

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1308 Docket No. 05.0009.0769

DATE RECEIVED 9-5
REVIEW DATE 9-15
DUE DATE 9-19

APPROVED 9-19-86 mjc
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED 9/8
REVISOR DISAPPROVED
FILED W/SEC. STATE 9/22
RETURNED TO AGENCY 9/22

✓ Rule as adopted (4 copies)

N/A Notice to Solicit Outside Information/Opinion
____ Date published in State Register
____ Comments

N/A Petition for Adoption of a Rule

✓ Board's Authorizing Resolution Not enclosed

✓ Proposed rule
____ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
221.165 Statutory Authority
yes Small business statement
no stmnt Expenditure of public money statement
none Signature

✓ Statement of Need and Reasonableness
Small business

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
June 6, 1986 Date (30)/25 days before adoption

✓ Publication in State Register
June 2, 1986 Date (30)/25 days before adoption

✓ Resolution Adopting

✓ ✓ Findings of Fact, Conclusions & Order Adopting
July 16, 1986 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
Allen E. Giles Name of SAAG representing agency

____ ~~Notice of Submission to Attorney General~~

____ ~~Affidavit of Mailing Notice to Attorney General~~

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: ROGER A. LAUFENBURGER, Chairman
Transportation Regulation Board

DATE: 9/22/86

ATTN: ALLEN GILES
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: Adopted Rules Relating to Motor Carrier Collective Ratemaking

The above-referenced rule has been approved as to its legality by the Attorney General on September 19, 1986.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC/rmk
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR#1308

A9

Transportation Regulation Board

Adopted Rules Relating to Motor Carrier Collective Ratemaking

Rules as Adopted

8900.0100 DEFINITIONS.

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

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

Subp. 3. **Collective ratemaking.** "Collective ratemaking" means the joint consideration and establishment of rates, charges, and classifications, and rules related to them, by two or more carriers subject to rate regulation under Minnesota Statutes, chapter 221.

Subp. 4. **Collective ratemaking organization.** "Collective ratemaking organization" means an organization or association of two or more carriers engaged in collective ratemaking for publishing rates, charges, and classifications, and rules related to them. Administrative activities of the collective ratemaking organization are at the express direction of participating carriers. Carriers who are members of a trade association, tariff publishing bureau, or similar organization may establish one or more collective ratemaking organizations within that association, bureau, or organization.

Subp. 5. **Docketing.** "Docketing" means submitting a rate proposal to the collective ratemaking organization.

Subp. 6. **Joint docket bulletin.** "Joint docket bulletin" means a periodic listing of rate proposals submitted to the collective ratemaking organization for consideration by member carriers and other interested parties.

Subp. 7. **Joint line rate.** "Joint line rate" means a rate applicable from a point located on one transportation line to a point located on another transportation line, made by agreement

APPROVED BY THE REVISOR OF STATUTES OFFICE BY: MM

or arrangement between the carriers and published in a single tariff under proper concurrence of the transportation lines over which the rate applies.

Subp. 8. **Single line rate.** "Single line rate" means a rate applicable from origin to destination over the lines of one carrier.

Subp. 9. **Rate proposal.** "Rate proposal" means a proposed rate, charge, rule, or classification to be published for the account of a proponent carrier and other participating carriers concurring in the proposal.

Subp. 10. **Tariff.** "Tariff" means a published schedule showing the rates, fares, charges, classifications, rules, regulations, and other provisions applying to transportation and incidental services.

8900.0200 PURPOSE.

To ensure that rates and charges for shippers and receivers are nondiscriminatory, to ensure that joint through interline service is continued, to ensure that just and reasonable rates and charges are published and maintained under uniform, reasonably related rate structures, and to promote efficiency in establishing, submitting, and considering rate proposals, motor carriers subject to rate regulation under Minnesota Statutes, chapter 221, unless exempted under part 8900.1000, shall collectively establish, maintain, and publish schedules of rates, charges, and classifications, and rules and practices relating to them, in joint agency tariffs covering their transportation service under Minnesota Statutes, section 221.165 and this chapter.

8900.0300 GENERAL DUTIES.

Subpart 1. **Motor carrier participation.** Motor carriers subject to rate regulation under Minnesota Statutes, chapter 221, unless exempted under part 8900.1000, shall participate in collective ratemaking organizations for collectively establishing, maintaining, and publishing joint or single line schedules of rates, charges, and classifications, and rules and

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practices relating to them, covering their transportation service.

Subp. 2. **Submission to board.** A collective ratemaking organization established under this chapter shall establish and submit to the board for its approval, procedures for jointly considering, initiating, establishing, maintaining, and publishing rates, charges, and classifications, and rules and practices relating to them.

8900.0400 PROVISIONAL APPROVAL REQUIREMENTS.

Subpart 1. **Board approval.** A collective ratemaking agreement, and the bylaws and rules of procedure of a collective ratemaking organization established or continued under that agreement, must be filed with and approved by the board. The board shall (provisionally) approve initial filings that conform (generally) to the requirements in subparts 2 to 12.

Subp. 2. **Identification.** Each carrier that is a party to the agreement must be identified by name, mailing address, and telephone number.

Subp. 3. **Rate proposal discussion, vote.** All member carriers must be allowed to discuss a docketed rate proposal, but only those carriers with authority to participate in the type of transportation service covered by the rate proposal may vote on the proposal. <u>This subpart applies only to docketed proposals involving rates and charges and does not apply to classification matters, in connection with voting on docketed rate proposals.</u>

Subp. 4. **Right of independent action.** Participating carriers in a collective ratemaking organization have the right of independent action and must be permitted to docket a rate proposal relating to them or to withdraw from the collective ratemaking organization. An agreement or action by or between two or more participating carriers to not exercise the right of independent action or to boycott, coerce, or intimidate a participating carrier from exercising its right of independent action is prohibited.

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Subp. 5. **Notice of rate proposals.** Notice of rate proposals must be given in a joint docket bulletin that is furnished to the board, to carriers participating in the collective ratemaking organization, and to persons who subscribe to the bulletin.

Subp. 6. **Tariff items published for account of motor carrier.** The collective ratemaking organization must not be allowed to protest or complain of tariff items published for the account of a motor carrier.

Subp. 7. **Computing composite expense level.** Revenues and expenses of carriers participating in a rate proposal must be considered in forming a composite expense level used in arriving at a uniform rate level applicable to any defined group of carriers.

Subp. 8. **Employee restrictions.** Employees of the collective ratemaking organization are prohibited from docketing or voting upon a proposal affecting a change in a tariff published by or for the account of a member carrier.

Subp. 9. **Disclosure of names of proponents.** The collective ratemaking organization must divulge to a person upon request the names of proponents of a rate proposal docketed in that organization.

Subp. 10. **Opportunity for comment.** Member carriers and other persons must be granted an opportunity to make oral or written statements respecting rate proposals to the collective ratemaking organization and its members.

Subp. 11. **Public meetings, votes; notice.** Meetings of the collective ratemaking organization discussing rate proposals must be open to the board and public. The collective ratemaking organization must divulge to a person upon request the vote cast by a member carrier on a rate proposal. The collective ratemaking organization shall give written notice of meetings to member carriers and the board mailed by first-class mail not less than five days before the meeting.

Subp. 12. **Quorum; voting.** At meetings of the collective ratemaking organization that involve a discussion of rates,

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charges, classifications, or rules, the organization shall establish a minimum quorum standard of 30 percent of the membership for general meetings and 30 percent of the membership of a committee for committee meetings. At all meetings the presence in person of the membership is necessary to establish quorum requirements and to transact business. Instead of personal attendance, members may vote by a written statement received before or at the commencement of the meeting. Each participating carrier must have one vote. A rate proposal must be approved if voted for by a simple majority of the carriers voting on the proposal, provided that quorum requirements are met before voting.

8900.0500 FINAL NOTICE OF APPROVAL OR DISAPPROVAL.

Upon finding that the agreement, bylaws, and rules of procedure of a collective ratemaking organization further the objectives of Minnesota Statutes, section 221.165 and after necessary amendments ordered by the board in connection with the provisionally approved agreement have been submitted, the board shall issue a final notice of approval or disapproval within six months from the date of filing the provisional agreement.

8900.0600 FILING TARIFF.

Upon approval of a rate proposal by a collective ratemaking organization under the agreement and procedures provisionally or finally approved by the board under part 8900.0400 or 8900.0500, a tariff must be filed with the commissioner of transportation under Minnesota Statutes, sections 221.041 and 221.161.

8900.0700 INDIVIDUAL NAME ON TARIFFS.

A member carrier of a collective ratemaking organization may prepare, at its own expense, tariffs bearing the member carrier's individual business name if the copies indicate that they are based on a tariff, specifying the number, that has been filed and that has become effective under Minnesota Statutes, sections 221.041 and 221.161, and this chapter.

8900.0800 INDIVIDUAL DEVIATIONS.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Motor carriers participating in collective ratemaking may petition the board for authority to deviate from collectively established rates, charges, and classifications, and rules relating to them. Suspensions of and complaints and protests against petitions for deviation, and hearings on them, must be processed under Minnesota Statutes, section 221.161. The board shall allow a carrier to deviate from the collectively established rates, charges, and classifications, and rules relating to them, if the board deems the proposed deviation to be just and reasonable and otherwise in accord with Minnesota Statutes, section 221.161.

8900.0900 BOARD MONITORS ACTIVITIES.

The board shall actively supervise the activities of each collective ratemaking organization. The supervision may include, without limitation, periodic field audits, attendance at scheduled meetings, and review of minutes from those meetings to the extent necessary to ensure compliance with board-approved collective ratemaking procedures.

