

*Surface Transportation Board
Washington, D.C. 20423-0001
Office of Economics*

November 20, 2025

Jason Tutrone
Thompson Hine
1919 M Street, N.W., Suite 700
Washington, D.C. 20036-3537

Re: Waybill Request WB25-33

Dear Mr. Tutrone:

The Surface Transportation Board (STB) has received your request under 49 C.F.R. § 1244.9(c) dated June 9, 2025, for permission to access the confidential Carload Waybill Sample (CCWS) for the year 2023 CCWS with unmasked revenues at the 5-digit Standard Transportation Commodity Code (STCC) level with specified fields. You requested, on behalf of yourself and Escalation Consultants Inc., the data to prepare a report quantifying, by 2-digit STCC, the total aggregated rail cost advantage or disadvantage for rail shipments of American products compared to products originating at import terminals. Notice of your request was published in the Federal Register on June 16, 2025 (90 Fed. Reg. 25420), and an objection from American Association of Railroads (AAR) was received on June 30, 2025. This request was denied on July 22, 2025. You appealed this decision on August 1, 2025.

On September 29, 2025, the Board denied your appeal but directed that your request for access be treated as renewed and be granted. Pursuant to that directive, I am now granting your request.

You will therefore have access to the CCWS for the year 2023 with unmasked revenues for railroad traffic as specified in your June 9, 2025 request. These data may only be used for the purpose detailed in your request and may not be used for any other purpose such as private, commercial consulting. ***This approval becomes effective when signed agreements from the individuals listed below are received by the STB:***

- a. *Jeffrey O. Moreno – Thompson Hine*
- b. *Jason D. Tutrone – Thompson Hine*
- c. *Richard M. Couch – Thompson Hine*
- d. *Jay Roman – Escalation Consultants*
- e. *Cory Roman – Escalation Consultants*
- f. *Cathy Ferguson – Escalation Consultants*
- g. *Keith Netsman – Escalation Consultants*

Waybill Agreement WB25-33

The expiration date for this agreement is November 30, 2026. Unless you seek and obtain a renewal from the STB, this agreement upon expiration obligates you to return or destroy all copies of the data (see item 6 of the agreement).

Several aspects of the CCWS limit the conclusions that may be drawn from analysis of the CCWS: 1) the CCWS is a sample, and 2) the CCWS is based on terminating shipments from relatively large carriers. Only those railroads with more than 4,500 annual terminating carloads are included in the sample. The limited sampling of small railroads may have a substantial effect on studies covering areas served predominately by non-sampled railroads. For additional information on the CCWS, see *Reference Guide* @ <https://www.stb.gov/reports-data/waybill/> on the Board's website.

The rules for release of waybill data are codified at 49 C.F.R. § 1244.9. The CCWS contains confidential shipper and railroad data. As a result, the CCWS is commercially sensitive and has the potential to cause competitive harm to shippers and railroads if disclosed. Therefore, the following agreement must be signed, and a copy of the signature pages returned to the STB, before any waybill data can be used.

Your signature acknowledges your agreement to comply with the following:

1. You will use the CCWS data released to you solely for the purpose requested.
2. Absent permission from the STB, you shall make the information contained in the CCWS (including work product and analyses derived from the CCWS) available only to the individuals identified above. The STB may approve access for additional individuals within your entity working on the particular project or study requiring the waybill data. Each such additional individual must review and sign this agreement and return a copy of the signature page to the STB.
3. You will not release any CCWS data (including work product and analyses derived from the CCWS) to anyone who has not signed this agreement and been approved for access by the STB until the STB has had the opportunity to review the materials proposed for disclosure to ensure confidentiality.
4. You acknowledge that, in addition to the restrictions described in paragraphs 2 and 3 above, you are bound by the STB's rules governing use and disclosure of CCWS data. These include the confidentiality provisions of 49 C.F.R. §§ 1244.9(f)(1)-(3), which require that "[a]ny shipper data obtained from the Waybill Sample shall not be publicly released unless the data are aggregated to include at least three shippers." In addition, you agree not to disclose CCWS data that permits identification of an individual railroad.

