

2140-0023
November 2020
Expires 11/30/20

**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 collections from those seeking statutory licensing authority (OMB Control Number: 2140-0023).

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. As mandated by Congress, parties seeking to construct, acquire, or operate a line of railroad, and railroads seeking to abandon or to discontinue operations over a line of railroad or, in the case of two or more railroads, to consolidate their interests through merger or a common-control arrangement (together, rail authority), are required to file an application for prior approval and authority with the Board. See 49 U.S.C. §§ 10901-03; 11323-26.

In addition to the application process, Congress directed the Board to provide exemptions from the application process whenever it finds that application of a statutory provision is unnecessary to carry out transportation policy and either (1) the transportation is limited in scope or (2) an application is not necessary to protect shippers. See 49 U.S.C. § 10502. Pursuant to its exemption authority, the Board has minimized the burden on filers by issuing rules that allow parties to file a notice of exemption or petition for exemption in lieu of an application.

As part of the process (and as previously approved under OMB Control No. 2140-0016), a carrier or other party that acquires (through sale or lease) a rail line is required to submit a copy of any agreement that contains a rail interchange commitment as well as other information about the interchange commitment. See 49 C.F.R. §§ 1121.3(d), 1150.33(h), 1150.43(h), 1180.4(g)(4). This allows the Board to monitor the use of rail interchange commitments in proposed transactions.

The collection by the Board of these applications, petitions for exemption, notices of exemption, and related information enables the Board to meet its statutory duty to regulate the referenced rail transactions. See 49 U.S.C. § 1321.

The table below shows the statutory and regulatory provisions under which the Board requires this collection.

Table – Statutory and Regulatory Provisions

| Certificate Required | Statutory Provision | Regulations |
|--|----------------------------|---|
| Construct, Acquire, or Operate Railroad Lines | 49 U.S.C. § 10901 | 49 C.F.R. pt. 1150 |
| Short Line purchases by Class II and Class III Rail Carriers | 49 U.S.C. § 10902 | 49 C.F.R. § 1150.41-45 |
| Abandonments and Discontinuances | 49 U.S.C. § 10903 | 49 C.F.R. pt. 1152 |
| Railroad Acquisitions, Trackage Rights, and Leases | 49 U.S.C. §§ 11323-26 | 49 C.F.R. pt. 1180 |
| Rail Interchange Commitments | 49 U.S.C. § 1321 | 49 C.F.R. § 1121.3(d) 49 C.F.R. § 1150.33(h) 49 C.F.R. § 1150.43(h) 49 C.F.R. § 1180.4(g)(4) |

2. How the collection will be used. When a party (usually a railroad or a party wishing to become a railroad) seeks rail authority (a benefit) from the Board, it must file an application, petition for exemption, or notice of exemption. The Board reviews each filing and decides whether the requester has met the statutory and regulatory requirements to receive or obtain the requested rail authority.

When an application or petition for exemption is filed, the Board will either grant or deny the requested rail authority after significant analysis. When a notice of exemption is filed, as discussed in section 5 below, the Board generally limits its review to whether the procedural requirements of its regulations are met. The information the Board collects regarding interchange commitments (which may limit the future interchange of traffic with third parties) aids it in determining whether a proposed transaction is appropriate for the exemption process or, on the other hand, whether it raises competitive issues and requires additional scrutiny.

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.

4. Identification of duplication. The information requested does not duplicate any other information available to the Board or the public. Each application, petition, notice, or agreement is unique.

5. Effects on small business. This information collection does not have a significant economic impact on a substantial number of small entities. While most of the estimated 80 respondents are small businesses, the exemptions available to small business filers require a relatively limited amount of time and expense for drafting and filing. In many cases, parties may file a notice of exemption with the Board, and, if procedurally proper, the notice of the filing is published in the Federal Register by the Board. Shortly after publication, the filer typically obtains the requested authority automatically. Alternatively, parties may file a petition for exemption. The petition for exemption allows for more scrutiny and opportunity for opposition than a notice of exemption, but generally is less burdensome than the application process. Today, the clear majority of parties seek rail authority through an exemption, and most exemptions are sought through the notice-of-exemption process. Filers also may seek a waiver of filing fees due to hardship.

