

the **Federal Register** on Wednesday, January 2, 2002 (67 FR 48).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by April 10, 2002.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

**LaNita VanDyke,**

*Acting Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).*

[FR Doc. 02-894 Filed 1-11-02; 8:45 am]

**BILLING CODE 4830-01-P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2700

#### Procedural Rules

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking that proposed adding a new procedural rule setting forth settlement procedures for cases that come before the Federal Mine Safety and Health Review Commission. The new procedures were to be instituted as a pilot program for a two-year trial period. Since the issuance of the notice of proposed rulemaking, the Commission has reevaluated the pilot program and has determined that withdrawal of the notice is appropriate at this time.

**FOR FURTHER INFORMATION CONTACT:**

Norman M. Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006; telephone 202-653-5610 (202-

653-2673 for TDD relay). Telephone numbers are not toll-free.

**SUPPLEMENTARY INFORMATION:** On November 10, 1999, the Commission issued a notice of proposed rulemaking, which proposed amending its procedural rules, 29 CFR part 2700, by adding a new procedural rule setting forth settlement procedures which were intended to facilitate and promote the pre-hearing settlement of contested cases that come before the Commission (64 FR 61236-39). The Commission's procedural rules are currently silent regarding procedures to be utilized by administrative law judges ("ALJs") to facilitate the settlement of contested cases. The procedures used in a given case to foster pre-hearing settlement of disputes have been determined informally by the individual ALJ assigned to the case. The proposed rule, 29 CFR 2700.85, was intended to provide a structured and formal system for settlement, which would be initiated by the appointing of a settlement judge on the motion of any party or on the chief administrative law judge's own initiative.

In response to a request by the Department of Labor's Office of the Solicitor, the Commission extended the comment period on the proposed rule for 30 days. 64 FR 68649 (Dec. 8, 1999). The Commission subsequently received comments suggesting, in part, that the settlement procedures should be initiated with the consent of all parties. In considering those comments, the Commission further examined the percentage of cases that settled and the length of time it took to reach settlement under the current informal system. Based upon that examination, the Commission has reconsidered the utility of a formal settlement system at the present time, and shall further evaluate the best means of effectuating the consensual resolution of disputes.

Withdrawal of the notice of proposed rulemaking constitutes only such action, and does not preclude the Commission from issuing another notice in the future, nor does it commit the Commission to any course of action in the future.

#### Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, or the Regulatory Flexibility Act (5 U.S.C. 601-612).

#### List of Subjects in 29 CFR Part 2700

Hearing and appeal procedures, Administrative practice and procedure, Ex parte communications, Lawyers.

## Withdrawal of Notice of Proposed Rulemaking

Accordingly, the notice of proposed rulemaking that was published by the Commission in the **Federal Register** on November 10, 1999 (64 FR 61236-39) is withdrawn.

Dated: January 7, 2002.

**Theodore F. Verheggen,**  
*Chairman.*

[FR Doc. 02-800 Filed 1-11-02; 8:45 am]

**BILLING CODE 6735-01-P**

## DEPARTMENT OF DEFENSE

### National Reconnaissance Office

#### 32 CFR Part 326

#### NRO Privacy Act Program

**AGENCY:** National Reconnaissance Office, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The National Reconnaissance Office (NRO) is proposing to exempt one Privacy Act system of records. The system of records is QNRO-21, Personnel Security Files. The exemptions are intended to increase the value of the systems of records for law enforcement purposes and to protect the privacy of individuals identified in the systems of records. The National Reconnaissance Office is proposing to exempt those records contained in this Privacy Act system of records when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the record when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records. The NRO is also proposing to exempt one Privacy Act system of records. The system of records is QNRO-19, Customer Security Services Personnel Security Files. The exemptions are intended to increase the value of the systems of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the systems of records. The NRO is moving part 326 from subchapter P to subchapter O—Privacy Program.

**DATES:** Comments must be received by March 15, 2002, to be considered by the agency.

**ADDRESSES:** National Reconnaissance Office, Information Access and Release

Center, 14675 Lee Road, Chantilly, VA 20151-1715.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Freimann at (703) 808-5029.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866, "Regulatory Planning and Review"**

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

**Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. chapter 6)**

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

**Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. chapter 35)**

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose 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"**

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the 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"**

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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 326**

Privacy.

1. The authority citation for 32 CFR part 326 continues to read as follows:

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

2. Chapter I, subchapters O and P are proposed to be amended by removing 32 CFR part 326 from subchapter P and adding it to subchapter O.

3. Section 326.17 is proposed to be amended by adding paragraphs (h), (i) and (j) to read as follows:

**§ 326.17 Exemptions.**

\* \* \* \* \*

(h) NRO-19

(1) *System name:* Customer Security Services Personnel Security Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory 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.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to investigatory records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigatory purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the

NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(i) NRO-21

(1) *System name:* Personnel Security Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory 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.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or

prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an

investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(j) QNRO-4, Freedom of Information Act and Privacy Act Files.

