DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Public Notice Concerning Changes to Nationwide Permit 26

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final notification.

SUMMARY: In the November 26, 1997, **Federal Register**, the U.S. Army Corps of Engineers requested comments on three changes that were made to nationwide permit (NWP) 26 and published in the December 13, 1996, **Federal Register**. This was done in response to a court order issued on October 27, 1997. The Corps requested comments on the following three changes to NWP 26: (1) The expiration of NWP 26 on December 13, 1998; (2) the prohibition against filling or excavating more than 500 linear feet of stream bed under NWP 26; and (3) the prohibition against using other NWPs with NWP 26 to authorize the loss of more than 3 acres of waters of the United States.

The Corps of Engineers is giving final notice that NWP 26 is being retained as published in the **Federal Register** on Friday, December 13, 1996 (61 FR 65874–65922) with one exception. The Corps has proposed to extend the expiration date of NWP 26 to March 28, 1998 (63 FR 36040–36078).

EFFECTIVE DATE: July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Write to the Chief of Engineers, U.S. Army Corps of Engineers, ATTN: CECW–OR, Washington, D.C. 20314–1000, or, contact Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 761–0199.

SUPPLEMENTARY INFORMATION:

Background

In the June 17, 1996 (61 FR 30780), **Federal Register**, the U.S. Army Corps of Engineers published a notice requesting comments on the issuance, reissuance and modification of the Corps of Engineers nationwide permits (NWPs) and announced a public hearing to invite the public to provide comments on the NWPs. In that notice, the Corps proposed changes to several NWPs including several changes to NWP 26. However, it did not specifically request comments on limiting the filling or excavation of stream beds to no more than 500 linear feet, restricting the use of other NWPs with NWP 26 to limit adverse effects to waters of the United States to 3 acres for a single and complete project, or issuing NWP 26 for a period shorter than 5 years, which is the legal maximum limit for any NWP in accordance with Section 404(e) of the Clean Water Act.

In response to the June 17, 1996, **Federal Register** Notice, the Corps received over 500 comments concerning NWP 26. Based on comments from the public and other agencies, as well as the Corps internal review of the implementation of NWP 26 over the past five years, several changes were made to NWP 26 to ensure that it would comply with the legal requirements of the Clean Water Act. The changes were published in the **Federal Register** on December 13, 1996 (61 FR 65874–65922) and became effective on February 11, 1997. On March 6, 1997, a lawsuit was filed by the National Association of Home Builders, objecting to the three changes noted above.

The Corps believes that the changes made to NWP 26 were promulgated in full compliance with all legal requirements of the Clean Water Act. However, in view of the public interest in the changes and to avoid the time and expense of litigation, the Corps volunteered to seek comments on the three changes. Accordingly, on October 27, 1997, a court order was issued remanding the action to the Corps to request public comments on the three changes to NWP 26 described above.

The November 26, 1997 (62 FR 63224), **Federal Register** notice was published and comments were accepted until February 26, 1998.

Summary of Comments

Over 3,000 comments were received. Approximately 2,700 were in favor of the three changes and approximately 300 were against them. Approximately two thirds of the commenters specifically addressed the three changes to indicate their approval or disapproval while others simply expressed favor or disfavor towards NWP 26 in general. Of those specifically addressing each change, all, except a very few (less than 10) indicated that they either favored or disfavored all three of the changes, (i.e., very few had split opinions about the changes).

Of those in favor of the changes, 190 represented environmental, civic, lake or watershed districts or other organizations or state agencies. Many individual commenters stated that they were members of the National Wildlife Federation or of the Ohio Bass Federation. Of those opposed to the changes, approximately 244 represented groups that are members of the National Association of Home Builders and other building, design, realty, or mining organizations.

Response to Specific Comments

I. General

A. Compliance With Section 404(e) of the Clean Water Act (Section 404(e))

Most of the commenters opposed to the changes stated that the three changes are contrary to Section 404(e). They believe Section 404(e) indicates that it was the intent of Congress for the Corps to develop and maintain a streamlined regulatory process for projects that have minimal adverse effects. However, many of the commenters that support the changes stated that, in its earlier form, NWP 26 was contrary to CWA 404(e). Section 404(e), in its entirety, reads:

(e)(1) In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary [of the Army] may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidance described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

While the Corps agrees that a streamlined process is essential for both the public and the agency, Section 404(e) does not guarantee a particular form of streamlined process. Section 404(e) sets forth two important terms: ''minimal adverse effects'' and ''similar in nature'', but does not define either. During the past twenty years there have been many changes that affect how we interpret them. There have been advancements in our understanding of the functions of aquatic resources, including wetlands, and changes in the types of projects that are most common.

