ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

Ocean Dumping; Amendment of Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) amends 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 establishing a new temporary disposal volume limit of 4.8 million cubic yards per year, and by extending the time period during which the disposal site would be managed under the temporary disposal volume limit by two years (through December 31, 1998). This amendment is necessary in order to allow the SF-DODS to remain an option 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 intended to provide the region with continued access to an environmentally appropriate dredged material disposal alternative. It is emphasized that this action 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 a permit allowing such ocean disposal may be issued, alternatives to ocean disposal must be considered and a need for the disposal established under the Marine, Protection, Research, and Sanctuaries Act (MPRSA). EPA Region 9 or the Corps San Francisco District will deny permits when either agency determines that feasible environmentally preferable alternatives are available, including beneficial use.

Under today's final rule, the SF–DODS will remain designated as an available alternative for the disposal of suitable dredged material removed from the San Francisco Bay region and other nearby harbors or dredging sites for two years (through December 31, 1998). However, EPA is not setting a permanent annual disposal volume limit at this time, as originally envisioned in the August 11, 1994 site designation Final Rule. Instead, EPA is extending the existing interim management of the site at a new and reduced temporary disposal volume limit of 4.8 million cubic yards per year. A decision on a permanent disposal volume limit will 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) will remain in full effect.

EFFECTIVE DATE: This final regulation becomes effective on December 30, 1996.

ADDRESSES: Send questions or comments to: Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, (EPA) (WTR-2), 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 (WTR-2), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744-1980.

SUPPLEMENTARY INFORMATION: In addition to the proposed rule (61 FR 54112), 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 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 228.12(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:

1. EPA Region 9, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California.
2. ABAG/MTC Library, 101 8th Street, Oakland, California.
3. Alameda County Library, 3121 Diablo Avenue, Hayward,California.
4. Bancroft Library, University of California, Berkeley, California.
5. Berkeley Public Library, 2090 Kittredge Street, Berkeley,California.
6. Daly City Public Library, 40 Wembley Drive, Daly City,California.
7. Environmental Information Center, San Jose State University,125 South 7th Street, San Jose, California.
8. Half Moon Bay Library, 620 Correas Street, Half Moon Bay,California.
9. Marin County Library, Civic Center, 3501 Civic Center Drive,San Rafael, California.
10. North Bay Cooperative Library, 725 Third Street, Santa Rosa,California.
11. Oakland Public Library, 125 14th Street, Oakland, California.
12. Richmond Public Library, 325 Civic Center Plaza, Richmond,California.
13. San Francisco Public Library, Civic Center, Larkin & McAllister, San Francisco, California.
14. San Francisco State University Library, 1630 Holloway Avenue,San Francisco, California.
15. San Mateo County Library, 25 Tower Road, San Mateo,California.
16. Santa Clara County Free Library, 1095 N. Seventh Street, San Jose, California.
17. Santa Cruz Public Library, 224 Church Street, Santa Cruz,California.
18. Sausalito Public Library, 420 Litho Street, Sausalito,California.
19. Stanford University Library, Stanford, California.

A. Regulated Entities

Entities potentially regulated by this action are persons or entities seeking permits to dump 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.

Category	Examples of potentially regulated entities
State/local/ tribal governments.	Local governments owning ports or berths seeking dredged material ocean dumping permits for SF–DODS use.
Federal	US Army Corps of Engineers for its projects proposing to use the SF–DODS.
Government	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 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. By publication of a Final Rule in the Federal Register on August 11, 1994 (59 FR 41243), EPA Region 9 designated SF–DODS as an ocean dredged material disposal site under the MPRSA, and readers are referred to that rulemaking for further information on the site. In that 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.

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 are 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. 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 thus 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.

Because of this situation, and in order to provide for a maximum of public comment opportunities about the overall policy approach that should be selected for long-term dredged material management(including the role of ocean disposal), EPA published a Proposed Rule (61 FR 54112) on October 17, 1996 to extend the period during which the SF–DODS would be managed under a temporary disposal volume limit. In that proposed rule, options were presented to solicit public comment both on the appropriate length for a new temporary extension, and for an appropriate temporary disposal volume limit.

