

CHAPTER Odb 100 OIL FUND DISBURSEMENT BOARD

Statutory Authority: RSA 541-A:16, I(a)

Readopt Odb 101, eff. 10-25-05 (doc. #8456), to read as follows:

PART Odb 101 DEFINITIONS

Odb 101.01 “Board” means the oil fund disbursement board established by RSA 146-D:4.

Odb 101.02 “Confidential business information (CBI)” means information that is exempt from disclosure under RSA 91-A:5, IV, or information used in business that provides an advantage over competitors who do not know of or use it.

Readopt with amendment Odb 102, eff. 10-25-05 (doc. #8456), to read as follows:

PART Odb 102 BOARD ORGANIZATION

Odb 102.01 Responsibilities. The board shall administer the provisions of RSA 146-D.

Odb 102.02 Chairman and Vice Chairman.

(a) The board shall elect a chairman and vice chairman from among its members at the first meeting of each calendar year.

(b) The chairman shall preside at all meetings. In the absence of the chairman, the vice-chairman shall preside.

(c) If both the chairman and vice-chairman are absent at any meeting, the board shall elect a chairman pro tem from among the members present to preside over that meeting.

Odb 102.03 Office Hours, Office Location, Mailing Address and Telephone Number.

(a) The board’s office location shall be at the:

New Hampshire Department of Environmental Services
29 Hazen Drive
Concord, New Hampshire

(b) The board’s office shall be open to the public Monday through Friday, 8:00 am to 4:00 pm, excluding holidays.

(c) Correspondence shall be addressed to the board at:

Oil Fund Disbursement Board
New Hampshire Department of Environmental Services
Waste Management Division
P.O. Box 95
Concord, N.H. 03302-0095

(d) The board’s telephone number shall be (603) 271-3899.

Readopt with amendment Odb 103, eff. 10-25-05 (doc. #8456), to read as follows:

PART Odb 103 MEETINGS AND DELIBERATIONS

Odb 103.01 Meetings. The chairman shall establish the date, time and location of meetings. Each member of the board shall be notified in writing of the date, time, location and agenda for meetings. Notice of meetings shall be posted at the board office, through the General Court calendar, on the department of environmental services website and in the Rulemaking Register, as applicable.

Odb 103.02 Agenda and Meeting Record. The board shall, through the department of environmental services, prepare a written agenda in advance of a meeting, record the proceedings, and prepare a written summary of proceedings.

Odb 103.03 Procedures. Robert's Rules of Order Newly Revised, 11th Edition shall govern the procedures of the board.

Odb 103.04 Quorum.

(a) A quorum of the board shall be a simple majority of the total number of sitting members, provided, however, that in the context of a hearing proceeding, a quorum shall be a simple majority of those sitting members who have not recused themselves from the proceeding.

(b) The board shall take formal or official action only when a quorum is present.

Readopt with amendment Odb 104, eff. 4-28-11 (doc. #9917), to read as follows:

PART Odb 104 INFORMATION MANAGEMENT

Odb 104.01 Availability of Records.

(a) All board records of meetings and official actions shall be public records unless deemed confidential under RSA 91-A:3, II or RSA 91-A:5.

(b) Board records of official actions under Odb 400 shall be available for public inspection on the internet through the department of environmental services One Stop Web Site <http://www2.des.state.nh.us/DESOnestop/BasicSearch.aspx> or successor systems. For all other official actions, meetings, and for the public without internet access, records shall be available through the department of environmental services during regular office hours, and with at least 48 hours' notice.

(c) Persons desiring copies of board records shall request the information being sought as clearly as possible.

(d) Persons desiring a verbatim transcript of a board meeting recording shall agree to pay the costs incurred by the board for transcription.

Odb 104.02 Records Retention.

(a) The board shall, through the department of environmental services, maintain records of activity conducted under its authority as follows:

- (1) Requests for reimbursement submitted under Odb 400 shall be maintained for 2 years after processing;
- (2) Notices of reimbursement issued under Odb 404.03(d) shall be maintained permanently after closure of the file; and
- (3) Records of activity under Odb 200 and records of board meetings shall be maintained for 3 years after the action date or meeting.

