

contractual effect. GSAR 528.310(b) is being deleted because it relates to proposed deletion of 552.228–70 where it states “in the case of an owner-controlled insurance program, or wrap-up insurance, the clause will be a part of the policy holder’s requirements” the phrase “the clause” refers to 552.528–70.

- GSA is proposing to add 528.311, Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts. The new language at 528.311–1 clarifies the usage for the FAR clause 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts. The language states that other than contracts and solicitations for construction and architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause, FAR clause 52.228–7 is required.

- GSA is proposing to add clause 552.228–5 to the GSAR. The language in this clause was previously in the GSAR and based upon GSA’s experience with contracts that do not have such a clause, it is being reinstated to protect the Federal Government’s interest. In essence, the new 552.228–5 replaced the newly deleted 552.228–70. GSAR 552.228–70 (formerly GSAR 552.228–75) did not serve any purpose other than to recite the fact that 40 U.S.C. 3172 (formerly 40 U.S.C. 290) effects a limited cession of jurisdiction to states with respect to enforcement of worker’s compensation laws. 552.228–70 had no contractual effect and was superfluous.

#### Discussion of Comments

There were no public comments received in response to the Advanced Notice of Proposed Rulemaking.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will

consider comments from small entities concerning the affected GSAR Parts 528 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR Case 2006–G517), in correspondence.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0027.

#### List of Subjects in 48 CFR Parts 528 and 552

Government procurement.

Dated: July 28, 2008.

Al Matera,

Director, Office of Acquisition Policy, U.S. General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 528 and 552 as set forth below:

#### PART 528—BONDS AND INSURANCE

1. The authority citation for 48 CFR part 528 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

##### 528.202 [Amended]

2. Amend section 528.202 by removing the word “You” and adding the words “The contracting officer” in its place.

3. Revise section 528.310 to read as follows:

##### 528.310 Contract clause for work on a Government installation.

Insert the clause at 552.228–5, Government as Additional Insured, in each solicitation and contract that meets all the following conditions:

(a) The contract amount is expected to exceed the simplified acquisition threshold.

(b) The contract will require work to be performed on Government property.

4. Add section 528.311 to read as follows:

##### 528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

##### 528.311–1 Contract clause.

Use the clause at FAR 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

#### PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

6. Add section 552.228–5 to read as follows:

##### 552.228–5 Government as Additional Insured.

As prescribed in 528.310, insert the following clause:

GOVERNMENT AS ADDITIONAL INSURED (DATE)

(a) This clause supplements the requirements set forth in FAR clause 52.528–5, Insurance—Work on a Government Installation.

(b) Each insurance policy required under this contract, other than workers’ compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under this contract. The insurance carrier is required to waive all subrogation rights against any of the named insured.  
(End of clause)

##### 552.228–70 [Removed]

7. Section 552.228–70 is removed.

[FR Doc. E8–17938 Filed 8–4–08; 8:45 am]

BILLING CODE 6820–61–S

#### GENERAL SERVICES ADMINISTRATION

#### 48 CFR Parts 546 and 552

[GSAR Case 2008–G514; Docket 2008–0007; Sequence 14]

RIN 3090–A169

#### General Services Acquisition Regulation; GSAR Case 2008–G514; Rewrite of GSAR Part 546, Quality Assurance

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise language that provides requirements for quality assurance.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before October 6, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2008–G514 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments

via the Federal eRulemaking portal by inputting "GSAR Case 2008–G514" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with GSAR Case 2008–G51. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "GSAR Case 2008–G514" on your attached document.

- Fax: 202–501–4067.
- Mail: General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite GSAR Case 2008–G514 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT** For clarification of content, contact Ms. Jeritta Parnell at (202) 501–4082. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2008–G514.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise GSAR Part 546, Quality Assurance. This proposed rule is a result of the General Services Administration Acquisition Manual (GSAM) rewrite initiative. The initiative was undertaken by GSA to revise the GSAM so as to maintain consistency with the FAR and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can use when entering into and administering contractual relationships. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy.

GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, GSA will publish it in the **Federal Register**.

This proposed rule revises GSAR 546 as follows:

GSAR 546.302–70, Source inspection by Quality Approved Manufacturer for fixed-price supply contracts, is revised to include applicability to certain

programs, *i.e.*, stock, special order program, wildfire. The subsection is revised to include reference to FAR 52.246–2, Inspection of Supplies—Fixed Price.

GSAR 546.302–71, Source Inspection, is retained with no revisions.

GSAR 546.302–72, Destination Inspection, is added to prescribe the clause at 552.246–78, Inspection at Destination.

