

**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 contained in 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 promulgated a new set of regulations to address inadequate service. In *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2) (Final Rule), 89 FR 38646 (May 7, 2024), the new rules allow a rail customer that is within a terminal area and that only has access to only one Class I rail carrier to petition the Board to order a reciprocal switching agreement when the customer's rail service falls below specified levels and when other conditions to a prescription were met. The prescription of a reciprocal switching agreement under the new regulations would allow shippers or receivers to gain access to an additional line haul carrier, while still allowing the incumbent carrier to compete for the customer's traffic. Reciprocal switching orders by the Board will be for a minimum of three years and a maximum of five years, with potential renewal under certain circumstances. The new reciprocal switching rules are a significant step in incentivizing Class I railroads to achieve and maintain adequate service levels on an ongoing basis.

The new regulations provide for reciprocal switching when service to an eligible shipper fails to meet any one of three performance standards and when other conditions to a prescription are met. These standards are easy to measure, objective service standards. A carrier would fail to meet the standards if it: (1) failed to maintain 70% or better on-time performance over a 12-week period, (2) increased transit time by more than 20% year over year or by more than 25% of any of the preceding three years, as measured over a 12-week period, and (3) failed to maintain at least 85% success on "industry spot and pull" (effectively measuring first mile-last mile service) over a 12-week period. Each standard would provide an independent path for a shipper, who files a petition, to obtain prescription of a reciprocal switching agreement if other conditions were also met.

To support implementation, the new rules require Class I carriers to maintain and produce various of data related to a carrier's original estimated time of arrival, transit time, and first-mile and last-mile service. As discussed in more detail below, the new rules require Class I carriers (1) to submit certain data to the Board, which would be publicly accessible and generalized; and (2) to, upon written request by a customer, provide to that customer individualized, machine-readable service data.

2. Use of Data Collected. Under the Final Rule, when an incumbent rail carrier's service fails to meet the performance standards over the specified time period, and when other conditions to a

prescription are met (including the absence of a valid affirmative defense), an eligible shipper may petition the Board for the prescription of a reciprocal switching agreement. The prescription of such an agreement would allow an alternate carrier to compete for the shipper's traffic even though the alternate carrier does not have physical access to the shipper. The new regulatory process allows the petitioner to obtain information upon which it may submit a petition seeking a reciprocal switching agreement and for all parties to provide their arguments to the Board. The reporting and submissions are necessary to enable the Board to implement its new process pursuant to the Board's statutory authority in this important area. The reporting and submissions are also necessary for both the initial petitions for a prescription and the petitions to terminate a prescription that are part of this collection.

In the Final Rule, the Board adopted, with certain modifications, the data collection it proposed in its notice of proposed rulemaking in *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2) 88 Fed. Reg. 63897 (Sept. 18, 2023) (NPRM). There are five parts to this collection. The first part requires that all six Class I rail carriers must adjust their data collection systems, as may be applicable to each carrier, to be able to maintain and provide data using the new, standardized definitions of original estimated time of arrival (OETA) and "industry spot and pull" (ISP) standard for its required reporting (new 49 CFR 1145.8(b)). These definitions allow the carrier's reporting to be standardized and practical in determining the quality of their service. The Class I carriers already maintain and make available to their customers similar data to what is required in this collection for business purposes. Depending on how carriers currently maintain their data, the update of definitions will require a one-time update to the carriers' data collection software to standardize with the Board's data definition for service reliability and ISP, and the data must be maintained for a period of 4 years from the date of service.

Second, the new rules require weekly reporting to the Board of certain service data by all six Class I carriers. With the integrated and updated definitions, the Final Rule requires Class I carriers to report: the percentage of shipments on the carrier's system that moved in manifest service and that were delivered within 24 hours of OETA, out of all shipments on the carrier's system that moved in manifest service during that week; and, for each of the carrier's operating divisions and for the carrier's overall system, the percentage of planned service windows during which the carrier successfully performed the requested local service, out of the total number of planned service windows on the relevant division or system for that week (new 49 CFR 1145.8(b)). The data that will be reported to the Board on a weekly basis will enable the Board to assess Class I carrier performance. By making that assessment, the Board will be better able to identify and respond to service problems and assess whether adjustments to the performance standards warrant consideration.

