

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

ENTERED
Office of Chief Counsel
December 19, 2025
Part of
Public Record

December 16, 2025

Richard M. Couch
Thompson Hine, LLP
1919 M Street, NW, Suite 700
Washington, DC 20036-3537

Re: Waybill Request WB25-66 & FD 36873

Dear Mr. Couch:

The Surface Transportation Board (STB) has received your request under 49 C.F.R. § 1244.9(b)(4) of November 21, 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 the American Chemistry Council (ACC), American Fuel & Petrochemical Manufacturers (AFPM), Alliance for Chemical Distribution (ACD), and The Fertilizer Institute (TFI) (collectively, Shipper Associations). Specifically, you requested access to CCWS data covering the period 2014 through 2023 (including all records, all fields, and confidential unmasked revenues) for all traffic and access to these data for 2024 when they become 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 to enable Shipper Associations' outside counsel and consultants to accurately assess claims made in the above-referenced proceeding and any sub-dockets and related proceedings.

Based on the complete and sufficiently detailed explanations and justifications contained in your request, you will be authorized to access the requested data. Specifically, you will have access to CCWS data covering the period 2014 through 2023 (including all records, all fields, and confidential unmasked revenues) for all traffic and access to these data for 2024 when they become available. 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) *Karyn Booth - Thompson Hine LLP*
- b) *Jason Tutrone- Thompson Hine LLP*
- c) *Jeff Moreno- Thompson Hine LLP*
- d) *Richard Couch- Thompson Hine LLP*
- e) *Timothy Crowley - L.E. Peabody & Associates*
- f) *Robert Mulholland - L.E. Peabody & Associates*

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- g) *Daniel Fapp - L.E. Peabody & Associates*
- h) *William Humphrey - L.E. Peabody & Associates*
- i) *Allison Reid - L.E. Peabody & Associates*
- j) *Thomas Cooper - L.E. Peabody & Associates*
- k) *Austin Orelup - L.E. Peabody & Associates*
- l) *Julia Ulrich - L.E. Peabody & Associates*
- m) *Hal Singer - EconOne Consultants*
- n) *Logan Summerlin - EconOne Consultants*
- o) *Ted Tatos - EconOne Consultants*
- p) *Belinda Hess - Praxichain*
- q) *Bill Foust - Praxichain*
- r) *James Shefelbine - Praxichain*
- s) *Karen Burchfield - Praxichain*

The expiration date for this agreement is December 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.

Waybill Agreement WB25-66

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 WB25-66

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 \$1568 (\$200 for processing plus \$72 per signature) is required and received.

Sincerely,

FRANCIS
O'CONNOR

Digitally signed by
FRANCIS O'CONNOR
Date: 2025.12.16
11:55:45 -05'00'

Francis X. O'Connor
Acting Director
Office of Economics

Waybill Agreement WB25-66

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: Karyn Booth

DocuSigned by:

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Signature

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By: Jason Tutrone

Signed by:

Signature

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By: Jeff Moreno

Signed by:

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Signature

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By: Richard Couch

Signed by:
Richard Couch
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Signature

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By: Timothy Crowley

Signed by:

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Signature _____

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By: Robert Mulholland

Signed by:

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Signature

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By: Daniel Fapp

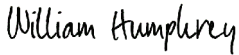
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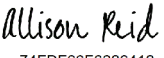
By: William Humphrey

Signed by:

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Signature

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By: Allison Reid

Signed by:

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Signature

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By: Thomas Cooper

Signed by:

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Signature

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By: Austin Orelup

Signed by:

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Signature

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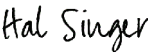
By: Julia Ulrich

Signed by:
Julia Ulrich
DAA803C8A83D4B3...
Signature

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By: Hal Singer

Signed by:

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Signature

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By: Logan Summerlin

Signed by:

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Signature

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By: Ted Tatos

Signed by:

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Signature

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By: Belinda Hess

Signed by:

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Signature

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By: Bill Foust

Signed by:

