

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 123-96]

Exemption of Systems of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Drug Enforcement Administration (DEA), proposes to amend its Privacy Act regulations to provide clarity and to include an additional reason for the exemption from subsection (e)(3). The additional reason will contribute to a better understanding of the need for the exemption. The revised language applies to the following systems of records as named in paragraphs (c)(1) through (c)(6): Air Intelligence Program (Justice/DEA-001), Investigative Reporting and Filing System (Justice/DEA-008), Planning and Inspection Division Records (Justice/DEA-010), Operations Files (Justice/DEA-011), Security Files (Justice/DEA-013), and System to Retrieve Information from Drug Evidence (Stride/Ballistics) (Justice/DEA-014).

DATES: All comments must be received by November 18, 1996.

ADDRESSES: To the extent that exemption from subsection (e)(3) has already been promulgated, it is unnecessary to offer an opportunity for comment. Nevertheless, an opportunity to comment on the additional reason therefor is extended. All comments should be addressed to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Information Resources Management, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, Program Analyst (202-616-0178).

SUPPLEMENTARY INFORMATION: This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have a "significant economic impact on a substantial number of small entities."

List of Subjects in Part 16

Administrative practices and procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General

Order No. 793-78, it is proposed to amend 28 CFR part 16 as set forth below.

Dated: October 3, 1996.
Stephen R. Colgate,
Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.98 by revising paragraph (d)(6) as follows:

§ 16.98 Exemption of the Drug Enforcement Administration (DEA)— Limited Access.

* * * * *

(d) * * *

(6) From subsection (e)(3) because the requirements thereof would constitute a serious impediment to law enforcement in that they could compromise the existence of an actual or potential confidential investigation and/or permit the record subject to speculate on the identity of a potential confidential source, and endanger the life, health or physical safety of either actual or potential confidential informants and witnesses, and of investigators/law enforcement personnel. In addition, the notification requirement of subsection (e)(3) could impede collection of that information from the record subject, making it necessary to collect the information solely from third party sources and thereby inhibiting law enforcement efforts.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-5637-4]

Ocean Dumping; Amendment of Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend the site designation for the San Francisco Deep Ocean Disposal Site (SF-DODS), an existing deep ocean dredged material disposal site located off San Francisco, California, by extending the time period during which the disposal site would be

managed under an interim disposal volume limit. A range of options are presented to solicit public comment on the appropriate length for an interim extension, and for an appropriate interim disposal volume limit. This amendment is necessary in order to allow the SF-DODS to remain open for disposal of dredged material from authorized projects, while documentation addressing comprehensive long term dredged material management for the region is being completed. The amendment is therefore intended to provide the region with continued access to an environmentally appropriate dredged material disposal alternative, without precluding any options for the comprehensive long-term management planning process now underway.

The SF-DODS would remain designated for the disposal of suitable dredged material removed from the San Francisco Bay region and other nearby harbors or dredging sites. However, EPA would not set a permanent annual disposal volume limit at this time, as originally envisioned in the August 11, 1994 site designation Final Rule. Instead, EPA is proposing to extend the existing interim management of the site for some period and volume limit yet to be determined. A decision on a permanent disposal volume limit would be made by the end of this extension period, based on the comprehensive dredged material management planning process or based on a separate alternatives-based EPA evaluation of the need for ocean disposal. All other aspects of the August 11, 1994 SF-DODS designation Final Rule, including the provisions of the Site Management and Monitoring Plan (SMMP) would remain in full effect.

DATES: Comments must be received on or before November 18, 1996.

ADDRESSES: Send questions or comments to: Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, (EPA) (W-3-3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744-1980.

FOR FURTHER INFORMATION: Contact Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region 9 (W-3-3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744-1980.

SUPPLEMENTARY INFORMATION: The primary supporting documents for this designation amendment are the Final Environmental Impact Statement (EIS) for Designation of a Deep Water Ocean Dredged Material Disposal Site off San

San Francisco, California (August 1993), the Long-Term Management Strategy (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region, Draft Policy Environmental Impact Statement/Programmatic Impact Report (April, 1996), and the SF-DODS designation Final Rule [40 CFR 228(b)(70), 59 FR 41243 (August 11, 1994), subsequently republished as 40 CFR 228.15(l)(3), 59 FR 61128 (November 29, 1994)], all of which are available for public inspection at the following locations:

- A. Water Docket, MC-4101, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.
- B. EPA Region 9, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California.
- C. ABAG/MTC Library, 101 8th Street, Oakland, California.
- D. Alameda County Library, 3121 Diablo Avenue, Hayward, California.
- E. Bancroft Library, University of California, Berkeley, California.
- F. Berkeley Public Library, 2090 Kittredge Street, Berkeley, California.
- G. Daly City Public Library, 40 Wembley Drive, Daly City, California.
- H. Environmental Information Center, San Jose State University, 125 South 7th Street, San Jose, California.
- I. Half Moon Bay Library, 620 Correas Street, Half Moon Bay, California.
- J. Marin County Library, Civic Center, 3501 Civic Center Drive, San Rafael, California.
- K. North Bay Cooperative Library, 725 Third Street, Santa Rosa, California.
- L. Oakland Public Library, 125 14th Street, Oakland, California.
- M. Richmond Public Library, 325 Civic Center Plaza, Richmond, California.
- N. San Francisco Public Library, Civic Center, Larkin & McAllister, San Francisco, California.
- O. San Francisco State University Library, 1630 Holloway Avenue, San Francisco, California.
- P. San Mateo County Library, 25 Tower Road, San Mateo, California.
- Q. Santa Clara County Free Library, 1095 N. Seventh Street, San Jose, California.
- R. Santa Cruz Public Library, 224 Church Street, Santa Cruz, California.
- S. Sausalito Public Library, 420 Litho Street, Sausalito, California.
- T. Stanford University Library, Stanford, California.