(b) The board shall, through the department of environmental services, maintain electronic records of activity conducted under its authority to the extent it is technically feasible and cost-effective, and in conformance with the requirements of RSA 294-E.

Readopt with amendment Odb 105, eff. 10-25-05 (doc. #8456), to read as follows:

PART Odb 105 CLAIMS OF CONFIDENTIALITY

Odb 105.01 Procedure for Making a Claim of Confidentiality.

(a) Any person claiming that information submitted to the board under Odb 200 or Odb 400 is CBI, shall assert that claim at the time the information is initially submitted by stamping or otherwise marking each page of such information with the notation “confidential” or “confidential business information”. If the claimant believes that only part of the information on a page is CBI, the claimant shall identify all portions to which the claim applies at the time of submission and shall designate only that portion of the page as “confidential” or “confidential business information”.

(b) If the board receives information from another agency of the state or federal government that is designated as CBI, the board shall exercise the same degree of confidentiality for the information as is exercised by the sending agency to the extent authorized by New Hampshire law.

(c) If a claim of confidentiality is made for any information that falls within any category identified in Odb 105.02, the information shall not be treated as confidential.

Odb 105.02 Non-Confidential Information.

(a) Any information for which no claim of confidentiality was made at the time of the initial submission shall not be considered confidential.

(b) Comments submitted by any person during the public comment period of any administrative proceeding shall not be considered confidential.

(c) Information that is in the public domain shall not be considered confidential.

(d) Information that demonstrates a claimant violated any statute or rule administered by the board shall not be confidential.

Odb 105.03 Release of Information. The board shall release information not identified as CBI, in accordance with RSA 91-A:4, IV.

CHAPTER Odb 200 OIL FUND DISBURSEMENT BOARD PROCEDURES

Readopt Odb 201, eff. 11-22-05 (doc. #8490-A), to read as follows:

PART Odb 201 PURPOSE AND APPLICABILITY

Odb 201.01 Purpose.

(a) The purpose of this chapter is to provide uniform procedures for the conduct of all non-adjudicative and adjudicative proceedings, including requests for reconsideration, declaratory rulings, rulemaking petitions, and hearings in contested cases.

(b) This chapter is intended to supplement the procedures established by RSA 541-A and any procedures or criteria established under any statute implemented by the oil fund disbursement board.

Odb 201.02 Applicability.

(a) The procedures set forth in this chapter shall apply to all proceedings conducted by the oil fund disbursement board, and shall be in addition to any applicable requirements of RSA 541-A.

(b) All board proceedings shall be subject to the provisions of RSA 91-A.

Readopt with amendment Odb 202, eff. 11-22-05 (doc. #8490-A), to read as follows:

PART Odb 202 DEFINITIONS

Odb 202.01 “Board” means the oil fund disbursement board established by RSA 146-D:4.

Odb 202.02 “Department” means the New Hampshire department of environmental services.

Odb 202.03 “Presiding officer” means the chairman of the board, or in the absence of the chairman, the vice chairman of the board.

Odb 202.04 “Sitting member” means an individual who has been appointed to the board and to whom the oath of office has been administered, and includes any member whose term has expired until such time as a replacement is appointed. The term does not include any member who has resigned from the board, regardless of whether a replacement has been appointed.

PART Odb 203 HEARINGS IN CONTESTED CASES

Readopt with amendment Odb 203.01, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.01 Waiver of Rules. Prior to the commencement of hearing procedures, any party may submit a written request to waive the application of any of the hearing rules of this part not required by statute. If no party objects to the request, and if the board determines that granting the request is necessary to conduct a more efficient hearing, then the rule or rules shall be waived and so noted in the hearing record.

Readopt with amendment Odb 203.02, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.02 Request for Hearing.

(a) Any person aggrieved by a decision of the board or the department may request a hearing within 30 days of the decision notification date. Such requests shall include a statement of the relief sought and the rule or statutory provision under which the relief is sought.

(b) The board shall establish a date and time for a hearing and provide notice in accordance with Odb 203.10.

Readopt Odb 203.03 through Odb 203.10, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.03 Place of Hearings. All hearings before the board shall be held at a location designated by the board and notice shall be provided in accordance with Odb 203.10.