8900.1000 EXEMPTION.

Subpart 1. **Request for exemption.** A carrier authorized by Minnesota Statutes, section 221.165 to engage in collective ratemaking may request that the board exempt its operations, or any part of its operations, by commodity or type of authority held, from the collective ratemaking procedures prescribed in this chapter, by filing with the board a written request. The written request must:

A. be executed by a duly authorized representative;

B. state that the carrier, from the date of the request and until the exemption is withdrawn in writing by the carrier or the board, will not engage in collective ratemaking with respect to its entire operations, a specified commodity, or type or types of authority held; and

C. set forth the reasons why exemption is sought.

Subp. 2. **Grant of exemption.** After considering the reasons set forth in the request, the board shall exempt the

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petitioning carrier from the collective ratemaking procedures prescribed in this chapter if it finds that:

A. the carrier will suffer no hardship in publishing its own rates and tariffs;

B. the grant will not conflict with the legislative purpose to be accomplished by board approval of collective ratemaking; and

C. the grant will be consistent with the public interest.

8900.1100 PENALTY FOR VIOLATION.

The failure of a motor carrier subject to rate regulation under Minnesota Statutes, chapter 221 to comply with this chapter may result in suspension or revocation of its certificate or permit under Minnesota Statutes, section 221.021, as well as other penalties provided for in Minnesota Statutes, chapter 221 and appropriate to the violations.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 22 1986
Joan Anderson Growe
Secretary of State
2:01 PM

APPROVED AS TO FORM AND LEGALITY
September 19 1986
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

RECOMMENDED CERTIFICATE OF AUTHORIZING RESOLUTION
FOR RULE WITHOUT A PUBLIC HEARING

Certificate of the
Minnesota Transportation Regulation Board
Authorizing Resolution.

I, Roger A. Laufenburger, do hereby certify that I am a member and the chairman, of the Minnesota Transportation Regulation Board (Board), a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 14th day of May, 1986, that a quorum was present, and that a majority of those present voted for a resolution which has not been rescinded or modified.

RESOLVED, that Roger A. Laufenburger, Chairman of the Transportation Regulation Board, is hereby granted the authority and directed to sign and to give the notice of the Board's proposed adoption of a rule without a public hearing governing rules for collective ratemaking by motor carriers to all persons who have registered their names with the Board for that purpose and publish the notice and rule in the State Register, and to perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd day of May, 1986.

Roger A. Laufenburger
Chairman
Transportation Regulation Board

ATTESTED BY:

Lorraine E. Mayasich
Board Member

IRCC 55700 /
A-85-505

The Board voted to approve the petition of Ronald Jerome Pierskalla dba R & N Trucking for irregular route common carrier permit to transport general commodities for the account of Bernatello's Pizza between Annandale, MN. on the one hand, and on the other, all points in Minnesota.

CC 8873, 56649 /
T-86-236

The Board voted to approve an ex parte order on the petition of Wenberg Transfer & Storage (Transferor) and Wenberg Transfer, Inc. (Transferee) to transfer contract carrier permit. Transferor, a father-son partnership, has formed a family-owned corporation. The stockholders of Transferee corporation are John L. Wenberg, his spouse Betty Jane Wenberg John L.'s son, John S. Wenberg, and his spouse Pamela Jean Wenberg.

CSC 26733, 56627 /
T-86-152

The Board voted to approve the joint petition of Landry Transfer, Inc. (Transferor) and Landry Transfer Co. (Corp.) (Transferee) to transfer courier services carrier permit held by Transferor.

IRCC 55746 /
A-85-614

The Board voted to approve the petition of Blue Lagoon Marina, Inc. for irregular route common carrier permit to transport boats, boat parts, engines and sub-assemblies to, from and between all points in Minnesota.

LCC 874 /
A-86-110

The Board voted to approve the petition of Independent Delivery Service for local cartage permit to transport advertising circulars, campaign literature, brochures, directories ar printed matter and product samples within the local cartage zone.

DISCUSSION ITEMS:

MAY 14/1986 MEETING

The Board voted to approve the Resolution to Publish in the State Register Notice of Proposed Adoption of Collective Ratemaking Rules by Motor Carriers Without a Public Hearing.

RRCC 70 /
MR-86-122

The Board voted to approve Confirmation of telephone authority to advance effective date of Package Excursion Fares to Minnesota Twins Baseball Games from June 6, 1986 to May 14, 1986, for Jefferson Lines, Inc. and Midland Lines, Inc.

There being no further business, the meeting was adjourned.

Roger A. Laufenburger, Chairman

Approved of Record

May 21 1986

Lorraine E. Mayasich, Board Member

John E. Moran, Board Member

Office of the Revisor of Statutes
Administrative Rules

Ron Ray
Assistant Revisor
296-0945

700 State Office Building
435 Park Street
St. Paul, MN 55155

June 4, 1986

SE021

(without [illegible] for voting)

RECEIVED
JUN 17 1986
MINNESOTA TRANSPORTATION REGULATION BOARD

Jerome E. Pedersen
Transportation Regulation Board
795 American Center Building
Saint Paul, Minnesota

RE: AR0928 Motor Carrier Collective Ratemaking

Dear Mr. Pedersen:

Enclosed is a stripped copy of your proposed rules as published in the State Register. The copy shows the text of the rules as you proposed them with the stricken text deleted and the underscoring removed.

If your proposed emergency rules or proposed rules adopted without public hearing are adopted without modification, please submit the required number of copies of this document to the Attorney General for final approval. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will then input the changes, approve the document as to form, and provide you with copies to submit to the Attorney General.

If your proposed rules are adopted after public hearing without modification, please submit one copy of this document to our office for final approval as to form. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will input the changes, approve the document as to form, and provide you with copies.

Very truly yours,

RR/cg

Ron Ray

RR/JP
Encl.

Transportation Regulation Board

Proposed Rules Relating to Motor Carrier Collective Ratemaking

RECEIVED
MAY 5 1986
MINNESOTA TRANSPORTATION REGULATION BOARD

Rules as Proposed (all new material)

8900.0100 DEFINITIONS.

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or arrangement between the carriers and published in a single tariff under proper concurrence of the transportation lines over which the rate applies.

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Subp. 9. **Rate proposal.** "Rate proposal" means a proposed rate, charge, rule, or classification to be published for the account of a proponent carrier and other participating carriers concurring in the proposal.

Subp. 10. **Tariff.** "Tariff" means a published schedule showing the rates, fares, charges, classifications, rules, regulations, and other provisions applying to transportation and incidental services.

8900.0200 PURPOSE.

To ensure that rates and charges for shippers and receivers are nondiscriminatory, to ensure that joint through interline service is continued, to ensure that just and reasonable rates and charges are published and maintained under uniform, reasonably related rate structures, and to promote efficiency in establishing, submitting, and considering rate proposals, motor carriers subject to rate regulation under Minnesota Statutes, chapter 221, unless exempted under part 8900.1000, shall collectively establish, maintain, and publish schedules of rates, charges, and classifications, and rules and practices relating to them, in joint agency tariffs covering their transportation service under Minnesota Statutes, section 221.165 and this chapter.

8900.0300 GENERAL DUTIES.

Subpart 1. **Motor carrier participation.** Motor carriers subject to rate regulation under Minnesota Statutes, chapter 221, unless exempted under part 8900.1000, shall participate in collective ratemaking organizations for collectively establishing, maintaining, and publishing joint or single line schedules of rates, charges, and classifications, and rules and

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practices relating to them, covering their transportation service.

Subp. 2. **Submission to board.** A collective ratemaking organization established under this chapter shall establish and submit to the board for its approval, procedures for jointly considering, initiating, establishing, maintaining, and publishing rates, charges, and classifications, and rules and practices relating to them.

8900.0400 PROVISIONAL APPROVAL REQUIREMENTS.

Subpart 1. **Board approval.** A collective ratemaking agreement, and the bylaws and rules of procedure of a collective ratemaking organization established or continued under that agreement, must be filed with and approved by the board. The board shall provisionally approve initial filings that conform generally to the requirements in subparts 2 to 12.

Subp. 2. **Identification.** Each carrier that is a party to the agreement must be identified by name, mailing address, and telephone number.

Subp. 3. **Rate proposal discussion, vote.** All member carriers must be allowed to discuss a docketed rate proposal, but only those carriers with authority to participate in the type of transportation service covered by the rate proposal may vote on the proposal.

Subp. 4. **Right of independent action.** Participating carriers in a collective ratemaking organization have the right of independent action and must be permitted to docket a rate proposal relating to them or to withdraw from the collective ratemaking organization. An agreement or action by or between two or more participating carriers to not exercise the right of independent action or to boycott, coerce, or intimidate a participating carrier from exercising its right of independent action is prohibited.

Subp. 5. **Notice of rate proposals.** Notice of rate proposals must be given in a joint docket bulletin that is furnished to the board, to carriers participating in the

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collective ratemaking organization, and to persons who subscribe to the bulletin.

Subp. 6. **Tariff items published for account of motor carrier.** The collective ratemaking organization must not be allowed to protest or complain of tariff items published for the account of a motor carrier.

Subp. 7. **Computing composite expense level.** Revenues and expenses of carriers participating in a rate proposal must be considered in forming a composite expense level used in arriving at a uniform rate level applicable to any defined group of carriers.

Subp. 8. **Employee restrictions.** Employees of the collective ratemaking organization are prohibited from docketing or voting upon a proposal affecting a change in a tariff published by or for the account of a member carrier.

Subp. 9. **Disclosure of names of proponents.** The collective ratemaking organization must divulge to a person upon request the names of proponents of a rate proposal docketed in that organization.

Subp. 10. **Opportunity for comment.** Member carriers and other persons must be granted an opportunity to make oral or written statements respecting rate proposals to the collective ratemaking organization and its members.

Subp. 11. **Public meetings, votes; notice.** Meetings of the collective ratemaking organization discussing rate proposals must be open to the board and public. The collective ratemaking organization must divulge to a person upon request the vote cast by a member carrier on a rate proposal. The collective ratemaking organization shall give written notice of meetings to member carriers and the board mailed by first-class mail not less than five days before the meeting.

