

Rules and Regulations

Federal Register

Vol. 68, No. 141

Wednesday, July 23, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 407 and 457

RIN 0563-AB85

General Administrative Regulations, Subpart J—Appeal Procedure and Subpart T—Federal Crop Insurance Reform, Insurance Implementation, Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2001 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulations which were published Wednesday, June 25, 2003 (68 FR 37697-37726). The regulations pertain to the General Administrative Regulations, Subpart J—Appeal Procedure and Subpart T—Federal Crop Insurance Reform, Insurance Implementation, Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2001 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions.

EFFECTIVE DATE: June 18, 2003.

FOR FURTHER INFORMATION CONTACT: For further information contact Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO, 64133-4676, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction implemented changes mandated by the Federal Crop Insurance Act, as amended by the Agricultural Risk Protection Act of 2000, and required an earlier notice of loss for prevented planting in response to an Office of Inspector General Audit.

Need for Correction

As published, the final regulations contained a typographical error which may prove to be misleading and is in need of correcting. Section 37(a) of the Common Crop Insurance Regulations, Basic Provisions contained a cite, “section 8(b)(2)”, which should have been “section 8(b)(1).”

Correction of Publication

■ Accordingly, the publication on Wednesday, June 25, 2003 of the final regulations at 68 FR 37697-37726 is corrected as follows:

PART 457—[CORRECTED]

§ 457.8 [Corrected]

■ On page 37726, in the second column, section 37(a) cites “section 8(b)(2)” which is corrected to read “section 8(b)(1).”

Signed in Washington, DC, on July 11, 2003.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 03-18720 filed 7-22-03; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1952 and 1956

Partial Withdrawal of Approval of the Virgin Islands State Plan; Resumption of Exclusive Federal Enforcement Authority in the Private Sector; and Conversion and Approval of the Virgin Islands State Plan to a State Plan for Public Employees Only

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: This action amends the Code of Federal Regulations (CFR) to reflect the withdrawal of approval by the Occupational Safety and Health Administration (OSHA) of the United States Virgin Islands’ (the “Virgin Islands”) comprehensive State plan covering both private and public sector employers and employees, and the conversion and approval of a public employee State plan, covering employers and employees of the Territory and its political subdivisions only. This action is taken as the result of unique structural and performance issues in the Virgin Islands and with mutual agreement. Federal OSHA will now exercise exclusive jurisdiction over all private sector employers and employees in the Virgin Islands. In addition to public employee coverage, the Territory will provide expanded on-site consultation services to the private sector in the U.S. Virgin Islands pursuant to a new cooperative agreement with OSHA as authorized by Section 21(d) of the Occupational Safety and Health Act.

EFFECTIVE DATE: July 23, 2003.

FOR FURTHER INFORMATION CONTACT:

Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693-2200, Fax (202) 693-1671, E-mail: Bryant.Barbara@dol.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the OSH Act), 29 U.S.C. 667, provides the basis for States to assume responsibility for the development and enforcement of occupational safety and health standards by submitting to the Assistant Secretary of Labor for Occupational Safety and Health (“Assistant Secretary”), and obtaining Federal approval of, a State plan. Under regulations at 29 CFR part 1902 and 1956 respectively, there are two types of State plans which a State may operate: a comprehensive “State plan” covering both private and public (State, or Territory, and its political subdivisions) employees; or a “State plan for public employees only.”

Section 3(7) of the OSH Act makes several U.S. Territories and possessions including the U.S. Virgin Islands eligible to submit State plans under Section 18. The United States Virgin Islands ("Virgin Islands") State plan received initial approval for its comprehensive State plan on September 11, 1973 (38 FR 24896). A description of the plan and Federal OSHA approval was codified in the Code of Federal Regulations at 29 CFR part 1952, subpart S. The Virgin Islands Department of Labor, Division of Occupational Safety and Health (VIDOSH) was designated as the State agency with responsibility for administering the State plan, and operations under the plan commenced at the time of initial plan approval in 1973. The Virgin Islands State plan covered all issues of occupational safety in private and public sector workplaces located within the Virgin Islands. Although in the public sector the State plan covered occupational health as well as safety, in the private sector the State plan did not exercise enforcement authority over occupational health issues; enforcement of health standards and other health-related requirements in the Virgin Islands with regard to private sector employment remained a Federal OSHA responsibility.

