

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****49 CFR Part 10**

[Docket No. OST-96-1437]

RIN 2105-AC9

**Privacy Act of 1974; Implementation****AGENCY:** Office of the Secretary, Department of Transportation (DOT).**ACTION:** Final rule.

**SUMMARY:** DOT exempts from certain provisions of the Privacy Act the record system designed to assist in finding Suspected Unapproved Parts used in aviation, and a record system used to manage the flow of data about commercial motor carriers. An editorial correction is also made to some existing language.

**DATES:** These changes take effect May 23, 2001.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** Aviation. To assist in the ongoing campaign of the Department's Federal Aviation Administration against defective and dangerous parts being used in aircraft, DOT is establishing a Privacy Act record system in which evidence will be gathered as investigations are conducted (DOT/FAA 852 Suspected Unapproved Parts (SUP) Program). Motor Carriage. The recent establishment of DOT's Federal Motor Carrier Safety Administration has led to the development of a management

information system (Motor Carrier Management Information System, DOT/FMCSA 001) that will encompass, among other things, safety investigations of commercial motor carriers and of their drivers. In both instances, investigations can result in criminal prosecutions. To facilitate the cooperation of persons who have information relevant to these investigations and who ask for confidentiality as a condition of their providing that information, DOT is exempting these systems from subsections (c)(3) (Accounting for Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of the Privacy Act, 5 USC 552a. If we do not exempt this system from these provisions, persons who are subjects of investigation will be able to learn that they are and who has provided information about them, both of which could well frustrate any investigation.

Finally, in the Appendix, a reference to subsection (e)(4)(I) was inadvertently omitted from, and section (g) was inadvertently included in explanatory paragraph 2 at the end of, paragraph A; these are corrected.

All of these changes were proposed for public comment (January 8, 2001; 66 FR 1294) and none was received. The amendment is being adopted as proposed.

**Analysis of Regulatory Impacts**

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866. 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 rule will 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.

This rule does 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.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. 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, \$100 million or more in any one year the UMRA analysis is required. This 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**

Privacy.

Accordingly, DOT amends Part 10 of 49 CFR as follows:

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

**Authority:** 5 USC 552a; 49 USC 322; 49 CFR 10.13

2. Part IIA of the Appendix is amended as follows:

a. By republishing the introductory text;

b. By adding new paragraphs 17 and 18; and

c. By revising explanatory paragraph 2.

The additions and revisions read as follows:

\* \* \* \* \*

**Part II. Specific Exemptions**

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

\* \* \* \* \*

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

18. Motor Carrier Management Information System (MCMIS), maintained by the Federal Motor Carrier Safety Administration (DOT/FMCSA 001). These exemptions are justified for the following reasons:

\* \* \* \* \*

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.

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Dated: April 17, 2001.

**Eugene K. Taylor, Jr.,**

*Deputy Chief Information Officer.*

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