

ENTERED
Office of Chief Counsel
August 11, 2025
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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. WB 25-33

REQUEST FOR WAYBILL DATA

OBJECTION OF THE
ASSOCIATION OF AMERICAN RAILROADS

In a June 9, 2025 letter, Thompson Hine, on behalf of itself and Escalation Consultants Inc., for their clients, American Chemistry Council (“ACC”), requested access to the “2023 confidential Carload Waybill Sample (“CCWS”) with unmasked revenues at the 5-digit STCC level.”¹ The Request sought access “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.”² Citing prior Board precedent, the Association of American Railroads (“AAR”) filed an objection to the release explaining that the Request sought CCWS information for commercial purposes which is not “a particular and legitimate need” for such data.³

¹ Letter from Jason Tutrone, Thompson Hine, to Dr. Kristen Monaco, Director, Office of Economics, at 1 (June 9, 2025) (“Request”).

² *Id.*

³ Letter from J. Frederick Miller Jr., on behalf of AAR, to Dr. Kristen Monaco, Director, Office of Economics, at 1 (dated June 30, 2025) (“AAR Objection”) (*citing Request for Waybill Access*, WB 20-40, at 5 (STB served Nov. 20, 2020) (“*U.S. Wheat*”) and *Request for Waybill Data*, WB 20-50, at 3 (STB served June 17, 2021) (“*Trinity*”).

On July 22, 2025, the Acting Director of the Office of Economics denied the Request and made several findings.⁴ First, the Denial Letter, citing *U.S. Wheat* and *Trinity*, explained that “CCWS data will not be made available ‘as a resource for private parties to mine . . . and create commercial reports.’”⁵ The “request falls within that prohibition because it seeks CCWS data for the purpose of furthering your client’s commercial and competitive interests.”⁶ Second, the Denial Letter explained that “[e]ven if your request were not prohibited by the Board’s precedent, moreover, it would be denied because you have not identified any particular regulatory initiative with which your request is connected that would justify disclosing such confidential data.”⁷ In its appeal, ACC claims the Acting Director’s decision constituted “clear error” and misapplied Board precedent.⁸

ARGUMENT

Pursuant to 49 C.F.R § 1011.6(b), “[a]ppeals are not favored and will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.” ACC has not demonstrated a clear error of judgment by the Acting Director or manifest injustice flowing from the decision. The Board should therefore deny the appeal.

Nothing in the appeal overcomes the basic principle that the information sought by ACC is confidential rail contract, rate, and other sensitive information. ACC desires such data so that

⁴ Letter from Francis O’Connor, Acting Director, Office of Economics, to Jason Tutrone, Counsel for ACC (July 22, 2025) (“Denial Letter”).

⁵ Denial Letter at 1.

⁶ *Id.*

⁷ *See id.* at 2 (citing *Intervistas Study*, EP 736 (STB served Feb. 28, 2018)).

⁸ Appeal of Denial of Waybill Request, *Waybill Request*, WB 25-33 at 4 (Aug. 1, 2025) (“ACC Appeal”).

it may “quantify the rail cost disadvantage for American products relative to imports.”⁹

Fundamentally, ACC does not deny that it seeks the information for a commercial purpose—namely, to seek an advantage for domestic goods vis-à-vis internationally sourced goods.

ACC belatedly attempts to justify its request because the information will help assist the “government-wide regulatory initiatives” of the current Administration, as well as the Board Chairman’s efforts in “holding a series of meetings designed to discuss ideas and opportunities to update the STB’s regulatory framework to improve competition and reduce regulatory barriers.”¹⁰ ACC is merely leveraging these broader initiatives to gain access to the most confidential data in the Board’s possession. To be sure, however, ACC’s goal remains to give its members an advantage in the marketplace. The Acting Director was correct to deny this thinly veiled attempt to access confidential data and properly explained that that ACC and others will have an opportunity to access CCWS “[s]hould the Board initiate a particular proceeding to which the proposed research would be relevant.”¹¹

ACC argues that the government-sponsored meetings and reviews are appropriate initiatives for release, but that misses the point. Broad government-wide initiatives are “general regulatory advocacy” and do not amount to “a ‘purpose-specific’ request of the kind contemplated by Board regulations.”¹² ACC does not get to mine STB data to determine whether it should or even could propose a regulatory change, and an announcement or review

⁹ ACC Appeal at 10.

¹⁰ ACC Appeal at 8 (citing Press Release No. 25-26, Chairman Fuchs Kicks Off Meetings on Improving Competition and Reducing Regulatory Barriers (July 21, 2025), *available at*: <https://www.stb.gov/news-communications/latest-news/pr-25-26/>.)

