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October 5, 2020

Via E-mail

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

Re: Waybill Data Request 20-41

Dear Dr. Brennan:

In a letter dated September 15, 2020, the Federal Reserve Bank of Atlanta ("FRBA") requested access to the Confidential Carload Waybill Samples ("CCWS") from 1984-2018, and for 2019 when it becomes available, to conduct academic research on the importance of multimodal transportation. *See* Letter from Simon Fuchs, Assistant Adviser and Research Economist, FRBA, et al. to Dr. William Brennan, Director, Office of Economics, at 1 (Sept. 15, 2020) ("FRBA Letter"). Notice of this request was published in the Federal Register on September 21, 2020. The request seeks access to waybill data for a "research project [that] seeks to a) build a quantitative multi- and intermodal transportation flow model for freight traffic in the US and b) an economic evaluation of the implementation of the double-stack rail transport technology." FRBA Letter at 1. For the research, FRBA requests "the entirety of the unmasked waybill sample." FRBA Letter at 1. The specific need for the data is threefold: (1) "to build and estimate a tractable model of inter- and multimodal freight transport in the US"; (2) to "embed the transportation model into a model of spatial economic interactions between locations in the US"; and (3) "to determine the local and macroeconomic effects of the introduction of the double-stack rail transport technology in the 80s." FRBA Letter at 2.

At the outset, the Association of American Railroads ("AAR") recognizes that while FRBA, as part of the Federal Reserve System, is a federal entity, it appears to

proceed under 49 C.F.R. §1244.9(c), rather than §1244.9(b)(2).¹ As such, by this letter, AAR, on behalf of its freight railroad members, makes a limited objection to the release of waybill data pursuant to this request. Entities seeking access to CWS under the other users provision have a demanding standard to meet. *Waybill Procedures*, at 5 (1987) (noting “confidential waybill data generally will not be released to other users.”). As explained in *Waybill Procedures*, other users must show that “a particular and legitimate need” for the data and, generally, then one must show that there are no reasonable alternatives to obtaining the data. *Waybill Procedures* at 5, 13-14.

Given the needs expressed by FRBA, AAR requests limitations to the release in three ways. First, the research is focused on the advent and development of double-stack rail transportation and intermodal flow. It is not apparent why all equipment would be needed for such research. Those types of movements lend themselves to a limited type of equipment, specifically boxcars and intermodal equipment. AAR, therefore, objects to the release of waybill data for all equipment and request the release be limited to boxcar and intermodal equipment.

Second, given the goal of “build[ing] a quantitative multi- and intermodal transportation flow model...,” it is not clear that FRBA needs the details on the rail portion of the move (e.g., interchange/junction points and bridge railroads) and railroads involved. FRBA Letter at 1. Whether a shipment was interlined back in the 1990s and by what railroads, does not seem necessary given the structure of the industry has changed over time. Further, considering that the focus is modal competitiveness, the mergers and route clearances of railroads over the years simply do not seem relevant to an intermodal comparison. Therefore, we request individual rail portions and the railroads involved not be released.

Finally, it is not at all apparent how rate and revenue information would be helpful in building a model of intermodal competitiveness based on elasticities of demand. These are the most sensitive and confidential pieces of information in the waybill sample. Without the rates and revenue information from other competing modes, which the FRBA does not state it has access to, such information only on the railroad mode of transportation seems unnecessary. As the Interstate Commerce Commission noted “certain waybill data such as identification of the commodity, railroad, origin and

¹ The Federal Reserve System was established through the Federal Reserve Act of 1913 as the central bank of the United States. Pursuant to the Federal Reserve Act, the Federal Reserve Board of Governors oversees the 12 Reserve Banks that are divided by regions. The Board of Governors of the Federal Reserve is composed of seven members nominated by the President and confirmed by the Senate. See The Board of Governors of the Federal Reserve System, *Structure of the Federal Reserve System*, found at: <https://www.federalreserve.gov/aboutthefed/structure-federal-reserve-board.htm> (last visited Oct. 1, 2020). The President of each individual Reserve Bank is appointed by the Board of Governors to five-year terms. See *id.* Unlike private corporations, the Reserve Banks are operated in the public interest. In adopting the regulations governing the release of waybill data, the Interstate Commerce Commission specifically was asked to clarify whether quasi-governmental agencies were considered Federal agencies for purposes of obtaining waybill data, and it explained the “final rules clarify that these entities [quasi-governmental agencies] are treated as Federal agencies in the handling of waybill requests.” *Procedures on Release of Data from the ICC Waybill Sample (Waybill Procedures)*, 4 I.C.C.2d 194, 1987 ICC LEXIS 377 at 34 (1987).

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destination of the traffic and confidential contract rate may be commercially sensitive to shippers or manufacturers” and should be protected from disclosure unless a legitimate need is identified. *Waybill Procedures*, at 9. Identifying the costs and revenues for railroads alone in the study does not seem to be a legitimate need for an overall intermodal comparison.

For these reasons, if the overall request is granted, the Board should limit the request as explained above. Thank you for considering the views of the AAR and its members.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JFM', with a stylized, cursive flourish.

J. Frederick Miller Jr.
(admitted in Maryland)
Counsel for the Association
of American Railroads