EPA (or the State) closely reviews sampling procedures, analytical test results, and the accompanying QA/QC data. This oversight increases the confidence in the quality and representativeness of the waste analysis.

Second, delisting is specific to one wastestream, which decreases uncertainties that arise in the more generic approach proposed today. For example, a delisting petition will typically provide the annual generation volume of the waste. Using a specific waste volume as an input to various models has allowed EPA to calculate exit levels that may be somewhat higher than the levels proposed in today's rule. EPA believes that it is reasonable to use higher exit levels for the smaller waste volumes in delisting petitions (see 56 FR 32993 (Reynolds Metals) for further description of volume impact).

The delisting process also allows more certainty in the plausible management scenarios that are modeled to generate exit levels. For example, the characteristics of the waste may dictate the likely disposal method (e.g., disposal in a landfill of de-watered process sludge). In some cases, special management standards may also be a factor (e.g., radioactive wastes are regulated under the Atomic Energy Act, therefore if such a hazardous waste were delisted, disposal options would be severely limited (see 60 FR 6054 (Hanford delisting)).

EPA also considers the applicability of available groundwater monitoring data from land-based waste management units that have received the petitioned waste. Such data are typically required under permitting regulations for hazardous waste facilities (see 40 CFR parts 264 and 265). If any contamination of groundwater appears to be due to constituents from the petitioned waste, EPA will consider this as a basis to deny the petition. The more generic waste identification rule proposed today does not incorporate this additional evaluation criterion.

EPA may also require special testing regimes to ensure waste consistently meets delisting criteria (e.g., see (cite Reynolds Metals, CSI, Hanford)). Because the overseeing agency reviews the petition in some detail, the testing frequency may be closely tied to the potential variability of the waste. A facility that accepts and treats waste from diverse sources would typically have frequent testing requirements (see 40 CFR part 261 appendix IX (Envirite)). In other cases, the testing requirements for some initial period will be extensive, but the subsequent testing may be reduced.

Delisting petitions for wastes that contain toxic constituents which exceed the exemption levels proposed today will continue to be accepted and reviewed by the Agency after promulgation of today's rule. With the exception of a potentially reduced petition review burden, the Agency does not anticipate any changes in the current review of delisting petitions as a result of the implementation of today's proposed exemption. EPA does request comment on which risk models should be used to evaluate future delisting petitions.

## *F. Requirements for Treatment, Storage, and Disposal Facilities and Interim Status Facilities*

In order to implement the changes proposed today, owners or operators of RCRA permitted or interim status facilities may have to amend their waste analysis plans if required under 40 CFR 264.13 and 265.13. Such changes will most likely include the addition of the appropriate analysis methods and changes that may be required in the frequency of testing.

Permitted facilities, in unauthorized States, who elect to employ the exemption procedures and who subsequently prepare changes to their waste analysis plans should, following promulgation of this rule, submit a Class I permit modification to EPA. (EPA is aware that although most States have either become authorized for, or have adopted, the 3-class permit modification regulations, some states may still be operating under the older "major/ minor" permit modification procedures. Under those procedures, changes to the waste analysis plan would be considered a major modification).

## G. Closure

Under today's proposed rule, a hazardous waste management unit that receives wastes that are exempt under today's exit criteria would continue to be a regulated Subtitle C unit subject to the requirements of 40 CFR parts 264 or 265, including closure requirements, until the owner/operator completed clean closure of the unit or unless all of the waste in the unit were delisted. A unit receiving only waste that is exempt under today's proposal would no longer be receiving hazardous waste upon the effective date of the exemption; such a unit would normally become subject to Subtitle C closure requirements, which are triggered by the final receipt of hazardous waste by the unit. The facility owner or operator is required to complete closure activities within 180 days after receiving the final volume of hazardous waste. 40 CFR 264.113(b) and 265.113(b). However, RCRA closure requirements do allow certain waste management units to delay closure, while continuing to receive nonhazardous waste (such as waste exempt under today's proposed rule), provided certain conditions are met.

The RCRA delay-of-closure regulations, promulgated on August 14, 1989 (54 FR 33376), allow owners or operators to delay the closure of landfills, land treatment units, and surface impoundments in cases where the unit stops receiving hazardous waste but the owner or operator wishes to continue using the unit to manage only non-hazardous waste. These requirements are outlined in 40 CFR 264.113(d) and (e) and 265.113(d) and (e). Owners or operators wishing to delay closure must request a permit modification at least 120 days prior to final receipt of hazardous wastes, or, if the facility is in interim status, submit an amended part B application at least 180 days prior to the final receipt of hazardous wastes. The request for a permit modification or the amended part B application must include demonstrations that the unit has the existing design capacity to manage nonhazardous wastes, and that the nonhazardous wastes are not incompatible with any wastes in the unit. In addition, certain facility information including the waste analysis plan, groundwater monitoring plans, closure and postclosure plans, cost estimates, and financial assurance demonstrations must be updated as necessary to account for receipt of only non-hazardous waste. Sections 264.113(d) and 265.113(d). In addition, surface impoundments that do not meet the minimum technological requirements (MTRs) for liners and leachate collection of RCRA 3004(o) must comply with additional requirements in order to delay closure, including the removal of hazardous wastes to the extent practicable from the unit. Sections 264.113(e) and 265.113(e).

The delay of closure regulations apply only to landfills, land treatment units, and surface impoundments. In the case of other RCRA units such as tanks and waste piles, the Agency did not feel that the delay-of-closure regulations were necessary for these types of units in order to receive only non-hazardous wastes (54 FR 33383). The closure requirements in subpart G for these units include removal or decontamination of waste residues, containers, liners, bases and contaminated soils, equipment, and other containment system components; these closure requirements are not incompatible with the reuse of these