

**Change the chapter heading for Inst 200 to read as follows:**

CHAPTER Inst 200 RULES OF PRACTICE AND PROCEDURE

**Repeal Inst 201 through Inst 203, effective 12/24/2005 (Document #8493-A), as follows:**

~~[PART Inst 201 PURPOSE AND SCOPE~~

~~— Inst 201.01 Purpose. The purposes of these rules is to specify the process used by the board for acquiring sufficient information to make fair and reasoned decisions on matters within its statutory jurisdiction. These rules shall be construed to secure the just, efficient and accurate resolution of all board proceedings.~~

~~— Inst 201.02 Scope. The rules in this chapter shall apply to any adjudicative proceeding conducted by the board.~~

~~PART Inst 202 DEFINITIONS~~

~~— Inst 202.01 Definitions. Except where the context makes another meaning manifest, the following terms shall have the meanings indicated below when used in this chapter:~~

~~— (a) “Adjudicative proceeding” means “adjudicative proceeding” as defined by RSA 541-A:1, I.~~

~~— (b) “Appearance” means a written notification to the agency that a party or a party’s representative intends to actively participate in a hearing.~~

~~— (c) “Complaint” means a written allegation filed by an aggrieved consumer, park owner, manufacturer, retailer or installer of manufactured housing having a dispute relative to installation or a disciplinary proceeding alleging the wrongs allegedly committed by a licensee.~~

~~— (d) “Data” means all information, other than argument, including oral or written descriptions, reports, maps, charts, drawings, photographs, audio or video recordings, computer programs or printouts.~~

~~— (e) “Hearing” means “adjudicative proceeding” namely the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36, and Inst 200.~~

~~— (f) “Intervenor” means a person with party status who participates in a hearing to the extent permitted by the presiding officer.~~

~~— (g) “Intervention” means a procedure by which a third party, not originally a party to the proceeding but claiming an interest, comes into the proceeding to protect the right or interest which formed the basis for intervention.~~

~~— (h) “Investigation” means a formal search by the board for information and data concerning matters within its jurisdiction.~~

~~— (i) “Motion” means any request by a party to the board for an order or ruling directing some act to be done in favor of the party making the motion, including a statement of justification or reasons for the request.~~

~~— (j) “Nonadjudicative processes” means “nonadjudicative processes” as defined by RSA 541 A:1, X.~~

~~— (k) “Order” means “order” as defined by RSA 541 A:1, XI.~~

~~— (l) “Party” means “party” as defined by RSA 541 A:1, XII.~~

~~— (m) “Person” means “person” as defined by RSA 541 A:1, XIII.~~

~~— (n) “Proof by a preponderance of the evidence,” means a demonstration by admissible evidence that, as a whole, tends to make the truth of the fact or legal conclusion more likely than not.~~

~~— (o) “Proposed decision” means a recommended decision made by the presiding officer, which is subject to review by a quorum of the board.~~

~~— (p) “Rulemaking” means the procedures for formulating agency rules as set forth in RSA 541 A:3.~~

~~PART Inst 203 PRESIDING OFFICER~~

~~— Inst 203.01 Presiding Authority.~~

~~— (a) All hearings shall be conducted before a quorum of the board at the call of the presiding officer.~~

~~— (b) A presiding officer shall as necessary:~~

~~(1) Direct the course of the proceeding, decide scheduling, discovery and other procedural issues;~~

~~(2) Determine order of proof in hearings;~~

~~(3) Facilitate an informal resolution;~~

~~(4) Administer oaths and affirmations;~~

~~(5) Direct parties to appear at a hearing;~~

~~(6) Receive relevant evidence at hearings and exclude irrelevant, immaterial and repetitious evidence;~~

~~(7) Rule on procedural requests including continuances, adjournments or postponements at the request of a party or on the presiding officer’s motion;~~

~~(8) Question any person who testifies;~~

~~(9) Consider and evaluate facts and evidence;~~

~~Make findings of facts and rulings of law;~~

~~(10) Determine appropriate weight of evidence;~~

~~(11) Allow amendments of the filed complaint upon motion;~~

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~~(12) Schedule argument or reopen the record prior to issuance of a final order;~~

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~~(13) Cause a complete record of the hearing to be made as specified in RSA 541-A:31; and~~

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~~(14) Take any other actions necessary to conduct the hearing in a fair and timely manner not inconsistent with applicable statutes and rules.~~

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~~Inst 203.02 Withdrawal of Presiding Officer or Board Member.~~

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~~(a) Upon his or her own initiative or upon the motion of any party, a presiding officer or board member shall, for good cause, withdraw from any hearing.~~

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~~(b) Good cause shall exist if a presiding officer or board member:~~

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~~(1) Has a direct interest in the outcome of a proceeding, including but not limited to a financial interest; or~~

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~~(2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudiced the facts of a case; or~~

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~~(3) Personally believes he or she cannot fairly judge the facts of the case.~~

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~~(c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal.~~

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~~PART Inst 204 FAILURE TO COMPLY; WAIVER OF RULES~~

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~~Inst 204.01 Failure to Comply with Procedural Rules or Orders.~~

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~~(a) Failure to comply with the rules of this chapter shall be grounds for:~~

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~~(1) Refusing to accept or admit a non-compliant document for filing or refusing to consider a non-compliant oral petition or motion; or~~

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~~(2) Admitting, or denying a non-compliant application, petition, motion, or exhibit on the condition that conformity with specific procedural requirements be achieved by a specified date.~~

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~~Inst 204.02 Waiver or Suspension of Procedural Rules or Orders. The presiding officer upon his own initiative or upon the motion of any party, shall suspend or waive any procedural requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension is determined to be lawful and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the board than would adherence to a particular rule or procedure.~~

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~~PART Inst 205 APPEARANCES BEFORE THE BOARD~~

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~~Inst 205.01 Representatives.~~

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~~(a) Persons appearing before the board shall be represented by a competent individual of good character who:~~

~~(1) Is an attorney holding a current and active New Hampshire license who has filed a written appearance with the board containing his or her business address and telephone number, e-mail address, and fax number if any; or~~

~~(2) Is not a New Hampshire licensed attorney but has filed a motion for leave to appear as a representative, which motion has been granted by the board.~~

