ACTION: Direct final rule.

SUMMARY: By direct final rule, the Federal Motor Carrier Safety Administration (FMCSA) eliminates the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP−1). This paperwork burden can be removed without an adverse impact on safety or the Agency’s ability to maintain effective commercial regulations over the for-hire trucking and passenger-carrying industries.

DATES: This rule is effective August 27, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via http://www.regulations.gov on or before July 27, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by July 27, 2012, we will withdraw this direct final rule and publish a timely notice of withdrawal in the Federal Register.

ADDRESSES: You may submit comments identified by docket number FMCSA–2012–0020 using any one of the following methods:


(2) Fax: 202–493–2251.


(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–3379.

To avoid duplication, please use only one of these four methods. See the “Open Docket Folder” in the “Actions” column. Your submission must identify you as an individual or as an entity submitting comments. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

B. Viewing Comments and Documents

To view comments, go to http://www.regulations.gov, click on the “read comments” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Rule” and insert “FMCSA–2012–0020” in the “Keyword” box. Click “Search,” then click on the balloon shape in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on
behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the Federal Register (73 FR 3316).

II. Regulatory Information

FMCSA publishes this direct final rule under 49 CFR 389.11 and 389.39, because the Agency has determined that the rule makes non-controversial, minor amendments to 49 CFR part 369 that will reduce reporting requirements for certain for-hire motor carriers. FMCSA does not expect any adverse comments. If no adverse comments or notices of intent to submit an adverse comment are received by July 27, 2012, this rule will become effective as stated in the DATES section. In that case, approximately 30 days before the effective date, we will publish a document in the Federal Register stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if we receive any adverse comments or notices of intent to submit an adverse comment, we will publish a document in the Federal Register announcing the withdrawal of all or part of this direct final rule. If we decide to proceed with a rulemaking following receipt of any adverse comments, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered “adverse” if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

III. Background

Annual Financial Reporting Requirements

Section 14123 of title 49, United States Code, requires the filing of annual financial reports by certain for-hire motor carriers of property and household goods (Form M).

The annual reporting program was implemented on Dec. 24, 1938 (3 FR 3158) (the first annual report for 1938 was due by Mar. 31, 1939) and subsequently was transferred from the Interstate Commerce Commission (ICC) to the U.S. Department of Transportation’s (DOT) Bureau of Transportation Statistics (BTS) on January 1, 1996. The Secretary of DOT delegated to BTS the responsibility for the program on December 17, 1996 (61 FR 68162–02). Responsibility for collection of Form M (for-hire property carriers, including household goods carriers) and Form MP–1 (for-hire passenger carriers), including quarterly reporting requirements for such forms (Form QFR), was transferred from the BTS to the FMCSA on August 17, 2004 (69 FR 51009), and the regulations were redesignated as 49 CFR part 369 on August 10, 2006 (71 FR 45740). FMCSA has continued to collect carriers’ annual reports and to furnish copies of the reports requested under the Freedom of Information Act.

Quarterly Financial Reporting

Subsection 14123(a)(2) of title 49, United States Code, allows the Agency to require quarterly financial reports from for-hire property and passenger carriers, but it does not mandate that the Agency require these reports to be submitted. These requirements are included in 49 CFR Part 369 and apply to Class I (average annual gross transportation operating revenues of $10 million or more) and Class II (average annual gross transportation operating revenues of $3 million dollars or more, but less than $10 million) for-hire motor carriers of property. The requirements also apply to Class I (average annual gross transportation operating revenues of $5 million or more) for-hire motor carriers of passengers.

E.O. 13563 Improving Regulation and Regulatory Review

On January 18, 2011, the President issued Executive Order 13563, “Improving Regulation and Regulatory Review” (76 FR 3821, January 21, 2011), which required agencies, among other things, to prepare plans for reviewing existing rules. On February 16, 2011, DOT published a notice requesting comments on its regulatory review plan (76 FR 8940). A public meeting on this issue was held on March 14, 2011. DOT placed all of the comments it received in docket DOT–OST–2011–0025, along with a transcript of the March 14 meeting. DOT received 102 comments, many offering multiple suggestions. One person argued that the financial reporting requirements transferred from the ICC to FMCSA provide no discernible benefits to the government or industry. FMCSA rescinds the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1). This burden can be removed without an adverse impact on safety or the Agency’s ability to maintain effective comment regulations over the for-hire trucking and passenger-carrying industries. FMCSA does not currently use the quarterly reports because the reports cover a small subset of the motor carriers of property and motor carriers of passengers that are subject to the Agency’s safety oversight and the financial reporting data is not necessary to monitor carriers’ safety performance. The information collected does not currently support any Agency regulatory function, nor does it have practical utility for the Agency or for those carriers who must comply with the reporting requirement.

