

Depositor shall fund the packaging and transportation costs.

7. Title to the Collection being cared for and maintained under this Memorandum lies with the Federal Government.

In witness whereof, the Parties hereto have executed this Memorandum.

Signed: (signature of the Federal Agency Official)

Date: (date)

Signed: (signature of the Repository Official)

Date: (date)

Attachment A: Inventory of the Collection
Attachment B: Inventory of any other U.S. Government-owned Personal Property
Attachment C: Terms and Conditions Required by the Depositor

Appendix C to Part 79—Example of a Short-Term Loan Agreement for a Federally-Owned Collection

SHORT-TERM LOAN AGREEMENT

BETWEEN THE

(Name of the Repository)

AND THE

(Name of the Borrower)

The (name of the Repository), hereinafter called the Repository, agrees to loan to (name of the Borrower), hereinafter called the Borrower, certain artifacts, specimens and associated records, listed in Attachment A,

which were collected from the (name of the prehistoric or historic resource) site which is assigned (list site number) site number. The collection was recovered in connection with the (name of the Federal or federally authorized project) project, located in (name of the nearest city or town), (name of the county) county in the State of (name of the State). The Collection is the property of the U.S. Government.

The artifacts, specimens and associated records are being loaned for the purpose of (cite the purpose of the loan), beginning on (month, day and year) and ending on (month, day and year).

During the term of the loan, the Borrower agrees to handle, package and ship or transport the Collection in a manner that protects it from breakage, loss, deterioration and contamination, in conformance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment B to this loan agreement.

The Borrower agrees to assume full responsibility for insuring the Collection or for providing funds for the repair or replacement of objects that are damaged or lost during transit and while in the Borrower's possession. Within five (5) days of discovery, the Borrower will notify the Repository of instances and circumstances surrounding any loss of, deterioration and

damage to, or destruction of the Collection and will, at the direction of the Repository, take steps to conserve damaged materials.

The Borrower agrees to acknowledge and credit the U.S. Government and the Repository in any exhibits or publications resulting from the loan. The credit line shall read as follows: "Courtesy of the (names of the Federal agency and the Repository)." The Borrower agrees to provide the Repository and the (name of the Federal agency) with copies of any resulting publications.

Upon termination of this agreement, the Borrower agrees to properly package and ship or transport the Collection to the Repository.

Either party may terminate this agreement, effective not less than (number of days) days after receipt by the other party of written notice, without further liability to either party.

Signed: (signature of the Repository Official)

Date: (date)

Signed: (signature of the Borrower)

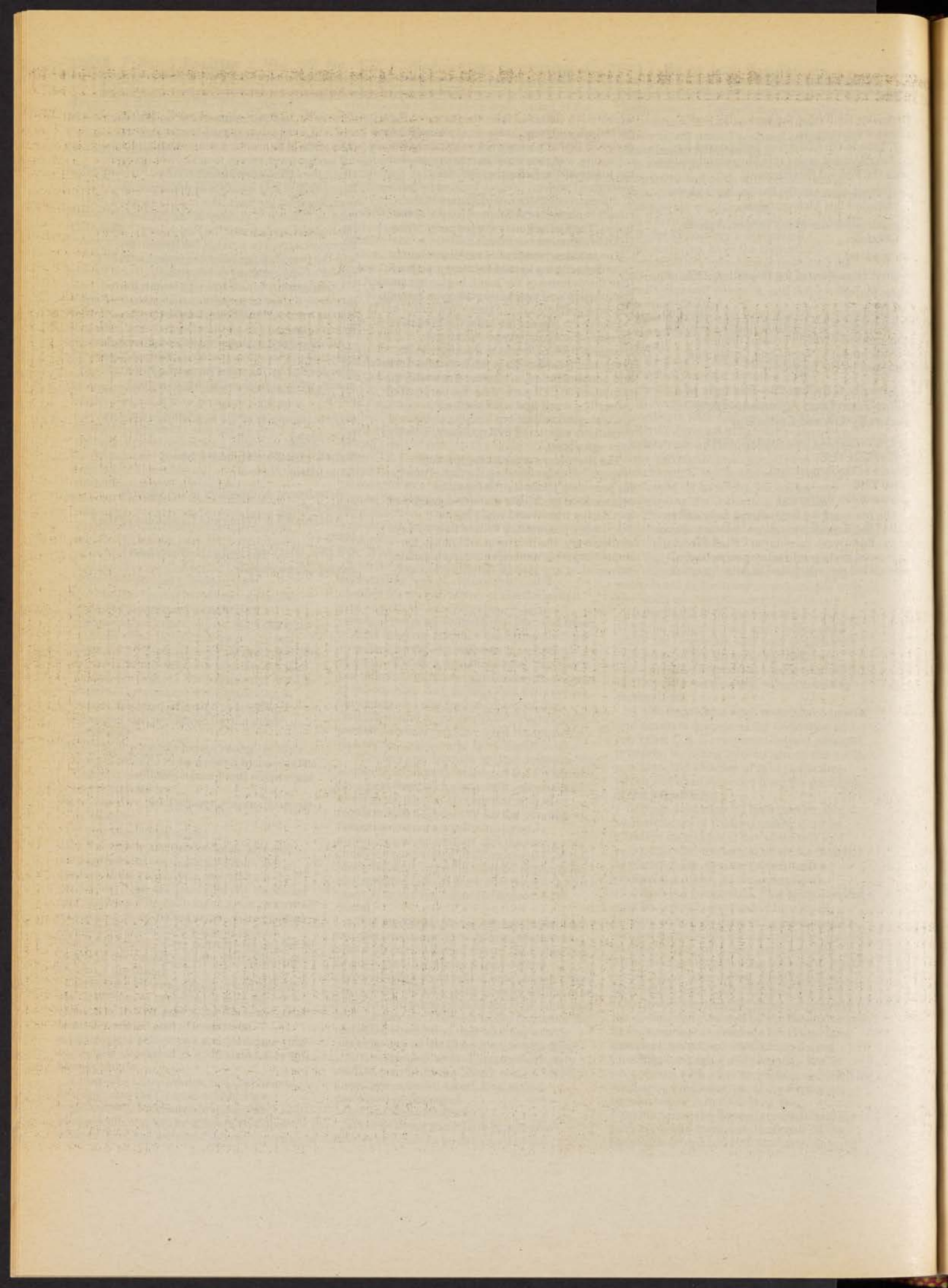
Date: (date)

Attachment A: Inventory of the Objects being Loaned.

Attachment B: Terms and Conditions of the Loan.

[FR Doc. 90-21348 Filed 9-11-90; 8:45 am]

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Executive Order Federal Register

Wednesday
September 12, 1990

Part IV

The President

Proclamation 6175—Agreement on Trade
Relations Between the United States of
America and the Czech and Slovak
Federal Republic

Presidential Documents

Title 3—**The President****Proclamation 6175 of September 6, 1990****Agreement on Trade Relations Between the United States of America and the Czech and Slovak Federal Republic****By the President of the United States of America****A Proclamation**

1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Czech and Slovak Federal Republic to conclude an agreement on trade relations between the United States of America and the Czech and Slovak Federal Republic.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (P.L. 93-618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Czechoslovak Federative Republic," including exchanges of letters which form an integral part of the Agreement, the foregoing in English and Czech, was signed on April 12, 1990, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVIII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405 and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Czech and Slovak Federal Republic, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVIII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the Federal Register.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in rate of duty column 2 of the tariff schedule, is modified by striking out "Czechoslovakia".

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George H. W. Bush

Billing code 3195-01-M

Presidential Documents

AGREEMENT ON TRADE RELATIONS BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE CZECHOSLOVAK FEDERATIVE REPUBLIC

The Government of the United States of America and the Government of the Czechoslovak Federative Republic (hereinafter referred to collectively as "Parties" and individually as "Party"),

Desiring to develop further the enduring friendship between their nations,
Noting the steady improvement in relations between the two countries,

Desiring to adopt mutually advantageous and equitable rules governing their trade and to ensure a predictable commercial environment,

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Acknowledging that the development of trade relations and direct contact between enterprises of the Parties, including private enterprises, will promote openness and mutual understanding,

Recognizing that development of bilateral trade may contribute to better mutual understanding and cooperation, and can contribute to the well-being of workers and promote respect for internationally recognized worker rights,

Resolving to incorporate in their trade relations the principles and rules of the General Agreement on Tariffs and Trade (hereinafter referred to as "GATT"), to which both the United States of America and Czechoslovakia are founding contracting parties,

Being convinced that an agreement on trade relations between the two Parties can create a framework which will foster the development and expansion of commercial ties between their respective nationals and companies, and best serve the mutual interests of the Parties,

Have agreed as follows:

ARTICLE I.—APPLICATION OF THE GATT, MOST-FAVORED-NATION TREATMENT, AND THE STATUS OF CERTAIN GATT CODES

1. Both Parties reaffirm the importance of their participation in the GATT and the importance of the provisions and principles of the GATT for their respective economic policies.

2. To this end, the Parties shall apply between themselves the provisions of the GATT, as those provisions apply to each Party, and shall accord each other's products most-favored-nation treatment as provided in the GATT, provided that, to the extent any provision of the GATT is inconsistent with any provision of this Agreement, the latter shall apply.

3. Both Parties reaffirm the importance of their participation in the Agreement on Technical Barriers to Trade, the Agreement on Import Licensing Procedures, the Agreement on Implementation of Article VII of the GATT and the Protocol to that Agreement (Customs Valuation), and the Agreement on Implementation of Article VI of the GATT (Anti-Dumping) and the importance of the provisions and principles therein for their respective economic policies.

Both Parties commit to participating in multilateral negotiations pertaining to those agreements with a view towards improving them.

4. Each Party shall accord to imports of products and services originating in the territory of the other Party most-favored-nation treatment with respect to the allocation of and access to the currency needed to pay for such imports.

ARTICLE II.—MAINTAINING A SATISFACTORY BALANCE OF MARKET OPPORTUNITIES

1. The Parties agree to maintain a satisfactory balance of market access opportunities in trade in products and services, taking into account, inter alia, the extent of tariffs or other duties or charges on trade in products and services; the extent of non-tariff barriers; the effects of state-to-state trade agreements; and the extent of responsibilities and rights deriving from those GATT Codes or similar agreements to which both Parties are signatories, and in particular to reciprocate satisfactorily reductions by the other Party in tariffs and nontariff barriers to trade that result from multilateral negotiations.

2. Each Party shall administer all tariff and nontariff measures affecting trade in products and services in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

ARTICLE III.—GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. Trade shall be effected by contracts between nationals and companies of the United States and economic entities of Czechoslovakia concluded on the basis of non-discrimination and in the exercise of their independent commercial judgement and on the basis of customary commercial considerations such as price, quality, availability, delivery and terms of payment.

2. Neither Party shall require or encourage nationals and companies of the United States or Czechoslovakia to engage in barter or countertrade.

ARTICLE IV.—EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of products and services and to secure favorable conditions for the long term development of trade relations between their respective nationals and companies. The Parties shall promote the development and diversification of their commercial exchanges to the fullest extent possible.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of Czechoslovakia expects that, during the term of this Agreement, economic entities of Czechoslovakia shall, consistent with commercial considerations, increase their purchases of products and services from the United States, while the Government of the United States expects that the effect of this Agreement will be to encourage increased purchases by nationals and companies of the United States of products and services from Czechoslovakia. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty-free basis of all

articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE V.—BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.
2. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit the establishment within its territory of commercial representations of nationals and companies of the other Party and shall accord non-discriminatory treatment to the activities of such representations.
3. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms that are mutually agreed between the parties, consistent with such Party's minimum wage laws.
4. Each Party shall permit commercial representations of the other Party to import and use, in accordance with normal commercial practices, office and other equipment in connection with the conduct of their activities in the territory of such Party.
5. Subject to its laws governing foreign missions, each Party shall permit such commercial representations access to office space and living accommodations on a non-discriminatory basis, including at non-discriminatory prices where such prices are set or controlled by the government.
6. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit nationals and companies of the other Party to engage or serve as agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties, provided that such agents, consultants, or distributors are entitled to engage in international trade.
7. Each Party shall, in accordance with its commitments made in the International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, done at Geneva on November 7, 1952, permit commercial representations to stock an adequate supply of samples. In addition, each Party shall permit commercial representations to distribute replacement parts for after-sales services on a non-commercial basis.
8. Each Party shall permit nationals and companies of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national or company.
9. Each Party shall encourage direct contact between nationals and companies of the other Party and end-users and other customers of their goods and services, and with agencies and organizations whose decisions will affect potential sales. The Parties will permit and encourage direct sales between U.S. nationals and companies and Czechoslovak economic entities.
10. Each Party shall permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall upon request make available non-confidential, non-proprietary information within its possession to nationals and companies of the other Party engaged in such efforts.
11. Each Party shall provide access to governmentally-provided services on a national treatment basis, including public utilities, to nationals and companies

of the other Party in connection with the operations of their commercial representations.

12. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals and companies of the other Party.

ARTICLE VI.—TRADE IN SERVICES

1. The Parties recognize the growing economic significance of service industries and agree to consult on matters affecting the conduct of service business between the two countries and on particular matters of mutual interest relating to individual service sectors with the objective of attaining maximum possible market access.

2. Services subject to existing bilateral agreements, such as civil aviation, and services subject to ongoing negotiations, such as maritime transportation, will be, or will remain, subject to their respective agreements.

3. Provisions elsewhere in this Agreement relating to trade promotion, business facilitation, commercial representation, transfers and convertibility, shall apply to services as appropriate.

ARTICLE VII.—TRANSPARENCY

1. Each Party shall make available publicly, on a timely basis, all laws and regulations, judicial decisions, and administrative rulings of general application related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor. Each Party shall also endeavor to provide such information in reading rooms in its own capital and in the capital of the other Party.

2. Each Party shall provide nationals and companies of the other Party with access to available non-confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Without prejudice to either Party's obligations and rights set forth in the Agreement on Technical Barriers to Trade, each Party shall allow nationals and companies of the other Party the opportunity, to the extent practicable, to comment on the formulation of rules and regulations which affect the conduct of business activities, including, inter alia, the setting of standards and technical regulations.

ARTICLE VIII.—GOVERNMENT COMMERCIAL OFFICES

1. Subject to its laws governing foreign missions, each Party shall allow government commercial offices to hire directly host-country nationals and, subject to immigration laws and procedures, third-country nationals.

2. Each Party shall ensure unhindered access of host-country nationals to government commercial offices of the other Party.

3. Each Party shall encourage the participation of its nationals and companies in the activities of their respective government commercial offices, especially with respect to events held on the premises of such commercial offices.

4. Each Party shall encourage and facilitate access by government commercial office personnel of the other Party to host-country officials at both the federal and subfederal level, and representatives of nationals and companies of the host Party.

5. This Agreement shall not derogate from obligations assumed by either Party concerning the establishment of existing government commercial offices.

ARTICLE IX.—FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. All commercial transactions between nationals or companies of the Parties shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency unless otherwise agreed between the parties to individual transactions.

2. Neither Party shall restrict the export from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in an authorized manner in connection with trade in products and services by nationals or companies of the other Party.

3. Expenditures in the territory of a Party by nationals and companies of the other Party may be made in local currency received in an authorized manner.

4. In connection with trade in products and services, each Party shall grant to nationals and companies of the other Party non-discriminatory treatment with respect to:

(a) opening and maintaining accounts in both local and foreign currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country; and

(c) rates of exchange and related matters.

ARTICLE X.—PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Both Parties agree to provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets and layout designs for integrated circuits. Each Party reaffirms its commitments to those international agreements relating to intellectual property to which both Parties are signatories.

2. Each Party reaffirms the commitments made with respect to industrial property in the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967.

3. Each Party reaffirms the commitments made in the Universal Copyright Convention of September 6, 1952, as revised at Paris on July 24, 1971 as well as their commitments made in the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 14, 1971.

4. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, *inter alia*

(a) Provide copyright protection for computer programs and databases as literary works under its copyright laws.

(b) Extend the term of protection for audiovisual works to at least fifty years from the date the work is made public.

(c) Provide protection for sound recordings for a term of at least fifty years from publication, and shall provide rights to prevent unauthorized distribution, reproduction and importation. In addition, the terms of such protection shall permit the owner of rights in the sound recording to prevent the unauthorized rental of a copy of the sound recording, notwithstanding the purchase of the sound recording.

(d) Provide protection for integrated circuit layout designs.

(e) Provide product and process protection for all areas of technology (except the Parties may exclude materials useful solely in atomic weapons).

(f) Provide comprehensive protection for trade secrets.

5. The Parties agree to submit to their respective legislative bodies no later than December 31, 1991 the legislation necessary to carry out the obligations of this Agreement and to exert their best efforts to enact and implement this legislation by that date.

ARTICLE XI.—IMPORT RELIEF

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. Determination of market disruption or threat thereof by the importing Party shall be based upon a good faith application of its laws and on an affirmative finding of relevant facts and on their examination. The importing Party, in determining whether market disruption exists, may consider, among other factors: the volume of imports of the merchandise which is the subject of the inquiry; the effect of imports of the merchandise on prices in the territory of the importing Party for like or directly competitive articles; the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and evidence of disruptive pricing practices or other efforts to unfairly manage trade patterns.