Waybill Agreement WB25-33

5. You will refer any requests for CCWS data in your possession (including work product and analyses derived from the CCWS) to the STB for processing and will inform the requesting party of such referral to the STB. If you are compelled by law or order of a governmental or judicial body to release CCWS data, you shall notify the Board in writing within three days of any determination that CCWS data must be released, and in no event later than five days before the CCWS data is scheduled to be released.
6. In order to retain access to the CCWS beyond the expiration date specified above, you must submit a written request for an annual extension of the agreement no later than thirty days prior to the expiration date and the renewal request must be approved by the Office of Economics. **If an annual agreement is not signed and approved, you must certify by no later than the expiration date that all CCWS data (including all work product and analyses derived from the CCWS) obtained under this agreement has been destroyed or returned to the STB.**
7. Failure to request an extension (if necessary), or destroy or return CCWS data when required, may prevent any future release of CCWS data to you. Violations of this agreement may subject you to sanctions by the Board.

After all parties have signed and returned this agreement, please contact waybill@stb.gov to make the necessary arrangements to have a copy of the data sent to you. The STB will provide the data by email through file transfer protocol. Prior payment of processing and mailing cost of **\$504 (\$72 per confidentiality agreement)** is required. Payment can be made through the Board's electronic payment system, Pay.gov. Your payment through Pay.gov will generate a unique Pay.gov transaction number, which you will need to provide with your signed agreement. Pay.gov accepts payment through bank accounts, credit cards, debit cards with a MasterCard or Visa logo, and digital wallet. Payment can also be made directly to the Board via check or money order.

Sincerely,

**FRANCIS
O'CONNOR**

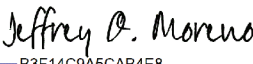
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Date: 2025.11.20
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Francis X. O'Connor
Acting Director
Office of Economics

Waybill Agreement WB25-33

I have read and understand the conditions for release of the CCWS data. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. No later than thirty days before the agreement expires, I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy all CCWS data and certify that I have done so. I have the authority to sign this agreement.

By: Jeffrey O. Moreno

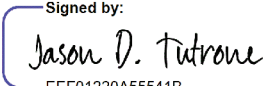
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Signature

Waybill Agreement WB25-33

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By: Jason D. Tutrone

Signed by:

Signature

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Waybill Agreement WB25-33

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By: Richard M. Couch

Signed by:

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Signature

Waybill Agreement WB25-33

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By: Jay Roman

Signed by:

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Signature

Waybill Agreement WB25-33

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By: Cory Roman

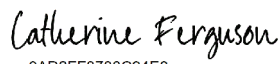
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Cory Roman
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Signature

Waybill Agreement WB25-33

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By: Cathy Ferguson

Signed by:

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Signature

Waybill Agreement WB25-33

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By: Keith Netsman

Signed by:

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Signature

June 9, 2025

Kristen Monaco, PhD
Director
Office of Economics
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: Request for Access to Confidential Carload Waybill Sample

Dear Dr. Monaco:

Thompson Hine, on behalf of itself and Escalation Consultants Inc. (collectively, “Requestors”), requests access to the 2023 confidential Carload Waybill Sample (CCWS) with unmasked revenues at the 5-digit STCC level. Requestors make this request under 49 C.F.R. § 1244.9(c).¹

I. Requesting Parties

Requestors are outside counsel and economic consultants, respectively, to the American Chemistry Council (ACC). ACC is a trade association representing more than 190 companies engaged in the business of chemistry. ACC members apply the science of chemistry to provide innovative products and services that make people’s lives better, healthier, and safer. As a \$633 billion enterprise, the business of chemistry is a key element in the nation’s economy, one of the largest exporting sectors, and one of the largest customers of the U.S. freight rail system.

II. Purpose

Requestors seek access to the CCWS to prepare a report quantifying, by 2-digit STCC, the total aggregated rail cost advantage or disadvantage for rail shipments of American products compared to products originating at import terminals. ACC will make this report publicly available to inform the Board and other government officials in ongoing and future government efforts to revitalize American industry.

¹ Requestors made a similar request in WB 25-18 that lacked sufficient detail about its purpose and justification and sought broad CCWS access. This new request includes a clarified purpose, a narrower scope of requested data, the detailed need for the data, and a narrower analysis output that will preclude use of the requested data for impermissible commercial purposes.

