technology-based treatment standard in § 268.40 or the UTS level in § 268.48.

First, the Agency repeats that it is not proposing to set any alternative risk-based LDR standards expressed as specified technologies (rather than constituent concentrations.) Consequently, the option of complying with minimize threat levels in lieu of levels specified in part 268 will be available only for wastes with treatment standards expressed as constituent concentrations. This includes both wastes subject to waste-specific treatment requirements under the table to § 268.40 and wastes subject to the Universal Treatment Standard levels in the table to § 268.48

The Agency proposes that for purposes of establishing nonwastewater and wastewater minimize threat values for wastes with BDAT treatment standards expressed as constituent concentrations, the levels proposed would utilize the LDR definitions of nonwastewater and wastewater from 40 CFR 268.2(d) and (f). Therefore, any exit levels that are considered nonwastewater for purposes of exit will also be considered nonwastewater for purposes of minimize threat. Likewise, wastewater exit levels will be considered wastewater LDR levels. The Agency believes that consistent definitions of nonwastewater and wastewater is the only practical means to establish minimize threat levels. The Agency realizes, however, that the modeling and subsequent development of exit levels for today's proposed exit did not use the part 268 definition of nonwastewater and wastewater. (A complete discussion of this may be found in section VIII.A.1.a.ii.) The effect of this would be that some wastes that would be defined as wastewaters under today's proposed exit scheme would be considered LDR non-wastewaters. The Agency requests comment on whether the definition in Part 268 should be adopted for purposes of establishing minimize threat levels.

The Agency compared the exit levels to the current LDR treatment levels to determine whether a constituent's risk level should be proposed as a minimize threat level. For wastewater values, the LDR wastewater value was directly compared to the wastewater exit value. Where the UTS nonwastewater level is a total level, the comparison was made to the nonwastewater totals exit level. Where the LDR nonwastewater level is a leach level, the comparison was made to the nonwastewater leach exit level. However, for the reasons explained below, the nonwastewater minimize threat level would contain both a leach level and a totals level. For both wastewater and nonwastewater, where the most comparable exit level is higher (less stringent) than the current LDR level, the constituent's risk level is proposed as an optional minimize threat level. The Agency requests comment on this approach to determining which exit levels are higher than current LDR levels.

The Agency is proposing that testing requirements when using minimize threat levels would be consistent with the current LDR testing requirements found in § 268.7. The Agency proposes that if a claimant wishes to meet LDR requirements by complying with a minimize threat level, the claimant must meet the minimize threat levels with a totals analysis, and where specified, the waste must meet the leach level with a leachate analysis. The Agency believes that a totals analysis is preferable to a leach analysis for establishing minimize threat levels, as it more directly pertains to all pathways, not only the groundwater pathway.

Today's proposed exit levels for nonwastewaters consist of two risk levels for each constituent. The totals (mg/kg) nonwastewater risk level is the result of the most limiting non-groundwater pathway. The leach (mg/L) nonwastewater risk level is the result of the most limiting groundwater pathway. The Agency believes it would be preferable to have one exit level, but the groundwater model results are a leach (mg/l), whereas the results from the multipathway analysis are a totals (mg/kg), and the science to extrapolate from a leach to totals is highly variable. Using only the leach or only the total risk level would reflect only a portion of the risks presented by the waste. A waste must meet both of these limits before it minimizes threats to human health and the environment. Consequently, EPA is proposing to include both levels in the minimize threat standards for nonwastewaters. The Agency proposes to allow generators to either use a calculational screen or perform the TCLP to make a determination that constituent concentrations do not exceed nonwastewater leach minimize threat levels. A full discussion and explanation of the calculational screen can be found in section VIII.A.1.a.iii. of today's proposal.

Because extrapolating from a leach to a total varies with each constituent and is not easily measured, EPA has not directly compared both of the minimize threat levels with the LDR standard. The Agency requests data on specific constituents where the second, less easily-compared nonwastewater minimize threat level may be harder to achieve than the current LDR standard. If such results occur, waste handlers will not be required to use the new minimize threat levels. The levels in the tables to § 268.40 and § 268.48 will continue to satisfy LDR requirements as they always have. The minimize threat levels will be located in Table 1 of § 268.60, are optional, and are intended to be used to provide treatment relief. The Agency believes that minimize threat levels will only be used where they are less stringent than current LDR levels. The Agency requests comment on the proposed revisions to part 268 with respect to minimize threat levels.

Table D–1 of appendix D to the preamble presents for comparison current LDR UTS standards and proposed minimize threat levels. The Agency is proposing that for the constituents listed below, the risk levels may substitute for current UTS treatment levels in 40 CFR 268.48 or for treatment standards for these constituents in 40 CFR 268.40. A table of the proposed minimize threat levels can be found at proposed 40 CFR 268.60 subpart F in the regulatory text following this preamble.

2. Constituents for Which Exit Levels Are Not Minimize Threat Levels

As an alternative to the approach described in C.1 above, the Agency solicits comment on the background data underlying the risk evaluations for these constituents. The Agency believes, in general, that the constituents evaluated in the risk analysis have relatively complete assessments of risk. The Agency recognizes, however, that data quality and completeness can vary among constituents, even for those for which risk can be assessed. The Agency solicits comment on both general criteria for assessing completeness of data, and also specific constituents for which use as minimize threat levels to cap LDR requirements may be inappropriate.

D. Meeting LDR Requirements

1. Wastes Below Exit Levels as Generated

EPA proposes that, if a generator samples a listed waste stream at its point of generation and analysis of the sample shows all constituents to be below exit levels, LDR requirements would not apply to the waste. EPA is proposing this result both for constituents with exit levels based on multipathway analysis (where, since exit levels can serve as LDR ''minimize threat'' levels that cap current treatment requirements, the LDR program will never require treatment to levels lower than exit levels) and constituents with