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Via E-mail

Dr. William Brennan
Director
Office of Economics
U.S. Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

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Re: Waybill Data Request 19-49

Dear Dr. Brennan:

In a letter dated October 1, 2019, the Southern California Association of Governments ("SCAG") requested the release of the entire Carload Waybill Sample for 2011 through 2015. Notice of this request was served on October 9, 2019. The request seeks access to waybill data "for the continued analysis of regional freight flows." The request is not limited to traffic in California and includes "cost/revenue information." The request is styled as an original request, but refers to previous access to an unspecified number of previous years Carload Waybill Sample, though there is no request for continued use of data from the previous years. The letter request is nearly identical to a request for the 2018 Waybill Sample filed in WB-44. You denied that request and that denial has now been appealed, though the appeal seems to modify the original request.

By this letter, the Association of American Railroads ("AAR"), on behalf of its freight railroad members, objects to the release of waybill data pursuant to the current request. As explained in the letter submitted by AAR in WB 19-11, waybill data is commercially sensitive to railroads and shippers and contains traffic information protected from disclosure by the Interstate Commerce Act under 49 U.S.C. §11904. Although 49 C.F.R. § 1244.9(b)(3) allows states access to "any waybill record pertaining to traffic that was originated, terminated, interchanged in, or that passed through its State subject to the same requirements imposed on federal agencies," SCAG's request for other data should be subject to the requirements of 49 C.F.R. 1244.9(c) for "other users" that allow for access to waybill data only in certain circumstances. Such a request must set forth a complete and detailed explanation of the specific information requested and a detailed justification of why release of the Waybill Sample is needed. *See* 49

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C.F.R. § 1244(e)(i)-(iii). The agency has previously recognized that “maximum effort should be made . . . to ensure that only waybill data essential to a requestors’ purpose is actually released.” *Procedures on Release of Data from the ICC Waybill Sample*, 4 I.C.C.2d 194, 199 (1987).

SCAG’s request should be denied for the reasons set forth in WB-44. While SCAG has stated that it would value “the confidential Waybill Sample data as a critical component of the analysis of commodity flow by rail system, in validating model inputs and outputs,” SCAG has not explained why it needs access to information that does not pertain to California. SCAG has thus not justified the release of commercially sensitive information in the Carload Waybill Sample and has in no way explained why there is compelling need for it to have access to rate information. If the overall request is nonetheless granted, the Board should not release any revenue information, especially unmasked contract revenues.

Sincerely,



Timothy J. Strafford
Counsel for the Association
of American Railroads