

CHAPTER Bcr 200 PRACTICE AND PROCEDURE

Statutory Authority: [RSA 155-A:11, RSA 155-A:11-a](#), RSA 541-A:16, I and RSA 541-A:30-a, I

PART Bcr 201 PURPOSE

Bcr 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 their statutory jurisdiction. These rules shall be construed to secure the just, efficient and accurate resolution of all board proceedings.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 202 DEFINITIONS

Bcr 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) "Data" means all information other than argument, including oral or written descriptions, reports, maps, charts, drawings, photographs, audio or video recordings, computer programs, or computer printouts.

(b) "De novo" means a new hearing on all issues and a full hearing on the merits in no way restricted by what occurred before.

(c) "File" means to place a document in the actual possession of the board.

(d) "Hearing" means "adjudicative proceeding" as defined by RSA 541-A:1, I, namely "the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36", and Bcr 200.

(e) "Investigation" means a search by the board for data concerning matters within its jurisdiction, the result of which is other than a final determination of a person's rights, duties or privileges.

(f) "Motion" means any request by a party to an existing proceeding for an order or relief relating to that proceeding.

(g) "Order" means a document issued by the board:

(1) Establishing procedures to be followed in an adjudicative or nonadjudicative proceeding;

(2) Granting or denying a petition or motion;

(3) Requiring a person to do, or to abstain from doing, something; or

(4) Determining a person's rights to a privilege established by RSA 155-A or the rules of this chapter.

(h) "Party" means "party" as defined by RSA 541-A:1, XII, namely, "each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party." The term "party" includes all intervenors in a proceeding, subject to any limitations established pursuant to RSA 541-A:32, III.

(i) "Petition" means any request to the board seeking an order or any other action or relief.

(j) "Presiding officer" means the board member or other individual to whom the board has delegated authority to preside over an adjudicative or other proceeding.

(k) "Rulemaking" means the statutory procedures for the formulation of a rule set forth in RSA 541-A:3.

(l) "State fire marshal" means the state fire marshal of the State of New Hampshire, or his or her designee.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 203 FAILURE TO COMPLY; WAIVER OF RULES

Bcr 203.01 Failure to Comply with Rules.

(a) Failure to comply with the rules of this chapter shall result in the board:

(1) Refusing to accept or admit a noncompliant document for filing or refusing to consider a noncompliant oral petition or motion; or

(2) Accepting or admitting, or denying or not admitting a noncompliant application, petition, motion or exhibit on the condition that conformity with specific procedural requirements be achieved by a specified date.

(b) When a noncompliant pleading or other tendered information is not accepted or admitted by the board, or when conditions for the acceptance or admission of noncompliant information are not met, the board shall make a decision on the pending matter without considering the noncompliant information, unless the board notifies the parties that it has waived the rule in accordance with Bcr 203.02.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 203.02 Waiver of Procedural Rules. The board, upon the accepted motion of any interested person, shall waive any procedural requirement or limitation imposed by this chapter upon reasonable notice to affected persons when it appears that the proposed waiver or suspension is lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues properly pending before the board than would adherence to particular procedural rules or requirements. A motion for waiver or suspension of a procedural rule or order shall fully set forth the reasons for the requested relief.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 204 TIME PERIODS

Bcr 204.01 Computation of Time.

- (a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.
- (b) Computation of any period of time referred to in these rules 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.
- (c) If the last day of the period so computed falls on a Saturday, Sunday or state legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or state legal holiday.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 204.02 Change in Allowed Times. Except where a time period is fixed by statute, the board shall, upon motion or upon its own initiative, change the time provided for the filing of any document, or reschedule the time set for any oral hearing, prehearing conference, or other activity upon a finding that the moving party did not comply with the time period due to accident, mistake, or misfortune, and the probable injury to the moving party outweighs any detriment likely to be suffered by any other party. The board shall shorten the time provided for the filing of any document or for the scheduling of any oral hearing, prehearing conference, or other activity upon a finding that to do so would assist in resolving the matter or issue fairly and there is no likelihood of any detriment to be suffered by any other party.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 204.03 Limitations. A motion to change time shall be filed at least 3 state business days before the scheduled date of the event in question.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 205 FILING AND SERVICE OF DOCUMENTS

Bcr 205.01 Filing of Documents with the Board.

(a) A document shall be considered filed when it is actually received at the board's office at the following address:

State Building Code Review Board

Office of the Commissioner
Department of Safety
33 Hazen Drive
Concord NH 03305

(b) 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 to subsequent acceptance if the deficiencies are corrected and the document is refiled within ~~any~~the applicable time period.

