



Canadian  
Transportation  
Agency

Office  
des transports  
du Canada

# Canadian Transportation Agency General Rules

Draft Revised

DRAFT

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# Table of Contents

- 1. Definitions ..... 1
  
- Part I: General..... 2
  - 2. Application..... 2
  - 3. Quorum ..... 2
  - 4. Guidelines ..... 2
  - 5. General Principles of Interpretation..... 3
  - 6. General Powers ..... 3
  
- Part II: Rules of Procedure for Adjudicating Disputes..... 3
  - Division 1: Filing a Document with the Agency..... 3
    - 7. Filing a Document ..... 3
    - 8. Language of Documents ..... 4
    - 9. Authorization for Representative ..... 4
    - 10. Confidential Information / Public Record ..... 4
    - 11. Time of Filing..... 5
    - 12. Verification by Affidavit or Declaration..... 5
  
  - Division 2: Pleadings Process ..... 5
    - 13. Application..... 5
    - 14. Incomplete Application ..... 5
    - 15. Answer ..... 6
    - 16. Reply To The Answer..... 6
    - 17. Intervener..... 6
    - 18. Reply to an Intervention ..... 6
    - 19. Position Statement..... 6
    - 20. Documents and Information Required by the Agency ..... 7
    - 21. Questions and Document Exchange Between Parties..... 7
    - 22. Expedited Pleadings Process..... 9
    - 23. Close of Pleadings ..... 9
    - 24. Documents Outside of Pleadings ..... 10
  
  - Division 3: Requests..... 10
    - 25. Requests - General..... 10
    - 26. Request for Expedited Pleadings Process ..... 11
    - 27. Request to Intervene..... 11
    - 28. Request to Extend or Shorten Time Limits..... 11

29. Request for Confidentiality .....	12
30. Request to Submit Documents Outside Pleadings.....	13
31. Request to Amend Documents .....	13
32. Request to Withdraw .....	14
33. Request for Facilitation or Mediation.....	14
Division 4: Powers of the Agency .....	15
34. Facilitation and Mediation .....	15
35. Formulation of Issues.....	15
36. Preliminary Determination of Issues.....	15
37. Joining Applications .....	15
38. Conferences.....	15
39. Stay of Proceeding, Order or Decision.....	16
40. Notice of Intention to Summarily Dismiss an Application .....	17
41. Re-Opening a Decision or Order.....	17
42. Coming into Force of Part II .....	18
Explanatory Note.....	19

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## Schedule: Forms

Form 1	Affidavit of Translator
Form 2	Authorization for Representative
Form3	Affidavit
Form4	Declaration
Form5	Application
Form6	Answer
Form 7	Reply to Answer
Form 8	Intervention
Form 9	Reply to Intervention
Form 10	Position Statement
Form 11	Questions
Form12	Request for Documents
Form 13	Response to Questions/Document Request
Form14	General Request
Form15	General Response to Request
Form16	General Reply to Response to Request
Form 17	Request for Expedited Pleadings Process
Form 18	Request to Intervene
Form 19	Request to Extend or Shorten Time Limits
Form 20	Request for Confidentiality
Form 21	Request for Disclosure
Form 22	Confidentiality Undertaking
Form 23	Request to Submit Documents Outside Pleadings

- Form 24 Request to Amend a Document
- Form 25 Notice of Withdrawal of Application or Discontinuance of Proceeding
- Form 26 Notice of Withdrawal of Document
- Form 27 Request to Mediate or Facilitate
- Form 28 Application for Review of Decision or Order

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# Canadian Transportation Agency General Rules

## 1. Definitions

The definitions in this section apply to these Rules.

“The Act” means the *Canada Transportation Act*.

“Agency” means the Canadian Transportation Agency.

“Applicant” means a person who makes an application to the Agency.

“Application” means, for purposes of Part II, a document that is filed with the Agency to initiate a dispute proceeding under any legislation or regulations administered in whole or in part by the Agency.

“Business day” means between 8:00 a.m. and 5:00 p.m. local time, on a day that is not a Saturday, Sunday or any other statutory holiday recognized by the federal public service in the province of Quebec where the Agency’s headquarters is located.

“Complete application” means, for purposes of Part II, an originating document under subsection 29(1) of the Act, as decided by the Agency, which will formally commence a dispute proceeding before the Agency.

“Day” means business day, unless otherwise specified.

