area bounded by a line 1.0 meter from the stack or duct wall, or (2) have at least 70 percent of the path within the inner 50 percent of the stack or duct cross sectional area, or (3) be centrally located over any part of the centroidal area.

3.2 Reference Method (RM) Measurement Location and Traverse Points. The RM measurement location should be (1) at least eight equivalent diameters downstream of the nearest control device, point of pollutant generation, bend, or other point at which a change of pollutant concentration or flow disturbance may occur, and (2) at least two equivalent diameters upstream from the effluent exhaust. The RM and CEMS locations need not be the same, however the difference may contribute to failure of the CEMS to pass the RA test, thus they should be as close as possible without causing interference with one another. The equivalent duct diameter is calculated as per 40 CFR part 60, Appendix A, Method 1, Section 2.1. Selection of traverse measurement point locations should be made according to 40 CFR part 60, Appendix A, Method 1, Sections 2.2 and 2.3. If the RM traverse line interferes with or is interfered by the CEMS measurements, the line may be displaced up to 30 cm (or 5 percent of the equivalent diameter of the cross section, whichever is less) from the centroidal area.

4. Performance and Equipment Specifications

4.1 Data Recorder Scale. The CEMS data recorder response range must include zero and a high level value. The high level value must be equal to the span value. If a lower high level value is used, the CEMS must have the capability of providing multiple outputs with different high level values (one of which is equal to the span value) or be capable of automatically changing the high level value as required (up to the span value) such that the measured value does not exceed 95 percent of the high level value.

4.2 Relative Accuracy (RA). The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data in terms of units of the emission standard for each metal, or 10 percent of the applicable standard, whichever is greater.

4.3 Calibration Drift. The CEMS design must allow the determination of calibration drift at concentration levels commensurate with the applicable emission standard for each metal monitored. The CEMS calibration may not drift or deviate from the reference value (RV) of the calibration standard used for each metal by more than 5 percent of the emission standard for each metal. The calibration shall be performed at a point equal to 80 to 120 percent of the applicable emission standard for each metal.

4.4 Zero Drift. The CEMS design must allow the determination of calibration drift at the zero level (zero drift) for each metal. If this is not possible or practicable, the design must allow the zero drift determination to be made at a low level value (zero to 20 percent of the emission limit value). The CEMS zero point for each metal shall not drift by more than 5 percent of the emission standard for that metal.

4.5 Sampling and Response Time. The CEMS shall sample the stack effluent continuously. Averaging time, the number of measurements in an average, and the averaging procedure for reporting and determining compliance shall conform with that specified in the applicable emission regulation.

4.5.1 Response Time for Instantaneous, Continuous CEMS. The response time for the CEMS must not exceed 2 minutes to achieve 95 percent of the final stable value.

4.5.2 Waiver from Response Time Requirement. A source owner or operator may receive a waiver from the response time requirement for instantaneous, continuous CEMS in section 4.5.1 from the Agency if no CEM is available which can meet this specification at the time of purchase of the CEMS.

4.5.3 Response Time for Batch CEMS. The response time requirement of Sections 4.5.1 and 4.5.2 do not apply to batch CEMS. Instead it is required that the sampling time be no longer than one third of the averaging period for the applicable standard. In addition, the delay between the end of the sampling period and reporting of the sample analysis shall be no greater than one hour. Sampling is also required to be continuous except in that the pause in sampling when the sample collection media are changed should be no greater than five percent of the averaging period or five minutes, whichever is less.

5. Performance Specification Test Procedure

5.1 Pretest Preparation. Install the CEMS and prepare the RM test site according to the specifications in Section 3, and prepare the

CEMS for operation according to the manufacturer's written instructions.

5.2 Calibration and Zero Drift Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the calibration drift (CD) and zero drift (ZD) once each day (at 24-hour intervals) for 7 consecutive days according to the procedure given in Section 6. To meet the requirements of Sections 4.3 and 4.4 none of the CD's or ZD's may exceed the specification. All CD determinations must be made following a 24-hour period during which no unscheduled maintenance, repair, or manual adjustment of the CEMS took place.

5.3 RA Test Period. Conduct a RA test following the CD test period. Conduct the RA test according to the procedure given in Section 7 while the affected facility is operating at more than 50 percent of normal load, or as specified in the applicable subpart.

6.0 The CEMS Calibration and Zero Drift Test Procedure

This performance specification is designed to allow calibration of the CEMS by use of standard solutions, filters, etc. that challenge the pollutant analyzer part of the CEMS (and as much of the whole system as possible), but which do not challenge the entire CEMS, including the sampling interface. Satisfactory response of the entire system is covered by the RA requirements.

The CD measurement is to verify the ability of the CEMS to conform to the established CEMS calibration used for determining the emission concentration. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and calibration settings, conduct the CD test immediately before the adjustments, or conduct it in such a way that the CD and ZD can be determined.

Conduct the CD and ZD tests at the points specified in Sections 4.3 and 4.4. Record the CEMS response and calculate the CD according to:

$$CD = \frac{(R_{CEM} - R_V)}{R_V} \times 100, \quad (1)$$

Where CD denotes the calibration drift of the CEMS in percent, R_{CEM} is the CEMS response, and R_V is the reference value of the high level calibration standard. Calculate the ZD according to:

$$ZD = \frac{(R_{CEM} - R_V)}{R_{EM}} \times 100, \quad (2)$$

Where ZD denotes the zero drift of the CEMS in percent, R_{CEM} is the CEMS response, R_V is the reference value of the low level calibration standard, and REM is the emission limit value.

7. Relative Accuracy Test Procedure

7.1 Sampling Strategy for RA Tests. The RA tests are to verify the initial performance of the entire CEMS system, including the sampling interface, by comparison to RM measurements. Conduct the RM measurements in such a way that they will yield results representative of the emissions from the source and can be correlated to the CEMS data. Although it is preferable to conduct the diluent (if applicable), moisture (if needed), and pollutant measurements simultaneously, the diluent and moisture measurements that are taken within a 30 to 60-minute period, which includes the pollutant measurements, may be used to calculate dry pollutant concentration.

A measure of relative accuracy at a single level is required for each metal measured for compliance purposes by the CEMS. Thus the concentration of each metal must be detectable by both the CEMS and the RM. In addition, the RA must be determined at three levels (0 to 20, 40 to 60, and 80 to 120 percent of the emission limit) for one of the metals which will be monitored, or for iron. If iron is chosen, the three levels should be chosen to correspond to those for one of the metals that will be monitored using known sensitivities (documented by the manufacturer) of the CEMS to both metals.

In order to correlate the CEMS and RM data properly, note the beginning and end of each RM test period of each run (including the exact time of day) in the CEMS data log. Use the following strategy for the RM measurements:

7.2 Correlation of RM and CEMS Data. Correlate the CEMS and RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration for each RM test period. Consider system response time, if important, and confirm that the pair of results are on a consistent moisture, temperature, and diluent concentration basis. Then compare each integrated CEMS value against the corresponding average RM value.

7.3 Number of tests. Obtain a minimum of three pairs of CEMS and RM measurements for each metal required and at each level required (see Section 7.1). If more than nine pairs of measurements are obtained, then up to three pairs of measurements may be rejected so long as the total number of measurement pairs used to determine the RA is greater than or equal to nine. However, all data, including the rejected data, must be reported.

7.4 Reference Methods. Unless otherwise specified in an applicable subpart of the regulations, Method 3B, or its approved alternative, is the reference method for diluent (O_2) concentration. Unless otherwise specified in an applicable subpart of the regulations, the manual method for multi-metals in 40 CFR part 266, Appendix IX, Section 3.1 (until superseded by SW–846), or its approved alternative, is the reference method for multi-metals.

As of March 22, 1995 there is no approved alternative RM to Method 29 (for example, a second metals CEMS, calibrated absolutely according to the alternate procedure to be specified in an appendix to this performance specification to be added when an absolute system calibration procedure becomes available and is approved).

7.5 Calculations. Summarize the results on a data sheet. An example is shown in Figure 2–2 of 40 CFR part 60, Appendix B, Performance Specification 2. Calculate the mean of the RM values. Calculate the arithmetic differences between the RM and CEMS output sets, and then calculate the mean of the differences. Calculate the standard deviation of each data set and CEMS RA using the equations in Section 8.

7.6 Undetectable Emission Levels. In the event of metals emissions concentrations from the source being so low as to be undetectable by the CEMS operating in its normal mode (i.e., measurement times and frequencies within the bounds of the performance specifications), then spiking of the appropriate metals in the feed or other operation of the facility in such a way as to raise the metal concentration to a level detectable by both the CEMS and the RM is required in order to perform the RA test.

8. Equations

8.1 Arithmetic Mean. Calculate the arithmetic mean of a data set as follows:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i, \quad (3)$$

Where n is equal to the number of data points.

8.1.1 Calculate the arithmetic mean of the difference, d, of a data set, using Equation 3 and substituting d for x. Then

$$d_i = x_i - y_i, \quad (4)$$

Where x and y are paired data points from the CEMS and RM, respectively.

8.2 Standard Deviation. Calculate the standard deviation (SD) of a data set as follows:

$$SD = \sqrt{\frac{\sum_{i=1}^{n} x_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} x_i\right)^2}{n-1}}, \quad (5)$$

8.3 Relative Accuracy (RA). Calculate the RA as follows:

$$RA = \frac{\bar{d} + \frac{t_{0.975}}{\sqrt{n}}(SD)}{\bar{R}_{RM}}, \quad (6)$$

Where $\bar{d}$ is equal to the arithmetic mean of the difference, d, of the paired CEMS and RM data set, calculated according to Equations 3 and 4, SD is the standard deviation calculated according to Equation 5, $\bar{R}_{RM}$ is equal to either the average of the RM data set, calculated according to Equation 3, or the value of the emission standard, as applicable (see Section 4.2), and $t_{0.975}$ is the t-value at 2.5 percent error confidence, see Table 1.

TABLE 1

[t-Values]

n[a]	$t_{0.975}$	n[a]	$t_{0.975}$	n[a]	$t_{0.975}$
2	12.706	7	2.447	12	2.201
3	4.303	8	2.365	13	2.179
4	3.182	9	2.306	14	2.160
5	2.776	10	2.262	15	2.145
6	2.571	11	2.228	16	2.131

[a] The values in this table are already corrected for n-1 degrees of freedom. Use n equal to the number of individual values.

9. Reporting

At a minimum (check with the appropriate regional office, or State, or local agency for additional requirements, if any) summarize in tabular form the results of the CD tests and the RA tests or alternate RA procedure as appropriate. Include all data sheets, calculations, and records of CEMS response necessary to substantiate that the performance of the CEMS met the performance specifications.

The CEMS measurements shall be reported to the agency in units of $\mu g/m^3$ on a dry basis, corrected to 20°C and 7 percent O_2.

10. Alternative Procedures

A procedure for a total system calibration, when developed, will be acceptable as a procedure for determining RA. Such a procedure will involve challenging the entire CEMS, including the sampling interface, with a known metals concentration. This procedure will be added as an appendix to this performance specification when it has been developed and approved. The RA requirement of Section 4.2 will remain unchanged.

11. Bibliography

1. 40 CFR part 60, Appendix B, ''Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_x Continuous Emission Monitoring Systems in Stationary Sources.''

2. 40 CFR part 60, Appendix B, ''Performance Specification 1—Specification and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources.''

3. 40 CFR part 60, Appendix A, ''Method 1—Sample and Velocity Traverses for Stationary Sources.''

4. 40 CFR part 266, Appendix IX, Section 2, ''Performance Specifications for Continuous Emission Monitoring Systems.''

5. Draft Method 29, ''Determination of Metals Emissions from Stationary Sources,'' Docket A–90–45, Item II–B–12, and EMTIC CTM–012.WPF.

6. ''Continuous Emission Monitoring Technology Survey for Incinerators, Boilers, and Industrial Furnaces: Final Report for Metals CEM's,'' prepared for the Office of Solid Waste, U.S. EPA, Contract No. 68–D2–0164 (4/25/94).

Performance Specification 11—Specifications and test procedures for particulate matter continuous monitoring systems in stationary sources.

1. Applicability and Principle

1.1 Applicability. This specification is to be used for evaluating the acceptability of particulate matter continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in the regulations. The CEMS may include, for certain stationary sources, a) a diluent (O_2) monitor (which must meet its own performance specifications: 40 CFR part 60, Appendix B, Performance Specification 3), b) flow monitoring equipment to allow measurement of the dry volume of stack effluent sampled, and c) an automatic sampling system.

This performance specification requires site specific calibration of the PM CEMS' response against manual gravimetric method measurements. The range of validity of the response calibration is restricted to the range of particulate mass loadings used to develop the calibration relation. Further, if conditions at the facility change (i.e., changes in emission control system or fuel type), then a new response calibration is required. Since the validity of the response calibration may be affected by changes in the properties of the particulate, such as density, index of refraction, and size distribution, the limitations of the CEMS used should be evaluated with respect to these possible changes on a site specific basis.

This specification is not designed to evaluate the installed CEMS' performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS' performance. The source owner or operator, however, is responsible to properly calibrate, maintain, and operate the CEMS. To evaluate the CEMS' performance, the Administrator may require, under Section 114 of the Act, the operator to conduct CEMS performance evaluations at other times besides the initial test. See Sec. 60.13 (c) and ''Quality Assurance Requirements For Particulate Matter Continuous Emission Monitoring Systems Used For Compliance Determination.''

1.2 Principle. Installation and measurement location specifications, performance specifications, test procedures, and data reduction procedures are included in this specification. Reference method tests and calibration drift tests are conducted to determine conformance of the CEMS with the specification.

2. Definitions

2.1 Continuous Emission Monitoring System (CEMS). The total equipment required for the determination of particulate matter mass concentration. The system consists of the following major subsystems:

2.1.1 Sample Interface. That portion of the CEMS used for one or more of the following: sample acquisition, sample transport, and sample conditioning, or protection of the monitor from the effects of the stack effluent.

2.1.2 Pollutant Analyzer. That portion of the CEMS that senses the particulate matter concentration and generates a proportional output.

2.1.3 Diluent Analyzer (if applicable). That portion of the CEMS that senses the diluent gas (O_2) and generates an output proportional to the gas concentration.

2.1.4 Data Recorder. That portion of the CEMS that provides a permanent record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.

2.2 Point CEMS. A CEMS that measures particulate matter mass concentrations either at a single point or along a path equal to or less than 10 percent of the equivalent diameter of the stack or duct cross section.

2.3 Path CEMS. A CEMS that measures particulate matter mass concentrations along a path greater than 10 percent of the equivalent diameter of the stack or duct cross section.

2.4 Span Value. The upper limit of the CEMS measurement range. The span value shall be documented by the CEMS manufacturer with laboratory data.

2.5 Confidence Interval. The interval with upper and lower limits within which the CEMS response calibration relation lies with a given level of confidence.

2.6 Tolerance Interval. The interval with upper and lower limits within which are contained a specified percentage of the population with a given level of confidence.

2.7 Calibration Drift (CD). The difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.8 Zero Drift (ZD). The difference in the CEMS output readings for zero input after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.9 Representative Results. Defined by the reference method test procedure defined in this specification.

2.10 Response Time. The time interval between the start of a step change in the system input and the time when the pollutant analyzer output reaches 95 percent of the final value.

2.11 Centroidal Area. A concentric area that is geometrically similar to the stack or duct cross section and is no greater than 1 percent of the stack or duct cross sectional area.

2.12 Batch Sampling. Batch sampling refers to the technique of sampling the stack effluent continuously and concentrating the pollutant in some capture medium. Analysis is performed periodically after sufficient time has elapsed to concentrate the pollutant to levels detectable by the analyzer.

2.13 Calibration Standard. Calibration standards produce a known and unchanging response when presented to the pollutant analyzer portion of the CEMS, and are used to calibrate the drift or response of the analyzer.

3. Installation and Measurement Location Specifications

3.1 The CEMS Installation and measurement location. Install the CEMS at an accessible location downstream of all pollution control equipment where the particulate matter mass concentrations measurements are directly representative or can be corrected so as to be representative of the total emissions from the affected facility. Then select representative measurement points or paths for monitoring in locations that the CEMS will meet the calibration requirements (see Section 7). If the cause of failure to meet the calibration requirements is determined to be the measurement location and a satisfactory correction technique cannot be established, the Administrator may require the CEMS to be relocated.

Measurement locations and points or paths that are most likely to provide data that will meet the calibration requirements are listed below.

3.1.1 Measurement Location. The measurement location should be (1) at least eight equivalent diameters downstream of the nearest control device, point of pollutant generation, bend, or other point at which a change of pollutant concentration or flow disturbance may occur and (2) at least two equivalent diameters upstream from the effluent exhaust. The equivalent duct diameter is calculated as per 40 CFR part 60, Appendix A, Method 1, Section 2.1.

3.1.2 Point CEMS. The measurement point should be (1) no less than 1.0 meter from the stack or duct wall or (2) within or centrally located over the centroidal area of the stack or duct cross section. Selection of traverse points to determine the representativeness of the measurement location should be made according to 40 CFR part 60, Appendix A, Method 1, Section 2.2 and 2.3.

3.1.3 Path CEMS. The effective measurement path should be (1) totally within the inner area bounded by a line 1.0 meter from the stack or duct wall, or (2) have at least 70 percent of the path within the inner 50 percent of the stack or duct cross sectional area, or (3) be centrally located over any part of the centroidal area.

3.1.4 Sampling Requirement for Saturated Flue Gas. If the CEMS is to be installed downstream of a wet air pollution control system such that the flue gases are saturated with water, then the CEMS must isokinetically extract and heat a sample of the flue gas for measurement so that the pollutant analyzer portion of the CEMS measures only dry particulate. Heating shall be to a temperature above the water condensation temperature of the extracted gas and shall be maintained at all points in the sample line, from where the flue gas is extracted to and including the pollutant analyzer. Performance of a CEMS design configured in this manner must be documented by the CEMS manufacturer.

3.2 Reference Method (RM) Measurement Location and Traverse Points. The RM measurement location should be (1) at least eight equivalent diameters downstream of the nearest control device, point of pollutant generation, bend, or other point at which a change of pollutant concentration or flow disturbance may occur and (2) at least two equivalent diameters upstream from the effluent exhaust. The RM and CEMS locations need not be the same, however the difference may contribute to failure of the CEMS to pass the RA test, thus they should be as close as possible without causing interference with one another. The equivalent duct diameter is calculated as per 40 CFR part 60, Appendix A, Method 1, Section 2.1. Selection of traverse measurement point locations should be made according to 40 CFR part 60, Appendix A, Method 1, Sections 2.2 and 2.3. If the RM traverse line interferes with or is interfered by the CEMS measurements, the line may be displaced up to 30 cm (or 5 percent of the equivalent diameter of the cross section, whichever is less) from the centroidal area.

4. Performance and Equipment Specifications

4.1 Span and Data Recorder Scale.

4.1.1 Span. The span of the instrument shall be three times the applicable emission limit. The span value shall be documented by the CEMS manufacturer with laboratory data.

4.1.2 Data Recorder Scale. The CEMS data recorder response range must include zero and a high level value. The high level value must be equal to the span value. If a lower high level value is used, the CEMS must have the capability of providing multiple outputs with different high level values (one of which is equal to the span value) or be capable of automatically changing the high level value as required (up to the span value) such that the measured value does not exceed 95 percent of the high level value.

4.2 CEMS Response Calibration Specifications. The CEMS response calibration relation must meet the following specifications.

4.2.1 Correlation Coefficient. The correlation coefficient shall be ≥ 0.90.

4.2.2 Confidence Interval. The confidence interval (95 percent) at the emission limit shall be within ±20 percent of the emission limit value.

4.2.3 Tolerance Interval. The tolerance interval at the emission limit shall have 95 percent confidence that 75 percent of all possible values are within ±35 percent of the emission limit value.

4.3 Calibration Drift. The CEMS design must allow the determination of calibration drift at concentration levels commensurate with the applicable emission standard. The CEMS calibration may not drift or deviate from the reference value (RV) of the calibration standard by more than 2 percent of the reference value. The calibration shall be performed at a point equal to 80 to 120 percent of the applicable emission standard.

4.4 Zero Drift. The CEMS design must allow the determination of calibration drift at the zero level (zero drift). If this is not possible or practicable, the design must allow the zero drift determination to be made at a low level value (zero to 20 percent of the emission limit value). The CEMS zero point shall not drift by more than 2 percent of the emission standard.

4.5 Sampling and Response Time. The CEMS shall sample the stack effluent continuously. Averaging time, the number of measurements in an average, and the averaging procedure for reporting and determining compliance shall conform with that specified in the applicable emission regulation.

4.5.1 Response Time. The response time of the CEMS should not exceed 2 minutes to achieve 95 percent of the final stable value. The response time shall be documented by the CEMS manufacturer.

4.5.2 Response Time for Batch CEMS. The response time requirement of Section 4.5.1 does not apply to batch CEMS. Instead it is required that the sampling time be no longer than one third of the averaging period for the applicable standard. In addition, the delay between the end of the sampling time and reporting of the sample analysis shall be no greater than one hour. Sampling is also required to be continuous except in that the pause in sampling when the sample collection media are changed should be no greater than five percent of the averaging period or five minutes, whichever is less.

5. Performance Specification Test Procedure

5.1 Pretest Preparation. Install the CEMS and prepare the RM test site according to the specifications in Section 3, and prepare the CEMS for operation according to the manufacturer's written instructions.

5.2 Calibration and Zero Drift Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the calibration drift (CD) and zero drift (ZD) once each day (at 24-hour intervals) for 7 consecutive days according to the procedure given in Section 6. To meet the requirements of Sections 4.3 and 4.4 none of the CD's or ZD's may exceed the specification. All CD determinations must be made following a 24-hour period during which no unscheduled maintenance, repair, or manual adjustment of the CEMS took place.

5.3 CEMS Response Calibration Period. Calibrate the CEMS response following the CD test period. Conduct the calibration according to the procedure given in Section 7 while the affected facility is operating at more than 50 percent of normal load, or as specified in the applicable subpart.

6.0 The CEMS Calibration and Zero Drift Test Procedure

This performance specification is designed to allow calibration of the CEMS by use of calibration standard that challenges the pollutant analyzer part of the CEMS (and as much of the whole system as possible), but which does not challenge the entire CEMS, including the sampling interface. Satisfactory response of the entire system is covered by the CEMS response calibration requirements.

The CD measurement is to verify the ability of the CEMS to conform to the established CEMS response calibration used for determining the emission concentration. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and calibration settings, conduct the CD test immediately before the adjustments, or conduct it in such a way that the CD and ZD can be determined.

Conduct the CD and ZD tests at the points specified in Sections 4.3 and 4.4. Record the CEMS response and calculate the CD according to:

$$CD = \frac{(R_{CEM} - R_V)}{R_V} \times 100, \quad (1)$$

Where CD denotes the calibration drift of the CEMS in percent, R_{CEM} is the CEMS response, and R_V is the reference value of the high level calibration standard. Calculate the ZD according to:

$$ZD = \frac{(R_{CEM} - R_V)}{R_{EM}} \times 100, \quad (2)$$

Where ZD denotes the zero drift of the CEMS in percent, R_{CEM} is the CEMS response, R_V is the reference value of the low level calibration standard, and R_{EM} is the emission limit value.

7. CEMS Response Calibration Procedure

7.1 Sampling Strategy for Response Calibration. The CEMS response calibration is carried out in order to verify and calibrate the performance of the entire CEMS system, including the sampling interface, by comparison to RM measurements. Conduct the RM measurements in such a way that they will yield results representative of the emissions from the source and can be correlated to the CEMS data. Although it is preferable to conduct the diluent (if applicable), moisture (if needed), and pollutant measurements simultaneously, the diluent and moisture measurements that are taken within a 30 to 60-minute period, which includes the pollutant measurements, may be used to calculate dry pollutant concentration.

7.2 Correlation of RM and CEMS Data. In order to correlate the CEMS and RM data properly, note the beginning and end of each RM test period of each run (including the exact time of day) in the CEMS data log. Correlate the CEMS and RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration for each RM test period. Consider system response time, if important, and confirm that the pair of results are on a consistent moisture, temperature, and diluent concentration basis. Then compare each integrated CEMS value against the corresponding average RM value.

7.3 Number of tests. The CEMS response calibration shall be carried out by making simultaneous CEMS and RM measurements at three (or more) different levels of particulate mass concentrations. Three (or more) sets of measurements shall be obtained at each level. A total of at least 15 measurements shall be obtained. The different levels of particulate mass concentration should be obtained by varying the process conditions as much as the process allows within the range of normal operation. Alternatively, emission levels may be varied by adjusting the particulate control system. It is recommended that the CEMS be calibrated over PM levels ranging from a minimum normal level to a level roughly twice the emission limit, as this will provide the smallest confidence interval bounds on the calibration relation at the emission limit level.

7.4 Reference Methods. Unless otherwise specified in an applicable subpart of the regulations, Method 3B, or its approved alternative, is the reference method for diluent (O_2) concentration. Unless otherwise specified in an applicable subpart of the regulations, Method 5 (40 CFR Part 60, Appendix A), or its approved alternative, is the reference method for particulate matter mass concentration.

7.5 Calculations. Summarize the results on a data sheet. An example is shown is shown in Figure 2–2 of 40 CFR part 60, Appendix B, Performance Specification 2. Calculate the calibration relation, correlation coefficient, and confidence and tolerance intervals using the equations in Section 8.

8. Equations

8.1 Linear Calibration Relation. A linear calibration relation may be calculated from the calibration data by performing a linear least squares regression. The CEMS data are taken as the x values, and the reference method data as the y values. The calibration relation, which gives the predicted mass emission, $\hat{y}$, based on the CEMS response x, is given by

$$\hat{y} = a \cdot x + b \quad (3)$$

where:

$$a = \frac{S_{xy}}{S_{xx}} \quad (4)$$

and

$$b = \bar{y} - a \cdot \bar{x} \quad (5)$$

The mean values of the data sets are given by

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i, \bar{y} = \frac{1}{n}\sum_{i=1}^{n} y_i \quad (6)$$

Where x_i and y_i are the absolute values of the individual measurements and n is the number of data points. The values S_{xx}, S_{yy}, and S_{xy} are given by

$$S_{xx} = \sum_{i=1}^{n}(x_i - \bar{x})^2, S_{yy} = \sum_{i=1}^{n}(y_i - \bar{y})^2, S_{xy} = \sum_{i=1}^{n}(x_i - \bar{x})\cdot(y_i - \bar{y}) \quad (7)$$

From which the scatter of y values about the regression line (calibration relation) s_L can be determined:

$$s_L = \sqrt{\frac{S_{yy}}{n-2}\left(1 - \frac{S_{xy}^2}{S_{xx} \cdot S_{yy}}\right)} \quad (8)$$

The two-sided confidence interval y_c for the predicted concentration $\hat{y}$ at point x is given by

$$y_c = \hat{y} \pm t_f \cdot s_L \sqrt{\frac{1}{n} + \frac{(x - \bar{x})^2}{S_{xx}}}, \text{ with } f = n - 2 \quad (9)$$

The two-sided tolerance interval y_t for the regression line is given by

$$y_T = \hat{y} \pm k_T \cdot s_L \quad (10)$$

At the point x with k_T=un′ v_f and f=n−, where

$$n' = \frac{n}{1 + \frac{n \cdot (x - \bar{x})^2}{S_{xx}}}, n' \geq 2. \quad (11)$$

The tolerance factor un′ for 75 percent of the population is given in Table I as a function of n′. The factor v_f as a function of f is also given in Table I as well as the t-factor at the 95 percent confidence level.

