

Surface Transportation Board, DOT

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(e) *Notice of intent to disclose.* (1) The Board shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its determination whether or not to disclose the requested information. Whenever the Board decides to disclose the information over a submitter's objection, it shall provide the submitter with written notice containing the following:

(i) A description or copy of the information to be disclosed;

(ii) The reasons why the submitter's disclosure objections were not sustained; and

(iii) A specific disclosure date, which shall be a reasonable number of days after the notice of intent to disclose has been mailed to the submitter.

(2) At the same time that notice of intent to disclose is given to a submitter, the Board shall notify the requester accordingly.

(f) *Notice of lawsuit.* (1) Whenever an FOIA requester brings legal action seeking to compel disclosure of confidential commercial information, the Board shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of confidential commercial information, the Board shall promptly notify the requester.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Board determines that the information requested should not be disclosed; or

(2) The information already has been published or otherwise officially made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) Disclosure is required by a Board rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the Board that are to be released; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or within a reasonable time

thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(5) The information requested was not designated by the submitter as exempt from disclosure, when the submitter had an opportunity to do so at the time of submission or within a reasonable time thereafter, unless the Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(6) The designation made by the submitter in accordance with these regulations appears obviously frivolous; in such case, the Board must provide the submitter only with written notice of any administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

PART 1002—FEES

Sec.

1002.1 Fees for records search, review, copying, certification, and related services.

1002.2 Filing fees.

1002.3 Updating user fees.

AUTHORITY: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721. Section 1002.1(g)(11) also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

§1002.1 Fees for records search, review, copying, certification, and related services.

Certifications and copies of such tariffs, reports and other public records and documents on file with the Surface Transportation Board as may be practicable to furnish, as well as searches and copying of records not considered public under the Freedom of Information Act (5 U.S.C. 552), will be furnished on the following basis:

(a) Certificate of the Records Officer, \$17.00.

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of \$41.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., identical thereto, at the rate of \$28.00 per hour.

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(d) Photocopies of tariffs, reports, and other public documents, at the rate of \$1.40 per letter or legal size exposure. A minimum charge of \$7.00 will be made for this service.

(e) Fees for courier services to transport agency records to provide on-site access to agency records stored off-site will be set at the rates set forth in the Board’s agreement with its courier service provider. Rate information is available on the Board’s Web site (<http://www.stb.dot.gov>) or can be obtained from the Board’s Records Officer, Room 1200, Surface Transportation Board, Washington, DC 20423–0001.

(f) The fee for search and copying services requiring computer processing are as follows:

(1) A fee of \$71.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

(2) Printing shall be charged at the rate of \$.10 per page of computer generated output with a minimum charge of \$.25. A charge of \$30 per reel of magnetic tape will be made if the tape is to be permanently retained by the requestor.

(g) The fees for search, review and copying services for records not considered public under the Freedom of Information Act are as follows:

(1) When records are sought for commercial use, requesters will be assessed the full and reasonable direct costs of document search, review and duplication. A “commercial use” request refers to a request from or on behalf of one who seeks 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.

(2) When records are not sought for commercial use and a request is made by an educational or noncommercial scientific institution, requesters will be assessed only for the cost of duplication (excluding charges for the first 100 pages). The term “Educational Institution” refers to 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, and an institution of vocational education,

which operates a program of scholarly research. The term “noncommercial scientific institution” refers to an institution that is not operated on a “commercial” basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. They must show that their request is authorized by and under the auspices of a qualifying institution and the records are not sought for a commercial use but, instead, are in furtherance of scholarly or scientific research.

(3) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only for the cost of duplication (excluding charges for the first 100 pages) if they can show that their request is not made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered a request for a commercial use.

(4) All other requesters will be assessed fees which recover the full, reasonable direct cost of searching for and duplicating records that are responsive to the request (excluding charges for the first 100 pages of duplication and the first two hours of search time).

(5) All requesters must reasonably describe the records sought.

(6) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions. They are as follows:

Grade	Rate	Grade	Rate
GS-1	\$12.01	GS-9	\$28.04
GS-2	13.07	GS-10	30.88
GS-3	14.73	GS-11	33.92
GS-4	16.54	GS-12	40.66
GS-5	18.50	GS-13	48.21
GS-6	20.63	GS-14	57.13
GS-7	22.92	GS-15 and over	67.21
GS-8	25.38		

(7) The fee for photocopies shall be \$1.40 per letter or legal size exposure with a minimum charge of \$7.00.

(8) The fees for computer data are set forth in paragraph (f) of this section.

