

**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 approval for the information collection of the Reciprocal Switching for Inadequate Service.

A. Justification:

1. Need for Information in Collection. Due to developments in the rail sector, including the emergence of rail service problems, the Board is considering a new set of regulations. In a notice of proposed rulemaking in *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2) (NPRM), the Board proposed rules on providing rail customers with access to reciprocal switching as a remedy for poor service. This new set of regulations would provide for the prescription of reciprocal switching agreements to address inadequate rail service, as determined using objective standards based on a carrier's original estimated time of arrival, transit time, and first-mile and last-mile service. To help implement the new regulations, the Board proposes (1) to require Class I carriers to submit certain data, which would be publicly accessible and generalized; and (2) to adopt a new requirement that, upon written request by a customer, a rail carrier must provide to that customer individualized, machine-readable service data.

The newly proposed regulations would provide a streamlined path for the prescription of a reciprocal switching agreement when service to a terminal-area shipper fails to meet any of three performance standards. The proposed standards are intended to reflect a minimal level of rail service below which a shipper would be entitled to relief, and each standard would provide an independent path for a petitioner to obtain prescription of a reciprocal switching agreement. They are intended to be unambiguous, uniform standards that employ Board-defined terms and are consistently applied across Class I rail carriers and their affiliated companies.

2. Use of Data Collected. The newly proposed regulations would allow for terminal-area shippers or receivers to seek the prescription of a reciprocal switching agreement when service to them fails to meet certain objective performance standards. The standards reflect what the Board believes to be the minimal level of rail service that is compatible with the public need, considering shippers and receivers' need for reliable, predictable, and efficient rail service as well as rail carriers' need for a certain degree of operating flexibility. When an incumbent rail carrier's service fails to meet the performance standards, and when other conditions to a prescription are met (including the absence of a valid affirmative defense), the Board will consider if it would be in the public interest to allow access to an alternate rail carrier through prescription of a reciprocal switching agreement. To facilitate implementation of the new regulations, the Board proposes to require weekly reporting of certain service data by Class I carriers and to grant shippers and receivers the right to receive their own individualized service data from a Class I carrier. The proposed reporting and submissions are necessary to the

purposes of the proposed regulation and therefore to enable the Board to implement its statutory authority in this important area.

The three standards proposed are:

Service Reliability: The measure of a Class I rail carrier's success in delivering a shipment by the original estimated time of arrival (OETA) that the rail carrier provided to the shipper. The OETA would be compared to when the car was delivered to the designated destination and would be based on all shipments over a given lane over 12 consecutive weeks. One proposed approach would be to set the success rate during the first year after the rule's effective date at 60%, meaning that at least 60% of shipments arrive within 24 hours of the OETA, and increasing the success rate thereafter to 70%. The Board also seeks comment on other approaches, such as maintaining the required success rate at 60% permanently or raising it to higher than 70% after the second year. The Board notes that by phasing in a higher success rate over time it would be providing the Class I carriers with time to increase their work forces and other resources, or to modify their operations, as necessary, in order to meet the required performance standard.

Service Consistency: The measure of a rail carrier's success in maintaining, over time, the carrier's efficiency in moving a shipment through the rail system. The service consistency standard is based on the transit time for a shipment, i.e., the time between a shipper's tender of the bill of lading and the rail carrier's actual or constructive placement of the shipment at the agreed-upon destination. The NPRM proposes that, for loaded cars, unit trains, and empties, a petitioner would be eligible for relief if the average transit time for a shipment increased by a certain percentage—potentially 20% or 25%—as compared to the average transit time for the same 12-week period during the previous year.

Inadequate Local Service: The measure of a rail carrier's success in performing local deliveries and pick-ups of loaded railcars and unloaded private or shipper-leased railcars within the applicable service window, often referred to as "industry spot and pull" (ISP). The NPRM proposes that a rail carrier would fail the standard if the carrier had an ISP success rate of less than 80%, over a period of 12 consecutive weeks, in performing local deliveries and pick-ups within the applicable service window. The ISP success rate would measure whether the carrier provides the service within its customary operating window for the affected shipper, which in no case can exceed 12 hours. This service metric provides rail customers with the long sought-after information on all important first mile/last mile service.

So that rail customers will be able to readily monitor and measure their rail service, the rule would require all Class I carriers to provide their customers with the historical data for these service metrics within seven days of a customer's request. The proposed rule also provides for affirmative defenses for service failures resulting from issues beyond the rail carrier's control, such as natural disasters or actions of third parties.

