to be operated pursuant to a permit issued under the EPA-approved State operating permit program. In accordance with section 129, under the proposed standards and guidelines, a permit would be required on the date 36 months after the date of promulgation, or on the effective date of an EPA-approved operating permit program in the State in which the facility is located, whichever date is later. The operating permit programs are developed under Title V of the Act and the implementing regulations under 40 CFR part 70.

VI. Request for Comment

This section is included in this notice to request public comment on certain issues raised during the development of these proposed standards and guidelines. As mentioned at the beginning of this notice, the EPA seeks full public participation in arriving at its final decisions and strongly encourages comments on all aspects of this proposal from all interested parties.

A. Procedure To Determine MACT

Section 129 of the Act establishes specific criteria that must be analyzed in developing standards and guidelines for solid waste combustion units. In general, this involves: (1) determining appropriate subcategories within a source category; (2) determining the MACT "floor" for each subcategory; (3) assessing available air pollution control technology with regard to achievable emission limitations and costs; and (4) examining the cost, nonair-quality health and environmental impacts, and energy requirements associated with standards and guidelines more stringent than the MACT floor. The details of how this process was applied to the MWI source category are described in section

In the process of developing the proposed standards and guidelines, the EPA met with representatives from environmental groups, States, MWI and air pollution control equipment vendors, commercial waste disposal companies, and trade associations that represent owners or operators of MWI's to discuss the proposed standards and guidelines. During these discussions, various groups have called into question some of the conclusions reached in developing the proposed standards and guidelines.

Specifically, questions were raised about: (1) appropriate methods for subcategorizing the source category, (2) information and assumptions used in determining the MACT floor, (3) conclusions drawn regarding the performance of air pollution control technology, and (4) decisions made

regarding MACT for MWI's. This section describes the regulatory development process in general terms and requests public comments on the information used and assumptions made in drawing conclusions. Following proposal, a reassessment of the four criteria listed above will be made that may result in the establishment of standards and guidelines that are different from this proposal.

1. Subcategorization

Section 129 of the Act enables EPA to distinguish among classes, types, and sizes within categories of new and existing sources in establishing standards and guidelines. The Agency has determined that subcategorizing the source category by type of unit is appropriate because of distinct technical differences among three types of MWI's. Therefore, three subcategories based on MWI type have been identified for the purpose of regulating MWI's: batch, intermittent, and continuous. While these subcategories were selected because of technical differences between the three types of units, as described in section V.G, they also generally follow differences in size within the source category. Typically, continuous units are large capacity MWI's and batch units are small capacity MWI's. Intermittent units tend to fall between the continuous and batch units in size. The EPA specifically solicits comment on its determination to distinguish between continuous, intermittent, and batch units.

It has been suggested that subcategories could have been identified according to size or capacity: small capacity, medium capacity, and large capacity, or that EPA might establish a subcategory of small intermittent and/or small batch MWI's in addition to establishing subcategories on the basis of continuous, intermittent, and batch units. Such a distinction by size, or tiering, is currently used by many State air pollution control agencies. Current State regulations, therefore, may provide a basis for subcategorization by size in establishing the standards and guidelines. The Agency is considering subcategorization by size and specifically solicits comment on the basis for subcategorization by size.

The EPA recognizes that there may be a relatively large number of very small incinerators within the categories of batch and intermittent. If so, further subcategorizing batch and intermittent incinerators by size or capacity could provide an alternative for consideration which might significantly reduce the cost of today's proposed standards and

guidelines. If the MACT floor is less stringent for small intermittent and or small batch MWI's, the EPA could consider less stringent requirements for these incinerators. Also, if these incinerators contribute little to total national medical waste incineration capacity, adoption of less stringent requirements for them could result in little loss in the environmental benefits associated with today's proposal. This alternative, therefore, could have substantial merit and the EPA requests comment on such an approach.

To fully consider subcategorization by size, however, a mechanism must be available to accurately and consistently determine the capacity of an MWI. Only if such a mechanism exists, will enforcement personnel, as well as owners and operators of MWI's, be assured that MWI's are subject to a consistent set of requirements.

The EPA believes this may be a serious problem. It appears there is no common or widely used mechanism or "standard" within the MWI industry for sizing or determining the capacity of an incinerator to burn medical waste. As a result, it seems that one vendor's 50 pound per hour capacity incinerator can be another vendor's 100 pound per hour capacity incinerator. It also appears the same vendor may sell one customer a 50 pound per hour capacity MWI and then sell another customer the same incinerator as a 100 pound per hour MWI. The EPA believes that a manufacturer's or vendor's "nameplate capacity" is not an accurate and reliable means for determining the size or capacity of an MWI.

The EPA recognizes that the composition of medical waste changes across generators, over time, and in response to changes in waste handling or recycling practices in a way that may affect the amount of medical waste a specific incinerator is able to burn. For the purposes of enforcing regulations that may vary by size or capacity, a common mechanism or "standard" to measure or determine the capacity of MWI's is necessary.

Consequently, EPA specifically requests comments on a mechanism or "standard" for accurately and consistently determining the capacity of MWI's in the enforcement of whatever regulation might be adopted. For example, the comments might outline the mechanisms or approaches used by States to ensure all MWI's of the same capacity are subject to the same requirements. Or, the comments may offer alternative measures of capacity that serve as a better basis for identifying small intermittent and/or small batch MWI's. Finally, the