Subp. 12. **Quorum; voting.** At meetings of the collective ratemaking organization that involve a discussion of rates, charges, classifications, or rules, the organization shall establish a minimum quorum standard of 30 percent of the membership for general meetings and 30 percent of the membership

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OFFICE BY:

of a committee for committee meetings. At all meetings the presence in person of the membership is necessary to establish quorum requirements and to transact business. Instead of personal attendance, members may vote by a written statement received before or at the commencement of the meeting. Each participating carrier must have one vote. A rate proposal must be approved if voted for by a simple majority of the carriers voting on the proposal, provided that quorum requirements are met before voting.

8900.0500 FINAL NOTICE OF APPROVAL OR DISAPPROVAL.

Upon finding that the agreement, bylaws, and rules of procedure of a collective ratemaking organization further the objectives of Minnesota Statutes, section 221.165 and after necessary amendments ordered by the board in connection with the provisionally approved agreement have been submitted, the board shall issue a final notice of approval or disapproval within six months from the date of filing the provisional agreement.

8900.0600 FILING TARIFF.

Upon approval of a rate proposal by a collective ratemaking organization under the agreement and procedures provisionally or finally approved by the board under part 8900.0400 or 8900.0500, a tariff must be filed with the commissioner of transportation under Minnesota Statutes, sections 221.041 and 221.161.

8900.0700 INDIVIDUAL NAME ON TARIFFS.

A member carrier of a collective ratemaking organization may prepare, at its own expense, tariffs bearing the member carrier's individual business name if the copies indicate that they are based on a tariff, specifying the number, that has been filed and that has become effective under Minnesota Statutes, sections 221.041 and 221.161, and this chapter.

8900.0800 INDIVIDUAL DEVIATIONS.

Motor carriers participating in collective ratemaking may petition the board for authority to deviate from collectively established rates, charges, and classifications, and rules

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relating to them. Suspensions of and complaints and protests against petitions for deviation, and hearings on them, must be processed under Minnesota Statutes, section 221.161. The board shall allow a carrier to deviate from the collectively established rates, charges, and classifications, and rules relating to them, if the board deems the proposed deviation to be just and reasonable and otherwise in accord with Minnesota Statutes, section 221.161.

8900.0900 BOARD MONITORS ACTIVITIES.

The board shall actively supervise the activities of each collective ratemaking organization. The supervision may include, without limitation, periodic field audits, attendance at scheduled meetings, and review of minutes from those meetings to the extent necessary to ensure compliance with board-approved collective ratemaking procedures.

8900.1000 EXEMPTION.

Subpart 1. **Request for exemption.** A carrier authorized by Minnesota Statutes, section 221.165 to engage in collective ratemaking may request that the board exempt its operations, or any part of its operations, by commodity or type of authority held, from the collective ratemaking procedures prescribed in this chapter, by filing with the board a written request. The written request must:

A. be executed by a duly authorized representative;

B. state that the carrier, from the date of the request and until the exemption is withdrawn in writing by the carrier or the board, will not engage in collective ratemaking with respect to its entire operations, a specified commodity, or type or types of authority held; and

C. set forth the reasons why exemption is sought.

Subp. 2. **Grant of exemption.** After considering the reasons set forth in the request, the board shall exempt the petitioning carrier from the collective ratemaking procedures prescribed in this chapter if it finds that:

A. the carrier will suffer no hardship in publishing

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its own rates and tariffs;

B. the grant will not conflict with the legislative purpose to be accomplished by board approval of collective ratemaking; and

C. the grant will be consistent with the public interest.

8900.1100 PENALTY FOR VIOLATION.

The failure of a motor carrier subject to rate regulation under Minnesota Statutes, chapter 221 to comply with this chapter may result in suspension or revocation of its certificate or permit under Minnesota Statutes, section 221.021, as well as other penalties provided for in Minnesota Statutes, chapter 221 and appropriate to the violations.

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OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD928

Agency: Transportation Regulation Board

Division:

Agency Contact: Jerome E. Pedersen
Rate Director

Minnesota Rules: Parts 8900.0100 to 8900.1100

Title: Proposed Rules Relating to Motor Carrier Collective Ratemaking

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Ron Ray
Assistant Revisor
Phone: 296-0945
Date: April 29, 1986

MINNESOTA TRANSPORTATION REGULATION BOARD

PROPOSED RULES RELATING TO
COLLECTIVE RATEMAKING BY REGULATED MOTOR CARRIERS

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Transportation Regulation Board (Board) proposes to adopt the above-captioned rules without a public hearing. The Board has determined that the proposed adoption of these rules will be non-controversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.22-14.28 (1984).

Persons or groups interested in these rules shall have 30 days to submit comments on the proposed rules. Comments in support of or in opposition to the proposed amendments are encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by data and views submitted to the Board and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed rules within the 30 day comment period. If a public hearing is required, the Board will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reasons for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Jerome E. Pedersen, Rate Director
Transportation Regulation Board
254 Livestock Exchange Bldg.
100 Stockyards Road
South St. Paul, Minnesota 55075
Telephone: 612/296-2349

Authority for adoption of these rules is contained in Minn. Stat. § 174A.02 (1984) and Minn. Stat. § 221.165 (1984). A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules, identifies the data and information relied on to support the proposed rules and assesses the impact of the proposed rules on small businesses has been prepared and is available from Mr. Pedersen upon request at the above address.

Pursuant to Minn. Stat. § 14.115 subdivision 4 (1984), the impact that the proposed rule will have on small businesses has been considered by the Board. The Board's position is contained in the Statement of Need and Reasonableness. Any person who desires to comment on the impact the proposed rule will have on small business may do so by contacting Mr. Pedersen.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the statement of need and reasonableness, all the written comments and requests for hearing received, and the final rules as adopted will be delivered to the Attorney General. The rules will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the rules and the existence of a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the rules as originally proposed, or who wish to obtain a final copy of the rules as adopted, should submit a request to Mr. Pedersen at the above address. The text of the proposed rules follows this notice in the State Register. These rules have two purposes: a) insuring non-discriminatory rates and charges for transportation services provided to shippers and receivers; and b) preserving and continuing intrastate collective ratemaking by immunizing the collective activity of Minnesota motor carriers from federal antitrust laws.

One free copy of the proposed rules may be obtained by contacting Mr. Pedersen at the above address or by calling (612) 296-2349.

Transportation Regulation Board

Roger A. Laufenburger
Chairman

CR-85-245-
T-8000

Transportation Regulation Board

Proposed Rules Relating to Motor Carrier Collective Ratemaking

Rules as Proposed (all new material)

8900.0100 DEFINITIONS.

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

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

Subp. 3. **Collective ratemaking.** "Collective ratemaking" means the joint consideration and establishment of rates, charges, and classifications, and rules related to them, by two or more carriers subject to rate regulation under Minnesota Statutes, chapter 221.

Subp. 4. **Collective ratemaking organization.** "Collective ratemaking organization" means an organization or association of two or more carriers engaged in collective ratemaking for publishing rates, charges, and classifications, and rules related to them. Administrative activities of the collective ratemaking organization are at the express direction of participating carriers. Carriers who are members of a trade association, tariff publishing bureau, or similar organization may establish one or more collective ratemaking organizations within that association, bureau, or organization.

Subp. 5. **Docketing.** "Docketing" means submitting a rate proposal to the collective ratemaking organization.

Subp. 6. **Joint docket bulletin.** "Joint docket bulletin" means a periodic listing of rate proposals submitted to the collective ratemaking organization for consideration by member carriers and other interested parties.

Subp. 7. **Joint line rate.** "Joint line rate" means a rate applicable from a point located on one transportation line to a point located on another transportation line, made by agreement or arrangement between the carriers and published in a single tariff under proper concurrence of the transportation lines over which the rate applies.

Subp. 8. **Single line rate.** "Single line rate" means a rate applicable from origin to destination over the lines of one carrier.

Subp. 9. **Rate proposal.** "Rate proposal" means a proposed rate, charge, rule, or classification to be published for the account of a proponent carrier and other participating carriers concurring in the proposal.

Subp. 10. **Tariff.** "Tariff" means a published schedule showing the rates, fares, charges, classifications, rules, regulations, and other provisions applying to transportation and incidental services.

8900.0200 PURPOSE.

To ensure that rates and charges for shippers and receivers are nondiscriminatory, to ensure that joint through interline service is continued, to ensure that just and reasonable rates and charges are published and maintained under uniform, reasonably related rate structures, and to promote efficiency in establishing, submitting, and considering rate proposals, motor carriers subject to rate regulation under Minnesota Statutes, chapter 221, unless exempted under part 8900.1000, shall collectively establish, maintain, and publish schedules of rates, charges, and classifications, and rules and practices relating to them, in joint agency tariffs covering their transportation service under Minnesota Statutes, section 221.165 and this chapter.

8900.0300 GENERAL DUTIES.

Subpart 1. **Motor carrier participation.** Motor carriers subject to rate regulation under Minnesota Statutes, chapter 221, unless exempted under part 8900.1000, shall participate in collective ratemaking organizations for collectively establishing, maintaining, and publishing joint or single line schedules of rates, charges, and classifications, and rules and practices relating to them, covering their transportation service.

Subp. 2. **Submission to board.** A collective ratemaking organization established under this chapter shall establish and submit to the board for its approval, procedures for jointly considering, initiating, establishing, maintaining, and publishing rates, charges, and classifications, and rules and practices relating to them.

8900.0400 PROVISIONAL APPROVAL REQUIREMENTS.

Subpart 1. **Board approval.** A collective ratemaking agreement, and the bylaws and rules of procedure of a collective ratemaking organization established or continued under that agreement, must be filed with and approved by the board. The board shall provisionally approve initial filings that conform generally to the requirements in subparts 2 to 12.

Subp. 2. **Identification.** Each carrier that is a party to the agreement must be identified by name, mailing address, and telephone number.

Subp. 3. **Rate proposal discussion, vote.** All member carriers must be allowed to discuss a docketed rate proposal, but only those carriers with authority to participate in the type of transportation service covered by the rate proposal may vote on the proposal.