The language in 546.312, Construction contracts, that prescribes the clause at 552.246–72, Final Inspection and Tests, is deleted.

The language in 546.708, Warranties of data, is revised to place emphasis on the role of the contracting officer.

The language in 546.710, Contract clause, is revised to add the clause at 552.246–77, Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature. This clause is used when the FAR clause at 52.246–17, Warranty of Supplies of a Noncomplex Nature, is included in solicitations and contracts. The prescriptive language in paragraphs (b), (c), and (d) is deleted. The clauses prescribed in paragraphs (b), (c), and (d) are being deleted.

The clause at 552.246–17, Warranty of Supplies of a Noncomplex Nature, is being deleted as it unnecessarily repeats, paraphrases, or otherwise restates material contained in the FAR. A new clause 552.246–77, Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature, is added to provide for GSA unique rights and remedies.

The clause at 552.246.70, Source Inspection by Quality Approved Manufacturer, is revised to edit and clarify existing clause language.

The clause at 552.246–71, Source Inspection by Government, is retained.

The clause at 552.246–72, Final Inspection and Tests, is being deleted. The FAR provides sufficient guidance.

The clause at 552.246–73, Warranty Multiple Award Schedule, is being relocated to GSAR Part 538.

The clause at 552.246–75, Guarantees, is being deleted. The FAR provides sufficient guidance.

The clause at 552.246–76, Pesticides, is being deleted. This clause was determined to be unnecessary for inclusion in the GSAR.

The clause at 552.246–78, Inspection at Destination, is being added to provide for inspection by Government personnel at destination.

##### **Discussion of Comments**

There were no comments received in response to the "Advanced Notice of Proposed Rulemaking" pertaining to this GSAR Part.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### **B. Regulatory Flexibility Act**

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions delete obsolete coverage, clarify existing coverage, and edit current language. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 546 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, (GSAR case 2008–G514), in all correspondence.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0027.

##### **List of Subjects in 48 CFR Parts 546 and 552**

Government procurement.

Dated: July 29, 2008.

**Al Matera,**

*Director, Office of Acquisition Policy.*

Therefore, GSA proposes to amend 48 CFR parts 546 and 552 as set forth below:

1. The authority citation for 48 CFR parts 546 and 552 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

##### **PART 546—QUALITY ASSURANCE**

2. Revise section 546.302–70 to read as follows:

**546.302–70 Source inspection by Quality Approved Manufacturer for fixed-price supply contracts.**

(a) For solicitations issued and contracts awarded by FAS that will exceed the simplified acquisition threshold and include the clause at 52.246–2, Inspection of Supplies—Fixed-Price—

(1) The contracting officer shall insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection for the Stock and Special Order Programs; and

(2) The contracting officer may authorize inspection and testing at manufacturing plants or other facilities located outside the United States, Puerto Rico, or the U.S. Virgin Islands, under paragraph (a)(1) of the clause at 552.246–70 under any of the following circumstances after coordinating the authorization with QVOC and documenting the authorization in the file:

(i) Inspection services are available from another Federal agency with primary inspection responsibility in the geographic area.

(ii) An inspection interchange agreement exists with another agency for inspection at a contractor's plant.

(iii) Other considerations will ensure more economical and effective inspection consistent with the Government's interest.

(b) When the estimated value of the acquisition is below the simplified acquisition threshold and will include the clause at 52.246–2, Inspection of Supplies—Fixed-Price, insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, only—

(1) In solicitations and contracts that support the Wildfire program; and

(2) In contracts when a pattern of acquisitions demonstrates an ongoing relationship with the contractor.

**546.302–71 [Amended]**

3. Amend section 546.302–71 by removing “FSS” and adding “FAS” in its place.

4. Add section 546.302–72 to read as follows:

**546.302–72 Destination inspection.**

The contracting officer shall include the clause at 552.246–78, Inspection at Destination, in supply contracts that require inspection at destination.

**546.312 [Removed]**

5. Remove section 546.312.

**Subpart 546.4 [Removed]**

6. Remove Subpart 546.4.

7. Revise section 546.708 to read as follows:

**546.708 Warranties of data.**

(a) The contracting officer shall use warranties of data only when both of the following conditions are applicable:

(1) Use of a warranty is in the Government's interest and is documented.

(2) The contracting director concurs with the decision.

(b) The contracting officer shall consult with the technical or specification manager responsible for developing any warranties of data.

8. Revise section 546.710 to read as follows:

**546.710 Contract clause.**

The contracting office shall insert the clause at 552.246–77, Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature, when using the clause at 52.246–17 in solicitations and contracts.

