

NOTICE OF MEETING  
NEBRASKA MOTOR VEHICLE  
INDUSTRY LICENSING BOARD

Notice is hereby given that the Nebraska Motor Vehicle Industry Licensing Board will hold a meeting on Tuesday, Wednesday, and Thursday, October 17-19, 2023, starting at 9:00 A.M. each day located in the Keating O’Gara Hearing Room, 200 South 21<sup>st</sup> street, Suite 400, Lincoln, NE 68510.

The purpose of the meeting is to take testimony and evidence about the addition of Rule 13-012 and 13-012.01 as well as changes to antiquated language within the Motor Vehicle Industry Licensing Board Rules and Regulations. The subject matter and scope of the rule making action is:

1. To Adopt Amendments to Chapter 13 adding Rule 012 and 12.01. This change grants the ability to The Board to employ a hearing officer to review any issue or mater which the Board deems proper in order to carry out the provisions of the Motor Vehicle Industry Regulation Act, any hearing conducted by a hearing officer shall require the Board to prepare an official record of the hearing.

Draft or working copies of the proposed rules are available at the office of the Nebraska Motor Vehicle Licensing Board, or at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508. There is no expected fiscal impact from adopting this rule on state agencies, regulated persons, or political subdivisions.

All interested persons may attend and testify orally or by written submission at the hearing. Interested persons may also submit written comments prior to hearing which will be made part of the hearing record at the time of hearing if received by the Nebraska Motor Vehicle Industry Licensing Board on or before October 17, 2023. If auxiliary aids or reasonable accommodations are needed to participate in the hearing, please call the Board at (402) 471-2148 a minimum of ten (10) days prior to the date hearing.

The Agenda for the meeting is kept continuously current and is available for public inspection in the office of the Board, 301 Centennial Mall South, Lincoln, Nebraska During normal business hours. The Board Shall have the right to Modify the agenda to include items of emergency nature only at such meetings.

## **Nebraska Motor Vehicle Industry Licensing Board**

### **Rules and Regulations – Explanation of Edits**

#### **Chapter 1 – ORGANIZATION**

- 003 Strikes “Chairman” and inserts “Chairperson”. Strikes “Secretary” and inserts “Director”.  
Strikes “telegraph” and inserts “electronic communication”.
- 004 Strikes “Secretary” and inserts “Director”.
- 005 Strikes “State Capitol Building,” and inserts “State Office Building, P.O. Box 94697,”.
- 006 Strikes “Secretary” and inserts “Director” four times.  
Strikes “Employment, transfer, and separation of all Board Employees shall be referred to the Board for approval.” *This is no longer the Board’s practice.*
- 007 Strikes “December” and inserts “first” and “of the calendar year”.  
Strikes “vice-chairman” and inserts “vice-chairperson” multiple times.  
Strikes “chairman” and insert “chairperson” multiple times.

#### **Chapter 2 – ISSUANCE OF LICENSES**

- 001 Strikes “Chapter 60, Article 14, R.R.S., 1943, as amended” and insert “the Motor Vehicle Industry Regulation Act”. Strikes “Secretary” and inserts “Director”.  
Inserts “or at a later date at the discretion of the Executive Director.” This will allow late applications.

#### **Chapter 3 – ESTABLISHED PLACE OF BUSINESS**

- 001 Strikes “Section 60-1401.02 (25) R.R.S., 1943,” and inserts “Neb. Rev. Stat. § 60-1401.15”.
- 002 Strikes “Sections 60-1401.01 to 60-1435, R.R.S., as amended” and inserts “the Motor Vehicle Industry Regulation Act”.

#### **Chapter 4 – SALESMEN & REPRESENTATIVES – Strikes “SALESMEN” and inserts “SALESPEOPLE”.**

- 001 Strikes “salesmen” and inserts “salespeople”.  
Strikes “Chapter 60-1401.01 to 60-1435, R.R.S., 1943, as amended” and inserts “the Motor Vehicle Industry Regulation Act”.  
Strikes “salesmen” and inserts “salesperson”.
- 002 This section was reorganized at the Attorney General’s recommendation.  
References to “salesmen”. *Board no longer licenses salespeople.*  
Inserts “or her” after “his”.

Strikes "Section 60-1410, R.R.S., 1943, as amended" and inserts "Neb. Rev. Stat. § 60-1410".

#### **Chapter 5 – USE OF DEALER PLATES**

001 Strikes "Sections" and inserts "Neb. Rev. Stat. §§".

Strikes ",," following 60-320 and "R.R.S., 1943, as amended".

003 Strikes "licensed as a salesman" and inserts "salesperson".

Inserts "or her" after "his".