“Dispute proceeding” includes an inquiry, application, investigation, appeal, objection and any other contested matter commenced by application to the Agency, but does not include a dispute submitted to the Agency for facilitation, or under the Act, for mediation, arbitration, or final offer arbitration.

“Document” means any pleading filed with the Agency during the pleadings process and any evidence filed with these pleadings, including any correspondence, affidavit, declaration, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record and any other recorded material, regardless of its physical form or characteristics and any copy of it.

“Intervener” means a person with a substantial and direct interest in a dispute proceeding before the Agency who has made a request to intervene under section 27 which has been approved by the Agency.

“Party” includes an applicant, a respondent, and an intervener.

“Pleading” means a document filed with the Agency that contains argument which advances a person’s position and includes an application, as well as any answer, reply,

position statement, intervention, reply to an intervention, request, response to a request, and reply to a response to a request.

“Pleadings process” means that part of a dispute proceeding when parties may file their pleadings with the Agency.

“Position statement” means a document filed with the Agency under section 19 which contains a person’s position on a dispute proceeding before the Agency.

“Respondent” means a person against whom the application is filed.

“Secretary of the Agency” means the designated Agency person who receives documents that are filed with the Agency.

## **Part I: General**

### **2. Application**

- (1) Part I of these Rules applies to all proceedings before the Agency.
- (2) Although Part II of these Rules applies only to dispute proceedings before the Agency, the Agency may apply any of the provisions contained in Part II, with such modifications as are necessary, to other proceedings or matters before the Agency that are not dispute proceedings.

### **3. Quorum**

- (1) The Chair may establish quorum for any proceeding before the Agency.
- (2) One Member may hear and can constitute a quorum in any proceeding before the Agency.

### **4. Guidelines**

- (1) The Agency may establish guidelines for the processing of specific proceedings before the Agency.
- (2) The guidelines may set out:
  - (a) the process to be followed by the parties;
  - (b) any timelines that must be met by the parties; and,
  - (c) any information or supporting documents required to be filed, for example, to complete an application.

## 5. General Principles of Interpretation

- (1) These Rules and any guidelines established under section 4 will be interpreted to secure the just, most expeditious and least resource intensive processing of every proceeding on its merits.
- (2) In applying these Rules and any guidelines established under section 4, the Agency will make decisions and orders and give directions that are proportionate to the nature and complexity of the issue that is before it.

## 6. General Powers

- (1) The Agency may, on its own initiative or at the request of a person:
  - (a) extend or shorten the time limits set either by these Rules or by the Agency in guidelines or otherwise, before or after the expiry of the time limits; and,
  - (b) make all necessary amendments, dispense with compliance with or vary any rule at any time or grant other relief on any terms that will secure the just determination of the issues.
- (2) Subject to an Agency decision, no proceedings or submissions are invalid by reason of a defect in form, a technical irregularity or by failing to follow a requirement of these Rules or any guidelines established under section 4.

# Part II: Rules of Procedure for Adjudicating Disputes

## Division 1: Filing a Document with the Agency

### 7. Filing a Document

- (1) All documents filed with the Agency must be sent to the Secretary of the Agency and to all other parties at the same time.
- (2) Documents can be filed with the Agency and sent to the other parties by the following means:
  - (a) e-mail;
  - (b) facsimile communication;
  - (c) courier service or other delivery in person;
  - (d) ordinary mail; or,
  - (e) other electronic means made available by the Agency.

- (3) The Agency may specify the means by which documents must be filed.
- (4) A document sent by email or facsimile before 5:00 p.m. local time is filed with the Agency and received by the other parties on the date of its transmission. A document sent by email or facsimile after 5:00 p.m. local time is considered to be filed with the Agency and received by the other parties on the next business day.
- (5) A document sent by courier service or other delivery in person is filed with the Agency and received by the other parties on the date of its delivery if it is delivered before 5 p.m. local time.
- (6) A document sent by ordinary mail is considered to be filed with the Agency and received by the other parties 4 business days after the postmark date appearing on the envelope.
- (7) Where reference is made in these Rules to the filing of a document using any of the forms set out in the Schedule, the document must be filed using the specified form.

## 8. Language of Documents

- (1) All documents filed with the Agency must be in either English or French.
- (2) If a person files a document that is in a language other than English or French, a translation of the document(s) to English or French must be filed at the same time together with an affidavit using Form 1 in which the translator attests to the accuracy of the translation.