(c) All correspondence, filings, and other communications to the board shall be addressed to the board's office.

(d) All petitions, motions, exhibits, memoranda or other documents filed in connection with a request for board action shall be filed with an original and 16 copies.

(e) Only an original copy shall be filed of transmittal letters, requests for public information, or other routine correspondence not directed at formal board action.

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

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 205.02 Subscription and Veracity of Documents.

(a) All ~~complaints~~, petitions, motions, and replies filed with the board shall be signed and dated by the proponent of the document or, if the party appears by a representative, by the representative.

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

(1) The signor has read the document;

(2) The signor is authorized to file it;

(3) To the best of the signor's knowledge, information and belief, there are good grounds to support it; and

(4) The document has not been filed for purposes of delay or harassment.

(c) A willful violation of the representations contained in (b), above, shall, to the extent consistent with justice, and the statutes administered by the board, result in the board entering an order adverse to the party committing the violation.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 205.03 Service of Documents.

(a) Applications and petitions for declaratory rulings shall be filed with the board.

(b) All objections, motions, replies, exhibits, memoranda, or other documents filed in connection with a request for board action under paragraph (a) shall be served by the proponent upon the board, pursuant to Bcr 204.02(b), and all other parties to the proceeding by:

(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; or

(2) Delivering a copy of the document in hand on or before the date it is filed with the board.

(c) Notices, orders, decisions or other documents issued by the board in connection with a request for board actions under paragraph (a) shall be served by the board upon all parties to the proceeding by either:

(1) Depositing a copy of the document, first class postage prepaid, in the United States mail, addressed to the last address given to the board by the party being served; or

(2) Delivering a copy of the document in hand to the party.

(d) When a party has appeared by a representative, delivery of a document to the party's representative at the address stated on the appearance filed by the representative shall constitute delivery to the party.

(e) Except for exhibits distributed at a prehearing conference or hearing, every document filed with the board, and required to be served upon the parties to an adjudicative proceeding, 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.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 206 PLEADINGS, APPEALS AND MOTIONS

Bcr 206.01 Pleadings.

- (a) The only pleadings permitted shall be petitions and replies to petitions.
- (b) A petitioner shall include the following on his or her petition:
 - (1) The name and address of the petitioner;
 - (2) The name and address of the petitioner's representative, if any;
 - (3) A concise statement of the facts which warrant the relief requested from the board;
 - (4) The description of the action which the petitioner wishes the board to take;

(5) A citation to any statutes, rules, orders, or other authority which entitles the petitioner to the relief requested; and

(6) The signature and date required by Bcr 205.02(a).

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 206.02 Appeals of Decisions of the State Fire Marshal.

(a) Appeals of variances or exceptions to the state fire code, Saf-C 6000, that have been granted or denied by the state fire marshal and appeals of a decision of the state fire marshal in enforcing provisions of the state building code pursuant to RSA 155-A:7, I, shall be in writing and filed at the board's office. All appeals shall be a de novo hearing.

(b) An appellant shall include the following on his or her appeal:

(1) The name and address of the appellant;

(2) The name and address of the appellant's representative, if any;

(3) A concise statement of the facts which warrant the relief requested from the board;

(4) The description of the action which the appellant wishes the board to take;

(5) A citation to any statutes, rules, orders, or other authority which entitles the appellant to the relief requested; and

(6) The signature and date required by Bcr 205.02(a).

(c) An appeal shall be dismissed upon a determination that it:

(1) Fails to state a cause of action;

(2) Alleges a cause of action that is so untimely filed that it imperils or prejudices another party's defense or position; or

(3) Is filed by an appellant who refuses to respond to requests for further information or to otherwise cooperate with any board investigation or hearing.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 206.03 Motions and Objections Thereto.

(a) Motions and objections shall be in writing unless made in response to a matter asserted for the first time at a hearing or on the basis of information which was not received in time to prepare a written motion.

(b) The moving party shall state, clearly and concisely, the following in his or her motion:

(1) The purpose of the motion;

(2) The relief sought by the motion;

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

(4) The facts claimed to constitute grounds for the relief requested by the motion; and

(5) The signature and date required in Bcr 205.02(a).

(c) A party objecting to a motion shall state, clearly and concisely, the following in his or her objection:

(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) The signature and date required by Bcr 205.02(a).

(d) A party filing an objection to a motion shall specifically admit or deny each fact contained in the motion. Failure to deny a fact contained in a motion shall constitute the admission of that fact for the purposes of the motion. In the event a party filing an objection to a motion lacks sufficient information to either admit or deny a fact contained in the motion, the party shall so state, specifically identifying such fact.

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

(f) Objections to motions shall be filed within 510 days after the filing of the motion. Failure to object to a motion within the time allowed shall constitute a waiver of objection to the motion.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 207 ADJUDICATIVE PROCEEDINGS

Bcr 207.01 Applicability.

(a) This part shall govern all proceedings conducted by the board except:

(1) Rulemaking proceedings;

and

(2) Nonadjudicative investigations.

[Source.](#) #8044, eff 2-17-04; ss by #8213, eff 11-22-04

Bcr 207.02 Commencement of Proceedings.

(a) The board shall commence an adjudicative proceeding by issuing a notice to the parties at least 15 days before the first scheduled hearing date or first prehearing conference.

(b) The notice commencing an adjudicative proceeding shall:

(1) Identify the parties to the proceeding as of the date of the order;

- (2) Briefly summarize the subject matter of the proceeding, and identify the issues to be resolved;
- (3) A statement of the legal authority under which the hearing is to be held;
- (4) A reference to the particular sections of the statutes and rules involved;
- (5) Specify the date by which, and the address where, appearances or motions by representatives shall be filed;
- (6) Specify the date, time, and location of an initial prehearing conference or dates for an oral hearing;
- (7) Identify the presiding officer for the proceeding, if other than the chair of the board;
- (8) A statement that each party has the right to have an attorney present to represent the party at the party's expense; and
- (9) Contain such other information or attachments as are warranted by the circumstances of the case including, but not limited to, orders consolidating or severing issues in the proceeding with other proceedings, and orders directing the production or exchange of documents.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.03 Docketing, Service of Notice, Public Notice.

- (a) The board shall assign each adjudicative proceeding a docket number, and serve the hearing notice upon all parties to the proceeding by first class mail.

(b) All subsequent notices, decisions, and orders issued by the board, including any amendments to the hearing notice, shall be served upon the parties, by first class mail.

(c) Orders, notices, and decisions of the board, and motions, memoranda, exhibits, and other documents and data submitted to the board in a docketed case shall be kept in a docket file and made available for public inspection in the board's office.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.04 Intervention.

(a) A petitioner shall state with particularity in his or her petition for intervention the following:

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

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

(3) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and

(4) Any other reasons why the petitioner should be permitted to intervene.

(b) Petitions for intervention shall be granted anytime during the proceeding if the petitioner has a substantial interest in the proceeding, granting the petition is in the interest of justice, and if granting intervention will not unduly delay the board's proceeding.

(c) Once granted leave to intervene, an intervenor shall take the proceeding as he or she finds it and no portion of the proceeding shall be repeated because of the fact of intervention.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.05 Right to Counsel.

(a) Parties and witnesses in an adjudicative proceeding may be represented by counsel, but an attorney appearing on behalf of a party shall first file a letter announcing the fact of representation at the earliest date practical.

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

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.06 Prehearing and Other Informal Conferences.

(a) At any time following the commencement of an adjudicative proceeding, the presiding officer, upon motion, or upon his or her own initiative, shall request the parties to attend one or more prehearing conferences when such a conference would aid in the disposition of the proceeding. Parties deciding not to attend these conferences do so at their peril.

(b) Matters which can be addressed at a prehearing conference shall include:

(1) The distribution of exhibits and written testimony, if any, to the parties;

(2) Opportunities and procedures for simplification of the issues;

(3) Possible amendments to the pleadings;

(4) Opportunities and procedures for settlement;

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

(6) Possible limitations on the number of witnesses, and possible limitations on the scheduling of witnesses;

(7) Possible changes to the standard procedures which would otherwise govern the proceeding; and

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

(c) The board shall cause all prehearing conferences to be recorded excluding settlement discussions. Matters decided at a prehearing conference shall be reflected in an appropriate order.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.07 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, which is reasonably related to the subject matter of the proceeding.

(b) Parties shall attempt to agree among themselves concerning the mutual exchange of relevant information. If these efforts prove unsuccessful, a party wishing to initiate discovery against another party, shall, by motion, seek leave to do so and shall identify the exact type of discovery requested.

(c) Discovery shall be permitted against a party when:

(1) The parties cannot adequately address specific relevant factual issues at the time fixed for the presentation of evidence and addressing these issues at a subsequent time would place the requesting party at a material disadvantage;

(2) The requested method of discovery is reasonable and the requested discovery would not cause material unfairness; and

(3) The request for discovery is not made for the sole purpose of delaying the proceedings.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.08 Evidence.

