

1 Transportation Regulation Board

2

3 Adopted Permanent Rules Relating to Practice and Procedure

4

5 Rules as Adopted

6 8920.0100 DEFINITIONS.

7 Subpart 1. **Scope.** The terms used in this chapter have the
8 meanings given them in this part.

9 Subp. 2. **Board.** "Board" means the Minnesota
10 Transportation Regulation Board.

11 Subp. 3. **Complainant.** "Complainant" means a person who
12 complains formally or informally that of a person who
13 violates (1) a board rule, (2) a general order of the board,
14 or that (3) an action or failure to act by the board, whether
15 past, present, or reasonably certain to occur as determined by
16 the board, allegedly violates a law governing the activities of
17 the board or under which the board has jurisdiction or allegedly
18 violates a board rule or order.

19 Subp. 4. **Filed.** "Filed" means deposit in the mail as
20 shown by the postmark.

21 Subp. 5. **Intervenor.** "Intervenor" means a person
22 permitted to intervene as a party in a proceeding under this
23 chapter.

24 Subp. ~~5~~ 6. **Motor carrier.** "Motor carrier" has the
25 meaning given it in Minnesota Statutes, section 221.011, and
26 includes local cartage carriers.

27 Subp. ~~6~~ 7. **Participant.** "Participant" means a person
28 appearing at a proceeding under part 8920.0800 to present views
29 without becoming a party.

30 Subp. ~~7~~ 8. **Party.** "Party" means a person by or against
31 whom a proceeding before the board is begun, a person permitted
32 to intervene in a proceeding under this chapter, or a person
33 admitted under this chapter as a protestant in a motor carrier
34 proceeding.

35 Subp. ~~8~~ 9. **Person.** "Person" means an individual,

1 organization, corporation, municipal corporation, public
 2 corporation, body politic, government agency, association,
 3 partnership, receiver, joint venture, trustee at common law, or
 4 statutory trust guardian or personal representative.

5 Subp. ~~9-~~ 10. **Petitioner.** "Petitioner" means a person who
 6 requests board permission, authorization, or approval or
 7 notifies the board of a proposed change in a tariff or rate
 8 proposal.

9 Subp. ~~10-~~ 11. **Presiding officer.** "Presiding officer"
 10 means the presiding board member, when appropriate, or the
 11 administrative law judge presiding at a hearing.

12 Subp. ~~11-~~ 12. **Proceeding.** "Proceeding" means an
 13 undertaking of the board, on its own motion or otherwise, formal
 14 or informal, by which it seeks to resolve a question or issue
 15 presented to it in a complaint, petition, application, or notice
 16 of a proposed change in a tariff or other rate proposal.

17 Subp. ~~12-~~ 13. **Proof of service.** "Proof of service" means
 18 a certificate or affidavit of service stating the facts of
 19 service, including the ~~time~~ date and manner of service, and
 20 identifying the parties served.

21 Subp. ~~13-~~ 14. **Protestant.** "Protestant" means a party
 22 person objecting in a motor-carrier proceeding involving a
 23 petition for board permission, authorization, or approval of
 24 new, additional, or modified motor carrier operating authority.

25 Subp. ~~14-~~ 15. **Respondent.** "Respondent" means one against
 26 whom a complaint is filed or against whom an investigation,
 27 order to show cause, or other proceeding on board motion is
 28 addressed.

29 Subp. ~~15-~~ 16. **Service date.** "Service date" means the same
 30 as issue date. ~~In-the-case-of-an-order-of-the-board,-it-is-the~~
 31 ~~date-stamped-in-the-upper-right-hand-corner---In-the-case-of-a~~
 32 ~~letter-or-notice,-it-is-the-date-typed-in-the-upper-right-hand~~
 33 ~~corner-~~

34 Subp. ~~16-~~ 17. **Staff.** "Staff" means professional or
 35 managerial persons employed by the board or assigned by the
 36 attorney general or commissioner of transportation to assist the

1 board in a proceeding.

2 8920.0150 TIME.

3 Subpart 1. Computation. In computing a period of time
4 prescribed by this chapter, the day of the last act, event, or
5 default from which the designated period of time begins to run
6 is not included. The last day of the period so computed is
7 included, unless it is a Saturday, Sunday, or legal holiday.

8 Subp. 2. Extra time for service by mail. When a party has
9 the right or is required to do some act or take some action
10 within a prescribed period after the service of a notice or
11 other paper on the party, or whenever service is required to be
12 made within a prescribed period before a specified event, and
13 the notice or paper is served by mail, three days is added to
14 the prescribed period. ~~In-the-event-an-agency-chooses-to~~
15 ~~utilize-the-Central-Mailing-Section, Publications-Division,~~
16 ~~Department-of-Administration, four-days-is-added-to-the~~
17 ~~prescribed-period.~~

18 8920.0200 SCOPE AND CONSTRUCTION.

19 This chapter governs practice and procedure in matters
20 before the board. It is to be liberally construed to secure
21 just, economical, and expeditious determination of the issues
22 presented. This chapter is to be construed by the board in
23 light of its statutory responsibilities and its obligation to
24 act in the public interest. Except as otherwise indicated, this
25 chapter applies to persons subject to the regulatory
26 jurisdiction of the board. A conflict between this chapter and
27 a statute must be resolved according to the statute. After the
28 assignment of a case to the Office of Administrative Hearings,
29 the rules of the Office of Administrative Hearings govern the
30 conduct of the case until the final report of the administrative
31 law judge is issued.

32 INITIATING A PROCEEDING; FORM

33 8920.0300 INITIATED BY COMPLAINT, PETITION, OR MOTION.

