

**RULES OF THE VERMONT TRANSPORTATION BOARD
FOR ADJUDICATING PROCEEDINGS PURSUANT TO VERMONT’S
MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS,
AND DEALERS FRANCHISING PRACTICES ACT**

SUMMARY: The purpose of these rules is to establish the operating procedures pursuant to which the Vermont Transportation Board (the “Board”) will enforce the provisions of 9 V.S.A. Chapter 108, §§ 4083 et seq., the Vermont Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act (the “Act”), which authorizes the Board to regulate business practices among motor vehicle manufacturers, distributors, and dealers.

STATUTORY AUTHORITY: 9 V.S.A. § 4100b(b) and 19 V.S.A. § 5(d)(11)

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1. Purpose

- A. The purpose of these rules is to establish the operating procedures pursuant to which the Vermont Transportation Board (the “Board”) will enforce the provisions of 9 V.S.A. Chapter 108, §§ 4083 *et seq.*, the Vermont Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act (the “Act”), which authorizes the Board to regulate business practices among motor vehicle manufacturers, distributors, and dealers. These rules shall be construed to secure just, speedy, and efficient determination of all matters pending before the Board pursuant to the Act. Procedures not specifically addressed by these rules shall be governed by the Vermont Rules of Civil Procedure (VRCP).
- B. These rules govern all actions pending or filed with the Board pursuant to the Act after their effective date.
- C. Amendments to these rules will govern proceedings pending on or begun after their effective date except as the Chair determines that the application of one or more of the amendments would not be feasible or would result in injustice.

§2. **Applicability**

These rules govern all practice before the Board pursuant to the Act subject to and in accordance with the Board’s enabling statute, 19 V.S.A. § 3 *et seq.* and the provisions of the Act, 9 V.S.A. Chapter 108, §§ 4083 *et seq.* These rules shall apply to any person or entity defined by the Act and any intervenor who is involved in a proceeding before the Board pursuant to the Act. These rules guide the Board in carrying out its duties prescribed in the Act.

§3. **Definitions**

Terms used in these rules are defined below or are as defined in the Act or other applicable statutes, including, but not limited to 19 V.S.A. § 1.

- A. “Board Chair” and “Chair” mean the Chairperson of the Board or designee, as set forth in 9 V.S.A. § 1.
- B. “Complaint” means any complaint, petition, or protest for relief filed pursuant to the Act.
- C. “Complainant” means the person or entity commencing adjudicatory action or motion.
- D. “Party” means the person commencing an adjudicatory proceeding, all respondents, and all intervenors in a proceeding.

- E. “Respondent” means a person or entity against whom an adjudicatory proceeding is initiated under the Act.

§ 4. **Vermont Transportation Board**

- A. The Board. Pursuant to 19 V.S.A. §3, the Board consists of seven members appointed by the Governor with the advice and consent of the Senate. As appropriate and necessary, the Chair, Hearing Officer, and Board will be advised by legal counsel.
- B. The Office of the Board is located at 14 Baldwin Street, Montpelier, Vermont 05602. (802 828-2942).
- C. Hearing Officers. To facilitate administration and adjudication of complaints under the Act, the Chair may, pursuant to 19 V.S.A. § 5(c), appoint a Hearing Officer who shall be empowered to act for the Chair in all matters relevant to the Act provided that final decision of the Board following hearing or submission to the Board on the written record complies with the provisions of 19 V.S.A. § 5(c).

§5. **Representation**

- A. *Pro Se* Representation. An individual may appear on his/her own behalf.
- B. Upon motion, and with approval of the Chair, a business entity (e.g. corporation, association, partnership), may appear through an officer or partner authorized by the entity’s decision-making process to do so; authorization by the entity shall be filed with the motion requesting appearance by an officer or partner.
- C. Attorneys. A party may be represented by an attorney authorized to practice law in Vermont. At the discretion of the Chair, an attorney who is not a member of the Vermont bar, but is a member in good standing of the bar of another state, the District of Columbia, or a Territory of the United States may represent a party if a member of the Vermont bar moves that the out-of-state attorney be so permitted and if both the member of the Vermont bar and the out-of-state attorney agree to be actively associated during the proceeding. The member of the Vermont bar so associated shall further agree to accept service of all papers, to sign all papers filed with the Board, and to attend all conferences and hearing as ordered by the Chair. The Chair may at any time for good cause revoke such permission without hearing.
- D. Notice of Appearance. An attorney who appears in a representative capacity shall enter an appearance by filing a written notice of appearance, setting forth

the attorney's name, business address, and telephone number, and the name and address of the party represented.

- E. Withdrawal by an Attorney. An attorney may withdraw from representation of a party only with the approval of the Chair. If an attorney is allowed to withdraw, correspondence will thereafter be forwarded directly to the party or as otherwise directed by the Chair.

§ 6.. Standard and Burden of Proof

Proof shall be by a preponderance of the evidence and the burden of proof shall be on the complaining party unless otherwise set forth in the Act. Except as designated or allowed by the Chair, the party which has the burden of proof shall present its case first. This is an area, as with others, where the discretion of the chair is of paramount importance.

§ 7. Commencement of Proceeding

- A. A Proceeding under these Rules is started by filing a Complaint under 9 V.S.A. § 4100b *et seq.* A Complaint may only be amended as a matter of right within ten (10) days of the date of filing. A Complaint shall provide the reason a hearing is requested, the specific section of the Act under which relief is being sought, the facts which form the grounds for the complaint, and the outcome sought.
- B. The Chair shall review the Complaint to determine whether any information is inadequate or missing and, if so, shall return it to the party with an explanation of the deficiencies and notice that the party may make corrections and resubmit the complaint within ten (10) days of receipt.
- C. A Complaint shall be accompanied by a non-returnable filing fee of \$1,500.00 (One Thousand, Five Hundred U.S. Dollars) and confirmation of service upon the respondent.
- D. The filing of any papers required or permitted to be filed under these Rules is complete when the Board receives the filing by mail, in-hand delivery, or other means specified by the Chair.
- E. Non-compliance. If a party fails to comply with this section, the Chair may refuse to accept or consider the Complaint.
- F. Nothing in these Rules shall operate to limit the Board's right to require additional information from the complainant or any other party.
- G. Except as required under 9 V.S.A. § 4096(6)(C), which requires a hearing within 45 days, the Board shall schedule a hearing to occur within 120 days of the date the Complaint is received and accepted by the Board.

- H. The respondent(s) must file and serve an answer within twenty (20) days of receipt of the Complaint, as filed or amended under Paragraph B above. The answer must respond fully to all allegations and plead any and all affirmative defenses, including the factual and legal bases therefor. The answer must present the respondent's position on the issues raised by the Complaint. All defenses or defense issues not presented in the answer are waived. The Chair may allow an answer to be amended for good cause shown based on information obtained during discovery that was otherwise unavailable to the respondent.

§ 8. **Form of Papers and Submissions**

- A. All papers and submissions filed in connection with adjudicatory proceedings shall be in the form of a pleading in a civil matter in the courts of Vermont. They shall contain the names of the parties, a descriptive name of the filing, and Board Case Number, when available.
- B. Form. All papers and submissions filed in connection with adjudicatory proceedings, excluding exhibits, shall be typed or otherwise printed on one side of the page of 8.5 x 11 inch paper. The typed matter must be double spaced in at least 12-point type, except that footnotes and indented quotations may be single spaced and in 11-point type, and margins shall be at least one inch on all sides. All pages shall be numbered.
- C. Signatures. Every submission filed with the Board by a party represented by an attorney shall be signed by hand by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated. A party not represented by an attorney shall sign the submission and state the party's address and telephone number.

§ 9. **Service and Filing of Pleadings and Other Communications**

- A. Service of the Complaint and answer shall be by certified mail, return receipt requested, or independent delivery service that provides confirmation of receipt.
- B. Subject to the provisions of the Vermont Rules of Civil Procedure (VRCP), all papers after the Complaint required to be served upon a party shall be filed with the Board either before service or within five (5) days thereafter. Filing by a party shall constitute a representation by the party, subject to the obligations of the VRCP, that a copy of the paper has been or will be served upon each of the other parties as required by the VRCP. No further proof of service is required unless an adverse party raises a question of notice.
- C. Where a party is represented by an attorney, service of papers shall be made upon the attorney; if a party is not represented by an attorney, service shall be to the

person who has signed papers on behalf of the party; if more than one person has signed on behalf of a party not represented by an attorney, service shall be on one or more of the persons who have done so.

- D. Acknowledgment of Service. For any paper filed under these rules, the filing party shall file the original with the Board along with a statement that copies have been served on every other party or designated representative and specifying for each:
- (a) The name and address of the party or attorney, and
 - (b) The date and manner of service.

§ 10. Number of Copies of Filings and Other Documents

Parties shall provide an original and eight (8) copies of every pleading, transcript and all other filings or papers filed with the Board.

§ 11. Motions

- A. All pre-hearing motions shall be in the form set forth in § 8 above.
- B. Content. All motions must:
1. State concisely the question to be determined;
 2. State concisely the factual and legal grounds for the desired order or action;
 3. Be accompanied by an attached or incorporated memorandum of law and any supporting documentation; and
 4. Be accompanied by a draft order.
- C. Timing. No pre-hearing motion may be filed fewer than seven (7) days before the hearing without a showing of good cause and the prior approval of the Chair. The filing or pendency of a motion does not alter or extend any time limit except that a motion to dismiss must be filed within twenty (20) days of the filing of the answer and a motion for summary judgment must be filed within ten (10) days of the close of discovery.
- D. Opposition. Any opposition to a motion, except a motion to dismiss or a motion for summary judgment, must be filed within ten (10) days after receipt of the motion. Any opposition to a motion to dismiss or a motion for summary judgment must be filed within fifteen (15) days after receipt of the motion. A party failing to file such opposition shall be deemed to have waived all objections to the motion.

- F. Length. No brief, motion, or opposition to a motion to dismiss or motion for summary judgment shall exceed fifteen (15) pages without a showing of good cause and prior approval of the Chair. No brief, motion, or opposition thereto for any other motion shall exceed ten (10) pages without a showing of good cause and prior approval of the Chair.
- F. Briefs and Oral Argument. The Chair may in his/her discretion order that additional briefs be filed on any issue and may allow oral argument on any motions.
- G. The Chair shall rule on all pre-hearing motions in writing or on the record following oral argument.

§ 12. Computation of Time

- A. General Rule. In computing any period of time that is either prescribed or allowed by these rules, or is ordered by the Chair, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, state holiday, or any other day on which state offices are closed, in which event the period runs until the end of the next business day.

For other times when the Board's office does not have staff coverage, the Chair may designate one or more alternate locations for filing papers by in-hand delivery with the Board. If a party wishes to file a submission with the Board by in-hand delivery, the party shall ascertain when the Board's office will have staff coverage and/or the alternate location(s) for filing papers with the Board.

- B. Modification. When, by this rule or by order of the Chair, an act is required or allowed to be done at or within a specified time, the Chair for good cause shown, may order the period shortened or extended, except as precluded by statute. The Chair may order the period extended if such a request is made before the expiration of the period originally prescribed or as extended by a previous order; upon motion made after the expiration of the specified period the Chair may permit the act to be done where the failure to act within the specified time was the result of excusable neglect.
- C. Shortening Time Limits or Staying Further Processing. The Chair may order accelerated action on a claim without regard to the time limits otherwise provided in these Rules or may order a stay in writing of further processing of a claim on such terms as s/he deems appropriate.
- D. Additional Time After Service by Mail. Whenever a party has the right or is

required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period.

§ 13. Intervention

- A. Timing. Unless the Chair orders otherwise for good cause shown, persons who seek to intervene in a proceeding must do so by motion, which must be filed and served on all parties no later than fifteen days after the filing of the answer with the Board.
- B. The motion must include the name, address and telephone number of the person seeking to intervene, the manner in which the movant is affected by or interested in the proceeding, and the movant's position on the issues raised by the complaint and/or answer.
- C. The motion must include a short and plain statement of the nature and extent of the participation sought and a statement of the nature of the evidence or argument that the movant intends to submit.
- D. The Chair shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and may limit the scope of an intervenor's participation in any reasonable manner in order to avoid delay or duplication of evidence, or to otherwise protect the rights of the original parties, and/or to preserve Board resources.

§ 14. Pre-hearing Procedure

- A. Pre-hearing Conference. Except as provided below, the Chair shall schedule a pre-hearing conference to take place no later than forty-five (45) days from the filing of the Complaint. The parties shall attend the pre-hearing conference and shall address and consider the possibility of settlement. If the matter is not resolved through the conference, the matter shall be placed on the Board's calendar for hearing. Conference discussions concerning settlement shall remain confidential and shall not be disclosed or used as an admission in any subsequent hearing.

For Complaints filed pursuant to § 4096(6), which requires a final hearing within forty-five (45) days of the filing of the Complaint, the Board will endeavor to schedule a pre-hearing conference to take place not later than fifteen (15) days from the filing of the Complaint.

The parties shall attend the pre-hearing conference and shall address and consider the possibility of settlement. If the matter is not resolved through the conference, the matter shall be

placed on the Board's calendar for hearing. Conference discussions concerning settlement shall remain confidential and shall not be disclosed or used as an admission in any subsequent hearing.

1. At least five (5) days before the pre-hearing conference each party shall serve the Board and all other parties with a pretrial memorandum. The memorandum shall, to the greatest extent possible:
 - (a) identify all issues of fact and law to be raised at the hearing;
 - (b) list requested admissions or stipulations to facts or documents;
 - (c) specify the time requested for presentation of the party's direct case and cross examination of witnesses.

Unless otherwise provided, each party will be allotted no more than:

- a. Ten (10) minutes for an opening statement;
- b. In addition to a and c, no more than four (4) hours - including motions, objections by the opposing party and intervenor(s) to motions, and cross-examination of other parties' witnesses - to present its case; and
- c. Ten (10) minutes for a closing statement.

Prior to the hearing, upon request to the Chair, a party may be granted additional time if the Chair determines it is necessary to fully develop the facts or to ensure that all relevant evidence will be received. Each party will be permitted to present relevant evidence and testimony.

- (d) identify all witnesses, including experts, and the scope of each witness's testimony;
- (e) list requests to use pre-filed direct testimony;
- (f) list requests for official notice;
- (g) list all outstanding discovery items that the party has requested and discovery to which the party has not responded;
- (h) list proposed exhibits; and
- (i) list, provide, and identify any other information requested by the Chair.

2. At, or after, the pre-hearing conference the Chair will, with assistance from and after participation of the Parties' representatives:
 - (a) formulate or simplify the issues of law and fact;
 - (b) obtain admissions or stipulations to facts and documents;
 - (c) decide time limits for each party's examination and cross-examination of witnesses;
 - (d) decide requests for official notice;
 - (e) address discovery disputes and motions;
 - (f) determine the admissibility of challenged evidence;
 - (g) address any requests to use or require the use of prefiled direct testimony;
 - (h) decide the order of presentation;
 - (i) arrange for exchange of proposed exhibits, testimony, and evidence;
 - (j) limit the number of witnesses and extent of witness examinations;
 - (k) determine scheduling and procedures for the hearing;
 - (l) rule on pending motions;
 - (m) schedule the hearing; and
 - (n) discuss and decide other matters which may expedite the orderly conduct and settlement or adjudication of the proceeding and which justice may require.

3. **Good Faith Effort to Resolve Disputes.** At the pre-hearing conference, the parties shall be prepared to, and shall in fact, engage in a good faith effort to obtain resolution, and shall arrive with a person authorized to act on settlement proposals. For good cause shown, the Chair may allow the person authorized to act on settlement proposals to participate by telephone or other interactive means.

4. Mediation. The Chair, at his/her sole discretion, may appoint a mediator to facilitate settlement at the pre-hearing conference or to appoint a mediator to convene a settlement conference after the pre-hearing conference. The parties shall split the cost of a mediator as directed by the Chair subject to a final award of costs pursuant to the Act and § 19 of these Rules.
5. Final and Additional Pre-Hearing Conferences. The Chair will conduct a final pre-hearing conference approximately ten (10) days before a scheduled hearing. Each party shall file a trial brief five (5) days before this conference, consisting of a brief statement of not more than five (5) pages explaining the party's case, the standard of proof, and the applicable law. Each party may include proposed findings of fact and conclusions of law. The parties shall review the issues raised at the pre-hearing conference as set forth in subsection 1.A. of this section and shall exchange pre-marked exhibits and witness lists. Exhibits or witnesses not then listed may be excluded at hearing.

The Chair may require the parties to participate in other pre-hearing conferences, which may be conducted by telephone, video, or other electronic means. All pre-hearing conferences shall be held pursuant to the provisions of this section.

6. Prior Board Record as Evidence. In appropriate circumstances, the Chair may designate all or part of the record of prior Board hearings as evidence to be considered in a particular hearing.
7. Recording of Pre-Hearing Conferences. All or part of pre-hearing conferences may be recorded by the Board.
8. Pre-Hearing Conference Reports. The Chair may direct one or more of the parties to draft a pre-hearing Conference Report setting out the issues resolved at the pre-hearing conference and the issues which remain to be decided at hearing, or the Chair may do so her/himself. This pre-hearing conference Report shall be made part of the record and will control the course of the proceedings unless modified by the Chair.

B. Discovery.

1. Except as set forth below or ordered by the Chair, the Vermont Rules of Civil Procedure (VRCP) govern discovery.

2. The parties are required to exchange the following information within thirty (30) days of the filing of the complaint/protest:
 - (a) The name, address, telephone number, facsimile number and electronic address of the person upon whom service shall be made;
 - (b) The name of the person who is both knowledgeable on the issues and primarily responsible for responding to discovery;
 - (c) Copies of all correspondence and communications of all types between the claimant and respondent relevant to the issues presented for the three years prior to the filing of the complaint;
 - (d) For all relevant times, copies of the franchise agreement(s) in effect, including all addenda thereto, and the sales and service agreement(s) in effect, including all addenda thereto relevant to the issues in the proceeding;
 - (e) Copies of all relevant material concerning manufacturer's service bulletins, recall notices, incentive programs, allocation standards, advertising standards or rules, and customer survey information.

- C. Pursuant to the VRCP, all parties shall have the right to take depositions and serve interrogatories, requests for production of documents, and requests for admission upon any party, subject to the following terms and procedures.
 1. Interrogatories and Requests for Production of Documents Pursuant to the Vermont Rules of Civil Procedure must be exchanged within twenty (20) days of service of the answer.
 2. Objections to interrogatories, requests for production of documents, and/or requests for admission shall be filed with the Board no later than seven (7) working days after receipt unless some other period is prescribed by order of the Chair.
 3. Except as to any part of a discovery request to which specific and timely objection is made, discovery requests shall be answered within fifteen (15) days after receipt or such other period as may be ordered by the Chair. In instances in which timely objection has been made and the objection is subsequently overruled, the requested information, document or admission shall be provided within seven (7) days of the denial.

4. The Chair may appoint one or more persons to serve at the deposition(s) of out-of-state witnesses.

D. Confidential or Proprietary Information.

A party may seek protection for information contained in any pleading, document, exhibit, testimony or any other information provided to the Board that it considers proprietary or confidential under Vermont law. The party seeking such protection must file a motion for protective order setting forth the information sought to be protected and the basis under Vermont law for the protection. The Board and all parties shall treat all information that is the subject of a motion for protection as confidential and proprietary until the Chair issues a ruling denying the motion for protection. If the Chair grants the motion, the ruling shall specify the requirement(s) for protection, which may include confidentiality agreement(s).

E. Sanctions.

1. Failure of a party to comply with an order of the Chair issued pursuant to this Chapter shall be grounds for dismissal of the complaint, entry of a default judgment, or dismissal of an intervenor from the proceeding. The dismissal or default shall be with prejudice unless otherwise stated in the order of dismissal or default and is final unless the Board finds that the failure to comply was the result of excusable neglect.
2. Any motion to compel discovery shall be decided without hearing unless the Chair determines there are genuine issues of fact which require review.

§ 15. Adjudicatory Proceedings

- A. The Board shall notify the parties of the date, time, location and scope of the hearing.
- B. In addition to other duties and powers contained in these rules, the Chair has the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relevant or pertinent to the issues presented to the Board for determination.
- C. Subpoenas.

1. The Chair may issue subpoenas at the request of any party to require the attendance and testimony of witnesses and the production of any evidence relating to any issue of fact in the proceeding.
 2. The Board may prescribe the form of subpoena, but it shall adhere, insofar as practicable, to the form used in civil cases before the Vermont courts. Witnesses shall be subpoenaed only within the territorial limits and in the same manner as witnesses in civil cases before the Vermont courts unless another territory or manner is provided by law. The fees for travel and attendance of witnesses shall be the same as for witnesses appearing before a district court. Such fees, as well as the costs of serving the subpoena, shall be paid by the party requesting the subpoena.
 3. It is the responsibility of the requesting party to serve the subpoena on the named individual. When a witness is subpoenaed, the witness travel and attendance fees must then be provided. If a party subpoenas a witness and then decides not to call that witness, the requesting party must give notice of its intent not to call that witness to the other parties to the proceeding and to the Board or the Chair at least forty-eight hours before the witness is scheduled to appear. A subpoena for documents will generally require the production of the documents at the initial pre-hearing conference.
 4. Any witness subpoenaed to testify or produce documents may move the Chair to quash or modify an issued subpoena. The grounds to quash or modify a subpoena shall be those set out in the Vermont Rules of Civil Procedure. The Chair may grant the motion in whole or in part upon a finding that the testimony or the evidence sought to be provided does not relate reasonably directly to any matter in question, or based upon a finding that the movant did not have a reasonable time to comply with the subpoena, or that the subpoena was otherwise unreasonable or oppressive.
 5. Any person served with a subpoena who fails to obey the subpoena without adequate excuse, may be found in contempt. The standards for finding contempt shall be those set out in the Vermont Rules of Civil Procedure.
- D. Misconduct at a Hearing is subject to the sanctions set forth in the Vermont Rules of Civil Procedure and Vermont law.
- E. Board Member Withdrawal.
1. Upon the filing in good faith by a party of a timely charge of conflict of interest or of personal or financial interest, direct or indirect, of a presiding officer or Board member in the proceeding requesting that that person

disqualify him/herself, that person shall determine the matter as a part of the record.

2. If a Board Member withdraws, or it becomes impracticable for him/her to continue to participate in the hearing, the remaining Board members shall continue with the hearing if they constitute a quorum.

F. **Quorum.** Four members of the Board shall constitute a Quorum. A quorum may take action authorized by the Act by a vote of a majority of the members present. However, any decision or order of the Board based upon a report or findings of a hearing officer shall be rendered by a majority of the Board. 19 V.S.A. § 5(c).

G. **Ex Parte Communication.** The parties may not communicate directly or indirectly with the Chair or any member of the Board in connection with any issue of fact, law, or procedure, except upon notice and opportunity for all parties to participate.

H. **Record.**

1. **Generally.** In proceedings subject to this chapter, the Board shall make a record consisting of:

- (a) The complaint, answer, pleadings, motions, and rulings and orders thereon;

- (b) Evidence received or considered;

- (c) A statement of facts officially noticed;

- (d) Offers of proof objections and rulings thereon; and

- (e) The decision of the Board.

2. **Hearings Recorded.** The Board shall record all hearings in a form susceptible to transcription. The Board shall transcribe the recording when necessary for the prosecution of an appeal. At the request of either the complainant or respondent, the record shall be taken by a court reporter. The expense of a court reporter shall be paid by the requesting party, subject to a final award of costs.

3. **Record, Copies.** The Board shall make a copy of the record including recordings made pursuant to subsection 2, available at its principal place of operation for inspection by any person during normal business hours, and shall make copies of the record, copies of recordings, or transcriptions of

recordings available to any person at actual cost, including staff and other person's time and expenses. Notwithstanding the provisions of this subsection, the Board shall withhold, obliterate, or otherwise prevent the dissemination of any portions of the record that are made confidential by state or federal law, but shall do so in the least restrictive manner feasible. After the hearing, confidential information shall be sealed within the record and may not be further disclosed except upon permission of the party that obtained the confidential treatment, order of the Board, or order of a court of competent jurisdiction.

4. Decision on the Record. All material, including records, reports and documents which the Board desires to avail itself as evidence in making a decision shall be offered and made a part of the record and no other factual information or evidence shall be considered in rendering a decision.
5. Documentary Evidence. Documentary evidence may be incorporated in the record by reference when the materials so incorporated are made available for examination by the parties before being received in evidence.

§ 16. Hearings and Evidence

A. Hearings.

1. Presentation. Except as designated or allowed by the Chair, the party which has the burden of proof shall present its case first, followed by the respondent(s), then by any intervenor(s), and then by rebuttal/surrebuttal as appropriate and allowed by the Chair.

2. Openings and Closings. Opening and closing statements may be made at the Chair's discretion.
3. Stipulations. With the approval of the Chair, the parties may stipulate to facts at issue on the record either orally or in writing, and shall be bound thereby.

B. Evidence. The Board shall accept evidence as follows:

1. Evidence that is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible.
2. Irrelevant, immaterial, or unduly repetitious evidence will be excluded by the Chair.

3. Expert evidence must be within the expertise of the witness and requires the laying of an adequate foundation.
4. The Board may use its experience, technical competence, and specialized knowledge in evaluating the evidence submitted.
5. The Board may designate all or part of the record of prior hearings before the Board as evidence to be considered in a particular hearing.
6. Cost Conclusions. No conclusory statements regarding costs will be considered unless supported by actual cost data based on actual operations of manufacturers and/or dealers, as appropriate. Projections or estimates of costs may be presented, but in cases of such projections or estimates, the actual costs or other data upon which such projections or estimates are based must be provided.
7. Confidential Information. If the Chair has granted a motion for protection of confidential information, during the introduction of such information or testimony on such information, the proceeding will be open only to the Board, parties, parties' representatives, counsel of record, and the witness testifying regarding the information. Access to the information is limited to these persons. After the hearing, the confidential information will be sealed within the record and may not be further disclosed except upon permission of the party that obtained the confidential treatment, order of the Board, or order of a court of competent jurisdiction.
8. Rules of Privilege. The Board shall observe the rules of privilege recognized by law.
9. Amendments to Conform. Upon objection at hearing that evidence presented is not within the issues set out in the pleadings, the Chair may freely allow the pleadings to be amended when it will aid in the presentation of the merits of the action and the objecting party fails to satisfy the Board that the admission of the evidence would prejudice it in maintaining its action or defense upon the merits. The Board may grant a continuance to enable the objecting party to meet that evidence. Upon the request of a party at the conclusion of the hearing, the complaint or response may be specifically amended to conform to the evidence.
10. All documents, materials and objects offered in evidence as exhibits shall be numbered or otherwise identified.

11. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.
12. The Chair may require that any person offering any documentary or photographic evidence provide the Board with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size, or character as not to be reasonably susceptible of reproduction.

C. Testimony.

1. Prefiled Testimony. Prefiled testimony shall be in writing and in a question and answer format as if the witness were testifying at the hearing. It shall be double spaced and shall include the number of each line in the lefthand margin, except as otherwise permitted by the Chair. If the testimony is more than three pages long, it shall include a Table of Contents identifying each issue which was the subject of testimony. It must be served on the Board and all parties at least ten days before the hearing, or such other time as the Chair designates. All witnesses whose testimony was prefiled must be physically present at the hearing for cross-examination.
2. Testimony by written or video-recorded deposition: A party may move to present testimony by written or video-recorded deposition in accordance with the Vermont Rules of Civil Procedure.

D. Witnesses.

1. With the exception of testimony presented by written or video-recorded deposition, or, at the discretion of the Chair, telephonic testimony, a witness presenting testimony must be present physically at the hearing.
2. All witnesses shall be sworn by oath or affirmation. An interpreter shall be administered an oath or affirmation to translate truthfully and accurately, to the best of his/her ability, all questions asked and answers given. Once a witness has taken an oath or made an affirmation at any hearing, it shall not be necessary for him/her to be sworn again for later testimony on the same day and in the same case. The record of the proceeding shall indicate that a person was recalled to testify and reminded that s/he was still under oath or affirmation.

- (a) After a witness is sworn, the parties may conduct direct and cross examination, re-direct and re-cross examination. Further examination by the parties is permissible only if the Chair so directs. If the witness submitted pre-filed testimony, further direct testimony is subject to approval by the chair,
- (b) The Chair and any Board Member may examine a witness at any time during the testimony of that witness.
- (c) The parties may present rebuttal witnesses and conduct surrebuttal as the Chair so directs in the exercise of his/her discretion.
- (d) Limitations. The Chair may limit the number of witnesses and/or the extent of witness testimony.

E. Sequestration of Witnesses.

- 1. Upon request by a party, or on its own initiative, the Chair may exclude witnesses other than parties from the hearing room when those witnesses are not testifying.
- 2. A party that is not a natural person may designate an individual as its representative to remain in the hearing room.
- 3. The witnesses, parties, their counsel, and any person under their direction shall not disclose to any sequestered witness the substance of the testimony, exhibits, or other evidence introduced during the witness's absence.

F. Objections

- 1. Objections shall be timely made during the course of the hearing and the basis of each objection shall be stated briefly on the record. The Chair may rule on the objection at the time it is made or may reserve a ruling until later, as appropriate.
- 2. Preserving Objections. Objections to rulings admitting or excluding evidence and other rulings or orders of the Chair shall be made and preserved, and may be appealed in accordance with applicable law. Exceptions to rulings or orders of the Chair shall not be made. It is sufficient that a party, at the time the ruling or order of the Chair is made or sought, makes known to the Chair the action which the party desires the Chair to take or the party's objection to the action of the Chair and the grounds therefor.

G. Offers of Proof.

An offer of proof may be made in connection with an objection to a ruling of the Chair excluding or rejecting any testimony or question on cross examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or what is expected to be shown by the answer of the witness.

H. Close of Evidence.

Once a party has rested its case, it may introduce no further evidence without the Chair's consent.

I. Conduct at Hearings.

1. All persons appearing at a hearing before the Board shall conform to the conduct expected in the Superior Court of the State of Vermont.
2. Contemptuous, disorderly, or improper conduct by any person appearing at a hearing shall be grounds for the Chair to exclude or expel that person from the hearing or to take other appropriate action.

J. Adjudication on Documentary Record. The Chair may choose not to hold a hearing, or a part thereof, if all parties waive their respective right to the hearing and agree to submit to adjudication based on the documentary record.

K. Official Notice.

The Board may, at any time, take official notice of relevant laws, official regulations and transcripts of other Board hearings, judicially recognizable facts, generally

recognized facts of common knowledge to the general public, and physical, technical, or scientific facts within its specialized knowledge. The Board shall make a record of those facts of which it took official notice.

§ 17. Decisions of the Board

- A. Only matters appearing on the record in the form of testimony, documentary, or other properly submitted evidence, and judicially noticed material may form the basis for the Board's decision(s). All decisions shall be reached on the basis of a preponderance of the evidence. A decision of the Board is final as to all factual and legal issues presented.
- B. Every decision made at the conclusion of a hearing subject to these Rules shall be in writing and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision.
- C. A copy of the decision(s) shall be delivered or promptly mailed to each party to the proceeding or his/her representative of record.
- D. The Board shall maintain a record of the vote of each Board member with respect to the decision(s). For the purpose of rendering a decision, four (4) members of the Board, including the Chair, shall constitute a quorum. However, any decision or order of the Board based upon a report or findings of a hearing examiner shall be rendered by a majority of the Board. 19 V.S.A. § 5(c).
- E. The Chair may vote to break or create a tie and shall vote whenever fewer than four (4) other Board members have voted for a decision.
- F. Within twenty (20) days after any order or decision of the Board, any party to the proceeding may apply for a rehearing with respect to any matter determined in the proceeding or covered in the order or decision. The application for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No ground not set forth in the application for rehearing shall be urged, relied on, or given consideration by the Board unless the Board, for good cause shown, allows the appellant to specify additional grounds. 9 V.S.A. § 4100 b(h).
- G. No appeal from any order or decision of the Board shall be taken unless the appellant makes an application for rehearing as provided in this subsection and the Act. 9 V.S.A. § 4100b(h).
- H. A party aggrieved by a final board decision may appeal that decision to the Superior Court pursuant to the Act, 19 V.S.A. § 5 (g), and the Vermont Rules of Civil Procedure, except in cases filed under 9 V.S.A. §4096 (6).

§ 18. Penalties

Any party to any proceeding under the Act who recklessly or knowingly fails, neglects, or refuses to comply with an order issued by the Board shall be fined a civil penalty not to exceed \$2,500.00 (Two Thousand, Five Hundred U.S. Dollars). Each day of noncompliance shall be considered a separate violation of such order. 9 V.S.A. § 4100b(i).

The Board shall determine the amount based upon:

- A. The seriousness of the violation, including the nature, circumstances, extent and gravity of the prohibited acts and the harm or potential harm to the safety of the public;
- B. The economic damage to the public caused by the violation;
- C. The harm done to other parties;
- D. Any previous violations;
- E. The amount necessary to deter future violations;
- F. Efforts made to correct the violation; and
- G. Any other matters that justice may require.
- H. Any party may seek any sanctions provided for by the Vermont Rules of Civil Procedure.

§ 19. Fees and Costs

In cases where the Board finds that a violation of the Act has occurred or there has been a failure to show good cause under Section 4098 of the Act, the Superior Court, upon petition, shall determine reasonable attorney's fees and costs and award them to the prevailing party. 9 V.S.A. § 4100b(i).

§ 20. Appeal of Sanction Imposed by Board

Any decision or order of the Board shall remain in full force and effect pending the outcome of the appeal or expiration of the decision or order imposed unless otherwise ordered by the Court.

§ 21. Severability

If any provision in these rules or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the rules which can be given effect without the invalid provisions and applications, and to this end, the provisions of these rules are severable.

STATUTORY AUTHORITY: 9 V.S.A. § 4100b(b)

EFFECTIVE DATE: