

Bureau of Transportation Statistics, DOT

§ 1420.9

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 fil-

ing 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.

[64 FR 13922, Mar. 23, 1999]

§ 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

§ 1420.9

49 CFR Ch. XI (10–1–04 Edition)

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

Bureau of Transportation Statistics, DOT

§ 1420.11

(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) *Pendency.* 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.

[64 FR 13922, Mar. 23, 1999]

§ 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.

[64 FR 13923, Mar. 23, 1999, as amended at 68 FR 4719, Jan. 30, 2003]

§ 1420.11 Quarterly reports of passenger revenues, expenses, and statistics.

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 §1420.3(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 Office of the Bureau of Transportation Statistics at the address in §1420.6, 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]