

ENTERED
Office of Chief Counsel
August 18, 2025
Part of
Public Record

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

August 11, 2025

Mary Lehner
Freshfields LLP
700 13th Street NW
10th Floor
Washington, DC 20005-3960

Re: Waybill Request WB25-46 & FD 36873

Dear Ms. Lehner:

The Surface Transportation Board (STB) has received your request under 49 C.F.R. § 1244.9(b)(4) of August 8, 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 Canadian National Railway Company and its rail carrier affiliates. 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 are required to prepare the various analyses and evidence needed to assess the effects of the proposed transaction.

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 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. *Christine S. Wilson – Freshfields US LLP*
 - b. *Mary Lehner – Freshfields US LLP*
 - c. *Heather P. Lamberg – Freshfields US LLP*
 - d. *Elizabeth Suarez – Freshfields US LLP*
 - e. *Sarah Claypoole – Freshfields US LLP*
- continued*

- f. Claire Wolter – Freshfields US LLP*
- g. David Bornudd – Freshfields US LLP*
- h. Ashley Brown – Freshfields US LLP*
- i. Diane Tuomala – Freshfields US LLP*
- j. Nicholas Vockrodt – Freshfields US LLP*
- k. Mary T. Coleman – Compass Lexecon*
- l. Theresa Sullivan – Compass Lexecon*
- m. Michael W. Matelis – Compass Lexecon*
- n. Holly Chin – Compass Lexecon*
- o. Arushi Ghosh – Compass Lexecon*
- p. Thomas J. Litwiler – Fletcher & Sippel LLC*

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 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

Waybill Agreement WB25-46

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 \$1304 (\$200 for processing plus \$69 per signature) is received.

Sincerely,

FRANCIS
O'CONNOR

Digitally signed by
FRANCIS O'CONNOR
Date: 2025.08.11
09:15:08 -04'00'

Francis X. O'Connor
Acting Director
Office of Economics

Waybill Agreement WB25-46

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: Christine S. Wilson

A handwritten signature in black ink, appearing to read "Christine Wilson", written over a horizontal line.

Signature

Waybill Agreement WB25-46

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By: Mary Lehner



Signature

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By: Heather P. Lamberg

Heather Lamberg

Signature

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By: Elizabeth Suarez

/s/ Elizabeth Suarez
Signature

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By: Sarah Claypoole

/s/Sarah Claypoole
Signature

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By: Claire Wolter

/s/ Claire Wolter
Signature

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By: David Bornudd

/s/ David Bornudd
Signature

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By: Ashley Brown

/s/ Ashley Brown
Signature

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By: Diane Tuomala

/s/ Diane Tuomala
Signature

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By: Nicholas Vockrodt

/s/ Nicholas Vockrodt
Signature

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By: Mary T. Coleman



Signature

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By: Theresa Sullivan



Signature

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By: Michael W. Matelis



Signature

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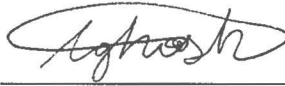
By: Holly Chin

A handwritten signature in cursive script that reads "Holly Chin".

Signature

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By: Arushi Ghosh

A handwritten signature in cursive script, appearing to read 'Arushi Ghosh', is written above a horizontal line.

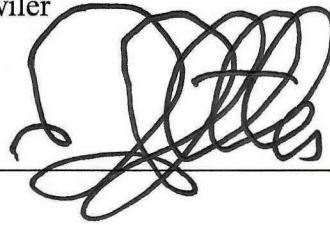
Signature

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By: Thomas J. Litwiler

Signature

A handwritten signature in black ink, appearing to be 'TJ Litwiler', written over a horizontal line.

August 8, 2025

Francis X. O'Connor
Acting Director
Office of Economics
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: CN Request for Waybill Data, FD 36873, *Union Pacific Corp.*—
Control—Norfolk Southern Corp.

Dear Mr. O'Connor,

I write on behalf of Canadian National Railway Company and its rail carrier affiliates ("CN") in connection with the above-referenced proceeding.

Pursuant to 49 C.F.R. § 1244.9(b)(4), we hereby request that CN's outside counsel and consultants 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 CN, are the following:

- 1) Christine S. Wilson, Freshfields US LLP
- 2) Mary Lehner, Freshfields US LLP
- 3) Heather P. Lamberg, Freshfields US LLP
- 4) Elizabeth Suarez, Freshfields US LLP
- 5) Sarah Claypoole, Freshfields US LLP
- 6) Claire Wolter, Freshfields US LLP
- 7) David Bornudd, Freshfields US LLP
- 8) Ashley Brown, Freshfields US LLP

- 9) Diane Tuomala, Freshfields US LLP
- 10) Nicholas Vockrodt, Freshfields US LLP
- 11) Mary T. Coleman, Compass Lexecon
- 12) Theresa Sullivan, Compass Lexecon
- 13) Michael W. Matelis, Compass Lexecon
- 14) Holly Chin, Compass Lexecon
- 15) Arushi Ghosh, Compass Lexecon
- 16) Thomas J. Litwiler, Fletcher & Sippel LLC

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 CN's counsel and consultants to prepare the various analyses and evidence needed to assess the effects of the proposed transaction, with the STB's Waybill Sample being the only single source of the data permitting a complete analysis of these issues.

We 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 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 so as to prevent the identification of any individual railroad.

I will be submitting payment of \$1,304 to the STB's electronic payment system at pay.gov, reflecting the fixed fee of \$200 plus \$69 for each individual (a total of 16 outside counsel and consultants). 49 C.F.R. § 1002.2(f)(98)(i).

Please do not hesitate to contact me at (202) 777-4500 if you have any questions regarding this request.

Sincerely

/s/ Mary Lehner
Mary Lehner