2140-0021
September 2020
Expires 10/31/2020

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 a three-year extension of approval of the regulations governing the information collection of the **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 can 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 and extension 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). In the NPRM, the Board proposed two changes to its existing demurrage regulations. First, the Board proposed that certain information be added to Class I carriers' demurrage invoices (such as minimum information to be included on or with those invoices). The purpose of this information would be to: enable invoice recipients to verify the validity of the demurrage charges; permit shippers and warehousemen to properly allocate demurrage responsibility amongst themselves; and 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 proposed 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.

In a final rule, Demurrage Billing Requirements, EP 759 (85 Fed. Reg. 26858) (published May 6, 2020) (Final Rule), the Board issued a new rule that required Class I carriers to directly bill the shipper for demurrage when the shipper and warehousemen agree to that arrangement and so notify the rail carrier, adopting the second proposed rule as discussed above. At the same time, in a supplemental notice of proposed rulemaking, Demurrage Billing Requirements, EP 759 (85 Fed. Reg. 26915) (published May 6, 2020) (SNPRM), the Board invited parties and the public to submit additional comments on the types of information that should be added to the Class I carriers' demurrage invoices. The Board will make an additional modification request when the final rule associated with the SNPRM is issued. This modification and extension request pertains only to the Final Rule here.

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 SNPRM and Final Rule, 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 Final Rule will require Class I rail carriers to bill shippers more often, but 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). The Board received one comment, from Canadian National Railway (CN), in response to the Board's PRA analysis in the NPRM regarding the requirement that railroads directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier.[1]

In its comment, CN argued that it would take longer than five minutes to permanently implement direct billing to a terminal customer and that, if it were required to change its billing for the 500 terminals it serves in its U.S. network, then it estimated that each large terminal of more than 5 shippers would require 1 hour of processing time per month, every month, and each small terminal would require 30 minutes per month, plus additional time at start up were they to opt for direct billing. In the Final Rule, the Board addressed CN's comments. While the Board disagreed with CN's arguments, pointing out that Class I carriers are only required to directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and notify the rail carrier. It estimated that each Class I railroad would only receive approximately 60 of these agreements per year. In the Final Rule, the Board nevertheless increased its estimate from five minutes per agreement to one hour per agreement to reflect the fact that the requests for direct billing could increase a carrier's workload.[2]

No other railroads commented on the Board's estimates.

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.

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[1] In its comments, an association representing small and regional railroads questioned the source of the estimated 677 burden hours in the NPRM. As the Board pointed out in the Final Rule, this estimate comes from the existing collection for which the Board is seeking a modification and extension and is shown in the burden analysis in Appendix B of the NPRM and included in the burdens for the existing portion of the collection in the Final Rule.

[2] In the Final Rule, the Board also clarifies that its burden estimates are on a per-agreement basis. CN does not challenge the Board's frequency estimate (60 agreements per Class I carrier), nor does it provide specific burden hours based on a more limited number of agreements.

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 one change to the existing collection, making 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: 1,434.7 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). In response to CN's comments, Board staff now estimates that annually seven Class I carriers would each receive 60 requests per year for additional shipper invoices at one hour per invoice (420 hours). The total estimated hour burdens are set forth in the table below.

Table – Total Burden Hours (per Year)

Respondents	**Existing Annual Burden**	**Existing Annual Update Burden**	**Estimated Annual Burden for Invoicing Agreement**	**Total Yearly Burden Hours**
7 Class I Carriers	105 hours	7 hours	420 hours	532 hours
677 Non-Class I Carriers	677 hours	225.7 hours	---	902.7 hours
Totals	782 hours	232.7 hours	420 hours	1,434.7 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. This collection is a 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. Because the Board will not collect any information, there will be no cost to the Board.

15. Changes in burden hours. The Final Rule modifies the hourly burden in the existing, approved information collection by creating an invoicing requirement for Class I carriers that would add an annual hour burden of 420 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.