



FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[EP 385 (Sub-No. 8)]

Waybill Sample Reporting

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) adopts a final rule that amends its Waybill Sample data collection regulations by increasing the sampling rates of certain non-intermodal carload shipments, specifying separate sampling strata and rates for intermodal shipments, and eliminating the manual system for reporting waybill data.

DATES: This rule is effective on January 1, 2021. Waybill reporting on or after the effective date must comply with the final rule.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245-0368. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: A waybill is a “document or instrument prepared from the bill of lading contract or shipper’s instructions as to the disposition of the freight, and [is] used by the railroad(s) involved as the authority to move the shipment and as the basis for determining the freight charges and interline settlements.”

49 CFR 1244.1(c). Among other things, a waybill contains the following data: (1) the originating and terminating freight stations; (2) the railroads participating in the movement; (3) the points of all railroad interchanges; (4) the number and type of cars; (5) the car initial and number; (6) the movement weight in hundredweight; (7) the

commodity; and (8) the freight revenue.

A railroad is required to file with the Board a sample of its waybill data for all line-haul revenue waybills terminated on its lines in the United States,¹ if the railroad: (a) terminated at least 4,500 revenue carloads in any of the three preceding years, or (b) terminated at least 5% of the revenue carloads terminating in any state in any of the three preceding years. 49 CFR 1244.2(a). The number of waybills that a railroad is required to file (i.e., the sampling rate) is set forth at current 49 CFR 1244.4(b) and (c), and varies based on the number of carloads on the waybill, as shown in Table 1 below.²

TABLE 1 – Current Waybill Sampling Rates (Computerized System of Reporting)

Number of carloads on waybill	Sample rate ³
1 to 2	1/40
3 to 15	1/12
16 to 60	1/4
61 to 100	1/3
101 and over	1/2

¹ A railroad moving traffic on the U.S. rail system to the Canadian or Mexican border is required to “include a representative sample of such international export traffic in the Waybill Sample.” 49 CFR 1244.3(c).

² The Board’s regulations set forth different sampling rates for computerized and manual systems of reporting. See 49 CFR 1244.4(b)-(c). Under the manual system, railroads submit Waybill Sample data through authenticated copies of a sample of audited revenue waybills instead of using a computerized system. *Id.* section 1244.4(a). The manual system of reporting is not currently used by any railroads and, as discussed further below, this final rule eliminates it.

³ The column showing the sample rate indicates the fraction of the total number of waybills within each stratum that must be submitted (e.g., for waybills of one to two carloads, the railroad must submit one out of every 40 waybills).

The Board creates an aggregate compilation of the sampled waybills of all reporting carriers, referred to as the Waybill Sample. First collected in 1946 by the Board's predecessor,⁴ the Interstate Commerce Commission (ICC), the Waybill Sample is the Board's principal source of data about freight rail shipments. It has broad application in, among other things, rate cases, the development of costing systems, productivity studies, exemption decisions, and analyses of industry trends. The Waybill Sample is also used by other Federal agencies, state and local government agencies, the transportation industry, shippers, research organizations, universities, and others that have a need for rail shipment data. Because some of the submitted waybill data is commercially sensitive, the Board's regulations place limitations on the release and use of confidential Waybill Sample data. See 49 CFR 1244.9; see also 49 U.S.C. 11904.⁵

PROCEDURAL BACKGROUND

As described more fully in the notice of proposed rulemaking in this proceeding, the Board's Rate Reform Task Force (RRTF) issued a report on April 25, 2019 (RRTF Report)⁶ recommending, among other things, that the Board change the sampling rates

⁴ See Bureau of Transp. Econ. & Stat., Interstate Com. Comm'n, Statement No. 543, Waybill Statistics their History & Uses 15, 19, 40 (1954); Waybill Analysis of Transp. of Prop.—R.Rs., 364 I.C.C. 928, 929 (1981) ("Since 1946, the Interstate Commerce Commission has collected a continuous sample of carload waybills for railroads terminating shipments.").

⁵ Any grant of access to confidential Waybill Sample data requires the requestor to execute a confidentiality agreement before receiving the data. See 49 CFR 1244.9(a)-(e). In addition to the confidential Waybill Sample, the Board also generates a Public Use Waybill File that includes only non-confidential data. See 49 CFR 1244.9(b)(5).

⁶ The RRTF Report was posted on the Board's website on April 29, 2019, and can be accessed at https://www.stb.gov/stb/rail/Rate_Reform_Task_Force_Report.pdf.

for its Waybill Sample. RRTF Report 14, 47-49; Waybill Sample Reporting (NPRM), EP 385 (Sub-No. 8), slip op. at 2 (STB served Nov. 29, 2019). After considering the recommendations in the RRTF Report and the overall utility of the current Waybill Sample, in the NPRM issued on November 29, 2019, the Board proposed a simplified waybill sampling rate for non-intermodal carload shipments and separate waybill sampling strata and rates for intermodal shipments, as shown in Table 2 below. See NPRM, EP 385 (Sub-No. 8), slip op. at 6-8; 84 Fed. Reg. 65,768, 65,770-71 (Nov. 29, 2019).

TABLE 2 – Proposed Waybill Sampling Rates (Computerized System of Reporting)

Number of non-intermodal carloads on waybill	Sample rate
1 to 2	1/5
3 to 15	1/5
16 to 60	1/5
61 to 100	1/5
101 and over	1/5
Number of intermodal trailer/container units on waybill	Sample rate
1 to 2	1/40
3 and over	1/5

As explained in the NPRM, EP 385 (Sub-No. 8), slip op. at 4, the Board reasoned that a net increase in sample size would provide more comprehensive information to the Board and other users of Waybill Sample data in a variety of contexts, such as exemption decisions, stratification reports, traffic volume and rate studies, Board-initiated

investigations, certain rate cases, and any other waybill data-related analysis the Board currently performs or might seek to perform in the future. The Board also explained that the added number of observations in the Waybill Sample would likely allow it to avoid redacting, for confidentiality reasons, as many results from some of the Board's routine analysis published on its website (e.g., the Standard Transportation Commodity Code 7 stratification report). Id. at 4-5. In addition, because it currently receives monthly and quarterly waybill data from reporting carriers, increasing the sampling rate would provide the Board with more observations in any given month or quarter from which it could draw meaningful insights throughout the year. Id. at 5. The Board also proposed that it should change the sampling requirements so that a greater portion of Waybill Sample data would represent regulated traffic instead of exempt traffic and stated that the proposed changes would help address the acknowledged shortcomings concerning the scarcity of data in some rate cases. Id. at 4-5, 8. The NPRM stated that the proposed waybill sampling rates would increase the percentage of movement categories containing at least 25 observations,⁷ suggesting that the proposed changes would produce more movement categories that have sufficient representativeness. Id. at 5-6, 8-10, 8 n.18.

The Board received seven opening comments on the NPRM from the following organizations: American Fuel & Petrochemical Manufacturers (AFPM); Association of American Railroads (AAR); CSX Transportation, Inc. (CSXT); National Grain and Feed

⁷ According to the Central Limit Theorem, once a sample has sufficient observations, it is considered to be normally distributed and can be used to approximate the mean and variance of the population from which it was sampled. Generally, around 25 or 30 observations is considered to be enough for those approximations. See NPRM, EP 385 (Sub-No. 8), slip op. at 5 n.10 (citing Robert V. Hogg et al., Probability and Statistical Inference 202 (9th ed. 2015)).

Association (NGFA); RSI Logistics, Inc. (RSI Logistics); U.S. Department of Agriculture (USDA); and Western Coal Traffic League (WCTL). The Board received one reply comment, from AAR.

FINAL RULE

After considering the comments, the Board will adopt the rule proposed in the NPRM, with certain modifications. Below, the Board addresses the comments and discusses the modifications being adopted in the final rule. The text of the final rule is below.

A. Sampling Rates and Strata

The comments received generally underscore the importance of the Waybill Sample as a critical source of information about the rail industry. For example, USDA notes that the Waybill Sample “is the most detailed and comprehensive data the federal government currently has on rail freight movements, making it instrumental in identifying trends and issues in the industry.” (USDA Comment 2.) RSI Logistics similarly states that the Waybill Sample “provides valuable insight into the rail marketplace.” (RSI Logistics Comment 1.) Due to the Waybill Sample’s utility, most commenters support the Board’s efforts to increase the quantity of waybill data collected through modified sampling rates. (AAR Comment 1; AFPM Comment 4; CSXT Comment 1; RSI Logistics Comment 1; USDA Comment 2, 4.) Although some commenters question the potential benefits of the proposed changes, suggest modifications to the proposed sampling rates, or urge the Board to be watchful for unintended effects, (see AAR Comment 1; NGFA Comment 4-5; WCTL Comment 4-6), no commenter opposes the Board’s effort to expand the quantity of waybill data

collected.

Regarding suggested modifications to the proposed rule, AAR cautions against the Board's proposal to reduce the data collected for larger, non-intermodal shipments. In particular, AAR notes that "non-coal larger blocks of shipments are more likely to have greater variance in their characteristics, including in size, frequency, and origin-destination pairs" and claims that much of this detail could be lost as a result of the proposed reduction in the sampling rates for these strata. (AAR Comment 3.) AAR also states that "there is no reason to suspect that shipments in the larger carload strata would be any less relevant to the small rate case process[,]” which would make “the need for more observations [of larger shipments] . . . just as important as for the smaller carload strata.” (*Id.*) Based on these concerns, AAR argues that “[t]he Board’s proposal to reduce the number of samples for the larger carload strata is at odds with the overarching goal of broadening access to relief and addressing the scarcity of data concerns expressed by the Board.” (*Id.*) AAR therefore asks the Board to maintain the current sampling rates for non-intermodal shipments with 16 or more carloads. (AAR Comment 1; AAR Reply 1.) CSXT likewise asks the Board to maintain the sampling rates for non-intermodal shipments with 16 or more carloads. (CSXT Comment 1 n.1.)

After considering the comments from AAR and CSXT, the Board concludes that the proposed decrease in the sampling rates for larger, non-intermodal shipments should not be adopted. The Board proposed reducing the sampling rates for non-intermodal shipments with 16 or more carloads per waybill to match the proposed sampling rates for non-intermodal shipments with 15 or fewer carloads as a way of simplifying the sampling rates while still achieving a net increase in the non-intermodal shipment data collected.

The commenters' arguments concerning the variable characteristics of larger, non-coal shipments and the relevance of larger shipments to the small rate case process support the conclusion that the Waybill Sample would lose robustness for shipments of 16 or more carloads if the proposal were implemented. Although one of the goals of the Board's proposal was to simplify sampling rates, the Board also seeks to maintain a robust dataset that is of use to the agency and stakeholders. As noted in the NPRM, a greater number of observations would allow for additional or more granular factors to compare movements while maintaining representativeness. This applies to shipments of 16 or more carloads and justifies maintaining the current (more frequent) sampling rates for those carload shipments. Therefore, the Board will maintain the current sampling rates for non-intermodal shipments with 16 or more carloads, as suggested by AAR and CSXT.

USDA asks the Board to consider removing the stratification process altogether and collecting 100% of the waybill population data, "postulat[ing]" that if the ICC had possessed current technology at its disposal "it would not have needed to undertake the statistical design process that led to the creation of today's [Waybill Sample]." (USDA Comment 2.) USDA contends that collecting 100% of the waybill population should not be an additional burden for the railroads or the Board. (Id. at 2-3.) USDA argues alternatively that if 100% of the population data cannot be collected, the Board should "significantly increase the sample size more than proposed." (Id. at 3.) Similarly, NGFA asks the Board to explore the feasibility of expanding to 100% data collection for non-intermodal carload traffic. (NGFA Comment 4.) In response, AAR raises various concerns about 100% data sampling, including regarding security-sensitive information and the risk of disclosure of confidential information. (AAR Reply 4-5.) AAR instead

argues that the Board's proposal, as modified to maintain the non-intermodal sampling rates for larger shipments, "strikes a balanced approach to obtaining more information, while preserving customer anonymity." (Id. at 5).

The Board will not pursue 100% waybill data collection at this time, although it does not foreclose the possibility of doing so in the future. While the arguments in favor of 100% collection may have merit, the Board expects the increase in the sample adopted in this final rule will achieve the goals of the NPRM, and the Board has not identified any implementation or data management issues that could delay such improvements. As a result, the advantages of increased sampling will be captured in the 2021 reporting year with sufficient time for carriers to adjust to the new requirements. In contrast, pursuing a 100% waybill collection at this stage of the rulemaking proceeding would delay implementing the important, incremental improvements to the waybill collection that will be achieved here. Further, prior to removing the sampling framework altogether, the Board, through notice and comment, would need to fully assess the utility of the collection and weigh that against any identified implementation or data management issues.

As an alternative to 100% data sampling, some commenters asked the Board to further stratify the collected waybill data based on additional shipment variables, such as the railroad involved in the movement, the distance of the movement, the commodity transported, and the geographic region of the movement. (NGFA Comment 4; USDA Comment 3-4.) Beyond shipment data, some commenters suggest collecting waybill data based on performance variables related to service quality, demurrage, and accessorial charges. (AFPM Comment 4-5; USDA Comment 4.) In response, AAR argues that

“these suggestions fail to recognize the nature and purpose of the waybill as a commercial document” and “[r]equiring additional, unrelated data to be included in waybills would require changes to industry practice and pose significant challenges.” (AAR Reply 2-3.)

The Board will not pursue the further stratification by additional shipment variables or the addition of performance variables to waybill data collection at this time. The Board already collects certain performance data, albeit not on a shipment basis, pursuant to 49 CFR part 1250. See, e.g., Pet. for Rulemaking to Amend 49 CFR Part 1250, EP 724 (Sub-No. 5), slip op. at 3-5 (STB served May 21, 2020). Similarly, the Board recognizes the importance of monitoring the application of demurrage and accessorial rules and charges, which is why it initiated several related proceedings. See, e.g., Oversight Hearing on Demurrage & Accessorial Charges, Docket No. EP 754; Policy Statement on Demurrage & Accessorial Rules & Charges, Docket No. EP 757; Demurrage Billing Requirements, Docket No. EP 759. Because the Board has received public input on the proposals in the NPRM, it can implement these changes for the 2021 reporting year with sufficient time for carriers to adjust to the new regulations, whereas pursuing further stratification beyond what is proposed in the NPRM, or adding performance data that was not proposed in the NPRM, could delay improvements to the Waybill Sample until the 2022 reporting year. Prior to considering any possible further stratification or adding performance data, the Board, through notice and comment, would need to assess, among other things, the benefits of such changes against any potential technical challenges.

Some commenters ask the Board to monitor closely the effect of implemented

changes for any unintended consequences, (NGFA Comment 5), or to maintain a parallel Waybill Sample based on the current methodology for at least two years (WCTL Comment 5-6). In response, AAR states that “[t]he Board can modify its processes to address anomalies or unintended consequences if they arise.” (AAR Reply 6.) The Board rejects WCTL’s suggestion that the Board maintain a parallel Waybill Sample because, compared to current regulations, the final rule’s waybill sampling rates, which have been modified from the NPRM, are either greater or the same for each stratified category of non-intermodal carload shipments and will have their expansion factors adjusted accordingly; as such, there is no longer any basis for concern that the Board’s Waybill Sample would become less representative for certain non-intermodal carload shipments.⁸ As a result, increasing the sampling rates would not affect any analyses that are based on a representation of the entire population of waybill shipments. The Board will continue to monitor the waybill dataset for anomalies or unintended effects, as it does in the ordinary course.