34 A proceeding may be initiated by:

1 A. a formal or informal complaint alleging a
2 violation of a law, or a rule or requirement made under a power
3 granted by law;

4 B. a petition for the granting or modifying of a
5 license, permit, franchise, certificate of convenience and
6 necessity, privilege, or authority to grant or withhold that is
7 specifically vested in the board;

8 C. a petition for a board order granting relief under
9 or from a law, rule, or requirement made under a power vested by
10 law, or order approving a proposal or other submission required
11 or permitted by law to be made by the board; or

12 D. a motion of the board.

13 8920.0400 TITLE; REFERENCES TO PARTIES.

14 Subpart 1. **Form.** A person initiating a proceeding is
15 referred to as the complainant if the proceeding is by complaint
16 and is referred to as the petitioner in other cases. A person
17 against whom a complaint is brought is referred to as the
18 respondent. In other proceedings the matter is entitled "In the
19 Matter of, " followed by a brief description of the
20 subject matter to which it relates.

21 Subp. 2. **Effect of error.** No proceeding may be dismissed,
22 impaired, or prejudiced because it is incorrectly entitled, but
23 opportunity must be given to correct the error, giving due
24 consideration to a person who may have been misled by the error.

25 PARTIES, INTERESTED PERSONS, JOINDER

26 8920.0500 PARTIES IN GENERAL.

27 Parties to proceedings are referred to as petitioners,
28 complainants, intervenors, respondents, or protestants according
29 to the nature of the proceeding and the relationship of the
30 parties to it. Parties to a proceeding before the board may
31 present evidence, cross-examine witnesses, and file briefs and
32 exceptions to ~~the-administrative-law-judge's~~ a recommended
33 decision. Parties must be notified of scheduling actions
34 relating to the proceedings.

1 8920.0600 INTERVENORS.

2 Subpart 1. Party to proceeding. A person who becomes a
3 party under this part is referred to as an intervenor.

4 Subp. 2. Petition and showing of interest. Before the
5 case is assigned to an administrative law judge, other persons
6 may become parties to the proceeding by leave of the board ~~or~~
7 ~~administrative-law-judge~~ on petitioning to intervene under parts
8 8920.2300 to 8920.2500 and showing that:

9 A. the person is specifically deemed by statute to be
10 interested in the particular type of matter involved or is
11 specifically declared by statute to be an interested party to
12 the particular type of proceeding involved; or

13 B. by the outcome of the proceeding the person will
14 be bound and affected either favorably or adversely with respect
15 to an asserted interest peculiar to the person as distinguished
16 from an interest common to the public or other taxpayers in
17 general.

18 After the assignment of a case to an administrative law
19 judge, persons seeking to intervene must proceed pursuant to
20 part 1400.6200.

21 Subp. 3. Department of Transportation. The Department of
22 Transportation may intervene in a case and become a party to the
23 case while retaining its investigative role.

24 8920.0700 PROTESTANTS; NOTICE.

25 Subpart 1. Party to proceeding. A person who becomes a
26 party to ~~the~~ a proceeding involving a petition for board
27 permission, authorization, or approval of new, additional, or
28 modified motor carrier operating authority under this part is
29 referred to as a protestant.

30 Subp. 2. Notice of intent to protest. A motor carrier
31 desiring to oppose a motor carrier petition shall file with the
32 board a written notice of intent to protest along with the
33 docket number as published in the board calendar signed by the
34 carrier's attorney, if any, an agent authorized to sign, or
35 partner or officer. The notice of intent to protest must

1 include proof of service of the notice on the petitioner or the
2 petitioner's attorney.

3 Subp. 3. **Failure to file timely notice.** A motor carrier
4 desiring to participate in the proceeding may be admitted as a
5 party only when it has filed a timely notice of intent to
6 protest as required by Minnesota Statutes, section 174A.02,
7 subdivision 4, that is, within 20 days of the notice having been
8 fully given. This subpart does not apply to a request to
9 participate in a proceeding that has been assigned to an
10 administrative law judge. With respect to such a request, the
11 rules of the Office of Administrative Hearings apply.

12 Subp. 4. **Notice states grounds, interest.** A notice of
13 intent to protest filed under this part must set forth
14 specifically the grounds on which the protest will be made and
15 must contain a concise statement of the interest of the
16 protestant in the proceeding. The notice of intent to protest
17 must include copies of the operating authority held by the
18 protestant.

19 Subp. 5. **Failure to appear.** If a timely notice of intent
20 to protest is filed but the protestant, without good cause,
21 fails to appear at the hearing, the presiding officer shall
22 disregard the notice.

23 Subp. 6. **Petition by nonmotor carriers.** A nonmotor
24 carrier desiring to participate as a party in a motor carrier
25 hearing shall file a formal petition for leave to intervene
26 under parts 8920.2300 to 8920.2500 including proof of service of
27 the petition on the petitioner or the petitioner's attorney.

28 8920.0800 PARTICIPANTS.

29 ~~The-administrative-law-judge~~ In proceedings before the
30 board, it may hear the views or evidence of a person concerning
31 the subject matter, but no person may become or may be
32 considered to have become a party to the proceeding by reason of
33 that participation in the hearing.

34 A person may enter an appearance in a proceeding before the
35 board, but no person may become or may be considered to have

1 become a party to the proceeding by reason of having entered an
2 appearance.

3 8920.0900 JOINDER OF SEVERAL PERSONS IN ONE PLEADING.

4 Two or more persons may join in one pleading when they
5 desire to make substantially the same allegation, subject to the
6 power of the board to order separate hearings on its own motion
7 or on the motion of a party to the proceeding.

