§ 1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

* * * * *

(a) If any rate established in connection with this contract was increased because:

(1) The Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in one of the Certificates of Accurate Cost or Pricing Data (FEHBAR 1615.406–2);

(2) The Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate reconciliation documents or MLR Calculation;

(3) The Carrier developed FEHBP rates for traditional community rated plans with a rating methodology and structure inconsistent with that used to develop rates for a similarly sized subscriber group (see FEHBAR 1602.170–13) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Carriers;

(4) The Carrier, who is not mandated by the State to use traditional community rating, developed FEHBP rates with a rating methodology and structure inconsistent with its State-filed rating methodology (or if not required to file with the State, their standard written and established rating methodology) or inconsistent with the FEHB specific medical loss ratio (MLR) requirements (see FEHBAR 1602.170–13); or

(5) The Carrier submitted or, kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

* * * * *

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund or that the Government is entitled to a MLR penalty, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid or at the time the MLR penalty is paid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used;

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly submitted cost or pricing data which was incomplete, inaccurate, or noncurrent; and,

(3) Simple interest on the MLR penalty from the date on which the penalty should have been paid to the FEHB Fund to the date on which the penalty was or will be actually paid to the FEHB fund. The interest rate shall be calculated as specified in paragraph (c)(1) of this section.

■ 9. In § 1652.216–70, revise paragraphs (b)(2), (3), (7), and (8) to read as follows:

§ 1652.216–70 Accounting and price adjustment.

* * * * *

(b) * * *

(2). Effective January 1, 2013 all community rated plans must develop the FEHBP's rates using their State-filed rating methodology or, if not required to file with the State, their standard written and established rating methodology. A carrier who mandated by the State to use traditional community rating will be subject to paragraph (b)(2)(ii) of this clause. All other carriers will be subject to paragraph (b)(2)(i) of this clause.

(i) The subscription rates agreed to in this contract shall meet the FEHB-specific MLR threshold as defined in FEHBAR 1602.170–14. The ratio of a plan's incurred claims, including the carrier's expenditures for activities that improve health care quality, to total premium revenue shall not be lower than the FEHB-specific MLR threshold published annually by OPM in its rate instructions.

(ii) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber group (SSSG) as defined in FEHBAR 1602.170–13. The subscription rates shall be determined according to the carrier's established policy, which must be applied consistently to the FEHBP and to the carrier's SSSG. If the SSSG receives a rate lower than that determined according to the carrier's established policy, it is considered a discount. The FEHBP must receive a discount equal to or greater than the carrier's SSSG discount.

(3) If subject to paragraph (b)(2)(ii) of this clause, then:

(i) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the SSSG, the carrier may include an adjustment to the Federal group's rates for the next contract period, except as noted in paragraph (b)(3)(iii) of this clause.

(ii) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the SSSG, the carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the SSSG, except as noted in paragraph (b)(3)(iii) of this clause.

(iii) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to the SSSG. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

* * * * *

(7) Carriers may provide additional guaranteed discounts to the FEHBP. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(8) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process. If the carrier is subject to the SSSG rules and imposes a surcharge on the SSSG, the carrier cannot impose the surcharge on FEHB.

* * * * *

[FR Doc. 2015–14219 Filed 6–9–15; 8:45 am]

BILLING CODE 6325–63–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 389

[Docket No. FMCSA–2015–0168]

RIN 2126–AB79

Rulemaking Procedures—Federal Motor Carrier Safety Regulations; Treatment of Confidential Business Information

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

ACTION: Final rule.

SUMMARY: FMCSA amends its Rulemaking Procedures by adding a new section establishing the standards and procedures that the Agency will use regarding the submission of certain

confidential commercial or financial information that is referred to in this rule as ''confidential business information'' (CBI). This rule also sets forth the procedures for asserting a claim of confidentiality by parties who voluntarily submit CBI to the Agency in connection with a notice-and-comment rulemaking and in a manner consistent with the standards adopted in today's rule.

DATES: This final rule is effective June 10, 2015.