RSI Logistics suggests that the Board should require reporting by “holding companies” consisting “of multiple Class II or III railroads” if their traffic volume otherwise meets the reporting threshold. (RSI Logistics Comment 1.) The Board declines to make this change. A change to the applicability provisions of 49 CFR 1244.2

⁸ Under 49 CFR 1090.2, rail and highway trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service—which generally covers intermodal shipments—is exempt from the requirements of 49 U.S.C. subtitle IV, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. Although the final rule reduces the sampling rates for larger intermodal shipments, the sampling rates adopted here will still produce a representative sample of intermodal shipments. See NPRM, EP 385 (Sub-No. 8), slip op. at 7 (explaining how sampling intermodal shipments separately would be appropriate in light of intermodal billing practices and would avoid over-sampling).

is beyond the scope of this proceeding, which focuses on adjustments to the sampling rates and strata.⁹

B. Waybill Record Order

The Board's standards and format guidance for the waybill collection is currently found in Statement No. 81-1, Procedure for Sampling Waybill Records by Computer (2009 edition),¹⁰ and currently provides that submitted waybills may be listed in any order. USDA comments that "[u]nder systematic sampling, order is an important consideration to account for patterns in the frame that may correspond to the skip interval," and suggests that the Board "either specify an order, use a random ordering, or even use a simple random sample rather than 'any order,' in order to avoid potential sampling bias." (USDA Comment 3 n.1.) The Board has no evidence suggesting that the Waybill Sample's unspecified sampling order has resulted in sampling bias. Moreover, the use of stratification is designed to reduce sampling bias. By sampling within certain strata, the sample is guaranteed to capture records of larger shipments that move less frequently. In addition, USDA's recommendation to use a random order is already addressed by using a different random start for each of the four subsamples within each

⁹ RSI Logistics also requests that the Waybill Sample be published "in a timelier manner" because delay in the release of the data "reduces the value of some of the information." (RSI Logistics Comment 1.) Publishing the annual Waybill Sample requires compiling the waybill data, analyzing it for potential issues, and correcting any issues identified, and is a process that cannot begin until the end of each calendar year. The Board will continue to publish the Waybill Sample as promptly as possible while ensuring the reliability of the published data.

¹⁰ The current edition of Statement No. 81-1 is posted on the Board's website and can be accessed by selecting the "Economic Data" quick link, then selecting the "Carload Waybill Sample" page link, and then selecting the "Procedure for Sampling Waybill Records by Computer" link under the "Public Use Waybill Samples" section.

stratum. Accordingly, the Board will not adopt USDA's recommendations.

C. Manual System of Reporting

In the NPRM, EP 385 (Sub-No. 8), slip op. at 3 n.5, the Board stated that "parties may provide comments on whether the manual system [for reporting waybill data] should be eliminated given its current lack of use." In response, NGFA states that the Board "should deem manually submitted waybills to be obsolete and rule that they no longer are a permissible way for carriers to submit such data." (NGFA Comment 5.) No other commenter addressed this issue, and the Board notes that no smaller carriers commented in this proceeding. Due to its current lack of use and the absence of support for its continuation, the Board sees no need to maintain the regulatory provision for manual reporting. Therefore, the Board will eliminate the manual system for reporting waybill data in the final rule and remove references to the manual system at sections 1244.4, 1244.5, 1244.6, and 1244.7.

D. Effective Date

CSXT asks the Board to provide a minimum of 90 days between the service date and the effective date of the final rule to give carriers sufficient time to make the programming changes necessary to comply with the revised reporting requirements. (CSXT Comment 3.) CSXT also requests that the Board limit, to the extent possible, revisions to Statement No. 81-1, and that if "extensive procedural changes" to Statement No. 81-1 are made, an additional 60 days be added to the 90 days it requested to implement the changes proposed in the NPRM. (Id. at 2-3.) The Board is sensitive to the practicalities surrounding any revision of the waybill reporting requirements. As a result, the Board will require reporting under the final rule to begin on January 1, 2021, which

will give reporting carriers sufficient time to prepare for the revised requirements.¹¹ Prior to that time (i.e., for all 2020 waybill reportings), carriers should continue to report according to the current sampling requirements.