The Board proposes that the reciprocal switching agreements would be for a minimum

period of two years and up to a maximum of four years, depending on the evidence presented, though the Board seeks comment on whether a longer period is necessary to ensure the rule's effectiveness. The reciprocal switching agreement could be terminated at the end of the prescribed period if the incumbent rail carrier proves to the Board that it can provide service meeting the pertinent minimum standard going forward. If it fails to do so, the reciprocal switching agreement would remain in place.

In sum, under the current rulemaking, the Board proposes that Class I carriers may individually report tare weight and loss and damage data directly to the Board. Under this option, Class I carriers would provide the tare weight totals by The Association of American Railroads (AAR) car type code in tons and pounds and the number of cars, and the Board would calculate the average tare weight. For loss and damage data, Class I carriers would provide their total annual loss and damage expenses, number of tons originated, and loss and damage per ton by commodity using the specific commodity groupings, and the Board would consolidate the data to calculate the loss and damage per ton for all Class I carriers. Further, if implemented, Class I carriers would be able to choose whether to provide tare weight and loss and damage data through AAR or to file the data on their own. This information collected is important to the Board's functions and responsibilities.

3. Reduction through Improved Technology. The Board expects all respondents to file electronically.

4. Identification of Duplication. No other federal agency collects the information in these collections, and the information in these collections is not available from any other source.

5. Minimizing Burden for Small Business. No small entities will be affected by the collection of this information. This reporting requirement applies only to Class I railroads, which have operating revenues in excess of \$900,000,000.

6. Consequences if Collection not Conducted or Conducted Less Frequently. Without these collections, the Board may be limited in its statutory duty to address the emergence of urgent rail service issues.

7. Special Circumstances. No special circumstances apply to this collection.

8. Compliance with 5 C.F.R. § 1320.8. The Board published the NPRM, with a total of 77 days for comments, including a 48-day initial comment period and an additional 29-day reply comment period regarding this collection. See 88 Fed. Reg. 63897 (Sept. 18, 2023). On September 29, 2023, the Board extended the comment period by an additional 30 days, through December 6, 2023.

9. Payments or Gifts. The Board does not provide any payment or gifts for this collection.

10. Assurance of Confidentiality. All information collected through this report will be subject to the Board’s confidentiality procedures.

11. Sensitive Information. This collection may contain sensitive information, but it is necessary to process information, and sensitive information is collected and handled consistent with the Board’s rules.

12. Estimated Burden Hours. 2,564 hours. As provided in *Table – Total Estimated Annual Burden Hours* below.

Table – Total Estimated Burden Hours for Respondents

Type of filing	Estimated Hours per Response	Number of Respondents	Estimated Frequency	Total burden hours
One-time update to data collection software to standardize with the Board’s data definition for service reliability and industry spot and pull	80	6	1	480
Weekly reporting on service reliability and industry spot and pull (new 49 CFR 1145.8(b))	4	6	52	1,248
Occasional request and response to request for individualized service data (new 49 CFR 1145.8(a))	3	12	1	36
Petition for Prescription of a Reciprocal Switching Agreement (new 49 CFR 1145.5)	140	5	1	700
Petition to Terminate Prescription of a Reciprocal Switching Agreement (new 49 CFR 1145.7)	50	2	1	100
Total Burden Hours				2,564

Frequency: Annually

13. Estimated Total Annual Cost to Respondents. The filings may be made electronically. No non-hour burdens have been identified.

14. Annualized Cost to the Federal Government. We estimate that the maximum cost to the Board is a total of 1,248 hours, as provided in *Table – Total Estimated Cost for the Federal Government* below.

Table – Total Estimated Cost for the Federal Government

Type of Filing	Estimated Hours per Response	Number of Respondents	Estimated Frequency	Total Burden Hours	Wage Rate	Cost Burden
Aggregate Trip Plan Compliance and Industry Spot and Pull per 1145.5(b)	4	6	52	1,248	\$88.62	\$110,597.76
Total				1,248		\$110,597.76

15. Explanation of Program Changes or Adjustments. This ICR is due to the Board creating new regulations that did not previously exist.

16. Plans for tabulation and publication. The information in this collection may be posted on the Board’s website, located at www.stb.gov, if it is not deemed confidential or sensitive.

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.