Neither wetland science nor wetland regulation are static disciplines.

NWP 26 was first developed in 1977, when the Corps Section 404 jurisdiction was extended from traditional navigable waters to all waters of the U.S. At that time, the blanket authorization of work above headwaters and in isolated waters, with discretionary authority to revoke or modify specific activities, was a practical means of managing the suddenly increased workload. Later, in 1984, when it had become apparent that very large tracts of waters of the U.S. could be impacted, NWP 26 was capped at 10 acres. Since that time, it has become evident that headwaters and isolated waters of the U.S., including wetlands, have greater values and functions in support of the overall aquatic ecosystem than previously recognized. This was addressed by the National Academy of Sciences in their 1995 report: *Wetlands: Characteristics and Boundaries.* It has also become apparent that, in some watersheds, urban developments that individually impact ten or less acres of wetlands, can cumulatively have adverse effects on water storage and water purification capacity. Given these changes in our knowledge base and in the types of projects that NWP 26 is being used for, the Corps believes that reducing the NWP 26 cap to 3 acres is warranted if we are to assure that only minimal adverse effects on the aquatic environment are resulting from its application.

The term ''similar in nature'' has been the subject of much discussion and controversy. Some, particularly those opposed to changes to NWP 26, believe it means activities that are similar to each other by virtue of the fact that they are fill activities and they all have minimal adverse effects. Others, including many of those who support the changes made to NWP 26, believe it has a much narrower meaning: projects for the same purpose conducted in a similar manner such as fill for a road, fill for an individual residence, fill in support of cranberry operations, etc. In addition, it has been posed that similar may refer to the size of the area impacted, e.g. fill up to ⅓ acre, fill up to 2 acres, etc., independent of purpose.

Some of the commenters opposed to the changes suggested that since the 500-foot and 3-acre limitations have been placed on NWP 26 to assure that it will not result in more than minimal adverse effects, it should no longer be necessary to phase it out altogether.

The Corps sees several advantages in moving to a new set of activity-specific NWPs. It will remove the question as to whether an NWP is authorizing activities that are similar in nature. It will allow us to tailor special conditions to similar types of activities, rather than ''one size fits all''. It will also facilitate regionalization of the NWPs to best protect the valuable resources found in each district while maintaining the Corps ability to expeditiously authorize activities with minimal effects on the aquatic environment. (For additional discussion of ''minimal adverse effect'' and ''similar in nature'', see the preamble to the NWPs published in the **Federal Register** on December 13, 1996.)

B. Workload

Almost all the commenters who were opposed to the changes expressed concern about how the Corps workload would be affected and, therefore, the Corps ability to respond to applicants in a reasonable amount of time. In December, 1996, the Corps estimated that the changes to NWP 26 (that became effective February 11, 1997) would result in approximately 7,500 additional pre-construction notifications (PCNs) each year. However, data indicated that most would be for 1 acre or less of fill and therefore would be Corps-only PCNs. In addition, it was estimated that there would be a 10% increase in the annual number of individual permits (IPs). It is not possible to look at data since February, 1997, and determine if those estimates were accurate because the change in the total number of PCNs and of IPs has been influenced by several factors, not known in December, 1996, rather than just the changes made to NWP 26. For example: The ''Tulloch rule'' (regulation of discharges incidental to excavation) was suspended for approximately 6 months during Fiscal Year (FY) 1997; several districts implemented new regional general permits during the same period; some applicants deferred work in order to understand the new NWPs; etc. We do know that the total number of IPs was lower, rather than higher, in FY 1997 (after the changes) than in FY 1996 (before the changes):

FY 1996: 5,040 IPs, 38,476 written NWP authorizations

FY 1997: 4,697 IPs 39,883 written NWP authorizations

C. Complex Regulatory System

Commenters opposed to the changes stated that these changes are part of a trend towards more complicated regulations. The Corps recognizes that this is occurring. It is a result of continuing work to fine-tune the NWPs so that, frequently-occurring, minimal adverse effect activities are expeditiously permitted, while activities that may have more than minimal adverse effects are more carefully scrutinized. It is also a result of applying permit terms and conditions that are specific to similar activities rather than ''one size fits all''.

