

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

Office of Economics

September 4, 2020

Mr. Daniel R. Elliott
Daniel Elliott PLLC
2000 Pennsylvania Avenue NW.
Suite 7000
Washington, DC 20006

Re: Waybill Request WB20-40

Dear Mr. Elliott:

This letter responds to your request under 49 C.F.R. § 1244.9(c) of August 7, 2020 on behalf of U.S. Wheat Associates (USW) for access to the unmasked Confidential Carload Waybill Samples (CCWS). Specifically, you requested unmasked data (and the masking factors) from the years 1984-2019 for most fields in the CCWS, excluding a limited number of fields (related primarily to physical car characteristics) identified in your Attachment. You requested the data in order “[t]o conduct a detailed study of the rail supply chain for wheat from the US to Mexico” so that USW can “develop strategies to ensure that Mexico continues to be a top buyer of U.S. wheat.” Notice of your request was published in the Federal Register on August 14, 2020. The Association of American Railroads (AAR) filed an objection to this request on August 28, 2020 arguing that USW has not provided a legitimate need for the revenue-related data, origin and destination data, or the data pertaining to commodities aside from wheat.

Having carefully considered your letter and AAR’s objections, I am denying your request. The Surface Transportation Board (Board) and its predecessor, the Interstate Commerce Commission (ICC), have long been sensitive to the potential harm to both railroads and shippers that could arise from disclosure of confidential data contained in the Waybill Sample. Indeed, the ICC instituted the process of masking revenues to protect railroads and shippers from the disclosure of competitively sensitive, deregulated contract rates. The Board and the ICC have recognized more generally that release of both pricing and other confidential data in the Waybill Sample could cause railroads harm by providing insights into their markets and operational methodologies. Shippers also have a strong interest in maintaining the confidentiality of this data, as the Board’s governing statute generally proscribes the release of contract, rate, and other information “that may be used to the detriment of the shipper . . . or may disclose improperly, to a competitor, the business transactions of the shipper.” 49 U.S.C. § 11904(b) (providing that such information may not be released by railroads or Board employees except as specifically authorized).

Your request seeks disclosure of confidential rail contract, rate, and other information “to identify time and costs associated with all of the relevant components of the rail shipments from the U.S. to Mexico.” You state that confidential contract revenues are a critical component of your analysis because “U.S. rail rates to Mexico [are] a key factor affecting the volume and value” and because it will not be possible to assess the differential between “competitive” and “captive” rates without actual revenues. But the information you are seeking to access for a commercial purpose is precisely the information that railroads and shippers are entitled to expect will ordinarily remain confidential, especially since contracts and contract rates are not regulated by the Board. There are limited circumstances where the Board has made such data available under stringent confidentiality restrictions, particularly when doing so would further the Board’s regulatory role. For example, the Board has made CCWS data available in

Waybill Request WB20-40

rulemaking or adjudication proceedings before the Board. The Board has also permitted scholarly researchers to obtain access for academic purposes. The Board has not, however, traditionally granted access to the unmasked CCWS when the intended use is of a private, commercial nature such as the gathering and analysis of market intelligence that you propose, particularly with regard to contract rates. As to your request for the masking factors, to protect the confidentiality of contract rates in the CCWS the Board has treated the masking factors as strictly confidential and not intended for disclosure. For these reasons, I will deny your request for CCWS access.

I will also deny your request on the separate ground that it does not adequately demonstrate the need for the breadth of CCWS data requested. While you propose to analyze the current transportation of wheat by rail to Mexico, your request seeks details for all shipments in the United States for all commodities over the past 35 years, regardless of any connection to Mexico. Your request does not adequately explain why data concerning commodities other than wheat is relevant to your purpose, why you require detailed information about precise origins and destinations of shipments, or why more than three decades of data is necessary for your analysis.

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