(a) Proceedings shall not be conducted under the rules of evidence, but the evidentiary privileges recognized by the law of New Hampshire shall apply to proceedings under this chapter.

(b) All data which will reasonably assist the board to arrive at the truth shall be admissible, but data which is irrelevant, immaterial, unduly repetitious, or cumulative, shall be excluded.

(c) Oral testimony shall be allowed unless the board, upon a finding that written evidence would be more efficient and would not result in material prejudice, orders that some or all of the evidence be submitted in written form.

(d) If the board officially notices a fact, it shall so state, and permit any party, upon timely request, the opportunity to show the contrary.

(e) Witnesses appearing before the board shall testify under oath or affirmation.

(f) The board shall cause an audiotape or stenographic record to be made of hearings and prehearing conferences. This record shall be transcribed upon the request of a party who pays the estimated cost of transcription in advance. However, 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.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.09 Burden of Proof.

(a) The party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.

(b) Without limiting the generality of paragraph (a), above, all moving parties and all petitioners shall have the burden of persuading the board that their motion or petition should be granted.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.10 Methods of Proceeding.

(a) Where facts material to the subject matter of the proceeding are in dispute, and personal observation of witnesses or the immediate opportunity for cross-examination of witnesses is necessary or desirable, the proceeding shall, to that extent, consist of a trial-type evidentiary hearing with the subsequent submission of memoranda.

(b) Oral motions and any oral objection to such motions shall be recorded in full in the record of the hearing. If the presiding officer finds that the motion requires additional information in order to be

fully and fairly considered, the presiding officer shall direct the moving party to submit the motion in writing, with supporting information.

(c) The foregoing paragraphs shall not limit the board's authority to structure individual proceedings in a manner suitable to their particular subject matter and recognized due process requirements, or to require the submission of additional data at any time with the consent of the parties.

(d) The presiding officer shall schedule supplemental argument or hearing, or re-argument, at any time prior to the issuance of a final order in a proceeding.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by 10161, eff 7-13-12

Bcr 207.11 Inquiry By Presiding Officer.

(a) The presiding officer shall make such inquiry of witnesses or counsel, as he or she believes necessary to develop a complete record for decision.

(b) Other board members participating in the proceeding shall also ask such questions and make such inquiries, subject to recognition by the presiding officer.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.12 Proposed Findings of Fact and Conclusions of Law. The presiding officer shall accept any proposed findings of fact and conclusions of law and shall direct any party to submit proposed findings of fact and conclusions of law pursuant to RSA 541-A:35 if the presiding officer believes proposed findings or conclusions would be helpful to the board in deciding the case. Pursuant to RSA 541-A:35, if, in accordance with this section, a party has submitted proposed findings of fact, the board's decision shall include a ruling upon each proposed finding.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.13 Ex parte Communications. Once an adjudicative proceeding has been commenced, no party shall communicate with any participating board member or the presiding officer concerning the merits of the case except upon notice to all parties and in accordance with the rules of this chapter. Nor shall any party cause another person to make such communications or otherwise engage in conduct prohibited by RSA 541-A:36.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 207.14 Decisions.

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

(b) A proposal for decision shall become a final decision upon its approval by the board.

(c) The board shall keep a decision on file in its records for at least 5 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 208 PRESIDING OFFICER

Bcr 208.01 Designation.

- (a) Adjudicative proceedings commenced by the board shall be conducted by a presiding officer.

- (b) The board's chairperson shall serve as presiding officer or shall designate another board member to so serve.

- (c) The presiding officer in an adjudicative proceeding shall be subject to replacement upon order of the board at any time, and without notice or hearing.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 208.02 Authority of Presiding Officer.

- (a) The presiding officer shall possess all authority with respect to the procedural aspects of adjudicative proceedings, including, but not limited to, the power to administer oaths and affirmations, direct the course of the proceeding, and decide scheduling, discovery and other procedural issues.

- (b) Except as provided by Bcr 208.04, the presiding officer shall receive no testimony or argument on the merits of the case unless a quorum of the board, including the presiding officer, is present.

- (c) Except in proceedings conducted pursuant to Bcr 208.04, the presiding officer shall, consistent with the fair and orderly conduct of the proceeding, permit board members who are present during any stage of an adjudicative proceeding to make inquiries of the witnesses, as provided in Bcr 207.11.

(d) Except as provided by Bcr 208.04, the presiding officer shall not accept final offers of settlement or impose consent decrees. When a settlement has been proposed in writing, the presiding officer shall refer it to the board for decision.