8 PLEADINGS

9 8920.1000 TYPES OF PLEADINGS.

10 The pleadings before the board are informal complaint,
11 formal complaint, answer, reply, petition, notice of intent to
12 protest, petition to intervene and answer to petition to
13 intervene, exceptions and replies to exceptions, and requests
14 for oral argument, as appropriate, including amendments or
15 supplements to them.

16 8920.1100 FORM OF INFORMAL COMPLAINT.

17 Subpart 1. **Making informal complaint.** An informal
18 complaint may be made by letter or other writing. In an
19 emergency, a board member or the board staff shall accept an
20 informal complaint by telephone and prepare and file a
21 memorandum concerning the call.

22 Subp. 2. **Information required.** No form of informal
23 complaint is prescribed, but in substance the informal complaint
24 must:

25 A. contain the name and address of the complainant
26 and the name of each carrier or other person against whom the
27 complaint is made;

28 B. state that a Minnesota statute or board rule has
29 been violated by the carrier or other person;

30 C. state when, where, and how the violation occurred;
31 and

32 D. request affirmative relief.

33 Subp. 3. **Copies, informing respondents.** Informal
34 complaints must be accompanied by enough copies to enable the

1 board to send one copy to each carrier and other persons named.
2 Informal complaints may be accompanied by supporting affidavits
3 and papers.

4 8920.1200 RESPONSE TO INFORMAL COMPLAINT.

5 Responses to informal complaints may be submitted to the
6 board by the named respondents within 20 days of board
7 notification without proof of service on the complainant and
8 without verifications unless the complaint is verified. The
9 board shall ensure that the complainant is notified of the
10 substance of the response.

11 8920.1300 FILING INFORMAL COMPLAINT.

12 Informal complaints are assigned numbers on the informal
13 docket in the order of their receipt. Copies of the informal
14 complaint and writings relating to it are filed under the name
15 of the respondent. Matters thus presented, if their nature
16 warrants it, are taken up by correspondence with the persons
17 affected, to try to resolve the complaint without formal hearing.

18 8920.1400 FORM OF FORMAL COMPLAINT.

19 A formal complaint must state the names and addresses of
20 the complainants and respondents without abbreviation, and the
21 names and addresses of complainants' attorneys, if any. Formal
22 complaints are filed as received and assigned numbers on the
23 formal docket. Formal complaints must be served on respondents
24 with proof of service filed with the board.

25 8920.1500 FORMAL COMPLAINT ALLEGATIONS; JOINDER OF CAUSES.

26 A formal complaint must be drawn to advise fully and
27 completely the respondents and the board of Minnesota statutes
28 or board rules that authorize the complaint and that allegedly
29 have been or are being violated. The complaint must set forth
30 briefly and in plain language the facts claimed to constitute
31 the violation and the relief sought. Two or more grounds of
32 complaint involving the same principle, subject, or statement of
33 facts may be included in one complaint, but must be stated
34 separately and the paragraphs numbered. If violations of two or

1 more sections of Minnesota Statutes are alleged, the facts
2 claimed to constitute violations of one section must be stated
3 separately from those facts relating to any other section. To
4 avoid repetition, facts in one allegation may be incorporated by
5 reference in another allegation.

6 8920.1550 INVESTIGATIVE DATA.

7 If the commissioner of transportation provides
8 investigative data to the board under Minnesota Statutes,
9 section 221.0315, the commissioner must notify the petitioner or
10 carrier.

11 8920.1600 TARIFF REFERENCE.

12 Complaints or objections regarding rates, fares, charges,
13 classifications, rules, regulations, or practices must be
14 specific with reference to the approved tariff on file.

15 8920.1700 PREFERENCE OR PREJUDICE ALLEGED.

16 If a complainant alleges undue or unreasonable preference
17 or advantage or undue or unreasonable prejudice, disadvantage,
18 or discrimination, in violation of Minnesota statutes, then the
19 formal complaint must name the particular person, company, firm,
20 or corporation affected, describe the locality or traffic
21 affected, and specify the statute prohibiting the preference,
22 advantage, prejudice, disadvantage, or discrimination relied on
23 as constituting the violation.

24 8920.1800 SIGNATURE AND VERIFICATION.

25 A formal complaint must be personally signed by the
26 complainant or by a person authorized to appear for the
27 complainant under part 8920.3100. In addition, the facts
28 alleged must be verified under oath by a complainant or by a
29 partner, officer, agent, or attorney of the complainant.
30 However, if the verification is made by an agent or attorney,
31 the reason it is not made by a complainant, partner, or officer
32 must be stated.

33 8920.1900 SUPPLEMENTAL COMPLAINT.

1 Supplemental complaints setting forth causes of action
2 alleged to have accrued in favor of the complainants and against
3 the respondents since the filing of the original formal
4 complaint may be served by the complainants on the respondents
5 at any time before the date set for hearing on the original
6 complaint and, upon leave granted, may be filed as provided for
7 original complaints. Supplemental complaints must be disposed
8 of in the same proceeding, if practicable. This part applies
9 only to cases before assignment to an administrative law judge
10 or to original proceedings before the board.

11 8920.2000 ANSWER TO FORMAL COMPLAINT.

12 Subpart 1. **Service.** An answer to a formal complaint must
13 be filed with the board, with proof of service on complainant,
14 within 20 days after the day on which the complaint was served.

