

Text added to existing rule in **bold italics**  
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Explanatory comments in *{bracketed blue italics}*

Readopt with amendment Env-C 201.01, eff. 3-25-07 (doc. #8851-A), to read as follows:

Env-C 201.01 Purpose.

(a) The purpose of the rules in Env-C 200 is to provide:

- (1) Uniform procedures for the conduct of adjudicative and non-adjudicative proceedings, **whether conducted in-person, held via electronic means, or conducted in-person with remote participation;**
- (2) Uniform procedures for the submittal, review, and disposition of motions for reconsideration, rulemaking petitions, claims of confidentiality, and declaratory rulings;
- (3) Uniform criteria for suspending, revoking, or refusing to issue or renew licenses issued by the department of environmental services; ~~and~~
- (4) Procedures for submitting:
  - a. ~~R~~requests to review department records; and
  - b. ~~R~~requests for determinations under RSA 72:12-a;
- (5) **Procedures for waivers of procurement provisions; and**
- (6) **Procedures for cross-media electronic reporting rule (CROMERR) compliance.**

(b) These rules are intended to supplement the requirements of RSA 541-A and any procedures or criteria established under any statute implemented by the department of environmental services.

Readopt with amendment Env-C 202.05, eff. 3-25-07 (doc. #8851-A), to read as follows:

Env-C 202.05 “Hearing” means a component of a proceeding, through which the commissioner or designee receives testimony, evidence, ~~or~~ arguments, **or comments**, or any combination thereof. **The term includes hearings conducted in-person, conducted via electronic means, and conducted in-person with remote participation.**

Readopt with amendment Env-C 202.09 through Env-C 202.12, eff. 3-25-07 (doc. #8851-A), to read as follows:

Env-C 202.09 “Oral adjudicative hearing” means a trial-type hearing that is part of an adjudicative proceeding that is held at a specific time ~~and location~~ for the purpose of receiving live testimony from witnesses, together with any evidence and argument that is presented in conjunction with such witnesses. **The term includes oral adjudicative hearings conducted in-person, conducted via electronic means, and conducted in-person with remote participation.**

Env-C 202.10 “Oral public hearing” means a legislative-type hearing that is part of a non-adjudicative proceeding that is held at a specific time ~~and location~~ for the purpose of receiving testimony from the public. **The term includes oral public hearings conducted in-person, conducted via electronic means, and conducted in-person with remote participation.**

Env-C 202.11 “Participant” means:

- (a) For an adjudicative proceeding, a respondent, intervenor, or representative of the department for that adjudicative proceeding; or
- (b) For a non-adjudicative proceeding, any person who attends **or otherwise participates in** the hearing or submits comments in writing on paper or by e-mail, or both.

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Env-C 202.12 “Participants” means:

(a) For an adjudicative proceeding, all respondent(s), intervenor(s), and representative(s) of the department for that adjudicative proceeding; or

(b) For a non-adjudicative proceeding, the collective group of persons who attend ***or otherwise participate in*** the oral public hearing or submit comments in writing on paper or by e-mail, or both.

***Adopt*** Env-C 202.16, and renumber existing Env-C 202.16 as Env-C 202.17, so that Env-C 202.16 reads as follows;

Env-C 202.16 “Remote participation” means participating in an in-person hearing electronically from a location other than that at which the hearing is being conducted.

***Adopt*** Env-C 202.18 and Env-C 202.19 to read as follows;

Env-C 202.18 “Via electronic means” means using a video teleconference electronic meeting platform that facilitates communications such that all participants are able to communicate with each other contemporaneously, such as, but not limited to, WebEx<sup>(R)</sup>, Zoom<sup>(R)</sup>, GoToMeeting<sup>(R)</sup>, or GoToWebinar<sup>(R)</sup>.

Env-C 202.19 “Virtual hearing” means any adjudicative or non-adjudicative hearing that is conducted via electronic means.

*Readopt with amendment* Env-C 204.06, *eff. 3-25-07 (doc. #8851-A), to read as follows:*

Env-C 204.06 **Notice of Initiation of Adjudicative Proceeding.**

(a) The department shall send notice of the initiation of an adjudicative proceeding to each respondent in accordance with (~~g~~e), below.

(b) The notice sent pursuant to (a), above, shall state:

(1) The docket number assigned to the proceeding by the department;

(2) The action the department is proposing to take;

(3) The statutory authority for the department to take the action;

(4) The facts and law that support the proposed action; ~~and~~

(5) That the respondent has the opportunity for a hearing prior to a final decision being made by the department; ***and***

~~(e)(26)~~ That the respondent has the right to ***have-be represented by*** an attorney ~~present to represent the respondent~~ at the respondent’s expense; ~~and~~.

(c) If the department has already scheduled an ***in-person*** oral adjudicative hearing for the matter when the notice required by (a), above, is prepared, the notice shall also state:

(1) The date, time, and location of the oral adjudicative hearing; ***and***

*{(c)(2) moved, renumbered as (b)(6)}*

~~(32)~~ If the proceeding relates to the respondent’s occupational license, that the respondent may request the department to provide a certified shorthand court reporter ***for the hearing*** at the respondent’s expense and that any such request shall be submitted in writing at least 10 days prior to the hearing, ***as provided in RSA 541-A:31, VII-a.***

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(d) If the department schedules an ***in-person*** oral adjudicative hearing subsequent to sending notice pursuant to (a), above, the department shall send a written notice that includes the docket number and the information specified in (c)~~(4)~~—(3), above, to each respondent and intervenor, if any, in accordance with ~~(ge)~~, below.

~~(ge)~~ The department shall send the notice required by (a) or (d), above, ***to each respondent and intervenor*** by certified mail, return receipt requested ***and by regular first class mail, postage prepaid***. If the certified mail is not accepted ***but the regular first class mail is not returned as undeliverable***, the notice shall be ***presumed to have been received***. ***If the certified mail is not accepted and the regular first class mail is returned as undeliverable, the notice shall be*** delivered by any method that is allowed for serving civil writs or other process as specified in RSA 510:2, RSA 510:4, or RSA 510:8 -17, as applicable.

~~(ef)~~ ~~If other persons who are not intervenors notify the department that they~~ ***who*** are interested in attending the hearing, ~~the department shall send notice to such persons by first class mail~~ ***shall***:

***(1) Obtain the information regarding the time, place, and location of the hearing or information needed to connect to a virtual hearing from the department's website at <https://www4.des.state.nh.us/Legal/index.html>; and***

***(2) Notify the department via email to [appeals@des.nh.gov](mailto:appeals@des.nh.gov) that they are planning to attend the hearing, provided that if the department is not notified, the individual may still attend the hearing.***

~~(fg)~~ If an ***in-person*** oral adjudicative hearing is rescheduled for any reason, the department shall give written notice of the date, time, and place of the rescheduled hearing by delivery in hand, ~~or by first class mail, or email if the department has the email address(es) to the respondent(s), and any intervenor(s), and any person(s) who received notice of the original hearing pursuant to (e), above.~~

***(h) The department shall schedule a virtual hearing in an adjudicative proceeding only after holding a prehearing conference with the respondent and any intervenor(s) at which all participants affirm that they have the capability to participate in the hearing via electronic means. Such prehearing conference shall be conducted via telephone if so requested by a participant. If all participants have the capability to participate in a virtual hearing, each participant shall provide an email address to which notice of the hearing can be sent.***

***(i) If a virtual hearing is scheduled, the department shall send a written notice that includes the docket number and the information specified in (c), above, to each respondent and intervenor, if any, in accordance with (j), below, provided that instead of stating the location of the hearing the notice shall provide the information necessary to join the hearing via electronic means.***

***(j) The department shall send the notice required by (i), above, to each respondent and intervenor electronically to the email address provided at the prehearing conference.***

***(k) If a virtual oral adjudicative hearing is rescheduled for any reason, the department shall give written notice of the date, time, and information necessary to join the rescheduled hearing by email to the respondent(s) and any intervenor(s).***

Readopt with amendment Env-C 204.08, eff. 3-25-07 (doc. #8851-A), to read as follows:

Env-C 204.08 Filing and Service of Documents; Signatures.

(a) Any participant wishing to file any written document(s) for inclusion in the record of an adjudicative proceeding shall deliver the original and one copy of the document to the presiding officer:

***(1) No later than at the hearing, for an in-person hearing;***

- (2) ***By the deadline established pursuant to Env-C 204.11(c), for a record hearing; or***
- (3) ***At least 10 days in advance of the date of the hearing, for a virtual hearing.***
- (b) ~~Any~~***Each*** document so filed shall:
- (1) Specify the docket number assigned by the department to the matter; and
- (2) Be signed by the participant filing the document or by that participant's representative.
- (c) The signature of the participant or participant's representative shall constitute certification that:
- (1) The signer has read the document;
- (2) The signer is authorized to file it;
- (3) To the best of the signer'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.
- (d) Any person filing any document as provided in (a), above, shall:
- (1) ***Provide a copy of the document to each other participant at the same time the document is filed, for an in-person hearing;***
- (2) ***Serve a copy of the document on each other participant as provided pursuant to Env-C 204.11 for a record hearing; or***
- (3) ***For a virtual hearing, serve the document on all other participants of record by delivering a copy of the document to such participants by one of the methods specified in (f) or (g), below, at the time the document is filed, provided that service shall be by means that ensures the recipient will have at least 5 business days to review the document prior to the hearing.***
- (e) The person filing the document shall also file a statement certifying that copies have been or are being delivered to all other participants as required by this section.
- (f) Delivery of ***hard-copy*** documents pursuant to this section shall be by:
- (1) Delivery in hand to the recipient or, if the recipient is unavailable, to the recipient's representative, in which case the person delivering the document shall sign a statement indicating the date and time of delivery and the identity of the person receiving the document;
- (2) First class mail to the recipient, postage prepaid, in which case a certificate of mailing shall be obtained by the person sending the document;
- (3) Certified mail to the recipient, return receipt requested;
- (4) United States Postal Service express delivery service to the recipient; or
- (5) Private express delivery service, such as Federal Express® or UPS®, to the recipient.
- (g) ***Delivery of electronic documents pursuant to this section shall be by:***
- (1) ***Email to the email address of record; or***
- (2) ***Such other electronic means the parties have agreed, at a prehearing conference, to use.***

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*Readopt with amendment Env-C 204.11 and Env-C 204.12, eff. 3-25-07 (doc. #8851-A), to read as follows:*

Env-C 204.11 Hearings in Adjudicative Proceedings; ***Remote Participation***.

(a) Subject to (e), below, the participants in an adjudicative proceeding may request the presiding officer to allow a record hearing in lieu of an oral hearing. Such a request shall be made by a motion filed in accordance with Env-C 204.17 that includes a proposed schedule for submittal of written testimony, evidence, and arguments.

(b) The presiding officer shall allow a record hearing in lieu of an oral hearing only if:

(1) All participants agree to the record hearing and waive their right to cross-examine on all testimony and evidence presented;

(2) Resolution of the matter will not hinge on the credibility of any witness; and

(3) The presiding officer believes that the record hearing will allow a full and fair consideration of the issues in dispute.

(c) If the participants agree to a record hearing, the presiding officer shall establish deadline(s) by which the participants must file their written testimony, evidence, and arguments and notify the participants of the deadline(s) in writing. Any requests for extension of the deadlines shall be filed and handled as specified in Env-C 204.21.

(d) Any written testimony provided as part of a record hearing shall be made under oath or affirmation.

(e) If the credibility of a witness is at issue in an adjudicative proceeding, the presiding officer shall conduct an oral hearing as required by Petition of Grimm, 138 N.H. 42 (1993).

