

SURFACE TRANSPORTATION BOARD REPORTS

STB EX PARTE NO. 576

ELECTRONIC ACCESS TO CASE FILINGS

Decided January 28, 2002

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is amending its rules governing how documents are filed in agency proceedings to facilitate the scanning of those documents for publication on the Board's Internet website, *www.stb.dot.gov*. The Board also is amending its rules governing electronic submissions to comport with current technology and is amending one rule to update a citation.

DATES: The amended rules are effective March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Anne K. Quinlan (202) 565-1727. [TDD for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: For several years, the Board has been making filings received in select agency proceedings available to the public by publishing them under the "Filings" link on the Board's Internet website, *www.stb.dot.gov*. We have used two methods to make filings available on the Internet.

Initially, we made filings available by downloading text files from diskettes, which were required to be filed along with the paper copies in certain cases to facilitate case processing. Public reaction to having filings available on the Internet was positive, and we were encouraged to make all filings available on our website. However, downloading text files was labor intensive, and some

files could not be downloaded at all. Moreover, text files included only text that the filer had word processed; no signatures, stamps, or graphics could be made available on-line. A more complete solution was needed.

More recently, the Board acquired scanning resources. Instead of downloading text files, we began to scan filings received in select cases and publish images of the filings on our website. Scanning technology has given the Board the ability to place on the Internet a replica of every documentary filing, in its entirety, in every case. Thus, scanning will be used to provide the public with more complete Internet access to the documentary record in Board proceedings.

To ensure that the highest quality image is captured during the scanning process and to facilitate high-speed scanning, rule 1104.2 will be amended. Amended rule 1104.2 will provide that filings must be typed, double-spaced, on 8½ by 11-inch white paper, with dark type no smaller than 12 point. These standards will provide adequate contrast for scanning and photographic reproduction. To facilitate the scanning process, *original documents* must be unbound and without divider tabs¹ and printed only on one side of the paper.² Original documents of more than one page may be clipped with a removable clip or similar device. These measures will reduce the possibility of damage to documents during removal of pins and staples and facilitate the use of the high-speed scanner mechanism for automated scanning. All pages of a submission (each side of each page, if printing is on both sides), including cover letters and attachments, must be paginated continuously.³ This will help ensure scanning accuracy.

We recognize that some filings may not conform to the above specifications and, therefore, we will be unable to scan them. For example, spreadsheet data in electronic format and oversized maps or blueprints may be included in a filing, but will not be susceptible to scanning. To address this, we have developed procedures for referencing the location of non-scannable submissions and making them available to the public at the Board's offices. Where there are oversized documents, however, parties are encouraged to file, in addition to the

¹ However, *copies* of filings may contain divider tabs. And, as prescribed in *Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, 5 S.T.B. 441 (2001), *copies* of filings that include expert testimony or workpapers *must* include divider tabs.

² However, *copies* of filings may be printed on both sides of the paper.

³ For very large filings, often assembled at different times and locations, this may be impractical. Accordingly, these types of filings may be numbered within the logical sequence of volumes or sections that make up the filing and need not be renumbered to maintain a single numbering sequence throughout the entire filing.

oversized documents, representations of them that fit on the standard paper described in section 1104.2(a), if possible. For example, a copy of an oversized map may be reduced in size (but only if the map and any writing on the map remain legible), or may be cut into multiple sequential standard pages that, when placed together, make up the whole. The standard sized representation should be identified and placed immediately behind the oversized document it represents.

The Board has the capability to scan color documents. However, scanning of color pages requires special handling. Accordingly, to ensure timely processing of all filings, color printing may not be used for textual submissions. Use of color in filings is limited to images such as graphs, maps and photographs. In addition, pages containing color must be filed as appendices or attachments to filings and not inserted among pages containing text. Also, the original of any filing that includes color images must bear an obvious notation, on the cover sheet, that the filing contains color.

Confidential filings will be processed so that persons using the Board's website will know by looking at the on-line list of filings that a particular filing is in the record as a confidential filing. However, the contents of confidential filings will not be viewable or downloadable from the Board's website.⁴

Rule 1104.3 is being amended to clarify the number and type of electronic filings required by the Board and to reflect the Board's use of more current technology. Electronic submissions must be submitted on compact discs or 3.5-inch IBM-compatible floppy diskettes (collectively referred to as discs).⁵ Discs should be clearly labeled with (1) the Docket Number of the proceeding in which it is filed; (2) the name(s) of the party(ies) on whose behalf the filing is made; and (3) "CONFIDENTIAL" or "REDACTED" as appropriate. If more than one disc is needed for a single filing, the label of each disc must be sequentially

⁴ Filers are reminded that requests to maintain confidentiality of materials should be sought only when absolutely necessary. Also, in accordance with rule 1104.14, materials that parties believe are entitled to confidential treatment should be submitted in a separate package and marked "Confidential materials subject to a (request for a) protective order." Any accompanying request for a protective order should be submitted as a separate filing.

⁵ Electronic submissions of textual material (pleadings, petitions, etc.) must be submitted in Corel WordPerfect format version 9.0 or earlier releases. Current rule 1104.3 requires the submission of electronic spreadsheets in Lotus format. However, we now have Excel spreadsheet software and will accept electronic spreadsheets in either Lotus or Excel format. Parties are reminded that in order to fully evaluate the evidence, we must be able to access and manipulate all spreadsheets. A more detailed description of current procedures for filing spreadsheets and related information in stand-alone cost proceedings appears in *Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, 5 S.T.B. 441 (2001).

numbered to indicate the disc number and the total number of discs filed (*e.g.*, the first disc of a 4-disc set should be labeled “Disc 1 of 4,” the second disc “Disc 2 of 4,” and so forth).