A range of approaches to determining an appropriate temporary disposal volume limit for SF-DODS was presented by EPA in the proposed rule. These included: (1) Revising the disposal volume limit based on an updated estimate of overall dredging and potential ocean disposal needs for the San Francisco area; (2) revising the disposal volume limit based on one of the alternatives presented in the LTMS draft EIS/R; (3) revising the disposal volume 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 disposal volume limit of six million cubic yards per year. As discussed in the preamble to the proposal, based on the site designation EIS, original August 1994 site designation rulemaking, and subsequent site monitoring results, 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 proposed rule's options for a continued temporary disposal volume limit reflected either a decrease, or no change, in potential disposal activity at the SF-DODS.

Five options also were presented in the proposed rule regarding extension of the date for management of the site under the temporary capacity limit. These options included extension periods of six months, one year, 18 months, two years, and an indefinite period tied to completion of the LTMS final EIS/R. EPA specifically solicited public comments on this range of options for an extended temporary site management period, as well as comments addressing other interim site management periods or alternatives that involve no extension at all.

C. Description of Final Rule

After considering the comments received on the proposed rule and the current status of the LTMS EIS/R, today's final rule reduces the temporary

volume capacity from 6 million cubic yards per year to 4.8 million cubic yards per year and extends site availability under that capacity for two years (through December 31, 1998). This is done in the final rule by amending 40 CFR 228.15(l)3) to reflect the new temporary volume limit and date.

Extending site use at this time under a temporary disposal volume limit will 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. 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 today's amendments. Responses to the comments received on the proposal and its options are presented in Section D below.

D. Response to Comments on the Proposed Rule

A total of eleven letters and one telephone call commenting on the proposed rule were received. These included letters from two federal and two state agencies, two Bay area ports, one port association, two dredging/port industry associations, three environmental groups (signing one letter), and a natural resources law firm representing area fishermen's organizations. In addition, a ''no comment'' phone call was received from one federal agency. Finally, one letter incorporated by reference the commentor's earlier comments on the original (1994) site designation action, and on the LTMS draft Policy EIS/Programmatic EIR.

Citing information similar to that provided in the proposed rule, all nine of the agency, port, and industry comment letters supported Volume Option 4: Retain existing six million cubic yard per year interim disposal volume limit for the SF-DODS. All but one of these commenters also supported either Extension Option 1: Two-year extension to interim site management, or the potentially longer time period under Extension Option 5: Unspecified period of interim site management (one agency comment letter did not specify a preferred time-frame). In contrast, the other commenters supported substantially lower disposal volume limits (a variation of Volume Option 3: Interim disposal volume limit based on specific projects currently approved for ocean disposal, that would allow no more than four million cubic yards of disposal per year), and a shorter extension period (Extension Option 4: Six-month extension to interim site management). EPA's response to these comments is presented in the following paragraphs.

Establish a Permanent Annual Disposal Volume Limit Now

Three of the comment letters recommended that EPA issue a final (permanent) annual ocean disposal volume limit now, rather than extend interim site management any longer. These commenters noted their agreement with the statement in the proposed rule that sufficient information now exists for EPA to establish a permanent limitation, based on publication of the LTMS draft Policy EIS/Programmatic EIR, public comments received pursuant to that draft EIS/EIR, and site monitoring conducted to date. One commenter supported a permanent disposal volume limit of one- to two-million cubic yards per year based on the LTMS draft EIS/EIR alternatives; other commenters did not specify a preference for the size of a permanent disposal volume limit.

Response. EPA agrees that sufficient technical information exists on which to appropriately base a final (permanent) annual disposal volume limit for the SF-DODS. However, as discussed in the preamble to the proposed rule, EPA prefers to extend the existing, interim management of the disposal site while the consideration of permanent region-wide dredged material disposal alternatives continues via the LTMS process. It is unfortunate that the LTMS Policy EIS/Programmatic EIR was not finalized as originally envisioned before the end of the initial interim site management period. However, the purposes behind providing an interim site management period in the first place—i.e., to better consider long-term management options and to maximize public input opportunities—remain relevant today. In the event that the LTMS EIS/EIR process is still not completed by the end of the new extended interim site management period, EPA expects to resolve the issue of a final (permanent) disposal volume limit based on an independent evaluation of the information available at that time.

Interim Disposal Volume Limit of Six Million Cubic Yards Per Year is Excessive

Commenters criticized a disposal volume limit of six million cubic yards per year and argued that a maximum of four million cubic yards per year should be set. They raised several specific arguments, including: (1) The original designated volume limit of six million cubic yards per year was excessive and flawed; (2) the LTMS draft Policy EIS/Programmatic EIR uses a revised (lower) estimate of 4.8 million cubic yards of sediment per year that on average may be suitable for ocean disposal, but even this estimate was conservative; (3) EPA has provided no evidence that there is any need for ocean disposal in excess of four million cubic yards per year (there is no demonstrated need to provide allowance for projects in addition to those anticipated at this time; (4) it is inappropriate to define ocean disposal needs based on the lack of currently available alternatives; and (5) reducing the disposal limit at this time would not prejudice the ongoing LTMS process, whereas not reducing it in light of the LTMS's own new dredging estimates would prejudice the process. Each of these comments is addressed in the following paragraphs.