This direct final rulemaking is non-controversial because it “Make[s] minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or elimina[es] a type of data collection no longer necessary” 49 CFR 389.39(a)(5). Elimination of the outdated and unnecessary quarterly reporting requirement falls squarely within the intended purpose of a direct final rule. FMCSA, therefore, finds there is good cause to dispense with the normal notice and comment procedures since reducing the reporting requirement is not likely to be controversial. Consequently, receipt of public comments prior to finalizing this action is unnecessary. 49 CFR 389.11.

IV. Discussion of the Rule

For the reasons discussed in the Background section, above, FMCSA amends 49 CFR part 369 by eliminating the quarterly reporting requirement under 49 CFR 369.1 and 369.4. In addition, FMCSA makes other conforming technical amendments to 49 CFR 369.8, 369.9, and 369.11.

In the course of redesignating 49 CFR part 1420 as 49 CFR part 369 in 2006 (August 10, 2006, 71 FR 45740), the authority citation for part 369 was inadvertently corrupted by adding references to (1) 5 U.S.C. 553 and 559 of the Administrative Procedure Act relating to rulemaking and administrative law judges, and (2) 16 U.S.C. 1456, a provision of the Coastal Zone Management Act (CZMA) of 1972. These statutes provide no authority for part 369 and the references have therefore been removed.

V. Regulatory Analyses

When developing this direct final rule, FMCSA considered numerous statutes and executive orders related to rulemaking. The Agency’s analyses are summarized below.

A. Regulatory Planning and Review

3821, January 18, 2011), FMCSA must determine whether a regulatory action is “significant” and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The Order defines “significant regulatory action” as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

4. Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the E.O.

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. This rule will not have a significant economic impact. In fact, elimination of the reporting requirement will, if anything, have a beneficial economic impact on industry.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, Title II, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued an NPRM prior to this action.

C. Paperwork Reduction Act

This rule eliminates two quarterly reporting requirements that are currently reported to OMB under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). Form QFR Quarterly for property carriers, authorized by OMB under information collection 2126–0033, is two pages long and takes approximately 27 minutes for each of the approximately 111 carriers to complete. This report is filed 4 times per year by a business and financial operations expert. The median salary of a business and financial operations expert in the interurban and rural bus transportation industry is $26.41 per hour (BLS, May 2010). Two adjustments are made to the burden associated with the filings is $49.34 ($49.34 × 200 hours = $9,868.00). The Class I passenger carrier financial quarterly survey (MP–1 Quarterly), which is two pages long and takes about 18 minutes to complete for the estimated 2 participating carriers is authorized by OMB under information collection 2126–0031. Since this report is also filed 4 times per year, the total burden hours associated with the requirement are 4 × 18/60 × 2 = 2.4 hours.

FMCSA believes the completion and submission of Form MP–1 is typically performed by a business and financial operations expert designated by the business entity because of the level of detail in the financial reports. The median salary of a business and financial operations expert in the interurban and rural bus transportation industry is $26.41 per hour (BLS, May 2010). Two adjustments are made to the burden to industry by 202.4 hours and $9,989.

The PRA requires that each agency “shall certify * * * that each collection of information * * * is necessary for the proper performance of the functions of the agency, including that the information has practical utility.” 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.5(d)(1)(iii). FMCSA can no longer certify that the quarterly requirements are “necessary for the proper performance of the functions of the agency.” Therefore, FMCSA is discontinuing the quarterly reporting requirements.

D. Federalism

A rule has federalism implications under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this rule under that Order and have determined that it does not have federalism implications.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a Federal, State, or local government or a private entity of $100,000,000 or more in any single year. This rule will have federalism implications.

FMCSA assumes that completion and submission of Form QFR is performed by an accountant designated by the business entity. The median salary of an accountant in the truck transportation industry is $25.90 per hour (BLS, May 2010). Two adjustments are made to this hourly estimate. First, employee benefits are estimated at 50.0 percent of the employee wage. Second, employee wage and benefits are increased by 27 percent to include relevant firm overhead. Applying the estimated 50.0 percent factor for employee benefits and 27 percent for overhead results in $50.31 in hourly compensation for the business and financial operations expert ($26.41 × (1 + 0.50) × (1 + 0.27) = $50.31). The total annual salary cost burden associated with the filings is $121 ($50.31 × 24.4 hours = $120.74, rounded to the nearest dollar).

Collectively, eliminating these reporting requirements reduces the burden to industry by 202.4 hours and $9,989.

The PRA requires that each agency “shall certify * * * that each collection of information * * * is necessary for the proper performance of the functions of the agency, including that the information has practical utility.” 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.5(d)(1)(iii). FMCSA can no longer certify that the quarterly requirements are “necessary for the proper performance of the functions of the agency.” Therefore, FMCSA is discontinuing the quarterly reporting requirements.

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State, local, or tribal government, in the aggregate, or by the private sector of
$143.1 million (which is the value of
$100,000,000 in 2010 after adjusting for inflation) or more in any 1 year. This
rule would not result in such an expenditure.

F. Taking of Private Property
This rule will not effect a taking of
private property or otherwise have
taking implications under Executive
Order 12630, Governmental Actions and Interference with Constitutionally
Protected Property Rights.

G. Civil Justice Reform
This rule meets applicable standards
in sections 3(a) and 3(b)(2) of Executive
Order 12988, Civil Justice Reform, to
minimize litigation, eliminate
ambiguity, and reduce burden.

H. Protection of Children
FMCSA has analyzed this rule under
Executive Order 13045, Protection of
Children from Environmental Health
Risks and Safety Risks. This rule is not
economically significant and does not
create an environmental risk to health or
risk to safety that may disproportionately affect children.

I. Energy Effects
FMCSA has analyzed this rule under
Executive Order 13211, Actions
Concerning Regulations That
Significantly Affect Energy Supply,
Distribution, or Use. The Agency has
determined that it is not a “significant
energy action” under that order because
it is not a “significant regulatory action”
under Executive Order 12866 and will
not have a significant adverse effect on the
supply, distribution, or use of
energy. The Administrator of the Office
of Information and Regulatory Affairs
has not designated it as a significant
energy action. Therefore, it does not
require a Statement of Energy Effects
under Executive Order 13211.

J. Environment
The Agency analyzed this direct final
rule for the purpose of the National
Environmental Policy Act of 1969
(NEPA) (42 U.S.C. 4321 et seq.) and
determined under our environmental
procedures Order 5610.1, published
March 1, 2004 (69 FR 9680), that this
action is categorically excluded under
two categorical exclusions (CEs) in the
Order from further environmental
documentation. These are found in
Appendix 2, paragraph 4, which covers
data and information gathering, and
Appendix 2, paragraph 6(y)(2) concerning reports provided by motor
carriers. This direct final rulemaking
makes minor changes to rules regarding
“a change in reporting period (for
example, from quarterly to annually) or
eliminating a type of data collection no
longer necessary,” as authorized by 49
CFR 389.39(a)(5). The action involves
no extraordinary circumstances that
would have any effect on the quality of
the environment. Thus, the action does
not require an environmental
assessment or an environmental impact
statement.

FMCSA also analyzed this rule under
the Clean Air Act, as amended (CAA),
section 176(c), (42 U.S.C. 7401 et seq.)
and implementing regulations
promulgated by the Environmental
Protection Agency. Approval of this
action is exempt from the CAA’s general
conformity requirement since it does
not result in any potential increase in
emissions that are above the general
conformity rule’s de minimis emission
threshold levels (40 CFR 93.153(c)(2)).
This action merely eliminates a
reporting requirement.

The Categorical Exclusion
Determination is available for
inspection or copying in the
regulations.gov Web site listed under
ADDITIONS.

List of Subjects in 49 CFR Part 369
Motor carriers, Reporting and
recordkeeping requirements.

In consideration of the foregoing,
FMCSA amends 49 CFR part 369 in title
49, Code of Federal Regulations, chapter
III, subchapter B, as follows:

PART 369—[AMENDED] * * * * *
1. The authority citation for part 369
is revised to read as follows.

Authority: 49 U.S.C. 14123; 49 CFR 1.73.
2. Amend § 369.1 by removing
paragraph (b) and redesignating
paragraph (c) as paragraph (b) and
revising it to read as follows.

§ 369.1 Annual reports of motor carriers of
property, motor carriers of household
goods, and dual property carriers.

(b) Where to file report. Carriers must
file the annual reports with the Federal
Motor Carrier Safety Administration at
the address in § 369.6. You can obtain
blank copies of the report forms from
the Federal Motor Carrier Safety
Administration Web site http://
www.fmcsa.dot.gov/forms/reporting/
mcs_info.htm#fos.

3. Revise § 369.4 to read as follows.

§ 369.4 Annual reports of Class I carriers
of passengers.

(a) All Class I motor carriers of
passengers shall complete and file
Motor Carrier Annual Report Form MP–
1 for Motor Carriers of Passengers (Form
MP–1).

(b) Accounting period. (1) Motor
Carrier Annual Report Form MP–1 shall
be used to file annual selected motor
carrier data.

(2) The annual accounting period
shall be based either:
(i) On the 31st day of December in
each year, or
(ii) An accounting year of thirteen
4-week periods ending at the close of
the last 7 days of each calendar year.

(3) A carrier electing to adopt an
accounting year of thirteen 4-week
periods shall file with the FMCSA a
statement showing the day on which its
accounting year will close. A
subsequent change in the accounting
period may not be made except by
authority of the FMCSA.

(c) The annual report shall be filed on
or before March 31 of the year following
the year to which it relates. The annual
report shall be filed in duplicate with
the Federal Motor Carrier Safety
Administration at the address in § 369.6.
Forms of Copy MP–1 may be obtained
from the FMCSA.

* * * * *
4. Amend § 369.8 by revising
paragraph (d) and removing the table
following it, to read as follows.

§ 369.8 Requests for exemptions from
filing.

* * * * *
(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 § 369.9(d). For Annual
Form M, both the report and the request
are due by March 31.

* * * * *
5. Amend § 369.9 by removing
paragraph (d)(4) and revising
paragraph (e)(4) and removing the table
following it, to read as follows.

§ 369.9 Requests for exemptions from
public release.

* * * * *
(e) * * *

(4) FMCSA 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 FMCSA shall be
administratively final. For Annual
Form M, both the report and the request
are due by March 31, and the decision is
due by June 30.

* * * * *
§ 369.11 [Removed]

* * * * *
§ 369.11 [Removed]

* * * * *
SUMMARY: As stated in 49 CFR 385.407, in order for FMCSA to issue a hazardous materials safety permit (HMSP), a motor carrier must not have a crash rate, or driver, vehicle, or hazardous materials (HM) Out-of-Service (OOS) rate in the top 30 percentile of the national average.

The current method for determining the qualifying crash and OOS rates under this rule, in effect since the inception of the HMSP program, utilizes two years of inspection data from FMCSA’s Motor Carrier Management Information System (MCMIS) to calculate the OOS rates representing the top or worst-performing 30 percent of the national average. FMCSA has been recalculating the threshold crash and OOS rates every two years, using MCMIS data from the preceding two years.

This notice of amendment explains the new methodology the Agency will begin to use to calculate the threshold crash rate and driver, vehicle, and HM OOS rates that qualify or disqualify a carrier for HMSP issuance. The revised methodology uses eight years of data from MCMIS (data from 2003 to 2010) to determine the national average for eligible crash and OOS thresholds that qualify for an HMSP. These rates will remain static rather than change every two years. The Agency decided that crash and OOS rates, which remain static over a longer period of time, will improve safety by providing a clearly identifiable standard for industry compliance and minimize the burden on motor carriers and the HM industry by allowing more appropriate measures that ensure eligibility for the HMSP. The calculations of crash and OOS rates in this notice of amendment will be implemented immediately and posted to FMCSA’s Web site. These new static rates will remain in effect until further notice.

DATES: Effective Date: This policy amendment becomes effective June 27, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Roxane Greene, at Roxane.Greene@dot.gov or phone (202) 366–0735; or John Hardridge, at John.Hardridge@dot.gov or or (202) 366–0811. Both staff members may be reached at Federal Motor Carrier Safety Administration, Office of Enforcement and Program Delivery, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The HMSP requirement became effective for motor carriers as of January 1, 2005. Additionally, 49 CFR part 385, subpart E identifies which motor carriers must hold a HMSP, and establishes the application process for a HMSP. It also specifies the need for a carrier’s crash rate and driver, vehicle, and HM OOS rates to be below the 70th percentile and describes other conditions that must be satisfied to qualify for this permit. As specified in § 385.407(a)(2), FMCSA will not issue a HMSP to a motor carrier having a crash rate in the top 30 percent of the national average, or a driver, vehicle, HM, or total OOS rate in the top 30 percent of the national average, as indicated in MCMIS. The methodologies for calculating these rates are posted on the FMCSA Web site www.fmcsa.dot.gov. More conditions are set forth in § 385.407 that require a carrier to have a Satisfactory safety rating, certify that it has a satisfactory security program, and be properly registered with the Pipeline and Hazardous Materials Safety Administration (PHMSA). The carrier also is required to submit proof of minimum levels of financial responsibility as stated in § 387.9. Pursuant to 49 CFR 390.19, a motor carrier is required to file its MCS–150 form with FMCSA every two years. The application for the HMSP was incorporated into the MCS–150 as an expanded version of the form entitled “MCS–150B or Combined Motor Carrier Identification Report and HM Permit Application.” Thus, the HMSP must be renewed every two years. Revision to the calculations of the crash and OOS rates will not change this requirement.

On November 7, 2007, FMCSA published a Notice of Enforcement Policy (72 FR 62795) explaining the methodology used by the Agency to calculate those averages. The rates had been calculated using roadside inspection data in MCMIS for both HM and non-HM inspections for driver and vehicle OOS rates. For the HM OOS rate, only inspections that indicated that HM was present were used. The applicant motor carriers needed to have a least three roadside inspections indicated in MCMIS for each of the 2-year rate calculation timeframes. For instance, when calculating the 2005–2006 registration cycle rates, in order to be included in the calculation, a motor carrier would had to have at least three roadside inspections during the 2003–2004 time period.

During the course of the program, the calculated 70th percentile OOS thresholds have fluctuated causing uncertainty in the industry. It has become increasingly more difficult for a motor carrier to attain or retain a HMSP because it must maintain OOS rates below 7.14% for drivers, 33.33% for vehicles, and 3.45% for HM. These rates compare with the national averages for all motor carriers at 5.51%, 20.72%, and 4.50%, respectively.

A historical picture of the OOS and crash rates, data from the entire eight-year period since the inception of the program, was used in the calculations (2003–2010) for the fixed rates. This provides a balanced perspective of motor carrier performance over a longer period of time and virtually eliminates the short term fluctuations that some motor carriers experience. It is also reflective of all of the time periods used to calculate rates for the present and three former registration periods. The threshold rate calculation included only carriers that had at least 12 inspections over the 8 years previously described, making this analysis comparable to the 3-inspections-per-cycle method used in previous calculations. The main difference in the fixed-rate calculations when compared to previous 2-year calculations is that, due to the number of inspections required during the extended timeframe (12), the number of inspections with an OOS rate of 0.00% decreased. This resulted in raising the overall HM OOS average for the population of motor carriers used in the calculation, and while higher, it is a more appropriate indicator of placarded motor carriers’ roadside inspection HM OOS performance.

In order to calculate the fixed crash rate, a MCMIS snapshot was taken on February 24, 2012. The 8-year period was divided into four 2-year periods reflecting fiscal years (FY) 2003–2004, FY 2005–2006, FY 2007–2008, and FY 2009–2010. Qualifying motor carriers had at least 2 crashes in at least one 2-