

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Ladysmith, Channel 279C1 and adding Hallie, Channel 279C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-21008 Filed 8-23-95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. 48438; Amdt. 10-2]

RIN 2105-AC05

Privacy Act; Implementation

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

ACTION: Final rule.

SUMMARY: DOT amends its rules implementing the Privacy Act of 1974 to add to the list of systems of records exempt from certain provisions of the Act the Coast Guard's Joint Maritime Information Element Support System.

DATES: This amendment takes effect September 25, 1995.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C-10, Department of Transportation, Washington, DC 20590, telephone (202) 366-9154, FAX (202) 366-9170.

SUPPLEMENTARY INFORMATION: Public comment was invited on this proposal (May 26, 1995, 60 FR 27946); none was received.

1. What is JMIE? The Joint Maritime Information Element (JMIE) Support System is a multi-agency database of vessel movements around the world that can assist in virtually any maritime support mission, including petroleum traffic movement, sea and defense zone surveillance, fisheries operations, and emergency sealift management, as well as prevention of illegal technology transfer, general cargo/commodity smuggling, and illegal immigration. DOT's Coast Guard is one of the participating agencies and the agency that has been selected by the others as the Executive Agent to manage the database. All participating agencies will have access to data in the system.

Each record in the database will consist of two parts. The first will cover the vessel; every participating agency will have access to that; it will refer to a second record about the individuals (e.g., owner, master, crew) associated with the vessel. Only the law enforcement agencies will be able to access that second record. This part of each record comes within the Privacy Act, although the entire record does not. The computer that houses the database has been programmed to grant access only to the Law Enforcement agencies that are members of JMIE.

2. What agencies are members of JMIE? The following are the members of JMIE; each is designated below by whether it is a law enforcement agency (L), member of the intelligence community (I), or other (O), only those designated '(L)' having direct access to Privacy Act information:

1. Office of National Drug Control Policy—Executive Office of the President (I)
2. Bureau of International Narcotics Matters—Department of State (I)
3. Customs Service—Department of the Treasury (L)
4. Office of Naval Intelligence—Department of Defense (I)
5. Military Sealift Command—Department of Defense (O)
6. Defense Intelligence Agency—Department of Defense (I)
7. National Security Agency—Department of Defense (I)
8. Drug Enforcement Administration—Department of Justice (L)
9. Immigration and Naturalization Service—Department of Justice (L)
10. US National Central Bureau—INTERPOL—Department of Justice (O)
11. Bureau of the Census—Department of Commerce (O)
12. Coast Guard—Department of Transportation (L)
13. Maritime Administration—Department of Transportation (O)
14. Office of Intelligence and Port Security—Department of Energy (I)
15. Central Intelligence Agency (I)

The only members of JMIE that will have direct access to the Privacy Act information that will be maintained as part of JMIE are the following, all of which are criminal law enforcement agencies; shown with each is its principal criminal law enforcement authority:

- (1) Customs Service—19 USC 1589a.¹

¹ Enforcement authority of Customs officers. Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

- (1) carry a firearm;

(2) Immigration and Naturalization Service—8 USC 1324.²

(3) Drug Enforcement

Administration—21 USC 878.³

(4) Coast Guard—14 USC 89.⁴

1. *General exemption.* Under Subsection (j)(2) of the Privacy Act (5 USC 552a(j)(2)), a system of records may be exempted from almost all provisions of the Act, so long as the system: (1) Is maintained by an agency, or a component of an agency, that performs as its principal function any activity pertaining to the enforcement of criminal laws; and (2) contains: (A) Information compiled for the purpose of identifying individual criminal

(2) execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States;

(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.

² Bringing in and harboring certain aliens.

* * * * *

(c) *Authority to arrest.* No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the [Immigration and Naturalization] Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

³ Powers of enforcement personnel.

(a) *Officers or employees of the Drug Enforcement Administration or any State or local law enforcement officer.*

Any officer or employee of the Drug Enforcement Administration or any State or local law enforcement officer designated by the Attorney General may—

(1) carry firearms;

(2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of the United States;

(3) make arrests without warrant (A) for any offense against the United States committed in his presence, or (B) for any felony, cognizable under the laws of the United States, if he has probable cause to believe that the person to be arrested has committed or is committing a felony;

(4) make seizures of property pursuant to the provisions of this subchapter; and

(5) perform such other law enforcement duties as the Attorney General may designate.

