

1 Supporting Statement for Paperwork Reduction Act Submission

OMB Control No. 2140-0022
Expires September 30, 2015

Statutory Authority to Preserve 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 (other than a trail) 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 or Certificate of Interim Trail Use, 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 for the purpose of continuing freight rail transportation.

3. Reduction of Burden through Improved Technology

This information may be e-filed by parties on the Board’s website, <www.stb.dot.gov>.

4. Identification of Duplication

The information requested does not duplicate any other information available to the Board or the public. The information in each of these filings is unique.

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 respondents 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.

6. Consequences if Collection Not Conducted or Less Frequent

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

No special circumstances require the collection to be conducted in a manner inconsistent with the guidelines in 5 C.F.R. § 1320.5.

8. Outside Consultation

The estimate of annual burden hours for potential respondents is based on information provided by the railroad industry or its representatives (fewer than 10) 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 80 Fed. Reg. 38509 (July 6, 2015). 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. 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 ten 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. Collection Burden to Respondents

The tables below show the number of responses for each regulatory provision for preserving rail service in FY 2014, as well as the estimated burden hours for each regulatory provision, based on an 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 368 hours.

Table – Number of Yearly Responses.

Type of Filing	Number of filings
Offer of Financial Assistance	1
OFA—Railroad Reply to Request for Information	2
OFA—Request to Set Terms and Conditions	1
Request for Public Use Condition	1
Feeder Line Application	1
Trail-Use Request	27
Trail-Use Request Extension	24 ¹

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	40 hours ²

1 In the 60-day notice for this collection, the Board estimated that the number of Trail-Use Request Extensions would be 94, but, upon further review, staff has revised the number to 24 because staff believes it more accurately reflects the annual number of this type of filing.

2 In the 60-day notice for this collection, the Board estimated that the burden on respondents would be four hours for filing of an “OFA-Request to Set Terms and Conditions,” but, upon further review, staff has revised this amount to 40 hours (as updated and explained in the 30-day notice), which staff believes is a more accurate estimate of the hourly burden.

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

No non-hour costs have been identified for this collection. This report is submitted to the agency electronically.

14. Estimate of Total Annual Cost to the Federal Government

Under 31 U.S.C. § 9701 and 49 C.F.R. § 1002, the Board establishes user fees (also called filing 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.³ Here, using the most recent cost study, the cost to the federal government for these items amounts to \$98,429 (filing fees applicable to each type of filing X number of responses for each type of filing).

Table – Number of Yearly Responses and their Associated Costs.

Type of Filing	Number of filings	Cost Per Filing	Total Cost Per Type
Offer of Financial Assistance	1	\$1,672	\$1,672
OFA—Railroad Reply to Request for Information	2	\$492	\$984
OFA—Request to Set Terms and Conditions	1	\$24,230	\$24,230
Request for Public Use Condition ⁴	1	\$1,254	\$1,254

³ The Board’s last annual user-fee update was issued in Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services–2015 Update, EP 542 (Sub-No. 23) (STB served July 15, 2015), and became effective on August 14, 2015.

⁴ 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

Feeder Line Application	1	\$24,623	\$24,623
Trail-Use Request	27	\$1,254	\$33,858
Trail-Use Request Extension	24	\$492	\$11,808
Total Cost for Filing Types			\$98,429

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.

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 assume here 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 \$1,254 (estimated \$1,254 cost of a public use condition request X number of public use condition requests).