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FEDERAL MARITIME COMMISSION

46 CFR PART 503

[DOCKET NO. 94-02]

ACCESS TO ANY RECORD OF IDENTIFIABLE PERSONAL INFORMATION

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Federal Maritime Commission is proposing amendments to its Privacy Act ("Act") regulations to adopt additional exemptions from requirements of the Act in regard to information about individuals which is included in certain investigatory material systems of records. The amendments are required to avoid compromise of ongoing investigations, disclosure of confidential sources and unwarranted invasion of privacy of third parties.

DATE: Comments due on or before (30 days from date of publication of the Proposed Rule in the Federal Register)

ADDRESS: Send comments (original and fifteen copies) to:

Joseph C. Polking, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
(202) 523-5725

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Secretary
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SUPPLEMENTARY INFORMATION:

Notice is given that the Federal Maritime Commission ("Commission") is proposing to amend its regulations implementing the Privacy Act, 5 U.S.C. 552a. The Commission previously exempted certain systems of records containing investigatory materials from the provisions of subsections (c)(3) and (d) of the Act which require an accounting of disclosures and permit access to records in the systems. This proposed amendment would promulgate additional exemptions under subsections (k)(2) and (5) of the Act for various systems of records within the agency. These exemptions would apply to those systems of records which include either investigatory material compiled for law enforcement purposes or investigatory material compiled for the purpose of determining suitability for Federal civilian employment or for access to classified information, but, in regard to the latter, only to the extent disclosure would reveal the identity of a confidential source. An additional exemption under subsection (j)(2) of the Act is proposed for the "Inspector General File" system of records in regard to activity pertaining to the enforcement of criminal laws. The thrust of these proposed amendments is to invoke the full reach of permitted exemptions so that the provisions of certain subsections of the Act, which, among other things, would limit the sources from which information is obtained and the types of information permitted to be collected and would require procedures for notification of the existence of and access to records would not routinely apply in regard to these classes of records. The exemptions are appropriate in regard to law enforcement records to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources, and invasion of personal

privacy of third parties. The exemptions are appropriate in regard to personnel related investigatory records to protect confidential sources.

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations because individuals affected by the rule do not appear to fall within the meaning of "small entity."

List of Subjects in 46 CFR Part 503

Classified information, Freedom of Information, Privacy, Sunshine Act

Therefore, pursuant to 5 U.S.C. 552a(j) and (k) and 553, Part 503 of Title 46, Code of Federal Regulations is proposed to be amended as follows:

1. The Authority Citation for Part 503 continues to read as follows:

AUTHORITY: 5 U.S.C. 552, 552a, 552b, 553; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

2. Section 503.68 is revised to read as follows:

§ 503.68 Exemptions

(a) The system of records designated FMC--25 Inspector General File is exempt from the provisions of 5 U.S.C. 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent it contains information meeting the criteria of 5 U.S.C. 552a(j)(2) pertaining to the enforcement of criminal laws. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(b) The following systems of records are exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), which otherwise require the Commission, among other things, to provide the individual named in the records an accounting of disclosures and access to and opportunity to amend the records. The scope of the exemptions and the reasons therefor are described for each particular system of records.

(1) FMC--1 Personnel Security File. All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption is required to honor promises of confidentiality.

(2) FMC--7 Licensed Ocean Freight Forwarders File. All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory materials compiled for law enforcement purposes, subject to the disclosure limitation proviso in that subsection. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(3) FMC--22 Investigatory Files. All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes, subject to the disclosure limitation proviso in that subsection. Exemption is appropriate to

avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(4) FMC--24 Informal Inquiries and Complaint Files. All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(5) FMC--25 Inspector General File.

(i) All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes, subject to the disclosure limitation proviso in that subsection. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(ii) All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent the disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption is required to honor promises of confidentiality.


(6) FMC--26 Administrative Grievance File.

(i) All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes, subject to the disclosure limitation proviso in that subsection. Exemption is appropriate to avoid compromise of

ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(ii) All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualification for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption is required to honor promises of confidentiality.

By the Commission.


Joseph C. Polking
Secretary