(e) The presiding officer shall not decide motions or enter orders which finally resolve any specific issue or issues which the board has designated for hearing. Unless otherwise ordered by the board, potentially dispositive motions shall be referred to the board if the presiding officer believes that they have sufficient merit to warrant prompt consideration.

(f) If the presiding officer believes that a default or similar final order should enter against a party, the presiding officer shall issue a written recommendation to the board, with service on the parties and intervenors, and the board shall take appropriate action after allowing the parties and intervenors 10 days to file objections thereto.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 208.03 Exceptions to Interlocutory Rulings by the Presiding Officer.

(a) There shall be no interlocutory appeal to the board of procedural or discovery orders made by the presiding officer.

(b) Objections to adverse rulings by a presiding officer shall be brought to the attention of the board by including such objections in any exceptions taken to a proposed decision under Bcr 207.04. When a proposed decision is not issued, such objections shall be presented to the board as a motion or as part of a closing memorandum submitted within 10 days from the close of the hearing or such further period as the presiding officer shall allow.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 208.04 Proposed Decisions By Presiding Officer.

(a) When so ordered by the board, evidence shall be received solely by a presiding officer who shall be charged with preparing a written proposed decision with recommendations for the final disposition of the case and any pending motions. Such proposed decision shall be served upon the parties, intervenors, and the board.

(b) Exceptions and supporting memoranda of law directed to the full board shall be filed within 30 days from the date the proposed decision was served. Replies to exceptions and supporting memoranda shall be filed within 15 days from the date on the document being replied to.

(c) If a party or intervenor wishes to present oral argument to the board the party or intervenor shall file a separate motion for oral argument within the time allowed for filing exceptions or replies to exceptions.

(d) If no exceptions to a proposed decision are filed, the board shall, within 10 days following the deadline for filing exceptions, issue an order announcing that the proposed decision shall be reviewed by the board on its own motion, or issue an order stating that the proposed decision shall automatically become the final decision of the board on the 41st day following the date it was served upon the parties.

(e) When the board has directed a presiding officer to receive evidence and enter a proposed decision, there shall be no communications between the presiding officer and the board members concerning the merits of the case, and the board members shall not participate in the questioning of witnesses at the hearing, as would otherwise be permitted by Bcr 207.12.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 209 RECONSIDERATION AND STAY

Bcr 209.01 Motion for Reconsideration or Rehearing.

(a) Final adjudicative orders of the board, and orders denying petitions for declaratory rulings or rulemaking, shall take effect on the date it is served upon the parties, intervenors or petitioners pursuant to Bcr 204.04(c).

(b) 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 the terms "reconsideration" and "rehearing."

(c) A motion for reconsideration shall:

(1) Include any memorandum of law the movant wishes to submit;

(2) Identify each error of fact, error of reasoning, or erroneous conclusion contained in the final order which the movant wishes reconsidered; and

(3) Concisely state the correct factual finding, correct reasoning, and correct conclusion urged by the movant.

(d) The board shall grant or deny the motion, or any part thereof, on its merits, to the extent the motion has revealed errors of law, fact or policy in the board's prior decision. The board shall also treat the motion as one for reopening and order the receipt of such additional data or additional argument as it considers necessary to evaluate newly discovered evidence or cure alleged procedural errors.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 209.02 Reconsideration on the Board's Own Motion.

(a) Within the time frame specified in Bcr 209.01(b), the board shall correct, reconsider, revise or reverse any final action on its own motion if the board discovers new facts that indicate such final action was incorrect.

(b) If the board's action is based upon the existing record, prior notice shall not be given to the parties.

(c) If the board's action is based on new facts not in the existing record, the board shall provide the parties with notice and an opportunity to be heard before any final revision is made by the board.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 209.03 Stay of Board Orders.

(a) Board actions shall be stayed only in response to a specific motion requesting a stay or by the board acting on its own motion.

(b) A motion for stay shall be considered only if it is filed within the time period for requesting reconsideration specified by Bcr 209.01(b) and demonstrates good cause sufficient to warrant the stay of an action by the board.

(c) Filing a motion for reconsideration above shall not stay a board order. Combining a motion for stay with a motion for reconsideration shall be permissible, however.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 210 CONSOLIDATION AND SEVERANCE

Bcr 210.01 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 timely motion from a party or on the board's own initiative.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 210.02 Severance. The board shall sever one or more issues from a proceeding and dispose of those issues in another proceeding when doing so would materially promote the fairness, accuracy and efficiency of the proceeding. Severance shall be ordered in response to a timely motion from a party or on the board's own initiative.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 211 INVESTIGATIONS

Bcr 211.01 Informal Investigations.