A. Regulated Entities

Entities potentially regulated by this action are persons or entities seeking permits to dump dredged material into ocean waters at the SF-DODS, under the Marine Protection, Research, and

Sanctuaries Act, 33 U.S.C. 1401 et seq. The rule would primarily be of relevance to parties in the San Francisco area seeking permits from the U.S. Army Corps of Engineers for the ocean dumping of dredged material at the SF-DODS as well as the U.S. Army Corps of Engineers itself. Potentially regulated categories and entities seeking to use the SF-DODS include:

Category	Examples of potentially regulated entities
Industry	Ports seeking dredged material ocean dumping permits for SF-DODS use. Marinas seeking dredged material ocean dumping permits for SF-DODS use. Shipyards seeking dredged material ocean dumping permits for SF-DODS use. Berth owners seeking dredged material ocean dumping permits for SF-DODS use.
State/local/tribal Governments.	Local governments owning ports or berths seeking dredged material ocean dumping permits for SF-DODS use.
Federal Government.	US Army Corps of Engineers for its projects proposing to use the SF-DODS. Federal agencies seeking dredged material ocean dumping permits for SF-DODS use.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the action. This table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your organization is potentially regulated by this action, you should carefully consider whether your organization is subject to the requirement to obtain an ocean dumping permit in accordance with the Purpose and Scope provisions of Section 220.1 of Title 40 of the Code of Federal Regulations, and you wish to use the SF-DODS. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION, CONTACT** section.

B. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. Sections 1401 et seq., gives the Administrator of EPA authority to designate sites where ocean dumping may be permitted. On October 1, 1986

the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. This action, proposing to amend an August 11, 1994 SF-DODS designation Final Rule, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR 228.4) state that ocean dumping sites will be designated by publication pursuant to 40 CFR Part 228. This proposed site designation amendment is being published as proposed rulemaking in accordance with Section 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

By publication of a Final Rule in the Federal Register on August 11, 1994 (59 Fed. Reg. 41243), EPA Region 9 designated SF-DODS as an ocean dredged material disposal site. The center of the SF-DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of approximately 6.5 square nautical miles (22 square kilometers). Water depths within the area range between approximately 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37°39.0' North latitude by 123°29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively.

In its August 11, 1994 Final Rule, EPA designated SF-DODS for continued use for a period of 50 years, with an interim capacity of six million cubic yards of dredged material per calendar year until December 31, 1996. It was assumed that by that date, a comprehensive evaluation of long term dredged material management needs for the overall San Francisco Bay region would have been conducted, which would have evaluated the potential for alternatives to ocean disposal, and which could therefore serve as a basis for establishing a permanent disposal volume limit for SF-DODS. (Alternatively, the August 11, 1994 site designation Final Rule provided for EPA to establish a permanent disposal site volume based on a separate alternatives-based EPA evaluation of the need for ocean disposal.)

Since the August 11, 1994 site designation Final Rule, significant effort

has in fact gone toward development of a comprehensive dredged material management approach for the region. In particular, the multi-agency draft Policy Environmental Impact Statement/ Programmatic Environmental Impact Report entitled *Long-Term Management Strategy (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region* (LTMS draft EIS/R) was published on April 17, 1996. The LTMS draft EIS/R evaluates the overall dredged material management needs and disposal or reuse potential for the San Francisco Bay area over the next 50 years, including not only ocean disposal, but also in-Bay disposal (placement at designated sites within the San Francisco estuary that are managed under Section 404 of the Clean Water Act), and upland or wetland disposal or reuse. The policy alternatives evaluated in the LTMS draft EIS/R include varying levels of dredged material disposal or reuse in each of these three placement environments. The potential environmental and socioeconomic effects of each policy alternative is evaluated in the LTMS draft EIS/R. Selection of one of the alternative policy approaches set forth in the LTMS draft EIS/R could therefore serve as an appropriate basis for designating a permanent disposal volume limit for SF-DODS, as originally envisioned. However, the LTMS Final EIS/R process is not yet complete. Public comments on the LTMS draft EIS/R were accepted through July 19, 1996, and over 60 substantive comment letters were received, many of which suggested that significant changes should be made before finalizing the EIS/R.

The August 11, 1994 site designation Final Rule provides for EPA to base the establishment of a permanent disposal site volume limit for the SF-DODS on a separate alternatives-based evaluation of the need for ocean disposal, conducted by EPA, in the event that the LTMS EIS/R process was not completed by December 31, 1996. EPA believes that the record represented by the information and evaluations presented in its original site designation EIS and rulemaking, together with those presented in the LTMS draft EIS/R and the public comments received on the draft EIS/R, is adequate as a basis for designating a permanent disposal volume limit for SF-DODS. However, in order to provide for a maximum of public input to the overall policy approach that should be selected for long-term dredged material management (including the role of ocean disposal), EPA is proposing to extend site use

under an interim disposal volume limit, and not to make a permanent volume limit determination at this time. Extending site use at this time under an interim disposal volume limit would allow the LTMS EIS/R process to continue, without precluding final selection of any of the LTMS EIS/R's overall dredged material management alternatives.

