

Surface Transportation Board
Washington, D.C. 20423-0001
Office of Economics

ENTERED
Office of Proceedings
March 28, 2025
Part of
Public Record

March 20, 2025

Mullins Law Group PLLC
William A. Mullins
2001 L Street NW, Suite 720
Washington, DC 20036

Re: Waybill Request WB25-08 & FD36836

Dear Mr. Mullins:

The Surface Transportation Board (STB) has received your request under 49 C.F.R. § 1244.9(b)(4) of February 21, 2025 for permission to access the confidential Carload Waybill Sample (CCWS) with unmasked revenues in connection with FD No. 36836, Norfolk Southern Corp. and Norfolk Southern Railway Co.–Acquisition of Control–Norfolk & Portsmouth Belt Line Railroad Co., on behalf of Norfolk Southern. Specifically, you requested carload waybill data covering the period 2017 through 2024 (including all records, all fields, and confidential unmasked revenues) for all traffic and 2025 when it becomes available.

Based on the explanations and justifications contained in your request I will grant you, in accordance with 49 C.F.R. § 1244.9(b)(4), access to carload waybill data covering the period 2017 through 2023 (including all records, all fields, and confidential unmasked revenues) for all traffic. The 2024 and 2025 datasets are not ready to be requested at this time and may be requested on a later date. These datasets may be used only for purposes of this proceeding. See 49 C.F.R. § 1244.9(b)(4)(v).

This approval becomes effective when signed agreements from the individuals listed below are received by the STB:

- a) William A. Mullins – Mullins Law Group PLLC*
- b) Rose-Michele Nardi – Mullins Law Group PLLC*
- c) John V. Edwards – Mullins Law Group PLLC*
- d) Spencer M. Naake – Mullins Law Group PLLC*
- e) Daniel L. Fapp – L.E. Peabody & Associates, Inc.*
- f) William W. Humphrey – L.E. Peabody & Associates, Inc.*
- g) Austin C. Orelup – L.E. Peabody & Associates, Inc.*

The expiration date for this agreement is March 31, 2026. Unless you seek and obtain a renewal from the STB, this agreement upon expiration obligates you to return or destroy copies of the data as described in item 7 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 *Reference Guide* @ <https://www.stb.gov/reports-data/waybill/> on the Board's website.

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 purposes of the proceeding identified above. Such purposes include any judicial review arising from that proceeding.
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 for purposes of the proceeding. In general, such individuals must be outside counsel in this proceeding, transportation practitioners, and those individuals working with or assisting such counsel or practitioners who are not regular employees of the party represented, who have a need to know, review, or handle the CCWS for purposes of the proceeding, including testifying and consulting experts. Each such additional individual must review and sign this agreement and return a copy of the signature page to the STB.
3. Pleadings and evidence filed with the Board in the proceeding may contain CCWS data (including work product and analyses derived from the CCWS). Unless data in the pleadings and evidence are aggregated to the level of at least three shippers and will prevent the identification of an individual railroad, the pleadings and evidence must be filed with the Board under confidential filing procedures (both in e-filing and paper submissions). Such pleadings and evidence should be appropriately marked to indicate that they contain confidential Waybill data and, if submitted in paper or on physical media, be in a package clearly marked on the outside "Highly Confidential Material: Contains Waybill Data." Such pleadings will not be posted in the publicly available docket. A

public version of the pleading and evidence that redacts unaggregated CCWS data should also be filed for posting in the public docket.

4. Pleadings and evidence (and underlying workpapers) containing CCWS data (including work product and analyses derived from the CCWS) may be disclosed only to outside counsel or other independent representatives for other parties to the proceeding who have signed an agreement with the Board that grants them access to the underlying CCWS data.
5. CCWS data may be disclosed to the reviewing court in briefs filed or oral argument made in connection with judicial review arising from the proceeding, but the party making such disclosure must take adequate steps to maintain the confidentiality of the data by filing pleadings under seal and seeking confidential treatment of the data at oral argument (and in any transcripts). Counsel who wish to access CCWS data for purposes of participating in judicial review arising from the proceeding must have signed an agreement with the Board that grants access to the data, and may be added pursuant to paragraph 2 above.
6. Except as provided in paragraph 4 above, 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.
7. 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.** Notwithstanding the foregoing, outside counsel (but not outside consultants or transportation practitioners) for each party may retain file copies of all pleadings and evidence filed with the Board and file copies of all work product. The non-disclosure requirements of this agreement shall continue to apply to such file copies for as long as they are retained.
8. 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 WB25-08

After all parties have signed and returned this agreement, please contact waybill@stb.gov 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.

