

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****49 CFR Part 1104**

[STB Ex Parte No. 651]

Electronic Filing Option for Certain Documents**AGENCY:** Surface Transportation Board, Transportation.**ACTION:** Final rule.

SUMMARY: The Surface Transportation Board (Board) is amending its regulations concerning filing of pleadings and other documents with the Board to give persons the option of filing certain types of pleadings and documents electronically instead of filing paper copies and to give persons the option of filing documents in formats other than WordPerfect.

DATES: These rules are effective on April 8, 2004.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565-1661. (Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.)

SUPPLEMENTARY INFORMATION: The Board is amending its regulations at 49 CFR part 1104 as needed to add the option of electronically filing (e-filing) certain types of pleadings and documents. If the e-filing option is chosen, it will eliminate the need for filing paper copies of those types of pleadings and documents that are eligible for e-filing.

The Board's updated Web site, <http://www.stb.dot.gov>, has a link labeled "E-FILING". Clicking on that link will open a series of prompts that will indicate what types of pleadings and documents are eligible for e-filing and will lead the e-filer, step-by-step, through the process of how to e-file. Formal filings, recordations, environmental comments, rail consumer complaints, FOIA requests and other correspondence may be submitted to the Board through the e-filing process. The e-filing process may *not* be used to file: (1) Initial filings in a proceeding; (2) filings requiring a fee (except recordations); or (3) large evidentiary filings (collectively, over 10 megabytes). Persons are not required to file electronically, but may choose the e-filing option at their discretion.

It should be noted that e-filing will not relieve a party of the obligation to serve other parties. Rather, e-filing pertains only to documents that are sent to the Board, and existing service requirements remain as to other parties. With respect to e-filings made with the Board, the service requirements of

§1104.12(a) of the Board's rules may be met by simultaneously e-mailing a copy of the e-filed document to other parties if that means of service is acceptable to those other parties, or by simultaneous personal service of a paper copy of the document on the other parties, but if e-mail is not acceptable to the receiving party and personal service is not feasible, the service requirements may be met by service of a paper copy by first-class or express mail.

To e-file a formal filing or a recordation, the e-filer must first establish a login account. A login account can be obtained by clicking on the "Request Login Account" button found on the e-filing page. The user will be prompted to provide the information required to establish an account. The user's e-mail address will be the "user name" and the user will have the opportunity to choose a password.

E-filing is a file attachment process. Submissions are to be prepared in the same manner in which a filer would if filing on paper, except that extra copies will not be required. E-filings will be available for public viewing in the Board's Public Docket Room. They will also be on the Board's Web site, just as paper filings are on the Web site. When using e-filing for a formal filing, the e-filer must submit a document as a PDF-format document and also, if available, in the original document format. The document submitted must include the applicable docket number and the name and address of the person responsible for the filing. For purposes of e-filing, a typewritten name is considered the signature of the appropriate party if a signature is required by the Board's regulations. The original, handwritten signature must be maintained in the files of the filing party. E-filers will be able to indicate, as part of the e-filing process, if the filing is to be treated by the Board as confidential.

Documents received by e-filing before 5 p.m. eastern time on a business day will be considered filed on that day. Documents received by e-filing on a non-business day, or after 5 p.m. eastern time on a business day, will be considered filed on the next business day.

Additionally, the Board is revising its rules to delete a reference to the WordPerfect format for electronic submissions of textual material and thus to permit practitioners to file documents in formats other than WordPerfect.

Because these rule changes relate solely to the rules of agency practice and procedure, they will be issued as final rules without requesting public comment. See 5 U.S.C. 553(b)(3)(A). It should be noted that public comment in

this matter is unnecessary, as the new rule will permit but not require e-filing, and will not affect any person's ability to review agency filings. See 5 U.S.C. 553(b)(3)(B). Moreover, good cause is found for making these rules effective on less than 30 days' notice under 5 U.S.C. 553(d) to give interested persons the option to use this new filing method, which will reduce paperwork and ease filing burdens on parties before the agency, as soon as possible.

The Board certifies that the rules will not have a significant impact on a substantial number of small entities. As noted, the e-filing option should streamline and simplify the process of filing certain pleadings and documents with the Board. If the e-filing option is chosen, it will eliminate the need for multiple paper copies and also eliminate the time and expense associated with the physical delivery of paper copies to the Board by mail, messenger or other delivery service, which should be beneficial to entities of all sizes. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1104

Administrative practice and procedure.

Decided: April 5, 2004.

By the Board, Chairman Nober.

Vernon A. Williams, Secretary.

■ For the reasons set forth in the preamble, part 1104 of title 49, chapter X, of the Code of Federal Regulations is amended as follows:

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

■ 1. The authority citation for part 1104 continues 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 the heading for § 1104.1 and add new paragraph (e) to read as follows:

§ 1104.1 Address, identification, and electronic filing option.

* * * * *

(e) Persons filing pleadings and documents with the Board have the option of electronically filing (e-filing) certain types of pleadings and documents instead of filing paper copies. Details regarding the types of pleadings and documents eligible for e-filing, the procedures to be followed, and other pertinent information are available on the Board's Web site, <http://www.stb.dot.gov>. If the e-filing

option is chosen (for those pleadings and documents that are appropriate for e-filing, as determined by reference to the information on the Board's Web site), then the applicable requirements will be those specified on the Web site, and any requirements of 49 CFR part 1104 that are specifically applicable to filing of paper copies will not apply to the e-filed pleadings and documents (these requirements include, but are not limited to, number of copies, stapling or binding specifications, submission of compact disks or floppy diskettes for documents of 20 pages or more, signature "in ink," etc.). Persons are not required to e-file, and may continue to use the Board's processes for filing paper copies.

