

Broadcast on VHF-FM Marine Band Radio, channel 22 (157.1 MHz).

(d) *Effective dates:* This regulation is effective from 12:30 p.m. to 2:30 p.m. March 27, 1999.

Dated: March 4, 1999.

**C.L. Miller,**

*Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.*

[FR Doc. 99-7092 Filed 3-22-99; 8:45 am]

BILLING CODE 4910-15-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### Approval and Promulgation of Implementation Plans

##### *CFR Correction*

In Title 40 of the Code of Federal Regulations, part 52 (§§ 52.01 to 52.1018), revised as of July 1, 1998, page 106, § 52.220 is corrected by adding paragraph (c)(21)(vi)(B) as follows:

##### **§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(21) \* \* \*

(vi) \* \* \*

(B) Previously approved on May 11, 1977 and now deleted without replacement Rule 41.

\* \* \* \* \*

[FR Doc. 99-55511 Filed 3-22-99; 8:45 am]

BILLING CODE 1505-01-D

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 41

[CC Docket No. 98-119, FCC 98-344]

#### 1998 Biennial Regulatory Review—Elimination of Rules Concerning Telegraph and Telephone Franks

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission released a Report and Order which eliminated the rules governing the issuance of franks and certain reports by communications common carriers. The elimination of this rule does not restrict privileges that are statutorily recognized, and will not affect other obligations imposed by the Communications Act, or confer any additional pricing flexibility on dominant or other carriers.

**DATES EFFECTIVE:** April 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Beers, Deputy Chief of the

Industry Analysis Division, Common Carrier Bureau, at (202) 418-0952.

**SUPPLEMENTARY INFORMATION:** A Notice of Proposed Rulemaking in this proceeding was released July 21, 1998. See 63 FR 41757, published August 5, 1998. This is a compendium of the Commission's Report and Order, CC Docket 98-119, adopted December 22, 1998, and released February 3, 1999, pursuant to our 1998 Biennial Review of Regulations as required by Section 11(b) of the Communications Act of 1934, as amended, 47 U.S.C. 161(b). The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, N.W., Washington, DC 20036.

#### List of Subjects in 47 CFR Part 41

Telegraph and telephone franks.

#### Rule Change

#### PART 41—[REMOVED]

Accordingly, under the authority of Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 210, 48 Stat. 1073, as amended (47 U.S.C. 210), Title 47 CFR chapter 1 is amended by removing part 41.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99-7059 Filed 3-22-99; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

#### 49 CFR Part 1420

[Docket No. BTS-98-4659]

RIN 2139-AA05

#### Revision to Reporting Requirements for Motor Carriers of Property and Household Goods

**AGENCY:** Bureau of Transportation Statistics, DOT.

**ACTION:** Final rule.

**SUMMARY:** The ICC Termination Act of 1995 transferred the motor carrier financial and operating data collection program to the Department of Transportation and made several changes to it. This final rule revises the data collection forms and reduces the reporting requirements. Class I and

Class II motor carriers of property are now required to file a revised annual report form called Form M. Class I carriers are also required to file quarterly report Form QFR, which has been substantially reduced. The rules also adopt a system whereby motor carriers can request exemptions from filing and from public release of their reported data.

**DATES:** This final rule is effective on April 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** David Mednick, K-2, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-8871; fax: (202) 366-3640; e-mail: david.mednick@bts.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Electronic Access

You can examine all comments that were submitted to the Rules Docket concerning this rulemaking at: Department of Transportation, 400 Seventh Street, SW., Room PL-401, Washington, DC 20590, from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Internet users can access the comments at the address: <http://dms.dot.gov>. Search for Docket Number 4659. Please follow the instructions online for more information and help.

You can download an electronic copy of this document using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512-1661. If you have access to the Internet, you can obtain an electronic copy at <http://www.bts.gov/mcs/rulemaking.htm>.

##### II. Copies of the Revised Report Forms

If you have Internet access, you can view and download copies of the revised Form M and Form QFR at [www.bts.gov/mcs/rulemaking.htm](http://www.bts.gov/mcs/rulemaking.htm). You can also obtain copies by calling BTS at (202) 366-4383. Carriers required to file report will receive a full information package, including the revised report forms.

##### III. Regulatory History

On November 3, 1998, the Bureau of Transportation Statistics (BTS) published a Notice of Proposed Rulemaking (NPRM) which proposed rules for revising the data collected from Class I and II motor carriers of property and household goods (63 FR 59263). It also proposed a system for carriers to request exemptions from filing reports and exemptions from public release of their reported data. On November 25, 1998, BTS published a notice extending

the comment period until January 15, 1999 (63 FR 65163). BTS is publishing a Supplemental Notice of Proposed Rulemaking (SNPRM) on a related topic in this issue of the **Federal Register**. For more information about the authority and background to this rulemaking, please refer to the NPRM.

#### IV. Background

The U.S. government has collected information on motor carriers for much of this century, even after the industry was greatly deregulated. The government and others have used these data in a number of ways and for a number of purposes. The data collection rules were last reviewed and modified by the Interstate Commerce Commission (ICC) in 1994. Under the data collection program now in place, motor carriers of property are classified based on revenue. Class I carriers are those with annual operating revenues of \$10 million or more, and they file annual report Form M-1 and quarterly report Form QFR. Class II carriers have annual operating revenues between \$3 and \$10 million, file a simpler annual report, Form M-2, and do not file a quarterly report. Class III carriers have annual operating revenues of less than \$3 million and are not required to file any periodic financial reports. Unless otherwise prohibited by law, individual carrier reports are made available to the public.

Since the last change in 1994, the ICC Termination Act of 1995 (the ICCTA) made several changes to the ICC's data collection program and transferred it to the Department of Transportation (DOT). Similar to the legislation replaced by the ICCTA, then codified at 49 U.S.C. 11145, the ICCTA requires DOT to collect certain data from motor carriers of property and motor carriers of passengers:

The Secretary shall require Class I and Class II motor carriers to file with the Secretary annual financial and safety reports, the form and substance of which shall be prescribed by the Secretary; except that, at a minimum, such reports shall include balance sheets and income statements.

The former 49 U.S.C. 11145 did not explicitly charge the ICC to collect information relevant to safety and did not specify minimum data to be collected. The ICCTA also allows DOT to collect certain other data as needed:

The Secretary may require motor carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations.

The ICCTA specifies the criteria to be used in designing the reporting program. DOT must consider: (1) Safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. In the ICCTA, Congress explicitly called on DOT to "streamline and simplify" these reporting requirements to the maximum extent practicable.

Unlike the former 49 U.S.C. 11145, the ICCTA authorizes two types of exemptions from the reporting requirements. Each exemption is based on certain criteria and is granted for a three-year period. The first is an exemption from filing report forms. The requestor "must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available." The second is an exemption from public release of data reported by the carrier. Similar to the other exemption, the requestor must demonstrate that "the exemption requested is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5." Further, for the latter exemption the requestor must not be a publicly held corporation or must not be subject to financial reporting requirements of the Securities and Exchange Commission.

In light of the ICCTA, we (BTS) believe it is necessary for us to weigh the continuing need for gathering accurate and consistent data against the burden the reporting requirements place on carriers who must comply with them. On November 3, 1998, BTS issued a Notice of Proposed Rulemaking (NPRM), which proposed changes to the annual and quarterly data collection forms and proposed procedures for carriers to request exemptions from filing and from public release of their reports. We sought comments concerning the use of the data we collect, why we should or should not continue to collect those data, and what procedures we should have for carriers that believe data in their report contain confidential business information. In response, 21 organizations and individuals submitted comments. The comments came from organizations in three broad groups—respondents (motor carriers and trade associations), data analysts, and other data users.

#### V. General Summary of the Comments

Some commenters (mostly trucking companies) advocate reducing or eliminating the reporting requirement. They argue that carrier reports represent an unwarranted intrusion into their privacy by allowing competitors to see their financial statements and are unnecessary because the reports are not used for any regulatory purpose. That is, while none of the commenters suggested the burden of completing the proposed forms was significant, some wished to protect data they consider to be confidential. Other commenters (including some representing carriers and carrier associations) felt the proposal struck the right balance between the needs of respondents and the needs of data users. A third group requested that more data be collected because the proposed reduction meant a loss in the utility of the data.

The comments we received confirm that carrier data are used and needed by a diversity of parties and that some of these uses require access to individual carrier data. They are used by private entities and governmental bodies to track the performance of the motor carrier industry and subgroups within it. Some representatives and associations of insurance companies state that knowledge of the financial condition, type of commodities hauled, and equipment of the carriers is essential to their underwriting operations. The data collected helps users review the financial status of Class I and Class II motor carriers to evaluate potential safety risks for particular firms and to define the aggregate relationship between financial conditions and safety. Information plays a role in analyzing various aspects of the motor carrier industry such as safety, productivity, and its role in the economy. Carriers use the information to benchmark their performance in order to strive for continuous improvement and efficiency.

After considering arguments on both sides of these issues, we conclude that we should go forward with the proposed annual and quarterly report forms with relatively minor modifications. We also conclude that the proposed procedures for handling requests for confidentiality and for exemptions from filing should be modified to clarify the standards that will be used, improve the process for all involved, and provide stronger assurances that firms will not be competitively harmed.