The Virgin Islands State plan successfully completed all of its State plan developmental steps and was certified as structurally complete on September 22, 1981. Pursuant to Section 18(e) of the OSH Act and procedures at 29 CFR 1902, OSHA determined that the Virgin Islands program met all requirements and, in actual operation, was "at least as effective" as the Federal program, granted the Virgin Islands State plan final approval, and relinquished Federal enforcement authority effective April 17, 1984 (49 FR 16766). However, on November 13, 1995, OSHA announced that, as a result of its monitoring, it had found that the Virgin Islands State plan, was no longer "at least as effective as" Federal OSHA and that other 18(e) requirements were no longer being met. In response to this finding, the Virgin Islands Commissioner of Labor agreed to voluntarily relinquish the State plan's final approval status under Section 18(e), to the reassertion of concurrent Federal OSHA enforcement authority and jurisdiction, and to undertake necessary corrective action to regain final approval status (60 FR 56950).

The decision to reinstate concurrent jurisdiction in 1995 allowed Federal OSHA to exercise full discretionary concurrent enforcement authority to assure worker protection, while

allowing the Virgin Islands time and assistance to improve its performance. However, since the agreement in 1995 the Virgin Islands has been unable to institute significant improvements to its staffing and operational performance. Federal OSHA monitoring of the State plan has not indicated sufficient improvements in the Territory's performance to alleviate the deficiencies identified at that time. This has made it necessary for OSHA to continue to provide Federal staffing and resources in recent years to assure an appropriate level of worker safety and health protection in workplaces in the Virgin Islands.

B. Partial Withdrawal of the Virgin Islands State Plan; Resumption of Exclusive Federal Enforcement Authority in the Private Sector

In a letter dated May 12, 2003, Governor Charles Turnbull of the United States Virgin Islands notified the Assistant Secretary of the decision of the Territory to formally withdraw that portion of its federally-approved occupational safety and health State plan which provides for occupational safety coverage of private sector employment, pursuant to 29 CFR 1955.3(b). This letter also notified the Assistant Secretary of the Virgin Islands' request that the OSHA-approved State plan be converted from a comprehensive State plan covering both private and public sector employees, as currently reflected in 29 CFR 1952, subpart S, to a public employee only State plan, as authorized by 29 CFR part 1956, covering employees of the Territory and its political subdivisions only. In addition, the Governor expressed the Territory's agreement to provide on-site consultation services to the private sector in the Virgin Islands pursuant to a cooperative agreement under section 21(d) of the OSH Act. (The Virgin Islands, up-to-now, has provided private sector consultation services under the auspices and funding of its State plan.) The Virgin Islands indicated such conversion would allow it to focus resources on increasing the protection provided to public sector employees, while at the same time providing increased safety and health assistance for small business employers and employees in the Territory with the additional Federal funding and assistance available through a Section 21(d) consultation agreement.

OSHA has conveyed to the Virgin Islands its agreement with the resolution set forth in the Governor's May 12 letter. This agreement resolves unique and long-standing issues regarding the status and funding of the

Virgin Islands State plan, in a manner which recognizes Federal OSHA's ongoing responsibility to provide staffing and resources for private sector enforcement in the Virgin Islands, while assuring continued recognition and funding for the valuable public sector compliance and consultation activity provided by the Territory. The agreement makes it possible for OSHA to devote its resources to providing safety and health protection in Virgin Islands workplaces, rather than expending its resources in a possibly lengthy and complex proceeding under 29 CFR part 1955 to formally withdraw State plan approval. The agreement also allows the Virgin Islands to qualify for enhanced funding under a provision of the Omnibus Insular Areas Act of 1977 (48 U.S.C. Section 1469 (d)), which authorizes OSHA to waive the requirement for Territorial matching funds for grant amounts under \$200,000.

Accordingly, OSHA is revising 29 CFR 1952 and 29 CFR part 1956 to reflect the Virgin Islands' decision to exclude private sector employment from coverage under the plan while retaining coverage of public sector employment, and to reflect the new status of the plan as one that applies to the public sector only. Pursuant to the Governor's May 12 letter, State plan coverage of all private sector employers and employees is terminated effective July 1, 2003; exclusive Federal OSHA jurisdiction over private sector employment in the Virgin Islands is resumed on the same date. In accordance with Section 18(f) of the OSH Act and 29 CFR part 1955.4, the Territory may retain jurisdiction in any case commenced prior to the July 1 voluntary termination of its private sector program in order to enforce standards under the plan. 29 CFR 1952, subpart S, which reflects the prior status of the Virgin Islands program as a comprehensive State plan, is being rescinded and reserved.