(1) *Exemption:* During the processing of a Freedom of Information Act/Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this system, the NRO hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary system of which they are a part.

(2) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(3) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: January 4, 2002.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 02-679 Filed 1-11-02; 8:45 am]

**BILLING CODE 5001-08-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60 and 61

[AZ, CA, HI, NV, GU-067-NSPS; FRL-7127-3]

#### Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for Guam and the States of Arizona, California, Hawaii, and Nevada

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA has routinely approved most requests from state and local agencies in Region IX for delegation of New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs). This document is addressing general authorities mentioned in the regulations for NSPS and NESHAPs, proposing to update the delegations tables and clarifying those authorities that are retained by EPA. We are taking comments on this proposal and intend to follow with a final action.

**DATES:** Any comments must be received by February 13, 2002.

**ADDRESSES:** Mail comments to Andy Steckel, Chief, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Copies of supporting information are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street (AIR-4), San Francisco, California, 94105.

Please contact Cynthia G. Allen at (415) 947-4120 to arrange a time if inspection of the supporting information is desired.

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen at (415) 947-4120 or Mae Wang at (415) 947-4124, U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR-4), 75 Hawthorne Street, San Francisco, California, 94105.

**SUPPLEMENTARY INFORMATION:** The supplementary information is organized in the following order:

What is the purpose of this document?

Who is authorized to delegate these authorities?

What does delegation accomplish?

What authorities are not delegated by EPA?

Does EPA keep some authority?

Administrative Requirements

#### What Is the Purpose of This Document?

Through this document, EPA is proposing to accomplish the following objectives:

(1) Update the delegations tables in the Code of Federal Regulations, Title 40 (40 CFR), parts 60 and 61, to provide an accurate listing of the delegated standards; and

(2) Clarify those authorities that are retained by EPA and not granted to state or local agencies as part of delegation. These actions are described below.

#### *Update of Tables in the CFR*

Today's action proposes to update the delegation tables in 40 CFR parts 60 and 61, to allow easier access by the public to the status of delegations in various state or local jurisdictions. The updated delegation tables would include the delegations approved in response to recent requests, as well as those previously granted. The proposed tables are shown at the end of this document. EPA is also proposing to update the addresses for state and local agencies within the jurisdiction of EPA Region IX.

Recent requests for delegation that will be incorporated into the updated CFR tables are identified below. Each individual submittal identifies the specific NSPS and NESHAPs for which delegation was requested. Some of these requests have already been approved and simply need to be included in the CFR. For requests listed below that have not yet been approved, EPA will consider these delegation requests as approved on the effective date of the final rulemaking that will follow today's action.

Agency	Date of request
Arizona Department of Environmental Quality .....	May 29, 1998, and October 6, 1999.
Kern County Air Pollution Control District .....	February 8, 1995, January 20, 2000, and May 18, 2001.
Lake County Air Quality Management District .....	February 24, 1997.
Mendocino County Air Quality Management District .....	May 21, 1999.
Sacramento Metropolitan Air Quality Management District .....	August 7, 1995, April 24, 1997, and July 7, 1998.
San Diego Air Pollution Control District .....	June 23 and December 24, 1999.
San Joaquin Valley Unified Air Pollution Control District .....	May 27, 1999, and June 26, 2000.
Santa Barbara County Air Pollution Control District .....	August 6, 1996.
Ventura County Air Pollution Control District .....	February 9, 1995.
Yolo-Solano Air Quality Management District .....	October 20, 1998.

In the future, EPA Region IX may establish a new procedural option for state and local agencies to receive delegation of 40 CFR part 60 and 61 standards. If an agency has delegation of a standard, then the new procedure may allow that agency to receive delegation of any amendments to that standard as they are adopted by reference. The details of any new procedure will be described in a future rulemaking action before it is implemented. It is being mentioned here for informational purposes only.

#### *Clarification of Non-Delegable Authorities*

In February 1999, EPA released a guidance document entitled, "How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring—NSPS & NESHAPS, (EPA 305-B-99-004)." In accordance with this guidance, today's action clarifies the NSPS and NESHAP authorities that are not delegated to state and local agencies under Clean Air Act sections 111 and 112. These clarifications will be codified at 40 CFR

60.4(d) and 61.04(c)(9). Today's action also requests that state and local agencies exclude the non-delegable subsections from future delegation requests, and informs the public of our intention to appropriately revise future delegation letter approvals and **Federal Register** announcements.

#### **Who Is Authorized To Delegate These Authorities?**

Sections 111(c)(1) and 112(l) of the Clean Air Act, as amended in 1990, authorize the Administrator to delegate