

SUBCHAPTER A—GENERAL ADMINISTRATION

PART 200—GENERAL ADMINISTRATION

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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.

§ 200.1 Designation of central and field organization.

(a) *Introduction.* (1) The Railroad Retirement Board (hereinafter referenced as the “Board”) is an independent agency in the executive branch of the Federal Government and is administered by three members appointed by the President, with the advice and consent of the Senate. By law, one member is appointed upon recommendations made by railroad labor organizations, one upon recommendations of railroad employers, and the third member, the Chairman, is in effect independent of employees and employers and represents the public interest. The terms of office are five years and are arranged so as to expire in different calendar years.

(2) The primary function of the Board is the determination and payment of benefits under the retirement-survivor

and unemployment-sickness programs. To this end, the Board must maintain lifetime earnings records for covered employees, a network of field offices to assist railroad personnel and their dependents in filing claims for benefits, and examiners to adjudicate the claims.

(3) The Board administers the Railroad Retirement Act and the Railroad Unemployment Insurance Act. The Railroad Retirement Tax Act, which imposes employment taxes to fund the railroad retirement system, is administered by the Internal Revenue Service of the U.S. Department of Treasury. The Board also participates in the administration of the Federal Medicare health insurance program.

(4) The headquarters of the Board is in Chicago, Illinois, at 844 North Rush Street. The Board maintains numerous district offices across the country in localities easily accessible to large numbers of railroad workers.

(b) *Internal organization.* (1) Reporting directly to the Board Members is the seven member Executive Committee. The Executive Committee is comprised of the General Counsel, the Director of Administration, the Director of Programs, the Chief Financial Officer, the Chief Information Officer, and the Director of Field Service. The Chief Actuary is a non-voting member. The Board members will designate a member of the Executive Committee as Senior Executive Officer.

(2) The Executive Committee is responsible for the day to day operations of the agency. The Senior Executive Officer is responsible for the direction and oversight of the Executive Committee. The General Counsel is responsible for advising the Board Members on major issues, interpreting the Acts and regulations administered by the Board, drafting and analyzing legislation, representing the Board in litigation and administrative forums and planning, directing, and coordinating the work of the Office of General Counsel, the Office of Secretary to the

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Board, the Bureau of Hearings and Appeals, and the Office of Legislative Affairs through their respective directors. The Director of Programs is responsible for managing, coordinating, and controlling the program operations of the agency which carry out provisions of the Railroad Retirement and Railroad Unemployment Insurance Acts. The Director of Administration is responsible for managing, coordinating and controlling certain administrative operations of the Board including the Division of Acquisition Management, the Bureau of Human Resources, the Office of Public Affairs, and the Division of Real Property Management. The Chief Financial Officer is responsible for the financial management of the agency, and the Chief Information Officer is responsible for coordinating the agency's information resources management program. The Chief Actuary is responsible for the actuarial program of the Board, and for maintaining statistical and financial information. The Director of Field Services is responsible for the oversight of the agency's nationwide field offices.

(3) The Office of Equal Employment Opportunity is responsible for equal employment opportunity and affirmative employment programs.

(c) *Office of Inspector General.* The Railroad Retirement Solvency Act of 1983 established the Office of Inspector General within the Board to be governed by the Inspector General Act of 1978. As structured, the Inspector General reports directly to the Chairman. The Office of Inspector General is responsible for policy direction and conduct of audit, inspection, and investigation activities relating to program and operations of the Board; and maintaining liaison with other law enforcement agencies, the Department of Justice, and United States Attorneys on all matters relating to the detection and prevention of fraud and abuse. The Inspector General reports semi-annually to the Congress through the Chairman concerning fraud, abuses, other serious problems, and deficiencies of agency programs and operations; recommends corrective action; and, re-

ports on progress made in implementing these actions.

[52 FR 11010, Apr. 6, 1987, as amended at 67 FR 5723, Feb. 7, 2002; 80 FR 13763, Mar. 17, 2015; 84 FR 28726, June 20, 2019]

§ 200.2 The general course and method by which the Board's functions are channeled and determined.

(a) *Retirement and death benefits.* (1) Retirement and death benefits must be applied for by filing application therefor. (For details as to application, see parts 210 and 237 of this chapter). The Bureau of Retirement Claims considers the application and the evidence and information submitted with it. Wage and service records maintained by the Board are checked and if necessary, further evidence is obtained from the employee, the employer, fellow employees, public records and any other person or source available. The Bureau makes initial decisions on the following matters:

- (i) Applications for benefits;
- (ii) Requests for the withdrawal of an application;
- (iii) Requests for a change in an annuity beginning date;
- (iv) The termination of an annuity;
- (v) The modification of the amount of an annuity or lump sum;
- (vi) Requests for the reinstatement of an annuity which had been terminated or modified;
- (vii) The existence of an erroneous payment;
- (viii) The eligibility of an individual for a supplemental annuity or the amount of such supplemental annuity.
- (ix) Whether representative payments shall serve the interests of an individual by reason of his incapacity to manage his annuity payments; and
- (x) Who shall be appointed or continued as representative payee on behalf of an annuitant.

(2) A claimant dissatisfied with the Bureau's decision may, upon filing notice within one year from the date the decision is mailed to the claimant, appeal to the Bureau of Hearings and Appeals. *Provided, however,* That (i) an individual under age 16 shall not have the right to appeal a finding of incapacity to manage his annuity payments, but shall have the right to contest on appeal that he is, in fact, under age 16;

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(ii) an individual who has been adjudged legally incompetent shall not have the right to appeal a finding of incapacity to manage his annuity payments, but shall have the right to contest on appeal the fact of his having been adjudged legally incompetent; and (iii) an individual shall not have the right to appeal a denial of his application to serve as representative payee on behalf of an annuitant. There he may have an oral hearing before a hearings officer of which a stenographic record is made, submit additional evidence, be represented, and present written and oral argument. If dissatisfied with the decision of the hearings officer, the claimant may appeal to the Board itself. This appeal must be made on a prescribed form within four months of the date a copy of the hearings officer's decision was mailed to him. If new evidence is received, the Board may remand the case to the hearings officer for investigation and recommendation concerning the new evidence. (For details on appeals procedure, see part 260 of this chapter.) A claimant, after he has unsuccessfully appealed to the Board itself and has thus exhausted all administrative remedies within the Board, may obtain a review of a final decision of the Board by filing a petition for review, within one year after the entry of the decision on the records of the Board and its communication to the claimant, in the U.S. Court of Appeals for the circuit in which the claimant resides, or in the U.S. Court of Appeals for the Seventh Circuit, or in the U.S. Court of Appeals for the District of Columbia Circuit.

(b) *Unemployment, sickness, and maternity benefits.* (1) Claims for unemployment benefits are handled by a comprehensive organization set up in the field. Under agreements between the Railroad Retirement Board and covered employers, the employers select employees of theirs to act as unemployment claims agents. These agents perform their services, specified in the agreement, in accordance with instructions issued by the Board but under general supervision and control of the employer. In accordance with the agreements, employers are reimbursed for such services at the rate of 50 cents for each claim taken by an unemploy-

ment claims agent and transmitted to the Board. There are some 13,000 such contract claims agents. An unemployed person who wishes to file a claim for unemployment benefits need only consult his recent railroad employer to be directed to the unemployment claims agent with whom he may file his claim.

