

# Supporting Statement for Paperwork Reduction Act Submission

OMB Control No. 2140-0026  
Expires September 30, 2021

## Modification in Docket No. EP 749 (Sub-No. 1), Preservation of Rail Service

The Surface Transportation Board (STB or Board) requests a three-year extension of approval for the Board's collections from those seeking statutory authority to preserve rail service (OMB Control Number 2140-0022). In a notice of proposed rulemaking, the Board is proposing to modify this collection to reduce the burden for respondents submitting trail use requests.

### **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, *amended by* the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), *amended by* the Surface Transportation Board Reauthorization Act of 2015, Pub. L. No. 114-110 (2015), and Section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 (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 (Trails Act). 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. How the collection will be used. 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, permitting the parties to negotiate a public use (other than a trail) for the rail line.

Under the Trails Act, a trail use request, if agreed upon by the abandoning carrier, requires the Board to condition an abandonment by issuing a Notice of Interim Trail Use (NITU) or Certificate of Interim Trail Use (CITU). Once issued, the CITU/NITU permits parties to negotiate for an interim trail use agreement. The parties may also agree to an extension of the negotiating period, which is commonly done to extend negotiations. If parties reach an agreement, then they must jointly notify the Board of that fact and must identify the exact location of the right-of-way subject to the agreement, including a map and milepost marker information. They must also notify the Board of any modification or vacancy of the agreement.

In a supplemental notice of proposed rulemaking, Limiting Extensions of Trail Use Negotiating Periods (SPR), EP 749 (Sub-No. 1),<sup>1</sup> the Board proposes three changes to its rules on trail use requests and trail use request extensions. First, the SPR would lengthen the initial

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<sup>1</sup> The Board issued a notice of proposed rulemaking in Limiting Extensions of Trail Use Negotiating Periods (NPR), EP 749 (Sub-No. 1) (STB served Oct. 2, 2018) (83 Fed. Reg. 50,326), without notice of its proposed modification to an existing information collection. The NPR has been revised, and the SPR is being issued in its place with the proper information collection notice.

interim trail use negotiating period from 180 days to one year. Second, it would permit up to three one-year extensions of the initial period (if the trail sponsor and the railroad agree), rather than an unlimited number of 180-day extensions. Finally, it would permit additional one-year extensions (if the trail sponsor and the railroad agree and good cause is shown). Ultimately, the submission of trail use requests and extensions ensure that the affected public and the agency will have notice of actions taken in pursuit of trail use under the Trails Act.

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. Extent of automated information collection. These documents may be e-filed on the Board's website, located at [www.stb.gov](http://www.stb.gov). The public may also access these filings on the Board's website. Additionally, records provided to others may be transmitted via email.

4. Identification of duplication. The information requested does not duplicate any other information available to the Board or the public.

5. Effects 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 transmission. Furthermore, filers may seek a waiver of filing fees due to hardship.

6. Impact of less frequent collections. Under the statutes referenced above, 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 apply to this collection.

8. Consultation with Outside Agency. By decision published on June 6, 2019 (84 Fed. Reg. 26387), the Board issued the SPR requesting public comments on its proposal to update its regulations to increase the length of the initial trail use request negotiating period and subsequent extensions of the negotiating period.

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, persons requesting to preserve rail service under 49 U.S.C. §§ 10904-05, 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).

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

12. Estimation of burden hours for respondents. The number of annual responses is shown in *Table – Number of Yearly Responses* below. 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 40 respondents making 74 responses is 658 hours (sum of estimated hours per response X number of responses for each type of filing).

*Table – Number of Yearly Responses.*

Type of Filing	Number of filings (Current)	Number of filings (2018)
Offer of Financial Assistance	1	1
OFA—Railroad Reply to Request for Information	1	1
OFA—Request to Set Terms and Conditions	1	1
Request for Public Use Condition	1	1
Feeder Line Application	5	5
Trail Use Request	23	23
Trail Use Request Extension	42	84

The *Table – Number of Yearly Responses* above shows a 50% reduction in the number of trail use request extensions for the next three years. In 2018, the Board used a three-year average of actual filings with the Board to estimate that 84 trail use request extensions would be filed annually through 2020. Due to the doubling of the length of these extensions under the SPR, the Board estimates that there will only be 42 trail use request extensions through 2022.

