

Railroad Retirement Board

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will be heard before an impartial hearings officer. An unsuccessful claimant in an appeal before such hearings officer may appeal to the Board. (For further details of appeals procedure by claimants for benefits and for appeals procedure by employers, see parts 319 and 320 of this chapter.)

Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act, of which the claimant is a member, or any other party aggrieved by a final decision pursuant to the Railroad Unemployment Insurance Act, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of such final decision of the Board by filing a petition for review within 90 days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Court of Appeals for the Seventh Circuit, or in the United States Court of Appeals for the District of Columbia Circuit.

(c) *Current compensation and service records.* Current compensation and service records are maintained by the Bureau of Research and Employment Accounts. These records are obtained from reports made periodically on either a quarterly or annual basis by employers and employee representatives. General instructions in this regard may be found in part 250 of this chapter. Special instructions to employers and employee representatives are issued from time to time by the Director of Research and Employment Accounts.

(d) *Collection of contributions.* The Office of Budget and Fiscal Operations acts as the collecting agency of the Board in receiving contributions due under the Railroad Unemployment Insurance Act. Contributions are, with some few exceptions, due quarterly and with the payment, the employer must file a report, Form DC-1, Employers Quarterly or Annual Report of Contributions under the Railroad Unem-

ployment Insurance Act. (For further details see part 345 of this chapter.)

(e) *Employment service.* Employers needing workers may avail themselves of the Board's employment service by making requests of any field office for referrals, in writing, on forms provided by the Board, or by telephone.

[15 FR 6752, Oct. 6, 1950, as amended at 21 FR 4808, June 29, 1956; Board Order 62-115, 27 FR 9254, Sept. 19, 1962; Board Order 67-67, 32 FR 9064, June 27, 1967; 41 FR 22557, June 4, 1976. Redesignated at 52 FR 11010, Apr. 6, 1987, as amended at 55 FR 26430, June 28, 1990]

§ 200.3 Obtaining forms from the Railroad Retirement Board.

Forms used by the Board, including applications for benefits and informational publications, may be obtained from the Board's headquarters at 844 Rush Street, Chicago, Illinois 60611, and from local Board offices.

[63 FR 17326, Apr. 9, 1998]

§ 200.4 Availability of information to public.

(a) The following materials (more particularly described in paragraph (d) of this section), with identifying details deleted pursuant to paragraph (b) of this section, are available for public inspection and copying:

(1) All final opinions (including concurring and dissenting opinions), and all orders made in the adjudication of cases, which have precedential effect;

(2) All statements of policy and interpretations which have been adopted by the Board, or by anyone under authority delegated by the Board, which have not been published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions to staff that affect any member of the public.

(b) The identifying details to be deleted shall include, but not be limited to, names and identifying numbers of employees and other individuals as needed to comply with sections 12(d) and (n) of the Railroad Unemployment Insurance Act, section 7(b)(3) of the Railroad Retirement Act, and § 200.8 of this part, or to prevent a clearly unwarranted invasion of personal privacy.

(c) There shall be maintained in the Board's library a current index of the materials referred to in paragraph (a)

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of this section which will have been issued, adopted, or promulgated subsequent to July 4, 1967. This index shall be available for public inspection and copying at the Board's headquarters offices located at 844 Rush Street, Chicago, Illinois, during the normal business hours of the Board. Copies of the index or any portion thereof may be obtained for a fee equivalent to the costs of reproduction by submitting a written request therefor. Such request should comply with the form for requests as described in paragraph (h) of this section.

(d) The materials and indexes thereto shall be kept, and made available to the public upon request, in the bureaus and offices of the Board that produce or utilize the materials. The following materials currently in use shall, as long as they are in effect as precedents and instructions, be made available in offices of the Board at 844 North Rush Street, Chicago, Illinois 60611-2092:

(1) In the Office of Programs/Operations: The Retirement Claims Manual, RCM Circulars, Special Services Manual, Policy Decisions, Procedural Memoranda containing information on the adjudication of claims not contained in the Retirement Claims Manual or in RCM Circulars, Field Operating Manual (Parts I and VI), FOM Circulars and Memoranda, the Occupational Disability Rating Schedule, Adjudication Instruction Manual, Regional Operating Manual (Part I), memorandum instructions on adjudication, and circular letters of instruction to railroad officials.

