



DEPARTMENT OF TRANSPORTATION

4910-9X

Office of the Secretary

49 CFR Part 10

[Docket No. OST-2016-0028]

RIN 2105-AE46

Maintenance of and Access to Records Pertaining to Individuals

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: On October 4, 2018, the Department of Transportation issued a notice of proposed rulemaking requesting comment on proposed exemptions from certain requirements of the Privacy Act for the Department's insider threat program system of records. The exemptions are necessary to protect properly classified information from disclosure, preserve the integrity of insider threat inquiries, and protect the identities of sources in such inquiries and any related investigations. The Department received no comments on this proposed rule. As a result, this final rule will finalize the proposed rule without change.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may access docket number DOT-OST-2016-0028 by any of the following methods:

- Federal Rulemaking Portal: Go to <http://www.regulations.gov>.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

FOR FURTHER INFORMATION CONTACT: Claire Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590 or privacy@dot.gov or (202) 366-8135.

SUPPLEMENTARY INFORMATION: DOT identifies a system of records that is exempt from one or more provisions of the Privacy Act (pursuant to 5 U.S.C. 552a(j) or (k)) both in the system of records notice published in the Federal Register for public comment and in an appendix to DOT's regulations implementing the Privacy Act (49 CFR part 10, appendix). This rule exempts records in the Insider Threat Program system of records from subsections (c)(3) (Accounting of Disclosures), (d) (Access to Records), (e)(1) and (e)(4)(G) through (I) (Agency Requirements) and (f) (Agency Rules) of the Privacy Act to the extent that records are properly classified, in accordance with 5 U.S.C.552a(k)(1), or consist of investigatory material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k)(2).

As DOT received no comments on the notice of proposed rulemaking published on October 4, 2018 (83 FR 50053), we are finalizing the proposed rule without change.

Regulatory Analysis and Notices:

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

DOT considered the impact of this rulemaking action under Executive Orders 12866 and 13563 (January 18, 2011, “Improving Regulation and Regulatory Review”), and DOT Order 2100.6, “Policies and Procedures for Rulemakings.” DOT has determined that this action will not constitute a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures. This rulemaking has not been reviewed by the Office of Management and Budget. This rulemaking will not result in any costs. Since these records would be exempt from certain provisions of the Privacy Act, DOT would not have to expend any funds in order to administer those aspects of the Act.

B. Regulatory Flexibility Act

DOT has evaluated the effect these changes will have on small entities and does not believe that this rulemaking will impose any costs on small entities because the reporting requirements themselves are not changed and because the rule applies only to information on individuals that is maintained by the Federal Government or that is already publicly available. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

DOT has analyzed the environmental impacts of this final action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering

Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, "[p]romulgation of rules, regulations, and directives." 23 CFR 771.117(c)(20). The purpose of this rulemaking is to amend the Appendix to DOT's Privacy Act regulations. The Department does not anticipate any environmental impacts and there are no extraordinary circumstances present in connection with this rulemaking.

E. Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, Federalism, dated August 4, 1999, and it has been determined that it will not have a substantial direct effect on, or sufficient Federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the preparation of a Federalism Assessment is not necessary.

F. Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Govern-

ments”). Because it would not effect on Indian Tribal Governments, the funding and consultation requirements of Executive Order 13084 do not apply.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4, 109 Stat. 48, March 22, 1995) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments; and the private sector. The UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A “Federal mandate” is a new or additional enforceable duty, imposed on any State, local, or tribal Government; or the private sector. If any Federal mandate causes those entities to spend, in aggregate, \$143.1 million or more in any one year (adjusted for inflation), an UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments; or the private sector.

List of Subjects in 49 CFR Part 10

Penalties, Privacy.

In consideration of the foregoing, DOT amends part 10 of title 49, Code of Federal Regulations, as follows:

PART 10—MAINTENANCE OF AND ACCESS TO RECORDS PERTAINING TO INDIVIDUALS

1. The authority citation for part 10 continues to read as follows:

AUTHORITY: 5 U.S.C. 552a; 49 U.S.C. 322.

Appendix to Part 10 [Designated as Appendix A to Part 10 and Amended]

2. Designate the appendix to part 10 as appendix A to part 10 and amend newly designated appendix A, in Part II, by revising sections A., B., F., and G. to read as follows:

APPENDIX A TO PART 10 - EXEMPTIONS

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Part II. Specific Exemptions

A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes, in accordance 5 U.S.C. 552a(k)(2):

1. Investigative Record System (DOT/FAA 815) maintained by the Federal Aviation Administration at the Office of Civil Aviation Security in Washington, DC; the FAA regional Civil Aviation Security Divisions; the Civil Aviation Security Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma; the FAA Civil Aviation Security Staff at the FAA Technical Center in Atlantic City, New Jersey; and the various Federal Records Centers located throughout the country.