3. The consultations provided for in paragraph 1 of this Article shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruption. Such consultations shall be concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

4. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures to such extent and for such a time as it deems necessary to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

5. Where in the judgment of the importing Party, emergency action, which may include the existence of critical circumstances, is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

6. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

7. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply laws applicable to unfair trade, including antidumping and countervailing duty laws.

ARTICLE XII.—NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIII.—EXCEPTIONS

1. Nothing in this Agreement shall be construed to prohibit any action by either Party which is required or specifically permitted by the GATT.
2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit:
 - (a) measures for the protection of intellectual property rights and for the prevention of deceptive practices as set out in Article X of this Agreement (and the related side letter); provided that such measures shall be related to the extent of any injury suffered or the prevention of such injury; and
 - (b) any other measure for reasons contemplated by Article XX of the GATT, provided that the term "Agreement" in paragraph (d) of Article XX of the GATT shall be construed to refer to this Agreement.
3. Trade in products or services between the Parties subject to existing bilateral or multilateral agreements (or ongoing negotiations) in specific sectors, such as steel, textiles or civil aviation, shall be, or shall remain, subject to the terms of any such agreement.
4. Each Party reserves the right to deny to any company the advantages of this Agreement if nationals of any third country control such company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.

ARTICLE XIV.—DISPUTE SETTLEMENT

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.
2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States of America and of Czechoslovakia. Such arbitration may be provided for by agreements in contracts between such nationals or companies, or in separate written agreements between them.
3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules, in which case the parties should designate an Appointing Authority under said Rules in a country other than the United States of America or Czechoslovakia.
4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States of America or Czechoslovakia, that is a party to the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

ARTICLE XV.—CONSULTATIONS

1. The Parties shall, in accordance with their respective policies and objectives, cooperate bilaterally and at the international level in the solution of commercial problems of common interest.
2. The Parties agree to set up a Joint Commercial Commission which will, subject to the terms of reference of its establishment, foster economic cooperation and the expansion of trade under this Agreement, and review periodically the operation of this Agreement and make recommendations for achieving its objectives.
3. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement or other relevant aspects of the relations between the Parties.

ARTICLE XVI.—AREAS FOR FURTHER ECONOMIC COOPERATION

1. For the purpose of further developing bilateral trade and providing for a steady increase in exchange of products and services, both Parties shall strive to achieve mutually acceptable agreements on taxation and investment issues, including the repatriation of profits and transfer of capital.
2. The Parties shall take appropriate steps to foster economic cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards. Among the objectives of such cooperation shall be:
 - the development and prosperity of the Czechoslovak and American economies and standards of living,
 - the encouragement of scientific and technological programs,
 - the creation of new employment opportunities,
 - the protection and improvement of the environment.

ARTICLE XVII.—DEFINITIONS

1. For purposes of this Agreement,
 - (a) "company" of a Party means any kind of corporation, association, state enterprise, cooperative or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned;
 - (b) "economic entity" means natural and juridical persons, including nationals and companies, entitled, according to Czechoslovak law, to carry out foreign trade activities;
 - (c) "commercial representation" means an organizational component part of a Party's company established in accordance with the laws of the respective Party;
 - (d) "non-discriminatory treatment" or "non-discrimination" means the better of national treatment or most-favored-nation treatment;
 - (e) "national treatment," when applied to a company or national, means that treatment which is at least as favorable as the most favorable treatment accorded by a Party to companies or nationals of that Party in like circumstances.

ARTICLE XVIII.—ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including Side Letters which are an integral part of the Agreement) shall enter into force on the date of exchange of written notices of acceptance by the two Governments and shall remain in force as provided in paragraphs 2 and 3 of this Article.

2. (a) The initial term of this Agreement shall be three years, subject to subparagraphs (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

(c) If either Party does not have domestic legal authority to carry out its obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law, seek to minimize disruption to existing trade relations between the two countries.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, D.C. on April Twelfth, 1990, in duplicate, in the English and Czech languages, both texts being equally authentic.

*FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA*

Carla A. Hills

*FOR THE GOVERNMENT OF THE
CZECHOSLOVAK FEDERATIVE REPUBLIC*

Andrej Barcak

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

Dear Mr. Minister:

I have the honor to confirm the following understanding reached between the delegations of the Czechoslovak Federative Republic and the United States of America in the course of negotiating the Agreement on Trade Relations signed on this day.

State-to-State Trade Agreements

With reference to paragraph 1 of Article II, the Government of Czechoslovakia confirms its policy to reduce the role in its foreign trade of state-to-state trade agreements which provide for imports of specified quantities of goods.

Commercial Representations

The Government of Czechoslovakia will make every effort to ensure prompt passage of its proposed legislation changing the authorization process for commercial representations to a simple registration process. If these legislative proposals do not become law by December 31, 1990, the Government of Czechoslovakia agrees to consult with the Government of the United States in order to agree on appropriate measures to realize the intent of this understanding.

Registration to Engage in Foreign Trade

Both Parties affirm their intention to promote the broadest possible opportunities for direct trade between their nationals and companies.

In order to meet this objective, the Government of Czechoslovakia confirms its policy to liberalize completely but gradually the Czechoslovak foreign trade system including the complete but gradual replacement of the authorization requirement for economic entities engaging in foreign commerce with a simple registration procedure.

The first measures in this respect will be taken on as broad a basis as possible in the amendment to the existing law which will be submitted by the Government of Czechoslovakia to the Federal Assembly in a short time and the Government will exert its best efforts to obtain enactment of and to implement the change no later than July 1, 1990.

The successive substantial changes will follow along with the transition of the Czechoslovak economy towards an economy based on the principles of market economy during the year 1991.

If the simple registration system has not been implemented by September 30, 1991, the Government of Czechoslovakia will consult with the Government of the United States, in accordance with Article XV, in order to agree on appropriate measures to realize the intent of this understanding.

In addition, the Government of Czechoslovakia will seek to expedite the approval of requests for authorization or registration in order not to impede the expansion of trade between the two countries.

Financial Provisions

As part of its economic liberalization process, the Government of Czechoslovakia intends to make its currency convertible as soon as possible. Until the Czechoslovak currency becomes freely convertible, the Government of Czechoslovakia, for purposes of this Agreement, will provide access to freely convertible currencies, including through auctions, on a most-favored-nation basis.

State Enterprises

The Parties recognize that Czechoslovakia has entered a period of dynamic political and economic change and that the economy of Czechoslovakia is in transition towards an economy based on the principles of market economy and free trade and that it is the policy of the Government of Czechoslovakia to diminish rapidly the role of state enterprises in the Czechoslovak economy.

The Government of Czechoslovakia maintains that state enterprises which engage in the purchase and sale involving either imports or exports of products or services are autonomous, profit-oriented and risk-taking entities and act independently from the State, which does not exercise control over them. The Government of Czechoslovakia further maintains that state ownership *per se* does not confer special powers or privileges since the state-owned enterprises operate in a competitive environment and act in a non-discriminatory manner in accordance with commercial principles and do not have the ability by their buying and selling to influence the level or direction of imports and exports.

It is understood that, with respect to international trade, state enterprises shall operate in accordance with the relevant provisions of the GATT, including, without limitation, Articles II, XI, XII, XIII, and XIV.

I have the honor to propose that this understanding be treated as an integral part of the Agreement on Trade Relations between our two countries signed on this day. I would be grateful if you would confirm that this understanding is shared by your government.

Sincerely,

Carla A. Hills.

Dr. Andrej Barcak
Minister of Foreign Trade
Washington, 12 April 1990

Dear Ambassador Hills:

I have the honor to confirm receipt of your letter which reads as follows:

Dear Mr. Minister:

I have the honor to confirm the following understanding reached between the delegations of the Czechoslovak Federative Republic and the United States of America in the course of negotiating the Agreement on Trade Relations signed on this day.

State-to-State Trade Agreements

With reference to paragraph 1 of Article II, the Government of Czechoslovakia confirms its policy to reduce the role in its foreign trade of state-to-state trade agreements which provide for imports of specified quantities of goods.

Commercial Representations

The Government of Czechoslovakia will make every effort to ensure prompt passage of its proposed legislation changing the authorization process for commercial representations to a simple registration process. If these legislative proposals do not become law by December 31, 1990, the Government of Czechoslovakia agrees to consult with the Government of the United States in order to agree on appropriate measures to realize the intent of this understanding.

Registration to Engage in Foreign Trade

Both Parties affirm their intention to promote the broadest possible opportunities for direct trade between their nationals and companies.

In order to meet this objective, the Government of Czechoslovakia confirms its policy to liberalize completely but gradually the Czechoslovak foreign trade system including the complete but gradual replacement of the authorization requirement for economic entities engaging in foreign commerce with a simple registration procedure.

The first measures in this respect will be taken on as broad a basis as possible in the amendment to the existing law which will be submitted by the Government of Czechoslovakia to the Federal Assembly in a short time and the Government will exert its best efforts to obtain enactment of and to implement the change no later than July 1, 1990.

The successive substantial changes will follow along with the transition of the Czechoslovak economy towards an economy based on the principles of market economy during the year 1991.

If the simple registration system has not been implemented by September 30, 1991, the Government of Czechoslovakia will consult with the Government of the United States, in accordance with Article XV, in order to agree on appropriate measures to realize the intent of this understanding.

In addition, the Government of Czechoslovakia will seek to expedite the approval of requests for authorization or registration in order not to impede the expansion of trade between the two countries.

Financial Provisions

As part of its economic liberalization process, the Government of Czechoslovakia intends to make its currency convertible as soon as possible. Until the Czechoslovak currency becomes freely convertible, the Government of Czechoslovakia, for purposes of this Agreement, will provide access to freely convertible currencies, including through auctions, on a most-favored-nation basis.

State Enterprises

The Parties recognize that Czechoslovakia has entered a period of dynamic political and economic change and that the economy of Czechoslovakia is in transition towards an economy based on the principles of market economy and free trade and that it is the policy of the Government of Czechoslovakia to diminish rapidly the role of state enterprises in the Czechoslovak economy.

The Government of Czechoslovakia maintains that state enterprises which engage in the purchase and sale involving either imports or exports of products or services are autonomous, profit-oriented and risk-taking entities and act independently from the State, which does not exercise control over them. The Government of Czechoslovakia further maintains that state ownership *per se* does not confer special powers or privileges since the state-owned enterprises operate in a competitive environment and act in a non-discriminatory manner in accordance with commercial principles and do not have the ability by their buying and selling to influence the level or direction of imports and exports.

It is understood that, with respect to international trade, state enterprises shall operate in accordance with the relevant provisions of the GATT, including, without limitation, Articles II, XI, XII, XIII, and XIV.

I have the honor of confirming that my Government shares this understanding, and that this exchange of letters constitutes an integral part of that Agreement.

Sincerely,

Andrej Barcak

Minister of Foreign Trade

Government of the Czechoslovak Federative Republic

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

Dear Mr. Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the Government of the United States of America and the Czechoslovak Federative Republic, I have the honor to advise you that it is my understanding that, to fulfill the obligations under Article X of the Agreement, your Government intends to incorporate the following principles in your national legislation on intellectual property.

A. Copyright Protection for Computer Programs

Copyright protection for computer programs shall extend to all types of computer programs including application programs and operating systems which may be expressed in any language, whether in source or object code and regardless of their medium of fixation.

The duration and level of protection for computer programs shall be consistent with that provided to other literary works.

Limitations on rights expressly permitted to apply to literary works under the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971) shall also be made applicable to computer programs. In addition, owners of a copy of a computer program shall be provided the right to make or authorize the making of a single copy or adaptation of that computer program provided:

(a) that such new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner; or

(b) that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

B. Protection of Integrated Circuit Layout Designs

Protection shall be granted for any original layout design incorporated in a semiconductor integrated circuit chip, however the layout design might be fixed or encoded.

Protection need not be provided to layout designs that are commonplace in the integrated circuit industry at the time of their creation or to layout designs that are exclusively dictated by the functions of the integrated circuit to which they apply.

Protection may be conditioned on fixation or registration. If protection is conditioned on registration of the layout design, applicants will be given at least two years from first commercial exploitation of the layout design in which to apply for registration. If deposits of identifying material or other material related to the layout design are required, applicants shall not be required to disclose confidential or proprietary information unless it is essential to allow identification of the layout design.

The term of protection shall extend for at least ten years from the date of first commercial exploitation or the date of registration, if required, whichever is earlier.

The owner of the layout designs must be provided the exclusive right to do or to authorize the doing of the following:

(a) reproduce the layout design;

(b) incorporate the layout design in a semiconductor integrated circuit chip; and

(c) import or distribute a semiconductor integrated circuit chip incorporating the layout design including products incorporating such chips.

Limitations on the layout design owner's exclusive rights may be implemented solely through non-exclusive compulsory or non-voluntary licenses and only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. A government may use semiconductor integrated circuit layout designs for governmental purposes on a non-exclusive basis. Compensation commensurate with the market value for a license of the semiconductor integrated circuit layout design must be provided when the government uses a layout design for government purposes or provides for or orders the issuance of compulsory or non-voluntary licenses during a declared national emergency. Decisions to grant compulsory or non-voluntary licenses and the compensation provided shall be subject to judicial review.

The following acts may be exempted from liability under the law:

(a) reproduction of a layout design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout design that is itself original;

(b) importation and distribution of semiconductor integrated circuit chips, incorporating a protected layout design which were sold by or with the consent of the owner of the layout design; and

(c) importation or distribution of a semiconductor integrated circuit chip incorporating a protected layout design by a person who establishes that he or she did not know, and had no reasonable grounds to believe, that the layout design was protected, provided that such person is liable for reasonable royalties after notice is received.

C. Patent Protection

Czechoslovakia will provide a patent term of at least 20 years from filing.

Limitations on the patent owner's exclusive rights may be implemented solely through non-exclusive compulsory licenses or non-voluntary licenses and only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. The government may use patents for governmental purposes on a non-exclusive basis provided that such use does not substantially prejudice the legitimate economic interests of the patent owner. Compensation commensurate with the market value for a license of the patent must be provided when the government uses a patent or provides for, or orders the issuance of, compulsory or non-voluntary licenses during a declared national emergency. Decisions to grant compulsory or non-voluntary licenses and the compensation provided shall be subject to judicial review.

Czechoslovakia will endeavor to provide transitional protection for products not currently patentable under Czechoslovak law which have the following characteristics:

(a) the product will be patentable in Czechoslovakia upon enactment of the proposed amendments to the patent law;

(b) a patent has been issued for the product in a country which currently grants product patents for that class of inventions; and

(c) the product has not been marketed in Czechoslovakia.

Czechoslovakia will examine the best means to implement such transitional protection. It is Czechoslovakia's intention to provide owners of products meeting these criteria the right to obtain an exclusive registration to produce and market the product in Czechoslovakia if the patent owner applies for Czechoslovak marketing approval within six months of obtaining the first marketing approval in any country and if the product meets Czechoslovak requirements for marketing approval. The term of the exclusive right to market and produce in Czechoslovakia shall be the same as the unexpired term of the patent in the country of original registration.

D. Protection of Trade Secrets

Protection will be provided for trade secrets,¹ whether such a trade secret is of a technical or commercial nature, provided that it:

(a) has actual or potential commercial value from not being known to the relevant public;

(b) is not readily accessible in a lawful manner; and

(c) has been subject to reasonable efforts, under the circumstances, by the rightful owner to maintain its secrecy.

The appropriation, disclosure, and use of trade secrets without the consent of the owner shall be unlawful.

Protection of trade secrets shall be available so long as the conditions set forth above are met.

The voluntary licensing of trade secrets shall not be impeded or discouraged by the imposition of excessive or discriminatory conditions on such licenses or conditions which dilute the value of the trade secrets.

If the Government of Czechoslovakia requires that trade secrets be submitted to carry out governmental functions, then that trade secret shall not be used for the commercial or competitive benefit of the government or of any person other than the owner of the trade secret, except with the owner's consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given to the trade secret owner.

The Parties may disclose such trade secrets, or require that the owner of the trade secrets disclose them to third parties, only with the owner's consent or to the degree required to carry out necessary government functions; or to protect human health or safety or to protect the environment when the owner is given an opportunity to enter into confidentiality agreements with any non-governmental agency receiving the trade secrets to prevent further disclosure.

I have the further honor to communicate to you my understanding that this letter and your letter of confirmation in reply, constitute an integral part of the Agreement.

Sincerely,

Carla A. Hills.

¹ "Trade secrets" include any formula, device, compilation of information, computer program, pattern, technique or process that is used or could be used in the trade secret owner's business and has actual or potential economic value from not being generally known to competitors or in the relevant industry.

Dr. Andrej Barcak
Minister of Foreign Trade
Washington, 12 April 1990

Dear Ambassador Hills:

I have the honor to confirm receipt of your letter which reads as follows:

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(a) that such new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner; or

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The following acts may be exempted from liability under the law:

(a) reproduction of a layout design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout design that is itself original;

(b) importation and distribution of semiconductor integrated circuit chips, incorporating a protected layout design which were sold by or with the consent of the owner of the layout design; and

(c) importation or distribution of a semiconductor integrated circuit chip incorporating a protected layout design by a person who establishes that he or she did not know, and had no reasonable grounds to believe, that the layout design was protected, provided that such person is liable for reasonable royalties after notice is received.