(1) The original (six million cubic yard per year) disposal limit was excessive and flawed at the time of the original site designation in 1994. In addition, the modeling at that time, which indicated that six million cubic yards per year could be disposed without adverse environmental impact, is irrelevant, since the legal standard requires EPA to minimize ocean disposal.

Response. EPA's original site designation EIS and rulemaking were based on the most up-to-date information that was appropriate to use at the time. The primary document supporting the original site designation for the SF-DODS was the Environmental Impact Statement (EIS) for Designation of a Deep Water Ocean Dredged Material Disposal Site off San Francisco, California. The draft EIS was published by EPA in December, 1992, and the final EIS was published in August, 1993. A proposed rule for site designation was subsequently published in the Federal Register on March 18, 1994, and the site designation final rule was published on August 11, 1994. The site designation became effective on September 12, 1994.

During the two years between publication of the draft EIS and the final designation of the ocean disposal site, new estimates of long-term dredging were being developed under the LTMS process. They were not, however, finalized for use in the final site desigation process. A series of base closure decisions during this general timeframe necessitated re-evaluation of long-term dredging needs. A final report was prepared, based on dredging project information as current as 1993, but was not published until 1995. This final report, Analysis of San Francisco Regional Dredging Quantity Estimate,

Dredging Project Profiles, and Placement Profiles, containing the new dredging estimates was published on September 28, 1995 (and incorporated as Appendix E in the LTMS draft Policy EIS/Programmatic EIR, dated April, 1996). Hence new, finalized estimates of long-term dredging needs were not completed, nor was there consensus on their use, at the time of the original site designation. EPA therefore evaluated (in part via computer modeling) the potential effects of six million cubic yards of disposal in one year as a reasonable worst-case scenario. Since this evaluation showed that significant adverse effects would not be expected at that level of disposal, lower disposal levels similarly would not be expected to cause significant effects. EPA believes that the modeling studies conducted for the original site designation therefore remain relevant to today's action to extend interim site use at 4.8 million cubic yards per year.

EPA has always recognized the need for caution in using any estimates of long-term, average dredging needs as the basis for site management decisions. Notwithstanding any overall disposal limit that may be set, project-by-project review must still occur and the need for ocean disposal must be determined in each case. EPA and the USACE will not approve any disposal that would be expected to cause significant adverse environmental effects individually or cumulatively. In this regard, too, the modeling studies showing that there should be no significant adverse environmental impacts from six million cubic yards per year of disposal at SF–DODS remain relevant. Today's new lower estimates could conceivably be superseded at some future date by higher estimates, if circumstances change substantially. If this were to occur, it would be appropriate to evaluate whether a higher level of ocean disposal could occur without causing significant adverse environmental effects. (The existing modeling results would not be adequate to establish whether disposal levels higher than six million cubic yards per year might be environmentally acceptable.) However, even if a higher disposal ''need'' were to exist in the future, higher levels of disposal would not be allowed if they would result in the Ocean Dumping Criteria being violated.

(2) The new long-term estimate of dredged material potentially suitable for ocean disposal which was used in the LTMS draft Policy EIS/Programatic EIR is 4.8 million cubic yards per year. Even that figure is conservative, because there is no evidence that more than four million cubic yards needs ocean disposal. Therefore an interim disposal limitation of no more than four million cubic yards per year should be established for the SF–DODS.

Response. EPA believes that the best and most appropriate current estimate of the long-term, average volume of dredged material that may be suitable for ocean disposal is 4.8 million cubic yards per year, as documented in the LTMS draft Policy EIS/Programmatic EIR. This volume represents a ''high-end'' estimate, taking into account projects and trends reasonably foreseeable at this time, and thus reflects a reasonable worst-case scenario. However, it is also an estimated average, and may not be sufficient in years of especially high dredging if alternative disposal sites are not available. For example, there are currently two large dredging projects authorized to use the SF–DODS and, if these are conducted simultaneously, four million cubic yards could in fact be disposed at the site in one year (1997). There is thus immediate ''evidence'' that at least four million cubic yards may occasionally need ocean disposal. However, a disposal limit set at four million cubic yards per year might not allow any other projects to use the SF–DODS in 1997, which could result in more disposal at existing sites within San Francisco Bay than would otherwise be necessary. In contrast, a disposal limit of 4.8 million cubic yards per year as represented by Volume Option 1 in the Proposed Rule (or the greater limits under Volume Options 3 and 4) would continue to allow consideration of ocean disposal as a potentially practicable alternative for new proposed projects.

