



20 CFR Part 200

RIN 3220-AB70

General Administration: Availability of Information to the Public

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Railroad Retirement Board (RRB) amends its regulations to comply with the requirements of the Freedom of Information Act (FOIA) Improvement Act of 2016 and to make certain corrections. In addition, this rule amends certain provisions in the fee section to reflect developments in the law and to streamline the description of the factors considered when making fee waiver determinations.

DATES: *Effective date:* This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment due date: Comments are due by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by **RIN 3220-AB70**, by any of the following methods:

E-mail: SecretarytotheBoard@RRB.gov. Include **RIN 3220-AB70** in the subject line of the message.

Mail: Secretary to the Board, Railroad Retirement Board, 844 N. Rush St, Chicago, IL 60611-1275.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, (312) 751-4945, TTD (312) 751-4701, Marguerite.Dadabo@rrb.gov.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board (RRB) amends 20 CFR 200.4 to comply with the FOIA Improvement Act of 2016 (Pub. L. 114-185). The amendments address procedures for notifying requesters of availability of assistance and/or for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services (OGIS), and extend the time to file an administrative appeal to 90 days. In addition, the amendments to §200.4 provide procedures for determining when fees for FOIA requests should be waived or reduced, how requesters may seek fee waivers, and when restrictions on charging fees should apply. The amendment also provides procedures for requesting expedited processing where compelling need is shown. The amendment also adds a category of documents that are available for public inspection. The amendment corrects various typographical errors or changes in nomenclature. Lastly, consistent with current policy of the RRB, this amendment replaces the word “Board” with “RRB” in those instances where the text refers to the agency rather than the three-member Board.

Public Participation

The RRB is issuing an interim rule to make these revisions in the RRB's FOIA regulations, because these changes merely bring the regulations into alignment with the provisions contained in the FOIA Improvement Act of 2016 and with current case law and to clarify the procedure the RRB uses with respect to fee determinations. This approach allows these regulatory changes to take effect sooner than would otherwise be possible with the publication of a notice of proposed rulemaking in advance. Nevertheless, the RRB welcomes public comments from any interested person on any aspect of the changes made by this interim final rule. Please refer to the ADDRESSES section above. The RRB will carefully consider all public comments in the drafting of the final rule.

Please note that all comments received are considered part of the public record. The information made available includes personal identifying information (such as name and address) voluntarily submitted by the commenter. If you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted. If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You also must prominently identify any confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted. Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person, please see the FOR FURTHER INFORMATION CONTACT section above to schedule an appointment.

Statutory and Executive Order Reviews

Administrative Procedure Act

The RRB's implementation of this rule as an interim final rule, with provision for post-promulgation public comment, is based on section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b). Under section 553(b), an agency may issue a rule without notice of proposed rulemaking and the pre-promulgation opportunity for public comment, with regard to “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.” The RRB has determined that many of the revisions being made are interpretive rules issued by the RRB, as they merely advise the public of the RRB's construction of the new statute and clarify the application of the substantive law. Moreover, the RRB has determined that the

remaining revisions are rules of agency procedure or practice, as they do not change the substantive standards the agency applies in implementing the FOIA. The RRB has also concluded that there is good cause to find that a pre-publication public comment period is unnecessary. These revisions to the existing regulations in 20 CFR 200.4 merely implement the statutory changes, align the RRB's regulations with controlling judicial decisions, and clarify agency procedures.

Paperwork Reduction Act

The RRB has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., does not apply because these regulations do not contain any information collection requirements subject to OMBs approval.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the statutory provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, et seq.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the RRB has determined that this rule will not have a significant economic impact on a substantial number of small entities because it pertains to administrative matters affecting the agency.

Executive Order 12866 – Regulatory Review

The Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866, as amended. Therefore, no regulatory impact analysis is required. There are no changes to the information collections associated with § 200.4, because these materials are already available in electronic format.

Executive Order 12988 – Civil Justice Reform

This rule meets the applicable standards under sections 3(a) and 3(b) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132 – Federalism

This rule will not have substantial direct effect on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the RRB has determined this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement in accordance with Executive Order 13132, Federalism.