D. Was This a Good Faith Notice?

Some of the commenters opposed to the changes stated that they believe the Corps requested comments on these three changes merely to avoid litigation and had no intention of seriously considering them. The Corps believes that the changes were promulgated in compliance with all legal requirements and, after review of the comments received, has concluded that a retraction of the changes is not warranted. However, all the comments received were carefully considered and we have obtained additional valuable information about the public's concerns and highlighted areas where we need to be more clear or provide more detail about the intent of NWPs and/or the special conditions that apply to them. This will be reflected in the proposed NWPs we are developing to go into effect when NWP 26 expires. The proposed NWPs were described in the July 1, 1998, FR (63 **Federal Register** 36040–36078).

E. The Corps Does Not Have a Good Tracking System

Many of the commenters who support the changes stated that the true impacts of NWP 26 cannot be ascertained because the Corps does not have an effective way to track them. The Corps has collected and reviewed data for all permit authorizations for many years to assist in making program-wide determinations and NWP decisions in particular. Data gathering has become progressively more sophisticated as additional districts become automated. Since May, 1997, we have collected additional data for all NWPs, and specifically for NWP 26, to ensure that we have a good understanding of where it is being used, how often, and for what types of projects.

F. NWP 26 Allows Fill for Development Without Regulatory Review, Analysis of Alternatives, Public Notification or Opportunity for Public Comment

It is the purpose of the nationwide permit program to streamline review of, and decisions for, proposed projects. To that end, alternatives analysis, public notification and opportunity for public comment take place at the time the NWPs are issued, i.e., usually every five years. Activities authorized by NWP 26 requiring a PCN are reviewed by the Corps and evaluated for potential impacts to particularly sensitive

resources, on-site avoidance and minimization of impacts, and compliance with general and special conditions. When the Corps receives a PCN, it can take discretionary authority to require an individual permit, if the Corps believes a more detailed evaluation is required. In practice, even those activities not requiring a PCN are often reviewed in the same manner as those that require it. In some cases, the applicant requests a review; in others, the initial proposed project requires a PCN but is subsequently reduced in scope. Moreover, the Corps believes that NWPs with regional conditions protect the aquatic environment by motivating applicants to reduce impacts to the extent practicable in order to receive a quick decision.

II. Expiration of NWP 26 on December 13, 1998

A. Why Set an Expiration Date?

Many commenters opposed to the changes asked why it is necessary to set an expiration date for NWP 26. They recommended that it be left in effect until the replacement NWPs are ready. They doubted the Corps ability to have new NWPs ready by December 13, 1998, and wanted to avoid a period of time with neither in effect. The Corps believes it is important to set a date not only as a goal for the Corps to conclude the process, but for applicants' ability to make plans. However, the coordination process to develop new and modified NWPs has taken longer than expected resulting in delay in the date of publication of the proposed new and modified nationwide permits. The Corps wants to ensure that there is adequate time to effectively involve other agencies and the public in a new regional conditioning process. Therefore, concurrent with the Corps July 1, 1998, publication in the **Federal Register**, the Corps proposed extension of the expiration date of NWP 26 to March 28, 1999. Comments on this matter will be received until July 31, 1998, after which the Corps will make a decision on whether to extend the expiration date for NWP 26.

B. Decreased Flexibility and Predictability; Loss of ''Catch-all'' NWP

Many commenters opposed to the changes believe that they will result in decreased flexibility and predictability. In the short term, there may be reduced predictability as applicants and agencies transition to a new set of NWPs. It is the Corps goal to increase consistency and predictability, as well as prioritizing efforts based on aquatic functions and values, by removing the artificial distinction that currently exists between headwaters and isolated waters versus other waters of the United States. There can be a very different level of review for similar projects depending on which type of water they are located in. This change will provide for a similar process for similar activities regardless of whether they are located above or below the headwaters point.