~~(b) Motion for leave to appear before the board shall:~~

~~(1) Briefly describe the proposed representative’s professional and character qualifications;~~

~~(2) Provide the proposed representative’s daytime address and telephone number; e-mail address and fax numbers, if any, and~~

~~(3) Be signed by both the proposed representative and the party who would be represented.~~

~~(c) Corporations, partnerships and other legal entities which are not natural persons shall be represented only by:~~

~~(1) Any licensed attorney in New Hampshire; or~~

~~(2) An officer, director, or managing partner with express and unqualified written authority to act on behalf of the entity concerning the matter at question.~~

~~(d) Nothing in this section shall be construed to permit the unauthorized practice of law.~~

~~(e) The board shall, after notice and opportunity for hearing, prohibit or restrict an individual from acting as a representative upon a finding that the individual has repeatedly violated rules or orders of the board, willfully disrupted board proceedings, or made material misrepresentations to the board or a party in a board proceeding.~~

~~(f) Any prohibition or restriction issued under (e) above, shall apply to the board’s proceedings either pending or in the future, or any combination thereof, as warranted by the circumstances of the case.~~

#### ~~PART Inst 206 TIME PERIODS~~

##### ~~Inst 206.01 Computation of Time.~~

~~(a) Unless otherwise specified, all time periods referenced shall be calendar days. Computation of any time period shall begin with the day after the action, which sets the time period in motion, and shall include the last day of the period so computed.~~

~~(b) If the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.~~

~~Inst 206.02 Change in Allowed Times. Except where a time period is fixed by statute, the board shall, upon motion or upon its own initiative, enlarge or shorten the time provided for the filing any document, or advance or postpone the time set for any oral hearing, pre-hearing conference, or other activity~~

~~upon a finding that the interest of the moving party outweighs any detriment likely to be suffered by any other party or the public interest.~~

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~~—— Inst 206.03 Limitations. A motion to change time shall be filed at least 5 days before the scheduled date of the event in question.~~

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#### ~~PART Inst 207 FILING, FORMAT AND SERVICE OF DOCUMENTS~~

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~~—— Inst 207.01 Filing Documents with the Board.~~

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~~—— (a) All written documents shall be rebuttably presumed to have been issued on the date noted on the document.~~

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~~—— (b) A document shall be considered filed when it is actually received at the board's office and is facially in conformity with the board's rules. A filed document shall be date stamped by the board or its staff. Date of receipt may also be handwritten on the document if initials of the person verifying receipt are also on the document.~~

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~~—— (c) A document, which is facially in violation of the board's rules, shall not be accepted for filing. Such submissions shall be returned to the sender without prejudice subject to subsequent acceptance if the deficiencies are corrected and the document is refiled within the applicable time period.~~

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~~—— (d) All complaints, motions, exhibits, memoranda or other documents filed in connection with a request for board action shall be filed with an original and 14 copies unless the board directs that a lesser number of copies be furnished.~~

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~~—— (e) Notwithstanding (d) above, a single copy shall be filed of:~~

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~~(1) Transmittal letters, requests for public information, or other routine correspondence not directed at formal board action; and~~

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~~(2) License applications and renewals.~~

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~~—— (f) Failure to furnish the required number of copies shall result in the tendered document being returned as unacceptable for filing.~~

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~~—— (g) The signature on a document filed with the board shall constitute a certification that:~~

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~~a. The signer has read the document;~~

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~~b. The signer is authorized to file it;~~

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~~c. To the best of the signer's knowledge, information, and belief, there are good grounds to support it; and~~

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~~d. The document has not been filed for purposes of delay or harassment.~~

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~~—— Inst 207.02 Format of Documents.~~

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~~—— (a) All correspondence, complaints, pleadings, motions, replies or other documents filed under these rules shall:~~

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- (1) ~~Include the title and docket number of the proceeding, if known;~~
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- (2) ~~Be typewritten or clearly printed on durable paper 8 ½ by 11 inches in size;~~
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- (3) ~~Be signed and dated by the party or proponent of the document, or if the party appears by a representative, by the representative; and~~
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- (4) ~~Include a statement certifying that a copy of the document has been delivered to all parties to the proceeding attesting to the method and date of service and the persons served.~~
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~~Inst 207.03 Delivery of Documents.~~

~~(a) Complaints against licensees shall be filed with the board, with service upon the licensee made by the board within a reasonable time after receipt and review of the complaint. The board will forward a copy of the complaint to the licensee by certified mail.~~

~~(b) Applications, petitions for rulemaking and petitions for declaratory rulings shall be filed with the board without service upon other persons.~~

~~(c) All objections, motions, replies, memoranda, exhibits, or other documents filed in connection with a request for board action shall be served by the proponent upon all interested parties by:~~

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- (1) ~~Depositing a copy of the document in the United States mail, first class postage prepaid, addressed to the last address given to the board by the party being served, no later than the day the document is filed with the board;~~
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- (2) ~~Delivering a copy of the document in hand on or before the date it is filed with the board;~~
- ~~or~~
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- (3) ~~Such other means, as the board shall order.~~
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~~(d) Notices, orders, decisions or other documents issued by the board in connection with requests for board action shall be served by the board upon all interested parties by either:~~

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- (1) ~~Depositing a copy of the document, first class mail postage prepaid in the US mail, addressed to the last address given to the board by the party being served; or~~
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- (2) ~~Delivering a copy of the document in hand to the parties.~~
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~~(e) When the party appears by representative, service shall be upon the representative.~~

~~(f) Except for exhibits distributed at a pre-hearing conference or hearing, every document filed with the board and required to be served upon the parties to an adjudicative hearing shall be accompanied by a certificate of service signed by the person making service attesting to the method and date of service, and the persons served.]~~

**Repeal Inst 208.01 and Inst 208.02, effective 4/14/2012 (Document #10113), cited as follows:**

[PART Inst 208 ~~COMPLAINTS AND REPLYS~~

~~— Inst 208.01 Complaints.~~

~~— (a) Complaints pursuant to RSA 205 D:6 shall be filed no later than one year from the date of occupancy of the manufactured house. Filings shall be at the board’s office on the joint board complaint form. Complaints received after one year shall be denied as untimely and returned to the complainant.~~

