

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Lockney, Channel 271C3, Quitaque, Channel 272A, and Turkey, Channel 269A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 10

[Docket No. OST–1996–1437]

RIN 2105–AD22

### Privacy Act of 1974; Implementation

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** DOT proposes to add three systems of records to the list of DOT Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act, and to add exemptions from 5 U.S.C. 552a(e)(1) to the General Exemptions, and to the (k)(2) portions of the Specific Exemptions. Public comment is invited.

**DATES:** Comments are due February 24, 2003.

**ADDRESSES:** Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL–401, Docket No. OST–1996–1437, Department of Transportation, SVC–124, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, from 9 a.m. to 5 p.m. ET Monday through Friday except Federal holidays.

### FOR FURTHER INFORMATION CONTACT:

Yvonne Coates, Office of the Chief Information Officer, Department of Transportation, Washington, DC (202) 366–6964.

### SUPPLEMENTARY INFORMATION: 1.

*Additional exempt systems.* 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 U.S.C. 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). This amendment proposes exemption from portions of the Privacy Act of three proposed Transportation Security Administration (TSA) systems, whose establishment is currently the subject of public comment—

1. The Transportation Security Enforcement Record System (TSER) (DOT/TSA 001) would enable the Transportation Security Administration (TSA) to maintain a civil enforcement and inspections system for all modes of transportation for which TSA has security-related duties. This system covers information regarding violations and potential violations of TSA security regulations (TSRs), and may be used, generally, to review, analyze, investigate, and prosecute violations of TSRs.

2. To facilitate TSA's performance of employment investigations for transportation workers, as required by 49 U.S.C. 114 and 44936, a system is proposed to be known as the Transportation Workers Employment Investigations system (TWEI) (DOT/TSA 002).

3. To facilitate TSA's performance of employment investigations for its own workers, a system to be known as the Personnel Background Investigation Files System (PBIFS) (DOT/TSA 004) is proposed.

To aid in the national security and law enforcement aspects of two of the proposed systems, TSERS and TWEI, DOT proposes to treat them as it treats other law enforcement systems, by exempting them from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1) (Relevancy and Necessity of Information), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) (1) to the extent that TWEI contains information properly classified in the interest of national security, in accordance with 5 U.S.C. 552a(k)(1), (2) and to the extent that TSER and TWEI contain investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2).

DOT proposes to exempt the other proposed system, PBIF, from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain

Disclosures, and (d) (Access to records) to the extent that PBIFS contains (1) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a confidential source, in accordance with 5 USC 552a(k)(5) or (2) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process, in accordance with 5 USC 552a(k)(6).

2. *Addition of (e)(1) exemption.* As can be seen from the existing text accompanying DOT's General Exemptions, our intention initially was to include (e)(1) (Relevancy and Necessity of Information) among those provisions of the Privacy Act from which our generally exempted systems are exempt. As we say in that text, it is often very difficult in the early stages of a law enforcement exemption to know what information is relevant and necessary; as the investigation progresses, that becomes clearer, and extraneous information is then culled from the appropriate file. To cover the early stages of an investigation, however, we need the (e)(1) exemption, and propose here to invoke it for our generally exempted record systems.

Similarly, we propose to invoke the (e)(1) exemption for those of our record systems exempt pursuant to 5 U.S.C. 552a(k)(2), which has a strong analogy to the (j)(2) general exemptions.

### Analysis of Regulatory Impacts

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.

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.

### Collection of Information

This proposal 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 aggregated, \$100 million or more in any one year the UMRA analysis is required. This proposal would not impose Federal mandates on any State, local, or tribal governments or the private sector.

### List of Subjects in 49 CFR Part 10

Privacy.

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:** Pub. L. 93-579; 49 U.S.C. 322.

2. Appendix to Part 10 would be amended as follows:

a. By revising the introductory text of Part I.

b. By amending Part II.A. by revising the introductory text; by adding new paragraphs 19 and 20; by adding a new paragraph 3. to the undesignated paragraph after paragraph 20; by revising paragraph G, introductory text; and by adding new paragraph G.2.

c. By adding Part II.H.

The revisions and additions read as follows:

### Appendix to Part 10—Exemptions

#### Part I. General Exemptions

Those portions of the following systems of records that consist of (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing,

confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision, are exempt from all parts of 5 U.S.C. 552a except subsections (b) (Conditions of disclosure); (c)(1) and (2) (Accounting of certain disclosures); (e)(1) (Relevancy and Necessity of Information); (e)(4)(A) through (F) (Publication of existence and character of system); (e)(6) (Ensure records are accurate, relevant, timely, and complete before disclosure to person other than an agency and other than pursuant to a Freedom of Information Act request), (7) (Restrict recordkeeping on First Amendment rights), (9) (Rules of conduct), (10) (Safeguards), and (11) (Routine use publication); and (i) (Criminal penalties):

\* \* \* \* \*

#### 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)(1) (Relevancy and Necessity of Information), (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):

\* \* \* \* \*

19. Transportation Workers Employment Investigations System (TWEI), DOT/TSA 002, maintained by the Transportation Security Administration.

20. Transportation Security Enforcement Record System (TSER), DOT/TSA 001, maintained by the Transportation Security Administration.

These exemptions are justified for the following reasons:

\* \* \* \* \*

3. From subsection (e)(1), because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of the laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

\* \* \* \* \*

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. 552(b)(1) are exempt from sections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1) (Relevancy and Necessity of Information), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a:

\* \* \* \* \*

2. Transportation Workers Employment Investigations System (TWEI), DOT/TSA 002,

maintained by the Transportation Security Administration.

\* \* \* \* \*

H. Those portions of the following systems of records consisting of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information or testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process, are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records) of 5 U.S.C. 552a, to the extent that disclosure of such material would reveal the identity of a source who provided information to the Government under an express or, prior to September 27, 1975, an implied promise of confidentiality (5 U.S.C. 552a(k)(5) and (6)).

1. Personnel Background Investigation Files System (PBIF), DOT/TSA 004, maintained by the Transportation Security Administration.

The purpose of these exemptions is to prevent disclosure of the identities of sources who provide information to the government concerning the suitability, eligibility, or qualifications of individuals for Federal civilian employment, contracts, access to classified information, or appointment or promotion in the armed services, and who are expressly or, prior to September 27, 1975, impliedly promised confidentiality. The purpose of these exemptions is also to preserve the value of these records as impartial measurement standards for appointment and promotion within the Federal service. (5 U.S.C. 552a(k)(5) and (6)).

Issued in Washington, DC, on December 9, 2002.

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

*Acting Chief Information Officer.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 001113318-2297-02; I.D. 110200D]

**RIN 0648-AO75**

### Atlantic Highly Migratory Species; Incidental Catch Requirements of Bluefin Tuna

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.