Third, the new rules also require Class I railroads to provide, within seven days of receiving a request from a shipper or receiver, the individualized performance records necessary to the requesting shipper or receiver so that they may practically file a petition for a reciprocal switching agreement (new 49 CFR 1145.8(a)). Individualized performance records are defined in the new rules to include OETA, transit times, and/or industry spot and pull records related to

the shipper or receiver's traffic, along with the corresponding time stamps. The Board's decision explains how each of the performance standards provides relevant information about the quality of the service received by the shipper.

For data production of individualized service data upon request, the rules require that the data be machine-readable, meaning data in an open format that can be easily processed by computer without human intervention while ensuring no semantic meaning is lost. A machine-readable data requirement will ensure that rail users have access to data that allows them to ascertain whether their individualized performance records meet the standards for a petition under part 1145. The Board has allowed Class I carriers the discretion to determine how to provide rail users with access to machine-readable data, including through a customized link, electronic file, or other similar option.

Fourth, the data in the collection will be used for shippers or receivers to prepare and submit a Petition for Prescription of a Reciprocal Switching Agreement (new 49 CFR 1145.5) and for the Board to evaluate that petition and replies. The rules require a petitioner to provide information and documents supporting its request, including a confirmation that the petitioner attempted good faith negotiations with the carrier and the petitioner must (a) identify the performance standard the railroad failed to meet over the requisite period of time, (b) identify the requested duration of the prescription of a reciprocal switching agreement, and (c) provide evidence supporting its claim and requested prescription. The Petition must also identify at least one possible rail carrier to provide alternative service and any relevant switching publications of the incumbent rail carrier and the potential alternate carrier, and the Petition must include a motion for a protective order to govern the disclosure of data that the rail carrier provided to the petitioner. The petition must have been served on the incumbent rail carrier, the alternate rail carrier, and the Federal Railroad Administration.

Finally, should the Board prescribe a reciprocal switching agreement, the incumbent rail carrier may petition the Board to terminate the prescription at the end of the prescribed term if the incumbent rail carrier is able to demonstrate that its service for similar traffic met all three performance standards for the most recent 12-week period prior to the filing of the petition to terminate. Carriers would use the data collection in petitions to terminate and the Board would use it to assess the petitions and replies. If the petition to terminate is denied, then the Board will extend the prescription for up to the same period as the initial prescription. If the incumbent carrier does not file a petition for termination, the prescribed agreement will automatically renew at the end of its term for the same period as the initial prescription.

3. Reduction through Improved Technology. The individualized performance records that Class I carriers provide to shippers upon request must be machine readable. Further, the Board expects that the manner of weekly reporting, the manner and form of which will be determined by the Board, will be electronic, as it is with other data reporting.

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

source other than the rail carrier respondents.

5. Minimizing Burden for Small Business. This collection will not have a significant economic impact on a substantial number of small entities. The data production requirements (other than the Petition for Prescription of a Reciprocal Switching Agreement by which a small entity could seek a prescription) will only apply to large, Class I carriers. These reporting requirements apply only to Class I railroads, which have operating revenues more than \$900,000,000. While a Petition for Prescription of a Reciprocal Switching Agreement could be filed by some small business, the Board does not anticipate a substantial number of petitions in any given year. Moreover, the process – through its use of easily applied performance standards and other clear parameters, is designed to allow them to resolve potential disputes over poor service more quickly and efficiently.

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

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 (including ex parte meetings) and an additional 29-day reply comment period regarding this collection. 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. After deliberation, the Board issued the Final Rule, as described herein. 89 Fed. Reg. 38646 (May 7, 2024). This Final Rule will be effective 120 days from the date of publication in the Federal Register. For details regarding today’s Board decision, please refer directly to the Final Rule, which may be viewed and downloaded [here](#).

The Board received comments from AAR and some carriers addressing the Board’s PRA burden analysis for the data production collections of information.

First, UP challenged the NPRM’s estimate of 480 hours (80 hours per Class I carrier) for the “one-time update to data collection software to standardize with the Board’s data definition for service reliability and industry spot and pull.” UP estimated that between one and two years would be required to complete the design, programming, and testing of such systems before they could be implemented. (UP Comments 18.) Similarly, CSXT contended that “designing and implementing such a platform could take a year.” (CSXT Reply 16.) As a result, both carriers argued that the required system updates would constitute a significant undertaking, estimating broadly one to two years of burden hours as opposed to the 480 hours estimated in the NPRM.<sup>1</sup>

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1 Despite UP’s and CSXT’s general estimate that the proposed rule will take them one to two years to implement, the railroads failed to provide a specific estimate of burden hours.