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Czechoslovakia will provide a patent term of at least 20 years from filing.

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(a) the product will be patentable in Czechoslovakia upon enactment of the proposed amendments to the patent law;

(b) a patent has been issued for the product in a country which currently grants product patents for that class of inventions; and

(c) the product has not been marketed in Czechoslovakia.

Czechoslovakia will examine the best means to implement such transitional protection. It is Czechoslovakia's intention to provide owners of products meeting these criteria the right to obtain an exclusive registration to produce and market the product in Czechoslovakia if the patent owner applies for Czechoslovak marketing approval within six months of obtaining the first marketing approval in any country and if the product meets Czechoslovak requirements for marketing approval. The term of the exclusive right to market

and produce in Czechoslovakia shall be the same as the unexpired term of the patent in the country of original registration.

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(c) has been subject to reasonable efforts, under the circumstances, by the rightful owner to maintain its secrecy.

The appropriation, disclosure, and use of trade secrets without the consent of the owner shall be unlawful.

Protection of trade secrets shall be available so long as the conditions set forth above are met.

The voluntary licensing of trade secrets shall not be impeded or discouraged by the imposition of excessive or discriminatory conditions on such licenses or conditions which dilute the value of the trade secrets.

If the Government of Czechoslovakia requires that trade secrets be submitted to carry out governmental functions, then that trade secret shall not be used for the commercial or competitive benefit of the government or of any person other than the owner of the trade secret, except with the owner's consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given to the trade secret owner.

The Parties may disclose such trade secrets, or require that the owner of the trade secrets disclose them to third parties, only with the owner's consent or to the degree required to carry out necessary government functions; or to protect human health or safety or to protect the environment when the owner is given an opportunity to enter into confidentiality agreements with any non-governmental agency receiving the trade secrets to prevent further disclosure.

I have the honor to confirm that my Government shares this understanding, and that this exchange of letters constitutes an integral part of the Trade Agreement mentioned above.

Sincerely,

Andrej Barcak

Minister of Foreign Trade

Government of the Czechoslovak Federative Republic

¹ "Trade secrets" include any formula, device, compilation of information, computer program, pattern, technique or process that is used or could be used in the trade secret owner's business and has actual or potential economic value from not being generally known to competitors or in the relevant industry.

UNITED STATES DEPARTMENT OF COMMERCE

United States Travel and Tourism Administration

Washington, D.C. 20230

Dear Mr. Minister:

I have the honor to confirm the following understanding reached between the delegations of Czechoslovak Federative Republic and the United States of America in the course of negotiating the Agreement on Trade Relations, signed this day.

The Parties recognize the need to encourage and promote the growth of tourism and travel-related investment and trade between the United States of America and Czechoslovakia.

The Parties recognize the benefits to both economies of increased tourism and travel-related investment in and trade between their two territories.

Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory. Permission to open official tourism promotion offices or field offices, shall be as agreed upon by the Parties, and subject to the applicable laws, regulations and policies of the host country. Official tourism offices opened by either Party shall be operated on a noncommercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with private sector travel agents or tour operators of the host country. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other.

Private and governmentally-owned commercial tourism enterprises shall be treated as private commercial enterprises fully subject to all applicable laws and regulations of the host country.

Each Party shall ensure, within the scope of its legal authority, that any company owned, controlled or administered by that Party, or any joint venture therewith, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party in a fair and equitable manner and on a most-favored-nation basis.

Subject to applicable laws, nationals and companies of the United States and of Czechoslovakia shall be permitted to act as agents for United States, Czechoslovak, and third country providers of tourism and travel-related services in the territory of either Party.

Nothing in this letter or in the Agreement on Trade Relations shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

The Parties agree to give consideration to the negotiation of a separate agreement on tourism and travel-related services.

I have the honor to propose that this understanding be treated as an integral part of the Agreement on Trade Relations. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Wylie H. Whisonant, Jr.

Deputy Under Secretary

Dr. Andrej Barcak
Minister of Foreign Trade
Washington, 12 April 1990

Dear Mr. Whisonant:

I have the honor to confirm receipt of your letter which reads as follows:

Dear Mr. Minister:

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The Parties recognize the benefits to both economies of increased tourism and travel-related investment in and trade between their two territories.

Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory. Permission to open official tourism promotion offices or field offices, shall be as agreed upon by the Parties, and subject to the applicable laws, regulations and policies of the host country. Official tourism offices opened by either Party shall be operated on a noncommercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with private sector travel agents or tour operators of the host country. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other.

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Subject to applicable laws, nationals and companies of the United States and of Czechoslovakia shall be permitted to act as agents for United States, Czechoslovak, and third country providers of tourism and travel-related services in the territory of either Party.

Nothing in this letter or in the Agreement on Trade Relations shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

The Parties agree to give consideration to the negotiation of a separate agreement on tourism and travel-related services.

I have the honor of confirming that my Government shares this understanding, and that this exchange of letters constitutes an integral part of that Agreement.

Sincerely,
Andrej Barcak
Minister of Foreign Trade
Government of the Czechoslovak Federative Republic

TERMS OF REFERENCE: THE U.S.-CZECHOSLOVAK JOINT COMMERCIAL COMMISSION

The U.S.-Czechoslovak Joint Commercial Commission is established by the governments of Czechoslovakia and the United States to facilitate the development of commercial relations and related economic matters between the Czechoslovak Federative Republic and the United States of America.

The Commission shall work and formulate recommendations on the basis of mutual consent.

The Commission shall:

- Review operation of The U.S.-Czechoslovak Trade Agreement and make recommendations for achieving its objectives in order to obtain the maximum benefit therefrom;

- Exchange information about amendments and developments in the regulations of the United States and Czechoslovakia affecting trade under the U.S.-Czechoslovak Trade Agreement;

- Consider measures which would develop and diversify trade and commercial cooperation. These measures shall include but are not limited to encouraging and supporting contracts and cooperation between businesses of both countries, and examining ways to improve the development of direct contacts between firms established in the United States and Czechoslovakia;

- Monitor and exchange views on U.S.-Czechoslovak commercial relations; identify and where possible recommend solutions to issues of interest to both Parties;

- Provide a forum for exchanging information in areas of commercial, industrial and technological cooperation, where they have an impact on trade and cooperation; and

- Consider other steps which could be taken to facilitate and encourage the growth and development of commercial relations and related economic matters between the two countries.

The Commission shall be comprised of two sections, a U.S. section and a Czechoslovak section. Each section shall be composed of a chairman and other government officials as designated by each Party.

The Commission shall meet as often as mutually agreed by the Parties, alternatively in Washington and Prague.

Appropriate senior-level officials from the U.S. Department of Commerce and the Czechoslovak Ministry for Foreign Trade shall act as co-chairmen of the Commission, and shall head their respective sections; each section of the Commission shall include other government officials as designated by each Party.

The Commission shall work on the basis of mutual agreement. The Commission shall, as necessary, adopt rules of procedure and work programs. The Commission may, as mutually agreed, establish joint working groups to consider specific matters. These working groups shall function in accordance with the instructions of the Commission.

Each section shall have an Executive Secretary, named by the chairman, who shall arrange the work of the respective section of the Commission. The Executive Secretary shall arrange the work of the respective section of the Commission, and perform the tasks of an organizational or administrative nature connected with the meetings of the Commission.

The Executive Secretaries shall communicate with each other as necessary to arrange Commission meetings and to perform other functions. Agendas for Commission meetings shall be agreed upon not later than one month prior to the meeting. The meeting shall consider matters included in this agenda, as

well as further matters which may be added to the agenda by mutual agreement.

The Commission and its working groups shall work on the basis of mutual agreement. Agreed minutes signed by the co-chairmen of the Commission shall be kept for each meeting of the Commission, and shall be made public by each side. The parties shall advise each other whenever measures and recommendations agreed to are subject to subsequent approval of their government.

Any document mutually agreed upon during the work of the Commission shall be in the English and Czech languages, each language being equally authentic.

Expenses incidental to the meetings of the Commission and any working group established by the Commission shall be borne by the host country. Travel expenses from one country to the other, as well as living and other personal expenses of representatives participating in meetings of the Commission and any working group of the Commission shall be borne by the party which sends such persons to represent it.

Each section may invite advisers and experts to participate at any meeting of the Commission or its working groups, except that such participation must be mutually agreed by the parties in advance of the meeting.

The terms of reference of the Commission may be amended by mutual agreement of the parties at any meeting or during the periods between the meetings of the Commission.

Done in Washington, D.C., April 12, 1990, in two copies, in the English and Czech languages, both texts being equally authentic.

FOR THE CZECHOSLOVAK FEDERATIVE REPUBLIC

Andrej Barcak

Minister for Foreign Trade

FOR THE UNITED STATES OF AMERICA

J. Michael Farren

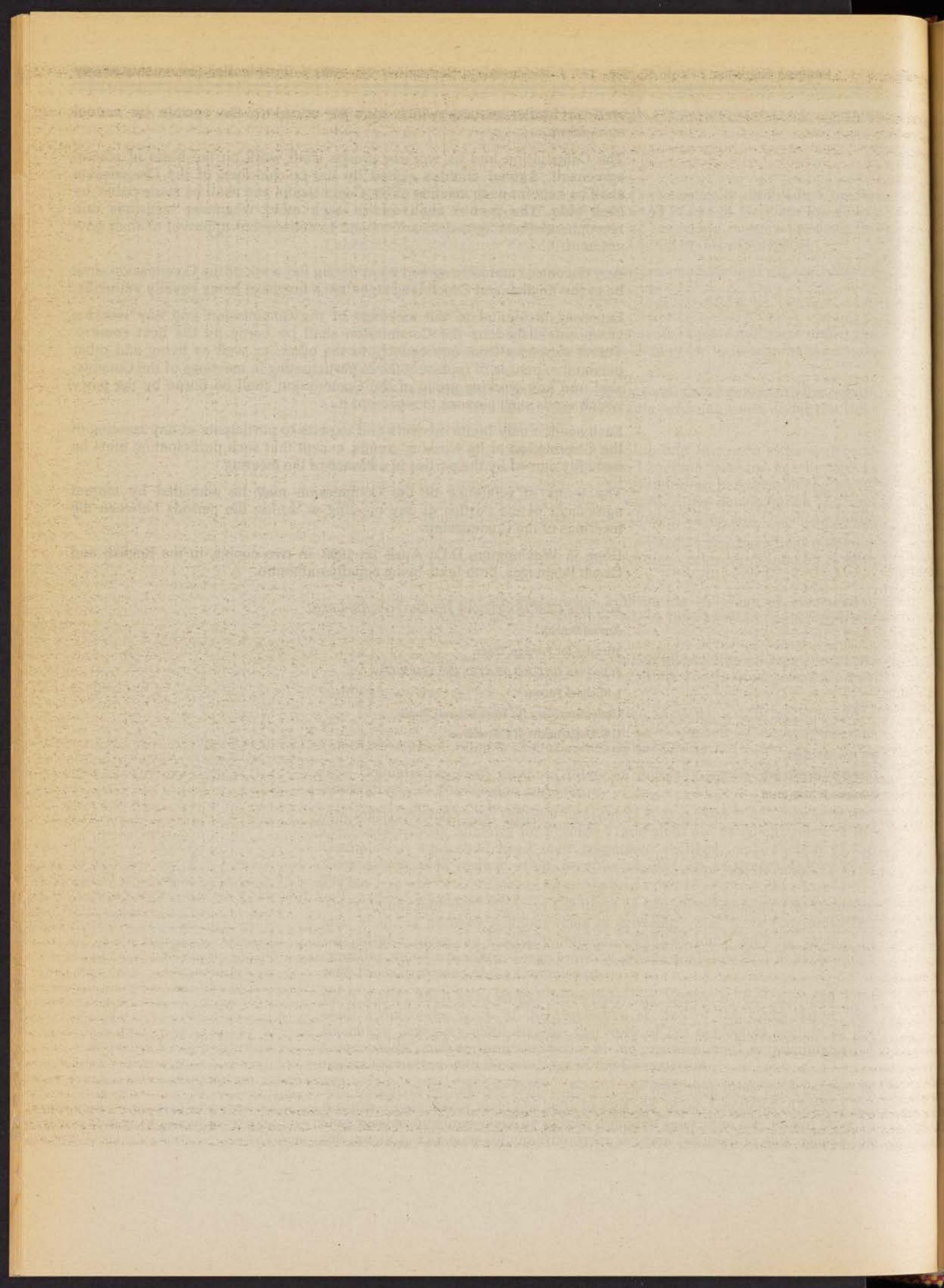
Under Secretary for International Trade

U.S. Department of Commerce

[FR Doc. 90-21324

Filed 9-10-90; 3:00 pm]

Billing code 3190-01-M



Wednesday
September 12, 1990

Final Proposed Rule

Part V

Department of the Interior

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the final regulation for the curation of federally-owned and administered archeological collections. It would establish procedures for Federal agencies to provide both information on the disposition of collections and copies of certain associated records to pertinent State officials and other appropriate parties. In addition, it would establish procedures for Federal agencies to discard, under certain circumstances, particular material remains that may be in collections subject to this part.

DATES: Comments on this proposed rule must be received on or before December 11, 1990.

ADDRESSES: Comments on this proposed rule should be addressed to Douglas H. Scovill, Acting Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, or delivered to Room 4127C, 1100 L Street, NW., Washington, DC, between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Francis P. McManamon (Chief, Archeological Assistance Division) at 202-343-4101 or FTS 343-4101.

SUPPLEMENTARY INFORMATION:**Background**

The final regulation 36 CFR part 79 establishes definitions, standards, procedures, and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, recovered in conjunction with Federal projects and programs under certain Federal statutes. This proposed rule would amend § 79.5 and would add § 79.12 to part 79.

Section 79.5 sets forth the responsibilities of Federal Agency Officials for the long-term management and preservation of collections subject to part 79. Paragraph (c) of § 79.5 requires that certain administrative records on the disposition of collections subject to part 79 be maintained by the Federal Agency Official. It does not, however, call for the Federal Agency Official to provide information on the disposition of collections or copies of

certain associated records to pertinent non-Federal parties. For example, State and Tribal Historic Preservation Officers should be provided with information about prehistoric and historic resources on lands within their respective States and reservations. In addition, researchers and scholars should have access to information about prehistoric and historic resources that they are studying. This proposed rule would address this matter by adding paragraph (d) to § 79.5.

Proposed paragraph 79.5(d)(1) would call for information on the disposition of collections and copies of certain associated records to be provided to pertinent State officials and other appropriate parties. Proposed paragraph 79.5(d)(2) would identify those State officials and other parties who should receive the information and records. Proposed paragraph 79.5(d)(3) would call for the Federal Agency Official to submit copies of final reports of federally-authorized surveys, excavations and other studies to a national depository of reports. Proposed paragraph 79.5(d)(4) would call for certain information on final reports of such studies to be submitted for inclusion in the National Archeological Database, which is administered by the National Park Service.

As currently codified, 36 CFR part 79 does not provide a mechanism for Federal agencies to discard material remains, which may be in collections subject to the part, that have limited or no scientific value. By adding a new § 79.12 to part 79, this proposed rule would establish procedures to discard, under certain circumstances, particular material remains.

Proposed paragraph 79.12(a) would provide Federal agencies with the discretion to discard, under certain circumstances, particular material remains. Proposed paragraph 79.12(b) would set forth four categories of material remains that would be appropriate for a Federal Agency Official to discard.¹ The categories are

¹ The procedure that would be established under this proposed amendment is not intended to address the complex issue of repatriation of human remains and funerary objects. A procedure for Federal agencies to release particular human skeletal remains and objects excavated or removed from public lands into the custody of the pertinent Indian tribe or other Native American group is being drafted by the Departments of the Interior, Agriculture, Defense, and the Tennessee Valley Authority as part of an amendment to uniform regulations (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229) implementing the Archaeological Resources Protection Act (16 U.S.C. 470aaa-mm). Nevertheless, human skeletal remains and objects that would meet any of the four categories of material remains set forth in proposed

specific and narrowly defined to ensure that material remains that are archeological or historic in nature are not inadvertently or casually discarded.

Proposed paragraphs 79.12(c) and (d) would establish procedures by which the Federal Agency Official would make and document determinations to discard particular material remains. Proposed paragraph 79.12(e) would provide a means for the Federal agency's determination to discard material remains to be reviewed by the Department of the Interior's Departmental Consulting Archeologist. Proposed paragraphs 79.12(f) through (i) would set forth the requirements under which material remains to be discarded would be disposed of. Proposed paragraph 79.12(j) would call for pertinent records on the collection to be amended to indicate any deaccessions and discards, and for certain documentation on the discard to be retained.

Preparation of the Rulemaking

The final regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections appears as 90-21348 published elsewhere in this issue of the *Federal Register*. The regulation had been published for public comment as a proposed rule on August 28, 1987 (52 FR 32740). A number of commenters recommended the changes being proposed in this amendment. Because the procedures being proposed were not contained in the proposed rule that was published in 1987, they are being issued hereinbelow as a proposed rule to allow for public review and comment.