Jason.Tutrone@thompsonhine.com Fax: 202.331.8330 Phone: 202.263.4143

Dr. Kristen Monaco

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A. The proposed analysis will inform government officials as they actively implement the President’s America First agenda to promote American production.

The rail cost disadvantage borne by American products is critical to current public policy and regulatory initiatives. This disadvantage has a direct impact on American production, which is at the heart of the President’s America First agenda.

The President has repeatedly emphasized that Federal policy must focus on promoting American manufacturers, workers, and communities. The Memorandum on America First Trade Policy, Daily Comp. Pres. Docs., 2025 DCPD No. 00145 (Jan. 20, 2025), directs the executive branch to engage in trade and economic security activities that “—above all—benefit[] American workers, manufacturers, farmers, ranchers, entrepreneurs, and businesses.” The Memorandum on Reciprocal Trade and Tariffs, Daily Comp. Pres. Docs., 2025 DCPD No. 00260 (Feb. 13, 2025), further directs the executive branch to counter “non-reciprocal trade relationships” that undermine U.S. competitiveness. Likewise, Executive Orders 14154 (Unleashing American Energy), 14192 (Unleashing Prosperity Through Deregulation), 14225 (Immediate Expansion of American Timber Production), 14241 (Immediate Measures To Increase American Mineral Production), and 14213 (Establishing the National Energy Dominance Council) seek to remove domestic production bottlenecks, eliminate unnecessary regulatory burdens on American production, and empower American producers.

In addition, the Executive Order on Reducing Anti-Competitive Regulatory Barriers further demonstrates the Administration’s commitment to revitalizing American production. Exec. Order No. 14,267, 90 Fed. Reg. 15,629 (Apr. 15, 2025). This order directs federal agency heads, including the Chairman of the Surface Transportation Board, to identify and eliminate regulations that create monopolies, restrict competition, or impose anti-competitive distortions on the free market. *Id.* § 3(a). It also provides an opportunity for the public to identify these regulations. *Id.* § 3(d). Targeting anti-competitive rules and practices reflects the Administration’s broader policy of ensuring that American manufacturers can compete with foreign manufacturers on a level playing field.

Collectively, these Presidential actions articulate a clear mandate to support the resurgence of American production. Freight rail plays an indispensable role in that effort. Many American producers depend on rail service in their supply chain or to reach customers at home and abroad. Rail rates ultimately show up in the prices for American products and can erode the very competitiveness that the President seeks to restore.

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Our proposed report will advance the President’s priorities by identifying rail cost disadvantages for American products. The results will guide government officials as they implement policies to remove impediments to fair competition and unleash American production.

Further, there is an urgent need for this report. In March, the Justice Department launched an Anticompetitive Regulations Task Force to advocate for the elimination of anticompetitive laws and regulations that “undermine free market competition and harm consumers, workers, and businesses.” Press Release No. 25-310, U.S. Dep’t of Justice, Justice Department Launches Anticompetitive Regulations Task Force (Mar. 27, 2025), <https://www.justice.gov/opa/pr/justice-department-launches-anticompetitive-regulations-task-force>. The Task Force is particularly interested in seeking information about laws and regulations that make it more difficult for businesses to compete effectively. *Id.* It cites anticompetitive regulations in transportation markets, including rail, are cited as an area of particular interest due to the impacts on American households, including raising the cost of “fuel[] and a variety of other products.” *Id.* Although the report will not be produced in time for the initial public comment period, the Task Force is expected to continue “supporting ongoing efforts across the Trump Administration to unleash competition.”

Also, in parallel with the President’s directives, the Board has announced its intent to pursue regulatory reform efforts. In May, the Board announced that it added two experts as senior advisors to the Chairman to “help drive reforms” and “ensure a more efficient and effective regulatory environment for the nation’s surface transportation network.” Press Release No. 25-18, STB, STB Adds Experts to Drive Efficiency and Regulatory Reform Efforts (May 12, 2025), <https://www.stb.gov/news-communications/latest-news/pr-25-18/>. The Chairman has also stated that that “the Board must eliminate unsound and unduly burdensome regulations while facilitating access to markets on reasonable terms.” Press Release No. 25-13, STB, Chairman Fuchs Provides Updates on Deregulatory Efforts (March 14, 2025), <https://www.stb.gov/news-communications/latest-news/pr-25-13/>. The proposed report will provide important insight for these efforts by identifying the extent that rail pricing, which is within the Board’s regulatory purview, impacts market access for American products.

