

**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 modification and 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. Demurrage is a charge by a rail carrier that both compensates it for the expense incurred when its rail cars are detained beyond a specified period of time (i.e., "free time") for loading and unloading and serves as a penalty for undue car detention to encourage the efficient use of rail cars in the rail network. See 49 C.F.R. § 1333.1. Demurrage is subject to Board regulation under 49 U.S.C. § 10702 (requiring railroads to establish reasonable rates and transportation-related rules and practices) and 49 U.S.C. § 10746 (requiring railroads to compute demurrage charges and related rules in a way that will fulfill national needs related to freight car use and distribution and maintenance of an adequate car supply).

In the simplest demurrage case, a railroad assesses demurrage on the consignor (the shipper of the goods) for delays in loading cars at origin and on the consignee (the receiver of the goods) for delays in unloading cars and returning them to the rail carrier at destination. Demurrage can also, however, involve warehousemen that accept freight cars for loading and unloading but have no property interest in the freight being transported. Warehousemen are not typically owners of property being shipped (even though, by accepting the cars, they could be in a position to facilitate or impede car supply), but rail carriers sometimes bill them for demurrage as well. Thus, with multiple participants, it is important to provide clarity and notice for all parties involved.

2. Why the modification is necessary. 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.

This modification request stems from the Board's proposed rule to change the Board's regulations governing demurrage liability. Demurrage Billing Requirements, EP 759 (84 Fed. Reg. 55114 (Oct. 15, 2019)) (NPRM). The Board proposes two changes to its existing demurrage regulations. First, the Board proposes certain requirements regarding Class I carriers' demurrage invoices, such as minimum information to be included on or with those invoices, that would enable invoice recipients to verify the validity of the demurrage charges; that would permit shippers and warehousemen to properly allocate demurrage responsibility amongst themselves; and that would assist shippers and receivers in determining how to modify their behavior to encourage the efficient use of rail assets, thereby fulfilling the purpose of demurrage. Second, the Board proposes a requirement for Class I carriers that if a shipper and warehouseman agree that the shipper should be responsible for paying demurrage invoices, the rail carrier must, upon receiving notice of that agreement, send the invoices directly to the shipper, and not require the warehouseman to guarantee payment.

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. 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. 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. In the NPRM, the changes apply only to Class I [i.e., large] carriers.

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. The NPRM would require additional notice and information in Class I carrier invoices. 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. The Board published its proposed rule change (84 Fed. Reg. 55114 (Oct. 15, 2019)), which provided for 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).

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: 684 (including seven Class I railroads)
- (2) Frequency of response: Occasionally. The existing demurrage liability disclosure requirement is triggered in two circumstances: (1) when a shipper initially arranges with a railroad for transportation of freight pursuant to the rail carrier's tariff; or (2) when a rail carrier changes the terms of its demurrage tariff. The modification sought here makes three changes to the existing collection, as follows: (1) one-time adjustments to the Class I railroads' billing systems to (a) include information on demurrage invoices, (b) to take appropriate action to ensure that the demurrage invoices are accurate and warranted, and (2) make an annual adjustment to the Class I carriers' invoicing practices to invoice the shipper when the warehouseman and the shipper reach agreement for the serving Class I carrier to invoice the shipper (estimated 60 agreements).
- (3) Annual hour burden for all respondents: 1,329.7 hours. Consistent with the existing, approved information collection, Board staff estimates that: (1) seven Class I carriers would each take on 15 new customers each year (105 hours); (2) each of the seven Class I carriers would update its demurrage tariffs annually (7 hours); (3) 677 non-Class I carriers would each take on one new customer a year (677 hours); and (4) each of the non-Class I carriers would update its demurrage tariffs every three years (225.7 hours annualized). For the modification to Class I carriers' invoicing requirements, Board staff estimates that, on average, each Class I rail carrier would have a one-time burden of 40 hours (280 total hours). Amortized over three years, this one-time burden equals 93.3 hours per year. For the modification requiring each Class I carrier to ensure that the demurrage charges are accurate and warranted, Board staff estimates that, on average, each Class I carrier would have a one-time burden of 80 hours (560 total hours) to establish or modify appropriate protocols and procedures. Amortized over three years, this one-time burden equals 186.7 hours per year. For the modification adding a shipper invoicing requirement when a warehouseman and shipper have agreed and notified the Class I carrier, Board staff estimates that annually seven Class I carriers would each receive 60 requests per year for additional shipper invoices at five minutes per invoice (35 hours). The total estimated hour burdens are also set forth in the table below.

Table – Total Burden Hours (per Year)

<u>Respondents</u>	<u>Existing Annual Burden</u>	<u>Existing Annual Update Burden</u>	<u>Estimated One-Time Burden for Additional Data</u>	<u>Estimated One-Time Burden for Appropriate Protocols</u>	<u>Estimated Annual Burden for Invoicing Agreement</u>	<u>Total Yearly Burden Hours</u>
7 Class I Carriers	105 hours	7 hours	93.3 hours	186.7 hours	35 hours	427 hours
677 Non-Class I Carriers	677 hours	225.7 hours	---	---	---	902.7 hours
Totals	782 hours	232.7 hours	93.3 hours	186.7 hours	35 hours	1,329.7 hours

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. There will be no cost beyond the normal labor costs for Board staff.

15. Changes in burden hours. The NPRM would modify the hourly burden in the existing, approved information collection in three ways. First, the Board estimates that the proposed invoicing requirements for Class I carriers would add a total one-time hour burden of 280 hours (or 93.3 hours per year as amortized over three years) for Class I carriers because, in most cases, those carriers would likely need to modify their billing systems to implement some or all of these changes. Second, the requirement that Class I carriers take appropriate action to ensure that demurrage charges are accurate and warranted would likely require Class I carriers to establish or modify appropriate demurrage invoicing protocols and procedures and would add an estimated total one-time hour burden of 560 hours (or 186.7 hours per year as amortized over three years). Third, the Board estimates that the proposed invoicing requirement that Class I carriers invoice demurrage involving a warehouseman to the shipper if the shipper and warehouseman have agreed to that arrangement and have so notified the rail carrier would add an annual hour burden of 35 hours. All other hour burdens would remain the same as before this modification (except for an update to the number of non-Class I carriers and to the estimate of how frequently Class I carriers choose to update their demurrage tariffs, as reflected in the estimates above).

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.