* * *

For the reasons discussed above, after consideration of all the comments received, the Board is adopting a final rule to amend its regulations to specify separate waybill sampling strata for intermodal and non-intermodal shipments and establish revised waybill sampling rates as shown in Table 3, below.

TABLE 3 – Final Rule Waybill Sampling Rates

Number of non-intermodal carloads on waybill	Sample rate
1 to 2	1/5
3 to 15	1/5
16 to 60	1/4
61 to 100	1/3
101 and over	1/2
Number of intermodal trailer/container units on waybill	Sample rate
1 to 2	1/40
3 and over	1/5

This rule is set out in full below and will be codified in the Code of Federal Regulations.

¹¹ The Board’s Office of Economics has revised Statement No. 81-1 to account for the changes adopted in this final rule. The revised edition is attached as Appendix B in the served decision, which is available to the public on the Board’s website.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Section 601-604. In its final rule, the agency must either include a final regulatory flexibility analysis, section 604(a), or certify that the final rule would not have a "significant impact on a substantial number of small entities," section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the rule. White Eagle Coop. v. Conner, 553 F.3d 467, 480 (7th Cir. 2009).

The Board certifies under 5 U.S.C. 605(b) that the final rule would not have a significant economic impact upon a substantial number of small entities, within the meaning of the RFA.¹² Under the Board's existing regulations, a railroad is required to

¹² For the purpose of RFA analysis for rail carriers subject to Board jurisdiction, the Board defines a "small business" as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1-1. See Small Entity Size Standards Under the Regulatory Flexibility Act, EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III rail carriers have annual operating revenues of \$20 million or less in 1991 dollars, or \$40,384,263 or less when adjusted for inflation using 2019 data. Class II carriers have annual operating revenues of less than \$250 million in 1991 dollars, or \$504,803,294 when adjusted for inflation using 2019 data. The Board calculates the revenue deflator factor annually and publishes the railroad

file Waybill Sample data for all line-haul revenue waybills terminated on its lines if:

- (a) it terminated at least 4,500 revenue carloads in any of the three preceding years; or
- (b) it terminated at least 5% of the revenue carloads terminating in any state in any of the three preceding years.

49 CFR 1244.2. Under this criteria, 53 railroads are currently required to report Waybill Sample data. Of these 53 railroads, the Board estimates that 36 are Class III rail carriers, and therefore small businesses within the meaning of the RFA. Of the 53 railroads required to report Waybill Sample data, 45 railroads currently use Railinc Corporation (Railinc)—a wholly-owned information technology subsidiary of the Association of American Railroads—to sample their waybills.¹³ Eight railroads currently sample their own waybills.

For the railroads that submit their waybills to Railinc for sampling, there will be no additional burden or costs as result of the changes adopted in the final rule. These entities will continue to submit all their waybills to Railinc, which will then sample the data in accordance with the Board’s revised sampling rates. Because the Board contracts with Railinc to sample railroads’ waybills, the entities that use Railinc to sample their waybills will incur no additional costs from Railinc as a result of the Board’s proposed changes. Of the approximately 36 Class III rail carriers, the Board estimates that 34 carriers fall into this category and therefore will not incur any additional burden or cost.

(. . . continued)

revenue thresholds in decisions and on its website. 49 CFR 1201.1-1; Indexing the Annual Operating Revenues of R.Rs., EP 748 (STB served June 10, 2020).

¹³ Some railroads hire a third party to collect their waybills. That third party then sends these waybills to Railinc for sampling.

For the railroads that choose to sample their own waybills, the final rule will not result in a significant economic impact. The purpose of the changes adopted in the final rule is to create a more robust Waybill Sample and result in more comprehensive information critical to the Board's decision-making and analyses. The final rule will increase the rate at which the Board samples certain railroad shipments and appropriately differentiate based on industry waybill practices for intermodal shipments. These changes will result in additional observations for certain shipments but will not significantly alter small entities' current practices for sampling their shipments. Based on the total burden hours described in the Paperwork Reduction Act analysis below, the Board estimates that, for railroads conducting their own sampling, the change in reporting procedures will result in a one-time burden of approximately 150 hours per railroad. Moreover, this impact will not apply to a substantial number of small entities, as the Board estimates that only two of the approximately 36 Class III rail carriers will incur this burden.

