

FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-10211 (62 FR 62239, November 21, 1997), and by adding a new airworthiness directive (AD), Amendment 39-11150, to read as follows:

AD 99-09-16 Eurocopter France:

Amendment 39-11150. Docket No. 98-SW-54-AD. Supersedes AD 97-24-04, Amendment 39-10211, Docket No. 97-SW-22-AD.

Applicability: Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 318C helicopters with main rotor blades, part number (P/N) 3130S11-10000-all part numbers, 3130S11-20000-all part numbers, or 3130S11-30000-all part numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade (blade) in flight and subsequent loss of

control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter at intervals not to exceed 100 hours time-in-service (TIS) or 6 calendar months, whichever occurs first, inspect each blade spar skin and blade root reinforcement strip area for bonding separations, cracks, or corrosion in accordance with paragraphs 2.A. and 2.B. of the Accomplishment Instructions of Eurocopter Service Bulletin No. 05.91 Revision No. 1, dated September 28, 1998 (SB). Notification to Eurocopter La Courneuve, Department E/SRPT is not required.

(1) For the hatched areas (15 x 95mm and 8 x 95mm) on the upper and lower surfaces of each blade, if bonding separation is found, replace the blade with an airworthy blade prior to further flight (see Figure 1 of the SB).

(2) Bonding separation in the non-hatched area (8 x 95mm) of the upper and lower surfaces of each blade is permissible but must be inspected using the tapping method at intervals not to exceed 25 hours TIS in order to monitor possible propagation. If the bonding separation reaches the hatched area, the blade must be replaced with an airworthy blade before further flight (see Figure 1 of the SB).

(b) Before further flight, and thereafter at intervals not to exceed 100 hours TIS or 6 calendar months, whichever occurs first, visually inspect for bonding separation, a crack, or corrosion on the upper and lower skin in the 100 x 95mm blade root area (see Figure 1 of the SB). If a bonding separation in the hatched area, a crack, or corrosion is detected, replace the blade with an airworthy blade prior to further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits will not be issued.

(e) The inspection and replacement, if necessary, shall be done in accordance with the Accomplishment Instructions of Eurocopter Service Bulletin No. 05.91 Revision No. 1, dated September 28, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 13, 1999.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (France) AD 97-135-055(A) R1, dated July 15, 1998 and AD 97-135-055(A)R2, dated December 16, 1998.

Issued in Fort Worth, Texas, on April 16, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99-10349 Filed 4-27-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

OSD Privacy Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule updates and implements procedures of the Privacy Act Program in the Office of the Secretary of Defense (OSD) and organizations provided Privacy Act administrative support by Washington Headquarters Services (WHS).

DATES: This rule is effective February 4, 1999. Comments must be received by June 28, 1999.

ADDRESSES: Forward comments to: DoD, WHS(C&D)D&R(records), 1155 Defense Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: David Bosworth, 703-588-0159.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 311 is not a significant regulatory action. The rule does not:

- (1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section 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. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

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

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is revised to read as follows:

PART 311—OSD PRIVACY PROGRAM

Sec.

- 311.1 Purpose.
- 311.2 Applicability and scope.
- 311.3 Definitions.
- 311.4 Policy.
- 311.5 Responsibilities.
- 311.6 Procedures.
- 311.7 Information requirements.

Authority: Pub. L. 93-579, 88 Stat. 1986 (5 U.S.C. 552a).

§ 311.1 Purpose.

This part updates and implements basic policies and procedures outlined in 5 U.S.C. 552a, OMB Circular A-130,¹ and DoD 5400.11-R² and provides guidance and procedures for use in establishing the Privacy Program in the Office of the Secretary of Defense (OSD) and those organizations assigned to OSD for administrative support.

§ 311.2 Applicability and scope.

This part:

(a) Applies to the OSD, the Chairman of the Joint Chiefs of Staff, Uniformed Services University of the Health Sciences (USUHS) and other activities assigned to OSD for administrative support hereafter referred to collectively as "OSD Components."

(b) Covers record systems maintained by OSD Components and governs the maintenance, access, change, and release of information contained in OSD Component record systems, from which information about an individual is retrieved by a personal identifier.

§ 311.3 Definitions.

Access. Any individual's review of a record or a copy of a record or parts of a system of records.

