

CHAPTER Fire 200 PETITIONS AND HEARING PROCEDURES

PART Fire 201 PETITIONS

Fire 201.01 Applicability. This part shall apply to petitions where a hearing is required by law.

Source. #2013, eff 5-5-82, EXPIRED: 5-5-88

New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

Fire 201.02 Waiver. The commission or presiding officer, upon his or her own initiative or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the agency than would adherence to a particular rule or procedure.

Source. #2013, eff 5-5-82, EXPIRED: 5-5-88

New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

Fire 201.03 Computation of Time Periods.

(a) In computing any period of time prescribed or allowed by these rules or RSA 21-P:27:

(1) The day of the act, event, or default after which the designated period of time begins to run shall not be included; and

(2) The last day of the period so computed shall be included unless it is a Saturday, Sunday, or state legal holiday, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, or state legal holiday as specified in RSA 288.

Source. #2013, eff 5-5-82, EXPIRED: 5-5-88

New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

Fire 201.04 Filing of Documents.

(a) Each petition for a hearing shall be in writing, signed, and shall accurately describe the nature of the petition and the relief sought.

(b) All petitions, motions, replies, answers, notices, and other pleadings relating to any petition shall, if mailed or hand-delivered, be addressed to:

Chairman, Fire Standards and Training Commission
c/o Director, Division of Fire Standards and Training and Emergency Medical Services
33 Hazen Drive
Concord, NH 03305

(c) All documents shall be deemed to have been filed when received by the director.

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New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

Fire 201.05 Action on Petitions.

(a) Upon receipt, all petitions, or other documents shall be forwarded by the director to the chairman.

(b) Within 60 days of receipt by the director, the chairman shall examine the petition and notify the applicant of any apparent errors or omissions. The applicant may resubmit the completed petition within 30 days of the receipt of the chairman's notification. The commission shall deny in writing any untimely petitions.

Source. #2013, eff 5-5-82, EXPIRED: 5-5-88

New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

Fire 201.06 Investigations. The chairman shall appoint any commission member or staff member of the division to investigate any petition, other than a written request to adopt, amend or repeal a rule or a written request for a declaratory ruling. The investigators shall report their findings to the chairman within 60 days of receipt of a complaint or petition.

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New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-B, eff 11-12-08

Fire 201.07 Informal Settlements.

(a) The chairman, with the advice and consent of the majority of the commission, shall engage in nonadjudicative processes for the purposes of settling a complaint or petition other than a written request to adopt, amend or repeal a rule or a written request for a declaratory ruling, when settlement can be reached without a hearing.

(b) The chairman shall, if needed, schedule one or more informal prehearing conferences, pursuant to RSA 541-A:31, V.

(c) No party shall be required to utilize informal procedures when a hearing is required.

(d) In the event a proposed informal settlement is reached, the chairman shall advise the commission of the nature of the proposed settlement, which shall be approved by a majority of the commission prior to the settlement being entered.

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New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

Fire 201.08 Contested Cases.

(a) In the event a petition is considered a contested case which cannot be settled under Fire 201.07, and a hearing is scheduled, all parties shall be notified of the:

- (1) Time, place, and nature of the hearing;
- (2) Statutory authority under which the hearing is to be held;
- (3) Particular sections of the statutes or rules involved;
- (4) Issues involved;
- (5) Right to have an attorney present to represent the party at the party's expense; and
- (6) Right to have commission provide a certified shorthand court reporter at the party's expense.

(b) The chairman, with the advice and consent of a majority of the commission, shall appoint any member of the commission to act as the presiding officer.

(c) A presiding officer shall, at any stage of the hearing process, withdraw from a case if he/she:

- (1) Presently, or in the past, has had a personal or business relationship with a party, witness or attorney that could hinder him/her from arriving at an impartial decision on the issue(s); or
- (2) Cannot render an impartial decision for any other reason.

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New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08*

Fire 201.09 Continuances.

(a) The presiding officer shall grant up to a 30-day extension of time to schedule a hearing pursuant to RSA 21-P:27 if a party:

- (1) Is absent from the jurisdiction;
- (2) Has a serious illness;
- (3) Is incarcerated; or
- (4) Has had a death in his/her family.