The correlation coefficient r may be calculated from

$$r = a\sqrt{\frac{S_{xx}}{S_{yy}}} \quad (12)$$

TABLE I.—FACTORS FOR CALCULATION OF CONFIDENCE AND TOLERANCE INTERVALS

f	t_f	v_f	n′	un′ (75)
7	2.365	1.7972	7	1.233
8	2.306	1.7110	8	1.223
9	2.262	1.6452	9	1.214
10	2.228	1.5931	10	1.208
11	2.201	1.5506	11	1.203
12	2.179	1.5153	12	1.199
13	2.160	1.4854	13	1.195
14	2.145	1.4597	14	1.192
15	2.131	1.4373	15	1.189
16	2.120	1.4176	16	1.187
17	2.110	1.4001	17	1.185
18	2.101	1.3845	18	1.183
19	2.093	1.3704	19	1.181
20	2.086	1.3576	20	1.179
21	2.080	1.3460	21	1.178
22	2.074	1.3353	22	1.177
23	2.069	1.3255	23	1.175
24	2.064	1.3165	24	1.174
25	2.060	1.3081	25	1.173

8.2 Quadratic Calibration Relation. In some cases a quadratic regression will provide a better fit to the calibration data than a linear regression. If a quadratic regression is used to determine a calibration

relation, a test to determine if the quadratic regression gives a better fit to the data than a linear regression must be performed, and the relation with the best fit must be used.

8.2.1 Quadratic Regression. A least-squares quadratic regression gives the best fit coefficients b_0, b_1, and b_2 for the calibration relation:

$$\hat{y} = b_0 + b_1 x + b_2 x^2 \quad (13)$$

The coefficients b_0, b_1, and b_2 are determined from the solution to the matrix equation Ab=B where:

$$A = \begin{bmatrix} n & S_1 & S_2 \\ S_1 & S_2 & S_3 \\ S_2 & S_3 & S_4 \end{bmatrix}, \qquad b = \begin{bmatrix} b_0 \\ b_1 \\ b_2 \end{bmatrix}, \qquad B = \begin{bmatrix} S_5 \\ S_6 \\ S_7 \end{bmatrix}.$$

and

$$S_1 = \sum_{i=1}^{n}\left(x_i\right), S_2 = \sum_{i=1}^{n}\left(x_i^2\right), S_3 = \sum_{i=1}^{n}\left(x_i^3\right), S_4 = \sum_{i=1}^{n}\left(x_i^4\right), \quad (14)$$

$$S_5 = \sum_{i=1}^{n} y_i, S_6 = \sum_{i=1}^{n}\left(x_i y_i\right), S_7 = \sum_{i=1}^{n}\left(x_i^2 y_i\right).$$

The solutions to b_0, b_1, and b_2 are:

$$b_0 = \left(S_5 \cdot S_2 \cdot S_4 + S_1 \cdot S_3 \cdot S_7 + S_2 \cdot S_6 \cdot S_3 - S_7 \cdot S_2 \cdot S_2 - S_3 \cdot S_3 \cdot S_5 - S_4 \cdot S_6 \cdot S_1\right) / \det A \quad (15)$$

$$b_1 = \left(n \cdot S_6 \cdot S_4 + S_5 \cdot S_3 \cdot S_2 + S_2 \cdot S_1 \cdot S_7 - S_2 \cdot S_6 \cdot S_2 - S_7 \cdot S_3 \cdot n - S_4 \cdot S_1 \cdot S_5\right) / \det A \quad (16)$$

$$b_2 = \left(n \cdot S_2 \cdot S_7 + S_1 \cdot S_6 \cdot S_2 + S_5 \cdot S_1 \cdot S_3 - S_2 \cdot S_2 \cdot S_5 - S_3 \cdot S_6 \cdot n - S_7 \cdot S_1 \cdot S_1\right) / \det A \quad (17)$$

Where:

$$\det A = n \cdot S_2 \cdot S_4 + S_1 \cdot S_3 \cdot S_2 + S_2 \cdot S_1 \cdot S_3 - S_2 \cdot S_2 \cdot S_2 - S_3 \cdot S_3 \cdot S_2 - S_4 \cdot S_1 \cdot S_1 \quad (18)$$

8.2.2 Confidence Interval. For any positive value of x, the confidence interval is given by:

$$y_{CI} = \hat{y} \pm t_f \cdot s_Q \sqrt{\Delta} \quad (19)$$

Where:

$f = n - 3$,

t_f is given in Table I,

$$s_Q = \sqrt{\frac{1}{n-3}\sum_{i=1}^{n}\left(\hat{y}_i - y_i\right)^2}, \text{ and} \quad (20)$$

$$\Delta = C_0 + 2C_1 x + \left(2C_2 + C_3\right)x^2 + 2C_4 x^3 + C_5 x^4. \quad (21)$$

The C coefficients are given below:

$$C_0 = \frac{S_2 \cdot S_4 - S_3^2}{D}, C_1 = \frac{S_3 \cdot S_2 - S_1 \cdot S_4}{D}, C_2 = \frac{S_1 \cdot S_3 - S_2^2}{D},$$

$$C_3 = \frac{nS_4 - S_2^2}{D}, C_4 = \frac{S_1 \cdot S_2 - nS_3}{D}, C_5 = \frac{nS_2 - S_1^2}{D} \quad (22)$$

Where:

$$D = n\left(S_2 \cdot S_4 - S_3^2\right) + S_1\left(S_3 \cdot S_2 - S_1 \cdot S_4\right) + S_2\left(S_1 \cdot S_3 - S_2^2\right). \quad (23)$$

8.2.3 Tolerance Interval. For any positive value of x, the tolerance interval is given by:

$$y_{TI} = \hat{y} \pm k_T \cdot s_Q, \quad (24)$$

Where:

$$k_T = u_{n'} \cdot v_f \text{ with } f = n - 3, \text{ and} \quad (25)$$

$$n' = 1/\Delta \text{ with } n' \geq 2. \quad (26)$$

The v_f and $u_{n,}$ factors can also be found in Table I.

8.3 Test to Determine Best Regression Fit. The test to determine if the fit using a quadratic regression is better than the fit using a linear regression is based on the values of s calculated in the two formulations. If s_L denotes the value of s from the linear regression and s_Q the value of s from the quadratic regression, then the quadratic regression gives a better fit at the 95 percent confidence level if the following relationship is fulfilled:

$$\frac{(n-2)\cdot s_L^2 - (n-3)\cdot s_Q^2}{S_Q^2} > F_f \quad (27)$$

With f = n-3 and the value of F_f at the 95 percent confidence level as a function of f taken from Table II below.

TABLE II.—VALUES FOR F_f

f	F_f	*f*	$F\phi$
1	161.4	16	4.49
2	18.51	17	4.45
3	10.13	18	4.41
4	7.71	19	4.38
5	6.61	20	4.35
6	5.99	22	4.30
7	5.59	24	4.26
8	5.32	26	4.23
9	5.12	28	4.20
10	4.96	30	4.17
11	4.84	40	4.08
12	4.75	50	4.03
13	4.67	60	4.00
14	4.60	80	3.96
15	4.54	100	3.94

9. Reporting

At a minimum (check with the appropriate regional office, or State, or local agency for additional requirements, if any) summarize in tabular form the results of the CD tests and the CEMS response calibration. Include all data sheets, calculations, and records of CEMS response necessary to substantiate that the performance of the CEMS met the performance specifications.

The CEMS measurements shall be reported to the agency in units of mg/m^3 on a dry basis, corrected to 20°C and 7 percent O_2.

10. Bibliography

1. 40 CFR part 60, Appendix B, ''Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_X Continuous Emission Monitoring Systems in Stationary Sources.''

2. 40 CFR part 60, Appendix B, ''Performance Specification 1—Specification and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources.''

3. 40 CFR part 60, Appendix A, ''Method 1—Sample and Velocity Traverses for Stationary Sources.''

4. 40 CFR part 266, Appendix IX, Section 2, ''Performance Specifications for Continuous Emission Monitoring Systems.''

5. ISO 10155, ''Stationary Source Emissions—Automated Monitoring of Mass Concentrations of Particles: Performance Characteristics, Test Procedures, and Specifications,'' available from ANSI.

6. G. Box, W. Hunter, J. Hunter, Statistics for Experimenters (Wiley, New York, 1978).

7. M. Spiegel, Mathematical Handbook of Formulas and Tables (McGraw-Hill, New York, 1968).

Performance Specification 12—Specifications and test procedures for total mercury continuous monitoring systems in stationary sources.

1. Applicability and Principle

1.1 Applicability. This specification is to be used for evaluating the acceptability of total mercury continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in the regulations. The CEMS must be capable of measuring the total concentration (regardless of speciation) of both vapor and solid phase mercury. The CEMS may include, for certain stationary sources, (a) a diluent (O_2) monitor (which must meet its own performance specifications: 40 CFR part 60, Appendix B, Performance Specification 3), (b) flow monitoring equipment to allow measurement of the dry volume of stack effluent sampled, and (c) an automatic sampling system.

This specification is not designed to evaluate the installed CEMS' performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS' performance. The source owner or operator, however, is responsible to properly calibrate, maintain, and operate the CEMS. To evaluate the CEMS' performance, the Administrator may require, under Section 114 of the Act, the operator to conduct CEMS performance evaluations at other times besides the initial test.

1.2 Principle. Installation and measurement location specifications, performance specifications, test procedures, and data reduction procedures are included in this specification. Reference method tests, calibration error tests, and calibration drift tests, and interferant tests are conducted to determine conformance of the CEMS with the specification. Calibration error is assessed with standards for elemental mercury (Hg(0)) and mercuric chloride ($HgCl_2$). The ability of the CEMS to provide a measure of total mercury (regardless of speciation and phase) at the facility at which it is installed is demonstrated by comparison to manual reference method measurements.

2. Definitions

2.1 Continuous Emission Monitoring System (CEMS). The total equipment required for the determination of a pollutant concentration. The system consists of the following major subsystems:

2.1.1 Sample Interface. That portion of the CEMS used for one or more of the following: sample acquisition, sample transport, and sample conditioning, or protection of the monitor from the effects of the stack effluent.

2.1.2 Pollutant Analyzer. That portion of the CEMS that senses the pollutant concentration(s) and generates a proportional output.

2.1.3 Diluent Analyzer (if applicable). That portion of the CEMS that senses the diluent gas (O_2) and generates an output proportional to the gas concentration.

2.1.4 Data Recorder. That portion of the CEMS that provides a permanent record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.

2.2 Point CEMS. A CEMS that measures the pollutant concentrations either at a single point or along a path equal to or less than 10 percent of the equivalent diameter of the stack or duct cross section.

2.3 Path CEMS. A CEMS that measures the pollutant concentrations along a path greater than 10 percent of the equivalent diameter of the stack or duct cross section.

2.4 Span Value. The upper limit of a pollutant concentration measurement range defined as twenty times the applicable emission limit. The span value shall be documented by the CEMS manufacturer with laboratory data.

2.5 Relative Accuracy (RA). The absolute mean difference between the pollutant concentration(s) determined by the CEMS and the value determined by the reference method (RM) plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the RM tests or the applicable emission limit.

2.6 Calibration Drift (CD). The difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.7 Zero Drift (ZD). The difference in the CEMS output readings for zero input after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.8 Representative Results. Defined by the RA test procedure defined in this specification.

2.9 Response Time. The time interval between the start of a step change in the

system input and the time when the pollutant analyzer output reaches 95 percent of the final value.

2.10 Centroidal Area. A concentric area that is geometrically similar to the stack or duct cross section and is no greater than 1 percent of the stack or duct cross sectional area.

2.11 Batch Sampling. Batch sampling refers to the technique of sampling the stack effluent continuously and concentrating the pollutant in some capture medium. Analysis is performed periodically after sufficient time has elapsed to concentrate the pollutant to levels detectable by the analyzer.

2.12 Calibration Standard. Calibration standards consist of a known amount of pollutant that is presented to the pollutant analyzer portion of the CEMS in order to calibrate the drift or response of the analyzer. The calibration standard may be, for example, a solution containing a known concentration, or a filter with a known mass loading or composition.

2.13 Calibration Error (CE). The difference between the concentration indicated by the CEMS and the known concentration generated by a calibration source when the entire CEMS, including the sampling interface) is challenged. A CE test procedure is performed to document the accuracy and linearity of the CEMS over the entire measurement range.

3. Installation and Measurement Location Specifications

3.1 The CEMS Installation and measurement location. Install the CEMS at an accessible location downstream of all pollution control equipment where the mercury concentration measurements are directly representative or can be corrected so as to be representative of the total emissions from the affected facility. Then select representative measurement points or paths for monitoring in locations that the CEMS will pass the RA test (see Section 7). If the cause of failure to meet the RA test is determined to be the measurement location and a satisfactory correction technique cannot be established, the Administrator may require the CEMS to be relocated.

Measurement locations and points or paths that are most likely to provide data that will meet the RA requirements are listed below.

3.1.1 Measurement Location. The measurement location should be (1) at least eight equivalent diameters downstream of the nearest control device, point of pollutant generation, bend, or other point at which a change of pollutant concentration or flow disturbance may occur and (2) at least two equivalent diameters upstream from the effluent exhaust. The equivalent duct diameter is calculated as per 40 CFR part 60, Appendix A, Method 1, Section 2.1.

3.1.2 Point CEMS. The measurement point should be (1) no less than 1.0 meter from the stack or duct wall or (2) within or centrally located over the centroidal area of the stack or duct cross section. Selection of traverse points to determine the representativeness of the measurement location should be made according to 40 CFR part 60, Appendix A, Method 1, Section 2.2 and 2.3.

3.1.3 Path CEMS. The effective measurement path should be (1) totally within the inner area bounded by a line 1.0 meter from the stack or duct wall, or (2) have at least 70 percent of the path within the inner 50 percent of the stack or duct cross sectional area, or (3) be centrally located over any part of the centroidal area.

3.2 Reference Method (RM) Measurement Location and Traverse Points. The RM measurement location should be (1) at least eight equivalent diameters downstream of the nearest control device, point of pollutant generation, bend, or other point at which a change of pollutant concentration or flow disturbance may occur and (2) at least two equivalent diameters upstream from the effluent exhaust. The RM and CEMS locations need not be the same, however the difference may contribute to failure of the CEMS to pass the RA test, thus they should be as close as possible without causing interference with one another. The equivalent duct diameter is calculated as per 40 CFR part 60, Appendix A, Method 1, Section 2.1. Selection of traverse measurement point locations should be made according to 40 CFR part 60, Appendix A, Method 1, Sections 2.2 and 2.3. If the RM traverse line interferes with or is interfered by the CEMS measurements, the line may be displaced up to 30 cm (or 5 percent of the equivalent diameter of the cross section, whichever is less) from the centroidal area.

4. Performance and Equipment Specifications

4.1 Data Recorder Scale. The CEMS data recorder response range must include zero and a high level value. The high level value must be equal to the span value. If a lower high level value is used, the CEMS must have the capability of providing multiple outputs with different high level values (one of which is equal to the span value) or be capable of automatically changing the high level value as required (up to the span value) such that the measured value does not exceed 95 percent of the high level value.

4.2 Relative Accuracy (RA). The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data in terms of units of the emission standard, or 10 percent of the applicable standard, whichever is greater.

4.3 Calibration Error. Calibration error is assessed using standards for Hg(0) and $HgCl_2$. The mean difference between the indicated CEMS concentration and the reference concentration value for each standard at all three test levels listed below shall be no greater than ±15 percent of the reference concentration at each level.

4.3.1 Zero Level. Zero to twenty (0–20) percent of the emission limit.

4.3.2 Mid-Level. Forty to sixty (40–60) percent of the emission limit.

4.3.3 High-Level. Eighty to one-hundred and twenty (80–120) percent of the emission limit.

4.4 Calibration Drift. The CEMS design must allow the determination of calibration drift of the pollutant analyzer at concentration levels commensurate with the applicable emission standard. The CEMS calibration may not drift or deviate from the reference value (RV) of the calibration standard by more than 10 percent of the emission limit. The calibration shall be performed at a level equal to 80 to 120 percent of the applicable emission standard. Calibration drift shall be evaluated for elemental mercury only.

4.5 Zero Drift. The CEMS design must allow the determination of calibration drift at the zero level (zero drift). The CEMS zero point shall not drift by more than 5 percent of the emission standard.

4.6 Sampling and Response Time. The CEMS shall sample the stack effluent continuously. Averaging time, the number of measurements in an average, and the averaging procedure for reporting and determining compliance shall conform with that specified in the applicable emission regulation.

4.6.1 Response Time. The response time of the CEMS should not exceed 2 minutes to achieve 95 percent of the final stable value. The response time shall be documented by the CEMS manufacturer.

4.6.2 Waiver from Response Time Requirement. A source owner or operator may receive a waiver from the response time requirement for instantaneous, continuous CEMS in section 4.5.1 from the Agency if no CEM is available which can meet this specification at the time of purchase of the CEMS.

4.6.3 Response Time for Batch CEMS. The response time requirement of Section 4.5.1 does not apply to batch CEMS. Instead it is required that the sampling time be no longer than one third of the averaging period for the applicable standard. In addition, the delay between the end of the sampling time and reporting of the sample analysis shall be no greater than one hour. Sampling is also required to be continuous except in that the pause in sampling when the sample collection media are changed should be no greater than five percent of the averaging period or five minutes, whichever is less.

4.7 CEMS Interference Response. While the CEMS is measuring the concentration of mercury in the high-level calibration sources used to conduct the CE test the gaseous components (in nitrogen) listed in Table I shall be introduced into the measurement system either separately or in combination. The interference test gases must be introduced in such a way as to cause no change in the mercury or mercuric chloride calibration concentration being delivered to the CEMS. The concentrations listed in the table are the target levels at the sampling interface of the CEMS based on the known cylinder gas concentrations and the extent of dilution (see Section 9). Interference is defined as the difference between the CEMS response with these components present and absent. The sum of the interferences must be less than 10 percent of the emission limit value. If this level of interference is exceeded, then corrective action to eliminate the interference(s) must be taken.

TABLE I.—INTERFERENCE TEST GAS CONCENTRATIONS IN NITROGEN

Gas	Concentration
Carbon Monoxide	500±50 ppm.
Carbon Dioxide	10±1 percent.
Oxygen	20.9±1 percent.
Sulfur Dioxide	500±50 ppm.
Nitrogen Dioxide	250±25 ppm.
Water Vapor	25±5 percent.
Hydrogen Chloride (HCl)	50±5 ppm.
Chlorine (Cl_2)	10±1 ppm.

4.8 Calibration Source Requirements for Assessment of Calibration Error. The calibration source must permit the introduction of known (NIST traceable) and repeatable concentrations of elemental mercury (Hg(0)) and mercuric chloride ($HgCl_2$) into the sampling system of the CEMS. The CEMS manufacturer shall document the performance of the calibration source, and submit this documentation and a calibration protocol to the administrator for approval. Determination of CEMS calibration error must then be made in using the approved calibration source and in accordance with the approved protocol.

4.8.1 Design Considerations. The calibration source must be designed so that the flowrate of calibration gas introduced to the CEMS is the same at all three calibration levels specified in Section 4.3 and at all times exceeds the flow requirements of the CEMS.

4.8.2 Calibration Precision. A series of three injections of the same calibration gas, at any dilution, shall produce results which do not vary by more than ±5 percent from the mean of the three injections. Failure to attain this level of precision is an indication of a problem in the calibration system or the CEMS. Any such problem must be identified and corrected before proceeding.

5. Performance Specification Test Procedure

5.1 Pretest Preparation. Install the CEMS and prepare the RM test site according to the specifications in Section 3, and prepare the CEMS for operation according to the manufacturer's written instructions.

5.2 Calibration and Zero Drift Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the calibration drift (CD) and zero drift (ZD) once each day (at 24-hour intervals) for 7 consecutive days according to the procedure given in Section 6. To meet the requirements of Sections 4.4 and 4.5 none of the CD's or ZD's may exceed the specification. All CD determinations must be made following a 24-hour period during which no unscheduled maintenance, repair, or manual adjustment of the CEMS took place.

5.3 CE Test Period. Conduct a CE test prior to the CD test period. Conduct the CE test according to the procedure given in Section 8.

5.4 CEMS Interference Response Test Period. Conduct an interference response test in conjunction with the CE test according to the procedure given in Section 9.

5.5 RA Test Period. Conduct a RA test following the CD test period. Conduct the RA test according to the procedure given in Section 7 while the affected facility is operating at more than 50 percent of normal load, or as specified in the applicable subpart.

6.0 The CEMS Calibration and Zero Drift Test Procedure

This performance specification is designed to allow calibration of the CEMS by use of standard solutions, filters, etc. that challenge the pollutant analyzer part of the CEMS (and as much of the whole system as possible), but which do not challenge the entire CEMS, including the sampling interface. Satisfactory response of the entire system is covered by the RA and CE requirements.

The CD measurement is to verify the ability of the CEMS to conform to the established CEMS calibration used for determining the emission concentration. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and calibration settings, conduct the CD test immediately before the adjustments, or conduct it in such a way that the CD and ZD can be determined.

Conduct the CD and ZD tests at the points specified in Sections 4.4 and 4.5. Record the CEMS response and calculate the CD according to:

$$CD = \frac{\left(R_{CEM} - R_V\right)}{R_V} \times 100, \qquad (1)$$

Where CD denotes the calibration drift of the CEMS in percent, R_{CEM} is the CEMS response, and R_V is the reference value of the high level calibration standard. Calculate the ZD according to:

$$ZD = \frac{\left(R_{CEM} - R_V\right)}{R_{EM}} \times 100, \qquad (2)$$

Where ZD denotes the zero drift of the CEMS in percent, R_{CEM} is the CEMS response, R_V is the reference value of the low level calibration standard, and R_{EM} is the emission limit value.

7. Relative Accuracy Test Procedure

7.1 Sampling Strategy for RA Tests. The RA tests are to verify the initial performance of the entire CEMS system, including the sampling interface, by comparison to RM measurements. Conduct the RM measurements in such a way that they will yield results representative of the emissions from the source and can be correlated to the CEMS data. Although it is preferable to conduct the diluent (if applicable), moisture (if needed), and pollutant measurements simultaneously, the diluent and moisture measurements that are taken within a 30 to 60-minute period, which includes the pollutant measurements, may be used to calculate dry pollutant concentration.

A measure of relative accuracy at a single level that is detectable by both the CEMS and the RM is required.

In order to correlate the CEMS and RM data properly, note the beginning and end of each RM test period of each run (including the exact time of day) in the CEMS data log.

7.2 Correlation of RM and CEMS Data. Correlate the CEMS and RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration for each RM test period. Consider system response time, if important, and confirm that the pair of results are on a consistent moisture, temperature, and diluent concentration basis. Then compare each integrated CEMS value against the corresponding average RM value.

7.3 Number of tests. Obtain a minimum of three pairs of CEMS and RM measurements. If more than nine pairs of measurements are obtained, then up to three pairs of measurements may be rejected so long as the total number of measurement pairs used to determine the RA is greater than or equal to nine. However, all data, including the rejected data, must be reported.

7.4 Reference Methods. Unless otherwise specified in an applicable subpart of the regulations, Method 3B, or its approved alternative, is the reference method for diluent (O_2) concentration. Unless otherwise specified in an applicable subpart of the regulations, the manual method for multi-metals in 40 CFR part 266, Appendix IX, Section 3.1 (until superseded by SW–846), or its approved alternative, is the reference method for mercury.

7.5 Calculations. Summarize the results on a data sheet. An example is shown in Figure 2–2 of 40 CFR part 60, Appendix B, Performance Specification 2. Calculate the mean of the RM values. Calculate the arithmetic differences between the RM and CEMS output sets, and then calculate the mean of the differences. Calculate the standard deviation of each data set and CEMS RA using the equations in Section 10.

8. Calibration Error Test Procedure

8.1 Sampling Strategy. The CEMS calibration error shall be assessed using calibration sources of elemental mercury and mercuric chloride in turn (see Section 4.8 for calibration source requirements). Challenge the CEMS at the measurement levels specified in Section 4.3. During the test, operate the CEMS as nearly as possible in its normal operating mode. The calibration gases should be injected into the sampling system as close to the sampling probe outlet as practical and shall pass through all filters, scrubbers, conditioners, and other monitor components used during normal sampling.

8.2 Number of tests. Challenge the CEMS three non-consecutive times at each measurement point and record the responses. The duration of each challenge should be for a sufficient period of time to ensure that the CEMS surfaces are conditioned and a stable output obtained.

8.3 Calculations. Summarize the results on a data sheet. Calculate the mean difference between the CEMS response and the known reference concentration at each measurement point according to equations 5 and 6 of Section 10. The calibration error (CE) at each measurement point is then given by

$$CE = \left|d / R_V\right| \times 100, \qquad (3)$$

Where R_V is the reference concentration value.

9. Interference Response Test Procedure

9.1 Test Strategy. Perform the interference response test while the CEMS is being challenged by the high level calibration source for mercury (after the CE determination has been made), and again while the CEMS is being challenged by the high level calibration source for mercuric chloride (after the CE determination has been made). The interference test gases should be injected into the sampling system as close to the sampling probe outlet as practical and shall pass through all filters, scrubbers, conditioners, and other monitor components used during normal sampling.

9.2 Number of tests. Introduce the interference test gas three times alternately with the high-level calibration gas and record the responses both with and without the interference test gas. The duration of each test should be for a sufficient period of time to ensure that the CEMS surfaces are conditioned and a stable output obtained.

9.3 Calculations. Summarize the results on a data sheet. Calculate the mean difference between the CEMS response with and without the interference test gas by taking the average of the CEMS responses with and without the interference test gas (see equation 5) and then taking the difference (d). The percent interference (I) is then given by:

$$I = |d / R_{HL}| \times 100, \qquad (4)$$

Where R_{HL} is the value of the high-level calibration standard. If the gaseous components of the interference test gas are introduced separately, then the total interference is the sum of the individual interferences.

10. Equations

10.1 Arithmetic Mean. Calculate the arithmetic mean of a data set as follows:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i, \qquad (5)$$

Where n is equal to the number of data points.

10.1.1 Calculate the arithmetic mean of the difference, d, of a data set, using Equation 5 and substituting d for x. Then

$$d_i = x_i - y_i, \qquad (6)$$

Where x and y are paired data points from the CEMS and RM, respectively.

10.2 Standard Deviation. Calculate the standard deviation (SD) of a data set as follows:

$$SD = \sqrt{\frac{\sum_{i=1}^{n} x_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} x_i\right)^2}{n-1}}, \qquad (7)$$

10.3 Relative Accuracy (RA). Calculate the RA as follows:

$$RA = \frac{\bar{d} + \frac{t_{0.975}}{\sqrt{n}}(SD)}{\bar{R}_{RM}} \qquad (8)$$

Where $\bar{d}$ is equal to the arithmetic mean of the difference, d, of the paired CEMS and RM data set, calculated according to Equations 5 and 6, SD is the standard deviation calculated according to Equation 7, $\bar{R}_{RM}$ is equal to either the average of the RM data set, calculated according to Equation 5, or the value of the emission standard, as applicable (see Section 4.2), and $t_{0.975}$ is the t-value at 2.5 percent error confidence, see Table II.

TABLE II

[t-Values]

n[a]	$t_{0.975}$	n_a	$t_{0.975}$	n[a]	$t_{0.975}$
2	12.706	7	2.447	12	2.201
3	4.303	8	2.365	13	2.179
4	3.182	9	2.306	14	2.160
5	2.776	10	2.262	15	2.145
6	2.571	11	2.228	16	2.131

[a] The values in this table are already corrected for n-1 degrees of freedom. Use n equal to the number of individual values.

11. Reporting

At a minimum (check with the appropriate regional office, or State, or local agency for additional requirements, if any) summarize in tabular form the results of the CE, interference response, CD and RA tests. Include all data sheets, calculations, and records of CEMS response necessary to substantiate that the performance of the CEMS met the performance specifications.

The CEMS measurements shall be reported to the agency in units of $\mu g/m^3$ on a dry basis, corrected to 20 °C and 7 percent O_2.

12. Bibliography

1. 40 CFR Part 60, Appendix B, ''Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_X Continuous Emission Monitoring Systems in Stationary Sources.''

2. 40 CFR Part 60, Appendix B, ''Performance Specification 1—Specification and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources.''

3. 40 CFR Part 60, Appendix A, ''Method 1—Sample and Velocity Traverses for Stationary Sources.''

4. 40 CFR Part 266, Appendix IX, Section 2, ''Performance Specifications for Continuous Emission Monitoring Systems.''