Disclosure. The transfer of any personal information from a system of records by any means of oral, written, electronic, mechanical, or other communication, to any person, private entity, or Government agency, other than the subject of the record, the subject's designated agent, or the subject's guardian.

Individual. A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf.

Individual access. Access to personal information pertaining to the individual, by the individual, his or her designated agent or legal guardian.

Maintain. Includes maintenance, collection, use or dissemination.

Personal information. Information about an individual that is intimate or private, as distinguished from information related solely to the individual's official functions or public life.

§ 311.4 Policy.

(a) It is DoD policy to safeguard personal information contained in any system of records maintained by any DoD Component and to permit any individual to know what existing records pertain to him or her in any OSD Component covered by this part.

(b) Each office maintaining records and information about individuals shall ensure that their privacy is protected from unauthorized disclosure of personal information. These offices shall permit individuals to have access to, and to have a copy made of all, or any portion of records about them, except as provided in Chapters 3 and 5, DoD 5400.11-R, and to have an opportunity to request that such records be amended as provided by the Privacy Act of 1974 and Chapter 3 of DoD 5400.11-R. Individuals requesting access to their records shall receive concurrent consideration under 5 U.S.C. 552a and the Freedom of Information Act, as amended, if appropriate.

(c) Heads of OSD Components shall maintain any necessary record of a personal nature that is individually identifiable in a manner that complies with the law and DoD policy. Any information collected must be as accurate, relevant, timely, and complete as is reasonable to ensure fairness to the individual. Adequate safeguards must be provided to prevent misuse or unauthorized release of such information.

§ 311.5 Responsibilities.

(a) The Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD) shall:

(1) Direct and administer the DoD Privacy Program for OSD Components.

(2) Establish standards and procedures to ensure implementation of and compliance with the Privacy Act of 1974, OMB Circular No. A-130, and DoD 5400.11-R.

(3) Designate the Director for Freedom of Information and Security Review as the point of contact for individuals requesting information of access to records and copies about themselves.

(4) Serve as the appellate authority within OSD when a requester appeals a denial for access to records under the Privacy Act.

(5) Serve as the appellate authority within OSD when a requester appeals a denial for amendment of a record or initiates legal action to correct a record.

(6) Evaluate and decide, in coordination with The General Counsel of the Department of Defense (GC, DoD), appeals resulting from denials of access or amendments to records by the OSD Components.

(7) Designate the Directives and Records Division, Correspondence and Directives Directorate, Washington Headquarters Services (WHS) as the office responsible for all aspects of the Privacy Act, except that portion about receiving and acting on public requests for personal records. As such, the Directives and Records Division shall:

(i) Exercise oversight and administrative control of the Privacy Act Program in OSD and those organizations assigned to OSD for administrative support.

(ii) Provide guidance and training to organizational entities as required by 5 U.S.C. 552a and OMB Circular A-130.

(iii) Collect and consolidate data from OSD Components, and submit an annual report to the Defense Privacy Office, as required by 5 U.S.C. 552a, OMB Circular A-130, and DoD 5400.11-R.

(iv) Coordinate and consolidate information for reporting all record systems, as well as changes to approved systems, to the OMB, the Congress, and the Federal Register, as required by 5 U.S.C. 552a, OMB Circular A-130, and DoD 5400.11-R.

(v) Collect information from OSD Components, and prepare consolidated reports required by 5 U.S.C. 552a and DoD 5400.11-R.

(b) The Director for Freedom of Information and Security Review shall:

(1) Forward requests for information or access to records to the appropriate OSD Component having primary

¹ Copies may be obtained by contacting EOP Publications, 725 16th Street, NW., NEOB, Washington, DC 20503.

² Copies may be obtained via internet at <http://web7.whs.osd.mil/corres.htm>.

responsibility for any pertinent system of records under 5 U.S.C. 552a, or to OSD Components, under the Freedom of Information Act, as amended.

(2) Maintain deadlines to ensure that responses are made within the time limits prescribed in DoD 5400.7-R,³ DoD Instruction 5400.10,⁴ and this part.

(3) Collect fees charged and assessed for reproducing requested materials.

(4) Refer all matters about amendments of records and general and specific exemptions under the 5 U.S.C. 552a to the proper OSD Components.