(2) When an employee makes his first claim in any benefit year, he identifies himself and fills out an application for unemployment benefits (UI-1), an application for employment service (Form ES-1), and a pay rate report (Form UI 1a) to be used in determining the rate at which benefits may be paid. The employee is given an informational booklet UB-4 and an Unemployment Bulletin No. UB-3 informing him of his responsibilities and explaining the statements to which he is required to certify and to which he does certify when he registers for benefits. When the applications and pay rate report are completed, the unemployment claims agent sends them to the nearest field office of the Board. That office inspects the applications to detect errors and omissions and to note items requiring investigation. The office also attempts to verify the employee's statement about his pay rate unless the unemployment claims agent has already done so. The application for unemployment benefits and the pay rate report are then sent to the appropriate regional office of the Board. The application for employment service is retained in the field office for use in referring the claimant to suitable job openings. On the basis of the information furnished on the application for unemployment benefits, the regional office determines whether the applicant is a qualified employee (that is, whether he earned \$500 or more from covered employment in the base year). The applicant is notified by letter if he is found to be not qualified.

(3) In addition to the application forms and pay rate report, the claimant executes a registration and claim for unemployment insurance benefits (Form UI-3). In substance, registration consists of his appearing before an unemployment claims agent during the agent's working hours and signing his name on the registration and claim form for the days he wishes to claim as

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days of unemployment. Registration for any day must be made on the day or not later than the sixth calendar day thereafter, except that, if such calendar day is not a business day, the claimant may make his registration on the next following business day. In other words, a claimant must ordinarily appear for registration at seven-day intervals. Under certain circumstances, such as illness, employment, looking for employment, etc., an employee may make a delayed registration for any day for which he is unable to register within the time limit mentioned above. The unemployment claims agent sends the claim to the nearest field office where it is inspected with a view to calling the claimant in for interview or referral to job openings, detecting errors and omissions, and noting items requiring investigation. The claim is then forwarded to the regional office.

(4) Claims for sickness benefits are handled by the field organization of the Board. An employee need not register in person for sickness benefits but claims for such benefits must be made on the forms prescribed by the Board and executed by the individual claiming benefits except that, if the Board is satisfied that an employee is so sick or injured that he cannot sign forms, the Board may accept forms executed by someone else in his behalf. Forms used in connection with claims for sickness benefits may be obtained from a railroad employer, a railway labor organization, or any Board office. An application for sickness benefits (Form SI-1a) and the required statement of sickness (Form SI-1b) may be mailed to any office of the Board (see part 335 of this chapter). It is important that a statement of sickness be filed promptly, for no day can be considered as a day of sickness unless a statement of sickness with respect to such day is filed at an office of the Board within ten days. The application and statement of sickness are forwarded to a regional office where they are examined. If it appears that the employee is entitled to benefits, the regional office will send him a claim form covering a 14-day registration period, and a pay rate report (Form SI-1d). The employee completes the forms, indicating on the claim

form the days during the period he claims as days of sickness and returns both forms to the regional office to which the claim form is preaddressed. When additional medical information is needed, a form for supplemental doctor's statement is sent to the employee. This should be filled out by a doctor and returned to the Board.

(5) Maternity benefits must be applied for on a form prescribed by the Board. A statement of maternity sickness, executed by a person authorized to execute statements of sickness (see part 335 of this chapter), is required also. The necessary forms may be obtained from a railroad employer, a railway labor organization, or any Board office. An application for maternity benefits (Form SI-101) and the statement of maternity sickness (Form SI-104) may be filed in person or by mail with any Board office. It is important that the statement of maternity sickness be filed promptly since no day can be considered as a day of sickness in a maternity period unless a statement of maternity sickness with respect to the day is filed at an office of the Board within ten days. As in the case of claims for sickness benefits, the forms are forwarded to a regional office. Claim forms are mailed to the claimant and are pre-addressed for return to the regional office.

(6) Whether benefits are payable to a claimant and, if so, the amount of benefits payable, is determined with respect to claims for unemployment, sickness, and maternity benefits, by the regional office. The names and addresses of claimants to whom benefits are found payable, and the amounts payable to them, are certified to the local disbursing office of the Treasury Department which mails the benefit checks to the claimants. If a claim is denied in whole or in part, an explanation is given to the claimant by letter.

(7) The rate at which benefits are payable is determined from the claimant's railroad wages earned in a base year period or from his daily pay rate for his last railroad employment in the base year period, whichever will result in the higher benefit rate. His daily benefit rate will be at least 60 per centum of his daily pay rate for his last

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railroad employment in the base year period, but not exceeding \$10.20.

(8) Any qualified employee whose claim for benefits under the Railroad Unemployment Insurance Act has been denied in whole or in part may, within one year from the date such denial is communicated to him, appeal from the initial determination, and such appeal 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 Unemployment 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;

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

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

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(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.

(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) The RRB shall maintain a current index of the materials referred to in paragraph (a) of this section which will have been issued, adopted, or promulgated subsequent to July 4, 1967. This index shall be available for public inspection in an electronic format at RRB.gov. 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 to the General Counsel, Railroad Retirement Board, Room 836, 844 N. Rush Street, Chicago, Illinois 60611-1275.

(d) The materials and indexes thereto shall be kept, and made available to the public upon request in an electronic format, in the bureaus and offices of the RRB 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 N. Rush Street, Chicago, Illinois 60611-1275:

(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, Ad-

judication Instruction Manual, memorandum instructions on adjudication, and circular letters of instruction to railroad officials.

(2) In the Office of Programs/Policy and Systems: 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) 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

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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 reproduction 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 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

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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. 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 RRB's Privacy Act Systems of records will continue to be treated under the 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. 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.

(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 RRB 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 RRB 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 RRB 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

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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 RRB 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 RRB 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 RRB in order to encourage repayment of fees billed in accordance with these regulations, the RRB 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.

(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.

(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 N. Rush Street, Chicago, Illinois 60611-2092. 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, to EFOIA <https://secure.rrb.gov/efoia/>.

(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

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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

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(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) 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 (k)(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 (k) of this section. 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

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Records Administration's (NARA's) Office of Government Information Services (OGIS).

(k) 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 90 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 (k)(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 (j) and (k) 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 (j) and (k) of this section, a request shall be received by the General Counsel of the RRB when it arrives at the RRB'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.

(l) 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 General Counsel.

(m) 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

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

(n) The RRB 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.

(o) *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

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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 General Counsel 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 RRB 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 information 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

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which the information is to be disclosed.

(5) The RRB 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 RRB.

(p) *Custom tailored information services; Fees charged.* This paragraph (p) and paragraph (q) 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 (p)(4)(vii) and (q) 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 RRB 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 the result of custom tailored information services.

(2) *Providing custom tailored information.* The RRB is not required to provide custom tailored information. It will do so only when the appropriate fees have been paid as provided in paragraph (p)(4) of this section and when the request for such information will not divert staff and equipment from the RRB'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 General Counsel, Railroad Retirement Board, Room 836, 844 N. Rush Street, Chicago, Illinois 60611-1275.

(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

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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 (p).

(q) *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 General Counsel 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. Redesignated at 52 FR 11010, Apr. 6, 1987]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 200.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 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 that can be retrieved by an individual identifier.

(3) *Railroad Retirement Board.* For purposes of this section, the term "Railroad Retirement Board" refers to the United States Railroad Retirement Board, an independent agency in the executive branch of the United States Government.

(4) *Board.* For purposes of this section the term "Board" refers to the three member governing body of the United States Railroad Retirement Board.

