

**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 requirement that railroads give notice of their demurrage tariff, otherwise known as Demurrage Liability Disclosure Requirements.

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.

Demurrage is 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. 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 in a way that will promote an adequate car supply.

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 railroad's ability to charge demurrage under its tariff depends on its having given, prior to rail car placement, actual notice of the demurrage tariff to the party receiving rail cars for loading and unloading. The notice requirement for railroads applies in every demurrage situation, but it is a one-time-per-shipper requirement. Additional notices are only required when and if the tariff changes materially.

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 has arisen as to which party 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 provide clarification for the industry. The demurrage liability 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 help to avoid demurrage liability disputes by clarifying when and to whom rail carriers may charge demurrage

fees.

2. How the collection will be used. Railroads and parties originating or terminating rail cars use the information in the disclosures to avoid demurrage disputes, as the disclosure allows all parties to a tariff to receive notice of potential liability for demurrage charges. The Board uses the information in the disclosures to resolve demurrage disputes that come before the agency, as the disclosure describes potential liability for demurrage charges before a dispute arises, and the disclosure may be presented by the parties to the Board in a demurrage dispute.

3. Extent of automated information collection. Carriers may use electronic means to satisfy the proposed notice requirement. A carrier may email an affected party 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 Board's regulations, carriers may continue in that practice and the Board's regulations do not require duplication of such notice. Other than those practices, the Board is not aware of the availability of any similar information. The Board is further not aware of any duplication with any other collections conducted by the Board or other federal agencies.

5. Effects 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. Notice is only required once per shipper, and not again unless the railroad chooses to materially change the terms of its tariff. Moreover, this burden may be minimized by using electronic notification, as carriers may choose between written notice and electronic notice. Electronic notice may simply be a link to a demurrage tariff published on the carrier's website. 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 collections. 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 materially changes the terms of its demurrage tariff. Less frequent notice or no notice at all would expose the parties to possible litigation regarding demurrage liability in the instances when such notice has not been provided.

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

8. Compliance with 5 C.F.R. § 1320.8. On April 6, 2017, a 60-day Federal Register Notice was published at 82 Fed. Reg. 16,872. No comments were received. A 30-day notice is being published concurrently with this submission to Office of Management and Budget (OMB).

82 Fed. Reg. 38985 (Aug. 16, 2017).

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

10. Assurance of confidentiality. No confidential information is involved in this collection.

11. Justification for collection of sensitive information. No sensitive information is requested.

12. Estimation of burden hours for respondents.

(1) Number of respondents: 575 (including seven Class I [i.e., large] railroads)

(2) Frequency of response: Occasionally. The notice requirement is triggered in two circumstances: (1) when a shipper initially arranges with a railroad for transportation of goods pursuant to the railroad's tariff; or (2) when a railroad materially changes the terms of its demurrage tariff.

(3) Annual hour burden for all respondents: 864.6 hours. Board staff estimates that: (1) seven Class I railroads will each take on 15 new customers each year (105 hours); (2) each of the seven Class I railroads will update its demurrage tariffs every three years (2.3 hours annualized); (3) 568 non-Class I railroads will each take on one new customer a year (568 hours); and (4) each non-Class I railroad will update its demurrage tariffs every three years (189.3 hours annualized).

(4) Annualized cost to respondents for the hour burden.

13. Other costs to respondents. No non-labor costs are anticipated as the notice is likely to be delivered electronically.

14. Estimated costs to the federal government. No cost to the Board or the federal government generally is anticipated from this collection because the collection consists of notice to parties other than the government, and nothing is collected by the agency.

15. Changes in burden hours. The requested number of burden hours is significantly lower compared to the previous Information Collection Request due to the initial burden associated with a new collection. Because this is no longer a new collection, carriers will only be required to serve the notice on new customers and customers with materially changed tariffs, not all existing customers.

16. Plans for tabulation and publication. Because the agency will not be collecting this

information, there are no plans for the agency 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 Certification Statement. Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.