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August 28, 2020

Via E-mail

Dr. William J. Brennan
Director
Office of Economics
U.S. Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: Waybill Data Request 20-40

Dear Dr. Brennan:

In a letter dated August 7, 2020, U.S. Wheat Associates (“USW”) requested access to “all fields and records included in the Confidential Waybill Sample (CWS) for all Class I railroads, with masking factors, for calendar years 1984-2018, and for 2019 when it becomes available.” Letter from Daniel R. Elliott, on behalf of US Wheat Associates, to Dr. William J. Brennan, Director Office of Economics, at 1 (dated Aug. 7, 2020) (“USW Request”). The request seeks access to voluminous amounts of waybill data to “conduct a study of the rail supply chain for wheat from the U.S. to Mexico[, because] [u]nderstanding the costs, time and potential challenges associated with each step of rail shipments from the U.S. to Mexico will enable USW to develop strategies to ensure that Mexico continues to be a top buyer of U.S. wheat. USW views U.S. rail rates to Mexico as a key factor affecting the volume and value of U.S. wheat exports to the largest buyer of U.S. wheat in the world.” USW Request at 1.

By this letter, the Association of American Railroads (“AAR”), on behalf of its freight railroad members, objects to certain aspects of the request, including the release of any revenue information contained in the waybill data. USW’s request is made pursuant to 49 C.F.R. § 1244.9(c) which allows “other users” access to waybill data in certain circumstances, but such a request must set forth a complete and detailed explanation of the specific information requested and a detailed justification of why release of the Waybill Sample is needed. See 49 C.F.R. § 1244 (e)(i)-(iii). Entities seeking access to CWS under the other users provision have a

demanding standard to meet. *Procedures on Release of Data from the ICC Waybill Sample (Waybill Procedures)*, 4 I.C.C.2d 194, 1987 ICC LEXIS 377 at 5 (1987) (noting “confidential waybill data generally will not be released to other users.”). As explained in *Waybill Procedures*, other users must show “a particular and legitimate need” for the data and then one must show that there are no reasonable alternatives to obtaining the data. *Waybill Procedures* at 6. Further, the ICC recognized that “maximum effort should be made by the [agency] to ensure that only waybill data essential to a requestors’ purpose is actually released.” *Waybill Procedures* at 13.

On revenue-related data, USW has not stated a legitimate need in its request that meets the high-bar for other users. USW’s mission is to “[d]evelop, maintain, and expand international markets to enhance wheat’s profitability for U.S. wheat producers and its value for their customers.” USW, *About Us*, found here <https://www.uswheat.org/about-us/>. Strikingly, USW seeks revenue-related information to evaluate competition in the “landlocked Plains region” and examine the “differential between competitive and captive rates” with the intent of “ensur[ing] that Mexico continues to be a top buyer of U.S. wheat.” USW Request at 1-3. Granting USW access to actual unmasked contract rate information with location information would identify individual member companies or producers and would potentially benefit one member at the expense of another. This is even more concerning because USW’s goal to “enhance wheat’s profitability” by ensuring a certain level of export sales to Mexico. Given the sensitivity of the information, this does not rise to the level of a legitimate purpose for revenue-related information. In general, entities should not be able to circumvent the private, confidential nature of contractual relationships through a government entity’s collection of data, much less for the purpose of enhancing other private entities’ profitability.

Similarly, on the matter of the origin and destination data requested, there is no legitimate need for the specificity of the information requested. According to the request, the study to be undertaken regards “the rail supply chain for wheat from the US to Mexico.” USW Request at 2. So, any traffic data released should only be those movements destined for Mexico. The specificity of the Standard Point Location Codes (SPLC) requested could also identify the individual shipper, which is unnecessary for any legitimate purpose of such a study. Therefore, with regard to destination, any data released should be limited to the first two numbers of the SPLC starting with “9x”, which indicate Mexico and the state therein as the destination, and the international flag set. Regarding the origin, it would also be more appropriate for SPLC codes at the four-digit level, which would identify only the county in which the shipment originated. Doing so would help to ensure the confidentiality of the individual entity shipping and/or receiving the traffic, as we recognize the requestors would have to follow the Board’s disclosure rules.

In addition, there is no particular and legitimate need expressed for data pertaining to commodities aside from wheat. USW explains that “[t]he analysis planned is solely for wheat, but the logistics costs may be influenced by all commodities shipped over the rail network.” USW Request at 1. Whether the costs of other commodities may or may not affect the costs of wheat is not a legitimate purpose, much less a particular one, to justify the release of all the

requested data over the last 36 years for all commodities, especially when such information could identify the shipper and receiver of the commodity and the specific cost information. Commodities other than wheat do not rise to the level of being “essential” to the purpose of USW’s study, as required by *Waybill Procedures*.

With regard to the time period of data sought, USW requests 36 years’ worth of rail traffic data, i.e., 1984-2019, so it can relate that data to physical logistics of the railroads over that period. However, since deregulation in the early 1980s much has changed in railroad logistics given the enhancements in efficiency of the railroads and rationalization of the networks. Especially prior to the turn of the millennium, there were more railroads with more interchanges, in addition to totally different logistics of single car shipments, as USW itself notes, “[i]n the past decade, Mexican millers have made significant investments in shuttle train (110-car) unloading facilities....” USW Request at 1 (emphasis added). Further, the recent addition of higher capacity covered hoppers over the past decade leaves the history prior to that largely irrelevant to any physical logistics analysis. Therefore, any data released should be for the last ten years, 2010-2019, where the physical logistics of the railroads have been more uniform.

AAR, therefore, objects to the release of any revenue-related information, especially unmasked contract revenues, the release of the specific origination and destination information, and the release of all commodities other than wheat. Thank you for considering the views of the AAR and its members.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JFM', with a stylized flourish at the end.

J. Frederick Miller Jr.
(admitted in Maryland)
Counsel for the Association
of American Railroads