

***Surface Transportation Board***  
***Washington, D.C. 20423-0001***

302428

***Office of Economics***

May 28, 2021

Mr. Anthony J. LaRocca  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036

ENTERED  
Office of Proceedings  
May 28, 2021  
Part of  
Public Record

**Re: Waybill Request WB21-39 & FD36472**

Dear Mr. LaRocca:

The Surface Transportation Board (STB or Board) has received your request under 49 C.F.R. § 1244.9(b)(4) dated May 27, 2021 for permission to access the confidential Carload Waybill Sample (CCWS) with unmasked revenues in connection with FD 36472, CSX Corporation and CSX Transportation, Inc., et. al. – Control and Merger – Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company, on behalf of CSX Transportation, Inc. (“CSXT”). Specifically, you request the unmasked 2015-2020 CCWSs for all records and fields.

Based on the explanations and justifications contained in your request, you will be authorized to access the requested data for use in the FD36472 proceeding. Specifically, I will grant you, in accordance with 49 C.F.R. § 1244.9(b)(4), access to the 2015-2019 unmasked costing waybill samples. The 2020 costing waybill sample will be released to you once it becomes available. These datasets may only be used for purposes of this proceeding. See 49 C.F.R. § 1244.9(b)(4)(v).

***The approval for FD36472 becomes effective when signed agreements from the individuals listed below are received by the STB:***

- a) Paul Cunningham – HC Project Advisors LLC
- b) Devin Flynn – HC Project Advisors LLC
- c) Eitan Ezra – HC Project Advisors LLC
- d) Jill Collins – HC Project Advisors LLC
- e) Dr. David Reishus – Compass Lexecon
- f) Catherine Barron – Compass Lexecon
- g) Meade Atkeson – Compass Lexecon
- h) Siyi Chen – Compass Lexecon
- i) Jiaxuan (Grace) Nie – Compass Lexecon
- j) Michael Matelis – Compass Lexecon

- k) Anthony LaRocca – Steptoe & Johnson LLP*
- l) Peter Denton – Steptoe & Johnson LLP*
- m) Sally Mordi – Steptoe & Johnson LLP*
- n) Louis Gitomer – Law Office of Louis E. Gitomer*
- o) Melanie Yasbin – Law Office of Louis E. Gitomer*
- p) Dr. William Huneke*

The expiration date for this agreement is May 31, 2022. Unless you seek and obtain a renewal from the STB, this agreement upon expiration obligates you to return or destroy all copies of the data as described in item 7 of the agreement.

Several aspects of the CCWS limit the conclusions that may be drawn from analysis of the CCWS: 1) the CCWS is a sample, and 2) the CCWS is based on terminating shipments from relatively large carriers. Only those railroads with more than 4,500 annual terminating carloads are included in the sample. The limited sampling of small railroads may have a substantial effect on studies covering areas served predominately by non-sampled railroads. For additional information on the CCWS, see *Reference Guide* @ <https://prod.stb.gov/reports-data/waybill/> on the Board's website.

The rules for release of waybill data are codified at 49 C.F.R. § 1244.9. The CCWS contains confidential shipper and railroad data. As a result, the CCWS is commercially sensitive and has the potential to cause competitive harm to shippers and railroads if disclosed. Therefore, the following agreement must be signed, and a copy of the signature pages returned to the STB, before any waybill data can be used.

Your signature acknowledges your agreement to comply with the following:

1. You will use the CCWS data released to you solely for purposes of the proceeding identified above. Such purposes include any judicial review arising from that proceeding.
2. Absent permission from the STB, you shall make the information contained in the CCWS (including work product and analyses derived from the CCWS) available only to the individuals identified above. The STB may approve access for additional individuals for purposes of the proceeding. In general, such individuals must be outside counsel in this proceeding, transportation practitioners, and those individuals working with or assisting such counsel or practitioners who are not regular employees of the party represented, who have a need to know, review, or handle the CCWS for purposes of the proceeding, including testifying and consulting experts. Each such additional individual must review and sign this agreement and return a copy of the signature page to the STB.
3. Pleadings and evidence filed with the Board in the proceeding may contain CCWS data (including work product and analyses derived from the CCWS). Unless data in the pleadings and evidence are aggregated to the level of at least

three shippers and will prevent the identification of an individual railroad, the pleadings and evidence must be filed with the Board under confidential filing procedures (both in e-filing and paper submissions). Such pleadings and evidence should be appropriately marked to indicate that they contain confidential Waybill data and, if submitted in paper or on physical media, be in a package clearly marked on the outside “Highly Confidential Material: Contains Waybill Data.” Such pleadings will not be posted in the publicly available docket. A public version of the pleading and evidence that redacts unaggregated CCWS data should also be filed for posting in the public docket.