Subp. 4. **Right of independent action.** Participating carriers in a collective ratemaking organization have the right of independent action and must be permitted to docket a rate proposal relating to them or to withdraw from the collective ratemaking organization. An agreement or action by or between two or more participating carriers to not exercise the right of independent action or to boycott, coerce, or intimidate a participating carrier from exercising its right of independent action is prohibited.

Subp. 5. **Notice of rate proposals.** Notice of rate proposals must be given in a joint docket bulletin that is furnished to the board, to carriers participating in the collective ratemaking organization, and to persons who subscribe to the bulletin.

Subp. 6. **Tariff items published for account of motor carrier.** The collective ratemaking organization must not be allowed to protest or complain of tariff items published for the account of a motor carrier.

Subp. 7. **Computing composite expense level.** Revenues and expenses of carriers participating in a rate proposal must be considered in forming a composite expense level used in arriving at a uniform rate level applicable to any defined group of carriers.

Subp. 8. **Employee restrictions.** Employees of the collective ratemaking organization are prohibited from docketing or voting upon a proposal affecting a change in a tariff published by or for the account of a member carrier.

Subp. 9. **Disclosure of names of proponents.** The collective ratemaking organization must divulge to a person upon request the names of proponents of a rate proposal docketed in that organization.

Subp. 10. **Opportunity for comment.** Member carriers and other persons must be granted an opportunity to make oral or written statements respecting rate proposals to the collective ratemaking organization and its members.

Subp. 11. **Public meetings, votes; notice.** Meetings of the collective ratemaking organization discussing rate proposals must be open to the board and public. The collective ratemaking organization must divulge to a person upon request the vote cast by a member carrier on a rate proposal. The collective ratemaking organization shall give written notice of meetings to member carriers and the board mailed by first-class mail not less than five days before the meeting.

Subp. 12. **Quorum; voting.** At meetings of the collective ratemaking organization that involve a discussion of rates, charges,

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

classifications, or rules, the organization shall establish a minimum quorum standard of 30 percent of the membership for general meetings and 30 percent of the membership of a committee for committee meetings. At all meetings the presence in person of the membership is necessary to establish quorum requirements and to transact business. Instead of personal attendance, members may vote by a written statement received before or at the commencement of the meeting. Each participating carrier must have one vote. A rate proposal must be approved if voted for by a simple majority of the carriers voting on the proposal, provided that quorum requirements are met before voting.

8900.0500 FINAL NOTICE OF APPROVAL OR DISAPPROVAL.

Upon finding that the agreement, bylaws, and rules of procedure of a collective ratemaking organization further the objectives of Minnesota Statutes, section 221.165 and after necessary amendments ordered by the board in connection with the provisionally approved agreement have been submitted, the board shall issue a final notice of approval or disapproval within six months from the date of filing the provisional agreement.

8900.0600 FILING TARIFF.

Upon approval of a rate proposal by a collective ratemaking organization under the agreement and procedures provisionally or finally approved by the board under part 8900.0400 or 8900.0500, a tariff must be filed with the commissioner of transportation under Minnesota Statutes, sections 221.041 and 221.161.

8900.0700 INDIVIDUAL NAME ON TARIFFS.

A member carrier of a collective ratemaking organization may prepare, at its own expense, tariffs bearing the member carrier's individual business name if the copies indicate that they are based on a tariff, specifying the number, that has been filed and that has become effective under Minnesota Statutes, sections 221.041 and 221.161, and this chapter.

8900.0800 INDIVIDUAL DEVIATIONS.

Motor carriers participating in collective ratemaking may petition the board for authority to deviate from collectively established rates, charges, and classifications, and rules relating to them. Suspensions of and complaints and protests against petitions for deviation, and hearings on them, must be processed under Minnesota Statutes, section 221.161. The board shall allow a carrier to deviate from the collectively established rates, charges, and classifications, and rules relating to them, if the board deems the proposed deviation to be just and reasonable and otherwise in accord with Minnesota Statutes, section 221.161.

8900.0900 BOARD MONITORS ACTIVITIES.

The board shall actively supervise the activities of each collective ratemaking organization. The supervision may include, without limitation, periodic field audits, attendance at scheduled meetings, and review of minutes from those meetings to the extent necessary to ensure compliance with board-approved collective ratemaking procedures.

8900.1000 EXEMPTION.

Subpart 1. **Request for exemption.** A carrier authorized by Minnesota Statutes, section 221.165 to engage in collective ratemaking may request that the board exempt its operations, or any part of its operations, by commodity or type of authority held, from the collective ratemaking procedures prescribed in this chapter, by filing with the board a written request. The written request must:

A. be executed by a duly authorized representative;

B. state that the carrier, from the date of the request and until the exemption is withdrawn in writing by the carrier or the board, will not engage in collective ratemaking with respect to its entire operations, a specified commodity, or type or types of authority held; and

C. set forth the reasons why exemption is sought.

Subp. 2. **Grant of exemption.** After considering the reasons set forth in the request, the board shall exempt the petitioning carrier from the collective ratemaking procedures prescribed in this chapter if it finds that:

A. the carrier will suffer no hardship in publishing its own rates and tariffs;

B. the grant will not conflict with the legislative purpose to be accomplished by board approval of collective ratemaking; and

C. the grant will be consistent with the public interest.

8900.1100 PENALTY FOR VIOLATION.

The failure of a motor carrier subject to rate regulation under Minnesota Statutes, chapter 221 to comply with this chapter may result in suspension or revocation of its certificate or permit under Minnesota Statutes, section 221.021, as well as other penalties provided for in Minnesota Statutes, chapter 221 and appropriate to the violations.

STATEMENT OF NEED AND REASONABLENESS
IN SUPPORT OF COLLECTIVE RATEMAKING RULES

The purposes of these rules are to ensure nondiscriminatory rates and charges for shippers and receivers, and to preserve and continue collective ratemaking in Minnesota by immunizing the collective activity of Minnesota motor carriers from federal antitrust laws. These rules also effectuate Minn. Stat. § 221.165 (1984).

Joint consideration of rates and charges is necessary to provide an orderly rate system. Without collectively set rates shippers and receivers would be subject to a veritable patchwork of charges and rates which would involve hundreds of individual tariff filings in lieu of agency tariffs filed for account of all participating carriers. Other justifications for collective ratemaking include the following:

1. Collective ratemaking is a practical way for the state to effectively regulate in the public interest the level of motor carrier rates and the relationship of rates to each other.

2. Collective ratemaking may prevent, or at least minimize, the damaging effects upon the economy of serious discrimination in the prices paid for motor carrier service by large and small shippers who are in competition with each other.

3. Collective ratemaking will help to preserve a well-coordinated network of motor carrier service required for efficient and expeditious distribution of the vast variety of goods which move to and from every corner of the economy by truck.

4. Collective ratemaking helps assure the degree of rate stability and certainty that producers, shippers and distributors must have in order to plan current and projected production and marketing operations efficiently.

5. Collective ratemaking provides a method by which shippers are involved in monitoring and influencing the ratemaking process.

These justifications are taken from J. J. Friedman, Collective Ratemaking by Motor Common Carriers: Economic and Public Policy Considerations, 10 Transp. L. J. 33 (1978)

Under collective ratemaking, rates are established by joint consideration of the motor carriers holding authority to provide transportation services in a particular territory. Collective pricing action by competitors would, under ordinary circumstances, violate the antitrust laws. However, collective ratemaking by motor carriers regulated by the Interstate Commerce Commission is exempt from Federal Antitrust Laws (i.e., Sherman Antitrust Act and Clayton Act) by virtue of the Reed-Bulwinkle Act of 1948, codified in 49 U.S.C. 10706, as long as such carriers participate in an I.C.C. approved ratemaking agreement.

Collective ratemaking in Minnesota has been viewed as exempt from state antitrust laws by Minn. Stat. § 325D.55, subd. 2 (1984); however, such collective activity has been viewed by the U. S. Department of Justice as a violation of federal antitrust laws. In United States v. Southern Motor Carriers Rate Conference, Inc., et al., 467 F.Supp.1 (N.D.Ga.1979); aff'd, 672 F.2d 471 (5th Cir. 1982); aff'd en banc, 702 F.2d 532 (5th Cir. 1983) ("Southern Motor Carriers Rate Conference") the United States Department of Justice successfully enjoined the collective ratemaking activities of three motor carrier rate bureaus representing common carriers before regulatory commissions in the states of Alabama, Georgia, Mississippi, North Carolina and Tennessee. The United States District Court for the Northern District of Georgia found that the practice of collective ratemaking constituted a per se violation of the Sherman Antitrust Act. That decision was upheld by a three-judge panel and by the Court sitting en banc. The United States Supreme Court granted certiorari in this case. 467 U.S. 1240 (June 11, 1984). The Southern Motor Carriers Rate Conference case established several standards that would qualify an intrastate collective ratemaking procedure for exemption from federal antitrust laws under the state action doctrine enunciated in Parker v. Brown, 317 U.S. 341, 63 S.Ct. 307 (1943). The collective activity must be:

(1) compelled by the state,

(2) "clearly articulated and affirmatively expressed as state policy", and

(3) "actively supervised by the state."

On March 27, 1985, the United States Supreme Court, in a 7-2 decision, ruled that the intrastate ratemaking activities of Southern Motor Carriers Rate Conference (SMCRC) and North Carolina Motor Carriers Assn. (NCMCA) in Georgia, Mississippi, North Carolina and Tennessee are immune from the Federal antitrust laws by virtue of the "state action" doctrine. The United States v. Southern Motor Carriers Rate Conference, Inc. et al., 105 S. Ct. 1721 (1985). The compulsion prong of the earliest decision was removed; however, the remaining two prong test was still ruled to be necessary in order to qualify for an antitrust exemption:

1. The challenged restraint must be one clearly articulated and affirmatively expressed as state policy.

2. The state must supervise actively any private anticompetitive conduct.

After Southern Motor Carriers Rate Conference, the legislature, in an effort to preserve and continue collective ratemaking in Minnesota enacted Minn. Laws 1983, Ch. 256 § 1, codified as Minn. Stat. § 221.165 (1984), to immunize intrastate ratemaking. These rules implement Minn. Stat. § 221.165 (1984) and further clarify that collective ratemaking in the state of Minnesota is:

(1) "clearly articulated and affirmatively expressed as state policy," and

(2) "actively supervised by the state."