Some commenters referred to loss of ''permit certainty''. It should be noted that existence of an NWP is not a guarantee that a permit will be issued. The project will be evaluated and if appropriate conditions are met, authorization can be granted in a streamlined manner. The Corps believes that most projects that now qualify for an NWP will continue to qualify for an NWP after NWP 26 expires, although the specific form of the NWP may change and there may be additional conditions related to the specific type of activity.

The Corps has gathered information from all its district offices about the types of projects that NWP 26 is used to authorize and most will be addressed by the new NWPs. Project types that occur frequently only in a given region, and have only minimal adverse effects, may be more appropriately addressed by regional general permits issued by individual Corps districts.

C. Burden on Transportation Projects

Several commenters from transportation agencies and from consultants who work with them stated that the 2-year expiration of NWP 26 would be particularly burdensome for transportation projects. They stated that transportation agencies often work on a 5-year, or longer, plan and need to know what the regulatory framework will be over that length of time. They also stated they would have increased costs because they would not be able to review the new NWPs in time to design their projects to meet new conditions and also meet advertisement and contracting schedules. The NWP regulations at 33 CFR 330.6(b) state that ''activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon an NWP will remain authorized provided the activity is completed within twelve months of the date of an NWP's expiration, modification or revocation''. For most projects, a year is sufficient time for project completion, however, if it is determined that particular transportation projects need a longer transition period, this can be addressed by Corps Districts on a case-by-case basis through expedited review as individual permits. However, as noted above, we believe that, in most cases, projects that now qualify for NWP 26, will continue to qualify for an NWP after NWP 26 expires, although the specific form and conditions of the NWP may change.

D. Regulation of Isolated Wetlands

Several of the commenters who were concerned about the expiration of NWP 26 referred to a December 23, 1997, decision of the U.S. Court of Appeals for the Fourth District regarding Section 404 jurisdiction over isolated waters. They requested that the expiration of NWP 26 be delayed until the issue of regulation of isolated wetlands is resolved. That decision, in the case of *United States* v. *Wilson,* 133 F.3d 251 (4th Cir. 1997) pertains to how a link is established between isolated water bodies and interstate or foreign commerce. The ultimate impact of that decision, if any, on Section 404 jurisdiction will occur independently of the existence of NWP 26 or other NWPs. The expiration of NWP 26 will not change the Corps jurisdiction in isolated waters, but rather when the Corps evaluates and authorizes projects in such waters.

E. Programmatic General Permits

Several of the commenters who were opposed to the replacement of NWP 26 with activity-specific NWPs made a comparison to programmatic general permits. These commenters believe the Corps is mis-interpreting the meaning of ''activities similar in nature'' because programmatic general permits routinely authorize many different types of activities. The difference between programmatic general permits and other general permits is that programmatic general permits are based on the existence of a Federal, State or local regulation that duplicates that of the Corps and authorizes several specific activities, each of which is similar in nature. Other general permits are based on a singular specific activity. Instead of a single programmatic general permit the Corps could issue several separate general permits, each based on the specific activities in the Federal, state, or local program. However, the Corps believes this would involve additional and unnecessary paperwork and confusion for the regulated public.

F. Regulatory Flexibility Act

In its comments, the National Association of Home Builders stated that the Corps should have conducted a regulatory flexibility analysis, in conjunction with the modifications to NWP 26, as required by the Small Business Regulatory Enforcement

Fairness Act which is part of the Regulatory Flexibility Act. Such an analysis would develop and examine alternatives that minimize impacts on small business and would describe steps taken by the agency to minimize adverse effects to small business. The Corps believes that this requirement does not apply to modification of NWPs. The NAHB's letter referred to Section 603(a) of the RFA, which provides that whenever an agency is required by section 553 of the Administrative Procedures Act, or any other law, to publish general notice of proposed rulemaking for any proposed rule, it must conduct a flexibility analysis. However, the NWPs are permits, similar to individual and regional general permits; they are not regulations (rules) and therefore would not fall under this requirement. The Corps NWP regulations at 33 CFR Part 330 are in compliance with the RFA and the Corps believes that the NWPs are also in compliance with the RFA. Indeed, the purpose of the NWPs is to minimize unnecessary adverse effects on the regulated public and the entire review process focuses on identification and consideration of alternatives for authorizing activities with minimal adverse effects.

