

Supporting Statement for Paperwork Reduction Act Submission

OMB Control No. 2140-0022
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 modification and 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 final rule, the Board modified this information 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. The Interstate Commerce Act, *as amended*, provides various mechanisms for preserving rail service and infrastructure. In addition, the Board's regulations at 49 C.F.R. § 1152.29 implementing Section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), provide a mechanism for interested persons to negotiate and reach voluntary agreements with railroads for interim trail use of railroad rights-of-way subject to potential reactivation.

When a line is authorized for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service or infrastructure 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 Trails Act 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
Trails Act 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 or infrastructure 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 Board’s regulations implementing the Trails Act, if a rail carrier agrees to negotiate in response to an interim trail use statement of willingness filed in an abandonment proceeding, the Board issues a Notice of Interim Trail Use (NITU) or Certificate of Interim Trail Use (CITU). The CITU/NITU permits provides a period during which parties may negotiate a voluntary interim trail use agreement. The parties may request extensions of the negotiating period. 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 Limiting Extensions of Trail Use Negotiating Periods (Final Rule), EP 749 (Sub-No. 1) (84 Fed. Reg. 66320), the Board amended its current regulations to: (1) provide that the initial term for a CITU or NITU will be one year (instead of the current 180 days); (2) permit up to three one-year extensions of the initial period if the trail sponsor and the railroad agree; and (3) permit additional one-year extensions if the trail sponsor and the railroad agree and extraordinary circumstances are shown. The final rule will become effective on February 2, 2020.

Adoption of this rule extending the initial term for a CITU or NITU and limiting extensions of trail use negotiating periods while extending the length of these extensions is intended to strike an appropriate balance between the interests of landowners (to which the property might

otherwise revert absent an interim trail use agreement), trail proponents, railroads, and the agency. The final rule will lead to more efficiency, clarity, and finality in the Trails Act process, reducing burdens on parties, conserving Board resources, and providing greater overall certainty, while also providing a reasonable amount of time (at least four years) for railroads and prospective trail sponsors to negotiate voluntary agreements for interim trail use/railbanking.

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. 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 some of the estimated 40 respondents may be small businesses, any submission from 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 and infrastructure. This collection is required only when a respondent is seeking the benefit of the use of a rail line that might otherwise be abandoned. A less frequent collection would not be feasible, as the collection is triggered only by a respondent's desire to show that it meets the eligibility standards to obtain the benefit it is seeking. Therefore, without this collection, respondents could not obtain the benefits to which they might be entitled, and 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. By decision published on June 6, 2019 (84 Fed. Reg. 26387), the Board issued a supplemental notice of rulemaking 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. No comments were received that pertain to this information collection.

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
Trails Act Request	23	23
Trails Act Request Extension	42	84

The *Table – Number of Yearly Responses* above shows a 50% reduction in the number of Trails Act extension requests for the next three years. In 2018, the Board used a three-year average of actual filings with the Board to estimate that 84 Trails Act request extensions would be filed annually through 2020. Due to the doubling of the length of these extensions under the Final Rule, the Board estimates that there will only be 42 Trails Act request extensions annually 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
Trails Act Request	4 hours
Trails Act 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, beyond the initial filing fee under STB regulations pursuant to the Independent Offices Appropriation Act. 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. Estimated costs to the Board: There will be no cost beyond the normal labor costs for Board staff.

15. Changes in burden hours. This is an existing collection, which is being adjusted to update the burdens and costs based on the Final Rule, as described in paragraph 2 above. 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. 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.