

Title 49: Transportation

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PART 369—REPORTS OF MOTOR CARRIERS

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Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 14123; 49 CFR 1.73.

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

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(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 §369.2.

(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 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.

[64 FR 13921, Mar. 23, 1999. Redesignated at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006]

§ 369.2 Classification of carriers—motor carriers of property, household goods carriers, and dual property carriers.

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(a) Common and contract motor carriers of property are grouped into the following three classes:

Class I. Carriers having annual carrier operating revenues (including interstate and intrastate) of \$10 million or more after applying the revenue deflator formula in Note A.

Class II. Carriers having annual carrier operating revenues (including interstate and intrastate) of at least \$3 million but less than \$10 million after applying the revenue deflator formula in Note A.

Class III. Carriers having annual carrier operating revenues (including interstate and intrastate) of less than \$3 million after applying the revenue deflator formula in Note A.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues (excluding revenues from private carriage, compensated intercorporate hauling, and leasing vehicles with drivers to private carriers) after applying the revenue deflator formula in Note A. Upward and downward classification will be effective as of January 1 of the year immediately following the third consecutive year of revenue qualification.

(2) Any carrier which begins new operations by obtaining operating authority not previously held or extends its existing authority by obtaining additional operating rights shall be classified in accordance with a reasonable estimate of its annual carrier operating revenues after applying the revenue deflator formula shown in Note A.

(3) When a business combination occurs such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective as of January 1 of the next calendar year on the basis of the combined revenues for the year when the combination occurred after applying the revenue deflator formula shown in Note A.

(4) Carriers must notify the Federal Motor Carrier Safety Administration (FMCSA) 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. FMCSA will notify the carriers of any change in classification.

(5) Carriers not required to file an Annual Report Form M may be required to file the Worksheet for Calculating Carrier Classification. All carriers will be notified of any classification changes.

Note A: Each carrier's operating revenues will be deflated annually using the Producers Price Index (PPI) of Finished Goods before comparing those revenues with the dollar revenue limits prescribed in paragraph (a) of this section. The PPI is published monthly by the Bureau of Labor Statistics. The formula to be applied is as follows:

$$\text{Current year's annual operating revenues} \times \frac{1994 \text{ average PPI}}{\text{Current year's average PPI}} = \text{Adjusted annual operating revenues}$$

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[52 FR 10383, Apr. 1, 1987, as amended at 59 FR 5111, Feb. 3, 1994; 59 FR 49848, Sept. 30, 1994. Redesignated at 63 FR 52193, Sept. 30, 1998, and amended at 64 FR 13921, 13922, Mar. 23, 1999; 68 FR 4719, Jan. 30, 2003. Resigned at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006]

§ 369.3 Classification of carriers—motor carriers of passengers.

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(a) Common and contract carriers of passengers are grouped into the following two classes:

Class I—Carriers having average annual gross transportation operating revenues (including interstate and intrastate) of \$5 million or more from passenger motor carrier operations after applying the revenue deflator formula as shown in the Note.

Class II—Carriers having average annual gross transportation operating revenues (including interstate or intrastate) of less than \$5 million from passenger motor carrier operations after applying the revenue deflator formula as shown in the Note.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues after applying the revenue deflator formula as shown in the Note. Upward and downward reclassification will be effective as of January 1 of the year immediately following the third consecutive year of revenue qualification.

(2) Any carrier which begins new operations (obtains operating authority not previously held) or extends its existing authority (obtains additional operating rights) shall be classified in accordance with a reasonable estimate of its annual carrier operating revenues after applying the revenue deflator formula shown in the Note.

(3) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective as of January 1 of the next calendar year on the basis of the combined revenues for the year when the combination occurred after applying the revenue deflator formula shown in the Note.

(4) Carriers shall notify the FMCSA of any change in classification or when their annual operating revenues exceed the Class II limit by writing to the Federal Motor Carrier Safety Administration at the address in §369.6. In unusual circumstances where the classification regulations and reporting requirements will unduly burden the carrier, the carrier may request from the FMCSA a waiver from these regulations. This request shall be in writing specifying the conditions justifying the waiver. The FMCSA then shall notify carriers of any change in classification or reporting requirements.

(c) For classification purposes, the FMCSA shall publish in the Federal Register annually an index number which shall be used for adjusting gross annual operating revenues. The index number (deflator) is based on the Producer Price Index of Finished Goods and is used to eliminate the effects of inflation from the classification process.

Note: Each carrier's operating revenues will be deflated annually using the Producers Price Index (PPI) of Finished Goods before comparing them with the dollar revenue limits prescribed in paragraph (a) of this section. The PPI is published monthly by the Bureau of Labor Statistics. The formula to be applied is as follows:

$$\text{Current year's annual operating revenues} \times \frac{1986 \text{ average PPI}}{\text{Current year's average PPI}} = \frac{\text{Adjusted annual operating revenues}}{\text{operating revenues}}$$

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[53 FR 4029, Feb. 11, 1988. Redesignated at 63 FR 52193, Sept. 30, 1998, and amended at 68 FR 4719, Jan. 30, 2003. Redesignated at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006]

§ 369.4 Annual and quarterly reports of Class I carriers of passengers.

