

2140-0029
January 2018
Expires 5/30/2020

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

The Surface Transportation Board (STB or Board) requests a modification and a three-year extension of approval of the regulations governing the collection of complaints.

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 the Interstate Commerce Act, Pub. L. No. 104-88, 109 Stat. 803 (1995), and corresponding regulations, the Board has broad authority to hear and act upon complaints. Shippers and other persons may bring claims for damages against railroads or other carriers regulated by the Board by filing a complaint before the Board under the procedures set forth in 49 C.F.R. § 1111 for claims under 49 U.S.C. §§ 10701-10707, 11101-11103, 11701-11707 (rail), 14701-14707 (motor, water & intermediaries), and 15901-15906 (pipelines).

For example, a shipper may allege that carriers are charging unreasonable rates or that they are engaging in unreasonable practices. See 49 U.S.C §§ 10701, 10704, 11701, 14701, 15901. The content of the complaint is outlined in 49 C.F.R. § 1111(a). Upon the filing of a complaint, an adjudicatory process is initiated as in the case of claims brought in federal court. The Board uses the information in the complaint to help it adjudicate the claims raised in the complaint. The Board's collection of information associated with these complaints enables it to meet its statutory duties.

This request for modification and approval is precipitated by the addition of a pre-filing notice requirement for what are known as Stand-Alone Cost (SAC) rate complaints. These are usually large and time-consuming proceedings to determine the reasonableness of a railroad's freight transportation rates. The pre-filing notice was developed to expedite these large proceedings to meet recent statutory deadline requirements.

2. Why the modification is necessary. Under Section 11 of the STB Reauthorization Act, Pub. L. No. 114-110, 129 Stat. 2228 (2015), Congress directed the Board to "initiate a proceeding to assess procedures that are available to parties in litigation before courts to expedite such litigation and the potential application of any such procedures to rate cases." In addition, section 11 required the Board to comply with a new timeline in SAC cases. In response to these directives by Congress, the Board proposed changes to its rate case procedures in EP 733,

Expediting Rate Cases, to help improve and expedite the rate review process.

In advance of initiating this proceeding, Board staff held informal meetings with stakeholders. It then issued an Advance Notice of Proposed Rulemaking on June 15, 2016, seeking formal comment on specific ideas raised in the informal meetings as well as comments on any other relevant matters. Expediting Rate Cases (ANPRM), EP 733 (STB served June 15, 2016). The Board received eight opening comments and six reply comments on the ANPRM.

On March 31, 2017, the Board issued a Notice of Proposed Rulemaking, addressing the comments on the ANPRM and proposing specific amendments to its regulations. Expediting Rate Cases (NPRM), EP 733 (STB served Mar. 31, 2017). The Board received four opening comments and six reply comments on the NPRM, all of which will be addressed in the Board's final rule in this proceeding. Although none directly addressed Paperwork Reduction Act (PRA) issues, the comments that may be considered relevant to the necessity, cost, or effect of this collection are summarized in response #8 below.

The Board anticipates that the Final rule in EP 733 will be issued within the next 30 days. To allow the Board and the parties time to prepare before a complaint is filed, the Board is modifying this collection to require a pre-filing notice for the filing of SAC rate cases.

3. Extent of automated information collection. Complaints may be e-filed on the Board's website, located at www.stb.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 federal agency has authority to adjudicate these complaints, and no other 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, as complaints are not typically filed by, or filed against, small entities. Complaints with the potential to have the largest economic effect are rate reasonableness complaints, and these complaints are typically filed by large electric utilities against large railroads.

6. Impact of less frequent collections. The Board is charged with adjudicating several different types of complaints. Limiting complaints by providing for less frequent collections would undermine the Board's ability to fulfill its statutory mandate to hear complaints.

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

8. Compliance with 5 C.F.R. § 1320.8. The Board published in the Federal Register the NPRM on March 31, 2017, which provided for a 45-day comment period (and an additional 30-day period for reply comments) regarding this collection, with specific reference to concerns

detailed in the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521 and Office of Management and Budget (OMB) regulations at 5 C.F.R. § 1320.8(d)(3).

The Board received four opening comments and six reply comments on the NPRM, none of which directly addressed the PRA notice and requests for comments. Even so, the comments that may be considered relevant to the necessity, cost or effect of this collection will be attached to the Board's ROCIS submission and are summarized as follows:

The American Chemistry Council (ACC), The Fertilizer Institute (TFI), and The National Industrial Transportation League (NITL) state that, although their main concern is with the unwieldiness of the SAC process itself (ACC, TFI and NITL Comments at 2), they “support the Board's efforts in this proceeding to expedite rate cases. There is much agreement among all the commenters on most of the proposals.” (ACC, TFI, and NITL NPRM Reply 3.)

Western Coal Traffic League, American Public Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissioners, National Rural Electric Cooperative Association, and Freight Rail Customer Alliance (collectively, Coal Shippers/NARUC) state that they “have no objections to the Board adopting rules giving such shippers the option of submitting a Pre-Filing Notice, and engaging in a mandatory pre-filing [] mediation, but there is no reason to adopt a one-size-fits-all rule requiring all shippers to engage in a costly, time-consuming process that increases, not decreases, the length of time it takes to pursue maximum rate relief at the STB.” (Coal Shippers/NARUC NPRM Reply 11.)

The Board anticipates publishing the Final Rule in the Federal Register within the next 30 days. The Final Rule will address the comments received in response to the NPRM.

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 www.stb.gov. However, some of the information collected may be protected and treated as confidential. At times, persons filing a complaint before the Board, or responding to a complaint, 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: Approximately four.

(2) Frequency of response: On occasion.

(3) Annual hour burden per respondent and total for all respondents: 1,876 hours (estimated hours per complaint (469) x total number of complaints (4)).

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 equaling approximately \$5,848 (estimated non-hour burden cost per complaint (\$1,462) x total number of complaints (4)).

14. Estimated costs to the Board: The total annual cost to the Board of this collection is estimated at \$513,368. This estimate is derived from a Board study to help the agency set filing fees based on the cost to the Board of various Board functions.

15. Changes in burden hours. This is an existing collection, which is being adjusted to add the pre-filing requirement in rate complaint proceedings and to update the Board’s estimate of its burdens and costs of all complaints filed at the Board. While the added pre-filing requirement will increase the burden of bringing any given complaint before the Board, our estimate that the number of responses will decrease from five to four annually will decrease the burden overall. In other words, because reduced number of responses will have a larger effect than the increased burdens for individual cases associated with the new pre-filing requirement, the overall burden of the collection will decrease.

16. Plans for tabulation and publication: Generally, complaints are published on the Board’s website, located at www.stb.gov. However, as discussed above, when complaints contain confidential information, only a public, redacted version is published on the Board’s website. Complaints are designated as permanent records, and, accordingly, the Board retains them for 10 years, after which they are transferred to the custody of the National Archives and Records Administration.

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.