(c) The General Counsel of the Department of Defense shall:

(1) Coordinate all OSD final denials of appeals for amending records, and review actions to confirm denial of access to records, as appropriate.

(2) Provide advice and assistance to the DA&M, OSD in the discharge of appellate and review responsibilities, and to the DFOISR on all access matters.

(3) Provide advice and assistance to OSD Components on legal matters pertaining to the Privacy Act of 1974.

(d) The Heads of the OSD Components shall:

(1) Designate an individual as the point of contact for Privacy Act matters; designate an official to deny initial requests for access to an individual's records or changes to records; and advise both DA&M, OSD and DFOISR of names of officials so designated.

(2) Report any new record system, or changes to an existing system, to the Chief, Directives and Records Division, WHS, at least 90 days before the intended use of the system.

(3) Review all contracts that provide for maintaining records systems, by or on behalf of his or her office, to ensure within his or her authority, that language is included that provides that such systems shall be maintained in a manner consistent with 5 U.S.C. 552a.

(4) Revise procurement guidance to ensure that any contract providing for the maintenance of a records system, by or on behalf of his or her office, includes language that ensures that such system shall be maintained in accordance with 5 U.S.C. 552a.

(5) Revise computer and telecommunications procurement policies to ensure that agencies review all proposed contracts for equipment and services to comply with 5 U.S.C. 552a.

(6) Coordinate with Automatic Data Processing (ADP) and word processing managers providing services to ensure that an adequate risk analysis is conducted to comply with DoD 5400.11-R.

(7) Review all Directives that require forms or other methods used to collect information about individuals to ensure that they are in compliance with 5 U.S.C. 552a.

(8) Establish administrative systems in OSD Component organizations to comply with the procedures listed in this part and DoD 5400.11-R.

(9) Coordinate with the GC, DoD on all proposed denials of access to records.

(10) Provide justification to the DFOISR when access to a record is denied in whole or in part.

(11) Provide the record to the DFOISR when the initial denial of a request for access to such record has been appealed by the requester, or at the time of initial denial when appeal seems likely.

(12) Maintain an accurate account of the actions resulting in a denial for access to a record or for the correction of a record. This account should be maintained so that it can be readily certified as the complete record of proceedings if litigation occurs.

(13) Ensure that all personnel who either have access to the system of records, or who are engaged in developing or supervising procedures for handling records in the system, are aware of their responsibilities for protecting personal information as established in the Privacy Act and DoD 5400.11-R.

(14) Forward all requests for access to records received directly from an individual to the DFOISR for appropriate suspense control and recording.

(15) Provide DFOISR with a copy of the requested record when the request is granted.

(e) The requester who desires to submit a request is responsible for:

(1) Determining whether to submit the request in writing or in person. A requester who seeks access to records pertaining to himself or herself which are filed by his or her name or personal identifier:

(i) May make such a request in person to the custodian of the records. If the requester is not satisfied with the response, however, in order to invoke any provision of 5 U.S.C. 552a, DoD 5400.11-R, or this part, the requester must file a request in writing as provided in § 311.6(b)(10). The requester must provide proof of identity by showing drivers license or similar credentials.

(ii) Describing the record sought, and providing sufficient information to enable the material to be located (e.g., identification of system of records, approximate date it was initiated,

originating organization, and type of document).

(iii) Complying with procedures provided in DoD 5400.11-R for inspecting and/or obtaining copies of requested records.

(iv) Submitting a written request to amend the record to the system manager or to the office designated in the system notice.

§ 311.6 Procedures.

(a) *Publication of notice in the Federal Register.* (1) A notice shall be published in the **Federal Register** of any record system meeting the definition of a system of records in DoD 5400.11-R.

(2) Regarding new or revised records systems, each OSD Component shall provide the Chief, Directives and Records Division with 90 days advance notice of any anticipated new or revised system of records. This material shall be submitted to the OMB and to Congress at least 60 days before use and to the Federal Register at least 30 days before being put into use, to provide an opportunity for interested persons to submit written data, views, or arguments to the OSD Components. Instructions on content and preparation are outlined in DoD 5400.11-R.

(b) *Access to information on records systems.* (1) Upon request, and as provided by the Privacy Act, records shall be disclosed only to the individual they pertain to and under whose individual name or identifier they are filed, unless exempted by provisions stated in DoD 5400.11-R.

