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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).<sup>1</sup>

**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.

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<sup>1</sup> 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.

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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,<sup>2</sup> 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

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<sup>2</sup> *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

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