#### **Chapter 6 – SALES INSTRUMENT**

001 Inserts "Neb. Rev. Stat. §" and strikes "Section" and "R.R.S., 1943, as amended".

001.02 Strikes the space between number and the end quote.

#### **Chapter 8 – PRACTICE BEFORE THE BOARD**

004 Strikes "State Capitol Building," and inserts "State Office Building, P.O. Box 94697,".

#### **Chapter 10 – APPLICATIONS**

002 Inserts "or her" after "his".

003 Inserts "or her" after "his".

004 Inserts "or her" after "his".

009 Strikes "Applications for special permits pursuant to Section 60-1407.03, Revised Statutes Supplement, 1972, shall be filed at least ten days prior to a regularly scheduled meeting of the Board, to be considered at that meeting. Hearings shall not be required on such applications unless the Executive Secretary determines a hearing would be advisable in a particular case, in which he shall furnish notice to the applicant at least 5 days in advance of the hearing." *This is no longer the Board's practice and the Attorney General recommended removing the Executive Secretary's role from this process anyway.*

Insert "Neb. Rev. Stat. § 60-1407.03" and strike "~~conform to Rule 10-(2), and shall also~~".

Following "(4)" insert "and".

Strike ", (5) and if the applicant is a non-resident dealer, certification from the appropriate licensing authority that such dealer is properly licensed in his state of residence" *This is no longer the Board's practice.*

#### **Chapter 11 – COMPLAINTS**

003 Inserts "or her" after "his".

005 Strikes "he" after "if" and inserts "the defendant".

006 Inserts "or her" after "his".

007 Inserts "or her" after "his".

Strikes "Secretary" and inserts "Director". Strikes "his" and inserts "the Executive Director's".

### **Chapter 13 – PROCEDURE**

001 Strikes "Secretary" and inserts "Director".

004 Inserts "or her" after "his".

Strikes "telegram" and inserts "electronic communication".

Strikes "or its Executive Secretary". *This is an Attorney General's recommendation.*

007 Inserts "or her" after "his".

007.01 Inserts "or she" after "he".

007.02 Inserts "or she" after "he".

011 Strikes "To clarify the provisions of Section 60-1415, R.R.S., 1943, as amended, the ten day period allowed for filing an appeal from an order of the Board shall commence to run on the date of service of the order on the applicant or licensee." *This is an Attorney General's recommendation due to statutory change.*

Strikes "Secretary" and inserts "Director".

Inserts "The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee." *This is an Attorney General's recommendation.*

Strikes "Secretary" and inserts "Director".

012 Inserts "The Board may employ a hearing officer who shall assist the Board with the review of any issue or matter which the Board deems proper in order to carry out the provisions of the Motor Vehicle Industry Regulation Act and who shall perform such other duties as the Board may prescribe, provided, any issue or matter reviewed by a hearing officer involving a contested case shall conform to the requirements of Rules Chapter 14, and provided further, if a hearing is conducted by a hearing officer, the hearing officer shall submit a report of the findings made by such hearing officer along with a recommendation of order or decision to the Board within 20 days of the date of such hearing, and a copy of the report and recommendation of the hearing officer shall be forwarded to all parties requesting the same, and provided further, any recommendation of order or decision made to the Board by a hearing officer will not be considered an order or decision of the Board unless accepted and affirmed by the Board, and the Board may further reverse, adopt, modify, supplement, amend or reject the recommendation of order or decision by the hearing officer, in whole or in part, and provided further, upon its motion or motion by any party to a hearing held before a hearing officer, the Board shall allow a rehearing before the Board of any issue or matter reviewed by a hearing officer. The written motion by an outside party shall be in writing and must be made within 20 days of the date of the Board's decision and shall include the reasons why a rehearing should take place."

012.01 Inserts the following new language clarifying the requirement that there be an official record of the hearing and related procedures:

“Any hearing conducted by a hearing officer shall require the department to prepare an official record of the hearing, including all testimony recorded mechanically or stenographically, and all exhibits introduced. The department is not required to transcribe such record except pursuant to an appeal, except that, upon written request and receipt of a reasonable fee for transcribing such record, the department may transcribe the record or allow for its transcription by the persons requesting.”

*This new language clarifies the hearing officer’s role and related procedures regarding hearings as authorized by Neb. Rev. Stat. § 60-1403.*

#### **Chapter 14 – CONTESTED CASES: EVIDENCE**

001 Inserts “Neb. Rev. Stat. §” and strikes “Section” and “R.R.S., 1943, as amended”.

Strikes “born” and inserts “borne”.

010 Strikes “Secretary” and inserts “Director” twice.

014 Strikes “Secretary” and inserts “Director”.

# MOTOR VEHICLE INDUSTRY LICENSING BOARD RULES AND REGULATIONS

RULES AND REGULATIONS

FOR STATE OF NEBRASKA

MOTOR VEHICLE INDUSTRY LICENSING BOARD

## TITLE 253 - MOTOR VEHICLE INDUSTRY LICENSING BOARD

### CHAPTER 1 - ORGANIZATION

#### 001 Short Title.

The Nebraska Motor Vehicle Industry Licensing Board will hereinafter be referred to as “the Board”.