2. FHWA Investigations Case File System, maintained by the Office of Program Review and Investigations, Federal Highway Administration (DOT/FHWA 214).

3. Federal Motor Carrier Safety Administration (FMCSA) Enforcement Management Information System, maintained by the Chief Counsel, FMCSA (DOT/FMCSA 002).

4. DOT/NHTSA Investigations of Alleged Misconduct or Conflict of Interest, maintained by the Associate Administrator for Administration, National Highway Traffic Safety Administration (DOT/NHTSA 458).

5. Civil Aviation Security System (DOT/FAA 813), maintained by the Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration.

6. Suspected Unapproved Parts (SUP) Program, maintained by the Federal Aviation Administration (DOT/FAA 852).

7. Motor Carrier Management Information System (MCMIS), maintained by the Federal Motor Carrier Safety Administration (DOT/FMCSA 001).

8. Suspicious Activity Reporting (SAR) database, maintained by the Office of Intelligence, Security, and Emergency Response, Office of the Secretary.

9. Departmental Office of Civil Rights System (DOCRS).

10. Insider Threat Program (DOT/ALL 26).

These exemptions are justified for the following reasons:

1. From subsection (c)(3), because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative in-

terest by not only DOT but also the recipient agency, thereby permitting the record subject to take appropriate measures to impede the investigation, as by destroying evidence, intimidating potential witnesses, fleeing the area to avoid the thrust of the investigation, etc.

2. From subsections (d), (e)(4)(G), (H), and (I), and (f), because granting an individual access to investigative records, and granting him/her access to investigative records with that information, could interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source, disclose information that would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

B. The following systems of records are exempt from subsections (c)(3) (Accounting of Certain Disclosures) and (d) (Access to Records) of 5 U.S.C. 552a, in accordance with 5 U.S.C. 552a(k)(2):

1. General Air Transportation Records on Individuals, maintained by various offices in the Federal Aviation Administration (DOT/FAA 847).

2. Investigative Records System, maintained by the Assistant Inspector General for Investigations in the Office of the Inspector General (DOT/OST 100).

3. General Investigations Record System, maintained by the Office of Investigations and Security, Office of the Secretary (DOT/OST 016).

4. Insider Threat Program (DOT/ALL 26).

These exemptions are justified for the following reasons:

1. From subsection (c)(3), because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest by not only DOT but also the recipient agency, thereby permitting the record subject to take appropriate measures to impede the investigation, as by destroying evidence, intimidating potential witnesses, fleeing the area to avoid the thrust of the investigation, etc.

2. From subsection (d), because granting an individual access to investigative records could interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source, disclose information that would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

* * * * *

F. Those portions of the following systems of records which consist of information properly classified in the interest of national defense or foreign policy in accordance with 5 U.S.C. 552(b)(1) are exempt from sections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4) (G), (H) and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a:

1. Investigative Record System maintained by the Assistant Inspector General for Investigations in the Office of the Inspector General (DOT/OST 100).

2. Personnel Security Records System, maintained by the Office of Investigations and Security, Office of the Secretary (DOT/OST 035).

3. Civil Aviation Security System (DOT/FAA 813), maintained by the Office of Civil Aviation Security, Federal Aviation Administration.

4. General Investigations Record System, maintained by the Office of Investigations and Security, Office of the Secretary (DOT/OST 016).

5. Insider Threat Program (DOT/ALL 26).

The purpose of these exemptions is to prevent the disclosure of material authorized to be kept secret in the interest of national defense or foreign policy, in accordance with 5 U.S.C. 552(b)(1) and 552a(k)(1).

G. Those portions of the following systems of records which consist of information properly classified in the interest of national defense or foreign policy in accordance with 5 U.S.C. 552a(b)(1) are exempt from subsections (c)(3) (Accounting of Certain Disclosures) and (d) (Access to Records) of 5 U.S.C. 552a:

1. Investigative Record System (DOT/FAA 815) maintained by the Federal Aviation Administration at the Office of Civil Aviation Security in Washington, DC; the FAA regional Civil Aviation Security Divisions; the Civil Aviation Security Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma; the FAA Civil Aviation Security Staff at the FAA Technical Center in Atlantic City, New Jersey; and the various Federal Records Centers located throughout the country.

2. Insider Threat Program (DOT/ALL 26).

The purpose of these exemptions is to prevent the disclosure of material authorized to be kept secret in the interest of national defense or foreign policy, in accordance with 5 U.S.C. 552(b)(1) and 552a(k)(1).

Issued in Washington, DC, on May 8, 2019.

Elaine L. Chao,
Secretary.

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