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 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


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). Before the ICC, 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 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 agency can create 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
care 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
dividuals 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
concordance 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 how 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?

5. 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?

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, D.C., on November 20, 1996.

Robert A. Knisely,
Deputy Director, Bureau of Transportation Statistics.