(2) There is not requirement under 5 U.S.C. 552a that a record be created or that an individual be given access to records that are not in a group of records that meet this definition of a system of records in 5 U.S.C. 552a.

(3) Granting access to a record containing personal information shall not be conditioned upon any requirement that the individual state a reason or otherwise justify the need to gain access.

(4) No verification of identity shall be required of an individual seeking access to records that are otherwise available to the public.

(5) Individuals shall not be denied access to a record in a system of records about themselves because those records are exempted from disclosure under DoD 5400.7-R. Individuals may only be denied access to a record in a system of records about themselves when those records are exempted from the access provisions of the Privacy Act under DoD 5400.11-R, Chapter 5.

(6) Individuals shall not be denied access to their records for refusing to disclose their Social Security Numbers

³ See footnote 2 to § 311.1.

⁴ See footnote 2 to § 311.1.

(SSNs), unless disclosure of the SSN is required by statute, by regulation adopted before January 1, 1975, or if the record's filing identifier and only means of retrieval is by SSN.

(7) Individuals may request access to their records, in person or by mail, in accordance with the procedures outlined in paragraph (b)(8) of this section.

(8) Information necessary to identify a record is: the individual's name, date of birth, place of birth, identification of the records system as listed in the **Federal Register**, or sufficient information to identify the type of records being sought, and the approximate date the records might have been created. Any individual making a request for access to records in person shall come to the Directorate for Freedom of Information and Security Review (DFOISR), Room 2C757, Pentagon, Washington, DC 20301-1155; and shall provide personal identification acceptable to the Director, DFOISR, to verify the individual's identity (e.g., driver's license, other licenses, permits, or passes used for routine identification purposes).

(9) If an individual wishes to be accompanied by a third party when seeking access to records or wishes to have the record released directly to a third party, the individual may be required to furnish a signed access authorization granting the third party access.

(10) Any individual submitting a request by mail for access to information shall address such request to the Directorate for Freedom of Information and Security Review, Pentagon, Room 2C757, Washington, DC 20301-1155. To verify the identity of the individual, the request shall include either a signed notarized statement or an unsworn declaration in the format specified by 28 U.S.C. 1746.

(11) The following procedures shall apply to requests for access to records or information compiled for law enforcement purposes:

(i) Individuals requesting access to records or information about themselves and compiled for law enforcement purposes are processed under DoD 5400.11-R and DoD 5400.7-R to give them the greater degree of access.

(ii) Individual requests for access to records or information about themselves and compiled for law enforcement purposes (and in the custody of law enforcement activities) that have been incorporated into the records system, exempted from the access provisions of 5 U.S.C. 552a, will be processed in accordance with subsection C1.5.13 and Chapter 5, DoD 5400.7-R. Individuals shall not be denied access to records

solely because they are in the exempt system, but they will have the same access that they would receive under DoD 5400.7-R. (Also see subsection A.10., Chapter 3, DoD 5400.11-R.)

(iii) Requests by the individuals for access to records or information about themselves and compiled for law enforcement purposes that are in records systems exempted from access provisions will be processed under subsection C.1., Chapter 5 of DoD 5400.11-R or DoD 5400.7-R, depending upon which regulation gives the greater degree of access. (See also subsection A.10., Chapter 3, DoD 5400.1-R)

(iv) Individual requests for access to records or information about themselves and compiled for law enforcement purposes exempted from access under Section B, Chapter 5 of DoD 54.11-R, that are temporarily in the hands of a non-law enforcement element for adjudicative or personnel actions, shall be referred to the originating agency. The requester will be informed in writing of these referrals.

(12) The following procedures shall apply to requests for illegible, incomplete, or partially exempt records:

(i) An individual shall not be denied access to a record or a copy of a record solely because the physical condition or format of the record does not make it readily available (e.g., deteriorated state or on magnetic tape). The document will be prepared as an extract, or it will be exactly recopied.

(ii) If a portion of the record contains information that is exempt from access, an extract or summary containing all of the information in the record that is releasable shall be prepared.

(iii) When the physical condition to the record makes it necessary to prepare an extract for release, the extract shall be prepared so that the requester will understand it.