The National Park Service seeks comments and suggestions from Federal, State and local Government agencies, Indian tribes, repositories, professional organizations, other interested organizations, groups, and the public on these proposed amendments to 36 CFR part 79.

Authorship

The author of this rulemaking is Michele C. Aubry (Archeologist and Program Analyst) in the office of the Departmental Consulting Archeologist, National Park Service, Washington, DC.

Compliance with Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a

paragraph 79.12(b) may be appropriate for discard under 36 CFR part 79.

significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Compliance with the Paperwork Reduction Act

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

Compliance with the National Environmental Policy Act

Federal agencies that conduct or authorize archeological investigations are required by law to maintain and preserve the resulting collections of artifacts, specimens and associated records. Issuance of this document will result in more consistent, systematic and professional care of those collections. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321-4347). In addition, the National Park Service has determined that this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 79

Archeology, Archives and records, Historic preservation, Indians-lands, Museums, Public lands.

Dated: June 25, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

For the reasons set out in the preamble, the Department of the Interior proposes to amend title 36, chapter I of the Code of Federal Regulations by amending part 79 as follows:

PART 79—CURATION OF FEDERALLY-OWNED AND ADMINISTERED ARCHEOLOGICAL COLLECTIONS

1. The authority citation for part 79 continues to read as follows:

Authority: 16 U.S.C. 470aa-mm, 16 U.S.C. 470 *et seq.*

2. Section 79.5 is amended by adding paragraph (d) to read as follows:

§ 79.5 Management and preservation of collections.

(d) *Distribution of records to other parties.* (1) For each new collection and,

upon request, for each preexisting collection, the Federal Agency Official shall ensure that pertinent State officials and other parties, as appropriate, are provided with:

- (i) The name and location of the repository where the collection is deposited;
- (ii) Copies of any site forms and maps of the prehistoric or historic resource that was surveyed, excavated or otherwise studied;
- (iii) Copies of any final reports of the survey, excavation or other study;
- (iv) Upon request, copies of other appropriate records; and
- (v) In accordance with such terms and conditions as are developed pursuant to § 79.10(d) of this part, instructions for restricting access to site forms, maps, final reports, and other records being provided that contain information relating to the nature, location or character of a prehistoric or historic resource.

(2) Pertinent State officials and other parties, as appropriate, would include but not be limited to the:

- (i) State Historic Preservation Officer;
- (ii) State Archeologist;
- (iii) When the State Historic Preservation Officer does not maintain the State's official site files, the official who represents the State agency or institution that does maintain such files;
- (iv) When the collection is from a site on Indian lands, the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands;
- (v) When the collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the Tribal Official and the Tribal Historic Preservation Officer, if any, of the pertinent Indian tribe; and
- (vi) When the collection is from a site on State, local or privately owned lands, the owner.

(3) For each new collection, after removing any information on the nature, location or character of a prehistoric or historic resource to which access is restricted pursuant to § 79.10(d) of this part, the Federal Agency Official shall submit copies of any final reports of the survey, excavation or other study to the:

- (i) National Technical Information Service;
- (ii) Defense Technical Information Service;
- (iii) Library of Congress; or
- (iv) Other appropriate national depository for reports.

(4) For each new collection and, upon request, for each preexisting collection, the Federal Agency Official shall ensure

that the information required by the National Archeological Database, administered by the National Park Service, about final reports of the survey, excavation or other study is submitted for inclusion in the National Archeological Database. Procedures for submitting the required information are available from the Archeological Assistance Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

3. A new § 79.12 is added to read as follows:

§ 79.12 Procedures to discard material remains.

(a) Under certain circumstances, the Federal Agency Official may determine that particular material remains in a collection subject to this part need not be preserved and maintained in a repository, and may be discarded.

(b) It may be appropriate to discard material remains when:

- (1) The material remains are not archeological or historic in nature and were inadvertently collected and included in the collection;
- (2) Material remains subject to the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm) are not or are no longer of archeological interest, as determined under uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229;
- (3) The material remains, while archeological or historic in nature, consist of large quantities of bulky, highly redundant, non-diagnostic items that have limited potential for further research; or
- (4) The material remains, while archeological or historic in nature, are a hazard to human health or safety.

(c) Prior to making a determination that it may be appropriate to discard particular material remains, the Federal Agency Official shall ensure that the following procedures are followed:

- (1) The material remains are professionally evaluated and documented, consistent with the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983), for the purpose of determining whether they meet the requirements of paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section;
- (2) The Federal agency's principal archeologist or, in the absence of an agency principal archeologist, the Department of the Interior's Departmental Consulting Archeologist, shall review the documentation prepared under paragraph (c)(1) of this

section and make recommendations to the Federal Agency Official concerning the adequacy of the evaluation and documentation and the appropriateness of the proposed discard;

(3) When the material remains are from a site on Indian lands, the Indian landowner and the Indian tribe having jurisdiction over the lands are notified of the proposed discard;

(4) When the material remains are from a site on State, local or privately owned lands, the owner is notified of the proposed discard;

(5) When the material remains are from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the pertinent Indian tribe or other group is provided with an opportunity to comment on the proposed discard;

(6) The State Historic Preservation Officer and other appropriate State and Federal agencies, universities, museums, scientific and educational institutions, and interested persons are provided with an opportunity to comment on the proposed discard; and

(7) When the collection is included in or eligible for inclusion in the National Register of Historic Places, the discard action is reviewed to determine whether it is subject to section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

(d) The Federal Agency Official shall fully document determinations to discard material remains and any terms and conditions to be applied. The Federal Agency Official's determinations shall be based upon:

(1) A professional evaluation of the material remains, conducted pursuant to paragraph (c)(1) of this section, that the remains meet the requirements of paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section;

(2) The recommendations of the agency's principal archeologist or the Department of the Interior's Departmental Consulting Archeologist, as appropriate, provided in accordance with paragraph (c)(2) of this section;

(3) The consent of any non-Federal owners; and

(4) Any consultations performed pursuant to paragraphs (c)(5), (c)(6) and (c)(7) of this section.

(e) Any interested person may request in writing that the Department of the Interior's Departmental Consulting Archeologist review any Federal agency's determination to discard material remains. Two copies of the request should be sent to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. The request should document why the requester disagrees with the Federal Agency Official's determination or the terms and conditions to be applied. The Departmental Consulting Archeologist shall review the request and, if appropriate, the Federal Agency Official's determination and its supporting documentation. Based on this review and within 60 days of the receipt of the request, the Departmental Consulting Archeologist shall prepare and transmit to the head of the Federal agency a final professional recommendation for further consideration.

(f) Federally-owned material remains to be discarded shall be disposed of in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), any agency specific regulations on the management of Federal property, any agency specific statutes and regulations on the management of museum collections, and such terms and conditions as may be appropriate.

(g) Indian-owned material remains to be discarded shall be disposed of in accordance with such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(h) State, local, and privately owned material remains to be discarded shall be disposed of in accordance with such terms and conditions as may be requested by the owner.

(i) When the material remains to be discarded consist of bulky, highly redundant, non-diagnostic items, a sample shall be retained that is representative of the remains and large enough to allow for destructive analysis in the future without substantially depleting the sample.

(j) The accession, catalog and artifact inventory list records for the collection from which the material remains are discarded shall be amended to indicate which material remains are deaccessioned and discarded, the basis for the discard, and the manner in which they are discarded. The documentation prepared under paragraphs (c) and (d) of this section shall be retained as a part of the collection.

[FR Doc. 90-21349 Filed 9-11-90; 8:45 am]
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Environmental Protection Agency

Wednesday
September 12, 1990

Part VI

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New
Stationary Sources; Small Industrial-
Commercial-Institutional Steam
Generating Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60**

[AD-FRL-3808-5]

RIN 2060-AB95

Standards of Performance for New Stationary Sources; Small Industrial-Commercial-Institutional Steam Generating Units**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: Today's action promulgates standards of performance for new, modified, and reconstructed small industrial-commercial-institutional steam generating units with a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hr) or less, but greater than or equal to 2.9 MW (10 million Btu/hr). These standards, codified in subpart Dc of 40 CFR part 60, limit emissions of sulfur dioxide (SO₂) and particulate matter (PM) from these sources. This Federal Register notice also announces the EPA's decision not to regulate nitrogen oxides (NO_x) emissions from these units. Standards of performance limiting emissions of SO₂, PM, and NO_x from small industrial-commercial-institutional steam generating units were proposed in the Federal Register on June 9, 1989 (54 FR 24792).

The standards implement section 111 of the Clean Air Act (CAA) and are based on the Administrator's determination that small industrial-commercial-institutional steam generating units cause, or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed small industrial-commercial-institutional steam generating units to control emissions to the level achievable by the best demonstrated technological system of continuous emission reduction considering costs, nonair quality health and environmental impacts, and energy requirements.

EFFECTIVE DATE: September 12, 1990.

Under section 307(b)(1) of the CAA, judicial review of the actions taken by this notice is available only by the filing

of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

INCORPORATION BY REFERENCE: The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of September 12, 1990.

ADDRESSES: *Background Information Document.* A background information document (BID) for the promulgated standards containing: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards, may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Small Industrial-Commercial-Institutional Steam Generating Units—Background Information for Promulgated Standards," EPA-450/3-90-016, August 1990.

Docket. Docket No. A-86-02, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, Room M-1500, First floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland, telephone number (919) 541-5265 or Mr. Fred Porter, telephone number (919) 541-5251, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble of the final standards.

I. Summary of the Standards

- A. Applicability
- B. Standards for Sulfur Dioxide
- C. Standards for Particulate Matter
- D. Standards for Nitrogen Oxides
- E. Performance Testing and Monitoring Requirements
- F. Reporting and Recordkeeping Requirements
- II. Summary of Changes to the Proposed Standards
- III. Impacts of the Standards
 - A. Air
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 - A. Standards for Particulate Matter
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 - B. Clean Air Act Procedural Requirements
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I. Summary of the Standards

Standards of performance for new stationary sources established under section 111 of the CAA reflect application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated (section 111(a)(1)). For convenience, this will be referred to as "best demonstrated technology."

Figures 1 and 2 depict the major provisions of the SO₂ and PM standards, respectively, for information purposes only. It should be noted that the figures do not attempt to show all of the requirements of the standards, only percent reduction requirements, emission limits, and opacity limits, as applicable. Other requirements, such as monitoring, performance testing, and reporting and recordkeeping requirements, are not shown. The regulation should be relied on for a full and comprehensive statement of the regulatory requirements under this subpart.

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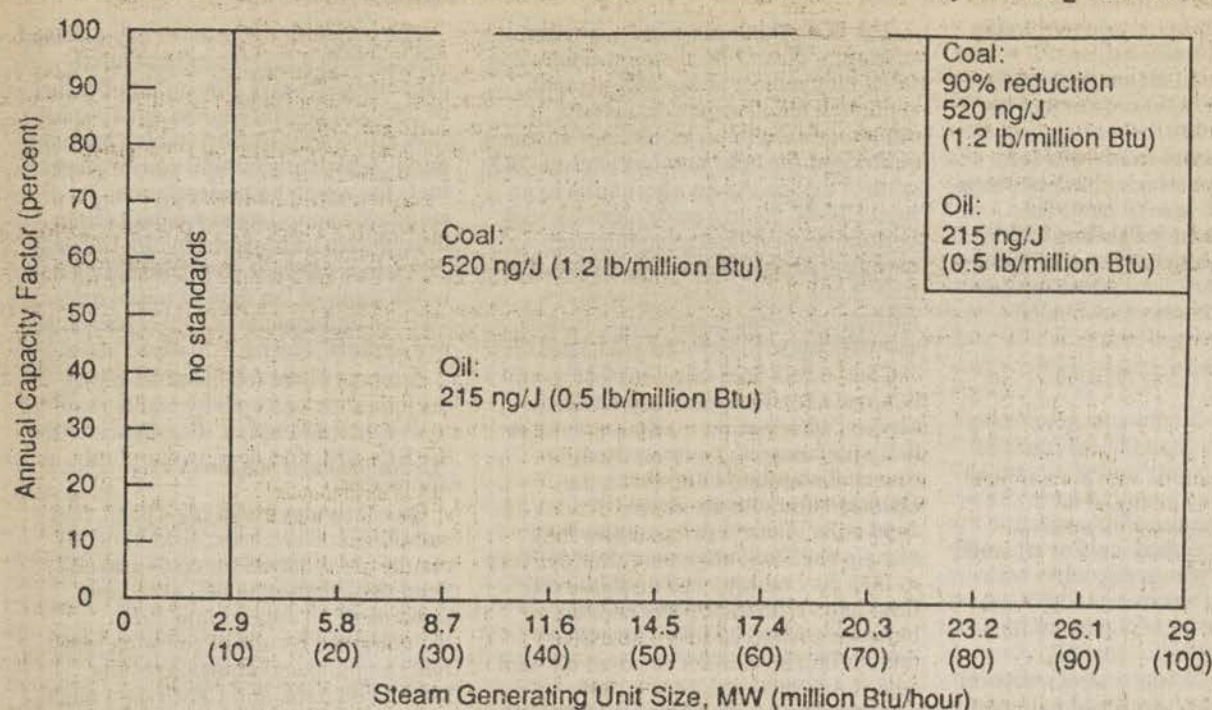
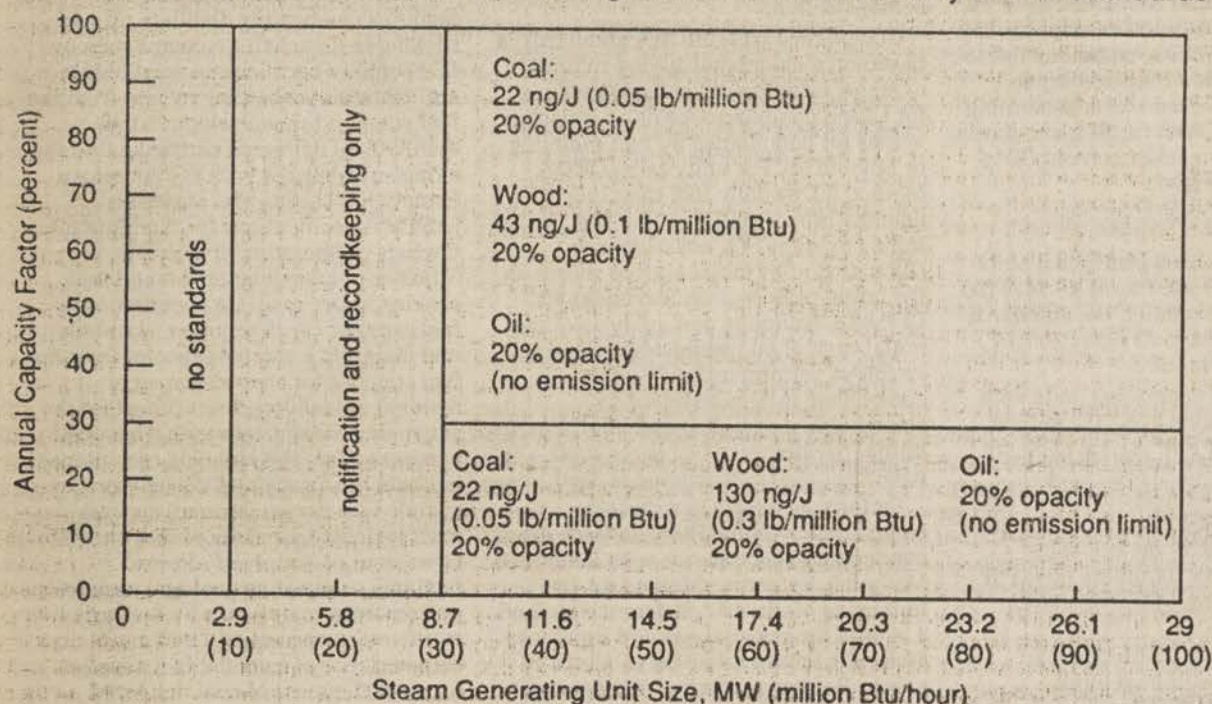
Figure 1 -- Small Steam Generating Units NSPS - Summary of SO₂ Standards*

Figure 2 -- Small Steam Generating Units NSPS - Summary of PM Standards*



* The regulation should be relied on for a full and comprehensive statement of the regulatory requirements under this subpart.

A. Applicability

The new source performance standards (NSPS) being adopted today apply to all new, modified, or reconstructed small steam generating units with a heat input capacity of 29 MW (100 million Btu/hr) or less, but greater than or equal to 2.9 MW (10 million Btu/hr) for which construction is commenced after June 9, 1989. The definition of "steam generating unit" includes all devices that combust fuel and produce steam, heat water, or heat other fluids which are used as heat transfer media.

B. Standards for Sulfur Dioxide

For small coal-fired steam generating units with greater than (75 million Btu/hr) heat input capacity and greater than 55 percent annual capacity factor, the SO₂ standards require a 90-percent reduction in SO₂ emissions. For all small coal-fired steam generating units with heat input capacities from 2.9 MW (10 million Btu/hr) to 29 MW (100 million Btu/hr), the standards limit SO₂ emissions to 520 nanograms of pollutant per joule (ng/J) [1.2 pounds of pollutant per million Btu (lb/million Btu)] heat input.