15 Subp. 2. **Form and style.** An answer to a formal complaint
16 must be drawn to advise fully and completely the parties and the
17 board of the nature of the defense, to state that the respondent
18 has granted the relief demanded if that is the case, and admit
19 or deny specifically and in detail each material allegation of
20 the pleading answered. Denial of an alleged discrimination or
21 that an alleged preference or prejudice is undue or unreasonable
22 must state fully the grounds relied upon in making the denial.

23 Subp. 3. **Signature and verification.** An answer must be
24 signed by the respondent or the respondent's attorney and
25 verified.

26 8920.2100 REPLY.

27 If the answer to a complaint alleges the granting of the
28 relief demanded, the complainant shall file with the board a
29 reply admitting or denying the allegation. The reply must be
30 filed within 20 days, with proof of service on the respondent.
31 If the complainant fails to reply, or admits the allegation, the
32 proceeding must be dismissed.

33 8920.2200 PETITION CONTENTS.

34 Except as otherwise prescribed by the board or required by

1 statute, a petition must contain the name and address of the
 2 petitioner without abbreviation and the name and address of the
 3 petitioner's attorney, if any.

4 A petition must state the facts and the grounds on which
 5 relief or authority is sought, the statute or statutes under
 6 which the proceeding is brought or that are otherwise
 7 applicable, and the relief or authority sought by the petitioner.

8 The petition must be signed in the same way as a formal
 9 complaint, but unless required by the board or by statute the
 10 petition need not be verified. Only the original must be filed
 11 with the board, but additional copies must be given to the board
 12 on request.

13 8920.2300 PETITION TO INTERVENE.

14 Subpart 1. Filed with board. This part applies only to an
 15 original proceeding before the board or a contested case
 16 proceeding before its assignment to the Office of Administrative
 17 Hearings. A person desiring to be made a party to a pending
 18 proceeding may petition for leave to intervene. The original
 19 petition, six copies, and the proof of service must be filed
 20 with the board before the case is assigned to the Office of
 21 Administrative Hearings. After assignment to the Office of
 22 Administrative Hearings, a petition to intervene may should be
 23 filed at-least-ten-days-before-the-date-set-for-hearing pursuant
 24 to part 1400.6200. A petition to intervene may be filed after
 25 that time only for good cause shown.

26 Subp. 2. Grounds and interest alleged. A petition to
 27 intervene filed with the board must allege the grounds for the
 28 proposed intervention and the specific interest of the
 29 petitioner in the proceeding that qualifies the petitioner as a
 30 party under this chapter. The allegations must be reasonably
 31 pertinent to the issues involved in the principal pleadings, and
 32 must not unduly broaden the issues.

33 Subp. 3. Signature. The A petition filed with the board
 34 must be signed and verified in the same way as a formal
 35 complaint.

1 Subp. 4. Service. The A petition filed with the board
2 must be served under part 8920.2700 on the parties to the
3 proceeding.

4 8920.2400 ANSWER TO PETITION TO INTERVENE.

5 Parties to ~~the~~ a proceeding before the board may file
6 answers to petitions to intervene with the board with proof of
7 service on the petitioner in intervention before the hearing, or
8 parties may answer on the record at the opening of the hearing
9 if fewer than ten days have elapsed from the date of service on
10 them of the petition to intervene. If ten days or more have
11 elapsed, the ~~administrative-law-judge~~ board shall grant or deny
12 the petition to intervene and state the reasons. If permission
13 is granted, the petitioner to intervene becomes an intervenor
14 and a party to the proceedings. Answers to petitions to
15 intervene must admit or deny the interest of the petitioner in
16 intervention. If the intervention is objected to by a party to
17 the proceeding, the grounds for the objection must be stated in
18 the answer. The answers ~~need-not~~ must be ~~verified-unless-the~~
19 ~~petition-to-intervene-has-been~~ verified. Failure to file an
20 answer to a petition to intervene or to make oral objection to
21 the petition is considered to be consent to the intervention.
22 However, on considering the files and records of the proceeding,
23 the ~~administrative-law-judge~~ board may grant or deny the
24 petition to intervene regardless of whether answers to it have
25 been filed or oral objections made.

26 8920.2500 SCOPE OF INTERVENOR'S PARTICIPATION.

27 In proceedings before the board, the participation of a
28 party granted leave to intervene is limited to those matters
29 raised in its petition to intervene, unless for good cause shown
30 on the record the ~~administrative-law-judge~~ board grants an
31 intervenor the right to participate more fully than set forth in
32 the petition to intervene. If there are two or more intervenors
33 with substantially like interests and positions,
34 the ~~administrative-law-judge~~ board, to expedite the hearing, may
35 set appropriate limits on the number of attorneys permitted to

1 cross-examine and to make and argue motions and objections on
2 behalf of the intervenors.

3 8920.2600 AMENDMENTS.

4 Subpart 1. **Amendments of pleadings.** Formal complaints,
5 answers to formal complaints, and replies may be amended before
6 the original time for answering or replying has expired, ~~but may~~
7 ~~be amended after that time only by order of the administrative~~
8 ~~law judge for good cause shown upon motion and upon notice to~~
9 ~~the parties to the proceeding.~~ After a case is assigned to an
10 administrative law judge, amendments must be filed as motions
11 pursuant to part 1400.5600, subpart 5, or 1400.6700, as
12 appropriate.

13 In proceedings before the board, amendments to petitions
14 initiating a proceeding that do not enlarge the authority or
15 relief sought or otherwise materially alter the petition, and
16 amendments to notices of intent to protest and petitions to
17 intervene, may be made without leave of the ~~administrative-law~~
18 ~~judge board~~ before the day of the hearing. After the hearing
19 begins, the petition, notices of intent to protest, or petitions
20 to intervene may be amended only by order of the ~~administrative~~
21 ~~law-judge board~~ for good cause shown upon motion.