Rule 1104.15, which addresses certification of eligibility for Federal benefits, is being amended to reflect that the underlying statute has been transferred to a different section of the U.S. Code without substantive change.

Because these changes update rules to agency procedure and practice and are not substantive changes, we find good cause to dispense with notice and comment. 5 U.S.C. 553(b)(A) and (B).

The amended regulations are set forth in the Appendix.

Pursuant to 5 U.S.C. 605(b), we certify that these rules will not have a significant economic impact on a substantial number of small entities. They affect only the technical specifications for filing the original copy of documentary submissions and for filing electronic submissions.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1104

Administrative practice and procedure.

By the Board, Chairman Morgan and Vice Chairman Burkes.

APPENDIX

For the reasons set forth in the preamble, amend part 1104 of title 49 of the *Code of Federal Regulations* as follows:

PART 1104—FILING WITH THE BOARD – COPIES – VERIFICATION – SERVICE – PLEADINGS, GENERALLY

1. Amend the authority citation for part 1104 to read as follows:

Authority: 5 U.S.C. 553 and 559; 18 U.S.C. 1621; 21 U.S.C. 862; and 49 U.S.C. 721.

2. Revise section 1104.2 to read as follows:

§1104.2 Document specifications.

(a) Documents filed with the Board must be on white paper not larger than 8½ by 11 inches, including any tables, charts, or other documents that may be included. Ink must be dark enough to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations, which may be single-spaced), using type not smaller than 12 point. Printing may appear only on one side of the paper for original documents, but copies of filings may be printed on both sides of the paper.

(b) In order to facilitate automated processing in document sheet feeders, original documents of more than one page may not be bound in any permanent form (no metal, plastic, or adhesive staples or binders) but must be held together with removable metal clips or similar retainers. Original documents may not include divider tabs, but copies must if workpapers or expert witness testimony are submitted. All pages of original documents, and each side of pages that are printed on both sides, must be paginated continuously, including cover letters and attachments. Where, as a result of assembly processes, such pagination is impractical, documents may be numbered within the logical sequence of volumes or sections that make up the filing and need not be renumbered to maintain a single numbering sequence throughout the entire filing.

(c) Some filings or portions of filings will not conform to the standard paper specifications set forth in section 1104.2(a) and may not be scannable. For example, electronic spreadsheets are not susceptible to scanning, but oversized

documents, such as oversized maps or blueprints, may or may not be scannable. Filings that are not scannable will be referenced on-line and made available to the public at the Board's offices. If parties file oversized paper documents, they are encouraged to file, in addition to the oversized documents, representations of them that fit on the standard paper, either through reductions in size that do not undermine legibility, or through division of the oversized whole into multiple sequential pages. The standard paper representations must be identified and placed immediately behind the oversized documents they represent.

(d) Color printing may not be used for textual submissions. Use of color in filings is limited to images such as graphs, maps and photographs. To facilitate automated processing of color pages, color pages may not be inserted among pages containing text, but may be filed only as appendices or attachments to filings. Also, the original of any filing that includes color images must bear an obvious notation, on the cover sheet, that the document contains color.

3. Revise section 1104.3 to read as follows:

§1104.3 Copies.

(a) An executed original, plus 10 copies, of every pleading, document, or paper permitted or required to be filed under this subchapter, including correspondence, must be furnished for the use of the Board, unless otherwise specifically directed by another Board regulation or notice in an individual proceeding. Copies may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall be used so that matters shown in color on the original, but in black and white on the copies, will be accurately identified on all copies.

(b) Electronic submissions must be furnished as follows:

(1) Textual submissions of 20 or more pages must be accompanied by three electronic copies submitted on compact discs or 3.5-inch IBM-compatible formatted floppy diskettes in WordPerfect 9.0 format or earlier releases.

(2) Three sets of evidence or workpapers consisting of mathematical computations must be submitted as functioning electronic spreadsheets in Lotus 1-2-3 Release 9 or Microsoft Excel 97, or compatible versions, on compact discs or 3.5-inch IBM-compatible formatted floppy diskettes. In order to fully evaluate evidence, all spreadsheets must be fully accessible and manipulable. Electronic databases placed in evidence or offered as support for spreadsheet calculations must be compatible with the Microsoft Open Database Connectivity (ODBC) standard. ODBC is a Windows technology that allows a database

software package to import data from a database created using a different software package. We currently use Microsoft Access 97 and databases submitted should be in either this format or another ODBC-compatible format. All databases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, and so forth.

(3) One copy of each diskette or compact disc submitted to the Board should, if possible, be provided to any other party requesting a copy.

(4) Each diskette and compact disc must be clearly labeled with (A) the Docket Number of the proceeding in which it is filed; (B) the name(s) of the party(ies) on whose behalf the filing is made; and (C) "CONFIDENTIAL" or "REDACTED" as appropriate. If more than one diskette or disc is submitted for one filing, the label of each must be sequentially numbered to indicate the diskette or disc number and the total number of diskettes or discs filed (*e.g.*, the first disc of a 4-disc set should be labeled "Disc 1 of 4," the second disc "Disc 2 of 4," and so forth).

4. In section 1104.15, remove the citation "21 U.S.C. 853a" and add, in its place, the citation "21 U.S.C. 862" in the section heading and in the text.