To be clear, ACC’s purpose is to identify rail cost differentials for all American products that move by rail, not just chemicals. ACC’s report will aggregate data at the 2-digit STCC level for all commodities with shipments originating both at import terminals and U.S. production facilities. This allows policymakers to see the total rail cost differential for each main commodity grouping so that they can pursue tailored solutions and make well informed decisions.

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B. This is not a private, commercial purpose.

ACC is not seeking access to the CCWS for the type of private, commercial purpose that the Board has deemed impermissible. Instead, as explained above, it seeks access to the CCWS solely to support the Trump Administration's implementation of the President's America First policies and to inform the Board as it carries out its regulatory mission to promote competition in the rail industry. The Board has made CCWS data available under similar circumstances, when doing so would further the Board's regulatory role. *See Request for Waybill Data*, WB 20-40, slip op. at 1 (Sept. 4, 2020) (Director's decision).

In a line of recent waybill decisions, the Board denied waybill access for the requestors' own private, commercial purpose. *Request for Waybill Data (Trinity Req. 2)*, WB 21-53 (STB served Jan. 10, 2023); *Request for Waybill Data (Trinity Req. 1)*, WB 20-50 (STB served June 17, 2021); *Request for Waybill Data (U.S. Wheat)*, WB 20-40 (STB served Nov. 20, 2020); *Request for Waybill Data (NC Soybean)*, WB 20-23 (STB served Sept. 24, 2020). These denials established a Board policy that "it will not permit CCWS data that is collected to further [its] regulatory mission to be converted to private, commercial use." *Trinity Req. 1*, slip op. at 3. Each denial involved access to the confidential carload sample for market-facing uses benefitting the requestor or its members. In *U.S. Wheat*, the requestor sought access to 35 years of CCWS data to identify detailed rail cost information for wheat shipments from the U.S. to Mexico. *U.S. Wheat*, slip op. at 1. The requestor's goal was to identify strategies to increase purchases of American wheat by Mexican millers. *Id.* In *Trinity Req. 1* and *Trinity Req. 2* (the *Trinity Requests*), the requestor was a railcar manufacturer who sought over 15 years of CCWS data to enhance its understanding of the railcar market and its ability to design equipment and services. *Trinity Req. 1*, at 2. In *NC Soybean*, the requestor sought 20 years of CCWS data so North Carolina soybean growers could understand the rail costs for out-of-state growers to sell to local buyers and obtain more favorable prices. *NC Soybean*, at 1-2.

This request for waybill access is materially different. *First*, it is solely for policy and regulatory purposes. As explained above, Requestors will use their access to develop information that is directly relevant to ongoing policy and regulatory initiatives that directly implicate Board regulation. The Board has granted CCWS access under similar circumstances, where it was related to Board initiatives. *Request for Waybill Data*, WB 17-44 (STB served Mar. 23, 2018). Further, aggregating the results at the 2-digit STCC level eliminates the possibility that shippers could use the data for pricing or any other commercial purpose.

Second, the proposed analysis does not pose a risk of competitive harm. Because it will show total rail costs at an aggregate level for each 2-digit STCC, it does not provide any single shipper or subset of shippers with a competitive information advantage. Instead, it will highlight broad

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categories of American-produced commodities that face a competitive disadvantage due to rail costs. Commodities within those categories may face the disadvantage in varying degrees or not at all. Further, ACC will make the analysis public so that all shippers, policy makers, and the public will have equal access to it.

Third, the requested access does not pose material confidentiality concerns. Unlike the requests in *NC Soybean*, *U.S. Wheat*, and *Trinity Requests*, which sought 15-35 years of data, this request involves data for a single year. On top of that, only ACC's outside counsel and consultant would have access to the raw data. While limited access to outside counsel and consultants, alone, is not a justification for release of the data,² the combination of this, the limited nature of the request, and the important need for the data to inform regulatory policy demonstrate that any confidentiality risks from this request are small compared to the potential benefits of the data for informing government policy and regulation.

III. Justification

Under 49 C.F.R. 1244.9(e)(1)(iii), Requestors must explain why the analyses it wishes to perform require the type of detailed shipment-by-shipment information that is contained in the CCWS.

Requestors seek access to the CCWS because the proposed analysis would be inaccurate and uninformative absent the detail in the CCWS. Critical information for the analysis, including origins, carload volumes, rates, and railroads' variable cost for movements, are not available from any other source in the level of accuracy necessary for this analysis.

The analysis involves three main steps, as follows:

Step 1: Escalation Consultants will construct an import-terminal benchmark for each 5-digit STCC with import-terminal origin traffic. This involves using CCWS origin data to identify shipments originating at import terminals. For each 5-digit STCC with this import-terminal origin traffic, Escalation Consultants will calculate an average revenue-to-variable-cost (R/VC) ratio and the average miles for this traffic.

Step 2: For each domestic-origin movement of a 5-digit STCC that Escalation Consultants identifies under Step 1 as having import-terminal origin traffic, Escalation Consultants will quantify the rail cost differential compared to the import-terminal benchmark. First, for each 5-digit STCC with import-terminal origin traffic, Escalation

² *U.S. Wheat*, slip op. at 3.

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Consultants will use CCWS origin data to identify each domestic-origin movement. Second, CCWS will determine the expected rail cost for each domestic-origin movement as if it had originated at an import terminal by multiplying the average R/VC for import-terminal origin moves from Step 1 against the movement's total variable cost from the CCWS. Third, Escalation Consultants will subtract this expected domestic movement cost from the rail revenue for the movement, determined using CCWS revenue data. This will produce a movement-specific cost differential.

Step 3: Escalation Consultants will aggregate the movement-specific rail-cost differential from Step 2 by 2-digit STCC. Escalation Consultants will sum, by 2-digit STCC, the rail cost differentials that it calculates under Step 2.

The final work product of this analysis will be the aggregated rail-cost differential for domestic-origin movements by 2-digit STCC. Specifically, for each 2-digit STCC, Escalation Consultants will identify the total nationwide rail cost differential of "y" dollars. Requestors will not disclose any data that Escalation Consultants uses to generate this aggregated rail cost figure.

Accordingly, this analysis requires CCWS data fields showing origins, mileage, unmasked movement revenue, and variable costs. The specific fields that Requestors seek are:

- Unique Serial Number
 - Number of Carloads
 - Commodity Code
 - Freight Revenue
 - Miscellaneous Charges
 - Type of Move
 - Origin FSAC
 - Theoretical Expansion Factor
 - Termination BEA Area
 - Expanded Carloads
 - Expanded Total Revenue
 - Total Distance
 - Origin SPLC Code
 - Fuel Surcharge
 - Exact Expansion Factor
 - Total Variable Cost
-

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Although the Public Use Waybill Sample (PUWS) also contains some of this information, it is not suitable for the proposed analysis for several reasons.

- Its reporting of origins using Business Economic Areas precludes the location-specific analysis necessary to identify moves that originate at import terminals instead of domestic origins. A single Business Economic Area could cover an import terminal and multiple domestic origins.
- It does not contain unmasked revenues. Since the purpose of this analysis is to identify rail transportation costs, accurate revenue data is critical.
- It does not contain variable cost information. As indicated above, variable cost information is necessary to generate average R/VC values for import traffic and determine the rail cost for domestic-origin movements if they had originated at import terminals. This promotes an apples-to-apples comparison of rail costs for domestic and import traffic.

In fact, absent the requested CCWS data, Requestors would have no practical alternative to obtain revenue, variable cost, and origin data necessary for a valid analysis of rail transportation costs.

IV. Confidentiality

Requestors will keep the CCWS data confidential consistent with 49 C.F.R. § 1244.9(f) and the confidentiality undertaking that the Board customarily requires. Requestors will not release the data to ACC or the public, except that they may provide aggregated data at the 2-digit STCC level as described above.

If you have any questions about this request, please contact me.