(c) *Procedure for requesting the existence of personally identifiable records in a record system.* An individual can determine if a particular record system maintained by the Railroad Retirement Board contains any record pertaining to him by submitting a written request for such information to the system manager of that record system as described in the annual notice published in the FEDERAL REGISTER. A current copy of the system notices, published in accordance with paragraph (i)

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of this section, is available for inspection at all regional and district offices of the Board. If necessary, Board personnel will aid requesters in determining what system(s) of records they wish to review and will forward any requests for information to the appropriate system manager. Also, requests for personal information may be submitted either by mail or in person to the system manager at the headquarters of the Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. Prior to responding to a request for information under this subsection, the system manager shall require the individual requesting such information to provide identifying data, such as his full name, date of birth, and social security number. The system manager shall respond to a request under this subsection within a reasonable time by stating that a record on the individual either is or is not contained in the system.

(d) *Disclosure of requested information to individuals.* (1) Upon request, an individual shall be granted access to records pertaining to himself, other than medical records and records compiled in anticipation of a civil or criminal action or proceeding against him, which are indexed by individual identifier in a particular system of records. Requests for access must be in writing and should be addressed to the system manager of that record system as described in the annual notice published in the *FEDERAL REGISTER*. Requests under this subsection may be submitted either by mail or in person at the headquarters offices of the Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

(2) The system manager shall, within ten working days following the date on which the request is received in his office, render a decision either granting or denying access and shall promptly notify the individual of his decision. If the request is denied, the notification shall inform the individual of his right to appeal the denial to the Board. An individual whose request for access under this subsection has been denied by the system manager may appeal that determination to the Board by filing a written appeal with the Secretary of the Board, Railroad Retirement

Board, 844 Rush Street, Chicago, Illinois 60611 within twenty working days following receipt of the notice of denial. The Board shall render a decision on an appeal within thirty working days following the date on which the appeal is received in the office of the Secretary of the Board. The individual shall promptly be notified of the Board's decision.

(3) In cases where an individual has been granted access to his records, the system manager shall, prior to releasing such records, require the individual to produce identifying data such as his name, date of birth, and social security number.

(4) Disclosure to an individual of his record may be made by providing him, upon written request therefor, a copy of the record or portion thereof which he reasonably describes in his request.

(5) An individual, and if such individual so desires, one other person of his choosing, may review and have a copy made of his record (in a form comprehensible to him) during regular business hours at the location described as the repository of the record system containing such records in the annual notice published in the *FEDERAL REGISTER* or at such other location convenient to the individual as specified by the system manager. If an individual is accompanied by another person, the system manager may require written authorizations for disclosure in the presence of the other person from the individual before any record or portion thereof is released.

(e) *Special procedures—medical records.* (1) An individual concerning whom the Railroad Retirement Board maintains medical records in a system of records shall, upon written request, be permitted to review such medical records or be furnished copies of such records if the system manager of the system containing the requested records determines that disclosure of the records or any portion thereof would not be harmful to the individual's mental or physical health.

(2) If, upon review of the medical records requested, the system manager determines that disclosure of such records or any portion thereof might be harmful to the individual's mental or

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physical health, he shall inform the individual that copies of the records may be furnished to a physician of the individual's own choosing. If the individual should select a physician to conduct such a review and direct the Board to permit the physician to review the records, the system manager shall promptly forward copies of the records in question to that physician. The system manager shall inform the physician that the records are being provided to him or her for the purpose of making an independent determination as to whether release or the records directly to the individual who has requested them might be harmful to that individual. The physician shall be informed that if, in his or her opinion, direct disclosure of the records would not be harmful to the individual's mental or physical health, he or she may then provide the copies to the individual. The physician shall further be informed that should he or she determine that disclosure of the records in question might be harmful to the individual, such records shall not be disclosed and should be returned to the Board, but the physician may summarize and discuss the contents of the records with the individual.

(3) The special procedure established by paragraph (e) of this section to permit an individual access to medical records pertaining to himself or herself shall not be construed as authorizing the individual to direct the Board to disclose such medical records to any third parties, other than to a physician in accordance with paragraph (e)(2) of this section. Medical records shall not be disclosed by the Board to any entities or persons other than the individual to whom the record pertains or his or her authorized physician regardless of consent, except as permissible under paragraphs (j)(1)(i), (iii), and (viii) of this section and as provided under paragraph (e)(4) of this section.

(4) Notwithstanding the provisions of paragraphs (e)(1), (2) and (3) of this section and of paragraph (d) of this section, if a determination made with respect to an individual's claim for benefits under the Railroad Retirement Act of the Railroad Unemployment Insurance Act is based in whole or in part on medical records, disclosure of or access

to such medical records shall be granted to such individual or to such individual's representative when such records are requested for the purpose of contesting such determination either administratively or judicially.

(5) The procedures for access to medical records set forth in paragraph (e) of this section shall not apply with respect to requests for access to an individual's disability decision sheet or similar adjudicatory documents, access to which is governed solely by paragraph (d) of this section.

(f) *General exemptions*—(1) *Systems of records subject to investigatory material exemption under 5 U.S.C. 552a(j)(2)*. RRB-43, Investigation Files, a system containing information concerning alleged violations of law, regulation, or rule pertinent to the administration of programs by the RRB or alleging misconduct or conflict of interest on the part of RRB employees in the discharge of their official duties.

(2) *Scope of exemption*. (i) The system of records identified in this paragraph is maintained by the Office of Investigations (OI) of the Office of Inspector General (OIG), a component of the Board which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the OIG's OI is the Inspector General Act of 1978, 5 U.S.C. App.

(ii) Applicable information in the system of records described in this paragraph is exempt from subsections (c)(3) and (4) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8), (Agency Requirements), (f) (Agency Rules) and (g) (Civil Remedies) of 5 U.S.C. 552a.

(iii) To the extent that information in this system of records does not fall within the scope of this general exemption under 5 U.S.C. 552(j)(2) for any reason, the specific exemption under 5 U.S.C. 552(k)(2) is claimed for such information. (See paragraph (g) of this section.)

(3) *Reasons for exemptions*. The system of records described in this section is exempt for one or more of the following reasons:

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(i) 5 U.S.C. 552a(c)(3) requires an agency to make available to the individual named in the records, at his or her request, an accounting of each disclosure of records. This accounting must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting of each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of an investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(ii) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since the RRB is claiming that this system of records is exempt from subsection (d) of the Act, concerning access to records, this section is inapplicable and is exempted to the extent that this system of records is exempted from subsection (d) of the Act.

(iii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment of such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in this system of records could inform the subject of the investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and dis-

close investigative techniques and procedures.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose required by statute or executive order of the President. The application of this provision could impair investigations and law enforcement, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(v) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation of the existence of the investigation, enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(vi) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation

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with substantial information about the nature of that investigation.

(vii) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a FEDERAL REGISTER notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him or her, how he or she can gain access to such a record, and how he or she can contest its contents. Since the RRB is claiming that the system of records is exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f) and (d) of the Act. Although the RRB is claiming exemption from these requirements, RRB has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, RRB might decide it is appropriate for an individual to have access to all or a portion of his or her records in this system of records.

(viii) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish in the FEDERAL REGISTER notice concerning the categories of sources or records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although RRB is claiming exemption from this requirement, RRB has published such a notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(ix) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines "maintain" to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law

enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(x) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(xi) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his or her request if any system of records named by the individual contains a record pertaining to him or her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation was able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since the RRB is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that this system of records is exempted from subsection (d) of the Act. Although RRB is

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claiming exemption from the requirements of subsection (f) of the Act, RRB has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his or her records in this system of records. These procedures are described elsewhere in this part.