(a) Notwithstanding any other provision of this title, the board, within the limits of its authority, and acting through its members, officers and employees, or through independent contractors, shall make inquiry of any person and otherwise gather data, and prepare reports describing the data obtained whenever:

- (1) It receives data which leads it to believe that a violation of any statute administered by the board, or of any rule of the board, has occurred, or is likely to occur; or
- (2) It desires to obtain data for any other lawful purpose.

(b) Informal investigations shall gather information which is appropriate to the circumstances of the case, including requests for additional information from the complainant, requests for a release of relevant records belonging to or under the control of the complainant and face-to-face meetings with potential witnesses and interested persons.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 211.02 Formal Investigations.

(a) The board shall commence a formal investigation for the purpose of obtaining documents, recorded testimony, and otherwise gathering information relevant to the board's jurisdiction.

(b) Formal investigations shall be commenced by the issuance of an order of investigation containing:

- (1) The statutory or regulatory authority for the investigation;
- (2) Any statutes or rules believed to have been, or about to be, violated;
- (3) The possible regulatory action;
- (4) The identity of the persons, or class of persons, who are the subject of the investigation;
- (5) The general nature of the conduct being investigated;
- (6) The identity of the investigating officer or committee;
- (7) The date upon which the investigating officer shall report his or her findings and recommendations to the board; and
- (8) Other provisions relevant to the issues under investigation and the time, place and manner in which the investigation is to be conducted.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 211.03 Informational Hearings.

(a) The board shall conduct informational hearings to assist in gathering information concerning policy matters, such as the adoption of board rules.

(b) The board chair, acting chair, or another board member designated by the chair shall serve as the presiding officer at informational hearings and shall conduct all facets of the proceeding.

(c) Sworn testimony shall not be received at informational hearings unless an order of investigation has been issued by the board.

(d) The board shall establish the order and the length of the presentations made in informational hearings, and, consistent with any applicable statutes, limit the time allotted to each speaker.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 212 RULEMAKING

Bcr 212.01 How Adopted. A board rule, or any amendment or repeal thereof, shall be adopted by order as provided by RSA 541-A:3 and in Bcr 211. Rules shall be proposed by petition or on the board's own initiative.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 212.02 Petition for Rulemaking.

(a) Any person shall make a request to the board to commence a proceeding for the purposes of adopting, amending, or repealing a rule by filing a petition which contains:

- (1) A statement of the intent, purpose, or particular result intended by the petitioner;
- (2) If the petitioner proposes to amend or repeal an existing rule, an identification of the particular rule sought to be amended or repealed;
- (3) Any data or argument the petitioner believes would be useful to the board in deciding whether to commence a rulemaking proceeding; and
- (4) The proposed text.

[Source.](#) #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 212.03 Disposition of Petition.

(a) The board shall by order grant a petition for rulemaking if the proposal is consistent with the laws regulating the state building code review board, RSA 155-A:10 et seq, advances the purposes thereof and, if implemented, would be required to be adopted as a rule. Before issuing such an order, however, the board shall require additional data or argument from the petitioner or other interested persons, if necessary for the board to reach its decision.

(b) If the petition is denied, the board shall state the reason therefore in the order. If the petition is granted, the board shall undertake to commence a rulemaking proceeding in accordance with RSA 541-A:3.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 212.04 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 Bcr 212.03.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 213 RULEMAKING HEARINGS

Bcr 213.01 Scope. This part shall apply to rulemaking hearings required pursuant to RSA 541-A:11.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 213.02 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.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 213.03 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;

(3) Cause a recording of the hearing to be made;

(4) Recognize those who wish to be heard;

(5) Maintain order during the hearing; and

(6) Adjourn the hearing.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 213.04 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.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 213.05 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;

(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 a quorum due to unavoidable absence.

(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).

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 213.06 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.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 213.07 Copies of Recordings.

(a) All hearings shall be recorded.

(b) A copy of the recording may be requested by submitting a written request to:

State Building Code Review Board
Office of the Commissioner
Department of Safety
33 Hazen Drive
Concord, NH 03305

(c) Pursuant to RSA 91-A:4, persons requesting a copy of the audio recording shall pay the actual cost of duplication.