8900.0300 General Duties of Motor Carriers

Subpart 1. This subpart requires all motor carriers subject to rate regulation to participate in collective ratemaking as required by Minn. Stat. § 221.165 (1984). The latter statute also confirms the fact that collective ratemaking is "clearly articulated and affirmatively expressed as state policy."

Subpart 2. Minn. Stat. § 221.165 (1984) also requires that collective ratemaking procedures be submitted to the Board for approval. Parker v. Brown also requires that collective activity be "actively supervised" by states to qualify for state action immunity. The review and approval of collective ratemaking procedures by the Board establishes active supervision of collective ratemaking in Minnesota. Thus, this subpart accomplishes the supervisory requirement of Parker v. Brown.

8900.0400 Filing Requirements

Subpart 1. Provisional Approval. For the purpose of implementing Minn. Stat. § 221.165 (Supp. 1983) without further delay, it is proposed that the Board will provisionaly approve initial collective ratemaking procedures filed by collective ratemaking organizations provided they conform generally to requirements set forth in Subparts 2 to 12 of the proposed rule. The Board's authority for granting provisional approval is in part Minn. Stat. § 174A.02, subd. 1 (1984). Under Parker v. Brown, collective activity must be "clearly articulated and affirmatively expressed" as state policy. This section also further exemplifies active supervision by the state as required by Parker v. Brown.

Subp. 2. Each carrier must be specifically identified in order for the Board to verify that the carrier possesses Minnesota intrastate operating authority and the extent of such authority to serve the public.

Subp. 3. Member carriers must be allowed to discuss any proposal docketed, but only those carriers with authority to participate in the transportation may vote on the proposal. The reason for this rule is to prevent frivolous voting by carriers, either in favor of or against rate proposals, when those carriers do not have appropriate authority to participate in the movement.

Subp. 4. The right of independent action must be guaranteed in any collective ratemaking organization, and beyond that, carriers are prohibited from any activity which may prevent another carrier from exercising its right of independent action.

Subp. 5. Notice of carrier proposals must be given in a joint docket bulletin in order that other carriers, the Board, and other persons who subscribe to the bulletin may be in a position to respond to the proposed action as they deem appropriate.

Subp. 6. The organization must not be allowed to protest or complain of tariff proposals submitted by member carriers. The reason for this rule is obvious. The organization is merely an administrative body acting only at the direction of its participating carriers. This rule is also present in interstate agreements.

Subp. 7. Revenues and expenses of participating carriers in any rate structure must be ascertained in arriving at collectively set rates. Both MMFB and MTSA agree on this principle, as required in Minn. Stat. 221.165, but still does not preclude the right of independent action by a member carrier to establish a rate deviating from the collectively set rate, in accordance with procedures set forth in these rules (8900.0800).

Subp. 8. Employees of the organization are prohibited from docketing or voting upon a proposal resulting in a change in carriers rates. The employees may only act at the express direction of the carriers, and then must further observe the rules of procedure prescribed herein. Interstate agreements contain similar language.

Subp. 9 and 10. The organization must divulge the name of the proponent carrier submitting docket proposals. This will insure that the proposal came from a specific carrier and not from an unnamed source, and will enable an interested person to respond to the proposal prior to final action on the proposal.

Subp. 11. Meetings of the organization discussing rates, charges, rules or classifications must be open to the public, and any person has the right to ascertain how a member carrier voted on proposals listed in the docket bulletin.

Subp. 12. The minimum quorum standard of 30% of the membership for general meetings and 30% of the membership of a committee for committee meetings are the same as prescribed by the ICC for interstate agreements. These standards will assure meaningful representation on voting and prevent abuse in voting which might result from a small group voting consistently in a manner which may or may not be in attune with the wishes of the majority. It also prevents the voting from being dominated by large carriers. The rule requires the presence in person of said membership in order to establish quorum requirements. Members may vote by a written statement received prior to or at the commencement of the meeting, provided that quorum requirements are met prior to voting.

8900.0500. Final notice of approval or disapproval. The Board must take final action on collective ratemaking agreements filed within six months from the date of filing the provisional agreement. This means that during the interim period, the Board will notify the ratemaking organization of any

necessary changes in order to meet the standards set forth in Subparts 2 to 12. If the Board deems the standards have been met, the organization will receive final approval. If the organization does not respond to Board directives for amendments to the proposed agreement, or fails to fully satisfy suggested changes by the Board, the ratemaking agreement will not be approved, and the organization shall be notified of this action.

8900.0600. Filing of Tariffs. When a rate proposal is approved by a collective ratemaking organization, the proposal will then be published in a tariff and filed with the Commissioner of Transportation in accordance with Minnesota Statutes, Section 221.041 and 221.161. (1984)

8900.0700 Individual Name on Tariffs

Under the concept of collective ratemaking, the organization issues an agency tariff applicable to the carriers participating therein. Some carriers prefer to issue tariffs in their own name. This rule allows that practice, provided that the carrier indicates the individual tariff is based on a tariff filed with and approved by the Board pursuant to the ratemaking agreement in which the carrier participates.

8900.0800 Individual Deviations

The right of independent action will necessarily result in some deviations from the collectively set rates. In the case of regular route common carriers and petroleum carriers, present Minn. Stat. 221.041 requires all rate changes to be approved by the Board prior to publication in a tariff. The Board approves or disapproves such rate changes on a regular basis at the present time.

Permit carriers are authorized to publish rate changes under Minn. Stat. 221.161 on ten days' notice, subject to complaint, suspension or rejection, as provided for in that statute. Minn. Stat. § 174A.02 (1984) and Minn. Stat. § 221.165 (1984) requires that this rule contain a provision permitting a carrier to deviate from the collectively set rate.

8900.0900 Board Monitors Activities

The Board shall actively supervise the activities of each ratemaking organization by means of field audits, attending scheduled meetings and review of minutes from prior meetings. This provision also serves as fulfiling one of the tests of the state action doctrine by means of the collective activity being "actively supervised by the state."

8900.1000 Exemption

Any carrier authorized by Minnesota Statutes, section 221.165 to engage in collective ratemaking may request the Board to exempt its operations, or any part thereof, by commodity or type of authority held from the prescribed ratemaking procedures. The Southern Motor Carriers Rate Conference case provides that a state may exempt a specific subclass of carriers from regulation or may predetermine a set amount or type of activity

that may remain in the free market. As a result of the United States Supreme Court decision in the Southern Motor Carriers Rate Conference case, the compulsion aspect of collective ratemaking has been removed as a precondition for carriers to accomplish federal antitrust immunity for intrastate collective ratemaking.

Participating in a collective ratemaking organizaion involves an expense to the carrier, in the form of membership fees as well as tariff publishing costs. Small carriers with limited operations who do not need the services performed by a collective ratemaking organization should not be forced to join such an organization. While all common carrier rates are open to public inspection in the office of Minnesota Department of Transportation, certain carriers, large or small, have no interest in their competitor's rates, and seek only to publish their own rates, without regard to other carrier rate structures.

For those carriers, immunity from federal antitrust laws is unnecessary. Forcing these carriers to engage in anticompetitive behavior is repugnant to the purposes of Minnesota Statutues Chapter 221 and is inconsistent with public policy.

These carriers do not discuss their rates with any other carriers, nor do they desire other carriers to utilize their rates or influence their rates in any manner. In this kind of setting, it would be inconsistent with Public Policy to force anticompetitive behavior on carriers who have no need for immunity from federal antitrust laws. It would also be inconsistent with Chapter 221, which mandates that any tariff changes for regular route common carriers or petroleum carriers must receive Board approval prior to publication. Permit carriers, by statute, are authorized to permissively file their rates, subject to rejection, suspension or complaint, as set forth in Minn. Stat. 221.161.

Rule 8900.1100 Penalty for Violation

This rule, once adopted, will have the force and effect of law. Failure to comply with the motor carrier duties and responsibilities described in this rule is tantamount to a failure to comply with other motor carrier law. Therefore, the Board may penalize a motor carrier who fails to comply with this rule as it would a motor carrier who fails to comply with other motor carrier law.

This section is necessary to ensure compliance. Informing motor carriers that penalties may result for failure to comply will aid in obtaining compliance.

The Board's authority for exercising the control and supervision described by this section is contained in Minn. Stat. § 174A.02 Subd. 1 (1984).

COLLECTIVE RATEMAKING RULE
IMPACT ON SMALL BUSINESS

Pursuant to Minn. Stat. 14.115 SMALL BUSINESS CONSIDERATIONS IN RULEMAKING, the Minnesota Transportation Regulation Board submits the following:

Subd. 2 IMPACT ON SMALL BUSINESS "(a) The establishment of less stringent compliance or reporting requirements for small business."

The proposed rule is not applicable to any small business except motor carriers under regulation of the Transportation Regulation Board (TRB). All carriers, large and small, must be treated alike in order to achieve the benefits of anti-trust immunity afforded by Minn. Stat. 221.165 and the rule implementing this statute.

"(b) The establishment of less stringent schedules or deadline for compliance or reporting requirements for small business." Same response as given for (a).

"(c) The consolidation or simplification of compliance or reporting requirements for small businesses." The filing of an annual financial report is a current rule requirement which is not involved herein. The only reporting requirement contained in the proposed Rules is that any collective ratemaking agreement filed by any organization or association of two or more carriers engaged in collective ratemaking must be filed with and approved by the Board.

"(d) The establishment of performance standards for small business to replace design or operational standards required in the rule." Not applicable, as the obligation of submitting appropriate collective ratemaking procedures to the TRB for approval lies with the rate bureau organization.