## 9. Authorization for Representative

- (1) Where a party uses a representative who is not a lawyer to represent them in the dispute proceeding, an authorization from that party to have the representative act on their behalf using Form 2 must be filed with the Agency.

## 10. Confidential Information / Public Record

- (1) All documents filed with the Agency will be placed on the public record unless:
  - (a) the party filing the document has made a request for confidentiality under section 29 at the time of filing; and,
  - (b) the request has been approved by the Agency.
- (2) No person shall refuse to file a document on the basis of confidentiality alone.

## 11. Time of Filing

- (1) Unless specified differently, when a person is required to file a document within a number of days, either under these Rules or by order of the Agency, the time period for filing is counted from the day after the person is notified of the requirement and includes the last day of the period.
- (2) Documents filed after the time established by the Agency for the filing will be returned to the person.

## 12. Verification by Affidavit or Declaration

- (1) The Agency may require that the whole or any part of a document filed with it be verified by an affidavit using Form 3 or a declaration using Form 4.
- (2) If the Agency requires verification of a document, notice shall be given to the person who filed it indicating the document or part of it that must be verified.
- (3) The affidavit or declaration must be filed within 5 business days after a person receives a notice under subsection (2).
- (4) Where a person fails to provide the verification required by the Agency, the Agency may strike out the document or part of it, which means that such document will not form part of the Agency's record.

## Division 2: Pleadings Process

### 13. Application

- (1) A person filing an application with the Agency must complete and file Form 5.
- (2) The Form 5 must be accompanied by any information or supporting documents that have been identified by the Agency in any guideline as being required to complete an application.
- (3) Parties will be notified when the application has been accepted as complete and the date on which the pleadings process has commenced.

### 14. Incomplete Application

- (1) The applicant will be notified if their application is incomplete and, unless otherwise directed by the Agency, will have 20 business days to complete the application.
- (2) Failure to complete the application within 20 business days or as otherwise directed by the Agency will result in the application being returned to the applicant and the file being closed.

- (3) Closure of the file does not preclude an applicant from re-filing a complete application at a later date.

## 15. Answer

- (1) A respondent may file with the Agency an answer to the application using Form 6 within 15 business days after the person receives notice that the application has been accepted as complete.

## 16. Reply To The Answer

- (1) An applicant may file with the Agency a reply to the answer using Form 7, within 5 business days after the applicant receives the answer.
- (2) A reply must not raise new issues, arguments or information that are not addressed in the answer unless the applicant has made a request under section 30 which has been approved by the Agency.

## 17. Intervener

- (1) Where a request to intervene in a dispute proceeding is approved by the Agency under section 27, the intervener must file with the Agency their intervention using Form 8, within 5 business days after the person receives the approval.
- (2) An intervener may be required to respond to questions or information requests from the Agency or from any other party to the proceeding that is adverse in interest to the intervener.

## 18. Reply to an Intervention

- (1) An applicant or a respondent who is adverse in interest to an intervener may file with the Agency a written reply to the intervention using Form 9, within 5 business days after the party receives the intervention.
- (2) A reply to an intervention must not raise new issues, arguments or information that are not addressed in the intervention unless a request has been made under section 30 and has been approved by the Agency.

## 19. Position Statement

- (1) A person with an interest in a dispute proceeding who is not an intervener may provide their comments by filing with the Agency a position statement, either using Form 10 or in a document which should include:
  - (a) the full name, address, telephone number and any other contact information of the person;

- (b) the identification of the dispute proceeding to which the position statement relates;
  - (c) a clear and concise description of the person's interest in and their comments on the proceeding, including whether they support or oppose the application; and,
  - (d) all other information or documents that are relevant in explaining or supporting the position.
- (2) Any position statement must be filed with the Agency before the close of pleadings and will be placed on the public record.
  - (3) A person who files a position statement in a dispute proceeding is not a party to, has no participation rights in and is not entitled to any further notice in that proceeding.
  - (4) A person who files a position statement may be required to respond to questions or information requests from the Agency or, upon request and with prior approval from the Agency, from a party to the dispute proceeding.
  - (5) Any party adverse in interest to a person who has filed a position statement may file with the Agency a written request to reply to the position statement using Form 14, within 5 business days after the party receives the position statement.