(2) In the Office of Programs/Assessment and Training: The Instructions to Employers, and Circular Letters to Employers.

(3) In the Office of General Counsel: Legal Opinions.

(4) In the Office of the Secretary to the Board: Decisions and rulings of the Board.

(5) Regional offices and field offices shall also make available to the extent practicable such of these materials and indexes as are furnished them in the ordinary course of business.

(e) The copies of manuals and instructions made available for public copying and inspection shall not include:

(1) Confidential statements, standards, and instructions which do not affect the public, and

(2) Instructions not affecting the public (such as those relating solely to processing and procedure, to management, or to personnel) which it is feasible to separate from instructions that do affect the public.

(f) With the exception of records specifically excluded from disclosure by section 552(b) of title 5, United States Code, or other applicable statute, any records of or in the custody of this agency, other than those made available under paragraphs (a), (c), and (d) of this section, shall, upon receipt of a written request reasonably describing them, promptly be made available to the person requesting them.

(g) The RRB may charge the person or persons making a request for records under paragraph (f) of this section a fee in an amount not to exceed the costs actually incurred in complying with the request and not to exceed the cost of processing a check for payment. Depending on the category into which the request falls, a fee may be assessed for the cost of search for documents, reviewing documents to determine whether any portion of any located documents is permitted to be withheld, and duplicating documents.

(1) *Fee schedule.* To the extent that the following are chargeable, they are chargeable according to the following schedule:

(i) The charge for making a manual search for records shall be the salary rate, including benefits, for a GS-7, step 5 Federal employee;

(ii) The charge for reviewing documents to determine whether any portion of any located document is permitted to be withheld shall be the salary rate, including benefits, for a GS-13, step 5 Federal employee;

(iii) The charge for making photocopies of any size document shall be \$.10 per copy per page;

(iv) The charge for computer-generated listings or labels shall include the direct cost to the RRB of analysis and programming, where required, plus the cost of computer operations to produce the listing or labels. The maximum computer search charge shall be \$2,250.00 per hour (\$37.50 per minute).

Search time shall not include the time expended in analysis or programming where these operations are required.

(v) There shall be no charge for transmitting documents by regular post. The charge for all other methods of transmitting documents shall be the actual cost of transmittal.

(2) *Categories of requesters.* For the purpose of assessing fees, requesters shall be classified into one of the following five groups:

(i) *Commercial use requesters.* Commercial use requesters are requesters who seek information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. For such requesters, the RRB will fully charge for the cost of searching, reviewing and copying and shall not consider a request for waiver or reduction of fees based upon an assertion that disclosure would be in the public interest; however, the RRB will not charge a fee if the total cost for searching, reviewing, and copying is less than \$10.00.

(ii) *Educational and non-commercial scientific institution requesters.* Educational requesters are educational institutions which operate a program or programs of scholarly research. They may be a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education. Non-commercial scientific requesters are institutions that are not operated on a "commercial" basis and which are operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. For requesters in this category, the RRB shall charge for the cost of reproduc-

tion alone, excluding the first 100 pages, for which no charge will be made. If after excluding the cost of the first 100 pages of reproduction, there remain costs to be assessed, the RRB will not charge for such costs if such costs total less than \$10.00. If the cost is \$10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. To be eligible for free search time, these requesters must reasonably describe the records sought.

(iii) *Requesters who are representatives of the news media.* The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that could be of interest to the public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. For requesters in this category the RRB shall charge for the cost of reproduction alone excluding the cost of the first 100 pages, for which no charge will be made. If, after excluding the cost of the first 100 pages of reproduction, there remain costs to be assessed, the RRB will not charge for such costs if such costs total less than \$10.00. If the cost is \$10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. To be eligible for free search time, these requesters must reasonably describe the record sought.