For small oil-fired steam generating units with heat input capacities from 2.9 MW to 29 MW (10 to 100 million Btu/hr), the standards limit SO₂ emissions to 215 ng/J (0.50 lb/million Btu) heat input. Alternatively, oil-fired steam generating units can comply with the SO₂ standards by firing oil with a sulfur content of 0.5 weight percent or less.

C. Standards for Particulate Matter

For coal-fired steam generating units with heat input capacities of 8.7 MW (30 million Btu/hr) or greater, the standards limit PM emissions to 22 ng/J (0.05 lb/million Btu) heat input.

For wood-fired generating units with heat input capacities of 8.7 (30 million Btu/hr) or greater and annual capacity factors greater than 30 percent, the standards limit PM emissions to 43 ng/J (0.10 lb/million Btu) heat input. For units with annual capacity factors of 30 percent or less, the standards limit PM emissions to 130 ng/J (0.30 lb/million Btu) heat input.

Coal-, wood- and oil-fired steam generating units with heat input capacities of 8.7 MW (30 million Btu/hr) or greater are subject to an opacity limit of 20 percent.

d. Standards for Nitrogen Oxides

No standards for NO_x are being promulgated. (See section V of this notice).

E. Performance Testing and Monitoring Requirements

The SO₂ standards require owners or operators of coal-fired steam generating units that subject to the SO₂ percent reduction requirements to install continuous emission monitoring systems (CEMS) at the inlet and outlet of the SO₂ control device. As an alternative to an inlet CEMS, the owner or operator may perform as-fired fuel sampling and analysis. As an alternative to an outlet CEMS, the owner or operator may perform emission measurements in accordance with Reference Method 6B.

Coal- or oil-fired units subject to an SO₂ emission limit may use a CEMS, Method 6B emission measurements, or daily fuel sampling and analysis to demonstrate compliance with the emission limit. As an alternative for oil-fired units, owners or operators may sample each fuel shipment after delivery to their fuel tank(s). For distillate oil-fired units with heat input capacities between 2.9 and 29 MW (10 and 100 million Btu/hr) and for residual oil- and coal-fired units with heat input capacities between 2.9 and 8.7 MW (10 and 30 million Btu/hr), supplier certification of sulfur content is allowed as an alternative compliance demonstration.

Compliance with the SO₂ standards is based on a calculated 30-day rolling average, using hourly emission values for CEMS compliance or daily emission values for compliance by fuel sampling or Method 6B. For units using CEMS, Method 6B, or daily fuel sampling to demonstrate compliance, the first 30-day rolling average SO₂ emission rate calculated after initial startup serves as the initial performance test under 40 CFR 60.8. Sampling and analysis of the initial tank of oil combusted is used as an initial performance test where compliance is demonstrated by shipment fuel sampling and analysis. No initial performance test is required where supplier certification is used.

Performance tests to determine compliance with the PM standards are conducted in accordance with Reference Method 5, Reference Method 5B, or Reference Method 17. Reference Method 3 is used for gas analysis and Reference Method 1 for the selection of sampling points. Reference Method 9 (a 6-minute average of 24 observations) is used to determine compliance with the opacity standards. Continuous opacity monitoring is required for all small coal-, residual oil- and wood-fired steam generating units with heat input capacities of 8.7 MW (30 million Btu/hr) or greater.

F. Reporting and Recordkeeping Requirements

The owner or operator of any affected facility with a maximum heat input capacity of 29 MW (100 million Btu/hr) or less, but greater than or equal to 2.9 MW (10 million Btu/hr) (which includes units combusting natural gas or other fuels for which no performance standards apply) must submit certain information as required by the General Provisions (40 CFR 60.11), including notification of the date of initial unit startup, and must maintain certain fuel use records.

A report of the results of an initial performance and opacity test is required to demonstrate initial compliance with the SO₂, PM, and opacity standards, as applicable.

Quarterly reports of the CEMS, fuel sampling and analysis, or Method 6B results are required for coal- and oil-fired units under the SO₂ standards. Records of all appropriate data, including the results of emission tests, fuel sampling and analysis results, Method 6B data, and CEMS data must be maintained for 2 years and made available for inspection by enforcement personnel.

Owners or operators of affected facilities combusting distillate oil and seeking to demonstrate compliance by fuel supplier certification must obtain and maintain a shipping receipt from the fuel supplier for each shipment of distillate oil delivered certifying that the shipment complies with the American Society for Testing and Materials (ASTM) specifications for distillate oil. Owners or operators of affected facilities combusting residual oil and seeking to demonstrate compliance by fuel supplier certification must obtain and maintain a shipping receipt from the fuel supplier for each shipment of residual oil delivered certifying that the shipment contains less than 0.5 weight percent sulfur. The shipping receipt must indicate the location of the oil when a sample was drawn for analysis and must include the results of that analysis. Owners or operators of affected facilities combusting coal and seeking to demonstrate compliance by fuel supplier certification must obtain and maintain a shipping receipt from the fuel supplier for each shipment of coal delivered certifying that the shipment contains a combination of sulfur and heat which would limit the SO₂ emissions from the shipment to 520 ng/J (1.2 lb/million Btu) or less. The shipping receipt must indicate the location of the coal when a sample was collected for analysis and must include the results of that analysis.

Owners or operators seeking to demonstrate compliance by fuel supplier certification must submit quarterly reports including copies of all shipping receipts obtained during the previous quarter and including a certified statement signed by the owner or operator of the affected facility that the shipping receipts submitted represent all of the fuel combusted in that quarter. Records must be maintained for 2 years.

The PM standards require owners or operators to submit quarterly excess emission reports for coal-, residual oil-, and wood-fired units. If no excess emissions occur in a particular quarter, then a semiannual report is required stating that no excess emissions occurred during the reporting period.

II. Summary of Changes to the Proposed Standards

The changes that have been made since proposal of the standards are presented below. The rationales for these changes are presented under section V of this notice. In addition to the changes listed below, the regulation has been reorganized since proposal to clarify its meaning and to remove redundant paragraphs.

The proposed NO_x limit of 430 ng/J (1.0 lb/million Btu) heat input has been eliminated; no NO_x standards are being promulgated.

For wood-fired steam generating units with heat input capacities greater than 8.7 MW (30 million Btu/hr) operating at annual capacity factors of 30 percent or less, the PM standards have been changed from 43 ng/J (0.10 lb/million Btu) heat input to 130 ng/J (0.30 lb/million Btu) heat input.

Distillate oil-fired units have been exempted from the requirement for continuous monitoring of opacity. In addition, the requirement for oil-fired units operating at 10 percent annual capacity factor or less to perform a 24-hour demonstration of operating capacity has been eliminated.

To comply with the SO_2 emission limit, all distillate oil-fired units with heat input capacities between 2.9 and 29 MW (10 and 100 million Btu/hr) and coal- and residual oil-fired units with heat input capacities of 2.9 to 8.7 MW (10 to 30 million Btu/hr) may use supplier certification of fuel sulfur content in lieu of fuel sampling and analysis.

III. Impacts of the Standards

A. Air

In the fifth year after adoption of this NSPS, nationwide emissions of SO_2 from small steam generating units would be decreased by about 33,000 megagrams

per year (Mg/yr) [37,000 tons per year (tons/year)], compared with projected emission levels under the regulatory baseline. This represents a reduction of about 70 to 80 percent, depending on the steam generating unit size and type of fuel fired. The nationwide emissions of PM would be decreased by about 3,000 Mg/yr (3,400 tons/year) compared with the baseline, an 80- to 90-percent reduction. The regulatory baseline is the emission level projected to result from new small steam generating units built between 1989 and 1993, controlled to the levels currently mandated under typical State implementation plans (SIP's) in the absence of the final standards.

The changes to the proposed standards are not expected to significantly impact air emissions for the following reasons. The proposed standards for NO_x had no environmental benefit; therefore, the decision to delete the NO_x standards from the final regulation will result in no environmental impact. The PM emissions projected for small wood-fired steam generating units in the proposal notice were based on units operating at a 55-percent annual capacity factor. Since the less stringent emission limit of 130 ng/J (0.30 lb/million Btu) will only apply to wood-fired units operating at annual capacity factors of 30 percent or less, PM emissions are not expected to exceed the level projected in the proposal notice. The elimination of the opacity monitoring requirement for distillate oil-fired units is not expected to result in increased PM emissions because distillate oil is a relatively clean fuel that is unlikely to have opacity problems.

B. Water and Solid Waste

Under the final standards, no significant water pollution impacts are projected, and the projected impacts on solid waste generation are small. In addition, the wastes produced by PM control processes are nonhazardous and can be disposed of using traditional treatment and disposal techniques. Therefore, no adverse water pollution or solid waste impacts are anticipated as a result of the standards.

C. Energy

The final standards will not result in significant impacts on national fuel use markets. Some fuel switching from coal and residual oil to natural gas or distillate oil may occur, but the impacts of any fuel switching on coal, oil, and natural gas markets would be negligible on a national basis. Energy consumption impacts resulting from the standards would be small.

D. Control Costs

Typical steam generating unit costs. Under the final standards, the capital cost of a small coal-fired steam generating unit would increase by about 11 percent over the costs at the regulatory baseline. The magnitude of the increase would depend on steam generating unit size and type. Annualized costs for a small coal-fired steam generating unit would increase by approximately 6 percent over the costs at the regulatory baseline, depending on unit size and coal type. For a small oil-fired steam generating unit, the capital cost would increase by about 3 percent and annualized costs would increase by about 19 percent over the costs at the regulatory baseline, depending on unit size and oil type. For a small wood-fired steam generating unit operating at an annual capacity factor of 55 percent, the capital cost would increase by about 19 percent and annualized costs would increase by about 10 percent over the costs at the regulatory baseline, depending on unit size and type. Capital and annual costs for small wood-fired steam generating units operating at annual capacity factors less than 30 percent would be increased by less than 10 percent.

Nationwide costs. In the fifth year of applicability of these standards, the nationwide annualized costs for small steam generating units would increase by about \$38 million.

E. Economic Effects

The economic effects of the final standards are considered negligible. For most of the six major industry groups analyzed, product prices under the "worst case" would increase by less than 1 percent. For the most steam intensive industries, product prices under the "worst case" are projected to increase by 2.8 percent. National product priced impacts would be significantly less. Most commercial-institutional facilities would not be affected by the final standards because of the size of the steam generating unit and fuels fired at these facilities. Of the commercial-institutional facilities with steam generating units subject to the SO_2 and PM standards, costs of services would generally increase by less than 0.5 percent. For the most steam intensive commercial facility, costs of services are projected to increase by 1.3 percent. Rental rates for office buildings that are affected by the final standards would increase by less than 1 percent.

IV. Public Participation

Prior to proposal of the standards, interested parties were advised by

public notice in the Federal Register (53 FR 9977, March 23, 1988) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the standards recommended for proposal. This meeting was held on May 19, 1988. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

The standards were proposed and published in the Federal Register on June 9, 1989 (54 FR 24792). The preamble to the proposed standards discussed the availability of eight background documents, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the background documents were distributed to interested parties.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on August 8, 1989, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed standards. A total of five people testified at the public hearing.

The public comment period extended from June 9, 1989, to September 8, 1989. Forty-eight comment letters were received addressing issues relative to the proposed standards. The comments have been placed in Docket No. A-86-02, carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

V. Significant Comment on the Proposed Standards

Comments on the proposed standards were received from industry, trade associations, Federal agencies, State agencies, and the general public. Those comments which led to a change in the regulation are discussed below. A complete presentation of the comments and the EPA's response to each of them is found in the promulgation BID which is referred to in the ADDRESSES Section of this preamble.

A. Standards for Particulate Matter

Some commenters objected to the PM limit of 43 ng/J (0.10 lb/million Btu) heat input for wood-fired steam generating units with greater than 8.7 MW (30 million Btu/hr) heat input capacity. They felt that the emission limit is too low. They recommended replacing the PM limit of 43 ng/J (0.10 lb/million Btu) heat input with a limit of 86 ng/J (0.20 lb/

million Btu) heat input based on good combustion and high efficiency cyclones or a limit of 130 ng/J (0.30 lb/million Btu) heat input based on use of double mechanical collectors (DMC's).

One commenter stated that the PM limit appears to have been based on the fact that control technology to achieve the limit is available to larger steam generating units, and that the performance and costs of these controls for small units have not been fully addressed. This commenter also questioned the EPA's assumption that 55 percent is a representative capacity factor for wood-fired units. This commenter asserted that some units would be operated at lower capacity factors and that the cost effectiveness of PM controls for these units would be significantly different than for high capacity factor units.

Wet scrubbers have been used widely for control of emissions from small wood-fired steam generating units. The available data on the effectiveness of wet scrubbers in reducing PM emissions indicate that the proposed standard of 43 ng/J (0.10 lb/million Btu) is achievable for wood-fired steam generating units with heat input capacities between 8.7 and 29 MW (30 and 100 million Btu/hr). The background document on the technical basis for the PM standards also presents data showing that wood-fired units equipped with an electrostatic precipitator (ESP) or electrostatic gravel bed filter (EGF) can achieve PM emission levels of 43 ng/J (0.10 lb/million Btu) heat input or less. Therefore, these control technologies are also considered to be demonstrated for reducing PM emissions from wood-fired steam generating units to 43 ng/J (0.10 lb/million Btu) heat input or less.

The PM control data analyzed for wood-fired steam generating units include measurements of PM emissions from units with heat input capacities ranging from 50 to 181 MW (170 to 615 million Btu/hr) equipped with ESP's, and from 16 to 67 MW (55 to 230 million Btu/hr) equipped with wet scrubbers. Although all of the units equipped with ESP's and many of the units equipped with wet scrubbers from which these data are drawn are larger than those included in this source category, the characteristics of the emissions from these larger units are similar to those of smaller units in terms of the concentration of particles in the gas stream, the size distribution and resistivity of those particles, and their chemical composition. The primary difference in emissions between the larger and smaller steam generating units is the volume of the gas stream to

be treated. The gas volume affects the size and capacity of the control device, rather than the effectiveness of the control technology in reducing the level of PM emitted. Consequently, these technologies are considered appropriate for units in the size range from 8.7 to 29 MW (30 to 100 million Btu/hr) heat input capacity. There are no available data suggesting that these technologies are not transferable to units in this size range.

The cost analysis performed for the various control options includes estimates of capital, operation and maintenance, and annualized costs. Although the cost-effectiveness values for achieving the standards are relatively high, the standards result in greater overall PM emission reductions and much greater reductions in PM₁₀ emissions than the other alternatives that were considered. Consequently, the impacts of compliance for small units were found to be reasonable for units with annual capacity factors above 30 percent.

A capacity factor of 55 percent has been determined to be typical of wood-fired steam generating units based on an analysis of the data presented in the background document "Projected Impacts of Alternative Particulate Matter New Source Performance Standards for Industrial-Commercial-Institutional Nonfossil Fuel-Fired Steam Generating Units." As shown in that document, virtually all new wood-fired steam generating units in the affected size range will be high capacity factor units due to economic considerations. Other fuels would be more economical below this capacity factor. Impacts of the 43 ng/J (0.10 lb/million Btu) standard were carefully analyzed for units operating at a capacity factor of 55 percent and were determined to be reasonable for units greater than 8.7 MW (30 million Btu/hr) in size.

It is acknowledged, however, that some lower capacity units may be constructed for reasons other than cost. Consequently, the impacts of the PM standards on units operating at low capacities (i.e., annual capacity factors below 30 percent) were also carefully analyzed. Compared to small wood-fired units with higher capacity factors, the cost effectiveness of the proposed PM standards for low capacity factor wood-fired units below 29 MW (100 million Btu/hr) heat input in size can be relatively high. For example, the estimated cost effectiveness for small wood-fired units between 29 and 8.7 MW (100 and 30 million Btu/hr) heat input capacity operating at a capacity factor of 26 percent ranges from about

\$11,000 to \$18,000/Mg (\$10,000 to \$16,000/ton), respectively, depending on unit size. These costs are considered unreasonable and therefore do not reflect best demonstrated technology for low capacity factor units. Rather, a PM standard of 130 ng/ (0.03 lb/million Btu) heat input is being included in the final regulation for wood-fired units operating at capacity factors below 30 percent. This limit is based on the use of DMC's. Such a standard results in significant reductions in capital and operating costs and cost effectiveness.

Two commenters stated that the EPA's cost-effectiveness estimate for achieving the PM emission limit is considerably higher, on a dollars per ton basis, than has been considered reasonable for previous NSPS rulemakings for other source categories. One commenter noted that EPA has estimated incremental cost-effectiveness values for small coal-fired units that are much lower than those for small wood-fired units. Both commenters stated that there is clearly an inequitable cost burden placed on new wood-fired steam generating units. Another commenter stated that the wide range of relatively high cost-effectiveness values indicates the need to further distinguish among sizes of wood-fired units, and to establish standards for subcategories based on size and capacity factor.

