

Supporting Statement for
Paperwork Reduction Act Submission

Collection of Requests for Statutory Licensing and Consolidation Authority

A. Justification

1. Need for Information

The Surface Transportation Board is, by statute, responsible for the economic regulation of common carrier freight railroads and certain other carriers operating in the United States. Under the Interstate Commerce Act, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICA), persons seeking to construct, acquire, or operate a line of railroad, and railroads seeking to abandon or to discontinue operations over a line of railroad or, in the case of two or more railroads, to consolidate their interests through merger or a common-control arrangement (together, rail authority), are required to file an application for prior approval and authority with the Board. See 49 U.S.C. §§ 10901-03 and 11323-26. In addition to the application process, Congress directed the Board to provide exemptions from the application process whenever it finds that application of a statutory provision is unnecessary to carry out transportation policy and either (1) the transportation is limited in scope or (2) an application is not necessary to protect shippers. See 49 U.S.C. § 10502.

Pursuant to its exemption authority, the Board has minimized the burden on filers by issuing rules that allow persons to file a notice of exemption or petition for exemption in lieu of an application. The collection by the Board of these applications, petitions for exemption, and notices of exemption enables the Board to meet its statutory duty to regulate the referenced rail transactions. The table below shows the statutory and regulatory provisions under which the Board requires this collection.

Table – Statutory and Regulatory Provisions

Certificate Required	Statutory Provision	Regulations
Construct, Acquire, or Operate Railroad Lines	49 U.S.C. § 10901	49 C.F.R. pt. 1150
Short Line purchases by Class II and Class III Rail Carriers	49 U.S.C. § 10902	49 C.F.R. § 1150.41-45
Abandonments and Discontinuances	49 U.S.C. § 10903	49 C.F.R. pt. 1152
Railroad Acquisitions, Trackage Rights, and Leases	49 U.S.C. §§ 11323-26	49 C.F.R. pt. 1180

2. Use of Data Collected

When a person (usually a railroad or persons wishing to become a railroad) seeks rail authority (a benefit) from the Board, it must file an application, petition for exemption, or notice of exemption. The Board reviews each filing and decides whether the requester has met the statutory and regulatory requirements to receive or obtain the requested rail authority. Specifically, when an application or petition for exemption is filed, the Board will either grant or deny the requested rail authority after significant analysis. When a notice of exemption is filed, as discussed in section 5 below, the Board generally limits its review to whether the procedural requirements of its regulations are met.

3. Reduction of Burden through Improved Technology

These documents may be e-filed on the Board's website, www.stb.dot.gov. They may also be accessed on the Board's website.

4. Identification of Duplication

The information requested does not duplicate any other information available to the Board or the public.

5. Minimizing the Impact on Small Business.

The information collection for rail authority will not have a significant economic impact on a substantial number of small entities. While a majority of the estimated 106 respondents are small businesses, the exemptions available to small business filers require a relatively limited amount of time and expense for drafting and filing. Under the notice of exemption process, persons may file a notice of exemption with the Board, and, if procedurally correct, the notice of the filing is published in the Federal Register by the Board. Shortly after publication, the filer automatically obtains the requested authority. Alternatively, persons may file a petition for exemption. The petition for exemption allows for more scrutiny and opportunity for opposition than a notice of exemption, but generally is less burdensome than the application process. Today, the vast majority of persons seek rail authority through an exemption, and most exemptions are sought through the notice-of-exemption process. For example, in FY 2011, 156 of the 177 submissions seeking licensing or acquisition authority were through notices of exemption. In contrast, 18 were by petition for exemption, and only 3 were by application. Filers also may seek a waiver of filing fees due to hardship.

6. Frequency Reduction Consequences

Under the ICA, the Board is required to regulate the transactions for which the Board requires this collection. Without this collection, the Board could not fulfill its statutory responsibilities.

7. Special Circumstances

None.

8. Consultation Outside Agency

The Board provided a 60-day comment period regarding this collection in 76 Fed. Reg. 77,312-14 (Dec. 12, 2011). No comments were received. As required, a Federal Register notice providing an additional 30-day comment period is being published simultaneously with this submission.

9. Payment or Gift

No payment or gift is made in connection with this collection of information.

10. Assurance of Confidentiality

Most of the information collected, as described above, is available to the public, but some of the information collected may be protected and treated as confidential. At times, persons requesting rail authority under 49 U.S.C. §§ 10901-03 and 11323-26 may wish to file commercially sensitive information. To protect such information, parties may mark documents or portions of documents as “confidential” or “highly confidential” and simultaneously file a motion for a protective order. See 49 C.F.R. § 1104.14. Generally, the Board will issue a protective order (sometimes with modifications), limiting access to confidential pleadings to parties who demonstrate a need for the information and adequately ensuring that the documents will be kept confidential. See 49 C.F.R. §§ 1121.3(d); 1150.33 (h); 1150.43(h); 1180.4(g)(4).