*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	4 hours
Request for Public Use Condition	2 hours
Feeder Line Application	70 hours
Trail Use Request	4 hours
Trail Use Request Extension	4 hours

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

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 \$1,200.00.

14. Estimate of 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.<sup>2</sup> Here, the Board’s user fees, which typically track the cost to the government for the respondents’ filings, amount to \$231,370 (filing fees applicable to each type of filing X number of responses for each type of filing + cost to agency due to capped fees and public use – see Table – Estimated Total Cost to the Federal Government).

*Table –Filing Fees.*

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<sup>2</sup> The Board’s last annual user-fee update was issued in Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services–2018 Update, EP 542 (Sub-No. 26) (STB served August 6, 2018), and became effective on September 5, 2018.

Type of Filing	Filing Fees
Offer of Financial Assistance	\$1,800
OFA—Railroad Reply to Request for Information <sup>3</sup>	\$0
OFA—Request to Set Terms and Conditions	\$26,000
Request for Public Use Condition <sup>4</sup>	\$0
Feeder Line Application	\$2,600
Trail Use Request	\$ 300
Trail Use Request Extension	\$ 500

However, the Board’s user fees do not always include all of the costs to the government. The Board caps certain fees either out of a concern that higher fees could have a chilling effect on the ability of some parties to bring a matter to our attention or because certain types of actions are deemed to benefit the public. As relevant here, the Board has capped the fees for filings of feeder line applications and trail use condition requests. The additional costs to the government due to capped fees are calculated in the tables below.

*Table – Additional Cost Per Response Due to Capped Fees.*

Type of Filing	Actual Cost	Capped Fee	Cost to Agency
Feeder Line Application	\$27,380	(\$2,600)	\$24,780
Trail Use Request	\$ 1,395	(\$ 300)	\$ 1,095
Trail Use Request Extension	\$ 545	(\$ 500)	\$ 45

*Table – Total Additional Cost to Agency Due to Capped Fees.*

Type of Filing	Additional Cost Per Response	Number of Responses	Additional Cost Due to Caps
Feeder Line Application	\$24,780	5	\$123,900
Trail Use Request	\$ 1,095	23	\$ 25,185
Trail Use Request Extn	\$ 45	42	\$ 1,890
Total Additional cost			\$150,975

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<sup>3</sup> There is no filing with the Board for railroad replies to requests for information by the filing party in an OFA. The railroad’s reply is provided directly to the requesting party. Therefore, there is no cost to the agency associated with this requirement.

<sup>4</sup> There is no fee associated with a request for a public use condition because it is in the public interest (i.e., use of right-of-way for state or local public projects).

Finally, 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 public. There are, however, costs 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 conclude 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 \$1,095 (estimated \$1,095 cost of a public use condition request X number of public use condition requests (1)).

Totaling the Board’s user fees and the additional costs not reflected in its user fees (due to capped fees and filings in the public interest), the estimated total annualized cost to the Federal government of this collection is summarized in the table below.

*Table – Estimated Total Cost to the Federal Government.*

Type of Cost	Cost
Cost Study for Filing Fees	\$ 79,300
Additional Cost of Capped Fees	\$150,975
Lack of Fees for Public Use	\$ 1,095
Estimated Total Cost	\$231,370

15. Changes in burden hours. This is an existing collection, which is being adjusted to update the burdens and costs based on the proposed rule changes in the SPR. The SPR proposes to: (a) increase the initial interim trail use negotiating period from 180 days to one year; (b) limit trail use request extensions to three, one-year extensions (if the trail sponsor and the railroad agree) rather than an unlimited number of 180-day extensions; and (c) allow additional one-year extensions (if the trail sponsor and the railroad agree and good cause is shown). Due to these rule changes, the Board estimates that there will be a 168-hour reduction in the burden hours to respondents. This reduction is derived from the assumption that, if the length of each extension is doubled, then the number of extensions will be reduced by half. Due to the doubling of the length of these extensions, the Board now estimates that there will only be half as many trail use request extensions annually.

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](http://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.