5. Draft Method 29, ''Determination of Metals Emissions from Stationary Sources,'' Docket A–90–45, Item II–B–12, and EMTIC CTM–012.WPF.

6. ''Continuous Emission Monitoring Technology Survey for Incinerators, Boilers, and Industrial Furnaces: Final Report for Metals CEM's,'' prepared for the Office of Solid Waste, U.S. EPA, Contract No. 68–D2–0164 (4/25/94).

7. 40 CFR Part 60, Appendix A, Method 16, ''Semicontinuous Determination of Sulfur Emissions from Stationary Sources.''

8. 40 CFR Part 266, Appendix IX, Performance Specification 2.2, ''Performance Specifications for Continuous Emission Monitoring of Hydrocarbons for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste.''

Performance Specification 13—Specifications and test procedures for hydrochloric acid continuous monitoring systems in stationary sources

1. Applicability and Principle

1.1 Applicability. This specification is to be used for evaluating the acceptability of hydrogen chloride (HCl) continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in the pertinent regulations. Some source specific regulations require the simultaneous operation of diluent monitors. These may be O_2 or CO_2 monitors.

This specification does not evaluate the performance of installed CEMS over extended periods of time. The specification does not identify specific calibration techniques or other auxiliary procedures that will assess the CEMS performance. Section 114 of the Act authorizes the administrator to require the operator of the CEMS to conduct performance evaluations at times other than immediately following the initial installation.

This specification is only applicable to monitors that unequivocally measure the concentration of HCl in the gas phase. It is not applicable to CEMS that do not measure gas phase HCl, per se, or CEMS that may have significant interferences. The Administrator believes that HCl CEMS must measure the concentration of gaseous HCl thereby eliminating interferences from volatile inorganic and/or organic chlorinated compounds. CEMS that are based upon infrared measurement techniques, non-dispersive infrared (NDIR), gas filter correlation infrared (GFC–IR) and Fourier Transform infrared (FTIR) are examples of acceptable measurement techniques. Other measurement techniques that unequivocally

measure the concentration of HCl in the gas phase may also be acceptable.

1.2 Principle. This specification includes installation and measurement location specifications, performance and equipment specifications, test procedures, and data reduction procedures. This specification also provides definitions of acceptable performance.

This specification stipulates that audit gas tests and calibration drift tests be used to assess the performance of the CEMS. The determination of the accuracy with which the CEMS measures HCl is measured by challenging the CEMS with audit gas of known concentration. There is no absolute determination of interference with the measurement of gas phase HCl with other constituents in the stack gases.

2. Definitions

2.1 Continuous Emission Monitoring System. The total equipment required for the determination of the concentration of a gas or its emission rate. The CEMS consist of the following subsystems:

2.1.1 Sample Interface. That portion of the CEMS used for one or more of the following: sample acquisition, sample transportation, sample conditioning, and protection of the monitor from the effects of the stack effluent.

2.1.2 Pollutant Analyzer. That portion of the CEMS that senses the pollutant gas and generates an output that is proportional to the gas concentration.

2.1.3 Diluent Analyzer. That portion of the CEMS that senses the concentration of the diluent gas (e.g., CO_2 or O_2) and generates an output that is proportional to the concentration of the diluent.

2.1.4 Data Recorder. That portion of the CEMS that provides a permanent record of the analyzer output. The data recorder may include automatic data reduction capabilities.

2.2 Point CEMS. A CEMS that measures the gas concentration either at a single point or along a path equal to or less than 10 percent of the equivalent diameter of the stack or duct cross section. The equivalent diameter must be determined as specified in Appendix A, Method 1 of this Part.

2.3 Path CEMS. A CEMS that measures the gas concentration along a path greater than 10 percent of the equivalent diameter (Appendix A, Method 1) of the stack of duct cross section.

2.4 Span Value. The upper limit of a gas concentration measurement range specified for affected source categories in the applicable subpart of the regulations. The span value shall be documented by the CEMS manufacturer with laboratory data.

2.5 Accuracy. A measurement of agreement between a measured value and an accepted or true value, expressed as the percentage difference between the true and measured values relative to the true value. For these performance specifications, accuracy is checked by conducting a calibration error (CE) test.

2.6 Calibration Error (CE). The difference between the concentration indicated by the CEMS and the known concentration of the cylinder gas. A CE test procedure is performed to document the accuracy and linearity of the monitoring equipment over the entire measurement range.

2.7 Calibration Drift. (CD). The difference between the CEMS output and the concentration of the calibration gas after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.8 Centroidal Area. A concentric area that is geometrically similar to the stack or duct cross section is no greater than 1 percent of the stack or duct cross-sectional area.

2.9 Representative Results. Defined by the RM test procedure outlined in this specification.

3. Installation and Measurement Location Specifications

3.1 CEMS Installation and Measurement Locations. The CEMS shall be installed in a location in which measurements representative of the source's emissions can be obtained. The optimum location of the sample interface for the CEMS is determined by a number of factors, including ease of access for calibration and maintenance, the degree to which sample conditioning will be required, the degree to which it represents total emissions, and the degree to which it represents the combustion situation in the firebox. The location should be as free from in-leakage influences as possible and reasonably free from severe flow disturbances. The sample location should be at least two equivalent duct diameters downstream from the nearest control device, point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate occurs and at least 0.5 diameter upstream from the exhaust or control device. The equivalent duct diameter is calculated as per 40 CFR part 60, appendix A, method 1, section 2.1. If these criteria are not achievable or if the location is otherwise less than optimum, the possibility of stratification should be investigated as described in section 3.2. The measurement point shall be within the centroidal area of the stack or duct cross section.

3.1.1 Point CEMS. It is suggested that the measurement point be (1) no less than 1.0 meter from the stack or duct wall or (2) within or centrally located over the centroidal area of the stack or duct cross section.

3.1.2 Path CEMS. It is suggested that the effective measurement path (1) be totally within the inner area bounded by a line 1.0 meter from the stack or duct wall, or (2) have at least 70 percent of the path within the inner 50 percent of the stack or duct cross-sectional area.

3.2 Stratification Test Procedure. Stratification is defined as a difference in excess of 10 percent between the average concentration in the duct or stack and the concentration at any point more than 1.0 meter from the duct or stack wall. To determine whether effluent stratification exists, a dual probe system should be used to determine the average effluent concentration while measurements at each traverse point are being made. One probe, located at the stack or duct centroid, is used as a stationary reference point to indicate the change in effluent concentration over time. The second probe is used for sampling at the traverse points specified in 40 CFR part 60 appendix A, method 1. The monitoring system samples sequentially at the reference and traverse points throughout the testing period for five minutes at each point.

4. Performance and Equipment Specifications

4.1 Data Recorder Scale. The CEMS data recorder response range must include zero and a high-level value. The high-level value is chosen by the source owner or operator and is defined as follows:

For a CEMS intended to measure an uncontrolled emission (e.g., at the inlet of a scrubber) the high-level value must be between 1.25 and 2.0 times the average potential emission concentration, unless another value is specified in an applicable subpart of the regulations. For a CEMS installed to measure controlled emissions or emissions that are in compliance with an applicable regulation, the high-level value must be between 1.5 times the HCl concentration corresponding to the emission standard level and the span value. If a lower high-level value is used, the operator must have the capability of requirements of the applicable regulations.

The data recorder output must be established so that the high-level value is read between 90 and 100 percent of the data recorder full scale. (This scale requirement may not be applicable to digital data recorders.) The calibration gas, optical filter or cell values used to establish the data recorder scale should produce the zero and high-level values. Alternatively, a calibration gas, optical filter, or cell value between 50 and 100 percent of the high-level value may be used in place of the high-level value, provided that the data recorder full-scale requirements as described above are met.

The CEMS design must also allow the determination of calibration drift at the zero and high-level values. If this is not possible or practicable, the design must allow these determinations to be conducted at a low-level value (zero to 20 percent of the high-level value) and at a value between 50 and 100 percent of the high-level value.

4.2 Calibration Drift. The CEMS calibration must not drift or deviate from the reference value of the gas cylinder, gas cell, or optical filter by more than 2.5 percent of the span value. If the span value of the CEMS is 20 ppm or less then the calibration drift must be less than 0.5 parts per million, for 6 out of 7 test days.

If the CEMS includes both HCl and diluent monitors, the calibration drift must be determined separately for each in terms of concentrations (see PS 3 for the diluent specifications).

4.3 Calibration Error (CE). Calibration error is assessed using EPA protocol 1 cyinder gases for HCl. The mean difference between the indicated CEMS concentration and the reference concentration value for each standard at all three test levels indicated below shall be no greater than 15 percent of the reference concentration at each level.

4.3.1 Zero Level. Zero to twenty (0–20) percent of the emission limit.

4.3.2 Mid Level. Forty to sixty (40–60) percent of the emission limit.

4.3.3 High Level. Eighty to one-hundred and twenty (80–120) percent of the emission limit.

4.4 CEMS Interference Response Test. Introduce the gaseous components listed in Table PS HCl–1 into the measurement system of the CEMS, while the measurement system is measuring the concentration of HCl in a calibration gas. These components may be introduced separately or as gas mixtures. Adjust the HCl calibration gas and gaseous component flow rates so as to maintain a constant concentration of HCl in the gas mixture being introduced into the measurement system. Record the change in the measurement system response to the HCl on a form similar to Figure PS HCl–1. If the sum of the interferences is greater than 2 percent of the applicable span concentration, take corrective action to eliminate the interference.

TABLE PS HCL–1.—INTERFERENCE TEST GASES CONCENTRATIONS

Gas	Concentration
Carbon Monoxide	500±50 ppm.
Carbon Dioxide	10±1 percent.
Oxygen	20.9±1 percent.
Sulfur Dioxide	500±50 ppm.
Water Vapor	25±5 percent.
Nitrogen Dioxide	250±25 ppm.

Figure PS HCl–1—Interference Response

Date of Test _____

Analyzer Type _____

Serial Number _____

HCl—CALIBRATION GAS CONCENTRATION

Test gas	Concentration	Analyzer response	Analyzer error	Percent of span

Conduct an interference response test of each analyzer prior to its initial use in the field. Thereafter, re-check the measurement system if changes are made in the instrumentation that could alter the interference response, e.g., changes in the type of gas detector.

4.5 Sampling and Response Time. The CEMS shall sample the stack effluent continuously. Averaging time, the number of measurements in an average, and the averaging procedure for reporting and determining compliance shall conform with that specified in the applicable emission regulation.

4.5.1 Response Time. The response time of the CEMS should not exceed 2 minutes to achieve 95 percent of the final stable value. The response time shall be documented by the CEMS manufacturer.

4.5.2 Waiver from Response Time Requirement. A source owner or operator may receive a waiver from the response time requirement for instantaneous, continuous CEMS in section 4.5.1 from the Agency if no CEM is available which can meet this specification at the time of purchase of the CEMS.

4.5.3 Response Time for Batch CEMS. The response time requirement of Section 4.5.1 does not apply to batch CEMS. Instead it is required that the sampling time be no longer than one third of the averaging period for the applicable standard. In addition, the delay between the end of the sampling time and reporting of the sample analysis shall be no greater than one hour. Sampling is also required to be continuous except in that the pause in sampling when the sample collection media are changed should be no greater than five percent of the averaging period or five minutes, whichever is less.

5. Performance Specification Test Procedure

5.1 Pretest Preparation. Install the CEMS, prepare the RM test site according to the specifications in Section 3, and prepare the CEMS for operation according to the manufacturer's written instructions.

5.2 Calibration Drift Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the calibration drift (CD) once each day (at 24-hour intervals) for 7 consecutive days, according to the procedure given in Section 6. The CD may not exceed the specification given in Section 4.2.

5.3 CE Test Period. Conduct a CE test prior to the CD test period. Conduct the CE test according to the procedure given in section 7.

6. The CEMS Calibration Drift Test Procedure

The CD measurement is to verify the ability of the CEMS to conform to the established CEMS calibration used for determining the emission concentration or emission rate. Therefore, if periodic automated or manual adjustments are made to the CEMS zero and calibration settings, conduct the CD test immediately before these adjustments, or conduct it in such a way that the CD can be determined.

Conduct the CD test at the two points specified in Section 4.1. Introduce the reference gases, gas cells or optical filters (these need not be certified) to the CEMS. Record the CEMS response and subtract this value from the reference value (see the example data sheet in Figure 2–1).

7. Calibration Error Test Procedure

7.1 Sampling Strategy. The CEMS calibration error shall be assessed using the calibration source specified in Section 4.3. Challenge the CEMS at the measurement levels specified in Section 4.3. During the test, operate the CEMS as nearly as possible in its normal operating mode. The calibration gases should be injected into the sampling system as close to the sampling probe outlet as practical and shall pass through all filters, scrubbers, conditioners, and other monitor components used during normal sampling.

7.2 Number of tests. Challenge the CEMS three non-consecutive times at each measurement point and record the responses. The duration of each challenge should be for a sufficient period of time to ensure that the CEMS surfaces are conditioned and a stable output obtained.

7.3 Calculations. Summarize the results on a data sheet. Calculate the mean difference between the CEMS response and the known reference concentration at each measurement point according to equations 1 and 2 of Section 8. The calibration error (CE) at each measurement point is then given by:

$$CE = |d / r_V| \times 100, \quad (1)$$

Where R_V is the reference concentration value.

8. Equations

8.1 Arithmetic Mean. Calculate the arithmetic mean of the difference, d, of a data set as follows:

$$\bar{d} = \frac{1}{n}\sum_{i=1}^{n} d_i \quad (2)$$

Where:
n=number of data points.

$$\sum_{i=1}^{n} d_i = \text{Algebraic sum of the individual differences } d_i$$

When the mean of the differences of pairs of data is calculated, be sure to correct the data for moisture, if applicable.

9. Reporting

At a minimum (check with the appropriate regional office, or State, or local agency for additional requirements, if any) summarize in tabular form the results of the CD tests and the relative accuracy tests or alternative RA procedure as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), cylinder gas concentration certifications (if applicable), necessary to substantiate that the performance of the CEMS met the performance specifications.

Performance Specifications 14—Specifications and test procedures for chlorine continuous monitoring systems in stationary sources.

1. Applicability and Principle

1.1 Applicability. This specification is to be used for evaluating the acceptability of chlorine (Cl_2) continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in the regulations. This performance specification applies only to those CEMS capable of directly measuring the gas phase concentration of the chlorine (Cl_2) molecule. The CEMS may include, for certain stationary sources, a) a diluent (O_2) monitor (which must meet its own performance specifications: 40 CFR part 60, Appendix B, Performance Specification 3), b) flow monitoring equipment to allow measurement of the dry volume of stack effluent sampled, and c) an automatic sampling system.

This specification is not designed to evaluate the installed CEMS' performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS' performance. The source owner or operator, however, is responsible to properly calibrate, maintain, and operate the CEMS. To evaluate the CEMS' performance, the Administrator may require, under Section 114 of the Act, the operator to conduct CEMS performance evaluations at other times besides the initial test.

1.2 Principle. Installation and measurement location specifications, performance specifications, test procedures, and data reduction procedures are included in this specification. Calibration error tests, and calibration drift tests, and interferant tests are conducted to determine conformance of the CEMS with the specification. Calibration error is assessed with cylinder gas standards for chlorine. The ability of the CEMS to provide an accurate measure of chlorine concentration in the flue gas of the facility at which it is installed is demonstrated by comparison to manual reference method measurements.

2. Definitions

2.1 Continuous Emission Monitoring System (CEMS). The total equipment required for the determination of a pollutant concentration. The system consists of the following major subsystems:

2.1.1 Sample Interface. That portion of the CEMS used for one or more of the following: sample acquisition, sample transport, and sample conditioning, or protection of the monitor from the effects of the stack effluent.

2.1.2 Pollutant Analyzer. That portion of the CEMS that senses the pollutant concentration(s) and generates a proportional output.

2.1.3 Diluent Analyzer (if applicable). That portion of the CEMS that senses the diluent gas (O_2) and generates an output proportional to the gas concentration.

2.1.4 Data Recorder. That portion of the CEMS that provides a permanent record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.

2.2 Point CEMS. A CEMS that measures the pollutant concentrations either at a single point or along a path equal to or less than 10 percent of the equivalent diameter of the stack or duct cross section.

2.3 Path CEMS. A CEMS that measures the pollutant concentrations along a path greater than 10 percent of the equivalent diameter of the stack or duct cross section.

2.4 Span Value. The upper limit of a pollutant concentration measurement range defined as twenty times the applicable emission limit. The span value shall be documented by the CEMS manufacturer with laboratory data.

2.5 Accuracy. A measurement of agreement between a measured value and an accepted or true value, expressed as the percentage difference between the true and measured values relative to the true value. For these performance specifications, accuracy is checked by conducting a calibration error (CE) test.

2.6 Calibration Drift (CD). The difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.7 Zero Drift (ZD). The difference in the CEMS output readings for zero input after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.8 Representative Results. Defined by the RA test procedure defined in this specification.

2.9 Response Time. The time interval between the start of a step change in the system input and the time when the pollutant analyzer output reaches 95 percent of the final value.

2.10 Centroidal Area. A concentric area that is geometrically similar to the stack or duct cross section and is no greater than 1 percent of the stack or duct cross sectional area.

2.11 Calibration Standard. Calibration standards consist of a known amount of pollutant that is presented to the pollutant analyzer portion of the CEMS in order to calibrate the drift or response of the analyzer. The calibration standard may be, for example, a gas sample containing known concentration.

2.12 Calibration Error (CE). The difference between the concentration indicated by the CEMS and the known concentration generated by a calibration source when the entire CEMS, including the sampling interface) is challenged. A CE test procedure is performed to document the accuracy and linearity of the CEMS over the entire measurement range.

3. Installation and Measurement Location Specifications

3.1 CEMS Installation and Measurement Locations. The CEMS shall be installed in a location in which measurements representative of the source's emissions can be obtained. The optimum location of the sample interface for the CEMS is determined by a number of factors, including ease of access for calibration and maintenance, the degree to which sample conditioning will be required, the degree to which it represents total emissions, and the degree to which it represents the combustion situation in the firebox. The location should be as free from in-leakage influences as possible and reasonably free from severe flow disturbances. The sample location should be at least two equivalent duct diameters downstream from the nearest control device, point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate occurs and at least 0.5 diameter upstream from the exhaust or control device. The equivalent duct diameter is calculated as per 40 CFR part 60, appendix A, method 1, section 2.1. If these criteria are not achievable or if the location is otherwise less than optimum, the possibility of stratification should be investigated as described in section 3.2. The measurement point shall be within the centroidal area of the stack or duct cross section.

3.1.1 Point CEMS. It is suggested that the measurement point be (1) no less than 1.0 meter from the stack or duct wall or (2) within or centrally located over the centroidal area of the stack or duct cross section.

3.1.2 Path CEMS. It is suggested that the effective measurement path (1) be totally within the inner area bounded by a line 1.0 meter from the stack or duct wall, or (2) have at least 70 percent of the path within the inner 50 percent of the stack or duct cross-sectional area.

3.2 Stratification Test Procedure. Stratification is defined as a difference in

excess of 10 percent between the average concentration in the duct or stack and the concentration at any point more than 1.0 meter from the duct or stack wall. To determine whether effluent stratification exists, a dual probe system should be used to determine the average effluent concentration while measurements at each traverse point are being made. One probe, located at the stack or duct centroid, is used as a stationary reference point to indicate the change in effluent concentration over time. The second probe is used for sampling at the traverse points specified in 40 CFR part 60 appendix A, method 1. The monitoring system samples sequentially at the reference and traverse points throughout the testing period for five minutes at each point.

4. Performance and Equipment Specifications

4.1 Data Recorder Scale. The CEMS data recorder response range must include zero and a high level value. The high level value must be equal to the span value. If a lower high level value is used, the CEMS must have the capability of providing multiple outputs with different high level values (one of which is equal to the span value) or be capable of automatically changing the high level value as required (up to the span value) such that the measured value does not exceed 95 percent of the high level value.

4.2 Relative Accuracy (RA). The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data in terms of units of the emission standard, or 10 percent of the applicable standard, whichever is greater.

4.3 Calibration Error. Calibration error is assessed using certified NIST traceable cylinder gas standards for chlorine. The mean difference between the indicated CEMS concentration and the reference concentration shall be no greater than ±15 percent of the reference concentration. The reference concentration shall be the greater of 80 to 120 percent of the applicable emission standard or 50 ppm Cl_2, in nitrogen.

4.4 Calibration Drift. The CEMS design must allow the determination of calibration drift at concentration levels commensurate with the applicable emission standard. The CEMS calibration may not drift or deviate from the reference value (RV) of the calibration standard by more than 2 percent of the reference value. The calibration shall be performed at a level equal to 80 to 120 percent of the applicable emission standard.

4.5 Zero Drift. The CEMS design must allow the determination of calibration drift at the zero level (zero drift). The CEMS zero point shall not drift by more than 2 percent of the emission standard.

4.6 Sampling and Response Time. The CEMS shall sample the stack effluent continuously. Averaging time, the number of measurements in an average, and the averaging procedure for reporting and determining compliance shall conform with that specified in the applicable emission regulation.

4.6.1 Response Time. The response time of the CEMS should not exceed 2 minutes to achieve 95 percent of the final stable value. The response time shall be documented by the CEMS manufacturer.

4.7 CEMS Interference Response. While the CEMS is measuring the concentration of chlorine in the high-level calibration source used to conduct the CE test, the gaseous components (in nitrogen) listed in Table I shall be introduced into the measurement system either separately or in combination. The interference test gases must be introduced in such a way as to cause no change in the calibration concentration of chlorine being delivered to the CEMS. The concentrations listed in the table are the target levels at the sampling interface of the CEMS based on the known cylinder gas concentrations and the extent of dilution (see Section 9). Interference is defined as the difference between the CEMS response with these components present and absent. The sum of the interferences must be less than 2 percent of the emission limit value. If this level of interference is exceeded, then corrective action to eliminate the interference(s) must be taken.

TABLE I.—INTERFERENCE TEST GAS CONCENTRATIONS IN NITROGEN

Gas	Concentration
Carbon Monoxide	500 ± 50 ppm.
Carbon Dioxide	10 ± 1 percent.
Oxygen	20.9 ± 1 percent.
Sulfur Dioxide	500 ± 50 ppm.
Nitrogen Dioxide	250 ± 25 ppm.
Water Vapor	25 ± 5 percent.
Hydrogen Chloride (HCl)	50 ± 5 ppm.

5. Performance Specification Test Procedure

5.1 Pretest Preparation. Install the CEMS and prepare the RM test site according to the specifications in Section 3, and prepare the CEMS for operation according to the manufacturer's written instructions.

5.2 Calibration and Zero Drift Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the calibration drift (CD) and zero drift (ZD) once each day (at 24-hour intervals) for 7 consecutive days according to the procedure given in Section 6. To meet the requirements of Sections 4.4 and 4.5 none of the CD's or ZD's may exceed the specification. All CD determinations must be made following a 24-hour period during which no unscheduled maintenance, repair, or manual adjustment of the CEMS took place.

5.3 CE Test Period. Conduct a CE test prior to the CD test period. Conduct the CE test according to the procedure given in Section 8.

5.4 CEMS Interference Response Test Period. Conduct an interference response test in conjunction with the CE test according to the procedure given in Section 9.

6.0 The CEMS Calibration and Zero Drift Test Procedure

This performance specification is designed to allow calibration of the CEMS by use of gas samples, filters, etc, that challenge the pollutant analyzer part of the CEMS (and as much of the whole system as possible), but which do not challenge the entire CEMS, including the sampling interface. Satisfactory response of the entire system is covered by the RA and CE requirements.

The CD measurement is to verify the ability of the CEMS to conform to the established CEMS calibration used for determining the emission concentration. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and calibration settings, conduct the CD test immediately before the adjustments, or conduct it in such a way that the CD and ZD can be determined.

Conduct the CD and ZD tests at the points specified in Sections 4.4 and 4.5. Record the CEMS response and calculate the CD according to:

$$CD = \frac{\left(R_{CEM} - R_V\right)}{R_V} \times 100, \qquad (1)$$

Where CD denotes the calibration drift of the CEMS in percent, R_{CEM} is the CEMS response, and R_V is the reference value of the high level calibration standard. Calculate the ZD according to:

$$ZD = \frac{\left(R_{CEM} - R_V\right)}{R_{EM}} \times 100, \qquad (2)$$

Where ZD denotes the zero drift of the CEMS in percent, R_{CEM} is the CEMS response, R_V is the reference value of the low level calibration standard, and R_{EM} is the emission limit value.

7. Calibration Error Test Procedure

7.1 Sampling Strategy. The CEMS calibration error shall be assessed using the calibration source specified in Section 4.3. Challenge the CEMS at the measurement levels specified in Section 4.3. During the test, operate the CEMS as nearly as possible in its normal operating mode. The calibration gases should be injected into the sampling system as close to the sampling probe outlet as practical and shall pass through all filters, scrubbers, conditioners, and other monitor components used during normal sampling.

7.2 Number of tests. Challenge the CEMS three non-consecutive times at each measurement point and record the responses. The duration of each challenge should be for a sufficient period of time to ensure that the CEMS surfaces are conditioned and a stable output obtained.

7.3 Calculations. Summarize the results on a data sheet. Calculate the mean difference between the CEMS response and the known reference concentration at each measurement point according to equations 5 and 6 of Section 10. The calibration error (CE) at each measurement point is then given by:

$$CE = \left|d / R_V\right| \times 100, \qquad (3)$$

Where R_V is the reference concentration value.

8. Interference Response Test Procedure

8.1 Test Strategy. Perform the interference response test while the CEMS is being challenged by the high level calibration source (after the CE determination has been

made). The interference test gases should be injected into the sampling system as close to the sampling probe outlet as practical and shall pass through all filters, scrubbers, conditioners, and other monitor components used during normal sampling.

8.2 Number of tests. Introduce the interference test gas three times alternately with the high-level calibration gas and record the responses both with and without the interference test gas. The duration of each test should be for a sufficient period of time to ensure that the CEMS surfaces are conditioned and a stable output obtained.

8.3 Calculations. Summarize the results on a data sheet. Calculate the mean difference between the CEMS response with and without the interference test gas by taking the average of the CEMS responses with and without the interference test gas (see equation 5) and then taking the difference (d). The percent interference (I) is then given by:

$$I = \left| d / R_{HL} \right| \times 100, \qquad (4)$$

Where R_{HL} is the value of the high-level calibration standard. If the gaseous components of the interference test gas are introduced separately, then the total interference is the sum of the individual interferences.

9. Equations

9.1 Arithmetic Mean. Calculate the arithmetic mean of a data set as follows:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^{n} x_i, \qquad (5)$$

Where n is equal to the number of data points.

9.1.1 Calculate the arithmetic mean of the difference, d, of a data set, using Equation 5 and substituting d for x. Then

$$d_i = x_i - y_i, \qquad (6)$$

Where x and y are paired data points from the CEMS and RM, respectively.

10. Reporting

At a minimum (check with the appropriate regional office, or State, or local agency for additional requirements, if any) summarize in tabular form the results of the CE, interference response, CD and RA tests. Include all data sheets, calculations, and records of CEMS response necessary to substantiate that the performance of the CEMS met the performance specifications.

The CEMS measurements shall be reported to the agency in units of $\mu g/m^3$ on a dry basis, corrected to 20 °C and 7 percent O_2.

11. Bibliography

1. 40 CFR Part 60, Appendix B, ''Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_X Continuous Emission Monitoring Systems in Stationary Sources.''

2. 40 CFR Part 60, Appendix B, ''Performance Specification 1—Specification and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources.''

3. 40 CFR Part 60, Appendix A, ''Method 1—Sample and Velocity Traverses for Stationary Sources.''

4. 40 CFR Part 266, Appendix IX, Section 2, ''Performance Specifications for Continuous Emission Monitoring Systems.''

5. ''Continuous Emission Monitoring Technology Survey for Incinerators, Boilers, and Industrial Furnaces: Final Report for Metals CEM's,'' prepared for the Office of Solid Waste, U.S. EPA, Contract No. 68–D2–0164 (4/25/94).

