

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Motion of United Airlines, Inc. for Confidential :
Treatment Under Section 302.12 : Docket DOT-OST-1995-675
(Form 41, Schedule B-43) :

MOTION OF
UNITED AIRLINES, INC.
TO WITHHOLD INFORMATION
FROM PUBLIC DISCLOSURE

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March 30, 2020

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United¹ moves, pursuant to Rule 12 of the Department's Rules of Practice (14 C.F.R. § 302.12), for confidential treatment of certain information contained in Schedule B-43 of United's Form 41 filing for the calendar year ending December 31, 2019. The Schedule for which United requests confidential treatment has been submitted electronically using the Department's eSubmit system in accordance with prescribed procedures.² United respectfully requests that the data submitted be withheld from public disclosure for a period of at least 10 years.

United states as follows in support of this motion:

1. The information sought to be withheld from public disclosure is being disclosed to the Department pursuant to Part 241 of the Department's economic regulations. This information details certain cost data for United's airframes and aircraft engines as of December 31, 2019 and is contained in columns M, N, O, and P of United's Schedule B-43 (Inventory of Airframes and Aircraft Engines) (the "Confidential Schedule B-43 Information"). United has filed Schedule B-43 with all the fields completed, including cost data,

¹ Common names are used for airlines.

² See Submitting Airline Data Via the Internet; Final rule, 75 Fed. Reg. 41579 (Jul. 16, 2010); see also <https://esubmit.rita.dot.gov/Warning.aspx>.

via the Department's eSubmit system.³

2. The Confidential Schedule B-43 Information is protected from public disclosure under various exemptions to the Freedom of Information Act, including 5 U.S.C. §§ 552(b)(3) and (b)(4). Exemption 4 protects from public disclosure information that is “(1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential.” *Gulf & Western Indus., Inc. v. United States*, 615 F.2d 527, 529 (D.C. Cir. 1979) (*citations omitted*). The Confidential Schedule B-43 Information satisfies this standard. Public disclosure of such information not only would inflict substantial competitive harm on United but also could “impair the Government’s ability to obtain necessary information in the future. . . .” *Nat’l Parks & Conservation Ass’n v. Kleppe*, 547 F.2d 673, 677-78 (D.C. Cir. 1976) (*quoting Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 765-70 (D.C. Cir. 1974)).

3. In addition, the Confidential Schedule B-43 Information is protected from disclosure by Exemption 3, which pertains to information specifically protected from disclosure by another federal statute, such as 49 U.S.C. § 40115. That statute requires the Department to withhold information that would “prejudice the United States Government in preparing and presenting its position in international negotiations” or “have an adverse effect on the competitive position of an air carrier in foreign air transportation.” *See also* 49 U.S.C. § 46311 (prohibiting the release of information acquired by the Department “when inspecting the records of an air carrier” or “information that is withheld from disclosure under section 40115”) and 18 U.S.C. § 1905 (prohibiting the release of sensitive commercial and financial information provided to the government in the course of “any examination or investigation”). As all three of

³

See supra note 2.

those statutory provisions apply in this case, the Confidential Schedule B-43 Information is also protected from public disclosure by Exemption 3.

4. The Department has previously determined that the confidential and competitively sensitive data contained in carriers' Schedule B-43 filings is entitled to confidential treatment, and United relies on this prior determination here.⁴

WHEREFORE, United respectfully requests that the confidential information contained in Schedule B-43 of its Form 41 report for the calendar year ending December 31, 2019 be withheld from public disclosure for at least 10 years.

Respectfully submitted,

JENNER & BLOCK LLP

A handwritten signature in black ink, appearing to read 'Marc Warren', with a stylized flourish at the end.

Marc Warren

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March 30, 2020

Counsel for
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⁴ See, e.g., Confidential Business Information Reporting Requirements–BTS' Response to Public Comments, 80 Fed. Reg. 33015 (Jun. 10, 2015) (granting an additional 10 year confidentiality period for Schedule B-43 data and indicating that BTS will seek regulatory language to delete the requirement for collecting airframe and engine cost data).