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ASSOCIATION OF
AMERICAN RAILROADS

John T. Gray
Senior Vice President, Policy & Economics

July 28, 2021

Dr. William Brennan
Director, Office of Economics
Surface Transportation Board
395 E St., SW
Washington, DC 20423

Dear Dr. Brennan:

In response to your letter dated June 23, 2021, the Association of American Railroads (AAR) hereby resubmits its request for permission from the Surface Transportation Board (STB) to use portions of the 1972 through 2019 Waybill Samples.¹ As noted previously, this request is an extension of Waybill Request WB 20-22, which will now expire on September 28, 2021.

Similar to prior years, on January 6, 2021, AAR submitted a request for permission to access the confidential Carload Waybill Sample (CCWS) with masked revenues.² That request explained that the requested data would be used for quantification of data in matters of regulatory economics, econometric models, freight car utilization analyses, measurement of hazardous material movements, and railroad industry database studies. In a letter June 23, 2021, that request was denied, however, it noted that AAR could resubmit an updated request that clarifies several aspects, including the data fields requested, the class of user, and the purpose of the request.

The Denial Letter requested clarification for the type of user under which this request is made. While the regulations contemplate that a single railroad may obtain the information for the movements that they participate in, the regulations do not contemplate the railroads' association obtaining such information.³ Therefore, while AAR is requesting this information as an "other user" under 49 C.F.R. § 1244.9(c), AAR is in a unique position of being the association representing all Class I railroads that are individually entitled to this information under the Board's regulations at § 1244.9(b)(1). No other "other user" is similarly situated. This is important because as the association representing these members, AAR is often called on, as discussed in more detail below,

¹ Letter from William Brennan, Chief Economist & Director, Office of Economics, STB, to John T. Gray, Ass'n of Am. RRs, WB 21-03 (June 23, 2021) (Denial Letter).

² See Letter from to John T. Gray, Ass'n of Am. RRs, to William Brennan, Chief Economist & Director, Office of Economics, STB, WB 21-3 (Jan. 6, 2021) (AAR Request); see, e.g., Letter from to John T. Gray, Ass'n of Am. RRs, to William Brennan, Director, Office of Economics, STB, WB 20-22 (Apr. 3, 2020); Letter from to John T. Gray, Ass'n of Am. RRs, to William Brennan, Director, Office of Economics, STB, WB 18-28 (Aug. 27, 2018).

³ See 49 C.F.R. § 1244.9(b)(1).

to answer questions of state and federal regulators, or develop reports or data analyses on behalf of the industry. This is different from the *US Wheat* case or the *Trinity* case in several respects.⁴

First, neither of those entities, a wheat grower association and railcar manufacturer, represent the entities required to submit this information and to whom the waybill information belongs. As you well know, the CCWS is comprised of the individual railroads' own business records, with some modifications required by the Board. Second, unlike AAR's members, there is no specific provision for wheat grower shippers or railcar manufacturers to receive the waybill data individually under the regulations.⁵ Third, AAR is requesting information for its educational and advocacy purposes, as described further below, on behalf of the individuals to whom the information belongs. US Wheat and Trinity both were asking for information belonging to entities that were not their members, nor did US Wheat or Trinity represent the individuals required to submit the information to the Board. Finally, AAR is treated differently than other entities and associations both in Board statute and regulation. Congress recognized this unique role of associations in law, granting the Board the power to require "rail carriers, lessors, *and associations, or classes of them* as the Board may prescribe, to file annual, periodic, and special reports with the Board containing answers to questions asked by it."⁶ The Board exercises this authority through regulations, requiring AAR to submit information on behalf of the railroads in a variety of instances.⁷ In short, AAR is a uniquely situated "other user" that is simply requesting the information our members own and to which our members are otherwise entitled. By doing so through a single AAR request, AAR is saving both the Board and our members the time and resources that would otherwise be dedicated to multiple annual requests.

With regard to the purpose for the request, it is admittedly broad because AAR is often called upon by state and federal agencies to supply information about the railroad industry throughout the year, be it in comments on rulemakings or assessments, or for general educational purposes. AAR has some information upon which it can draw, separate and apart from the CCWS, however, those states and agencies may not have access to that information. They do, however, have access to the Board's waybill information pursuant to 49 C.F.R. § 1244.9(b)(2) "Federal agencies" and § 1244.9(b)(3) "States" if they make a request. AAR has found using the Board's waybill information ensures that AAR, federal agencies, and states are all working from the same information, which reduces confusion. Similarly, the CCWS is used by AAR to develop reports used by shippers, policymakers, stakeholders, and the public throughout the year as issues arise. A single annual request allows AAR to obtain that information in a timely fashion without having to submit multiple requests throughout the year for the same information as situations arise that would have to be processed by the Board.