(xii) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since the RRB is claiming that this system of records is exempt from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8), and (f) of the Act, the provisions of subsection (g) of the Act are inapplicable and are exempted to the extent that this system or records is exempted from those subsections of the Act.

(g) *Specific exemptions*—(1) *Systems of records subject to investigatory material exemption under 5 U.S.C. 552a(k)(2).* RRB-43, Investigation Files, a system containing information concerning alleged violations of law, regulation, or rule pertinent to the administration of programs by the RRB or alleging misconduct or conflict of interest on the part of RRB employees in the discharge of their official duties.

(2) *Privacy Act provisions from which exempt.* The system of records described in this paragraph is exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), 4G, H, and I (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a.

(3) *Reasons for exemptions.* The system of records described in this section is exempt for one or more of the following reasons:

(i) To prevent the subject of the investigations from frustrating the investigatory process.

(ii) To protect investigatory material compiled for law enforcement purposes.

(iii) To fulfill commitments made to protect the confidentiality of sources

and to maintain access to necessary sources of information.

(iv) To prevent interference with law enforcement proceedings.

(h) *Request for amendment of a record.*

(1) An individual may request that a record pertaining to himself be amended by submitting a written request for such amendment to the system manager as described in the annual notice published in the *FEDERAL REGISTER*. Requests under this subsection may be made either by mail or in person at the headquarters offices of the Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. Such a request should include a statement of the information in the record which the individual believes is incorrect, a statement of any information not in the record which the individual believes would correct the record, if included, and a statement of any evidence which substantiates the individual's belief concerning the inaccuracy of the information presently contained in the record.

(2) Prior to rendering a determination in response to a request under this subsection, the system manager shall require that the individual provide identifying data such as his name, date of birth, and social security number.

(3) The system manager responsible for the system of records which contains the challenged record shall acknowledge receipt of the request in writing within ten working days following the date on which the request for amendment was received in his office and shall promptly render a decision either granting or denying the request.

(i) If the system manager grants the individual's request to amend his record, the system manager shall amend the record accordingly, advise the individual in writing that the requested amendment has been made and where an accounting of disclosures has been made, advise all previous recipients of the record to whom disclosure of such record was made and accounted for of the fact that the amendment was made and the substance of the amendment.

(ii) If the system manager denies the individual's request to amend his

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record, the system manager shall inform the individual that the request has been denied in whole or in part, the reason for the denial and the procedure regarding the individual's right to appeal the denial to the Board.

(i) *Appeal of initial adverse determination on amendment.* (1) An individual, whose request for amendment of a record pertaining to him is denied, may appeal that determination to the Board by filing a written appeal with the Secretary of the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. The written notice of appeal should include a statement of the information in the record which the individual believes is correct, a statement of any information not in the record which the individual believes would correct the record, if included, and a statement of any evidence which substantiates the individual's belief concerning the inaccuracy of the information presently contained in the record.

(2) The Board shall consider the appeal and render a final decision thereon within thirty working days following the date on which the appeal is received in the office of the Secretary of the Board. An extension of the thirty day response period is permitted for a good cause upon notification of such to the requester.

(3) If, upon consideration of the appeal, the Board upholds the denial, the appellant shall be so informed in writing. The appellant shall be advised that he may file a concise statement with the Board setting forth his reasons for disagreeing with the Board's decision and the procedures to be followed in filing such a statement of disagreement. The individual shall also be informed of his right to judicial review as provided under section 552a(g)(1)(A) of title 5 of the United States Code. If disclosure has or will be made of a record containing information about which an individual has filed a statement of disagreement, that contested information will be annotated and a copy of the statement of disagreement will be provided to past and future recipients of the information along with which the Board may include a statement of its reasons for not amending the record in question.

(4) If, upon consideration of the appeal, the Board reverses the denial, the Board shall amend the record, advise the appellant in writing that such amendment has been made, and where an accounting of disclosures has been made, advise all previous recipients of the record to whom disclosure of such was made and accounted for, of the fact that the amendment was made and the substance of the amendment.

(j) *Disclosure of record to person other than the individual to whom it pertains.* (1) Records collected and maintained by the Railroad Retirement Board in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act which contain information of a personal or private nature shall not be disclosed to any person or to another agency without the express written consent of the individual to whom the record pertains. Such written consent shall not be required if the disclosure is not otherwise prohibited by law or regulation and is:

(i) To officers or employees of the Railroad Retirement Board who, in the performance of their official duties, have a need for the record;

(ii) Required under section 552 of title 5 of the U.S. Code;

(iii) For a routine use of such record as published in the annual notice in the **FEDERAL REGISTER**;

(iv) To the Bureau of the Census for uses pursuant to the provisions of title 13 of the United States Code;

(v) To a recipient who has provided the Board with advance written assurance that the record will be used solely as a statistical or research record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government or for evaluation by the administrator of General Services or his designee to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if

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the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(xi) Pursuant to the order of a court of competent jurisdiction.

(2) The Railroad Retirement Board shall maintain an accounting of all disclosures of records made under paragraph (h)(1) of this section, except those made under paragraphs (h)(1)(i) and (ii) of this section. This accounting will include:

- (i) Date of disclosure;
- (ii) Specific subject matter of disclosure;
- (iii) Purpose of disclosure; and
- (iv) Name and address of the person or agency to whom the information has been released.

The Railroad Retirement Board shall maintain the accounting for five years or the life of the system of records, whichever is longer, and make such accounting, with the exception of disclosures made under paragraph (h)(1)(vii) of this section, available to the individual to whom the record pertains upon his request. If, subsequent to disclosure of a record for which disclosure an accounting has been made pursuant to this subsection, an amendment is made to that record or an individual has filed a statement of disagreement concerning that record, the person or agency to whom such disclosure was made shall be notified of the amendment or statement of disagreement.

(k) *Annual notice of systems of records.* The Railroad Retirement Board shall

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publish in the *FEDERAL REGISTER* on an annual basis a listing of the various systems of records which it maintains by individual identifier. That notice shall provide the following for each system:

(1) The name and location of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The routine uses of the system;

(4) The methods of storage, disposal, retention, access controls and retrievability of the system;

(5) The title and business address of the individual who is responsible for the system;

(6) The procedure whereby an individual can be notified at his request whether or not the system contains a record pertaining to him;

(7) The procedure whereby the individual can be notified at his request how he can gain access to any record pertaining to him which is contained in the system;

(8) How the individual can contest the contents of such a record; and

(9) The categories of sources of records in the system.

(1) *Collection of information and maintenance of records.* With respect to each system of records indexed by individual identifier which is maintained by the Railroad Retirement Board, the Railroad Retirement Board shall:

(1) Maintain in each system only such information about an individual as is relevant and necessary in accomplishing the purposes for which the system is kept;

(2) To the greatest extent practicable, collect information directly from the individual when that information may result in an adverse determination about such individual's rights, benefits or privileges under programs administered by the Railroad Retirement Board;

(3) Inform each individual who is asked to supply information:

(i) The authority under which the solicitation of such information is carried out;

(ii) Whether disclosure of the requested information is mandatory or voluntary and any penalties for failure to furnish such information;

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- (iii) The principal purposes for which the information will be used;
- (iv) The routine uses and transfers of such information; and
- (v) The possible effects on such individual if he fails to provide the requested information.

