

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

Office of Economics

February 22, 2021

Jill Flygare
Chief Operating Officer
Utah Inland Port Authority
60 E South Temple, 3rd Floor
Salt Lake City, Utah 84111

Re: Waybill Request WB21-07

Dear Ms. Flygare:

The Surface Transportation Board (STB) has received your request under 49 C.F.R. § 1244.9(c) of January 13, 2021 for permission to access the 2017-2018 confidential Carload Waybill Sample (CCWS) with masked revenues. Specifically, you requested the 2017 and 2018 CCWSs, all fields, masked revenues, and records for traffic originating, terminating, or traveling through the states of California and Utah. Your request explained that the Utah Inland Port Authority (UIPA) is a state corporation of Utah, established by the state legislature, and that these particular data were required in order to assist UIPA, in furtherance of its legislatively assigned mission, to conduct a confidential business case/feasibility assessment for an intermodal transloading facility in Utah. Notice of your request was published in the *Federal Register* on January 25, 2021. The Association of American Railroads (AAR) filed an objection to this request on February 8, 2021, arguing that the request should be denied because the purpose was equivalent to a commercial use of the data and that UIPA should have requested data under 49 C.F.R. § 1244.9(b)(3), which provides for waybill access to states.

Having considered your request and AAR's objection, I will grant access to a more limited set of data that covers Utah rail traffic. Contrary to AAR's argument, I have concluded that granting your request is not precluded by Board precedent regarding commercial use by other users. You have indicated that UIPA is a Utah state corporation and the proposed study appears consistent with the public interest role assigned to UIPA by the state legislature. I have, however, granted narrower access because your request does not provide a justification as to why CCWS data outside of traffic originating, terminating, interchanged in or that passed through the state of Utah is needed. Utah's own state data will include information on California originations and terminations for traffic that passed through, originated, or terminated in Utah. This should provide detailed information on a substantial proportion of the traffic that is relevant to your proposed study. In addition, the Public Use Waybill Sample is available to you as a resource concerning California rail traffic that does not touch Utah. Although the Public Use data is not as detailed as the CCWS data, the Public Use data still contains significant information concerning commodities, volumes, and traffic flows related to California. Therefore, you will be granted access to the CCWS data for traffic that originated, terminated, interchanged in or that passed through Utah for 2017-2018 with masked revenues. This data

may only be used for the purpose detailed in your request. ***This approval becomes effective when signed agreements from the individuals listed below are received by the STB:***

- a) *Jill Flygare – Utah Inland Port Authority*
- b) *Taslima Akter – CPCS*
- c) *Alex Marach – CPCS*
- d) *Kamol Chandra Roy – CPCS*

The expiration date for this agreement is February 28, 2022. Unless you seek and obtain a renewal from the STB, this agreement upon expiration obligates you to return or destroy all copies of the data (see item 6 of the agreement).

Several aspects of the CCWS limit the conclusions that may be drawn from analysis of the CCWS: 1) the CCWS is a sample, and 2) the CCWS is based on terminating shipments from relatively large carriers. Only those railroads with more than 4,500 annual terminating carloads are included in the sample. The limited sampling of small railroads may have a substantial effect on studies covering areas served predominately by non-sampled railroads. For additional information on the CCWS, see @ <https://prod.stb.gov/reports-data/waybill/>.

The rules for release of waybill data are codified at 49 C.F.R. § 1244.9. The CCWS contains confidential shipper and railroad data. As a result, the CCWS is commercially sensitive and has the potential to cause competitive harm to shippers and railroads if disclosed. Therefore, the following agreement must be signed, and a copy of the signature pages returned to the STB, before any waybill data can be used.