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Signature

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By: James Shefelbine

Signed by:

C7C83A3079A14BD...
Signature

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By: Karen Burchfield

Signed by:

0FD45A76F51A484...
Signature

November 21, 2025

Sent by email to waybill@stb.gov

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

Re: Shipper Associations Request for Waybill Data, STB Docket No. FD 36873, *Union Pacific Corporation et al.—Control—Norfolk Southern Corporation, et al.*

Dear Acting Director O'Connor:

I write as outside counsel for the American Chemistry Council (ACC), American Fuel & Petrochemical Manufacturers (AFPM), Alliance for Chemical Distribution (ACD), and The Fertilizer Institute (TFI) (collectively, Shipper Associations) to request access to confidential Carload Waybill Sample (CCWS) data. This request is made pursuant to 49 C.F.R. § 1244.9(b)(4) to enable Shipper Associations' outside counsel and consultants to obtain and use confidential CCWS data in connection with the above-referenced proceeding. The outside counsel and consultants for Shipper Associations who will have access to the CCWS data are the following:

L.E. Peabody & Associates

1. Timothy Crowley
2. Robert Mulholland
3. Daniel Fapp
4. William Humphrey
5. Allison Reid
6. Thomas Cooper
7. Austin Orelup
8. Julia Ulrich

Thompson Hine LLP

1. Karyn Booth
2. Jason Tutrone
3. Jeff Moreno
4. Richard Couch

EconOne Consultants

1. Hal Singer
2. Logan Summerlin
3. Ted Tatos

Praxichain

1. Belinda Hess
2. Bill Foust
3. James Shefelbine
4. Karen Burchfield

We respectfully request that these individuals be granted access to CCWS data covering the period 2014 through 2023 (including all records, all fields, and confidential unmasked revenues) for all traffic. We also request access to these data for 2024 when they become available. We understand that access to the CCWS data will be granted pursuant to the terms of a protective order, solely for the

Richard.Couch@thompsonhine.com Fax: 202.331.8330 Phone: 202.973.2736

Francis X. O'Connor
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purposes of this proceeding and any related litigation, and only after the execution of appropriate confidentiality undertakings. In accordance with 49 C.F.R. § 1244.9(b)(4)(iv), any evidence drawn from the CCWS 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.

The purpose of this request is to enable Shipper Associations' outside counsel and consultants to accurately assess claims made in the above-referenced proceeding and any sub-dockets and related proceedings (collectively "Proceedings"), including but not limited to the market and traffic impacts and effects on the public interest of the proposed transaction, and to prepare analyses and developed evidence and Verified Statements in support of any comments or other participation by Shipper Associations in the Proceedings. As the only single source of the data permitting a complete analysis of the issues, the STB CCWS data is essential for Shipper Associations, through their outside counsel and consultants, to verify propositions in and analyses supporting the Applicants' Application, participants' comments, any responsive applications, and the validity and methodology of and assumptions used in such analyses; and to ensure full review of the potential competitive impacts of the transaction(s) proposed by Applicants and any responsive.

At this time, access is being requested for the parties listed above. If additional consultants or counsel are retained, we will amend our request to add such individuals. If the CCWS data is required for an additional period of time because the above-reference proceeding is still pending before the STB or a court, we will sign new confidentiality undertakings in accordance with 49 C.F.R. § 1244.9(b)(4)(v).

The required fee of \$1,568.00, which includes a fixed fee of \$200.00 plus \$72.00 per person for each individual (a total of nineteen (19) outside counsel and consultants) will be paid on pay.gov per 49 C.F.R. § 1002.2(f)(98)(i).

Please contact me at (202) 973-2736 or Richard.Couch@ThompsonHine.com with any questions, and thank you for your attention to this request.

Respectfully,

/s/ Richard M. Couch

Richard M. Couch

Attorney for American Chemistry Council, American Fuel & Petrochemical Manufacturers, Alliance for Chemical Distribution, and The Fertilizer Institute