(4) Maintain all records which are used by the Railroad Retirement Board in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(5) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to paragraph (h)(1)(ii) of this section, make reasonable efforts to assure that such records are accurate, complete, timely and relevant for purposes of the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act;

(6) Maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual to whom the record pertains or unless pertinent to and within the scope of an authorized law enforcement activity;

(7) Make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record; and

(8) At least thirty days prior to publication of information under paragraph (i) of this section, publish in the FEDERAL REGISTER notice of any new use or intended use of the information in the system and provide an opportunity for interested persons to submit written data, views or arguments to the Railroad Retirement Board.

(m) *Fees.* The Railroad Retirement Board may assess a fee for copies of any records furnished to an individual under paragraph (d) of this section. The fees for copies shall be \$.10 per copy per page, not to exceed the actual cost of reproduction, and should be paid to the Director of Budget and Fiscal Operations for deposit to the Railroad Retirement Account. If payment is made

by check, the check should be payable to the order of the Railroad Retirement Board. Any fee of less than \$10 may be waived by the system manager if he determines that it is in the public interest to do so.

(n) *Government contractors.* When the Railroad Retirement Board provides by a contract or by a subcontract subject to its approval for the operation by or on behalf of the Railroad Retirement Board of a system of records to accomplish an agency function, the Railroad Retirement Board shall, consistent with its authority, cause the requirements of section 552a of title 5 of the United States Code to be applied to such system. In each such contract or subcontract for the operation of a system of records, entered into on or after September 27, 1975, the Railroad Retirement Board shall cause to be included a provision stating that the contractors or subcontractors and their employees shall be considered employees of the Railroad Retirement Board for purposes of the civil and criminal penalties provided in sections (g) and (i) of the Privacy Act of 1974 (5 U.S.C. 552a (g) and (i)).

(o) *Mailing lists.* The Railroad Retirement Board shall neither sell nor rent information containing any individual's name or address, unless authorized by statute.

(p) *Disclosure of social security account numbers.* Whenever an individual is requested by the Railroad Retirement Board to disclose his social security account number he shall be informed as to whether such disclosure is mandatory or voluntary. If disclosure of the individual's social security account number is mandatory, he shall be informed of the statutory authority requiring such disclosure.

[41 FR 20580, May 19, 1976, as amended at 43 FR 17468, Apr. 25, 1978; 50 FR 27222, July 2, 1985. Redesignated at 52 FR 11010, Apr. 6, 1987, as amended at 53 FR 3198, Feb. 4, 1988; 54 FR 43055, Oct. 20, 1989]

§ 200.6 Open meetings.

(a) *Definitions—(1) Meeting.* For purposes of this section, the term "meeting" shall mean the deliberations of at least two of the three members of the Railroad Retirement Board, which deliberations determine or result in the

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joint conduct or disposition of official agency business. The term "meeting" shall not include:

(i) Deliberations of the Board members concerning the closure of a meeting, the withholding of any information with respect to a meeting, the scheduling of a meeting, the establishment of the agenda of a meeting, or any change in the scheduling, agenda, or the open or closed status of a meeting; or

(ii) Consideration by the Board members of agency business circulated to them individually in writing for disposition by notation.

(2) *Public announcement.* For purposes of this section the term "public announcement" shall mean the posting of the notice of a scheduled meeting as required by this section on a bulletin board available to the public on the first floor of the Board's headquarters building located at 844 Rush Street, Chicago, Illinois 60611.

(b)(1) The members of the Board shall not jointly conduct or dispose of agency business except in accordance with the procedures and requirements established by this section. *Provided, however,* That nothing in this section shall be construed so as to prohibit the Board from disposing of routine or administrative matters by sequential, notational voting.

(2) Where agency business is disposed of by notational voting as provided in paragraph (b)(1) of this section, the minutes of the next succeeding Board meeting shall reflect such action.

(3) Every portion of every meeting of the Board at which agency business is conducted or disposed of shall be open to public observation, except as provided in paragraph (c) of this section.

(c)(1) Except as provided in this section, every portion of every meeting of the Board shall be open to the public. A meeting or a portion of a meeting may be closed where (i) the Board properly determines that the subject matter of the meeting or portion thereof is such as to make it likely that disclosure of matters falling within one or more of the exceptions set out in paragraph (c)(3) of this section would result, and (ii) the Board determines that the public interest would not require that the

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meeting or portion thereof be open to the public.

(2) The requirements of paragraphs (d) and (e) of this section shall not apply to information pertaining to a meeting which would otherwise be required to be disclosed to the public under this section where the Board properly determines that the disclosure of the information is likely to disclose matters within the exceptions listed in paragraph (c)(3) of this section, and that the public interest would not require that the matters, even though excepted, should be disclosed.

(3) The Board may close a meeting or a portion thereof and may withhold information concerning the meeting or portion thereof, including the explanation of closure, the description of the subject matter of the meeting, and the list of individuals expected to attend, which otherwise would be required to be made public under paragraphs (d) and (e) of this section, where it has determined, as provided in paragraphs (c)(1) and (2) of this section, where it has determined, as provided in paragraphs (c)(1) and (2) of this section, that the public interest would not otherwise require that the meeting or portion thereof be open or that the information be made public, and that the meeting, or portion thereof, or the disclosure of the information is likely to:

(i) Disclose matters that are (A) specifically authorized under criteria established by Executive Order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such executive order;

(ii) Relate solely to the internal personnel rules and practices of the Board;

(iii) Disclose matters exempted from disclosure under 45 U.S.C. 362(d) and 362(n) and 45 U.S.C. 231f(b)(3) or disclose matters specifically exempted from disclosure by any other statute (other than 5 U.S.C 552), *Provided,* That such other statute either requires that the matters be withheld from the public in such a manner as to afford no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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- (iv) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (v) Involve accusing any person of a crime, or formally censuring any person;
- (vi) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (vii) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would
 - (A) Interfere with law enforcement proceedings,
 - (B) Deprive a person of a right to a fair trial or an impartial adjudication,
 - (C) Constitute an unwarranted invasion of personal privacy,
- (D) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,
- (E) Disclose investigative techniques and procedures, or
- (F) Endanger the life or physical safety of law enforcement personnel;

(viii) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Board action, except that this paragraph shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(ix) Specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the authority granted in 45 U.S.C. 231f and 45 U.S.C. 365.

(d)(1) Any action by the Board to close a meeting or a portion thereof, or to withhold any information pertaining to such meeting or portion thereof, shall be taken only upon the vote of at least two members of the Board that the meeting or portion thereof be closed or information withheld for one or more of the reasons set forth in paragraph (c)(3) of this section. A single vote may be taken with respect to a series of meetings, to close the meetings or portions thereof or to withhold information pertaining to such meetings, where the meetings or portions thereof involve the same subject matter and are scheduled within 30 calendar days after the date of the initial meeting in the series.

(2) The vote of each member of the Board participating in the vote on closure of a meeting or portion thereof shall be recorded. Vote by proxy shall not be allowed.

(3) A person whose interests might be directly affected by a meeting or portion thereof which otherwise would be open may request that the meeting or portion thereof which concerns such person's interests be closed under paragraphs (c)(3)(v), (vi), or (vii) of this section. The request should be directed to The Secretary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, and must be received no later than the beginning of the meeting to which it applies. Upon receipt of such a request the Board shall vote by recorded vote on the question as to whether the meeting or portion thereof should be closed.

(4) Within one day following a vote taken under paragraphs (d)(2) and (3) of this section, a copy of such vote showing the vote of each member shall be available for public inspection and copying in the office of the Secretary of the Board, located in the Board's headquarters office.

(5) If a meeting or portion thereof is closed in accordance with an action under paragraphs (d)(2) or (3) of this section, the Board shall, within one day following the vote, except to the extent such information is exempt from disclosure under paragraph (c) of this section, make available for inspection and copying in the office of the

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Secretary of the Board a written explanation of the Board's action and a list of the persons expected to attend and their affiliations.

(e)(1) Except as to those meetings or portions of meetings scheduled as provided in paragraphs (d)(2) and (3) of this section, the Board shall for each meeting make public announcement at least one week prior thereto of the time, place and subject matter of the meeting, whether the meeting is to be open or closed to the public, and the name and telephone number of an official of the Railroad Retirement Board designated by the Board to respond to any requests from the public pertaining to the meeting.

(2) The requirement contained in paragraph (e)(1) of this section that the Board give one week advance notice of each meeting shall not apply where the Board determines by majority vote, which vote shall be recorded, that agency business requires that a meeting be scheduled at an earlier date. If a meeting is scheduled less than one week in the future, as provided in this paragraph, the Board shall make a public announcement at the earliest practicable time of the time, place and subject matter of the meeting and whether the meeting is to be open or closed to the public.

(3) The Board may change the time and place of a previously scheduled and announced meeting, but such change must be announced to the public at the earliest practicable time. The Board may change the subject matter, or its determination to open or close a meeting or portion thereof, of a previously scheduled and announced meeting only if (i) a majority of the Board determines by recorded vote that agency business requires the change and that no earlier public announcement of the change was possible, and (ii) the Board makes a public announcement of the change and the vote of each member thereon at the earliest practicable time.

(4) Immediately following each public announcement required by this subsection, the Board shall submit for publication in the *FEDERAL REGISTER* notice of the time, place, and subject matter of the meeting, whether the meeting is to be open or closed, any

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changes in such items from a previous announcement, and the name and telephone number of the Railroad Retirement Board official designated by the Board to respond to requests concerning the announced meeting.

(f)(1) Whenever the Board should determine to close a meeting or a portion of a meeting under any of the exemptions contained in paragraph (c)(3) of this section, the General Counsel of the Railroad Retirement Board shall, prior to the meeting, certify in writing that in his or her opinion the meeting or portion thereof may be closed to the public and shall state the applicable exemptions which permit closure. The Board shall maintain a copy of the General Counsel's certification and a copy of the statement of the presiding officer of the meeting setting forth the time and place of the meeting and a list of the persons present, other than those present merely as spectators.

(2) In the event that a meeting or any portion of a meeting is closed to the public, a complete transcript or recording shall be made of the meeting or portion thereof closed; *Provided, however,* That if the meeting or portion thereof is closed under paragraph (c)(3)(ix) of this section, a set of minutes may be made of the closed meeting or portion of a meeting in lieu of a complete transcript or recording thereof. If a set of minutes is the method chosen to record the proceedings of a meeting or portion thereof closed under paragraph (c)(3)(ix) of this section, such minutes shall fully and clearly describe the matters discussed. The minutes shall also fully reflect any actions taken by the Board, set forth a statement of the reasons for such actions, summarize each of the views expressed concerning such actions, identify any documents considered in connection with such agency actions, and show the vote of the Board and each of its members on such actions.

(3) The transcript, recording, or minutes of each meeting or portion thereof closed to the public shall be available for public inspection or listening in the office of the Secretary of the Board, 844 Rush Street, Chicago, Illinois 60611, no later than two weeks following the meeting. There shall be expunged or erased from the transcript, recording,

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or minutes of each meeting which is made available to the public any items of discussion or testimony when it has been determined that they contain information which may be withheld under paragraph (c) of this section, and that the public interest would not require disclosure. The determination as to what items of discussion or testimony shall be expunged or erased from the copies of the transcript, recording, or minutes available to the public shall be made by the Secretary of the Board with the approval of the Board.

(4) Copies of transcripts, minutes, or transcriptions of recordings maintained by the Board as provided in paragraph (e)(3) of this section shall be provided to members of the public who request such copies, at the actual cost of duplicating or transcription. Requests for copies of transcripts, minutes or transcriptions of recordings should be in writing, addressed to the Secretary of the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, and should clearly indicate the date of the meeting or meetings for which such copies are requested. If the requester desires a copy of only a portion or portions of the transcript, minutes, or transcription of a specified meeting, the request should specify which portion or portions are desired.

(5) The Board shall maintain the complete transcript, recording, or minutes required to be made under paragraph (e)(2) of this section for a period of at least two years after the meeting, or for at least one year after the conclusion of any agency proceeding with respect to which the meeting or portion of the meeting was held, whichever occurs later.

(g) Nothing in this section shall expand or limit the rights of any person under 5 U.S.C. 552, and 20 CFR 200.3, except that the exemptions contained in paragraph (c) of this section shall govern in the case of any request under 5 U.S.C. 552 and 20 CFR 200.3 to copy, inspect, or obtain copies of transcripts, recordings, or minutes described in paragraph (f) of this section. Nothing in this section shall limit the rights of any individual under 5 U.S.C. 552a and 20 CFR 200.4 to gain access to any

record which would be available to such individual under those provisions.

[42 FR 15312, Mar. 21, 1977, as amended at 42 FR 22865, Nov. 11, 1977. Redesignated at 52 FR 11010, Apr. 6, 1987]

§ 200.7 Assessment or waiver of interest, penalties, and administrative costs with respect to collection of certain debts.

(a) *Purpose.* The Debt Collection Act of 1982 requires the Board to charge interest on claims for money owed the Board, to assess penalties on delinquent debts, and to assess charges to cover the costs of processing claims for delinquent debts. The Act permits, and in certain cases requires, an agency to waive the collection of interest, penalties and charges under circumstances which comply with standards enunciated jointly by the Comptroller General and the Attorney General. Those standards are contained in 4 CFR 102.13. This section contains the circumstances under which the Board may either assess or waive interest, penalties, and administrative costs which arise from benefit or annuity overpayments made under any of the Acts which the Board administers.

(b)(1) Simple interest shall be assessed once a month on the unpaid principal of a debt.

(2) Interest shall accrue from the date on which notice of the debt and demand for repayment with interest is first mailed or hand-delivered to the debtor, or in the case of a debt which is subject to section 10(c) of the Railroad Retirement Act or section 2(d) of the Railroad Unemployment Insurance Act, interest shall accrue from the date that a denial of waiver of recovery is mailed or hand-delivered to the debtor or, if waiver has not been requested, upon the expiration of the time within which to request waiver, except as otherwise specified in this section.

(3) In the case of a lien for reimbursement of sickness benefits pursuant to part 341 of this chapter, interest on the amount of the lien shall accrue from the date of settlement or the entry of final judgment.

(4) The rate of interest assessed shall be the rate of the current value of funds to the U.S. Treasury (i.e., the Treasury tax and loan account rate) as

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prescribed and published in the FEDERAL REGISTER and the Treasury Financial Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717.

(5) The rate of interest as initially assessed shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, a new interest rate may be assessed.

(c)(1) A penalty charge of 6 percent per year shall be assessed on any debt that is delinquent for more than 90 days.

(2) The penalty charge shall accrue from the date on which the debt became delinquent.

(3) A debt is delinquent if it has not been paid in full by the 30th day after the date on which the initial demand letter was first mailed or hand-delivered, or, if the debt is being repaid under an installment payment agreement, at any time after the debtor fails to satisfy his or her obligation for payment thereunder.

(4) In the case of a lien for reimbursement of sickness benefits pursuant to part 341 of this chapter, the amount of the lien is delinquent if it has not been paid in full by the 30th day after the date of settlement or entry of final judgment.

(d)(1) Charges shall be assessed against the debtor for administrative costs incurred as a result of processing and handling the debt because it became delinquent.

(2) Administrative costs include costs incurred in obtaining a credit report and in using a private debt collector.

(e) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal. Where a debtor is in default under an installment repayment agreement, uncollected interest, penalties and administrative cost charges which have accrued under the agreement shall be added to the principal to be paid under any new installment repayment agreement entered into between the Board and the debtor.

(f) *Exemptions.* The assessment of interest, penalties, and administrative costs under this section does not apply to debts under sections 2(f) and 8(g) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(f) and 358(g)).

(g)(1) The Board shall waive the collection of interest under the following circumstances:

(i) When the debt is paid within thirty days after the date on which notice of the debt was mailed or personally delivered to the debtor,

(ii) When, in any case where a decision with respect to waiver of recovery of an overpayment must be made:

(A) The debt is paid within thirty days after the end of the period within which the debtor may request waiver of recovery, if no request for waiver is received within the prescribed time period; or

(B) The debt is paid within thirty days after the date on which notice was mailed to the debtor that his or her request for waiver of recovery has been wholly or partially denied if the debtor requested waiver of recovery within the prescribed time limit; however, regardless of when the debt is paid, no interest may be charged for any period prior to the end of the period within which the debtor may request waiver of recovery or, if such request is made, for any period prior to the date on which notice was mailed to the debtor that his or her request for waiver of recovery has been wholly or partially denied;

(iii) When, in the situations described in paragraphs (g)(1)(i) and (ii) of this section, the debt is paid within any extension of the thirty-day period granted by the Board;

(iv) With respect to any portion of the debt which is paid within the time limits described in paragraphs (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section; or

(v) In regard to any debt the recovery of which is waived.

(2) The Board may waive the collection of interest, penalties and administrative costs in whole or in part in the following circumstances:

(i) Where, in the judgment of the Board, collecting interest, penalty and administrative costs would be against equity and good conscience; or

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(ii) Where, in the judgment of the Board, collecting interest, penalty and administrative costs would not be in the best interest of the United States.

(h)(1) In making determinations as to when the collection of interest, penalty and administrative costs is against equity and good conscience the Board will consider evidence on the following factors:

(i) The fault of the overpaid individual in causing the underlying overpayment; and

(ii) Whether the overpaid individual in reliance on the incorrect payment relinquished a valuable right or changed his or her position for the worse.

(2) In rendering a determination as to when the collection of interest, penalties and administrative costs is not in the best interest of the United States the Board will consider the following factors:

(i) Whether the collection of interest, penalties and administrative costs would result in the debt never being repaid; and

(ii) Whether the collection of interest, penalties and administrative costs would cause undue hardship.

(i) The Board shall waive the collection of interest, penalties, and administrative costs in any case where the debt to be recovered is being recovered by full or partial withholding of a current annuity payable under the Railroad Retirement Act and the debt was not incurred through fraud.

[52 FR 41559, Oct. 29, 1987, as amended at 59 FR 15049, Mar. 31, 1994; 67 FR 5723, Feb. 7, 2002]

§ 200.8 Disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(a) *Purpose and scope.* The purpose of this section is to establish specific procedures necessary for compliance with section 12(d) of the Railroad Unemployment Insurance Act, which is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act. Except as otherwise indicated in this section, these regulations apply to all information obtained by the Railroad Retirement Board in connection with the

administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(b) *Definitions—Agency.* The term *agency* refers to the Railroad Retirement Board, an independent agency in the executive branch of the United States Government.

Applicant. The term *applicant* means a person who signs an application for an annuity or lump-sum payment or unemployment benefits or sickness benefits for himself or herself or for some other person.

Beneficiary. The term *beneficiary* refers to an individual to whom a benefit is payable under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Board. The term *Board* refers to the three-member governing body of the Railroad Retirement Board.

Document. The term *document* includes correspondence, applications, claims, reports, records, memoranda and any other materials or data used, prepared, received or transmitted to, from, by or for the agency in connection with the administration of the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Information. The term *information* means any non-medical document or data which is obtained by the agency in the administration of the Railroad Retirement Act and/or the Railroad Unemployment Insurance Act. *Information* does not include the fact of entitlement to or the amount of a benefit under either of these Acts. Medical records are subject to the disclosure provisions set out in § 200.5(e) of this part.

Testify and testimony. The terms *testify* and *testimony* include both in-person oral statements before a court or a legislative or administrative body and statements made in the form of depositions, interrogatories, declarations, affidavits or other means of formal participation in such proceedings.

(c) *General rule.* Except as otherwise authorized by this section, information shall not be produced, disclosed, delivered or open to inspection in any manner revealing the identity of an employee, applicant or beneficiary unless the Board or its authorized designee finds that such production, disclosure,

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delivery, or inspection is clearly in furtherance of the interest of the employee, applicant or beneficiary or of the estate of such employee, applicant, or beneficiary. Where no such finding is made, no information shall be released except in accordance with the provisions of § 200.5 of this part, unless release of such information is required by a law determined to supersede this general rule. In addition, regardless of whether or not such finding can be made, information which is compiled in anticipation of a civil or criminal action or proceeding against an applicant or beneficiary may not be released under this general rule.

(d) *Subpoenas—statement of policy and general rule.* (1) It is the policy of the Board to provide information, data, and records to non-Federal litigants to the same extent and in the same manner that they are available to the general public. The availability of Board employees to testify before state and local courts and administrative and legislative bodies, as well as in Federal court and administrative proceedings which involve non-Federal litigants, concerning information acquired in the course of performing their official duties or because of the employee's official capacity, is governed by the Board's policy of maintaining strict impartiality with respect to private litigants and minimizing the disruption of an employee's official duties. Thus, the Board may refuse to make an employee available for testimony under this paragraph or paragraph (e) or (f) of this section if it determines that the information sought is available other than through testimony and where making such employee available would cause disruption of agency operations. However, this paragraph does not apply to any civil or criminal proceeding where the United States, the Railroad Retirement Board, or any other Federal agency is a party; to Congressional requests or subpoenas for testimony; to consultative services and technical assistance provided by the Board or the agency in carrying out its normal program activities; to employees serving as expert witnesses in connection with professional and consultative services rendered as approved outside activities (in cases

where employees are providing such outside services, they must state for the record that the testimony represents their own views and does not necessarily represent the official position of the agency); or to employees making appearances in their private capacity in legal or administrative proceedings that do not relate to the official business of the agency (such as cases arising out of traffic accidents, crimes, domestic relations, etc.) and not involving professional and consultative services as described above.

(2) No officer, agent, or employee of the agency is authorized to accept or receive service of subpoenas, summons, or other judicial process addressed to the Board or to the agency except as the Board may from time to time delegate such authority by power of attorney. The Board has issued such power of attorney to the Deputy General Counsel of the agency and to no one else.

(3) In the event the production, disclosure, or delivery of any information is called for on behalf of the United States or the agency, such information shall be produced, disclosed, or delivered only upon and pursuant to the advice of the Deputy General Counsel.

(4) When any member, officer, agent, or employee of the agency is served with a subpoena to produce, disclose, deliver, or furnish any information, he or she shall immediately notify the Deputy General Counsel of the fact of the service of such subpoena. Unless otherwise ordered by the Deputy General Counsel or his or her designee, he or she shall appear in response to the subpoena and respectfully decline to produce, disclose, deliver, or furnish the information, basing such refusal upon the authority of this section.