(iv) *Requests by subjects of records in Privacy Act Systems of Records.* Requests from subject individuals for records about themselves filed in any of the Board's Privacy Act Systems of records will continue to be treated under the

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fee provisions of the Privacy Act of 1984 which permit assessing fees only for reproduction.

(v) *All other requesters.* For requesters who do not fall within the purview of paragraph (g)(2)(i), (ii), (iii), or (iv) of this section, the RRB will charge the full direct cost of searching for and reproducing records that are responsive to the request. The RRB will not charge for such costs to be assessed if the total is less than \$10.00. If the total is \$10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(3) *Charges for unsuccessful searches.* Where search time is chargeable, the RRB may assess charges for time spent searching, even if the RRB fails to locate the records, or if located, the records are determined to be exempt from disclosure. If the Board estimates that search charges are likely to exceed \$25.00 it will notify the requester of the estimated amount of fees, unless the requester has agreed in advance to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(4) *Aggregating requests.* When the RRB reasonably believes that a requester or group of requesters acting in concert is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the RRB will aggregate any such requests and charge accordingly. One element the RRB will consider in determining whether a belief would be reasonable is the time period in which the requests have been.

(5) *Advance payments.* (i) The RRB estimates or determines that the allowable charges payment unless:

(A) The RRV estimates or determines that the allowable charges that a requester may be required to pay are likely to exceed \$250.00, in which case the RRV will notify the requester of the likely cost and obtain satisfactory

assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the RRB may require the requester to pay the full amount owed plus any applicable interest as provided below of demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(ii) When the Board acts under paragraph (g)(5)(i) of this section, the administrative time limits prescribed in subsection (a)(6) of the Freedom of Information Act (5 U.S.C. 552(a)(6)) (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after the Board has received the fee payments described in said paragraph (g)(5)(i) of this section.

(6) *Charging interest.* Interest may be charged to any requester who fails to pay fees charged within 30 days of the date of billing. Interest will be assessed beginning on the 31st day following the day on which the bill for fees was sent. Interest will be the rate prescribed in section 3717 of title 31 of the U.S. Code Annotated and will accrue from the date of the billing.

(7) *Collection of fees due.* Whenever it is appropriate in the judgment of the Board in order to encourage repayment of fees billed in accordance with these regulations, the Board will use the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer reporting agencies and use of collection agencies.

(h) Any person or organization requesting records pursuant to this section shall submit such request in writing to the General Counsel, Railroad Retirement Board, Room 836, 844 North Rush Street, Chicago, Illinois 60611-

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2092. All such requests should be clearly and prominently identified as requests for information under the Freedom of Information Act. If submitted by mail or otherwise submitted in an envelope or other cover, requests should be clearly and prominently identified as such on the envelope or cover. Requests may also be submitted by e-mail, *LAWGroupMailbox@rrb.gov*.

(i) The General Counsel, or any other individual specifically authorized to act on behalf of the General Counsel, shall have the authority to grant or deny a request for information submitted under this section. The General Counsel or such authorized representative shall, within 20 working days following the receipt of a request, except as provided in paragraph (j)(1) of this section, make a determination granting or denying the request and notify the requester of his or her decision, and if a denial, the reasons therefor. The requester shall be further advised that a total or partial denial may be appealed to the Board as provided in paragraph (j) of this section.

(j) In cases where a request for information is denied, in whole or in part, by the General Counsel or his or her authorized representative, the party who originally made the request may appeal such determination to the Board by filing a written appeal with the Secretary of the Board within 20 working days following receipt of the notice of denial. The Board shall render a decision on an appeal within 20 working days following receipt of the appeal except as provided in paragraph (j)(1) of this section. The requester shall promptly be notified of the Board's decision and, in cases where the denial is upheld, of the provisions for judicial review of such final administrative decisions.

(1) In unusual circumstances, as enumerated in section 552(a)(6)(B) of title 5, United States Code, the time restrictions of paragraphs (i) and (j) of this section may be extended in the aggregate by no more than 10 days by notice to the requester of such extension, the reasons therefor, and the date on which a determination is expected to be dispatched.

