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 add a system of records relating to suspicious activity reporting to the list of DOT Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act. Public comment is invited.

DATES: Comments are due October 7, 2011. If no comments are received by the due date, the proposal will take effect as proposed and comments addressed accordingly. If comments are received by the due date, the proposal will still take effect as proposed and the comments addressed accordingly.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number [OST–1996–1437] by any of the following methods:

Web site: http://www.regulations.gov
Follow the instructions for submitting comments on the DOT electronic docket site.

DIRECTOR

ADDRESSES: You may submit comments and reply comments using any one of the following methods:

Initial comments will be made available promptly electronically, online on http://www.regulations.gov or for public inspection in room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. In order to allow sufficient opportunity for interested parties to prepare and submit any reply comments, late-filed initial comments will not be considered. Reply comments must address only matters raised in initial comments and must not be used to present new arguments, contentions, or factual material that is not responsive to the initial comments.

ADDRESSES: You may submit comments and reply comments identified by docket number OST–1996–1437 using any one of the following methods:

• Federal eRulemaking Portal: http://www.regulations.gov
• Fax: 202–482–2251.
• Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Supplementary Information: 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 A). This amendment proposes exemption from certain portions of the Privacy Act of a proposed record system—the Suspicious Activity Reporting (SAR) database—to be used to track observed behavior reasonably indicative of pre- operational planning related to terrorism or other criminal activity. To aid in the law enforcement aspects of SAR, 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 SAR contains investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2).

1 c(c)(3)—An agency making disclosures of information that is covered by the Privacy Act must keep an accounting of those disclosures and, under (c)(3), make that accounting available to the subject upon the subject’s request. The exemption from (c)(3) means that, although we still have to maintain the accounting, we do not have to provide it to the subject.

(d)—One of the essential elements of the Privacy Act is the subject’s right of access to information in any file covered by the Privacy Act that is retrieved by the subject’s name or other personal identifier, such as social security number. In this way, the subject can test the validity of the information. The exemption from (d) means that we do not have to grant the subject access to the information.

(e)(1)—Another essential element of the Privacy Act is to limit the collection and maintenance of
**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 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.

**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 information subject to the Act to information that is relevant and necessary to carry out a lawful activity of the agency that collects or maintains the information. The exemption from (e)(1) means that we are not limited to information that is relevant and necessary. In practical terms, the subject may contest the relevancy and necessity of any information in the file; however, given the exemption from (d), above, the subject has no way to verify what is in the file, so is unable to contest its relevancy or necessity. Hence, a formal exemption from (e)(1) is not needed.

(e)(4) (G), (H), and (I)—To equip a subject to verify information in a file, we are required by the Privacy Act to publish in the public notice of the existence of the information procedures informing subjects how to learn from us whether we have records on them, procedures on how subjects can gain access to their files, and procedures to identify for subjects the categories of record sources in the file. The exemption from (e)(4) (G), (H), and (I) means that we need not publish these procedures for this file. Again, if we do not have to grant access, these provisions have no meaning.

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

Issued in Washington, DC, on: August 31, 2011.

Claire W. Barrett,
Departmental Chief Privacy Officer.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 269**

[Docket No. FRA–2009–0108; Notice No. 1]

**RIN 2130–AC19**

**Alternate Passenger Rail Service Pilot Program**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This NPRM is in response to a statutory mandate that FRA complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008. The proposed rule would develop this pilot program in conformance with the statutory directive.

**DATES:** Written Comments: Written comments on the proposed rule must be received by November 7, 2011.

Comments received after that date will be considered to the extent possible without incurring additional expense or delay. FRA anticipates being able to determine these matters without a public hearing. However, if prior to October 7, 2011, FRA receives a specific request for a public hearing accompanied by a showing that the party is unable to adequately present his or her position by written statement, a hearing will be scheduled and FRA will publish a supplemental notice in the Federal Register to inform interested parties of the date, time, and location of any such hearing.

**ADDRESSES:** Comments: Comments related to Docket Number FRA–2009–0108, may be submitted by any of the following methods:

- Hand Delivery: Room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.