

By direction of the Commission.
 Lois D. Cashell,
Acting Secretary.
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PANAMA CANAL COMMISSION

35 CFR Part 60

Classified Information

AGENCY: Panama Canal Commission.
ACTION: Final rule.

SUMMARY: This final rule revises 35 CFR Part 60, which governs the Panama Canal Commission's information security program. The purpose of this document is to implement the provisions of Executive Order 12356. The regulations contained in this part are adopted pursuant to that Executive Order (which became effective on August 1, 1982) and to implement its provisions within the Panama Canal Commission. Executive Order 12356 sets forth uniform standards for the identification, classification, downgrading, declassification, and safeguarding of security information affecting the national defense and foreign relations of the United States.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, 2000 L Street NW., Washington DC 20036-4996 (Telephone: 202-634-6441) or Mr. Thomas C. Duty, Chief, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000 (Telephone: 011-507-52-7757).

SUPPLEMENTARY INFORMATION: The Panama Canal Commission is revising its regulations dealing with programs for safeguarding and handling of classified information in order to implement Executive Order 12356. In addition to incorporating the provisions of the Executive Order and its implementing directives, the regulations also reflect organizational changes created by the disestablishment of the agency's Internal Security Office on December 1, 1981, and the subsequent realignment of duties and responsibilities between the Offices of Executive Administration and Personnel Administration, Panama Canal Commission. As part of this realignment, the Director, Office of Executive Administration has been designated the senior agency official to direct and administer the information security program for the Commission; his duties include an active oversight

and security education program to ensure effective implementation of Executive Order 12356 and any implementing directives published by the Information Security Oversight Office. Also as a result this realignment, the Personnel Director has been designated the official responsible for directing the conduct of investigations of individuals for the purpose of security clearances, in accordance with the standards and criteria of E.O. 10450.

This is not a major rule for the purposes of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 35 CFR Part 60

Classified Information, Information Security, Panama Canal Commission.

For the reasons set forth in the preamble, the Panama Canal Commission proposes to revise in its entirety 35 CFR Part 60 to read as follows:

PART 60—CLASSIFIED INFORMATION

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| 60.19 | Reproduction of classified documents. |

Authority: E.O. 12356, 47 FR 14874; 32 CFR Part 2001 (Directive No. 1, Information Security Oversight Office), 47 FR 27836; E.O. 10450, 18 FR 2489; 22 U.S.C. 3611.

§ 60.1 Authority, scope, and definitions.

(a) Executive Order 12356, dated April 2, 1982 (47 FR 14874, April 6, 1982) and 32 CFR Part 2001 (Directive No. 1 of the Information Security Oversight Office, approved by the National Security Council on June 22, 1982, 47 FR 27836,

June 25, 1982), set forth uniform standards for the identification, classification, downgrading, declassification, and safeguarding of security information affecting the national defense and foreign relations of the United States. The regulations contained in this part are adopted pursuant to that Executive Order (which became effective on August 1, 1982) and implement its provisions within the Panama Canal Commission.

(b) Definitions:

(1) "Commission" refers to the Panama Canal Commission.

(2) "Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(3) "National security information" means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(4) "Foreign government information" means:

(i) Information provided by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, be held in confidence; or

(ii) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, be held in confidence.

(5) "National security" means the national defense or foreign relations of the United States.

(6) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship or both be held in confidence.

(7) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

(8) "ODUSD(P)" refers to the Office of the Deputy Under Secretary of Defense (Policy).

§ 60.2 Compliance with Executive Order 12356 and implementing directives.

(a) The Director, Office of Executive Administration is designated the senior agency official to direct and administer the information security program for the Commission, including an active oversight and security education program to ensure effective implementation of Executive Order 12356 and any implementing directives published by the Information Security Oversight Office.

(b) The Director, Office of Executive Administration will establish procedures to prevent unnecessary access to classified information, including procedures that (1) require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures and (2) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs.

(c) The Personnel Director will direct the conduct of investigations relative to the issuance of security clearances in accordance with the standards and criteria of Executive Order 10450.

§ 60.3 Classification levels, categories, and limitations.

(a) Classification levels. Official information which requires protection against unauthorized disclosure in the interest of the national security shall be classified "Top Secret," "Secret," or "Confidential" depending upon the degree of its significance to national security. No other terms or phrases of classification shall be used to identify such information except as otherwise expressly provided by statute. If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by one of the original classification authorities listed in § 60.4(a), who shall make this determination within thirty (30) days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by one of the original classification authorities, who shall make this determination within thirty (30) days.

(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. The Commission does not have the authority to classify information originally as "Top Secret."

(2) "Secret" shall be applied to information, the unauthorized disclosure

of which reasonably could be expected to cause serious damage to the national security.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(b) Classification categories. Information shall be considered for classification if it concerns:

(1) Military plans, weapons, or operations;

(2) The vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;

(3) Foreign government information;

(4) Intelligence activities (including special activities), or intelligence sources or methods;

(5) Foreign relations or foreign activities of the United States;

(6) Scientific, technological, or economic matters relating to the national security;

(7) United States Government programs for safeguarding nuclear materials or facilities;

(8) Cryptology;

(9) A confidential source; or

(10) Other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have been delegated original classification authority by the President. Any determination made under this subsection shall be reported promptly to the Director of Information Security, Office of the Deputy Under Secretary of Defense (Policy).

(c) Information that is determined to concern one or more of the categories in § 60.3(b) shall be classified when one of the original classification authorities listed in § 60.4(a) also determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. Classification on the basis of combination or association with other (classified or unclassified) information shall be supported by a written explanation which shall be maintained with the record copy of such information.

(d) Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security.

(e) Information classified in accordance with § 60.3 shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United

States or abroad of identical or similar information, see § 60.11(e).

(f) Limitations on classification.

(1) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, an organization, or the Panama Canal Commission or other agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.

(2) Basic scientific research information not clearly related to the national security may not be classified.

(3) The President or the officials designated by the President in the **Federal Register** may reclassify information previously declassified and disclosed if it is determined in writing that (i) the information requires protection in the interest of national security; and (ii) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the DUSD(P) for subsequent reporting to the Director of the Information Security Oversight Office.

(4) Information in the custody of the Panama Canal Commission may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of Executive Order 12356 if such classification meets the requirements of that Executive Order and is accomplished personally and on a document-by-document basis by the officials identified in § 60.4(a) or an official with original Top Secret classification authority.

§ 60.4 Limitations on original classification authority.

(a) The authority to classify information originally under this part shall be limited to the categories of Secret and Confidential. Only the following officials of the Panama Canal Commission are authorized to classify information or material originally:

(1) The Administrator; and

(2) The Director, Office of Executive Administration.

(b) Other officials and employees of the Panama Canal Commission originating documents which, in their opinion, should be classified as Secret or Confidential prior to dispatch, shall forward these documents to the Director, Office of Executive Administration with recommendation for appropriate classification. Such documents shall be protected by a cover sheet (such as Panama Canal

Commission Forms 165-Conf or 165-B Secret) of the classification recommended by the originator, and shall be handled and safeguarded as if classified, see § 60.8(a).

(c) All information originated within the Commission which is believed to require classification as Top Secret (within the meaning of this part and Executive Order 12356) shall be hand carried by the originator to the Director, Office of Executive Administration who will determine the appropriate level of classification. If the information warrants Top Secret classification, that official shall transmit the information promptly under appropriate safeguards to the agency which has appropriate subject matter interest and classification authority in accordance with the procedures established by § 60.18 of this part. If it is not clear which agency should get the information, it shall be sent to the Director of the Information Security Oversight Office for a determination.

(d) Intra-office documents, such as longhand notes or draft papers, that contain information affecting the national security shall be distinctly marked with the proper classification at top and bottom, by hand, by the originator, and shall be protected and destroyed in the same manner as an inter-office or inter-agency classified documents. Such intra-office documents shall be forwarded to the Office of Executive Administration for destruction as soon as the content has been included in a formal classified paper or as soon as the note or draft is no longer required.

(e) A holder of classified information or material shall observe and respect the classification assigned by the originator.

(f) Exceptional Cases. When an employee, contractor, licensee, or grantee of an agency that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with Executive Order 12356 and its implementing directives. The information shall be transmitted promptly as provided under the Order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within thirty (30) days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency

having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

§ 60.5 Use of derivative classification.

(a) Derivative classification is: (1) the determination that information is in substance the same as information currently classified; and (2) the application of the same classification markings. Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

(1) Observe and respect original classification decisions; and

(2) Carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

(c) If a person who applies derivative classification markings believes that the process of reproducing, extracting, paraphrasing, restating or summarizing may have changed the level of or removed the basis for classification, an appropriate official of the originating agency or the office of origin who has the authority to upgrade, downgrade or declassify the information must be consulted.

(d) Paper copies of derivatively classified documents shall be marked at the time of origination as follows:

(1) Classification authority. (i) The authority for classification shall be shown as follows:

CLASSIFIED BY (description of source document on classification guide).

(ii) If a document is classified on the basis of more than one source document or classification guide, the authority for classification shall be shown as follows:

CLASSIFIED BY MULTIPLE SOURCES

In these cases the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked "CLASSIFIED BY MULTIPLE SOURCES" shall cite the source document in its "CLASSIFIED BY" line rather than the term "MULTIPLE SOURCES."

(2) Declassification and downgrading instructions. Dates or events for automatic declassification or downgrading, or the notation "ORIGINATING AGENCY'S DETERMINATION REQUIRED" to indicate that the document is not to be declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on a "DECLASSIFY ON" line as follows:

DECLASSIFY ON (date; description of event) or ORIGINATING AGENCY'S DETERMINATION REQUIRED (OADR)

(3) Any additional markings or abbreviations described in paragraphs (b) through (m) of § 60.8 of this part appearing on the source material shall be carried forward to the new material when appropriate.

§ 60.6 Requirements for classification guides.

(a) Classification guides used to direct derivative classification and issued pursuant to Section 2.2 of Executive Order 12356 and § 60.5 of this part shall, at a minimum:

(1) Identify or categorize the elements of information to be protected;

(2) State which of the classification designations (i.e., Top Secret, Secret, or Confidential) applies to each element or category of the information;

(3) Prescribe declassification instructions for each element or category of information in terms of (i) a period of time, (ii) the occurrence of an event, or (iii) a notation that the information shall not be declassified automatically without the approval of the originating agency; and

(4) Indicate how the designation, time limits, markings, and other requirements of Executive Order 12356 and this part are to be applied.

(b) Each classification guide shall be kept current and shall be reviewed at least once every two years and updated as necessary. The Office of Executive Administration shall compile and maintain a list of classification guides in current use.

(c) Each guide shall be approved personally and in writing by the Director, Office of Executive Administration.

(d) The Administrator may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. A decision to waive the requirement should be based, at minimum, on an evaluation of the following factors:

(1) The ability to segregate and describe the elements of information;

(2) The practicality of producing or disseminating the guide because of the nature of the information;

(3) The anticipated usage of the guide as a basis for derivative classification; and

(4) The availability of alternative sources for derivatively classifying the information in a uniform manner. The Director of the Information Security Oversight Office shall be notified of any waivers.

§ 60.7 Duration of classification.

(a) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified.

(b) Automatic declassification determinations under predecessor orders shall remain valid unless the classification is extended by an authorized official of the originating agency. These extensions may be by individual documents or categories of information. The originating agency shall be responsible for notifying holders of the information of such extensions.

(c) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of Executive Order 12356.

§ 60.8 Identification and markings.

(a) At the time of original classification, the following information shall be shown on the face of all classified documents, or clearly associated with other forms of classified information in a manner appropriate to the medium involved, unless this information itself would reveal a confidential source or relationship not otherwise evident in the document or information:

(1) One of the three classification levels defined in § 60.3;

(2) If the original classification authority is other than the approving or signing official, the identity shall be shown as follows:

CLASSIFIED BY (identification of original classification authority)

(3) Agency and office of origin. If the identity of the originating agency and office is not apparent on the face of a document, it shall be placed below the "CLASSIFIED BY" line.

