

Surface Transportation Board
Washington, D.C. 20423-0001

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Office of Economics

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April 22, 2016

Cynthia Richman
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306

In Response Refer To Waybill Request WB16-17A

Dear Ms. Richman:

Re: EP704 (Sub-No.1), Review of Commodity, Boxcar, and TOF/COFC Exemptions

The Surface Transportation Board (STB) has approved Gibson, Dunn & Crutcher LLP request, on behalf of the Association of American Railroads (AAR), of April 8, 2016 for permission to access the 1987 through 2014 carload waybill data, including unmasked revenue. This data is identical to the data released to the AAR pursuant to waybill request WB463-16. The only difference is that unmasked data contains the actual rate flags along with the unmasked revenues. ***This approval becomes effective when the signed agreements from the parties listed below are received by the STB:***

- a) *Gibson, Dunn & Crutcher LLP*
- b) *FTI Consulting*

Any information or reports developed from the waybill data may be provided to any party provided only if all data items are aggregated to a level that guarantees the presence of at least three shippers. The three FSAC-rule (EX Parte 385, Sub-No. 2) will be accepted as guaranteeing the presence of at least three shippers.

When using the data the parties must recognize several aspects which limit drawing general conclusions from any potential findings: 1) The waybill data are sample data, and 2) the data are based on terminating shipments from relatively large carriers. Only those railroads with more than 4,500 annual terminating carloads were included in the sample. This limited sampling of very small railroads may have a substantial effect on studies covering small areas served predominately by a non-sampled railroad.

The rules for release of waybill data [Ex Parte No. 385 (Sub-No. 2)] are codified at 49 CFR 1244.9. The waybill data contain confidential shipper and railroad data. As a result,

waybill data are commercially sensitive and have the potential for competitive harm to shippers and railroads. Therefore, the following agreement must be signed before any waybill data can be used.

Your signature acknowledges your agreement to comply with the following:

1. The information contained in the released waybill data shall be made available only to members of your firm participating in the analysis as well as any approved consultants.
2. The waybill data released shall be used solely for the purpose requested.
3. After the proceeding, failure to return the data, or destroy the data may prevent any future release of the waybill data from the STB.

After you sign and return this agreement, please contact Mr. Dusenberry (202-245-0319) to make the necessary arrangements to have a copy of the data sent to you. The Surface Transportation Board will provide you the data on a R-CD ROM. The STB requests that you pay processing and mailing cost in the amount of \$250.

Sincerely,

A handwritten signature in cursive script that reads "William F. Huneke". To the left of the signature is a small, stylized mark that appears to be "for".

William F. Huneke
Director & Chief Economist

Each approved person must sign a copy of this agreement.

I have read and understand the conditions for release of the waybill data. I agree to comply fully with these conditions and the provision of this confidential agreement. At the conclusion of this proceeding, *Review of commodity, Boxcar, and TOF/COFC Exemptions, Docket No. EP704 (Sub-No.1)*, I will return or destroy all waybill data and certify I have no copies of the data. I understand that failure to return or destroy the data may prevent me from receiving any future waybill data from the STB.

Gibson, Dunn & Crutcher LLP

By:

Cynthia Richman

Signature

Cynthia Richman

Name - Please Print

Partner - Gibson, Dunn & Crutcher

Title

4/25/2014

Date

Each approved person must sign a copy of this agreement.

I have read and understand the conditions for release of the waybill data. I agree to comply fully with these conditions and the provision of this confidential agreement. At the conclusion of this proceeding, *Review of commodity, Boxcar, and TOF/COFC Exemptions, Docket No. EP704 (Sub-No.1)*, I will return or destroy all waybill data and certify I have no copies of the data. I understand that failure to return or destroy the data may prevent me from receiving any future waybill data from the STB.

FTI Consulting

By:

Benton V. Fisher

Signature

Benton V. Fisher

Name - Please Print

Senior Managing Director

Title

April 26, 2016

Date