

2140-0029
July 2020
Expired 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 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 and corresponding regulations, the Board has broad authority to hear and act upon complaints. Shippers and other persons may seek relief, including 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. § 1111.2. Upon the filing of a complaint, an adjudicatory process is initiated as in the case of claims brought in federal court. The Board's collection of information associated with these complaints enables it to meet its statutory duties by determining the reasonableness of challenged rail transportation rates, one of the Board's core functions. See 49 U.S.C. § 10101(6) (stating the rail transportation policy "to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital").

2. How the collection will be used. Persons seeking relief, including claims for certain damages against a railroad or other regulated carrier, must file a complaint before the Board. For example, a shipper may allege that carriers are charging unreasonable rates or that they are engaging in unreasonable practices. 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.

In two notices of proposed rulemakings, Final Offer Rate Review, EP 755 et al. (84 Fed. Reg. 48872 (Sept. 17, 2019)); and Market Dominance Streamlined Approach, EP 756 (84 Fed. Reg. 48882 (Sept. 17, 2019)), the Board proposed new rules that are intended to simplify and

streamline certain complaint proceedings. The Board has submitted to OMB an interim request for modification and extension of the existing collection and has received comments, which it is reviewing. The Board will submit its final request for modification of this collection and address comments once the final rules are decided.

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. Rate complaints are not typically filed against small carriers. And to the extent that small shippers elect to file rate complaints, the notices of proposed rulemakings identified above, should they proceed to final rule, would make it easier for them to do so.

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. As required, the Board published a notice providing a 60-day comment period regarding this collection. *See* 85 Fed. Reg. 31020 (May 21, 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. 42481 (July 14, 2020).

9. Payments or gifts to respondents. The Board does not provide any payment or gift to respondents.

10. Assurance of confidentiality. The information in 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. In recent years, respondents have filed approximately four complaints per year with the Board.
- (3) Annual hour burden per respondent and total for all respondents: 1,876 hours (sum of estimated hours per complaint (469) x total number of estimated, existing complaints (4)). The annualized burden is shown in the Table below.

Table – Total Annual Estimated Hours

Type of Complaints	Estimated Annual Complaints	Estimated Hours per Complaint	Total Annual Estimated Hours
Existing Annual Complaints	4	469	1,876

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 (sum of estimated non-hour burden cost per complaint (\$1,462) x total number of estimated, existing complaints (4)).

14. Estimated costs to the Board: There will be no cost beyond the normal labor costs for Board staff.

15. Changes in burden hours. The Board bases the estimated number of responses on the average number of actual filings over the previous three years. For Complaints, the average number of filings for fiscal years 2017-2019 decreased to four filings per year from the five filings per year for years 2014-2016. Thus, the number of complaints decreased from five to four.

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.