(4) Declassification and downgrading instructions. Declassification and, as applicable, downgrading instructions shall be shown as follows:

(i) For information to be declassified automatically on a specific date:

DECLASSIFY ON: (date)

(ii) For information to be declassified automatically upon occurrence of a specific event:

DECLASSIFY ON: (description of event)

(iii) For information not to be declassified automatically:

DECLASSIFY ON: ORIGINATING AGENCY'S DETERMINATION REQUIRED or "OADR"

(iv) For information to be downgraded automatically on a specific date or upon occurrence of a specific event:

DOWNGRADE TO (classification level) ON (date or description of event)

(b) Each classified document shall by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. The Administrator may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

(c) Marking designations implementing the provisions of Executive Order 12356, including abbreviations, shall conform to the standards prescribed in implementing directives issued by the Information Security Oversight Office.

(d) Foreign government information shall either retain its original classification or be assigned a United States classification that shall ensure a degree of protection at least equivalent to that required by the entity that furnished the information.

(e) Information assigned a level of classification under predecessor Executive Orders shall be considered as classified at that level of classification despite the omission of other required markings. Omitted markings may be inserted on a document by the officials listed in § 60.4(a) of this part.

(f) The overall classification of a document, whether or not permanently bound, or any copy or reproduction thereof, shall be conspicuously marked or stamped at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, on the back page, and on the outside of the back cover (if any). Each interior page of a classified document shall be marked or stamped at the top and bottom either according to the highest classification of the content of the page, including the designation "Unclassified" when appropriate, or according to the highest classification of the document. In any

case, the classification marking of the page shall not supersede the classification marking of portions of the page marked with lower levels of classification.

(g) Whenever practicable, subjects and titles shall be selected so as not to require classification. When the subject or title is classified, an unclassified identifier may be assigned to facilitate receipt and reference.

(h) Classifiers shall identify the level of classification of each classified portion of a document (including subjects and titles), and those portions that are not classified. Portion marking shall be accomplished by placing a parenthetical designator immediately preceding or following the text that it governs. The symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for Unclassified, shall be used for this purpose. If individual portion marking is impracticable, the document shall contain a description sufficient to identify the information that is classified and the level of such classification. The officials listed in § 60.4(a) may for good cause, request from the DUSD(P) a waiver of the portion marking requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified by the DUSD(P) of any waivers.

(i) The classification and associated markings prescribed by this part for documents shall, where practicable, be affixed to material other than documents by stamping, tagging, or other means. If this is not practicable, recipients shall be made aware of the classification and associated markings by notification or other means.

(j) A transmittal document shall indicate on its face the highest classification of any information transmitted by it. It shall also include the following or similar instruction:

(1) For an unclassified transmittal document:

UNCLASSIFIED WHEN CLASSIFIED ENCLOSURE IS REMOVED

(2) For a classified transmittal document:

UPON REMOVAL OF ATTACHMENTS THIS DOCUMENT IS (classification level of the transmittal document standing alone)

(k) Documents that contain foreign government information shall include either the marking "FOREIGN GOVERNMENT INFORMATION," or a marking that otherwise indicates that the information is foreign government information. If the fact that information is foreign government information must

be concealed, the marking shall not be used and the document shall be marked as if it were wholly of U.S. origin. Documents classified by a foreign government or an international organization of governments shall, if the foreign classification is not in English, be marked with the equivalent United States classification. Foreign government information not classified by a foreign government or an international organization of governments but provided to the United States in confidence by a foreign government or by an international organization of governments, shall be classified at an appropriate level and shall be marked with the United States classification accordingly.

(l) In addition to the marking requirement in paragraphs (a) through (k) of this section, the additional markings provided in paragraphs (1)(1)-(3) of this section shall, as appropriate, be displayed prominently on classified information. When display of these additional markings is not practicable, their applicability to the information shall be included in the written notification of the assigned classification.

(1) For classified information containing Restricted Data or Formerly Restricted Data as defined in the Atomic Energy Act of 1954, as amended, such markings as may be prescribed by the Department of Energy in regulations issued under the Act shall be applied.

(2) For classified information involving intelligence sources or methods:

WARNING NOTICE—INTELLIGENCE SOURCES AND METHODS INVOLVED.

(3) For classified information that, pursuant to Executive Order 12356, the originator has determined should be subject to special dissemination or reproduction limitations, or both, a statement placing the user on notice of the restrictions shall be included in the text of the document or on its cover sheet; e.g., "Reproduction requires approval of originator," or "Further dissemination only as directed by the Director, Office of Executive Administration."

(m) National security information that is transmitted electrically shall be marked as follows:

(1) The highest level of classification shall appear before the first line of text;

(2) A "CLASSIFIED BY" line is not required;

(3) The duration of classification shall appear as follows:

(i) For information to be declassified automatically on a specific date:

DECL:(date)

(ii) For information to be declassified upon occurrence of a specific event:

DECL:(description of event)

(iii) For information not to be automatically declassified which requires the originating agency's determination, see § 60.7(a):

DECL: OADR

(iv) For information to be automatically downgraded: DNG (abbreviation of classification level to which the information is to be downgraded and date or description of event on which downgrading is to occur).

§ 60.9 Declassification and downgrading.

(a) Information shall be declassified or downgraded as soon as national security considerations permit. Review of classified information shall be coordinated with other agencies that have a direct interest in the subject matter. Information that continues to meet the classification requirements prescribed by § 60.3 of this part, despite the passage of time, will continue to be protected in accordance with Executive Order 12356 and this part.

(b) Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; by the originator's successor; by a supervisory official of either; or by officials delegated such authority, in writing, by an official listed in § 60.4(a).

(c) In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of Executive Order 12356 and this part.

(d) In the case of classified information that is not officially transferred as described in § 60.9(c), but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such information shall be deemed to be the originating agency for purposes of Executive Order 12356 and this part. Such information may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the information.

(e) The Commission shall maintain a current listing of officials delegated declassification or downgrading authority by name or position.

(f) Classified information accessioned into the National Archives of the United States from the Commission shall be declassified or downgraded by the Archivist of the United States in accordance with Executive Order 12356,

the directives of the Information Security Oversight Office, and guidelines established by the Director, Office of Executive Administration of the Panama Canal Commission. Such guidelines shall be reviewed and updated if necessary at least every five years, unless earlier review is requested by the Archivist.

§ 60.10 Access to classified information.

(a) A person is eligible for access to classified information provided that a determination of trustworthiness has been made and that such access is essential to the accomplishment of lawful and authorized Government purposes. The determinations of eligibility and trustworthiness, referred to in this part as a security clearance, shall be based on such investigations as the Panama Canal Commission may require. The Personnel Director shall be responsible for conducting investigations relative to the issuance of security clearances in accordance with the standards and criteria of Executive Order 10450, and will maintain a list showing the level of security clearances granted to each person. Security clearances will be granted by the Director, Office of Executive Administration, as provided in § 60.14 of this part.

(b) In addition to a security clearance, a person must have a need for access to the particular classified information or material sought in connection with the performance of that person's official duties or contractual obligations, except in those instances provided for in paragraph (d) of this section. The determination of that need shall be made by the Director, Office of Executive Administration in coordination with officials having responsibility for the classified information or material.

(c) When a person no longer requires access to classified information or material in connection with the performance of that person's official duties or contractual obligations, the security clearance shall be withdrawn. Likewise, when a person no longer needs access to a particular security classification category, that person's security clearance shall be adjusted to the classification category still required for the performance of that person's duties and obligations. In both instances, such action shall be without prejudice to the person's eligibility for a security clearance should the need again arise.

(d) Persons engaged in historical research projects and former Presidential appointees who occupied

policy-making positions may be authorized access to classified information or material originating within the Panama Canal Commission. In such cases, the requirement in section 60.10(a) that access to classified information may be granted only as is essential to the accomplishment of lawful and authorized Government purposes, may be waived, but only if the Commission has jurisdiction over the information and:

(1) The Commission makes a written determination that access is consistent with the interests of national security;

(2) The Commission takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 12356;

(3) The Commission limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed or received while serving as a Presidential appointee; and

(4) In addition, the Director, Office of Executive Administration obtains:

(i) Written agreements from the requesters to safeguard the information to which they are given access as permitted by Executive Order 12356 and this part; and

(ii) Written consent from the requester for the Director, Office of Executive Administration to review all of their notes and manuscripts for the purpose of assuring that no classified information is contained in them.

(e) If the access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to 31 U.S.C. 9701, the requester shall be so notified and the fees may be imposed.

(f) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency.

§ 60.11 Top Secret, Secret, and Confidential Control Officer.

(a) The Director, Office of Executive Administration, Panama Canal Commission, is the Agency's designated Top Secret Control Officer and is responsible for the receipt, current accountability, and transmission of all Top Secret information. The Deputy Director, Office of Executive Administration is the Alternate Top Secret Control Officer. A physical

inventory of all Top Secret material shall be made at least annually.

(b) The Director and the Deputy Director, Office of Executive Administration are also the Agency's designated Control Officer and Alternate Control Officer, respectively, for all classified information up to and including Secret.

(c) The Director, Office of Executive Administration shall act on all suggestions and complaints received by the Commission with respect to the administration of Executive Order 12356 and this part, and may also recommend to the Administrator appropriate administrative actions or sanctions to correct abuse or violation of any provision of that Order or directives under it. The Director of the Information Security Oversight Office shall be promptly informed by the agency when such violations occur.

(d) To the extent required by applicable laws and agency regulations, the Administrator shall report to the Attorney General evidence reflected in classified information of possible violations of Federal criminal law by an agency employee and of possible violations by any other person of those Federal criminal laws specified in guidelines adopted by the Attorney General.

(e) When the Commission is the agency of primary interest, following an inadvertent or unauthorized publication or disclosure of information identical or similar to information that has been classified in accordance with the Executive Order 12356 or predecessor orders, the Director, Office of Executive Administration shall determine the degree of damage to the national security, the need for continued classification, and, in coordination with the agency in which the disclosure occurred, what action must be taken to prevent similar occurrences, see § 60.17.

§ 60.12 Mandatory review for declassification.

(a) Any United States citizen, permanent resident alien, federal agency, or the government of a U.S. state or municipality may request that classified information be reviewed for declassification by the originating agency and released. Such requests must be submitted in writing to the Chief, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000 (or Panama Canal Commission, Balboa Heights, Republic of Panama). In accordance with § 9701 of title 31, United States Code, fees may be applied to any requests for declassification and release. A request need not identify the information

requested by date or title, but must describe the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort. Whenever a request is deficient in its description of the information sought, the Chief, Administrative Services Division shall notify the requester that, unless additional identifying information is provided or the scope of the request is narrowed, the Commission will take no further action on the request.

(b) When the Commission receives any request for documents in its custody that were classified by another agency, it shall refer copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral. In cases in which the originating agency determines in writing that a response is required, it is the responsibility of the referring agency to respond to the requester.

(c) When another agency refers a request to the Commission for review because the Commission originally classified the information requested, the Commission shall treat the request as though it were submitted directly to it under paragraph (a) of this section. The Commission shall send its decision directly to the requester and shall, if so requested, notify the referring agency of its decision on the request and on the appeal, if any.

(d) Requests for classification review made under paragraph (a) of this section shall be promptly acknowledged by the Chief, Administrative Services Division and then forwarded to the official who originally classified the document, or that official's successor, or when appropriate to an official designated by an official listed in § 60.4(a), who, in coordination with the Chief, Administrative Services Division, shall decide whether the requested information may be declassified, see § 60.7 and § 60.9.

(1) Unless withholding is otherwise warranted under applicable law, any information which may be declassified shall normally be forwarded to the requester within sixty (60) days after receipt of a proper request. If additional time is needed to locate or review the requested information, the Chief, Administrative Services Division will notify the requester accordingly. Except in unusual circumstances, a decision will be made within one year of receipt of the request.

(2) When information cannot be declassified in its entirety, a reasonable

effort will be made, consistent with other applicable law, to release those portions of the requested information that constitute a coherent segment.