#### 002 Regular Meetings.

The Board’s regular meetings shall be held monthly, at a date to be determined by the Board at the last prior meeting, unless a majority of the Board members vote not to hold a meeting during a particular month. Any meeting may be continued from time to time as required by the business before the Board, upon the vote of a majority of the members.

#### 003 Special Meetings.

Special meetings may be held on any date or time, upon the call of the Board ~~Chairman~~ Chairperson or the written request of two Board Members, through the Executive ~~Secretary~~ Director, by notice given to the Board Members at least 48 hours prior to the time the meeting is to be held. Such notice will be given to the Board Members by letter, telephone or ~~telegraph~~ electronic communication.

#### 004 Board Quorum.

A quorum consisting of a simple majority of the Board Members will be required to constitute an official Board Meeting. Minutes of the meeting shall be recorded, published and kept by the Executive ~~Secretary~~ Director of the Board.

#### 005 Communications.

All Communications with the Board shall be addressed to its office, ~~State Capitol Building, State Office Building, P.O. Box 94697, Lincoln, Nebraska.~~

#### 006 Executive ~~Secretary~~ Director.

The Executive ~~Secretary~~ Director of the Board shall be in charge of the Board’s office and shall conduct and direct the activities thereof in a manner as directed by the Board. The Executive ~~Secretary~~ Director shall be accountable and responsible directly to the Board. The field and office staffs of the Board shall be under the supervision and direction of the Executive ~~Secretary~~ Director and shall be accountable and responsible directly to the Executive ~~Secretary~~ Director. ~~Employment, transfer, and separation of all Board Employees shall be referred to the Board for approval.~~

### **007 Officers.**

The Board shall annually, at its ~~December~~ first meeting of the calendar year, elect a first ~~vice-chairman~~ vice-chairperson and a second ~~vice-chairman~~ vice-chairperson. The ~~chairman~~ chairperson shall preside at all meetings, and in ~~the chairman's~~ his absence the chairperson's ~~his~~ duties shall devolve upon the first ~~vice-chairman~~ vice-chairperson, and in ~~the first vice-chairman's~~ his absence upon the second ~~vice-chairman~~ vice-chairperson. In the event that the ~~chairman~~ chairperson, first ~~vice-chairman~~ vice-chairperson, and second ~~vice-chairman~~ vice-chairperson are absent, the remaining members, if they constitute a quorum, shall select a temporary ~~chairman~~ chairperson and proceed with the business of the Board.

## **CHAPTER 2 - ISSUANCE OF LICENSES**

### **001 Delegation of Responsibility.**

It shall be the responsibility of the Board to approve or deny the issuance of licenses under ~~Chapter 60, Article 14, R.R.S., 1943, as amended~~ the Motor Vehicle Industry Regulation Act. However, the Board reserves the right, at its discretion, to delegate, the administrative purposes, any part thereof to the Executive ~~Secretary~~ Director in such cases where, in the opinion of the Board, the matter will be handled more expeditiously in this manner. Applications for renewal of licenses shall be filed not later than December 31 of each year.

### **002 Photograph of Facilities.**

An applicant for an initial dealer license from the Board shall provide a photograph of the building facilities of the business, which photograph shall show clearly the required sign installed as a part of the photograph of the building facilities. In such cases where the facilities of the established place of business of the dealer applicant appear to be inadequate or substandard such applicant may be required to appear before the Board in person for the purpose of determination of issuance or denial of the license by the Board.

## **CHAPTER 3 - ESTABLISHED PLACE OF BUSINESS**

### **001 Dealership Sign.**

With reference to ~~Section 60-1401.02 (25) R.R.S., 1943,~~ Neb. Rev. Stat. § 60-1401.15 as amended, pertaining to the required sign of an established place of business, such sign shall be permanent in nature, installed to be readily visible from the principal avenue of traffic and embody a designation so as to clearly identify the type of business for which the license is granted.

### **002 One Dealer Per Location.**

It shall be unlawful for more than one separately owned retail dealership, under the jurisdiction of ~~Sections 60-1401.01 to 60-1435, R.R.S., 1943, as amended~~ the Motor Vehicle Industry Regulation Act, to be located at the same address location.

### **003 Not Where Alcoholic Beverage Sold.**

It shall be unlawful for a dealer license holder to have such established place of business in the same business facilities where alcoholic beverages are dispensed or sold.

### **004 Oil Company Agreements.**

When the premises for which a license is sought are owned by a company engaged in the wholesale distribution of gasoline, the applicant shall submit a statement signed by an authorized representative or the owner of said premises approving the use of said premises for the sale of motor vehicles and, or trailers.

