

ENTERED
Office of Chief Counsel
June 24, 2026
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY
—CONTROL—
NORFOLK SOUTHER CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

**UNITED STATES DEPARTMENT OF AGRICULTURE
MOTION FOR SUPPLEMENTAL PROTECTIVE ORDER**

Pursuant to 49 U.S.C. § 11327, the United States Department of Agriculture (USDA) respectfully moves the Surface Transportation Board (Board) to enter a Supplemental Protective Order to govern USDA's access to confidential and highly confidential documents and information produced in the captioned proceeding. A proposed Supplemental Protective Order is attached as Appendix A.

The Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946, codified in relevant part at 7 U.S.C. §§ 1291 and 1622(j), entrust the Secretary of Agriculture with representing the interests of agricultural producers and shippers in improving transportation services and facilities. Consistent with these authorities, USDA regularly participates in Board proceedings affecting the rail transportation of farm products, including Class I control proceedings. *See also* 49 C.F.R. § 1180.1(m) ("To ensure a fully developed record on the effects of a proposed railroad consolidation, the Board encourages public participation from federal . . . government departments and agencies.").

Given the potential for the proposed merger between Union Pacific Railroad and Norfolk Southern Railway (Applicants) to affect rail rates and service for agriculture, USDA filed a Notice of Intent to Participate on January 22, 2026.

USDA's participation is directed at the public-interest determination the Board must make under 49 U.S.C. § 11324(c) and the factors the Board must consider in making that determination under 49 U.S.C. § 11324(b), including the proposed transaction's effects on competition and on the adequacy of transportation to the public. To evaluate those effects for agricultural traffic, USDA must be able to review the shipper-specific traffic data, supporting workpapers, and other information that underlie the Application—materials that are, by design, redacted from the public version. The non-public record is necessary for USDA to test independently the parties' representations regarding rates for farm products, the preservation of competitive gateways and interchanges serving agricultural origins and destinations, and service reliability for time- and condition-sensitive commodities. USDA's analytical expertise concerning agricultural movements can assist the Board only if applied to the actual, non-public traffic information underlying the Application.

Meaningful participation by USDA thus requires access to non-public materials submitted or produced in this proceeding—including the non-public, unredacted Application and any revised, amended, supplemented, or refiled Application; supporting workpapers; traffic tapes; and presentations by Applicants or other parties. These materials may include confidential, proprietary, commercially sensitive, shipper-specific, or other non-public information subject to the Protective Order entered by the Board on August 5, 2025 (Decision No. 1) (Protective Order).

USDA does not seek to disturb the Protective Order except to the limited extent necessary to accommodate USDA's status as a federal agency participant. For example, Paragraph 8 of the Protective Order limits access to materials designated "Highly Confidential" to outside counsel, outside consultants, and their employees. USDA is not outside counsel or an outside consultant to a party; its review must be conducted by USDA personnel and agency counsel. In addition, Paragraphs 4 and 12 require destruction of Designated Material (as that term is defined in the Protective Order) under circumstances that may be inconsistent with USDA's record-keeping obligations under the Federal Records Act and applicable records schedules. Finally, paragraphs 7 and 8 require that all USDA employees provided access to Designated Material sign the Undertakings set forth in Exhibits A and B. Such a requirement is unnecessary given the confidentiality laws¹ that apply to USDA employees.

USDA recognizes that unrestricted disclosure of confidential, proprietary, or commercially sensitive information and data could cause competitive injury to Applicants, shippers, receivers, carriers, and other parties. The proposed Supplemental Protective Order therefore preserves the core protections of the Protective Order while tailoring them to USDA.

¹ The Trade Secrets Act provides in relevant part as follows:

Whoever, being an officer or employee of the United States or of any department or agency thereof, . . . publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

The proposed order would (1) limit use of Designated Material to the proceeding or where otherwise required by law, regulation, court order, or Board order; (2) preserve appropriate treatment of Designated Material retained under federal records obligations; and (3) continue to prohibit business, commercial, strategic, or competitive use of Designated Material.

For these reasons, USDA respectfully requests the Board enter the Supplemental Protective Order attached as Appendix A.

Respectfully submitted,

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APPENDIX A

SUPPLEMENTAL PROTECTIVE ORDER

1. For purposes of this Supplemental Protective Order, the defined terms contained in the Protective Order entered as the Appendix to Decision No. 1 on August 5, 2025, apply.
2. Subject to the protections set forth in this Supplemental Protective Order, any Designated Material may be provided to the U.S. Department of Agriculture (“USDA”), and USDA may attend any deposition at which Designated Material is used or discussed.
3. Designated Material must not be used by USDA for any purposes other than for the preparation and submission of comments in the Proceedings or as otherwise required by law, regulation, court order, or Board order.
4. Designated Material may be disclosed by or within USDA only to USDA officers, employees, and attorneys who are assigned to assist USDA with respect to the preparation and submission of comments in the Proceedings, and who have a need to access Designated Material for that purpose.
5. USDA must not include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the submission is made under seal, in a package clearly marked on the outside as “Confidential Materials Subject to Protective Order.” All such submissions must be kept confidential by the Board and must not be placed in the public docket in the Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board. If USDA submits anything to the Board containing Designated Material, USDA must file simultaneously a redacted version.
6. USDA must not include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than the Board in the Proceedings unless (a) the submission is made under seal in accordance with a protective order that requires the submission to be kept confidential by that tribunal and not be placed in the public docket; or (b) the submission is made in a sealed package clearly marked, “Confidential Materials Subject to Request for Protective Order,” and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the submission to be kept confidential and not be placed in the public docket, and requesting that if the motion for protective order is not issued by that tribunal, the submission be returned to USDA.
7. USDA must not present or otherwise use any Designated Material at a Board hearing in the Proceedings, unless USDA has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge, or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge, or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material.

8. To the extent that materials reflecting Confidential or Highly Confidential Information are provided to USDA by a party in the Proceedings, and are held and/or used by USDA in compliance with this Supplemental Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. §§ 11323 or 11904 or of any other relevant provision of the ICC Termination Act.
9. Upon completion of the Proceedings, including any petitions for reconsideration, appeals, or remands, USDA must destroy all Designated Material unless USDA is otherwise required by law, regulation, court order, or Board order, or by applicable records schedule or other federal records-management obligation, to retain certain information or documents.
10. USDA agrees to comply fully with the provisions of this Supplemental Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension or modification of any provision herein.
11. Nothing in this Supplemental Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document, the United States Department of Agriculture's Motion for Supplemental Protective Order, has this day been electronically filed with the Surface Transportation Board and served on all parties of record in this proceeding by electronic mail this 24 day of June, 2026.

/s/ John Adam Sparger
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