(3) Upon the denial or a partial denial of a request, the Chief, Administrative Services Division shall reply to the requester and provide a brief statement of the reasons for the denial, a notice of the right to appeal the decision to the Director, Office of Executive Administration, and a notice that the appeal must be in writing and must be received by the Commission within sixty (60) days of receipt of the decision letter by the requester. Appeals should be addressed to: Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011-5000 (or Panama Canal Commission, Balboa Heights, Republic of Panama).

(e) Within thirty (30) days after its receipt of a proper appeal against an initial decision not to declassify information, the Director, Office of Executive Administration shall make and dispatch the decision whether the information should be declassified. If the Director, Office of Executive Administration is the original classification authority of the information under appeal, the Administrator shall determine whether the information may be declassified. The Director, Office of Executive Administration shall, after the decision, promptly make available to the requester any information that is declassified and which is otherwise releasable. If continued classification of the requested information is necessary, the requester shall be notified of that decision and the reasons therefor. If requested, the appeal determination shall also be communicated to any referring agency.

(f) The classification reviews made in response to requests and appeals under this section are in addition to the systematic review of classified information prescribed by Executive Order 12356 and 32 CFR Part 2001.

(g) Requests for access to classified material submitted under the Freedom of Information Act or the Privacy Act of 1974 (5 U.S.C. 552 and 552a) shall be processed in accordance with Parts 9 and 10 of 35 CFR, and shall be subject to the same review criteria for declassification as requests submitted under paragraphs (a) through (d) of this section. In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this Order, the Commission shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or

non-existence is itself classifiable under Executive Order 12356 or 32 CFR Part 2001.

§ 60.13 Custody and storage.

(a) Classified information shall be protected in accordance with applicable National Security Council directives or directives promulgated by the Information Security Oversight Office and approved by the National Security Council.

(b) Each bureau director and chief of an independent unit (or classified security control officer as designated by the Director, Office of Executive Administration) shall be responsible for assuring that all classified information within that official's organization is used, processed, stored, reproduced, and transmitted only under conditions which will provide adequate protection and prevent access by, or dissemination to, unauthorized persons. Containers, vaults, alarm systems, and associated security devices procured after the effective date of this part for the storage and protection of classified information shall be in conformance with the standards and specifications published by the General Services Administration and, to the maximum extent practicable, be of the type designated on its Federal Supply Schedule.

(c)(1) Top secret information shall be stored in a GSA-approved security container with an approved built-in, three-position, dial-type combination lock; in a vault protected by an alarm system and response force; or in other storage facility that meets the standards for top secret established under the provisions of paragraph (b) of this section.

(2) Secret and confidential information shall be stored in a manner and under the conditions prescribed for top secret information, or in a container, vault, or alarmed area that meets the standards for secret or confidential information established pursuant to the provisions of paragraph (c)(1) of this section, and/or paragraph (c)(3) of this section.

(3) Secret and confidential information may also be stored in a safe-type filing cabinet having a built-in, three-position, dial-type, changeable combination lock, or a steel filing cabinet equipped with a steel lock bar, provided it is secured by a three-position, changeable combination padlock approved by GSA for the purpose. The Director, Office of Executive Administration shall prescribe any necessary supplementary controls for storage of secret information in cabinets equipped with a steel lock bar.

(d) Each bureau director and chief of an independent unit is responsible for assuring that all personnel within that official's organization, having access to classified information, have a security clearance issued by the Director, Office of Executive Administration, see §§ 60.14 and 60.16.

(e)(1) Combinations of all repositories containing classified information shall be changed at least annually and forwarded in double-sealed envelopes to the Office of Executive Administration. The double-sealed envelopes shall be classified no lower than the highest category of information contained in the repositories. Combinations to dial-type locks shall be changed only by persons having appropriate security clearance, and shall be changed whenever such equipment is placed in use, whenever a person knowing the combination no longer requires access to the combination, whenever the equipment is taken out of service, and at least once every year. Knowledge of combinations protecting classified information shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned. Bureau directors and heads of independent units shall ensure that combinations of dial-type locks shall be changed whenever there is reason to suspect possible compromise of the current combination.

(2) When security equipment having a built-in combination lock is taken out of service, the lock shall be reset to the standard combination 50-25-50. Combination padlocks shall be reset to the standard combination 10-20-30.

(3) The Commission shall establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the classified information being protected. Under no circumstances may keys be removed from the premises. They shall be stored in a secure container.

(f) Custodians of classified matter are responsible for registering with the Office of Executive Administration the names of all persons having knowledge of combinations to repositories containing classified information.

(1) Persons entrusted with classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in approved security equipment whenever

it is not in use or under the direct supervision of authorized persons. Custodians shall follow procedures which will ensure that unauthorized persons do not gain access to classified information.

(2) Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to ensure adherence to procedural safeguards prescribed to protect classified information. The Director, Office of Executive Administration shall ensure that periodic inspections are made to determine whether procedural safeguards prescribed by agency regulations are in effect at all times.

§ 60.14 Security investigations; training and orientation of employees.

(a) Requests for security clearances, including changes in the level of clearances, will be forwarded to the Office of Personnel Administration for background investigations and security checks. The Personnel Director shall ensure that all necessary investigations are completed, and will provide a recommendation on the issuance of a security clearance to the Office of Executive Administration. The Director, Office of Executive Administration, in consideration of all available information, will determine if a security clearance may be issued, or if the level may be changed, and establish the expiration date of the clearance.

(b) The Director, Office of Executive Administration is also responsible for establishing and maintaining a training and orientation program for employees concerned with classified information or material.

§ 60.15 Debriefing upon termination of employment.

(a) Bureau directors and heads of independent units shall be responsible for notifying the Office of Executive Administration whenever it is necessary that an employee be briefed or debriefed. Such notification should be in writing and be at least sixty (60) days, or as long as possible, in advance.

(b) Bureau directors and heads of independent units shall ensure that debriefings are accomplished for any employee whose employment is terminated, or scheduled to be terminated, or when a temporary separation from employment (not to include leave) for sixty (60) days or more has occurred or is scheduled, whenever the employee has had access to classified information within the last twelve calendar months of his employment.

§ 60.16 Responsibility of individual employees.

(a) The responsibility for the safeguarding of classified information shall rest on each individual employee having possession or knowledge of it, regardless of how such information or knowledge was obtained. In addition, each individual employee is directly responsible for acquiring familiarity with and complying with these and subsequently published security regulations.

(b) Any officer or employee, at any level of employment, determined to have been responsible for any release or disclosure of national security information or material in a manner not authorized by Executive Order 12356 or under this part, is subject to prompt and stringent administrative action, and, where a violation of criminal statute may be involved, is subject to prosecution under applicable law.

§ 60.17 Loss or compromise; destruction of nonrecord classified information.

(a) Any person who has knowledge of the loss or possible compromise of classified information in the custody of the Commission shall immediately report the circumstances to the Office of Executive Administration. The Director, Office of Executive Administration shall initiate an inquiry to (1) determine cause, (2) place responsibility, and (3) take corrective measures and appropriate administrative, disciplinary, or legal action. If it is determined that classified information has been compromised, the agency that originated the information shall be notified of the loss or possible compromise so that a damage assessment may be conducted and appropriate measures taken to negate or minimize any adverse effect of the compromise.

(b) The Administrator (or Director, Office of Executive Administration) shall initiate a damage assessment whenever there has been a compromise of classified information originated by the Commission that, in his judgment, can reasonably be expected to cause damage to the national security. Damage assessments shall be in writing and shall conform to the guidelines established by the Information Security Oversight Office, as provided in 32 CFR 2001.47(b).

(c) Nonrecord classified information that has served its intended purpose shall be destroyed in accordance with procedures and methods approved by the Administrator. The method of destruction selected must preclude recognition or reconstruction of the classified information or material.

§ 60.18 Procedures for receiving and transmitting classified documents.

(a) The procedures for handling classified documents received by any person or unit of the Panama Canal Commission shall be as follows:

(1) All classified documents received by any person or unit of the Commission shall be immediately delivered to the Office of Executive Administration. Personnel of the Office of Executive Administration shall receipt for and record all classified documents received from outside agencies (except that those officials listed in § 60.4(a) of this part may receipt for classified documents from outside agencies, and then forward them to the Office of Executive Administration, in person or by an authorized representative).

(2) The receipted documents shall be permanently recorded by the Office of Executive Administration, at which time accountability for these documents shall be assumed by that office.

(3) When classified documents addressed to an individual in the Panama Canal Commission are received by the Office of Executive Administration, the addressee shall be notified by telephone that such classified matter is awaiting him; or the classified documents may be transmitted as provided in paragraph (c) and (d) of this section. When the addressee picks up the classified documents, all items shall be recorded on an individual classified documents register furnished by the Office of Executive Administration; one copy is to be permanently retained in the library, and one is to be furnished to the addressee, or his authorized representative, who shall sign for the documents opposite each item on the register. This method of transfer may be utilized in lieu of a receipt.

(b) When any unit of the Panama Canal Commission prepares a document which is to be classified Secret or Confidential for transmission to other offices of the Commission, the procedure shall be as follows:

(1) Prepare sufficient copies of the document for whatever distribution is required, and one additional copy for file in the Office of Executive Administration.

(2) Forward draft copies, handwritten copies, and carbons to the Office of Executive Administration for retention or destruction under established procedures.

(i) In addition, all portions of electric typewriter ribbons used in the preparation of classified material must be destroyed in the same manner. Reusable cloth typewriter ribbons must

be protected if used for preparation of classified material on the first pass through typewriter.

(ii) Classified material may not be entered into electronic equipment with memory capability, such as word processors, computers, personal computers, memory typewriters and other similar equipment, *unless* specific, written permission is obtained in advance, for each specific piece of equipment or system, from the Office of Executive Administration.

(3) Bring all copies of the document to the Office of Executive Administration. Copies shall be securely fastened underneath a cover sheet of the classification recommended by the originator.

(4) At the direction of the Director, Office of Executive Administration, the proper classification, short title, and serial number shall be assigned to each document, and an accountability stamp shall be placed on each copy.

(5) All classified documents shall be appropriately and conspicuously marked to put all persons on clear notice of their classified content. In addition, all classified documents shall be marked to indicate the downgrading-declassification schedule to be followed in accordance with § 60.9.

(6) The documents shall be recorded in the permanent documents log. The accountability for the documents passes from the originator to the Office of Executive Administration at this point.

(7) Distribution of the remaining copies shall be made according to the procedures covered in paragraphs (a)(3), (c) and (d) of this section. The number of copies of documents containing classified information shall be kept to a minimum to decrease the risk of compromise and reduce storage costs.

(c) When any unit of the Panama Canal Commission transmits documents or information classified Top Secret to other offices of the Commission, or any classified documents or information to any agencies or units other than the Commission, the procedure for handling such information shall be as follows:

(1) The documents or information shall be enclosed in opaque inner and outer covers before transmitting. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. The outer cover shall be sealed and addressed with no identification of the classification of its contents.

(2) A receipt shall be attached to or enclosed in the inner cover. The receipt shall identify the sender, addressee, and the document, but shall contain no classified information. It shall be

immediately signed by the recipient and returned to the sender.

(d) When the Commission transmits classified documents or information to any agency other than the Commission, or documents or information classified Top Secret to other offices of the Commission, one or more of the following methods shall be used:

(1) By specifically designated personnel having the appropriate security clearance;

(2) By State Department diplomatic pouch;

(3) By messenger-courier system specifically created for that purpose;

(4) Over authorized secure communication circuits.

(e) Secret and confidential documents or information may also be transmitted by the following methods:

(1) As provided in paragraph (c) of this section, if transmittal is to be within the Commission;

(2) By U.S. registered mail through Army, Navy, or Air Force Postal Service facilities provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system; or

(3) Under escort of appropriately cleared personnel aboard U.S. Government and U.S. Government-contract vehicles or aircraft, ships of the United States Navy, civil-service-manned U.S. Naval ships, and ships of U.S. Registry. Operators of vehicles, captains or masters of vessels, and pilots of aircraft who are U.S. citizens and who are appropriately cleared may be designated as escorts.