III. Prohibition Against Filling More Than 500 Linear Feet of Stream Bed

A. Consistency

In the December 13, 1996, **Federal Register**, the Corps stated that 500 feet was chosen as a cutoff point for consistency with NWPs 12 and 13. Most of the commenters opposed to the changes, pointed out that, under NWPs 12 and 13, reaching a length of 500 feet of impact triggers a PCN while under NWP 26 it triggers an IP. The Corps meant that the actual length was chosen to be consistent with the length in NWPS 12 and 13. It is recognized that the prohibition is more restrictive than the PCN requirement for NWPs 12 and 13. This matter will be reviewed in conjunction with the issuance of the new, activity specific, NWPs that will become effective when NWP 26 expires.

B. Work in Areas Much Smaller Than One Third Acre Will Be Precluded

Many of the commenters opposed to the 500-foot limit noted that a 500-foot length of a narrow stream bed or waterway could result in individual permit review of an impact area well below the 1/3-acre PCN threshold and far from the 3-acre limit that exists for NWP 26. In these cases, the degree of impact may be disproportionate to the acreage involved. For example, filling a 5-foot wide stream bed over a distance of O.5 mile would result in a loss of 0.30 acre of stream bed. Under acreage limits, alone, a PCN would not be required, yet the work could result in more than minimal adverse effects if the stream served important spawning habitat functions. Therefore, the Corps believes it has a responsibility to review those projects more closely as long as specific activities are undefined. We are continuing to collect data and will review this limitation in the activity-specific NWPs that will replace NWP 26.

C. Definition of Stream Bed

Almost all the commenters opposed to the 500-foot limit indicated that the Corps should distinguish between different types of streams and should provide clear definition of a stream. They also encouraged the Corps to take into consideration the characteristics of the stream's drainage basin and stream bed hydrology. They expressed concern that the southwestern region of the U.S. would be unduly burdened by this restriction. Finally, they cautioned against use of the ''ordinary high water mark'' (OHWM) for determining existence of a stream in that region (many dry runs have an OHWM, yet carry water only after heavy rain events).

In the December 13, 1996, preamble, the term ''loss of waters of the U.S.'' was defined differently for the linear limitation for streambed than for the acreage limitation. For the acreage limitation, the term includes filling, excavation, drainage, and flooding impacts. For the 500 linear-foot limitation, the preamble specifically distinguishes the impacts to be considered as activities ''directly affecting (filling or excavating) more than 500 linear feet of the stream bed of creeks or streams''. When determining the 500-foot limitation, the Corps will evaluate the length of filling or excavating in the stream bed (within the ordinary high water mark). The term ''stream bed'' was meant to capture water bodies that normally have flowing water. This would include all perennial streams and many, but not all, intermittent streams. In deciding whether to apply the restriction to an intermittent stream, the Corps would consider whether the level of impact was minimal by applying professional judgement, considering the characteristics of the drainage basin and stream bed hydrology, etc. This determination should not be confused with a determination of jurisdiction.

IV. Use of NWP 26 With Other NWP's Cannot Exceed 3 Acres of Impact

A. Limitation vs Prohibition

Many of the comment letters, both those in support and those opposed to the changes to NWP 26, included statements indicating that the commenters might not be making the distinction between limitation and prohibition of multiple use of NWPs for one single and complete project (commonly referred to as ''stacking''). The Corps has not prohibited the multiple use of other NWPs with NWP 26 to authorize a single and complete project. However, when multiple NWPs are used, the total acreage is limited to 3 acres. In addition, notification is required for projects where any NWP 12 through 40 is used with another NWP 12 through 40. This is not a prohibition of stacking; rather, stacking is allowed within the stated limits and conditions.

B. Unreasonable Assumption

Many of the commenters opposed to the changes stated that it is not reasonable to assume that two or more project components, each with minimal adverse effects on its own, will automatically add up to more than minimal adverse effects when put together. The Corps does not believe that two or more minimal adverse effect projects always add up to greater than minimal adverse effects. Rather, we recognize that the potential exists and therefore, there should be a mechanism (i.e., the PCN) to assure evaluation of each case. In the case of NWP 26, we also believe that a limit of 3 acres is appropriate to ensure that there can be equitable use of the NWP by members of the public while maintaining minimal cumulative adverse effects.

