

SUPPORTING STATEMENT
FOR REQUEST OF OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT AND 5 C.F.R. § 1320

The Surface Transportation Board (STB or Board) requests a three-year extension of approval for the Board's collections from those seeking statutory licensing authority (OMB Control Number: 2140-0023). The Board also seeks to merge into this collection the collection of information about interchange commitments (OMB Control Number: 2140-0016).

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. As mandated by Congress, parties seeking to construct, acquire, or operate a line of railroad, and railroads seeking to abandon or to discontinue operations over a line of railroad or, in the case of two or more railroads, to consolidate their interests through merger or a common-control arrangement (together, rail authority), are required to file an application for prior approval and authority with the Board. See 49 U.S.C. §§ 10901-03; 11323-26.

In addition to the application process, Congress directed the Board to provide exemptions from the application process whenever it finds that application of a statutory provision is unnecessary to carry out transportation policy and either (1) the transportation is limited in scope or (2) an application is not necessary to protect shippers. See 49 U.S.C. § 10502. Pursuant to its exemption authority, the Board has minimized the burden on filers by issuing rules that allow parties to file a notice of exemption or petition for exemption in lieu of an application.

As part of the abbreviated process (and as previously approved under OMB Control No. 2140-0016), a carrier or other party that acquires (through sale or lease) a rail line is required to submit a copy of any agreement that contains a rail interchange commitment as well as other information about the interchange commitment. See 49 C.F.R. §§ 1121.3(d), 1150.33 (h), 1150.43(h), 1180.4(g)(4). This allows the Board to monitor the use of rail interchange commitments in proposed transactions.

The collection by the Board of these applications, petitions for exemption, notices of exemption, and related information enables the Board to meet its statutory duty to regulate the referenced rail transactions. See 49 U.S.C. § 1321.

The table below shows the statutory and regulatory provisions under which the Board

requires this collection.

Table – Statutory and Regulatory Provisions

Certificate Required	Statutory Provision	Regulations
Construct, Acquire, or Operate Railroad Lines	49 U.S.C. § 10901	49 C.F.R. pt. 1150
Short Line purchases by Class II and Class III Rail Carriers	49 U.S.C. § 10902	49 C.F.R. § 1150.41-45
Abandonments and Discontinuances	49 U.S.C. § 10903	49 C.F.R. pt. 1152
Railroad Acquisitions, Trackage Rights, and Leases	49 U.S.C. §§ 11323-26	49 C.F.R. pt. 1180
Rail Interchange Commitments	49 U.S.C. § 1321	49 C.F.R. § 1121.3(d) 49 C.F.R. § 1150.33(h) 49 C.F.R. § 1150.43(h) 49 C.F.R. § 1180.4(g) (4)

2. How the collection will be used. When a party (usually a railroad or a party wishing to become a railroad) seeks rail authority (a benefit) from the Board, it must file an application, petition for exemption, or notice of exemption. The Board reviews each filing and decides whether the requester has met the statutory and regulatory requirements to receive or obtain the requested rail authority.

When an application or petition for exemption is filed, the Board will either grant or deny the requested rail authority after significant analysis. When a notice of exemption is filed, as discussed in section 5 below, the Board generally limits its review to whether the procedural requirements of its regulations are met. The information the Board collects regarding interchange commitments aids it in determining whether a proposed transaction is appropriate for the exemption process or, on the other hand, whether it raises competitive issues and requires additional scrutiny.

3. Extent of automated information collection. These documents may be e-filed on the Board’s website, located at www.stb.gov. The public may also access these filings 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. Each application, petition, or notice is unique.

5. Effects on small business. This information collection does not have a significant economic impact on a substantial number of small entities. While most of the estimated 76 respondents are small businesses, the exemptions available to small business filers require a relatively limited amount of time and expense for drafting and filing. In many cases, parties may file a notice of exemption with the Board, and, if procedurally proper, the notice of the filing is published in the Federal Register by the Board. Shortly after publication, typically the filer automatically obtains the requested authority. Alternatively, parties may file a petition for exemption. The petition for exemption allows for more scrutiny and opportunity for opposition than a notice of exemption, but generally is less burdensome than the application process. Today, the clear majority of parties seek rail authority through an exemption, and most exemptions are sought through the notice-of-exemption process. Filers also may seek a waiver of filing fees due to hardship.

6. Impact of less frequent collections. Under the ICA, the Board is required to regulate the transactions for which the Board requires this collection. Without this collection, the Board could not fulfill its statutory responsibilities.

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 82 Fed. Reg. 8560 (Jan. 26, 2017). No comments were received. A 30-day notice was published concurrently with this submission to Office of Management and Budget (OMB). 82 Fed. Reg. 23481 (May 22, 2017).

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

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, parties requesting authority under 49 U.S.C. §§ 10901-03 and 11323-26 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.

Parties wishing to keep information regarding interchange commitments confidential may file under 49 C.F.R. § 1104.14 without filing an accompanying motion for a protective order. The Board limits access to confidential information to shippers or other affected parties who demonstrate a need for the information and 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).

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

12. Estimation of burden hours for respondents. The estimated annual labor burden for potential respondents is based on information provided by the railroad industry and its representatives (less than 10) and generally depends on the type of filing and the transaction. As discussed above, a respondent may use an application, petition for exemption, or notice of exemption to seek rail authority. The application traditionally has required the most burden hours with the petition next. The notice of exemption is the least burdensome way to seek rail authority.

As explained above, respondents most often use notices of exemption and petitions for exemption to seek rail authority. As provided in *Table – Number of Responses* below, respondents filed one application, 12 petitions for exemption, and 113 notices of exemption in FY 2015. When multiplied by the number of hours for each type of filing, as provided in *Table – Number of Hours Per Response* below, the estimated annual burden hours for 126 responses is 3,399 hours (sum of estimated hours per response X number of responses for each type of filing plus 32 hours for four filings (estimated by staff to take 4 hours each) involving interchange commitments).

Table – Number of Responses in FY 2015

Type of Filing	Number of filings under 49 U.S.C. §§ 10901-03 and 11323-26
Applications	1
Petitions*	12
Notices*	113

Table – Estimated Hours Per Response

Type of Filing	Number of Hours Per Response under 49 U.S.C. §§ 10901-03 and 11323-26
-----------------------	--

Applications	524 hours
Petitions*	58 hours
Notices*	19 hours

* Petition for exemptions and notices of exemption under § 10502 are permitted in lieu of an application.

However, the actual hourly burden to respondents will depend on the facts and complexity of each situation in which they seek rail authority.

- (1) Number of respondents: 76¹
- (2) Frequency of response: On occasion.
- (3) Annual hour burden for all respondents: 3,399 (total estimated hours per response x number of responses for each type of filing (3,367 hours) plus 32 hours for four filings involving interchange commitments)

13. Other costs to respondents. Because Board collections are submitted electronically to the Board, there is no cost for filing with the Board. However, respondents are sometimes required to send consultation letters to various other governmental agencies. Copies of these letters are part of an environmental and historic report that must be filed with this collection (unless waived by the Board). Because some of these other agencies may require hard copy letters, there may be some limited mailing costs, which staff estimates in total to be approximately \$1,537.50.

14. Estimated costs to the Board.

Each year, the Board prepares a cost study, based on the cost-study formula set forth at 49 C.F.R. § 1002.3(d) and other factors relevant to Board fee policy, to establish user fees that approximate the cost to the Board to provide each service. These fees are updated each year, based on a new cost study.² Thus, the user fees used by the Board for each type of filing, including requests for rail authority, track the cost to the government for the respondents' filings here.

1 Approximately 40% of the filings are additional filings submitted by railroads that had already submitted filings during the time period.

2 The Board's last annual user-fee update was issued in Regulations Governing Fees for Services Performed in Connection with Licensing & Related Services—2016 Update, EP 542 (Sub-No. 24) (STB served Aug. 2, 2016), and became effective on September 1, 2016.

The filing fees vary depending on the type of filing and the rail authority requested. See 49 C.F.R. § 1002.2(f). Based on the Board’s user fees, the total annualized cost to the Federal government is estimated to be \$432,906.80 (sum of Board costs applicable to each type of response X number of responses for each type of response).

Table – Number of Yearly Responses and their Associated Costs

Type of Filing	Number of filings under 49 U.S.C. §§ 10901-03 and 11323-26	Cost Per Filing	Total Cost Per Type Filing
Applications	1	\$24,400	\$24,400
Petitions	12	\$9,525	\$114,300
Notices	113	\$2,603.60 ³	\$294,206.80
Total Cost	-----	-----	\$432,906.80

15. Changes in burden hours. This is an existing collection, which is being adjusted to update the burdens and costs based on the actual number of recent filings. The burdens associated with the merged collection have also been incorporated.

16. Plans for tabulation and publication. The information in this collection that is not confidential will be posted on the Board’s website, located at www.stb.gov. However, as discussed above, when these filings contain confidential information, only a public, redacted version is published on the Board’s website.

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 Certification Statement. Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.

3 Notices of exemption have four different costs, where the amount of \$2,603.60 is the weighted average cost.