~~— (b) Complaints pursuant to RSA 205 D:6 shall include the following:~~

- ~~(1) The name and address of the complainant;~~
- ~~(2) The name and address of the complainant’s representative, if any;~~
- ~~(3) The specific facts or circumstances giving rise to the complaint;~~
- ~~(4) The particular action or conduct complained of which warrants relief;~~
- ~~(5) The description of the action which the complainant wishes the board to take; and~~
- ~~(6) A citation to any statutes and rules which entitles the complainant to the relief requested.~~

~~— (c) The complaint shall be signed, in accordance with Inst 207.02.~~

~~— (d) Service of the written complaint shall be made upon the respondent by the board by prepaid certified mail, return receipt requested.~~

~~— (e) The board shall not act upon any documents that do not conform to this rule.~~

~~— (f) The board shall review all written complaints within 90 days of the date that notice of a complaint was received by the complainant unless otherwise agreed to by the parties.~~

~~— Inst 208.02 Replies to Complaints.~~

~~— (a) Replies to complaints under RSA 205 D:6 shall be on a reply form, form Inst 2, provided by the board.~~

~~— (b) The respondent shall provide on form Inst 2 the following information:~~

- ~~(1) The name and address of the respondent;~~
- ~~(2) The name and address of the representative of the respondent as applicable;~~
- ~~(3) A statement admitting or denying each fact alleged in the complaint;~~
- ~~(4) A statement admitting or denying the authority identified by the complainant;~~
- ~~(5) A concise statement of any additional or different facts which warrant the board acting in the manner requested by the respondent;~~
- ~~(6) A citation to any statutes, rules, orders or other authority, not identified in the complaint, having a bearing upon the subject matter of the petition; and~~

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- ~~(7) A description of the action which the respondent wishes the board to take.~~
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- ~~— (c) A reply form shall be signed and dated by the proponent of the document or if the party appears by representative, by the representative.~~
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- ~~— (d) Respondent shall file the reply within 30 days of receipt of Inst 2.~~
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- ~~— (e) Any fact contained in the complaint, which is not denied, shall be deemed admitted by the respondent. A statement that the respondent lacks sufficient knowledge to admit or deny shall be treated as a denial. The complainant shall be presumed to deny all allegations in the reply and no response shall be permitted to the reply.]~~

**Repeal Inst 208.03 through Inst 211.02, effective 12/24/2005 (Document #8493-A), as follows:**

~~[Inst 208.03 Disciplinary Complaints of Licensee Misconduct.~~

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- ~~— (a) The board upon request shall provide a disciplinary complaint form. Complaints alleging misconduct by licensees in violation of RSA 205-D:13 shall be in writing and filed at the board's office in Concord, New Hampshire.~~
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- ~~— (b) A disciplinary complaint shall be treated as a request for the initiation of disciplinary proceedings by the board. The board shall serve the complaint and a notice of hearing on the licensee at least 14 days before any hearing relative to a complaint against a licensee by registered mail, return receipt or personal delivery in hand.~~
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- ~~— (c) A disciplinary complaint shall contain the following information:~~
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- ~~(1) The name and address of the complainant;~~
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- ~~(2) The name and business address of the licensee against whom the complaint is directed; and~~
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- ~~(3) The specific facts and circumstances which are believed to constitute professional misconduct, including but not limited to fraud, deceit in procuring a license, suspension of installation license in another jurisdiction which has not been reinstated, and willful and repeated violations of RSA 205-D.~~
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- ~~— (d) The disciplinary complaint shall be sworn to, signed and dated by the proponent of the document, or if the party appears by representative, by the representative.~~
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- ~~— (e) A complaint shall be subject to dismissal at any time upon the determination that it:~~
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- ~~(1) Fails to state a cause of action;~~
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- ~~(2) Alleges a time barred cause of action; or~~
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- ~~(3) The complainant has failed to respond to requests for further information or has failed to cooperate with the board's investigation or hearing.~~
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~~— (f) A withdrawal of the complaint shall not preclude the board from independently pursuing some or all of the allegations of misconduct alleged by the complainant. The board may institute a disciplinary complaint on its own.~~

~~— (g) Upon receiving the written consent of the licensee to a specific written proposal, the board shall consider whether to approve a settlement agreement or a consent decree which resolves some or all of the issues in a disciplinary proceeding. Motions to approve settlement agreements shall be entertained until a notice of hearing is issued. Once a notice of hearing is issued, settlements shall only be accomplished by means of a consent decree.~~

~~— (h) Settlements pursuant to (g) above shall not be granted if:~~

~~(1) The complainant has not been provided with notice and an opportunity to submit written comments concerning the proposal;~~

~~(2) The board believes material facts remain unresolved which are reasonably capable of resolution; or~~

~~(3) Available contested facts do not permit the board to conclude that the proposed sanction is appropriate to the allegations.~~

~~(i) Unless otherwise agreed to by the board, the licensee and the complainant, a hearing on disciplinary complaints shall be held within 90 days of the date of notice served on licensee, pursuant to (b) above.~~

~~— Inst 208.04 Motions and Objections Thereto.~~

~~— (a) Motions shall be in writing unless the nature of the relief requested requires oral presentation upon short notice.~~

~~— (b) Motions shall state clearly and concisely:~~

~~(1) The purpose of the motion;~~

~~(2) The relief sought by the motion;~~

~~(3) The statutes, rules, order, or other authority authorizing the relief sought by the motion; and~~

~~(4) The facts claimed to constitute grounds for the relief.~~

~~— (c) All motions shall be signed and dated by the proponent of the document or, if the party appears by representative, by the representative.~~

~~— (d) Objections shall state clearly and concisely:~~

~~(1) The defense of the party filing the objections;~~

~~(2) The action which the party filing the objection wishes the board to take on the motion;~~

~~(3) The statutes, rules, orders or other authority relied upon in defense of the motion;~~

~~(4) Any facts which are additional to or different from the facts stated in the motion; and~~

~~(5) Signed and dated by the proponent of the document or if the party appears by representative by the representative.~~