(b) All requests for continuances shall:

- (1) Be in writing;
- (2) Be submitted to the presiding officer at least 5 working days before the scheduled hearing; and
- (3) Include:
 - a. The reason for the request; and
 - b. Optional dates when the party shall be available.

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New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08*

Fire 201.10 Representation of Parties.

(a) Parties may be represented:

- (1) Pro se;
- (2) By legal counsel; or
- (3) Pursuant to RSA 311:1.

Source. #2013, eff 5-5-82, EXPIRED: 5-5-88

New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

Fire 201.11 Discovery.

(a) Parties shall be provided with all documents and records requested relative to the issues raised by the request for hearing no later than 5 working days prior to the hearing date.

(b) All discovery requests shall be in writing and shall be honored unless the presiding officer rules that the request is not relevant to an issue(s).

Source. #2013, eff 5-5-82, EXPIRED: 5-5-88

New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

Fire 201.12 Role of Complainants. Unless called as witnesses or granted party or intervenor status, a person who initiates an adjudicative proceeding by complaining to the commission about the conduct of a person who becomes a party shall have no role in any enforcement or disciplinary hearing.

Source. #2013, eff 5-5-82, EXPIRED: 5-5-88

New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

Fire 201.13 Intervenors. If a person meets the criteria of RSA 541-A:32, that person shall be allowed to intervene in any action before the presiding officer.

Source. #2013, eff 5-5-82, EXPIRED: 5-5-88

New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08* (from Fire 201.12)

Fire 201.14 Agency Staff. Agency staff who have been designated by the commission to request a hearing and present the commission's case shall fully participate in the hearing. Other agency staff shall have no role in the hearing unless called as a witness.

Source. #2013, eff 5-5-82, EXPIRED: 5-5-88

New. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08* (from Fire 201.13)

Fire 201.15 Motions.

(a) All motions shall be submitted in writing unless presented orally at the hearing.

(b) The presiding officer shall rule on a motion when made or shall advise parties present that the motion shall be taken under advisement.

Source. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08* (from Fire 201.14)

Fire 201.16 Oaths or Affirmations.

(a) An oath or affirmation shall be administered to each witness by the presiding officer prior to receiving testimony in a hearing.

(b) Interpreters shall have an oath or affirmation administered to them to truthfully and accurately translate all questions asked and answers given.

(c) Once a witness has been sworn or affirmed at any hearing, it shall not be necessary for him/her to be sworn or affirmed again for subsequent testimony on the same day and in the same case. The record of the proceeding shall indicate that a person was recalled to testify, and reminded that he/she was still under oath or affirmation.

Source. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08* (from Fire 201.15)

Fire 201.17 Applicable Rules of Evidence.

(a) The following shall govern the introduction and admissibility of evidence at hearings:

(1) Hearings shall not be bound by the rules of evidence.

(2) All relevant and material evidence shall be admissible.

(3) Evidence shall include but not be limited to:

- a. Depositions;
- b. Affidavits;
- c. Official documents; and
- d. Testimony of witnesses;

(4) The presiding officer shall exclude any irrelevant, immaterial, or unduly cumulative or repetitious evidence; and

(5) Applicable statutory and constitutional provisions and immunities requiring exclusion of evidence shall be recognized provided however, that nothing contained herein shall prohibit a party from waiving his/her privilege or immunity.

Source. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08* (from Fire 201.16)

Fire 201.18 Burden of Proof and Standard 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, each moving party and each petitioner shall have the burden of persuading the commission that the motion or petition should be granted.

Source. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08* (from Fire 201.16)

Fire 201.19 Proposed Findings of Fact and Conclusions of Law.

(a) Any party may submit proposed findings of fact and conclusions of law to the presiding officer prior to or at the hearing.

(b) Upon request of any party, or if the presiding officer determines that proposed findings of fact and conclusions of law would serve to clarify the issues presented at the hearing, the presiding officer shall specify a date after the hearing for the submission of proposed findings of fact and conclusions of law.

(c) In any case where proposed findings of fact and conclusions of law are submitted, the decision shall include rulings on the proposals.

Source. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08*

Fire 201.20 Rendering a Decision.

(a) A commission 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) If a presiding officer has been delegated the authority to conduct a hearing in the absence of a majority of the commission who are to render a final decision, the presiding officer shall submit to the agency a written proposal for decision, which shall contain a statement of the reasons for the decision and finding of fact and rulings of law necessary to the proposed decision.

