

CHAPTER VII—NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

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PART 700—ORGANIZATION, FUNCTIONING AND AVAILABLE INFORMATION

Sec.

700.1 Purpose.

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700.3 Availability of documents, assistance, and information.

AUTHORITY: 5 U.S.C. 552(a) (1), (2).

SOURCE: 49 FR 24378, June 13, 1984, unless otherwise noted.

§700.1 Purpose.

This part describes the organization and functioning of Amtrak and the availability to the public of documents and information concerning its policies, procedures and activities.

§700.2 Organization and functioning of Amtrak.

The creation of the National Railroad Passenger Corporation ("Amtrak") was authorized by the Rail Passenger Service Act, as amended, 84 Stat. 1327, 45 U.S.C. 541 *et seq.* ("the Act"). The Act requires that Amtrak be operated and managed as a for-profit corporation, that it be incorporated under the District of Columbia Business Corporation Act, and subject to the provisions of that statute to the extent not inconsistent with the Act, and that it provide a balanced transportation system by developing, operating, and improving intercity rail passenger service. The Act also states that Amtrak will not be an agency or establishment of the United States Government. Amtrak thus is a corporation created by Congress to compete for the transportation business of the intercity traveller, to the end that the travelling public will have a choice of travel modes. The address of its headquarters is 400 North Capitol Street, NW., Washington, DC 20001. Telephone: (202) 383-3000.

(a) *Board of Directors.* Amtrak's major policies are established by its board of directors. The nine members of the board are selected as follows: The Secretary of Transportation serves as an ex-officio member and Amtrak's President, ex-officio, is Chairman of the Board; three members are appointed by the President of the United States and

confirmed by the Senate (representing labor, State Governors, and business); two represent commuter authorities and are selected by the President from lists drawn up by those authorities; and two are selected by the Corporation's preferred stockholder, the Department of Transportation.

(b) *Officers and central management.* Amtrak is managed by a President and a Management Committee consisting of four Executive Vice Presidents. Reporting to the Executive Vice Presidents are eleven vice presidents representing sales, transportation marketing, planning and development, computer services, labor relations, finance and treasurer, personnel, passenger and operating services, government affairs, operations and maintenance, engineering, and the General Counsel. Areas handled as special matters with the authority of vice presidents, such as corporate communications, safety, real estate, procurement, materials management, police and security, contract administration, and internal audit are supervised by assistant vice presidents and directors.

(c) *Regional and field structure.* The need for decentralization of functions in the areas of passenger services and transportation operations has led to the creation of Amtrak's regional and field structure. Field offices are located in major cities such as Baltimore, Philadelphia, New York, Albany, Boston, Chicago, Seattle and Los Angeles. Pursuant to overall policies established at headquarters in Washington, DC, these offices handle matters like the assignment and scheduling of employees who work on board moving trains; purchase, stowage and preparation of food for dining service; maintenance and rehabilitation of rolling stock; and daily operating arrangements such as the make-up of trains or the cleaning and repairing of cars on trains.

(d) *Route system.* Amtrak's basic route system has been established pursuant to statutory guidelines, and in some cases by specific statutory directive. Out of a route system covering about 23,000 route-miles, Amtrak owns a right-of-way of about 2,600 track miles in the Northeast Corridor (Washington-New York-Boston; New Haven-

Springfield; and Philadelphia-Harrisburg) and small segments of track near Albany, New York, and Kalamazoo, Michigan. In the Northeast Corridor Amtrak trains are run by operating crews consisting of Amtrak employees. On other routes, Amtrak operates trains on the tracks of about twenty different privately owned railroads and compensates the railroad for the use of their facilities and for the services of their employees, including engineers, conductors, and maintenance personnel. Those private railroads are responsible for the conditions of the roadbed and for coordinating the flow of traffic over their lines.

(e) *Operations.* Amtrak provides about 250 trains daily, serving about 500 stations in over forty states. Amtrak owns most of its cars and locomotives, some of its stations, and most of its repair facilities. Its capital improvements and almost half of its operating losses are supported principally through Federal financing, with some State, regional and local financial support for some trains and stations. Congress requires Amtrak to earn revenues equivalent to at least fifty percent of its operating costs, and it currently does so.