The Virgin Islands' decision to retain its existing State plan in the public sector is being implemented by adding a new subpart H to 29 CFR part 1956, which reflects the new status of the Virgin Islands plan as a public sector only plan. The new subpart codifies the Virgin Islands plan as a developmental plan under 29 CFR part 1956, as it will be necessary for the Territory to make certain adjustments to its public employee program structure and to revise its State plan document to reflect its new, more limited scope. The State plan already meets the majority of the criteria for public sector State plans in 29 CFR 1956.10 and the indices of effectiveness in 29 CFR part 1956.11.

However, to provide a procedure for documenting how it meets those requirements, the Virgin Islands has submitted a developmental schedule for making the necessary adjustments to the State plan to reflect its change in scope, including the amendment and/or revision of Territorial legislation to provide more explicit authority for the public employee program, State plan narrative, implementing regulations and administrative procedures including revisions to its standards adoption procedures, and the development of a public employee only consultation program, strategic plan, and poster.

The State plan action and associated reconfiguration of the Virgin Islands workplace safety and health program will also result in changes in the Federal funding arrangements. As the reduction in the size and administrative cost of its State plan will reduce its funding requirements, OSHA has determined that the provisions of the Omnibus Insular Areas Act of 1977 (48 U.S.C. Section 1469(d)) can now apply. This authorizes OSHA to waive the Territory's matching share requirement for Federal funding under \$200,000. The Virgin Islands is appropriately amending its grant documents to reflect these changes in status and funding.

C. Waiver of Comment Period; Immediate Effective Date

OSHA finds that good cause exists for amending 29 CFR parts 1952 and 1956 to reflect the modification in coverage of the Virgin Islands State plan without an opportunity for public comment, and for making this rule effective immediately upon publication in the **Federal Register**. Today's action imposes no new rights or obligations on affected parties, since as discussed above, private sector workplaces in the Virgin Islands have been subject to enforcement of Federal OSHA safety requirements since 1995, and subject to Federal OSHA health requirements since the inception of the Virgin Islands State plan. (Federal OSHA and Virgin Islands safety and health standards and regulations are identical.) Public sector employers in the Virgin Islands are likewise unaffected, as they remain subject to the same requirements approved as part of the Territory's existing plan, which was approved after public notice and comment (38 FR 24896). Today's revisions to the 29 CFR parts 1952 and 1956 have no substantial effect on the rights or obligations of any member of the public, and are made only to update these basic public references to reflect the current coverage of the Virgin Islands State plan. Accordingly, OSHA finds that good

cause exists for making these revisions without an opportunity for public comment, and for making them effective immediately upon publication in the **Federal Register**.

D. Decision

In accordance with the Governor's request and in order to assure the most effective protection possible to both private and public sector workers in the U.S. Virgin Islands, the withdrawal of the Virgin Islands' State plan in the private sector and its conversion to a public employee only State plan under 29 CFR 1956 is hereby approved. This decision incorporates the requirements of the OSH Act and of regulations applicable to State plans generally.

E. Effective Date of State Plan Conversion

The Virgin Islands State plan ceased inspections and other compliance activity in the private sector, except for previously initiated cases, and began operating as a public employee only State plan limiting its coverage to employees of the Territory and its political subdivisions on July 1, 2003.

F. Paperwork Reduction

This final rule contains no collections of information other than those already imposed by State plan regulations which have been previously reviewed and approved by the Office of Management and Budget ("OMB"), and assigned OMB control number 1218-0247 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The OMB approval of these collections of information contained in these regulations expires November 30, 2005.

G. Regulatory Review

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that the approval of the withdrawal of the complete plan and conversion to a public employee only plan will not have a significant economic impact on a substantial number of small entities. This final rule applies only to the one Territorial agency operating an OSHA-approved State plan, and would not place small units of government under any new or different requirements, nor would any additional burden be placed upon the Territorial government beyond the responsibilities already assumed as part of the approved plan. By its own terms, the converted plan will have no effect on private sector employment, but is limited to the Territory and its political subdivisions. Moreover, a plan has been

in effect in the Virgin Islands since 1973 and all public sector employers, including small units of local government, have been subject to its terms.