Therefore, EPA is proposing to extend the period during which the SF-DODS would be managed under an interim disposal volume limit. In this proposed rule, options are presented to solicit public comment on the appropriate length for an interim extension, and for an appropriate interim disposal volume limit.

Other than establishing an interim disposal volume limit and setting a new timeframe for designating a permanent disposal volume limit, the provisions of the August 11, 1994 site designation Final Rule would be unchanged by the amendments described in this proposed Rule. In particular, the August 11, 1994 site designation Final Rule stipulated that site use is subject to implementation of a specific Site Monitoring and Management Plan (SMMP) for the SF-DODS, and that the monitoring provisions of this SMMP would be fully implemented during the first two years of site use independent of actual volumes of dredged material disposed at the site. This proposed rule would continue the requirement to fully implement monitoring during any extended period of interim site management. Thereafter, consistent with the August 11, 1994 site designation Final Rule, the EPA Region 9 Regional Administrator may establish a minimum annual disposal volume (not to exceed 10 percent of the designated site capacity at any time) below which this monitoring program need not be fully implemented.

The SMMP provisions in the Final Rule are closely related to EPA Region 9's previous proposals on site monitoring and management. These proposals have been put forth for public review and comment on at least two occasions. First, EPA Region 9 outlined its proposals concerning site monitoring and management in the Preamble accompanying the Proposed Rule designating the SF-DODS. EPA Region 9 published the Proposed Rule in the Federal Register on February 17, 1994 (59 FR 7952), and held open a public comment period on the Proposed Rule until March 18, 1994. Second, EPA Region 9 completed a draft of a separate SMMP document and made this document available for public review and comment. EPA Region 9 published

this SMMP document as an EPA Public Notice on April 20, 1994 and accepted comments on this document until June 6, 1994. The SMMP provisions in the August 11, 1994 Final Rule were determined after considering the public comments received in response to both the Proposed Rule Preamble and the SMMP document. None of the requirements of the SMMP would be changed by this proposed rule.

C. Interim Disposal Volume Limit

A range of approaches to determining an appropriate interim disposal volume limit for SF-DODS is being considered by EPA for this proposed rule. These include: (1) revising the interim disposal limit based on an updated estimate of overall dredging and potential ocean disposal needs for the San Francisco area; (2) revising the interim disposal limit based on one of the alternatives presented in the LTMS draft EIS/R; (3) revising the interim disposal limit to accommodate only those specific projects currently approved for ocean disposal (plus an additional volume to accommodate a limited number of new projects in the near term); and (4) leaving unchanged the existing interim disposal limit of six million cubic yards per year. Each of these options is discussed in the following paragraphs. (Options for the duration of the interim site management period are discussed in Section D, INTERIM SITE MANAGEMENT PERIOD, below.) Note that EPA's determination, based on the site designation EIS and rulemaking, and subsequent site monitoring results (see Section E—Compliance with Ocean Site Designation Criteria) is that no significant adverse environmental impacts are expected in association with the original interim disposal volume limit of six million cubic yards per year. All of the options discussed below for a continued interim disposal volume limit reflect either a decrease, or no change, in potential disposal activity at the SF-DODS. (No option considers an increase in the disposal volume limit, because the August, 1993 final EIS did not evaluate whether there would be potential adverse impacts at volumes greater than six million cubic yards per year. That August, 1993 final EIS would need to be supplemented with new analyses before greater volumes could be considered.) Therefore, no significant adverse environmental impacts are expected for any of these options.

EPA is specifically soliciting public comment on the following range of options, which we believe covers the full spectrum of possible actions. However, EPA will also consider

comments addressing modifications to these options. Comments should address interim disposal volume limits both from the standpoint of minimizing overall environmental impacts, and from the standpoint of providing adequate disposal volume for projects that may need dredging during the interim period. Note that additional public comment will be solicited as part of EPA's designation of a permanent disposal volume limit.

Volume Option 1: Interim disposal volume limit based on new estimate of long-term dredging need. EPA's original designation of a six million cubic yard annual disposal limit for the SF-DODS was based, in part, on the estimate of long-term dredging needs for the San Francisco Bay area contained in the site designation EIS (August, 1993). At that time, it was estimated that 400 million cubic yards of dredged material would be generated in the area over 50 years, for a long-term average of eight million cubic yards per year. It was assumed that up to 80 percent of this estimated eight million cubic yard annual average could be found to meet the ocean disposal criteria of 40 CFR Part 228 as being physically, chemically, and biologically suitable for ocean disposal at the SF-DODS. Modeling and other evaluations conducted for the site designation EIS (August, 1993) were therefore based on the site potentially accommodating a maximum of six million cubic yards per year (about 80 percent of the estimated eight million cubic yards per year total dredging).

Since EPA's August, 1993 site designation EIS, estimated long-term dredging needs for the San Francisco Bay area have decreased substantially. The LTMS draft EIS/R (April, 1996) documents the current "high end" estimate of long-term dredging needs for the San Francisco Bay area as being approximately 300 million cubic yards over the next 50 years. This represents a 25 percent reduction from the earlier 400 million cubic yard long-term estimate. Much of this estimated decrease is attributable to military base closures announced since EPA's August 1993 site designation EIS was being prepared. Based on the new LTMS estimate of 300 million cubic yards over 50 years, the average overall dredging need decreases from eight million to six million cubic yards per year. Under the same assumption used in the site designation EIS (August, 1993) that up to 80 percent of this dredged material may be determined to be suitable for ocean disposal, a long-term annual average of 4.8 million cubic yards of dredged material would now be

assumed to be potentially suitable for ocean disposal at the SF-DODS.