(f) *Revenue production.* The sale of tickets for transportation and accommodations, Amtrak's principal source of revenue, is accomplished through Amtrak ticket agents at stations, travel agencies, and five central reservation offices which service a nationwide telephone network. National Timetables contain basic information about routes, stations, and services.

§700.3 Availability of documents, assistance, and information.

(a) A member of the public having need for assistance or information concerning any of the matters described in §700.2 should address his or her concerns in a letter or other written communication directed to the appropriate vice president or to the Director of Corporate Communications. Amtrak will bring such communications to the attention of the appropriate official if they are misdirected in the first instance. Formal requests for "records" under 5 U.S.C. 552(a)(3) of the Freedom of Information Act are to be made in

accordance with the provisions of 49 CFR 701.4.

(b) The National Train Timetables described in §700.2(f) are widely distributed in the continental United States and are available in major cities in Europe, Canada and Mexico. When they are updated (usually in April and October each year) each printing involves about 1,000,000 copies. They are ordinarily available at staffed Amtrak stations and copies are usually kept on hand in the offices of about 9800 travel agents who are authorized to sell Amtrak tickets. A person unable to obtain a copy locally should request one from the Director of Corporate Communications at the Washington, DC headquarters. The timetable depicts the major Amtrak train routes on a map of the United States, and most of the remainder of the booklet shows the schedules for specific trains. Several pages are used to offer travel information dealing with the availability of assistance to handicapped travellers, red cap service, purchase of tickets on board, use of credit cards and personal checks, handling of baggage, refunds for unused tickets and similar matters.

(c) Also available to members of the public at most staffed Amtrak stations, and usually maintained in the offices of travel agencies authorized to sell Amtrak tickets, is a copy of the Reservations and Ticketing Manual (RTM) which constitutes a compendium of information governing Amtrak employees in furnishing transportation to the travelling public. It contains substantial segments dedicated to the following topics: Amtrak's computer system and its communication codes; interline service agreements; passenger and baggage services; customer relations functions; reservations policy and procedures; acceptance of checks and credit cards; refunds; missed connection policies; ticketing; accommodations; employee pass travel; location maps for Amtrak stations; and intermodal state maps.

(d) A full statement of Amtrak's tariffs containing the fares for point-to-point travel, regional plan travel and all relevant travel conditions, such as excursions, discounts, family plans, accommodations, etc., is contained in the privately published *Official Railway*

Guide, which is available by subscription from its publisher at 424 West 33rd Street, New York, New York 10001. A copy of the guide can usually be found at each staffed Amtrak station, and at the offices of travel agents authorized to sell Amtrak tickets. Tariff changes which occur between issues of the Guide are published and widely distributed by Amtrak pending their publication in the next issue of the Guide.

(e) Each of the documents described in paragraphs (b) through (d) of this section is available to the public for inspection during regular business hours at the office of Amtrak's Freedom of Information Office at its headquarters at 400 North Capitol Street, NW., Washington, DC 20001, and at the office of the Division Manager, Human Resources, in New Haven, Philadelphia, Baltimore, New York, Los Angeles and Chicago. Each document has its own index. Since each index is useful only in connection with the document to which it pertains, and since requests for indices are uncommon, Amtrak has determined that publication of its indices as described in 5 U.S.C. 552(a)(2) would be unnecessary and impracticable.

PART 701—FREEDOM OF INFORMATION ACT REGULATIONS

Sec.

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- 701.4 Availability of records on request.
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- 701.8 Notification procedures for confidential commercial and financial information.

AUTHORITY: 5 U.S.C. 552, as amended by sections 1801–1804 of the Omnibus Anti-Drug Abuse Act of 1986 (Pub. L. 99–570) which contains the Freedom of Information Reform Act of 1986 and sec. 306(g) of the Rail Passenger Service Act (45 U.S.C. 546(g)).

SOURCE: 47 FR 17822, Apr. 26, 1982, unless otherwise noted. Redesignated at 49 FR 24378, June 13, 1984.

EDITORIAL NOTE: For nomenclature changes to this part, see 49 FR 24378, June 13, 1984.

§ 701.1 Purpose.

This part prescribes the procedures by which records of the National Railroad Passenger Corporation may be made available to the public pursuant to section 306(g) of the Rail Passenger Service Act, 45 U.S.C. 546(g), and the Freedom of Information Act, 5 U.S.C. 552.