* * * * *

⁴ Law enforcement.

(a) The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States * * *. When * * * it appears that a breach of the laws of the United States rendering a person liable to arrest is being, or has been committed, by any person, such person shall be arrested or, if escaping to shore, shall be immediately pursued and arrested on shore, or other lawful and appropriate action shall be taken * * *.

* * * * *

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. Those provisions of the Act from which such a system may not be exempted are subsections (b) (Conditions of Disclosure); (c)(1) and (2) (Accounting of Certain Disclosures); (e)(4)(A) through (F) (Publication of Existence and Character of System); (e)(6) (Ensure Records are Accurate, Relevant, Timely, and Complete), (7) (Restrict Recordkeeping on First Amendment Rights), (9) (Rules of Conduct), (10) (Safeguards), and (11) (Routine Use Publication); and (i) (Criminal Penalties).

DOT is exempting JMIE under subsection (j)(2) accordingly.

2. *Specific exemptions.* Under subsection (k) of the Privacy Act (5 USC 552a(k)), qualifying records may be exempted from various provisions of the Act. Among these provisions are the requirement in subsection (c)(3) to maintain an accounting of disclosures of information from a system of records and make that accounting available on request to the record subject; in subsection (d) to grant to a record subject access to information maintained on him/her under the Act; in subsection (e)(1) to maintain only such information as is relevant and necessary to accomplish a purpose of the agency under statute or Executive Order; in subsection (e)(4)(G), (H), and (I) to advise record subjects of the agency procedures to request if a system of records contains records pertaining to them, how they can gain access to such records and contest their content, and the categories of sources of such records; and in subsection (f) to establish rules governing the procedures above.

a. Under Subsection (k)(1) of the Privacy Act (5 USC 552a(k)(1)), portions of a system of records that are subject to 5 USC 552(b)(1), in that they contain information that is properly classified in the interest of national security, may be exempted from these provisions, and DOT exempts JMIE accordingly.

b. Under Subsection (k)(2) of the Privacy Act (5 USC 552a(k)(2)), investigatory material compiled for law enforcement purposes, other than material encompassed within Subsection (j)(2), may be exempted from these provisions, and DOT exempts JMIE accordingly.

Analysis of regulatory impacts. This amendment 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 amendment will not have a significant economic impact on a substantial number of small entities.

This amendment 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.

Finally, the amendment does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1980.

List of Subjects in 49 CFR Part 10

Penalties; Privacy.

In accordance with the above, DOT amends 49 CFR part 10 as follows:

PART 10—[AMENDED]

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

Authority: 5 USC 552a; 49 USC 322.

2. Part I of Appendix A is amended by republishing the introductory text and adding a new paragraph F; Part II.A. is amended by adding a new paragraph 14; and Part II.F is amended by adding a new paragraph 4, all to read as follows:

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Appendix A 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 USC 552a except subsections (b) (Conditions of disclosure); (c)(1) and (2) (Accounting of certain disclosures); (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):

* * * * *

F. Joint Maritime Intelligence Element (JMIE) Support System, maintained by the Operations Systems, Center, US Coast Guard (DOT/CG 642).

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 with 5 USC 552a(k)(2):

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14. Joint Maritime Intelligence Element (JMIE) Support System, maintained by the Operations Systems, Center, US Coast Guard (DOT/CG 642).

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F. Those portions of the following systems of records that consist of information properly classified in the interest of national defense or foreign policy in accordance with 5 USC 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 USC 552a, to the extent that they contain investigatory material compiled for law enforcement purposes in accordance with 5 USC 552a(k)(1):

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4. Joint Maritime Intelligence Element (JMIE) Support System, maintained by the Operations Systems Center, US Coast Guard (DOT/CG 642).

Issued in Washington, DC, on August 17, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95-21084 Filed 8-23-95; 8:45 am]

BILLING CODE 4910-62-P