## **CHAPTER 4 – SALESMEN SALESPeople & REPRESENTATIVES**

### **001 Dealers.**

Manufacturers and distributors shall be responsible for the actions of their ~~salesmen~~ salespeople and representatives, and any violation of ~~Chapter 60, Article 14, R.R.S., 1943, as amended~~ the Motor Vehicle Industry Regulation Act, or of these rules and regulations, by a ~~salesmen~~ salesperson or representative shall be deemed a violation by the respective employing dealer, manufacturer, or distributor.

### **002 Pocket Card.**

A licensed motor vehicle ~~dealer's agents, factory representatives, and distributor representatives~~ or trailer sales man, factory representative, and distributor representatives ~~is~~ are required to carry on his or her person at all times the respective dealer's agents', factory representatives', and distributor representatives' ~~salesman, factory representative and distributor representative~~ pocket cards issued in accordance with ~~Section 60-1410, R.R.S., 1943, as amended~~ Neb. Rev. Stat. § 60-1410.

## **CHAPTER 5 - USE OF DEALER PLATES**

### **001 Responsibility of Licensee**

It shall be the responsibility of a licensed person, firm co-partnership, association, or corporation entitled to the purchase of dealer plates under Neb. Rev. Stat. §§ Sections 60-320, and 60-322 R.R.S., 1943, as amended, for the proper use of dealer plates issued or assigned to such person, firm co-partnership, association, or corporation under said Sections 60-320 and 60-322.

### **002 Definition of Dealer for the purpose of dealer plate usage.**

A dealer is a proprietor, partner, corporation officer or owner who is actively engaged in the operation of a licensed dealership and who does not rely on another employment or business pursuit for a substantial degree of his or her total income.

### **003 Definition of bona fide employee for the purpose of dealer plate usage.**

A bona fide employee of a licensed dealership is an individual who is: (1) ~~licensed as a salesman~~ salesperson for the dealership, (2) receives more than half of his or her total income from said dealership, excluding investment, retirement, pension, social security benefits income of payments and, (3) associated in the regular conduct of the dealership business with regular and reasonable amount of time spent in his or her employment with said dealership.

## **CHAPTER 6 - SALES INSTRUMENT**

### **001 Clarifications & Interpretations.**

In order to clarify certain language of Neb. Rev. Stat. § Section 60-1417, R.R.S., 1943, as amended, and to provide clear instructions in line with automotive and trailer industry practices the following interpretations are declared:

#### 001.01

Where "year of model" and "year and model" appears, this shall be construed to mean "make, year, model, and body type, where applicable".

#### 001.02



Where reference is made to “~~serial number~~ number” this shall also be construed to mean “identification number”.

## **CHAPTER 7 - SEVERANCE CLAUSE**

### **001 Void & Non-enforceable.**

If any section, subdivision, or clause in these Rules and Regulations, for any reason, be held void or non-enforceable, such decision shall in no way affect the validity or enforceability or any other part or parts of these Rules and Regulations.

## **CHAPTER 8 - PRACTICE BEFORE THE BOARD**

### **001 Scope and Application.**

These rules govern practice and procedure before the Motor Vehicle Industry Licensing Board unless otherwise specifically directed by the Board in any proceeding. Practice and procedure before this Board is also governed by the applicable Revised Statutes of Nebraska and the decisions of the Nebraska Supreme Court. In the absence of a specific rule or order of the Board, the statutory rules and practice obtaining in proceedings in the District Courts of the State shall be applicable, including provisions as to depositions, discovery, and pre-hearing conferences.

### **002 Promulgation, Amendment, or Repeal of Rules and Regulations.**

An application for the promulgation, amendment, or repeal of any Board rule or regulation shall state the precise wording of the proposed rule or addition, or the precise wording of the present regulation to be deleted or repealed, and shall state briefly the reasons for such promulgation, amendment, or repeal. All such requests will be considered and acted upon by the Board on or about July 1 and January 1 of each year, in the manner provided by Statute.

### **003 Applicability of Rules; Declaratory Rulings.**

Any person desiring to obtain a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by a rule shall file a petition with the Board, which petition shall set forth the rule or statute in question and shall clearly state the rights, status, or other legal relations, a determination of which is sought, and the grounds for the petitioner's position with reference thereto.

### **004 Communications.**

All correspondence should be addressed to the Motor Vehicle Industry Licensing Board, ~~State Capitol Building~~ State Office Building, P.O. Box 94697, Lincoln, Nebraska. Each piece of correspondence shall embrace only one subject, should clearly state the file number of the proceeding involved, and shall include the number and address of the sender.

### **005 Office.**

The Board office is located at Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, 68509. Office hours are from 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m., Monday through Friday. Board files are located in the office, and are public records open to examination. When the filing of a pleading or the doing of any act is required on or before a given date which falls on Saturday, Sunday, or any legal holiday on which the Board offices are closed, the pleading or act need not be filed nor done until the next succeeding working day.