#### VI. The Report Forms

For BTS, the basic purposes of the data collection program are: (1) to provide the data DOT needs to fulfill its

responsibilities in overseeing the motor carrier industry; and (2) to help BTS fulfill its own statutory mandate to provide information on all modes of transportation for decision makers in the public and private sectors. We recognize that BTS and others in DOT have not made much direct use of individual carrier data. Rather, we have relied on summary data to better understand the industry. Under BTS's general statutory mandate (49 U.S.C. 111) and under the ICCTA, BTS is required to consider not only the Department of Transportation's information needs but also how information is used by others, including those in the private sector. Thus it is relevant that data collected may help third parties, such as motor carriers, insurance companies, and researchers, do their jobs. Given the ICCTA's safety emphasis, we must also give weight to third party use of the data to enhance safety, a use cited in comments by labor unions, representatives and associations of insurance companies, and university researchers. Collecting only bottom-line balance sheet and income statement data, as some commenters favor, would not be useful for analyzing industry and carrier safety. Conversely, providing the scope and detail of data desired by all users would fail to streamline and simplify the reporting requirements. Therefore, BTS has retained data items of critical importance and eliminated those that are now of more limited value. The revisions to the report forms represent a balance between the interest in reducing burden and the interest in providing important safety and economic data concerning the trucking industry.

#### *The Annual Form*

While some commenters endorsed the proposed forms, others suggested specific changes. Those supporting a reduction in proposed Form M wanted something approaching the minimum data requirements identified in the ICCTA—basic balance sheets and income statements. Those supporting expanding proposed Form M requested: (1) Greater detail on payables, receivables, and debt; (2) additional expense detail; (3) employment, compensation, and benefits data; (4) operating statistics with detail by industry segments; and (5) expanding the list of revenue commodity groups. The U.S. Department of Commerce's Bureau of Economic Analysis (BEA) has requested that BTS retain the following data contained in the proposed form: (1) The operating revenue section; (2) the operating supplies and expenses section; (3) most of the data items listed

under miscellaneous expenses; (4) miles, tons, and ton-miles; and (5) the revenue equipment section. They use the data in preparing the national accounts of the United States economy.

In light of these comments, we will make some changes to the annual form we proposed. The resulting new form will still greatly reduce the amount of data currently collected. Most of the changes being made to the proposed Form M are technical changes to data items that will not add to reporting burden. These changes will make reporting more consistent with carriers' internal systems and therefore easier. The substantive changes being made to the proposed Form M are: (1) Expanding the Revenue Commodity Group table to include more freight types; (2) removing detail on Carrier Operating Property; (3) splitting Freight Operating Revenue into two categories—Intercity and Other; (4) increasing the categories for wages in the Wages and Salaries section from two to four; (5) adding separate line items for Interest Expenses and Extraordinary Items to the Net Income section; (6) dividing the Operating Statistics section into Less than Truckload and Truckload for general freight carriers; (7) adding a section on Employment and Compensation; and (8) adding a column for Cost of Units Acquired to the Revenue Equipment section. Except for the last, each of these substantive additions is an item already reported on both the current Form M-1 and Form M-2. Many of the changes are being made to provide categories that are consistent with motor carrier accounting systems and prior data collections, and will permit the kinds of distinctions and analyses needed for safety and other purposes. The employment data, containing the minimum amount of detail needed for most analyses, are being added in response to commenters who noted the importance of this information, particularly to analysis regarding driver shortage and driver hours of service issues.

The revised Form M will have only five schedules (balance sheet, income statement, operating information, revenue equipment, and employment information) and will require little time to complete. The creation of a Form M will result in a significant reduction in reporting burden for Class I carriers, while continuing to provide key information on their operations. In fact, we estimate that it should take no more than 10 hours annually to prepare Form M, compared to 25 hours for Form M-1. Although the burden will remain the same for Class II carriers, the ICC greatly reduced Class II reporting burden in

1994 with the introduction of the current M-2.

#### *The Quarterly Form*

Commenters representing the motor carrier industry disagreed about whether to eliminate the quarterly reporting requirement, keep the requirement as proposed, or expand on the proposal. All data analysts and users supported keeping and/or expanding the quarterly report. Some commenters called for additional data based on the need for timely information to detect motor carrier financial difficulties, and therefore potential safety problems. One commenting carrier wanted quarterly data for benchmarking its operations. Suggested additions included collection of more detailed information on freight revenue and on non-operating income, and collection of operating information detailed by industry segment. BEA has requested that BTS retain quarterly collection of operating revenue and expenses for its quarterly Gross Domestic Product estimates.

We will retain Form QFR, albeit greatly reduced from its current size. As the pace of society quickens so does the need for more timely data. Yet, because of the burden filing four times a year represents, we have reduced the number of data items to a small fraction of what is currently collected. A half-dozen line items are being added to the proposed form, though the resulting survey will still be much shorter than the current QFR. The report will include net income and a small amount of operating information to keep the form consistent with the annual data collection. The basic quarterly information we will collect is described by commenters as being easy to compile since it is maintained for other internal purposes. Yet it will help users monitor emerging trends in the dynamic trucking industry and will enable carriers to benchmark their operations. The public will also be able to periodically monitor the strength and viability of carriers, particularly those experiencing financial difficulties.

#### *Reporting Carriers*

The current program collects data from only Class I and II carriers. This has been based on the assumption that data from the largest carriers represent an accurate indicator of the industry because these companies comprise such a large share of the industry revenue and traffic volume. We could reduce the universe of reporting carriers further still, as one commenter suggested, by changing the revenue limits of the classifications. However, this could seriously hamper BTS's function in providing data for understanding the

industry and monitoring its health. Therefore, BTS will retain the current classification definitions. One commenter called for an exemption from reporting for all privately held companies stating that the collected information is private and therefore confidential. Since the vast majority of carriers are privately held, we believe the data collection would be rendered meaningless and this would subvert the intent of the ICCTA.

## VII. Confidentiality

Some commenters expressed concerns about the proposed procedures for handling requests for exemptions from filing and exemptions from the public release of data. A major concern was about the public release of individual carrier data. The commenters state that many carriers are privately held companies and that competitive harm could result from disclosing the information to third parties, particularly shippers or competing carriers. These commenters suggested changes to the proposal they believe would better protect carriers from potential competitive harm. First, BTS could restrict access to individual carrier data. Second, assuming individual carrier data are made publicly available, BTS could limit the data items it collects. Potential detrimental affects would be reduced if BTS collected fewer data items or less detailed data.

Other commenters, including some representing motor carriers, supported the proposed procedures for handling requests for exemptions from filing and public release of carrier reports. These commenters state that the data collected are of critical importance to understanding the motor carrier industry and to monitoring motor carrier safety. Therefore, the information is in the public interest and DOT should not withhold it from public release. They state that not only should the Department monitor the financial condition of each motor carrier in order to protect the public interest, but that the prompt release of the information will result in even closer scrutiny and a concomitant increase in the protection accorded the public.

### *Exemptions From Filing*

Some commenters disagreed with BTS's proposal that exemptions from filing not be allowed since no competitive harm could result if reports are kept confidential. They pointed out that publicly held firms cannot request confidentiality protection. Furthermore, all carriers should have at least the option to request relief from the filing requirement as allowed by the ICCTA.

Unlike exemptions from public release, notice and comment are not necessary with an exemption from filing, plus the carrier would be relieved of submitting reports.

BTS will allow carriers to request exemptions from filing based on confidential business information. As required by the ICCTA, the carrier will need to "demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available." As discussed below, this is the same standard as for Exemption Four of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). BTS notes that while it will consider all requests, it will be difficult for a carrier to meet the minimum showing. A privately held carrier that meets the requirements would also be eligible for confidentiality protection and the availability of this option would likely render moot any claim for further competitive harm requiring an exemption from filing. For a publicly held carrier, most of the reported information would likely be publicly available through other channels. Nonetheless, BTS will consider requests for exemptions from filing.

### *Exemptions From Public Release*

Regarding the procedures for requesting confidentiality, a number of changes were suggested. The comments were that: (1) BTS should publish a notice indicating its decisions; (2) parties wishing to comment on requests should have access to the request; (3) reports should be held confidential while a request is pending; (4) requests should be allowed within a reasonable time after a report's deadline; (5) requests should be allowed anytime, regardless of the report due date; (6) BTS should decide the requests individually instead of en-masse; and (7) if a request is granted the confidentiality period should last three years.

Based on these comments, BTS will use the following revised procedure. A carrier may request that its annual report be exempt from public release. If so, the carrier must submit a request that must be received by the annual report due date. This gives carriers flexibility in making their request. BTS, in response to comments received, will use as the received date either the date the request is physically received or the date it is postmarked. BTS will allow a late request if there are extenuating circumstances and the requesting carrier gives adequate notice within a reasonable time of the extenuating

circumstances. To protect the data of potential requestors, all annual reports received by BTS will be withheld from public release from the time they are received until at least the annual report's due date, which is also the request's due date. Carriers making a request after the report's due date, except as discussed above, will not be able to later request confidentiality for the report. The report either would have already been submitted, and therefore already been available to the public, or the report should have been submitted but was not.

After the annual report's due date, BTS will continue to withhold from public release those reports from carriers that have requested confidentiality. BTS will publish a **Federal Register** notice inviting public comment on the requests. BTS plans to use the DOT Dockets Management System to facilitate access to the requests and comments received. BTS will decide each request within 90 days of the annual report's due date. After the 90-day period from the annual report's due date, BTS will continue to withhold from public release those reports receiving an exemption from public release. If an exemption is granted, the confidentiality period will last for three years, unless otherwise required by law.

If a carrier wishes to request confidentiality for quarterly reports, it must submit its request at the same time it submits its request covering the annual report. For example, to request confidentiality for any or all of the four 1999 Form QFRs, the request must be included with the petition covering the 1998 Form M. Both requests will be decided in the 90-day period and quarterly reports will be released neither before the request due date nor while there is a request pending. As noted subsequently, BTS is granting an extension for filing of the 1998 Form M and for the Form QFR for the first quarter of 1999.

One commenter, a motor carrier, wanted the 90-day decision period to begin not on the report due date but on the date the request was made. We point out that all carriers' reports will be withheld from public release up to the report's due date and any report for which there is a pending request will be withheld from public release until a decision is made. Furthermore, BTS will not decide the requests en-masse. Regardless of the decision date, each request will be decided individually since a request must be based on circumstances particular to a carrier and based on the explanation it provides. Thus, a carrier would not benefit if the decision period started before the report

due date. This system also gives carriers more leeway for submitting requests for confidentiality than the one the commenter advocates. Under the latter, a request would have to be made only before or simultaneously with filing of the carrier's report. But under the former, a request could be made anytime up to the report's due date, regardless of when the carrier files its report. Perhaps a carrier may wish to request confidentiality, and wait for the decision, before filing its report. However, regardless of when the decision is made and regardless of whether the request is granted or denied, the report is required under law by the due date.

Regarding the criteria for deciding requests, some commenters supported the proposed standard that a carrier should be required to explain the particular or unique circumstances that would show why its data should be treated differently than other carriers' data. Other commenters felt the proposed confidentiality standards were vague and asked BTS to further clarify them. One objected to the requirement that a carrier show specific evidence of competitive harm favoring instead having the carrier simply allege harm and show evidence that it does not customarily release the data. Another commenter wanted BTS to make a blanket determination that all privately held carriers meet the threshold for confidentiality protection since it is common knowledge that the information is sensitive and since public release would not be in the public interest.

The ICCTA's standard for withholding information from public release is the same as the standard contained in Exemption Four FOIA. Exemption four covers "trade secrets and commercial or financial information obtained from a person (that is) privileged or confidential." Since the standards are the same, BTS will follow FOIA law on the standard that must be met. Information is confidential under Exemption Four if disclosure would be likely to cause substantial harm to the competitive position of the person from whom the information was obtained or would impair a protectable government interest. To clarify the criteria and keep it closely in line with established FOIA law, BTS will change the wording of its proposal. BTS will require that a carrier provide information on (1) whether the information is confidential; (2) the measures taken by carrier to prevent disclosure; and (3) either how disclosure would cause competitive harm or how disclosure would impair a protectable government interest. Under

this showing, a carrier must do more than make a "blanket" assertion or conclusory statement that it meets the standard for an exemption from public release. These more detailed rules are based on those issued by the Department of Transportation's National Highway Traffic Safety Administration. Those rules allow persons to request confidential treatment of data they submit to that agency and they have worked well for many years (see 49 CFR part 512).

#### VIII. Extension of Report Due Dates

Usually, the annual report covering 1998 (the 1998 Form M) would be due on March 31, 1999. Because of the revisions to regulations contained in this final rule, including changes to the forms, BTS is hereby extending that report's due date. The 1998 annual report must be filed on or before May 31, 1999. This will give carriers enough time to complete the forms. As soon as possible, BTS will send the revised Form M to carriers and make it available on its web site at: [www.bts.gov/mcs/info.html](http://www.bts.gov/mcs/info.html). We note that very little has changed on the form, except to remove data items. Where changes have been made to a data item, it has usually been done to make it more consistent with carriers' internal systems and thus easier to complete.

A request for an exemption from filing (covering just the annual report or covering the annual report and the reports for the following quarters) must be received by the due date of the annual report. Therefore, a carrier submitting a request for an exemption from filing the 1998 Form M and/or the 1999 QFRs, must do so before May 31, 1999. Likewise, a request for an exemption from public release (covering just the annual report or covering the annual report and the reports for the following quarters) must be received by the due date of the annual report. Again, a request covering the 1998 Form M and/or the 1999 QFRs must therefore be received by May 31, 1999. The extension of the 1998 annual report due date will also affect the date that carrier reports are made publicly available under the new 49 CFR 1420.10.

The quarterly report for the first quarter of 1999 is normally due on April 30, 1999. Because of the revisions to regulations contained in this final rule, including changes to the Form QFR, BTS is hereby extending the due date for the first quarter of 1999. The report will also be due on May 31, 1999.

#### IX. Supplemental Notice of Proposed Rulemaking

Today, BTS is also publishing a Supplemental Notice of Proposed Rulemaking (SNPRM). This is being done to address an issue that was raised by some commenters but was not part of the NPRM. These commenters urged BTS not to release individual carrier data at all. They stated that there is no strong public interest in having the information made available to the public, or at least available to those that would use it for private purposes, such as competing carriers. Furthermore, they feel the information is commercially sensitive. This issue is outside of the scope of the NPRM, which only addressed procedures and criteria for individual carriers to request exemptions from filing and public release of data based on individual circumstances. It did not ask whether all or any data collected should be generally withheld because of the confidential nature of the data. The SNPRM proposes revised rules on confidentiality that are designed to minimize any potential detrimental affects of public access to individual carrier data to the extent possible under law. They do this by restricting access to individual carrier data for those data items that are most sensitive. For more information on the SNPRM, please refer to the Proposed Rules section in this issue of the **Federal Register**.

#### X. Rulemaking Analyses and Notices

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore is not reviewed by the Office of Management and Budget.

This final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). It would reduce industry reporting burden by 18,900 hours or 39 percent. BTS estimates that the annual cost of reporting to be just over \$1.1 million for the industry. This breaks down to \$456 per year for Class I carriers and \$380 per year for Class II carriers. The estimate is based on reporting costs of \$38 per hour including overhead.

The major beneficiaries of the data collection are the federal government, the motor carrier industry, industry associations, transportation investment analysts, transportation research analysts, and motor carrier safety analysts. The program provides data that are used in developing the national accounts and preparing the Gross

Domestic Product estimates, data for monitoring industry trends, and data useful to the public and private sectors regarding the operation and health of the trucking industry and individual carriers.

#### *Regulatory Flexibility Analysis*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), BTS must consider whether a final rule would have a significant economic impact on a substantial number of small entities. The definition of "small business" is contained in the Small Business Administration's small business size standard regulations. For motor carriers of property, small businesses are those with annual receipts of up to \$18.5 million. Under the current classification, there are about 2,800 reporting carriers of which an estimated 2,180 (or 78 percent) are small businesses (all Class II carriers and 31 percent of Class I carriers are classified as small businesses). The changes decrease reporting burden hours for Class I carriers by 64 percent. In addition, the changes do not impose any new regulatory requirements, directly or indirectly, on small entities. Therefore, BTS certifies this final rule will not have a significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act Analysis*

The Form M and Form QFR have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The control numbers for these information collections are OMB Numbers 2139-0002 and 2139-0004. Administration: Bureau of Transportation Statistics. Titles: Quarterly Report of Class I Motor Carriers of Property and Household Goods, Annual Report of Class I and Class II Motor Carriers of Property and Household Goods. Need for Information: information that are used in developing the national accounts and preparing the Gross Domestic Product estimates, data for monitoring industry trends, and data useful to the public and private sectors regarding the operation and health of the trucking industry and individual carriers. Frequency: Quarterly and Annually. Burden Estimate: 29,800 annual hours. Average Annual Burden Hours per Respondent: Class I carriers—12 annual hours, Class II carriers—10 annual hours. For further information contact: Office of Information and

Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention Desk Officer for the Bureau of Transportation Statistics or David Mednick at the address listed above under **FOR FURTHER INFORMATION CONTACT**.

#### *Other Determinations*

BTS has analyzed the this action for the purposes of the National Environmental Protection Act. It will not have a significant impact upon the quality of the human environment or the conservation of energy resources. Accordingly, an Environmental Impact Statement is not required. BTS has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism") and determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This action does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule. Similarly, because this rule does not create an unfunded Federal mandate on state, local or tribal governments the requirements of section 1(a) of Executive Order 12875, Enhancing Intergovernmental Partnerships, do not apply to this rule. This final rule does not have potential takings implication under Executive Order 12630 because it does not authorize any takings. In accordance with Executive Order 12630, regarding Governmental Action and Interference with Constitutionally Protected Property Rights, BTS finds that this final rule implicates no takings, in that it does not propose or implement licensing, permitting, or other conditions, requirements, or limitations on private use, nor does it require dedications or exactions from owners of private property. BTS has reviewed this final rule in accordance with Executive Order 12988, Civil Justice Reform, and has determined that this rule meets the applicable standards provided in section 3(b) of the Executive Order. Nor does this rule require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks.

#### **Regulation Identifier Number**

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal

Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2139-AA05 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### **List of Subjects in 49 CFR Part 1420**

Motor carriers, Reporting and classification.

Accordingly, the Bureau of Transportation Statistics amends 49 CFR part 1420 Reports of Motor Carriers, as follows:

#### **PART 1420—REPORTS OF MOTOR CARRIERS**

1. The authority citation for part 1420 is revised to read as follows:

**Authority:** 49 U.S.C. 14123.

2. Section 1420.1 is revised to read as follows:

##### **§ 1420.1 Annual reports of motor carriers of property, motor carriers of household goods, and dual property carriers.**

(a) *Annual Report Form M*. All class I and class II common and contract carriers of property, including household goods and dual property motor carriers, must file Motor Carrier Annual Report Form M (Form M). Carriers must file the annual report on or before March 31 of the year following the year to which it relates. For classification criteria, see § 1420.2.

(b) *Quarterly Report Form QFR*. All class I common motor carriers of property and class I household goods motor carriers must file Motor Carrier Quarterly Report Form QFR (Form QFR). The quarterly accounting periods end on March 31, June 30, September 30, and December 31. The quarterly reports must be filed within 30 calendar days after the end of the reporting quarter.

(c) *Where to file reports*. Carriers must file the quarterly and annual reports with the Bureau of Transportation Statistics at the address in § 1420.6. You can obtain blank copies of the report forms from the Bureau of Transportation Statistics.

3. In § 1420.2, paragraph (a) remove the phrase "subject to the Interstate Commerce Act".

4. In § 1420.2, paragraph (b)(4) is revised to read as follows:

##### **§ 1420.2 Classification of carriers—motor carriers of property, household goods carriers, and dual property carriers.**

\* \* \* \* \*

(b) \* \* \*

(4) Carriers must notify the Bureau of Transportation Statistics (BTS) of any

change in classification or any change in annual operating revenues that would cause a change in classification. The carrier may request a waiver or an exception from these regulations in unusual or extenuating circumstances, where the classification process will unduly burden the carrier, such as partial liquidation or curtailment or elimination of contracted services. The request must be in writing, specifying the conditions justifying the waiver or exception. BTS will notify the carriers of any change in classification.

\* \* \* \* \*

5. In § 1420.2(b)(5), remove the term "an Annual Report (Form M-1 or Form M-2)" and add "Annual Report Form M" in its place.

6. In § 1420.2, paragraph (c) is removed (Note A is unchanged).  
7. Section 1420.8 is added to read as follows:

**§ 1420.8 Requests for exemptions from filing.**

(a) *In General.* This section governs requests for exemptions from filing of reports required under § 1420.1.

(b) *Criteria.* The Bureau of Transportation Statistics (BTS) may grant a request upon a proper showing that the exemption is necessary to preserve confidential business information that is not otherwise publicly available. Information is considered to be confidential when:

(1) Disclosure of the information in the carrier's report would be likely to

cause substantial harm to the carrier's competitive position; or

(2) Disclosure of information in the report would be likely to impair protectable government interests.

(c) *Contents of a request.* The contents of a request for an exemption from filing must contain, at a minimum, the contents that are required for a request for an exemption from public release contained in § 1420.9(c). A carrier's request may include any other grounds as to why the request should be granted.

(d) *When requests are due.* The timing of a request for an exemption from filing is the same as the timing for a request for an exemption from public release contained in § 1420.9(d). The table below summarizes report and request due dates.

Report	Report due by	Request due by
Annual Form M .....	March 31 .....	March 31
First Quarter Form QFR .....	April 30 .....	March 31
Second Quarter Form QFR .....	July 31 .....	March 31
Third Quarter Form QFR .....	October 31 .....	March 31
Fourth Quarter Form QFR .....	January 31 .....	March 31

(e) *Decision to grant or deny a request.*

(1) A request will be denied if it fails to provide all of the supporting information required in paragraph (c) of this section or if the supporting information is insufficient to establish that information in the carrier's report meets the criteria in paragraph (b) of this section.

(2) BTS will grant or deny each request within a reasonable period of time. BTS will notify the carrier of its decision. The decision by BTS shall be administratively final.

(f) *Pendency.* While a request is pending, the carrier is required to submit any reports required under § 1420.1.

(g) *Period of exemptions.* If a request for an exemption under this section is granted, the carrier will be exempt from the reporting requirements of § 1420.1 for a period of three reporting years.

(h) *Modification of a decision to grant a request.* If a request is granted it remains in effect in accordance with its terms, unless modified by a later finding that the decision was clearly erroneous. If BTS believes such a finding should be made, BTS will notify the requesting carrier in writing of the reasons for the modification. The carrier may seek reconsideration of the modification.

8. Section 1420.9 is added to read as follows:

**§ 1420.9 Requests for exemptions from public release.**

(a) *In General.* This section governs requests for exemptions from public release of reports filed under § 1420.1.

(b) *Criteria.* The Bureau of Transportation Statistics (BTS) will grant a request upon a proper showing that the carrier is not a publicly held corporation or that the carrier is not subject to financial reporting requirements of the Securities and Exchange Commission, and that the exemption is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as trade secret or privileged or confidential information under 5 U.S.C. 552(b)(4). Information is considered to be confidential when:

(1) Disclosure of the information in the carrier's report would be likely to cause substantial harm to the carrier's competitive position; or

(2) Disclosure of information in the report would be likely to impair protectable government interests.

(c) *Contents of a request.* A request for an exemption from public release must contain information supporting the claim. While the supporting information may contain opinions, the request must consist of objective data to the extent possible. General or nonspecific assertions or analysis will be insufficient to support a request if BTS is unable to find that the criteria are

met. The supporting information must show:

(1) That the information claimed to be confidential is a trade secret, or commercial or financial information that is privileged or confidential.

(2) Measures taken by the carrier to ensure that the information has not been disclosed or otherwise made available to any person, company, or organization other than the carrier.

(3) Insofar as is known by the carrier, the extent to which the information has been disclosed, or otherwise become available, to persons other than the carrier, and why such disclosure or availability does not compromise the confidential nature of the information.

(4) If the carrier asserts that disclosure would be likely to result in substantial competitive harm, what the harmful effects of disclosure would be, why the effects should be viewed as substantial, and the causal relationship between the effects and disclosure.