Revising the interim disposal volume limit for the SF-DODS to 4.8 million cubic yards of suitable dredged material per year is not expected to have an impact on completion of existing, authorized projects. The Port of Oakland - 42-Foot Deepening Project and the Port of Richmond - 38-Foot Deepening Project, both of which are already authorized, will each generate over two million cubic yards of dredged material authorized for disposal at the SF-DODS. Therefore, even if both these projects were to conduct the majority of their authorized dredging within the same, single calendar year, a revised interim disposal volume limit of 4.8 million cubic yards per year would accommodate them both with little or no delay. In this event, however, only limited additional volume would be available for other projects during that year. (For example, ample capacity would be available for additional projects the following year under a two-year interim site management extension, but no additional capacity for other projects would be available under a one year extension.) In addition, in combination with existing capacity at aquatic disposal sites within the San Francisco Bay and estuary (managed under the Clean Water Act), reducing the interim disposal volume limit at the SF-DODS to 4.8 million cubic yards per year is not expected to cause an overall shortage of available disposal capacity in the region during the near term.

There are no indications that the disposal volume limit should be reduced due to any direct environmental impacts. In addition, changing the existing interim disposal volume limit before the LTMS EIS/R process is complete could be viewed by some as prejudicial to the outcome of that process. Comments supporting this option would be particularly helpful if they address why a reduced interim disposal volume limit would be appropriate, and why any outcome of the LTMS EIS/R process would not be affected by such a reduction at this time.

Volume Option 2: Interim disposal volume limit based on alternatives presented in the LTMS draft EIS/R. In addition to the No Action alternative, the LTMS draft EIS/R (April, 1996) evaluated three "policy alternatives" for overall management of dredged material estimated to be generated in the San Francisco Bay area over the next 50 years. Each of the alternatives retained for detailed evaluation included either "medium" or "low" levels of ocean disposal. "Medium" ocean disposal was defined in the LTMS draft EIS/R to be

40 percent of the average annual volume of dredged material expected to be found suitable for ocean disposal, or approximately two million cubic yards per year. "Low" ocean disposal was defined as 20 percent of the ocean suitable dredged material, or approximately one million cubic yards per year.

Although alternative 50-year overall management approaches having either "medium" or "low" ocean disposal volumes are being considered as long-term LTMS goals, this proposal is intended to address short term needs while that longer term process is completed. At the present time, multi-user upland or wetland reuse sites capable of managing these volumes of dredged material are not available. Until additional upland or wetland reuse sites become available, sufficient capacity must be retained at a combination of the SF-DODS and the existing in-Bay disposal sites to manage the dredged material generated by necessary projects.

Given that the Port of Oakland and Port of Richmond projects have already been authorized, setting the interim disposal volume limit to coincide directly with either the "medium" (two million cubic yards per year) or "low" (one million cubic yards per year) long-term LTMS goals would not allow consideration of additional projects for ocean disposal during the interim period. With upland alternatives extremely limited at present, this option could cause an overall shortage of available disposal capacity in the region during the near term, and could have the effect of forcing state and federal regulators to rely almost exclusively on existing sites within the San Francisco Bay and estuary for disposal of suitable dredged material from any new dredging projects during the interim period. Furthermore, the Oakland and Richmond projects could not be dredged simultaneously. The Oakland project is already in the midst of dredging, but the Richmond project had not yet begun dredging at the time this proposed rulemaking was prepared. It is likely that construction of the Port of Richmond project would be delayed for at least one year under this option. Such a delay could jeopardize the federal funding for this project.

The factors discussed above would be re-evaluated when determining an appropriate permanent disposal volume limit for the SF-DODS, once the programmatic LTMS EIS/R process has been completed.

Comments supporting this option would be particularly helpful if they include specific recommendations

regarding which LTMS draft EIS/R alternative an ocean disposal volume limit should be based on, and should provide specific information supporting such recommendations.

Volume Option 3: Interim disposal volume limit based on specific projects currently approved for ocean disposal (plus an additional volume to accommodate a limited number of new projects in the near term). Under this option, EPA would establish an interim disposal volume limit for the SF-DODS that is sufficient to allow for the potential simultaneous construction of the already authorized Port of Oakland and Port of Richmond deepening projects, plus an additional volume to accommodate a limited number of new dredging projects. For example, an interim disposal volume limit of from five million cubic yards of suitable dredged material per year would provide for construction of both the Oakland and Richmond projects in one year, plus approximately an additional one million cubic yards from other projects during that same year. (If some additional volume for other projects were not included, an overall shortage of available disposal capacity in the region could occur during the near term, and could have the effect of forcing state and federal regulators to rely almost exclusively on existing sites within the San Francisco Bay and estuary for disposal of suitable dredged material from any new dredging projects during the interim period.)