### **006 Definitions.**

As used in this chapter, unless the context otherwise requires:

006.01

Pleading shall mean any written applications, petition, protest, complaint, answer, or motion used in any proceeding before the Board.

006.02

Proceeding shall mean an application for any right which the Board is empowered to grant, or a formal complaint, or an investigation instituted on motion of the Board.

## **CHAPTER 9 - PARTIES TO PROCEEDINGS**

### **001 Parties Classified.**

Parties to a proceeding are:

001.01 Applicants.

In proceedings involving applications for authority or permission which the Board is empowered to grant or deny, the parties on whose behalf the applications are made are termed applicants.

001.02 Board Staff.

Persons who appear in a proceeding by virtue of their Board employment are Board Staff.

001.03 Complainants.

Persons filing a complaint with the Board of any violation subject to the jurisdiction of the Board are complainants.

001.04 Defendants.

Persons within the jurisdiction of the Board against whom any complaint is filed are defendants.

001.05 Protestants.

Persons objecting to the granting of an application are protestants.

001.06 Respondents.

Persons ordered by the Board to appear in a proceeding are respondents.

### **002 Other Persons.**

Only those persons designated above who have met the applicable requirements of these rules are parties to any proceedings.

## **CHAPTER 10 - APPLICATIONS**

### **001 Parties.**

The only parties to application proceedings are applicants, protestants, respondents, and the Board Staff.

### **002 Form.**

If the Board has prescribed official forms in Rule 15, they shall be used as specified. Except as otherwise provided in Rule 15, a formal application shall show the venue "BEFORE THE NEBRASKA MOTOR VEHICLE INDUSTRY LICENSING BOARD", shall be entitled, "in the Matter of the Application of" (specifying the name of the applicant and the subject matter), and shall be designated in the heading as an "Application". All applications shall set forth the facts on which the application is based, a request for whatever Board action is being sought, and a

reference to the applicable laws, rules and regulations. The applications shall contain such further statements as may be required by any provision of law. The application shall be signed by the applicant, or by a duly authorized officer of the applicant, if it be a corporation or organization, or for the applicant by his or her attorney.

### **003 Protests.**

Except as provided in Rule 10-004, a protest against the granting of an application shall set forth specifically the grounds upon which it is made; shall contain a concise statement of the interest of protestant in the proceedings; shall be signed by the protestant, or by a duly authorized officer of the protestant, if it be a corporation or organization, or for the protestant by its attorney; shall be filed with the Board on or before the seventh day prior to the date of the hearing; and shall show service of a copy thereof on the applicant and his or her attorney, if known.

### **004 Informal Protests.**

Any individual may appear at a hearing on his or her own behalf as a protestant, and may participate by making a statement for the record only, without meeting the requirements of Rule 10-003.

### **005 Order for Respondents to Appear.**

The Board may by order ask any person, subject to its jurisdiction, to appear as respondent in an application proceeding. This order shall name those persons to appear as respondents, shall state the purpose or scope of their appearance, shall state the time and place of the hearing, and shall be served on respondents either by Certified mail, return receipt requested, or personally by an employee of the Board or any officer authorized by law to serve process of the District Courts.

### **006 Order of Evidence.**

Evidence will ordinarily be received in the following order: (1) applicants; (2) protestants; (3) Board Staff; and (4) rebuttal by applicants.

### **007 Informal Applications.**

Matters which under the law may be acted upon without a hearing may be handled by correspondence.

### **008 Subsequent Applications.**

When any application has been denied in whole or in part, a subsequent application covering substantially the same subject matter will not be considered by the Board within 90 days from the date of the final denial in whole or in part of the previous application, except for good cause shown.

### **009 Special Permits.**

~~Applications for special permits pursuant to Section 60-1407.03, Revised Statutes Supplement, 1972, shall be filed at least ten days prior to a regularly scheduled meeting of the Board, to be considered at that meeting. Hearings shall not be required on such applications unless the Executive Secretary determines a hearing would be advisable in a particular case, in which he shall furnish notice to the applicant at least five days in advance of the hearing. Applications for special permits pursuant to Neb. Rev. Stat. § 60-1407.03 shall conform to Rule 10-(2), and shall also include (1) the names of the sponsors of the event for which a permit is sought, (2) the specific location of the event, (3) the dates for which the permit is sought, (4) and the basic~~

purpose of the event, ~~(5) and if the applicant is a non-resident dealer, certification from the appropriate licensing authority that such dealer is properly licensed in his state of residence.~~

## **CHAPTER 11 - COMPLAINTS**

### **001 Form of Complaints.**

Complaints may be formal or informal. A formal complaint must follow the format set out in Rule 11-003 below. Informal complaints should be in the form set out in 11-007 below.

### **002 Parties.**

The only parties to a complaint proceeding are complainants and defendants.