§ 60.19 Reproduction of classified documents.

(a) Top Secret documents may not be reproduced without the consent of the originating agency unless otherwise marked by the originating office. The reproduction of Secret and Confidential documents may be restricted by the originating agency. Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

(b) The Office of Executive Administration is the only office within the Panama Canal Commission authorized to reproduce documents which have been classified. Other offices within the Panama Canal Commission which require the reproduction of classified documents shall take them to the Office of Executive Administration, where the documents will be reproduced, properly marked, controlled and then returned to the user.

Dated: February 9, 1988.

D.P. McAuliffe,
Administrator.

[FR Doc. 88-5192 Filed 3-10-88; 8:45 am]

BILLING CODE 3640-04-M

VETERANS ADMINISTRATION

38 CFR Part 3

Frequency of Payment of Improved Pension

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration (VA) is amending its adjudication regulations pertaining to the frequency of payment of improved pension. The amendment is necessary to insure that other Federal benefits are not denied to VA beneficiaries solely because of the payment of improved pension less frequently than monthly. The effect of this amendment will be to provide VA beneficiaries with the ability to elect monthly pension payments if to do so would be to their advantage.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3005.

SUPPLEMENTARY INFORMATION: It has been brought to our attention that in some instances payment of improved pension less frequently than monthly has resulted in the denial of other Federal benefits, such as Supplemental Security Income and Medicaid, because of the amount of the payment. By amending 38 CFR 3.30 to provide an option for VA beneficiaries who receive improved pension payments less frequently than monthly to elect to receive monthly payments, other Federal benefits will not be denied solely on the basis of the frequency of payment of improved pension. An editorial change is also being made to delete the last sentence of both paragraphs (b) and (c) of § 3.30 as redundant.

The VA finds good cause for dispensing with prior publication for public comments, such comments being unnecessary and contrary to the public interest. Denial of other Federal benefits is an unintended result for those VA improved pension beneficiaries who receive their payments quarterly, semi-annually, or annually under the current provisions of § 3.30. The beneficiaries

affected by this amendment may, therefore, choose to receive their improved pension benefits in the same manner, monthly, as do the vast majority of improved pension beneficiaries.

The Administrator has determined that denial of their Federal benefits because of the current provisions of § 3.30 is an unintended result and is contrary to the best interests of our improved pension beneficiaries. Any delay in effectuating this amendment could result in further denials of other Federal benefits with resulting hardship to our beneficiaries. Public participation is unnecessary and an effective date as of publication of this amendment is warranted.

Because a notice of proposed rulemaking is unnecessary and is not being published, this change does not come within the term "rule" as defined in, and made subject to, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, the Administrator hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. The reason for this certification is that this regulatory amendment imposes no regulatory burden on small entities, and only claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this regulation is nonmajor for the following reasons:

- (1) It will not have an annual effect on the economy of \$100 million or more.
- (2) It will not cause a major increase in costs or prices.
- (3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 61.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 12, 1988.
Thomas K. Turnage,
Administrator.

PART 3—[AMENDED]

In 38 CFR Part 3, ADJUDICATION, § 3.30 is amended by adding introductory text and by revising paragraphs (b) and (c) to read as follows:

§ 3.30 Frequency of payment of improved pension.

Payment shall be made as shown in paragraphs (a), (b), (c), (d), and (e) of this section; however, beneficiaries receiving payment less frequently than monthly may elect to receive payment monthly in cases in which other Federal benefits would otherwise be denied.

(Authority: 38 U.S.C. 210(c))

(b) *Quarterly.* Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least \$144 but less than \$228.

(c) *Semiannually.* Payment shall be made every 6 months on or about June 1, and December 1, if the annual rate payable is at least \$72 but less than \$144.

[FR Doc. 88-5379 Filed 3-10-88; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3340-5]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 to the Releases Control Branch (RCB) of EPA, for certain solid wastes generated at the Denney Farm site in McDowell, Missouri by the EPA Mobile Incineration System. This action responds to a delisting petition received by the Agency under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically

provides generators the opportunity to petition the Administrator to exclude wastes on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: March 11, 1988.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (Sub-basement), Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-88-MIEF-FFFF." The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT:

The RCRA Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information concerning this notice, contact Mr. Bob Kayser, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

The Releases Control Branch (RCB) of EPA, located in Edison, New Jersey, petitioned the Agency to exclude from hazardous waste control certain waste it intends to generate. After evaluating the petition, on January 4, 1988, EPA proposed to exclude RCB's waste from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32, conditional upon RCB meeting certain monitoring and sampling and analysis requirements (see 53 FR 31). RCB's petition was for an "upfront" exclusion. A petitioner may request an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. An upfront delisting petition (when treatment is planned) allows an exclusion to be granted based on

untreated waste characteristics, pilot-scale treatment data if available, process descriptions and batch testing requirements. The batch testing requirements may include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may specify verification testing limitations (i.e., the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion; when the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

A. EPA Releases Control Branch

1. Proposed Exclusion

The EPA Releases Control Branch (RCB) petitioned the Agency for an upfront exclusion from EPA Hazardous Waste No. F027 of incineration residues from the treatment of certain cancelled pesticides in the EPA Mobile Incineration System (MIS). RCB based its petition on the expected low concentrations of the listed constituents in the incineration residues. In the proposed rule, the Agency concluded that data submitted by RCB, in conjunction with the verification testing conditions which the Agency proposed to require as part of a final exclusion, substantiated RCB's claim that the listed constituents of concern would not be present in the incineration residues above levels of regulatory concern. Furthermore, RCB submitted data on other non-listed hazardous constituents expected to be present in the untreated pesticides and potentially present in the incineration residues as products of incomplete combustion. The verification testing conditions attached to the exclusion are designed to ensure that these constituents will not be present in the incineration residues at or above levels of regulatory concern. See 53 FR 31, January 4, 1988, for a more detailed explanation of why EPA proposed to grant RCB's petition for these incineration residues.

2. Agency Response to Public Comments

General. The Agency received public comments on the proposed rule from four different interested parties. All commenters were generally in favor of the Agency's proposed decision to exclude the incineration residues from

the treatment of the cancelled pesticides. Several commenters specifically supported the Agency's efforts to meet the Agency's statutory duties under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As will be discussed in more detail below, several commenters submitted detailed comments arguing that the proposed testing requirements and accompanying delisting levels were too conservative.

One commenter stated that the conditions of the exclusion are so conservative that the impact of the exclusion will be to discourage future incineration of similar dioxin-contaminated materials, despite clear Congressional preference for permanent treatment of hazardous waste. The Agency strongly disagrees. EPA believes that the successful incineration of the cancelled pesticides and upfront exclusion of the resultant incineration residues will encourage an otherwise reluctant commercial hazardous waste management industry to step into the dioxin management business. EPA also believes that the conservative approach to the exclusion of these materials demonstrates a commitment to meeting statutory requirements to ensure protection of human health and environmental safety while encouraging permanent treatment solutions.

One commenter stated that the Agency failed to provide an adequate opportunity to comment on the proposal. The commenter believed that the administrative record for the proposal was inadequate. Although EPA believes that the record was and is fully adequate to support the proposal and final action, the Agency has provided in today's rulemaking preamble additional information to address specific concerns raised by this and other commenters. This information includes historical background on the 1985 exclusion for the MIS and on the evolution of the Delisting Program's rulemaking activities and criteria over the past three years. Because many of the health-based levels used to set delisting levels have been published in previous delisting decisions and because the Delisting Program's analytical approach and the MIS technology have been subject to extensive public notice and comment and were fully referenced in the notice of proposed rulemaking, the Agency believes that the administrative record was replete with necessary and sufficient information upon which the interested parties could comment. (The Agency notes that no commenter requested an extension of the comment period.)

The remainder of this section addresses specific aspects of the proposal on which the Agency received comment, including differences from previous related exclusions, the concept of upfront delistings, EPA's modeling approach in general, the appropriateness of the modeling approach for dioxin, and specific comments on the proposed conditions. In responding to comments and in considering approaches to and criteria for the proposed and final exclusions, the Agency has kept an open mind and has applied its best, current technical judgment.

a. Differences from Related Exclusions. One commenter characterized the proposal as "a startling and largely unexplained departure" from the approach used in the original exclusion for the MIS in 1985 (see 50 FR 30272, July 25, 1985). This commenter also stated that the proposal is inconsistent with the second proposal related to the MIS, for certain lagoon sludge from Syntex Agribusiness, published on September 3, 1987 (See 52 FR 33439).

The Agency's approach to the evaluation of petitions has evolved since the 1985 exclusion. Since that time, for example, the Agency has adopted the organic leachate model (OLM) as an analytical tool in reviewing delisting petitions (see 51 FR 41084, November 13, 1986). The OLM allows the Agency to evaluate the potential mobility of hazardous organic constituents. In addition, the Agency has implemented the requirements of the Hazardous and Solid Waste Amendments of 1984 (HSWA) that the delisting process consider all factors (including additional constituents) which could cause a waste to be hazardous rather than only those factors for which a waste was listed. EPA has also published a guidance manual (see "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530-SW-003), April 1985) which outlines the information needed in a delisting petition. Further, the recent Syntex proposal and today's final rule are examples of the Agency's current ability to evaluate and grant "upfront" exclusions.

One of the major differences between the 1985 exclusion and the 1987 and 1988 proposals is that the two recent proposals were for "upfront" exclusions; that is, the treatment residues from the incineration of the Syntex lagoon sludge and the cancelled pesticides have not yet been generated and therefore have not been characterized. In the case of the 1985 exclusion, RCB had submitted

actual analytical data on treatment residues for the EP toxic metals and hazardous organic compounds (identified in the petition as potential constituents of concern), including dioxin. Upon evaluation of these data, the Agency determined that batch testing was only necessary for the three metals listed in the conditions of that exclusion. Because similar data for the Syntex and cancelled pesticides treatment residues do not yet exist, the Agency is requiring as part of this final exclusion for the cancelled pesticides (and intends to require as part of any final exclusion for the Syntex residues) extensive verification sampling and analysis of the incineration residues when generated.

A second difference is that the materials to be incinerated in these three cases vary from contaminated soils to wastewater treatment sludge to commercial pesticide products. As a result of the inherent differences among these incinerator feeds, the constituents of concern vary.

The levels of regulatory concern for the metals vary among the three petitions due to application of the vertical and horizontal spread (VHS) model (see 50 FR 48896, November 27, 1985). As discussed in the preambles to the 1987 and 1988 proposals, the VHS model results in a scale which suggests that a large volume of waste exhibiting a particular extract level could be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous (see 52 FR 33441 and 53 FR 32). Because the waste volumes of the three petitions vary, levels of concern for metals in these wastes also vary.

Further discussion of specific differences among the 1985 exclusion and the two recent proposals is provided later in today's notice in Section II.A.2.e. ii, iii, and iv.

Thus, differences between these actions properly reflect differences in the petitioned wastes and the Agency's evolving technical expertise in assessing the hazards of wastes proposed for exclusions. The mere fact that differences exist reveals nothing more or less than this. These differences have been publicly noticed in numerous post-1985 actions that appeared in the *Federal Register* and were fully referenced in the proposal. The Agency believes strongly that it should be able to apply superior methods of analysis or more accurate information when they become available to ensure protection of human health and the environment. Of course, commenters are encouraged to assess the Agency's evolving methodologies and to comment on

specific criteria where proposed. Specific challenges to the analysis for the proposed exclusion of cancelled pesticides are described below.

b. *Upfront Delisting as a Concept.* Several commenters expressed their support of the concept of upfront delistings. One commenter stated that the ability to determine upfront delisting levels will encourage waste minimization and treatment activities that reduce constituent concentrations below delisting levels. One commenter also noted that the availability of upfront delisting levels will discourage petitions which are likely to be unsuccessful, thereby saving industry and Agency resources. The Agency agrees with this commenter and is planning to amend the delisting criteria contained in 40 CFR 260.22 to include specific criteria for upfront delisting petitions.

