

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

ENTERED
Office of Chief Counsel
August 5, 2025
Part of
Public Record

August 4, 2025

Michael L. Rosenthal
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956

Re: Waybill Request WB25-42 & FD 36873

Dear Mr. Rosenthal:

The Surface Transportation Board (STB) has received your request under 49 C.F.R. § 1244.9(b)(4) of July 30, 2025, for permission to access the confidential Carload Waybill Sample (CCWS) with unmasked revenues in connection with FD 36873, Union Pacific Corporation, et al. – Control – Norfolk Southern Corporation, et al. on behalf of Union Pacific and Norfolk Southern. Specifically, you requested unmasked 2019 through 2023 (including all records, all fields, and confidential unmasked revenues) for all traffic. You also requested access to comparable data for 2024 when it becomes available. Your request explained that the CCWS is the only single source of the requested data. Your request further explained that these particular data were required because it is essential to the preparation, among other things, of the market and traffic impact analyses required by 49 C.F.R. §§ 1180.6(a)(2)(i) and 1180.7.

Based on the complete and sufficiently detailed explanations and justifications contained in your request, I will grant access to 2019 through 2024 CCWS data for use in the FD 36873 proceeding. The 2024 CCWS is not yet available, and that data will be provided to you at a later date. Specifically, you will have access to unmasked 2019 through 2024 unmasked CCWS including all records and all fields for all traffic allowing counsel and consultants to prepare among other things, the market and traffic impact analyses required in support of the planned application. This data may only be used for purposes of this proceeding.

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

- a. Michael Rosenthal – Covington & Burling LLC*
 - b. Derek Ludwin – Covington & Burling LLC*
 - c. James O’Connell – Covington & Burling LLC*
 - d. Thomas Brugato – Covington & Burling LLC*
 - e. Pegah Nabili – Covington & Burling LLC*
- continued*

- f. Rachel Dow – Covington & Burling LLC*
- g. Wentao Yang – Covington & Burling LLC*
- h. Raymond A. Atkins – Sidley Austin LLC*
- i. Matthew Warren – Sidley Austin LLC*
- j. Carrie Mahan – Sidley Austin LLC*
- k. Allison Davis – Sidley Austin LLC*
- l. Marc Korman – Sidley Austin LLC*
- m. Stephen Laudone – Sidley Austin LLC*
- n. Nichole Booth – Sidley Austin LLC*
- o. Elizabeth Bailey – Charles River Associates*
- p. Nadia Soboleva – Charles River Associates*
- q. Josh Sherman – Charles River Associates*
- r. Adriene Bailey – Oliver Wyman*
- s. Matthew Schabas – Oliver Wyman*
- t. David Hunt – Oliver Wyman*
- u. Yury Gorbunov – Oliver Wyman*
- v. Michael Koehler – Oliver Wyman*
- w. Olivia Eriksson – Oliver Wyman*
- x. Mark Israel – Econic Partners, LLC*
- y. Catherine Barron – Econic Partners, LLC*
- z. Steven Peterson – Econic Partners, LLC*
- aa. Georgi Giozov – Econic Partners, LLC*
- bb. Meade Atkeson – Econic Partners, LLC*
- cc. Alexander Collison – Econic Partners, LLC*
- dd. CJ Lu Sing – Econic Partners, LLC*
- ee. Yunheng Ni – Econic Partners, LLC*
- ff. Divya Mathur – Analysis Group*
- gg. Ann Murray – Analysis Group*
- hh. Hyun Lee – Analysis Group*

The expiration date for this agreement is August 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/>.

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

Waybill Agreement WB25-42

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.

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. Prior payment of processing and mailing cost of \$2546 (\$200 for processing plus \$69 per signature) is received.

Sincerely,

FRANCIS
O'CONNOR

Digitally signed by
FRANCIS O'CONNOR
Date: 2025.08.04
08:23:43 -04'00'

Francis X. O'Connor
Acting Director
Office of Economics

Waybill Agreement WB25-42

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: Michael Rosenthal

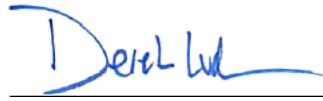
A handwritten signature in dark ink, appearing to read "Michael Rosenthal", written over a horizontal line.

Signature

Waybill Agreement WB25-42

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: Derek Ludwin

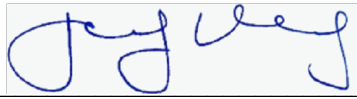


Signature

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By: James O'Connell

A handwritten signature in blue ink, appearing to read "James O'Connell", is written over a light blue rectangular background.