§ 701.2 Definitions.

Unless the context requires otherwise, the following apply in this part:

(a) Masculine pronouns include the feminine gender.

(b) Definitions:

Corporation or *Amtrak* means the National Railroad Passenger Corporation.

Includes means “includes but is not limited to”.

President means the President of the Corporation or his delegee.

Record means any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved, but does not include library materials compiled for reference purposes or objects of substantial intrinsic value.

[47 FR 17822, Apr. 26, 1982. Redesignated at 49 FR 24378, June 13, 1984 and amended at 52 FR 15321, Apr. 28, 1987]

§ 701.3 Policy.

(a) The National Railroad Passenger Corporation will make records within the Corporation available to the public to the greatest practicable extent in keeping with the spirit of the law. Therefore, all records of the Corporation—except those that the Corporation specifically determines should not be disclosed either in the public interest, for the protection of private rights, or for the efficient conduct of public or corporate business, but only to the extent withholding is permitted by law are declared to be available for public inspection and copying as provided in these procedures. A record will not be withheld from the public solely because its release might suggest administrative error or embarrassment of an officer or employee of the Corporation. Each

officer and employee of the Corporation dealing with record requests is directed to cooperate to the end of making records available to the public promptly, consistent with this policy.

(b) A requested record of the Corporation may be withheld from disclosure if it comes within one or more of the exemptions in 5 U.S.C. 552(b) or is otherwise exempted by law.

(c) In the event one or more of the exemptions applies to a record, any reasonably segregable portion of the record will be made available to the requesting person after deletion of the exempt portions.

(d) These procedures apply only to records in existence at the time of a request. The Corporation has no obligation to create a record solely for the purpose of making it available under the FOIA.

[47 FR 17822, Apr. 26, 1982. Redesignated at 49 FR 24378, June 13, 1984 and amended at 52 FR 15321, Apr. 28, 1987]

§701.4 Availability of records on request.

(a) Each person desiring access to a record or to have a copy of a record pursuant to the Freedom of Information Act shall comply with the following provisions:

(1) The request for the record shall be in writing.

(2) The request shall indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent shall be prominently marked with the symbol "FOIA".

(4) The request shall be addressed to the Freedom of Information Officer, National Railroad Passenger Corporation, 400 North Capitol Street, NW., Washington, DC 20001.

(b) If the requirements of paragraph (a) of this section are not met, the ten (10) day time limit described in §701.5 will not begin to run until the request has been identified by an employee of the Corporation as a request under the Freedom of Information Act and has been received by the Corporate Communications Department.

(c) Each request should describe the particular record or records desired. To the extent practicable, the request should specify such features as the sub-

ject matter of the record, the date when it was made, the place where it was made and the person or office that made it. Generally, a request will be acceptable if it identifies a record with sufficient particularity to enable an employee of the Corporation to locate the record with a reasonable amount of effort. If the description is insufficient to permit location of a record, the Freedom of Information Officer will notify the requester and indicate the additional kinds of data which will facilitate the search.

(d) The submission of a FOIA request constitutes an agreement by the requester to pay the fees specified in §701.7 unless the requester is entitled to a fee waiver or specifies in the request a different amount to which the Corporation agrees in writing.

(e) Searches will be made for requested records in order of receipt. Each so-called "continuing request" will be treated as a one-time request.

[47 FR 17822, Apr. 26, 1982. Redesignated at 49 FR 24378, June 13, 1984 and amended at 52 FR 15321, Apr. 28, 1987]

§701.5 Time limits.

(a) An initial determination whether to release records requested under this part shall be made within ten (10) days (excepting Saturdays, Sundays, and legal public holidays) after the request is received, except that this time limit may be extended by up to ten (10) working days in accordance with paragraph (c) of this section. The person making the request will be given prompt notice of any extension of time. If a determination is made to release a requested record, the record shall be made promptly available. If the determination is to decline to disclose the record, the person making the request shall, at the same time he is notified of such determination, be notified of:

(1) The reason for the determination; including citation of the relevant exemption relied on for denial;

(2) The right of the requester to appeal the determination; and

(3) The name and title or position of each person responsible for denial of the request.