(2) For purposes of paragraphs (i) and (j) of this section, a request shall be re-

ceived by the General Counsel of the Board when it arrives at the Board's headquarters. *Provided, however,* That when the estimated fee to be assessed for a given request exceeds \$30.00, such request shall be deemed not to have been received by the General Counsel until the requester is advised of the estimated cost and agrees to bear it. *Provided further,* That a request which does not fully comply with all the provisions of paragraph (h) of this section shall be deemed to have been received by the General Counsel on the day it actually reaches his or her office.

(k) Any person in the employ of the Railroad Retirement Board who receives a request for any information, document or record of this agency, or in the custody thereof, shall advise the requester to address such request to the General Counsel. If the request received is in writing, it shall be immediately referred for action to the Executive Director.

(l) The General Counsel shall maintain records of:

(1) The total amount of fees collected by this agency pursuant to this section;

(2) The number of initial denials of requests for records made pursuant to this section and the reason for each;

(3) The number of appeals from such denials and the result of each appeal, together with the reason(s) for the action upon each appeal that results in a denial of information;

(4) The name(s) and title(s) or position(s) of each person responsible for each initial denial of records requested and the number of instances of action on a request for information for each such person;

(5) The results of each proceeding conducted pursuant to section 552(a)(4)(F) of title 5 U.S. Code, including a report of any disciplinary action against an official or employee who was determined to be primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(6) Every rule made by this agency affecting or in implementation of section 552 of title 5 U.S. Code;

(7) The fee schedule for copies of records and documents requested pursuant to this regulation; and

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(8) All other information which indicates efforts to administer fully the letter and spirit of section 552 of title 5 U.S. Code.

(m) The Board shall, prior to February 1 of each year, prepare and submit a report to the Attorney General of the United States covering each of the categories of records maintained in accordance with the foregoing for the preceding fiscal year.

(n) *Special procedures for handling requests for business information:*

(1) The Freedom of Information Act exempts from mandatory disclosure matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential * * *." The Board maintains records that may include information within this exception and to protect the rights of submitters of business information with respect to the confidentiality of such information, all requests for records or information contained in contract bids, contract proposals, contracts, and similar business information documents shall be handled in accordance with the procedures established by this paragraph.

(2) When the Executive Director or an individual authorized to grant or deny requests under the Freedom of Information Act receives a request for business information, the General Counsel or other individual shall promptly provide the person who submitted the information to the Board with written notice that a request for the information has been made. The notice shall specify what record or information has been requested and shall inform the business submitter that the submitter may, within ten working days after the date of the notice, file a written objection to disclosure of the information or portions of the information. The written objection to disclosure shall be addressed to the individual whose name appears in the notification and shall specify the portion or portions of the information that the submitter believes should not be disclosed and state the grounds or bases for objecting to disclosure of such portion or portions. No written notice to the business submitter shall be required under this subparagraph if it is readily determined that the informa-

tion will not be disclosed or that the information has lawfully been published or otherwise made available to the public.

(3) In determining whether to grant or deny the request for the business information, the official or entity making the determination shall carefully consider any objection to disclosure made by the submitter of the information in question.

(4) If a determination is made to disclose information with respect to which the business submitter has filed an objection to disclosure, the official or entity making the determination shall, no later than ten working days prior to the date on which disclosure of the information will be made, provide the submitter with written notice of the determination to disclose. The written notice shall state the reasons why the submitter's grounds for objecting to disclosure were rejected and inform the submitter of the date on which the information is to be disclosed.

(5) The Board shall promptly notify the business submitter of any suit commenced under the Freedom of Information Act to compel disclosure of information which he or she submitted to the Board.

(o) *Custom tailored information services; Fees charged.* This paragraph and paragraph (p) of this section set forth the policy of the Railroad Retirement Board with respect to the assessment of a fee for providing custom tailored information where requested. Except as provided in paragraphs (o)(4)(vii) and (p) of this section, a fee shall be charged for providing custom tailored information.