(e) *Subpoena duces tecum.* (1) When any document is sought from the agency by a subpoena duces tecum or other judicial order issued to the agency by a court of competent jurisdiction in a proceeding wherein such document is relevant, a copy of such document, certified by the Secretary to the Board to be a true copy, may be produced, disclosed, or delivered by the agency if, in

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the judgment of the Board or its designee, such production is clearly in furtherance of the interest of the employee, applicant, or beneficiary to whom the document pertains, or is clearly in furtherance of the interest of the estate of such employee, applicant, or beneficiary, and such document does not consist of or include a report of medical information.

(2) When the production, disclosure, or delivery of any document described in paragraph (e)(1) of this section would not be permitted under the standards therein set forth, no member, officer, agent, or employee of the agency shall make any disclosure of or testify with respect to such document.

(f) *Requests for voluntary testimony.* All requests for testimony by a Board employee in his or her official capacity must be in writing and directed to the Deputy General Counsel. They shall state the nature of the requested testimony, why the information is not available by any other means, and the reasons, if any, why the testimony would be in the interest of the Board or the Federal government.

(g) *Authorized release of information.* Subject to the limitation expressed in paragraph (h) of this section, disclosure of documents and information is hereby authorized, in such manner as the Board may by instructions prescribe, in the following cases:

(1) To any employer, employee, applicant, or prospective applicant for an annuity or death benefit under the Railroad Retirement Act of 1974, or his or her duly authorized representative, as to matters directly concerning such employer, employee, applicant, or prospective applicant in connection with the administration of such Act.

(2) To any employer, employee, applicant or prospective applicant for benefits under the Railroad Unemployment Insurance Act, or his or her duly authorized representative, as to matters directly concerning such employer, employee, applicant, or prospective applicant in connection with the administration of such Act.

(3) To any officer or employee of the United States lawfully charged with the administration of the Railroad Retirement Tax Act, the Social Security Act, or acts or executive orders admin-

istered by the Department of Veterans Affairs, and for the purpose of the administration of those Acts only.

(4) To any applicant or prospective applicant for death benefits or accrued annuities under the Railroad Retirement Act, or to his or her duly authorized representative, as to the amount payable as such death benefits or accrued annuities, and the name of the person or persons determined by the agency to be the beneficiary, or beneficiaries, thereof, if such applicant or prospective applicant purports to have a valid reason for believing himself or herself to be, in whole or in part, the beneficiary thereof.

(5) To any officer or employee of the United States lawfully charged with the administration of any Federal law concerning taxes imposed with respect to amounts payable under the Railroad Retirement Act of 1974 and the Railroad Unemployment Insurance Act and the name of the person or persons to whom such amount was payable.

(6) To any officer or employee of any state of the United States lawfully charged with the administration of any law of such state concerning unemployment compensation, as to the amounts payable to payees or beneficiaries under the Railroad Retirement Act of 1974 and the Railroad Unemployment Insurance Act.

(7) To any court of competent jurisdiction in which proceedings are pending which relate to the care of the person or estate of an incompetent individual, as to amounts payable under the Railroad Retirement Act to such incompetent individual, but only for the purpose of such proceedings.

(8) To parties involved in litigation, including an action with respect to child support, alimony, or marital property, the amount of any actual or estimated benefit payable under the Railroad Retirement Act or the Railroad Unemployment Insurance Act, where such amount or estimated amount is relevant to that litigation.

(9) To any employer, as to the monthly amount of any retirement annuity under the Railroad Retirement Act of 1974 or benefit under the Railroad Unemployment Insurance Act to which a present or former employee of that employer is entitled.

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(10) To any governmental welfare agency, information about the receipt of benefits and eligibility for benefits.

(11) To any law enforcement agency, information necessary to investigate or prosecute criminal activity in connection with claims for benefits under the Railroad Retirement Act, Railroad Unemployment Insurance Act, or any other Act the Board may be authorized to administer.

(12) To any consular official, other than a consular officer of a country to which United States Treasury checks and warrants may not be sent, acting in behalf of a compatriot who has claimed benefits under the Railroad Retirement Act or Railroad Unemployment Insurance Act, information that is pertinent to the claim and that the applicant himself could have upon his or her own request.

(h) No document and no information acquired solely by reason of any agreement, arrangement, contract, or request by or on behalf of the agency, relating to the gathering, preparation, receipt or transmittal of documents or information to, from or for the agency, which is by virtue of such agreement, arrangement, contract, or request in the possession of any person other than an employee of the agency, shall be produced, reproduced, or duplicated, disclosed or delivered by any person to any other person or tribunal (other than the agency or an employee thereof, or the person to whom the document or information pertains), whether in response to a subpoena or otherwise, except with the consent of the Board or its designee. Any person, upon receipt of any request, subpoena, or order calling for the production, disclosure, or delivery of such document or information shall notify the Board or its designee of the request, subpoena, or order and shall take no further action except upon advice of the Board or its designee. Unless consent of the Board or its designee is given, the person shall respectfully decline to comply with the request, subpoena or order.

(i) Notwithstanding any other provision of this section, no disclosure of information may be made by the Board or any member, officer, agent, or employee of the agency, if the disclosure

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of such information is prohibited by law.

(j) The Deputy General Counsel or his designee will request the assistance of the Department of Justice where necessary to represent the interests of the agency and its employees under this section.

[54 FR 43055, Oct. 20, 1989, as amended at 56 FR 50247, Oct. 4, 1991; 63 FR 2141, Jan. 14, 1998]

§ 200.9 Selection of members of Actuarial Advisory Committee.

(a) *Introduction.* Under section 15(f) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(f)), the Board is directed to select two actuaries to serve on an Actuarial Advisory Committee. This section describes how the two actuaries are selected.

(b) *Carrier actuary.* One member of the Actuarial Advisory Committee shall be selected by recommendations made by "carrier representatives." "Carrier representatives," as used in this section, shall mean any organization formed jointly by the express companies, sleeping-car companies and carriers by railroad subject to the Interstate Commerce Act which own or control more than 50 percent of the total railroad mileage within the United States.

(c) *Railway labor actuary.* The other member of the Actuarial Advisory Committee to be selected by the Board shall be recommended by "representatives of employees." "Representatives of employees," as used in this section, shall mean any organization or body formed jointly by a majority of railway labor organizations organized in accordance with the provisions of the Railway Labor Act, as amended, or any individual or committee authorized by a majority of such railway labor organizations to make such recommendation.

[54 FR 43056, Oct. 20, 1989]

§ 200.10 Representatives of applicant or beneficiaries.

(a) *Power of attorney.* An applicant or a beneficiary shall not be required to hire, retain or utilize the services of an attorney, agent, or other representative in any claim filed with the Board.

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In the event an applicant or beneficiary desires to be represented by another person, he or she shall file with the Board prior to the time of such representation a power of attorney signed by such applicant or beneficiary and naming such other person as the person authorized to represent the applicant or beneficiary with respect to matters in connection with his or her claim. However, the Board may recognize one of the following persons as the duly authorized representative of the applicant or beneficiary without requiring such power of attorney when it appears that such recognition is in the interest of the applicant or beneficiary:

(1) A Member of Congress;

(2) A person designated by the railway labor organization of which the applicant or beneficiary is a member to act on behalf of members of that organization on such matters; or

(3) An attorney who, in the absence of information to the contrary, declares that he or she is representing the applicant or beneficiary.

(b) *Payment of claim.* The Board will not certify payment of any awarded claim to or through any person other than the applicant or beneficiary for the reason that a power of attorney for such person to represent such applicant or beneficiary has been filed.

[54 FR 43057, Oct. 20, 1989]