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

II. In part 63:

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is revised by adding subpart EEE, to read as follows:

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

Sec.
63.1200 Applicability.
63.1201 Definitions.
63.1202 Construction and reconstruction.
63.1203 Standards for hazardous waste incinerators (HWIs).
63.1204 Standards for cement kilns (CKs) that burn hazardous waste.
63.1205 Standards for lightweight aggregate kilns (LWAKs) that burn hazardous waste.
63.1206 Initial compliance dates.
63.1207 Compliance with standards and general requirements.
63.1208 Performance testing requirements.
63.1209 Test methods.
63.1210 Monitoring requirements.
63.1211 Notification requirements.
63.1212 Recordkeeping and reporting requirements.

Appendix to Subpart EEE—Quality Assurance Procedures for Continuous Emissions Monitors Used for Hazardous Waste Combustors

§ 63.1200 Applicability.

(a) The provisions of this subpart apply to all hazardous waste combustors (HWCs): hazardous waste incinerators, cement kilns that burn hazardous waste, and lightweight aggregate kilns that burn hazardous waste.

(b) HWCs are subject to the provisions of part 63 as major sources irrespective of the quantity of hazardous air pollutants emitted.

(c) When a HWC continues to operate when hazardous waste is neither being fed nor remains in the combustion chamber, the source remains subject to this subpart until hazardous waste burning is terminated.

(1) A source has terminated hazardous waste burning if:

(i) It has stopped feeding hazardous waste and hazardous waste does not remain in the combustion chamber;

(ii) The owner or operator notifies the Administrator in writing within 5 calendar days after hazardous waste burning has ceased that hazardous waste burning has terminated.

(2) A source that has terminated hazardous waste burning may resume hazardous waste burning provided that:

(i) It complies with requirements in this subpart for new sources; and

(ii) The owner and operator submits a notification of compliance based on comprehensive performance testing after burning has been resumed. Hazardous waste cannot be burned for more than 720 hours prior to submittal of the notification of compliance, and may be burned only for purposes of emissions testing in preparation for performance testing or performance testing.

(d) HWCs are also subject to applicable requirements under parts 260–270 of this chapter.

(e) The more stringent of requirements of an operating permit issued under part 270 of this chapter or the requirements of this subpart (and part) apply. If requirements of the operating permit issued under part 270 of this chapter conflict with any requirements of this subpart (and part 63), the requirements of this subpart (and part 63) take precedence.

(f) If the only hazardous wastes that a HWC burns are those exempt from regulation under § 266.100(b) of this chapter, the HWC is not subject to the requirements of this subpart.

(g) Waiver of emission standards. (1) Nondetect levels of Hg, SVM, or LVM in feedstreams. If no feedstream to a HWC contains detectable levels of Hg, SVM, or LVM, the HWC is not subject to the emission standards and ancillary performance testing, monitoring, notification, and recordkeeping and reporting requirements for those standards provided in this subpart. To be eligible for this waiver, the owner and operator must also develop and implement a feedstream sampling and analysis plan to document that no feedstream contains detectable levels of the metals.

(2) Nondetect levels of chlorine in feedstreams. If no feedstream to a HWC contains detectable levels of chlorine, the HWC is not subject to the HCl/Cl_2 emission standard and ancillary performance testing, monitoring, notification, and recordkeeping and reporting requirements for that standard in this subpart. To be eligible for this waiver, the owner and operator must also develop and implement a

feedstream sampling and analysis plan to document that no feedstream contains detectable levels of the chlorine.

§ 63.1201 Definitions.

The terms used in this part are defined in the Act, in subpart A of this part, or in this section as follows:

Air pollution control system means the equipment used to reduce the release of particulate matter and other pollutants to the atmosphere.

Automatic waste feed cutoff (AWFCO) system means a system comprised of cutoff valves, actuator, sensor, data manager, and other necessary components and electrical circuitry designed, operated and maintained to stop the flow of hazardous waste to the combustion unit automatically and immediately when any of the parameters to which the system is interlocked exceed the limits established in compliance with applicable standards, the operating permit, or safety considerations.

By-pass duct means a device which diverts a minimum of 10 percent of a cement kiln's off gas.

Cement kiln means a rotary kiln and any associated preheater or precalciner devices that produces clinker by heating limestone and other materials for subsequent production of cement for use in commerce, and that burns hazardous waste.

Combustion chamber means the area in which controlled flame combustion of hazardous waste occurs.

Compliance date means the date by which a hazardous waste combustor must submit a notification of compliance under this subpart.

Comprehensive performance test means the performance test during which a HWC demonstrates compliance with emission standard and establishes or re-establishes operating limits.

Confirmatory performance test means the performance test conducted under normal operating conditions to demonstrate compliance with the D/F emission standard.

Continuous monitor means a device which continuously samples the regulated parameter without interruption except during allowable periods of calibration, and except as defined otherwise by the CEM Performance Specifications in appendix B, part 60.

Dioxins and furans (D/F) means tetra-, penta-, hexa-, hepta-, and octa-chlorinated dibenzo dioxins and furans.

Feedstream means any material fed into a HWC, including, but not limited to, any pumpable or nonpumpable solid or gas.

Flowrate means the rate at which a feedstream is fed into a HWC.

Fugitive combustion emissions means particulate or gaseous matter generated by or resulting from the burning of hazardous waste that is not collected by a capture system and is released to the atmosphere prior to the exit of the stack.

Hazardous waste is defined in § 261.3 of this chapter.

Hazardous waste combustor (HWC) means a hazardous waste incinerator, or a cement kiln, or a lightweight aggregate kiln.

Hazardous waste incinerator means a device defined in 260.10 of this chapter that burns hazardous waste.

Initial comprehensive performance test means the comprehensive performance test that is used as the basis for initially demonstrating compliance with the standards.

Instantaneous monitoring means continuously sampling, detecting, and recording the regulated parameter without use of an averaging period.

Lightweight aggregate kiln means a rotary kiln that produces for commerce (or for manufacture of products for commerce) an aggregate with a density less than 2.5 g/cc by slowly heating organic-containing geologic materials such as shale and clay, and that burns hazardous waste.

Low volatility metals means arsenic, beryllium, chromium, and antimony, and their compounds.

New source means a HWC that first begins to burn hazardous waste, or the construction or reconstruction of which is commenced, after April 19, 1996.

Notification of compliance means a notification in which the owner and operator certify, after completion of performance evaluations and tests, that the HWC meets the emission standards, CMS, and other requirements of this subpart, and that the source is in compliance with operating limits.

One-minute average means the average of detector responses calculated at least every 60 seconds from responses obtained at least each 15 seconds.

Operating record means a documentation of all information required by the standards to document and maintain compliance with the applicable regulations, including data and information, reports, notifications, and communications with regulatory officials.

Reconstruction means the replacement or addition of components of a hazardous waste combustor to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source.

(2) Upon reconstruction, the combustor becomes subject to the standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

Rolling average means the average of all one-minute averages over the averaging period.

Run means the net period of time during which an air emission sample is collected under a given set of operating conditions. Three or more runs constitutes an emissions test. Unless otherwise specified, a run may be either intermittent or continuous.

Semivolatile metals means cadmium and lead, and their compounds.

TEQ means the international method of expressing toxicity equivalents for dioxins and furans as defined in U.S. EPA, Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update, March 1989.

§ 63.1202 Construction and reconstruction.

The requirements of § 63.5 apply, except the following apply in lieu of §§ 63.5(d)(3)(v) and (vi) and (e)(1)(ii)(D), as follows:

(a) A discussion of any technical limitations the source may have in complying with relevant standards or other requirements after the proposed replacements. The discussion shall be sufficiently detailed to demonstrate to the Administrator's satisfaction that the technical limitations affect the source's ability to comply with the relevant standard and how they do so.

(b) If in the application for approval of reconstruction the owner or operator designates the affected source as a reconstructed source and declares that there are no technical limitations to prevent the source from complying with all relevant standards or other requirements, the owner or operator need not submit the information required in paragraphs (d)(3) (iii) through (v) of this section.

(c) Any technical limitations on compliance with relevant standards that are inherent in the proposed replacements.

§ 63.1203 Standards for hazardous waste incinerators (HWIs).

(a) Emission limits for existing sources. No owner or operator of an existing HWI shall discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) Dioxins and furans in excess of 0.20 ng/dscm (TEQ) corrected to 7 percent oxygen;

(2) Mercury in excess of 50 μg/dscm, over a 10-hour rolling average, and corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 270 μg/dscm, combined emissions, corrected to 7 percent oxygen, and measured over a 12-hour rolling average if compliance is based on a CEMS;

(4) Arsenic, beryllium, chromium, and antimony in excess of 210 μg/dscm, combined emissions, corrected to 7 percent oxygen and measured over a 10-hour rolling average if compliance is based on a CEMS;

(5) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average, dry basis and corrected to 7 percent oxygen;

(6) Hydrocarbons in excess of 12 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(7) Hydrochloric acid and chlorine gas in excess of 280 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen, and measured over a hourly rolling average if compliance is based on a CEMS; and

(8) Particulate matter (PM) in excess of 69 mg/dscm, over a 2-hour rolling average and corrected to 7 percent oxygen.

(b) Emission limits for new sources. No owner or operator that commences construction or reconstruction of a HWI, or that first burns hazardous waste in an existing incinerator, after April 19, 1996, shall discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) Dioxins and furans in excess of 0.20 ng/dscm (TEQ), corrected to 7 percent oxygen;

(2) Mercury in excess of 50 μg/dscm, over a 10-hour rolling average, corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 62 μg/dscm, combined emissions, corrected to 7 percent oxygen and measured over a 10-hour rolling average;

(4) Arsenic, beryllium, chromium, and antimony in excess of 60 μg/dscm (or 80 μg/dscm if compliance is based on a CEMS), combined emissions, corrected to 7 percent oxygen and measured over a 10-hour rolling average if compliance is based on a CEM;

(5) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average, dry basis and corrected to 7 percent oxygen;

(6) Hydrocarbons in excess of 12 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(7) Hydrochloric acid and chlorine gas in excess of 67 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen, and measured over a hourly rolling average if compliance is based on a CEM; and

(8) Particulate matter (PM) in excess of 69 mg/dscm, over a 2-hour rolling average and corrected to 7 percent oxygen.

(c) Significant figures. The emission limits provided by paragraphs (a) and (b) of this section shall be considered to have two significant figures. Emissions measurements may be rounded to two significant figures to demonstrate compliance.

(d) Air emission standards for equipment leaks, tanks, surface impoundments, and containers. Owners and operators of HWIs are subject to the air emission standards of Subparts BB and CC, part 264, of this chapter.

§ 63.1204 Standards for cement kilns (CKs) that burn hazardous waste.

(a) Emission limits for existing sources. No owner or operator of an existing CK shall discharge or cause combustion gases (resulting solely or partially from burning hazardous waste) to be emitted into the atmosphere that contain:

(1) Dioxins and furans in excess of 0.20 ng/dscm, TEQ, corrected to 7 percent oxygen;

(2) Mercury in excess of 50 μg/dscm, over a 10-hour rolling average, and corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 57 μg/dscm, combined emissions, corrected to 7 percent oxygen, and measured over a 10-hour rolling average if compliance is based on a CEMS;

(4) Arsenic, beryllium, chromium, and antimony in excess of 130 μg/dscm, combined emissions, corrected to 7 percent oxygen and measured over a 10-hour rolling average if compliance is based on a CEMS;

(5) Carbon Monoxide. For kilns equipped with a by-pass duct, either:

(i) Carbon monoxide in the by-pass duct in excess of 100 parts per million by volume, over an hourly rolling average, dry basis and corrected to 7 percent oxygen; or

(ii) Hydrocarbons in the by-pass duct in excess of 6.7 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane.

(6) Hydrocarbons. Hydrocarbons in the main stack of kilns not equipped with a by-pass duct in excess of 20 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(7) Hydrochloric acid and chlorine gas in excess of 630 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis, corrected to 7 percent oxygen, and measured over a hourly rolling average if compliance is based on a CEMS; and

(8) Particulate matter (PM) in excess of 69 mg/dscm over a 3-hour rolling average and corrected to 7 percent oxygen.

(b) Emission limits for new sources. No owner or operator that commences construction or reconstruction of a CK, or that first burns hazardous waste in an existing CK, after April 19, 1996, shall discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) Dioxins and furans in excess of 0.20 ng/dscm (TEQ) corrected to 7 percent oxygen;

(2) Mercury in excess of 50 μg/dscm, over a 10-hour rolling average, corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 55 μg/dscm, combined emissions, corrected to 7 percent oxygen, or if compliance is based on a CEMS, 60 μg/dscm, combined emissions, corrected to 7 percent oxygen and measured over a 10-hour rolling average;

(4) Arsenic, beryllium, chromium, and antimony in excess of 44 μg/dscm, combined emissions, corrected to 7 percent oxygen, or, if compliance is based on a CEM, 80 μg/dscm, combined emissions, corrected to 7 percent oxygen and measured over a 10-hour rolling average;

(5) Carbon Monoxide. For kilns equipped with a by-pass duct, either:

(i) Carbon monoxide in the by-pass duct in excess of 100 parts per million by volume, over an hourly rolling average, dry basis and corrected to 7 percent oxygen; or

(ii) Hydrocarbons in the by-pass duct in excess of 6.7 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane.

(6) Hydrocarbons. Hydrocarbons in the main stack of kilns not equipped with a by-pass duct in excess of 20 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(7) Hydrochloric acid and chlorine gas in excess of 67 parts per million, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen, and

measured over a hourly rolling average if compliance is based on a CEMS; and

(8) Particulate matter (PM) in excess of 69 mg/dscm over a 2-hour rolling average and corrected to 7 percent oxygen.

(c) Significant figures. The emission limits provided by paragraphs (a) and (b) of this section shall be considered to have two significant figures. Emissions measurements may be rounded to two significant figures to demonstrate compliance.

(d) Air emission standards for equipment leaks, tanks, surface impoundments, and containers. Owners and operators of CKs are subject to the air emission standards of subparts BB and CC, part 264, of this chapter.

§ 63.1205 Standards for lightweight aggregate kilns (LWAKs) that burn hazardous waste.

(a) Emission limits for existing sources. No owner or operator of an existing LWAK shall discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) Dioxins and furans in excess of 0.20 ng/dscm (TEQ), corrected to 7 percent oxygen;

(2) Mercury in excess of 72 µg/dscm, over a 10-hour rolling average, and corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 12 µg/dscm, combined emissions, corrected to 7 percent oxygen, or, if compliance is based on a CEMS, 60 µg/dscm, combined emissions, corrected to 7 percent oxygen and measured over a 10-hour rolling average;

(4) Arsenic, beryllium, chromium, and antimony in excess of 340 µg/dscm, combined emissions, corrected to 7 percent oxygen, and measured over a 10-hour rolling average if a CEMS is used for compliance;

(5) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average, dry basis and corrected to 7 percent oxygen;

(6) Hydrocarbons in excess of 14 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(7) Hydrochloric acid and chlorine gas in excess of 450 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen, and measured over a hourly rolling average if compliance is based on a CEMS; and

(8) Particulate matter (PM) in excess of 69 mg/dscm over a 2-hour rolling average and corrected to 7 percent oxygen.

(b) Emission limits for new sources. No owner or operator that commences construction or reconstruction of a LWAK, or that first burns hazardous waste in an existing LWAK, after April 19, 1996, shall discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) Dioxins and furans in excess of 0.20 ng/dscm (TEQ), corrected to 7 percent oxygen;

(2) Mercury in excess of 72 µg/dscm, over a 10-hour rolling average, corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 5.2 µg/dscm, combined emissions, corrected to 7 percent oxygen, or, if compliance is based on a CEMS, 60 µg/dscm, combined emissions, corrected to 7 percent oxygen and measured over a 10-hour rolling average;

(4) Arsenic, beryllium, chromium, and antimony in excess of 55 µg/dscm, combined emissions, corrected to 7 percent oxygen, or, if compliance is based on a CEMS, 80 µg/dscm, combined emissions, corrected to 7 percent oxygen and measured over a 10-hour rolling average;

(5) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average, dry basis and corrected to 7 percent oxygen;

(6) Hydrocarbons in excess of 14 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(7) Hydrochloric acid and chlorine gas in excess of 62 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen, and measured over a hourly rolling average if compliance is based on a CEMS; and

(8) Particulate matter (PM) in excess of 69 mg/dscm over a 2-hour rolling average and corrected to 7 percent oxygen.

(c) Significant figures. The emission limits provided by paragraphs (a) and (b) shall be considered to have two significant figures. Emissions measurements may be rounded to two significant figures to demonstrate compliance.

(d) Air emission standards for equipment leaks, tanks, surface impoundments, and containers. Owners and operators of LWAKs are subject to the air emission standards subparts BB and CC, part 264, of this chapter.

§ 63.1206 Initial Compliance dates.

(a) Existing sources. (1) Compliance Date. Each owner or operator of an existing hazardous waste combustor (HWC) shall submit to the Administrator under § 63.1211 an initial notification of compliance certifying compliance with the requirements of this subpart no later than [date 36 months after publication of the final rule], unless an extension of time is granted under § 63.6(i).

(2) Failure to meet compliance date. (i) Termination of waste burning. If an owner or operator fails to submit the notification of compliance as specified in paragraph (a)(1) of this section, hazardous waste burning must terminate on the date that the owner or operator determine that the notification will not be submitted by the deadline, but not later than the date the notification should have been submitted.

(ii) Requirements for resuming waste burning. (A) If a source that fails to submit a timely initial notification of compliance has not been issued a RCRA operating permit under part 270 of this chapter for the HWC, the source may not resume burning hazardous waste until a RCRA permit is issued.

(B) If a source that fails to submit a timely initial notification of compliance has already been issued a RCRA operating permit under part 270 of this chapter for the HWC, the source may resume burning hazardous waste only for a total of 720 hours and only for purposes of pretesting or comprehensive performance testing prior to submitting an initial notification of compliance. If the owner and operator do not submit an initial notification of compliance within 90 days after the date it is due, they must begin closure procedures under the RCRA operating permit unless an extension of time is granted prior to that date in writing by the Administrator for good cause.

(C) The source must comply with the requirements for new sources under this subpart.

(b) New sources. (1) Sources that begin burning hazardous waste before the effective date but after the date of proposal. Each owner or operator of a new source that first burns hazardous waste prior to [date of publication of final rule] but after April 19, 1996 shall:

(i) For any requirements of this subpart (and part) that are not more stringent than the proposed requirement, submit to the Administrator a notification of compliance at the time specified in the operating permit issued under part 270 of this chapter;

(ii) For any requirements of this subpart (and part) that are more stringent than the proposed requirement:

(A) Submit to the Administrator a notification of compliance not later than [date 36 months after publication of the

final rule], unless an extension of time is granted under § 63.6(i); and

(B) Comply with the standards as proposed in the interim until the notification of compliance is submitted.

(2) Sources that begin burning hazardous waste after the effective date. Each owner or operator of a new source that first burns hazardous waste after [date of publication of final rule] must submit the notification of compliance at the time specified in the operating permit issued under part 270 of this chapter.

Note to paragraph (b) of this section: An owner or operator wishing to commence construction of a hazardous waste incinerator or hazardous waste-burning equipment for a cement kiln or lightweight aggregate kiln must first obtain some type of RCRA authorization, whether it be a RCRA permit, a modification to an existing RCRA permit, or a change under already existing interim status. See 40 CFR part 270.

§ 63.1207 Compliance with standards and general requirements.

(a) Compliance with standards. (1) Standards are in effect at all times. A hazardous waste combustor (HWC) shall not burn hazardous waste (that is, hazardous waste must not be fed and hazardous waste must not remain in the combustion chamber) except in compliance with the standards of this subpart, including periods of startup, shutdown, and malfunction. Therefore, the owner or operator of a HWC is not subject to the requirements of §§ 63.6(e) and (f)(1) (regarding operation and maintenance in conformance with a startup, shutdown, and malfunction plan) when burning hazardous waste.

(2) Automatic waste feed cutoff (AWFCO). During the initial comprehensive performance test required under § 63.1208, and upon submittal of the initial notification of compliance under § 63.1211, a HWC must be operated with a functioning system that immediately and automatically cuts off the hazardous waste feed when any of the following are exceeded: applicable operating limits specified under § 63.1210; the emission levels monitored by CEMS; the span value of any CMS detector, except a CEMS; the automatic waste feed cutoff system fails; or the allowable combustion chamber pressure.

(i) Ducting of combustion gases. During a AWFCO, combustion gases must continue to be ducted to the air pollution control system while hazardous waste remains in the combustion chamber;

(ii) Restarting waste feed. The operating parameters for which limits are established under § 63.1210 and the emissions required under that section to be monitored by a CEMS must continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the operating parameters and emission levels are within allowable levels;

(iii) Violations. If, after a AWFCO, a parameter required to be interlocked with the AWFCO system exceeds an allowable level while hazardous waste remains in the combustion chamber, the owner and operator have violated the emission standards of this subpart.

(iv) Corrective measures. After any AWFCO that results in a violation as defined in paragraph (a)(2)(iii) of this section, the owner or operator must investigate the cause of the AWFCO, take appropriate corrective measures to minimize future AWFCO violations, and record the findings and corrective measures in the operating record.

(v) Excessive AWFCO report. If a HWC experiences more than 10 AWFCOs in any 60-day period that result in an exceedance of any parameter required to be interlocked with the AWFCO system under this section, the owner or operator must submit a written report within 5 calendar days of the 10th AWFCO documenting the results of the investigation and corrective measures taken.

(vi) Limit on AWFCOs. The Administrator may limit the number of cutoffs per an operating period on a case-by-case basis.

(vii) Testing. The AWFCO system and associated alarms must be tested at least weekly to verify operability, unless the owner and operator document in the operating record that weekly inspections will unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum, operational testing must be conducted at least monthly.

(3) ESV Openings. (i) Violation. If an emergency safety vent opens when hazardous waste is fed or remains in the combustion chamber, such that combustion gases are not treated as during the most recent comprehensive performance test (e.g., if the combustion gas by-passes any emission control device operating during the performance test), it is a violation of the emission standards of this subpart.

(ii) ESV Operating Plan. The ESV Operating Plan shall explain detailed procedures for rapidly stopping waste feed, shutting down the combustor, maintaining temperature in the combustion chamber until all waste exits the combustor, and controlling emissions in the event of equipment malfunction or activation of any ESV or other bypass system including calculations demonstrating that emissions will be controlled during such an event (sufficient oxygen for combustion and maintaining negative pressure), and the procedures for executing the plan whenever the ESV is used, thus causing an emergency release of emissions.

(iii) Corrective measures. After any ESV opening that results in a violation as defined in paragraph (b)(1) of this section, the owner or operator must investigate the cause of the ESV opening, take appropriate corrective measures to minimize future ESV violations, and record the findings and corrective measures in the operating record.

(iv) Reporting requirement. The owner or operator must submit a written report within 5 days of a ESV opening violation documenting the result of the investigation and corrective measures taken.

(b) Fugitive emissions. (1) Fugitive emissions must be controlled by:

(i) Keeping the combustion zone totally sealed against fugitive emissions; or

(ii) Maintaining the maximum combustion zone pressure lower than ambient pressure using an instantaneous monitor; or

(iii) Upon prior written approval of the Administrator, an alternative means of control to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than ambient pressure;

(2) The owner or operator must specify in the operating record the method used for fugitive emissions control.

(c) Finding of compliance. The procedures of determining compliance and finding of compliance provided by § 63.6(f)(2) and (3) are applicable to HWCs, except that paragraph (f)(2)(iii)(B) (testing is to be conducted under representative operating conditions) is superseded by the requirements for performance testing under § 63.1208.

(d) Use of an alternative nonopacity emission standard. The provisions of § 63.6(g) are applicable to HWCs.

(e) Extension of compliance with emission standards. The provisions of § 63.6(i) are applicable to HWCs.

(f) Changes in design, operation, or maintenance. If the design, operation, or maintenance of the source is changed in a manner that may affect compliance with any emission standard that is not monitored with a CEMS, the source shall:

(1) Conduct a comprehensive performance test to re-establish

operating limits on the parameters specified in § 63.1210; and

(2) Burn hazardous waste after such change for no more than a total of 720 hours and only for purposes of pretesting or comprehensive performance testing (including demonstrating compliance with CMS requirements).

§ 63.1208 Performance testing requirements.

(a) Types of performance tests. (1) Comprehensive performance test. The purpose of the comprehensive performance test is to demonstrate compliance with the emission standards provided by §§ 63.1203, 63.1204, and 63.1205, establish limits for the applicable operating parameters provided by § 63.1210, and demonstrate compliance with the performance specifications for CMS.

(2) Confirmatory performance test. The purpose of the confirmatory performance test is to demonstrate compliance with the D/F emission standard when the source operates under normal operating conditions.

(b) Frequency of testing. Testing shall be conducted periodically as prescribed in this paragraph (b). The date of commencement of the initial comprehensive performance test shall be the basis for establishing the anniversary date of commencement of subsequent performance testing. A source may conduct comprehensive performance testing at any time prior to the required date. If so, the anniversary date for subsequent testing is advanced accordingly. Except as provided by paragraph (c) of this section, testing shall be conducted as follows:

(1) Comprehensive performance testing. (i) Large or off-site sources. HWCs that receive hazardous waste from off-site and HWCs with a gas flow rate exceeding 23,127 acfm at any time that hazardous waste is burned or remains in the combustion chamber shall commence testing within 35–37 months of the anniversary date of the initial comprehensive performance test, and within every 35–37 months of that anniversary date thereafter.

(ii) Small, on-site sources. HWCs that burn hazardous waste generated on site only and that have a gas flow rate of 23,127 acfm or less shall commence testing within 59–61 months of the anniversary date of the initial comprehensive performance test, and within every 59–61 months of that anniversary date thereafter. However, the Administrator may determine on a case-specific basis that such a source may pose the same potential to exceed the standards of this part as a large or off-site source. If so, the Administrator may require such a source to comply with the testing frequency applicable to large and off-site sources. Factors that the Administrator may consider include: type and volume of hazardous wastes burned, concentration of toxic constituents in the hazardous waste, and compliance history.

(2) Confirmatory performance testing. (i) Large or off-site sources shall commence confirmatory performance testing within 17–19 months after the anniversary date of each comprehensive performance test.

(ii) Small, on-site sources shall conduct confirmatory performance testing within 29–31 months after the anniversary date of each comprehensive performance test.

(3) Duration of testing. Performance testing shall be completed within 30 days after the date of commencement.

(c) Time extension for subsequent performance tests. After the initial performance test, a HWC may request under procedures provided by § 63.6(i) up to a 1-year time extension for conducting a performance test in order to consolidate performance testing with trial burn testing required under part 270 of this chapter, or for other reasons deemed acceptable by the Administrator. If a time extension is granted, a new anniversary date for subsequent testing is established as the date that the delayed testing commences.

(d) Operating conditions during testing. (1) Comprehensive performance testing. (i) The source must operate under representative conditions (or conditions that will result in higher than normal emissions) for the following parameters to ensure that emissions are representative (or higher than) of normal operating conditions:

(A) When demonstrating compliance with the D/F emission standard, types of organic compounds in the waste (e.g., aromatics, aliphatics, nitrogen content, halogen/carbon ratio, oxygen/carbon ratio), and feedrate of chlorine; and

(B) When demonstrating compliance with the SVM or LVM emission standard when using manual stack sampling (i.e., rather than a CEMS) and the D/F emission standard, normal feedrates of ash and normal cleaning cycle of the PM control device.

(ii) Given that limits will be established for the applicable operating parameters specified in § 63.1210, a source may conduct testing under two or more operating modes to provide operating flexibility. If so, the source must note in the operating record under which mode it is operating at all times.

