



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST-1996-1437]

RIN 2105-AD11

Maintenance of and Access to Records Pertaining to Individuals; Proposed Exemption

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: DOT proposes to exempt portions of a newly established system of records titled, "Department of Transportation/ALL 24 Departmental Office of Civil Rights System" from certain provision of the Privacy Act. Specifically, the DOT exempts portions of the "Department of Transportation/ALL-24 Departmental Office of Civil Rights System" from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements. Public comment is invited.

DATE: Comments are due _____ [insert date thirty days after publication].

ADDRESSES: You may file comments identified by the docket number DOT-OST-1996-1437 by any of the following methods:

- Federal Rulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- 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.

Instructions: You must include the agency name and docket number DOT-OST-1996-1437 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

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 claire.barrett@dot.gov or (202) 366-8135.

SUPPLEMENTAL INFORMATION: It is DOT practice to identify a Privacy Act system of records that is exempt from one or more provisions of the Privacy Act (pursuant to 5 USC 552a(j) or (k)) both in the system 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 A). This amendment proposes exemption from certain portions of the Privacy Act of a proposed record system -- the Departmental Office of Civil Rights System of Records (DOCRS)-- to be used to track correspondence, inquiries, complaints, and appeals filed by individuals, small businesses, or representatives of individuals or small businesses who believe they have been subjected to discrimination or retaliation prohibited by Federal law by a DOT employee, or by a DOT Federally-assisted, or Federally-conducted program or activity.

To aid in the law enforcement aspects of DOCRS, DOT proposes to treat it as it treats other law enforcement systems, by exempting it from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) to the extent that

DOCRS contains investigatory material compiled for law enforcement purposes, in accordance with 5 USC 552a(k)(2).

Regulatory Analysis and Notices:

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

This proposal is not a “significant regulatory action” within the meaning of Executive Order 12886. It is also not significant within the definition in DOT’s Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal would not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals that is maintained by the Federal Government.

This proposal would not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

B. Executive Order 13084

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal

Governments”). Because it has no effect on Indian Tribal Governments, the funding and consultation requirements of Executive Order 13084 do not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. §601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. I hereby certify that the rule proposed in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This rule imposes no new information reporting or record keeping necessitating clearance by the Office of Management and Budget.

E. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

List of Subjects in 49 CFR Part 10

Authority delegations (government agencies); Organization and functions (government agencies); Transportation Department.

In consideration of the foregoing, DOT proposes to amend Part 10 of Title 49, Code of Federal Regulations, as follows:

1. The authority citation for Part 10 would continue to read as follows:

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

2. The Appendix to Part 1—Exemptions would be amended by inserting in of Part II.A. a new paragraph 8, immediately following paragraph (7) to read as follows:

Appendix A—Exemptions.

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 USC 552a, to the extent that they contain investigatory material compiled for law enforcement purposes, in accordance 5 USC 552a(k)(2):

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

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Issued in Washington, DC, on November 9, 2011

Claire Barrett

Departmental Chief Privacy Officer

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