List of Subjects in 20 CFR Part 200

Administrative practice and procedure, Railroad employees, Railroad retirement, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Railroad Retirement Board amends 20 CFR part 200 as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 is revised to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362;
Section 200.4 also issued under 5 U.S.C. 552;
Section 200.5 also issued under 5 U.S.C. 552a;
Section 200.6 also issued under 5 U.S.C. 552b; and
Section 200.7 also issued under 31 U.S.C. 3717.

2. Amend § 200.4 as follows:

a. Remove the word “and” at the end of paragraph (a)(2);

b. Remove the period and in its place add “; and” at the end of paragraph (a)(3);

c. Add paragraph (a)(4);

d. In paragraph (c):

i. Remove the phrase at the beginning of the first sentence “There shall be maintained in the Board’s library” and add in its place “The RRB shall maintain”;

ii. Remove the phrase at the end of the second sentence “and copying at the Board’s headquarters offices located at 844 Rush Street, Chicago, Illinois, during the normal business hours of the Board” and add in its place “in an electronic format at RRB.gov”; and

iii. At the end of the third sentence add the phrase “to the General Counsel, Railroad Retirement Board, Room 836, 844 N. Rush Street, Chicago, Illinois 60611-1275”;

e. In paragraph (d):

i. Remove the word “Board” and add in its place “RRB”;

ii. In the first sentence, after the word “request” add the phrase “in an electronic format”; and

iii. In the second sentence, remove “North” and add in its place “N.” and remove the zipcode “60611-2092” and add in its place “60611-1275”;

f. In paragraph (g)(2)(iii), remove the first four sentences of the paragraph and add six sentences in their place;

g. In paragraph (g)(2)(iv), remove “Board’s” and add in its place “RRB’s”;

h. Add a sentence at the end of paragraph (g)(2)(v);

i. In paragraph (g)(3), remove “Board” and add in its place “RRB”;

j. In paragraph (g)(5)(i)(A), remove “RRV” and add in its place “RRB”;

k. In paragraph (g)(5)(ii), remove “Board” and add in its place “RRB”;

l. In paragraph (g)(6), remove “fo” and add in its place “of”;

m. In paragraph (g)(7), remove “Board” and add in its place “RRB”;

n. Add paragraphs (g)(8) and (9);

o. In paragraph (h), remove the word “North” and add in its place the abbreviation “N.” and remove “, *LAWGroupMailbox@rrb.gov*” and add in its place “to EFOIA <https://secure.rrb.gov/efoia/>”;

p. Redesignate paragraphs (i) through (p) as paragraphs (j) through (q);

q. Add a new paragraph (i);

r. In newly redesignated paragraph (j):

i. Remove references to “(j)(1)” and “(j)” add in their places “(k)(1)” and “(k)”, respectively; and

ii. Add a sentence to the end of the paragraph;

s. In newly redesignated paragraph (k) introductory text:

i. Remove the phrase “Secretary of the Board within 20” and add in its place the phrase “Secretary to the Board within 90”; and

ii. Remove the reference to “(j)(1)” and add in its place “(k)(1)”;

t. In newly redesignated paragraph (k)(1), remove the reference to “(i) and (j)” and in its place add “(j) and (k)”;

u. In newly redesignated paragraph (k)(2), remove the reference to “(i) and (j)” and in its place add “(j) and (k)” and remove “Board” and “Board’s” and add in their places “RRB” and “RRB’s”, respectively;

v. In newly redesignated paragraph (l), remove “Executive Director” and add in its place “General Counsel”;

