

**SUPPORTING STATEMENT
FOR REQUEST OF OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT AND 5 CFR 1320**

The Surface Transportation Board (the Board) is seeking approval of the “information collection” associated with the notification requirements proposed in Demurrage Liability, Ex Parte No. 707 (77 Fed. Reg. 27384 (5/10/2012)). The proposed rule defines demurrage as a charge that compensates rail carriers for expenses incurred when rail cars are detained beyond a set time period and serves as a penalty for undue car detention in order to promote efficiency. The rule conditions the railroad’s ability to charge demurrage on its having given, prior to rail car placement, actual notice of the demurrage tariff to the person receiving rail cars for loading and unloading. The rule also provides that a person who is acting as an agent for another party may avoid liability for demurrage if he provides the rail carrier with notice of his agency status and the identity of the principal.

A. Justification

1. Need for Collection. The Interstate Commerce Act, as amended by the ICC Termination Act of 1995, provides that demurrage is subject to Board regulation under 49 U.S.C. § 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices, and under 49 U.S.C. § 10746, which requires railroads to compute demurrage and to establish demurrage-related rules “in a way that fulfills the national needs related to” freight car use and distribution and that will promote an adequate car supply.

The Board has long been involved in resolving demurrage disputes, both as an original matter and on referral from courts hearing railroad complaints seeking recovery of charges. While disputes between railroads and parties that originate or terminate rail cars usually involve relatively straightforward application of the carrier’s tariffs to the circumstances of the case, complications can arise in cases involving warehousemen or other “third-party intermediaries” who handle the goods but have no property interest in them. The new information disclosure requirement is necessary to ensure that parties to rail transactions provide and/or receive notice regarding any potential liability for demurrage charges. The proposed disclosure requirements should help to avoid demurrage liability disputes by clarifying when and to whom rail carriers may charge demurrage fees.

2. Uses of Information. The parties will use the information in these disclosure requirements to avoid demurrage disputes, and the Board will use the information to resolve demurrage disputes that come before the agency.

3. Reduction of Burden through Use of Technology. The parties may use electronic means to satisfy the proposed notice requirements.

4. Identification of Duplication. To the extent that it is already the practice of parties to provide the actual notice required under the proposed rule, the rule does not require duplication of such notice.

5. Impact on Small Business. The burden of providing notice is minimal. Moreover, providing the required notice will help small businesses avoid costly litigation regarding demurrage disputes. Therefore, the disclosure requirements should result in a net benefit to small businesses.

6. Impact of Less Frequent Collection. The notice requirements are triggered whenever a new shipper arranges with a rail carrier for transportation of goods pursuant to the railroad's tariff, or when a warehouseman seeks to avoid liability by claiming agency status. Less frequent notice would expose the parties to possible litigation regarding demurrage liability in the instances when such notice has not been provided.

7. Special Circumstances. None.

8. Outside Consultations and Compliance with 5 C.F.R. § 1320.8. As required under 5 C.F.R. §§ 1320.8 and 1320.11, the Board has published notice regarding the proposed rule and collection in the Federal Register (77 Fed. Reg. 27384 (5/10/2012)).

9. Payment or Gift to Respondents. None.

10. Confidentiality. No confidential information is involved in this collection.

11. Sensitive Information. No sensitive information of a personal nature is involved in this collection.

12. Collection Burden to Respondents. The Board estimates the annual hourly burden of complying with this information requirement at no more than 2,208 hours (6625 hours averaged over three years). The estimated annual burden is based on the assumption that it will take each of 650 railroads eight hours to provide initial notice to its customers (for a total of 5200 hours) and that it will take each of an estimated 75 warehouses that might consider asserting agency status one hour to provide notice to each, assuming an average of 19 customers (for a total of 1425 hours). We anticipate that the notices will consist of electronic communications between parties that are already in communication regarding the transaction and that the burden will be minimal after the first year as the customer population for railroads tends to be rather stable and only new customers would have to be notified.

13. Annual Cost to Respondents. No non-labor costs are anticipated as the notice is likely to be delivered electronically.

14. Annualized Cost to the Federal Government. No cost to the government is anticipated from this collection because it consists of notice to parties other than the government, and nothing would be collected by the agency.

15. Changes in Burden Hours. Change due to new collection.

16. Publication of Data and/or Results. Because the agency will not be collecting this information, there are no plans to publish the information.

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 for Employing Statistical Methods. Not applicable. This collection of information does not involve statistical methods.