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**552.246–17 [Removed]**

9. Remove section 552.246–17.

10. Revise section 552.246–70 to read as follows:

**552.246–70 Source Inspection by Quality Approved Manufacturer.**

As prescribed in 546.302–70, insert the following clause:

**Source Inspection By Quality Approved Manufacturer (Date)**

(a) *Inspection system and inspection of facilities.* (1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause (FAR 52.246–2) of this contract shall be maintained throughout the contract period. Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall comply with all requirements of editions in effect on the date of the solicitation of either Federal Standard 368 or the International Organization for Standardization (ISO) Standard 9001:2000 (Quality Management Systems—Requirements). A documented description of the inspection system shall be made available to the Government before contract award. At the sole discretion of the Contracting Officer, he/she may authorize in writing exceptions to the quality assurance standards identified above. The Contractor shall immediately notify the Administrative Contracting Officer (ACO) of any changes made in the inspection system during the contract period. As used herein, the term “inspection system” means the Contractor's own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside

of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the U.S. Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, ISO 9001:2000 or as otherwise approved by the Government, records shall include the date inspection and testing were performed. These records shall be available for—

(i) 3 years after final payment; or

(ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) The Contractor shall provide the Administrative Contracting Officer (ACO) with the name of the individual and an alternate responsible for the inspection system. In the event that the designated individual(s) becomes unavailable to oversee the inspection system, the Contractor, within 10 calendar days of such event, shall provide the ACO with the names of the replacement individual(s).

(b) *Inspection by the Contractor.* The Contractor is required to demonstrate that the supplies in the shipment have been subject to had have passed all inspections and tests required by the contract and meet the requirements of the contract.

(c) *Inspection by Government personnel.* (1) Although the Government will normally rely upon the Contractor's representation as to the quality of supplies shipped, it reserves the right under the Inspection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract, before acceptance, at all times and places, including the point of manufacture. When the Government notifies the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until inspection by

the Government is completed and shipment is authorized by the Government.

(2) The offeror shall indicate, in the spaces provided below the location(s) at

which the supplies will be inspected or made available for inspection.

INSPECTION POINTS

Item No(s).	Name of Manufacturer	Name, Address (Including County), and	Telephone Number
_____	_____	_____	_____
_____	_____	_____	_____

NOTE: If additional space is needed, the offeror may furnish the requested information by an attachment to the offer.

(3) During the contract period, a Government representative may periodically select samples of supplies produced under this contract for Government verification, inspection, and testing. Samples selected for testing will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(d) *Quality deficiencies.* (1) Notwithstanding any other clause of this contract concerning the conclusiveness of acceptance by the Government, any supplies or production lots shipped under this contract found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this contract within a period of \_\_\_\_\_ \* \_\_\_\_\_ months after acceptance shall, at the Government's option, be replaced, repaired, or otherwise corrected by the Contractor at no cost to the Government within 30 calendar days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice to replace or correct. The Contractor shall remove, at its own expense, supplies rejected or required to be replaced, repaired, or corrected. When the nature of the defect affects an entire batch or lot of supplies, and the Contracting Officer determines that correction can best be accomplished by retaining the nonconforming supplies, and reducing the contract price by an equitable amount under the circumstances, then the equitable price adjustment shall apply to the entire batch or lot of supplies from which the nonconforming item was taken.

(2) The Contractor may be issued a Quality Deficiency Notice (QDN) if—

(i) Supplies in process, shipped, or awaiting shipment to fill Government orders are found not to comply with contract requirements; or

(ii) Deficiencies in either plant quality or process controls are found. Upon receipt of a QDN, the Contractor shall take immediate corrective action and shall suspend shipment of the supplies covered by the QDN until such time as corrective action has been completed. The Contractor shall notify the Government representative, within 5 workdays, of the action plan or the corrective action taken. The Government may elect to verify the corrective action at the Contractor location(s). Shipments of nonconforming supplies will be returned at the Contractor's expense and may constitute cause for termination of the contract. Delays due to the insurance of a QDN do not constitute excusable delay under the default clause of this contract. Failure to complete corrective action in a timely manner may result in termination of the contract.

(3) This contract may be terminated for default if subsequent Government inspection discloses that plant quality or process controls are not being maintained, supplies that do not meet the requirements of the contract are being shipped, or if the contractor fails to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing.* The Contractor shall be charged for any additional cost of inspection/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246—2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of \$ \_\_\_\_\_ \* \_\_\_\_\_ per man-hour or fraction thereof if the inspection is at a GSA distribution center; \$ \_\_\_\_\_ \* \_\_\_\_\_ per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any

other location; and \$ \_\_\_\_\_ \* \_\_\_\_\_ per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under paragraph (d) of this clause, pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246—2, supplies may be—

(1) Stored and charged against the Contractor's account;

(2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return shall also be charged against the Contractor's account);

(3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale; or

(4) Otherwise disposed of by the Government.