FOR FURTHER INFORMATION CONTACT: Kim McCarthy, Office of Chief Counsel, Regulatory Affairs Division (MC–CCR), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590; by telephone at 202–366–0834. If you have questions on viewing or submitting material to the public docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Legal Basis for Rulemaking

Section 552(b)(4) of the Freedom of Information Act (FOIA) exempts from public disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential''. 5 U.S.C. 552(b)(4). There is a substantial body of Federal case law interpreting and upholding this exemption, commonly referred to as ''FOIA Exemption 4.'' An underlying theme of the FOIA Exemption 4 cases is that the exemption is ''intended to protect the government as well as the individual,'' including advancing the efficiency of government operations. *National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765, 767 (D.C. Cir. 1974).

Like other Federal agencies, FMSCA has adopted procedural rules implementing the FOIA. 49 CFR 389.7. Agencies' procedures for exempting CBI from disclosure under FOIA vary. In today's rule, FMCSA establishes procedures that the Agency will use for the submission of certain CBI that is presumptively exempt from public disclosure under FOIA Exemption 4. These procedures apply to information voluntarily submitted to the Agency in response to a notice-and-comment rulemaking and that falls within the designated classes of information established in accordance with the rule.

Today's rule incorporates the confidentiality standard for CBI adopted by the U.S. Court of Appeals for the D.C. Circuit in *Critical Mass Energy Project* v. *NRC,* 975 F.2d 871 (D.C. Cir. 1992) (en banc), in which the court distinguished between information the government compels and that which is voluntarily submitted to help further government functions, such as rulemakings. The court held that information voluntarily submitted to the government should be treated as confidential under FOIA Exemption 4 as long as the submitter can show that it is not customarily released to the general public. *Id.* at 880.

This regulation is published as a final rule and effective on June 10, 2015. Under the Administrative Procedure Act (APA), agencies may promulgate final rules only after providing notice and an opportunity for public comment. 5 U.S.C. 553(b) and (c). This requirement does not apply, however, to ''interpretative rules, general statements of policy, or rules of agency organization, *procedure* or practice.'' 5 U.S.C. 553(b)(A) (emphasis added). Today's final rule establishes procedures for submitting CBI, and FMCSA therefore determines that notice and comment is unnecessary. In addition, this rule makes no substantive changes to the motor carrier safety regulations and is therefore not a substantive rule subject to the APA's requirement that publication be made at least 30 days before its effective date. 5 U.S.C. 553(d).

Before prescribing any regulations, FMCSA must also consider their benefits and costs. 49 U.S.C. 31136(c)(2)(A) and 31502(d). Those factors are discussed in this final rule.

Background Information

FMCSA has a recurring occasional need to receive CBI in order to improve the Agency's ability to promulgate regulations that: (1) Are evidence-based; (2) take into account the operational and financial realities of regulated parties; and (3) result in improved safety for motor carriers, drivers, and the general public. Historically, FMCSA has received limited amounts of usable data submitted as part of the rulemaking comment process, even in response to specific requests for data on particular topics. FMCSA believes that the procedures and confidentiality protections set forth in today's rule will optimize the Agency's ability to receive necessary CBI in response to notice-and-comment rulemakings.

The Agency recognizes the need to add confidentiality assurances to commenters who provide CBI. Today's rule balances the interests of FMCSA, persons who choose to submit CBI to the Agency, and the public. First, this rule responds to FMCSA's need for pertinent data by facilitating its ability to obtain information necessary for the development of particular rulemakings. Today's rule authorizes the FMCSA Administrator to define classes of information, which are presumptively confidential, based on the confidentiality standard for voluntarily submitted information adopted by the D.C. Circuit in *Critical Mass,* as noted above. Under the procedures adopted, the specific items of information included within a class will be determined on an as needed basis, depending on the informational requirements of each particular rulemaking. Because the Agency will invite the submission of CBI that is specifically calibrated to inform the rulemaking, FMCSA believes this procedure will significantly enhance the efficacy of responsive comments and, ultimately, the final rule.

