

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.