22 Subp. 2. **Answers.** In proceedings before the board, rules
23 on the form, content, signature, verification, and time of
24 filing of answers to formal complaints and petitions to
25 intervene apply to answers to amended or supplemental complaints
26 and answers to amended petition to intervene.

27 8920.2700 SERVICE.

28 When filing a pleading or other document initiating or
29 relating to a proceeding pending before the board, the rules of
30 service in items A to D must be adhered to.

31 A. Service of documents must be made on other parties
32 in proceedings before the board by deposit in the first class
33 mail with postage prepaid or by delivery in person, unless
34 otherwise ordered by the ~~administrative-law-judge board~~ or
35 unless otherwise specifically provided by law.

1 B. When a party has appeared by attorney, service on
2 the attorney constitutes service on the party.

3 C. The date of service is the day when the document
4 served is deposited in the mail as evidenced by the postmark or
5 is delivered in person, as the case may be, unless otherwise
6 provided by the board ~~or the administrative law judge if the~~
7 ~~case has been referred to the Office of Administrative Hearings.~~

8 D. When a document is served, the person serving the
9 paper shall file with the board ~~or the administrative law judge~~
10 proof of service, or proof of acceptance of service by the
11 person served or the person's attorney. Proof of service or
12 acceptance must be annexed to the copies of the documents served.

13 8920.2800 CONTINUANCES AND EXTENSIONS OF TIME.

14 In proceedings before the board, for good cause shown,
15 continuance and extensions of time may be granted or denied at
16 the discretion of the board ~~or the administrative law judge.~~

17 8920.2900 DOCKETS.

18 Unless otherwise specified in this chapter, an original and
19 six copies of pleadings, briefs, written arguments, notices,
20 written motions, and other papers relating to or affecting the
21 power or jurisdiction of the board or intended for the
22 information of or action by the board must first be filed with
23 the board. The board shall keep a copy as a public record.
24 When a matter within the board's jurisdiction is filed, the
25 board shall enter the matter on the docket and give it a
26 consecutive docket number.

27 The board shall keep the necessary dockets. The dockets
28 must be open to public inspection, but a person desiring to
29 inspect a record of the board shall first apply to the board.

30 8920.3000 TRADE SECRET AND PROPRIETARY INFORMATION.

31 This chapter does not require parties to reveal proprietary
32 information or trade secrets or processes in a document filed
33 with the board under this chapter. When a document is filed
34 with proprietary information or trade secret portions omitted,

1 the person filing the document shall bring the omissions to the
2 attention of the ~~administrative-law-judge~~ board.

3 The ~~administrative-law-judge~~ board may require omitted
4 information to be submitted. If the ~~administrative-law-judge~~
5 board considers this information to be necessary to the hearing,
6 the information must be protected by protective orders.

7 8920.3100 HEARINGS.

8 Subpart 1. Referral to Office of Administrative Hearings.

9 The board shall refer a proceeding to the Office of
10 Administrative Hearings for contested case hearing under the
11 procedures in parts 1400.5100 to 1400.8300:

12 A. when an issue of fact has been joined upon formal
13 complaint by filing proof of service of answer or by failure of
14 respondent to answer;

15 B. when a hearing is required by law; or

16 C. in every other case determined by the board to
17 require a contested case hearing.

18 Subp. 2. Board determination. Unless a hearing is
19 required by law, the board may determine a proceeding without a
20 contested case hearing and without referring the proceeding to
21 the Office of Administrative Hearings:

22 A. when the board determines that there are no
23 material issues of fact to be determined and the pleadings raise
24 only issues of law or policy that can be resolved through
25 briefs;

26 B. when the parties, through their authorized
27 representatives, waive any right to a contested case hearing;

28 C. when the parties stipulate, either in writing or
29 oral entry in the record, to all ~~or-part-of-the~~ material facts
30 involved in the controversy; or

31 D. following an uncontested or unprotested proceeding.

32 Subp. 3. Waiver of right to testify. When competent motor
33 carriers object to the grant of a petition but choose not to
34 intervene as protestants within the established time frame, this
35 choice operates to waive the right of these motor carriers to

1 testify at the a hearing before the board on the matter.

2 ~~Subp. 4. Contested case procedures incorporated. Parts~~
3 ~~1400.5100 to 1400.8300 are incorporated by reference.~~

4 ~~Subp. 5. Record of proceeding. A written transcript of~~
5 ~~testimony before the Office of Administrative Hearings may be~~
6 ~~required if exceptions to findings of fact in a recommended~~
7 ~~decision are taken under part 8920.3200, subpart 2, or if a~~
8 ~~hearing is scheduled to last more than one day. The transcript~~
9 ~~is to be prepared at the expense of the petitioner or~~
10 ~~complainant and, at the discretion of the board, protestants or~~
11 ~~respondents.~~

12 Subp. 4. Appearances of attorneys. Parties, except
13 individuals appearing on their own behalf, must be represented
14 by an attorney. Participants, as defined in part 8920.0100,
15 subpart 6, need not be represented by an attorney. Persons
16 holding specific authority to practice before the board in their
17 areas of expertise since the effective date of part 7830.3000,
18 subpart 1, may continue to do so within the express limits of
19 that authority.

20 Subp. 5. Presiding officers. Each formal hearing before
21 the board must be presided over by one or more board members
22 and, where appropriate, by one or more members of the staff,
23 with each person presiding known as a presiding officer. The
24 presiding officers have complete charge of the proceedings and
25 shall rule on all matters of evidence, continuances, motions, or
26 other matters involving the case from the time the proceedings
27 have been assigned to the presiding officers.