## 20. Documents and Information Required by the Agency

- (1) The Agency may require that:
  - (a) a person provide the Agency with any additional documents or information that the Agency considers relevant and necessary;
  - (b) subject to a request for confidentiality being made under section 29, any documents or information obtained under paragraph (a) be provided to any party to the dispute proceeding or, where appropriate, be produced for review; and,
  - (c) a dispute proceeding be stayed until the documents and information are filed with the Agency and until the Agency determines that the person has complied with the requirement.
- (2) The Agency may gather additional documents or information in writing or by other means, including at conferences or site inspections.

## 21. Questions and Document Exchange Between Parties

- (1) A party may direct written questions, using Form 11, or a request to produce documents, using Form 12, to any other party that is adverse in interest to them, at any time before the close of pleadings.

- (2) Any document requested under subsection (1) must be in the possession or control of the party, must relate to any matter in dispute and may be referred to and relied on in any submission to the Agency.
- (3) Any document request under subsection (1) must be made within 5 business days after the party becomes aware of the document and, in any event, before the close of pleadings.
- (4) A party to whom questions or a document request have been directed must respond to the questions or document request, using Form 13, within 5 business days after the party receives the questions or document request, either by:
  - (a) providing a complete response to each question and copies of any documents requested; or,
  - (b) objecting to the questions, document request or any of them, including on the basis that they are not relevant or that the information is not available.
- (5) Where the party objects to questions or a document request under paragraph (4)(b), that party must also provide:
  - (a) a clear and concise explanation of the reasons underlying the objection;
  - (b) all documents that are relevant in explaining or supporting the objection;
  - (c) any alternative available information or documents that the party considers would be of assistance to the party who directed the questions or document request.
- (6) Where the response to a question or a document requested contains information that the party believes is confidential, the party must file the response or the document with the Agency and make a request for confidentiality under section 29.
- (7) If the party who directed questions or a document request is not satisfied that the response is complete or with any document produced, or opposes the objection made, the party may, within 2 business days after receiving the response, provide justification for their position and request the Agency to direct that the questions be answered in full or that the documents be provided.
- (8) Subject to a determination of confidentiality under section 29, the Agency may:
  - (a) direct that the questions be answered in full or in part or not at all;
  - (b) require that a document be provided where it is relevant and necessary to the proceeding;

- (c) determine that a document need not be provided where it is not relevant or necessary to the proceeding;
  - (d) permit a party to submit secondary evidence of the contents of a document; or,
  - (e) permit a party to produce a document for inspection only, where to provide copies of the document would be inappropriate or impracticable.
- (9) A party who fails to comply with a document request may not enter the document as evidence in the proceeding unless the party has objected to providing the document under paragraph (4)(b) and the Agency has approved the document being placed on the record.
- (10) A party who is adverse in interest to a person who has filed a position statement may make a request under section 25 for approval from the Agency to direct questions or a document request to that person in accordance with this rule.

## 22. Expedited Pleadings Process

- (1) The Agency may, on its own initiative or at the request of a party under section 26, direct that an expedited pleadings process apply to a dispute proceeding or to any request within the proceeding.
- (2) Under the expedited pleadings process for any dispute proceeding:
- (a) the respondent has 5 business days to file an answer to the application; and
  - (b) the applicant has 3 business days to file a reply.
- (3) Under the expedited pleadings process for any request within a dispute proceeding made under Division 3:
- (a) the person to whom the request is directed has 2 business days to file a response to the request; and
  - (b) the person making the request has 1 business day to file a reply.

## 23. Close of Pleadings

- (1) Subject to section 24, pleadings in respect of an application shall close,
- (a) where no answer is filed, 20 business days after the parties are notified that the application has been accepted as an originating document; or,
  - (b) where an answer is filed, 30 business days after the parties are notified that the application has been accepted as an originating document.

- (2) The time for the close of pleadings provided for in subsection (1) will be automatically extended to the date established by the Agency for the filing of any responses to any requests made, questions directed, or document or information filing requirements.
- (3) Under the expedited pleadings process, pleadings in respect of an application shall close:
  - (a) where no answer is filed, within 7 business days after the parties are notified that the application has been accepted as an originating document; or
  - (b) where an answer is filed, 10 business days after the parties are notified that the application has been accepted as an originating document.

## 24. Documents Outside of Pleadings

- (1) No person may file documents with the Agency after pleadings have closed or that are otherwise outside of pleadings unless a request is made under section 30 and approved by the Agency.
- (2) Any document filed after pleadings have closed or which is otherwise outside of pleadings that is not accompanied by a request under section 30 shall not be placed on the Agency's record and will be returned to the person who filed the document.

