

**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 adopted in Demurrage Liability, Ex Parte No. 707 (79 Fed. Reg. 21407 (4/14/2014)). The final rule defines demurrage as a charge for detaining rail cars beyond a specified amount of time. It both compensates rail carriers for expenses incurred, and serves as a penalty for undue car detention in order to promote efficiency. The rule states that a carrier and its customers may enter into contracts pertaining to demurrage, but in the absence of such contracts, demurrage will be governed by the carrier’s demurrage tariff. The rule conditions the railroad’s ability to charge demurrage pursuant to its tariff 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 final rule clarifies that the notice requirement for railroads applies in every situation, but it is a one-time per shipper requirement. Additional notices are only required when and if the tariff changes materially. Carriers may have to modify their tariffs to conform to the rule. The final rule drops the notice requirement that the proposed rule had imposed on persons acting as agents for a shipping or receiving entity.

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.

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. In recent years, a question arose as to who should bear liability when an intermediary that accepts rail cars and detains them too long is named as consignee in the bill of lading, but asserts either that it did not know of its consignee status or that it affirmatively asked the shipper not to name it consignee. The resulting legal debate prompted the Board to reexamine its existing policy and to assist in providing clarification for the industry. 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 adopted 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 carriers may use electronic means to satisfy the proposed notice requirement. A carrier may email the tariff itself or a link to the tariff that is posted on the carrier's website.

4. Identification of Duplication. To the extent that it is already the practice of carriers to provide the actual notice required under the final 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. Based on comments received in response to the NPRM, the agency sought additional comments concerning the impact of the proposed requirements on small businesses. The agency has modified the proposed rule to include several burden reducing suggestions from commenters. For example, the agency clarified that notice is only required once per shipper, and not again unless the railroad chooses to change the terms of its tariff. Moreover, carriers may choose between written notice and electronic notice, which may simply be a link to a demurrage tariff published on the carrier's website. Therefore, the Board concluded that incorporating this relatively modest requirement into the carriers' regular business practices and customer communications will be beneficial, both to the industry as a whole and to carriers, including small carriers, in the event of a demurrage dispute.

6. Impact of Less Frequent Collection. The notice requirement is triggered when a shipper initially arranges with a rail carrier for transportation of goods pursuant to the railroad's tariff, or when a rail carrier changes the terms of its demurrage tariff. 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 published notice regarding the proposed rule and collection in the Federal Register (77 Fed. Reg. 27384 (5/10/2012)). Several comments were received and are discussed in the Federal Register notice of the Final Rule (79 Fed. Reg. 21407 (4/14/2014), and/or in the Board's decision (Demurrage Liability, EP 707 (STB served 4/11/14)). The comments, which are available on the Board's website under E-LIBRARY/Filings, were also submitted to OMB as part of the PRA approval process.

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 approximately 1,733 hours (5200 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). We anticipate that the notices will consist of electronic communications between parties that are already in communication regarding the transaction. Therefore, we anticipate that the burden will be minimal after the first year when carriers may have to modify their tariff- communication practices because the customer population for railroads tends to be rather stable and respondents will only be required to provide notice when they have new customers or when they change the terms of their demurrage tariffs.

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.