Odb 203.04 Computation of Time. All time periods referenced in this chapter shall be calendar days, commencing with the first day following the date of an action. If the last day of the time period 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.

Odb 203.05 Extensions of Time.

(a) Any party requesting a hearing may petition the board to extend any time limit prescribed by this chapter for good cause as specified in (d) below. A request for an extension shall be submitted in writing to the board prior to the expiration of the prescribed period and shall state the reasons for the extension request. A copy of the request shall also be sent to all other parties involved.

(b) The department or any other party may object to the request by filing a written objection with the board within 5 days of receipt of the request, stating the reasons why the request should not be granted.

(c) If there is no opposition to the request and if the delay would not cause prejudice, the presiding officer shall grant the request. If an objection to a request is filed, the presiding officer shall consider whether good cause exists to grant the request and shall rule on the request within a reasonable time.

(d) Good cause shall include such contingencies as an accident, sudden illness, death of a family member, or other circumstances beyond the control of the party, which prevents the party from meeting the time limit.

(e) The board shall notify all parties of board actions through the department.

Odb 203.06 Date of Filing. All exhibits, findings of fact, correspondence, motions, petitions, applications and any other documents governed by this part, shall be deemed to have been filed with or received by the board on the actual date of receipt by the board.

Odb 203.07 Identification of Communications. Communications shall contain the name and address of the communicator and the subject of the communication. When the subject matter pertains to a pending proceeding, the title of the proceeding shall be given.

Odb 203.08 Appearance Before the Board. Appearances may be entered either in writing or upon the record of the hearing. Other persons, not parties to a proceeding but having an interest in the subject matter of the proceeding, may participate in the hearing to the extent that they are able to establish an interest, other than that of the public generally, in the subject matter of the proceeding.

Odb 203.09 Representatives. Any party to a hearing before the board may be represented by an individual as that party may designate, in accordance with Odb 203.08.

Odb 203.10 Notice of Hearings. When a hearing is scheduled, notice shall be provided in writing, to all parties or other interested persons, at least 15 days prior to the hearing date. The notice shall specify the date, time, place and subject matter of the hearing.

Readopt with amendment Odb 203.11, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.11 Hearing Record. The record of the hearing shall consist of a verbatim recording of the hearing, documentary evidence introduced by the parties, and documents of which official notice has been taken by the board.

Readopt Odb 203.12, eff. 4-28-11 (doc. #9918-A), to read as follows:

Odb 203.12 Retention of Board Records of Decisions or Orders.

(a) The board shall, through the department of environmental services, maintain records of decisions or orders issued pursuant to RSA 541-A:35 for 3 years after the date of the final decision or order.

(b) The board shall, through the department of environmental services, maintain electronic records of decisions or orders issued pursuant to RSA 541-A:35 to the extent it is technically feasible and cost-effective, and in conformance with the requirements of RSA 294-E.

Readopt with amendment Odb 203.13, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.13 Hearing Procedures.

(a) The presiding officer shall:

- (1) Regulate the course of the hearing;
- (2) Rule upon issues of procedure; and
- (3) Take such other action that is necessary for the efficient and orderly conduct of the hearing.

(b) The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing, and the general procedure governing its conduct.

(c) Any person appearing before the board shall be required to state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

Readopt Odb 203.14 through Odb 203.16, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.14 Burden and Standard of Proof.

(a) The party asserting a proposition or challenging a decision of the board shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.

(b) For purposes of this section, “proving the truth of the proposition by a preponderance of the evidence” means what is sought to be proved is more probable than not.

Odb 203.15 Pre-Hearing Exchange of Information.

(a) At least 10 days prior to the commencement of a hearing, the parties involved shall provide the board with the following:

- (1) A list identifying each witness expected to be called at the hearing with a brief description of that witness’s testimony;
- (2) A list of all exhibits expected to be presented at the hearing; and
- (3) Any requests for changes to or waivers of the standard procedures as specified in this chapter or other matters concerning the conduct of the hearing.

(b) If the board requests information other than that specified in (a), above, from the parties involved, the board shall provide written notice to the parties.