28 Subp. 6. Discretionary hearing on informal
29 complaint. When it appears to the board, following any
30 investigation that the board considers appropriate, that a
31 person filing an informal complaint is entitled to relief, it
32 may order a hearing upon the informal complaint. It may at any
33 time order a hearing on any matter on the informal docket or on
34 any other matter where a hearing is discretionary with the board.

35 Subp. 7. Hearing on formal complaint; other hearings. The
36 board shall assign a time and place of hearing pursuant to part

1 8920.3500 (1) when issue has been joined upon formal complaint
2 by service of answer or by failure of respondent to answer, and
3 proof of the service or failure has been filed, (2) in every
4 other contested case, and (3) in every case in which a hearing
5 is required by law.

6 Subp. 8. Examination of witnesses, cross-examination, and
7 rebuttal. Witnesses may be examined orally before the presiding
8 officers or, when deemed appropriate, direct evidence may be
9 taken by written statement prepared in advance of the hearing.
10 In these cases the author of the written statement will be made
11 available for cross-examination. Every party to a contested
12 case may cross-examine witnesses and submit rebuttal evidence.

13 Subp. 9. Exhibits. Unless the presiding officers direct
14 otherwise, exhibits offered to the board at any hearing or
15 conference in a contested case must be six in number with
16 additional copies furnished to parties of record.

17 Subp. 10. Order of procedure. Unless otherwise directed,
18 the following order of procedure applies to all hearings before
19 the board:

20 A. At hearings on informal complaints, formal
21 complaints, or petitions, the complainant or petitioner shall
22 open the proof.

23 B. The presiding officers shall determine the
24 subsequent order of procedure.

25 C. Intervening parties shall follow the party in
26 whose behalf intervention is made; except that in all cases when
27 the intervention is not in support of either original party, the
28 presiding officers shall determine when the intervening party
29 must be heard.

30 Subp. 11. Failure to appear. If a complainant or
31 petitioner fails to appear at a hearing, the presiding officers,
32 at their discretion, may:

33 A. dismiss the proceeding with or without prejudice;

34 B. continue the hearing; or

35 C. grant the relief requested on the basis of a

36 verified complaint or petition and affidavits, if any, filed in

1 the case, which must be considered as having been offered in
2 evidence at the hearing by the complainant or petitioner who is
3 absent. However, the presiding officers shall not grant the
4 relief requested if any person appears at the hearing who
5 qualifies as a party and objects to the relief being granted.

6 Subp. 12. Admission of evidence. In a contested case, the
7 presiding officers may admit and give probative effect to
8 evidence that possesses probative value commonly accepted by
9 reasonably prudent persons in the conduct of their affairs.
10 They shall give effect to rules of privilege recognized by law.
11 They may exclude incompetent, irrelevant, immaterial, and
12 repetitious evidence.

13 Subp. 13. Documentary evidence. In a contested case,
14 documentary evidence may be received in the form of copies or
15 excerpts, or by incorporation by reference.

16 Subp. 14. Evidence must be offered. All evidence in a
17 contested case, including records and documents in the
18 possession of the board of which the presiding officers desire
19 to avail themselves, must be offered and made a part of the
20 record in the case. No other factual information or evidence
21 may be considered in the determination of the case.

22 Subp. 15. Official notice. In a contested case, the
23 presiding officers may take notice of judicially cognizable
24 facts. They may take notice of general, technical, or
25 scientific facts within their specialized knowledge. Parties
26 must be notified in writing either before or during hearing, by
27 reference in preliminary reports or otherwise, or by oral
28 statement in the record, of the material so noticed. The
29 parties must be afforded opportunity to contest the facts so
30 noticed.

31 Subp. 16. Record of proceeding. A written transcript of
32 testimony before the Office of Administrative Hearings may be
33 required if:

34 A. exceptions to findings of fact in a recommended
35 decision are taken under part 8920.3700; or

36 B. if a hearing is scheduled to last more than one

1 day.

2 8920.3200. CONFERENCE RECOMMENDED BY PRESIDING OFFICER.

3 The presiding officers, with or without motion, may direct
4 that a conference be held and direct the parties to the
5 proceeding, their attorneys, and the staff of the Department of
6 Transportation to appear to consider any or all of the matters
7 enumerated in part 8920.3600, subpart 2. Due notice of the time
8 and place of the conference will be given to all parties to the
9 proceeding, their attorneys, and the staff of the Department of
10 Transportation. All parties shall come to the conference fully
11 prepared for a useful discussion of all problems involved in the
12 proceeding, both procedural and substantive, and fully
13 authorized to make commitments with respect to those problems.
14 Preparation should include, among other things, advance study of
15 all relevant material and advance informal communication between
16 the parties, including requests for additional data and
17 information, to the extent it appears feasible and desirable.
18 Failure of a party to attend the conference, without prior
19 notification to the presiding officer and for good cause, after
20 being served with due notice of the time and place, constitutes
21 a waiver of all objections to any order or ruling with respect
22 thereto, but must not otherwise prejudice an absent party's
23 position as to the issues in the proceeding. The presiding
24 officers at the conference may dispose of by ruling,
25 irrespective of the consent of the parties, any procedural
26 matters which they are authorized to rule upon during the course
27 of the proceeding. All rulings made at the prehearing
28 conference are binding on all parties to the proceedings. These
29 rulings may be subsequently modified for good cause shown.