"(e) The exemption of small businesses from any or all requirements of the rule." The proposed rule requires all motor carriers under jurisdiction of the TRB to participate in a rate bureau organization in order to have the protection of anti-trust immunity in collective ratemaking, which stems from certain outstanding court orders. The rule does provide for any carrier, large or small, to petition the TRB for deviation from any collectively set rate or to petition for exemption from all aspects of the rule.

"Subd. 3 FEASIBILITY. The agency shall incorporate into the proposed rule or amendment any of the methods specified under Subdivision 2 that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking."

None of the methods specified under Subdivision 2 would be feasible in this rule. In fact, treating motor carriers differently on the basis of the definition of small business would be contrary to the statutory objectives that are the basis of the proposed rulemaking. Minn. Stat. 221.165 states that all motor carriers subject to rate regulation under Chapter 221 are required to comply with the ratemaking procedure. As stated earlier, the proposed rules do provide for deviation for exemption from the rule requirements under certain circumstances.

"Subd. 4 SMALL BUSINESS PARTICIPATION IN RULEMAKING. In addition to the requirements under Section 14.14, the agency shall provide an opportunity for small businesses to participate in the rulemaking process, utilizing one or more of the following methods:

(a) The inclusion in any advance notice of proposed rulemaking of a statement that the rule will have an impact on small businesses which shall include a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons; or

(b) The publication of a notice of the proposed rulemaking in publications likely to be obtained by small businesses that would be affected by the rule; or

(c) The direct notification of any small business that may be affected by the rule; or

(d) The conduct of public hearings concerning the impact of the rule on small businesses.

The only quantitative or qualitative impact would be on motor carriers regulated by TRB. The proposed rule is designed to retain the status quo as to how motor carriers will continue to provide service to shippers and receivers in Minnesota.

In regard to the publication of a notice of the proposed rulemaking, the TRB utilized the following methods:

1. Direct notice to 64 parties registered at Transportation Regulation Board as interested parties for rulemaking proceedings, including transportation-interested parties.

2. An additional 13 parties interested in transportation matters, including tariff publishing officers.

3. Notice of Intent to Solicit Outside Opinion Regarding New Rules to Implement Collective Ratemaking Procedures for Motor Carriers was published in the State Register and the TRB Weekly Calendar of Notices.

4. The draft of the proposed rule was sent to all parties who wished to be notified, resulting from our Notice of Intent to Solicit Outside Opinion, and in addition, the Rule Draft was sent to Mr. Mike Hickey, Director of the local chapter of the National Federation of Independent Businesses, representing 19,000 members in Minnesota.

"Subd. 7 APPLICABILITY."

The rule at issue affects only motor carriers under the jurisdiction of the Transportation Regulation Board, and in that context would apply only to those motor carriers coming within the purview of the small business definition.

In summary, we do not believe that the proposed rule will have an adverse effect on small business. To the contrary, we believe that the rule will provide anti-trust immunity for large and small motor carriers alike, and will allow these motor carriers to continue serving all shippers and receivers in Minnesota on the basis of single and/or joint line rates in effect today and for the future. This service is extended to large shippers and receivers as well as smaller shippers and receivers who may come under the definition of small business.

Affidavit of Mailing Notice of Proposed Adoption of a Rule Without a Public Hearing and Certificate of Mailing List

In the Matter of the Proposed
Adoption of the Rule of the
State Transportation Regulation
Board Governing Motor Carrier
Collective Ratemaking

State of Minnesota
County of Dakota

Elaine E. Wachholz, being first duly sworn, deposes and says:

I hereby certify that the persons and associations who have requested, pursuant to Minnesota Statutes, Sections 14.14, Subdivision 1a and 14.22 or 14.30, that their names be placed on the State Transportation Regulation Board mailing list is accurate, complete and current as of this 4th day of June, 1986.

That on the 6th day of June, 1986, at the City of South St. Paul, County of Dakota, State of Minnesota, I mailed the attached Notice of Adoption of Rules Related to Collective Ratemaking by Regulated Motor Carriers Without a Public Hearing by depositing in the United States Mail, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Subscribed and sworn to before me
this 6th day of June, 1986.

Mary E. Swanson

MARY E. SWANSON
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMM. EXPIRES FEB. 8, 1990

Elaine E. Wachholz

Elaine E. Wachholz

Dkt. GR-85-245
File T-8000

TRANSPORTATION REGULATION BOARD

COLLECTIVE RATEMAKING RULE MAILING LIST

Mailed 6/6/86	68	TRB Rulemaking Mailing List (1) Notice of Intent to Adopt Rules Without a public hearing.
Mailed 6/6/86	13	Parties taking part in meetings and tariff publishing officers: (1) Notice of intent to adopt rules without a public hearing. (2) Copy of the proposed rule. (3) Statement of need and impact on small business.
Mailed 6/6/86	125	Subscribers to the Board Weekly Calendar. (1) Notice of intent to adopt rules without a public hearing.
Mailed 6/2/86		Subscribers to State Register (1) Notice of intent to adopt rules without a public hearing. (2) Copy of the proposed rule.

STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss

AFFIDAVIT OF SERVICE

Elaine E. Bacharly, being first duly sworn, deposes and says:

That on the 6 day of June, 1986, (s)he served the attached material

Docket No. T-8000/GR-85-245

[X] by depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

[X] by personal service

to all persons at the addresses indicated below or on the attached list:

Mailed 6/6/86	68	TRB Rulemaking Mailing List (1) Notice of Intent to Adopt Rules Without a public hearing.
Mailed 6/6/86	13	Parties taking part in meetings and tariff publishing officers: (1) Notice of intent to adopt rules without a public hearing. (2) Copy of the proposed rule. (3) Statement of need and impact on small business.
Mailed 6/6/86	125	Subscribers to the Board Weekly Calendar. (1) Notice of intent to adopt rules without a public hearing.

Elaine E. Bacharly

Subscribed and sworn to before me

this 6th day of June, 1986

Mary E. Swanson

MARY E. SWANSON
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMM. EXPIRES FEB. 8, 199-

TRB RULEMAKING MAILING LIST

Val M. Higgins, Attorney
1600 TCF Tower
121 S. 8th St.
Minneapolis, MN 55402

Urban Transport, Inc.
~~8856 N. E. Xylite St.~~ P O Box 515
~~Blaine, MN 55434~~ HASTINGS, MN 55033

Mix Transfer Co.
Donald A. Bjornson
8207 Sheridan Ave. S.
Bloomington, MN 55431

Arnie Hillman, Pres.
United Van Bus Delivery
2601 - 32nd Ave. S.
Minneapolis, MN 55406

Linderholm Trucking, Inc.
P. O. Box 16122
Minneapolis, MN 55416

Abe Rosenthal, Ex. V. P.
Minn. Transport Services Assn.
1821 University Ave.
St. Paul, MN 55104

W. A. Hallman, Pres.
Assoc. Motor Carriers Tar. Bur.
1745 University AVe.
St. Paul, MN 55104

R. J. Fisher
Ashland Petroleum Co.
P. O. Box 391
Ashland, KY 41101

Larry D. McKimm, Pres.
McKimm Milk Transit, Inc.
Highway 22 South
Hutchinson, MN 55350

James L. Nelson, Atty.
~~Suite 163 North~~ P O Box 1510
~~1821 University Ave.~~ 1104 Pioneer Bldg
St. Paul, MN ~~55104~~ 55101

Byron Starns, Leonard St. & Deinard
1200 Nat'l. City Bank Bldg.
510 Marquette Ave.
Minneapolis, MN 55402

Timothy M. Walters, Atty.
Middlewest Motor Freight Bureau
215 Volker Blvd., P. O. Box 647
Kansas City, MO 64141

Phillips Legis. Service, Inc.
459 Rice St.
St. Paul, MN 55103

City of St. Charles
1242 Whitewater Ave.
St. Charles, MN 55972

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Lake County Highway Dept.
P. O. Box J
Two Harbors, MN 55616

Robert E. Schmidt
304 Clear Lake Dr.
P. O. Box 502
Waseca, MN 56093

Edward E. Schmidt
dba Bud Schmidt Trucking
920 5th St. SW, P. O. Box 7
Waseca, MN 56093

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Ruan Transport Corp.
3200 Ruan Center, P.O.Box 855
Des Moines, IA 50304

B. W. Smitha
Mobil Oil Corp.
5151 Belt Line Rd., Suite 600
Dallas, TX 75240

Lake Crystal Bus Serv. Inc.
Lake Crystal, MN 56055

Dennis Hallberg
Kirscher Transport
P. O.Box 1228
Virginia, MN 56792

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Fargo, ND 58108

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Mankato, MN 56002

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Metropolitan Transit Commis.
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MIKE HICKEY, DIRECTOR
NATIONAL FEDERATION OF INDEPENDENT
SMALL BUSINESS MINNESOTA
SUITE 235 HANOVER BLDG.
480 CEDAR ST. STPAUL, MN 55101

Mailing List (Collective Ratemaking)
(Notice of Rule and Copy of Rule)

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480 CEDAR ST
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13

Department of Natural Resources

Proposed Rules Relating to Land Use Districts, Boundary Changes

Rule as Proposed (all new material)

6105.1291 LAND USE DISTRICT AMENDMENT

Part 6105.1290 is amended by changing the land use district descriptions and acreages as follows: T 115 N - R 39 W, Section 4, Government Lot 3. Everything east of State Hwy. 23. 18.10 acres

INCORRECT REFERENCES. The references in Minnesota Rules, part 6105.1290 listed in Column 1 are corrected as indicated in Column 2.