For the reasons explained in the preamble to the Final Rule, the Board disagreed with UP's stated concern that an entirely new system will be needed to meet the reporting requirements of the new rule and similarly disagrees with CSXT's assertion that it will take a year to update its existing software. It is true that the new rule creates a standardized definition of OETA for purposes of part 1145. But, because the railroads' systems already have the code in place to measure a similar OETA metric (under the demurrage definition), the new definition of OETA should require limited changes to their system codes. Therefore, to meet the new rules, the only change that should be required is an update to the railroads' existing software.<sup>2</sup>

Accordingly, the Board rejected UP and CSXT's conclusory claims that creating a whole new system or engaging in a year-long software update would be required and concluded that UP and CSXT failed to provide a reasonable basis for updating the estimate of hourly burdens based on either carrier's actual system requirements. Even so, upon further consideration, the Board recognized in the Final Rule that system updates may require more time to edit, test, and implement than estimated in the NPRM. For example, the Board recognized that the change would require some coding, testing, and validity checks upon updating their current software, and that the estimates in the NPRM may not have accounted for some of the complexities raised by UP and other railroads. Thus, the Board increased the burden estimates upwards to reflect that complexity. The estimated one-time hourly burden for an update to the carriers' systems increased from 480 hours (80 hours per carrier) to 1,440 hours (240 hours per carrier).

Second, CN, CSXT, and UP challenged the burden estimates associated with the data disclosure requirement in 49 CFR § 1145.8(a) (concerning shipper/receiver requests for data from railroads), arguing that the requirement was vague and overly broad. Additionally, CPKC claimed that its systems are not set up to generate shipper and commodity-specific lane-by-lane statistics but did not provide hourly burden data associated with this requirement. In response to the carriers' arguments, the Board modified this aspect of the collection to specify the information that Class I carriers must provide under part 1145.8(a) in response to requests for individualized service data from shippers and receivers. The modified data disclosure requirement is a reasonable exercise of the Board's discretion and is narrowly tailored to implement the new regulations effectively. Ultimately, the data disclosure requirements are intended to provide customers with records that are necessary to ascertain whether a carrier has met the OETA, transit time, and/or ISP standards and to ensure that these customers have basic eligibility information that is otherwise in the hands of the carriers.

Finally, AAR contended that the estimates in the NPRM significantly underestimate the burden to Class I carriers of responding to requests for data from shippers and receivers. (AAR Comments 110.) But AAR failed to provide specific hourly estimates to support its contentions, and there is also little or no data in the carriers' comments to support what hourly burden might

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2 In Demurrage Billing Requirements, the Board recognized a similar one-time burden, which included the time Class I carriers would need to undertake the software redesign necessary to provide minimum information to be included on or with Class I carriers' demurrage invoices. See Demurrage Billing Requirements, EP 759, slip op. at 34-35.

be required. Nevertheless, the Board responded to AAR’s general workload burden concerns by modifying the data disclosure requirements that were proposed in § 1145.8(a) to make the written data request more limited and specific. In addition, out of an abundance of caution, the Board increased its estimate of the annual number of written data requests to 72 (12 per carrier) and its estimate of the hourly burden per request to 16 hours. The total estimate for written requests therefore increased to 1,152 hours.

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. 4,640 hours. As provided in *Table – Total Estimated Annual Burden Hours* below.

*Table – Total Estimated Burden Hours for Respondents*

<b>Type of filing</b>	<b>Estimated Hours per Response</b>	<b>Number of Respondents</b>	<b>Estimated Frequency</b>	<b>Total burden hours</b>
One-time update to data collection software to standardize with the Board’s data definition for service reliability and industry spot and pull	240	6	1	1,440
Weekly reporting on service reliability and industry spot and pull (new 49 CFR 1145.8(b))	4	6	52	1,248
Written request identifying the specific 12-week period and lane and response to request for individualized service data (new 49 CFR 1145.8(a))	16	72	1	1152

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
<b>Total Burden Hours</b>				4,640

*Frequency:* Annually (except for the part of the collection requiring weekly reporting)

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. The Board estimates that the maximum cost to the agency 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
<b>Total</b>				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](http://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.