(2) Confirmatory performance testing. Confirmatory performance testing for D/F shall be conducted under normal operating conditions defined as follows:

(i) The CO, HC, and PM CEM emission levels must be within the range of the average value to the maximum (or minimum) value allowed. The average value is defined as the sum of all one-minute averages, divided by the number of one-minute averages over the previous 18 months (30 months for small, on-site facilities defined in § 63.1208(b)(1)(ii));

(ii) Each operating limit established to maintain compliance with the D/F emission standard must be held within the range of the average value over the previous 18 months (30 months for small, on-site facilities defined in § 63.1208(b)(1)(ii)) and the maximum or minimum, as appropriate, that is allowed; and

(iii) The source must feed representative types (or types that may result in higher emissions than normal) of organic compounds in the waste (e.g., aromatics, aliphatics, nitrogen content, halogen/carbon ratio, oxygen/carbon ratio), and chlorine must be fed at normal feedrates or greater.

(e) Notification of performance test and approval of test plan. The provisions of § 63.7 (b) and (c) apply. Notwithstanding the Administrator's approval or disapproval, or failure to approve or disapprove the test plan, the owner or operator must comply with all applicable requirements of this part, including deadlines for submitting the initial and subsequent notifications of compliance.

(f) Performance testing facilities. The provisions of § 63.7(d) apply.

(g) Notification of compliance. Within 90 days of completion of the performance test, the owner or operator must postmark a notification of compliance documenting compliance with the emission standards and CMS requirements, and identifying applicable operating limits. See § 63.7(g) for additional requirements.

(h) Failure to submit a timely notification of compliance. If an owner or operator determines (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that the source has failed any emission standard during the performance test for a mode of operation, it is a violation of the standard and hazardous waste burning must cease immediately under that mode of operation. Hazardous waste burning could not be resumed under that mode of operation, except for purposes of pretesting or comprehensive performance testing and for a maximum

of 720 hours, until a notification of compliance is submitted subsequent to a new comprehensive performance test.

(i) Waiver of performance test. The following waiver provision applies in lieu of § 63.7(h). Performance tests are not required to document compliance with the following standards under the conditions specified and provided that the required information is submitted to the Administrator for review and approval with the site-specific test plan as required by paragraph (e) of this section:

(1) Mercury. The owner or operator is deemed to be in compliance with the mercury emission standard (and monitoring Hg emissions with a CEMS is not required) if the maximum possible emission concentration determined as specified below does not exceed the emission standard:

(i) Establish a maximum feedrate of mercury from all feedstreams, and monitor and record the feedrate according to § 63.1210(c);

(ii) Establish a minimum stack gas flow rate, or surrogate for gas flow rate, monitor the parameter with a CMS and record the data, and interlock the limit on the parameter with the automatic waste feed cutoff system;

(iii) Calculate a maximum possible emission concentration assuming all mercury from all feedstreams is emitted.

(2) SVM (semivolatile metals). The owner or operator is deemed to be in compliance with the SVM (cadmium and lead, combined) emission standard if the maximum possible emission concentration determined as specified below does not exceed the emission standard:

(i) Establish a maximum feedrate of cadmium and lead, combined, from all feedstreams, and monitor and record the feedrate according to § 63.1210(c);

(ii) Establish a minimum stack gas flow rate, or surrogate for gas flow rate, monitor the parameter with a CMS and record the data, and interlock the limit on the parameter with the automatic waste feed cutoff system;

(iii) Calculate a maximum possible emission concentration assuming all cadmium and lead from all feedstreams is emitted.

(3) LVM (low volatility metals). The owner or operator is deemed to be in compliance with the LVM (arsenic, beryllium, chromium, and antimony, combined) emission standard if the maximum possible emission concentration determined as specified below does not exceed the emission standard:

(i) Establish a maximum feedrate of arsenic, beryllium, chromium, and antimony, combined, from all feedstreams, and monitor and record the feedrate according to § 63.1210(c);

(ii) Establish a minimum stack gas flow rate, or surrogate for gas flow rate, monitor the parameter with a CMS and record the data, and interlock the limit on the parameter with the automatic waste feed cutoff system;

(iii) Calculate a maximum possible emission concentration assuming all LVM from all feedstreams is emitted.

(4) HCl/Cl_2. The owner or operator is deemed to be in compliance with the HCl/Cl_2 emission standard if the maximum possible emission concentration determined as specified below does not exceed the emission standard:

(i) Establish a maximum feedrate of total chlorine and chloride from all feedstreams, and monitor and record the feedrate according to § 63.1210(c);

(ii) Establish a minimum stack gas flow rate, or surrogate for gas flow rate, monitor the parameter with a CMS and record the data, and interlock the limit on the parameter with the automatic waste feed cutoff system;

(iii) Calculate a maximum possible emission concentration assuming all total chlorine and chloride from all feedstreams is emitted.

§ 63.1209 Test methods.

(a) Dioxins and furans. (1) Method 0023A, provided by SW–846 (incorporated by reference in § 260.11 of this chapter), shall be used to determine compliance with the emission standard for dioxin and furans;

(2) If the sampling period for each run is six hours or greater, nondetects shall be assumed to be present at zero concentration. If the sampling period for any run is less than six hours, nondetects shall be assumed to be present at the level of detection for all runs.

(b) Mercury. Method 0060, provided by SW–846 (incorporated by reference in § 260.11 of this chapter), shall be used to evaluate the mercury CEMS as required by § 63.1210.

(c) Cadmium and lead. Method 0060, provided by SW–846 (incorporated by reference in § 260.11 of this chapter), shall be used to determine compliance with the emission standard for cadmium and lead or to calibrate and/or evaluate a CEMS as provided by § 63.1210.

(d) Arsenic, beryllium, chromium, and antimony. Method 0060, provided by SW–846 (incorporated by reference in § 260.11 of this chapter), shall be used to determine compliance with the emission standard for arsenic, beryllium, chromium, and antimony or to calibrate and/or evaluate a CEMS as provided by § 63.1210.

(e) HCl and chlorine gas. Methods 0050, 0051, and 9057, provided by SW–846 (incorporated by reference in § 260.11 of this chapter), shall be used to determine compliance with the emission standard for HCl and Cl_2 (combined) or to calibrate and/or evaluate the HCl and chlorine gas CEMS as provided by § 63.1210.

(f) Particulate Matter. Method 5 in appendix A of part 60 shall be used to calibrate and/or evaluate a PM CEMS as provided by § 63.1210.

(g) Feedstream Analytical methods. Analytical methods used to determine feedstream concentrations of metals, halogens, and other constituents shall be those provided by SW–846 (incorporated by reference in § 260.11 of this chapter.)

Alternate methods may be used if approved in advance by the Director.

§ 63.1210 Monitoring requirements.

(a) Continuous emissions monitors (CEMS). (1) HWCs shall be equipped with CEMS for PM, Hg, CO, HC, and O_2 for compliance monitoring, except as provided by paragraph (a)(3). Owners and operators may elect to use CEMS for compliance monitoring for SVM, LVM, HCl, and Cl_2.

(2) At all times that hazardous waste is fed into the HWC or remains in the combustion chamber, the CEMS must be operated in compliance with the appendix to this subpart.

(3) Waiver of CEMS requirement for mercury. The following waiver provision applies in lieu of § 63.7(h). A mercury CEMS is not required to document compliance with the mercury standard under the conditions specified and provided that the required information is submitted to the Administrator for review and approval with the site-specific test plan as required by § 63.1209(e). The owner or operator is deemed to be in compliance with the mercury emission standard if the maximum possible emission concentration determined as specified below does not exceed the emission standard:

(i) Establish a maximum feedrate of mercury, combined, from all feedstreams, and monitor and record the feedrate according to § 63.1210(c);

(ii) Establish a minimum stack gas flow rate, or surrogate for gas flow rate, monitor the parameter with a CMS and record the data, and interlock the limit on the parameter with the automatic waste feed cutoff system;

(iii) Calculate a maximum possible emission concentration assuming all mercury from all feedstreams is emitted.

(b) Other continuous monitoring systems. (1) CMS other than CEMS (e.g.,

thermocouples, pressure transducers, flow meters) must be used to document compliance with the applicable operating limits provided by this section.

(2) Non-CEMS CMS must be installed and operated in conformance with § 63.8(c)(3) requiring the owner and operator, at a minimum, to comply with the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(3) Non-CEMS CMS must sample the regulated parameter without interruption, and evaluate the detector response at least once each 15 seconds, and compute and record the average values at least every 60 seconds.

(4) The span of the detector must not be exceeded. Span limits shall be interlocked into the automatic waste feed cutoff system required by § 63.1207(a)(2).

(c) Analysis of feedstreams. (1) General. The owner or operator must obtain an analysis of each feedstream prior to feeding the material that is sufficient to document compliance with the applicable feedrate limits provided by this section.

(2) Feedstream analysis plan. The owner or operator must develop and implement a feedstream analysis plan and record it in the operating record. The plan must specify at a minimum:

(i) The parameters for which each feedstream will be analyzed to ensure compliance with the operating limits of this section;

(ii) Whether the owner or operator will obtain the analysis by performing sampling and analysis, or by other methods such as using analytical information obtained from others or using other published or documented data or information;

(iii) How the analysis will be used to document compliance with applicable feedrate limits (e.g., if hazardous wastes are blended and analyses are obtained of the wastes prior to blending but not of the blended, as-fired, waste, the plan must describe how the owner and operator will determine the pertinent parameters of the blended waste);

(iv) The test methods which will be used to obtain the analyses;

(v) The sampling method which will be used to obtain a representative sample of each feedstream to be analyzed using sampling methods described in appendix I, part 261, of this chapter, or an equivalent method; and

(vi) The frequency with which the initial analysis of the feedstream will be reviewed or repeated to ensure that the analysis is accurate and up to date.

(3) Review and approval of analysis plan. The owner and operator must submit the feedstream analysis plan to the Administrator for review and approval, if requested.

(4) Compliance with feedrate limits. To comply with the applicable feedrate limits of this section, feedrates must be monitored and recorded as follows:

(i) Determine and record the value of the parameter for each feedstream by sampling and analysis or other method;

(ii) Determine and record the mass or volume flowrate of each feedstream by a CMS. If flowrate of a feedstream is determined by volume, the density of the feedstream shall be determined by sampling and analysis and shall be recorded (unless the constituent concentration is reported in units of weight per unit volume (e.g., mg/l));

(iii) Calculate and record the mass feedrate of the parameter per unit time.

(d) Performance evaluations. (1) The requirements of § 63.8(d) (Quality control program) and (e) (Performance evaluation of continuous monitoring systems) apply, except that performance evaluations of components of the CMS shall be conducted under the frequency and procedures (for example, submittal of performance evaluation test plan for review and approval) applicable to performance tests as provided by § 63.1208.

(2) Performance specifications and evaluations of CEMS are prescribed in the appendix to this subpart.

(e) Conduct of monitoring. The provisions of § 63.8(b) apply.

(f) Operation and maintenance of continuous monitoring systems. The provisions of § 63.8(c) are superseded by this section, except that paragraphs (c)(2), (c)(3), and (c)(6) are applicable.

(g) [Reserved]

(h) Use of an alternative monitoring method. The provisions of § 63.8(f) apply.

(i) Reduction of monitoring data. The provisions of § 63.8(g) apply, except for paragraphs (g)(2) and (g)(5).

(j) Dioxins and furans. To remain in compliance with the emission standard for dioxins and furans, the owner or operator shall establish operating limits for the following parameters and comply with those limits at all times that hazardous waste is fed or that hazardous waste remains in the combustion chamber:

(1) Maximum temperature at the dry PM control device. If a source is equipped with an electrostatic precipitator, fabric filter, or other dry emissions control device where particulate matter is collected and retained in contact with combustion gas, the maximum allowable temperature at the inlet to the first such control device in the air pollution control system must be established and complied with as follows:

(i) A 10-minute rolling average shall be established as the average over all runs of the highest 10-minute rolling average for each run;

(ii) An hourly rolling average shall be established as the average level over all runs.

(2) Minimum combustion chamber temperature. (i) The temperature of each combustion chamber shall be measured at a location as close to, and as representative of, each combustion chamber as practicable;

(ii) A 10-minute rolling average shall be established as the average over all runs of the minimum 10-minute rolling average for each run; and

(iii) An hourly rolling average shall be established as the average level over all runs.

(3) Maximum flue gas flowrate or production rate. As an indicator of gas residence time in the combustion chamber, the maximum flue gas flowrate, or a parameter that the owner or operator documents in the site-specific test plan is an appropriate surrogate, shall be established as the average over all runs of the maximum hourly rolling average for each run, and complied with on a hourly rolling average basis.

(4) Maximum hazardous waste feedrate. The maximum hazardous waste feedrate shall be established as the average over all runs of the maximum hourly rolling average for each run, and complied with on a hourly rolling average basis. A maximum waste feedrate shall be established for each waste feed point.

(5) Batch size, feeding frequency, and minimum oxygen. (i) Except as provided below, HWCs that feed a feedstream in a batch (e.g., ram fed systems) or container must comply with the following:

(A) The maximum batch size shall be the mass of that batch with the lowest mass fed during the comprehensive performance test;

(B) The minimum batch feeding frequency (i.e., the minimum period of time between batch or container feedings) shall be the longest interval of time between batch or container feedings during the comprehensive performance test; and

(C) The minimum combustion zone oxygen content at the time of firing the batch or container shall be the highest instantaneous oxygen level observed at the time any batch or container was fed during the comprehensive performance test.

(ii) Cement kilns that fire containers of material into the hot, clinker discharge end of the kiln are exempt from the requirements of this paragraph provided the owner or operator documents in the operating record:

(A) The volume of each container does not exceed 1 gallon; and

(B) The frequency of firing the containers does not exceed the rate occurring during the comprehensive performance test.

(6) PM limit. (i) PM shall be limited to the level achieved during the comprehensive performance test;

(ii) During the comprehensive performance test the owner and operator shall demonstrate compliance with the PM standards in §§ 63.1203, 63.1204, and 63.1205, corrected to 7 percent oxygen, based on a 2-hour rolling average, and monitored with a CEMS;

(A) The owner or operator shall install, calibrate, maintain, and continuously operate a CEMS that measures particulate matter at all times that hazardous waste is fed or that hazardous waste remains in the combustion chamber.

(B) The PM CEMS shall meet the requirements provided in the appendix to this subpart.

(iii) The site-specific PM limit shall be determined from the performance test as follows:

(A) A 10-minute rolling average shall be established as the average over all runs of the maximum 10-minute rolling average for each run;

(B) An hourly rolling average shall be established as the average of all one minute averages over all runs.

(7) Carbon injection parameters. If carbon injection is used:

(i) Injection rate. Minimum carbon injection rates shall be established as:

(A) A 10-minute rolling average established as the average over all runs of the minimum 10-minute rolling average for each run; and

(B) An hourly rolling average established as the average level over all runs.

(ii) Carrier fluid. Minimum carrier fluid (gas or liquid) flowrate or pressure drop shall be established as a 10-minute rolling average based on the carbon injection system manufacturer's specifications.

(iii) Carbon specification. (A) The brand (i.e., manufacturer) and type of carbon used during the comprehensive performance test must be used until a subsequent comprehensive performance test is conducted, unless the owner or operator document in the site-specific performance test plan required under § 63.1208 key parameters that affect adsorption and establish limits on those parameters based on the carbon used in the performance test.

(B) The owner or operator may request approval from the Administrator at any time to substitute a different brand or type of carbon without having to conduct a comprehensive performance test. The Administrator may grant such approval if he or she determines that the owner or operator has sufficiently documented that the substitute carbon will provide the same level of dioxin and furan control as the original carbon.

(8) Carbon bed. If a carbon bed is used, a carbon replacement rate must be established as follows:

(i) Testing Requirements. Testing of carbon beds shall be done in the following manner:

(A) Initial comprehensive performance test. For the initial comprehensive performance test, the carbon bed shall be used in accordance with manufacturer's specifications. No aging of the carbon is required.

(B) Confirmatory tests prior to subsequent comprehensive tests. For confirmatory tests after the initial but prior to subsequent comprehensive tests, the facility shall follow the normal change-out schedule specified by the carbon bed manufacturer.

(C) Subsequent comprehensive tests. The age of the carbon in the carbon bed shall be determined as the length of time since carbon was most recently added and the amount of time the carbon that has been in the bed the longest.

(ii) Determination of maximum allowable carbon age. (A) Prior to subsequent comprehensive performance tests, the manufacturer shall follow the manufacturer's suggested change-out interval for replacing used carbon with unused carbon.

(B) After the second comprehensive test the maximum allowable age of a carbon bed shall be the amount of time since carbon has most recently been added and the amount of time that the carbon the has been in the bed the longest, based on what those two time intervals were during the comprehensive performance test.

(iii) Carbon specification. (A) The brand (i.e., manufacturer) and type of carbon used during the comprehensive performance test must be used until a subsequent comprehensive performance test is conducted, unless the owner or operator document in the site-specific performance test plan required under § 63.1208 key parameters that affect adsorption and establish limits on those parameters based on the carbon used in the performance test.

(B) The owner or operator may request approval from the Administrator at any time to substitute a different brand or type of carbon without having to conduct a comprehensive performance test. The Administrator may grant such approval if he or she determines that the owner or operator has sufficiently documented that the substitute carbon will provide the same level of dioxin and furan control as the original carbon.

(7) Catalytic oxidizer. If a catalytic oxidizer is used, the following parameters shall be established:

(i) Minimum flue gas temperature at the entrance of the catalyst. A minimum flue gas temperature at the entrance of the catalyst shall be established as follows:

(A) A 10-minute average shall be established as the average over all runs of the minimum temperature 10-minute rolling average for each run;

(B) An hourly average shall be established as the average level over all runs.

(ii) Maximum time in-use. A catalytic oxidizer shall be replaced with a new catalytic oxidizer when it has reached the maximum service time specified by the manufacturer.

(iii) Catalyst replacement specifications. When a catalyst is replaced with a new one, the new catalyst shall be identical to the one used during the previous comprehensive test, including:

(A) Catalytic metal loading for each metal;

(B) Space time, expressed in the units s^{-1}, the maximum rated volumetric flow of the catalyst divided by the volume of the catalyst;

(C) Substrate construction, including materials of construction, washcoat type, and pore density.

(iv) Maximum flue gas temperature. Maximum flue gas temperature at the entrance of the catalyst shall be established as a 10-minute rolling average, based on manufacturer's specifications.

(8) Inhibitor feedrate. If a dioxin inhibitor is fed into the unit, the following parameters shall be established:

(i) Minimum inhibitor feedrate. Minimum inhibitor feedrate shall be established as:

(A) A 10-minute rolling average shall be established as the average over all runs of the minimum 10-minute rolling average for each run;

(B) An hourly average shall be established as the average level over all runs.

(ii) Inhibitor specifications. (A) The brand (i.e., manufacturer) and type of

inhibitor used during the comprehensive performance test must be used until a subsequent comprehensive performance test is conducted, unless the owner or operator document in the site-specific performance test plan required under § 63.1208 key parameters that affect the effectiveness of a D/F inhibitor and establish limits on those parameters based on the inhibitor used in the performance test.

(B) The owner or operator may request approval from the Administrator at any time to substitute a different brand or type of inhibitor without having to conduct a comprehensive performance test. The Administrator may grant such approval if he or she determines that the owner or operator has sufficiently documented that the substitute inhibitor will provide the same level of dioxin and furan control as the original inhibitor.

(k) Mercury CEMS. (1) The owner or operator shall install, calibrate, maintain, and continuously operate a CEMS for mercury at all times that hazardous waste is fed or that hazardous waste remains in the combustion chamber.

(2) The mercury CEMS shall meet Performance Specification 10, if the CEM measures other metals as well as mercury, or Performance Specification 12, if the CEM measures only mercury. Both performance specifications are provided in the appendix to this subpart.

(3) The owner and operator shall comply with the quality assurance procedures provided in the appendix to this subpart.

(l) Semivolatile metals (SVM). The owner or operator shall demonstrate compliance with the SVM (cadmium and lead) emission standard by either:

(1) CEMS. (i) Installing, calibrating, maintaining, and continuously operating a CEMS that measures multiple metals at all times that hazardous waste is fed or remains in the combustion chamber.

(ii) The multi-metal CEMS shall meet the requirements provided in the appendix to this subpart; or

(2) Operating limits. Establishing and complying with the following operating limits, except that cement kilns and lightweight aggregate kilns must comply with alternative requirements provided by paragraph (f) of this section:

(i) PM limit. (A) PM shall be limited to the level achieved during the comprehensive performance test;

(B) During the comprehensive performance test the owner and operator shall demonstrate compliance with the applicable PM standard in §§ 63.1203, 63.1204, and 63.1205, corrected to 7 percent oxygen, based on a 2-hour rolling average, and monitored with a CEMS;

(*1*) The owner or operator shall install, calibrate, maintain, and continuously operate a CEMS that measures particulate matter at all times that hazardous waste is fed or that hazardous waste remains in the combustion chamber.

(*2*) The PM CEMS shall meet the requirements provided in the appendix to this subpart.

(C) The site-specific PM limit shall be determined from the performance test as follows:

(*1*) A 10-minute rolling average shall be established as the average over all runs of the maximum 10-minute rolling average for each run;

(*2*) An hourly rolling average shall be established as the average of all one minute averages over all runs.

(ii) Maximum feedrate of Cd and Pb. A 12-hour rolling average limit for the feedrate of Cd and Pb, combined, in all feedstreams shall be established as the average feedrate over all runs.

(iii) Maximum total chlorine and chloride feedrate. A 12-hour rolling average limit for the feedrate of total chlorine and chloride in all feedstreams shall be established as the average feedrate over all runs.

(iv) Minimum gas flowrate. An hourly rolling average limit for gas flowrate, or a surrogate parameter, shall be established as the average over all runs of the lowest hourly rolling average for each run.

(m) Low volatility metals (LVM). The owner or operator shall demonstrate compliance with the LVM (arsenic, beryllium, chromium, and antimony) emission standard by either:

(1) CEMS. (i) Installing, calibrating, maintaining, and continuously operating a CEMS that measures multiple metals at all times that hazardous waste is fed or remains in the combustion chamber.

(ii) The multi-metals CEMS shall meet the requirements provided in the appendix to this subpart; or

(2) Operating limits. Establishing and complying with the following operating limits, except that cement kilns and lightweight aggregate kilns must comply with alternative requirements provided by paragraph (f) of this section:

(i) PM limit. (A) PM shall be limited to the level achieved during the comprehensive performance test;

(B) During the comprehensive performance test the owner and operator shall demonstrate compliance with the applicable PM standard in §§ 63.1203, 63.1204, or 63.1205, corrected to 7 percent oxygen, based on a 2-hour rolling average, and monitored with a CEMS;

(*1*) The owner or operator shall install, calibrate, maintain, and continuously operate a CEMS that measures particulate matter at all times that hazardous waste is fed or that hazardous waste remains in the combustion chamber.

(*2*) The PM CEMS shall meet the requirements provided in the appendix to this subpart.

(C) The site-specific PM limit shall be determined from the performance test as follows:

(*1*) A 10-minute rolling average shall be established as the average over all runs of the maximum 10-minute rolling average for each run;

(*2*) An hourly rolling average shall be established as the average of all one minute averages over all runs.

(ii) Maximum feedrate of As, Be, Cr, and Sb. (A) A 12-hour rolling average limit for the feedrate of As, Be, Cr, and Sb, combined, in all feedstreams shall be established as the average feedrate over all runs.

(B) A 12-hour rolling average limit for the feedrate of As, Be, Cr, and Sb, combined, in all pumpable feedstreams shall be established as the average feedrate in pumpable feedstreams over all runs.

(iii) Maximum chlorine and chloride feedrate. A 12-hour rolling average limit for the feedrate of total chlorine and chloride in all feedstreams shall be established as the average feedrate over all runs.

(iv) Minimum gas flowrate. An hourly rolling average limit for gas flowrate, or a surrogate parameter, shall be established as the average over all runs of the lowest hourly rolling average for each run.

(n) Special requirements for CKs and LWAKs for compliance with metals standards. Owners and operators of cement kilns and lightweight aggregate kilns that recycle collected particulate matter back into the kiln must comply with one of the following alternative approaches to demonstrate compliance with the emission standards for SVM, combined (cadmium and lead), and for LVM, combined (arsenic, beryllium, chromium and antimony):

(1) Feedstream monitoring. The requirements of paragraphs (d) and (e) of this section only after the kiln system has been conditioned to enable it to reach equilibrium with respect to metals fed into the system and metals emissions. During conditioning, hazardous waste and raw materials having the same metals content as will be fed during the performance test must

be fed at the feedrates that will be fed during the performance test; or

(2) Monitor recycled PM. The special testing requirements prescribed in ''Alternative Method for Implementing Metals Controls'' in appendix IX, part 266, of this chapter; or

(3) Semicontinuous emissions testing. Stack emissions testing for a minimum of 6 hours each day while hazardous waste is burned. The testing must be conducted when burning normal hazardous waste for that day at normal feedrates for that day and when the air pollution control system is operated under normal conditions. Although limits on metals in feedstreams are not established under this option, the owner or operator must analyze each feedstream for metals content sufficiently to determine if changes in metals content may affect the ability of the facility to meet the metal emissions standards under §§ 63.1204 and 63.1205.

(o) HCl and chlorine gas. The owner or operator shall demonstrate compliance with the HCl/Cl_2 emission standard by either:

(1) CEMS. (i) Installing, calibrating, maintaining, and continuously operating a CEMS for HCl and Cl_2 at all times that hazardous waste is fed or that hazardous waste remains in the combustion chamber.

(ii) The HCl and Cl_2 CEMS shall meet the requirements provided in the appendix to this subpart; or

(2) Operating limits. Establishing and complying with the following operating limits:

(i) Feedrate of total chlorine and chloride. A 12-hour rolling average limit for the total feedrate of total chlorine and chloride in all feedstreams shall be established as the average feedrate over all runs.

(ii) Maximum flue gas flowrate or production rate. As an indicator of gas residence time in the control device, the maximum flue gas flowrate, or a parameter that the owner or operator documents in the site-specific test plan is an appropriate surrogate, shall be established as the average over all runs of the maximum hourly rolling average for each run, and complied with on a hourly rolling average basis.

(iii) Wet Scrubber. If a wet scrubber is used, the following operating parameter limits shall be established.

(A) Minimum pressure drop across the scrubber. Minimum pressure drop across a wet scrubber shall be established.

(*1*) A 10-minute rolling average shall be established as the average over all runs of the minimum 10-minute rolling averages for each run.

(*2*) An hourly rolling average shall be established as the average level over all runs.

(B) Minimum liquid feed pressure. Minimum liquid feed pressure shall be established as a ten minute average, based on manufacturer's specifications.

(C) Minimum liquid pH. Minimum liquid pH shall be established.

(*1*) A 10-minute rolling average shall be established as the average over all runs of the minimum 10-minute rolling averages for each run.

(*2*) An hourly rolling average shall be established as the average level over all runs.

(D) Minimum liquid to gas flow ratio. Minimum liquid to gas flow ratio shall be established.

(*1*) A 10-minute rolling average shall be established as the average over all runs of the minimum 10-minute rolling averages for each run.

(*2*) An hourly rolling average shall be established as the average level over all runs.

(iv) Ionizing Wet Scrubber. If an ionizing wet scrubber is used, the following operating parameter limits shall be established.

(A) Minimum pressure drop across the scrubber. Minimum pressure drop across an ionizing wet scrubber shall be established on both a ten minute and hourly rolling average.

(*1*) A 10-minute rolling average shall be established as the average over all runs of the minimum 10-minute rolling averages for each run.

(*2*) An hourly rolling average shall be established as the average level over all runs.

(B) Minimum liquid feed pressure. Minimum liquid feed pressure shall be established as a ten minute average, based on manufacturer's specifications.

(C) Minimum liquid to gas flow ratio. Minimum liquid to gas flow ratio shall be established on both a ten minute and hourly rolling average.

(*1*) A 10-minute rolling average shall be established as the average over all runs of the minimum 10-minute rolling averages for each run.

(*2*) An hourly rolling average shall be established as the average level over all runs.

(v) Dry scrubber. If a dry scrubber is used, the following operating parameter limits shall be established.

(A) Minimum sorbent feedrate. Minimum sorbent feedrate shall be established on both a ten minute and hourly rolling average.