### **003 Form.**

A complaint of any violation subject to the jurisdiction of the Board may be filed by any person, organization or corporation. Each complaint shall show the venue "BEFORE THE NEBRASKA MOTOR VEHICLE INDUSTRY LICENSING BOARD"; shall contain a heading showing the name of the complainant and the name of the defendant; shall specifically advise the defendant of the alleged violations; shall concisely set forth all material facts upon which the complaint is based; and shall be subscribed and verified by at least one complainant, or by a duly authorized officer of the complainant if it be a corporation or organization, or for the complainant by his or her attorney.

### **004 Copies and Service.**

Every formal complaint must be accompanied by copies sufficient in number to serve one to each defendant and retain an original and five copies for its own use. The Board shall serve the complaint on each defendant in the manner required by law. One copy is sufficient in the case of an informal complaint.

### **005 Satisfaction of Complaint.**

A statement of satisfaction may be filed by the defendant if ~~he~~ the defendant desires to satisfy the complaint. Such statement shall state the satisfaction which the defendant is willing to give, shall be filed within ten days of the mailing of the complaint, shall be subscribed and verified in the same manner as a complaint, shall include sufficient copies to provide one copy for each party and an original and five copies for the Board. The Board shall immediately forward a copy thereof to each complainant, either by certified mail or by personal service. Within five days of receipt of statement of satisfaction, the complainant shall notify the Board in writing whether the satisfaction meets the complaint. If the complainant so notifies the Board that the satisfaction does not meet the complaint, the Board shall give written notice to the defendant to answer. Otherwise the Board shall in its sole and absolute discretion determine whether to dismiss or notify the defendant to answer.

### **006 Answers.**

The caption of an answer shall be the same as that of the complaint, except that it shall contain the word "ANSWER". An answer shall completely advise all parties as to the nature of the defense, shall specifically admit or deny each material allegation of the pleading being answered, and shall be subscribed and verified by the defendant, or by a duly authorized officer of the defendant if it be a corporation or organization, or for the defendant by his or her attorney. Unless otherwise ordered by the Board, answer day shall be twenty days from the date of service of the complaint by the Board.

### **007 Informal Complaints.**

Any person may informally complain with respect to any matter within the jurisdiction of the Board by letter or other writing addressed to the Board, setting forth his or her name and address and that of any person or persons complained of and concise statement of the allegations with respect to which the complaint is made. An informal complaint is without prejudice to the right to file a formal complaint with reference to same subject matter. Upon the receipt of an informal complaint, the Executive ~~Secretary~~ Director is authorized to cause a preliminary investigation by the Staff acting under his the Executive Director's direction and to endeavor, by correspondence or conference, to adjust the complaint to the mutual satisfaction of the parties.

### **008 Order of Evidence.**

Evidence will ordinarily be received in the following order: (1) Complainant; (2) Defendant; and (3) Rebuttal by Complainant.

## **CHAPTER 12 - BOARD INVESTIGATION**

### **001 Parties.**

The only parties to a Board investigation are the Board Staff and respondents.

### **002 Scope.**

The Board may at any time on its own motion, make an investigation or order any hearing which the Board is authorized either by law or inherent power to conduct.

### **003 Order for Respondents to Appear.**

The Board may by order ask any person to appear as respondent in an investigation proceeding. This order shall name those persons to appear as respondents, shall state the purpose of scope of their appearance, shall state the time and place of the hearing, and shall be served on respondents either by Certified mail, return receipt requested, or personally by an employee of the Board or any officer authorized by law to serve process of the District Courts.

### **004 Evidence.**

The evidentiary provisions of Chapter 14 shall also apply to investigation proceedings. The Board may, through its staff or otherwise, secure and present such evidence as it may consider necessary or desirable in any investigation proceedings, in addition to the evidence presented by respondents. Evidence will ordinarily be received in the following order: (1) Board Staff, (2) Respondents, and (3) Rebuttal by Board Staff.

## **CHAPTER 13 - PROCEDURE**

### **001 Setting of Hearings.**

Upon instigation of proceedings, the time and place of each hearing will be set by the Board or its Executive ~~Secretary~~ Director.

### **002 Filing and Withdrawal of Pleadings, Motions and Exceptions.**

Unless otherwise provided in Rules 11-004, 11-005 and 15-001 the original and one copy of all pleadings, motions and exceptions will be filed with the Board. The original copy shall be accompanied by a certificate showing service thereof on all parties to the proceedings or their attorneys and the date of service. Such service shall be made by delivery in person or by Certified mail, properly addressed with charges prepaid, one copy to each party. Any party making a filing with the Board may not withdraw the filing without Board approval.

### **003 Receipt for Filing Pleadings, Motions, and Exceptions.**

If a receipt for filing of any pleading, document or paper is desired, letters of transmittal shall be sent in duplicate to the Board. One copy showing date of receipt will be returned to the sender.

### **004 Continuances.**

Any party who desires a continuance shall, immediately upon receipt of notice of hearing, or as soon thereafter as facts requiring such continuance come to his or her knowledge, notify the Board in writing, by letter or ~~telegram~~ electronic communication of said desire, stating in detail the reasons why such continuance is necessary. Any such party may be required to submit affidavits in support of such requests. For good cause shown, the Board ~~or its Executive Secretary,~~ may grant such a continuance and may at any time order a continuance on its own motion. Only under exceptional circumstances will requests for continuance of a hearing be considered unless submitted on or before the seventh day prior to the hearing date.

### **005 Consolidation.**

Where two or more proceedings are legally or factually related, they may be heard and considered together on a consolidated record, unless any party would be prejudiced thereby.

### **006 Conduct of Hearings.**

Hearings will be conducted by the Board, which, among other things, will open the proceedings; enter into the record the notice of hearing; take appearances; act on pleadings not previously filed; hear the evidence in the order provided in Rules 10-006, 11-008, and 12-004; rule on motions and objections; interrogate any witnesses; and close the proceedings.

### **007 Appearances.**

Any individual may appear on his or her own behalf before the Board. An individual may appear on behalf of another only if,

007.01 he or she is admitted to practice law before the Nebraska Supreme Court, or

007.02 he or she is admitted to practice law before the supreme court of any state and is accompanied by a person admitted to practice law before the Nebraska Supreme Court.

### **008 Briefs.**

Submission of briefs may be required by the Board. Any party desiring to submit a brief may do so by indicating such desire at the close of the hearing. The time in which briefs shall be filed and the number of copies required will be fixed at the close of the hearing by the presiding Board Member.

### **009 Oral Argument.**

Ordinarily no oral argument will be permitted at the close of the hearing. However, the Board may request or permit such argument.

### **010 Revocation or Suspension; Effective date, Service.**

Any order of suspension or revocation of a license shall be made effective fourteen days after such order has been served upon the licensee. Service shall be made by certified mail, return receipt requested, or personally by an employee of the Board or an officer authorized by law to serve process of the District Courts.

### **011 Appeals.**

~~To clarify the provisions of Neb. Rev. Stat. § Section 60-1415, R.R.S., 1943, as amended, the ten day period allowed for filing an appeal from an order of the Board shall commence to run on the date of service of the order on the applicant or licensee. In any appeal, service of summons upon the Executive Secretary Director shall constitute service upon the Board. In any appeal the Board will file with the court a certified transcript of the proceedings. The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The transcript shall be certified by the reporter and the Executive Secretary Director.~~

### **012 Hearing Officer.**

The Board may employ a hearing officer who shall assist the Board with the review of any issue or matter which the Board deems proper in order to carry out the provisions of the Motor Vehicle Industry Regulation Act and who shall perform such other duties as the Board may prescribe, provided, any issue or matter reviewed by a hearing officer involving a contested case shall conform to the requirements of Rules Chapter 14, and provided further, if a hearing is conducted by a hearing officer, the hearing officer shall submit a report of the findings made by such hearing officer along with a recommendation of order or decision to the Board within 20 days of the date of such hearing, and a copy of the report and recommendation of the hearing officer shall be forwarded to all parties requesting the same, and provided further, any recommendation of order or decision made to the Board by a hearing officer will not be considered an order or decision of the Board unless accepted and affirmed by the Board, and the Board may further reverse, adopt, modify, supplement, amend or reject the recommendation of order or decision by the hearing officer, in whole or in part, and provided further, upon its motion or motion by any party to a hearing held before a hearing officer, the Board shall allow a rehearing before the Board of any issue or matter reviewed by a hearing officer. The written motion by an outside party shall be in writing and must be made within 20 days of the date of the Board's decision and shall include the reasons why a rehearing should take place.

#### 012.01

Any hearing conducted by a hearing officer shall require the Board to prepare an official record of the hearing, including all testimony recorded mechanically or stenographically, and all exhibits introduced. The Board is not required to transcribe such record except pursuant to an appeal, except that, upon written request and receipt of a reasonable fee for transcribing such record, the Board may transcribe the record or allow for its transcription by the persons requesting.

## **CHAPTER 14 - CONTESTED CASES: EVIDENCE**

### **001 Contested Cases; Notice of Hearing; Record.**

In any contested case all parties directly interested shall be afforded an opportunity to file pleadings and to be heard after notice, which shall state the time and place of hearing, the issues involved and shall be given at least ten days prior to such hearing. In such hearing formal rules of pleading and evidence need not necessarily be observed; provided, however, the provisions of ~~Section Neb. Rev. Stat. § 84-914, R.R.S., 1943, as amended,~~ shall apply. Matters offered into evidence subject to objection under the provisions of said section shall stand as admitted into evidence unless objection thereto is made and sustained. A copy of the official record of hearing, or any part thereof, shall be furnished to any interested party at its expense, upon written request. The Board and interested parties may provide for the payment of the expense of transcribing and copying said official record by agreement. The Board may



compensate witnesses which it calls. The compensation, if any, of other witnesses shall be ~~born~~ borne by the party calling such witnesses. All such hearings shall be open to the public.