The estimated cost effectiveness of the PM standards for typical wood-fired units, based on use of wet scrubbers or ESP's capable of reducing PM emissions to 43 ng/J (0.10 lb/million Btu) heat input or less, ranges from about \$6,000 to 9,200/Mg (\$5,400 to \$8,300/ton), depending on the size of the steam generating unit. These values represent the cost effectiveness for small wood-fired units with an annual capacity factor of 55 percent, which is typical for most industrial size wood-fired units. These values are generally consistent with the cost-effectiveness range estimated for small coal-fired units. Although it is not necessary to equalize cost-effectiveness values across all classes of sources within the source category, the cost effectiveness of the PM standards for the bulk of the population of new wood-fired units is entirely consistent with the cost effectiveness of the PM standards for small coal-fired units. Also, as discussed above, the impacts of the PM standards on wood-fired units operated at lower annual capacity factors (i.e., below 30 percent) were examined and the standards for these units have been raised to 130 ng/J (0.30 lb/million Btu) heat input to reduce the cost burden. Consequently, the PM standards do not

pose an inequitable burden on new wood-fired units as compared to new coal-fired units.

The steam generating unit size categories used in establishing the PM standards reflect differences in the end use, design, fuel-use, and emissions characteristics of small steam generating units. The data presented in the background documents indicate that small steam generating units fall into the three size categories of 0 to 2.9 MW, 2.9 to 8.7 MW, and 8.7 to 29 MW (0 to 10 million Btu/hr, 10 to 30 million Btu/hr, and 30 to 100 million Btu/hr) heat input capacity. The largest size units (8.7 to 29 MW [30 to 100 million Btu/hr] heat input capacity) generally serve industrial facilities such as manufacturers. These units are primarily watertube units. Units in the middle category (2.9 to 8.7 MW [10 to 30 million Btu/hr] heat input capacity) serve large commercial and institutional facilities where both watertube and firetube units are used. The smallest units are generally found in small commercial or institutional facilities (such as churches and public schools) where firetube and cast-iron units predominate. Available data on small steam generating units indicate that these size categories are the most appropriate for setting PM standards because emission reduction potential varies according to these size categories and because there are differences in the typical uses of the units and the availability of operating personnel among these size categories.

The impacts of PM control on each of these three size categories of small steam generating units were carefully examined. It was determined that PM controls were both effective and did not impose unreasonable costs or other impacts for units larger than 8.7 MW (30 million Btu/hr) heat capacity. For the two smaller size categories, however, the costs of control are not considered reasonable and trained operators capable of operating the PM control systems are not typically available. Therefore, no PM standards have been established for units smaller than 8.7 MW (30 million Btu/hr) heat input capacity.

B. Standards for Nitrogen Oxides

Several commenters objected to the proposal of standards for NO_x emissions from small industrial-commercial-institutional steam generating units. These commenters stated EPA had misinterpreted the U.S. District Court's ruling in *Sierra Club v. Reilly*, (D.D.C., No. 84-0325) in deciding to set NO_x standards even though the EPA had determined that the impacts of the standards would be unreasonable. The

commenters stated that the language in the Court order in *Sierra Club v. Reilly* does not require EPA to adopt a standard that is determined to be unreasonable, but recognizes the EPA's discretion to determine if such a standard is necessary and reasonable. Further, these commenters stated that the EPA's on analysis showed that the proposed standards for NO_x emissions would result in unreasonable costs for compliance and administration, particularly for owners and operators of small steam generating units. Two commenters stated that EPA has the discretion to determine if a NO_x standard is necessary, and that if EPA determines that promulgating such a standard is neither reasonable nor practical, that this determination would be given deference by the Court.

Pursuant to the order of the Court in *Sierra Club v. Reilly*, control technologies for reducing NO_x emissions from small steam generating units were examined thoroughly in developing the proposed regulations. The primary NO_x control technologies (low excess air (LEA), flue gas recirculation (FGR), staged combustion, thermal deNO_x, selective catalytic reduction (SCR) were examined, and the best information on the effectiveness, availability, and cost of these technologies evaluated. Of these technologies, thermal deNO_x was found to be inapplicable to small steam generating units for technical reasons. Selective catalytic reduction is an expensive technology that is considered unreasonably costly for small steam generating units. Although the data on the performance of the remaining three technologies in reducing emissions of NO_x from small steam generating units are limited, the cost effectiveness of these remaining three technologies was calculated for representative units and conservatively estimated to range from \$3,300 to \$33,000/Mg (\$3,000 to \$30,000/ton). These costs are considered to be unreasonably high for national NO_x standards for this source category.

In proposing a NO_x standard for small steam generating units, EPA pointed out that the language of the Court's order in *Sierra Club v. Reilly* could be interpreted to require EPA to propose such a standard. To avoid any potential conflict with the Court's order, EPA proposed and requested comments on a NO_x standard. The proposed NO_x standard would impose no costs although it would also achieve no emission reductions. No additional information has been presented in response to the EPA's request for comments that would alter the original conclusion that the cost of NO_x control

for this source category is unreasonably high and that the proposed NO_x standard would result in no reduction in NO_x emissions or produce any other environmental benefits. Therefore, the proposed NO_x standard is being withdrawn and small steam generating units will not be subject to an emission limit for NO_x under this regulation.

C. Test Methods and Monitoring

Six commenters stated that applying CEMS for opacity monitoring at small oil-fired steam generating units is unjustified. These commenters stressed that oil-fired steam generating units normally have low opacity and would exceed the 20 percent opacity standard only under poor operation and maintenance conditions. Because poor operation and maintenance practices that result in high opacity would also result in higher costs to the steam generating unit owner or operator by increasing fuel costs, the commenters asserted that instances of high opacity would be infrequent. One commenter said opacity monitoring for oil-fired steam generating units would result in capital costs of \$110,000 and annual operation and maintenance costs of \$50,000, without reducing emissions at all.

The intent of the proposed opacity limit was to identify units operating with incomplete combustion and to allow appropriate remedial and enforcement actions to be taken to improve the operation of those units. Because distillate oil is a very clean burning fuel with a relatively low ash content, steam generating units firing distillate oil typically require very little maintenance to ensure proper combustion. Because violations of the opacity standards are not expected to occur at distillate oil-fired units, these units are being exempted from the opacity monitoring requirements of the final standards. Although the monitoring requirement for opacity is being withdrawn, the opacity limit itself is being retained for these units because it will allow operators and enforcement personnel to intervene in those instances where improper operation and maintenance of a distillate oil-fired unit results in unexpectedly high opacity.

The combustion of residual oil, on the other hand, is more likely to result in opacity problems, because residual oil has a higher ash content. Further, incomplete combustion of residual oil results in formation of an unburned carbonaceous component that can account for 90 percent of the measured opacity from a poorly operated residual oil-fired steam generating unit. Consequently, residual oil-fired units

require much more maintenance than distillate oil-fired units to achieve low opacity on a continuous basis. Because residual oil has a higher ignition temperature and lower viscosity than distillate oil, it is much more difficult to achieve and maintain proper combustion in a residual oil-fired unit. Therefore, because residual oil-fired steam generating units are much more likely to lead to opacity exceedences if not carefully maintained, residual oil-fired units are not being exempted from the opacity monitoring requirements of the standards. The opacity monitor will identify units operating with incomplete combustion and indicate to the source owner or operator the need for some maintenance activity.

Several commenters objected that the requirement for daily fuel sampling and analysis would impose an unreasonable cost burden on the owners and operators of small steam generating units, without accomplishing any significant improvement in air quality. These commenters also pointed out that Reference Method 19 is overly complicated and costly. They said that small steam generating units often do not have full-time, trained operators who can take samples as frequently or as accurately as required. One commenter pointed out that EPA had recognized this limitation in eliminating the PM standards for units smaller than 8.7 MW (30 million Btu/hr) and that the same consideration should apply to daily coal sampling.

In lieu of sampling, these commenters suggested substituting fuel supplier certification of coal and/or oil composition for actual sampling and analysis by the small steam generating unit owner or operator. The commenters said that coal or oil purchased at a specific sulfur content will meet the defined SO₂ emission limit, and that duplicate testing and paperwork by the fuel purchaser would be unnecessary and create extra expense without environmental improvement.

In the case of distillate oil, the fuel supplier's certification that a shipment of oil complies with ASTM specifications is sufficient to demonstrate compliance with the SO₂ standards. The ASTM specifications require a relatively uniform fuel with a sulfur content of 0.5 weight percent or less. Any unit firing oil meeting the ASTM specifications for distillate oil is capable of achieving compliance with the SO₂ emission limit. Consequently, a supplier's certification that the oil is distillate oil will be considered sufficient to verify compliance with the standards

for all distillate oil-fired units in this source category.

For residual oil, on the other hand, the ASTM specifications allow a wider variety of sulfur contents, only some of which are capable of meeting the SO₂ emission limit. In addition, fuel supplier certifications are rarely the result of sampling and analysis of as-delivered fuels, but are generally the result of sampling and analysis of very large quantities of stored oil at the refinery. It is difficult to confirm that the results of sampling and fuel analysis at the refinery are representative of the fuel shipment received at the steam generating unit. Consequently, supplier certifications are significantly less reliable as an indicator of actual sulfur content for residual oil than for distillate oil. Therefore, sampling and analysis of fuel shipments will continue to be required for most residual oil-fired units, except as discussed below.

Fuel sampling and analysis for residual oil is a relatively simple procedure when conducted by a trained steam generating unit operator. Because residual oil-fired steam generating units larger than 8.7 MW (30 million Btu/hr) heat input capacity are typically located at industrial facilities, they generally have full-time, trained operators on site who are capable of collecting and preparing samples for analysis. Oil-fired steam generating units smaller than 8.7 MW (30 million Btu/hr) heat input capacity, on the other hand, are typically located at institutional or commercial facilities (e.g., hospital and shopping centers) and frequently are not supported by full-time operators. For this reason, sampling and analysis would be a greater burden on the owners or operators of steam generating units in this size range. Therefore, although somewhat less reliable, certifications of residual oil sulfur content from fuel suppliers may be used to demonstrate compliance for residual oil-fired steam generating units smaller than 8.7 MW (30 million Btu/hr) heat input capacity.

The circumstances for coal-fired steam generating units are similar to those for residual oil-fired units. The coal sampling and analysis procedure in Method 19 requires the attention of a full-time, trained operator to collect samples with the required frequency and to prepare the sample for analysis. Industrial facilities that use coal-fired steam generating units generally have trained operators on-site to perform this function, whereas commercial and institutional facilities typically do not. Because coal-fired steam generating units larger than 8.7 MW (30 million

Btu/hr) heat input capacity are typically located at industrial facilities, fuel sampling is an appropriate alternative to continuous emission monitoring for units in this size range. For smaller units, however, that are typically located at institutional and commercial facilities, coal sampling and analysis would pose a significant burden. Consequently, these standards allow operators of coal-fired steam generating units smaller than 8.7 MW (30 million Btu/hr) heat input capacity to rely on a coal supplier's certification of coal sulfur content in lieu of sampling.

D. Miscellaneous

One commenter objected to the requirement in § 60.44c(d) of the proposed standards that requires units firing very low sulfur oil with capacity factors less than 10 percent to perform a full-load, 24-hour performance test. The commenter pointed out that § 60.44c(j) of the proposed standards exempts higher capacity factor units firing distillate oil or residual oil having a sulfur content of 0.5 weight percent or less from the performance testing requirements, while § 60.44c(d) of the proposed standards required performance testing for very low sulfur oil-fired units with lower capacity utilization.

The performance testing requirements of § 60.44c(d) of the proposed standards were intended to be less burdensome for low capacity units firing very low sulfur oil than the 30-day initial SO₂ performance test required of most affected facilities. However, the commenter is correct that § 60.44c(j) of the proposed standards provided oil-fired steam generating units firing either distillate oil or residual oil with 0.5 weight percent sulfur or less with an alternative to the 30-day performance test. Under § 60.44c(j) of the proposed standards, an owner or operator who fires very low sulfur oil and who maintains fuel records does not have to conduct performance testing. Because this exclusion from performance testing overlaps with the 24-hour performance test requirement of § 60.44c(d) of the proposed standards, the requirement for a 24-hour initial performance test for low capacity units firing very low sulfur oil and using supplier certification to demonstrate compliance has been deleted from the final standards. In lieu of an initial performance test, owners or operators of distillate oil-fired units are allowed to maintain records of fuel supplier certifications that the oil combusted meets ASTM specifications for distillate oil. Similarly, supplier certification of fuel sulfur content is allowed as an alternative to an initial performance test for residual oil-fired

units between 2.9 and 8.7 MW (10 and 30 million Btu/hr) heat input capacity. For residual oil-fired units between 8.7 and 29 MW (30 and 100 million Btu/hr) heat input capacity, the initial performance test consists of sampling and analysis of the initial tank of fuel oil to demonstrate compliance with the standard. Thereafter, the owner or operator must sample and analyze the sulfur content of each new shipment of fuel oil and calculate compliance with the standard on a 30-day rolling average basis.

One commenter stated that alternative methods of fuel analysis should be allowed for oil-fired steam generating units with only one fuel tank. The commenter pointed out that the wording of the current standards would require a unit with only one fuel tank to be shut down while filling and analyzing the oil in the fuel tank. The commenter suggested that the regulation either allow the owner or operator of an oil-fired steam generating unit to sample the tank immediately after filling, or sample and analyze the incoming shipment prior to unloading.

Section 60.46c(b)(2) of the proposed standards required oil samples to be taken "from the fuel tank after each new shipment of oil is received and before any amount of oil is combusted." This requirement would accommodate the commenter's suggestion that the tank be sampled immediately after refilling. As use of this new fuel begins, the owner or operator can send the samples to be analyzed and begin firing the oil. If the analysis subsequently shows that the sulfur content of the fuel is too high to comply with the standards, then the owner or operator must ensure that the sulfur content of the next fuel shipment is low enough to meet the standards using a 30-day rolling average. The final language in § 60.44c has been clarified to reflect this procedure.

One commenter stated that § 60.46c(b) of the proposed regulation appears to require oil-fired steam generating units to sample and analyze oil sulfur content using both Method 19 and fuel shipment testing. The commenter suggested that the requirement should be either Method 19 or shipment testing. The same commenter also suggested that the applicability of § 60.46c(b)(2) of the proposed regulation to units using 24-hour averaging should be clarified.

The testing provisions of § 60.46c(b)(1) and (2) of the proposed regulation were intended to be alternative testing methods for residual oil-fired steam generating units. The language of the regulation has been amended to clarify that these alternatives for residual oil-fired units.

The provisions of § 60.46c(b)(2) in the proposed standards which discussed fuel tank sampling did not specifically state the applicability of these procedures to low capacity units firing very low sulfur oil that use 24-hour averaging. The language of the regulation has been clarified to state that units firing distillate oil only need to maintain fuel supplier certifications that distillate oil is being fired in the unit. Similarly, steam generating units with a heat input capacity between 2.9 MW and 8.7 MW (10 and 30 million Btu/hr) that fire residual oil with a sulfur content of 0.5 weight percent or less only need maintain fuel supplier certifications that residual oil with a sulfur content of 0.5 weight percent or less is being fired in the unit.

One commenter stated that § 60.46c(e)(3) of the proposed regulation specifies that the setting of the span value of the outlet SO₂ CEMS at 50 percent of the maximum estimated hourly potential SO₂ emissions of the fuel combusted. The commenter pointed out that this setting could result in the inability to determine exceedances of the SO₂ emissions limit when a relatively low sulfur fuel is used. The commenter recommended that the span value of the outlet SO₂ CEMS should be at least 125 percent of the applicable emission standards.

The span values listed in § 60.46c(e)(3) of the proposed regulation were relevant only to those instances where a percent reduction in SO₂ emissions is required in addition to compliance with an emission limit. Section 60.46c of the final regulation has been amended to require a span value of 125 percent where only an emission limit (no percent reduction) is required.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments in the Federal Register Notices and background documents, the contents of the docket, except for interagency review materials, will serve as the

record in case of judicial review (Section 307(d)(7)(A)).

B. Clean Air Act Procedural Requirements

The effective date of this regulation is September 12, 1990. Section 111 of the CAA provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal, June 9, 1989.

As prescribed by section III, the promulgation of these standards was preceded by the Administrator's determination that small industrial-commercial-institutional steam generating units contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the CAA, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed not later than 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of CAA requires the Administrator to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the CAA. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining the best demonstrated technology. The economic impact assessment is included in the background documents for the proposed standards.

C. Office of Management and Budget Reviews

Information collection requirements associated with this regulation (those included in 40 CFR part 60, subpart A and subpart Dc) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2060.0202).

During the first 3 years that the standards are in effect, the public reporting burden for collection of

information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated to be 72 person-years, based on an average of 708 respondents per year.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The EPA has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." (1) Nationwide annual compliance costs are not as great as the threshold of \$100 million; (2) the regulations do not significantly increase prices or production costs; and (3) the regulations do not cause significant, adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

This regulation was submitted to the OMB for review as required by Executive Order 12291. Any written comments from OMB and any responses to those comments will be included in Docket A-86-02. This docket is available for public inspection at the EPA's Air Docket, which is listed under the ADDRESSES section of this notice.

D. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act requires consideration of the impacts of regulation on small entities, including small businesses, organizations, and jurisdictions. A small business is defined as any business concern that is independently owned and operated and not dominant in its field as defined by the Small Business Act (SBA). Similarly, a small organization is defined by the SBA as a not-for-profit enterprise, independently owned and operated, and not dominant in its field. A small jurisdiction is defined as any government district with a population of fewer than 50,000 people.