In contrast to Option 2, this option would not delay and possibly put at risk the federal funding for either the Port of Oakland or Port of Richmond deepening projects. Also, it should allow state and federal regulators to continue to evaluate whether ocean disposal may be a less damaging, practicable alternative to in-Bay disposal for some new dredging projects in the near term (prior to completion of the LTMS EIS/R process and implementation of a comprehensive, long-term management plan for the San Francisco Bay area). As with the other options discussed, no significant adverse environmental impacts would be expected in association with disposal of five million cubic yards of suitable dredged material per year at the SF-DODS. In addition, in combination with existing capacity at aquatic disposal sites within the San Francisco Bay and estuary (managed under the Clean Water Act), reducing the interim disposal volume limit at the SF-DODS to five million cubic yards per year would not be expected to cause an overall shortage of available disposal capacity in the region during the near term.

Although this option would allow only slightly more ocean disposal than Option 1 (which would allow up to 4.8 million cubic yards per year), this option represents a conceptual change in the basis under which the SF-DODS has been managed during the first two years of interim site management. Only currently authorized projects plus a small additional volume for other potential projects would be accommodated.

Comments supporting this option would be particularly helpful if they include specific recommendations regarding volume, and should provide specific supporting information.

Volume Option 4: Retain existing six million cubic yards per year interim disposal volume limit. Modeling and other evaluations conducted for both the site designation EIS (August, 1993) and the site designation Final Rule (August 11, 1994), support EPA's determination that no significant adverse environmental impacts are expected in association with disposal of up to six million cubic yards of suitable dredged material per year at the SF-DODS. Site monitoring studies conducted to date, and summarized briefly in Section E, below, are consistent with the EIS predictions and confirm that the site is performing as predicted. Therefore, no significant adverse environmental impacts would be expected if the existing interim disposal volume limit (up to six million cubic yards of dredged material per year) were to be retained during an extended period of interim site management.

Similar to Option 1 and Option 3, this option would accommodate the already authorized Port of Oakland and Port of Richmond dredging projects without delay, and would have capacity for additional near term projects for which ocean disposal may be found to be a practicable alternative. In combination with existing capacity at aquatic disposal sites within the San Francisco Bay and estuary (managed under the Clean Water Act), an interim disposal volume limit at the SF-DODS of six million cubic yards per year is not expected to cause an overall shortage of available disposal capacity in the region during the near term.

Retaining the existing disposal volume limit would require that the August 11, 1994 site designation Final Rule be amended only by changing the dates included therein, and thus would minimize any confusion among regulated entities that might otherwise result from establishing a different interim management volume for the SF-DODS. This option most clearly leaves open all options for comprehensive

long-term dredged material management (including the role of ocean disposal); it would not in any way prejudice consideration of a permanent disposal volume limit based on the ongoing comprehensive management planning process.

D. Interim Site Management Period

The primary purpose in extending the interim disposal volume limit for the SF-DODS is to allow for completion of the public process associated with finalizing the LTMS EIS/R. The draft LTMS EIS/R was published on April 19, 1996, and the public comment period closed on July 19, 1996. Over 60 substantive comment letters were received on the LTMS draft EIS/R. Several comment letters expressed the view that the programmatic document was inadequate and that a revised draft EIS/R should be prepared. Other comment letters recommended that a detailed Management Plan, outlining the specific actions that state and federal agencies would take to implement any of the alternatives in the draft EIS/R, should be prepared prior to finalizing the programmatic EIS/R.

It is apparent that an LTMS final EIS/R and Record of Decision will not be available in time to serve as the basis for establishing a permanent disposal volume limit for the SF-DODS before the December 31, 1996 expiration of the interim period specified in the August 11, 1994 site designation Final Rule. Therefore, EPA is proposing to extend the interim site management period for the SF-DODS. Five options are presented below to solicit public comment on the appropriate length of an extended interim site management period. (Options for the disposal volume limit that would apply during the interim site management period are discussed in Section C, DISPOSAL VOLUME LIMIT, above.)

EPA is specifically soliciting public comment on this range of options; however, EPA will also consider comments addressing other interim site management periods, including alternatives that involve no extension at all. Such comments should address how an alternative can reasonably provide for completion of the LTMS final EIS/R, or for development of a separate EPA evaluation of the overall need for ocean disposal (as provided in the August 11, 1994 site designation Final Rule).

Extension Option 1: Two-year extension to interim site management. It is expected that relatively substantial revisions to the LTMS draft EIS/R will be required before the final EIS/R can be published and a Record of Decision signed. A two-year interim site

management extension should allow reasonable time for completion of the LTMS Final EIS/R process, including the approximate four month period necessary to conduct the rulemaking process for a permanent SF-DODS disposal volume limit. A two-year period would also be a sufficient time to allow the approved Port of Oakland deepening project to be completed, and to allow planning and contracting for the approved Port of Richmond deepening project to proceed with reasonable predictability. Ocean disposal would remain a feasible alternative to consider for upcoming projects. At the same time, a permanent disposal volume limit could be established before the end of the two-year period, if the LTMS final EIS/R process is completed earlier, or if EPA were to prepare a separate evaluation of the overall need for ocean disposal (as provided in the August 11, 1994 site designation Final Rule).

Extension Option 2: 18-Month extension to interim site management. As with Extension Option 1, an 18-month extension should be a sufficient time to allow completion of the LTMS final EIS/EIR. However, an 18-month extension might not be sufficient to provide for the subsequent rulemaking process to be completed and for a permanent disposal volume limit to become effective. In addition, an 18-month extension would make it more difficult for planning and contracting of the already-authorized Port of Richmond Deepening Project, potentially making it more likely that either the entire project would be dredged within the shorter 18-month period, or that some of the project's dredged material would have to be disposed at existing sites within the San Francisco Bay and estuary (managed under the Clean Water Act). Planning for other projects that would potentially be appropriate for ocean disposal would also be made more difficult.