30 Nothing contained in part 8920.3600 and this part may be
31 construed as precluding any party to a proceeding from
32 submitting at any time offers of settlement or proposals of
33 adjustment to all parties and to the staff of the Department of
34 Transportation, or from requesting conferences for that
35 purpose. The presiding officers have the same powers at

1 settlement conferences as those enumerated for prehearing
2 conferences.

3 8920.3300 STIPULATION.

4 The parties to a proceeding before the board may agree by
5 stipulation either in writing filed with the board or oral entry
6 in the record upon the facts or any portion of the facts
7 involved in the controversy. The stipulation must be regarded
8 and used as evidence in the determination of the facts.

9 8920.3400 WITNESSES AND SUBPOENAS.

10 Subpoenas requiring the attendance of witnesses at any
11 designated place of hearing within Minnesota or for the
12 production of books, papers, or documents may be issued by the
13 board, by any member of the board, or by a presiding officer.
14 Upon motion made promptly and in any event at or before the time
15 specified in the subpoena for compliance with the subpoena, the
16 board may: quash or modify the subpoena if it is unreasonable
17 or oppressive; or condition denial of the motion upon the
18 advancement by the person in whose behalf the subpoena is issued
19 of the reasonable cost of producing the books, papers, or
20 documents.

21 Witnesses who are subpoenaed are entitled to the same fees
22 as are paid for like service in the district courts of Minnesota.
23 These fees must be paid by the party at whose instance the
24 testimony is taken.

25 Service of subpoenas must be made in like manner as
26 provided by law for the service of subpoenas in the district
27 courts of this state.

28 8920.3500 WRITTEN NOTICE.

29 Except as otherwise provided by statute or this chapter,
30 written notice of any hearing must be served at least 30 days
31 before the date set for the hearing, upon all parties and other
32 persons as the board directs, unless the board for good cause
33 determines a longer or shorter period of notice. The notice
34 must state the time, place, and nature of the hearing and

1 include a concise statement of the matter to be considered. The
2 board, except as otherwise provided by statute, may prescribe by
3 order the form and extent of notice to be given. The board's
4 notice of public hearings and decisions must be issued weekly
5 and must be mailed to all subscribers, and to all parties and
6 other persons deemed interested in a given proceeding by the
7 secretary, and constitutes official notice of all formal
8 proceedings.

9 8920.3600 PREHEARING CONFERENCES AND SETTLEMENT CONFERENCES.

10 Subpart 1. Conferences. In order to provide opportunity
11 for submitting and considering facts, arguments, offers of
12 settlement, or proposals of adjustment, for settling a
13 proceeding or any of the issues in the proceeding, or for
14 considering means by which the conduct of the hearing may be
15 facilitated and the disposition of the proceeding expedited,
16 conferences between the parties to the proceeding and staff for
17 these purposes may be held at any time before the hearings
18 before the presiding officers as time, the nature of the
19 proceeding, and the public interest may permit.

20 Subp. 2. Issues at conferences. At a prehearing or other
21 conference as may be held to expedite the orderly conduct and
22 disposition of any hearing, there may be considered, in addition
23 to any offers of settlement or proposals of adjustment, the
24 possibility of the following:

25 A. simplification of the factual and legal issues to
26 be determined;

27 B. amendment of pleadings;

28 C. determination of prehearing motions;

29 D. separation of issues;

30 E. consolidation of presentations by parties having
31 substantially the same interest;

32 F. the names, number, and order of presentation of
33 witnesses giving testimony;

34 G. production of exhibits and consideration of their
35 authenticity;

- 1 H. arrangement for completion of discovery
 2 activities;
 3 I. submission and consideration of appropriate
 4 authorities in support of contentions made;
 5 J. estimation of the time required for hearing;
 6 K. discussion of the possibility of voluntary
 7 dismissal of the proceedings; and
 8 L. all other matters that may aid in the disposition
 9 of the proceedings.

10 8920.3200 8920.3700 EXCEPTIONS TO RECOMMENDED DECISIONS AND
 11 ORDERS.

12 Subpart 1. ~~Decision contents, service,--A recommended~~
 13 ~~decision of an administrative law judge in a contested case~~
 14 ~~hearing must consist of findings of fact, conclusions of law,~~
 15 ~~and recommendation.--The decision must be served on the parties~~
 16 ~~to the proceeding by mail.~~

17 Subp. 2. Filing exceptions. Within 20 days after the
 18 service date, which is the issue date, of a recommended decision
 19 of an administrative law judge in a contested case hearing, a
 20 party may file and serve exceptions to the decision and reasons
 21 in support of the exceptions. The filing must be
 22 postmarked mailed or delivered personally. ~~Since the postmark~~
 23 ~~would be later than the issue date when an order is sent by the~~
 24 ~~board through the Central Mailing Section, four days is added to~~
 25 ~~the prescribed period of 20 days in accordance with part~~
 26 ~~8920.0150.~~ If an order is exceptions are mailed without going
 27 ~~through the Central Mailing Section, three days is added to the~~
 28 prescribed period of 20 days in accordance with part 8920.0150.
 29 Exceptions that are not filed in a timely fashion must not be
 30 accepted or read by the board unless the party, for good cause
 31 shown, has applied to the board for an extension of time.

32 Subp. 3. 2. Contents of exceptions. Exceptions to
 33 findings of fact or conclusions of law must be specific and must
 34 be stated and numbered separately. When exception is taken that
 35 a finding of fact is unsupported or contrary to substantial

1 evidence in the record, a corrected finding must be submitted.
2 Specific reference in the transcript supporting the correction
3 to the finding must be submitted in support of the exception.

