

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:** Withdrawal of proposed rule.

SUMMARY: The Bureau of Transportation Statistics (BTS) published a Supplemental Notice of Proposed Rulemaking on March 23, 1999, regarding its motor carrier financial and operating data collection program. The proposal would have restricted access to individual carrier data for some of the operating statistics, revenue equipment, and employment data items. Access to these data items would have been limited to the Department of Transportation and to such persons and in such circumstances as DOT determined to be in the public interest or consistent with the Department's regulatory functions and responsibilities. Most of the comments strongly opposed adopting the proposed rule. After considering the issues raised by the comments, BTS is withdrawing the Supplemental Notice of Proposed Rulemaking.

DATES: The proposed amendment to § 1420.10, published on March 23, 1999 (64 FR 13948), is withdrawn on July 21, 1999.

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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. Background

Under 49 U.S.C. 14123 and its implementing regulations at 49 CFR 1420, BTS collects financial and operating information from for-hire motor carriers of property and household goods. The data are collected on annual Form M, filed by Class I and Class II carriers, and quarterly Form QFR, filed only by Class I carriers. The data are used by the Department of Transportation, other federal agencies, motor carriers, shippers, industry analysts, labor unions, segments of the insurance industry, investment analysts, and the consultants and data vendors that support these users. Among the uses of the data are: (1) Developing the U.S. national accounts and preparing the quarterly estimates of the Gross Domestic Product; (2) measuring the performance of the for-hire motor carrier industry and segments within it; (3) monitoring carrier safety; (4) benchmarking carrier performance; and (5) analyzing motor carrier safety, productivity, and its role in the economy.

On November 3, 1998, BTS initiated a rulemaking to consider what data items BTS should collect and how BTS should implement a system whereby carriers could, in order to avoid competitive harm, request that their reported information be kept confidential or that they be excused from filing (63 FR 59263). The final rule was published on March 23, 1999 (64 FR 13916). On the same day, BTS published a Supplemental Notice of Proposed Rulemaking (SNPRM) concerning access to motor carrier financial and operating information reported to BTS (64 FR 13948). Under current policy, all reported data are made available at the carrier level. The only exception is when a carrier is granted confidentiality under 49 CFR 1420.9 based on competitive harm, in which case its report is withheld from public release for three years. BTS reviewed this policy in light of comments received during the rulemaking and the governing legislation. Under the legislation, in designing the data collection program BTS 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 other words, BTS has

to consider both confidentiality issues and data access issues.

The proposed regulation was therefore intended to strike a balance between the interests of respondents, many of whom do not want data they believe are proprietary and sensitive made available to competitors, shippers, and the public, and the interests of data users, who often need access to individual carrier data. While most data would be fully available, BTS sought to withhold the most sensitive data items from general release. Those data items receiving protection would be available only for key uses and this limitation would apply to data reported by all carriers. For these data items, access would be allowed only as follows: (1) Aggregate statistics that do not identify a particular carrier would be available to the public; (2) individual carrier data would be available only to Department of Transportation users and those users whose access is "in the public interest or consistent with the Department's regulatory functions and responsibilities;" and (3) individual carrier data previously kept confidential would be available to the public after three years.

III. General Summary of the Comments

BTS received 10 comments on the proposal, from the American Moving and Storage Association, the Central Analysis Bureau, the Inland Marine Underwriters Association, the International Brotherhood of Teamsters, Landstar System, Jack A. Nickerson, Transportation Technical Services, the Transportation Trades Department of the AFL-CIO, University of Michigan Trucking Industry Program, and Klaas T van't Veld. Nine of the commenters were opposed to the proposal and wanted it withdrawn; one supported the proposal as written.

Landstar System supported the proposal, stating that it would withhold certain sensitive information and struck a reasonable balance. The comments opposing the proposal were generally based on three arguments: (1) BTS does not have the authority to restrict access to data, except case-by-case based on carrier requests; (2) public availability of the data does not and will not cause competitive harm to the reporting carrier; and (3) the proposed system would impair important uses of the data.

IV. Withdrawal of the Proposed Rule

BTS appreciates both the concern that sensitive information be protected to the extent possible and the concern that the insurance industry, safety analysts, other researchers, and other data users

have timely access to information about the motor carrier industry and individual motor carriers. BTS has carefully reviewed the comments received. After considering the concerns raised on both sides of the issue, we are convinced that the proposal as written would not accomplish the goal of striking an appropriate balance and that BTS does not have enough experience with respect to the recent changes made to the program to make adequate adjustments. BTS is therefore withdrawing the supplemental proposal.

The SNPRM requested comments on whether and why public availability of the identified data items, or other data items, would be likely to cause substantial competitive harm. BTS received comments from only one carrier, which said the information was sensitive and release would cause competitive harm. Additionally, in the initial rulemaking, BTS received several similar generalized assertions. However, BTS received no explanation or examples of how public access would cause competitive harm for carriers generally, leaving the assertions unsupported.

BTS is also concerned that the changes it proposed were premature. The possibility of competitive harm resulting from public release of data is inextricably intertwined with what data items are collected. The types of data collected, the level of detail they are collected at, and how those data can be put together with other available data must all be considered. In the final rule published the same day as the SNPRM, BTS made many changes to the report forms, eliminating some categories of data items and either reducing detail or

changing what is collected in others. The amount of information reported by Class I carriers was reduced by 64 percent. For Class II carriers, the burden was not reduced, but the report form was significantly changed. The feedback BTS received regarding confidentiality was based largely on the old forms. Therefore, BTS does not know how the changes in the forms impact the confidentiality issue. Also, before the final rule was published, carriers did not have a mechanism for requesting confidentiality. Now individual carriers can request confidentiality protection based on a competitive harm standard. If a carrier meets the standard, BTS must withhold its report from public release. Carriers can also request an exemption from filing based on a similar standard. In order to know what further protections are needed, if any, BTS must review how effective these new mechanisms are. In sum, in order for BTS to accomplish its goal of striking an appropriate balance, it needs to gain more experience with the major changes it recently made.

Gaining experience and additional information will also be critical in solving several problems pointed out in the comments. For instance, while it may sound reasonable to limit access to certain classes of users—those classes where access would be least likely to cause competitive harm—this presents several practical problems. For instance, researchers would be able to conduct safety and policy-relevant studies with carrier-level data, but the researchers would not be able to publish their results at the carrier level. Not only would this preclude the presentation of many of the meaningful findings, but others would not be able to examine and

critique their work. Similarly, it is not clear whether safety researchers outside of academia would have access, although safety is certainly a concern to many others. For instance, how would access work with organizations such as trucking associations or labor unions, which are likely to have broad interests including safety? Thus, the proposal would not achieve its goal of not impeding access for safety and other key uses. While these problems have been raised, no solutions—other than withdrawing the proposal—were suggested.

While we will continue to monitor the issue and seek feedback from respondents and data users, BTS believes it would be unwise to proceed at this time. Any changes would have to come after the benefit of more experience regarding the recent changes and a deeper understanding of the issues. BTS can then determine whether and how to make further adjustments regarding access to reported data.

V. Effect on the Availability of Reported Data

While the SNPRM was pending, BTS did not release any reported data from the 1998 annual report and the 1999 quarterly reports. By withdrawing this proposal, BTS will make that information available, except as otherwise prohibited by law. For instance, pursuant to 49 CFR 1420.10, BTS will not release data where a carrier's report has been granted confidential treatment or is covered by a pending confidentiality request.

Ashish Sen,

Director.

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