(1) *Definition: Custom tailored information.* Custom tailored information is information not otherwise required to be disclosed under this part but which can be created or extracted and manipulated, reformatted, or otherwise prepared to the specifications of the requester from existing records. For example, the Board needs to program computers to provide data in a particular format or to compile selected items from records, provide statistical data, ratios, proportions, percentages, etc. If this data is not already compiled and available, the end product would be

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the result of custom tailored information services.

(2) *Providing custom tailored information.* The Board is not required to provide custom tailored information. It will do so only when the appropriate fees have been paid as provided in paragraph (o)(4) of this section and when the request for such information will not divert staff and equipment from the Board's primary responsibilities.

(3) *Requesting custom tailored information.* Information may be requested in person, by telephone, or by mail. Any request should reasonably describe the information wanted and may be sent to the Director of Administration, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

(4) *Fee schedule.* Requests for custom tailored information are chargeable according to the following schedule:

(i) *Manual searching for records.* Full cost of the time of the employees who perform the service, even if records cannot be found, management and supervisory costs, plus the full costs of any machine time and materials the employee uses. Consulting and other indirect costs will be assessed as appropriate.

(ii) *Photocopying or reproducing records on magnetic tapes or computer diskettes.* The charge for making photocopies of any size document shall be \$.10 per copy per page. The charge for reproducing records on magnetic tapes or computer diskettes is the full cost of the operator's time plus the full cost of the machine time and the materials used.

(iii) *Use of electronic data processing equipment to obtain records.* Full cost for the service, including computer search time and computer runs and printouts, and the time of computer programmers and operators and of other employees.

(iv) *Certification or authentication.* Full cost of certification and authentication.

(v) *Providing other special services.* Full cost of the time of the employee who performs the service, management and supervisory costs, plus the full costs of any machine time and materials the employee uses. Consulting and other indirect costs will be assessed as appropriate.

(vi) *Special forwarding arrangements.* Full cost of special arrangements for forwarding material requested.

(vii) *Statutory supersession.* Where a Federal statute prohibits the assessment of a charge for a service or addresses an aspect of that charge, the statute shall take precedence over this paragraph (o).

(p) *Assessment of a fee with respect to the provision of custom tailored information where the identification of the beneficiary is obscure and where provision of the information can be seen as benefiting the public generally.* When the identification of a specific beneficiary with respect to the provision of custom tailored information is obscure, the service can be considered primarily as benefiting broadly the general public, and the estimated cost of providing the information is less than \$1,000.00, the Director of Administration shall determine whether or not a fee is to be charged. In any such case where the cost is \$1,000.00 or more, the request shall be referred by the Director of Administration to the three-member Board for a determination whether or not a fee is to be assessed.

[Board Order 6784, 32 FR 9651, Sept. 4, 1967, as amended at 40 FR 7255, Feb. 19, 1975; 48 FR 51447, 51448, Nov. 9, 1983; 50 FR 26357, June 26, 1985. Redesignated at 52 FR 11010, Apr. 6, 1987, as amended at 52 FR 13820, Apr. 24, 1987; 54 FR 43055, Oct. 20, 1989; 59 FR 28765, June 3, 1994; 60 FR 29984, June 7, 1995; 61 FR 25390, May 21, 1996; 68 FR 61621, Oct. 29, 2003]

§ 200.5 Protection of privacy of records maintained on individuals.

(a) *Purpose and scope.* The purpose of this section is to establish specific procedures necessary for compliance with the Privacy Act of 1974 (Pub. L. 93-579). These regulations apply to all record systems containing information of a personal or private nature maintained by the Railroad Retirement Board that are indexed and retrieved by personal identifier.

(b) *Definitions—(1) Individual.* The term "individual" pertains to a natural person who is a citizen of the United States or an alien lawfully admitted for permanent residence and not to a company or corporation.

(2) *System of records.* For the purposes of this section, the term "system of records" pertains to only those records