

DEPARTMENT OF TRANSPORTATION**Bureau of Transportation Statistics****49 CFR Ch. XI****Negotiated Rulemaking Committee to Revise the Motor Carrier Financial and Operating Data Collection Program**

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Proposed establishment of negotiated rulemaking advisory committee.

SUMMARY: The Bureau of Transportation Statistics (BTS) proposes to establish a negotiated rulemaking advisory committee (the Committee) under the Federal Advisory Committee Act and the Negotiated Rulemaking Act to consider the relevant issues and attempt to reach a consensus in developing regulations governing the collection of financial and operating data from motor carriers of property. This effort also is in response to the President's Regulatory Reinvention Initiative, which specifically directed agencies to increase use of regulatory negotiation in rulemaking proceedings. The Committee would be composed of people who represent the interests that would be substantially affected by the rule. BTS invites interested parties to comment on the proposal to establish the Committee, on the proposed membership of the Committee, and on the proposed issues for consideration by the Committee. Persons are also invited to submit applications or nominations for membership on the Committee.

DATES: Interested parties may file comments and nominations for committee membership on or before January 8, 1997.

ADDRESSES: When sending comments and/or nominations, send the original plus three copies. Mail to Docket Clerk, Docket No. BTS-96-1979, Department of Transportation, 400 Seventh Street, SW., Room PL-401, Washington, D.C. 20590. Commenters desiring notification of receipt of comments must include a stamped, self-addressed postcard. The Docket Clerk will date stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: David Mednick, Bureau of Transportation Statistics, K-2, 400 Seventh Street, SW., Washington, D.C. 20590; by phone at (202) 366-8871; by e-mail at david.mednick@bts.gov; or by Fax at (202) 366-3640.

SUPPLEMENTARY INFORMATION:**Background**

The Secretary of Transportation has authority to establish regulations for the collection of certain data from motor carriers of property and others. Section 103 of the ICC Termination Act of 1995 (the Act), Pub. L. 104-88, 109 Stat. 803 (1995) (to be codified at 49 U.S.C. 14123). This authority is delegated to the Director of the Bureau of Transportation Statistics.

For many years, the Interstate Commerce Commission (ICC) administered a motor carrier financial data collection program. 49 U.S.C. 11145 (*amended by the Act*). Under this statute and its implementing regulations, 49 CFR part 1249, the ICC collected data on an annual and quarterly basis from freight and passenger motor carriers. The program collected data on many aspects of the motor carrier industry including financial, employee, and operating statistics.

Before 1980, the ICC required detailed financial reports from all classes of motor carriers with annual revenues over \$500,000. The reporting requirements reflected the ICC's close economic regulation of the industry. In the years following trucking deregulation, the ICC substantially reduced reporting requirements. It created classes of reporting carriers based on revenues, raised the revenue levels for the various carrier classes, and reduced the information required for each class.

The quality of the data in the latter years of ICC administration declined considerably, due to constraints on resources needed for support and enforcement. Regulatory use of the data by the Federal government has dwindled and is today, as far as BTS knows, almost nonexistent. BTS is uncertain as to the extent of use for statistical purposes or the value of the data as collected. Aggregate data have been and continue to be published. Unless otherwise prohibited by law, individual carrier reports are made available to the public.

For motor carriers of property, the current regulations create three classes of carriers based on revenue. Class I carriers are those with annual operating revenues of \$10 million or greater and they file annual report form M1 and quarterly report form QFR. Class II carriers have annual operating revenues of between \$3 and 10 million and file annual report form M2. Class III carriers have annual operating revenues of less than \$3 million and are not required to file any financial reports. The term

"motor carriers" used here includes only common and contract carriers—those providing motor vehicle transportation for compensation. Private motor carriers—a retail store's own fleet, for example—are excluded from the program.

The ICC Termination Act of 1995, which went into effect January 1, 1996, abolished the ICC and transferred some former ICC functions to the Department of Transportation (DOT). The Secretary of Transportation delegated responsibility and authority for the motor carrier financial data reporting program to DOT's Bureau of Transportation Statistics (BTS). Since Congress preserved the data collection provisions, albeit with some differences, the regulations remain in effect until "modified, terminated, superseded, set aside, or revoked" by BTS. That is, the program remains current and DOT will continue collecting motor carrier financial data as was done when the ICC administered the program.

Meanwhile, DOT is to redefine the reporting requirements within the bounds of the Act. Revision is necessary because the Act changed the laws governing data collection slightly. Similar to the old legislation, the Act requires DOT to collect certain data from motor carriers of property and motor carriers of passengers.

The Secretary shall require Class I and Class II motor carriers to file with the Secretary annual financial and safety reports, the form and substance of which shall be prescribed by the Secretary; except that, at a minimum, such reports shall include balance sheets and income statements.

However, the earlier statute did not explicitly charge ICC to collect information relevant to safety. The Act also allows DOT to collect certain other data as needed.

The Secretary may require motor carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations.