Signature

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By: Thomas Brugato


Signature

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By: Pegah Nabili

Pegah Nabili
Signature

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By: Rachel Dow

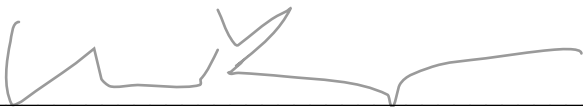
Rachel M. Dow

Signature

Waybill Agreement WB25-42

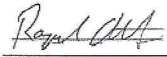
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By: Wentao Yang


Signature

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By: Raymond Atkins

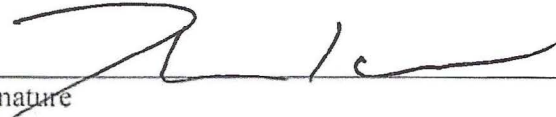
A handwritten signature in cursive script, appearing to read "Raymond Atkins", is written over a horizontal line.

Signature

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By: Matthew Warren

Signature

A handwritten signature in black ink, appearing to read 'M Warren', is written over a horizontal line. The signature is fluid and cursive.

Waybill Agreement WB25-42

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By: Carrie Mahan

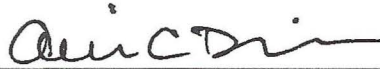
A handwritten signature in cursive script that reads "C Mahan." The signature is written in dark ink and is positioned above a horizontal line.

Signature

Waybill Agreement WB25-42

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By: Allison Davis

A handwritten signature in cursive script, appearing to read "Allison Davis", written over a horizontal line.

Signature

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By: Marc Korman

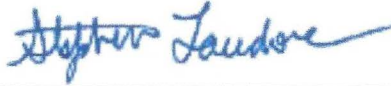


Signature

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By: Stephen Laudone



Signature

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By: ~~Nichole Booth~~

NICOLE BOOTH



Signature

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By: Elizabeth Bailey

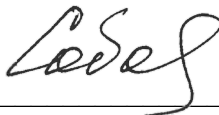


Signature

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By: Nadia Soboleva



Signature

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By: Josh Sherman

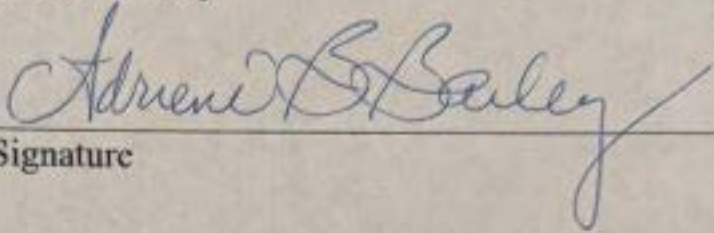
Signature

A handwritten signature in black ink, appearing to read 'Jm82', is written over a horizontal line.

Waybill Agreement WB25-42

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By: Adriene Bailey


Signature

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By: Matthew Schabas

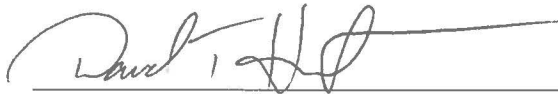
MES

Signature

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By: David Hunt



Signature

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By: Yury Gorbunov



Signature

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By: Michael Koehler

Michael Koehler

Signature

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By: Olivia Ericksson

Olivia Ericksson

Signature

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By: Mark Israel

/s/ Mark Israel

Signature

Waybill Agreement WB25-42

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By: Catherine Barron

/s/ Catherine Barron

Signature

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By: Steven Peterson

/s/ Steven Peterson

Signature

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By: Georgi Giozov

/s/ Georgi Giozov

Signature

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By: Meade Atkeson

/s/ Meade Atkeson

Signature

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By: Alexander Collison

/s/ Alexander Collison/s/

Signature

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By: CJ Lu Sing

/s/ CJ Lu Sing

Signature

Waybill Agreement WB25-42

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By: Yunheng Ni

/s/ Yunheng Ni

Signature

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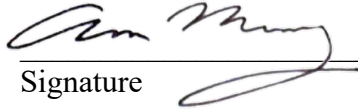
By: Divya Mathur



Signature

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By: Ann Murray


Signature

Waybill Agreement WB25-42

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By: Hyun Lee

A handwritten signature in black ink, appearing to be 'Hyun Lee', written on a light gray rectangular background.

Signature

COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT
JOHANNESBURG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Michael L. Rosenthal

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5448
mrosenthal@cov.com

By Email

July 30, 2025

Dr. Francis O'Connor
Acting Director, Office of Economics
Surface Transportation Board
395 E Street, SW
Washington, DC 20423
francis.o'connor@stb.gov

**Re: Request for Waybill Data, Finance Docket No. 36873,
Union Pacific Corporation, et al. – Control – Norfolk
Southern Corporation, et al.**

Dear Dr. O'Connor:

I write on behalf of Applicants Union Pacific and Norfolk Southern,¹ which have filed their Notice of Intent to File an Application seeking STB authorization for Union Pacific's control of Norfolk Southern. Applicants have also filed a Motion for Protective Order in this proceeding.