- w. In newly redesignated paragraph (n), remove “Board” and add in its place “RRB”;
- x. In newly redesignated paragraph (o)(2), remove “Executive Director” and add in its place “General Counsel” and remove “Board” and add in its place “RRB”;
- y. In newly redesignated paragraph (o)(5), remove “Board” and add in its place “RRB”;
- z. In newly redesignated paragraph (p) introductory text:
 - i. Remove “This paragraph and paragraph (p)” and add in its place “This paragraph (p) and paragraph (q)”;
 - ii. Remove the reference to “(o)(4)(vii) and (p)” and add in its place “(p)(4)(vii) and (q)”;
 - aa. In newly redesignated paragraph (p)(1), remove “Board” and add in its place “RRB”;
 - bb. In newly redesignated paragraph (p)(2), remove “Board” and “Board’s” and add in their places “RRB” and “RRB’s”, respectively, and remove the reference to “(o)(4)” and add in its place “(p)(4)”;
 - cc. In newly redesignated paragraph (p)(3), remove “Director of Administration” and in its place add “General Counsel” and remove the address “844 North Rush Street, Chicago, Illinois 60611-2092” and in its place add “Room 836, 844 N. Rush Street, Chicago, Illinois 60611-1275”;
 - dd. In newly redesignated paragraph (p)(4)(vii), remove the reference to “(o)” and in its place add “(p)”;
 - ee. In newly redesignated paragraph (q), remove “Director of Administration” and in its place add “General Counsel”.

The addition and revisions read as follows:

§ 200.4 Availability of information to the public.

(a) * * *

(4) Copies of all records, regardless of form or format –

(i) That have been released to any person under paragraph (f) of this section; and

(ii) That because of the nature of their subject matter, the RRB determines have become or are likely to become the subject of subsequent requests for substantially the same records, or that have been requested 3 or more times.

* * * * *

(g) * * *

(2) * * *

(iii) * * * The term “representative of the news media” refers to any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest

evidence that publication is expected; however, the RRB will also consider a requester's past publication record in making this determination. ***

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(v)* * * Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested 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.

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(8) *Restriction on charging fees.* If the RRB fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraphs (g)(2)(ii) and (iii) of this section, may not charge reproduction fees except as described in paragraphs (g)(8)(i) and (ii) of this section.

(i) If the RRB has determined that unusual circumstances as defined by the FOIA apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(ii) If the RRB has determined that unusual circumstances as defined by the FOIA apply, and more than 5,000 pages are necessary to respond to the request, the agency may charge search fees, or, in the case of requesters described in paragraphs (g)(2)(ii) and (iii) of this section, may charge duplication fees if the following steps are taken. The agency must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the agency must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in

accordance with 5 U.S.C. 552(a)(6)(B)(ii). If the exception in this paragraph (g)(8)(ii) is satisfied, the component may charge all applicable fees incurred in the processing of the request.

(9) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the agency must inform the requester of the contact information of that program.

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(i) *Timing of responses to requests.* The RRB ordinarily will respond to requests according to their order of receipt. In instances involving misdirected requests that are required to be rerouted, the response time shall commence on the date that the request is received by the office that is designated to receive requests, but in any event not later than 10 working days after the request is first received by any office that is designated by these regulations to receive requests.

(1) *Unusual circumstances.* Whenever the RRB cannot meet the statutory time limit for processing a request because of “unusual circumstances,” as defined in the FOIA, and the RRB extends the time limit on that basis, the RRB shall, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which the RRB estimates processing of the request will be completed. Where the extension exceeds 10 working days, the RRB shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The RRB shall make available its designated FOIA Public Liaison for this purpose. The RRB shall also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

(2) *Expedited processing.* (i) The RRB shall process requests and appeals on an expedited

basis whenever it is determined that they involve:

(A) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(ii) A request for expedited processing may be made at any time. Requests based on paragraphs (i)(2)(i)(A) and (B) of this section must be submitted to the General Counsel, Railroad Retirement Board, Room 836, 844 N. Rush Street, Chicago, Illinois 60611-1275.

(iii) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (i)(2)(i)(B) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, an agency may waive the formal certification requirement.

(iv) The RRB shall notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, the RRB will act on any appeal of that decision expeditiously.

(j)* * * Additionally, any grant shall contain a statement notifying the requester of the assistance available from the RRB's FOIA Public Liaison, and any denial shall contain a statement notifying the requester of the assistance available from the RRB's FOIA Public Liaison and the dispute resolution services offered by the National Archives and Records Administration's (NARA's) Office of Government Information Services (OGIS).

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By Authority of the Board

Stephanie Hillyard,

Secretary to the Board.

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