The final standards would apply to small steam generating units in small businesses (defined as having 500 to 1,500 employees depending on the SIC classification) as well as large businesses. The standards however, would not affect a substantial number of small businesses. Most small businesses will not be affected by the standards because sales of new steam generating units are expected to remain at their current low levels. New small steam generating units, therefore, are expected to be a relatively small percentage of the existing population of small steam

generating units over the next five years. In addition, small steam generating units in the commercial segment are used primarily for space heating and hot water. A relatively small percentage of commercial buildings will be impacted because (1) steam is not the predominant choice for heating new buildings, (2) most steam generating units used in commercial applications will be smaller than 2.9 MW (10 million Btu/hr) heat input, and (3) the predominant fuels used in commercial applications are natural gas and distillate oil, which will incur little or no compliance costs.

An economic impact on small businesses is considered significantly adverse if one of the following four criteria is met:

- Annual costs of compliance with the standards increase process or product costs by more than 5 percent.
- Compliance costs as a percent of sales are at least 10 percentage points higher for small businesses than for large businesses.
- Capital costs of compliance represent a significant portion of capital available to small businesses.
- The standards are likely to result in closure of small businesses.

The final standards would increase production costs by less than 5 percent, assuming full cost pass through, for "worst case" facilities in the most steam intensive industries. Impacts on product prices at the national level are expected to be insignificant. In the commercial segment, rental rates for office buildings that are affected by the standards would increase by less than 1 percent.

Compliance costs as a percent of sales or annual revenues were analyzed for small and large businesses. This measure of the regulatory burden of the standards would not be significantly higher for small businesses.

The final standards would impose additional capital expenditures for fabric filters on new small coal-fired steam generating units. These additional capital costs, however, would increase the capital requirement for the purchase of a new small steam generating unit by less than 10 percent.

Finally, the additional costs associated with the final standards are not expected to result in any business closures. Consequently, the standards will not result in significant adverse economic impacts on small businesses.

Pursuant to the Provisions of 5 U.S.C. 605(b), I hereby certify that these rules, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the number of small

entities that would be affected, if any, is not substantial.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Fossil fuel-fired steam generating units, Nonfossil fuel-fired steam generating units.

Dated: August 31, 1990.

William K. Reilly,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.17 is amended by revising paragraphs (a)(1), (a)(10), and (a)(50) to read as follows:

§ 60.17 Incorporation by reference.

(a) * * *

(1) ASTM D388-77, Standard Specification for Classification of Coals by Rank, incorporation by reference (IBR) approved for §§ 60.41(f); 60.45(f)(4)(i), (ii), (vi); 60.41a; 60.41b; 60.41c; 60.25(b), (c).

(10) ASTM D396-78, Standard Specification for Fuel Oils, IBR approved for §§ 60.40b; 60.41b; 60.41c; 60.111(b); 60.111a(b).

(50) ASTM D1835-86, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for §§ 60.41b; 60.41c.

3. Part 60 is amended by adding subpart Dc to read as follows:

Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

Sec.

60.40c Applicability and delegation of authority.

60.41c Definitions.

60.42c Standard for sulfur dioxide.

60.43c Standard for particulate matter.

60.44c Compliance and performance test methods and procedures for sulfur dioxide.

60.45c Compliance and performance test methods and procedures for particulate matter.

60.46c Emission monitoring for sulfur dioxide.

Sec.

60.47c Emission monitoring for particulate matter.

60.48c Reporting and recordkeeping requirements.

Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

§ 60.40c Applicability and delegation of authority.

(a) The affected facility to which this subpart applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr).

(b) In delegating implementation and enforcement authority to a State under section 111(c) of the Clean Air Act, § 60.48c(a)(4) shall be retained by the Administrator and not transferred to a State.

§ 60.41c Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act and in subpart A of this part.

Annual capacity factor means the ratio between the actual heat input to a steam generating unit from an individual fuel or combination of fuels during a period of 12 consecutive calendar months and the potential heat input to the steam generating unit from all fuels had the steam generating unit been operated for 8,760 hours during that 12-month period at the maximum design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility during a period of 12 consecutive calendar months.

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials in ASTM D388-77, "Standard Specification for Classification of Coals by Rank" (incorporated by reference—see § 60.17); coal refuse; and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes of this subpart.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50

percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (kJ/kg) (6,000 Btu per pound (Btu/lb)) on a dry basis.

Cogeneration steam generating unit means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

Combined cycle system means a system in which a separate source (such as a stationary gas turbine, internal combustion engine, or kiln) provides exhaust gas to a steam generating unit.

Conventional technology means wet flue gas desulfurization technology, dry flue gas desulfurization technology, atmospheric fluidized bed combustion technology, and oil hydrodesulfurization technology.

Distillate oil means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396-78, "Standard Specification for Fuel Oils" (incorporated by reference—see § 60.17).

Dry flue gas desulfurization technology means a sulfur dioxide (SO₂) control system that is located between the steam generating unit and the exhaust vent or stack, and that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion-gases with an alkaline slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline reagents used in dry flue gas desulfurization systems include, but are not limited to, lime and sodium compounds.

Duct burner means a device that combusts fuel and that is placed in the exhaust duct from another source (such as a stationary gas turbine, internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a steam generating unit.

Emerging technology means any SO₂ control system that is not defined as a conventional technology under this section, and for which the owner or operator of the affected facility has received approval from the Administrator to operate as an emerging technology under § 60.48c(a)(4).

Federally enforceable means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

Fluidized bed combustion technology means a device wherein fuel is distributed onto a bed (or series of beds) of limestone aggregate (or other sorbent materials) for combustion; and these materials are forced upward in the device by the flow of combustion air and the gaseous products of combustion. Fluidized bed combustion technology includes, but is not limited to, bubbling bed units and circulating bed units.

Fuel pretreatment means a process that removes a portion of the sulfur in a fuel before combustion of the fuel in a steam generating unit.

Heat input means heat derived from combustion of fuel in a steam generating unit and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust gases from other sources (such as stationary gas turbines, internal combustion engines, and kilns).

Heat transfer medium means any material that is used to transfer heat from one point to another point.

Maximum design heat input capacity means the ability of a steam generating unit to combust a stated maximum amount of fuel (or combination of fuels) on a steady state basis as determined by the physical design and characteristics of the steam generating unit.

Natural gas means (1) a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane, or (2) liquefied petroleum (LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835-86, "Standard Specification for Liquefied Petroleum Gases" (incorporated by reference—see § 60.17).

Noncontinental area means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

Oil means crude oil or petroleum, or a liquid fuel derived from crude oil or petroleum, including distillate oil and residual oil.

Potential sulfur dioxide emission rate means the theoretical SO₂ emissions (nanograms per joule [ng/J], or pounds per million Btu [lb/million Btu] heat input) that would result from combusting fuel in an uncleaned state and without using emission control systems.

Process heater means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

Residual oil means crude oil, fuel oil that does not comply with the specifications under the definition of distillate oil, and all fuel oil numbers 4,

5, and 6, as defined by the American Society for Testing and Materials in ASTM D396-78, "Standard Specification for Fuel Oils" (incorporated by reference—see § 60.17).

Steam generating unit means a device that combusts any fuel and produces steam or heats water or any other heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system. This term does not include process heaters as defined in this subpart.

Steam generating unit operating day means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

Wet flue gas desulfurization technology means an SO₂ control system that is located between the steam generating unit and the exhaust vent or stack, and that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a liquid material. This definition includes devices where the liquid material is subsequently converted to another form. Alkaline reagents used in wet flue gas desulfurization systems include, but are not limited to, lime, limestone, and sodium compounds.

Wet scrubber system means any emission control device that mixes an aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of particulate matter (PM) or SO₂.

Wood means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

§ 60.42c Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c), and (e) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, the owner or operator of an affected facility that combusts only coal shall neither: (1) cause to be discharged into the atmosphere from that affected facility any gases that contain SO₂ in excess of 10 percent (0.10) of the potential SO₂ emission rate (90 percent reduction); nor (2) cause to be discharged into the atmosphere from that affected facility any gases that contain SO₂ in excess of 520 ng/J (1.2

lb/million Btu) heat input. If coal is combusted with other fuels, the affected facility is subject to the 90 percent SO₂ reduction requirement specified in this paragraph and the emission limit is determined pursuant to paragraph (e)(2) of this section.

(b) Except as provided in paragraphs (c) and (e) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, the owner or operator of an affected facility that:

(1) Combusts coal refuse alone in a fluidized bed combustion steam generating unit shall neither:

(i) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO₂ in excess of 20 percent (0.20) of the potential SO₂ emission rate (80 percent reduction); nor

(ii) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO₂ in excess of 520 ng/J (1.2 lb/million Btu) heat input. If coal is fired with coal refuse, the affected facility is subject to paragraph (a) of this section. If oil or any other fuel (except coal) is fired with coal refuse, the affected facility is subject to the 90 percent SO₂ reduction requirement specified in paragraph (a) of this section and the emission limit determined pursuant to paragraph (e)(2) of this section.

(2) Combusts only coal and that uses an emerging technology for the control of SO₂ emissions shall neither:

(i) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO₂ in excess of 50 percent (0.50) of the potential SO₂ emission rate (50 percent reduction); nor

(ii) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO₂ in excess of 260 ng/J (0.60 lb/million Btu) heat input. If coal is combusted with other fuels, the affected facility is subject to the 50 percent SO₂ reduction requirement specified in this paragraph and the emission limit determined pursuant to paragraph (e)(2) of this section.

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, alone or in combination with any other fuel, and is listed in paragraphs (c)(1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO₂ in excess of the emission limit determined pursuant to paragraph

(e)(2) of this section. Percent reduction requirements are not applicable to affected facilities under this paragraph.

(1) Affected facilities that have a heat input capacity of 22 MW (75 million Btu/hr) or less.

(2) Affected facilities that have an annual capacity for coal of 55 percent (0.55) or less and are subject to a Federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for coal of 55 percent (0.55) or less.

(3) Affected facilities located in a noncontinental area.

(4) Affected facilities that combust coal in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat entering the steam generating unit is from combustion of coal in the duct burner and 70 percent (0.70) or more of the heat entering the steam generating unit is from exhaust gases entering the duct burner.

(d) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts oil shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 215 ng/J (0.50 lb/million Btu) heat input; or, as an alternative, no owner or operator of an affected facility that combusts oil shall combust oil in the affected facility that contains greater than 0.5 weight percent sulfur. The percent reduction requirements are not applicable to affected facilities under this paragraph.

(e) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, or coal and oil with any other fuel shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of the following:

(1) The percent of potential SO_2 emission rate required under paragraph (a) or (b)(2) of this section, as applicable, for any affected facility that

(i) Combusts coal in combination with any other fuel,

(ii) Has a heat input capacity greater than 22 MW (75 million Btu/hr), and

(iii) Has an annual capacity factor for coal greater than 55 percent (0.55); and

(2) The emission limit determined according to the following formula for any affected facility that combusts coal, oil, or coal and oil with any other fuel:

$$E_a = (K_a H_a + K_b H_b + K_c H_c) / (H_a + H_b + H_c)$$

where:

E_a is the SO_2 emission limit, expressed in ng/J or lb/million Btu heat input,

K_a is 520 ng/J (1.2 lb/million Btu),

K_b is 260 ng/J (0.60 lb/million Btu),

K_c is 215 ng/J (0.50 lb/million Btu),

H_a is the heat input from the combustion of coal, except coal combusted in an affected facility subject to paragraph (b)(2) of this section, in Joules (J) [million Btu]

H_b is the heat input from the combustion of coal in an affected facility subject to paragraph (b)(2) of this section, in J (million Btu)

H_c is the heat input from the combustion of oil, in J (million Btu).

(f) Reduction in the potential SO_2 emission rate through fuel pretreatment is not credited toward the percent reduction requirement under paragraph (b)(2) of this section unless:

(1) Fuel pretreatment results in a 50 percent (0.50) or greater reduction in the potential SO_2 emission rate; and

(2) Emissions from the pretreated fuel (without either combustion or post-combustion SO_2 control) are equal to or less than the emission limits specified under paragraph (b)(2) of this section.

(g) Except as provided in paragraph (h) of this section, compliance with the percent reduction requirements, fuel oil sulfur limits, and emission limits of this section shall be determined on a 30-day rolling average basis.

(h) For affected facilities listed under paragraphs (h)(1), (2), or (3) of this section, compliance with the emission limits or fuel oil sulfur limits under this section may be determined based on a certification from the fuel supplier, as described under § 60.48c(f)(1), (2), or (3), as applicable.

(1) Distillate oil-fired affected facilities with heat input capacities between 2.9 and 29 MW (10 and 100 million Btu/hr).

(2) Residual oil-fired affected facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 million Btu/hr).

(3) Coal-fired facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 million Btu/hr).

(i) The SO_2 emission limits, fuel oil sulfur limits, and percent reduction requirements under this section apply at all times, including periods of startup, shutdown, and malfunction.

(j) Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from wood or other fuels or for heat derived from exhaust gases from other sources, such as stationary gas turbines, internal combustion engines, and kilns.

§ 60.43c Standard for particulate matter.

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal or combusts mixtures of coal with other fuels and has a heat input capacity of 8.7 MW (30 million Btu/hr) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emission limits:

(1) 22 ng/J (0.05 lb/million Btu) heat input if the affected facility combusts only coal, or combusts coal with other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 43 ng/J (0.10 lb/million Btu) heat input if the affected facility combusts coal with other fuels, has an annual capacity factor for the other fuels greater than 10 percent (0.10), and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.

(b) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts wood or combusts mixtures of wood with other fuels (except coal) and has a heat input capacity of 8.7 MW (30 million Btu/hr) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emissions limits:

(1) 43 ng/J (0.10 lb/million Btu) heat input if the affected facility has an annual capacity factor for wood greater than 30 percent (0.30); or

(2) 130 ng/J (0.30 lb/million Btu) heat input if the affected facility has an annual capacity factor for wood of 30 percent (0.30) or less and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for wood of 30 percent (0.30) or less.

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, wood, or oil and has a heat input capacity of 8.7 MW (30 million Btu/hr) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-

minute period per hour of not more than 27 percent opacity.

(d) The PM and opacity standards under this section apply at all times, except during periods of startup, shutdown, or malfunction.

§ 60.44c Compliance and performance test methods and procedures for sulfur dioxide.

(a) Except as provided in paragraphs (g) and (h) of this section and in § 60.8(b), performance tests required under § 60.8 shall be conducted following the procedures specified in paragraphs (b), (c), (d), (e), and (f) of this section, as applicable. Section 60.8(f) does not apply to this section. The 30-day notice required in § 60.8(d) applies only to the initial performance test unless otherwise specified by the Administrator.

(b) The initial performance test required under § 60.8 shall be conducted over 30 consecutive operating days of the steam generating unit. Compliance with the percent reduction requirements and SO₂ emission limits under § 60.42c shall be determined using a 30-day average. The first operating day included in the initial performance test shall be scheduled within 30 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after the initial startup of the facility. The steam generating unit load during the 30-day period does not have to be the maximum design heat input capacity, but must be representative of future operating conditions.

(c) After the initial performance test required under paragraph (b) and § 60.8, compliance with the percent reduction requirements and SO₂ emission limits under § 60.42c is based on the average percent reduction and the average SO₂ emission rates for 30 consecutive steam generating unit operating days. A separate performance test is completed at the end of each steam generating unit operating day, and a new 30-day average percent reduction and SO₂ emission rate are calculated to show compliance with the standard.

(d) If only coal, only oil, or a mixture of coal and oil is combusted in an affected facility, the procedures in Method 19 are used to determine the hourly SO₂ emission rate (E_{ho}) and the 30-day average SO₂ emission rate (E_{ao}). The hourly averages used to compute the 30-day averages are obtained from the continuous emission monitoring system (CEMS). Method 19 shall be used to calculate E_{ao} when using daily fuel sampling or Method 6B.

(e) If coal, oil, or coal and oil are combusted with other fuels:

(1) An adjusted E_{ho} (E_{ho}^o) is used in Equation 19-19 of Method 19 to compute the adjusted E_{ao} (E_{ao}^o). The E_{ho}^o is computed using the following formula:

$$E_{ho}^o = [E_{ho} - E_w(1 - X_k)]/X_k$$

where:

E_{ho}^o is the adjusted E_{ho} , ng/J (lb/million Btu)

E_{ho} is the hourly SO₂ emission rate, ng/J (lb/million Btu)

E_w is the SO₂ concentration in fuels other than coal and oil combusted in the affected facility, as determined by fuel sampling and analysis procedures in Method 9, ng/J (lb/million Btu). The value E_w for each fuel lot is used for each hourly average during the time that the lot is being combusted. The owner or operator does not have to measure E_w if the owner or operator elects to assume $E_w = 0$.

X_k is the fraction of the total heat input from fuel combustion derived from coal and oil, as determined by applicable procedures in Method 19.

(2) The owner or operator of an affected facility that qualifies under the provisions of § 60.42c(c) or (d) [where percent reduction is not required] does not have to measure the parameters E_w or X_k if the owner or operator of the affected facility elects to measure emission rates of the coal or oil using the fuel sampling and analysis procedures under Method 19.