## Division 3: Requests

### 25. Requests - General

- (1) Any person may make a written request under this Division to the Agency to decide procedural or other issues within a dispute proceeding using Form 14.
- (2) Unless otherwise provided in this Division, a request must be filed as soon as possible and, in any event, before the close of pleadings.
- (3) Any party to the proceeding that may be affected by the request may file with the Agency a written response to the request using Form 15.
- (4) Unless otherwise provided in this Division or directed by the Agency under subsection 22(3), any response to a request must be filed within 5 business days after the party receives the request.
- (5) A person that has submitted a request may file with the Agency a written reply using Form 16.
- (6) A reply must not raise new issues, arguments or information that are not addressed in the response unless a request is made and approved by the Agency under section 30.

- (7) Unless otherwise provided in this Division or directed by the Agency under subsection 22(3), any reply to the response must be filed within 2 business days after the person receives the response.

## 26. Request for Expedited Pleadings Process

- (1) Any party may file with the Agency a written request to have an expedited pleadings process, using Form 17, applied to either:
- (a) a dispute proceeding; or,
  - (b) a request within a dispute proceeding.
- (2) A request to apply an expedited pleadings process must be filed:
- (a) where the expedited pleadings process is to apply to a dispute proceeding, within 5 business days after the application is filed with the Agency; or,
  - (b) where the expedited pleadings process is to apply to a request within a dispute proceeding, at the time that the request is filed with the Agency.
- (3) All other parties to the proceeding will have 1 business day to file any response to a request for an expedited pleadings process using Form 15.

## 27. Request to Intervene

- (1) A person who has a substantial and direct interest in a dispute proceeding may file with the Agency a written request to intervene in the proceeding using Form 18.
- (2) Any request to intervene must be filed with the Agency within 10 business days after the person becomes aware of the application and, in any event, before the close of pleadings.
- (3) Any request to intervene must contain a statement of the participation rights that the person wishes to receive in the dispute proceeding.

## 28. Request to Extend or Shorten Time Limits

- (1) A person may file with the Agency a written request to extend or shorten time limits using Form 19.
- (2) The other parties may be given an opportunity to provide their comments on the request to the Agency, using Form 15, at which time a party may oppose a request to extend or shorten time limits.
- (3) A response to a request to extend or shorten time limits must be filed within 3 business days of the party receiving the request.

- (4) Any reply to the response, using Form 16, must be filed within 1 business day of the party receiving the response.

## 29. Request for Confidentiality

- (1) A person who is filing documents with the Agency may file with them a written request for confidentiality using Form 20.
- (2) Any person that files a request for confidentiality under subsection (1) must also file:
  - (a) one public version of the document from which the confidential information has been deleted; and,
  - (b) one confidential version of the document that contains and identifies the confidential information that has been deleted from the public version of the document and is marked “contains confidential information” on the top of each page.
- (3) The Agency will place on its public record any request for confidentiality and the public version of the document.
- (4) A party may oppose a request for confidentiality by filing with the Agency a written request for disclosure using Form 21, within 5 business days after the person receives the request for confidentiality.
- (5) The person making a request for confidentiality may file with the Agency a written response to a request for disclosure using Form 15, within 3 business days after the person receives a request for disclosure.
- (6) The Agency will make a determination of confidentiality and may:
  - (a) place the document on the public record where the Agency determines that the document is relevant to the proceeding and no specific direct harm would likely result from its disclosure or any demonstrated specific direct harm is not sufficient to outweigh the public interest in having it disclosed;
  - (b) order that the document be withdrawn where the Agency determines that the document is not relevant to a proceeding; or
  - (c) where the Agency determines that the document is relevant to a proceeding and the specific direct harm likely to result from its disclosure justifies confidentiality:
    - (i) order that the document not be placed on the public record but that it be maintained in confidence;
    - (ii) order that a version or part of the document from which the confidential information has been deleted be placed on the public record;

(iii) order that the document or any part of it not be placed on the public record, but that it be provided in confidence to any of the other parties to the proceeding, or to certain of their advisors, experts and representatives, upon receipt of signed confidentiality undertakings using Form 22; or

(iv) make any other order that it considers appropriate.

(7) The Agency may, on its own initiative, make a determination of confidentiality after giving the parties to the proceeding an opportunity to comment on the issue.

### 30. Request to Submit Documents Outside Pleadings

(1) Any person may file with the Agency a written request to file documents after pleadings have closed or that are otherwise outside pleadings using Form 23.