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(9) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(10) A fee may be charged for searches which are not productive and for searches for records or those parts of records which subsequently are determined to be exempt from disclosure.

(11) Interest charges will be assessed on any unpaid bill starting on the date specified in the bill, at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. The Debt Collection Act, 5 U.S.C. 5514 (1982), including disclosure to the consumer reporting agencies and the use of collection agencies, as prescribed in the Board's Debt Collection Regulations in 49 CFR part 1018, will be utilized to encourage payment where appropriate.

(12) If search charges are likely to exceed \$25, the requester will be notified of the estimated fees unless requester willingness to pay whatever fee is assessed has been provided in advance. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(13) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed \$250. Requesters who have previously failed to pay a fee charged in timely fashion (i.e. within 30 days of the date of billing) may be required first to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) also will not begin until after a requester has complied with this provision.

(14) Documents shall be furnished without any charge or at a charge reduced below the fees set forth above if 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. The following six factors will be employed in determining when such fees shall be waived or reduced:

(i) The subject of the request: Whether the subject of the requester records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." This fee waiver and reduction provision will be implemented in accordance with guidelines issued by the U.S. Department of Justice on April 2, 1987 and entitled "New FOIA Fee Waiver Policy Guidance." A copy of these guidelines may be inspected or obtained from the Surface Transportation Board's Freedom of Information Office, Washington, DC 20423-0001.

(h) Fees for services described in paragraphs (a) through (g) of this section may be charged to accounts established in accordance with 49 CFR 1002.2(a)(2), or paid for by check, money order, currency, or credit card in accordance with 49 CFR 1002.2(a)(3).

(i) Transcript of testimony and of oral argument, or extracts therefrom, may be purchased by the public from the Board's official reporter. For information regarding the official reporter, contact the Records Officer, Surface Transportation Board, Washington, DC 20423-0001.

[32 FR 20010, Dec. 20, 1967]

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1002.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1002.2 Filing fees.

(a) *Manner of payment.* (1) Except as specified in this section, all filing fees will be payable at the time and place the application, petition, notice, tariff, contract summary, or other document is tendered for filing. Filing fees for tariffs, including schedules, and contract summaries, including supplements (Item 78), and filing fees for documents submitted for recording (Item 83) may be charged to accounts established by the Board in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* Form STB-1032 must be submitted to the Board's Section of Financial Services to establish STB billing accounts for filing fees for tariffs and for documents submitted for recording.

(3) Fees will be payable to the Surface Transportation Board, by check payable in United States currency drawn upon funds deposited in a United States or foreign bank or other financial institution, money order payable in United States currency, or by credit card.

(b) Any filing that is not accompanied by the appropriate filing fee, payment via credit card or STB billing account, or a request for waiver of the fee, is deficient. However, the Board may find that a tariff which is submitted without the appropriate filing fee is deficient and reject the tariff filing, if the filer repeatedly fails to submit the appropriate filing fee after the Board has advised the filer of the proper filing fee and tariff filing procedures.

(c) *Fees not refundable.* Fees will be assessed for every filing in the type of proceeding listed in the schedule of fees contained in paragraph (f) of this section, subject to the exceptions contained in paragraphs (d) and (e) of this section. After the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Board, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document is granted or

approved, denied, rejected before docketing, dismissed, or withdrawn. If an individual exemption proceeding becomes a matter of general applicability and is handled through the rulemaking process, the Board will refund the filing fee.

(d) *Related or consolidated proceedings.* (1)(i) Except as provided for in paragraph (d)(1)(ii) of this section, separate fees need not be paid for related applications filed by the same applicant that would be the subject of one proceeding.

(ii) In proceedings filed under the rail consolidation procedures at 49 CFR part 1180, the applicable filing fee must be paid for each proceeding submitted concurrently with the primary application. The fee for each type of proceeding is set forth in the fee schedule contained in paragraph (f) of this section.

(2) A separate fee will be assessed for the filing of an application for temporary authority to operate a motor carrier of passengers as provided for in paragraph (f)(5) of this section regardless of whether such application is related to a corresponding transfer proceeding as provided for in paragraph (f)(2) of this section.

(3) The Board may reject concurrently filed applications, petitions, notices, contracts, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(e) *Waiver or reduction of filing fees.* It is the general policy of the Board not to waive or reduce filing fees except as described below:

(1) Filing fees are waived for an application or other proceeding which is filed by a federal government agency, or a state or local government entity. For purposes of this section the phrases "federal government agency" or "government entity" do not include a quasi-governmental corporation or government subsidized transportation company.

(2) In extraordinary situations the Board will accept requests for waivers or fee reductions in accordance with the following procedure: