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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 369

Docket No. FMCSA-2012-0020

RIN-2126-AB69; formerly RIN 2126-AB48

Rescission of Quarterly Financial Reporting Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: 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 is removed without an adverse impact on safety or the Agency's ability to maintain effective commercial regulatory oversight over the for-hire trucking and passenger-carrying industries. The annual reporting requirements remain.

DATES: Effective date: **[INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, e-mail or call Ms. Vivian Oliver, Office of Research and Information Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; Telephone 202-366-2974; email Vivian.Oliver@dot.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

This action is in response to a recommendation received from the public and in response to Executive Order 13563, “Improving Regulation and Regulatory Review,” which required Agencies, among other things, to prepare plans for reviewing existing rules.

The rule eliminates the quarterly financial reporting requirements for certain for-hire motor carriers of property and for-hire motor carriers of passengers. This paperwork burden can be removed without an adverse impact on safety or the Agency’s ability to maintain effective commercial regulatory oversight over the for-hire trucking and passenger-carrying industries.

FMCSA estimates that eliminating these reporting requirements reduces the burden to industry by about 200 hours and \$9,900 annually. There is no cost associated with this action. Table ES-1 displays the average annual net costs and benefits of the rule.

**Table ES-1
Estimated Annual Costs and Benefits for Implementing this Final Rule
(2013 Dollars Rounded)**

	Annual Impact
Costs	\$0
Benefits	\$9,900
Net Benefits	\$9,900

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert “FMCSA-2012-0020” in the “Search” box and then click on “Search.” Click on the “Open Docket

Folder” link and all the information for the notice, and the list of comments will appear with a link to each one. Click on the comment you would like to read. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

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).

Background

Annual Financial Reporting Requirements

Section 14123 of title 49 of the United States Code (U.S.C.) requires certain for-hire motor carriers of property, household goods, and passengers to file annual financial reports. Annual financial reports are filed on Form M (for-hire property carriers, including household goods carriers) and Form MP-1 (for-hire passenger carriers). FMCSA has continued to collect carriers’ annual reports and to furnish copies of the reports requested under the Freedom of Information Act. These requirements remain in effect. Section 14123(d) requires FMCSA to streamline and simplify, to the maximum extent practicable,” any reporting requirement under this section.

Quarterly Financial Reporting

Section 14123(a)(2) of 49 U.S.C. allows, but does not require, the Agency to require for-hire property and passenger carriers to file quarterly financial reports. These requirements are 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. This information is submitted on Form QFR for property carriers and Form MP-1 Quarterly for passenger carriers.

E.O. 13563 Improving Regulation and Regulatory Review

On January 18, 2011, the President issued Executive Order (E.O.) 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 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). One person argued that the financial reporting requirements transferred from the ICC to FMCSA provide no discernible benefits to the government or motor carrier industry.

Direct Final Rule

On June 27, 2012, FMCSA published a direct final rule that would have eliminated 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 Quarterly) if no adverse comments were received by July 27, 2012 (77 FR 38211). One

entity, SJ Consulting Group, submitted adverse comments and stated that it uses the quarterly financial information to advise motor carriers, shippers, and persons interested in buying motor carriers. It stated that the quarterly report filings provide useful insight into the U.S. trucking industry, such as operating statistics that are not available from other public sources, particularly for private carriers. Although SJ Consulting acknowledged that some data on general demand and pricing trends are available from other sources, it believed that quarterly data on the profitability of carriers are essential in providing safe and timely service to shippers, estimating future growth rates, and assessing opportunities for profitable investment in the trucking industry. SJ Consulting has used Form QFR quarterly report filings for these purposes for many years. FMCSA considered this an adverse comment and the Agency withdrew the direct final rule on August 27, 2012 (77 FR 51705).

Although FMCSA considered SJ Consulting's comment adverse for the direct final rule, it continues to believe the quarterly financial reporting requirements for certain for-hire motor carriers of property (on Form QFR) and for-hire motor carriers of passengers (on Form MP-1 Quarterly) can be eliminated without an adverse impact on safety. 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.

Notice of Proposed Rulemaking (NPRM)

On May 24, 2013, FMCSA published the NPRM for comment with a 60-day comment period under Regulatory Identification Number (RIN) 2126-AB48. The NPRM proposed to amend 49 CFR part 369 by eliminating the quarterly reporting requirement

under 49 CFR 369.1 and 369.4 (78 FR 31475). In addition, FMCSA proposed making other conforming technical amendments to 49 CFR 369.8, 369.9, and 369.11. A new RIN 2126-AB69 was assigned for this final rule.

Discussion of the Comments

Three comments were received. Two industry associations (American Trucking Associations, Inc. (ATA) and National Motor Freight Traffic Association, Inc.) filed comments in support of the proposal to eliminate the quarterly financial report. A third commenter, a private citizen from Florida, supported eliminating the reporting requirement, noting the change will save motor carriers significant time. ATA requested that FMCSA expand the proposal to include elimination of the Form M annual report as well, given the fact that the Agency has not had any staff working on compiling or analyzing the for-hire motor carrier financial reports for many years.

As FMCSA explained in the June 27, 2012, direct final rule and the May 24, 2013, NPRM, 49 U.S.C. 14123 requires certain for-hire motor carriers of property and household goods to file annual financial reports. Congress has given FMCSA no discretion to rescind or repeal annual financial reports. In its 2011 reauthorization technical drafting assistance, the Agency proposed a repeal of the annual reporting requirement, but the repeal provision was omitted from the final version of the bill that became the Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141 (MAP-21). FMCSA, however, has lessened the burden of annual reporting by eliminating the requirement to file Form MP-1 report in duplicate. Form M filers for property carriers have not been required to file in duplicate since 1999 (64 FR 13916, March 23, 1999). A single copy of Form MP-1 will now be required. This is consistent

with our mandate to “streamline and simplify” reporting requirements under 49 USC 14123(d).

FMCSA received a letter from SJ Consulting on July 23, 2013, requesting the Agency to extend the NPRM comment period, but FMCSA denied the request on August 14, 2013. The Agency believes all interested parties were provided ample opportunity to respond to the NPRM, especially since the Agency provided for a 60-day comment period in its June 27, 2012, direct final rule and also the 60-day comment period for the NPRM. FMCSA also said in its denial of SJ Consulting’s request that it would consider late comments to the extent practicable. The Administrative Procedure Act requires only 30 days for public comment. 5 U.S.C. 553(d).

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. This final rule does not affect the annual reporting requirements, which still must be completed and filed as required by statute (49 U.S.C. 14123(a)(1)). In accordance with 49 USC 14123(d), the final rule does simplify and streamline the reporting requirement by eliminating in 49 CFR 369.4 the requirement to submit the annual report in duplicate.

Regulatory Analyses

Regulatory Planning and Review

FMCSA has determined that this action does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866, as supplemented

by Executive Order 13563, or within the meaning of the Department of Transportation regulatory policies and procedures (44 FR 11034, Feb. 26, 1979). This rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. This rulemaking will not have a significant economic impact. In fact, elimination of the reporting requirement will have a beneficial, albeit non-significant, economic impact on the motor carrier industry through reduced reporting costs. Consequently, the OMB has not reviewed this rule under that Order.

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), when an agency issues a rulemaking, the RFA requires the agency to “prepare and make available for public comment a final regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities” (5 U.S.C. 603(a)) or certify the final rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605).

FMCSA has determined that the impact on entities affected by this final rule will not be significant. In fact, the existing burden from quarterly reporting will be eliminated. FMCSA expects the impact of the rule will be a reduction in the paperwork burden for for-hire motor carriers. FMCSA asserts that the economic impact of the reduction in paperwork, if any, will be minimal and entirely beneficial to small for-hire motor carriers. As can be seen below under section C., Paperwork Reduction Act, FMCSA estimates that

eliminating these reporting requirements will reduce the burden to the for-hire motor carrier industry by about 200 hours and \$9,900 annually.

Courts have held that “a regulatory flexibility analysis is required when an agency determines that the rule will have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule.”¹ The RFA does not require FMCSA to consider the effect of this rule on entities that are not subject to the rule.² Although SJ Consulting Group filed an adverse comment to the FMCSA’s June 27, 2012, direct final rule, it is not a for-hire motor carrier and, therefore, not subject to the current financial reporting rule. In any event, FMCSA has determined that this rule will not have an impact on a substantial number of small entities that are subject to the requirements of the rule.

Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This rule directly affects 112 for-hire motor carriers that prepare and file quarterly financial reports under 49 CFR part 369. FMCSA estimates that approximately 10 percent of these 112 for-hire motor carriers are small entities with average annual gross transportation operating revenues of no more than \$23.5 million. The current requirement to file quarterly financial reports applies only to for-hire motor carriers of property with average annual gross transportation operating revenues of \$3 million dollars or more, and \$5 million or more for passenger carriers.

¹ E.g., *Mid-Tex Electric Cooperative, Inc. v. Federal Energy Regulatory Commission (FERC)*, 773 F.2d 327, 342 (D.C. Cir. 1985).

² *Id.* See also “A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,” Small Business Administration (2010), retrieved February 13, 2013, from <http://archive.sba.gov/advo/laws/rfaguide.pdf>.

Accordingly, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking 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).

Quarterly Report for 110 Property Carriers

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 110 carriers to complete. This report is filed 4 times per year, so the total burden-hour impact per filer per year is $4 \times 27/60 = 1.8$ hours. Multiplying this figure by the 110 carriers that file quarterly reports yields a total burden estimate of 198 hours.

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).³ Two adjustments are made to this hourly compensation estimate. First, employee benefits are estimated at 50.0 percent of the employee wage.⁴ Second, employee wage and benefits are increased

³ Bureau of Labor Statistics, "Occupational Employment Survey," May 2010, retrieved December 15, 2011, from http://www.bls.gov/oes/current/naics3_484000.htm. North American Industry Classification System (NAICS) 484000, Truck Transportation, Standard Occupational Classification (SOC) 13-2011, Accountants and Auditors.

⁴ FMCSA estimates this 50 percent employee benefit rate by using the private industry average wage (\$16.03 per hour) and benefit information (\$8.01 per hour) for production, transportation, and moving material workers. Benefits thus amount to 50.0 percent of wages ($0.500 = \$8.01 / \16.03). From "Employer Costs for Employee Compensation—September 2010," retrieved August 23, 2011, from <http://www.bls.gov/news.release/pdf/ecec.pdf>.

by 27 percent to include relevant firm overhead.⁵ Applying the estimated 50.0 percent factor for employee benefits and 27 percent for overhead results in \$49.34 in hourly compensation for the accountant ($\$25.90 \times (1 + 0.50) \times (1 + 0.27) = \49.34). The total annual salary cost burden associated with the filings is \$9,770 rounded up ($\$49.34 \times 198 \text{ hours} = \$9,769.32$).

Quarterly Report for Two Passenger Carriers

The Class I passenger carrier financial quarterly survey (Form 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 $4 \times 18/60 \times 2 = 2.4$ hours.

FMCSA believes the completion and submission of Form MP-1 Quarterly 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).⁶ Two adjustments are made to this hourly estimate. First, employee benefits are estimated at 50.0 percent of the employee wage.⁷ Second, employee wage and benefits are increased by 27 percent to include relevant firm

⁵ Berwick, Farooq. "Truck Costing Model for Transportation Managers." Upper Great Plains Transportation Institute, North Dakota State University (2003), retrieved January 9, 2013, from <http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf>.

⁶ Bureau of Labor Statistics, "Occupational Employment Survey," May 2010, retrieved December 15, 2011, from http://www.bls.gov/oes/current/naics4_485200.htm. North American Industry Classification System (NAICS) 485200, Interurban and Rural Bus Transportation, Standard Occupational Classification (SOC) 13-2000, Business and Financial Operations Occupations.

⁷ FMCSA estimates this 50 percent employee benefit rate by using the private industry average wage (\$16.03 per hour) and benefit information (\$8.01 per hour) for production, transportation, and moving material workers. See footnote 5, above.

overhead.⁸ 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 ($\$26.41 \times (1 + 0.50) \times (1 + 0.27) = \50.31). The total annual salary cost burden associated with the filings is \$121 ($\$50.31 \times 2.4 \text{ hours} = \120.74 , rounded to the nearest dollar).

Collectively, eliminating these reporting requirements reduces the burden to industry by 200.4 hours and \$9,891 annually, rounded to 200 hours and \$9,900, respectively.

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)(3)(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.

Federalism

A rule has implications under E.O. 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 rulemaking under that Order and has determined that it does not have federalism implications.

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

⁸ Berwick “Truck Costing Model for Transportation Managers.”

particular, the Act addresses actions that may result in the expenditure by a 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 rulemaking would not result in such an expenditure.

Taking of Private Property

This rulemaking will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rulemaking meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

FMCSA analyzed this rule under E.O. 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.

Energy Effects

FMCSA analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under E.O. 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 E.O. 13211.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. The Agency is not aware of any technical standards relating to FMCSA's quarterly financial reporting and has concluded that this requirement does not apply.

Environment

The Agency analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.) and determined under the Agency's environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this action is excluded from further environmental documentation under two categorical exclusions (CEs). 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. 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. The Categorical Exclusion Determination is available for inspection or copying in the regulations.gov website listed under ADDRESSES.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c), as amended (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.

Additionally, FMCSA evaluated the effects of this rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impacts resulting from its promulgation. Environmental justice issues would be raised if there were "disproportionate" and "high and adverse impact" on minority or low-income populations. As noted above, this rule is exempt from analysis under the National Environmental Policy Act due to two categorical exclusions. This final rule simply eliminates a paperwork requirement and would not result in high and adverse environmental impacts.

List of Subjects in 49 CFR Part 369

Motor carriers, Reporting and recordkeeping requirements.

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

PART 369—REPORTS OF MOTOR CARRIERS

1. The authority citation for part 369 continues to read as follows.

Authority: 49 U.S.C. 14123; 49 CFR 1.87.

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 report with the Federal Motor Carrier Safety Administration at the address in § 369.6. You can obtain blank copies of the report form from the Federal Motor Carrier Safety Administration website 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 13 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 13 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 with the Federal Motor

Carrier Safety Administration at the address in § 369.6. Copies of Form MP-1 may be obtained from the FMCSA.

4. Amend § 369.8 by revising paragraphs (a) and (d) to read as follows.

§ 369.8 Requests for exemptions from filing.

(a) General. This section governs requests for exemptions from filing of the report required under § 369.1.

* * * * *

(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 of the year following the year to which it relates.

* * * * *

5. Amend § 369.9 by removing paragraph (d)(4) and revising paragraphs (a) and (e)(4) to read as follows.

§ 369.9 Requests for exemptions from public release.

(a) General. This section governs requests for exemptions from public release of the report required under § 369.1.

* * * * *

(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]

6. Remove § 369.11.

Issued under the authority delegated in 49 CFR 1.87 on: November 26, 2013

Anne S. Ferro
Administrator

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