

Supporting Statement for
Paperwork Reduction Act Submission

Collection of Requests for Preservation of Rail Service

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, as amended by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICA), and Section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), persons seeking to preserve rail service may file pleadings before the Board to acquire or subsidize a rail line for continued service, or to impose a trail use or public use condition.

When a line is proposed for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board: an offer of financial assistance (OFA) to subsidize or purchase a rail line for which a railroad is seeking abandonment (49 U.S.C. § 10904), including a request for the Board to set terms and conditions of the financial assistance; a request for a public use condition (§ 10905); or a trail-use request (16 U.S.C. § 1247(d)). Similarly, when a line is placed on a system diagram map identifying it as an anticipated or potential candidate for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board a feeder line application to purchase the identified rail line (§ 10907). Additionally, the railroad owning the rail line subject to abandonment must, in some circumstances, provide information to the applicant or offeror.

The collection by the Board of these filings and submissions allows the Board to meet its statutory duty to regulate or facilitate the referenced rail transactions. The table below shows the statutory and associated regulatory provisions under which the Board requires this collection of information.

Table – Statutory and Regulatory Provisions

Information Required	Statutory Provision	Regulations
Offer of Financial Assistance	49 U.S.C. § 10904	49 C.F.R. § 1152.27
Request for Public Use Condition	49 U.S.C. § 10905	49 C.F.R. § 1152.28
Trail-Use Request	16 U.S.C. § 1247(d)	49 C.F.R. § 1152.29
Feeder Line Application	49 U.S.C. § 10907	49 C.F.R. pt. 1151

2. Use of Data Collected

When a person seeks to preserve rail service through one of the provisions outlined above, the applicable statute or regulation requires that certain information be filed or submitted to the Board or to another party. Under 49 U.S.C. § 10904, the filing of an OFA starts a process of negotiations to quantify the financial assistance needed to purchase or subsidize the rail line sought for abandonment. Once the OFA is filed, the offeror may request additional information from the railroad, which the railroad must provide. If the parties cannot agree to the sale or subsidy, either party also may file a request for the Board to set the terms and conditions of the financial assistance. Under § 10905, a public use request allows the Board to impose a 180-day public use condition on the abandonment of a rail line, allowing the parties to negotiate a public use for the rail line. Under 16 U.S.C. § 1247(d), a trail-use request, if agreed upon by the abandoning carrier, requires the Board to condition the abandonment by issuing a Notice of Interim Trail Use (NITU) or Certificate of Interim Trail Use (CITU), allowing the parties to negotiate an interim trail use/rail banking agreement for the rail line. Finally, under § 10907, a feeder line application provides the basis for authorizing an involuntary sale of a rail line.

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 filings and submissions by persons seeking to preserve rail service does not have a significant economic impact on a substantial number of small entities. While a majority of the estimated 40 respondents¹ may be small businesses, any submission that would be applicable to such businesses requires a relatively limited amount of time and expense for drafting and filing. Furthermore, filers may seek a waiver of filing fees due to hardship.

¹ In Fiscal Year (FY) 2011, there were 56 filings under 49 U.S.C. §§ 10904-07 and the Trails Act. See *Table – Number of Yearly Responses* below. In its 60-day notice (77 Fed. Reg. 7,236-37), the Board indicated that there were approximately 60 respondents. Although no comments were filed in response to the 60-day notice, it has come to our attention that approximately 30% of the filings were additional filings submitted by railroads or trail users that had already submitted filings during the time period. Therefore, the number of respondents has been revised to approximately 40, which is 30% less than the number of filings.

6. Frequency Reduction Consequences

Under the ICA, the Board is required to regulate, or provide for, various transactions to preserve rail service. This collection is only required when a respondent is seeking the benefit of the use of a rail line that might otherwise be abandoned. A less frequent collection would deprive the Board of its ability to determine whether the respondent meets the eligibility standards to obtain the benefit that the respondent is seeking. Therefore, without this collection, the Board could not fulfill its statutory responsibilities.

7. Special Circumstances

None.

8. Consultation with Outside Agency

The estimate of annual burden hours for potential respondents is based on information recently provided by the railroad industry and its representatives and generally depends on the type of filing and the provisions under which the respondent is seeking to preserve rail service. In addition, the Board provided a 60-day comment period regarding this collection in 77 Fed. Reg. 7,236-37 (February 10, 2012). 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

Although most of the information collected, as described above, is available to the public, some of the information collected may be protected and treated as confidential. At times, persons requesting to preserve rail service under 49 U.S.C. §§ 10904-05 and 10907 and 16 U.S.C. § 1247(d) 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 ensure 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).

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.

11. Sensitive Information

No sensitive information of a personal nature is requested.

12. Estimate of Burden Hours for Information Requested

The tables below show the number of responses for each regulatory provision for preserving rail service in FY 2011, as well as the estimated burden hours for each regulatory provision, based on a recent informal survey of respondents. Multiplying the estimated number of burden hours for each type of filing times the number of respondents for each type of filing and summing the products results in a total estimated annual burden hours for this collection of no more than 374 hours.