11. Sensitive Information

No sensitive information of a personal nature is requested.

12. Estimate of Burden Hours for Information Requested

The estimated annual labor burden for potential respondents is based on information provided by the railroad industry and its representatives and generally depends on the type of filing and the transaction. As discussed above, a respondent may use an application, petition for exemption, or notice of exemption to seek rail authority. The application traditionally has required the most burden hours with the petition next. The notice of exemption is the quickest way to seek rail authority.

As explained above, respondents most often use notices of exemption and petitions for exemption to seek rail authority. As provided in *Table – Number of Responses in FY 2011* below, respondents filed 3 applications, 18 petitions for exemption, and 156 notices of exemption. When multiplied by the number of hours for each type of filing, as provided in *Table*

– *Number of Hours Per Response* below, the total estimated annual burden hours for the estimated 106 respondents is, therefore, no more than 5580 hours (sum total of estimate hours per response X number of responses for each type of filing).

Table – Number of Responses in FY 2011.

Type of Filing	Number of filings under 49 U.S.C. §§ 10901-03 and 11323-26
Applications	3
Petitions*	18
Notices*	156

Table – Estimated Hours Per Response in FY 2011:

Type of Filing	Number of Hours Per Response under 49 U.S.C. §§ 10901-03 and 11323-26
Applications	524 hours ¹
Petitions*	58 hours
Notices*	19 hours

* Petition for exemptions and notices of exemption under § 10502 are permitted in lieu of an application.

However, the actual hourly burden to respondents will depend on the facts and complexity of each situation in which they seek rail authority.

1 Because most respondents seek authority under the expedited exemption process, rather than the more burdensome application process, the sample size for applications filed under §§ 10901-03 and 11323-26 is small. For example, under these provisions, only 3 applications were filed with the Board during the FY 2011, all of which were reported by the industry as routine and noncontroversial. Staff believes that the burden hours associated with these routine applications do not accurately reflect the hourly burden historically related to the filing of applications before the Board. Therefore, to calculate a more accurate hourly burden Board staff compiled additional burden-hour data associated with a traditionally larger application that was filed in FY 2010.

For respondents, there is no Board-generated record keeping requirement associated with this collection (except as may be required of legal counsel under state bar rules). The filings that comprise this collection are designated as permanent records. Accordingly, the STB retains them for 10 years, after which they are transferred to the custody of the National Archives and Records Administration.

13. Estimate of Total Annual Costs to Respondent

The total annual costs to respondents, or the “non-hour burden” costs associated with this information collection, will consist of copying and mailing costs. These costs for potential respondents are based on information provided by the railroad industry and its representatives and average approximately \$450 per filing without regard to the type of filing. (However, the actual copying and mailing costs to respondents will depend on the facts of each filing situation.) As provided in *Table – Number of Responses in FY 2011* above, respondents made 177 filings. When multiplied by the estimated average copying and mailing costs, the total estimated annual burden hours for the estimated 106 respondents is, therefore, no more than \$79,650.

14. Estimate of Cost to the Federal Government

Each year, the Board prepares a cost study, based on the cost study formula set forth at 49 C.F.R. § 1002.3(d) and other factors relevant to Board fee policy, to establish user fees that approximate the cost to the Board to provide each service. These fees are updated each year, based on a new cost study.² Thus, the user fees used by the Board for each type of filing, including requests for rail authority, track the cost to the government for the respondents’ filings here.

The filing fees vary depending on the type of filing and the rail authority requested. See 49 C.F.R. § 1002.2(f). Based on the Board’s user fees, the total annualized cost to the Federal government is estimated to be \$669,950 (sum of filing fees applicable to each type of response X number of responses in FY 2011 for each type of response).³

15. Reason for Program Changes.

No changes are sought.

16. Publication of Data and/or Results

² The Board’s last annual user-fee update was issued in Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services–2012 Update, EP 542 (Sub-No. 20) (STB served July 27, 2012), and became effective on August 26, 2012.

³ Because filing fees may vary within a particular statutory section, an average filing fee was used (except for applications under §§ 11323-26, where only minor transactions were filed in FY 2011).

Individual submissions will be published on the Board's website, <www.stb.dot.gov>. However, when these submissions contain confidential information (as discussed above), only a public, redacted version will be published on the Board's website. There are no plans to publish for statistical use information derived from this collection.

17. Display of Expiration date for OMB approval

The new expiration date for this collection will be published in the Federal Register when the collection is approved by OMB.

18. Exceptions to the Certification for Paperwork Reduction Act Submissions

No exceptions are sought.

B. Collection of Information Employing Statistical Methods

Not applicable. This collection of information does not involve statistical methods.