(d) Recordings of proceedings shall be preserved in accordance with RSA 91-A, III and III-a & b.
~~for no less than 75 days from the conclusion of the hearing date.~~

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 214 RULES TO UPDATE OR CHANGE THE STATE BUILDING CODE

Bcr 214.01 How Adopted. Rules to update or change the state building code for the codes described in RSA 155-A:1, IV shall be adopted by order as provided in Bcr 214. Rules shall be proposed by petition or on the board's own initiative.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 214.02 Petition for Adopting Rules to Update or Change the State Building Code Manuals.

(a) Any person shall make a request to the board to commence a proceeding for the purposes of updating or changing the state building code manuals for the codes described in RSA 155-A:1, IV by filing a petition which contains:

- (1) A statement of the intent, purpose, or particular result intended by the petitioner;
- (2) If the petitioner proposes to amend or repeal an existing rule, an identification of the particular rule sought to be amended or repealed;
- (3) Any data or argument the petitioner believes would be useful to the board in deciding whether to commence the adoption of the rule; and

(4) The proposed text.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 214.03 Disposition of Petition.

(a) The board shall by order, grant or deny a petition for the update or changing of the state building code in accordance with the requirements of RSA 155-A.

(b) Upon receipt of a petition, the board shall vote whether to send the matter to a public hearing to be held within 30 days of the vote.

(c) If the board votes to send the matter to a public hearing and after the public hearing, the board shall vote whether to update or change the state building code.

(d) Notwithstanding any rule to the contrary, if imminent public safety issues are at stake, the board shall waive the need for a public hearing and adopt the rule change, however a public hearing shall be held within 60 days of the vote.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 214.04 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 Bcr 213.03.

Source. #8044, eff 2-17-04; ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

PART Bcr 215 APPEALS

Bcr 215.01 Scope.

(a) The rules in this part shall apply to all appeals to the state building code review board from a final decision of the electricians' board, established under RSA 319-C:4, or the state board for the licensing and regulation of plumbers, established under RSA 329-A:3, or the board of home inspectors, established under RSA 310-A:186.

(b) Notwithstanding Bcr 207.01, unless otherwise specifically stated in this part, the general procedures of the board's hearing process shall apply to appeals.

Source. #8323, eff 4-12-05; ss by #10161, eff 7-13-12

Bcr 215.02 Definitions. For the purpose of this part, the following terms shall be defined as follows:

(a) "Evidence" means all information, other than oral argument, submitted and considered by the board as part of the appeal record.

(b) "Licensing board" means the electricians' board, established under RSA 319-C:4, ~~or the state board for the licensing and regulations of plumbers, established under RSA 329-A:3,~~ or the board of home inspectors, established under RSA 310-A:186.

Source. #8323, eff 4-12-05; ss by #10161, eff 7-13-12

Bcr 215.03 How to Appeal.

(a) To initiate an appeal, the aggrieved party from the hearing below shall file with the board a notice of appeal. The notice of appeal shall be signed by the aggrieved party or his or her lawyer or representative and shall be filed within 30 days of the date of the final decision or order by the licensing board.

(b) The notice of appeal shall contain the following:

(1) The name and address of the appellant;

(2) The name and address of the appellant's lawyer or representative, if applicable;

(3) If applicable, the name/s and address/es of the complainant, and other parties if applicable, at the proceeding below;

(4) The grounds for the appeal, including:

1. A detailed explanation of the appellant's objections to the decision; and

2. Description of errors in the decision;

(5) Any background facts that relate to the appeal; and

(6) A description of the relief requested.

(c) The aggrieved party shall file with the notice of appeal a copy of the decision that is being appealed.

[Source.](#) #8323, eff 4-12-05; ss by #10161, eff 7-13-12

Bcr 215.04 Rejection of Notice of Appeal.

(a) Unless the pertinent rule has been waived pursuant to Bcr 203.02, the board shall reject a notice of appeal if:

(1) The notice of appeal is untimely; or

(2) The notice does not substantially conform with Bcr 215.03.

(b) The board shall reject a notice of appeal if:

(1) The appellant does not have standing; or

(2) The board does not have jurisdiction over the subject matter of the appeal.

(c) If the board rejects a notice of appeal, it shall inform the appellant in writing setting forth the reasons for its action.

[Source.](#) #8323, eff 4-12-05; ss by #10161, eff 7-13-12

Bcr 215.05 Commencement of the Appeal.

(a) Within 10 days of receipt of a notice of appeal, the board shall commence the appeal by issuing an order of notice to all parties to the proceeding appealed from by first class mail, postage prepaid.