(iv) The requester shall be informed of all deletions or changes to records.

(13) Medical records shall be disclosed to the individual they pertain to, unless a determination is made in consultation with a medical doctor, that the disclosure could have adverse effects on the individual's physical or mental health. Such information may be transmitted to a medical doctor named by the individual concerned. If the named medical doctor declines to provide the record to the individual, the OSD Components shall take positive action to ensure that the requested records are provided the individual.

(14) The individual may be charged reproduction fees for copies or records as outlined in DoD 5400.11-R.

(c) *Requested to amend personal information in records systems and*

disputes. (1) The Head of an OSD Component, or the designated official, shall allow individuals to request amendment to their records to the extent that such records are not accurate, relevant, timely, or complete. Requests should be as brief and as simple as possible and should contain, as a minimum, identifying information to locate the record, as description of the items to be amended, and the reason for a change. A request shall not be rejected nor required to be resubmitted unless additional information is essential to process the request. Requesters shall be required to provide verification of their identity as stated in paragraph (b)(8) of this section, to ensure that they are seeking to amend records about themselves, and not, inadvertently or intentionally, the records of others.

(1) The appropriate system manager shall mail a written acknowledgement to an individual's request to amend a record within 10 days after receipt, excluding Saturdays, Sundays, and legal public holidays. Such acknowledgement shall identify the request and may, if necessary, request any additional information needed to make a determination. No acknowledgment is necessary if the request can be reviewed, processed, and if the individual can be notified of compliance or denial within the 10-day period. Whenever practical, the decision shall be made within 30 working days. For requests presented in person, written acknowledgment may be provided at the time the request is presented.

(3) The Head of an OSD Component, or designated official, shall promptly take one of the following actions on requests to amend the records:

(i) If the OSD Component official agrees with any portion or all of an individual's request, he or she will proceed to amend the records in accordance with existing statutes, regulations, or administrative procedures, and inform the requester of the action taken. The OSD Component official shall also notify all previous holders of the record that the amendment has been made, and shall explain the substance of the correction.

(ii) If the OSD Component official disagrees with all or any portion of a request, the individual shall be informed promptly of the refusal to amend a record, the reason for the refusal, and the procedure established by OSD for an appeal as outlined in paragraph (c)(6) of this section.

(iii) If the request for an amendment pertains to a record controlled and maintained by another Federal Agency,

the request shall be referred to the appropriate Agency, and the requester advised of this:

(4) The following procedures shall be used when reviewing records under dispute:

(i) In response to a request for an amendment to records, officials shall determine whether the requester has adequately supported their claim that the record is inaccurate, irrelevant, untimely, or incomplete.

(ii) The Head of an OSD Component, or designated official, shall limit the review of a record of those items of information that clearly bear on any determination to amend the records and shall ensure that all those elements are present before determination is made.

(5) If the Head of an OSD Component, or designated official, after an initial review of a request to amend a record, disagrees with all or any portion of a record, he or she shall:

(i) Advise the individual of the denial and the reason for it.

(ii) Inform the individual that he or she may appeal the denial.

(iii) Describe the procedures for appealing the denial including the name and address of the official to whom the appeal should be directed. The procedures should be as brief and simple as possible.

(iv) Furnish a copy of the justification of any denial to amend a record to the DA&M, OSD.

(6) If an individual disagrees with the initial OSD determination, he or she may file an appeal. The request should be sent to the Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD), 1950 Defense Pentagon, Washington, D.C. 20301-1950, if the record is created and maintained by an OSD Component.

(7) If, after review, the DA&M, OSD further refuses to amend the record as requested, he shall advise the individual:

(i) Of the refusal and the reason and authority for the denial.

(ii) Of his or her right to file a statement of the reason for disagreeing with the DA&M's decision.

(iii) Of the procedures for filing a statement of disagreements.

(iv) That the statement filed shall be made available to anyone the record is disclosed to, together with a brief statement, at the discretion of the OSD Component, summarizing its reasons for refusing to amend the records.

(v) That prior recipients of copies of disputed records by provided by a copy of any statement of dispute to the extent that an accounting of disclosure is maintained.

(vi) Of his or her right to seek judicial review of the DA&M's refusal to amend a record.