(*1*) A 10-minute rolling average shall be established as the average over all runs of the minimum 10-minute rolling averages for each run.

(*2*) An hourly rolling average shall be established as the average level over all runs.

(B) Minimum carrier fluid flowrate or nozzle pressure drop. Minimum carrier fluid (gas or liquid) flowrate or nozzle pressure drop shall be established as a ten minute average, based on manufacturer's specifications.

(C) Sorbent specifications. (*1*) The brand (i.e., manufacturer) and type of sorbent used during the comprehensive performance test must be used until a subsequent comprehensive performance test is conducted, unless the owner or operator document in the site-specific performance test plan required under § 63.1208 key parameters that affect the effectiveness of a sorbent and establish limits on those parameters based on the inhibitor used in the performance test.

(*2*) The owner or operator may request approval from the Administrator at any time to substitute a different brand or type of inhibitor without having to conduct a comprehensive performance test. The Administrator may grant such approval if he or she determines that the owner or operator has sufficiently documented that the substitute sorbent will provide the same level of HCl and Cl2 control as the original sorbent.

(p) Carbon monoxide CEMS. (1) The owner or operator shall install, calibrate, maintain, and continuously operate a CEMS for carbon monoxide at all times that hazardous waste is fed or that hazardous waste remains in the combustion chamber.

(2) The carbon monoxide CEMS shall meet the requirements provided in the appendix to this subpart.

(q) Hydrocarbon CEMS. (1) The owner or operator shall install, calibrate, maintain, and continuously operate a CEMS for hydrocarbons at all times that hazardous waste is fed or that hazardous waste remains in the combustion chamber.

(2) The hydrocarbon CEMS shall meet the requirements provided in the appendix to this subpart.

(r) Oxygen CEMS. (1) The owner or operator shall install, calibrate, maintain, and continuously operate a CEMS for oxygen at all times that hazardous waste is fed or remains in the combustion chamber.

(2) The oxygen CEMS shall meet the requirements provided in the appendix to this subpart.

(s) Maximum combustion chamber pressure. If a source complies with the fugitive emissions requirements of § 63.1207(b) by maintaining the maximum combustion chamber zone pressure lower than ambient pressure, the source must monitor the pressure instantaneously and the automatic

waste feed cutoff system must be engaged when negative pressure is not maintained at any time.

(t) Waiver of operating limits. The owner or operator may request in writing a waiver from any of the operating limits provided by this section. The waiver must include documentation that other operating parameters or methods to establish operating limits are more appropriate to ensure compliance with the emission standards. The waiver must also include recommended averaging periods and the basis for establishing operating limits.

§ 63.1211 Notification requirements.

(a) Notifications. HWCs shall submit the following notifications as applicable:

(1) Initial notification. HWCs shall comply with the initial notification requirements of § 63.9(b).

(2) Notification of performance test and CMS evaluation. The notification of performance test requirements of § 63.9(c) apply to all performance tests and CMS evaluations required by § 63.1208, except that all notifications shall be submitted for review and approval at the times specified in that section.

(3) Notification of compliance. The notification of compliance status requirements of § 63.9(h) apply, except that:

(i) The notification is a notification of compliance (rather than compliance status), as defined in § 63.1200;

(ii) The notification is required for each performance test;

(iii) The requirements of § 63.9(h)(2)(i)(D) and (E) pertaining to major source determinations do not apply; and

(iv) Under § 63.9(h)(2)(ii), the notification shall be sent before the close of business on the 90th day following the completion of relevant compliance demonstration activity specified in this subpart.

(4) Request for extension of time to submit a notification of compliance. HWCs that elect to request a time extension of up to one year to submit an initial notification of compliance under § 63.9(c) or a subsequent notification of compliance under § 63.1208(c) must submit a written request and justification as required by those sections.

(b) Applicability of § 63.9 (Notification requirements). The following provisions of § 63.9 are applicable to HWCs:

(1) Paragraphs (a), (b), (c), (d), (e), (g), (i), and (j); and

(2) Paragraph (h), except as provided in paragraphs (a)(3) (iii) and (iv) of this section.

§ 63.1212 Recordkeeping and reporting requirements.

(a) The following provisions of § 63.10 are applicable to HWCs:

(1) Paragraph (a) (Applicability and general information), except (a)(2);

(2) Paragraph (b) (General recordkeeping requirements), except (b)(2) (iv) through (vi), and (b)(3); and

(3) Paragraph (c) (Additional recordkeeping requirements for sources with CMS), except (c)(6) through (8), (c)(13), and (c)(15).

(4) Paragraph (d) (General reporting requirements) applies as follows:

(i) Paragraphs (d)(1), (d)(4) apply; and

(ii) Paragraph (d)(2) applies, except that the report may be submitted up to 90 days after completion of the test; and

(5) In paragraph (e) (Additional reporting requirements for sources with CMS), paragraphs (e)(1) (General) and (e)(2) (Reporting results of CMS performance evaluations) apply.

(b) Additional reporting requirements. HWCs are also subject to the reporting requirements for excessive automatic waste feed cutoffs under § 63.1207(a)(2) and emergency safety vent openings under § 63.1207(a)(3).

(c) Additional recordkeeping requirements. HWCs must also retain the feedstream analysis plan required under § 63.1210(c) in the operating record.

Appendix to Subpart EEE—Quality Assurance Procedures for Continuous Emissions Monitors Used for Hazardous Waste Combustors

1. Applicability and Principle

1.1 Applicability. These quality assurance requirements are used to evaluate the effectiveness of quality control (QC) and quality assurance (QA) procedures and the quality of data produced by continuous emission monitoring systems (CEMS) that are used for determining compliance with the emission standards on a continuous basis as specified in the applicable regulation. The QA procedures specified by these requirements represent the minimum requirements necessary for the control and assessment of the quality of CEMS data used to demonstrate compliance with the emission standards provided under subpart EEE, part 63, of this chapter. Owners and operators must meet these minimum requirements and are encouraged to develop and implement a more extensive QA program. These requirements supersede those found in Part 60, Appendix F of this chapter. Appendix F does not apply to hazardous waste-burning devices.

Data collected as a result of the required QA and QC measures are to be recorded in the operating record. In addition, data collected as a result of CEM performance evaluations required by Section 5 in conjunction with an emissions performance test are to be submitted to the Director as provided by § 63.8(e)(5) of this chapter. These data are to be used by both the Agency and the CEMS operator in assessing the effectiveness of the CEMS QA and QC procedures in the maintenance of acceptable CEMS operation and valid emission data.

1.2 Principle. The QA procedures consist of two distinct and equally important functions. One function is the assessment of the quality of the CEMS data by estimating accuracy. The other function is the control and improvement of the quality of the CEMS data by implementing QC policies and corrective actions. These two functions form a control loop. When the assessment function indicates that the data quality is inadequate, the source must immediately stop burning hazardous waste. The CEM data control effort must be increased until the data quality is acceptable before hazardous waste burning can resume.

In order to provide uniformity in the assessment and reporting of data quality, this procedure explicitly specifies the assessment methods for response drift and accuracy. The methods are based on procedures included in the applicable performance specifications provided in Appendix B to Part 60. These procedures also require the analysis of the EPA audit samples concurrent with certain reference method (RM) analyses as specified in the applicable RM's.

Because the control and corrective action function encompasses a variety of policies, specifications, standards, and corrective measures, this procedure treats QC requirements in general terms to allow each source owner or operator to develop a QC system that is most effective and efficient for the circumstances.

2. Definitions

2.1 Continuous Emission Monitoring System (CEMS). The total equipment required for the determination of a pollutant concentration. The system consists of the following major subsystems:

2.1.1 Sample Interface. That portion of the CEMS used for one or more of the following: sample acquisition, sample transport, and sample conditioning, or protection of the monitor from the effects of the stack effluent.

2.1.2 Pollutant Analyzer. That portion of the CEMS that senses the pollutant concentration and generates a proportional output.

2.1.3 Diluent Analyzer. That portion of the CEMS that senses the diluent gas (O_2) and generates an output proportional to the gas concentration.

2.1.4 Data Recorder. That portion of the CEMS that provides a permanent record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.

2.2 Relative Accuracy (RA). The absolute mean difference between the pollutant concentration determined by the CEMS and the value determined by the reference method (RM) plus the 2.5 percent error confidence coefficient of a series of test divided by the mean of the RM tests or the applicable emission limit.

2.3 Calibration Drift (CD). The difference in the CEMS output readings from the established reference value after a stated

period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.4 Zero Drift (ZD). The difference in CEMS output readings at the zero pollutant level after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.5 Tolerance Interval. The interval with upper and lower limits within which are contained a specified percentage of the population with a given level of confidence.

2.6 Calibration Standard. Calibration standards produce a known and unchanging response when presented to the pollutant analyzer portion of the CEMS, and are used to calibrate the drift or response of the analyzer.

2.7 Relative Accuracy Test Audit (RATA). Comparison of CEMS measurements to reference method measurements in order to evaluate relative accuracy following procedures and specification given in the appropriate performance specification.

2.8 Absolute Calibration Audit (ACA). Equivalent to calibration error (CE) test defined in the appropriate performance specification using NIST traceable calibration standards to challenge the CEMS and assess accuracy.

2.9 Response Calibration Audit (RCA). For PM CEMS only, a check of stability of the calibration relationship determined by comparison of CEMS response to manual gravimetric measurements.

2.10 Fuel Type. For the purposes of PM CEMs, fuel type is defined as the physical state of the fuel: gas, liquid, or solid.

2.11 Rolling Average. The average emissions, based on some (specified) time period, calculated every minute from a one-minute average of four measurements taken at 15-second intervals.

3. QA/QC Requirements

3.1 QC Requirements. Each owner or operator must develop and implement a QC program. At a minimum, each QC program must include written procedures describing in detail complete, step-by-step procedures and operations for the following activities.

1. Checks for component failures, leaks, and other abnormal conditions.
2. Calibration of CEMS.
3. CD determination and adjustment of CEMS.
4. Integration of CEMS with the automatic waste feed cutoff (AWFCO) system.
5. Preventive Maintenance of CEMS (including spare parts inventory).
6. Data recording, calculations, and reporting.
7. Checks of record keeping.
8. Accuracy audit procedures, including sampling and analysis methods.
9. Program of corrective action for malfunctioning CEMS.
10. Operator training and certification.
11. Maintaining and ensuring current certification or naming of cylinder gasses, metal solutions, and particulate samples used for audit and accuracy tests, daily checks, and calibrations.

Whenever excessive inaccuracies occur for two consecutive quarters, the current written procedures must be revised or the CEMS modified or replaced to correct the deficiency causing the excessive inaccuracies. These written procedures must be kept on record and available for inspection by the enforcement agency.

3.2 QA Requirements. Each source owner or operator must develop and implement a QA plan that includes, at a minimum, the following.

1. QA responsibilities (including maintaining records, preparing reports, reviewing reports).
2. Schedules for the daily checks, periodic audits, and preventive maintenance.
3. Check lists and data sheets.
4. Preventive maintenance procedures.
5. Description of the media, format, and location of all records and reports.
6. Provisions for a review of the CEMS data at least once a year. Based on the results of the review, the owner or operator shall revise or update the QA plan, if necessary.

4. CD and ZD Assessment and Daily System Audit

4.1 CD and ZD Requirement. Owners and operators must check, record, and quantify the ZD and the CD at least once daily (approximately 24 hours) in accordance with the method prescribed by the manufacturer. The CEMS calibration must, at a minimum, be adjusted whenever the daily ZD or CD exceeds the limits in the Performance Specifications. If, on any given ZD and/or CD check the ZD and/or CD exceed(s) two times the limits in the Performance Specifications, or if the cumulative adjustment to the ZD and/or CD (see Section 4.2) exceed(s) three times the limits in the Performance Specifications, hazardous waste buring must immediately cease and the CEMS must be serviced and recalibrated. Hazardous waste burning cannot resume until the owner or operator documents that the CEMS is in compliance with the Performance Specifications by carrying out an ACA.

4.2 Recording Requirements for Automatic ZD and CD Adjusting Monitors. Monitors that automatically adjust the data to the corrected calibration values must record the unadjusted concentration measurement prior to resetting the calibration, if performed, or record the amount of the adjustment.

4.3 Daily System Audit. The audit must include a review of the calibration check data, an inspection of the recording system, an inspection of the control panel warning lights, and an inspection of the sample transport and interface system (e.g., flowmeters, filters, etc.) as appropriate.

4.4 Data Recording and Reporting. All measurements from the CEMS must be retained in the operating record for at least 5 years.

5. Performance Evaluation

5.1 Multi-Metals CEMS. The CEMS must be audited at least once each calendar year. In years when a performance test is also required under § 63.1208 of this chapter to document compliance with emission standards, the performance evaluation (i.e., audit) shall coincide with the performance test. Successive yearly audits shall be at least 9 months apart. The audits shall be conducted as follows.

5.1.1 Relative Accuracy Test Audit (RATA). The RATA must be conducted at least once every three years (five years for small on-site facilities defined in § 63.1208(b)(1)(ii)). Conduct the RATA as described in the RA test procedure (or alternate procedures section) described in the applicable Performance Specifications. In addition, analyze the appropriate performance audit samples received from the EPA as described in the applicable sampling methods (i.e., SW–846 method 0060).

5.1.2 Absolute Calibration Audit (ACA). The ACA must be conducted at least once each year except when a RATA is conducted instead. Conduct an ACA using NIST traceable calibration standards at three levels for each metal that is being monitored for compliance purposes. The levels must correspond to 0 to 20, 40 to 60, and 80 to 120 percent of the applicable emission limit for each metal. (For the SVM and LVM standards where the standard applies to combined emissions of several metals, the average annual emission concentration for each individual metal in a group for which a standard applies should be assumed by projecting emissions based on feedrate estimates determined from the waste management plan required under § 63.1210(c)(2) of this chapter. The estimated average annual emission concentration should be used as a surrogate metal emission limit for purposes of the ACA.) At each level and for each metal, make nine determinations of the RA as defined in Section 8 of the applicable Performance Specifications using the value of the calibration standard in the denominator of Equation (6).

5.1.3 Reference method. The reference method is SW–846 method 0060.

5.1.4 Excessive Audit Inaccuracy. If the RA using the RATA or ACA exceeds the criteria in Section 4.2 of the Performance Specifications, hazardous waste burning must immediately cease. Before hazardous waste burning can resume, the owner or operator must take necessary corrective action to eliminate the problem, and must audit the CEMS with a RATA to document that the CEMS is operating within the specifications.

5.2 Particulate Matter CEMS. The CEMS must be audited at least once each quarter (three calendar months.) A response calibration audit (RCA) shall be conducted every 18 months. An absolute calibration audit (ACA) shall be conducted quarterly, except when an RCA is conducted instead. The audits shall be conducted as follows.

5.2.1 Response Calibration Audit (RCA). The RCA must be conducted at least every 18 months (30 months for small on-site facilities defined in § 63.1208(b)(1)(ii)). Conduct the RCA as described in the CEMS Response Calibration Procedure described in the applicable Performance Specifications (Sections 5 and 7). A minimum of nine tests are required at three particulate levels. The three particulate levels should be at the high-end, low-end, and midpoint of the particulate range spanned by the current calibration of the CEMS.

5.2.2 Absolute Calibration Audit (ACA). The ACA must be conducted at least

quarterly, except when an RCA is conducted instead. Conduct an ACA using NIST traceable calibration standards, making three measurements at three levels (nine measurements total). The levels must correspond to 10 to 50 percent, 80 to 120 percent, and 200 to 300 percent of the emission limit. At each level make a determination of the instrument response and compare it to the nominal response by calculating the calibration error CE:

Where:

R_{CEM} is the CEMS response;

R_N is the nominal response generated by the calibration standard, and

R_{EM} is the emission limit value.

5.2.3 Excessive Audit Inaccuracy.

5.2.3.1 RCA. If less than 75 percent percent of the test results from the RCA fall within the tolerance interval established for the current calibration (see Sections 7 and 8 of the Performance Specifications), then a new calibration relation is required. Hazardous waste burning must cease immediately, and may not be resumed until a new calibration relation is calculated from the RCA data according to the procedures specified in Section 8 of the Performance Specifications.

5.2.3.2 ACA. If the calibration error is greater than 2 percent of the emission limit for any of the calibration levels, hazardous waste burning must cease immediately. If adjustments to the instrument reduce the calibration error to less than 2 percent of the emission limit at all three levels, then hazardous waste burning can resume. If not, the instrument must be repaired and must pass a complete ACA before hazardous waste burning can resume.

5.2.4 Calibrating for Fuel Type. The owner or operator shall derive a sufficient number of calibration curves to use for all fuel type and mixtures of fuel type.

5.2.5 Reference Method. The reference method is Method 5 found in 40 CFR Part 60, Appendix A.

5.3 Total Mercury CEMS. An Absolute Calibration Audit (ACA) must be conducted quarterly, and a Relative Accuracy Test Audit (RATA) must be conducted every three years (five years for small on-site facilities defined in § 63.1208(b)(1)(ii)). An Interference Response Tests shall be performed whenever an ACA or a RATA is conducted. In years when a performance test is also required under § 63.1208 of this chapter to document compliance with emission standards, the RATA shall coincide with the performance test. The audits shall be conducted as follows.

5.3.1 Relative Accuracy Test Audit (RATA). The RATA must be conducted at least every three years (five years for small on-site facilities defined in § 63.1208(b)(1)(ii)). Conduct the RATA as described in the RA test procedure (or alternate procedures section) described in the applicable Performance Specifications. In addition, analyze the appropriate performance audit samples received from the EPA as described in the applicable sampling methods.

5.3.2 Absolute Calibration Audit (ACA). The ACA must be conducted at least quarterly except in a quarter when a RATA is conducted instead. Conduct an ACA as described in the calibration error (CE) test procedure described in the applicable Performance Specifications.

5.3.3 Interference Response Test. The interference response test shall be conducted whenever an ACA or RATA is conducted. Conduct an interference response test as described in the applicable Performance Specifications.

5.3.4 Excessive Audit Inaccuracy. If the RA from the RATA or the CE from the ACA exceeds the criteria in the applicable Performance Specifications, hazardous waste burning must cease immediately. Hazardous waste burning cannot resume until the owner or operator take corrective measures and audit the CEMS with a RATA to document that the CEMS is operating within the specifications.

5.3.5 Reference Methods. The reference method for mercury is SW–846 method 0060.

5.4 Hydrogen Chloride (HCl), Chlorine (Cl_2), Carbon Monoxide (CO), Oxygen (O_2), and Hydrocarbon (HC) CEMS. An Absolute Calibration Audit (ACA) must be conducted quarterly, and a Relative Accuracy Test Audit (RATA) (if applicable, see sections 5.4.1 and 5.4.2) must be conducted yearly. An Interference Response Tests shall be performed whenever an ACA or a RATA is conducted. In years when a performance test is also required under § 63.1208 of this chapter to document compliance with emission standards, the RATA shall coincide with the performance test. The audits shall be conducted as follows.

5.4.1 Relative Accuracy Test Audit (RATA). This requirement applies to O_2 and CO CEMS. The RATA must be conducted at least yearly. Conduct the RATA as described in the RA test procedure (or alternate procedures section) described in the applicable Performance Specifications. In addition, analyze the appropriate performance audit samples received from the EPA as described in the applicable sampling methods.

5.4.2 Absolute Calibration Audit (ACA). This requirements applies to all CEMS listed in 5.4. The ACA must be conducted at least quarterly except in a quarter when a RATA (if applicable, see section 5.4.1) is conducted instead. Conduct an ACA as described in the calibration error (CE) test procedure described in the applicable Performance Specifications.

5.4.3 Interference Response Test. The interference response test shall be conducted whenever an ACA or RATA is conducted. Conduct an interference response test as described in the applicable Performance Specifications.

5.4.4 Excessive Audit Inaccuracy. If the RA from the RATA or the CE from the ACA exceeds the criteria in the applicable Performance Specifications, hazardous waste burning must cease immediately. Hazardous waste burning cannot resume until the owner or operator take corrective measures and audit the CEMS with a RATA to document that the CEMS is operating within the specifications.

6. Other Requirements

6.1 Performance Specifications. CEMS used by owners and operators of HWCs must comply with the following performance specifications in Appendix B to Part 60:

TABLE I.—PERFORMANCE SPECIFICATIONS FOR CEMS

CEMS	Performance specification
Carbon monoxide	4B
Oxygen	4B
Total hydrocarbons	8A
Mercury, semivolatile metals, and low volatile metals.	10
Particulate matter	11
Mercury	12
Hydrochloric acid (hydrogen chloride).	13
Chlorine gas (diatomic chlorine)	14

6.2 Downtime due to Calibration. Facilities may continue to burn hazardous waste for a maximum of 20 minutes while calibrating the CEMS. If all CEMS are calibrated at once, the facility shall have twenty minutes to calibrate all the CEMS. If CEMS are calibrated individually, the facility shall have twenty minutes to calibrate each CEMS. If the CEMS are calibrated individually, other CEMS shall be operational while the individual CEMS is being calibrated.

6.3 Span of the CEMS.

6.3.1 Multi-metals, Particulate Matter, Mercury, Hydrochloric Acid, and Chlorine Gas CEMS. The span shall be at least 20 times the emission limit at an oxygen correction factor of 1.

6.3.2 CO CEMS. The CO CEM shall have two ranges, a low range with a span of 200 ppmv and a high range with a span of 3000 ppmv at an oxygen correction factor of 1. A one-range CEM may be used, but it must meet the performance specifications for the low range in the specified span of the low range.

6.3.3 O_2 CEMS. The O_2 CEM shall have a span of 25 percent. The span may be higher than 25 percent if the O_2 concentration at the sampling point is greater than 25 percent.

6.3.4 HC CEMS. The HC CEM shall have a span of 100 ppmv, expressed as propane, at an oxygen correction factor of 1.

6.3.5 CEMS Span Values When the Oxygen Correction Factor is Greater than 2. When a owner or operator installs a CEMS at a location of high ambient air dilution, i.e., where the maximum oxygen correction factor as determined by the permitting agency is greater than 2, the owner or operator shall install a CEM with a lower span(s), proportionate to the larger oxygen correction factor, than those specified above.

6.3.6 Use of Alternative Spans. Owner or operators may request approval to use alternative spans and ranges to those specified. Alternate spans must be approved in writing in advance by the Director. In considering approval of alternative spans and ranges, the Director will consider that measurements beyond the span will be recorded as values at the maximum span for purposes of calculating rolling averages.

6.3.7 Documentation of Span Values. The span value shall be documented by the CEMS manufacturer with laboratory data.

6.4.1 Oxygen Correction Factor. Measured pollutant levels shall be corrected for the amount of oxygen in the stack according to the following formula:

$$P_c = P_m \times 14/(E-Y)$$

where:

P_c=concentration of the pollutant or standard corrected to 7 percent oxygen;

P_m=measured concentration of the pollutant;

E=volume fraction of oxygen in the combustion air fed into the device, on a dry basis (normally 21 percent or 0.21 if only air is fed);

Y=measured fraction of oxygen on a dry basis at the sampling point.

The oxygen correction factor is:

$$OCF = 14/(E-Y)$$

6.4.2 Moisture Correction. Method 4 of appendix A of this Part shall be used to determine moisture content of the stack gasses.

6.4.3 Temperature Correction. Correction values for temperature are obtainable from standard reference materials.

6.5 Rolling Average. A rolling average is the arithmetic average of all one-minute averages over the averaging period.

6.5.1 One-Minute Average. One-minute averages are the arithmetic average of the four most recent 15-second observations and shall be calculated using the following equation:

$$\bar{c} = \sum_{i=1}^{4} \frac{c}{4}$$

Where:

$\bar{c}$=the one minute average

c_i=a fifteen-second observation from the CEM

Fifteen second observations shall not be rounded or smoothed. Fifteen-second observations may be disregarded only as a result of a failure in the CEMS and allowed in the source's quality assurance plan at the time of the CMS failure. One-minute averages shall not be rounded, smoothed, or disregarded.

6.5.2 Ten Minute Rolling Average Equation. The ten minute rolling average shall be calculated using the following equation:

$$C_{RA} = \sum_{i=1}^{10} \frac{\bar{c}_i}{10}$$

Where:

C_{RA}=The concentration of the standard, expressed as a rolling average

$\bar{c}_i$=a one minute average

6.5.3 n-Hourly Rolling Average Equation. The rolling average, based on a specific number integer of hours, shall be calculated using the following equation:

$$C_{RA} = \sum_{i=1}^{60*N} \frac{\bar{c}_i}{60*N}$$

Where:

C_{RA}=The concentration of the standard, expressed as a rolling average

N=The number of hours of the rolling average

$\bar{c}_i$=a one minute average

6.5.4 New rolling averages. When a rolling average begins due to the provisions of § 6.5.4.2 of this appendix or when no previous one-minute average have been recorded, the rolling average shall be the average all one-minute averages since the rolling average commenced. Then when sufficient time has passed such that there are enough one-minute averages to calculate a rolling average specified in § 6.5.2 or 6.5.3 of this appendix, i.e., when the period of time since the rolling average was started is equal to or greater than the averaging period, the average shall be calculated using the equation specified there.

6.5.4.1 Short term interruption of a rolling average. When rolling averages which are interrupted (such as for a calibration or failure of the CEMS), the rolling average shall be restarted with the one-minute averages prior to the interruption being the i=1 to (60*N–1) values and the i=60*N value being the one minute average immediately after the interruption. A short term interruption is one with a duration of less than the averaging period for the given standard or parameter.

6.5.4.2 Long term interruptions of the rolling average. When ten minute rolling averages are interrupted for periods greater than ten minutes, the rolling average shall be restarted as provided in § 6.5.4 of this appendix. When rolling averages with averaging periods in excess of the averaging period for the given standard or parameter, the rolling average shall be restarted as provided in § 6.5.4 of this appendix.

6.6 Units of the Standards for the Purposes of Recording and Reporting Emissions. Emissions shall be recorded and reported expressed after correcting for oxygen, temperature, and moisture. Emissions shall be reported in metric, but may also be reported in the English system of units, at 7 percent oxygen, 20 °C, and on a dry basis.

6.7 Rounding and Significant Figures. Emissions shall be rounded to two significant figures using ASTM procedure E–29–90 or its successor. Rounding shall be avoided prior to rounding for the reported value.

7. Bibliography

1. 40 CFR Part 60, Appendix F, ''Quality Assurance Procedures: Procedure 1. Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used For Compliance Determination''.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

III. In part 260:

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Subpart B of part 260 is amended by revising the definition of ''industrial furnace'' and adding the following definitions to read as follows:

§ 260.10 Definitions.

When used in parts 260 through 270 of this chapter, the following terms have the meanings given below:

* * * * *

Air pollution control system means the equipment used to reduce the release of particulate matter and other pollutants to the atmosphere.

Automatic waste feed cutoff (AWFCO) system means a system comprised of cutoff valves, actuator, sensor, data manager, and other necessary components and electrical circuitry designed, operated and maintained to stop the flow of hazardous waste to the combustion unit automatically and immediately when any of the parameters to which the system is interlocked exceed the limits established in compliance with applicable standards, the operating permit, or safety considerations.

* * * * *

Cement kiln means a rotary kiln and any associated preheater or precalciner devices that produces clinker by heating limestone and other materials for subsequent production of cement for use in commerce.

* * * * *

Combustion chamber means the area in which controlled flame combustion of hazardous waste occurs.

* * * * *

Continuous monitor means a device which continuously samples the regulated parameter without interruption except during allowable periods of calibration, and, for CEMS, except as defined otherwise by the applicable performance specification.

* * * * *

Dioxins and furans (D/F) means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

* * * * *

Feedstream means any material fed into a HWC, including, but not limited to, any pumpable or nonpumpable solid or gas.

* * * * *

Flowrate means the rate at which a feedstream is fed into a HWC.

* * * * *

Fugitive combustion emissions means particulate or gaseous matter generated by or resulting from the burning of hazardous waste that is not collected by a capture system and is released to the atmosphere prior to the exit of the stack.