C. Contrary to § 330.6

Many of the commenters opposed to the changes stated that the stacking limitation is contrary to 33 CFR 330.6(c). However, that section reads, in its entirety:

Two or more different NWPs can be combined to authorize a ''single and complete project'' as defined at 33 CFR 330.2(I). However, the same NWP cannot be used more than once for a single and complete project.

That paragraph simply says that multiple use is acceptable; it does not say that it is mandatory that it be allowed in every case; nor does it make any statement about what type of conditions may be placed on use of multiple NWPs.

D. Hindrance of Well-planned Developments

Several commenters opposed to the limitations placed on NWP 26 stated that the new limits will discourage developers from proposing well-planned developments. They believe that, in order to qualify for an NWP under the lower limits, developers will present a larger number of smaller projects as ''single and complete'' rather than a more genuine, larger, single and complete project such as could be done with allowance for up to 10 acres of fill. Others indicated that developers would make less effort to ''avoid and minimize'' at the outset. Once they determined they would have to apply for an individual permit anyway, they would start out by requesting as much wetland fill as they might wish. Both of these scenarios are possible with the previous or current limits of NWP 26. The Corps doesn't believe that this would encourage developers to design projects this way. It is incumbent on the Corps to evaluate if a project is truly ''single and complete'' or is, rather, the first of several components of a larger single and complete project. In the same way, the Corps must determine if appropriate avoidance and minimization has been conducted and that the adverse effects are minimal. The Corps is considering this in more detail in the NWPs proposed to replace NWP 26.

E. Need for an Upper Limit

Several commenters opposed to the changes stated that an upper limit should not be necessary since a PCN is required any time more than one NWP 12 through 40 is applied to a single and complete project. Some of the same commenters suggested that there be provisions allowing for 3 acres to be exceeded for the most-often-used combinations of NWPs. As stated above, based on current knowledge of wetland science and of the types of projects proposed nationwide, the Corps believes that to ensure that adverse effects are minimal we, usually, need to maintain an upper acreage limit of 3 acres to projects authorized under one or more NWPs. However, a limit of 10 acres has been proposed for master planned developments in the activity-specific NWPs proposed to replace NWP 26 (63 FR 36040–36078).

V. Conclusion

Based on our review of the comments we have concluded that the 3 modifications:(1) the expiration of NWP 26 on December 13, 1998; (2) the prohibition against filling or excavating more than 500 linear feet of stream bed under NWP 26; and (3) the prohibition against using other NWPs with NWP 26 to authorize the loss of more than 3 acres of waters of the United States, we made regarding NWP 26 are appropriate and should not be changed, with one exception. We have proposed to extend the expiration date of NWP 26 to March 28,1999, to ensure that there is adequate time to effectively involve other agencies and the public in the development of regional conditions for the new and modified, activity-specific, NWPs and to ensure that those NWPs are in place at the time NWP 26 expires.

Dated: July 17, 1998.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 98–19495 Filed 7–21–98; 8:45 am]

BILLING CODE 3710–92–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Privacy Act; Systems of Records

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: New system of records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, as amended, to publish a description of the systems of records it maintains containing personal information. In this notice the Board announces a new system of records.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (202) 208–6387.

SUPPLEMENTARY INFORMATION: The new system of records, designated DNFSB–7, is described below.

DNFSB–7

SYSTEM NAME:

Supervisor Files.

SECURITY CLASSIFICATION:

Unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Board's technical, legal, and administrative staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files maintained by supervisors, indexed by employee name, containing positive or negative information used primarily to write annual or mid-year performance appraisals or to propose awards and honors. The files may contain written correspondence, examples of an employee's work, printed versions of electronic communications, private notes by the supervisor, and other records bearing on the individual's performance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records are used by supervisors to write annual or mid-year performance appraisals for their employees or to propose awards and honors. Records may also be used in connection with disciplinary and adverse actions. These records are not disclosed outside DNFSB and will not be accessed by persons other than the supervisor maintaining the record and administrative staff personnel assigned to file or retrieve records, except as required by law consistent with the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer files.

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Access is limited to the individual supervisor keeping the records and administrative personnel who may file or retrieve records. Records are stored in locked file cabinets or in locked desk drawers.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the ''General Records Schedules'' published by National Archives and Records Administration, Washington, DC. Most files in DNFSB–7 are purged once per year following completion of appraisals. Records are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901. Attention: Andrew Thibadeau.