In designing the reporting program, DOT must consider, pursuant to the Act: (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. Congress has also explicitly called on DOT to "streamline and simplify" reporting requirements to the maximum extent practicable. BTS notes that the data needs of the public and private sectors have changed, and the technology to

collect, process, and disseminate data is much improved. Further, as part of the Regulatory Reinvention Initiative, the President asked that agencies reduce by half the frequency of reports that the public is required to provide.

Unlike the previous legislation, the Act authorizes two types of exemptions from the reporting requirements. Each exemption is based on certain criteria and is granted for a three-year period. The first is an exemption from filing report forms. The requestor "must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available." The second is an exemption from public release of data reported by the carrier. Similar to the other exemption, the requestor must demonstrate that "the exemption requested is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5." Further, the requestor must not be a publicly held corporation and must not be subject to financial reporting requirements of the Securities and Exchange Commission.

As it redesigns the data collection program under the Act, BTS will seek to determine the government and private needs for motor carrier financial and operating data and how to balance these needs against the burden on respondents. This rulemaking will form the basis for addressing these questions, as well as others that may be identified as this process continues. When complete, the Bureau hopes to resolve: (1) Which motor carriers should report; (2) what data items should be collected; (3) how often data should be collected; and (4) whether BTS should release carrier-specific data in addition to aggregate data and, if so, what entities should have access.

Pursuant to the Negotiated Rulemaking Act, 5 U.S.C. 561-570, the agency is considering forming a negotiated rulemaking committee. The agency believes that this approach is most likely to lead to a program that provides the government with the data it needs for industry oversight while minimizing the impact on respondents. Unlike traditional, informal notice and comment rulemaking, this process would allow for the open exchange of ideas and information among and between parties with an interest in the outcome of this issue. The agency believes that in adopting this approach, the process would lead to creative, innovative approaches to resolving issues that might not emerge through

the individual efforts of commenters to a docket. The process would still result in the promulgation of a notice of proposed rulemaking. This would provide an opportunity for comment by other interested parties and the general public, but the initial proposal published for comment would reflect the exchange of ideas and differing proposals that occur in negotiations. One result of the negotiations would be better informed providers and users of motor carrier data with a fuller understanding of the costs and benefits of the various methods for collecting and utilizing motor carrier financial and operating information.

Negotiated Rulemaking Process— Conveners

As provided for in 5 U.S.C. 563(b), a convener assists the agency in identifying the persons or interests that would be significantly affected by the proposed rule. The convener conducts discussions with representatives of such interests to identify the issues of concern to them and to ascertain the feasibility of establishing a negotiated rulemaking committee.

BTS retained the services of an attorney working for the United States Coast Guard to act as a convener and provide advice on the feasibility of using a negotiated rulemaking process for this rule. The convener met with BTS officials to review background information on the issues, including the history of the program, potential interested parties, and agency objectives.

The convener attempted to develop the range of interests that would be affected by the rule and identify individuals who would be able to represent or articulate those interests. The convener then sought to interview those individuals to determine their views on the issues involved and whether they would be interested in participating in the negotiated rulemaking. Each party was also asked if there were other individuals or groups which should be contacted and these additional parties were interviewed. Based upon these interviews, the convener submitted a convening report in October 1996 to BTS recommending that the agency proceed with the negotiated rulemaking process.

Determination of Need for a Negotiated Rulemaking Committee

The purpose of a negotiated rulemaking committee is to develop consensus on a proposed rule. "Consensus" means the unanimous concurrence among the interests represented on the negotiated

rulemaking committee unless the committee explicitly adopts some other definition. This requirement also means that the agency itself participates in the negotiations in a manner similar to that of any other party.

Before establishing such a negotiated rulemaking committee, the Negotiated Rulemaking Act (5 U.S.C. 563(a)) directs the head of an agency to consider whether:

1. There is a need for the rule;
2. There are a limited number of identifiable interests that will be significantly affected by the rule;
3. There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent those interests and are willing to negotiate in good faith to reach a consensus on a proposed rule;
4. There is a reasonable likelihood that a committee will reach consensus on the proposed rule within a fixed period of time;
5. The negotiated rulemaking will not unreasonably delay the issuance of the notice of proposed rulemaking and the final rule;
6. The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and
7. The agency, to the maximum extent possible, consistent with its statutory authority and legal obligations, will use the consensus of the committee as the basis for the rule proposed by the agency for notice and comment.