4. Pleadings and evidence (and underlying workpapers) containing CCWS data (including work product and analyses derived from the CCWS) may be disclosed only to outside counsel or other independent representatives for other parties to the proceeding who have signed an agreement with the Board that grants them access to the underlying CCWS data.
5. CCWS data may be disclosed to the reviewing court in briefs filed or oral argument made in connection with judicial review arising from the proceeding, but the party making such disclosure must take adequate steps to maintain the confidentiality of the data by filing pleadings under seal and seeking confidential treatment of the data at oral argument (and in any transcripts). Counsel who wish to access CCWS data for purposes of participating in judicial review arising from the proceeding must have signed an agreement with the Board that grants access to the data, and may be added pursuant to paragraph 2 above.
6. Except as provided in paragraph 4 above, you will refer any requests for CCWS data in your possession (including work product and analyses derived from the CCWS) to the STB for processing and will inform the requesting party of such referral to the STB. If you are compelled by law or order of a governmental or judicial body to release CCWS data, you shall notify the Board in writing within three days of any determination that CCWS data must be released, and in no event later than five days before the CCWS data is scheduled to be released.
7. In order to retain access to the CCWS beyond the expiration date specified above, you must submit a written request for an annual extension of the agreement no later than thirty days prior to the expiration date and the renewal request must be approved by the Office of Economics. **If an annual agreement is not signed and approved, you must certify by no later than the expiration date that all CCWS data (including all work product and analyses derived from the CCWS) obtained under this agreement has been destroyed or returned to the STB.** Notwithstanding the foregoing, outside counsel (but not outside consultants or transportation practitioners) for each party may retain file copies of all pleadings and evidence filed with the Board and file copies of all work product.

**Waybill Agreement WB21-39**

The non-disclosure requirements of this agreement shall continue to apply to such file copies for as long as they are retained.

8. Failure to request an extension (if necessary), or destroy or return CCWS data when required, may prevent any future release of CCWS data to you. Violations of this agreement may subject you to sanctions by the Board.

After all parties have signed and returned this agreement, please contact Mr. Dusenberry (202) 245-0319 to make any necessary arrangements to have a copy of the data sent to you. The STB will provide the data by email through file transfer protocol. Prior payment of processing and mailing cost of **\$1,176** (\$200 processing plus \$61 per signature) is required. Payment can be made through the Board's electronic payment system, Pay.gov. Your payment through Pay.gov will generate a unique Pay.gov transaction number, which you will need to provide with your signed agreement. Pay.gov accepts payment through bank accounts, credit cards, debit cards with a MasterCard or Visa logo, and digital wallet. Payment can also be made directly to the Board via check or money order.

Sincerely,

*William Brennan*

William Brennan, PhD  
Chief Economist & Director,  
Office of Economics

**Waybill Agreement WB21-39**

I have read and understand the conditions for release of the CCWS data. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. No later than thirty days before the agreement expires, I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy all CCWS data and certify that I have done so. I have the authority to sign this agreement.

By: Paul Cunningham

/s/ Paul Cunningham  
\_\_\_\_\_  
Signature

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By: Devin Flynn

/s/ Devin Flynn

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Signature

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By: Eitan Ezra

/s/ Eitan Ezra  
\_\_\_\_\_  
Signature

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By: Jill Collins

/s/ Jill Collins  
\_\_\_\_\_  
Signature

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By: Dr. David Reishus

/s/ Dr. David Reishus

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Signature

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By: Catherine Barron

/s/ Catherine Barron

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Signature

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By: Meade Atkeson

/s/ Meade Atkeson  
\_\_\_\_\_  
Signature

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By: Siyi Chen

/s/ Siyi Chen

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Signature

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By: Jiaxuan (Grace) Nie

/s/ Jiaxuan (Grace) Nie  
\_\_\_\_\_  
Signature

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By: Michael Matelis

/s/ Michael Matelis

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Signature

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By: Anthony LaRocca

/s/ Anthony LaRocca  
\_\_\_\_\_  
Signature

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By: Peter Denton

/s/ Peter Denton

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Signature

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By: Sally Mordi

/s/ Sally Mordi

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Signature

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By: Louis Gitomer

/s/ Louis Gitomer  
\_\_\_\_\_  
Signature

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By: Melanie Yasbin

/s/ Melanie Yasbin  
Signature

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By: Dr. William Huneke

/s/ Dr. William Huneke  
\_\_\_\_\_  
Signature

Anthony J. LaRocca  
202 429 8119  
alarocca@steptoe.com

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
202 429 3000 main  
www.steptoel.com