(c) A party receiving a request for information pursuant to (b), above, shall provide the information requested within 10 days.

Odb 203.16 Documentary Evidence.

(a) Evidence, which is relevant and material to the subject matter of the hearing, shall be admissible. Evidence, which is irrelevant, immaterial, or unduly repetitious, shall be excluded.

(b) The board shall include in its final decision those facts of which it took official notice unless those facts are included in the transcript of the record.

(c) All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence shall be received in the form of copies or excerpts if the original is not readily available. Any person offering any documentary or photographic evidence shall provide the board with 20 copies of such documents or photographs, unless the presiding officer determines that such documents or photographs are of such form, size or character as not to be reasonably suitable for reproduction.

(d) All written statements and documents, materials, and objects admitted into evidence shall be made available during the course of the hearing for public examination. Following the hearing, all such evidence shall be available at the board's office in Concord during normal business hours.

(e) All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. Nothing herein shall be construed to permit interlocutory appeal of rulings of the presiding officer.

Readopt with amendment Odb 203.17, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.17 Exhibits.

(a) Where evidence to be presented consists of tabulations and figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form. Exhibits may be summarized, supplemented, and explained.

(b) Space shall be provided in the upper right hand corner of each such exhibit for the insertion of the number of the exhibit and the name of the witness through whom it is presented.

(c) The original exhibit and 20 copies thereof shall be provided to the board and at least one copy shall be provided to all other parties.

Readopt Odb 203.18, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.18 Advance Filing of Exhibits. Any party intending to use exhibits shall file an original and 20 copies thereof with the board at least 15 days prior to the hearing at which such exhibits are to be introduced.

Readopt with amendment Odb 203.19 through Odb 203.20, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.19 Signatures. Every application, exhibit, notice, motion, petition, complaint, brief, and memorandum shall be signed by the person filing the document, or by one or more attorneys in their individual names or by other duly designated representative on behalf of the person filing the document.

Odb 203.20 Continuance.

(a) Any party may request that a hearing conducted pursuant to this part be continued for reasonable cause and reconvened or rescheduled. Reasonable cause shall include, but not be limited to, unavailability of an individual party, a representative, or critical documents.

(b) Requests for a continuance made prior to a hearing shall be in writing and shall state the reason(s) for the request. Requests for a continuance made at a hearing may be made orally and shall be entered in the record of the hearing.

(c) If the presiding officer determines that reasonable cause exists and that no prejudice will result from the delay, the presiding officer shall grant the request. All orders for continuance shall specify the time and place at which such hearing shall be reconvened.

(d) The presiding officer shall notify the parties and the public, if applicable, in such a manner as is appropriate to insure that reasonable notice shall be given of the time and place of such continued hearing.

Readopt Odb 203.21 through Odb 203.24, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.21 Recess and Adjournment. The presiding officer shall, from time to time, at the request of any party or members of the board, recess or adjourn any hearings as may be necessary to the orderly conduct of the proceeding.

Odb 203.22 Conclusion of Hearing.

(a) Prior to the conclusion of the hearing, the presiding officer shall, upon request and at his or her discretion, direct that the record be left open for a specified period of time to accommodate the filing of documents not available at the hearing.

(b) If the presiding officer determines that such documents are necessary to a full consideration of the subject matter, the presiding officer shall set a date by which the additional documents shall be filed.

Odb 203.23 Reopening of the Record.

(a) At any time prior to a final decision, any party to a hearing may request the presiding officer to reopen the record to consider documents or arguments not previously considered.

(b) If the presiding officer determines that such documents or arguments are necessary to a full consideration of the subject matter of the hearing, the presiding officer shall reopen the record and written notice shall be given to all parties.

Odb 203.24 Decision of Board. Following the conclusion of a hearing, or the closing of the record, the board shall issue a notice of decision to all parties through the department.

Readopt with amendments Odb 203.25, eff. 11-22-05 (doc. #8490-A), to read as follows:

Odb 203.25 Withdrawal of a Presiding Officer.

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

(b) For purposes of this section, good cause for withdrawal shall be that the presiding officer has an objectively demonstrated bias for or against one or more of the parties. Good cause shall not include that the presiding officer is an employee of the department.