One commenter suggested that EPA should use upfront delisting levels as a "floor" in other RCRA programs so that management requirements could cease or be reduced based upon the concentrations present in a particular waste stream. Although the Agency is interested in evaluating the commenter's novel approach, this approach has ramifications beyond the scope of this rulemaking. EPA encourages the commenter to provide in another forum more specific examples of such reduced management requirements, and a more thorough analysis of how such a program could be implemented.

c. *General Comments on the OLM and VHS Models.* Several commenters expressed concern regarding the Agency's use of the OLM and VHS models as factors in setting the delisting levels. The commenters referred the Agency to comments on the Agency's models that they had made on earlier proposals, and reiterated their major concerns that (1) the models use extremely conservative assumptions and do not include all critical parameters, resulting in unrealistic conclusions, and (2) the models do not allow for the consideration of site-specific factors.

EPA believes that the models used in the Delisting Program generally represent a reasonable worst case waste disposal scenario, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, i.e., generators may dispose of wastes on their property or at any facility that will accept the waste, EPA currently believes that it can be inappropriate for the Delisting

Program to consider extensive site-specific factors. The Agency currently is unable to predict how a waste will be managed after delisting. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The decision not to consider site-specific criteria is particularly appropriate in this exclusion, because the petitioner has not requested that EPA give any consideration to site-specific factors. Therefore, the Agency has not examined these factors in making a decision in this case.

For the purposes of this particular rule, EPA has considered the appropriateness of the OLM/VHS model approach and of the model's parameters. First, the Agency decided that a landfill exposure scenario would be appropriate. EPA assessed the nature of the solid residues which will be generated by the MIS and concluded that landfilling is the most reasonable disposal scenario. (Due to the lack of organic content in the residues following incineration, land treatment would probably not be used. Similarly, management in an impoundment is not expected.) In terms of the liquid residues, EPA determined that the groundwater dilution of constituents afforded by application of the VHS model was appropriate, given past management practices for the MIS's scrubber water (i.e., land application). The Agency further considered whether the OLM/VHS model was the landfill model of choice. The primary criteria in this evaluation were (1) the need to apply a generic model (i.e., non-site specific), and (2) the need to apply an environmentally conservative model. As discussed above, the Agency believes that a generic modelling approach is needed because of the potential for

delisted wastes to be subject to numerous management options. Further, the Agency believes that a conservative approach is particularly warranted in regard to upfront exclusions, because the petitioner has not generated any residues yet and therefore has not provided any waste characterization.

d. *Specific Comments on the Use of the OLM/VHS Model for Dioxin Migration.* One commenter submitted comments regarding the appropriateness of the VHS model for setting delisting levels for dioxin. Specifically, the commenter noted that the VHS model does not include consideration of actual migration potential of a compound because the model does not account for attenuative mechanisms (such as sorption) which would retard the flow of hydrophobic compounds (such as dioxin) in ground water. The commenter noted that the original version of the model adopted by the Delisting Program (see Domenico and Palciauskas, "Alternative Boundaries in Solid Waste Management", *Groundwater*, v. 20, 301-311, 1982) included a term to account for retardation due to sorption, and that other models used by EPA (e.g., the Liner Location Model) consider sorption effects. The commenter believes that the omission of a migration factor in the VHS model will result in an overestimation of receptor concentrations of dioxin, other organic constituents, and metals.

The Agency acknowledges that sorption effects can play an important part in the migration of contaminants through ground water. Sorption effects, however, are highly variable from site to site and are dependent on many factors, such as soil characteristics. In keeping with the reasonable worst case approach, the Agency has determined not to consider site-specific sorption variables in applying the VHS model to these wastes. An important aspect of this reasonable worst-case scenario is that soil and aquifer conditions would not favor the attenuation of contaminants. Thus, sorption effects, in fact all attenuative effects, are assumed to have no effect on the receptor concentrations of ground-water contaminants. For very hydrophobic compounds, this assumption is a very conservative, worst-case assumption. The Agency notes, however, that this assumption becomes significantly less conservative when the hydrophobic compounds are codisposed or leached with solvents which tend to mobilize hydrophobic constituents.

The commenter also stated that the organic leachate model (OLM) is inappropriate for predicting the leaching

capacity of highly insoluble compounds because (1) highly insoluble compounds are not well represented in the OLM leaching data base, (2) the insoluble compounds that are represented show a poor correlation with the adopted model, and (3) actual leaching data from municipal incinerator ash show that the OLM overpredicts dioxin leaching levels by a factor of 100.

In response to these comments, some background information on the OLM is appropriate. The OLM was constructed using 353 data pairs representing 53 wastes bearing 73 different constituents. A number of the wastes sampled were bound in hydrophobic matrices (e.g., lumpy oil refinery sludge, viscous chemical manufacturing sludge, and tar/dirt mixtures from production of methyl ethyl ketone), other wastes were bound in inorganic matrices, and one waste type represented incinerator ash (API sludge/incinerator ash). The commenter is correct that the correlation coefficient determined solely for the low solubility constituents in the leaching data base is low. However, the correlation coefficient for any general subset of data studied in a regression analysis will be lower than the correlation coefficient for the overall data set. Part of what the commenter noticed is due to the fact that the low correlation coefficient was generated from a small data set.

The Agency agrees, however, that the variability of leaching data in general is partly responsible for the low correlation. In keeping with the reasonable worst-case approach, the Agency is taking a conservative stance in regard to the high variability in the leaching data on mobility of hydrophobic compounds. For this reason, the municipal incinerator ash data cannot be considered by itself. Even if the municipal incinerator ash data were added to the leaching data base, the paucity of these data would result in little or no effect on the general correlation coefficient.

The commenter also stated that the time frame for dioxin to reach the compliance point in the VHS model scenario is on the order of tens of thousands of years and that the dioxin is likely to degrade before actually reaching the receptor. However, the length of time required for contaminants in an aquifer to reach a potential receptor may be highly variable; full analysis of dioxin mobility would necessarily require a substantial amount of site-specific information. As discussed above, the Delisting Program does not currently believe it appropriate to consider site-specific information in

its analysis. In fact, because the Agency cannot know with certainty how the wastes will be disposed after exclusion, the Agency cannot discount the possibility that the wastes may be exposed to solubilizing agents which will tend to mobilize any dioxin remaining in the residues. For these reasons, the Agency has assumed in using the VHS model that (1) attenuation is insignificant, and (2) soil and aquifer conditions do not favor the degradation of contaminants en route to the receptor point.

The commenter disagreed with the application of the VHS model for dioxin because it does not, in general, conserve mass. That is, due to the simplifying assumptions used in the VHS model, the initial velocity of a contaminant entering the aquifer is determined only by the velocity of the ground water, the vertical dispersivity of the aquifer, and the width of the disposal unit. The commenter claimed that this initial velocity is also affected by the properties of the waste materials and net infiltration into the ground water. The commenter stated that, by not considering these factors, the VHS model can overestimate or, more likely, underestimate the dilution that may occur in an aquifer.

EPA acknowledges that the VHS model is more likely to overpredict (rather than underpredict) the receptor concentration of contaminants in any given waste due to the conservative nature of the assumptions underlying the model. EPA also recognizes that all models do not always predict factual values accurately. Notwithstanding, EPA believes that the VHS model provides a useful analytical tool for the evaluation of the hazards posed by these wastes. EPA has considered and rejected the use of alternative models and approaches for this specific petition, as described below. Unless the Agency is able to assure protection of human health and the environment without generic, conservative assumptions, the Agency will employ these assumptions. Commenters should, however, feel free to demonstrate that more specific alternatives are scientifically valid and adequate to replace such assumptions.

Other Models. One commenter objected to the proposed dioxin delisting levels as being unreasonably low in light of the Center for Disease Control (CDC) level of 1 ppb for residential soils (See Kimbrough, R.D., H. Falk, P. Stehr, 1984. Health Implications of 2,3,7,8-Tetrachlorodibenzodioxin (TCDD) Contamination of Residential Soil, *J. Tox. Env. Health*, 14:47-93). The delisting level for solid residues is

different from the CDC number for the following reasons:

- The CDC used a significantly different unit cancer risk (a factor used to compute a regulatory dose) from that used by EPA to set the health-based level. Because the CDC unit risk factor is lower, a higher concentration could be set for the same degree of overall risk than if EPA's factor were used.

- The CDC approach considers exposures to dioxin contaminated soil via ingestion, dermal absorption, and inhalation, while the VHS model considers ingestion of ground water.

- The CDC analysis was originally meant to specify acceptable levels of contamination which have become fixed to residential soils. The delisting levels represent raw waste concentrations.

The 1 ppb action level for residential soils recommended by CDC corresponds to an acceptable dose level of 636 picogram/kg/day. CDC calculated that the Virtually Safe Dose (equivalent to a cancer risk of 10^{-6} for dioxin falls within the range of 28 fg/kg/day to 1,428 fg/kg/day, but justified the chosen value of 636 fg/kg/day as acceptable in the context of their specific analysis. If the unit cancer risk of 6.4 fg/kg/day calculated by EPA (Health Assessment Document for Polychlorinated Dibenzo-p-dioxins, U.S. EPA, 1985) is used in the methodology presented by CDC, the resultant "action level" would be about 100-fold less than the 1 ppb level, i.e., on the order of 10 ppt (see the docket to this notice for the calculations supporting this estimation). Despite the numerous differences in the exposure scenarios and modeling approaches, this level is comparable to the levels of concern predicted by the OLM/VHS model analysis for solids.

One commenter challenged the Agency's unit cancer risk value used to derive health-based levels for the VHS model groundwater exposure scenario. The Agency acknowledges that the value used is conservative, but continues to believe that this conservative unit cancer risk value is appropriate for the purposes of this delisting evaluation. The Agency's full response to these comments is available in the docket to this rule (see "Response to Public Comments on Health-based Levels Used in the Cancelled Pesticides Proposed Exclusion", March 2, 1988).

The Agency considered the appropriateness of other exposure assessment models for dioxin as alternatives to the OLM/VHS model approach. As a result of comment on the 1987 and 1988 MIS delisting proposals, the CDC approach was considered as one alternative. The CDC approach considers very different exposure routes than the VHS model. In general, the exposure scenarios considered in the

CDC approach are appropriate for dioxin, although as demonstrated briefly above, the use of EPA's unit risk number with the CDC assumptions results in a similar, conservative level of concern as the use of the OLM/VHS model. The CDC analysis did not, however, take into account other routes of exposure, including ground water and food chain bioaccumulation. Under certain circumstances, the Agency believes that bioaccumulation may be an equally significant exposure route as those addressed in the CDC approach.¹ The Agency also notes that a number of assumptions used in the CDC approach, including estimated soil ingestion rates, have been revised or have been the subject of serious scientific debate since the development of the CDC action level. Based on the uncertainty associated with the underlying assumptions of the CDC approach and the difference in unit cancer risk levels, the Agency decided that the CDC approach is not a preferable alternative to the VHS model for evaluating this petition at this time.

The Agency also considered application of developmental work by EPA's Office of Research and Development (ORD) for the evaluation of dioxin-related delisting petitions. ORD is currently preparing a detailed exposure assessment document for dioxin. One portion of this work evaluates a variety of potential exposure routes for dioxin-contaminated soils and assigns estimated risk levels to these exposure routes for a given scenario. The Delisting Program has evaluated the merits of this approach and believes that, when finalized, this approach will be a valuable tool. ORD's work, however, has not been released for use at this time and is undergoing extensive peer and Science Advisory Board (SAB) review. Given the uncertainties associated with the technical merits of this approach, the Agency has determined that the ORD approach should not be used at this time. However, application of ORD's draft document to the facts of this case supports the low levels of concern predicted by the OLM/VHS model approach (i.e., low ppt level). (This

information has also been placed in the docket.)