4 Subp. ~~4~~ 3. **Replies.** A reply to an exception is not
5 required, but may be filed by a party within ten days after
6 service by mail of the exception to which the reply is made.
7 Proof of service of the reply on the parties of record must be
8 filed with the reply.

9 Subp. ~~5~~ 4. **Supporting arguments required.** Exceptions and
10 replies must contain written arguments in support of the
11 position taken by the party filing them.

12 ~~8920-3300~~ 8920.3800 ORAL ARGUMENT.

13 If a party adversely affected by a recommended decision
14 requests oral argument before the board when filing exceptions
15 or replies, the board must permit it. Oral arguments are
16 limited to a discussion of legal issues and a restatement of
17 facts in evidence. No new evidence may be received at oral
18 arguments.

19 ~~8920-3400~~ 8920.3900 UNTIMELY SUBMISSION OF COMMENTS OR
20 LETTERS.

21 The board shall not consider comments or letters filed in
22 place of oral argument if submitted by parties or intervenors
23 after oral arguments.

24 ~~8920-3500~~ 8920.4000 PETITION FOR FURTHER HEARING.

25 Before the board issues a final ~~rewritten~~ written decision
26 or order in a proceeding, a party desiring a further hearing may
27 file a petition for further hearing with the board. The
28 petition must clearly set forth the grounds relied on for a
29 further hearing. If the party proposes to produce additional
30 testimony, the testimony must be briefly summarized. No further
31 hearing may be granted if the evidence to be adduced appears to
32 be merely cumulative. The petition must be served on the
33 parties to the proceeding. An adverse party has ten days from
34 the service date of the petition to answer. A reply to an

1 answer is not permitted. The board may grant or deny the
2 petition without a hearing or may set a hearing on the petition.

3 ~~8920-3600~~ 8920.4100 BOARD'S FINAL DECISIONS AND ORDERS.

4 Subpart 1. **Contents.** A decision or order must be in
5 writing and set forth findings of fact, conclusions of law, and
6 a statement of reasons necessary to decision.

7 Subp. 2. **Filed and mailed.** The board shall file its
8 decisions and orders and notify parties to the proceeding of the
9 filing. Copies of the decision or order must be mailed to the
10 parties by first class United States mail.

11 Subp. 3. **When effective.** A decision or order of the board
12 is effective upon filing and mailing unless the board orders a
13 different date.

14 ~~8920-3700~~ 8920.4200 PETITIONS FOR FURTHER ACTIONS.

15 Subpart 1. **Deadline.** Within 20 days from the service date
16 of the board's final decision and order, a party to the
17 proceeding may petition for a rehearing; for an amendment or
18 vacation of the findings of fact, decision, or order; or for
19 reconsideration or reargument.

20 Subp. 2. **Contents.** A petition for rehearing, vacation,
21 reconsideration, or reargument must specifically set forth the
22 grounds relied upon and clearly state the errors. A petition
23 for an amendment of the findings of fact, decision, or order
24 must contain the desired proposed amendments and must state
25 clearly the reasons for amending.

26 Subp. 3. **Service.** A petition under this part must be
27 served on the parties to the proceeding. An adverse party has
28 ten days from the service date of the petition to answer.
29 Replies are not permitted.

30 Subp. 4. **Board actions.** The board may grant or deny the
31 petition without a hearing or in its discretion set the matter
32 for hearing. Pending the decision of the board on the petition,
33 the board may vacate and set aside the decision or order.

34 Subp. 5. **Extending time for appeal.** A petition under this
35 part does not extend the time for appeal from a final decision

1 or order unless it is filed within ten days after the filing and
2 mailing of the board's decision or order under Minnesota
3 Statutes, section 14.64.

4 ~~8920-3800~~ 8920.4300 AMENDMENT OF EFFECTIVE DATE.

5 Petitions to amend an order or decision that seek only a
6 change in the date when the order or decision takes effect, or
7 in the period or date prescribed, must be made by petition
8 reasonably filed and served in a like manner as other petitions
9 under this part and part ~~8920-3900~~ 8920.4400, except that, if an
10 unforeseen emergency satisfactorily shown by the petitioner
11 requires relief within three days, the relief may be sought
12 informally, by telegram or otherwise, upon notice to the parties
13 to the proceeding.

14 ~~8920-3900~~ 8920.4400 SECOND PETITION ON SAME GROUND.

15 A second petition for further hearing, rehearing,
16 amendment, or vacation of a finding of fact, decision or order,
17 reconsideration, or reargument by the same party or parties and
18 on the same grounds as a former petition that has been
19 considered and denied, must not be entertained.

20 ~~8920-4000~~ 8920.4500 VARIANCE.

21 Subpart 1. **Conditions justifying.** Upon written
22 application or upon its own motion, the board shall grant a
23 variance to this chapter when it appears to the satisfaction of
24 the board that:

25 A. enforcing the rule would impose an excessive
26 burden on the applicant or others affected by the rule;

27 B. granting the variance would not adversely affect
28 the public interest; and

29 C. granting the variance would not conflict with
30 standards imposed by law.

31 Subp. 2. **Alternative practices.** A variance granted under
32 subpart 1 may be conditioned upon alternative practices proposed
33 by the applicant or imposed by the board and adapted to the
34 circumstances and facts justifying approval of the variance.

1 Subp. 3. **Notice.** Within 30 days after receiving an
2 application, the board shall notify the applicant by written
3 order that the variance is granted or denied and the reasons for
4 that decision.

5 Subp. 4. **Duration; revocation.** A variance may be of
6 limited duration. The board shall revoke a variance if a
7 material change occurs in the circumstances that justified the
8 variance under subpart 1, or if the applicant fails to comply
9 with the specified practices.