



ASSOCIATION OF AMERICAN RAILROADS
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June 1, 2020

Via E-mail

Dr. William Brennan
Director
Office of Economics
U.S. Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: Waybill Data Request 20-19

Dear Dr. Brennan:

In a letter dated May 7, 2020, the Missouri Department of Transportation (MoDOT) requested access to the “confidential Carload Waybill data for rail carriers pertaining to traffic that was originated, terminated, interchanged in, or that passed through Missouri, Illinois, Kansas, and Arkansas.” The request seeks access to waybill data for “a project that will update the existing Statewide Freight Plan and Statewide Rail Plan into a combined Statewide Freight and Rail Plan in accordance with the Fixing America’s Surface Transportation (FAST) Act.” MoDOT explains that it discussed the request with the other state DOTs, and each has expressed support for the request for co-mingled data for each state for rail traffic movements for years 2012-2018, and, therefore, the Board has interpreted this as a joint request of those states. Though brought by state DOTs, the request is styled as an “other users” request.

By this letter, the Association of American Railroads (“AAR”), on behalf of its freight railroad members, makes a partial objection to the release of any revenue information contained in the waybill data pursuant to the current request. Although 49 C.F.R. § 1244.9(b)(3) allows states access to “any waybill record pertaining to traffic that was originated, terminated, interchanged in, or that passed through its State subject to the same requirements imposed on federal agencies,” this request is made under 49 C.F.R. § 1244.9(c) which allows “other users” access to waybill data in certain circumstances, but a request must set forth a complete and detailed explanation of the specific information

requested and a detailed justification of why release of the Waybill Sample is needed. See 49 C.F.R. § 1244(e)(i)-(iii). The ICC has recognized that “maximum effort should be made by the [agency] to ensure that only waybill data essential to a requestors’ purpose is actually released.” *Procedures on Release of Data from the ICC Waybill Sample*, 4 I.C.C.2d 194, 199 (1987). MoDOT’s request for other data should be subject to the requirements of 49 C.F.R. 1244.9(c) for “other users” that allow for access to waybill data only in certain circumstances. MoDOT’s justification for the request is to comply with statutorily-required planning mandates, and specifically notes the waybill data will support analysis and identification of “freight generators related to rail in the States... [and] trends of existing and emerging industries and their impact [on] future freight transportation demand related to rail...” AAR, generally, has no objection to the release of waybill data necessary to support the stated purpose, however, AAR does not believe this justification explains why revenue-related information from the waybill data should be released. Such information is not “essential” to MDOT’s purpose, and should be withheld.

AAR, therefore, does not object to the release of most waybill data information to the requesters, but does object to the release of any revenue-related information, especially unmasked contract revenues.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JFM', with a stylized, cursive flourish.

J. Frederick Miller Jr.
(admitted in Maryland)
Counsel for the Association
of American Railroads