Very truly yours,

/s/Jason D. Tutrone

Jason D. Tutrone

SERVICE DATE – SEPTEMBER 29, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. WB 25-33

REQUEST FOR WAYBILL DATA

Digest:¹ This decision denies an appeal of a ruling by the Director of the Office of Economics that denied a request for access to the Confidential Carload Waybill Sample. In light of an intervening announcement of a relevant Board initiative, this decision also directs that the request for access be treated as renewed and be granted.

Decided: September 29, 2025

Thompson Hine LLP, a law firm, appeals a decision by the Acting Director of the Board's Office of Economics that denied a request for access to the Confidential Carload Waybill Sample (CCWS). Thompson Hine sought access so that it and a consulting firm could prepare an economic report for their client, the American Chemistry Council (ACC). ACC intended to publish the report for use by government policymakers, including the Board, as part of the trade group's public policy advocacy. The Director denied the request on the ground the request proposed a "private, commercial use" of CCWS data prohibited by Board precedent and was unconnected to a Board initiative or regulatory proceeding. See Request for Waybill Data (U.S. Wheat), WB 20-40 (STB served Nov. 20, 2020); Request for Waybill Data (Trinity), WB 20-50 (STB served June 17, 2021).

The Director's decision was not a clear error of judgment or manifest injustice under the Board's precedent and given the arguments raised by the parties at the time. But the Board has since undertaken a new initiative to which the proposed report would be relevant and on which the Board has invited stakeholder input. Treating the appeal as a renewal of the request for CCWS access, the Board finds that the request (as construed in the appeal) is sufficiently related to an existing Board initiative and is aimed at assisting the public and the Board in that effort, therefore removing it from the Board's prohibition on private, commercial uses. Accordingly, the Board directs that the renewed request be granted.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

On June 9, 2025, Thompson Hine and Escalation Consultants Inc. submitted an “other user” request under 49 C.F.R. § 1244.9(c) for access to the 2023 CCWS with unmasked revenues at the 5-digit Standard Transportation Commodity Code (STCC) level. (Request 1.) They made the request in their capacities as outside counsel and economic consultants to ACC, “a trade association representing more than 190 companies engaged in the business of chemistry.” (*Id.*) Their stated purpose was “to prepare a report quantifying, by 2-digit STCC, the total aggregated rail cost advantage or disadvantage for rail shipments of American products compared to products originating at import terminals”—that is, to report on “the rail cost disadvantage borne by American products” relative to foreign ones.² (*Id.* at 1-2.) They stated that ACC would “make this report publicly available to inform the Board and other government officials in ongoing and future government efforts to revitalize American industry.” (*Id.*) They also cited certain “public policy and regulatory initiatives” to which they said the planned report on domestic-foreign trade cost imbalances would be relevant, including:

- Two presidential memoranda directing government action to address “unfair and unbalanced aspects of our trade with foreign trading partners,” Reciprocal Trade and Tariffs, 90 Fed. Reg. 9837 (Feb. 19, 2025); accord America First Trade Policy, 90 Fed. Reg. 8471 (Jan. 30, 2025);
- Five executive orders aimed generally at promoting domestic manufacturing and production, see Exec. Order 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 20, 2025); Exec. Order 14192, Unleashing Prosperity Through Deregulation, 90 Fed. Reg. 9065 (Jan. 31, 2025); Exec. Order 14225, Immediate Expansion of American Timber Production, 90 Fed. Reg. 11,365 (Mar. 1, 2025); Exec. Order 14241, Immediate Measures to Increase American Mineral Production, 90 Fed. Reg. 13,673 (Mar. 20, 2025); Exec. Order 14213, Establishing the National Energy Dominance Council, 90 Fed. Reg. 9945 (Feb. 14, 2025); and
- An executive order directing federal agencies to identify and eliminate anticompetitive regulations, see Exec. Order 14267, Reducing Anti-Competitive Regulatory Barriers, 90 Fed. Reg. 15,629 (Apr. 15, 2025); see also Dep’t of Justice, Press Release No. 25-310, Justice Department Launches Anticompetitive Regulations Task Force (Mar. 27, 2025), <https://www.justice.gov/opa/pr/justice-department-launches-anticompetitive-regulations-task-force>.

(Request 2-3.)