Comments supporting this option would be particularly helpful if they address why an 18-month period would be sufficient to allow for the completion of both the LTMS final EIS/EIR and subsequent ocean disposal rulemaking, without significantly affecting permitted and potential future projects or increasing disposal within the San Francisco Bay and estuary.

Extension Option 3: One-year extension to interim site management. Extending the interim site management period for only one year probably would not allow sufficient time for the finalization of the LTMS EIS/R, given the substantial concerns raised in public comments on the draft EIS/R. Following

publication of the LTMS final EIS/R and Record of Decision, approximately four months would be needed for rulemaking to establish a permanent disposal volume limit for the remainder of the SF-DODS' 50-year designation. In order for the entire process to be completed within one year, a maximum of eight months would therefore be available for preparation, publication, and public review of the LTMS final EIS/R. It is unlikely that the necessary revisions can be made within a few months, particularly if they are based on a process of ongoing, open discussions with interested parties, as several commenters on the LTMS draft EIS/R have requested. As noted above, the primary reason for extending the interim site management period is to allow the LTMS final EIS/R process to be completed. At this time EPA does not believe that a one-year extension will reasonably allow this to occur.

A one-year extension might only be adequate if EPA were to prepare a separate evaluation of the overall need for ocean disposal (as provided in the August 11, 1994 site designation Final Rule); rather than moving forward with the LTMS EIS/R process at this time. This would delay completion of the LTMS EIS/R by a commensurate period. Comments supporting this option would be particularly helpful if they address why a one-year extension would be adequate to complete the LTMS EIS/R and rulemaking processes, or why a permanent disposal volume limit should be established prior to completion of the LTMS EIS/R process (based on a separate EPA evaluation of the need for ocean disposal).

Extension Option 4: Six-month extension to interim site management. Similar to Option 3 above, a six-month extension period would not provide sufficient time for the completion of the LTMS final EIS/EIR. A six-month extension might only be adequate if EPA were to prepare a separate evaluation of the overall need for ocean disposal (as provided in the August 11, 1994 site designation Final Rule), rather than moving forward with the LTMS EIS/R process at this time. This would delay completion of the LTMS EIS/R by a commensurate period. Comments supporting this option would be particularly helpful if they address why a six-month extension would be adequate to complete the LTMS EIS/R and rulemaking processes, or why a permanent disposal volume limit should be established prior to completion of the LTMS EIS/R process (based on a separate EPA evaluation of the need for ocean disposal).

Extension Option 5: Unspecified period of interim site management (period to end following completion of the LTMS final EIS/R, or concurrent with publication of a comprehensive management plan for the San Francisco Bay region). An extension period could be tied specifically to completion of the LTMS final EIS/R process, without attempting to speculate about the timeframe needed. This option would provide the greatest assurance that any LTMS EIS/R process would in fact be completed before conducting rulemaking to establish a permanent disposal site volume for the SF-DODS. However, it would not provide the public with reasonable assurance that the LTMS final EIS/R process will in fact move forward as expeditiously as possible. In particular, interested parties might be concerned that resources adequate to continue and complete the LTMS final EIS/R process may not be committed by the agencies in a timely manner, if a specific timeframe for action is not somehow integral to the process. Comments supporting this option would be particularly helpful if they address why an indefinite extension period would be superior to the options described above, and whether and how the alternate provision (in the August 11, 1994 site designation Final Rule) to base a permanent disposal volume limit on a separate EPA evaluation of the need for ocean disposal should be incorporated under an indefinite extension.

E. Ocean Dumping Site Designation Criteria

Five general criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR Section 228.5). First, sites must be selected to minimize interference with other activities, particularly avoiding fishery areas or major navigation areas. Second, sites must be situated such that temporary (during initial mixing) water quality perturbations caused by disposal operations would be reduced to normal ambient levels before reaching any beach, shoreline, sanctuary, or geographically limited fishery area. Third, if site designation studies show that any interim disposal site does not meet the site selection criteria, use of such site shall be terminated as soon as an alternate site can be designated. Fourth, disposal site size must be limited in order to localize for identification and control any immediate adverse impacts, and to facilitate effective monitoring for long-range effects. Fifth, EPA must, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf

and where historical disposal has occurred. As described in the site designation EIS, SF-DODS was specifically selected as the alternative location which best complied with these general criteria.

In addition to the five general criteria, 11 specific site selection criteria are listed in 40 CFR 228.6(a) of the EPA Ocean Dumping Regulations for evaluation of all candidate disposal sites. The five general criteria and the 11 specific factors overlap to a great degree. The SF-DODS, as discussed in the August, 1993 site designation final EIS and subsequent rulemaking, was also found to best comply with each of the 11 specific criteria.

