



## **DEPARTMENT OF TRANSPORTATION**

### **BUREAU OF TRANSPORTATION STATISTICS**

Docket ID Number DOT-OST-2014-0031

#### **Confidential Business Information Reporting Requirements**

**AGENCY:** Office of the Assistant Secretary for Research and Technology (OST-R), Bureau of Transportation Statistics (BTS).

**ACTION:** Request for Public Comments.

**SUMMARY:** Pursuant to the Department's regulations, certain air carriers are required to file BTS Schedule B-7 (Airframe and Aircraft Engine Acquisitions and Retirements) and Schedule B-43 (Inventory of Airframes and Aircraft Engines). Under the Department's regulations, the Department can withhold confidential business information if release of the confidential information is likely to cause substantial competitive harm to the entity that submitted the information to the Department. The BTS routinely grants, based on the sensitive nature of this cost data, a ten-year confidentiality period. After receiving notification that, upon the expiration of the ten-year confidentiality period, the BTS intended to release the cost data, the United Parcel Service Co. (UPS) and United Air Lines, Inc. (United) filed objections to the pending release. Both UPS and United claimed that the cost data, although ten years old, remained sensitive and its release would result in competitive harm. The cost data is now 20 years old.

BTS is seeking public comments on the merits of the UPS and United positions and views on whether the BTS should increase the confidentiality period for certain airframe and aircraft engine cost data.

**DATE:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Jeff Gorham, Office of Airline Information, RTS-42, Room E34, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, Telephone Number (202) 366-4406, Fax Number (202) 366-3383 or EMAIL [jeff.gorham@dot.gov](mailto:jeff.gorham@dot.gov)

**REQUEST FOR PUBLIC COMMENTS:**

We are inviting public comments on the UPS and United requests and views on whether BTS' confidentiality period should be retained or amended. Based on the public comments and a review of the requests to extend the confidentiality period, BTS will consider retaining or amending its confidentiality period.

We are posing a series of questions in the hope that the public comments will address several issues in particular:

(1) Do you use the airframe and aircraft engine cost data required under Part 241 and, if so, how do you use the data elements?

(2) Should BTS amend or retain its confidentiality period for airframe and aircraft engine cost data?

(3) Should BTS change the manner in which it collects these data elements?

(4) Would it be in the public interest for BTS to grant the confidentiality extension requests?

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number DOT-OST-2014-0031 by any of the following methods:

**Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Mail:** Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

**Hand Delivery or Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**Fax:** 202-366-3383.

**Instructions:** Identify docket number, DOT-OST-2014-0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at <http://www.regulations.gov>. All comments are posted electronically without charge or edits, including any personal information provided.

**Privacy Act:** Anyone is able to search the electronic form of all 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 DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. or the street address listed above. Follow the online instructions for accessing the dockets.

**Electronic Access:** You may access comments received for this notice at <http://www.regulations.gov>, by searching docket DOT-OST-2014-0031.

**SUPPLEMENTAL INFORMATION:** Pursuant to 14 CFR Part 241, certain air carriers are required to file BTS Schedule B-7 (Airframe and Aircraft Engine Acquisitions and Retirements) and Schedule B-43 (Inventory of Airframes and Aircraft Engines). These schedules contain cost data concerning airframes and aircraft engines. In previous confidentiality requests, UPS and United requested and the Department granted a ten-year period of confidentiality for the cost data reported on the Form 41, Schedules B-7 and B-43.

Prior to the expiration of the ten-year period, BTS informed twelve air carriers that, at the close of the ten-year period (October 1, 2004), the agency intended to release the information. In a September 14, 2004 letter, UPS filed objections to the release and, in a September 23, 2004 letter, United also filed objections to the release (see BTS Docket No. 2004 – 19380). Both UPS and United claim that the information, although ten years old, is so sensitive that each company would suffer “competitive harm” if the BTS releases the information.

In its letter, UPS maintains that the information is still “commercially sensitive” based on three main points: 1) disclosure of the data diminishes competition among the major aircraft manufacturers; engine manufacturers, and new and used aircraft owners and lessors who can use the commercially sensitive data to closely track UPS’ acquisition and retirement costs; 2) disclosure of the data impairs competition among competing domestic and foreign airlines in the

international arena, because United States airlines are required to reveal major elements of their cost structures when their foreign competitors are not; and 3) the Securities and Exchange Commission (SEC) has determined that these data should be withheld from public disclosure.

In addition, UPS requested that the Department withhold the information under Exemptions 3 and 4 of the Freedom of Information Act (FOIA) (See 5 U.S.C. 552(b)(3) and 4)). Exemption 3 allows the withholding of information if the disclosure is prohibited by another statute and the statute either: “(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;” (see 5 U.S.C. 552(b)(3)). UPS stated that a provision in the United States Code (see 49 U.S.C. 40115) qualifies as an Exemption 3 statute in that the statute allows the Department to order certain information withheld from public disclosure if the disclosure would “have an adverse effect on the competitive position of an air carrier in foreign air transportation.” (See 49 U.S.C. 40115(a)(2)(B)).

In light of its objections, UPS requested that “the Department continue to afford confidential treatment to Form 41, Schedules B-7 and B-43 and that such confidential treatment be continued indefinitely or, at a minimum, for [another] ten (10) years.”

United requested an extension based on the fact that prices have changed little since the 1992 to 1996 period. According to United, its “747s delivered in 1994 ... have aircraft/engine prices which are the same as the prices of the later delivered 747s, except for some minor changes due to price escalation provisions and any minor configuration changes.” United also claimed that Exemptions 3 and 4 of FOIA protected this information from disclosure. United also cited the fact that the SEC had provided a period of confidentiality for this information. Thus, United

requested that the BTS extend its period of confidentiality until December 31, 2006, the expiration date for the SEC confidentiality period.

Ten years have passed since the initial confidential treatment period, and BTS is again asking whether we should increase the confidentiality period for certain airframe and aircraft engine cost data, or release the data to the public.

Issued in Washington, DC on February 5, 2015

William Chadwick, Jr.  
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Bureau of Transportation Statistics

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