The Board published notice of the request for access, see 90 Fed. Reg. 25,420 (June 16, 2025), and on June 30, 2025, the Association of American Railroads (AAR) filed a letter arguing

² Access would be limited to specifically named individuals at Thompson Hine and Escalation Consultants. (Request 5.) Any CCWS-derived data disclosed in the public report would need to be aggregated to include at least three shippers in compliance with the Board’s waybill confidentiality rules. See 49 C.F.R. § 1244.9(f).

that the request should be denied. According to AAR, the request was improper because “compar[ing] prices among different markets” is an inherently “commercial purpose” prohibited by Board precedent and because the request did not relate to “a specific Board proceeding.” (AAR Letter 2.)

On July 22, 2025, the Director denied the request. He determined that the proposed report constituted a private, commercial use prohibited by U.S. Wheat and Trinity because it had “the purpose of furthering [ACC’s] commercial and competitive interests,” even if it would ultimately be made public, and because it lacked a connection “to any particular Board initiative.” Director Decision, WB 25-33, slip op. at 1-2 (July 22, 2025). According to the Director, “merely citing very broad areas of potential Board interest is not sufficient.” Id. at 2.

Meanwhile, on July 21, 2025, the Board announced a Policy Review Team established by the Chairman “to meet with interested parties and gather and analyze policy proposals” for implementing the President’s economic directives described above and for “updat[ing] the STB’s regulatory framework to improve competition and reduce regulatory barriers.” STB Press Release No. 25-26, Chairman Fuchs Kicks Off Meetings on Improving Competition and Reducing Regulatory Barriers (July 21, 2025), https://www.stb.gov/wp-content/uploads/PR-25-26_d5c398.pdf. Given that less than twenty-four hours passed between the announcement and the Director’s decision in this matter, no party had argued that the announcement bore on the pending request for CCWS access.

Thompson Hine now appeals the Director’s decision to the Board under 49 C.F.R. § 1244.9(d)(4)(iii), citing the announcement of the Policy Review Team as a principal reason the request should have been granted. (See Appeal 4, 8-10.) AAR has filed an objection to the appeal. Thompson Hine has moved for leave to file a proposed reply, and AAR has responded in opposition.³

DISCUSSION AND CONCLUSIONS

The Director’s decision correctly apprehended the scope of the rule established in U.S. Wheat and Trinity. Under those decisions, the Board generally “will not make the CCWS available as a resource for private parties to mine for data and create commercial reports” (i.e., reports about market conditions). U.S. Wheat, slip op. at 5. That remains the case even if the only persons granted access are attorneys or consultants, id. at 3, and even without specific concerns regarding potential competitive harm, Trinity, slip op. at 3. And, as the Board now makes clear, that prohibition continues to apply even if the commercial report will ultimately be made public. To be sure, “the Board does occasionally, under appropriate circumstances, grant waybill access to individuals engaged in academic research” so that those individuals can publish reports or articles about market conditions that are not dissimilar in kind from what ACC

³ As a general matter, to promote the orderly and efficient administration of cases, the Board is more strictly enforcing 49 C.F.R. § 1104.13(c), the rule prohibiting replies to replies. See, e.g., Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025). Thompson Hine’s motion for leave to file a reply to AAR’s objection will therefore be denied.

proposes here. U.S. Wheat, slip op. at 3-4. But the Board has declined to extend that approach to commercial actors such as ACC’s members, which are themselves “participants in the markets they [seek to] study.” Id. at 4.

The Director’s decision also correctly recognized that the U.S. Wheat prohibition may not apply when the request is made in “connection to a[] particular Board initiative.” Director Decision, slip op. at 1. Requests designed to aid in responding to an express Board invitation for analysis or that are reasonably intended to further an existing regulatory initiative at the Board are not “private, commercial uses”; they primarily serve the Board and therefore the public. This understanding is generally consistent with pre-U.S. Wheat decisions that evaluate CCWS requests from market actors based on whether “there is [a] Board proposal (preliminary or otherwise)” to which the request is linked. Intervistas Study, EP 736, slip op. at 2 (STB served Feb. 28, 2018); see also Intervistas Study, EP 736, slip op. at 3 (STB served June 28, 2018) (“[I]t is not the Board’s standard operating procedure to distribute confidential information in the absence of a Board proposal or request for analysis.” (emphasis omitted)).