Site monitoring activities conducted pursuant to the requirements of the SF-DODS Site Management and Monitoring Plan have established that it is feasible to monitor at the site using standardized methods, and that to date the site is performing as expected. For example, seafloor mapping of dredged material deposits (footprint) from disposal operations indicates that deposition is occurring as predicted in the EIS. The bulk of the sediments discharged from barges have deposited within the site boundaries and have not been transported offsite thereafter. Deposit thicknesses exceeding 17 centimeters have been identified only at the center of the site, and no deposit thicknesses exceeding the five centimeter threshold established in the August 11, 1994 site designation Final Rule have been detected at or outside of the site boundaries. No apparent changes in the basic successional stage of the native benthic communities attributable to dredged material deposition have been observed outside the disposal site boundary in site monitoring studies. Therefore, any significant disturbances associated with dredged material disposal are limited to within the disposal site boundaries, as predicted. In addition, water column studies confirmed that plumes resulting from disposal operations dissipate rapidly and suspended sediment concentrations of the plumes decrease to ambient levels within the disposal site boundaries. Vessel traffic associated with disposal operations has not interfered with overall vessel traffic in the San Francisco Bay region, and observations of seabirds and marine mammals in the vicinity of disposal operations to date indicate that no apparent significant adverse impacts have occurred to these resources as a result of disposal operations. Finally, use of SF-DODS has reduced the total volume of disposal at existing in-Bay sites (managed under Section 404 of the Clean Water Act [40

CFR Section 230]). It has therefore already reduced potential cumulative effects to sensitive aquatic resources of the San Francisco Bay-Delta estuary.

Taken together, the evaluations presented in the site designation final EIS and rulemaking, and the site monitoring results to date, confirm that the SF-DODS is performing as predicted and that, in operation, it continues to meet the general and specific site designation criteria of 40 CFR 228.5 and 228.6.

EPA Region 9 has determined that the SF-DODS may appropriately be designated for use over a period of 50 years, with an interim capacity of up to six million cubic yards of dredged material per calendar year. Site capacity shall be re-evaluated based on the results of comprehensive regional dredged material management planning (including consideration of in-Bay, ocean, and upland or wetland disposal or reuse) underway at the time of this rulemaking (or, as provided in the August 11, 1994 site designation Final Rule, independently by EPA if a comprehensive management approach is not yet available).

Designation of the SF-DODS for up to six million cubic yards of suitable dredged material per year complies with the general and specific criteria used for site evaluation, as evaluated in the August 11, 1994 site designation Final Rule. The continued use of the site under an interim disposal volume limit equal to or less than this annual amount also complies with these criteria, as described in Section E, above. Management of this site will continue to be the responsibility of the Regional Administrator of EPA Region 9 in cooperation with the Corps South Pacific Division Engineer and the San Francisco District Engineer, based on requirements defined in the Final Rule. The requirement for compliance with the Ocean Dumping Criteria of the MPRSA may not be superseded by the provisions of any future comprehensive regional management plan for dredged material.

It is emphasized that ocean dumping site designation does not constitute or imply EPA Region 9's or the Corps San Francisco District's approval of actual ocean disposal of dredged materials. Before ocean dumping of dredged material at the site may begin, EPA Region 9 and the Corps San Francisco District must evaluate permit applications according to the Ocean Dumping Criteria (40 CFR Part 227) adopted pursuant to the MPRSA. EPA Region 9 or the Corps San Francisco District would not allow ocean dumping if either agency determines that the

Ocean Dumping Criteria of MPRSA have not been met.

F. Compliance With Other Laws and Executive Orders

Consistency With the Coastal Zone Management Act

EPA prepared a Coastal Consistency Determination (CCD) document based on the evaluations presented in the August, 1993 site designation EIS. The CCD evaluated whether the proposed action—designation of "Alternative Site 5" (now SF-DODS) as described in the site designation EIS as an ocean disposal site for up to 50 years, and with an annual capacity of six million cubic yards of dredged material meeting ocean disposal criteria—would be consistent with the provisions of the Coastal Zone Management Act. The CCD was formally presented to the California Coastal Commission (Commission) at their public hearing on April 12, 1994. The Commission staff report recommended that the Commission concur with EPA's CCD, and the Commission voted unanimously to concur on the CCD without revision.

Since the approved CCD was based on 50 years of site use at up to six million cubic yards of dredged material per year, and none of the options being considered exceed these parameters, the effects of today's proposal are well within the scope of the prior review and do not require further Commission review.

Endangered Species Act Consultation

During the development of the August, 1993 site designation EIS, EPA consulted with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) pursuant to provisions of the Endangered Species Act, regarding the potential for designation and use of any of the alternative ocean disposal sites under study to jeopardize the continued existence of any federally listed threatened or endangered species. This consultation process is fully documented in the August, 1993 site designation EIS. NMFS and FWS concluded that none of the three alternative disposal sites, including Alternative Site 5, if designated and used for disposal of dredged material meeting ocean disposal criteria as described in the EIS, would likely jeopardize the continued existence of any federally listed threatened or endangered species.

This consultation was based on site use at up to six million cubic yards of dredged material per year, for 50 years. Since none of the options being

considered would exceed these parameters, and since conditions have not changed for any of the listed or candidate threatened or endangered species potentially affected by disposal site use, the effects of today's proposal are well within the scope of the prior consultation and do not require further Endangered Species Act consultation.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed rulemaking should have minimal impact on permittees. The proposed rule merely addresses the interim capacity and period of time during which the existing SF-DODS may be used under existing interim management provisions. It thus has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, an agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. §§ 604 & 605). EPA has determined that this proposed rule will not have a significant economic impact on small entities since the amended site designation will only have the effect of

providing a continuing disposal option for dredged material. The proposal merely addresses the interim capacity and period of interim management of the SF-DODS. Consequently, EPA's action will not impose any additional economic burden on small entities such as small private dredging operations that seek authorization for the dumping of dredged materials. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget. Since this proposed rule would not establish or modify any information or record-keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

The Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes

any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or sections 202 and 205 of the UMRA. As is explained elsewhere in this preamble, the proposed rule merely relates to the period of time and interim capacity under which the existing SF-DODS may be managed by the Federal government under existing interim provisions. Accordingly, it imposes no new enforceable duty on any State, local or tribal governments or the private sector. Even if this proposed rule did contain a Federal mandate, it would not result in annual expenditures of \$100 million or more for State, local, and tribal governments in the aggregate, or the private sector. Thus this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the foregoing reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus the requirements of Section 203 of UMRA do not apply to this rule.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: October 4, 1996.