(c) The party requesting the withdrawal of the presiding officer shall support the request with sworn testimony or other evidence submitted with the motion.

(d) For purposes of this section, an “objectively-demonstrated bias” means that the party requesting the presiding officer to withdraw submits evidence that shows, by a preponderance of the evidence, that the presiding officer has had personal dealings with a party to the proceeding that would cause a reasonable person to believe that as a result of the dealings, the presiding officer will discount or ignore evidence and law to find in favor of or against the party.

Odb 203.26 Roles in Adjudicative Proceedings. In any adjudicative hearing, department staff may be called as witnesses by the board or any party to the hearing to present testimony and evidence as requested.

Readopt with amendment Odb 204, eff. 12-3-13 (doc. #10481), to read as follows:

PART Odb 204 NON-ADJUDICATIVE PUBLIC HEARINGS

Odb 204.01 Applicability. With the exception of rulemaking hearings under Odb 205, this part shall apply to the conduct of hearings held by the board to provide information and receive public comment in any matter that is not a contested case as defined by RSA 541-A:1, IV.

Odb 204.02 Hearings. A non-adjudicative public hearing shall be held:

(a) To receive evidence and testimony on reimbursement determinations and other matters required by the statute or rules;

(b) For any matter for which the board is required by law or by these rules to hold a hearing that is not a contested case; and

(c) For any matter for which the law does not require the board to hold a hearing but for which the board believes a public hearing would be of benefit.

Odb 204.03 Record.

(a) A record of the hearing shall be kept by tape recording or other method, which will provide a verbatim record.

(b) Copies of the recording shall be provided to any person upon request and payment of the costs of the tape(s) and staff time to make the copy, or of staff time only if enough blank tapes to copy the hearing tape(s) are submitted with the request.

(c) If any person desires a transcript of the hearing tape(s), the board shall prepare or cause to be prepared a transcript provided the cost of the transcription is paid by the person(s) requesting the transcript. If the department hires another person to prepare the transcript, the person requesting the transcript shall be billed directly by and shall directly pay the person preparing the transcript.

Odb 204.04 Testimony.

(a) Any individual wishing to submit written testimony or exhibit(s) at a non-adjudicative public hearing shall do so to the presiding officer, provided the individual signs and dates such testimony or exhibit(s).

(b) Any individual wishing to testify at a non-adjudicative public hearing shall submit his/her name, address, and whom s/he represents, if anyone, in writing to the presiding officer. The presiding officer shall call each individual to present his/her testimony. The presiding officer shall encourage individuals who plan to testify orally to place their testimony in writing and to submit such written testimony to the presiding officer prior to the close of the record.

(c) At the conclusion of testimony of each individual, the individual shall remain available to answer questions from the presiding officer, who shall only ask such questions as are necessary to clarify the testimony given.

(d) The presiding officer shall terminate any comments, questions, or discussions that are not relevant to the subject of the hearing.

Odb 204.05 Closing the Hearing and the Record.

(a) The presiding officer shall close the hearing when s/he determines that no one has further questions or comments that are relevant to the subject of the hearing.

(b) At a non-adjudicative public hearing other than a rulemaking hearing, if additional time is requested to submit written testimony as specified in Odb 205.04(b) or supplemental information which the presiding officer determines to be relevant to the subject of the hearing, he or she shall designate a specific time period for the record to remain open to receive such information.

Odb 204.06 Continuances.

(a) At any non-adjudicative public hearing, if anyone requests a continuance and the presiding officer determines that the public will be best served by continuing the hearing and that any prejudice caused to any person as a result of the continuance is outweighed by the benefit to the public of granting the continuance, the presiding officer shall order that the hearing be continued to a later date, time, and place.

(b) If such later date, time, and place are known at the time of the hearing that is being continued, the presiding officer shall state the date, time, and place on the record.

(c) If such later date, time, and place are not known at the time of the hearing that is being continued, the presiding officer shall state how notice will be given of the date, time, and place of the continued hearing.

