

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

Parts 1000–1019—General Provisions

PART 1000 [RESERVED]

PART 1001—INSPECTION OF RECORDS

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AUTHORITY: 5 U.S.C. 552, 49 U.S.C. 1302, and 49 U.S.C. 1321.

SOURCE: 62 FR 48954, Sept. 18, 1997, unless otherwise noted.

§ 1001.1 Records available from the Board.

(a) The following specific files and records in the custody of the Records Officer of the Surface Transportation Board are available to the public and may be inspected at the Board's office upon reasonable request during business hours (between 8:30 a.m. and 5 p.m., Monday through Friday):

(1) Copies of tariffs and railroad transportation contract summaries filed with the Board pursuant to 49 U.S.C. 13702(b) and 10709(d), respectively.

(2) Annual and other periodic reports filed with the Board pursuant to 49 U.S.C. 11145.

(3) All docket files, which include documents of record in a proceeding.

(4) File and index of instruments or documents recorded pursuant to 49 U.S.C. 11301.

(5) Surface Transportation Board Administrative Issuances.

(b) The following records, so-called "reading room" documents, are available for inspection and copying at the Board's office:

(1) Final decisions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations that have been adopted

by the agency and are not published in the FEDERAL REGISTER;

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

(4) Copies of all records, regardless of form or format, that have been released to any person under 5 U.S.C. 552(a)(3) and that, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(c) The Board maintains, and makes available for inspection and copying, indexes of the documents described in paragraph (b) of this section. Final decisions are indexed in the "Surface Transportation Board Daily Releases", which is issued by the Board every working day. This document also explains how copies of decisions can be purchased. The remaining documents are indexed as they are made available.

(d) Documents described in paragraph (b) of this section that were created on and after November 1, 1996, are indexed by service date or date of issuance and are available for viewing and downloading from the Board's Electronic Reading Room at *www.stb.gov*, the Board's website. Final decisions are maintained in a database that is full text searchable.

[64 FR 47711, Sept. 1, 1999, as amended at 74 FR 52902, Oct. 15, 2009; 83 FR 15077, Apr. 9, 2018]

§ 1001.2 Certified copies of records.

Copies of and extracts from public records will be certified by the Records Officer. Persons requesting the Board to prepare such copies should clearly state the material to be copied, and whether it shall be certified. Charges will be made for certification and for the preparation of copies as provided in part 1002 of this chapter.

[74 FR 52903, Oct. 15, 2009]

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§ 1001.3 Requests to inspect other records not considered public under 5 U.S.C. 552.

(a) *Request and determination.* Requests to inspect records other than those now deemed to be of a public nature shall be in writing and addressed to the Freedom of Information Act Officer (FOIA Officer). The FOIA Officer shall determine within 20 days of receipt of a request (excepting Saturdays, Sundays, and legal public holidays) whether a requested record will be made available. If the FOIA Officer determines that a request cannot be honored, the FOIA Officer must inform the requesting party in writing of this decision and such letter shall contain a detailed explanation of why the requested material cannot be made available and explain the requesting party's right of appeal.

(b) *Appeal.* If the FOIA Officer rules that such records cannot be made available because they are exempt under the provisions of 5 U.S.C. 552(b), an appeal from such ruling may be addressed to the Chairman. The Chairman's decision shall be administratively final and shall state the specific exemption(s) contained in 5 U.S.C. 552(b) relied upon for any denial. Such an appeal must be filed within 90 days of the date of the FOIA Officer's letter. The Chairman shall act in writing on such appeals within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of any appeal. In unusual circumstances, as set forth in 5 U.S.C. 552(a)(6)(B), the time limit may be extended, by written notice to the person making the particular request, setting forth the reasons for such extension, for no more than 10 working days. If the appeal is denied, the Chairman's order shall notify the requesting party of his or her right to judicial review. Charges shall be made as provided for in 49 CFR 1002.1.

(c) *Alternative dispute resolution services.* Requesters may seek dispute resolution services from:

(1) The Board's FOIA Public Liaison by Email at FOIA.Privacy@stb.gov or by mail, telephone, or facsimile as provided on the Board's Web site located at <https://www.stb.gov/stb/foia.html>; or

(2) The Office of Government Information Services (OGIS) by mail to Of-

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fice of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, Maryland, 20740–6001, by facsimile at (202) 741–5769, or by Email at ogis@nara.gov.

[81 FR 90750, Dec. 15, 2016]

§ 1001.4 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Confidential commercial information provided to the Interstate Commerce Commission or the Board shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. For such purposes, the following definitions apply:

(1) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the government. The term “submitter” includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* Except as provided in paragraph (g) of this section, the Board, to the extent permitted by law, shall provide a submitter with prompt written notice, in accordance with paragraph (c) of this section, of receipt of an FOIA request encompassing its submissions. This notice shall either describe the exact nature of the information requested or provide copies of the records themselves.

(c) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(2) The information has been designated, in good faith by the submitter, as confidential commercial information at the time of submission or within a reasonable time thereafter. Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer

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or authorized representative of the company that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.*

(1) Through the notice described in paragraph (b) of this section, the Board shall afford a submitter a reasonable period of time in which to provide it with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding the requested information.

(2) When notice is given to a submitter under this section, the Board also shall notify the requester that it has been provided.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or within a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

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

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

PART 1002—FEES

Sec.

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

1002.2 Filing fees.

1002.3 Updating user fees.

AUTHORITY: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

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

Certifications and copies of such tariffs, reports and other public records and documents on file with the Surface