Table – Number of Yearly Responses.

Type of Filing	Number of filings
Offer of Financial Assistance	3
OFA—Railroad Reply to Request for Information	3
OFA—Request to Set Terms and Conditions	1
Request for Public Use Condition	9
Feeder Line Application	1
Trail-Use Request	20
Trail-Use Request Extension	19

Table – Estimated Hours Per Response.

Type of Filing	Number of Hours Per Response
Offer of Financial Assistance	32 hours
OFA—Railroad Reply to Request for Information	10 hours
OFA—Request to Set Terms and Conditions	4 hours

Request for Public Use Condition	2 hours
Feeder Line Application	70 hours
Trail-Use Request	4 hours
Trail-Use Request Extension	4 hours

The actual hourly burden for any one respondent will, of course, depend on the facts and complexity of each situation in which rail service is sought to be preserved.

13. Estimate of Total Annual Costs to Respondents.

The “non-hour burden” costs associated with this information collection consists of copying and mailing costs. The total “non-hour burden cost” is estimated to be \$2,030 (estimated “non-hour burden” cost per response X number of responses for each type of filing). These costs are detailed in the table below.

Table – Estimated “Non-Hour Burden” Costs by Type of Filing.

Type of Filing	Costs
Offer of Financial Assistance	\$90
OFA—Railroad Reply to Request for Information	\$30
OFA—Request to Set Terms and Conditions	\$30
Request for Public Use Condition	\$30
Feeder Line Application	\$200
Trail-Use Request	\$30
Trail-Use Request Extension	\$30

14. Estimate of Cost to the Federal Government.

Under 31 U.S.C. § 9701 and 49 C.F.R. § 1002, the Board establishes user fees (also called filling fees) that, for most services, recoup the cost to the Board for the specific services that the Board provides to persons seeking a benefit, including requests to preserve rail service. These fees, and the corresponding costs to the government, are based on a cost study using the formula set forth at 49 C.F.R. § 1002.3(d) and other factors relevant to Board fee policy. These costs are updated each year, based on a new cost study.² Here, the Board’s user fees, which

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.

typically track the cost to the government for the respondents' filings, amount to \$43,750 (filing fees applicable to each type of filing X number of responses for each type of filing).

Table –Filing Fees.

Type of Filing	Filing Fees
Offer of Financial Assistance	\$1,500
OFA—Railroad Reply to Request for Information ³	\$0
OFA—Request to Set Terms and Conditions	\$23,100
Request for Public Use Condition ⁴	\$0
Feeder Line Application	\$2,600
Trail-Use Request	\$ 250
Trail-Use Request Extension	\$ 450

However, the Board's user fees do not always include all of the costs to the government. The Board caps certain fees either out of a concern that higher fees could have a chilling effect on the ability of some parties to bring a matter to our attention or because certain types of actions are deemed to benefit the general public. As relevant here, the Board has capped the fees for filings of feeder line applications and trail use condition requests. The additional costs to the government due to capped fees are calculated in the tables below.

Table – Additional Cost Per Response Due to Capped Fees.

Type of Filing	Actual Cost	Capped Fee	Cost to Agency
Feeder Line Application	\$23,698	(\$2,600)	\$21,098
Trail-Use Request	\$ 473	(\$ 250)	\$ 223

3 There is no filing with the Board for railroad replies to requests for information by the filing party in an OFA. The railroad's reply is provided directly to the requesting party. Therefore, there is no filing fee associated with this requirement.

4 There is no fee associated with a request for a public use condition because it is in the general public interest (i.e., use of right-of-way for state or local public projects).

Table – Total Additional Cost to Agency Due to Capped Fees.

Type of Filing	Additional Cost Per Response	Number of Responses	Additional Cost Due to Caps
Feeder Line Application	\$21,098	1	\$21,098
Trail-Use Request	\$ 223	20	\$ 4,460
Total Additional cost			\$25,558

Finally, the Board has not assessed a user fee for the filing of requests for a public use condition because such requests are for the good of the general public. There are, however, costs to the government associated with this filing. Because the Board’s treatment of a request for a public use condition is similar to its treatment of a trail-use request, we conclude that the costs to the government for both types of requests are similar. Therefore, we estimate that the cost to the government for requests for a public use condition is \$4,257 (estimated \$473 cost of a public use condition request X number of public use condition requests).

Totaling the Board’s user fees and the additional costs not reflected in its user fees (due to capped fees and filings in the general public interest), the estimated total annualized cost to the Federal government of this collection is summarized in the table below.

Table – Estimated Total Cost to the Federal Government.

Type of Cost	Cost
Cost Study for Filing Fees	\$43,750
Additional Cost of Capped Fees	\$25,558
Lack of Fees for Public Use	\$ 4,257
Estimated Total Cost	\$73,565

15. Reason for Program Changes.

No changes are sought.

16. Publication of Data and/or Results

Individual submissions are generally 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 is 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.