(8) If, after the review, the DA&M, OSD, determines that the record should be amended in accordance with the individual's request, the OSD Component shall amend the record, advise the individual, and inform previous recipients where an accounting of disclosure has been maintained.

(9) All appeals should be processed within 30 days (excluding Saturdays, Sundays, and legal public holidays) after receipt by the proper office. If the DA&M determines that a fair and equitable review cannot be made within that time, the individual shall be informed in writing of the reasons for the delay and of the approximate date the review is expected to be completed.

(d) *Disclosure of disputed information.* (1) If the DA&M, OSD, has refused to amend a record and the individual has filed a statement under paragraph (c)(7) of this section, the OSD Component shall clearly annotate the disputed record so that it is apparent to any person to whom the record is disclosed that a statement has been filed. Where feasible, the notation itself shall be integral to the record. Where an accounting of a disclosure has been made, the OSD Component shall advise previous recipients that the record has been disputed and shall provide a copy of the individual's statement.

(i) This statement shall be maintained to permit ready retrieval whenever the disputed portion of the record is to be disclosed.

(ii) When information that is the subject of a statement of dispute is subsequently disclosed, the OSD Component's designated official shall note which information is disputed and provide a copy of the individual's statement.

(2) The OSD Component shall include a brief summary of its reasons for not making a correction when disclosing disputed information. Such statement shall normally be limited to the reasons given to the individual for not amending the record.

(3) Copies of the OSD Component's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedure outlined in paragraph (c)(3)(iii) of this section.

(e) *Penalties*—(1) *Civil action.* (i) An individual may file a civil suit against the United States and may recover damages, for:

(A) Refusal to amend a record.

(B) Improper denial of the access to a record.

(C) Failure to maintain an accurate, relevant, timely, and complete record that is used to make determinations adverse to the individual.

(ii) An individual may also file a suit against the United States for failure to implement a provision of the Privacy Act when such failure leads to an adverse determination.

(iii) If the individual's suit is upheld, the court may direct the United States to pay the court costs and attorney's fees.

(2) *Criminal action.* (i) Criminal penalties may be imposed against an OSD officer or employee for certain offenses listed in section (i) of the Privacy Act, as follows: willful unauthorized disclosure of protected information in the records; failure to publish a notice of the existence of a record system in the **Federal Register**; requesting or gaining access to the individual's record under false pretenses.

(ii) An OSD officer or employee may be fine up to \$5,000 for a violation as outlined in paragraph (e)(2)(i) of this section.

(3) *Litigation status sheet.* Whenever a complaint citing 5 U.S.C. 552a is filed in a U.S. District Court against the Department of Defense, a DoD component, or any DoD employee, the responsible system manager shall promptly notify the Defense Privacy Office. The litigation status sheet in DoD 5400.11-R provides a standard format for this notification. (The initial litigation status sheet shall, as a minimum, provide the information required by items 1. through 6.) A revised litigation status sheet shall be provided at each stage of the litigation. When a court renders a formal opinion or judgment, copies of the judgment or opinion shall be provided to the Defense Privacy Office with the litigation status sheet reporting that judgment or opinion.

(f) *Computer matching programs.* Paragraph B of Chapter 11 of DoD 5400.11-R prescribes that all requests for participation in a matching program (either as a matching agency or a source agency) be submitted to the Defense Privacy Office for review and compliance. OSD Components shall submit these request through the Directives and Records Division.

§ 311.7 Information requirements.

The Defense Privacy Office shall establish requirements and deadlines for DoD privacy reports. These reports shall be licensed in accordance with DoD Directive 8910.1.⁵

⁵ See footnote 2 to § 311.1.

Dated: April 22, 1999.

L.M. Bynum,

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

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA024-5042; FRL-6318-5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reasonably Available Control Technology for Major Sources of Nitrogen Oxides

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires the implementation of reasonably available control technology (RACT) on major sources of nitrogen oxides (NO_x) in the Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. The intended effect of this action is to grant conditional limited approval of Virginia's regulations to impose RACT on major sources of NO_x.

EFFECTIVE DATE: This final rule is effective on May 28, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814-2092. Or by e-mail at gaffney.kristeen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On January 26, 1999 (64 FR 3891), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed conditional limited approval of Virginia's NO_x RACT regulations for the Virginia portion of the Metropolitan Washington D.C. serious ozone

nonattainment area. No comments were received on the proposal.

