

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