Accordingly, the Board certifies under 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Offices of Advocacy, U.S. Small Business Administration.

Paperwork Reduction Act

In this proceeding, the Board is modifying an existing collection of information that was approved by the Office of Management and Budget (OMB) under the collection of Waybill Sample data (OMB Control No. 2140-0015). In the NPRM, the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3521 and

OMB regulations at 5 CFR 1320.8(d)(3) regarding: (1) whether the collection of information, as proposed below to the NPRM, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate.

In the NPRM, the Board estimated that the proposed requirements would add a total one-time hourly burden of 640 hours (or approximately 213.3 hours per year as amortized over three years) because the railroads, in most cases, will need to edit their software programs to implement these changes. The Board anticipated that, once the burden of the one-time programming changes is incurred, the annual burden would remain the same as before this modification. The Board received one comment from CSXT, offering its estimates for the one-time hourly burden of actual time and costs of collection of Waybill Sample data.¹⁴ The Board received five other comments that generally pertained to the Board's burden analysis under the PRA.

In its comments, CSXT provides two estimates for its one-time hourly burden based on certain assumptions. CSXT estimates a base one-time hourly burden of 200 hours, assuming (i) the introduction of two new strata, (ii) no changes to the Kth interval and random starts for the existing strata, and (iii) the use of existing Kth interval

¹⁴ In NPRM, Tables B-2, B-3 and B-4 show a total annual burden of 774.6 hours. This incorporates the annualized one-time hour burden of 213.3 hours under the proposed rule and the agency's most recent estimated annual burden of 561.3 hours for the extension request (due to a change in the number of carriers submitting their own data, there was a slight change from the annual burden of 555 hours approved in 2017).

and random start tables for the two new strata. CSXT estimates an additional one-time hourly burden of 50 hours if new Kth intervals and random start tables are necessary. It also suggests that other procedural changes are likely to have a similarly additive effect. (CSXT Comment 2.)

CSXT's estimates are helpful but CSXT's first assumption—that there will be two new intermodal strata—is not accurate because the final rule creates only one new stratum. The first intermodal stratum of “1 to 2” trailer/container units remains unchanged from the “1 to 2” carloads stratum currently applied to intermodal shipments. The second intermodal stratum of “3 and over” trailer/container units is the only new stratum. It combines the other four carload strata currently applied to intermodal shipments into one stratum (i.e., “3 and over” trailer/container units). Given that the number of new strata assumed by CSXT is reduced by half, its base estimate of 200 one-time burden hours may also be reduced by half, to 100 one-time burden hours.

CSXT's second assumption is for an additional one-time burden of 50 hours if the Board intends to add new tables/intervals for the new sampling rates of the new strata. The new sampling rate of “1/5 waybills” will require a new Kth interval and random starts table, which will use the same interval and start table, even though it will be applied to three different strata, (i.e., the first two carload strata and the second intermodal stratum). This will result in an additional one-time burden of 50 hours, which the Board will add to the adjusted base estimate of 100 hours, for a total of 150 one-time burden hours.

The other comments received, which generally pertain to the collection of this information, provided no data estimates or assumptions upon which to adjust the burdens

under the PRA. These other comments pertain to those burdens in two ways. First, USDA and RSI Logistics propose general rule changes that would impact the burdens here. (USDA Comment 2-3; RSI Logistics Comment 1.) These comments are addressed above and are not adopted in this rulemaking. Second, AAR, AFPM, and NGFA point to the estimated total one-time hour burden (640 hours) under the PRA set forth in the NPRM as indicating the limited cost of the changes in the proposed rule. (AAR Comment 4 n.4; AFPM Comment 4; NGFA Comment 4-5.)