John Wise,

Acting Regional Administrator, EPA Region 9.

In consideration of the foregoing, Subchapter H of Chapter 1 of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 228.15 [Amended]

Under Extension Options

2. *Option 1 for paragraph (l):* paragraphs (l) (3)(vii) and (3)(x) are

amended by removing the words "December 31, 1996" each time they occur, and adding in their place, "December 31, 1998".

3. *Option 2 for paragraph (l):* paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words "December 31, 1996" each time they occur, and adding in their place, "June 30, 1998".

4. *Option 3 for paragraph (l):* paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words "December 31, 1996" each time they occur, and adding in their place, "December 31, 1997".

5. *Option 4 for paragraph (l):* paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words "December 31, 1996" each time they occur, and adding in their place, "June 30, 1997".

6. *Option 5 for paragraph (l):* paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words "December 31, 1996" each time they occur, and adding in their place, "four months after such time as the LTMS final EIS/EIR has been completed and a subsequent Record of Decision signed by EPA".

Under Volume Options

7. *Option 1 for paragraph (l):* paragraph (l)(3)(vii) is amended by removing the words "six million cubic yards" and adding in their place, "4.8 million cubic yards".

8. *Option 2 for paragraph (l):* paragraph (l)(3)(vii) is amended by removing the words "six million cubic yards" and adding in their place, "two million cubic yards".

9. *Option 3 for paragraph (l):* paragraph (l)(3)(vii) is amended by removing the words "six million cubic yards" and adding in their place, "five million cubic yards".

[FR Doc. 96-26630 Filed 10-16-96; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1600, 1820, 1840, 1850, 1860, 1880, 2090, 2200, 2300, 2450, 2520, 2540, 2560, 2620, 2640, 2650, 2720, 2800, 2810, 2880, 2910, 2920, 3000, 3100, 3120, 3150, 3160, 3180, 3200, 3240, 3250, 3260, 3280, 3410, 3420, 3430, 3450, 3470, 3480, 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3590, 3710, 3730, 3740, 3800, 3810, 3830, 3870, 4200, 4300, 4700, 5000, 5470, 5510, 8370, 9180 and 9230

[WO-130-1820-00 24 1A]

RIN 1004-AC99

Appeals Procedures; Hearings Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations that govern procedures for protests of proposed decisions, contests, appeals of BLM decisions and hearings. The proposed regulations provide more consistent procedures for administrative review of BLM decisions. The proposal also clarifies when and how BLM decisions go into effect and if an appeal will or will not stay the effectiveness of a BLM decision. The goal of the proposed regulation is to present a single, streamlined administrative review process for most of BLM's decisions, thereby reducing costs and time spent on appeals by the appellants, BLM and the Office of Hearings and Appeals (OHA).

DATES: *Comments:* Submit comments by November 18, 1996. BLM will consider comments received or postmarked on or before this date in the preparation of the final rule.

ADDRESSES: Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC.; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC. 20240. Commenters may send comments through the internet to WOCComment@WO0033wp.wo.blm.gov. Please include "attn: AC99", and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your internet message, please contact us by telephone or mail.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren 202-452-7779, or Bernie Hyde 202-452-5057.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

I. Public Comment Procedures

Please provide written comments about the proposed rule which explain the reason for any recommended changes to the addresses listed above. Please indicate the section or paragraph of the proposed rule on which you are commenting.

Comments received after the closing date of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**) may, but need not be, considered or included in the Administrative Record for the final rule.

II. Background

A. Introduction—Protests, Appeals, Contests and Hearings

This rule pertains to the following: Protests—which are objections to any action proposed to be taken in any proceeding before the BLM. A protest is normally considered by the official who has the next higher rank above the BLM official who will make the proposed decision, unless otherwise directed in a notice of proposed decision, if such a notice is issued.

Appeals—which are requests under part 4 of title 43 of the Code of Federal Regulations for a review of a BLM decision. You may appeal a BLM decision if you are a party to a case and adversely affected by BLM's decision.

Contests—which are formal proceedings regarding such matters as disputes over title to lands or the validity of mining claims as described in 43 CFR 4.450 and 4.451. Contests usually involve hearings.

Hearings—which are evidentiary and factfinding proceedings before an administrative law judge. They may be held in a variety of circumstances. The Interior Board of Land Appeals (IBLA) may, on its own or at the request of an appellant, order a hearing to resolve a factual dispute related to an appeal of a BLM decision. In some cases, a hearing must be on the record when statutorily required.

B. Historical and Current Procedures

The Department of the Interior (Department) has been handling protests, appeals, contests and hearings since its creation in 1849. From 1849 until BLM was created in 1946, the