May 27, 2021

**VIA-E-MAIL**

Director William Brennan  
Office of Economics  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423

**Re: Finance Docket No. 36472, CSX Corporation and CSX Transportation, Inc., et. al. – Control and Merger – Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company**

Dear Director Brennan:

I write on behalf of CSX Transportation, Inc. ("CSXT"), which filed on April 26, 2021 an application (the "Application") seeking Board approval under 49 U.S.C. §§ 11321-26 for: (1) CSX Corporation, CSXT, and 747 Merger Sub 2, Inc. to control seven railroads owned by Pan Am Systems, Inc. and Pan Am Railway, and (2) CSXT to merge six of the seven railroads into CSXT (collectively the "Merger Transaction"). On May 26, 2021, the Board found that the Application failed to include necessary market information but allowed CSXT to file a revised application with the necessary information. CSXT submits this request for STB Waybill Sample data to prepare a revised application.

Pursuant to 49 CFR § 1244.9(b)(4), we hereby request that CSXT's outside counsel and consultants in the above-referenced proceeding be granted permission to access the confidential Carload Waybill Sample (CCWS) with unmasked revenues in this proceeding. Those outside counsel and consultants, none of whom is a regular employee of CSXT, are the following:

1. Steptoe & Johnson LLP and its employees;
2. Law Offices of Louis E. Gitomer, LLC and its employees;

3. Paul A. Cunningham of HC Project Advisors, LLC and its employees and associates;
4. Dr. David Reishus, Compass Lexecon; and
5. Dr. William Huneke.

We respectfully request access to the CCWS files, nationwide, covering the period 2015 through 2019 (including all records, all fields, and confidential unmasked revenues) for all traffic. We also request access to comparable data for 2020 when it becomes available. We understand that access to these data will be granted pursuant to the terms of a protective order, solely for the purposes of this proceeding and any related litigation, and only after execution of appropriate confidentiality undertakings. In accordance with 49 CFR § 1244.9(b)(1), any evidence drawn from the CCWS will remain confidential and will be submitted only to the Board unless the evidence is aggregated to the level of at least three shippers and will prevent the identification of an individual railroad.

The purpose of this request is to allow CSXT's counsel and consultants to accurately describe the relevant markets involved in the Merger Transaction and any impacts of the Merger Transaction on inter- and intra-modal competition and address the information requirements set out by the Board in its May 26, 2021 decision. As the only single source of the data permitting a complete analysis of these issues, the CCWS is essential for CSXT, through its outside counsel and consultants, to:

- (1) Describe the relevant markets, including traffic flows;
- (2) Evaluate the potential impact of the Merger Transaction on the relevant markets;
- (3) Evaluate competitive alternatives in the relevant markets; and
- (4) Ensure full review and analysis of potential competitive impacts.

This type of waybill access is routinely granted in proceedings such as this one.

At this time, access is being requested for the parties listed above. If additional consultants or counsel are retained, we will amend our request to add such individuals. Any strategic reports generated by outside counsel or consultants will not be disclosed to any party unless aggregated to at least the three FSAC rule in accordance with 49 CFR § 1244.9(f).

We understand the limitations of the waybill files regarding revenues and accuracy. We also understand that the data includes confidential shipper and carrier information. We will treat this data as highly confidential, and we will make the data available only to certain of our attorneys and members of our staff in accordance with 49 CFR § 1244.9(f). Any waybill data disclosed to any other party not specifically covered herein, however, will be aggregated to the three FSAC rule according to 49 CFR § 1244.9(f).

Director William Brennan

May 27, 2021

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We will undertake all efforts to ensure that those with access to the CCWS will comply with the confidentiality requirements established in the regulations. We understand that we will be required to sign an agreement before any waybill data may be used. We will comply with the Board's confidentiality requirements, and no person, other than those listed here, will be entitled to access and review the raw data contained within the CCWS.

Please let me know the appropriate fee, calculated pursuant to 49 CFR § 1002.2(f)(98), and how it can be paid. Your prompt attention to this request is appreciated.

Respectfully submitted,

/s/ Anthony J. LaRocca

Anthony J. LaRocca

Peter W. Denton

Sally Mordi

*Attorneys for CSX Corporation and  
CSX Transportation, Inc.*