(3) Four million cubic yards per year would allow currently authorized projects to proceed; there is no evidence of any need to provide for other than currently authorized projects at this time.

Response. As discussed in the response to the immediately preceding comment, a four million cubic yard per year disposal volume limit at the SF–DODS could in some circumstances (possibly as early as 1997) limit the range of practicable alternatives for new proposed projects. This in turn could result in more disposal at existing sites within San Francisco Bay than would otherwise be necessary. Of course, opportunities for beneficial reuse and upland disposal are also evaluated on a project-by-project basis. However, as documented in the LTMS draft Policy EIS/Programmatic EIR, beneficial reuse and upland disposal opportunities are generally very limited at the present time. The LTMS draft EIS/EIR therefore discussed the likelihood that the majority of dredged material generated in the near term would have to be managed at aquatic disposal sites (i.e., at the SF–DODS in combination with existing San Francisco Bay disposal sites), until additional beneficial reuse or upland disposal sites become available. It is EPA's determination that, in general and to the extent practicable, disposal of suitable dredged material at the SF–DODS is environmentally preferable to disposal at existing sites within San Francisco Bay. EPA therefore believes that restricting disposal at the SF–DODS to only currently approved projects during the extended interim use period may result in cumulative effects that could otherwise be avoided.

(4) It is inappropriate to define ocean disposal needs based on the lack of currently available alternatives.

Response. As discussed in the LTMS draft Policy EIS/Programmatic EIR, it is expected that in the near term management of dredged material from the San Francisco Bay area will require a greater emphasis on aquatic disposal sites than on beneficial reuse or upland disposal sites, due to lack of available opportunities for such reuse or upland diposal at this time. It is therefore appropriate to establish disposal volume limits that are sufficient to manage the reasonably foreseeable aquatic disposal needs, provided that no significant adverse environmental effects would occur at that level of disposal. (Modeling studies and subsequent site monitoring have in fact indicated that no significant adverse environmental effects are expected at the SF–DODS at disposal volumes even at the level of six million cubic yards per year.)

Over time, as the LTMS participants seek additional beneficial reuse or upland disposal sites, less overall reliance on aquatic disposal is anticipated. In the meantime, the primary alternative to ocean disposal is disposal at the existing designated sites within San Francisco Bay. As noted in the response to the immediately preceding comment, it is EPA's determination that, in general and to the extent practicable, disposal of suitable dredged material at the SF–DODS is environmentally preferable to disposal at existing sites within San Francisco Bay. Availability of in-Bay sites should therefore be limited to projects where a practicable alternatives analysis allows use of such sites. Thus, EPA's decision about a disposal volume limit for the SF–DODS is based not only on the current lack of beneficial reuse or upland disposal alternatives, but also on the current limited availability of

alternative aquatic disposal sites within San Francisco Bay, and the relative risks, impacts, and management opportunities afforded at those sites compared to the SF–DODS. In addition, project-by-project review must still occur and the need for ocean disposal must be determined in each case. Notwithstanding any overall disposal limit that may be set, EPA and the USACE will not approve any disposal at SF–DODS that would be expected to cause significant adverse environmental effects individually or cumulatively.

(5) Reducing the disposal limit at this time would not prejudice the ongoing LTMS process, whereas not reducing it in light of the LTMS's own new dredging estimates could be viewed as negative.

Response. EPA agrees that the revised LTMS estimate of long-term, average dredging quantities for the San Francisco Bay area reflects substantial new information that was not fully available at the time of the original SF–DODS designation. EPA has therefore applied this new information under the same approach that was used in the original designation action, and has determined that an annual disposal volume limit of 4.8 million cubic yards is appropriate. Use of this information, which was developed as part of the LTMS process, should not prejudice final decisions made as a result of the LTMS process. Final decisions will continue to be based on the most current information developed in that process. Prejudice is more likely to occur if EPA does not apply the most up-to-date information developed in that process.