Pursuant to 49 C.F.R. § 1244.9(b)(4), we hereby request that Applicants' outside counsel and consultants in the above-referenced proceeding be authorized to obtain and use certain confidential STB Waybill Sample data. Those outside counsel and consultants, none of whom is a regular employee of Applicants, are the following:

1. Covington & Burling LLP and its employees
2. Sidley Austin LLP and its employees
3. Selected employees of Charles River Associates (See Attachment A)
4. Selected employees of Oliver Wyman (See Attachment B)
5. Selected employees of Econic Partners, LLC (See Attachment C)

¹ "Applicants" are Union Pacific Corporation ("UPC") and Union Pacific Railroad Company ("UP") (collectively, "Union Pacific") and Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NS") (collectively, "Norfolk Southern").

COVINGTON

Dr. Francis O'Connor
July 30, 2025
Page 2

6. Selected employees of Analysis Group (See Attachment D)

We request access to carload waybill data covering the period 2019 through 2023 (including all records, all fields, and confidential unmasked revenues) for all traffic. We also request access to comparable data for 2024 when it becomes available. The purpose of this request is to allow Applicants' counsel and consultants to prepare the various analyses and evidence required by 49 C.F.R. Part 1180 in support of their planned Application. The requested data are essential to the preparation, among other things, of the market and traffic impact analyses required by 49 C.F.R. §§ 1180.6(a)(2)(i) and 1180.7, as the STB Waybill Sample is the only single source of the data permitting a complete analysis of these issues.

We understand that access to these 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 execution of appropriate confidentiality undertakings. In accordance with 49 C.F.R. § 1244.9(b)(1), 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.

I will be submitting payment of \$1,718 to the STB's electronic payment system at pay.gov, reflecting the fixed fee of \$200 plus \$69 per person for each individual (a total of 22 outside counsel and consultants). 49 C.F.R. § 1002.2(f)(98)(i).

Please do not hesitate to contact me at (202) 662-5448 if you have any questions regarding this request.

Sincerely,



Michael L. Rosenthal
*Counsel for Union Pacific
Railroad Company*

cc: Raymond A. Atkins, Counsel for Norfolk Southern Railway Company

Attachments

ATTACHMENT A

Selected Personnel at Charles River Associates

1. Elizabeth Bailey
2. Nadia Soboleva
3. Josh Sherman

ATTACHMENT B

Selected Personnel at Oliver Wyman

1. Adriene Bailey
2. Matthew Schabas
3. David Hunt
4. Yury Gorbunov
5. Michael Koehler
6. Olivia Eriksson

ATTACHMENT C

Selected Personnel at Econic Partners, LLC

1. Mark Israel
2. Catherine Barron
3. Steven Peterson
4. Georgi Giozov
5. Meade Atkeson
6. Alexander Collison
7. CJ Lu Sing
8. Yunheng Ni

ATTACHMENT D

Selected Personnel at Analysis Group

1. Divya Mathur
2. Ann Murray
3. Hyun Lee

From: [Rosenthal, Michael](#)
To: [waybill](#); [O'Connor, Francis](#); [Dusenberry, Alexander](#)
Cc: [Davis, Allison C.](#); [Atkins, Raymond](#)
Subject: Union Pacific - Norfolk Southern Waybill Request Letter
Date: Thursday, July 31, 2025 4:59:00 PM
Attachments: [image001.png](#)

Good afternoon,

The following individuals from Covington & Burling LLP and Sidley Austin LLP will be using the CCWS:

Covington

Michael Rosenthal
Derek Ludwin
James O'Connell
Thomas Brugato
Pegah Nabili
Rachel Dow
Wentao Yang

Sidley

Raymond Atkins
Matthew Warren
Carrie Mahan
Allison Davis
Marc Korman
Stephen Laudone,
Nichole Booth

Payment of \$966 for these fourteen individuals has been submitted through pay.gov.

Pay.gov Tracking ID: 27Q6NG49

Agency Tracking ID: 77115370330

In addition, payment of \$1,718 for our initial request was also submitted via pay.gov

Pay.gov Tracking ID: 27Q5UT7D

Agency Tracking ID: 77114355755

Please contact me with any questions.

Thank you for your assistance.

Mike Rosenthal

Michael L. Rosenthal

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW

Washington, DC 20001-4956
T +1 202 662 5448 | mrosenthal@cov.com
www.cov.com

COVINGTON

From: waybill <waybill@stb.gov>
Sent: Thursday, July 31, 2025 3:43 PM
To: O'Connor, Francis <francis.o'connor@stb.gov>; Atkins, Raymond <ratkins@sidley.com>; waybill <waybill@stb.gov>; Dusenberry, Alexander <Alexander.Dusenberry@stb.gov>
Cc: Rosenthal, Michael <mrosenthal@cov.com>; Davis, Allison C. <allison.davis@sidley.com>
Subject: RE: Union Pacific - Norfolk Southern Waybill Request Letter

[EXTERNAL]

Good Afternoon,

The waybill request is received and assigned waybill number WB25-42.

Your request states Covington and Burling LLP and its employees and Sidley Austin LLP and its employees will be using the CCWS. Before proceeding with this request, we will need a list of the individuals from each firm that will be using the CCWS.

Please provide the names of individuals from each firm that will be using the CCWS as well as the \$69 fee per individual.

Regards,
Kristen Nunnally