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Office of Proceedings
June 17, 2020
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June 17, 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 20-23

Dear Dr. Brennan:

In a letter dated May 28, 2020, the North Carolina Soybean Producers Association (NC Soybean) requested the release of unmasked waybill data with Standard Transportation Commodity Codes beginning with 011 and 209 from the Board's 1990–2018 Unmasked Carload Waybill Samples. Notice of this request was served on June 3, 2020. The request seeks access to this waybill data “[t]o accurately determine what grain basis in [North Carolina] should look like...for all trips terminating in Virginia, North Carolina and South Carolina.” Letter from Owen Wagner, CEO, NC Soybean, to Dr. William Brennan, Director, Office of Economics, at 1 (May 28, 2020) (NC Soybean Letter). Aside from the identifying states and STCC codes, the request is broad and would include cost, revenue, and other confidential information. It does not identify the type of request, but it appears to be an “other users” request pursuant to 49 C.F.R. § 1244.9 (c).

By this letter, the Association of American Railroads (AAR), on behalf of its freight railroad members, strongly objects to the release of waybill data pursuant to the current request. Entities seeking access to CWS under the other users provision have a demanding standard to meet. *Procedures on Release of Data from the ICC Waybill Sample (Waybill Procedures)*, 4 I.C.C.2d 194, 1987 ICC LEXIS 377 at 5 (1987)(noting “confidential waybill data generally will not be released to other users.”). As explained in *Waybill Procedures*, other users must show that “a particular and legitimate need” for the data and, generally, then one must show that there are no reasonable alternatives to obtaining the data. *Waybill Procedures* at 6. NC Soybean states they need unmasked waybills because “without reliable transportation cost information, we are unable to answer this question [whether locally produced soybeans are competitive] definitively ... [and]

accurately determine what grain basis in the state should look like.” NC Soybean Letter, at 1. Stated another way, NC Soybean is requesting confidential rail pricing information to determine whether their members’ locally produced soybeans are cost-efficient, so their members can reset their prices.

There is simply no legitimate need for this information to be released to NC Soybean. NC Soybean is an association of soybean producers that are commercial entities, and its stated mission is “to maximize the profitability of North Carolina’s soybean farmers in an economically and environmentally sound manner.” NC Soybean, *Our Mission*, found at <https://ncsoy.org/about-us/>. Granting NC Soybean access to the fundamental pricing structure of competitors so that their members can set prices is entirely inappropriate, especially when those figures are contained in private contracts. In general, individuals should not be able to circumvent the private nature of contractual relationships through a government entity’s collection of data. Further, there is little reason for the breadth of the request, namely nearly three decades of data, movements to three states, and multiple STCC commodities. Given the commercially sensitive nature of the unmasked waybill data, including shipper and revenue data, it would be particularly inappropriate to release the CWS information based on this request.

In addition, there is no reasonable explanation for the need for this information from the CWS. The letter itself admits that the USDA’s Agricultural Marketing Service Grain Transportation Report provides published rates for soybeans and that it “is adequate for our purposes....” NC Soybean Letter, at 1. Instead, NC Soybean attempts to justify the request on its *belief* that published rates are not representative of actual prices because of buyer consolidation and an assumption that more rail rates are contractual, but NC Soybean provides no evidentiary basis for that belief. Indeed, the statute incorporates a special provision for the public disclosure of summaries of each contract for the transportation agricultural products under 49 U.S.C. 10709(d)(1). The Board’s rules implementing this section at 49 C.F.R. Part 1313 reflect the Congressional intent that only non-confidential aspects of those contracts be made public. Regardless, NC Soybean has not addressed why such summaries do not satisfy their needs. NC Soybean essentially admits its purpose is to obtain competitively sensitive data to be used for competitive purposes stating “North Carolina farmers will continue to find themselves on the wrong side of information asymmetries” if they do not get commercially sensitive, revenue-related information from the CWS. NC Soybean Letter, at 1.

For these reasons, NC Soybean’s request should be denied. If the overall request is nonetheless granted, the Board should not release any revenue information, especially unmasked contract revenues.

Sincerely,

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

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