* * * * *

Industrial furnace means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal

treatment to accomplish recovery of materials or energy:

(1) Cement kilns

(2) Lime kilns

(3) Lightweight aggregate kilns

* * * * *

Lightweight aggregate kiln means a rotary kiln that produces for commerce (or for manufacture of products for commerce) an aggregate with a density less than 2.5 g/cc by slowly heating organic-containing geologic materials such as shale and clay.

* * * * *

One-minute average means the average of detector responses calculated at least every 60 seconds from responses obtained at least each 15 seconds.

* * * * *

Operating record means all information required by the standards to document and maintain compliance with the applicable regulations, including data and information, reports, notifications, and communications with regulatory officials.

* * * * *

Rolling average means the average of all one-minute averages over the averaging period.

Run means the net period of time during which an air emission sample is collected under a given set of operating conditions. Three or more runs constitutes an emissions test. Unless otherwise specified, a run may be either intermittent or continuous.

* * * * *

Synthesis gas fuel means a gaseous fuel produced by the thermal treatment of hazardous waste and which meets the specification provided by § 261.4(a)(12)(ii).

* * * * *

TEQ means the international method of expressing toxicity equivalents for dioxins and furans as defined in U.S. EPA, Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update, March 1989.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

IV. In part 261:

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by adding paragraph (a)(13) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(13) Wastes that meet the following comparable fuel specifications, under the conditions of paragraph (a)(13)(iv):

(i) Generic comparable fuel specification. (A) Constituent specifications. For compounds listed below, the specification levels and, where non-detect is the specification, maximum allowable detection limits are: [values to be determined].

(B) Physical specifications. (1) Heating value. The heating value must exceed 11,500 J/g (5,000 BTU/lbm).

(2) Flash point. The flash point must not be less than [value to be determined].

(3) Viscosity. The viscosity must not exceed [value to be determined]

(ii) Synthesis gas fuel specification.

(A) Synthesis gas (syngas) which is generated from hazardous waste and which:

(*1*) Has a minimum Btu value of 11,500 J/g (5,000 Btu/lb);

(*2*) Contains less than 1 ppmv of each hazardous constituent listed in Appendix VIII of this part that could reasonably be expected to be in the gas, except the limit for hydrogen sulfide (H_2S) is 10 ppmv; and

(*3*) Which contains less than 1 ppmv each of total chlorine and total nitrogen other than diatomic nitrogen (N_2).

(B) Measurements of concentrations of constituents specified in paragraph (a)(13)(ii)(A) are to be taken at the temperature and pressure of the gas at the point that the exclusion is first claimed.

(iii) Implementation. Waste that meets the comparable fuel specifications provided by paragraphs (a)(13)(i) or (ii) of this section is excluded from the definition of solid waste provided that:

(A) The person who generates the waste or produces the syngas must claim the exclusion. For purposes of this paragraph, that person is called the waste-derived fuel producer;

(B) (*1*) The producer must submit a one-time notice to the Director claiming the exclusion and certifying compliance with the conditions of the exclusion.

(*2*) If the producer is a company which produces comparable fuel at more than one facility, the producer shall specify at which sites the comparable fuel will be produced and each specified site must be in compliance with the conditions of the exclusion at each point of production;

(C) Sampling and analysis. (*1*) The producer must obtain information by sampling and analysis as often as necessary to document that fuel claimed to be excluded meets the comparable fuel specification provided by paragraphs (a)(13)(i) or (ii) of this section. At a minimum, the producer must sample and analyze the fuel for all constituents for which specifications are established when the exclusion is first claimed, and at least annually thereafter, for all constituents that, using the results of the initial test and process knowledge, the producer reasonably expects to be found in the comparable fuel.

(*2*) The producer must develop and implement a comparable fuel sampling and analysis plan, using the same protocols used to develop waste analysis plans, to document that the comparable fuel meets the specifications.

(*3*) Analytical methods provided by SW–846 must be used unless prior written approval is obtained from the Director to use an equivalent method;

(*4*) If a waste-derived fuel is blended in order to meet the flash point and kinematic viscosity specifications, the producer shall analyze the fuel as produced to ensure that it meets the constituent and heating value specifications and then analyze the fuel again after blending to ensure that it meets all specifications.

(*5*) If not blended, the comparable fuel shall be analyzed as produced.

(D) (*1*) Comparable fuel shall be burned on-site or shipped directly to a person who burns the waste.

(*2*) No person other than the producer and the burner shall manage a comparable fuel other than incidental transportation related handling.

(E) Treatment to meet the specification. (*1*) Bona fide treatment of hazardous waste to remove or destroy constituents listed in the specifications or to raise the heating value by removing constituents or materials can be used to meet the specification.

(*2*) Owners and operators of RCRA permitted hazardous waste treatment facilities qualify as producers of waste-derived fuel eligible for the exclusion provided that the newly generated waste results from bona fide treatment to remove or destroy constituents listed in the specifications or to increase the heating value.

(*3*) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.

(*4*) Treatment by incidental settling during storage or blending operations is not bona fide treatment for purposes of this exclusion; and

(F) Blending to meet the specification. Blending a waste containing, as generated, higher concentration(s) of hazardous constituent(s) than allowed in the comparable fuel specifications with materials with lower

concentrations of such constituents to meet the specifications is prohibited. (An excluded comparable fuel, however, may be blended with other materials without restriction.)

(G) Speculative Accumulation. Producers and burners are subject to the speculative accumulation test under § 261.2(c)(4).

(H) Recordkeeping. Producers claiming the exclusion must keep records of:

(*1*) One-time notification to the Director required by paragraph (a)(13)(ii)(B) of this section;

(*2*) Sampling and analysis or other information documenting that the fuel meets the comparable fuel specification;

(*3*) The comparable fuel sampling and analysis plan; and

(*4*) For waste that is treated before meeting particular constituent limits of the comparable fuel specification, documentation that the treatment resulted in removal or destruction of those constituents to meet the specification.

(I) Records Retention. Records must be retained for three years. The sampling and analysis plan and all revisions to the plan shall be retained for as long as the producer claims the exclusion, plus three years.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

V. In part 264:

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.340 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and adding paragraph (b), to read as follows:

§ 264.340 Applicability.

* * * * *

(b) Incorporation of MACT standards. (1) The requirements applicable to hazardous waste incinerators under subpart EEE, part 63, of this chapter are incorporated by reference.

(2) When an owner and operator begin compliance (i.e., submit a notification of compliance) with the requirements of subpart EEE, part 63, of this chapter:

(i) The applicability provisions of § 264.340(b) and (c) no longer apply;

(ii) The performance standards provided by § 264.343(b) and (c) are superseded (i.e., replaced) by the subpart EEE, part 63, standards such that an operating permit issued or reissued under part 270 of this chapter must ensure compliance with the subpart EEE, part 63, standards as well as the DRE performance standard under § 264.343;

(iii) The operating requirements of § 264.345(b)(1) through (4) and the monitoring requirements of § 264.347(a)(1) and (2) are superseded (i.e., replaced) by the operating and monitoring requirements of § 63.1210 of this chapter such that an operating permit issued or reissued under part 270 of this chapter must ensure compliance with the subpart EEE, part 63, standards as well as the remaining standards under §§ 264.345 and 264.347; and

(iv) The operating requirements of § 264.345(d)(1)–(3) and § 264.345(e) are superseded (i.e., replaced) by the operating and monitoring requirements of § 63.1207 of this chapter such that an operating permit issued or reissued under part 270 of this chapter must ensure compliance with the subpart EEE, part 63, standards as well as the remaining applicable standards under § 264.345.

* * * * *

3. Section 264.345 is amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 264.345 Operating Requirements

(a) An incinerator must be operated in accordance with operating requirements specified in the permit and meet the applicable emissions standards at all times that hazardous waste remains in the combustion chamber. These will be specified on a case-by-case basis as those demonstrated (in a trial burn or in alternative data as specified in § 264.344(b) and included with part B of the facility's permit application) to be sufficient to comply with the performance standards of § 264.343.

* * * * *

(g) ESV Openings. (1) Violation. If an emergency safety vent opens when hazardous waste is fed or remains in the combustion chamber, such that combustion gases are not treated as during the most recent performance test, it is a violation of the emission standards of this subpart.

(2) ESV Operating Plan. The ESV Operating Plan shall explain detailed procedures for rapidly stopping waste feed, shutting down the combustor, maintaining temperature in the combustion chamber until all waste exits the combustor, and controlling emissions in the event of equipment malfunction or activation of any ESV or other bypass system including calculations demonstrating that emissions will be controlled during such an event (sufficient oxygen for combustion and maintaining negative pressure), and the procedures for executing the plan whenever the ESV is used, thus causing an emergency release of emissions.

(3) Corrective measures. After any ESV opening that results in a violation, the owner or operator must investigate the cause of the ESV opening, take appropriate corrective measures to minimize future ESV violations, and record the findings and corrective measures in the operating record.

(4) Reporting requirement. The owner or operator must submit a written report within 5 days of a ESV opening violation documenting the result of the investigation and corrective measures taken.

4. Section 264.347 is amended by adding paragraphs (e), (f), and (g).

§ 264.347 Monitoring and inspections.

* * * * *

(e) Fugitive emissions. (1) Fugitive emissions must be controlled by:

(i) Keeping the combustion zone totally sealed against fugitive emissions; or

(ii) Maintaining the maximum combustion zone pressure lower than ambient pressure using an instantaneous monitor; or

(iii) Upon prior written approval of the Administrator, an alternative means of control to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than ambient pressure;

(2) The owner or operator must specify in the operating record the method used for fugitive emissions control.

(f) Continuous emissions monitors (CEMS). (1) Hazardous waste incinerators shall be equipped with CEMS for compliance monitoring.

(2) At all times that hazardous waste is fed into the hazardous waste incinerator or remains in the combustion chamber, CEMS must be operated in compliance with the requirements of the appendix to subpart EEE, part 63, of this chapter.

(g) Other continuous monitoring systems. (1) CMS other than CEMS (e.g., thermocouples, pressure transducers, flow meters) must be used to document compliance with the applicable operating limits.

(2) Non-CEM CMS must be installed and operated in conformance with § 63.8(c)(3) of this chapter requiring the owner and operator, at a minimum, to comply with the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(3) Non-CEM CMS must sample the regulated parameter without interruption, and evaluate the detector response at least once each 15 seconds, and compute and record the average values at least every 60 seconds.

(4) The span of the detector must not be exceeded. Span limits shall be interlocked into the automatic waste feed cutoff system.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

VI. In part 265:

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936, unless otherwise noted.

2. Section 265.340 is amended by redesignating paragraph (b) as paragraph (c), and adding paragraph (b), to read as follows:

§ 265.340 Applicability.

* * * * *

(b) Incorporation of MACT standards. (1) The requirements applicable to hazardous waste incinerators under subpart EEE, part 63, of this chapter are incorporated by reference.

(2) When an owner and operator begin to comply (i.e., submit a notification of compliance) with the requirements of subpart EEE, part 63, of this chapter, those requirements apply in addition to those of this subpart, and the provisions of § 265.340(b) no longer apply.

* * * * *

3. Section 265.347 is amended by adding paragraphs (c), (d), and (e), to read as follows:

§ 265.347 Monitoring and inspections.

* * * * *

(c) Fugitive emissions. (1) Fugitive emissions must be controlled by:

(i) Keeping the combustion zone totally sealed against fugitive emissions; or

(ii) Maintaining the maximum combustion zone pressure lower than ambient pressure using an instantaneous monitor; or

(iii) Upon prior written approval of the Administrator, an alternative means of control to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than ambient pressure;

(2) The owner or operator must specify in the operating record the method used for fugitive emissions control.

(d) Continuous emissions monitoring systems (CEMS). (1) Hazardous waste incinerators shall be equipped with CEMS for compliance monitoring.

(2) At all times that hazardous waste is fed into the hazardous waste incinerator or remains in the combustion chamber, CEMS must be operated in compliance with the requirements of the appendix to subpart EEE, part 63, of this chapter.

(e) Other continuous monitoring systems. (1) CMS other than CEMS (e.g., thermocouples, pressure transducers, flow meters) must be used to document compliance with the applicable operating limits.

(2) Non-CEM CMS must be installed and operated in conformance with § 63.8(c)(3) of this chapter requiring the owner and operator, at a minimum, to comply with the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(3) Non-CEMS CMS must sample the regulated parameter without interruption, and evaluate the detector response at least once each 15 seconds, and compute and record the average values at least every 60 seconds.

(4) The span of the detector must not be exceeded. Span limits shall be interlocked into the automatic waste feed cutoff system.

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

VII. In part 266:

1. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

2. Section 266.100 is amended by redesignating paragraphs (b), (c), (d), (e), and (f) as paragraphs (c), (d), (e), (f), and (g), adding paragraph (b), revising introductory text to paragraph (d)(1), revising paragraphs (d)(2) (i) and (ii), revising the introductory text to paragraph (d)(3), revising paragraphs (d)(3)(i)(B) and (d)(3)(ii), and adding paragraph (h), to read as follows:

§ 266.100 Applicability.

* * * * *

(b) Incorporation of MACT standards. (1) The requirements applicable to cement kilns and lightweight aggregate kilns under subpart EEE, part 63, of this chapter are incorporated by reference.

(2) When an owner and operator begin to comply (i.e., submit a notification of compliance) with the requirements of subpart EEE, part 63, of this chapter, those requirements apply in addition to those of this subpart.

* * * * *

(d) * * *

(1) To be exempt from §§ 266.102 through 266.111, an owner or operator of a metal recovery furnace or mercury recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of paragraph (d)(3) of this section, and owners or operators of lead recovery furnaces that are subject to regulation under the Secondary Lead Smelting NESHAP must comply with the requirements of paragraph (h) of this section.

* * * * *

(2) * * *

(i) The hazardous waste has a total concentration of nonmetal compounds listed in part 261, appendix VIII, of this chapter exceeding 500 ppm by weight, as fired, and so is considered to be burned for destruction. The concentration of nonmetal compounds in a waste as generated may be reduced to the 500 ppm limit by bona fide treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (d)(1)(iii) of this section; or

(ii) The hazardous waste has a heating value of 5,000 Btu/lb or more, as fired, and so is considered to be burned as fuel. The heating value of a waste as generated may be reduced to below the 5,000 Btu/lb limit by bona fide treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (d)(1)(iii) of this section.

(3) To be exempt from § 266.102 through 266.111, an owner or operator of a lead or nickel-chromium or mercury recovery furnace, except for owners or operators of lead recovery furnaces subject to regulation under the Secondary Lead Smelting NESHAP,

* * *

(i) * * *

(B) The waste does not exhibit the Toxicity Characteristic of § 261.24 of

this chapter for a nonmetal constituent; and

* * * * *

(ii) The Director may decide on a case-by-case basis that the toxic nonmetal constituents in a material listed in appendix XI or XII of this part that contains a total concentration of more than 500 ppm toxic nonmetal compounds listed in appendix VIII, part 261, of this chapter, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this subpart. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this subpart when burning that material. In making the hazard determination, the Director will consider the following factors;

(A) The concentration and toxicity on nonmetal constituents in the material; and

(B) The level of destruction of toxic nonmetal constituents provided by the furnace; and

(C) Whether the acceptable ambient levels established in appendices IV or V of this part may be exceeded for any toxic nonmetal compound that may be emitted based on dispersion modeling to predict the maximum annual average off-site ground level concentration.

* * * * *

(h) Starting June 23, 1997, owners or operators of lead recovery furnaces that process hazardous waste for recovery of lead and that are subject to regulation under the Secondary Lead Smelting NESHAP, are conditionally exempt from regulation under this subpart, except for § 266.101. To be exempt, an owner or operator must provide a one-time notice to the Director identifying each hazardous waste burned and specifying that the owner or operator claims an exemption under this paragraph. The notice also must state that the waste burned has a total concentration of non-metal compounds listed in part 261, appendix VIII, of this chapter of less than 500 ppm by weight, as fired and as provided in paragraph (d)(2)(i) of this section, or is listed in appendix XI, part 266.

3. Section 266.101 is amended by revising paragraph (c)(1) to read as follows:

§ 266.101 Management prior to burning.

* * * * *

(c) Storage and treatment facilities. (1) Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of parts 264, 265, and 270 of this chapter, except as provided by paragraph (c)(2) of this section. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.)

* * * * *

4. Section 266.102 is amended by redesignating paragraph (a)(2) as (a)(3), adding paragraph (a)(2), revising the introductory text to paragraph (d)(4), adding paragraph (d)(5), revising paragraphs (e)(4)(i) (A) and (C), (e)(5)(i) (A) and (C), (e)(6)(i) (A), (B), and (C), and (e)(6)(iii), revising the introductory text to (e)(7)(i), and revising paragraphs (e)(7)(i)(C), (e)(8)(i) (A) and (C), and (e)(10), to read as follows:

§ 266.102 Permit standards for burners.

(a) Applicability. (1) * * *

(2) Applicability of MACT standards to cement and lightweight aggregate kilns. When an owner and operator of a cement or lightweight aggregate kiln that burns hazardous waste begin to comply (i.e., submit a notification of compliance) with the requirements of subpart EEE, part 63, of this chapter:

(i) The emission standards provided by §§ 266.104 through 266.107 are superseded (i.e., replaced) by the standards under subpart EEE, part 63, except that the DRE requirement provided by § 266.104(a) and the enforcement provisions of those sections (i.e., §§ 266.104(i), 266.105(c), 266.106(i), and 266.107(h)) continue to apply;

(ii) The specific operating requirements (and associated monitoring requirements) provided by paragraphs (e)(2)(ii), (e)(3), (e)(4), and (e)(5) of this section are superseded by the standards under subpart EEE, part 63, except that the provisions of paragraphs (e)(2)(i)(G), (e)(3)(i)(E), (e)(4)(ii)(J), (e)(4)(iii)(J), and (e)(5)(i)(G) of this section continue to apply to enable the permitting authority to establish such other operating requirements as are necessary to ensure compliance with the standards of subpart EEE, Part 63.;

(iii) An operating permit that is issued or reissued under part 270 of this chapter must ensure compliance with the subpart EEE, part 63, standards as well as those § 266.102 standards that continue to apply.

* * * * *

(d) * * *

(4) Except as provided by paragraph (d)(5) of this section, * * *

(5) When a cement or lightweight aggregate kiln becomes subject to the standards of subpart EEE, Part 63, of this chapter, the provisions of paragraph (d)(4) of this section continue to apply, except that the operating requirements established under that paragraph will be those sufficient to ensure compliance with the emission standards of subpart EEE and the DRE requirement of § 266.104(a).

(e) * * *

(4) * * *

(i) * * *

(A) Total feedrate of each metal in every feedstream measured and specified under provisions of paragraph (e)(6) of this section;

* * * * *

(C) A sampling and metals analysis program for every feedstream;

* * * * *

(5) * * *

(i) * * *

(A) Feedrate of total chloride and chlorine in every feedstream measured and specified as prescribed in paragraph (e)(6) of this section;

* * * * *

(C) A sampling and analysis program for total chloride and chlorine for every feedstream:

* * * * *

(6) * * *

(i) * * *

(A) One-minute average. The limit for a parameter shall be established and continuously monitored on a one-minute average basis, and the permit limit specified as the time-weighted average during all valid runs of the trial burn of the one-minute averages.

(B) Hourly rolling average. The limit for a parameter shall be established and continuously monitored on an hourly rolling average basis. The permit limit for the parameter shall be established based on trial burn data as the average over all valid test runs of the highest (or lowest, as appropriate) hourly rolling average value for each run.

(C) Instantaneous limit for combustion chamber pressure. Combustion chamber pressure shall be continuously sampled, detected, and recorded without use of an averaging period.

(ii) * * *

(iii) Feedrate limits for metals, total chloride and chlorine, and ash. Feedrate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstreams. To monitor the feedrate of these substances, the flowrate of each feedstream must be monitored under the

monitoring requirements of paragraphs (e)(6) (i) and (ii) of this section.

* * * * *

(7) * * *

(i) Fugitive emissions. Fugitive emissions must be controlled by the following and it must specify in the operating record the method used for fugitive emissions control:

* * * * *

(C) Upon prior written approval of the Administrator, an alternative means of control to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than ambient pressure.

* * * * *

(8) * * *

(i) * * *

(A) If specified by the permit, feedrates and composition of every feedstream and feedrates of ash, metals, and total chloride and chlorine;

* * * * *

(C) Upon the request of the Director, sampling and analysis of any feedstream, residues, and exhaust emissions must be conducted to verify that the operating requirements established in the permit achieve the applicable standards of §§ 266.105, 266.106, 266.107, and 266.108.

* * * * *

(10) Recordkeeping. The owner or operator shall maintain files of all information (including all reports and notifications) required by this section recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

* * * * *

6. Section 266.103 is amended by redesignating paragraphs (a)(2) through (a)(7) as paragraphs (a)(3) through (a)(8), adding paragraph (a)(2), revising the introductory text to paragraph (b)(2)(ii), revising paragraphs (b)(2)(ii)(A), (b)(2)(iii), and (b)(5)(i) and (iii), revising the introductory text to paragraphs (c) and (c)(4), revising paragraphs (c)(4)(iv)(A) through (D), revising the introductory text to paragraph (c)(7), adding a sentence at the end of paragraph (d), revising the introductory text to paragraph (h), revising paragraphs (h)(3) and (i), revising the introductory text to paragraph (j)(1), and revising paragraphs (j)(1)(i) and (iii), and (k), to read as follows:

§ 266.103 Interim status standards for burners.

(a) * * *

(2) Compliance with subpart EEE, part 63. When an owner and operator begin to comply (i.e., submit a notification of compliance) with the requirements of subpart EEE, part 63, of this chapter (and that are incorporated by reference), those requirements apply in lieu of the requirements of paragraphs (b) through (k) of this section.

* * * * *

(b) * * *

(2) * * *

(ii) Except for facilities complying with the Tier I or Adjusted Tier I feedrate screening limits for metals or total chlorine and chloride provided by §§ 266.106(b) or (e) and 266.107(b)(1) or (e), respectively, the estimated uncontrolled (at the inlet to the air pollution control system) emissions of particulate matter, each metal controlled by § 266.106, and hydrochloric acid and chlorine, and the following information supporting such determinations:

(A) The feedrate (lb/hr) of ash, chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feedstream;

* * * * *

(iii) For facilities complying with the Tier I or Adjusted Tier I feedrate screening limits for metals or total chlorine and chloride provided by §§ 266.106(b) or (e) and 266.107(b)(1) or (e), the feedrate (lb/hr) of total chloride and chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feedstream.

* * * * *

(5) * * *

(i) General requirements. Limits on each of the parameters specified in paragraph (b)(3) of this section (except for limits on metals concentrations in collected particulate matter (PM) for industrial furnaces that recycle collected PM) shall be established and monitored under either of the following methods:

(A) One-minute average. The limit for a parameter shall be established and continuously monitored on a one-minute average basis, and the permit limit specified as the time-weighted average during all valid runs of the trial burn of the one-minute averages.

(B) Hourly rolling average. The limit for a parameter shall be established and continuously monitored on an hourly rolling average basis. The permit limit for the parameter shall be established based on trial burn data as the average over all valid test runs of the highest (or lowest, as appropriate) hourly rolling average value for each run.

(C) Instantaneous limit for combustion chamber pressure. Combustion chamber pressure shall be continuously sampled, detected, and recorded without use of an averaging period.

* * * * *

(iii) Feedrate limits for metals, total chloride and chlorine, and ash. Feedrate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feedrate of these substances, the flowrate of each feedstream must be monitored under the monitoring requirements of paragraphs (b)(5)(i) and (ii) of this section.

* * * * *

(c) Certification of Compliance. The owner or operator shall conduct emissions testing to document compliance with the emissions standards of §§ 266.104(b) through (e), 266.105, 266.106, 266.107 and paragraph (a)(5)(i)(D) of this section, under the procedures prescribed by this paragraph, except under extensions of time provided by paragraph (c)(7). Based on the compliance test, the owner or operator shall submit to the Director on or before August 21, 1992, a complete and accurate ''certification of compliance'' (under paragraph (c)(4) of this section) with those emission standards establishing limits on the operating parameters specified in paragraph (c)(1).

* * * * *

(4) Certification of compliance. Within 90 days of completing compliance testing, the owner or operator must certify to the Director compliance with the emission standards of §§ 266.104(b), (c), and (e), 266.105, 266.106, 266.107 and paragraph (a)(5)(i)(D) of this section. The certification of compliance must include the following information:

* * * * *

(iv) * * *

(A) One-minute average. The limit for a parameter shall be established and continuously monitored on a one-minute average basis, and the permit limit specified as the time-weighted average during all valid runs of the trial burn of the one-minute averages.

(B) Hourly rolling average. The limit for a parameter shall be established and continuously monitored on an hourly rolling average basis. The permit limit for the parameter shall be established based on trial burn data as the average

over all valid test runs of the highest (or lowest, as appropriate) hourly rolling average value for each run.

(C) Instantaneous limit for combustion chamber pressure. Combustion chamber pressure shall be continuously sampled, detected, and recorded without use of an averaging period.

(D) Feedrate limits for metals, total chloride and chlorine, and ash. Feedrate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feedrate of these substances, the flow rate of each feedstream must be monitored under the monitoring requirements of paragraphs (c)(4)(iv)(A) through (C) of this section.

* * * * *

(7) Extensions of time. If the owner or operator does not submit a complete certification of compliance for all of the applicable emission standards of § 266.104, 266.105, 266.106, and 266.107 as specified in § 266.103(C)(1), or as required pursuant to § 266.103(d), he/she must either:

* * * * *

(d) * * *. The extensions of time provisions of paragraph (c)(7) of this section apply to recertifications.

* * * * *

(h) Fugitive emissions. Fugitive emissions must be controlled by one of the following methods. The operator must specify in the operating record the method selected.

* * * * *

(3) Upon prior written approval of the Administrator, an alternative means of control to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than ambient pressure.

(i) Changes. A boiler or industrial furnace must cease burning hazardous waste when changes in combustion properties, or feedrates of any feedstream, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits specified in the certification of compliance.

(j) Monitoring and Inspections. (1) The owner or operator must monitor and record the following, at a minimum, while burning hazardous waste. All monitoring and recording shall be in units corresponding to the units on the operating limits established in the certification of precompliance and certification of compliance.

(i) Applicable operating parameters of paragraphs (b) and (c) of this section shall be monitored and recorded under the requirements of paragraphs (b)(5) (i) and (ii) of this section;

* * * * *

(iii) Upon request of the Director, sampling and analysis of any feedstream and the stack gas emissions must be conducted to verify that the operating conditions established in the certification of precompliance or certification of compliance achieve the applicable standards of §§ 266.104, 266.105, 266.106, and 266.107.

(k) Recordkeeping. The owner or operator shall maintain files of all information (including all reports and notifications) required by this section recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

* * * * *

7. Section 266.104 is amended by removing paragraph (f), and redesignating paragraphs (g) and (h) as paragraphs (f) and (g), respectively.

8. Section 266.105 is amended by revising paragraph (b), redesignating paragraph (c) as paragraph (d) and adding paragraph (c), to read as follows:

§ 266.105 Standards to control particulate matter.

* * * * *

(b) An owner or operator meeting the requirements of § 266.109(b) for the low risk exemption is exempt from the particulate matter standard. Owners and operators of cement or lightweight aggregate kilns are not eligible for this exemption, however, upon compliance with the emission standards of subpart EEE, Part 63, of this chapter.

(c) Oxygen correction. (1) Measured pollutant levels shall be corrected for the amount of oxygen in the stack gas according to the formula:

$$Pc = Pm \times 14/(E - Y)$$

where Pc is the corrected concentration of the pollutant in the stack gas, Pm is the measured concentration of the pollutant in the stack gas, E is the oxygen concentration on a dry basis in the combustion air fed to the device, and Y is the measured oxygen concentration on a dry basis in the stack.

(2) For devices that feed normal combustion air, E will equal 21 percent. For devices that feed oxygen-enriched air for combustion (that is, air with an oxygen concentration exceeding 21 percent), the value of E will be the concentration of oxygen in the enriched air.