CSXT’s estimates, as adjusted above, are reasonable. Therefore, the one-time burden for each of the eight railroads providing their own waybills will be increased from a total of 80 hours to 150 hours for each railroad providing its own waybills, as provided in the table below.

TABLE 4 – Estimated Additional One-Time Hour Burden under Final Rule for Each Railroad Providing Its Own Waybills

Categories of Respondents	Number of Respondents	Estimated One-Time Hour Burden (per Respondent)	Total One-Time Hour Burden
Railroads that conduct their own sampling and report monthly	5	150	750
Railroads that conduct their own sampling and report quarterly	3	150	450
Total One-Time Hour Burden			1,200

The Board's removal of the manual filing option does not impact the PRA analysis because the Board has not received a manual filing in 10 years.

This request to modify and extend an existing, approved collection will be submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11. The request will address the comments discussed above as part of the PRA approval process.

Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801-808, the Office of Information and Regulatory Affairs has designated this rule as non-major, as defined by 5 U.S.C. 804(2).

It is ordered:

1. The Board adopts the final rule set forth in this decision. Notice of the final rule will be published in the Federal Register.
2. This decision is effective on January 1, 2021.
3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

List of Subjects in 49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

Decided: August 26, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1244 of title 49, chapter X, of the Code of Federal Regulations as follows:

**PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—
RAILROADS**

1. The authority citation for part 1244 continues to read as follows:

Authority: 49 U.S.C. 1321, 10707, 11144, 11145.

2. Revise § 1244.4 to read as follows:

§ 1244.4 Sampling of waybills.

(a) *Reporting samples.* Subject railroads shall submit waybill sample information as a computer file containing specified information from a sample waybill.

(1) Statement No. 81-1 contains information on the standards and format for the computer file.

(2) Effective January 1, 2021, and thereafter, unless otherwise ordered, the sampling rates are as follows:

Table 1 to paragraph (a)(2)

Number of non-intermodal carloads on waybill	Sample rate
1 to 2	1/5
3 to 15	1/5
16 to 60	1/4
61 to 100	1/3

101 and over	1/2
Number of intermodal trailer/container units on waybill	Sample rate
1 to 2	1/40
3 and over	1/5

(b) *Controls and Annual Counts.* (1) Each subject railroad shall maintain a control procedure to ensure complete and accurate reporting for the waybill sampling. All pertinent waybill data shall be included on hard copy waybill submissions including inbound references for transit waybills. All such pertinent waybill data shall be legible.

(2) All subject railroads shall maintain a record of the number of line-haul revenue carloads that terminated on their line in a calendar year and shall furnish this number when requested by the Board.

(3) All subject railroads shall furnish the Board the control counts and file specification information as required by Statement No. 81-1.

(4) Certification by a responsible officer of the subject railroad as to the completeness and accuracy of sample shall be made once a year in accordance with the instructions on the Transmittal Form OPAD-1.

3. Amend § 1244.5 by revising paragraphs (a) and (d) to read as follows:

§ 1244.5 Date of filing.

(a) The reporting period for which subject railroads submit waybill sample information shall be the audit (accounting) month except that subject railroads may submit waybill sample information quarterly as specified in Statement No. 81-1.

* * * * *

(d) Subject railroads shall complete the Transmittal Form OPAD-1 to accompany

each waybill file submission.

4. Revise § 1244.6 to read as follows:

§ 1244.6 Retention of files.

(a) Subject railroads shall retain the underlying hard copy waybills or facsimiles capable of producing legible copies, which shall be complete including inbound references for transit waybills, for a minimum period of four years.

(b) This file of retained waybills shall be maintained in such a manner that railroads may readily retrieve waybill copies using the waybill identifier code as shown on the submitted waybill record.

5. Amend § 1244.7 by revising paragraph (a) to read as follows:

§ 1244.7 Special studies.

(a) Although routine submission of hard copy waybills is not required, the Board may order railroads to submit hard copies of the underlying waybills for special studies.

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[FR Doc. 2020-19195 Filed: 9/2/2020 8:45 am; Publication Date: 9/3/2020]