### **002 Filing and Serving Exhibits Prior to Hearing.**

In any proceeding where detailed or complicated exhibits are to be used, the Board or its staff may require any party to file and serve copies of such exhibits or other necessary information within a specified time in advance of the hearing in order to enable the other parties and the Board staff to study same and prepare cross examination with references thereto.

### **003 Copies of Exhibits.**

Parties shall furnish accurate copies of all documentary evidence offered at the hearing to the Official Reporter, the presiding Board Member and all parties to the proceeding.

### **004 Official Files.**

Any party desiring to introduce into evidence any part or parts of official files, shall obtain copies thereof in advance of the hearing.

### **005 Stipulations.**

Parties to any proceeding may agree upon any facts involved in the controversy, either by written stipulation entered into the record as an exhibit, or by oral agreement stated on the record; provided, that the Board shall not be irrevocably bound by such stipulation.

### **006 Cumulative Evidence.**

The presiding Board Member may exclude evidence which is cumulative or repetitious.

### **007 Abstracts and Documents.**

When documents are numerous the Board may refuse to receive in evidence more than a limited number alleged and appearing to be representative. The party may be required to abstract in orderly fashion the relevant data from these documents, affording other parties reasonable opportunity to examine both the documents and the abstract and thereupon offer the abstract in evidence in exhibit form.

### **008 Material in Books, Papers or Documents.**

Relevant portions of books, papers, or documents, shall be plainly designated and distinguished from all irrelevant portions before the relevant material may be offered into evidence. Where the irrelevant material in the book, paper, or document is voluminous so as to encumber the record, the book, paper or document may be marked for identification and the relevant material read into the record. Upon direction of the presiding Board member, a true copy of the relevant matter may be received as an exhibit, provided that copies are delivered to all parties of record and provided all parties of record are afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof, if found to be material and relevant.

### **009 Late Filed Exhibits.**

The presiding Board Member may authorize any party to furnish and serve designated late filed exhibits within a specified time after the close of the hearing.

### **010 Subpoenas.**

Subpoenas requiring the attendance of witnesses will be issued by any member of the Board or the Executive ~~Secretary~~ Director on written application of any party, or on order of the Board. Subpoenas for the production of papers, books, or documents, unless directed by the Board on



its own motion, will be issued only upon application in writing, stating specifically which papers, books, or documents are required and the facts expected to be proved thereby. The subpoena shall be served in the manner provided by law. All parties directed to produce such books, papers, or documents shall furnish and deliver same at the time and place specified by the Board to the Executive ~~Secretary~~ Director or other designated employee or agent of the Board.

#### **011 Witness Fee.**

Any witness who is summoned and responds thereto is entitled to the same fee as is paid for like service in the District Courts of Nebraska, such fee to be paid by the party at whose instance the witness's testimony is taken.

#### **012 Depositions.**

The use of depositions in proceedings before the Board is governed by the Revised Statutes of Nebraska except as hereinafter provided:

012.01 Time for Taking. All depositions within this State shall be taken at least ten days prior to the date of the hearing, and all depositions outside of the State shall be taken at least thirty days prior to the date of the hearing, except for good cause shown in writing.

012.02 Request and Order. A deposition will be taken only on the order of the Board. This order may issue on the Board's own initiative, or on good cause shown in a petition by any party to a proceeding. This petition requesting that a deposition be taken shall be filed with the Board with due regard to the time provisions of Rule 012.01 above; and shall clearly set forth the name and address of the witness, and place where, the time when, and reasons why taken. The Board order that a deposition be taken shall specify the witness whose deposition is to be taken; shall state the time, the place, and the official before whom taken; and shall be served on all parties of record.

#### **013 Written Interrogatories.**

Parties served with the order for the taking of a deposition may promptly transmit written interrogatories to the hearing officer, who shall propound all proper questions to the witness and record the answers verbatim. These interrogatories need not be served upon the party at whose instance the deposition is taken. No other interrogatories shall be used before the Board.

#### **014 Filing.**

The officer taking the deposition shall promptly seal the deposition along with all exhibits in an envelope, endorsed with the title of the proceeding, and send same by registered mail to the Executive ~~Secretary~~ Director of the Board. The deposition shall reach the Board, except for good cause shown, at least five days prior to the date of hearing at which it is to be offered as evidence. The party taking the deposition shall give prompt notice of its filing to all parties of record.

### **CHAPTER 15 - FORMS**

#### **001 Board Approval**

The Board may approve certain forms for use in connection with proceedings before the Board; such approved forms shall be available on request and should be used where applicable.