

paragraph 70 of the Second Report and Order and other procedures and instructions to reduce paperwork burdens. See Second Report and Order at para. 112.

4. Accordingly, it is ordered that, pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), and section 1.3 of the Commission's rules, 47 CFR 1.3, the date for C block licensees to file a written election notice, in accordance with the requirements set forth in the Second Report and Order, is changed to February 26, 1998. Pursuant to section 1.427(b) of the Commission's rules, 47 CFR 1.427(b), this change will become effective on January 14, 1998. It is necessary for this change to become effective before January 15, 1998, the deadline initially set for C block licensees to file their election.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 10

[Docket No. OST-96-1472]

RIN 2105-AC60

#### Privacy Act; Implementation

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

**ACTION:** Final rule.

**SUMMARY:** DOT amends its rules implementing the Privacy Act of 1974 to exempt from certain provisions of the Act the Coast Guard's Vessel Identification System.

**EFFECTIVE DATE:** This amendment is effective February 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Robert I. Ross, Office of the General Counsel, C-10, Department of Transportation, Washington, DC 20590, telephone (202) 366-9156, FAX (202) 366-9170.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On October 24, 1997, the Department published a notice of proposed rulemaking entitled, Privacy Act; Implementation in the **Federal Register** (62 FR 55380). The Department did not receive any comments on the proposed rulemaking. DOT is therefore making its proposal final as written. The

Department is correcting an editorial error in the name of the system. The notice of proposed rulemaking termed the system the "Vessel Information System," and the correct name of the system is the "Vessel Identification System."

##### Background

The Coast Guard's Vessel Identification System (VIS) will collect selected information on vessels operating in US waters, and will collect and manage the data needed to provide a nationwide pool of vessel and vessel owner information that will help in identification and recovery of stolen vessels, and deter vessel theft and fraud. Establishment of VIS is required by statute. 46 U.S.C. 12501-07.

Because of the capability to retrieve information by the names or other unique identifiers of individuals, VIS is subject to the Privacy Act, which imposes many restrictions on the use and dissemination of information in the system. However, because VIS is to be used for law enforcement purposes, it may be exempted from some of these restrictions.

The Coast Guard, via a rulemaking entitled Vessel Identification System (CGD 89-050), has established the guidelines for participating states to make their information available for VIS, as well as the guidelines to establish the procedures for state vessel titling systems, and the procedures for establishing compliance. An interim rule was published in the **Federal Register** on April 25, 1996 (60 FR 20310), and the comment period on the interim rule was reopened on October 20, 1997 (62 FR 54385).

##### Privacy Act Exemption

Under subsection (k) of the Privacy Act (5 U.S.C. 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.

Under Subsection (k)(2) of the Privacy Act (5 U.S.C. 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 proposes to exempt VIS accordingly; however, if an individual would be denied any right, privilege, or benefit to which he/she would otherwise be entitled by Federal law, or for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

##### 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; 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. This rule does not impose any unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995.

Finally, this rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995.

##### List of Subjects in 49 CFR Part 10

Penalties, Privacy.

Accordingly, DOT amends 49 CFR Part 10 as follows:

##### PART 10—[AMENDED]

1. The authority citation to Part 10 remains as follows:

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

2. Part II.A of the Appendix is amended by republishing the introductory text and adding a new paragraph 15, to read as follows:

\* \* \* \* \*

#### Appendix to Part 10—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 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k)(2):

\* \* \* \* \*

15. Vessel Identification System, maintained by the Operations Systems Center, U.S. Coast Guard (DOT/CG 590). The purpose of this exemption is to prevent persons who are the subjects of criminal investigations from learning too early in the investigative process that they are subjects, what information there is in Coast Guard files that indicates that they may have committed unlawful conduct, and who provided such information.

\* \* \* \* \*

Issued in Washington, DC, on January 5, 1998.