As explained previously the Waybill Sample will be used for the following applications, however, to help illuminate these purposes are several examples of previous similar uses and further detail regarding the specific purposes:

1. Quantification of data in matters of regulatory economics, including, but not limited to:
(a) alternate methods of productivity quantification, (b) studies for exemption of certain

⁴ See *Request for Waybill Data (U.S. Wheat Associates)*, WB 20-40 (STB served Nov. 20, 2020); *Request for Waybill Data (Trinity Industries)*, WB-20-50 (STB served June 17, 2021).

⁵ See 49 C.F.R. § 1244.9(b)(1).

⁶ 49 U.S.C. § 11145(a)(1)(emphasis added).

⁷ See, e.g., 49 C.F.R. §§ 1034.1 (temporary authority); 1135.1 (quarterly adjustment); 1135.2 (RSAM); 1250.3 (Chicago terminal reporting).

rail commodities or services, (c) measurement of the amount of traffic interlined or rebilled, (d) traffic flows to, from, or through certain states or other politically or economically defined areas, (e) line capacity and traffic projection studies, (f) rate regulation and other STB rulemakings, (g) measurement of the amount of traffic affected by safety regulations, and (h) measurement of the amount of traffic subject to economic regulation, as quantified by revenue to variable cost ratios and other indicators.

- Federal Railroads Administration (FRA) – In the past, AAR helped to verify commodity-specific annual shipment assumptions, trends, and analytical findings in various FRA NPRM's and final rule regulatory impact analyses (RIA) for commodities such as petroleum, crude oil, and ethanol, among other hazardous materials. For example, during its development with PHMSA of the High-Hazard Flammable Train rulemaking in 2015, FRA proactively approached AAR to assist with an analytical methodology and interpretation of those results by the agency. AAR was able to correct double-counting due to rebilling in FRA's RIA.
- United States Geological Survey (USGS) – Each year the USGS publishes its Mineral Commodities Summaries annual report. On an annual basis, AAR reviews and verifies those trends and total volumes for mineral productions (e.g., frac sands) to ensure the best information is being supplied to the public.
- State and Local Transportation Planning Agencies – AAR will assist these agencies, usually at their request, either by performing an analysis or reviewing and confirming an agency's own analysis designed to estimate total rail freight traffic through regions in which there are multiple rail carriers. Sometimes these efforts have resulted in changes to the agency's approach. The purpose of the analysis will generally be to support conceptual planning of projects designed to mitigate impacts rail movements through a region or local area on the residents or businesses in that area. For example, the City of Chicago requested AAR to review their commodity-specific rail traffic analysis using the waybill data for the City's planning and funding applications to the Federal government. AAR verified the City's analysis to make sure the City's results did not miss any traffic. AAR's review actually assisted the City by pointing out that the City had missed a significant number of frac sand and other traffic from Wisconsin that passed through Chicago. In the past, AAR also assisted planning agencies for the State of Louisiana and the City of New Orleans regarding high level rail traffic flows through the New Orleans Gateway which these agencies needed to support early project planning and analysis.
- California Air Resources Board (CARB) – Also at the state level, often AAR must verify annual rail shipment assumptions, trends, and analytical findings in various CARB economic impact analyses. For example, AAR reviewed CARB's analysis of the STB waybills in their report entitled "Truck vs. Train Emission Analysis" that's currently being used for the state-wide locomotive emission regulatory initiatives.
- CREATE Partnership Agencies and Carriers – AAR will utilize the Waybill Sample data along with R-1 and other public data sources to develop models of train size and composition to provide information needed to estimate costs of current delays to operations and projections of changes in those delay patterns if capital projects are

funded and constructed by the partners or Federal participants. The resultant information is also used to estimate impacts on surrounding communities of rail operations either with, or without, the implementation of specific projects. Use of the Waybill Data helps to provide anonymity to both carriers and shippers while providing a mechanism for review and confirmation of results by Federal, State, and Local agencies who review funding applications and make decisions to either fund or not fund a particular project. With reasonable frequency, funding opportunities or requests to update the benefit-cost analysis of a particular project will be required on short notice making it impossible to utilize the normal STB Waybill application procedures if the agencies involved are to be accommodated.