One commenter pointed out that the Agency has re-examined its unit cancer risk number and has prepared a draft document (which the commenter submitted as part of the comment package) revising the number upwards by a factor of 16. The Agency is continuously considering new toxicological data and re-evaluating many of its health-based numbers. Petitioners who have either withdrawn their petitions or received denial decisions in the past are free to re-petition if final revisions to these numbers would potentially improve their chances of obtaining an exclusion. The report that the commenter has referred to, however, is a preliminary draft which has not been formerly released by the Agency, is not available for use as Agency policy, and is being circulated for review within the Agency for comments on its technical accuracy. As such, it cannot at this time be adopted by the Delisting Program and should not be considered in discussions of the applicability of the existing, Agency-sanctioned risk specific dose (RSD) for dioxin.

e. *Specific Comments on Proposed Verification Conditions—i. Condition 1—Compliance with Permit Conditions.* Two commenters agreed that all incinerators should operate in compliance with their permit conditions, but objected to the requirement in the proposed exclusion that residues be retreated if the incinerator is operating out of compliance with its permit conditions (see 53 FR 36, January 4, 1988). The commenters suggested that the results of the analyses of the residues be used to determine whether the residue be considered non-hazardous.

The Agency agrees with the commenters that the petitioner should analyze any residues generated whenever the MIS is operating outside of the limits specified in its permit. The Agency is specifically concerned with a hypothetical situation where the MIS experiences a mechanical system failure (i.e., failure of the secondary combustion chamber (SCC) or the air pollution control system, failure of the kiln to fire, etc.) after RCB has made a successful demonstration under Condition 6 of the exclusion and has terminated the daily analytical testing specified in Conditions 2 through 5. Although the Agency does not expect these failures to occur, we are modifying Condition 1 in response to comments to require RCB to conduct verification testing on the

¹ Rappe, C., H.R. Buser, D.L. Stalling, L.M. Smith, and R.C. Dougherty, 1981. Identification of Polychlorinated Dibenzofurans in Environmental Samples. *Nature*, 292:524-526.

Kuehl, D.W., P.M. Cook, A.R. Batterman, D.B. Lothenback, B.C. Butterworth and D.L. Johnson, 1985. Bioavailability of 2,3,7,8-Tetrachlorodibenzo-p-dioxin from Municipal Incinerator Fly Ash to Freshwater Fish. *Chemosphere*, 14:427-437.

Jensen, D.J., R.A. Hummel, N.H. Mahle, C.W. Kocher and H.S. Higgins, 1981. A Residue Study on Beef Cattle Consuming 2,3,7,8-tetrachlorodibenzo-p-dioxin. *J. Agric. Food Chem.*, 29:265-268.

incinerator residues should such a scenario occur:

Condition (1): The incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, RCB must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (5), regardless of whether or not the demonstration in Condition (6) has been made.

ii. *Conditions 2 and 3—Metals Analyses.* One commenter questioned why the 1988 and 1987 proposals imposed more stringent maximum allowable leachate and treatment residue concentrations for mercury, chromium, and selenium than the 1985 rule, as well as limitations for the remainder of the EP toxic metals, nickel, and cyanide that have no counterpart in the 1985 rule. As discussed earlier, the Agency is requiring in this exclusion (and intends to require in any exclusion for the Syntex residues) that the residues be tested for all of the EP toxic metals, nickel and cyanide, because the 1987 and 1988 proposals were for upfront exclusions. The treatment residues from the incineration of the Syntex lagoon sludge and the cancelled pesticides have not been generated yet and therefore have not been characterized. In the case of the 1985 exclusion, RCB had submitted actual analytical data on treatment residues. Upon evaluation of these data, the Agency determined that batch testing was only necessary for the three metals listed in the conditions of that exclusion. No such data exist for the Syntex or cancelled pesticides treatment residues since they have not been generated yet.

The commenter also questioned why the delisting levels for chromium, mercury, and selenium are different than the levels listed in the conditions for the 1985 exclusion. As discussed earlier, the delisting levels have been determined by back-calculating from the regulatory standards through the VHS model and are a function of the waste volume. Since the waste volume covered by the 1985 exclusion differs from the volume covered by the cancelled pesticides proposal (as well as Syntex's waste volume), the dilution factors differ and the resultant delisting levels also differ.

The commenter also requested an explanation of why the proposed delisting levels are lower than the EP Toxicity characteristic limits. The general purpose of the hazardous waste characteristics, such as the EP Toxicity characteristic, is to regulate the worst, rather than all, of the hazardous wastes

exhibiting a given characteristic. Wastes leaching concentrations of the EP toxic metals at less than 100 times the National Primary Drinking Water Standards (the EP Characteristic) are not necessarily non-hazardous. Rather, such wastes may be listed as hazardous if, pursuant to the criteria for listing contained in 40 CFR 261.11 of the regulations, these lesser concentrations in combination with other factors are deemed to pose substantial present or potential threats to human health and the environment. Similarly, the Delisting Program currently believes that wastes which exhibit levels slightly less than the levels established through the hazardous waste characteristics may still be identified as hazardous. Thus, levels established by application of the VHS model that are below the EP Toxicity characteristic levels may properly be considered to be hazardous.

One commenter submitted specific comments on the Maximum Concentration Limits (MCLs) which the Agency used in this exclusion for the EP toxic metals. The commenter argued that the drinking water standards (or MCLs) should not be used by EPA in establishing the delisting levels for metals. The commenter claimed that the MCLs are based on chronic exposure scenarios, and would necessarily overestimate the adverse health impact under a scenario where "the MCL is reached only transiently."

The Agency believes that the steady-state VHS model generally provides a reasonable worst case value for constituents of concern at a receptor well. In most cases, the concentration of a constituent in the leachate represents only a small fraction of the total mass of the constituent in the waste. Sustained leaching of the constituent is possible, which would lead to chronic exposure to the chemical over long time periods. Therefore, the Agency believes that use of health-based standards (such as MCLs) derived for chronic exposures is valid.

The commenter also raised a variety of questions concerning the bases of the MCLs for a number of the metals. The Agency's response to these comments is available in the docket to today's rule (see "Response to Public Comments on Health-based Levels Used in the Cancelled Pesticides Proposed Exclusion", March 2, 1988). The Agency is in the process of revising the MCLs, and all of the points raised by the commenter were acknowledged by EPA in a proposed rule (50 FR 46936, November 13, 1985). As discussed in the docket, EPA does not believe that the questions raised warrant the use of

different health-based levels for these constituents in this rulemaking.

The same commenter also challenged the health-based levels used to establish delisting levels for nickel and cyanide. The commenter further questioned why these two chemicals should be monitored because neither chemical was detected in the waste. The bases for these health-based levels were described in detail in a proposed rule establishing prohibition levels for the land disposal of "California List" metals and cyanide (see 52 FR 29994, August 12, 1987). These proposed health-based levels were established for the same exposure route as the MCLs (i.e., drinking water), and the Agency believes these levels are adequate for setting delisting levels. For both chemicals, the commenter noted the uncertainty in the bioavailability of these chemicals when ingested in food or water. The Agency agrees that some uncertainty exists in this area, but believes that the safety factors incorporated into the health-based levels appropriately address these (as well as other) uncertainties.

In response to the commenter's statement regarding the absence of nickel and cyanide in the untreated pesticides, the Agency notes that the petitioner submitted data only for an aqueous extract of the solid cancelled pesticides. While the analyses of the extract indicate that these two chemicals do not leach from the solid pesticide material, these results do not confirm the absence of these chemicals in the pesticide wastes. If these constituents are actually present in the untreated pesticides, they may potentially be more mobile after incineration due to the removal and destruction of the organic materials which can, under certain circumstances, retard leaching. Furthermore, cyanide is a possible product of incomplete combustion and may be formed during the incineration process. For these reasons, EPA believes that the analyses of nickel and cyanide in the final waste residues are justified.

iii. *Condition 4—Organics Analyses.* One commenter expressed support of the Agency's proposed approach to allow residuals to be disposed as non-hazardous when the constituents of concern are not detected using the appropriate SW-846 methods correctly and the practical quantitation limits exceed the delisting levels.

One commenter believed that the maximum waste residue concentrations proposed for organics are excessively low and are not necessary to protect human health and the environment. The

commenter questioned why any testing for organics is necessary, because the 1985 exclusion did not require batch testing for organics. The Agency refers the commenter to the discussions earlier in this notice regarding the differences between the 1985 exclusion and the upfront exclusions proposed in 1987 and 1988.

One commenter stated that the low delisting levels for certain organics will require the MIS to operate with extended residence times to ensure destruction of these constituents to the delisting levels. The commenter believed that this is unnecessary and will (1) effectively reduce the capacity of the MIS, (2) significantly increase operating costs, and (3) deter future thermal treatment of hazardous wastes.

The Agency acknowledges that effective hazardous waste treatment and detoxification can be quite expensive and time consuming. The Agency also recognizes that its conservative approach to protecting human health and the environment may cause increased treatment costs compared with less protective approaches. Notwithstanding, the Agency believes that the availability of upfront exclusions, even with conservative conditions, will encourage such treatment.

Two commenters supported the Agency's proposed approach to eliminate certain constituents from the verification testing requirements when the delisting levels exceed 1,000 ppm. The commenters agreed with the Agency that it is highly unlikely that these constituents will be present in the residues at these levels after incineration.

One commenter noted that the maximum allowable treatment residue concentrations for a number of constituents are substantially higher than the levels for the same constituents in the 1987 proposal. The commenter correctly attributes some of these differences to updates to the Agency's health-based levels. The constituents affected by these updates include chloroform, 1,2-dichloroethane, and 2,3,4,6-tetrachlorophenol. The commenter stated that for the sake of fairness and completeness, all of the exclusions should be comparable (except where the Agency has specifically demonstrated a health-based rationale for different requirements). The commenter assumed that the Syntex exclusion, when finalized, would incorporate the updated values.

The Agency notes that part of the difference in delisting levels is due to the different volumes of waste

petitioned for exclusion by the two petitioners (see earlier discussion of the effect of volume changes in setting delisting levels). The Agency agrees that the basis for exclusions should be similar unless appropriate reasons for differences exist, and is considering several options to bring the Syntex proposal and today's rule into closer agreement.

The commenter also questioned why the delisting level for chloroform in the solid residues differs between the 1987 and 1988 proposals by 540 fold, yet the difference in the health-based level and in waste volume is about 120 fold (12 fold in the health-based regulatory level and 10 fold in the waste volume). The Agency notes that differences in health-based levels for a given constituent are not directly proportional to the resulting differences in delisting levels because of the exponential form of the OLM, which essentially amplifies the differences in health-based levels. The public is referred to the docket for the mathematical derivation of this explanation.

One commenter stated that it was unable to comment on the acceptability of the proposed delisting levels because the health-based levels were not published in the proposal. These health-based levels were, however, placed in the docket to the notice and were thus available for review to substantiate any comment. Although the Agency believes that availability of such information in the docket fully complies with applicable requirements for notice, the Agency intends to publish such numbers in future proposals for upfront exclusions.

One commenter objected to the Agency's intention to add constituents to the list of constituents in Condition 4 if health-based levels became available after the publication of the proposal and before promulgation. The commenter argued that such values must be subject to notice and comment prior to inclusion in a final rule. The Agency agrees and has not added any additional constituents to the list in Condition 4.

One commenter suggested that the list of constituents to be tested for under Condition 4 be reduced by 50 percent. The commenter believes that the reduced list would allow for a conservative, more cost-effective verification that the incineration residues are not hazardous. The Agency considered but has rejected the commenter's suggestions because justification for specific deletions from the verification lists was not provided. In addition, HSWA requires that petitioners demonstrate that any potential constituents of concern do not

cause the wastes to be hazardous; the concept of verifying only 50 percent of the constituents of concern is not consistent with this mandate. The constituents listed in Condition 4 represent compounds which are known to be present in the untreated pesticides and compounds which potentially may be present in the incineration residues as products of incomplete combustion. The verification testing list presented in the proposal (and finalized today) was abbreviated by eliminating hazardous constituents which could not possibly be present at levels of regulatory concern (i.e., the level of regulatory concern was greater than 1,000 ppm). The Agency believes this reduction was appropriate because of (1) the low or non-existent levels of the "eliminated" constituents in the untreated pesticides, (2) analytical test results on residues generated in the past by the MIS, and (3) the MIS's demonstrated ability to achieve 99.9999 percent destruction and removal efficiency. Without further information sufficient to indicate that the other specific constituents will not be present at or above levels of regulatory concern in the residues, verification testing for such constituents is appropriate.