**Rodney E. Slater,**

*Secretary of Transportation.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Part 382

#### Controlled Substances and Alcohol Testing Management Information System (MIS) Statistical Data

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Controlled substances and alcohol testing rates.

**SUMMARY:** The FHWA is announcing the motor carrier industry's 1994, 1995, and

1996 controlled substances and alcohol testing positive rates. The controlled substances testing positive rate was 2.6 percent in calendar year 1994, 2.8 percent in 1995, and 2.2 percent in 1996. The alcohol testing "violation" rate was 0.14 percent in 1995, and 0.18 percent in 1996. Because the violation rate was below 0.5 percent for two consecutive years, the FHWA is announcing it is lowering the random alcohol testing rate for calendar year 1998 to 10 percent, in accordance with the provisions of the testing regulations.

**DATES:** January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Rombro, Office of Motor Carrier Information Analysis (HIA-20), (202) 366-5615; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** On December 23, 1993 (58 FR 68220), the FHWA announced it would require motor carriers subject to 49 CFR part 391, later replaced by part 382, to implement and maintain specific controlled substance testing data, and submit an appropriate annual report when requested. All motor carriers must maintain this information. The FHWA randomly selects a sample of motor carriers annually and asks those selected to submit their data.

On February 15, 1994 (59 FR 7484), the FHWA promulgated new controlled substances and alcohol testing rules in 49 CFR part 382. These rules combined the controlled substances annual report with a similar alcohol rule "violation" annual report. An alcohol rule violation for purposes of the annual report are alcohol concentrations of 0.04 or greater and refusals to submit to alcohol testing.

On March 13, 1995, the FHWA amended the rule to reduce the information collection burden on all respondents, including small entities (60 FR 13369).

The current rule at § 382.403, formerly at 49 CFR 391.87(h), is essential for the FHWA to accomplish the following four goals.

1. Collect controlled substance and alcohol testing statistical data.
2. Use the data to analyze its current approach to deterring and detecting illegal controlled substance abuse and

alcohol misuse in the motor carrier industry.

3. Determine each calendar year's random selection rates for alcohol and controlled substance testing under the rule.

4. Provide for a more efficient and effective regulatory program.

In 1995, the FHWA requested a sample of motor carriers report to the FHWA data collected in 1994. The FHWA determined the random positive controlled substance testing rate for commercial motor vehicle (CMV) drivers subject to 49 CFR part 391, subpart H, for the period of January 1, 1994, through December 31, 1994, was 2.6 percent.

In 1996, the FHWA requested a sample of motor carriers report to the FHWA data collected in 1995. The FHWA calculated a random positive controlled substance testing rate—"the positive rate"—for 1995 of 2.8 percent. The 1995 random alcohol violation testing rate—"the violation rate"—for CDL drivers of motor carriers with 50 or more CDL drivers was 0.14 percent.

The FHWA performed similar calculations on the 1996 data, based on forms received from a random sample of carriers in early 1997. The "positive rate" for controlled substances was 2.2 percent. For alcohol, the "violation rate" was 0.18 percent. The estimated rates, with their associated 95 percent confidence intervals, are presented in Table 1.

The estimation procedures for the 1995 and 1996 rates incorporate carrier data on drivers refusing to test. Specific definitions for violation rate and positive rate were added to the regulations during calendar year 1994 for testing in 1995. Based on these rule changes, refusals to take a random test are counted as "positive." Adding refusals slightly increases the rates for alcohol concentrations of 0.04 or greater and verified positive controlled substances tests, because the number of refusals each year were very small. See the definitions for "violation rate" added on February 15, 1994 (59 FR 7484) and "positive rate" added on December 2, 1994 (59 FR 62218). This results in a higher rate than would be the case if the FHWA excluded refusals.

TABLE 1.—RANDOM TESTING

	Calendar year	Survey rate (%)	95% confidence (interval %)
Controlled substances .....	1994	2.6	±1.9
	*1995	2.8	±0.9
	*1996	2.2	±0.8
Alcohol .....	*1995	0.14	±0.04