Readopt Odb 205, eff. 11-22-05 (doc. #8490-A), to read as follows:

PART Odb 205 RULEMAKING HEARINGS

Odb 205.01 Public Hearing. The board shall hold a public hearing when proposing to adopt, readopt, amend or repeal rules.

Odb 205.02 Notice of Hearing. The board shall provide notice for a public hearing in accordance with Odb 203.10.

Odb 205.03 Record. A record of the public hearing shall be kept by verbatim recording.

Odb 205.04 Hearing Procedures.

(a) The presiding officer shall:

- (1) Regulate the course of the hearing;
- (2) Rule upon issues of procedure; and
- (3) Take such other action that is necessary for the efficient and orderly conduct of the hearing.

(b) The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing and the general procedure governing its conduct.

(c) Any person providing oral testimony shall state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

(d) Any person wishing to submit written testimony shall do so to the presiding officer provided the person signs and dates such testimony.

(e) The presiding officer shall call each person to present testimony and encourage persons testifying orally to place their testimony in writing and to submit such written testimony to the presiding officer prior to the close of the record.

(f) At the conclusion of testimony of each person, the presiding officer shall encourage the person to remain available to answer questions from the presiding officer, who shall only ask such questions as are necessary to clarify the testimony given.

(g) The presiding officer shall terminate any comments, questions, or discussions that are not relevant to the subject of the hearing.

Odb 205.05 Closing the Hearing and the Record.

(a) The presiding officer shall close the hearing upon determining there are no further questions or comments that are relevant to the subject of the hearing.

(b) The record shall remain open until the date specified in the notice published in the New Hampshire Rulemaking Register.

Readopt with amendment Odb 206, eff. 11-22-05 (doc. #8490-A), to read as follows:

PART Odb 206 RULEMAKING PETITIONS

Odb 206.01 Filing. Any person wishing to file a rulemaking petition shall file the original and one copy of the petition with the board.

Odb 206.02 Format and Content of Petition. A person filing a petition to adopt, amend, or repeal a rule shall provide the following information:

(a) The exact legal name of each person requesting the adoption, amendment, or repeal of the rule, with a residence address or principal place of business of the person;

(b) Whether the person is asking the board to adopt, amend, or repeal a rule;

(c) If the petition is to adopt a rule:

(1) The chapter, part, and section, by alphanumeric code, where the person proposes the rule language to be inserted; and

(2) The proposed rule language;

(d) If the petition is to amend a rule:

(1) The specific rule, by alphanumeric code, that is the subject of the petition; and

(2) The proposed rule language;

(e) If the petition is to repeal a rule, the specific rule, by alphanumeric code, that is the subject of the petition;

(f) A written statement of why the petitioner wants the board to undertake the action requested and how the action is consistent with RSA 146-D or RSA 541-A, as applicable; and

(g) Such other information the person filing the petition deems pertinent and relevant to their request, including written testimony.

Odb 206.03 Board Review.

(a) Upon receipt of a petition to adopt, amend, or repeal a rule, the board shall proceed in accordance with RSA 541-A: 4, I.

(b) The petition shall be granted and a rulemaking proceeding shall be initiated if the board determines that the proposed action is:

- (1) Consistent with state and federal law and policy; and
- (2) Necessary to the efficient and effective implementation of the rules that are the subject of the action.

Readopt Odb 207, eff. 12-3-13 (doc. #10481), to read as follows:

PART Odb 207 REQUESTS FOR RULE EXPLANATION

Odb 207.01 Request for Rule Explanation.

(a) Any person may request, at any time before 30 days after the final adoption of the rule, that the board issue an explanation of a rule by filing an original and one copy of the request.

(b) The request shall include:

- (1) The chapter, part or section, or paragraph, by alphanumeric code, of the rule(s), statutory provision(s), or order(s) which is the subject of the request; and
- (2) Any other information as the person filing the petition deems pertinent and relevant, including attachments, illustrations, and other written documents.

Readopt Odb 208, eff. 11-22-05 (doc. #8490-A), to read as follows:

PART Odb 208 PETITION FOR DECLARATORY RULING

Odb 208.01 Applicability. Any interested person may submit a petition for a declaratory ruling on the applicability of any statute, rule, or order administered or enforced by the board. The rules in this part shall apply to any petition for such ruling.