(b) The notice shall:

(1) Identify the parties to the proceeding;

(2) Briefly summarize the subject matter and identify the issues to be resolved;

(3) Specify the statutory authority for the proposed action;

(4) Identify any applicable board rules;

(5) Specify the date by which, and place where, appearances shall be filed;

(6) Specify the date, which shall be no earlier than 14 days from the date of the notice or prehearing conference, time and place of the first day of oral argument, if any, which may be limited to procedural matters;

(7) Specify the date and address for the submission of written materials;

(8) Specify that each party has the right to have an attorney present to represent the party at the party's expense; and

(9) Specify that each party has the right to have the agency provide a certified shorthand court reporter at the party's expense and that any such request shall be submitted in writing at least 10 days prior to the hearing.

[Source.](#) #8323, eff 4-12-05; ss by #10161, eff 7-13-12

Bcr 215.06 Transcripts from Licensing Board. The licensing board shall supply the board a certified copy of the record and a transcribed copy of the testimony at the licensing board's expense at least 5 days prior to any scheduled hearing or within the timeframe as directed by the board.

[Source.](#) #8323, eff 4-12-05; ss by #10161, eff 7-13-12

Bcr 215.07 Standard of Review on Appeal.

(a) On appeal, the appellant shall have the burden of proving, by a clear preponderance of the evidence, that the licensing board's decision was:

- (1) Not supported by substantial evidence on the record;
- (2) Arbitrary and capricious;
- (3) An abuse of the licensing board's discretion; or
- (4) Otherwise unlawful.

[Source.](#) #8323, eff 4-12-05; ss by #10161, eff 7-13-12

Bcr 215.08 Evidence. Review shall be based on the record below. The board shall not receive or consider any additional evidence, except for newly discovered evidence and such evidence as the board deems necessary for it to rule on the merits of the appeal.

[Source.](#) #8323, eff 4-12-05; ss by #10161, eff 7-13-12

Bcr 215.09 Appeal Hearing Process.

(a) The appeal hearing shall begin with an opening statement by the presiding officer of the board, which shall describe the issues raised on appeal, the applicable standard of review, and the procedures to be followed at the hearing.

(b) The appellant, or his or her representative, shall then offer any oral argument in support of the appeal.

(c) The appellee, or his or her representative, shall appear at the appeal hearing and may present oral argument in support of its decision.

(d) Members of the board may question the parties at any time during the oral argument. The board shall, as necessary, extend the time limitation imposed in (e) to accommodate extensive questioning by the board.

(e) Oral arguments shall be limited to 15 minutes unless a party has requested at least 2 weeks in advance for additional time. Additional time shall be granted if the matter is complex enough to merit it.

(f) At the conclusion of the oral arguments, the hearing shall be adjourned.

Source. #8323, eff 4-12-05; ss by #10161, eff 7-13-12

Bcr 215.10 Appeal Decisions.

(a) All decisions rendered by the board shall be made on the basis of the record before the board.

(b) Board members who hear an appeal, and who are not recused for good cause, shall not abstain from deciding the appeal.

(c) The board may affirm or reverse the decision of the licensing board, or remand the case back to the licensing board for action consistent with the board's decision.

(d) The board shall set forth its decision in writing, with findings of fact and conclusions of law.

Source. #8323, eff 4-12-05; ss by #10161, eff 7-13-12

PART Bcr 216 DECLARATORY RULINGS

Bcr 216.01 Petitions for Declaratory Rulings.

(a) A petition for a declaratory ruling on matters within the jurisdiction of the board shall be filed by a person as a petition which meets the requirements of Bcr 206.01(b).

(b) Such a petition shall also set forth the following information:

(1) The exact ruling being requested; and

(2) The statutory and factual basis for the ruling, including any supporting affidavits or memoranda of law.

Source. #8044, eff 2-17-04; renumbered by #8323 (from Bcr 215.01); ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by #10161, eff 7-13-12

Bcr 216.02 Action on Petitions for Declaratory Rulings.

(a) The petitioner shall provide such further information as the board shall direct after reviewing the petition.

(b) Petitions shall be dismissed when the board lacks subject matter or personal jurisdiction.

Source. #8044, eff 2-17-04; renumbered by #8323 (from Bcr 215.02); ss by #10073, INTERIM, eff 1-17-12, EXPIRES: 7-16-12; ss by *10161*, eff 7-13-12.

PART Bcr 217 EXPLANATION OF RULE

Bcr 217.01 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 principal 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:

State Building Code Review Board
Office of the Commissioner
Department of Safety
33 Hazen Drive
Concord, NH 03305

(2) When a request for 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 by (a) above.