Unfunded Mandates Reform Act

The procedures in 29 CFR parts 1952, 1955 and 1956 for submission, initial approval and withdrawal of OSHA-approved State plans apply only to States and Territories which have voluntarily submitted a State plan for OSHA approval under the OSH Act, and accordingly these procedures do not meet the definition of a "Federal intergovernmental mandate" under section 421(5) of UMRA (2 U.S.C. 658(5)).

Federalism

Executive Order 13132, "Federalism," (64 FR 43255; Aug. 4, 1999) establishes fundamental Federalism criteria to be applied in formulating and implementing Federal policies, and requires agencies to consult with affected State, Territorial and local officials in the development of regulatory policies. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to plan approval decisions under the Act, which have no effect outside the particular State or Territory receiving approval, OSHA has reviewed this action and believes it is consistent with the principles and criteria set forth in the Executive Order. This rule was developed in coordination with representatives from the U.S. Virgin Islands, and opportunities for additional State input have been afforded through consultation with the Occupational Safety and Health State Plan Association (OSHSPA), the organization of State agencies which administer Federally-approved plans.

Executive Order

This final rule has been deemed not significant under Executive Order 12866.

List of Subjects in 29 CFR Parts 1952 and 1956

Administrative practice and procedure, Intergovernmental relations, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the

Occupational Safety and Health Act of 1970 (29 U.S.C. 667), 29 CFR 1902, 1952, 1955, and 1956, and Secretary of Labor's Order 5-2002 (67 FR 65008, October 22, 2002).

Signed at Washington, DC this 16th day of July, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

■ Accordingly, the 29 CFR Ch. XVII is amended as set forth below:

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

■ 1. The authority for 29 CFR part 1952 is revised to read as follows:

Authority: Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), 29 CFR part 1902 and 1955, and Secretary of Labor's Order 5-2002 (67 FR 65008, October 22, 2002).

■ 2. Subpart S of 29 CFR part 1952 is removed and reserved to read as follows:

Subpart S—[Removed and Reserved]

PART 1956—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS APPLICABLE TO STATE AND LOCAL GOVERNMENT EMPLOYEES IN STATES WITHOUT APPROVED PRIVATE EMPLOYEE PLANS

■ 3. The authority for 29 CFR part 1956 is revised to read as follows:

Authority: Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), 29 CFR 1902, 1952, and 1955, and Secretary of Labor's Order 5-2002 (67 FR 65008, October 22, 2002).

■ 4. 29 CFR part 1956 is amended by adding a new subpart H to read as follows:

Subpart H—The Virgin Islands

Sec.

1956.70 Description of plan as approved.

1956.71 Developmental schedule.

1956.72 Changes to approved plan.

[Reserved.]

1956.73 Determination of operational effectiveness. [Reserved.]

1956.74 Location of basic State plan documentation.

Subpart H—The Virgin Islands

§ 1956.70 Description of plan as approved.

(a) The Virgin Islands State plan was converted to a public employee only occupational safety and health program on July 1, 2003, and received initial approval on July 23, 2003. It is administered and enforced by the Virgin Islands Department of Labor, Division of Occupational Safety and Health ("the agency," or "VIDOSH") throughout the

U.S. Virgin Islands (the "Virgin Islands"). The Virgin Islands public employee program, established by Executive Order 200-76 on July 11, 1975, extends full authority under Virgin Islands Act No. 3421, Section 16 (April 27, 1973) and implementing regulations to the agency to enforce and administer all laws and rules protecting the safety and health of employees of the Government of the Virgin Islands, its departments, agencies and instrumentalities, including any political subdivisions. It covers all activities of public employers and employees and places of public employment. The Territory has adopted all Federal standards promulgated as of June 2003, and has given assurances that it will continue to adopt and update all Federal standards, revisions and amendments. The plan is accompanied by a statement of the Governor's support.

(b) The plan establishes procedures for variances and the protection of employees from hazards under a variance; insures inspection in response to complaints; provides employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations before, during, and after inspections; notification to employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protection; protection of employees against discharge or discrimination in terms and conditions of employment; includes provision for prompt notices to employers and employees of violations of standards and abatement requirements and either sanctions or alternative mechanisms to assure abatement; employer's right to appeal citations for violations, abatement periods and any proposed sanctions and/or compulsory process; employee's right to appeal abatement periods; and employee participation in review proceedings. Also included are provisions for right of entry for inspection, prohibition of advance notice of inspection and the requirement for both employers and employees to comply with the applicable rules, standards, and orders, and employer obligations to maintain records and provide reports as required. Further, the plan provides assurances of a fully trained adequate staff and sufficient funding, and for voluntary compliance programs, including a public sector consultation program.