~~(c) An objection shall specifically admit or deny each fact contained in the motion. Failure to deny a fact shall not in and of itself constitute grounds for granting the motion. In the event a party filing an objection lacks sufficient information to either admit or deny a fact contained in the motion the party shall so state, specifically identifying such fact.~~

~~(f) Repetitious motions shall not be submitted. Motions shall be decided upon the writings submitted.~~

~~(g) Objections to motions shall be filed within 10 days after filing of the motion.~~

~~(h) The presiding officer or the board shall rule on the motion after full consideration of all objections and other relevant factors. If the presiding officer or board finds it needs additional information to rule on a motion, the proponent shall be directed to provide additional information and supporting documentation.~~

~~(i) If necessary, a hearing shall be held on the motion.~~

~~Inst 208.05 Motion for Continuance.~~

~~(a) If a party requests a continuance it shall be granted if the presiding officer determines that good cause has been demonstrated.~~

~~(b) For the purposes of (a) above, good cause shall include:~~

~~(1) Unavailability of parties, witnesses or attorneys necessary to conduct the hearing;~~

~~(2) Likelihood that a settlement will make the hearing unnecessary; or~~

~~(3) Any other circumstance that would assist in resolving the case fairly.~~

#### ~~PART Inst 209 ADJUDICATIVE PROCEEDINGS~~

~~Inst 209.01 Applicability. This part shall govern all proceedings conducted by the board except rulemaking and non-adjudicative investigations.~~

~~Inst 209.02 Commencement of Hearing.~~

~~(a) A hearing shall be commenced by~~

~~(1) An order of the board giving parties notice specified in paragraph (b) below; or~~

~~(2) In the case of the board's immediate suspension of a license, the notice specified in (b) below together with the order issued pursuant to Inst 209.18 (a).~~

~~(b) The hearing notice shall contain:~~

~~(1) A statement of the date, time, place and nature of the hearing;~~

~~(2) A statement of the legal authority under which the hearing is held;~~

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- ~~(3) References to applicable statutes and rules;~~
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- ~~(4) A summary of the subject matter of the proceeding and identify the issues to be resolved;~~
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- ~~(5) A statement that each party has a right to representation by an attorney at the party's own expense;~~
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- ~~(6) A statement that each party has the right to have the board provide a certified shorthand court reporter at the party's expense and that any such request be submitted in writing at least 10 days prior to the proceeding;~~
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- ~~(7) Dates when appearances or motions by representatives are to be filed;~~
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- ~~(8) The identity of the presiding officer for the proceeding if someone other than the chair.~~
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- ~~(9) The date, time, and location of any initial pre-hearing conference;~~
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- ~~(10) Any special procedures to be followed;~~
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- ~~(11) A statement that a party has the right to a copy of the digitally recorded proceeding;~~
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- ~~(12) Any confidentiality requirements; and~~
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- ~~(13) Severing or consolidation of issues in the proceeding with other proceedings and orders directing the production and exchange of documents.~~

~~— Inst 209.03 Docketing, Service of Notice, Public Notice.~~

~~— (a) The board shall assign each proceeding a docket number and serve the hearing notice upon all parties to the proceeding. Hearing notices shall be served by first class US mail at the last known address.~~

~~— (b) Service of all subsequent orders, decisions and notices shall also be by first class US mail at the last known address.~~

~~— (c) Orders, notices and decisions of the board and motions, memoranda, exhibits and other documents and data submitted shall be kept in a docket file and made available for public inspections, upon written request, except if confidential by law.~~

~~— Inst 209.04 Intervention.~~

~~— (a) A person requesting to intervene shall state in writing with particularity:~~

~~(1) The party's interest in the subject matter of the hearing;~~

~~(2) The party's position with respect to the subject matter of hearing; and~~

~~(3) Why the interests of the parties would not be impaired or affect the orderly conduct of the matter if the board were to grant the request.~~

~~— (b) A copy of the request shall be mailed to the board and all persons identified as participating in the proceeding.~~

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~~— (c) A request to intervene shall be granted if it is determined by the board that:~~

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~~(1) The requesting party has substantial interest in the proceeding;~~

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~~(2) The requesting party has exercised due diligence in respect to requesting intervention, at least 10 days before the hearing; and~~

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~~(3) Granting the request will not prejudice a party or cause undue delay.~~

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~~— (d) The request, if granted, may be subject to appropriate conditions or limitations which will be subject to modification at any time.~~

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~~— (e) Once granted, the intervenor shall take the proceeding as it finds it and no portion shall be repeated because of intervention.~~

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~~— Inst 209.05 Right to Counsel.~~

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~~— (a) Parties or witnesses in an adjudicative proceeding shall have a right to be represented by legal counsel.~~

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~~— (b) An attorney appearing on behalf of a party shall file at the earliest practical date a letter announcing the fact of representation.~~

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~~— (c) Requests for appointment of counsel shall not be entertained and the board shall have no responsibility for legal expenses of any licensee, applicant, party, intervenor or witness.~~

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~~— Inst 209.06 Pre-Hearing and Other Informal Conferences.~~

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~~— (a) Any party may request a pre hearing or informal conference, or the presiding officer shall schedule on his or her own initiative and direct the parties to attend one or more scheduled pre hearing conferences in accordance with RSA 541 A:31, V(e) and RSA 541 A:38.~~

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~~— (b) Matters to be addressed at a prehearing conference shall include:~~

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~~(1) Distribution of exhibits and written testimony;~~

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~~(2) Procedures for simplification;~~

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~~(3) Amendments to pleadings;~~

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~~(4) Opportunities and procedures for settlement;~~

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~~(5) Possible admission of fact and authentication of documents to avoid unnecessary proof;~~

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~~(6) Limitations on witnesses;~~

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~~(7) Possible standard procedures; and~~

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~~(8) Other matters which might contribute to orderly prompt and fair resolution of the proceeding, including alternative dispute resolution.~~

~~— (c) The board shall record all pre-hearing conferences.~~

~~— Inst 209.07 Discovery and Disclosure.~~

~~— (a) The board shall provide for the disclosure of any investigative report or other unprivileged information in the possession of the board that is reasonably related to the subject matter of the proceeding.~~

~~— (b) Parties shall attempt to agree among themselves the exchange of relevant information. If these efforts prove unsuccessful, a party wishing to initiate discovery against another shall, by motion, identify the exact type of discovery requested and include a request to compel.~~