1	2
T 116 N - R 40 W Section 13 E 1/2 of NE 1/4 of SW 1/4 20.00 acres	Delete
T 116 N - R 39 W Section 33 Government Lot 3 (YM)	T 116 N - R 39 W Section 33 Government Lot 2 (YM)
T 113 N - R 35 W Section 36 SE 1/4 of NE 1/4	T 113 N - R 35 W Section 36 SW 1/4 of NE 1/4
Total 22,290.45	Total 22,249.75

Transportation Regulation Board

Proposed Rules Relating to Collective Ratemaking by Regulated Motor Carriers

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Transportation Regulation Board (Board) proposes to adopt the above-captioned rules without a public hearing. The Board has determined that the proposed adoption of these rules will be non-controversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.22-14.28 (1984).

Persons or groups interested in these rules shall have 30 days to submit comments on the proposed rules. Comments in support of or in opposition to the proposed amendments are encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by data and views submitted to the Board and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed rules within the 30 day comment period. If a public hearing is required, the Board will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reasons for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Jerome E. Pedersen, Rate Director
Transportation Regulation Board
254 Livestock Exchange Bldg.
100 Stockyards Road
South St. Paul, Minnesota 55075
Telephone: 612/296-2349

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Authority for adoption of these rules is contained in Minn. Stat. § 174A.02 (1984) and Minn. Stat. § 221.165 (1984). A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules, identifies the data and information relied on to support the proposed rules and assesses the impact of the proposed rules on small businesses has been prepared and is available from Mr. Pedersen upon request at the above address.

Pursuant to Minn. Stat. § 14.115 subdivision 4 (1984), the impact that the proposed rule will have on small businesses has been considered by the Board. The Board's position is contained in the Statement of Need and Reasonableness. Any person who desires to comment on the impact the proposed rule will have on small business may do so by contacting Mr. Pedersen.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the statement of need and reasonableness, all the written comments and requests for hearing received, and the final rules as adopted will be delivered to the Attorney General. The rules will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the rules and the existence of a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the rules as originally proposed, or who wish to obtain a final copy of the rules as adopted, should submit a request to Mr. Pedersen at the above address. The text of the proposed rules follows this notice in the *State Register*. These rules have two purposes: a) insuring non-discriminatory rates and charges for transportation services provided to shippers and receivers; and b) preserving and continuing intrastate collective ratemaking by immunizing the collective activity of Minnesota motor carriers from federal antitrust laws.

One free copy of the proposed rules may be obtained by contacting Mr. Pedersen at the above address or by calling (612) 296-2349.

Transportation Regulation Board
Roger A. Laufenburger
Chairman

Transportation Regulation Board

Proposed Rules Relating to Motor Carrier Collective Ratemaking

Rules as Proposed (all new material)

8900.0100 DEFINITIONS.

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

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

Subp. 3. **Collective ratemaking.** "Collective ratemaking" means the joint consideration and establishment of rates, charges, and classifications, and rules related to them, by two or more carriers subject to rate regulation under Minnesota Statutes, chapter 221.

Subp. 4. **Collective ratemaking organization.** "Collective ratemaking organization" means an organization or association of two or more carriers engaged in collective ratemaking for publishing rates, charges, and classifications, and rules related to them. Administrative activities of the collective ratemaking organization are at the express direction of participating carriers. Carriers who are members of a trade association, tariff publishing bureau, or similar organization may establish one or more collective ratemaking organizations within that association, bureau, or organization.

Subp. 5. **Docketing.** "Docketing" means submitting a rate proposal to the collective ratemaking organization.

Subp. 6. **Joint docket bulletin.** "Joint docket bulletin" means a periodic listing of rate proposals submitted to the collective ratemaking organization for consideration by member carriers and other interested parties.

Subp. 7. **Joint line rate.** "Joint line rate" means a rate applicable from a point located on one transportation line to a point located on another transportation line, made by agreement or arrangement between the carriers and published in a single tariff under proper concurrence of the transportation lines over which the rate applies.

Subp. 8. **Single line rate.** "Single line rate" means a rate applicable from origin to destination over the lines of one carrier.

Subp. 9. **Rate proposal.** "Rate proposal" means a proposed rate, charge, rule, or classification to be published for the account of a proponent carrier and other participating carriers concurring in the proposal.

Subp. 10. **Tariff.** "Tariff" means a published schedule showing the rates, fares, charges, classifications, rules, regulations, and other provisions applying to transportation and incidental services.

8900.0200 PURPOSE.

To ensure that rates and charges for shippers and receivers are nondiscriminatory, to ensure that joint through interline service is continued, to ensure that just and reasonable rates and charges are published and maintained under uniform, reasonably related rate structures, and to promote efficiency in establishing, submitting, and considering rate proposals, motor carriers subject to rate regulation under Minnesota Statutes, chapter 221, unless exempted under part 8900.1000, shall collectively establish, maintain, and publish schedules of rates, charges, and classifications, and rules and practices relating to them, in joint agency tariffs covering their transportation service under Minnesota Statutes, section 221.165 and this chapter.

8900.0300 GENERAL DUTIES.

Subpart 1. **Motor carrier participation.** Motor carriers subject to rate regulation under Minnesota Statutes, chapter 221, unless exempted under part 8900.1000, shall participate in collective ratemaking organizations for collectively establishing, maintaining, and publishing joint or single line schedules of rates, charges, and classifications, and rules and practices relating to them, covering their transportation service.

Subp. 2. **Submission to board.** A collective ratemaking organization established under this chapter shall establish and submit to the board for its approval, procedures for jointly considering, initiating, establishing, maintaining, and publishing rates, charges, and classifications, and rules and practices relating to them.

8900.0400 PROVISIONAL APPROVAL REQUIREMENTS.

Subpart 1. **Board approval.** A collective ratemaking agreement, and the bylaws and rules of procedure of a collective ratemaking organization established or continued under that agreement, must be filed with and approved by the board. The board shall provisionally approve initial filings that conform generally to the requirements in subparts 2 to 12.

Subp. 2. **Identification.** Each carrier that is a party to the agreement must be identified by name, mailing address, and telephone number.

Subp. 3. **Rate proposal discussion, vote.** All member carriers must be allowed to discuss a docketed rate proposal, but only those carriers with authority to participate in the type of transportation service covered by the rate proposal may vote on the proposal.

Subp. 4. **Right of independent action.** Participating carriers in a collective ratemaking organization have the right of independent action and must be permitted to docket a rate proposal relating to them or to withdraw from the collective ratemaking organization. An agreement or action by or between two or more participating carriers to not exercise the right of independent action or to boycott, coerce, or intimidate a participating carrier from exercising its right of independent action is prohibited.

Subp. 5. **Notice of rate proposals.** Notice of rate proposals must be given in a joint docket bulletin that is furnished to the board, to carriers participating in the collective ratemaking organization, and to persons who subscribe to the bulletin.

Subp. 6. **Tariff items published for account of motor carrier.** The collective ratemaking organization must not be allowed to protest or complain of tariff items published for the account of a motor carrier.

Subp. 7. **Computing composite expense level.** Revenues and expenses of carriers participating in a rate proposal must be considered in forming a composite expense level used in arriving at a uniform rate level applicable to any defined group of carriers.

Subp. 8. **Employee restrictions.** Employees of the collective ratemaking organization are prohibited from docketing or voting upon a proposal affecting a change in a tariff published by or for the account of a member carrier.

Subp. 9. **Disclosure of names of proponents.** The collective ratemaking organization must divulge to a person upon request the names of proponents of a rate proposal docketed in that organization.

Subp. 10. **Opportunity for comment.** Member carriers and other persons must be granted an opportunity to make oral or written statements respecting rate proposals to the collective ratemaking organization and its members.

Subp. 11. **Public meetings, votes; notice.** Meetings of the collective ratemaking organization discussing rate proposals must be open to the board and public. The collective ratemaking organization must divulge to a person upon request the vote cast by a member carrier on a rate proposal. The collective ratemaking organization shall give written notice of meetings to member carriers and the board mailed by first-class mail not less than five days before the meeting.

Subp. 12. **Quorum; voting.** At meetings of the collective ratemaking organization that involve a discussion of rates, charges,

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classifications, or rules, the organization shall establish a minimum quorum standard of 30 percent of the membership for general meetings and 30 percent of the membership of a committee for committee meetings. At all meetings the presence in person of the membership is necessary to establish quorum requirements and to transact business. Instead of personal attendance, members may vote by a written statement received before or at the commencement of the meeting. Each participating carrier must have one vote. A rate proposal must be approved if voted for by a simple majority of the carriers voting on the proposal, provided that quorum requirements are met before voting.

8900.0500 FINAL NOTICE OF APPROVAL OR DISAPPROVAL.

Upon finding that the agreement, bylaws, and rules of procedure of a collective ratemaking organization further the objectives of Minnesota Statutes, section 221.165 and after necessary amendments ordered by the board in connection with the provisionally approved agreement have been submitted, the board shall issue a final notice of approval or disapproval within six months from the date of filing the provisional agreement.

8900.0600 FILING TARIFF.

Upon approval of a rate proposal by a collective ratemaking organization under the agreement and procedures provisionally or finally approved by the board under part 8900.0400 or 8900.0500, a tariff must be filed with the commissioner of transportation under Minnesota Statutes, sections 221.041 and 221.161.

8900.0700 INDIVIDUAL NAME ON TARIFFS.

A member carrier of a collective ratemaking organization may prepare, at its own expense, tariffs bearing the member carrier's individual business name if the copies indicate that they are based on a tariff, specifying the number, that has been filed and that has become effective under Minnesota Statutes, sections 221.041 and 221.161, and this chapter.

8900.0800 INDIVIDUAL DEVIATIONS.

Motor carriers participating in collective ratemaking may petition the board for authority to deviate from collectively established rates, charges, and classifications, and rules relating to them. Suspensions of and complaints and protests against petitions for deviation, and hearings on them, must be processed under Minnesota Statutes, section 221.161. The board shall allow a carrier to deviate from the collectively established rates, charges, and classifications, and rules relating to them, if the board deems the proposed deviation to be just and reasonable and otherwise in accord with Minnesota Statutes, section 221.161.

8900.0900 BOARD MONITORS ACTIVITIES.

The board shall actively supervise the activities of each collective ratemaking organization. The supervision may include, without limitation, periodic field audits, attendance at scheduled meetings, and review of minutes from those meetings to the extent necessary to ensure compliance with board-approved collective ratemaking procedures.

8900.1000 EXEMPTION.

Subpart 1. **Request for exemption.** A carrier authorized by Minnesota Statutes, section 221.165 to engage in collective ratemaking may request that the board exempt its operations, or any part of its operations, by commodity or type of authority held, from the collective ratemaking procedures prescribed in this chapter, by filing with the board a written request. The written request must:

A. be executed by a duly authorized representative;

B. state that the carrier, from the date of the request and until the exemption is withdrawn in writing by the carrier or the board, will not engage in collective ratemaking with respect to its entire operations, a specified commodity, or type or types of authority held; and

C. set forth the reasons why exemption is sought.

Subp. 2. **Grant of exemption.** After considering the reasons set forth in the request, the board shall exempt the petitioning carrier from the collective ratemaking procedures prescribed in this chapter if it finds that:

A. the carrier will suffer no hardship in publishing its own rates and tariffs;

B. the grant will not conflict with the legislative purpose to be accomplished by board approval of collective ratemaking; and

C. the grant will be consistent with the public interest.

8900.1100 PENALTY FOR VIOLATION.

The failure of a motor carrier subject to rate regulation under Minnesota Statutes, chapter 221 to comply with this chapter may result in suspension or revocation of its certificate or permit under Minnesota Statutes, section 221.021, as well as other penalties provided for in Minnesota Statutes, chapter 221 and appropriate to the violations.

CERTIFICATE OF THE
MINNESOTA TRANSPORTATION REGULATION BOARD

Resolution Adopting the Rule.

I, Roger A. Laufenburger, do hereby certify that I am a member and the Chairman of the Minnesota Transportation Regulation Board ("Board"), a Board duly authorized under the laws of the State of Minnesota, and the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 16th day of July, 1986, that a quorum was present, and that a majority of those present voted for the following resolution which has not been rescinded or modified.

> RESOLVED, that the rule relating to collective ratemaking of regulated motor carriers is approved and adopted as modified, pursuant to authority vested in the Board by Minnesota Statutes §§ 174A.02 and 221.165 (1984). Roger A. Laufenburger, Chairman of the Transportation Regulation Board, is authorized to sign the Findings of Fact, Conclusions and Order Adopting the Rule, and further is authorized to modify the rule if necessary to obtain the approval of the rule by the Attorney General when such modification does not raise significant new legal issues and to perform the necessary acts to provide that the rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have here unto subscribed my name this 27th day of August, 1986.

Roger A. Laufenburger
ROGER A. LAUFENBURGER
Chairman
Transportation Regulation Board

ATTESTED BY:

Lorraine E. Mayasich
Board Member

RRCC 716 /
TA-MR-86-193

MEETING OF JULY 16, 1986

The Board voted to approve an Ex Parte Order on the petition of WEST SUBURBAN TRANSPORTATION, INC. for a temporary certificate to transport passengers from Victoria, MN to Minneapolis/St. Paul Int'l. Airport and return, serving points located west of Hwy. I-494 restricted to eight passenger vans.

DISCUSSION ITEMS: The Board voted to approve a modified Collective Ratemaking Rule, for submission to Ron Ray, Revisor of Statutes, for final rule and subsequent transmittal to Attorney General.

PC 7000 /
MR-86-185

The Board approve a letter be sent to David G. Bilkey Superamerica citing File No. 989-379, Administrative Ruling, rquiring that all costs associated with painting shipper's advertising on a carrier unit devoted to service under incentive rates are borne by the shipper.

IRCC 36192

The Board voted to rescind the suspension and void the cancellation of ARROW MOVING & STORAGE, INC. upon proof that insurance was paid prior to cancellat date.

IRCC 25402

The Board voted to rescind the suspension and void the cancellation of EARL A. TAYLOR dba EARL'S DELIVERY SERVICE upon proof that insurance was paid prior to cancellation date.

There being no further business, the meeting was adjourned.

Approved of Record
July 23 '86

Roger A. Laufenburger, Chairman

Lorraine E. Mayasich, Board Member

John E. Moran, Board Member

BEFORE THE MINNESOTA TRANSPORTATION REGULATION BOARD

Roger A. Laufenburger — Chairman
Lorraine E. Mayasich — Board Member
John E. Moran — Board Member

In the Matter of the Proposed Adoption of the Rule of the Transportation Regulation Board Governing Collective Ratemaking by Regulated Motor Carriers.

DOCKET NO. GR-85-245

FILE NO. T-8000

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

1. Notice of the Board's proposed adoption of the above-entitled rule was published in the State Register on June 2, 1986 and was sent by United States Mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, Sections 14.14, Subdivision 1a and 14.22 on June 6, 1986. The Statement of Need and Reasonableness was prepared before the date of the Notice of Proposed Adoption of a Rule without a Public Hearing and was available to the public.

2. All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule and no requests for notice of submission of the adopted rule to the attorney general were received by the agency.

3. The Board finds that this rule is needed and reasonable. The rule will:

A. Implement Minn. Stat. § 221.165 (1984);

B. Ensure that rates and charges for shippers and receivers are nondiscriminatory;

C. Ensure that joint through interline service is continued;

D. Ensure that just and reasonable rates and charges are published and maintained under uniform, reasonably related rate structures; and

E. Promote efficienty in establishing, submitting, and considering rate proposals.

4. The Board received comments from the National Motor Freight Traffic Association, Inc. (NMFTA) and from the National Bus Traffic Association, Inc. The NMFTA proposed a clarification of the rule. The National Bus Traffic Association did not propose a change in the rule.

5. Based upon the comments and the evidence in the record before the agency, the rule adopted contains a modification suggested by NMFTA for purposes of clarification. Justification for the modification to the rule is as follows:

(A) Rule 8900.0100, Subp. 9 defines "rate proposal" as meaning a proposed rate, charge, rule or classification to be published for the account of a proponent carrier and other participating carriers concurring in the proposal.

(B) Rule 8900.0400, Subp. 3 states that all member carriers must be allowed to discuss a docketed rate proposal, but only those carriers with authority to participate in the type of transportation service covered by the rate proposal may vote on the proposal.

(C) Comments received from the National Motor Freight Traffic Assn., Inc. (NMFTA) requests that Rule 8900.0400, Subp. 3 be amended by indicating that classification matters are not intended to be embraced within the scope of this rule.

NMFTA points out that because Proposed Rule 8900.0100, Subp. 9 broadly defines a "rate proposal as embracing classification matters as well as rate matters, classification matters would technically be subject to the voting restriction contained in Proposed Rule 8900.0400, Subp. 3. However, the primary function of classification is to group the commodities moving in commerce so that articles exhibiting similar or related transportation characteristics bear their fair share of the transportation burden. No rates are contained in the National Motor Freight Classification. Accordingly, unlike rate considerations, the fact that a carrier does or does not hold authority to transport a particular commodity is of no significance in classification matters.

On interstate commerce, changes in commodity classifications are specifically exempted from the requirement that only carriers holding appropriate authority to provide the involved service can vote on such docket proposals (49 U.S.C. § 10706(b)(3)(D)(ii).

The object of the proposed addition to Minnesota Rule 8900.0400, Subp. 3 is to allow the same exemption for classification matters on Minnesota intrastate commerce as now in effect on interstate commerce.

(D) In order to clarify this matter, Rule 8900.0400, Subp. 3 has been amended by adding the following language: "This subpart applies only to docketed proposals involving rates and charges and does not apply to classification matters, in connection with voting on docketed rate proposals."

6. The above addition to Rule 8900.0400, Subp. 3 does not constitute a substantial change in the rule as adopted from the proposed rule as noticed. No significant new subject matter has been introduced which a reasonable person, on the basis of the rulemaking notice, would not have anticipated would be raised during the rulemaking proceeding.

CONCLUSIONS

The above-captioned rule, as modified, is needed and reasonable in order to implement Minn. Stat. § 221.165 (1984).

NOW, THEREFORE, IT IS ORDERED that the rule identified as Collective Ratemaking by Regulated Motor Carriers, as modified, is adopted this 16th day of July, 1986, pursuant to authority vested in the Board by Minnesota Statutes, Section 174A.02 (1984) and 221.165 (1984).

BY ORDER OF THE BOARD

Roger A. Laufenburger

Roger A. Laufenburger
Chairman

SERVICE DATE: July 16, 1986

(S E A L)

RAL:JEP:vm

STATE OF MINNESOTA
BEFORE THE
TRANSPORTATION REGULATION BOARD

In the Matter of the Adoption of
Rules Relating to Collective Ratemaking
By Regulated Motor Carriers

DECLARATION OF COUNSEL

I, Allen E. Giles, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, Chapter 2010 have been followed. For Attorney General billing purposes, the 4-digit docket client code is 0769.

Dated: August 26, 1986

ALLEN E. GILES
Special Assistant Attorney General

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

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ST. PAUL, MN 55101
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September 4, 1986

Ms. Martha Casserly
Special Assistant Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: Proposed Adoption of the Rule of the Transportation Regulation Board Governing Collective Ratemaking by Regulated Motor Carriers; Docket No. GR-85-245

Dear Ms. Casserly:

Please find enclosed the Transportation Regulation Board proposed rule governing collective ratemaking by regulated motor carriers. The Board has undertaken to adopt this rule under the noncontroversial rulemaking procedures of Chapter 14. The rule is being submitted to the Attorney General for review pursuant to Minn. Stat. § 14.26 (1984).

Please contact the undersigned or Mr. Jerome E. Pedersen (296-2349) if you have questions regarding the rule.

Sincerely,

Allen E. Giles

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St. Paul, Minnesota 55101
(612) 296-0413

AEG:kd
cc: Jerome Pedersen

P 3 Line 14

what does "provisionally" mean?