(5) If the carrier asserts that disclosure would be likely to impair protectable government interests, what the effects of disclosure are likely to be and why disclosure is likely to impair such interests.

(d) *When requests are due.*

(1) Requests for an exemption under this section may be made at any time during the year. However, a request will be deemed applicable to only those reports due on or after the date the request is received. Requests received

after a report's due date will only be considered for the following year's report.

(2) A request will be deemed received on the date the request is physically received or, if it is sent by mail, on the date it is postmarked.

(3) BTS will only allow a late request if there are extenuating circumstances and the carrier gives adequate notice within a reasonable time of the extenuating circumstances.

(4) A carrier submitting a request relating to the annual report can also request that it cover the quarterly reports for the upcoming year. In this case BTS will decide both requests at the same time. Requests covering the quarterly reports must be received by

the due date of the annual report which relates to the prior year. The table in paragraph (e) of this section summarizes report, request, and decision due dates.

(e) *Decision to grant or deny a request.*

(1) After each due date of each annual report specified in § 1420.1, BTS will publish a notice in the **Federal Register** requesting comments on any requests received under this section that are valid and pending.

(2) A request will be granted only if it provides all of the supporting information required in paragraph (c) of this section and if the supporting information is sufficient to establish that information in the carrier's report meets the criteria in paragraph (b) of this section.

(3) If the carrier fails to comply with the timing requirements of paragraph (d) of this section, the claim for confidentiality will be waived unless BTS is notified of extenuating circumstances before the information is disclosed to the public and BTS finds that the extenuating circumstances warrant consideration of the claim.

(4) BTS will grant or deny each request no later than 90 days after the request's due date as defined in paragraph (d) of this section. The decision by BTS shall be administratively final. The table below summarizes report, request, and decision due dates.

Report	Report due	Request due	Decision due
Annual Form M .....	March 31 .....	March 31 .....	June 30
First Quarter Form QFR .....	April 30 .....	March 31 .....	June 30
Second Quarter Form QFR .....	July 31 .....	March 31 .....	June 30
Third Quarter Form QFR .....	October 31 .....	March 31 .....	June 30
Fourth Quarter Form QFR .....	January 31 .....	March 31 .....	June 30

(5) If a request is granted, BTS will notify carrier of that decision and of any appropriate limitations.

(6) If a request for confidentiality is denied, BTS will notify the carrier of that decision and that the information will be made available to the public not less than ten working days after the carrier has received notice of the denial. The notice will specify the reasons for denying the request.

(f) *Penalty.* A request is deemed pending from the date it is received by BTS until it is granted or denied by BTS. BTS will not release publicly, unless otherwise required by law, any report for which a valid request for an exemption from public release is pending.

(g) *Period of exemptions.* If a request for an exemption under this section is granted, BTS will not publicly release the reports covered by the granted exemption, unless otherwise required by law, for a period of three years from the report's due date.

(h) *Modification of a decision to grant a request.* If a request is granted it remains in effect in accordance with its terms, unless modified by a later finding that the decision was clearly erroneous. If BTS believes such a finding should be made, BTS will notify the requesting

carrier in writing of the reasons for the modification and that the carrier's report will be made available to the public in not less than ten working days from the date of receipt of notice under this paragraph. The carrier may seek reconsideration of the modification.

9. Section 1420.10 is added to read as follows:

**§ 1420.10 Public release of motor carrier of property data.**

(a) *In general.* Unless otherwise provided in this section, the data contained in a report filed under § 1420.1 shall be made publicly available, but no sooner than the due date for the report.

(b) *Exceptions relating to exemptions from public release.*

(1) If a request for an exemption from public release is pending under § 1420.9, BTS will not publicly release the reports covered by the request until at least the time that a decision to grant or deny the request is made.

(2) If a carrier is granted an exemption from public release under § 1420.9, BTS will not publicly release the reports covered by the granted exemption for a period of three years from the report's due date.

(c) *Other exceptions.* Notwithstanding any other provision of this part, information may be released:

(1) If the data are included in aggregate industry statistics that do not identify the individual carrier;

(2) To other components of the Department of Transportation for their internal use only;

(3) If required by law;

(4) With the consent of the carrier filing the report; or

(5) To contractors, if necessary for the performance of a contract with BTS.

10. Section 1420.6 is added to read as follows:

**§ 1420.6. Address.**

The following address must be used by motor carriers when submitting a report, requesting an exemption from filing a report, or requesting an exemption from public release of a report: Bureau of Transportation Statistics, U.S. Department of Transportation, K-27, 400 Seventh St., SW., Washington, DC 20590. This address may also be used for general correspondence regarding the data collection program described in this section.

**Ashish Sen,**

*Director, Bureau of Transportation Statistics.*

[FR Doc. 99-6849 Filed 3-22-99; 8:45 am]

BILLING CODE 4910-FE-P