Note: The Virgin Islands' received initial approval for a comprehensive State plan

covering the private (safety only) and public sectors on September 11, 1973 (38 FR 24896) and final approval under Section 18(e) of the Act on April 17, 1984 (49 FR 16766). Final approval status for that State plan was suspended and full Federal concurrent enforcement authority was reinstated on November 13, 1995 (60 FR 56950). Effective July 1, 2003, the Virgin Islands withdrew the portion of its State plan which covered private sector employment, and exclusive Federal enforcement jurisdiction for the private sector resumed.

§ 1956.71 Developmental schedule.

The Virgin Islands State plan for public employees only is developmental. The following is a schedule of major developmental steps to be completed:

(a) The Virgin Islands will review and amend its legislation and regulations, as appropriate, to assure proper statutory authority for "at least as effective" coverage of all public sector employers and employees including Territorial government employers and employees and any employers or employees of municipalities or other local governmental entities. The plan will be revised to include a legal opinion that the converted plan meets the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the laws of the Virgin Islands. These actions will occur within one year of plan conversion approval.

(b) The Virgin Islands will review and amend its legislation and regulations as necessary to reflect its more limited coverage and to be consistent with formal withdrawal of Federal approval of the private sector portion of the State plan, within one year of plan conversion approval.

(c) The Virgin Islands will review its statutory authority regarding standards adoption and take appropriate legislative or administrative action to assure that it is consistent with 29 CFR part 1953 and that all standards applicable to the public sector will be promulgated within six months of the promulgation date of new Federal OSHA standards, within one year of plan conversion approval.

(d) The Virgin Islands will take appropriate legislative or administrative action to assure effective sanctions, either as monetary penalties, or an alternative mechanism for compelling abatement in the public sector within one year of plan conversion approval.

(e) The Virgin Islands will develop a five-year strategic plan and corresponding annual performance plan within two years of plan conversion approval.

(f) A new State poster will be developed and distributed to reflect

coverage of the public sector only within one year of plan conversion approval.

(g) The Virgin Islands will submit a revised State plan, in electronic format to the extent possible, reflecting its coverage of public employers and employees only in accordance with 29 CFR 1956, within one year of plan conversion approval.

(h) The Virgin Islands will hire and provide appropriate training for their public sector compliance and consultation staffs, within one year of plan conversion approval.

(i) The Virgin Islands will develop a public sector consultation program within two years of plan conversion approval.

§ 1956.72 Changes to approved plan. [Reserved]

§ 1956.73 Determination of operational effectiveness. [Reserved]

§ 1956.74 Location of basic State plan documentation.

Copies of basic State plan documentation are maintained at the following locations. Specific documents are available upon request, and will be provided in electronic format, to the extent possible. Contact the: Directorate of Cooperative and State Programs, Office of State Programs, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N-3700, Washington, DC 20210; Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York, New York 10014; and the Virgin Islands Department of Labor, Division of Occupational Safety and Health, 3021 Golden Rock, Christiansted, St. Croix, Virgin Islands, 00840. Current contact information for these offices (including telephone numbers, mailing and e-mail addresses) is available on OSHA's Web site, <http://www.osha.gov>.

[FR Doc. 03-18719 Filed 7-22-03; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is revising the exemption rule for N05520-5, entitled "Personnel Security Program Management Records System". The revision includes deleting the (k)(1) exemption because it is redundant to 32 CFR 701.117; and claiming subsections (c)(3) and (e)(1) under the (k)(5) exemption. The principal purpose of the (k)(5) exemption is to protect the identity of a confidential source. The expansion is considered supportive, and in furtherance, of the overall purpose of the exemption.

EFFECTIVE DATE: July 8, 2003.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

SUPPLEMENTARY INFORMATION: The proposed rule was published on May 9, 2003, at 68 FR 24904. No comments were received, therefore, the rule, as changed, is being adopted as final.

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act". It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more

and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism". It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 701

Privacy.

■ Accordingly, 32 CFR part 701 is amended to read as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

■ 1. The authority citation for 32 CFR part 701, Subpart F continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 701.118, paragraph (n) is revised to read as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(n) *System identifier and name:*

(1) *N05520-5, Personnel Security Program Management Records System.*

(2) *Exemption:* (i) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(3) *Authority:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or