Second, by making confidential class determinations, this rule will alleviate the burden on commenters to submit individual claims for confidential treatment, as well as the Agency's burden to evaluate requests for confidential treatment submitted on an individual basis.

Third, this rule responds to the interests of commenters who wish to protect their submitted information from disclosure in the public domain because it is confidential within the meaning of the FOIA. It establishes the standards and procedures by which submitters of CBI must substantiate their request for confidential treatment. Today's rule also states that, if those qualifying requirements are met and maintained, the Agency will not disclose the CBI in the public docket or in response to a FOIA request.

Fourth, this rule responds to the public's interest in transparency and disclosure in the rulemaking process. It requires FMCSA to describe through summarization, aggregation, or some other de-identified means, any CBI submitted in accordance with these procedures and on which the Agency relies in developing a final rule. FMCSA must also explain how such CBI assisted in formulating that final rule.

Finally, this rule permits the public disclosure of information initially designated as confidential by the submitter if the Agency finds that the submitter fails to meet or maintain the confidentiality criteria established in this rule. In addition, to the extent that commenters who choose to submit CBI in accordance with the adopted procedures also wish to provide *non-confidential* information, their comments must be segregated and filed in the rulemaking's public docket.

Regulatory Analyses

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA considered the impact of this procedural rule under Executive Orders 12866 and 13563 and DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). The Agency has determined this rule does not constitute a significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563, or DOT's regulatory policies and procedures.

FMCSA expects that the economic impact of this rule will be minimal, as it merely codifies the procedures by which CBI may be voluntarily submitted to FMCSA in connection with notice-and-comment rulemakings. This rule does not alter the confidentiality threshold established by FOIA Exemption 4, as currently reflected in the FOIA procedures of both FMCSA (49 CFR 389.5(b)) and the DOT (49 CFR part 7). It is adopted to address the concerns of potential submitters of CBI as well as the Agency's need to receive certain commercial and financial information that is eligible for confidential treatment under FOIA Exemption 4.

Today's rule imposes a minimal additional burden on parties who elect to submit CBI to FMCSA since they will now be required to complete a standardized affidavit certifying that the submitted information meets the confidentiality threshold established by FOIA Exemption 4. FMCSA expects that the amount of time and resources that CBI submitters will devote to completing the standardized CBI affidavit will be minimal. This rule does not change the current burden imposed on submitters to ensure that the information they designate as confidential meets the established FOIA criteria.

The Agency may realize additional costs associated with its use of resources to review submitted CBI, subjected to request for public disclosure under the FOIA, in order to confirm that the information is withheld from the public in accordance with FOIA Exemption 4. We expect the increase in the use of Agency resources devoted to FOIA review will be minimal. Although this rule does not change the Agency's current role in reviewing confidential information subject to request for disclosure under the FOIA, we anticipate that the volume of FOIA requests may increase due to the fact that FMCSA will specifically solicit CBI for submission under informational categories established in accordance with today's final rule. Today's rule is intended to increase the amount of CBI submitted to the Agency. FMCSA expects any additional FOIA review costs will be minimal, however, since CBI will be submitted under informational categories already determined by the Agency to be presumptively confidential.

FMCSA believes the potential marginal increase in costs associated with the adoption of this rule is more than outweighed by the benefits for both submitters of CBI and for the Agency. In addition, this rule enhances FMCSA's ability to promulgate rules that are data-driven and evidence-based; therefore, regulated entities and the public will also benefit.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 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 a notice of proposed rulemaking prior to this action. FMCSA has therefore determined that it has good cause to adopt the rule without notice-and-comment.

Assistance to Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Ms. Kim McCarthy, listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

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 State, local, or tribal government, in the aggregate, or by the private sector of $151 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2012 levels) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Paperwork Reduction Act

This final rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Executive Order 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA has determined that this final rule will not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 (Civil Justice Reform)

This final 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.