2. Econometric models, used to measure the rail industry-wide impact on the railroad industry as a whole, from events such as a recession, a railroad strike, a major change in truck and/or rail costs or a change in state and federal policy proposals such as changes in international trade or tariff policies.
 - For example, in 2017 with tariff and trade policy was at the height of the national news, AAR produced a report on freight railroads and international trade. This report was intended to help educated policymakers and the public, at large, about the important role freight railroad industry plays in the global economy.⁸
3. Freight car utilization analyses designed to estimate equipment supply and demand characteristics and provide input data to mathematical models which simulate optimal distribution patterns and assist with pooling and other fleet decisions.
 - For example, AAR reports, including Rail Transportation of Chemicals, Rail Transportation of Coal, and Rail Transportation of Grains, inform rail customers and other stakeholders on the different rail car types used. The utilization rates based on the annual shipments and the average shipment distances are drawn from the CCWS.
4. Measurement of hazardous material movements by commodity, car type, geographic factors, and other criteria.
 - Pipeline and Hazardous Materials Safety Administration (PHMSA) – Throughout the years, AAR has been able to verify annual hazardous materials rail shipment assumptions, trends, and analytical findings in a number of PHMSA RIAs including for the FAST Act Requirements for Flammable Liquids and Rail Tank Cars, and Volatility of Unrefined Petroleum Products and Class 3 Materials rulemakings.
5. Railroad industry data base studies, including, but not limited to: (a) obsolescence studies for the Industry Reference Files, (b) investigations of the proper use and interpretation of the Waybill Sample itself, and (c) benchmarking other railroad databases.
 - For example, AAR routinely benchmarks rail stations or terminals that handled certain commodities, as listed in the CCWS, versus our internal TRAINII database.

The Denial Letter also requested the specific data fields. Given the variety of uses of the CCWS enumerated above and the unknown nature of what state or federal agencies may request or what

⁸ AAR, *Freight Railroads & International Trade* (March 2017) (found here: <https://www.aar.org/wp-content/uploads/2017/12/AAR-Freight-Railroads-International-Trade-Report-March-2017.pdf>).

specific matters may require an educational report at the time of this letter, AAR requests all data fields, as we have in the past. We do not, however, request the masking factors.

In addition, the AAR is requesting permission for one of our contractors to use the 1972 through 2019 Waybill Samples:

Dr. Christopher Barkan of the University of Illinois is conducting research on behalf of the AAR, its member railroads, and the RSI-AAR Railroad Tank Car Safety Research & Test Project. Dr. Barkan is also conducting research for AAR and its member railroads on rail capacity modeling, planning and analysis. Dr. Barkan will use the Waybill as input for the following applications:

- a. Assessment of product-specific routing patterns necessary for exposure analysis needed for environmental and human health risk analyses.
- b. Analysis of product-specific tank car and shipment distances to quantify exposure.
- c. Statistical comparisons to assess the accuracy of other information sources.
- d. Analysis of traffic movement patterns in conjunction with and to verify capacity modeling techniques.

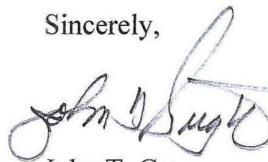
Each of these ongoing research endeavors have assisted AAR in responding to a variety of Public Agency and Transportation Research Board Expert Panels on topics related to the movement of various hazardous materials.

As always, the AAR will respect the confidentiality of the Waybill Sample and agrees to observe the STB conditions including:

1. The "raw" Waybill Sample data shall be made available only to those AAR employees who have a need for the data in conducting approved studies requiring the use of Waybill data.
2. The Waybill Sample data shall be used solely for the purposes requested.
3. None of the Waybill Sample data, or results generated from analyses thereof, will be released to the public unless the data are aggregated so that they contain at least three FSACs.

If any questions arise concerning this request, please contact me at your convenience. Per 49 CFR 1244.9, an original and two copies of this request are enclosed. Per the list of charges in 49 CFR 1002.2, I am attaching a proof of the filing fee paid on the Board's electronic payment system, Pay.gov for \$572 (the \$450 fixed portion, plus \$61 each for the AAR and the consultant).

Sincerely,



John T. Gray

cc: Rapik Saat, AAR