(2) Any request to file documents outside pleadings must include a copy of the document proposed to be filed.

(3) Where the person fails to justify the request, the Agency will dismiss the request and return the document to the person.

(4) Any party may be provided with an opportunity to respond to the request. A response to the request must use Form 15 and include a description of any prejudice that would be caused to the party if the request were granted.

(5) A response to a request must be filed within 3 business days after the party is provided with an opportunity to respond.

(6) The Agency may:

(a) deny the request and return the document to the person; or,

(b) approve the request and, where appropriate, re-open pleadings to provide the other parties with an opportunity to comment on the document.

### 31. Request to Amend Documents

(1) A person may file with the Agency a written request to make a substantive amendment to a document that they have filed, using Form 24.

(2) Any request to make a substantive amendment to a document must include a new copy of the document which clearly identifies the amendment being made and indicates "AMENDED" at the top right hand corner of the first page of the document.

(3) Any party may be provided with an opportunity to respond to the request. A response to the request must use Form 15 and include a description of any

prejudice that would be caused to the party if the request were granted or whether it will hinder or delay the fair conduct of the proceeding.

- (4) A response to a request to amend a document must be filed within 3 business days after the party is provided with an opportunity to respond.
- (5) The Agency may
  - (a) deny the request and return the amended document to the person; or,
  - (b) approve the request, in whole or in part, and, where appropriate, provide parties adverse in interest with an opportunity to respond to the amended document.
- (6) A request under this rule is not required for a person to make a minor amendment to a document they have filed with the Agency. The person must file a new copy of the document which clearly identifies the amendment being made and the date of the amendment, and indicates "AMENDED" at the top right hand corner of the first page of the document. Where appropriate, the Agency may provide parties adverse in interest with an opportunity to respond to the amended document.

### 32. Request to Withdraw

- (1) An applicant may request to withdraw an application in a dispute proceeding at any time before the Agency's final decision by filing with the Agency a written notice of withdrawal from the proceeding using Form 25.
- (2) A party may request to withdraw any document that was filed in a dispute proceeding at any time before the close of pleadings by filing with the Agency a written notice of withdrawal of document using Form 26.
- (3) The party must provide a copy of any notice of withdrawal to all other parties to the proceeding.
- (4) The Agency may impose any terms and conditions to the withdrawal that it considers just and reasonable in the circumstances, including costs.

### 33. Request for Facilitation or Mediation

- (1) A party may request at any time that a dispute be facilitated or mediated by the Agency using Form 27.
- (2) Where the pleadings process has commenced, the dispute proceeding will be stayed by the Agency for the period during which the parties to the dispute are involved in facilitation or mediation.

## **Division 4: Powers of the Agency**

### **34. Facilitation and Mediation**

- (1) At any time in a dispute proceeding, the Agency may request that the parties participate in facilitation or mediation to help settle the dispute or any issue in dispute between the parties where this would lead to a more effective and efficient resolution of any of the issues in dispute.

### **35. Formulation of Issues**

- (1) The Agency may formulate the issues to be considered in any dispute proceeding if:
  - (a) the documents filed do not clearly identify the issues;
  - (b) the formulation would assist the Agency in the conduct of the proceeding; or
  - (c) the formulation would assist the parties to participate more effectively in the proceeding.

### **36. Preliminary Determination of Issues**

- (1) The Agency may, on its own initiative or at the request of a party made under section 25, determine that an issue should be decided as a preliminary matter before continuing a dispute proceeding.
- (2) The Agency may stay the whole or any part of the proceeding, pending its decision on a preliminary matter.

### **37. Joining Applications**

- (1) The Agency may, on its own initiative, join applications to consider them together in one dispute proceeding in order to provide for a more efficient and effective process.

### **38. Conferences**

- (1) The Agency may, on its own initiative or at the request of a party made under section 25, require the parties to attend a conference to:
  - (a) facilitate or encourage settlement of the dispute;
  - (b) formulate, clarify or simplify the issues;
  - (c) determine the terms of amendment of any document;
  - (d) obtain the admission of certain facts or determine whether the proof of those facts by affidavit should be required;

- (e) establish the procedure to be followed in the dispute proceeding;
  - (f) provide for the exchange by the parties of documents proposed to be submitted;
  - (g) establish a process for the identification and treatment of confidential information;
  - (h) discuss the appointment of experts; and,
  - (i) resolve any other matters to provide a more effective and efficient process.
- (2) The parties may be required to file written submissions with the Agency on any issue discussed at a conference.
  - (3) Minutes will be prepared following all conferences and will form part of the Agency's record.
  - (4) The Agency may make an order, decision or direction on any issue discussed at a conference without further submissions from the parties.

### 39. Stay of Proceeding, Order or Decision

- (1) The Agency may, on its own initiative or at the request of a party made under section 25, stay a dispute proceeding,
  - (a) while a decision is being made in another proceeding before the Agency or before any court in Canada where the issue is the same or substantially the same as the issue to be raised in the proceeding;
  - (b) if a party to the proceeding has not complied with any requirement of these Rules, or with any direction on procedure issued by the Agency; or
  - (c) for any other reason that the Agency considers necessary and appropriate.
- (2) The Agency may, on its own initiative or at the request of a party made under section 25, stay a decision or order of the Agency,
  - (a) while an application for re-hearing or review is being considered under section 32 of the Act;
  - (b) while a petition to the Governor in Council is being considered under section 40 of the Act; or,
  - (c) while an application for leave to appeal, or, if leave is granted, an appeal, is being considered under section 41 of the Act.
- (3) In staying a dispute proceeding, decision or order, the Agency may impose any terms and conditions that it considers just and reasonable in the circumstances.

#### 40. Notice of Intention to Summarily Dismiss an Application

- (1) The Agency may, by notice to the applicant and before considering the issues raised in an application, require that an applicant justify why the Agency should not dismiss the application if the Agency is of the preliminary view that:
  - (a) the Agency does not have jurisdiction over the subject of the application;
  - (b) to proceed would be an abuse of process; or,
  - (c) the application contains a fundamental defect.
- (2) The applicant must respond to this notice within 10 business days after receiving it, failing which the application will be dismissed without further notice.
- (3) Any other parties to the dispute proceeding may be provided with an opportunity to comment on whether the application should be dismissed.

#### 41. Re-Opening a Decision or Order

- (1) The Agency may, on its own initiative or at the request of a party made under section 25, re-open an Agency decision or order made in a dispute proceeding in the following limited circumstances:
  - (a) under section 32 of the Act, where, since the decision or order, there has been a change in the facts or circumstances pertaining to the decision or order of sufficient importance to warrant a review, rescission or variance the decision or order; or,
  - (b) where, in the opinion of the Agency, there is a slip or error in the decision or order that warrants a variance of the decision or order.
- (2) An application to the Agency may be made under paragraph (1)(a), using Form 28.
- (3) Any party to the original decision or order may be provided with an opportunity to respond to the request, to address one or more of the following issues:
  - (a) the existence of new facts or circumstances since the Agency made the decision or order;
  - (b) the importance of the new facts or circumstances on the outcome of the decision or order; or,
  - (c) any variance of the decision or order.
- (4) Where the Agency provides a party with an opportunity to respond,

- (a) a response to the request must use Form 15 and include a description of any prejudice that would be caused to the party if the request were granted; and,
- (b) A response to a request must be filed within 3 business days after the party is provided with an opportunity to respond.

(5) The Agency may:

- (a) find no new facts or circumstances and deny the request;
- (b) find that any new facts or circumstances are not of sufficient importance to warrant the review of the decision or order and deny the request; or,
- (c) approve the request and consider whether to vary or rescind the decision or order.

#### 42. Coming into Force of Part II

- (1) Part II of these Rules applies to all dispute proceedings commenced before the Agency on or after XXX.
- (2) The Canadian Transportation Agency General Rules, SOR/2005-35 apply to all dispute proceedings commenced before XXX.

## Explanatory Note

The Canadian Transportation Agency (Agency) is an independent, quasi-judicial tribunal and economic regulator established under the *Canada Transportation Act*, S.C. 1996, c. 10 as amended (the Act). It makes economic determinations and resolves disputes on a wide range of matters involving air, and federal rail, marine and bus transportation under the Act, the *Canada Marine Act*, the *Shipping Conferences Exemption Act*, 1987; the *Civil Air Navigation Services Commercialization Act*, the *Railway Relocation and Crossing Act*, the *Railway Safety Act*, the *Pilotage Act*, and related regulations.

Transportation users and service providers turn to the Agency for dispute resolution about transportation services; rates, fees and charges; terms and conditions of carriage; and accessibility. The Agency offers various dispute resolution options, including facilitation, mediation, arbitration, final offer arbitration and formal adjudication.