I. Background

The Clean Air Act requires states to submit rules to implement RACT on major sources of NO_x in ozone nonattainment areas designated as moderate or above and throughout the Ozone Transport Region. The definition of major source is determined by the classification of the nonattainment area and whether or not it is located in the Ozone Transport Region. A portion of Virginia is part of the Metropolitan Washington D.C. serious ozone nonattainment area and that same portion of Virginia is in the Ozone Transport Region. Therefore, sources in the Virginia portion of the Washington D.C. nonattainment area which emit or have the potential to emit 50 tons or more of NO_x per year are considered major and are subject to the NO_x RACT requirements of the Act.

On November 9, 1992, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP consisting of adopted regulations to impose NO_x RACT on major sources in the nonattainment area, known in state regulations as the Northern Virginia Emissions Control Area. The VADEQ supplemented its November 1992 submittal on December 11, 1992. On August 11, 1998, the VADEQ made another submittal to EPA withdrawing certain provisions of the November 9, 1992 submittal, and forwarding revisions that corrected typographical errors and recodified and renumbered one of the relevant regulations, Appendix T (now 9 VAC 5-40-311).

The November 9, 1992 submittal consisted of revisions to Virginia Regulation 120-01, Part IV, Emission Standards for General Process Operations (Rule 4-4) and Appendix T, entitled "Reasonably Available Control Technology Guidelines for Stationary Sources of Nitrogen Oxides". Rule 4-4 was amended to insert a new section, 120-04-0408, entitled "Standard for nitrogen oxides". To accommodate the insertion of section 120-04-0408, the revision also renumbered the previously existing sections 120-04-0408 through 120-04-0418, inclusive, as sections 120-04-0409 through 120-04-0419, inclusive. On April 11, 1998, the VADEQ submitted a revised version of Appendix T to correct a technical error in the *Virginia Register* version of the final rule dated November 30, 1992. This error was corrected by Virginia in the *Virginia Register* on June 23, 1997. On April 11, 1998, the Commonwealth submitted the corrected version of Appendix T. In addition to the

typographical correction, the Commonwealth also recodified Appendix T and renumbered it as 9 VAC 5-40-311.

Virginia's rule 120-04-0408 requires certain sources to comply with the applicable emission limits established in Appendix T (now known as 9 VAC 5-40-311); or to apply for an alternative emission limit through a source-specific RACT determination process. The emission limits of section C of 9 VAC 5-40-311 do not cover all categories of NO_x sources. Section C specifically enacts emission limits for boilers/steam generating units, process heaters and gas turbines. Other source categories, such as incinerators, reciprocating internal combustion engines, cement manufacturing and iron/steel manufacturing are not covered in 9 VAC 5-40-311. Therefore, not all potential major NO_x sources are subject to specific, presumptive "up-front" (i.e. immediately ascertainable) emission limits. Instead, the regulations establish a process for the Commonwealth to review and approve individual RACT emission limitations proposed by the sources, which are then to be submitted to EPA as SIP revisions. Additionally, subsection 120-04-0408(B) of Virginia's rule allows sources subject to the presumptive limits in Appendix T (now known as 9 VAC 5-40-311) to propose alternative RACT on a case-by-case basis provided they submit the proposal by January 1, 1994. The proposal must include technical and economic support documentation for the proposed RACT and include a schedule for compliance as expeditiously as practical but no later than May 31, 1995.

The Clean Air Act requires states to implement RACT on all major stationary sources. Process-oriented generic regulations, such as those submitted by Virginia, which do not include specific and ascertainable emission limits for all major sources, do not by themselves provide standards for EPA to approve or disapprove as satisfying the definition of RACT. Therefore, the Act's RACT requirements are satisfied only after the specific limits imposed by the Commonwealth on its major sources have been submitted to EPA as SIP revisions and approved by EPA as RACT for the subject sources.

In a November 7, 1996 policy memo from Sally Shaver, Director, Air Quality Strategies and Standards Division of the Office of Air Quality Planning and Standards, EPA issued guidance for approving state generic RACT regulations, like Virginia's, provided certain criteria are met. This guidance does not exempt any major source from RACT requirements but instead