(f) Affected facilities subject to the percent reduction requirements under § 60.42c(a) or (b) shall determine compliance with the SO₂ emission limits under § 60.42c pursuant to paragraphs (d) or (e) of this section, and shall determine compliance with the percent reduction requirements using the following procedures:

(1) If only coal is combusted, the percent of potential SO₂ emission rate is computed using the following formula:

$$\%P_s = 100(1 - \%R_s/100)(1 - \%R_d/100)$$

where

$\%P_s$ is the percent of potential SO₂ emission rate, in percent

$\%R_s$ is the SO₂ removal efficiency of the control device as determined by Method 19, in percent

$\%R_d$ is the SO₂ removal efficiency of fuel pretreatment as determined by Method 19, in percent

(2) If coal, oil, or coal and oil are combusted with other fuels, the same procedures required in paragraph (f)(1) of this section are used, except as provided for in the following:

(i) To compute the $\%P_s$, an adjusted $\%R_s$ ($\%R_s^o$) is computed from E_{ao}^o from paragraph (e)(1) of this section and an adjusted average SO₂ inlet rate (E_{ai}^o) using the following formula:

$$\%R_s^o = 100 [1.0 - E_{ao}^o/E_{ai}^o]$$

where:

$\%R_s^o$ is the adjusted $\%R_s$, in percent

E_{ao}^o is the adjusted E_{ao} , ng/J (lb/million Btu)

E_{ai}^o is the adjusted average SO₂ inlet rate, ng/J (lb/million Btu)

(ii) To compute E_{ai}^o , an adjusted hourly SO₂ inlet rate (E_{ai}^o) is used. The E_{ai}^o is computed using the following formula:

$$E_{ai}^o = [E_{ai} - E_w(1 - X_k)]/X_k$$

where:

E_{ai}^o is the adjusted E_{ai} , ng/J (lb/million Btu)

E_{ai} is the hourly SO₂ inlet rate, ng/J (lb/million Btu)

E_w is the SO₂ concentration in fuels other than coal and oil combusted in the affected facility, as determined by fuel sampling and analysis procedures in Method 19, ng/J (lb/million Btu). The value E_w for each fuel lot is used for each hourly average during the time that the lot is being combusted. The owner or operator does not have to measure E_w if the owner or operator elects to assume $E_w = 0$.

X_k is the fraction of the total heat input from fuel combustion derived from coal and oil, as determined by applicable procedures in Method 19.

(g) For oil-fired affected facilities where the owner or operator seeks to demonstrate compliance with the fuel oil sulfur limits under § 60.42c based on shipment fuel sampling, the initial performance test shall consist of sampling and analyzing the oil in the initial tank of oil to be fired in the steam generating unit to demonstrate that the oil contains 0.5 weight percent sulfur or less. Thereafter, the owner or operator of the affected facility shall sample the oil in the fuel tank after each new shipment of oil is received, as described under § 60.46c(d)(2).

(h) For affected facilities subject to § 60.42c(h)(1), (2), or (3) where the owner or operator seeks to demonstrate compliance with the SO₂ standards based on fuel supplier certification, the performance test shall consist of the certification, the certification from the fuel supplier, as described under § 60.48c(f)(1), (2), or (3), as applicable.

(i) The owner or operator of an affected facility seeking to demonstrate compliance with the SO₂ standards under § 60.42c(c)(2) shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the steam generating unit at this capacity for 24 hours. This demonstration shall be made during the initial performance test, and a subsequent demonstration may be requested at any other time. If the demonstrated 24-hour averaged firing rate for the affected facility is less than the maximum design heat input capacity stated by the manufacturer of the

affected facility, the demonstrated 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility; otherwise, the maximum design heat input capacity provided by the manufacturer shall be used.

(j) The owner or operator of an affected facility shall use all valid SO₂ emissions data in calculating %P_s and E_{no} under paragraphs (d), (e), or (f) of this section, as applicable, whether or not the minimum emissions data requirements under § 60.46c(f) are achieved. All valid emissions data, including valid data collected during periods of startup, shutdown, and malfunction, shall be used in calculating %P_s or E_{no} pursuant to paragraphs (d), (e), or (f) of this section, as applicable.

§ 60.45c Compliance and performance test methods and procedures for particulate matter.

(a) The owner or operator of an affected facility subject to the PM and/or opacity standards under § 60.43c shall conduct an initial performance test as required under § 60.8, and shall conduct subsequent performance tests as requested by the Administrator, to determine compliance with the standards using the following procedures and reference methods.

(1) Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 120 minutes and the minimum sampling volume shall be 1.7 dry square cubic meters (dscm) [60 dry square cubic feet (dscf)] except that smaller sampling times or volumes may be approved by the Administrator when necessitated by process variables or other factors.

(2) Method 3 shall be used for gas analysis when applying Method 5, Method 5B, or Method 17.

(3) Method 5, Method 5B, or Method 17 shall be used to measure the concentration of PM as follows:

(i) Method 5 may be used only at affected facilities without wet scrubber systems.

(ii) Method 17 may be used at affected facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160 °C (320 °F). The procedures of Sections 2.1 and 2.3 of Method 5B may be used in Method 17 only if Method 17 is used in conjunction with a wet scrubber system. Method 17 shall not be used in conjunction with a wet scrubber system if the effluent is saturated or laden with water droplets.

(iii) Method 5B may be used in conjunction with a wet scrubber system.

(4) For Method 5 or Method 5B, the temperature of the sample gas in the probe and filter holder shall be monitored and maintained at 160 °C (320 °F).

(5) For determination of PM emissions, an oxygen or carbon dioxide measurement shall be obtained simultaneously with each run of Method 5, Method 5B, or Method 17 by traversing the duct at the same sampling location.

(6) For each run using Method 5, Method 5B, or Method 17, the emission rates expressed in ng/J (lb/million Btu) heat input shall be determined using:

(i) The oxygen or carbon dioxide measurements and PM measurements obtained under this section,

(ii) The dry basis F-factor, and

(iii) The dry basis emission rate calculation procedure contained in Method 19 (Appendix A).

(7) Method 9 (6-minute average of 24 observations) shall be used for determining the opacity of stack emissions.

(b) The owner or operator of an affected facility seeking to demonstrate compliance with the PM standards under § 60.43c(b)(2) shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the steam generating unit at this capacity for 24 hours. This demonstration shall be made during the initial performance test, and a subsequent demonstration may be requested at any other time. If the demonstrated 24-hour average firing rate for the affected facility is less than the maximum design heat input capacity stated by the manufacturer of the affected facility, the demonstrated 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility; otherwise, the maximum design heat input capacity provided by the manufacturer shall be used.

§ 60.46c Emission monitoring for sulfur dioxide

(a) Except as provided in paragraphs (d) and (e) of this section, the owner or operator of an affected facility subject to the SO₂ emission limits under § 60.42c shall install, calibrate, maintain, and operate a CEMS for measuring SO₂ concentrations and either oxygen or carbon dioxide concentrations at the outlet of the SO₂ control device (or the outlet of the steam generating unit if no SO₂ control device is used), and shall record the output of the system. The owner or operator of an affected facility subject to the percent reduction requirements under § 60.42c shall measure SO₂ concentrations and either

oxygen or carbon dioxide concentrations at both the inlet and outlet of the SO₂ control device.

(b) The 1-hour average SO₂ emission rates measured by a CEM shall be expressed in ng/J or lb/million Btu heat input and shall be used to calculate the average emission rates under § 60.42c. Each 1-hour average SO₂ emission rate must be based on at least 30 minutes of operation and include at least 2 data points representing two 15-minute periods. Hourly SO₂ emission rates are not calculated if the affected facility is operated less than 30 minutes in a 1-hour period and are not counted toward determination of a steam generating unit operating day.

(c) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(1) All CEMS shall be operated in accordance with the applicable procedures under Performance Specifications 1, 2, and 3 (Appendix B).

(2) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 (Appendix F).

(3) For affected facilities subject to the percent reduction requirements under § 60.42c, the span value of the SO₂ CEMS at the inlet to the SO₂ control device shall be 125 percent of the maximum estimated hourly potential SO₂ emission rate of the fuel combusted, and the span value of the SO₂ CEMS at the outlet from the SO₂ control device shall be 50 percent of the maximum estimated hourly potential SO₂ emission rate of the fuel combusted.

(4) For affected facilities that are not subject to the percent reduction requirements of § 60.42c, the span value of the SO₂ CEMS at the outlet from the SO₂ control device (or outlet of the steam generating unit if no SO₂ control device is used) shall be 125 percent of the maximum estimated hourly potential SO₂ emission rate of the fuel combusted.

(d) As an alternative to operating a CEMS at the inlet to the SO₂ control device (or outlet of the steam generating unit if no SO₂ control device is used) as required under paragraph (a) of this section, an owner or operator may elect to determine the average SO₂ emission rate by sampling the fuel prior to combustion. As an alternative to operating a CEM at the outlet from the SO₂ control device (or outlet of the steam generating unit if no SO₂ control device is used) as required under paragraph (a) of this section, an owner or operator may elect to determine the average SO₂ emission rate by using Method 6B. Fuel sampling shall be conducted pursuant to either paragraph

(d)(1) or (d)(2) of this section. Method 6B shall be conducted pursuant to paragraph (d)(3) of this section.

(1) For affected facilities combusting coal or oil, coal or oil samples shall be collected daily in an as-fired condition at the inlet to the steam generating unit and analyzed for sulfur content and heat content according to the Method 19. Method 19 provides procedures for converting these measurements into the format to be used in calculating the average SO₂ input rate.

(2) As an alternative fuel sampling procedure for affected facilities combusting oil, oil samples may be collected from the fuel tank for each steam generating unit immediately after the fuel tank is filled and before any oil is combusted. The owner or operator of the affected facility shall analyze the oil sample to determine the sulfur content of the oil. If a partially empty fuel tank is refilled, a new sample and analysis of the fuel in the tank would be required upon filling. Results of the fuel analysis taken after each new shipment of oil is received shall be used as the daily value when calculating the 30-day rolling average until the next shipment is received. If the fuel analysis shows that the sulfur content in the fuel tank is greater than 0.5 weight percent sulfur, the owner or operator shall ensure that the sulfur content of subsequent oil shipments is low enough to cause the 30-day rolling average sulfur content to be 0.5 weight percent sulfur or less.

(3) Method 6B may be used in lieu of CEMS to measure SO₂ at the inlet or outlet of the SO₂ control system. An initial stratification test is required to verify the adequacy of the Method 6B sampling location. The stratification test shall consist of three paired runs of a suitable SO₂ and carbon dioxide measurement train operated at the candidate location and a second similar train operated according to the procedures in § 3.2 and the applicable procedures in section 7 of Performance Specification 2 (Appendix B). Method 6B, Method 6A, or a combination of Methods 6 and 3 or Methods 6C and 3A are suitable measurement techniques. If Method 6B is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B 24-hour tests, the mean of the absolute difference between the three paired runs must be less than 10 percent (0.10).

(e) The monitoring requirements of paragraphs (a) and (d) of this section shall not apply to affected facilities subject to § 60.42c(h) (1), (2), or (3)

where the owner or operator of the affected facility seeks to demonstrate compliance with the SO₂ standards based on fuel supplier certification, as described under § 60.48c(f) (1), (2), or (3), as applicable.

(f) The owner or operator of an affected facility operating a CEMS pursuant to paragraph (a) of this section, or conducting as-fired fuel sampling pursuant to paragraph (d)(1) of this section, shall obtain emission data for at least 75 percent of the operating hours in at least 22 out of 30 successive steam generating unit operating days. If this minimum data requirement is not met with a single monitoring system, the owner or operator of the affected facility shall supplement the emission data with data collected with other monitoring systems as approved by the Administrator.

§ 60.47c Emission monitoring for particulate matter.

(a) The owner or operator of an affected facility combusting coal, residual oil, or wood that is subject to the opacity standards under § 60.43c shall install, calibrate, maintain, and operate a CEMS for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system.

(b) All CEMS for measuring opacity shall be operated in accordance with the applicable procedures under Performance Specification 1 (appendix B). The span value of the opacity CEMS shall be between 60 and 80 percent.

§ 60.48c Reporting and recordkeeping requirements.

(a) The owner or operator of each affected facility shall submit notification of the date of construction or reconstruction, anticipated startup, and actual startup, as provided by § 60.7 of this part. This notification shall include:

(1) The design heat input capacity of the affected facility and identification of fuels to be combusted in the affected facility.

(2) If applicable, a copy of any Federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under § 60.42c, or § 60.43c.

(3) The annual capacity factor at which the owner or operator anticipates operating the affected facility based on all fuels fired and based on each individual fuel fired.

(4) Notification if an emerging technology will be used for controlling SO₂ emissions. The Administrator will examine the description of the control device and will determine whether the technology qualifies as an emerging

technology. In making this determination, the Administrator may require the owner or operator of the affected facility to submit additional information concerning the control device. The affected facility is subject to the provisions of § 60.42c(a) or (b)(1), unless and until this determination is made by the Administrator.

(b) The owner or operator of each affected facility subject to the SO₂ emission limits of § 60.42c, or the PM or opacity limits of § 60.43c, shall submit to the Administrator the performance test data from the initial and any subsequent performance tests and, if applicable, the performance evaluation of the CEMS using the applicable performance specifications in appendix B.

(c) The owner or operator of each coal-fired, residual oil-fired, or wood-fired affected facility subject to the opacity limits under § 60.43c(c) shall submit excess emission reports for any calendar quarter for which there are excess emissions from the affected facility. If there are no excess emissions during the calendar quarter, the owner or operator shall submit a report semiannually stating that no excess emissions occurred during the semiannual reporting period. The initial quarterly report shall be postmarked by the 30th day of the third month following the completion of the initial performance test, unless no excess emissions occur during that quarter. The initial semiannual report shall be postmarked by the 30th day of the sixth month following the completion of the initial performance test, or following the date of the previous quarterly report, as applicable. Each subsequent quarterly or semiannual report shall be postmarked by the 30th day following the end of the reporting period.

(d) The owner or operator of each affected facility subject to the SO₂ emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.42c shall submit quarterly reports to the Administrator. The initial quarterly report shall be postmarked by the 30th day of the third month following the completion of the initial performance test. Each subsequent quarterly report shall be postmarked by the 30th day following the end of the reporting period.

(e) The owner or operator of each affected facility subject to the SO₂ emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.43c shall keep records and submit quarterly reports as required under paragraph (d) of this section, including the following information, as applicable.

(1) Calendar dates covered in the reporting period.

(2) Each 30-day average SO₂ emission rate (ng/J or lb/million Btu), or 30-day average sulfur content (weight percent), calculated during the reporting period, ending with the last 30-day period in the quarter; reasons for any noncompliance with the emission standards; and a description of corrective actions taken.

(3) Each 30-day average percent of potential SO₂ emission rate calculated during the reporting period, ending with the last 30-day period in the quarter; reasons for any noncompliance with the emission standards; and a description of corrective actions taken.

(4) Identification of any steam generating unit operating days for which SO₂ or diluent (oxygen or carbon dioxide) data have not been obtained by an approved method for at least 75 percent of the operating hours; justification for not obtaining sufficient data; and a description of corrective actions taken.

(5) Identification of any times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and a description of corrective actions taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit.

(6) Identification of the F factor used in calculations, method of determination, and type of fuel combusted.

(7) Identification of whether averages have been obtained based on CEMS rather than manual sampling methods.

(8) If a CEMS is used, identification of any times when the pollutant concentration exceeded the full span of the CEMS.

(9) If a CEMS is used, description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specifications 2 or 3 (appendix B).

(10) If a CEMS is used, results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1.

(11) If fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification as described under paragraph (f)(1), (2), or (3) of this section, as applicable. In addition to records of fuel supplier certifications, the quarterly report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the quarter.

(f) Fuel supplier certification shall include the following information:

(1) For distillate oil:

(i) The name of the oil supplier; and

(ii) A statement from the oil supplier that the oil complies with the specifications under the definition of distillate oil in § 60.41c.

(2) For residual oil:

(i) The name of the oil supplier;

(ii) The location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the affected facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location;

(iii) The sulfur content of the oil from which the shipment came (or of the shipment itself); and

(iv) The method used to determine the sulfur content of the oil.

(3) For coal:

(i) The name of the coal supplier;

(ii) The location of the coal when the sample was collected for analysis to determine the properties of the coal, specifically including whether the coal was sampled as delivered to the affected facility or whether the sample was collected from coal in storage at the mine, at a coal preparation plant, at a coal supplier's facility, or at another location. The certification shall include the name of the coal mine (and coal seam), coal storage facility, or coal preparation plant (where the sample was collected);

(iii) The results of the analysis of the coal from which the shipment came (or of the shipment itself) including the sulfur content, moisture content, ash content, and heat content; and

(iv) The methods used to determine the properties of the coal.

(g) The owner or operator of each affected facility shall record and maintain records of the amounts of each fuel combusted during each day.

(h) The owner or operator of each affected facility subject to a Federally enforceable requirement limiting the annual capacity factor for any fuel or mixture of fuels under § 60.42c or § 60.43c shall calculate the annual capacity factor individually for each fuel combusted. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of the calendar month.

(i) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of two years following the date of such record.

(Approved by the Office of Management and Budget under control number 2060-0202)

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