(c) If a proposal for decision in a matter not personally heard by a commission member is adverse to a party to the proceeding other than the commission itself, the commission shall serve a copy of the proposal for decision on each party to the proceeding and provide an opportunity to file exceptions and present briefs and oral arguments to the agency.

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

(e) All decisions shall be reached on the basis of a preponderance of the evidence.

(f) The commission 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.](#) #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08* (from Fire 201.18)

Fire 201.21 Record.

(a) The record in a contested case shall include:

- (1) All pleading, motions, orders and rulings;
- (2) All evidence received or considered;
- (3) A statement of any matter officially noticed;
- (4) Objections and rulings on questions, and offers of proof;
- (5) Proposed findings and exceptions;
- (6) Any decision, opinion, or report by the presiding officer at the hearing;
- (7) All staff memoranda or data submitted to or considered by the presiding officer before making the decision;
- (8) The tape recording or stenographic notes or symbols prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered by the presiding officer before making the decision; and
- (9) Matters placed on the record after an ex parte communication.

[Source.](#) #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, *eff 11-12-08* (from Fire 201.19)

Fire 201.22 Transcripts.

- (a) There shall be an audio recording of all hearings and all parties who are present shall be so notified.
- (b) A copy of the recording, pursuant to RSA 541-A:31, VII shall be made available on written request by a party.
- (c) All written requests for audio recordings or transcripts shall include the following:
 - (1) Name and address of the party making the request;
 - (2) Date of the hearing;
 - (3) Name of the presiding officer; and
 - (4) Docket number of the hearing.
- (d) A party may request, in writing, a transcript of the hearing if all reasonable costs for transcription are paid first.
- (e) The commission shall retain a copy of hearing recordings, for at least 60 days.
- (f) Any person attending a hearing may tape or otherwise record the hearing. The presiding officer shall notify all parties present that the record is in addition to the official record being made by the commission.

Source. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss by #9319-A, eff 11-12-08 (from Fire 201.20)

Fire 201.23 Reopening of Cases.

- (a) A case shall be reopened whenever:
 - (1) A party alleges the existence of newly-discovered evidence which due diligence would not have discovered prior to the hearing; or
 - (2) A party alleges any material error, omission, misconstruction of applicable statutes or rules or misrepresentation of applicable precedents.
- (b) A request to reopen a case shall be in writing, and shall be filed within 30 days of the issuance of the decision. It shall outline newly discovered evidence or an allegation of material error, omission, or misconstrued statutes, rules, or misrepresentation of applicable precedents.
- (c) A request to reopen a case shall be denied if it is determined that the request is:
 - (1) Made solely to obtain a delay in the disposition of the case; or
 - (2) Not in compliance with this section.

Source. #9319-A, eff 11-12-08 (from Fire 201.21)

Fire 201.24 Appeal of Administrative Action. The result of an administrative action shall remain in full force and effect, pending the outcome of the appeal or expiration of the sanction imposed.

[Source.](#) #9319-A, *eff 11-12-08* (from Fire 201.22)

PART Fire 202 PETITION FOR ADOPTION, AMENDMENT OR REPEAL OF A RULE

Fire 202.01 Petitions for Rulemaking.

(a) Any person may request the commission to commence a proceeding for the purpose of adopting, amending, or repealing a rule by filing a petition.

(b) The petition for rulemaking shall contain the following:

- (1) The text of the proposed rule or a statement of the results intended by the petitioner to flow from the implementation of the proposed rules; or
- (2) If the petitioner proposed to amend or repeal an existing rule, an identification of the particular rule sought to be amended or repealed.

(c) Petitions shall be filed in accordance with Fire 201.04(b) and (c).

(d) The petition shall be granted if:

- (1) The commission has rulemaking authority pursuant to RSA 21-P:27 or RSA 541-A;
- (2) The petition clearly identifies issues which require rulemaking;
- (3) There is not an existing rule which addresses the issues raised in the petition; and
- (4) The petition is consistent with RSA 21-P:27 and any applicable case law.