Executive Order 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property

Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

Privacy

The Consolidated Appropriations Act, 2005, (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not involve the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Public Law 107–347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

Executive Order 12372 (Intergovernmental Review of Federal Programs)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs do not apply to this program.

Executive Order 13211 (Energy Supply, Distribution or Use)

FMCSA has analyzed this final rule under E.O. 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'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

Indian Tribal Governments (E.O. 13175)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (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. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment (NEPA, CAA, Environmental Justice)

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined that this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (6b) that covers editorial and procedural regulations. The CE is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES**.

FMCSA also analyzed this action 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 affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations'' in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this rule in accordance with the E.O. and has determined that no environmental justice issue is associated with this rule, nor is there any collective environmental impact that would result from its promulgation.

List of Subjects in 49 CFR Part 389

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, FMCSA amends 49 CFR part 389 to read as follows:

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

■ 1. The authority citation for part 389 continues to read as follows:

Authority: 49 U.S.C. 113, 501 *et seq.,* subchapters I and III of chapter 311, chapter 313, and 31502; 42 U.S.C. 4917; and 49 CFR 1.87.

■ 2. Add a definition of ''Confidential business information'' to § 389.3 in alphabetical order to read as follows:

§ 389.3 Definitions.

* * * * *

Confidential business information means trade secrets or commercial or financial information that is privileged or confidential, as described in 5 U.S.C. 552(b)(4). Commercial or financial information is considered confidential if it was voluntarily submitted and is the type of information that is customarily not released to the general public by the person or entity from whom it was obtained.

■ 3. Add § 389.9 to subpart A to read as follows:

§ 389.9 Treatment of confidential business information.

(a) *Purpose.* This section establishes the standards and procedures by which the Agency will solicit and receive certain confidential commercial or financial information, as that term is used in the Freedom of Information Act (5 U.S.C. 552(b)(4)), categorically referred to below as ''confidential business information,'' and the manner in which the Agency will protect such information from public disclosure in accordance with 5 U.S.C. 552(b)(4).

(b) *Confidential class determinations.* The Administrator may make and issue a class determination, which shall pertain to a specified rulemaking and shall clearly identify categories of information included within the class. Information submitted under the class determination and conforming to the characteristics of the class will be treated as presumptively confidential and accorded the non-disclosure protections described in paragraph (h) of this section. The Administrator may establish a class upon finding that:

(1) FMCSA seeks to obtain related items of commercial or financial

information as described in 5 U.S.C. 552(b)(4);

(2) The class determination would facilitate the voluntary submission of information necessary to inform the rulemaking; and

(3) One or more characteristics common to each item of information in the class will necessarily result in identical treatment, and that it is therefore appropriate to treat all such items as a class under this section.

(c) *Frequency and content of class determinations.* Class determinations may be defined by the Administrator on an as needed basis and shall include substantive criteria established in accordance with the informational needs of the particular rulemaking.

(d) *Modification or amendment.* The Administrator may amend or modify any class determination established under this section.

(e) *Publication.* Once the Administrator has made a class determination, the Agency shall publish the class determination in the **Federal Register**. If the Administrator amends or modifies any class determination established and published in accordance with this section, such changes will be published in the **Federal Register**.

(f) *Submission of confidential business information.* Persons wishing to submit information in accordance with a class determination established under authority of this section must complete and sign, under penalties of perjury, an *Affidavit in Support of Request for Confidentiality* (Affidavit), as set forth in Appendix A to this part. In the event that information is submitted under more than one designated class, each submission must include an executed Affidavit, asserting, among other factors, that:

(1) The information is submitted to the Agency voluntarily;

(2) The information is of a type customarily not disclosed to the public by the submitter;

(3) The information, to the best of the submitter's knowledge and belief, has not been disclosed to the public; and

(4) The information satisfies the substantive criteria for the class as established by the Administrator under authority of paragraph (b) of this section.

