

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

Office of Economics

December 04, 2020

Mr. John B. Totaro, Jr.
Neville Peterson LLP
1400 16th Street, N.W.
Suite 350
Washington, DC 20036

Re: Waybill Request WB20-50

Dear Mr. Totaro:

This letter responds to your request under 49 C.F.R. § 1244.9(c) of October 13, 2020 on behalf of Trinity Industries, Inc. (Trinity) for access to the Confidential Carload Waybill Samples (CCWS). Specifically, you requested select fields (Attachment A) from the 2019 masked Carload Waybill Sample, as well as an annual extension for continuing access to CCWS data for 2003-2018. The requested data would assist Patrick Krick, a consultant, in preparing studies of trends in rail freight traffic and equipment usage for Trinity, a railcar manufacturer and provider of comprehensive fleet management services. According to your letter, the studies “enhance [Trinity’s] ability to design equipment and services that address the needs of the shipping and carrier communities more efficiently and directly.” Notice of your request was published in the Federal Register on June 3, 2020.

Your request for access to the 2019 CCWS and your extension request for continued access to prior-year CCWS data will be denied. In Request for Waybill Data, Docket No. WB 20-40 (STB served Nov. 20, 2020)(affirming denial of CCWS access to consultant for U.S. Wheat Associates), the Board confirmed that CCWS data should not be made available for purposes of preparing private, commercial reports. The Board “reaffirm[ed] its policy that it will not permit CCWS data that is collected to further the Board’s regulatory mission to be converted to private, commercial use.” Id., slip op. at 5. Because the purpose for which Trinity has requested the data is a private, commercial use of the type addressed in the Board’s recent decision, the requested data will not be made available.

Although I am not granting you access to the requested CCWS data, I note that the Board publishes a wide variety of public data on its website that could be useful for analyzing trends in car usage by commodity type and assessing shipper and railroad demand for railcars. The Public Use Waybill Sample (available at <https://prod.stb.gov/reports-data/waybill/#Public-Use>) contains detailed shipment information that includes commodity, volume, railcar, and origin/destination (at BEA economic area level) data. Moreover, the Board has recently modified its waybill sampling and collection procedures so that the dataset will become an even more detailed resource in the future. See Waybill Sample Reporting, EP 385 (Sub-No. 8) (STB served Sept. 3, 2020). In addition, the Board publishes quarterly and annual Freight Commodity Statistics (available at <https://prod.stb.gov/reports-data/economic-data/freight-commodity-statistics/>) filed by the Class I railroads that include carload and volume information by commodity.

Because your existing access to 2003-2018 data has been revoked, you must follow the requirements of numbered paragraph 5 of your November 20, 2019, access letter, which requires that you certify “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.” Pursuant to 49 C.F.R. § 1244.9

(d)(4)(iii), you may appeal this determination within 10 days of the date of this letter. Under the Board's regulations, "[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." 49 C.F.R. § 1011.6(b). Replies must be filed within 10 days after the due date for appeals.

Sincerely,

William Brennan

William Brennan
Director
Office of Economics