

SUPPORTING STATEMENT – PETITIONS FOR DECLARATORY ORDER

**A. Justification:**

1. Why the collection is necessary. 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 5 U.S.C. § 554(e) and 49 U.S.C. § 721, any person may ask the Board to issue a decision to terminate a controversy or remove uncertainty in a matter arising under the Interstate Commerce Act, 49 U.S.C. §§ 10101-16106 (ICA) or corresponding regulations. The Board's collection of petitions for declaratory order enables the Board to meet its statutory duty more efficiently.

2. How the collection will be used. Persons wishing to terminate a controversy or remove uncertainty under the ICA or corresponding regulations may file a petition for declaratory order before the Board. Petitions for a declaratory order cover a broad range of requests. In recent years, for example, petitions filed with the Board have sought a declaratory order on whether the provisions of the ICA and the Board's regulations preempt state and local laws (i.e., local permitting and land use laws) or whether certain railroad practices are appropriate and legal. The Board uses the information in the petition for declaratory order to help the Board resolve the questions or issues raised in the petition. The filings that comprise this collection are designated as permanent records. Accordingly, the Board retains them for 10 years, after which they are transferred to the custody of the National Archives and Records Administration.

3. Extent of automated information collection. These documents may be e-filed on the Board's website, located at [www.stb.dot.gov](http://www.stb.dot.gov). With limited exceptions (as discussed in response #10), these documents are publicly available 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. No other entity has authority to address these petitions, and no other federal agency collects this information.

5. Effects on small business. This collection does not have a significant economic effect on a substantial number of small entities. Petitions for declaratory order are usually used to seek the Board's opinion on a specific legal question, or narrow set of questions, under the Board's jurisdiction and are thereby limited in nature. This allows the parties to better understand their position under an efficient process limited to the specific facts that pertain to a specific claim. In contrast, if a party wishes to receive damages or more fully litigate a matter, it may file a formal complaint. In this way, the petition for declaratory order may benefit small entities by allowing them to resolve a specific issue and thereby avoid more costly administrative proceedings.

6. Impact of less frequent collections. Respondents may file these petitions to terminate

a controversy or remove uncertainty. Failure to allow railroads, other regulated carriers, shippers, and other persons to do so would remove a means by which the agency's stakeholders can avoid more costly administrative proceedings by having legal questions resolved early and would hamper the Board's ability to fulfill its statutory mandate efficiently.

7. Special circumstances. No special circumstances apply to this collection.

8. Compliance with 5 C.F.R. § 1320.8. As required, the Board published a notice providing a 60-day comment period regarding this collection. See 78 Fed. Reg. 23826 (4/22/13). No comments were received. A 30-day notice was published concurrently with this submission to Office of Management and Budget (OMB). See 79 Fed. Reg. 2249 (1/13/14).

9. Payments or gifts to respondents. The Board does not provide any payment or gift to respondents.

10. Assurance of confidentiality. This collection is generally available to the public as filings on the Board's website, located at <http://www.stb.dot.gov/filings/all.nsf/WebFilingDate?openform>. However, some of the information collected may be protected and treated as confidential. At times, persons filing a petition for declaratory order before the Board, or responding to one, 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. 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. In such circumstances, a redacted public version of the document will be posted on the Board's website in lieu of the document containing confidential information.

11. Justification for collection of sensitive information. No sensitive information of a personal nature is requested.

12. Estimation of burden hours for respondents. The following information pertains to the estimate of burden hours associated with this collection:

(1) Number of respondents: Seven respondents filed petitions for declaratory order during Fiscal Year 2012 (FY 2012).

Frequency of response: On occasion. (Seven petitions for declaratory order were filed during FY 2012.)

(2) Annual hour burden per respondent and total for all respondents: Based on informal feedback recently provided by a small sampling (less than five) of respondents, it is estimated that it takes approximately 183 hours to prepare and file a petition for

declaratory order with the Board. The resulting total hourly burden for this collection is estimated at 1,281 hours (estimated hours per petition for declaratory order (183) X number of FY 2012 petitions for declaratory order (7)).

For respondents, there is no Board-generated record keeping requirement associated with this collection.

13. Other costs to respondents: The total annual costs to respondents, or the “non-hour burden” costs associated with this information collection, will consist of printing, copying, mailing and messenger costs. Based on informal feedback recently provided by a small sampling (less than five) of respondents, it is estimated that it will average approximately \$1,236 per petition for declaratory order. (However, the actual costs to respondents will depend on the facts of each filing situation.) In FY 2012, respondents made 7 filings. When multiplied by the estimated average non-hourly costs, the total estimated cost for all respondents is, therefore, no more than \$8,652 (estimated “non-hour burden” cost per petition for declaratory order (\$1,236) X number of FY 2012 responses (7)).

14. Estimated costs to the Board: The total annual cost to the Board of this collection is estimated at \$48,622. This estimate is based on a cost study performed by the Board to determine the cost to the Board of various Board functions. These cost studies are typically used to determine the various fees set by the Board, including the fees for filing these petitions. While the Board generally sets its fees to capture the total cost of collection to the Board, the Board reduced the fees for filing certain petitions. Nevertheless, the Board continues to track the full cost for each type of petition and, therefore, staff is able to derive the estimated total annual cost to the Board for this collection.

15. Changes in burden hours. This is an existing collection without a control number.

16. Plans for tabulation and publication: Generally, petitions for declaratory order are published on the Board’s website, located at [www.stb.dot.gov](http://www.stb.dot.gov). However, as discussed above, when these petitions contain confidential information, only a public, redacted version is published on the Board’s website.

17. Display of expiration date for OMB approval. There is no form associated with this collection. When issued, the control number and expiration date for this collection will be published in the Federal Register.

18. Exceptions to Certification Statement. Not applicable.

**B. Collections of Information Employing Statistical Methods:**

Not applicable.