One commenter noted that the proposal did not specify precise analytical methodologies for analysis of the solid residues and that there are no approved methods for measuring volatiles in solids. Condition 4 of the proposal (and final rule) states that "analyses must be performed according to SW-846 methodologies", and the commenter is referred to that manual for the appropriate analytical method for the chemicals of concern. SW-846 does include methods for analyzing volatile organics in solid waste. For example, Method 8240 contains procedures for purging and analyzing volatile compounds from soil/sediment samples.

The commenter suggested that SW-846 methods be applied to an aqueous extract of the solid residues because this would be appropriate for a groundwater exposure scenario. The Agency believes that an aqueous extraction is appropriate for groundwater exposure scenarios, and for this reason, used the OLM (which was derived from an aqueous leaching data base, see 51 FR 41082, November 13, 1986) to predict aqueous leachate concentrations of organics from total concentrations of constituents in waste. Because the delisting levels were back-calculated (by using the VHS/OLM models to predict leachate from total constituent levels in the residue), double-counting would result if leachate levels of the

residues were compared to the delisting levels.

iv. Condition 5—Dioxin Analyses—General. One commenter objected to the inclusion of testing for dioxin because it is inconsistent with the 1985 exclusion. As stated earlier, the conditional testing requirements have been added to verify that the MIS can treat the cancelled pesticides as successfully as the petitioner claims it can. If the petition were a conventional petition instead of an upfront petition, the conditional testing requirements may not have been needed.

One commenter referenced the 1985 exclusion, pointing out that limits were not set for dioxin at that time, and that the Agency should be consistent and apply the same criteria to the recent proposals. As stated earlier in the Agency's response to general comments, the Agency's general approach to dioxin and that of the delisting program have developed considerably since the 1985 exclusion was promulgated, and the 1985 exclusion was not an upfront exclusion.

One commenter noted that the dioxin levels in the proposal are significantly more conservative than the levels promulgated in the 1985 exclusion. The commenter further noted that the Agency indicated in 1985 that the 1985 detection limit levels for dioxin in solids and aqueous media were not of regulatory concern, even though lower levels were achievable. In 1985, the Agency viewed the determination of dioxins by HRGC/HRMS as an experimental method. The Agency now believes that the better detection limits that are available (see discussion below on Method 8290), and the more conservative levels proposed for this exclusion, are more consistent with the delisting programs' unit cancer risk values and with the evolution of its reasonable worst case modeling approach. The Agency also believes that the development of a more conservative approach is a reasonable means of ensuring protection of human health and the environment.

The same commenter stated that if verification testing is required, the Agency should only require analysis for those dioxin isomers and homologs present in the untreated residues. The Agency disagrees. HSWA clearly states that the Agency must evaluate wastes for all factors which may cause a waste to be hazardous (see 42 U.S.C. 6921(f)). Dioxins and furans are known to be products of incomplete combustion. Therefore, the Agency believes it is appropriate to analyze these incineration residues for all possible dioxin isomers and homologs.

This commenter also submitted a catalog of other thermal treatment units which have treated dioxin-contaminated materials in the U.S. and claimed that few of these units have achieved the dioxin delisting levels specified in the cancelled pesticides exclusion. The Agency has examined the commenter's catalog and has concluded that the referenced thermal treatment units may indeed have actually achieved the delisting levels of concern, as each unit achieved non-detectable levels of dioxin in their ash. Without more information, there is no means to know whether the units did or did not achieve the delisting levels. Notwithstanding, the Agency notes that in some cases the detection limits achieved were equivalent to or below the PQLs proposed for this exclusion. The Agency therefore questions why the commenter claimed that few thermal units may be able to meet the conditions of today's rule.

The commenter also questioned why the Agency is requiring such rigorous treatment when data from municipal incinerators indicates that ash from such incinerators can exceed the MIS's delisting levels. Whether dioxins are found in municipal incinerator ash is not relevant to RCB's delisting petition. Issues related to the presence of dioxin in municipal incinerator ash will be considered in the Agency's overall decision on appropriate management standards for such ash.

Method 8290. One commenter protested the Agency's proposed requirement that Method 8290 be used to analyze the residues for dioxin. The commenter objected to the use of a method which has not been subject to general notice and comment through rule-making and is not in final form. As stated in the proposal, Method 8290 has been subjected to single laboratory validation. (See: ORD Publication EPA 600/4-86-004, "Protocol for the Analysis of 2,3,7,8-Tetrachlorodibenzo-p-dioxin by High Resolution Gas Chromatography/High Resolution Mass Spectrometry", January, 1986.) According to Agency experts who were consulted in the choice of a HRGC/HRMS method, Method 8290 is the method of choice (see memorandum to Suzanne Rudzinski from Robert L. Booth dated December 3, 1987 which was and is available in the docket to the proposal). The Agency also notes that HRGC/HRMS analysis has been available for several years, and although it is a sophisticated method, it is certainly not an untried, experimental procedure. In addition, although methods which are added to SW-846 are traditionally noticed in the Federal Register for public information and

comment, SW-846 is currently used as a guidance manual by the Delisting Program rather than as a regulatory requirement. In proposed rulemakings such as the proposed cancelled pesticides exclusion, EPA proposes the use of specific SW-846 methods and the regulated community is given the opportunity to comment on the methods. Comment on the proposed use of Method 8290 was received in this case.

One commenter objected to the use of Method 8290 on the grounds that it is not widely available, has not been used extensively, is twice as expensive as the less sensitive method for dioxins which is currently in SW-846 (Method 8280), is too complicated, will be burdensome for laboratories to avoid false positives due to laboratory cross-contamination of samples and equipment, and has a long turnaround time which will be burdensome during the incineration process due to the limited storage capacity at the Denney Farm site. The Agency agrees with the commenter that there are complications associated with the use of Method 8290. Nevertheless, the Agency is responsible for choosing an analytical method which is best suited for measuring the potential hazard of the cancelled pesticides incineration residues, not the method which is most convenient and inexpensive. Given the need for high analytical sensitivity to assure careful analyses of residue constituents, the Agency remains convinced that Method 8290 is the method of choice. Additionally, the Agency notes that there are a number of laboratories which are familiar with and experienced in the conduct of Method 8290. Many of these laboratories participated in the development of the method and should be able to provide analytical services with a minimal turn-around and adequate quality control.

Practical Quantitation Limits (PQLs). Two commenters objected to the Agency specifying PQLs in delistings. One commenter stated that setting an absolute limit for an analytical method as a delisting requirement is precedent-setting and in many cases would be inappropriate. The commenter expressed concern that the Agency intends to specify PQLs routinely in all future upfront exclusions. However, the commenter also stated that the logic which the Agency used in estimating a PQL for dioxin may be reasonable for the specific application of the cancelled pesticides exclusion, since the laboratories used to conduct the analysis will be limited to the few qualified laboratories in the country. The same commenter went on to state

that for future delistings, the Agency should not estimate a PQL, but should allow a laboratory to establish a matrix-specific, laboratory-specific minimum detection limit (MDL) for the constituent of concern. The PQL should be a set multiple of this MDL. Finally, the commenter agreed that the multiplier for setting a PQL from an MDL is almost certainly in the range of three to ten, as stated by the Agency in the proposal. Another commenter stated that the low PQLs are unjustified given the lack of rigorous interlaboratory studies for Method 8290.

The Agency believes that setting specific PQLs for upfront delisting petitions is appropriate. For upfront delistings, the data submittal requirements must be described in detail to minimize situations where the petitioner submits verification data that the Agency subsequently might reject as inadequate. One of the critical elements of verification testing is the analytical detection limits. The adequacy of the detection limits is judged by comparing the achieved detection limits with the suggested detection limits in SW-846. The Agency frequently requests that the petitioner reanalyze the waste using lower detection limits or provide a detailed discussion of why lower detection limits cannot be achieved. To avoid such situations, the Agency believes that specification of reasonable but conservative MDLs and PQLs that labs must meet is appropriate. RCB's petition was for an upfront delisting and no analytical data on the treatment residues were available for EPA's review. As was discussed in detail in the proposal, the Agency considered data from a number of laboratories that have analyzed wastes for dioxin using Method 8290 in order to establish a reasonable yet conservative PQL. (The Agency notes that PQLs were only specified in the dioxin testing condition. Dioxin is the primary listed constituent of concern in the petitioned waste (EPA Hazardous Waste No. F027).)

Several commenters stated that many factors (i.e., waste matrix interferences, background levels, operator and instrument variability) can affect a method's analytical sensitivity. Method 8290 has been designed with extensive cleanup procedures and instrumentation calibration requirements. These features were added to the method to maximize the method's sensitivity and minimize potential interferences. EPA consulted with experts regarding the feasibility of the proposed PQLs and determined that, given the quality and expertise of the laboratories which may be used to conduct the dioxin analyses, the

proposed PQLs are reasonable. Future determinations of PQLs will be made on a matrix- and constituent-specific basis.

One commenter argued that the procedure used to determine minimum detection limits (MDLs) and PQLs is meant to be applied by specific laboratories for a specific chemical and specific matrix, rather than as specified in the proposal. The commenter also stated that if the Agency is concerned about laboratories having abnormally high MDLs or PQLs because of poor practices, this concern should be addressed through existing QA/QC programs instead of through the specification of PQLs. The Agency notes that the levels presented in the proposal are not specific targets for the petitioner to achieve, but rather maximum acceptable PQLs, or the upper bound of acceptable detection limits. These values were determined by evaluating the levels which have been achieved by a number of laboratories which are familiar with the method. The Agency also notes that Method 8290 is a very detailed and specific method with extensive QA/QC requirements. Agency experts believe that laboratories which follow the method procedure correctly should be able to achieve the PQLs. The Agency is not indicating that these PQLs for this dioxin waste are necessarily appropriate for all petitions. PQLs depend on the waste matrix and thus will be determined, as needed, on a case-by-case basis.

One commenter complained that the Agency has set the maximum PQLs arbitrarily. Specifically, the commenter stated that it was unclear why the Agency set the PQLs to be less than three times the minimum detection limits (MDL) after the Agency indicated that PQLs are normally set at three to ten times the MDL. One commenter, having recommended that the Agency not specify PQLs, provided an alternative recommendation that if PQLs are to be used, the Agency should use a factor of 10 to determine the PQL. The commenter did not provide specific justification as to why the factor of 10 is more appropriate than a factor of three.

Although the Agency defended its earlier choice of PQLs as reasonable because (1) the residues to be analyzed will be relatively free of interferences, (2) the petitioner will be using highly qualified and experienced operators and laboratories to conduct the analyses, and (3) the values chosen are extremely conservative, the Agency acknowledges that standard scientific protocol used to establish PQLs specifies three to ten times the MDL, rather than two or two-and-one-half times the MDL. EPA is

therefore revising the condition to raise the PQLs to three times the MDL (the most conservative value in this range), i.e., to 15 ppt and 0.120 ppt for the solid residues and wastewaters, respectively.