[Source.](#) #5726, *eff 10-21-93*, EXPIRED: 10-21-99

[New.](#) #7145, INTERIM, *eff 12-2-99*, EXPIRED: 3-31-00

[New.](#) #7332, *eff 8-1-00*; ss by #9218, INTERIM, *eff 8-1-08*; ss
by #9319-A, *eff 11-12-08*

Fire 202.02 Commission Action Upon Petition. Within 30 days of filing, the commission shall, in writing, grant or deny a petition for rulemaking. If the petition is denied, the commission shall state the reasons in the letter denying the petition. If the petition is granted, the commission shall commence rulemaking proceedings as prescribed by law.

[Source.](#) #5726, *eff 10-21-93*, EXPIRED: 10-21-99

[New.](#) #7145, INTERIM, *eff 12-2-99*, EXPIRED: 3-31-00

[New.](#) #7332, *eff 8-1-00*; ss by #9218, INTERIM, *eff 8-1-08*; ss
by #9319-A, *eff 11-12-08*

PART Fire 203 DECLARATORY RULINGS

Fire 203.01 Petitions for Declaratory Rulings.

(a) Any person may file a petition requesting a declaratory ruling from the commission on the following matters:

- (1) Any statutory provision that vests authority in the commission;
- (2) Any rule of the commission; or
- (3) Any order of the commission.

(b) The petition for a declaratory ruling shall contain the following information:

- (1) The exact ruling being requested;
- (2) The statutory and factual basis for the ruling, including any supporting affidavits or memoranda of law;
- (3) Interest of the petitioner; and
- (4) The petitioner's name and mailing address.

(c) Petitions shall be filed in accordance with Fire 201.04(b) and (c).

Source. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

Fire 203.02 Commission Action Upon Petition. Within 60 days of filing, the commission shall respond to the petitioner in writing. If the commission grants the petition, the commission shall provide its ruling to the director of legislative services as required by law. The commission shall reject the petition if it is inadequate or beyond the scope of the commission's authority as specified in RSA 21-P:27.

Source. #5726, eff 10-21-93, EXPIRED: 10-21-99

New. #7145, INTERIM, eff 12-2-99, EXPIRED: 3-31-00

New. #7332, eff 8-1-00; ss by #9218, INTERIM, eff 8-1-08; ss
by #9319-A, eff 11-12-08

PART Fire 204 RULEMAKING HEARINGS

Fire 204.01 Scope. This part shall apply to rulemaking hearings required pursuant to RSA 541-A:11.

Source. #9319-A, eff 11-12-08

Fire 204.02 Notice. The commission 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.](#) #9319-A, eff 11-12-08

Fire 204.03 Presiding Officer.

- (a) The hearing shall be presided over by the chairperson of the commission or his or her designee.
- (b) The chairperson or designee shall:
 - (1) Determine whether a quorum of the commission is present for the hearing;
 - (2) Call the hearing to order;
 - (3) Cause a recording of the hearing to be heard;
 - (4) Recognize those who wish to be heard;
 - (5) Maintain order during the hearing; and
 - (6) Adjourn the hearing.

[Source.](#) #9319-A, eff 11-12-08

Fire 204.04 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 commission.
- (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.](#) #9319-A, eff 11-12-08

Fire 204.05 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 quorum; or
 - (3) Determination by the commission 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 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. #9319-A, eff 11-12-08

Fire 204.06 Written Comments. Individuals may submit comments in writing or electronic format to the commission 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. #9319-A, eff 11-12-08

Fire 204.07 Copies of Tapes.

- (a) All hearings shall be recorded.
- (b) A copy of the recording may be requested by submitting a written request to:

Fire Standards and Training Commission
c/o Executive Officer
33 Hazen Drive
Concord, NH 03305

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

(d) Recordings of proceedings shall be preserved for no less than 75 days from the conclusion of the hearing date.

Source. #9319-A, eff 11-12-08

PART Fire 205 EXPLANATION OF RULE

Fire 205.01 Request for Rule Explanation.

(a) Within 30 days after the adoption of a rule, any interested person may request the commission 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 commission 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 commission at:

Chairman, Fire Standards and Training Commission
c/o Director, Division of Fire Standards and Training and Emergency Medical Services
33 Hazen Drive
Concord, NH 03305

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

[Source.](#) # 9319-B, eff 11-12-08