(b) A determination with respect to an appeal made pursuant to §701.6 shall

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be made within twenty (20) days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended by up to ten (10) working days in accordance with paragraph (c) of this section. The person making the request will be notified promptly if the time is extended.

(c) In unusual circumstances the time limits prescribed in this section may be extended by written notice to the person making a request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice shall not specify a date that would result in a cumulative extension of more than ten (10) working days. As used in this subsection, "unusual circumstances" means, but only to the extent reasonably necessary for the proper processing of the particular request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another entity having a substantial interest in the determination of the request or among two or more components of an entity having substantial subject matter interest therein.

§ 701.6 Appeals from denials of records or setting of fees.

Each denial decision will set forth the reasons therefor and state the appeal from that decision that is available to the requester. A decision denying access to a document or setting fees may be appealed to the President of the Corporation by filing with his office a written notice of appeal, within thirty (30) days after the date of the denial, specifying the relevant facts and the basis for appeal. If the President denies the appeal, the denial shall set forth the reasons therefor and notify the requester of the provision for judi-

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cial review contained in 5 U.S.C. 552(a)(4)(B).

§ 701.7 Fees.

(a) *Categories of requesters.* There are four categories of FOIA requesters: commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall begin upon receipt of a proper request by the Freedom of Information Office which reasonably describes the records sought and which identifies the specific category of the requester. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories.

(1) *Commercial use requester.* When records are requested for commercial use, the fee policy of NRPC is to levy full allowable direct costs for search, review for release, and duplication of records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents nor waiver or reduction of fees based on an assertion that disclosure would be in the public interest. Commercial use is defined as use that furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, NRPC shall first look to the use to which a requester will put the documents requested. Where a requester does not explain the use or where explanation is insufficient, NRPC may draw reasonable inferences from the requester's identity and charge fees accordingly.

(2) *Representatives of the news media.* When records are requested by representatives of the news media, the fee policy of NRPC is to levy reproduction charges only, excluding charges for the first 100 pages. The term "representatives of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations

broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through an organization, even though not actually employed by that entity. To be eligible for inclusion in this category, requesters must meet the criteria specified in this section, and the request must not be made for commercial use as this term is defined under paragraph (a)(1) of this section.

(3) *Educational and noncommercial scientific institution requesters.* When records are requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of NRPC is to levy reproduction charges only, excluding charges for the first 100 pages. Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research. Noncommercial scientific institution refers to an institution that is not operated on a commercial basis as defined under paragraph (a)(1) of this section and which is 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 commercial use or to further an individual goal, but are sought in furtherance of scholarly or scientific research.

(4) *All other requesters.* For other requesters who do not come under the purview of paragraphs (a)(1) through (a)(3) of this section, the fee policy of NRPC is to levy full reasonable direct cost of search for and duplication of records sought, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

(b) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, in order to avoid payment of fees. When NRPC believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series or requests for the purpose of evading the assessment of fees, NRPC may aggregate any such requests and charge accordingly. Before aggregating requests from more than one requester, NRPC must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may NRPC aggregate multiple requests on unrelated subjects from one requester.

(c) *Waiver or reduction of fees.* (1) NRPC may waive all fees or levy a reduced fee when disclosure of the information is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of NRPC and is not primarily in the commercial interest of the requester.

(2) In determining whether disclosure is in the public interest, the following factors may be considered:

(i) The relation of the records to the operations or activities of the NRPC;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the information requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(3) In all cases, the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(d) *Advance payment.* (1) When NRPC estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250, NRPC may require a requester to make an advance payment of the entire fee before continuing to process the request.

(2) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), NRPC may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (h) and 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.

(3) When NRPC acts under paragraph (d)(1) or (d)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial plus permissible extensions of these time limits) will begin only after NRPC has received fee payments under paragraph (d)(1) or (d)(2) of this section.

(e) *Fee schedule.* (1) *Manual searches for records.* NRPC will charge \$27 per hour for the salary and fringe benefits of personnel conducting the search and review. NRPC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(2) *Computer searches for records.* For each request, NRPC will charge the actual direct cost of providing this service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to search for records responsive to the request and operator/programmer salary apportionable to the search. NRPC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(3) *Duplication costs.* (i) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charges will be \$.25 per page.

(ii) The fee for reproducing copies of records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through NRPC or commercial sources.

(iii) For copies prepared by computer such as tapes or printouts, NRPC shall charge the actual cost, including operator time, of production of the tape or printout.

(4) *Other forms of duplication.* For other methods of reproduction or duplication, NRPC shall charge the actual direct costs of producing the document(s).

(f) *Restrictions in accessing fees.* (1) In accordance with section (4)(A)(iv) of the Freedom of Information Act, as amended, with the exception of requesters seeking documents for a commercial use, NRPC shall provide the first 100 pages of duplication and the first two hours of search time without charge.

(2) NRPC shall not charge fees to any requester, including commercial-use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(3) With the exception of requesters seeking documents for a commercial use, NRPC shall not charge fees for computer search until the cost of the search equals the equivalent dollar amount of two hours of the salary of the operator performing the search.

(g) *Payment procedures.* (1) A request will not be deemed to have been received by the Freedom of Information Office until the requester has agreed to pay the anticipated fees and has made an advance deposit if one is required.

(2) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, or a money order.

(3) Remittances shall be made payable to National Railroad Passenger Corporation and mailed to the Freedom of Information Office.

(h) *Late charges.* Interest may be charged those requesters who fail to

pay fees charged. NRPC may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(i) *Other procedures.* NRPC shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. NRPC may choose to contract with outside services to locate, reproduce and disseminate the records in response to FOIA requests when deemed the most efficient and least costly method. When documents responsive to a request are maintained for distribution by government agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, NRPC will inform requesters of the steps necessary to obtain records from those sources.

[52 FR 15321, Apr. 28, 1987, as amended at 52 FR 31407, Aug. 20, 1987]

§701.8 Notification procedures for confidential commercial and financial information.

(a) *Definitions.* For the purpose of this section, the following definitions apply:

(1) *Confidential commercial or financial information* means records provided to NRPC by a submitter that arguably contain material exempt from release under Exemption 4 of FOIA, 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 or financial commercial information to NRPC. The term submitter includes, but is not limited to, corporations, state governments, and foreign governments.

(3) *Requester* means any person or entity who submits a valid request for information under the Freedom of Information Act. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice requirements.* (1) For confidential commercial or financial information submitted prior to January 1,

1988, NRPC shall, if it determines that it may be required to disclose the requested information, notify the submitter in writing prior to the release of responsive records whenever:

(i) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial or financial information; or

(ii) NRPC has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) For confidential financial or commercial information submitted on or after January 1, 1988, the submitter may designate, at the time the information is submitted to NRPC or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. NRPC shall, if it determines that it may be required to disclose the requested information, notify the submitter in writing prior to its release whenever:

(i) The records are designated pursuant to paragraph (b)(1)(i) of this section; or

(ii) NRPC has reason to believe that disclosure of the formation could reasonably be expected to cause substantial competitive harm.

(c) *Opportunity to object to disclosure.* After notification is given pursuant to paragraph (b)(1) or (b)(2) of this section, the submitter shall have ten days from the receipt of notification in which to object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.

(d) *Notice of intent to disclose.* In all instances when NRPC determines to disclose the requested records, the Corporation shall provide the submitter with a written notice to include the following:

(1) A statement briefly explaining why the submitter's objections were not sustained;

(2) A description of the business information to be disclosed or a copy of the material proposed for release; and

(3) A specific disclosure date.

The notice shall be provided to the submitter ten working days prior to

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the specified disclosure date. The requester shall also be advised of NRPC's final determination to disclose the requested information at the same time as notification is provided to the submitter.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial or financial information, NRPC shall promptly notify the submitter.

(f) *Exceptions to notice requirements.* The notice requirements of paragraphs (b)(1) and (b)(2) of this section need not be followed if:

(1) NRPC determines that the information should not be disclosed;

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

(3) Disclosure of the information is required by law (other than FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with these regulations, unless Amtrak has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter appears obviously frivolous, except that NRPC will provide the submitter with written notice of any final administrative disclosure determination pursuant to paragraph (c) of this section.

(g) *Notification of requester.* Whenever NRPC notifies a submitter that it may be required to disclose information pursuant to paragraphs (b)(1) and (b)(2) of this section, NRPC shall also notify the requester that notice and an opportunity to comment are being provided to the submitter.

[53 FR 5581, Feb. 25, 1988]