6. Impact of less frequent collections. Under the statute, the Board is required to regulate the transactions covered by this collection. Without this collection, 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. As required, the Board published a notice providing a 60-day comment period regarding this collection. See 85 Fed. Reg. 21495 (Apr. 17, 2020). No comments were received. A 30-day notice was published concurrently with this submission to Office of Management and Budget (OMB). 85 Fed. Reg. 37147 (June 19, 2020).

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, parties requesting authority under 49 U.S.C. §§ 10901-03 and 11323-26 may wish to file commercially sensitive information. To protect such information, parties may mark documents or portions of documents as “confidential” or “highly confidential.” See 49 C.F.R. § 1104.14. The Board limits access to confidential information to shippers or other affected parties who demonstrate a need for the information and 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. 4,257 hours. The estimated annual labor burden for potential respondents is based on information provided by the railroad industry and its representatives (fewer than 10) and generally depends on the type of filing and the transaction. As discussed above, a respondent may use an application, petition for exemption, or notice of exemption to seek rail authority. The application traditionally has entailed the most burden hours, the petition the next-most, and the notice of exemption – the least burdensome way to seek rail authority – the fewest.

As provided in *Table 1 – Annual Average Number of Responses for FY 2017-19* below, respondents filed three applications, 12 petitions for exemption, 103 notices of exemption, and four interchange commitments annually based on an actual three-year average (FY 2017-19) of filings. When multiplied by the number of hours for each type of filing, as provided in *Table 2 – Estimated Number of Hours Per Response* below, the estimated annual burden hours for 122 responses is 4,257 hours (sum of estimated hours per response X number of responses for each type of filing), as shown in *Table 3 – Total Estimated Annual Burden Hours*.

Number of respondents: 80

Frequency: On occasion

Table 1 – Annual Average Number of Responses for FY 2017-2019

| Type of filing | Average number of filings per year under 49 U.S.C. 10901-03 and 11323-26 |
|-------------------------|--|
| Applications | 3 |
| Petitions* | 12 |
| Notices* | 103 |
| Interchange commitments | 4 |

Table 2 – Estimated Hours per Response

| Type of filing | Number of hours per response under 49 U.S.C. 10901-03 and 11323-26 |
|-------------------------|--|
| Applications | 524 |
| Petitions* | 58 |
| Notices* | 19 |
| Interchange commitments | 8 |

Table 3 – Total Estimated Annual Burden Hours

| Type of filing | Hours per response | Annual number of filings | Total annual burden hours |
|----------------|--------------------|--------------------------|---------------------------|
| Applications | 524 | 3 | 1,572 |

| | | | |
|---------------------------|----|-----|-------|
| Petitions* | 58 | 12 | 696 |
| Notices* | 19 | 103 | 1,957 |
| Interchange commitments | 8 | 4 | 32 |
| Total annual burden hours | | 122 | 4,257 |

* Under section 10502, petitions for exemption and notices of exemption are permitted in lieu of an application.

However, 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, for some filings, 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 \$1,750.

14. Estimated costs to the Board. The estimated cost to the Board is approximately 0.1 FTEs for formation of staff teams (for applications and larger proceedings) and the review and processing of all filings that are a part of this collection.

15. Changes in burden hours. This is an existing collection, which is being adjusted to update the burdens and costs based on the actual number of recent filings, using a recent three-year average. Based on the difference between the currently applicable three-year average (2017-2019) and the previously used three-year average (using 2014-2016), the estimated number of notices decreased by 10 and the estimated number of applications increased by two. As a result of this distribution change, there was a net decrease of eight responses, but a net increase of approximately 858 burden hours. For comparison, the decrease of 10 notices resulted in a decrease of 190 annual burden hours. At the same time, the increase of two applications resulted in increase of approximately 1,050 annual burden hours. These are accurate results.

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.