The Board concludes that the request in this case, as supplemented by the arguments and explanation on appeal, is sufficiently linked to a particular and important Board initiative. The Chairman created a Policy Review Team for the purpose of “meet[ing] with interested parties . . . to gather and analyze policy proposals that respond to [the President’s economic] initiatives.” Press Release No. 25-26, supra. Those initiatives include directives to promote domestic industries to better compete with imports and reduce regulatory burdens. See supra at p. 2. The results of ACC’s proposed study could help the Board better understand what regulatory changes it should consider to promote rail competition and reduce burdens, thereby potentially mitigating whatever “rail cost disadvantage” may be “borne by American products.” (Request at 1-2); see also Appeal 9; Press Release No. 25-26, supra. ACC’s proposed use fits within the Policy Review Team’s mandate.

Contrary to AAR’s suggestion (AAR Objection 4 & n.13), the Board has not always required a connection to a formal, docketed case for an “other user” request. In Request for Waybill Data (Thompson Hine), WB 17-44, slip op. at 1 (STB served March 23, 2018), the Board granted access to Thompson Hine and an economic consulting firm so that they could develop a new methodology for rate cases. No formal proceeding had been initiated; just the ongoing general Board endeavor to generate more effective rate-case methodologies.⁴ See id. at 5. Just as “the public interest [in that case wa]s served by permitting Requestors to use the CCWS to prepare a submission to the Board regarding potential [rate-case] alternatives,” id., the public interest here is served by allowing use of the CCWS to prepare a report responsive to the public policy questions teed up by the Policy Review Team. Nothing in U.S. Wheat was meant to hinder such regulatory input, particularly where the Board has expressly solicited it from

⁴ At the time of the initial request in Thompson Hine, Board members had written publicly about the need for new rate-case methodologies. E.g., Total Petrochemicals & Refining USA, Inc. v. CSX Transp., Inc., NOR 42121, slip op. at 46-47 (STB served Sept. 14, 2016) (Miller, concurring). By the time of the Board’s decision, the Board had convened an internal task force on the subject. Thompson Hine, WB 17-44, slip op. at 5.

stakeholders as the Board did in this case.⁵ The Board would therefore grant the request for CCWS access if it were made anew today.

That does not mean, however, that the Director’s decision to deny access was a “clear error of judgment” or “manifest injustice.” See 49 C.F.R. § 1011.6(b). Given the timing, no party cited the Policy Review Team initiative, which had been announced less than twenty-four hours before the Director issued his decision, as relevant to the request. Accordingly, the Director did not commit a clear error of judgment in concluding that the request related only to the “very broad areas of *potential* Board interest” described in the request, or in deeming that insufficient to warrant the release. Director Decision, slip op. at 2 (emphasis added).

Although the Board is denying the appeal, for the sake of administrative efficiency, the Board will construe Thompson Hine’s appeal as renewing its request for CCWS access in light of the intervening announcement of the Policy Review Team, and the Board will direct that the request be granted. See 49 U.S.C. § 10101(15); 49 C.F.R. § 1011.6(a)(2). Thompson Hine’s appeal invokes the Policy Review Team’s mandate as justification for its request, see Appeal 4, 8-10, and the Board now concludes that the request is justified on that basis. Requiring Thompson Hine to re-submit a new request would serve little purpose when the relevant facts and arguments are already before the Board.

It is ordered:

1. Thompson Hine LLP’s appeal is denied.
2. The Director of the Office of Economics is directed to treat the request for CCWS access filed in this docket as having been renewed in light of the announcement of the Policy Review Team. The Director is further directed to grant the request.
3. Thompson Hine LLP’s motion for leave to file a reply is denied.
4. This decision is effective October 13, 2025.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

⁵ Requiring a connection to a formal, docketed case would also effectively collapse the category of “other user” requests under 49 C.F.R. § 1244.9(c) with the category of “[t]ransportation practitioners, consulting firms, and law firms—specific proceedings” requests under § 1244.9(b)(4). But the Board has held that transportation practitioners may avail themselves of both. Thompson Hine, WB 17-44, slip op. at 3.