



DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number DOT-OST-2014-0031]

Confidential Business Information Reporting Requirements – BTS’ Response to Public Comments

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

ACTION: Response to 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, Airlines for America (A4A), an industry association representing several air carriers, filed an objection to the pending release. A4A claimed that the cost data, although twenty years old, remained sensitive and its release would result in competitive harm. Bloomberg News requested that the Department release the cost data.

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

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.

SUPPLEMENTARY 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 twenty-year period, BTS informed twelve air carriers that, at the close of the twenty-year period (October 1, 2014), the agency intended to release the information. Airline for America (A4A) on behalf of its members, filed objections to the release (see OST Docket No. 2014 – 0031). A4A claims that the information, although twenty years old, is so sensitive that each company would suffer “competitive harm” if the BTS releases the information.

In its objection, A4A 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 each other's 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 Department does not use this data to support any policy initiatives.

In addition, the Department determined that withholding 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)). The Department determined 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, A4A requested that "the Department cease collecting the information because it serves no useful purpose, is burdensome to report and competitively sensitive or at the very least 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 an additional ten year period.

Bloomberg News, in a letter dated April 13, 2015 stated the information at issue is now 20 years old. Given the passage of time, any interest in keeping the data confidential has presumably

lessened. Disclosure of cost data after 20 years would seem to achieve a reasonable balance between transparency and maintaining the confidentiality of potentially sensitive commercial information.

Based on the comments received, the BTS will grant an additional 10 year confidentiality period while seeking regulatory language to delete the requirement for collecting airframe and engine cost data.

Issued in Washington, DC on June 3, 2015.

William Chadwick, Jr.,
Director, Office of Airline Information,
Bureau of Transportation Statistics.

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