~~— (c) A motion to compel shall:~~

~~(1) Set forth in detail those facts which justify the request for information or documents; and~~

~~(2) List with specificity the information or documents being sought.~~

~~— (d) The presiding officer shall grant the motion to compel if the proponent has demonstrated that the information being sought is necessary for a full and fair presentation of evidence at hearing.~~

~~— (e) The presiding officer shall prepare a schedule for completion of discovery.~~

~~— (f) The presiding officer shall also order parties and intervenor to prepare a list of all witnesses and a brief summary of their testimony.~~

~~— (g) Discovery shall be permitted to avoid placing a party at a disadvantage and if it will not cause material unfairness or unreasonable expense. It shall be permitted to allow for the fair and full presentation of evidence during the hearing.~~

~~— Inst 209.08 Evidence.~~

~~— (a) All data which will assist the board to arrive at the truth shall be admitted. However, data that is irrelevant, repetitious, immaterial or insulting shall be excluded. The presiding officer shall determine admissibility of evidence.~~

~~— (b) Oral testimony shall be allowed unless written evidence is determined by the board to be more efficient.~~

~~— (c) Witnesses appearing before the board shall testify under oath or affirmation.~~

~~— Inst 209.09 Record of Hearings.~~

~~— (a) The board shall cause a digital record to be made of all hearings.~~

~~— (b) A copy of the digital record will be provided upon request and upon providing the required number of CD(s) upon which the record is copied and a \$25 fee.~~

~~— (c) If the board elects to transcribe some or all of the record for its own use, the transcribed portions shall be included in the public docket file.~~

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~~— Inst 209.10 Burden of Proof.~~

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~~— (a) The party asserting the affirmative of a proposition shall have the burden of proof unless otherwise provided by statute.~~

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~~— (b) The person filing a motion shall have the burden of persuading the board the motion should be granted.~~

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~~— Inst 209.11 Standard of Proof. The board shall decide contested issues in adjudicative proceedings based upon the preponderance of the evidence.~~

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~~— Inst 209.12 Method of Proceeding.~~

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~~— (a) An evidentiary hearing shall be scheduled when facts are in dispute, personal observation of witnesses is necessary or cross examination is desirable or necessary. Such a hearing shall not preclude the opportunity to submit a memoranda.~~

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~~— (b) Notwithstanding (a) above, if the board determines that the submission of affidavits and memoranda will suffice when facts are in dispute and witnesses are not necessary no hearing shall be scheduled.~~

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~~— (c) Oral argument shall be allowed when the board determines a substantial need for such procedure after review of memorandum, briefs, and argument submitted by the parties.~~

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~~— (d) Parties may be allowed opening and closing statements if the board so declares and there may also be written submissions at the board's direction.~~

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~~— (e) Notwithstanding anything in this section, the board may structure individual proceedings in a manner suitable to its particular subject matter so long as due process requirements are met.~~

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~~— Inst 209.13 Inquiry by Presiding Officer or Board Members.~~

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~~— (a) The presiding officer shall make inquiry of witnesses, parties or counsel as he or she deems necessary to develop a sound record of the proceeding.~~

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~~— (b) Other board members participating in the proceeding shall have the right to ask questions subject to recognition by the presiding officer.~~

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~~— Inst 209.14 Proposed Findings of Fact and Conclusions of Law.~~

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~~— (a) Approval of a request by the parties to submit proposed findings of fact and conclusions of law shall be at the presiding officer's discretion.~~

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~~— (b) The presiding officer shall direct any party to submit proposed findings of fact or conclusions of law if the presiding officer believes they would assist the board in rendering a decision. If such an order is issued, individual rulings on each finding or conclusions shall be included as part of any proposed or final decision. If there is a transcript the party shall cite the page, paragraph and line that it believes supports its finding or conclusion.~~

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— (c) The board may limit the number findings of fact and rulings of law and it may in full or in part, admit or deny.

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— ~~Inst 209.15 Ex Parte Communications. Once an adjudicative proceeding has begun, no party shall communicate directly or indirectly with a participating board member or the presiding officer concerning the merits of the case except upon notice to all parties.~~

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— ~~Inst 209.16 Role of Complainants in Enforcement of Disciplinary Hearings. Unless called as a witness or granted party or intervenor status, a person who initiates an adjudicative proceeding by complaining to any agency about the conduct of a person who becomes a party shall have no role in any enforcement of a disciplinary hearing.~~

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— ~~Inst 209.17 Disciplinary Hearings.~~

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— (a) ~~Adjudication of misconduct allegations shall be conducted in accordance with this part and as supplemented by the hearing order and other procedural orders served upon the parties which shall establish the particular scheduling and filing requirements applicable to each case.~~

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— (b) ~~A hearing notice shall be subject to substantive amendment by the board at any time prior to the issuance of a final order. However, the parties shall receive at least 15 days notice and an opportunity to be heard on any new or materially different misconduct allegation to be decided in a particular disciplinary proceeding.~~

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— (c) ~~If ordered to do so by the presiding officer, the licensee shall respond in writing to stated misconduct allegations by admitting or denying each allegation within a reasonable period of time as established by the board.~~

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— (d) ~~The board shall have authority to appoint an individual to investigate and to prosecute misconduct allegations in furtherance of the public protection at any time during a disciplinary hearing. The decision to appoint shall be the sole discretion of the board and shall not be the subject of a motion by any party.~~

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— (e) ~~When the board receives notice that a licensee has been subjected to disciplinary action by the licensing authority in another jurisdiction, the board shall issue an order directing the licensee to demonstrate why reciprocal disciplinary action should not be taken in New Hampshire.~~

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— (f) ~~When the board receives information indicating that a licensee has engaged in or is likely to engage in professional misconduct which poses an immediate safety danger to the public or a consumer, the board shall issue an order which sets forth the alleged misconduct and immediately suspends the license pending completion of an adjudicative proceeding on the specified issues.~~

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— ~~Inst 209.18 Immediate Suspension of Licenses.~~

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— (a) ~~Upon a finding that a public safety hazard exists that requires emergency action against a licensee, the board shall, without a hearing, suspend a license by issuing a written order incorporating the specific finding.~~