The Agency's clients have clearly indicated that they want more information about dispute resolution processes. Through client satisfaction surveys, they have expressed a desire for faster and simpler processes that are more predictable and transparent. This is why the Agency made it a key strategic priority for 2011-2014. The Agency is committed to high quality dispute resolution services that are timely, efficient and responsive.

The Agency is required to resolve disputes as expeditiously as possible, and the Act establishes a 120-day statutory deadline after receipt of a complete application for the Agency to make its decision unless the parties agree to extend the deadline. In addition, the Agency strives for high performance and has adopted a set of high performance targets which are monitored and reported on an annual basis. In the case of complex formal disputes, the Agency has committed to resolving 80 percent of these cases in 90 days after the close of pleadings. Meeting this target has been a challenge and the Agency is now working to improve its performance in this area by focussing on reviewing its procedures, with a view to streamlining and simplifying them and to gain efficiencies in case processing.

The Agency has the power under the Act to establish its own rules of procedure and the Courts have been deferential to the Agency's procedural decisions, continually affirming that the Agency is the master of its own procedures. In the past, the Agency used general regulations, the Canadian Transportation Agency General Rules, SOR/2005-35 (the General Rules), to establish procedures for both dispute adjudications and economic determinations. However, this resulted in rules of procedure that were overly broad and, at times, inefficient. While the Agency has always had full discretion under the General Rules to adopt different procedures on a case-by-case basis and was required to use these powers regularly to craft customized procedures that were efficient and effective in individual cases, this ad hoc approach has not provided the predictability and clarity that the Agency's clients and stakeholders expect.

Accordingly, and as part of its effort to ensure that its services are timely, effective, responsive, fair and transparent, the Agency is amending its general regulations, the General Rules, to provide in Part I for a number of mechanisms to improve the efficiency of case processing in all proceedings, including

- the use of a one-Member quorum; and,
- the establishment of specialized guidelines that are tailored to ensure optimal efficiency and effectiveness in the specific procedures to be used in the processing of a wide range of proceedings before the Agency.

A number of specialized guidelines have already been adopted by the Agency for the processing of various economic determinations, including Coasting Trade Guidelines and Net Salvage Value Guidelines, and dispute proceedings, including Rail Noise and Vibration Guidelines.

Part II of this document contains new Rules of Procedure for Adjudicating Disputes, which are being proposed to enhance the clarity, efficiency and predictability of the formal adjudication process in dispute proceedings. This regulation is being established to better inform and assist potential participants and includes forms in appended Schedules to be used by participants, all to improve the participation of persons in dispute proceedings before the Agency. These forms incorporate specific information requirements to improve the completeness of filings with the Agency, and the mandatory use of these forms will help to ensure that the Agency's processes are as efficient and effective as possible.

In addition, a companion annotation document and resource tool will be made available to provide further plain language guidance to participants, many of whom are unfamiliar with the Agency and its processes, including unrepresented consumers of transportation services.

The Agency will continue its efforts to actively offer, promote and expand the use of informal alternative dispute resolution (ADR) mechanisms as a cost-effective and timely option for identifying issues and resolving disputes informally, reducing the need for formal adjudicative procedures. Although these Rules of Procedure are for the Agency's formal adjudicative process, the integral role that ADR plays in the resolution of disputes and the Agency's commitment to ADR are highlighted through the incorporation of facilitation and mediation in these Rules of Procedure.

These Rules of Procedure provide for both a standard pleadings process of 20 business days and an expedited pleadings process of 8 business days after the receipt of a complete application for the filing of any answers and replies. They also provide an opportunity for persons to make to the Agency a variety of procedural requests on matters which commonly arise in dispute proceedings, including requests to keep information confidential.

At the end of the adjudication process, the Agency will issue a written decision that will contain a summary of the pleadings, including the arguments of the parties as well as the evidence and other information filed with the pleadings, and an analysis of the case, along with the Agency's conclusion, the reasons for its conclusion and any corrective action the Agency decides is appropriate.

As a quasi-judicial tribunal operating like a court in adjudications, the Agency is bound by the constitutionally protected open-court principle which guarantees the public's right to know how justice is administered and to have access to decisions rendered by administrative tribunals. Accordingly, all information filed with the Agency in the adjudication process, including the names of parties and witnesses, becomes part of the public record, is shared with the other parties to the application and may be made available to the public. For more information about the Agency's privacy policies, please see <http://www.otc-cta.gc.ca/eng/important-notice>.

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