Sincerely,

**KRISTEN
MONACO**

Digitally signed by
KRISTEN MONACO
Date: 2025.03.20
11:23:14 -04'00'

Kristen Monaco, PhD
Director
Office of Economics

Waybill Agreement WB25-08

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: William A. Mullins

William A. Mullins

Signature

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By: Rose-Michele Nardi


Signature

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By: John V. Edwards

/s/ John V. Edwards

Signature

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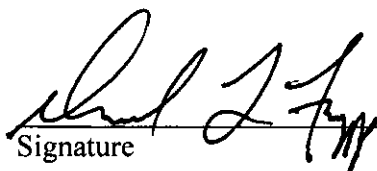
By: Spencer M. Naake


Signature

Waybill Agreement WB25-08

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By: Daniel L. Fapp


Signature

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By: William W. Humphrey



Signature

Waybill Agreement WB25-08

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By: Austin C. Orelup



Signature

MULLINS LAW GROUP PLLC

Transportation Solutions for the 21st Century

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Facsimile: (202) 464-9123

February 21, 2025

VIA E-FILING

Dr. Kristen Monaco
Director
Office of Economics
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Norfolk Southern Railway Company – Control Acquisition – Norfolk & Portsmouth Belt Line Railroad Company, FD No. 36836

Dear Director Monaco:

I am writing on behalf of Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway Company (“NSR”) (collectively, “NS”) related to NS’s minor application pursuant to 49 U.S.C. § 11323(a)(2) and 49 C.F.R. Part 1180 (“Application”) seeking Surface Transportation Board (“STB”) authority to control Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) (the “Transaction”) in the above-captioned proceeding.

Pursuant to 49 C.F.R. § 1244.9(b)(4), we hereby request that NS’s outside counsel and consultants in the above-referenced proceedings be authorized to obtain and use certain confidential STB Waybill Sample data. None of the named outside counsel and consultants is a regular employee of Norfolk Southern:

1. William A. Mullins – Mullins Law Group PLLC
2. Rose-Michele Nardi – Mullins Law Group PLLC
3. John V. Edwards – Mullins Law Group PLLC
4. Spencer M. Naake – Mullins Law Group PLLC
5. Daniel L. Fapp – L.E. Peabody & Associates, Inc.
6. William W. Humphrey – L.E. Peabody & Associates, Inc.
7. Austin C. Orelup – L.E. Peabody & Associates, Inc.

Access to the waybill data is requested in order to analyze traffic patterns and the competitive effects, if any, for this proceeding. Such analysis may be submitted as part of verified statements

in the above-referenced proceeding. Usage of the waybill data is the most economical and least burdensome method of fully evaluating relevant changes, or no changes in traffic and the competitive patterns that may occur from the proposed transaction and for analyzing the competitive impacts, if any, of the transaction. This type of waybill access is routinely granted in proceedings such as this one.

This request seeks access to carload waybill data covering the period 2017 through 2024 (including all records, all fields, and confidential unmasked revenues) for all traffic. This request also seeks access to comparable data for 2025 when it becomes available. The purpose of this request is to allow NS's counsel and consultants to review the various analyses and evidence required by 49 C.F.R. Part 1180 in support of the NS Minor Application, as well as to prepare and submit any evidence in response thereto. The STB Waybill Sample is the only single source of the relevant data and obtaining the data from other sources would be burdensome and costly. The data is directly relevant to issues in this proceeding and is a valuable source of data permitting a complete analysis of these issues.

We understand the limitations of the Waybill files regarding revenues and accuracy. We also understand that access to this data will be granted pursuant to the terms of a protective order, solely for the purposes of this proceeding and any related litigation, and only after the execution of appropriate confidentiality undertakings. Accordingly, we will treat this data as confidential and undertake all efforts to ensure that all those with access to the Waybill data will comply with the confidentiality requirements established in 49 CFR §1244.9. Specifically, in accordance with 49 C.F.R. § 1244.9(b)(4)(iv), any evidence drawn from the STB Waybill Sample will remain confidential and will be submitted only to the Board, unless the evidence is aggregated to the level of at least three shippers and will prevent the identification of an individual railroad, in accordance with the three-FSAC rule under 49 CFR §1244.9(f).

The required fee of \$683.00, which includes a fixed fee of \$200 plus \$69 per person for each individual (a total of seven (7) outside counsel and consultants) has been paid on pay.gov per 49 C.F.R. § 1002.2(f)(98)(i). Should you have any questions, please contact me at (202) 663-7823 or by email at wmullins@mullinslawgroup.net.

Sincerely,

/s/ **William A. Mullins**

William A. Mullins
Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company

cc: Daniel L. Fapp – L.E. Peabody