The Agency received comments which pointed out that the Agency had specified maximum PQLs for Method 8290 but did not specify whether they applied only to 2,3,7,8-TCDD or to all of the polychlorinated dioxins and furans. The commenter referenced the ad hoc Agency work group which had originally recommended Method 8290 and the PQLs, and stated, that (1) the PQLs specified in the proposal were meant to apply to 2,3,7,8-TCDD, (2) a laboratory achieving these PQLs would achieve "reasonable" detection limits for the other congeners and homologs, (3) equivalent PQLs should be achievable for all tetra- and penta- homologs, and (4), for the hexa- homologs, PQLs should be 2.5 times the 2,3,7,8-TCDD PQLs. The sensitivity of the 8290 method decreases somewhat for the more highly chlorinated homologs, and the method specifies that method calibration limits for the hexachlorinated compounds are 2.5-fold higher than the limits for the tetrachlorinated homologs. The Agency agrees that these levels should have been specified in the proposal. The Agency also agrees with the commenter's suggested PQLs and is modifying the condition accordingly:

Condition (5): RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (i.e., kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in conditions (2) and (3). The TCDD equivalent levels for solids must be less than 5 ppt and for wastewater the levels must be below 0.002 ppt. Any residues with detected dioxins or furans in excess of these levels must be retreated or disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. For tetra- and pentachlorinated homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 0.120 ppt for wastewaters. For hexachlorinated homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 0.3 ppt for wastewaters.

One commenter objected to the requirement that residues be retreated or managed in accordance with Subtitle C if no dioxin is detected in the residues but the laboratory cannot meet the required PQLs. One commenter suggested that the Agency validate an analytical method's ability to achieve

any future MDL that is set as a condition of an upfront delisting. The Agency has used its best technical judgment in setting MDLs at realistic values, and will continue to do so in the future. The Agency believes that this condition is necessary to protect human health and the environment, and it is appropriate because the exclusion is in response to an upfront delisting petition. The Agency notes that in such instances, the petitioner has a number of options: (1) the petitioner can retreat the residue; (2) the petitioner can also dispose of the residue as hazardous; (3) the petitioner can request that the laboratory reanalyze the residues to achieve the PQLs specified in the exclusion, or the petitioner can retain the services of a different laboratory that is capable of achieving the PQLs; or (4) the petitioner can submit the high analytical detection limits with documentation certifying the laboratory's inability to achieve lower detection limits due to specific matrix interferences which the method cannot address.

Several commenters pointed out confusing printing errors in the proposals regarding the PQLs. As a point of clarification, the final sentence in the second column on 53 FR 38 of the proposal should have read as follows: "Using a factor of three to determine the resultant PQL, most highly qualified laboratories should be able to achieve PQLs of 15 ppt for solids and 120 ppq for wastewaters."

v. Condition (6)—Termination Provision and Data Submittal Requirements. Three commenters expressed support of the termination of verification testing after four consecutive clean batches of residues are generated.

One commenter objected to the requirement that the petitioner continue testing until the Assistant Administrator of the Office of Solid Waste and Emergency Response notifies the petitioner that the testing requirement has been terminated. The commenter believes that this is an unworkable approach given the constraints of the storage capacity at the Denney Farm site, the lengthy analytical turnaround times, and the potential administrative delays at the Agency. The commenter suggests that either the Agency commit to an expedited review of the verification data or allow the petitioner to evaluate the samples independently to ensure compliance with the exclusion conditions.

The Agency believes at this time that Agency review of verification data is needed to maintain the integrity of the upfront delisting process, and the

Agency will strive to review this data expeditiously.

The two commenters objected to the requirement that all data be submitted to EPA. The commenters believe that on-site summaries should be acceptable and would save EPA the cost of handling and storing unneeded data. The Agency disagrees with the commenters' characterization of the data as unneeded. These data will serve as validation of the petitioner's claim that the residues will be non-hazardous, and must be available for public review in the docket.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the incineration residues from the treatment of the cancelled pesticides, when subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to the Releases Control Branch for the incineration residues generated from the treatment of cancelled pesticides in the EPA Mobile Incineration System. These wastes are listed as EPA Hazardous Waste No. F027 and will be generated at the Denney Farm site in McDowell, Missouri. The exclusion remains in effect unless the wastes vary from those originally described in the petition (i.e., the wastes are altered as a result of changes in the treatment process). The current exclusion applies only to the processes covered by the original demonstration. The facility would require a new exclusion if the treatment process is altered, and accordingly would need to file a new petition. The facility must treat such wastes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste may either treat or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section

3010 of RCRA to allow rules to become effective in less than 6 months when the regulated community does not need the 6-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date 6 months after promulgation and the fact that a 6-month deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any State which had delisting programs prior to the Amendments must become reauthorized under the new provisions (See RCRA Regulation Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.) To date, only one State (Georgia) has received reauthorization for their delisting program. The final exclusion granted today, therefore, is issued under the Federal program. A state, however, can still decide whether to exclude these wastes under the State program as a matter of state law. Since a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is

"major" and therefore subject to the requirements of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as nonhazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which

describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001, RCRA, 42 U.S.C. 6921.

Date: March 7, 1988.

Jeffery Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PARTS 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6912, and 6922).

2. In Appendix IX, add the following waste stream in alphabetical order to Table 1 as indicated:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
EPA's Mobile Incineration System (MIS).	McDowell, MO.....	Kiln ash, cyclone ash, separator sludge, and filtered wastewater (except spent activated carbon) (EPA Hazardous Waste No. F027) generated during the treatment of cancelled pesticides containing 2,4,5-T and Silvex and related materials by the EPA's Mobile Incineration System at the Denney Farm Site in McDowell, Missouri after [insert date of final rule publication in the Federal Register], so long as: (1) the incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, RCB must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (5), regardless of whether or not the demonstration in Condition (6) has been made; (2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal, the composite samples analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.44 ppm; barium levels exceed 8.8 ppm; cadmium and selenium levels exceed 0.09 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 4.4 ppm; or cyanide levels exceed 1.8 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW-846 methodologies. (3) One grab sample must be taken from each drum of kiln ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. One grab sample must be taken from each drum of cyclone ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight hour run. Prior to the disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 1.6 ppm; barium levels exceed 32 ppm; cadmium and selenium levels exceed 0.3 ppm; mercury levels exceed 0.7 ppm; nickel levels exceed 16 ppm; or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW-846 methodologies. (4) RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (<i>i.e.</i>, kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in conditions (2) and (3). Analyses must be performed according to SW-846 methodologies. Any residues which exceed any of the levels listed below must be retreated or must be disposed as hazardous. Solid and sludge concentrations must not exceed the following levels: Aldrin—0.015 ppm Benzene—9.7 ppm Benzo(a)pyrene—0.43 ppm Benzo(b)fluoranthene—1.8 ppm Chlordane—0.37 ppm Chloroform—5.4 ppm Chrysene—170 ppm Dibenz(a,h)anthracene—0.083 ppm 1,2-Dichloroethane—4.1 ppm Dichloromethane—2.4 ppm 2,4-Dichlorophenol—480 ppm Dichlorvos—260 ppm Disulfaton—23 ppm

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Endosulfan I—310 ppm Fluorene—120 ppm Indeno(1,2,3-cd)pyrene—330 ppm Methyl parathion—210 ppm Nitrosodiphenylamine—130 ppm Phenanthrene—150 ppm Polychlorinated biphenyls—0.31 ppm Tetrachloroethylene—59 ppm 2,4,5-TP (silvex)—110 ppm 2,4,6-Trichlorophenol—3.9 ppm. And detected wastewater concentrations do not exceed the following levels: Acetone—35 ppm Aldrin—0.000018 ppm Benzene—0.044 ppm Benzo(a)pyrene—0.000027 ppm Benzo(b)fluoranthene—0.00018 ppm Biphenyl—15 ppm Bis-2-ethylhexyl phthalate—6.2 ppm Chlordane—0.00024 ppm Chlorobenzene—8.8 ppm Chloroform—0.052 ppm Chrysene—0.0018 ppm 2,4-D—3.5 ppm Dibenz(a,h)anthracene—0.000006 ppm Dichloromethane—0.042 ppm 1,3-Dichlorobenzene—34 ppm 1,4-Dichlorobenzene—0.66 ppm 1,2-Dichlorobenzene—26 ppm 1,2-Dichloroethane—0.044 ppm 2,4-Dichlorophenol—0.88 ppm Dichlorvos—0.78 ppm Diethyl phthalate—4,400 ppm Disulfaton—0.016 ppm Endosulfan I—0.020 ppm Ethyl benzene—35 ppm Fluoranthene—1.8 ppm Fluorene—0.018 ppm Indeno(1,2,3-cd)pyrene—0.0018 ppm Isophorone—62 ppm Methyl chloride—35 ppm Methyl parathion—0.099 ppm Naphthalene—80 ppm Nitrosodiphenylamine—0.063 ppm Pentachlorophenol—8.8 ppm Phenanthrene—0.018 ppm Phenol—8.8 ppm Polychlorinated biphenyls—0.000072 ppm Pyrene—35 ppm Tetrachloroethylene—0.059 ppm 2,3,4,6-Tetrachlorophenol—8.8 ppm Toluene—88 ppm 2,4,5-TP (silvex)—0.088 ppm 1,2,4-Trichlorobenzene—6.2 ppm 2,4,6-Trichlorophenol—0.018 ppm 2,4,5-Trichlorophenol—35 ppm 2,4,5-Trichlorophenoxyacetic acid—0.88 ppm Xylene—619 ppm; (5) RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (i.e., kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in conditions (2) and (3). The TCDD equivalent levels for solids must be less than 5 ppt and for wastewater the levels must be below 0.002 ppt. Any residues with detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. For tetra- and penta-chlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 0.3 ppt for wastewaters; (6) The test data from conditions (1), (2), (3), (4) and (5) must be kept on file by RCB for inspection purposes and must be compiled, summarized, and submitted to the Assistant Administrator for Solid Waste and Emergency Response by certified mail on a monthly basis and when the treatment of the cancelled pesticides and related materials is concluded. The testing requirements for conditions (2), (3), (4), and (5) will continue until RCB provides the Assistant Administrator with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable treatment residue concentrations listed in these conditions and the Assistant Administrator notifies RCB that the conditions have been lifted. All data submitted will be placed in the RCRA docket.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(7) RCB must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) accuracy, I certify as the Agency official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

[FR Doc. 88-5467 Filed 3-10-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Federal Insurance Administration; Final Flood Elevation Determinations

AGENCY: Federal Emergency
Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the *Federal Register* for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster

Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Chambers County (Unincorporated Areas) (FEMA Docket No. 6917)	
<i>Chattahoochee River:</i>	
About 4.2 miles downstream of Riverview Dam.....	*527
Just downstream of Langdale Dam.....	*552
Just upstream of Langdale Dam.....	*558
About 2000 feet downstream of West Point Dam.....	*580
<i>Osanippa Creek:</i>	
About 800 feet downstream of U.S. Highway 29.....	*577
About 1,500 feet downstream of Interstate.....	*596
<i>Tributary No. 2:</i>	
At mouth.....	*579
About 1.2 miles upstream of County Road 55.....	*597
<i>Moore Creek:</i>	
About 600 feet downstream of State Highway 29.....	*552
Just upstream of Fob James Boulevard.....	*556
<i>Ginnie Creek:</i>	
At mouth.....	*553
About 500 feet upstream of Fob James Boulevard.....	*587
Maps available for inspection at the County Commissioner's Office, Valley, Alabama.	
Lanett (city), Chambers County (FEMA Docket No. 6917)	
<i>Chattahoochee River:</i>	
About 1.6 miles downstream of U.S. Highway 29.....	*571
About 1,100 feet upstream of U.S. Highway 29.....	*575
Maps available for inspection at the City Hall, Lanett, Alabama.	
ARIZONA	
Colorado City (town), Mohave County (FEMA Docket No. 6920)	
<i>Short Creek:</i>	
Approximately 15 feet upstream of State Highway 389.....	*4,930
Approximately 30 feet downstream of North Central Road.....	*4,977
At Usona Avenue.....	*5,010
Maps are available for review at Town Hall, 15 N. Central Street, Suite A, Colorado City, Arizona.	
ARKANSAS	
Lepanto (city), Polk County (FEMA Docket No. 6917)	
<i>Left Hand Chute of Little River:</i>	
Approximately 1.1 miles downstream of most downstream crossing of State Route 140.....	*220
Approximately .61 mile upstream of Old State Route 140.....	*223
Maps available for inspection at 117 South Greenwood, Lepanto, Arkansas.	