Odb 208.02 Filing. The original and one copy of a petition for a declaratory ruling shall be filed with the board.

Odb 208.03 Format and Content of Petitions. Petitions for rulings shall include the following:

(a) The legal name of each person requesting the action, with a resident address or principal place of business of the person;

(b) The chapter, part, section, or paragraph, by alphanumeric code, of the rule(s), statutory provision(s), or order(s), which is the subject of the request;

(c) The petitioner's signature and date signed;

(d) Any other information as the person filing the petition deems pertinent and relevant, including attachments, illustrations, and other written documents; and

(e) A concise and explicit statement of why the petitioner wants the board to rule on the statutory provision, rule or order.

Odb 208.04 Processing of Petitions.

(a) If the board determines that the petition is deficient, the board shall notify the petitioner within 30 days, in writing, of the specific deficiencies and allow the petitioner to amend the petition.

(b) The board shall take one of the following actions in response to a petition:

(1) Issue a ruling responsive to the petition within 90 days; or

(2) If deemed necessary, request the opinion of the department of justice and issue a ruling within 90 days following receipt of the department of justice opinion.

Readopt with amendment Odb 209, eff. 4-30-14 (doc. #10580), to read as follows:

PART Odb 209 WAIVER OF IMPORT FEE PENALTIES AND INTEREST

Odb 209.01 Definitions.

(a) “Person” means “person” as defined in RSA 146-A:11-b, I(a).

(b) “Penalties” means penalties assessed by the department of safety under RSA 146-A:11-b, IV.

Odb 209.02 Waiver of Import Fee Penalties And Interest.

(a) Penalties not assessed in error shall be waived by the board no more than once in a 12-month reporting period, if the distributor filed timely reports for the prior 11 months, or if the total penalty is \$10 or less. Related interest shall not be waived.

(b) Penalties and related interest assessed in error shall be waived by the board.

(c) Notice to the person that penalties were waived under (a), above, or penalties and interest were waived under (b), above, shall be in the form of a refund issued by the department of safety if the person had already paid the penalty/interest assessment, or a credit if the distributor had not yet paid. The person shall pay any interest still due under (a), above, in accordance with the department of safety invoice.

(d) The board shall approve a written request for waiver of penalties not waived under (a) and (b), above, upon finding the circumstances were beyond the knowledge or control of the person, including but not limited to, a fire or natural disaster. Related interest shall not be waived. The board shall, through the department of environmental services, provide written notice of its decision to the person within 30 business days, with a copy to the department of safety.

(e) If a written request for waiver under (d), above, is approved, the board notice copy shall be authorization for the department of safety to issue a penalty refund if the person had already paid the penalty assessment or a penalty credit if the person had not yet paid. The person shall pay any interest still due in accordance with the department of safety invoice. If a waiver is denied, the person shall pay any penalty and interest still due.

Appendix A: State Statutes Implemented

Rule(s)	Statute(s)
Odb 101.01 - Odb 105.03	RSA 91-A:4, IV, RSA 91-A:5, IV, RSA 541-A: 16, I(a)
Odb 201.01 - Odb 201.02; Odb 202.01	RSA 146-D:5
Odb 202.01; Odb 203.01 - 203.26	RSA 541-A:16, I (b); RSA 541-A:30-a., I, VI, & VII; RSA 541-A:31; RSA 541-A:32; RSA 541-A:33; RSA 541-A:34; RSA 541-A:35; RSA 541-A:37
Odb 202.01; Odb 204.01 –204.06	RSA 541-A:29
Odb 202.01; Odb 205.01 – 205.05	RSA 541-A:3; RSA 541-A:6; RSA 541-A:11, I-VI
Odb 202.01; Odb 206.01 – 206.03	RSA 541-A:4, I; RSA 541-A:11, I-V; RSA 541-A:16, I(c)
Odb 202.01; Odb 207.01	RSA 541-A:11, VII
Odb 202.01; Odb 208.01 – 208.04	RSA 541-A:16, I (d)
Odb 209.01	RSA 146-A:11-b, IV; RSA 541-A:16, I(b); RSA 541-A:38