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— (b) ~~The board shall initiate a hearing no later than 10 days after the issuance of an order pursuant to (a) above.~~

~~— (c) No hearing date established pursuant to (b) above shall be postponed at the request of the licensee unless the licensee agrees to continue the suspension period pending issuance of the board’s final decision.~~

~~— (d) If the no hearing is initiated within the 10 days after the issuance of an order, the suspension shall be vacated unless the deadline is waived by the licensee or the licensee requests a continuance.~~

~~— (e) If the suspension is vacated, the board may not again suspend the licensee on the basis of the same conduct without giving the licensee prior notice and the opportunity to be heard.~~

~~— Inst 209.19 Expedited Hearing.~~

~~— (a) The board shall grant a request for an expedited hearing upon review of a complaint setting forth facts in sufficient detail to support such a request. A person requesting an expedited hearing shall be required to waive in writing the 15 day notice requirement.~~

~~— (b) Reasons for such requests shall include, but not be limited to, economic hardship, medical emergency or other circumstances in which a delay of a hearing would cause irreparable harm.~~

~~— (c) The opposing party may respond to a request for an expedited hearing or may request a continuance under Inst 208.05.~~

~~— Inst 209.20 Failure to Attend Hearing.~~

~~— (a) Failure of a party to attend or participate in the hearing shall result in the party being declared in default if it has the burden of proof, has been given notice, but fails to attend the hearing. In this instance, the case shall be dismissed.~~

~~— (b) If the party does not have the overall burden of proof and fails to attend a hearing after having been given notice, the testimony and evidence of any other parties or intervenors shall be received and evaluated.~~

~~— (c) If the party who has the overall burden of proof attends the hearing but fails to present evidence or argument a decision will be entered against that party.~~

~~— (d) Notwithstanding any rule to the contrary, the board shall not dismiss a matter if good cause existed for failure to appear. Good cause in these circumstances means beyond the control of the party.~~

~~— (e) If the presiding officer believes a default should enter against a party, the presiding officer shall issue a written recommendation, with service on the parties, and action will be taken by the board 10 days after objections are filed.~~

~~— Inst 209.21 Decisions.~~

~~— (a) A board member shall not participate in making a decision unless he or she has personally heard the testimony unless the matter’s disposition does not depend on the credibility of any witness and the record provides a reasonable basis for evaluating testimony.~~

~~— (b) The disposition of the hearing shall be in writing and shall set forth findings of fact, conclusions of law and a final disposition as set forth in RSA 541-A.~~



~~— (c) Final adjudicative order of the board and orders denying petitions for declaratory rulings or rulemaking, shall take effect on the date they are served upon the parties pursuant to Inst 207.03 (d).~~

~~— Inst 209.22 Exceptions to Interlocutory Rulings by the Presiding Officer. The board shall not entertain interlocutory appeals of procedural or discovery orders made by the presiding officer.~~

~~PART Inst 210 RECONSIDERATION AND STAY~~

~~— Inst 210.01 Motion for Reconsideration or Rehearing.~~

~~— (a) Motions for reconsideration or rehearing shall be filed within 30 days after service of a final adjudicative order. The board shall make no distinction between “reconsideration” and “rehearing.”~~

~~— (b) A motion for reconsideration shall:~~

~~(1) Include any memorandum of law the moving party wishes to submit;~~

~~(2) Identify every ground upon which the moving party asserts the hearing or the outcome of the hearing is unlawful, unjust or unreasonable; and~~

~~(3) Concisely state the proposed factual findings, reasoning, and conclusions urged by the moving party.~~

~~— (c) The board shall grant or deny the motion, or any part thereof, on its merits to the extent the motion has demonstrated the decision is unlawful, unreasonable or unjust. The board shall treat the motion as one of reopening and order the receipt of such additional data or additional argument as it considers necessary to evaluate any newly discovered evidence or to cure any alleged procedural orders.~~

~~— (d) The board shall not grant a motion for reconsideration or rehearing for 5 days after the motion is filed in order to permit the opposing party to respond.~~

~~— (e) After the board has granted a motion for reconsideration or rehearing, the board shall affirm its order, modify its order or reverse its order as justice and equity require.~~

~~— Inst 210.02 Stay of Board Orders.~~

~~— (a) Board actions shall be stayed only in response to a specific motion.~~

~~— (b) A motion for stay shall be considered only if it is filed within the time period for requesting reconsideration and shall demonstrate good cause sufficient to warrant the stay.~~

~~— (c) Filing a motion for reconsideration shall not automatically stay a board order.~~

~~PART Inst 211 CONSOLIDATION AND SEVERANCE~~

~~— Inst 211.01 Consolidation. Adjudicative proceedings which involve the same or substantially related issues shall be consolidated for hearing or decision, or both, when fairness, accuracy and efficiency would be served by such an action. Consolidation shall be ordered in response to a party’s motion or on the board’s own initiative.~~

~~— Inst 211.02 Severance.~~

~~— (a) Severance shall be ordered in response to a motion from a party or on the board’s initiative.~~

~~— (b) The board shall sever one or more issues from a proceeding and dispose of those issues in another proceeding when it would promote the fairness of the proceeding.]~~

**Repeal Inst 212, effective 4/14/2012 (Document #10113), as follows:**

~~[PART Inst 212 NON ADJUDICATIVE INVESTIGATIONS~~

~~— Inst 212.01 Formal Investigation.~~

~~— (a) The board shall commence a formal investigation when necessary for the purpose of obtaining documents, recording testimony and otherwise gathering information relevant to any matter within its jurisdiction.~~

~~— (b) Formal investigations shall be commenced by the issuance of any order containing:~~

~~(1) The statutory or regulatory authority for the investigation;~~

~~(2) Statutes or rules believed to have been violated, or the possible regulatory action being contemplated by the board;~~

~~(3) Identity of the person(s) who are subjects of the investigation;~~

~~(4) The general nature of the conduct being investigated;~~

~~(5) Identity of the investigating officer(s);~~

~~(6) The date upon which the investigating officer shall report the findings and recommendations; and~~

~~(7) Other provisions including time, place and manner in which the investigation is to be conducted.~~

~~— (c) The issuance of an order to investigate shall not commence a disciplinary hearing and shall not constitute an allegation of misconduct against a license holder. It shall be declared an unverified complaint until completion of the investigation.~~

~~— Inst 212.02 Investigators. The board shall, as necessary appoint a member, investigator or other qualified person or committee to conduct an investigation.~~

~~— Inst 212.03 Misconduct Investigations.~~

~~— (a) The board shall conduct such non adjudicative investigations as it deems necessary to examine an act of possible misconduct which has come to its attention through complaints or other means or to satisfy itself that misconduct has not occurred.~~

~~— (b) When a misconduct investigation occurs, an investigator designated by the board shall contact such persons and examine records and documents as are necessary to make a recommendation as to whether or not further board action should be taken.~~

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~~— (c) Investigations, including those based on allegations in a complaint, shall be conducted on an ex parte basis except to the extent the investigator elects to share information with the subject of investigation or with a complainant.~~

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~~— (d) In formal misconduct investigations, the investigator shall make a written report and recommendations to the board as to whether there is a reasonable basis to conduct further disciplinary proceedings.~~

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~~— (e) Investigator reports and all information gathered by an investigator shall be kept confidential except that:~~

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~~(1) The investigator's report shall be made available to the parties in any adjudicative proceeding;~~

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~~(2) Information gathered by the investigator shall be subject to public disclosure if it is introduced as evidence in a disciplinary hearing; and~~

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~~(3) Information gathered in disciplinary investigations shall be made available to:~~

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~~a. Law enforcement agencies;~~

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~~b. Licensing agencies in other jurisdictions;~~

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~~c. Board investigators or prosecutors;~~

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~~d. Expert witnesses or assistants retained by board prosecutors or investigators in the same disciplinary matters; and~~

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~~e. A licensee, complainant, or other person with knowledge of the subject matter of a particular misconduct allegation, when such disclosure would assist the board investigation; and~~

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~~(4) Copies of investigations shall be provided to all board members;~~

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~~(f) No investigator shall have ex parte communication with the board concerning the subject complaint.~~

**Repeal Inst 213.01, effective 12/24/05 (Document #8493-A) as amended effective 4/14/12 (Document #10114), cited as follows:**

~~PART Inst 213 RULEMAKING~~

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~~— Inst 213.01 Rulemaking Petition.~~

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~~— (a) Petitions for rulemaking shall be in writing.~~

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~~— (b) The petitioner shall include the following in his or her rulemaking petition:~~

~~(1) The reasons for the proposed ruling; and~~

~~(2) The petitioner’s name, address, and phone number.~~

~~(c) Petitions shall be sent to:~~

~~Manufactured Housing Installation Standards Board  
NH Joint Board  
121 South Fruit Street  
Concord, NH 03301~~

~~(d) The board shall use the following criteria to determine whether a rulemaking petition should be granted or denied:~~

~~(1) Whether the board has rulemaking authority pursuant to RSA 205-D and RSA 541-A;~~

~~(2) Whether petition clearly identifies issues which require rulemaking;~~

~~(3) Whether there is an existing rule which addresses the issues raised in the petition; and~~

~~(4) Whether the petition is consistent with RSA 205-D and applicable case law.~~

~~(f) Pursuant to RSA 205-D and RSA 541-A:4, the board shall notify the petitioner in writing whether the petition was granted or denied. If denied, the notification letter shall state the reasons for denial.]~~

**Repeal Inst 213.02 through Inst 214.06, effective 12/24/2005 (Document #8493-A), as follows:**

~~[Inst 213.02 Deficiencies in Petitions.~~

~~(a) If the board determines that any petition does not meet the requirements of this section, it shall immediately notify the petitioner in writing, of the specific deficiencies.~~

~~(b) Upon receipt of a corrected petition, the board shall take action as outlined in Inst. 213.01.~~

~~PART Inst 214 RULEMAKING HEARINGS~~

~~Inst 214.01 Scope. This part shall apply to rulemaking hearings pursuant to RSA 541-A:11.~~

~~Inst. 214.02 Notice. The board shall cause to be published in the New Hampshire Rulemaking Register a notice of its intent to hold a rulemaking hearing pursuant to RSA 541-A:6.~~

~~Inst 214.03 Presiding Officer.~~

~~(a) The hearing shall be presided over by the chairperson of the board or his or her designee.~~

~~(b) The chairperson or designee shall:~~

~~(1) Determine whether a quorum of the board is present for the hearing;~~

- ~~(2) Call the hearing to order;~~
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- ~~(3) Cause a recording of the hearing to be made;~~
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- ~~(4) Recognize those who wish to be heard;~~
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- ~~(5) Maintain order during the hearing; and~~
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- ~~(6) Adjourn the hearing.~~
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~~Inst 214.04 Order of the Hearing.~~

~~(a) Any individual who wishes to testify at the hearing shall provide his or her full name on a speakers list furnished by the board.~~

~~(b) Individuals shall be called to testify in the order in which they signed up.~~

~~(c) Before adjourning the public hearing and after all individuals who signed up have been heard, the chairperson or designee shall call for any new testimony from any new speaker.~~

~~(d) When the chairperson or designee has determined that no other individual wishes to testify, he or she shall close the public hearing.~~

~~Inst 214.05 Postponement and Continuations.~~

~~(a) The chairperson or designee shall postpone a hearing to a later date, time or place in the event of:~~

- ~~(1) Inclement weather;~~
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- ~~(2) A lack of a quorum; or~~
- 
- ~~(3) Determination by the board that postponement of the hearing shall facilitate greater participation by the public.~~

~~(b) The chairperson or designee shall continue a hearing to a later date, time or place in the event that:~~

- ~~(1) The time allotted is not sufficient to give each individual who wishes to testify an opportunity to do so; or~~
- 
- ~~(2) A lack of quorum.~~

~~(c) Notice of a postponement or continuation of a public hearing or of extension of the public comment period shall be provided pursuant to RSA 541 A:11, III and IV(d).~~

~~Inst 214.06 Written Comments. Individuals may submit comments in writing or electronic format to the board on proposed rulemaking actions any time from the time notice has been published until the end of the public comment period as set forth in the notice of rulemaking.]~~



~~(3) Reject the declaratory ruling petition if it is beyond the scope of authority as specified in RSA 205-D.]~~

**Repeal Inst 216, effective 4/14/2012 (Document #10113), as follows:**

~~[PART Inst 216 EXPLANATION OF RULE~~

~~— Inst 216.01 Request for Rule Explanation.~~

~~(a) Within 30 days after the adoption of a rule, any interested person may request the board to issue a statement explaining the following:~~

~~(1) The principle reason(s) for and against the adoption of a rule in its final form; or~~

~~(2) Reasons why the board overruled arguments and considerations relative to the rule.~~

~~— (b) Rule explanation requests shall be received and disposed of in the following manner:~~

~~(1) Requests shall be submitted to the board at:~~

~~Manufactured Housing Installation Standards Board  
NH Joint Board  
121 South Fruit Street  
Concord, NH 03301~~

~~(2) When a request for a rule explanation has been received by the board, the board shall issue a statement responsive to the request within 60 days. The statement shall provide the information required in (a) above.]~~

**Adopt Part Inst 201 to read as follows:**

PART Inst 201 APPLICABILITY AND WAIVER OF SUBSTANTIVE RULES

Inst 201.01 Rules of Practice and Procedure. The Plc 200 rules shall govern with regards to all procedures for:

- (a) Disciplinary proceedings;
- (b) Rulemaking submissions, considerations and disposition of rulemaking petitions;
- (b) Public comment hearings;
- (d) Declaratory rulings;
- (e) Explanation of adopted rules; and
- (f) Voluntary surrender of licenses.

Inst 201.02 Waiver of Administrative Rules.

(a) The board shall initiate a waiver of a substantive rule upon its own motion by providing affected parties with notice and opportunity to be heard, and issuing an order which finds that waiver would be necessary to advance the purpose of the rules of the board.

(b) Individuals who wish to request a waiver of a rule shall submit a written request to the board, which includes:

- (1) The rule for which a waiver is requested;
  - (2) The anticipated length of time the requested waiver will be needed;
  - (3) The reason for requesting the waiver;
  - (4) Evidence of how the waiver will provide for the health and safety of the consumer or licensee;
  - (5) A time-limited written compliance plan which sets forth plans to achieve compliance including an estimated date of compliance; and
  - (6) The signature of the applicant.
- (c) The board shall consider the following when determining whether to approve or deny a waiver:
- (1) If adherence to the rule would cause the petitioner unnecessary or undue hardship;
  - (2) If the requested waiver is necessary because of any neglect or misfeasance on the part of the practitioner;
  - (3) If enforcement of the rule would injure a third person(s); and
  - (4) If waiver of the rule would injure a third person(s).
- (d) The board shall approve a waiver of an administrative rule request only if:
- (1) Granting a waiver does not have the effect of waiving or modifying a provision of RSA 206-D;
  - (2) The petitioner has shown good cause exists pursuant to (c) above to waive the rule; and
  - (3) The board determines that the individual's plans for compliance with the rule includes an estimated date of compliance and eventual compliance.
- (e) If the board, after receiving and reviewing a request for a waiver, requires further information or documentation to grant or deny the waiver, the board shall:
- (1) Notify the applicant in writing within 30 days; and
  - (2) Specify the information or documentation the board requires.



(f) The board shall issue a written approval or denial of the waiver within 60 days of the date the request is received, unless additional information or documentation is required. If additional information and documentation is required, then the board shall issue a written approval or denial within 60 days of receiving the requested information or documentation.

#### APPENDIX

<b>RULE</b>	<b>STATUTE</b>
Inst 201 (repealed)	RSA 541-A:7
Inst 202.01 (repealed)	RSA 541-A:7
Inst 203 (repealed)	RSA 541-A:30-a, I
Inst 204 (repealed)	RSA 541-A:30-a, III (j)
Inst 205 (repealed)	RSA 541-A:30-a, III (b)
Inst 206 (repealed)	RSA 541-A:30-a, III(f)
Inst 207 (repealed)	RSA 541-A:30-a, III(a)
Inst 208.01, Inst 208.02 (repealed)	RSA 541-A:30-a, III (a); RSA 205-D:20, IX
Inst 208.03 (repealed)	RSA 205-D:13 & RSA 541-A:30-a, III(a)
Inst 208.04 – Inst 208.05 (repealed)	RSA 541-A:30-a, III(a)
Inst 209.01- Inst 209.03 (repealed)	RSA 541-A:30-a, I
Inst 209.04 (repealed)	RSA 541-A:30-a, III(g)
Inst 209.05 (repealed)	RSA 541-A:30-a, I
Inst 209.06 – Inst 209.07 (repealed)	RSA 541-A:30-a, III(c)
Inst 209.08 (repealed)	RSA 541-A:33
Inst 209.09 (repealed)	RSA 541-A:31, VII
Inst 209.10 (repealed)	RSA 541-A:30-a, III(d)
Inst 209.11 (repealed)	RSA 541-A:30-a, III(e)
Inst 209.12 – Inst 209.14 (repealed)	RSA 541-A:30-a, I
Inst 209.15 (repealed)	RSA 541-A:36
Inst 209.16 (repealed)	RSA 541-A:30-a, III(g)
Inst 209.17 (repealed)	RSA 541-A:30, II & 541-A:30-a, I
Inst 209.18 (repealed)	RSA 541-A:30, III
Inst 209.19 & Inst 209.20 (repealed)	RSA 541-A:30-a, I
Inst 209.21 (repealed)	RSA 541-A:35
Inst 209.22 (repealed)	RSA 541-A:30-a, I
Inst 210 & Inst 211 (repealed)	RSA 541-A:30-a, I
Inst 212 (repealed)	RSA 541-A:16, I(b); RSA 205-D:20, IX
Inst 213 (repealed)	RSA 541-A:16, I(c)
Inst 214 (repealed)	RSA 541-A:16, I(b)(3)
Inst 215 (repealed)	RSA 541-A:16, I(d)
Inst 216 (repealed)	RSA 541-A:16, I(d)
Inst 201.01	RSA 310:6, II
Inst 201.02	RSA 541-A:16, I (b); RSA 205-D:20, I