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(a) All Class I motor carriers of passengers shall complete and file Motor Carrier Quarterly and Annual Report Form MP-1 for Motor Carriers of Passengers (Form MP-1). Other than Class I carriers are not required to file Form MP-1.

(b) Motor Carrier Quarterly and Annual Report Form MP–1 shall be used to file both quarterly and annual selected motor carrier data. The annual accounting period shall be based either (1) on the 31st day of December in each year, or (2) an accounting year of thirteen 4-week periods ending at the close of the last 7 days of each calendar year. 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. The quarterly accounting period shall end on March 31, June 30, September 30, and December 31. The quarterly report shall be filed within 30 days after the end of the reporting quarter. The annual report shall be filed on or before March 31 of the year following the year to which it relates.

(c) The quarterly and annual report shall be filed in duplicate to the Federal Motor Carrier Safety Administration at the address in §369.6. Copies of Form MP–1 may be obtained from the FMCSA.

[52 FR 20400, June 1, 1987. Redesignated at 63 FR 52193, Sept. 30, 1998, as amended at 68 FR 4719, Jan. 30, 2003. Redesignated at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006]

§ 369.5 Records.

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Books, records and carrier operating documents shall be retained as prescribed in 49 CFR part 379, Preservation of Records.

[52 FR 10383, Apr. 1, 1987. Redesignated at 63 FR 52193, Sept. 30, 1998. Redesignated at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006]

§ 369.6 Address.

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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: Federal Motor Carrier Safety Administration, Office of Information Technology (MC–RI), 1200 New Jersey Ave., SE., Washington, DC 20590–0001. This address may also be used for general correspondence regarding the data collection program described in this section.

[64 FR 13923, Mar. 23, 1999, as amended at 68 FR 4719, Jan. 30, 2003. Redesignated at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006; 72 FR 55699, Oct. 1, 2007]

§ 369.8 Requests for exemptions from filing.

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(a) *In General.* This section governs requests for exemptions from filing of reports required under §369.1.

(b) *Criteria.* The Federal Motor Carrier Safety Administration (FMCSA) 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 §369.9(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 §369.9(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) FMCSA will grant or deny each request within a reasonable period of time. FMCSA will notify the carrier of its decision. The decision by FMCSA shall be administratively final.

(f) *Pendency.* While a request is pending, the carrier is required to submit any reports required under §369.1.

(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 §369.1 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 FMCSA believes such a finding should be made, FMCSA will notify the requesting carrier in writing of the reasons for the modification. The carrier may seek reconsideration of the modification.

[64 FR 13922, Mar. 23, 1999. Redesignated at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006]

§ 369.9 Requests for exemptions from public release.

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(a) *In General.* This section governs requests for exemptions from public release of reports filed under §369.1.

(b) *Criteria.* The Federal Motor Carrier Safety Administration (FMCSA) 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 FMCSA 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) FMCSA 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 FMCSA 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 §369.1, FMCSA 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 FMCSA is notified of extenuating circumstances before the information is disclosed to the public and FMCSA finds that the extenuating circumstances warrant consideration of the claim.

(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. 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, FMCSA will notify carrier of that decision and of any appropriate limitations.

(6) If a request for confidentiality is denied, FMCSA 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) *Pendency.* A request is deemed pending from the date it is received by FMCSA until it is granted or denied by FMCSA. FMCSA 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, FMCSA 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 FMCSA believes such a finding should be made, FMCSA 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.

[64 FR 13922, Mar. 23, 1999. Redesignated at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006]

§ 369.10 Public release of motor carrier of property data.

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(a) *In general.* Unless otherwise provided in this section, the data contained in a report filed under §369.1 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 §369.9, FMCSA 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 §369.9, FMCSA 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 FMCSA.

[64 FR 13923, Mar. 23, 1999, as amended at 68 FR 4719, Jan. 30, 2003. Redesignated at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006]

§ 369.11 Quarterly reports of passenger revenues, expenses, and statistics.

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Commencing with reports for the quarter ended March 31, 1968, and for subsequent quarters thereafter, until further order, all class I common and contract motor carriers of passengers, as defined in §369.3(a), shall compile and file quarterly reports in accordance with Motor Carrier Quarterly and Annual Report, Form MP-1. Such quarterly reports shall be filed in duplicate in the FMCSA Office of Information Management at the address in §369.6, within 30 days after the close of the period to which it relates.

[43 FR 46975, Oct. 12, 1978. Redesignated at 63 FR 52193, Sept. 30, 1998, as amended at 68 FR 4719, Jan. 30, 2003. Redesignated at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006]