BTS believes that all of the requisite negotiated rulemaking factors are satisfied with regard to redesigning the motor carrier data collection program and that the negotiating process could provide significant advantages over conventional informal rulemaking. This determination is based on the convener's report. There is broad consensus among the parties contacted by the convener that the data collection program in place today does not serve current users' needs, warranting changes in the types of data collected as well as the universe of reporting carriers. The potentially affected interests are limited in number; there are clearly fewer than 25 distinct interests that would be affected by the rule. A balanced committee representing the various interests at stake in this matter can be empaneled. The parties contacted by the convener have expressed their interests in discussing the issues and believe that there is a strong likelihood of reaching consensus on the issues within a reasonable period of time. BTS believes that these negotiations would not delay, but

expedite the rulemaking process since the negotiations would enable the agency to benefit from the committee members' practical, first-hand insights and knowledge into what data are needed for what purposes, and how these data can be most efficiently obtained. The information BTS hopes to gain would be valuable to rulemaking even if full consensus is not reached. Further, BTS has a much greater chance of obtaining this information and resolving the controversies through negotiated rulemaking than through informal notice and comment rulemaking. The agency is committed to facilitating the negotiated rulemaking process and will devote the necessary resources, including technical assistance, to the Committee. The member or members of the Committee representing the agency shall participate in the deliberations and activities of the Committee with the same rights and responsibilities as other members of the Committee, and shall be authorized to fully represent the agency in discussions and negotiations of the Committee. The agency, to the maximum extent possible, consistent with its statutory authority and legal obligations, will use the consensus of the Committee as the basis for the rule proposed by the agency for notice and comment.

Therefore, based on this analysis of the seven factors mentioned above, the agency has concluded that the use of the negotiated rulemaking procedure in this case is in the public interest.

Potential Topics for the Negotiated Rulemaking Process

Based on the interviews conducted with potential committee members and the report provided by the convener, BTS proposes consideration of the following issues in the negotiated rulemaking process.

1. What financial and operating information about the motor carrier industry and individual motor carriers is needed by the Federal government, the private sector, academia, and the general public for statistical purposes?
2. What financial and operating information about the motor carrier industry and individual motor carriers is needed by the Federal government for the purpose of promoting safety?
3. What other sources exist to provide needed data?
4. What approach to data collection provides the optimum balance between minimizing the reporting burden to motor carriers on one hand and meeting governmental and other data needs on the other?

4. What approach to data use provides the optimum balance between preventing competitive harm and preserving confidential business information and trade secrets on one hand and meeting governmental and other data needs on the other?

5. What categories of reporting and non-reporting motor carriers should be created? Should all carriers within a category report or just a sample? What data items should each category report? How often should the data items be reported?

6. In addition to aggregate data, what carrier-specific data should be made available? What entities, inside and outside the Federal government, should have access to carrier-specific data?

Potential Participants Who Were Interviewed by the Convener

The following entities were identified as interested parties that should be included in the negotiated rulemaking process either directly as members of the Committee or as a part of a broader caucus of similar or related interests: Government Agencies

- U.S. Department of Transportation Carriers
- American Trucking Associations Drivers
- International Brotherhood of Teamsters Insurance
- American Insurance Association
- Central Analysis Bureau, Inc.
- Industry Analysts
- Transportation Technical Services
- University of Michigan Program on the Trucking Service Industry

Proposed Agenda and Schedule

BTS anticipates that the negotiated rulemaking committee will hold six two-day meetings, approximately once a month. The first committee meeting will focus on such matters as: determining if there are additional interests that should be represented on the Committee; identifying issues to be considered; and setting ground rules, a schedule, and an agenda for future Committee meetings.

Administrative Support

BTS will select and fund a facilitator, who is neutral, has the relevant skills, and is acceptable to all participants. BTS will also supply logistical, technical, and administrative support to the Committee. The meetings will be held in Washington, D.C., where a majority of the prospective Committee members are likely to be located. In general, Committee members will be responsible for their own expenses, but BTS will consider requests for reimbursement in accordance with 5 U.S.C. 568(c).

Applications for Membership on Committee

BTS is soliciting comments on this proposal to establish a negotiated rulemaking advisory committee, on the proposed membership of the Committee, and on the proposed issues for consideration by the Committee. Persons may apply or nominate another person for membership on the Committee in accordance with the following procedures:

Persons who will be significantly affected by the proposed rule and who believe that their interests will not be adequately represented by any person on the previously discussed list of potential participants may apply for, or nominate another person for, membership on the negotiated rulemaking committee. Each application or nomination shall include:

1. the name of the applicant or nominee and a description of the interests such person shall represent;
2. evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;
3. a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration; and
4. the reasons that the persons specified in this notice do not adequately represent the interests of the person submitting the application or nomination.

As a general rule, the Federal Advisory Committee Act provides that no advisory committee may meet or take any action until an approved charter has been filed with the appropriate House and Senate committees with jurisdiction over the agency using the committee. Only upon the Secretary of Transportation's approval of the charter and the list of organizations or interests to be represented on the Committee and the filing of the charter will BTS form the Committee and begin negotiations.

After review of the comments received in response to this notice, BTS will issue a final notice announcing formation of the Committee, its members, the issues for consideration, and the date of the first Committee meeting.

Authority: 5 U.S.C. 561-570.

Issued in Washington, DC, on November 20, 1996.

Robert A. Knisely,

Deputy Director, Bureau of Transportation Statistics.

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