Your signature acknowledges your agreement to comply with the following:

1. You will use the CCWS data released to you solely for the purpose requested.
2. Absent permission from the STB, you shall make the information contained in the CCWS (including work product and analyses derived from the CCWS) available only to the individuals identified above. The STB may approve access for additional individuals within your entity working on the particular project or study requiring the waybill data. Each such additional individual must review and sign this agreement, and return a copy of the signature page to the STB.
3. You will not release any CCWS data (including work product and analyses derived from the CCWS) to anyone who has not signed this agreement and been approved for access by the STB until the STB has had the opportunity to review the materials proposed for disclosure to ensure confidentiality.
4. You acknowledge that, in addition to the restrictions described in paragraphs 2 and 3 above, you are bound by the STB's rules governing use and disclosure of

Waybill Agreement WB21-07

CCWS data. These include the confidentiality provisions of 49 C.F.R. §§ 1244.9(f)(1)-(3), which require that “[a]ny shipper data obtained from the Waybill Sample shall not be publicly released unless the data are aggregated to include at least three shippers.” In addition, you agree not to disclose CCWS data that permits identification of an individual railroad.

5. You will refer any requests for CCWS data in your possession (including work product and analyses derived from the CCWS) to the STB for processing and will inform the requesting party of such referral to the STB. If you are compelled by law or order of a governmental or judicial body to release CCWS data, you shall notify the Board in writing within three days of any determination that CCWS data must be released, and in no event later than five days before the CCWS data is scheduled to be released.
6. In order to retain access to the CCWS beyond the expiration date specified above, you must submit a written request for an annual extension of the agreement no later than thirty days prior to the expiration date and the renewal request must be approved by the Office of Economics. **If an annual agreement is not signed and approved, you must certify by no later than the expiration date 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.**
7. Failure to request an extension (if necessary), or destroy or return CCWS data when required, may prevent any future release of CCWS data to you. Violations of this agreement may subject you to sanctions by the Board.

Waybill Agreement WB21-07

After all parties have signed and returned this agreement, please contact Mr. Dusenberry (202) 245-0319 to make the necessary arrangements to have a copy of the data sent to you. The STB will provide the data by email through file transfer protocol. Prior payment of processing and mailing cost of **\$244 (\$61 per confidentiality agreement)** is required. Payment can be made through the Board's electronic payment system, Pay.gov. Your payment through Pay.gov will generate a unique Pay.gov transaction number, which you will need to provide with your signed agreement. Pay.gov accepts payment through bank accounts, credit cards, debit cards with a MasterCard or Visa logo, and digital wallet. Payment can also be made directly to the Board via check or money order.

Sincerely,

William Brennan

William Brennan
Director
Office of Economics

Waybill Agreement WB21-07

I have read and understand the conditions for release of the CCWS data. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. No later than thirty days before the agreement expires, I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy all CCWS data and certify that I have done so. I have the authority to sign this agreement.

By: Jill Flygare



Signature

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By: Taslima Akter

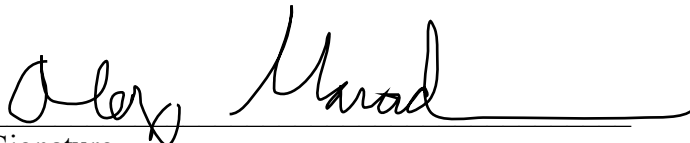


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By: Alex Marach


Signature

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By: Kamol Chandra Roy

A handwritten signature in black ink, appearing to read 'K Roy', is positioned above a horizontal line.

Signature

From: [Sarah Harley](#)
To: [Dusenberry, Alexander](#)
Cc: [Jill Flygare](#); [Alex Marach](#); [Kamol Chandra Roy](#); [Taslima Akter](#)
Subject: RE: WB21-07 UT & CA Waybill Request
Date: Monday, February 22, 2021 5:04:40 PM
Attachments: [image001.png](#)

Good afternoon Alex,

Thank you for this request. We have changes to the team on our end – would it be possible to update the form and agreement to acknowledge the following three CPCS staff (all cc'd):

- Alex Marach
- Kamol Chandra Roy
- Taslima Akter (unchanged)

We apologize for the change. But once received, I will work to get the signed forms and payment coordinated asap.

Thank you,

Sarah Harley
Senior Consultant
Global Transport Unit



t: +1-519-215-3098
cpcs.ca