Interim Site Management Period Should Not Exceed Six Months

Comments supporting the Proposed Rule's Extension Option 4: Six-month extension to interim site management, were based on two main considerations. First, that a six-month extension would allow for a total of over one year since the LTMS draft Policy EIS/Programmatic EIR was published (and approximately eight years since the LTMS process was initiated), which should be sufficient time to complete a final EIS/EIR. Second, that there is no need to tie the SF-DODS extension period decision to the timing of the Record of Decision following the LTMS final EIS/EIR. Each of these issues is addressed in the following responses.

(1) A six-month extension would allow for a total of over one year since the LTMS draft Policy EIS/Programmatic EIR was published (and approximately eight years since the LTMS process was initiated). This should be sufficient time to produce a final EIS/EIR.

Response. Over 60 letters, comprising over 1,000 individual comments, were received on the LTMS draft Policy EIS/Programmatic EIR. Many of these comments recommended that substantive revisions be made before the EIS/EIR is be finalized. In addition, unlike more typical ''project'' EIS/EIRs, responding to the comments received on the policy/program issues will require the collaboration and consensus of all the state and federal LTMS agencies. This process is more time-consuming than if the proposed action, and all the specific decisions needed to define and implement it, were to be within the authority of a single agency. Similarly, the experience of the LTMS agencies to date has been that evaluation of the policy/program issues in this process cannot be carried out through contractual support. Since this is a policy EIS/EIR, the majority of the analysis and written revisions must be done by agency staff. All available staff resources from each of the LTMS agencies are being assigned to finalizing the EIS/EIR (along with the related draft Management Plan). If the Policy EIS/Programmatic EIR is finalized earlier than expected, a permanent disposal volume limit for the SF-DODS can be established earlier than the end of the two-year extension period.

(2) There is no need to tie the SF-DODS extension period to the timing of the Record of Decision following the LTMS final EIS/EIR. Response. EPA agrees that the overall process could be accelerated, without significantly affecting public input, by publishing the proposed rule for a permanent disposal volume limit at the same time as the LTMS final EIS/EIR is published. The comment periods for the two actions could thus occur simultaneously, and the permanent disposal volume limit could become effective at the same time that the Record of Decision is signed by the federal agencies, rather than weeks to months later.

The LTMS Agencies Should Apply More Resources to Accelerate Finalizing the LTMS EIS/EIR

Some commenters recommended that the LTMS agencies accelerate the overall LTMS EIS/EIR schedule, thus allowing for a shorter interim management period for the SF–DODS, by applying additional staff and other resources to the EIS/EIR. In particular, they noted that the LTMS agencies have moved forward with implementation of a pilot joint-agency Dredged Material Management Office (DMMO) for permit application processing, before the EIS/EIR has been finalized and before other important documents (such as the Site Management and Monitoring Implementation Manual for the SF–DODS) have been prepared.

Response. With the exception of staff resources assigned to DMMO, all the available staff resources from each of the LTMS agencies are being assigned to finalizing the EIS/EIR (along with the related draft Management Plan). EPA recognizes that this leaves limited the resources available to produce other documents—such as the SMMP Implementation Manual—as quickly as would be desirable. Staff assigned to the DMMO are addressing current permit application information as it comes in. These applications and related reports would have to be evaluated by each of the member agencies, whether this is done individually or jointly under the auspices of the DMMO. The DMMO is expected to reduce the overall amount of time the agencies spend on directing and reviewing sediment evaluations for dredging projects, thus freeing resources that would otherwise not be available for the EIS/EIR effort. Thus, little or no benefit could be gained by delaying the establishment of the DMMO, or reducing staff allocated to it.

The LTMS Agencies Should Apply More Resources to Establishing Beneficial Reuse Alternatives

One commenter also recommended that the LTMS agencies apply more resources to identifying and implementing beneficial reuse or upland disposal alternatives. Such alternatives would presumably reduce the need for the two-year interim timeframe and/or the 4.8 million cubic yards per year interim disposal volume limit for the SF–DODS. In particular, the commenter noted that a new potential opportunity for large-scale reuse of dredged material in the Sacramento-San Joaquin River Delta has been suggested in another forum (the CalFed process), and that this new possibility should be pursued vigorously by the agencies.