(3) Compliance with all emission standards provided by this subpart shall be based on correcting to 7 percent oxygen using this procedure.

* * * * *

9. Section 266.108 is amended by revising paragraph (a)(2), to read as follows:

§ 266.108 Small quantity on-site burner exemption.

(a) * * *

(2) The quantity of hazardous waste burned in a device for a calendar month does not exceed 27 gallons.

* * * * *

10. Section 266.109 is amended by revising the introductory text to paragraph (b) and adding paragraph (b)(3), to read as follows:

§ 266.109 Low risk waste exemption.

* * * * *

(b) Waiver of particulate matter standard. Except as provided in paragraph (b)(3) of this section, the particulate matter standard of § 266.105 does not apply if:

* * * * *

(3) When the owner and operator of a cement or lightweight aggregate kiln become subject to the standards of subpart EEE, part 63, of this chapter (i.e., upon submittal of the initial notification of compliance), the source is no longer eligible for waiver of the PM standard provided by this paragraph. At that time, the source is subject to the PM standard provided by subpart EEE, part 63.

11. Section 266.112 is amended by adding a sentence at the end of the introductory text to paragraph (b)(1), adding a sentence at the beginning of paragraph (b)(1)(ii), adding a sentence before the last sentence of paragraph (b)(2)(i), revising the first sentence of paragraph (b)(2)(iii), redesignating paragraph (c) as paragraph (d), and adding paragraph (c), to read as follows:

§ 266.112 Regulation of residues.

* * * * *

(b) * * *

(1) * * * For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, specific congeners and homologues must be measured and converted to 2,3,7,8–TCDD equivalent values using the calculation procedure specified in appendix IX, section 4.0 of this part.

(ii) Waste-derived residue. Waste-derived residue shall be sampled and

analyzed as required by this paragraph and paragraph (c) of this section to determine whether the residue generated during each 24 hour period has concentrations of toxic constituents that are higher than the concentrations established for the normal residue under paragraph (b)(1)(i) of this section. * * *

(2) * * *

(i) * * * In complying with the alternative levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, only the tetra-, penta-, and hexa- homologues need to be measured. * * *

* * * * *

(iii) Sampling and analysis. Waste-derived residue shall be sampled and analyzed as required by this paragraph and paragraph (c) of this section to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the health-based levels. * * *

(c) Sampling and analysis frequency. (1) The owner or operator must sample and analyze residues at least once each 24-hour period when burning hazardous waste, unless written, advance approval is obtained from the Regional Administrator under paragraph (c)(2) of this section for less frequent sampling and analysis.

(2) Requests for approval for less frequent sampling and analysis (that is, less than once each 24-hour period) must be based on and justified by a statistical analysis.

(i) The Regional Administrator shall not grant approval for a sampling and analysis frequency of less than once each month.

(ii) At a minimum, the following information to support the request for reduced sampling and analysis frequency must be submitted to the Regional Administrator and must be contained in the facility's waste analysis plan for residue sampling:

(A) The statistical methodology selected, reason for selection, and the statistical procedures for calculating the sampling frequency;

(B) Analytical results used to generate the statistical database; and

(C) A description of how the statistical database is to be maintained and updated.

* * * * *

12. Appendix VIII to part 266 is revised to read as follows:

Appendix VIII to Part 266—Organic Compounds for Which Residues Must Be Analyzed for Bevill Determinations

Volatiles	Semivolatiles
Benzene	Bis(2-ethylhexyl)phthalate.
Toluene	Naphthalene.
Carbon tetrachloride	Phenol.
Chloroform	Diethyl phthalate.
Methylene chloride	Butyl benzyl phthalate.
Trichloroethylene	2,4-Dimethylphenol.
Tetra chloroethylene	o-Dichlorobenzene.
1,1,1-Trichloroethane	m-Dichlorobenzene.
Chlorobenzene	p-Dichlorobenzene.
cis-1,4-Dichloro-2-butene	Hexachlorobenzene.
Bromochloromethane	2,4,6-Trichlorophenol.
Bromodichloromethane	Fluoranthene.
Bromoform	o-Nitrophenol.
Bromomethane	1,2,4-Trichlorobenzene.
Methylene bromide	o-Chlorophenol.
Methyl ethyl ketone	Pentachlorophenol.
	Pyrene.
	Dimethyl phthalate.
	Mononitrobenzene.
	2,6-Toluene diisocyanate.
	Polychlorinated dibenzo-p-dioxins.
	Polychlorinated dibenzo-furans.

13. In Appendix IX to Part 266, Section 2.0 of the Table of Contents and the Appendix is revised to read as follows:

Appendix IX to Part 266—Methods Manual for Compliance With the BIF Regulations

Table of Contents

* * * * *

2.0 Performance Specifications and Quality Assurance Requirements for Continuous Monitoring Systems

2.1 Continuous emissions monitors (CEMS).

2.2 Other continuous monitoring systems.

* * * * *

Section 2.0 Performance Specifications and Quality Assurance Requirements for Continuous Monitoring Systems

2.1 Continuous emissions monitors (CEMS).

2.1.1 BIFs shall be equipped with CEMS for compliance monitoring.

2.1.2 At all times that hazardous waste is fed into the BIF or remains in the combustion chamber, CEMS must be operated in compliance with the requirements of the appendix to subpart EEE, part 63, of this chapter.

2.2 Other continuous monitoring systems.

2.2.1 CMS other than CEMS (e.g., thermocouples, pressure transducers, flow meters) must be used to document compliance with the applicable operating limits provided by this section.

2.2.2 Non-CEM CMS must be installed and operated in conformance with § 63.8(c)(3) of this chapter requiring the owner and operator, at a minimum, to comply with the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

2.2.3 Non-CEM CMS must sample the regulated parameter without interruption, and evaluate the detector response at least once each 15 seconds, and compute and record the average values at least every 60 seconds.

2.2.4 The span of the detector must not be exceeded. Span limits shall be interlocked into the automatic waste feed cutoff system.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

VIII. In part 270:

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.19 is amended by adding a sentence at the end of the introductory text to the section.

§ 270.19 Specific part B information requirements for incinerators

* * * When an owner and operator begin to comply (i.e., submit a notification of compliance) with the requirements of subpart EEE, part 63, of this chapter, specific requirements of §§ 264.343, 264.345, and 264.347 are superseded by the subpart EEE standards as provided by § 264.340(b).

* * * * *

3. Section 270.22 is amended by adding introductory text to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.

When an owner and operator of a cement or lightweight aggregate kiln begin to comply (i.e., submit a notification of compliance) with the requirements of subpart EEE, part 63, of this chapter, specific requirements of §§ 266.104 through 266.107 are superseded by the subpart EEE standards as provided by § 266.102(a)(2).

* * * * *

4. In Appendix I to § 270.42, an entry is added to section L.

Appendix I to § 270.42—Classification of Permit Modification

* * * * *

Modification	Class
* * * * *	
L. Incinerators, Boilers, and Industrial Furnaces	
* * * * *	
9.[2] Initial Technology Changes Needed to Meet Standards under 40 CFR Part 63 (Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors)''	[1]1
* * * * *	

[1] Class 1 modifications requiring prior Agency approval.

[2] Denotes that this section will be dropped from Appendix I 4 years following promulgation of this rule.

5. Section 270.62 is amended by adding introductory text and revising paragraph (b)(2)(vii), to read as follows:

§ 270.62 Hazardous waste incinerator permits.

When an owner and operator begin to comply (i.e., submit a notification of compliance) with the requirements of subpart EEE, part 63, of this chapter, specific requirements of §§ 264.343, 264.345, and 264.347 are superseded by the subpart EEE standards as provided by § 264.340(b).

* * * * *

(b) * * *

(2) * * *

(vii) Procedures for rapidly stopping waste feed, shutting down the combustor, maintaining temperature in the combustion chamber until all waste exits the combustor, and controlling emissions in the event of equipment malfunction or activation of any ESV or other bypass system including calculations demonstrating that emissions will be controlled during such an event (sufficient oxygen for combustion and maintaining negative pressure), and the procedures for executing the ''Contingency Plan'' whenever the ESV is used, thus causing an emergency release of emissions.

* * * * *

6. Section 270.66 is amended by adding introductory text to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

When an owner and operator of a cement or lightweight aggregate kiln begin to comply (i.e., submit a notification of compliance) with the requirements of subpart EEE, part 63 of this chapter, specific requirements of § 266.104 through 266.107 are superseded by the subpart EEE standards as provided by § 266.102(a)(2).

* * * * *

7. Section 270.72 is amended by adding paragraph (b)(8) to read as follows:

§ 270.72 Changes during interim status.

(b) * * *

(8) Changes necessary to comply with standards under subpart EEE, part 63, of this chapter (National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors).

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

IX. In part 271:

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

Subpart A—Requirements for Final Authorization

2. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the Federal Register to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* *	*	* *	* *
[*Insert date of publication of final rule in the Federal Register (FR)*]..	Revised Standards for Hazardous Waste Combustion Facilities.	[*Insert FR page numbers*].	[*Insert date of publication of final rule*].
* *	*	* *	* *

* * * * *

[FR Doc. 96–7872 Filed 4–18–96; 8:45 am]

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Friday
April 19, 1996

Part III

Department of Housing and Urban Development

24 CFR Part 990

Low-Income Public Housing Performance Funding System; Streamlining; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–3760–F–01]

RIN 2577–AB50

Office of the Assistant Secretary for Public and Indian Housing; Low-Income Public Housing Performance Funding System—Streamlining

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule eliminates obsolete provisions from part 990 that had been retained solely for historical purposes. Additionally, revisions have been made to part 990 to reflect recent policy actions relating to the submission of operating budgets and the elimination of the maximum operating reserve.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: MaryAnn Russ, Deputy Assistant Secretary, Office of Public and Assisted Housing Operations, Public and Indian Housing, Room 4204, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0614. For hearing or speech-impaired persons, this number may be accessed via TDD by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a memorandum on regulatory reform wherein he directed all Federal departments and agencies to, among other things, delete obsolete and unnecessary regulations, and revise necessary regulations. The memorandum built on the regulatory philosophy set forth in the President's Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, which is premised on the recognition of the legitimate role of government to govern, but to do so in a focused and sensible way.

This final rule accomplishes the President's goal by eliminating obsolete sections in 24 CFR part 990, and revising several other sections.

In addition to the removal of obsolete provisions which had been retained in the regulation for historical purposes, the rule has been changed to reflect the following policy changes:

(1) In 1994, as part of HUD's reinvention efforts and recommendations made as a result of the Public and Indian Housing Statutory and Regulatory Review Program on financial management, a streamlined operating budget submission procedure was adopted. HUD waived the requirement in Section 407 of the Annual Contributions Contract for the submission of annual operating budgets and revisions for certain housing authorities (HAs) which have successfully passed performance measures found in the Public Housing Management Assessment Program.

(2) In 1995, HUD administratively removed the maximum allowable operating reserve for the Low Rent Public Housing and Turnkey III programs. As a result of this step, the requirement (for applicable programs) to remit to HUD residual receipts generated out of operations of HAs is inoperative because such residual receipts were created by a maximum allowable operating reserve.

II. Summary of Amendments

Section 990.101 has been revised to remove a general discussion of the background leading to the development of the Performance Funding System (PFS) in 1975. It also removes an overview of the PFS which summarized in a general way the basic elements of the PFS.

The following changes have been made to the definitions found in § 990.102. The statement that the Formula is subject to annual update has been removed because the Formula published in this regulation in 1992 is not updated annually. The definition of Interim Formula has been removed because it is a historical reference to the formula used before PFS. The definition of Local Inflation Factor has been simplified to remove language describing the adoption of a revised factor in 1982. The definition of Operating Budget has been revised to reflect the fact that some HAs are no longer required to submit operating budgets for HUD approval. Top of Range, which has changed over time, is now defined here and will no longer have to be defined each time it is referenced in § 990.105.

Section 990.103 has been revised to eliminate a reference to the starting dates for commencement of the PFS in 1975.

The following changes have been made to § 990.105. Section 990.105(a) has been revised to drop two references to budgets being ''approved'' because some HAs are no longer required to obtain HUD approval of their operating budgets. The detailed description of the current PFS formula has been moved to § 990.105 from § 990.110(f), the FY 1992 Formal Review Process section. The Top of Range is now defined in § 990.102, and its definition has been removed from § 990.105. Sections describing the Allowable Expense Level calculations before 1992 have been removed.

Section 990.107 has been revised to eliminate a general discussion of the reasons behind the PFS treatment of utilities. It has also been revised to reflect that there is no longer a heating degree day adjustment and to remove reference to the 1983 starting date for the current provisions.

References to Residual Receipts have been eliminated from § 990.108 to reflect the fact that the requirement to remit residual receipts is no longer operative. A sentence on the proration of audit costs has been removed because it only discussed proration of development costs and proration to other programs is also often appropriate. The limitation on approval of costs attributable to changes in Federal law or regulation has been revised to remove the requirement for a determination that sufficient other funds are not available. The Section on Costs beyond Control has been removed because this provision is statutory and does not need to be repeated in regulation.

The revisions to § 990.109 have been made to simplify the reference to the Tenant Rent Roll and to reflect the fact that some HAs are no longer required to submit an operating budget.

Section 990.110 has also been changed to reflect elimination of a universal requirement to submit operating budgets. The phrase ''independent audit'' has been substituted for ''IPA audit.'' The section on utility adjustments has been simplified so that separate discussions of upward and downward adjustments are combined into one paragraph. This section has also been revised to reflect the fact that the requirement to remit residual receipts is no longer operative. The discussion of rental income adjustments has been shortened by removing examples of two of the reasons for these adjustments. The paragraph covering the Formal Review Process which took place in 1992 has been removed.

Section 990.111, Operating Reserves, has been removed to reflect the elimination of a maximum operating reserve.

The entire description of operating budget submission and approval has been rewritten to reflect the fact that some HAs are no longer required to submit an operating budget.

Section 990.113 has been revised to eliminate specific regulatory citations for occupancy regulations.

A one-time 1982 Energy Conservation procedure has been removed by deleting § 990.116.

A change in a regulatory reference has been made in § 990.401(a) to reflect the revision to § 990.105.

III. Justification for Final Rulemaking

The Department has determined that it is unnecessary to subject this rule to public comment. Since this rule is limited to removing obsolete provisions and updating provisions in part 990 to reflect current practices, prior public comment was determined to be unnecessary. Section 10.1 of 24 CFR part 10 states that notice and public procedure can be omitted if the Department determines in a particular case or class of cases that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

IV. Findings and Certifications

Executive Order 12866

The Office of Management and Budget reviewed this final rule under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection at the Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(o) of the HUD regulations, the policies and procedures contained in this final rule relate only to operating costs that do not affect a physical structure or property and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule eliminates obsolete provisions which had been retained solely for historical purposes.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order.

Impact on the Family

The General Counsel of HUD, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on formation, maintenance, and general well-being of families, and thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 990

Grant programs—housing and community development; Public housing, Reporting and record keeping requirements.

Accordingly, 24 CFR part 990 is amended as follows:

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

1. The authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 11437(g) and 3535(d).

2–3. Section 990.101 is revised to read as follows:

§ 990.101 Purpose.

Implementation of Section 9(a). The purpose of this subpart is to establish standards and policies for the determination of operating subsidy eligibility in accordance with section 9(a) of the U.S. Housing Act of 1937, 42 U.S.C. 1437g. Section 9(a) authorizes the Secretary of Housing and Urban Development (HUD) to make annual contributions for the operation of PHA-owned rental housing (operating subsidy).

4. In § 990.102, the following definitions are amended:

(a) The last sentence of the definition of *Formula* is removed;

(b) The definition of ''*Interim Formula*'' is removed;

(c) The definition for *Local Inflation Factor* is revised:

* * * * *

Local Inflation Factor. The HUD-supplied weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses;

* * * * *

(d) The definition for ''*Operating budget*'' is revised:

* * * * *

Operating budget. The PHA's operating budget and all related documents, as required by HUD, approved by the PHA Board of Commissioners;

* * * * *

and

(e) The definition of ''*Top of Range*'' is added:

* * * * *

Top of Range. Formula Expense Level multiplied by 1.15.

* * * * *

5. In § 990.103, paragraph (a) is revised; paragraph (b) is removed; and paragraph (c) is redesignated as paragraph (b), to read as follows:

§ 990.103 Applicability of PFS.

(a) PFS has been and will be utilized in determining the amounts of operating subsidy payable to PHAs. PFS is applicable to all PHA-owned rental units under Annual Contributions Contracts. PFS applies to PHAs that have not received operating subsidy payments previously, but are eligible for such payments under PFS. PFS, as described in this part, is not applicable to Indian Housing, the Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, or the Turnkey III or Turnkey IV Homeownership Opportunity Programs. PFS is not applicable to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska. Operating subsidy payments to these PHAs are made in accordance with subpart B of this part. PFS for Indian Housing is described in 24 CFR part 950.

* * * * *

6. Section 990.105 is amended by revising the introductory text, paragraph (a), introductory text, paragraph (c), paragraph (d), introductory text, paragraphs (d)(1) and (d)(2), introductory text, paragraph (d)(4), and (d)(5), to read as follows:

§ 990.105 Computation of allowable expense level.

The PHA shall compute its Allowable Expense Level using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes Payments in Lieu of Taxes (PILOT) required by a Cooperation Agreement even if PILOT is not included in the Operating Budget for the Base Year because of a waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the PHA's

Operating Budget for the Base Year except the following:

* * * * *

(c) *Computation of Formula Expense Level.* The PHA shall compute its Formula Expense Level in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular PHA's inventory. It uses weights and a Local Inflation Factor assigned each year to derive a Formula Expense Level for the current year and the requested budget year. The formula is the sum of the following six numbers and the weights of the formula and the formula are subject to updating by HUD:

(1) The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954. This Census-based statistic applies to the county of the PHA, except that, if the PHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(2) The Local Government Wage Rate multiplied by a weight of 116.496. The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted PHA standard of 1.0. For multi-county PHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

(3) The lesser of the current number of the PHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.

(4) The current ratio of the number of the PHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA's units available for occupancy multiplied by a weight of 37.294. For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

(5) The current ratio of the number of the PHA's three or more bedroom units available for occupancy to the number of all the PHA's units available for occupancy multiplied by a weight of 22.303.

(6) An equation calibration constant of −.2344.

(d) *Computation of Allowable Expense Level.* The PHA shall compute its Allowable Expense Level as follows:

(1) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level does not exceed the top of the range.* Every PHA whose Base Year Expense Level is less than the top of the range shall compute its Allowable Expense Level for the first budget year under the PFS by adding the following to its Base Year Expense Level (before adjustments under § 990.110):

* * * * *

(2) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level exceeds the top of the range.* Every PHA whose Base Year Expense Level exceeds the top of the range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

* * * * *

(4) *Allowable Expense Level for budget years after the first budget year under PFS.* For each budget year after the first budget year under PFS, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 990.108(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the PHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph, it shall use the increase (decrease) between the Formula Expense Level calculated using the PHA's characteristics that applied to the Requested Year when the last adjustment to the AEL was made based on this paragraph and the Formula Expense Level calculated using the PHA's characteristics for the Requested Budget Year.

(iii) The amount computed in accordance with paragraphs (d)(4) (i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(5) *Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.* HUD may adjust the Allowable Expense Level of budget years after the first year under PFS under the provisions of § 990.105(b) or § 990.108(c).

7. Section 990.107 is amended by revising paragraphs (a) and (c)(1), introductory text, to read as follows:

§ 990.107 Computation of utilities expense level.

(a) The PHA's Utilities Expense Level for the requested Budget Year shall be computed by multiplying the AUCL per unit per month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(c) * * *

(1) *Rolling Base Period System.* For project utilities with consumption data for the entire Rolling Base Period, the AUCL is the average amount consumed per unit per month during the Rolling Base Period adjusted in accordance with paragraph (d) of this section. The PHA shall determine the average amount of each of the utilities consumed during the Rolling Base period (i.e., the 36-month period ending 12 months prior to the first day of the Requested Budget Year). An example of a rolling base is as follows:

* * * * *

8. In § 990.108, paragraphs (a) (1) and (2) and (c) are revised, paragraph (d) is removed, paragraph (e) is redesignated as paragraph (d), paragraph (f) is redesignated as paragraph (e), and paragraph (g) is redesignated as paragraph (f).

§ 990.108 Other costs.

(a) *Cost of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the PFS. However, the PHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has already been funded by subsidy in a prior year. The PHA's estimate of cost of the independent audit is subject to adjustment by HUD. If the PHA requires assistance in determining the amount of cost to be estimated, the HUD Field Office should be contacted.

(2) A PHA that is required by the Single Audit Act (see 24 CFR part 44) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The estimated cost of an independent audit, applicable to the operations of PHA-owned rental housing, is not included in the Allowable Expense Level, but it is

allowed in full in computing the amount of operating subsidy under § 990.104, above.

* * * * *

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, HUD may in HUD's sole discretion decide to prescribe a procedure under which the PHA may apply for or may receive an increase in operating subsidy.

* * * * *

9. In § 990.109, paragraphs (b), introductory text, (b)(1), and (d) are revised to read as follows:

§ 990.109 Projected operating income level.

* * * * *

(b) *Computation of projected average monthly dwelling rental income.* The projected average monthly dwelling rental income per unit for the PHA is computed as follows:

(1) *Average monthly dwelling rental charge per unit.* The dollar amount of the average monthly dwelling rental charge per unit shall be computed on the basis of the total dwelling rental charges (total of the adjusted rent roll amounts) for all Project Units, as shown on the Tenant Rent Rolls which the PHA is required to maintain, for the first day of the month which is six months prior to the first day of the Requested Budget Year, except that if a change in the total of the Rent Rolls has occurred in a subsequent month which is prior to the beginning of the Requested Budget Year and prior to the submission of the Requested Budget Year calculation of operating subsidy eligibility, the PHA shall use the latest changed Rent Roll for the purpose of the computation. This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

* * * * *

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken subsequent to the effective date of these regulations, which affects rents paid by tenants of Projects, each PHA shall submit a revision of its calculation of operating subsidy eligibility showing an estimate of any change in rental income which it anticipates as the result of the implementation of said provisions. HUD shall have complete discretion to adjust the projected average monthly dwelling rental charge per unit to reflect such change or in the absence of this submission, if HUD has knowledge of such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the PHA current fiscal year in an amount equivalent to the change in the rental income.

* * * * *

§ 990.110 [Amended]

10. Section 990.110 is amended as follows:

(a) The first sentence of the introductory text is amended by removing the phrase ''operating budget'' and adding the phrase ''calculation of operating subsidy eligibility'';

(b) Paragraph (a)(1) is amended by removing the phrase ''IPA'' and adding the word ''independent'' in its place; paragraph (a)(2) is amended by removing the phrase ''operating budget'' and adding the phrase ''calculation of operating subsidy eligibility'' in its place;

(c) Paragraph (c) is amended by removing the phrase ''IPA'' in two places and adding the word ''independent'' in its place;

(d) Paragraph (c)(1)(i) is amended by removing the ''(i)'' and the first sentence and adding the sentence ''A change in the Utilities Expense Level because of changes in utility rates-to the extent funded by the operating subsidy-will result in an adjustment of future operating subsidy payments.'' in its place;

(e) Paragraph (c)(1)(ii) is removed;

(f) Paragraph (c)(2)(ii) is amended by removing the sentence ''The decreased consumption is to be determined by adjusting for any utility rate changes.'' and adding ''The decreased consumption is to be determined by adjusting for any utility rate changes and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities.'' in its place;

(g) Paragraph (c)(2)(iii) is amended by removing the phrase, ''then 50 percent of the amount will be funded by increased operating subsidy payment, subject to the availability of funds.'' and the following phrase is added in its place ''fifty percent of an increase in the Utilities Expense Level attributable to increased consumption, after adjustment for any utility rate change, will be funded by HUD by adjusting future operating subsidy payments.'';

(h) The first sentence of paragraph (d)(1) is amended by removing the phrase '', such as a substantial increase in general unemployment in the locality, or because of a revision of the PHA's rent schedule which has been approved by HUD'';

(i) Paragraph (e) is amended by removing the phrase ''990.107(g)(2)'' and adding ''990.107(f)(2)'' in its place;

(j) Paragraph (e)(1)(i) is revised:

* * * * *

(e) * * *

(1) * * *

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for any change in utility rate and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities;

* * * * *

(k) Paragraph (f) is removed; and

(l) Paragraph (g) is redesignated as paragraph (f).

11. Section 990.111 is revised to read as follows:

§ 990.111 Submission and Approval of Operating Subsidy Calculations and Budgets.

(a) *Required Documentation.* (1) Prior to the beginning of its fiscal year, the PHA shall prepare an operating budget in a manner prescribed by HUD. The Board of Commissioners shall review and approve the budget by resolution. Each fiscal year, the PHA shall submit to the HUD Field Office, in a time and manner prescribed by HUD, the approved board resolution and the required operating subsidy eligibility calculation forms. The PHA shall submit revised calculations in support of mandatory or other adjustments based on procedures prescribed by HUD.

(2) HUD may direct the PHA to submit its complete operating budget if the PHA has failed to achieve certain specified operating standards, or for other reasons which in HUD's determination threaten the PHA's future serviceability, efficiency, economy, or stability.

(b) *HUD operating budget review.* (1) The HUD Field Office will perform a detailed review on operating budgets that are subject to HUD review and approval. If the HUD Field Office finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Field Office may at any time require the submission by the PHA of further information regarding an operating budget or operating budget revision.

(2) When the PHA no longer is operating in a manner that threatens the future serviceability, efficiency,

economy, or stability of the housing it operates, HUD will notify the PHA that it no longer is required to submit an operating budget to HUD for review and approval.

12. Section 990.112 is removed and the present § 990.113 is redesignated as § 990.112.

13. Section 990.115 is redesignated as § 990.113 and paragraphs (a) and (b) are revised to read as follows:

§ 990.113 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *Policy.* The income of each family must be reexamined at least annually. PHAs must be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *PHAs in compliance with requirements.* Each submission of the original calculation of operating subsidy eligibility for a fiscal year shall be accompanied by a certification by the PHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with current HUD requirements.

* * * * *

§ 990.116 [Removed]

14. Section 990.116 is removed.

§ 990.401 [Amended]

15. Section 990.401(a) is amended by removing from the last sentence the phrase § 990.105(e)(5) and adding the phrase § 990.105(e)(4) in its place.

Dated: March 14, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–9613 Filed 4–18–96; 8:45 am]

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federal register

Friday
April 19, 1996

Part IV

The President

Proclamation 6885—National Volunteer Week, 1996

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Presidential Documents

Title 3—

The President

Proclamation 6885 of April 17, 1996

National Volunteer Week, 1996

By the President of the United States of America

A Proclamation

The history of America is a history of volunteerism. Our people have always worked together to resolve concerns, to fight injustice, to rebuild communities, and to comfort those in need. And though some regard today's society with cynicism and doubt, we need only look to the more than 89.2 million volunteers who work tirelessly throughout the year to see that we are still a people who care for one another and who daily seek positive change by reaching out to others.

We owe a great debt to the many volunteers who work to stem the tides of poverty, hunger, homelessness, crime, and abuse. Examples of unsung heroes exist in every neighborhood—a mother starts an after-school program in her garage to tutor young people in a crime-ridden area; a group of teenagers takes youngsters from a local shelter to the movies or a cultural event a few times a month; an elderly man looks after his neighbor's children so that she can run errands; a family makes regular visits to seniors at a local home. Citizens from all walks of life are working together to claim our Nation's challenges as their own, building bridges among people and setting a powerful example of leadership and compassion.

This week and throughout the year, let us salute all those who devote their time, their talents, and sometimes even their lives to the betterment of our communities. And let us recognize organizations like the Corporation for National and Community Service and the Points of Light Foundation that foster the spirit of service across America. In partnership with government, schools, and religious communities, these caring individuals and groups are expanding and encouraging the great American legacy of volunteerism.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 21 through April 27, 1996, as National Volunteer Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities to express appreciation for volunteers and to encourage volunteer activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of April, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

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