(g) *Submission of comments not containing confidential business information.* If a submitter elects to provide commentary in addition to the confidential business information submitted under one or more classes designated under this section, any portion of a submitter's additional commentary that does *not* contain confidential business information shall be filed in the public docket in the form and manner set forth in the rulemaking.

(h) *Non-disclosure of confidential business information.* In accordance with the provisions of 5 U.S.C. 552(b)(4), information submitted under this section shall not be available for inspection in the public docket, nor shall such information be provided by the Agency in response to any request for the information submitted to the Agency under 5 U.S.C. 552, except as provided for in paragraph (j) of this section.

(1) If a requester brings suit to compel the disclosure of information submitted under this section, the Agency shall promptly notify the submitter.

(2) The submitter may be joined as a necessary party in any suit brought against the Department of Transportation or FMCSA for non-disclosure.

(i) *Use of confidential business information.* To the extent that the Agency relies upon confidential business information submitted under paragraph (f) of this section in formulating a particular rule, the Agency shall, in the preamble of the final rule, disclose its receipt of such information under a designated class and shall describe the information in a de-identified form, including by summary, aggregation or other means, as necessary, to sufficiently explain the Agency's reasoning while maintaining the confidentiality of the information.

(j) *Disclosure of confidential business information.* (1) If the Administrator finds that information submitted to the Agency under paragraph (f) of this section fails to satisfy the requirements set forth in paragraphs (f)(2), (3) or (4), or that the Affidavit accompanying the information submitted under paragraph (f) is false or misleading in any material respect, the Agency shall disclose the non-conforming information by placing it in the public docket for the particular rulemaking, within 20 days following written notice to the submitter of its decision to do so, except that:

(i) Submitters may, within 10 days of receipt of such notice, provide the Agency with a written statement explaining why the submitted information conforms to the requirements of paragraph (f) of this section and thus, should not be disclosed. The Agency shall continue to withhold the information from the public docket until completing its review of the submitter's statement. The Agency may, following timely review of the submitter's statement, determine that disclosure is not required under this paragraph. In any event, the Agency shall advise the submitter in writing of its decision concerning whether the information shall be disclosed in the public docket.

(ii) [Reserved]

(2) Notice of the Agency's intention to disclose the submitted information is not required if the Administrator determines that the entity submitting such information has authorized its disclosure to the public.

(3) If, at the time the Administrator determines that the submitted information fails to comply with the requirements set forth in paragraph (f), such information is the subject of a FOIA request, the requirements of 49 CFR 7.29 shall apply.

■ 4. Add Appendix A to Part 389 to read as follows:

APPENDIX A TO PART 389

AFFIDAVIT IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, _____, pursuant to the provisions of 49 CFR part 389, section 389.9, state as follows:

(1) I am [insert official's name, title] and I am authorized by [insert name of entity] to execute this Affidavit on its behalf;

(2) I certify that the information contained in the document(s) attached to this Affidavit is submitted voluntarily, with the claim that the information is entitled to confidential treatment under 5 U.S.C. 552(b)(4);

(3) I certify that the information contained in the documents attached to this Affidavit is of a type not customarily disclosed to the general public by [insert name of entity];

(4) I certify that, to the best of my knowledge, information and belief, the information contained in the documents attached to this Affidavit, for which confidential treatment is claimed, has never been released to the general public or been made available to any unauthorized person outside [insert name of entity];

(5) I certify that this information satisfies the substantive criteria set forth in the notice published in the **Federal Register** on _____ [insert date of rule-specific publication in month/day/year format] under FMCSA Docket Number [insert docket number].

(6) I make no representations beyond those made in this Affidavit, and, in particular, I make no representations as to whether this information may become available outside [insert name of entity] due to unauthorized or inadvertent disclosure; and

(7) I certify under penalties of perjury that the foregoing statements are true and correct.

Executed on this ____day of ____, ____.

_____(*signature of official*)

Issued under the authority of delegation in 49 CFR 1.87. May 27, 2015.

T.F. Scott Darling III,

Chief Counsel.

[FR Doc. 2015–14181 Filed 6–9–15; 8:45 am]

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