

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

July 22, 2025

Jason Tutrone
Thompson Hine
1919 M Street, N.W., Suite 700
Washington, D.C. 20036-3537

Re: Waybill Request WB25-33

Dear Mr. Tutrone:

This letter responds to your request under 49 C.F.R. § 1244.9(c) of June 9, 2025, for access to the unmasked, Confidential Carload Waybill Sample (CCWS) for the year 2023. On behalf of your client the American Chemistry Council (a trade association), you requested that your firm and Escalation Consultants Inc. be given access to the data to create a report analyzing “the aggregated rail cost advantage or disadvantage for rail shipments of American products compared to products originating at import terminals.” This request follows a prior request you made in April of this year, which was denied on May 5, 2025. Notice of your most recent request was published in the Federal Register on June 16, 2025 (90 Fed. Reg. 25420), and an objection from American Association of Railroads (AAR) was received on June 30, 2025. AAR argues that your current request impermissibly seeks “CCWS information for commercial purposes.”

I have reviewed your request and AAR’s objection. The CCWS contains data that are highly confidential to rail shippers and railroads. Unmasked revenue data, in particular, are among the most commercially sensitive information that railroads possess. The Board has, under appropriate circumstances, granted access to the CCWS for “other users” under § 1244.9(c) who are not using the CCWS for commercial purposes. The Board’s regulations require both a complete and detailed explanation of the purpose for which the data are requested and a detailed justification for why the specific data requested are needed. See 49 C.F.R. § 1244.9(e)(1)(i-iii).

Your letter states that your request is made “solely for policy and regulatory purposes.” But although your letter refers to broad Executive Orders and task forces, it does not cite or describe how the analysis and report that you propose to produce would be relevant to specific policy questions or Board regulatory proceedings.

Your letter briefly describes a three-step methodology that you propose to follow in preparing your report. First, import-terminals will be identified and average revenue-to-variable-cost ratio and miles will be calculated for each 5-digit STCC. Second, “domestic origin” will be identified for relevant STCCs and comparable measures calculated in order to determine cost differentials. Third, results will be aggregated to the 2-digit STCC level.

I am denying your request. In Request for Waybill Access (U.S. Wheat), WB 20-40 (STB served Nov. 20, 2020), and Request for Waybill Data (Trinity), WB-20-50 (STB served June 17, 2021), the Board confirmed that CCWS data will not be made available “as a resource for private parties to mine . . . and create commercial reports.” Your request falls within that prohibition because it seeks CCWS data for the purpose of furthering your client’s commercial and competitive interests, without a connection to any particular Board initiative or regulatory proceeding. See Waybill Request WB21-50 (invoking the

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commercial-use doctrine to deny AAR access confidential data for the purpose of conducting unspecified regulatory advocacy). In the Board's decisions establishing that the CCWS will not be provided for the preparation of commercial reports, the Board did not carve out an exception for commercial reports that would ultimately be made public. Instead, the Board emphasized that market research conducted by trade groups is generally commercial in nature because such trade groups are themselves "participants in the markets they [seek to] study," and their research is "intended to provide commercial benefits" to their members. U.S. Wheat, slip op. at 4. That remains the case for your request on behalf of the ACC, regardless of your stated intent to publish the resulting report.

Even 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. See Intervistas Study, EP 736 (STB served Feb. 28, 2018). Should the Board initiate a particular proceeding to which the proposed research would be relevant, ACC (and other parties) would have an opportunity to seek access to the CCWS in connection with that effort. But merely citing very broad areas of potential Board interest is not sufficient. See Waybill Request WB21-50 (general regulatory advocacy is not a "purpose-specific" request of the kind contemplated by Board regulations).

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,

**FRANCIS
O'CONNOR**

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Francis O'Connor
Acting Director
Office of Economics