Response. EPA agrees that a greater potential for beneficial reuse than projected by the LTMS draft EIS/EIR may exist, including the particular opportunity referred to by this commenter. Beneficial reuse has been identified as one of the issues that will be addressed for the final LTMS Policy EIS/Programmatic EIR. The LTMS agencies intend to explore ways to maximize the coordination among the programs that are looking into such opportunities, in order to maximize the beneficial reuse of Bay area dredged material to the extent practicable over time. Other beneficial reuse

opportunities may be identified during the interim management period for the SF–DODS, as well. To the extent that such opportunities become available, EPA and the USACE will require that they are evaluated in the practicable alternatives analysis for projects seeking aquatic disposal during the interim management period for the SF–DODS.

Other Comments Incorporated by Reference

One letter incorporated by reference the commentor's earlier letters about the original (1994) SF–DODS designation action, and about the LTMS draft Policy EIS/Programmatic EIR.

Response. EPA responded to the comments received regarding the original SF–DODS designation as a part of the Response to Comments section of that final rule, published in the Federal Register on August 11, 1994. EPA intends to respond fully to the commenter's letter about the LTMS draft Policy EIS/Programmatic EIR as a part of the overall response to comments on that document now being prepared by the LTMS agencies. Today's extension of the interim site management period for the SF–DODS is more limited in scope and purpose than the actions under consideration in the LTMS process. Moreover, the purpose of today's extension is to allow for the programmatic LTMS EIS/EIR process to be completed, including responding to comments received. Today's action in no way prejudices the ability to respond to the commenter's letter on the LTMS EIS/EIR, and in no way precludes the selection of any alternative evaluated in that document. Therefore, it is appropriate that the comments in the referenced letter are not addressed as part of today's action, to the extent that they coincide with the comments addressed herein.

E. 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 since these parameters are not exceeded by this action, this final rule extending interim disposal site management does not require additional 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 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 these parameters are not exceeded by this action, and since conditions have not changed for any of the listed or candidate threatened or endangered species potentially affected by disposal site use, this final rule extending interim disposal site management does not require additional 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 final rulemaking should have minimal impact on permittees. The final rule merely extends the period of time during which the existing SF–DODS may be used under existing interim management provisions. It thus has been determined that this final 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 final 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 final 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 final rule merely extends the current 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 final 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 final rule does 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), Public Law 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 final 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 final rule merely extends the period of time during 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 final 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 final 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.

Compliance With Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., generally requires that substantive rules be published 30 days prior to their effective date except:

> ''(1) A substantive rule which grants or recognizes an exemption or relieves a restriction; * * * or (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d).

EPA is issuing today's final rule as effective December 30, 1996, under the provisions of 5 U.S.C. 553(d). As is explained elsewhere in this preamble, today's final rule is intended to assure that the SF–DODS remains available for use as a disposal alternative for suitable dredged material. In the absence of today's rule, after December 31, 1996, Federal projects and permit applicants that need to use the ocean disposal alternative (including the Port of Oakland project already using the site) would not be able to use the SF–DODS unless the additional step of site selection under MPRSA § 103 was undertaken by the USACE. By extending the current deadline, and avoiding this result, today's final rule has the effect of removing a restriction and thus meets the exception specified in 5 U.S.C. 553(d). In addition, the Agency believes today's rule meets the ''good cause'' exception of 5 U.S.C. 553(d)(3). As previously noted, failure to extend the current deadline before it expires could adversely affect the Port of Oakland Harbor project, which is currently authorized to dispose of project dredged material at the SF–DODS, and which received such authorization after environmental assessment, demonstration of a need for ocean disposal, and opportunity for public comment. Issuing today's final rule as immediately effective would avoid potential disruption of this ongoing and already authorized project. At the same time, issuance of the final rule as immediately effective would *not* result in additional use of the site by other potential dumpers. Because issuance of an immediately-effective rule is necessary to avoid disruption of an already approved, ongoing, and environmentally acceptable use of the SF–DODS on which the public has already had the opportunity to comment, and an immediate effective date does not result in usage by any other dumpers, the Agency has determined that there is good cause within the meaning of 5 U.S.C. 553(d)(3) to issue this rule as effective December 30, 1996.

List of Subjects in 40 CFR Part 228

Environmental Protection, Water Pollution Control.

Dated: December 20, 1996

Alexis Strauss,

Acting Regional Administrator, EPA Region 9.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is 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]

2. Section 228.15, paragraphs (l)(3)(vii) and (l)(3)(x) are amended by removing the words ''December 31, 1996'' each time they occur, and adding in their place, ''December 31, 1998''.

3. Section 228.15, paragraph (l)(3)(vii) is amended by removing the words ''6 million cubic yards'' and adding in their place, ''4.8 million cubic yards''.

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