§ 1104.2 [Amended]

■ 3. Amend the first sentence in § 1104.2(a) by adding the words "except electronic filings," after the word "Documents".

§ 1104.3 [Amended]

■ 4. Amend § 1104.3 as follows:

■ A. In paragraph (a), in the first sentence, remove the words "of every pleading," and add in their place "of every paper pleading,".

■ B. In paragraph (b), add the words "accompanying paper filings" after the words "Electronic submissions".

■ C. In paragraph (b)(1), remove the words "in WordPerfect 9.0 format or earlier releases".

■ 5. Amend § 1104.6 by adding the following sentence at the end of the section:

§ 1104.6 Timely filing required.

* * * If the e-filing option is chosen (for those pleadings and documents that are appropriate for e-filing, as determined by reference to the information on the Board's Web site), then the e-filed pleading or document is timely filed if the e-filing process is completed before 5 p.m. eastern time on the due date.

■ 6. Amend § 1104.12 by revising paragraph (a) to read as follows:

§ 1104.12 Service of pleadings and papers.

(a) *Generally.* Every document filed with the Board should include a certificate showing simultaneous service upon all parties to the proceeding. Service on the parties should be by the same method and class of service used in serving the Board, with charges, if any, prepaid. One copy should be served on each party. If service is made on the Board in person, and personal service on other parties is not feasible, service should be made by first-class or express mail. If a document is filed with

the Board through the e-filing process, a copy of the e-filed document should be emailed to other parties if that means of service is acceptable to those other parties, or a paper copy of the document should be personally served on the other parties, but if email is not acceptable to the receiving party and personal service is not feasible, service of a paper copy should be by first-class or express mail. When a party is represented by a practitioner or attorney, service upon the practitioner is deemed to be service upon the party.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG09

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Prudency Determination for Designation of Critical Habitat for Two Plant Species From the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status and critical habitat prudency pursuant to the Endangered Species Act of 1973, as amended (Act), for two plant species: *Nesogenes rotensis* (no common name) and *Osmoxylon mariannense* (no common name). *Nesogenes rotensis* and *Osmoxylon mariannense* are found only on the island of Rota in the U.S. Commonwealth of the Northern Mariana Islands (CNMI). Based on a public comment, we have re-examined the basis of recognition of *Tabernaemontana rotensis* as a distinct endemic species on Rota and the U.S. Territory of Guam, and are not listing this species as endangered. This rule implements the protection and recovery provisions afforded by the Act for these species.

DATES: This rule is effective May 10, 2004.

FOR FURTHER INFORMATION CONTACT: Gina M. Shultz, Acting Field Supervisor, the Pacific Islands Fish and Wildlife Office; telephone, 808/792-9400; facsimile, 808/792-9581.

SUPPLEMENTARY INFORMATION:

Background

Nesogenes rotensis, *Osmoxylon mariannense*, and *Tabernaemontana rotensis* all occur on the island of Rota in the CNMI; *Tabernaemontana rotensis* is also found in the U.S. Territory of Guam.

We provided detailed physical descriptions for these species and their habitats for Guam and Rota in the proposed listing rule (65 FR 35025, June 1, 2000).

Discussion of the Three Plant Species

Nesogenes rotensis

Williams has observed *Nesogenes rotensis* in flower throughout the year; however, she has never observed it in fruit (Laura Williams, CNMI Division of Fish and Wildlife (DFW), pers. comm. 2004).

Biannual surveys for this species have been conducted since 2000. The species was observed in flower in February 2000, and a direct count was made on June 27, 2000 (L. Arriola, in litt. 2000). At that time there were 80 individuals within an approximate area of 960 yd² (800 m²). In May and November 2001, direct counts made by staff from CNMI DFW identified 458 and 579 adult plants, respectively. No individuals of *Nesogenes rotensis* were observed in May or November of 2003 following supertyphoon Pongsona; however, 34 adults were observed in December 2003 (L. Williams, pers. comm. 2004).

Osmoxylon mariannense

In 2000, a survey conducted by biologists with the CNMI DFW identified six living, and five dead, individual trees on Rota (L. Arriola, in litt. 2000). A survey conducted in 2002 by Taisacan confirmed eight occurrences in this same vicinity, again with only one living mature tree in each. *Osmoxylon mariannense* individuals were defoliated during supertyphoon Pongsona; however, are leafing out and appear to be recovering (E. Taisacan, pers. comm. 2003).

Tabernaemontana rotensis

Tabernaemontana rotensis has been recognized as an endemic species on Guam and Rota by most who have studied the flora of the Marianas (Fosberg in Stone 1980, Raulerson pers. comm., Herbst pers. comm.) and is recognized as distinct by the government of Guam. Nevertheless, in an authoritative monographic work on the genus in the Old World (Leeuwenberg 1991), it was submerged in an expansive interpretation of the widespread species *T. pandacaqui*, which was originally described from the