

2140-0029
January 2023
Expires 8/31/2023

**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 modification and 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, as amended by the ICC Termination Act of 1995, the Board has broad authority to hear and act upon complaints. Shippers and other persons may bring 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(a). 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 one of its core statutory duties: determining the reasonableness of challenged rail transportation rates. See 49 U.S.C. § 10101(6) (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. Why the modification is necessary. This modification request stems from the Board's final rule to establish a new rate complaint review option for smaller cases, called Final Offer Rate Review (FORR), that utilizes procedural limitations to constrain the cost and complexity of a rate case. Final Offer Rate Review, EP 755 (88 Fed. Reg. 299 (Jan. 4, 2023)) (FORR Final Rule). The FORR Final Rule relies on principle-based, non-prescriptive criteria to allow for innovation with respect to rate review methodologies. Under the new FORR procedure, if the Board finds a rate to be unreasonable, the Board will prescribe the rate by selecting either the complainant's or the defendant's final offer, subject to an expedited procedural schedule that

adheres to firm deadlines.¹

By lowering the costs, complexity, and time involved in litigating smaller rate disputes, the Board expects that complainants with smaller rate disputes who otherwise might have been deterred from challenging a rate due to the cost of bringing a case under the Board's existing rate reasonableness methodologies will have a more accessible avenue for rate reasonableness review by the Board. The modification of the existing collection of complaints will facilitate the Board's ability to meet its statutory directives.²

In a FORR case, after the filing of a complaint, parties will be allowed limited time for discovery. After discovery concludes, parties will simultaneously file their rate reasonableness analyses, final offers, and the complainant's market dominance presentation. Soon after that, parties will simultaneously file their merits replies and the defendant's market dominance reply. If the complainant chooses the streamlined market dominance option, it may elect to have a telephonic evidentiary hearing before an administrative law judge. The Board will then determine the reasonableness of the challenged rate using a multi-factor test to apply the applicable statutory principles. If the Board finds that the complainant has carried its burden of proof of showing that the carrier has market dominance and that the challenged rate is unreasonable, the Board will prescribe a rate by selecting either the complainant's or the defendant's final offer. Relief may include reparations up to \$4 million, as indexed for purposes of the Board's Three-Benchmark test, and a rate prescription up to two years (unless the parties agree to a different limit on relief).

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

¹ The FORR Final Rule references a related rulemaking decided on the same day, in which the Board is issuing a decision adopting new arbitration procedures for smaller cases. Joint Pet. for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes, EP 765 (STB served December 19, 2022). The two procedures are interrelated.

² In the ICC Termination Act of 1995, Congress directed the Board to "establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost [(SAC)] presentation is too costly, given the value of the case." Pub. L. No. 104-88, 109 Stat. 803, 810. In the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Pub. L. No. 114-110, 129 Stat. 2228, Congress revised the text of this requirement so that it currently reads: "[t]he Board shall maintain 1 or more simplified and expedited methods for determining the reasonableness of challenged rates in those cases in which a full [SAC] presentation is too costly, given the value of the case." 49 U.S.C. § 10701(d)(3). In addition, section 11 of the STB Reauthorization Act modified 49 U.S.C. § 10704(d) to require that the Board "maintain procedures to ensure the expeditious handling of challenges to the reasonableness of railroad rates." More generally, the rail transportation policy states that, in regulating the railroad industry, it is the policy of the United States Government "to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part." 49 U.S.C. § 10101(15).

#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 by small shippers, or filed against small carriers. To the extent that small shippers elect to file rate complaints, the proposed FORR process 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. The Board published its proposed rule change in the FORR NPRM (84 Fed. Reg. 48872 (Sept. 17, 2019)), which provided for a 60-day comment period (and an additional 60-day period for reply 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. 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 eight.

(2) Frequency of response: On occasion. In recent years, respondents have filed approximately four complaints per year with the Board. The Board estimates that the proposed FORR alternative complaint would result in the collection of approximately four additional complaints annually and approximately eight total complaints, as shown in Table 1 below.

Table 1

Type of Complaints	Existing Complaints	New Complaints	Total Annual Complaints
Existing Annual Complaints	4	0	4
Final Offer Complaints (from NPRM in EP 755)	0	4	4
Totals	4	4	8

(3) Annual hour burden per respondent and total for all respondents: 2,876 hours (sum of (i) estimated hours per complaint (469) x total number of estimated, existing complaints (4), and (ii) estimated hours per additional complaints (250) x total number of those complaints (4)). The annualized burden is shown in Table 2 below.

Table 2

Type of Complaints	Estimated Annual Complaints	Estimated Hours per Complaint	Total Annual Estimated Hours
Existing Annual Complaints	4	469	1,876
Final Offer Complaints (from NPRM in EP 755)	4	250	1,000
Total	---	---	2,876

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 \$8,968 (sum of (i) estimated non-hour

burden cost per complaint (\$1,462) x total number of estimated, existing complaints (4), and (ii) estimated non-hour burden cost per additional complaint (\$780) x total number of those complaints (4)).

14. Estimated costs to the Board: We estimate that the maximum cost to the Board of entering the documents into the Board's e-Library under the appropriate docket, posting the searchable pdfs to the website, and review and analysis of the complaints would total no more than 600 staff hours (100 hours per complaint X four full complaints filed and 50 hours per FORR complaints) at an average GS-14 pay grade.

15. Changes in burden hours. This is an existing collection with an OMB control number (2140-0029), which is being adjusted to take into consideration the effects of the expedited FORR alternative complaint proposed in the FORR NPRM and to update the burdens and costs of all complaints filed at the Board.

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.