(g) *Subcontracting requirements.* The Contractor shall insert in any subcontracts the inspection or testing provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause of this contract. The Contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause.

(End of clause)

*\*Normally insert 12 months as the period during which defective or otherwise nonconforming supplies must be replaced. However, when the supplies being bought have a shelf life of less than 1 year, you should use the shelf-life period, or in the instance where you reasonably expect a longer period to be available, you should use the longer period.*

*\*\*The rates to be inserted are established by the Commissioner of the Federal Acquisition Service or a designee.*

#### 552.246-71 [Amended]

11. Amend section 552.246-71 by—  
a. Revising the date of the clause to read “(Date)”;

b. Removing from paragraph (c)(3) “Virgin Islands” and adding “U.S. Virgin Islands” in its place; and

c. Removing from the end of the section, at the footnote, “Supply” and adding “Acquisition” in its place.

#### 552.246-72 through 552.246-76 [Reserved]

12. Remove and reserve sections 552.246-72 through 552.246-76.

13. Add sections 552.246-77 and 552.246-78 to read as follows:

#### 552.246-77 Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature.

As prescribed in 546.710(a), insert the following clause in solicitations and contracts that include FAR 52.246-17, Warranty of Supplies of a Noncomplex Nature.

#### Additional Contract Warranty Provisions For Supplies of a Noncomplex Nature (Date)

(a) *Definition.* Correction, as used in this clause, means the elimination of a defect.

(b) *Contractor's obligations.* When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant to the return, correction, or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense.

(c) *Remedies available to the Government.* When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(End of clause)

#### 552.246-78 Inspection at Destination.

As prescribed in 546.302-72 insert the following clause:

#### INSPECTION AT DESTINATION (DATE)

Inspection of all purchases under this contract will be made at destination by an authorized government representative.

(End of clause)

[FR Doc. E8-17902 Filed 8-4-08; 8:45 am]

BILLING CODE 6820-61-S

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R9-ES-2008-0063; 92300-1113-0000-9B]

RIN 1018-AU62

#### Endangered and Threatened Wildlife and Plants; Amending the Formats of the Lists of Endangered and Threatened Wildlife and Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (FWS), propose to amend the formats of the Lists of Endangered and Threatened Wildlife and Plants to include current practices and standards that will make the regulations and Lists easier for the public to understand. When we finalize this proposed rule, we will publish the Lists of Endangered and Threatened Wildlife and Plants in their entirety in the new formats.

**DATES:** We must receive comments by September 4, 2008 in order to ensure their consideration in our final decision.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-ES-2008-0063; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Michael Franz, Office of Program Support, Endangered Species, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA, 22203; telephone 703-358-2079. If you use a

telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Lists of Endangered and Threatened Wildlife and Plants (Lists), found in the Code of Federal Regulations (CFR) at 50 CFR 17.11 for wildlife and 50 CFR 17.12 for plants, contain the names of species officially listed as endangered or threatened under the Endangered Species Act of 1973, as amended 16 U.S.C. §§1531 *et seq.* (ESA). The most recent compilation of Lists appears in the 2007 edition of title 50 CFR, which was issued in early 2008. That compilation included regulatory amendments effective as of October 1, 2007.

The species were placed on the Lists by FWS, by the National Marine Fisheries Service (NMFS) of the Department of Commerce's National Oceanic and Atmospheric Administration, or by both of these agencies in joint rulemaking actions. References to “Services” in the text of §17.11 and §17.12 refer to both of these agencies.

The Lists represent the official Government record of which species are listed and where they are considered listed under the ESA. Over time, we have noted numerous anomalies in the Lists, including ambiguous entries and confusing format and column titles. After detailed research on the origin, history, and purpose of the Lists, we determined that the format, references, and standards need to be updated. This rule is designed to address these observed problems and propose corrections to enhance the clarity of the lists.

#### History of the Lists of Endangered and Threatened Species

The first endangered species list was published March 8, 1969 (35 FR 5034) and included only two columns, Common Name and Scientific Name. In 1971, that list was added to title 50 CFR in the newly created section 17 and divided into two separate lists with appendix A being the “U.S. List of Endangered Foreign Fish and Wildlife” with three columns (Common Name, Scientific Name, and Where Found) and appendix D being the “United States’ List of Endangered Native Fish and Wildlife” with still only the original two columns (Common Name and Scientific Name).

In 1974, the two appendices were changed into the now familiar locations in §17.11 and §17.12 with the appendix A becoming §17.11 (Foreign) and