¹¹ Denial Letter at 2.

¹² Denial Letter at 2 (citing *Waybill Request*, WB21-50).

of regulations does not change that fact. The key inflection point is when the Board initiates a “specific proceeding,” then access to CCWS might be appropriately granted, not beforehand.¹³ As the Board has previously recognized, “it is not the Board’s standard operating procedure to distribute confidential information in the absence of a Board proposal or request for analysis.”¹⁴ In ignoring this key distinction, ACC fails to recognize that allowing any interested stakeholder to access this confidential information merely because it believes that the information might assist in development of regulatory proposals would create an expansive precedent for anyone to receive the CCWS so long as the stated purpose was to “inform[] and support[] the regulatory reform proposal[.]”¹⁵ For these reasons, the denial should be upheld.

It is noteworthy that ACC admits it does not need the CCWS to develop its proposals, stating “[i]n fact, ACC has put forward specific policy proposals to the DOJ Anticompetitive Regulations Task Force and the Chairman’s Policy Review Team.”¹⁶ Instead, ACC claims the CCWS will provide support for their position that rail costs disadvantage American products, which presupposes what the CCWS data might show. In other words, ACC is fishing for access to railroads’ and shippers’ most confidential data—and it is doing so with a preconceived outcome in mind. The Board should not facilitate such misuse and manipulation of the CCWS.

¹³ 49 C.F.R. 1244.9(b)(4) (“Transportation practitioners, consulting firms, and law firms – *specific proceedings*. Transportation practitioners, consulting firms and law firms may use data from the STB Waybill Sample in preparing verified statements to be submitted *in formal proceedings before the STB*.” (emphasis added)).

¹⁴ *Intervistas Study*, EP 736, at 3 (STB served June 28, 2018) (“*Intervistas Study*”)

¹⁵ ACC Appeal at 11; *see Intervistas Study*, EP 736, at 2 (STB served Feb. 28, 2018); *Procedures on Release of Data from the ICC Waybill Sample*, 4 I.C.C.2d at 197-98.)

¹⁶ ACC Appeal at 11.

The Acting Director's decision to deny the request for such purposes was simply not a clear error of judgment.

ACC also claims that the Acting Director misapplied Board precedent in citing to *Trinity* and *U.S. Wheat*. However, ACC's attempts to distinguish the cases are ineffective. ACC is seeking the CCWS to gain an advantage for its members' domestic products over international competitors—just as U.S. Wheat sought to use the CCWS to help its members compete in a foreign market.¹⁷ In *Trinity*, the requester, a railcar manufacturer, was likewise trying to utilize the CCWS to gain an advantage in the marketplace for its products. ACC simply cannot get around its admission that it wishes to provide its members with a competitive advantage against other producers.

Finally, the fact that ACC will follow confidentiality requirements does not turn an otherwise inappropriate request into a legitimate one. ACC reiterates that because it will aggregate its ultimate report to the 2-digit STCC level there is no commercial harm.¹⁸ Again, ACC misses the point. Were this release allowed, anyone could receive the CCWS for a commercial purpose, so long as they committed to aggregating the data in their ultimate report. That would be a poor precedent to set. The Acting Director's focus should be, and properly was, on the particular and legitimate need for the information, and ACC's request does not rise to that high standard.

¹⁷ Compare *U.S. Wheat Appeal*, WB 20-40, at 2 (Sept. 14, 2020) ("U.S. rail rates to Mexico [are] a key factor affecting the volume and value of U.S. wheat exports"), with ACC Appeal at 7 ("[r]ail transportation costs and access to competitive rail transportation options directly impact the competitiveness of American-produced goods with imports").

¹⁸ See ACC Appeal at 12.

CONCLUSION

For the foregoing reasons, the AAR continues to object to the release of CCWS data to ACC. The Board should deny the appeal.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'JD' or similar, with a stylized, cursive style.

Kathryn D. Kirmayer
J. Frederick Miller Jr.
Amber L. McDonald
Association of American Railroads
425 Third Street, S.W.
Suite 1000
Washington, D.C. 20024
(202) 639-2100
*Counsel for the Association of
American Railroads*

August 11, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August 2025, I caused to be served by electronic mail a copy of the foregoing on:

Jason D. Tutrone
Thompson Hine LLP
1919 M Street, NW Suite 700
Washington, DC 20036
Jason.Tutrone@ThompsonHine.com



Amber L. McDonald