***(f) A respondent or an intervenor in an adjudicative proceeding may request the presiding officer to be allowed to participate in an in-person hearing from a remote location via electronic means. Such a request shall be made by a motion filed in accordance with Env-C 204.17 that includes an explanation of why it is not possible for the requestor to attend the hearing in person.***

***(g) Any participant in an adjudicative proceeding may request the presiding officer to allow a witness to participate in an in-person hearing from a remote location via electronic means. Such a request shall be made by a motion filed in accordance with Env-C 204.17 that includes the reason(s) for the request.***

***(h) The hearing officer shall grant a request to participate from a remote location via electronic means if:***

***(1) Attendance in-person would be difficult for the requesting participant or witness, as applicable, due to illness or disability, prohibitive distance, lack of transportation, or other reason that makes it equitable to allow the remote participation; and***

***(2) The requesting participant or witness, as applicable, has the equipment and technology needed to participate via electronic means.***

Env-C 204.12 Record of the Proceeding.

(a) The record of an adjudicative proceeding for which the hearing is a record hearing shall comprise:

(1) The notice(s) sent by the department pursuant to Env-C 204.06;

(2) Any written response(s) to such notice(s);

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- (3) All other correspondence between the department and a respondent or intervenor that relates to the proceeding;
  - (4) All testimony, evidence, and arguments submitted ***into the record*** by the participants;
  - (5) All motions, objections or other responses to motions, and requests for findings of fact and rulings of law submitted by the participants;
  - (6) Any information of which official notice was taken pursuant to Env-C 204.16(b); and
  - (7) All rulings of the presiding officer.
- (b) The record of an adjudicative proceeding for which the hearing is an oral adjudicative hearing shall comprise:
- (1) All information specified in (a), above; and
  - (2) ***An ~~tape~~ audio recording or other verbatim record of the oral hearing, including, if applicable, the recording made of a virtual hearing or the transcript produced by a certified shorthand court reporter if a request has been made pursuant to RSA 541-A:31, VII-a.***
- (c) The record of an adjudicative proceeding shall be available for inspection by any person in accordance with Env-C 210.05.

*Readopt with amendment Env-C 204.14, eff. 3-25-07 (doc. #8851-A), to read as follows:*

Env-C 204.14 Testimony at an Oral Adjudicative Hearing.

- (a) All testimony at an oral adjudicative hearing shall be in accordance with RSA 541-A:33, I.
- (b) Any individual offering testimony, evidence, or arguments shall state his/ ~~or~~ her name and ~~address~~ ***city or town of residence for individuals or city or town of the principle place of business for other persons*** on the record. If the individual is representing another person, the person being represented shall also be identified by name and ~~address~~ ***city or town of residence or principle place of business, as applicable.***
- (c) Unless otherwise agreed at a prehearing conference, testimony shall be offered in the following order:
  - (1) The department and such witnesses as the department calls;
  - (2) The respondent and such witnesses as the respondent calls; and
  - (3) Any intervenor(s) and such witnesses as the intervenor(s) call.
- (d) Any person offering testimony shall be subject to cross-examination as provided in Env-C 204.15.
- (e) Any person included within (c)(1) through (3), above, who wishes to submit written testimony at ~~the~~ ***an in-person*** hearing in addition to oral testimony shall do so to the presiding officer, provided the person signs and dates such testimony and the presiding officer determines, as required by RSA 541-A:33, II, that the interests of the other participants will not thereby be prejudiced substantially. The person submitting written testimony shall give a copy of such testimony to each ~~party~~ ***participant***. All participants shall have the opportunity to cross-examine the witness on and offer rebuttal testimony to the testimony.
- (f) ***Any person included within (c)(1) through (3), above, who wishes to submit written testimony at a virtual hearing in addition to oral testimony shall do so to the presiding officer via email or other method that allows all participants an opportunity to view the testimony, provided the person signs and dates such testimony and the presiding officer determines, as required by RSA 541-A:33, II, that the interests of the***



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***other participants will not thereby be prejudiced substantially. The person submitting written testimony shall send a copy of such testimony to each participant. All participants shall have the opportunity to cross-examine the witness on and offer rebuttal testimony to the testimony.***

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

*Readopt with amendment Env-C 204.16, eff. 3-25-07 (doc. #8851-A), to read as follows:*

Env-C 204.16 Evidence.

(a) Evidence that is relevant and material to the subject matter of the adjudicative proceeding in which it is offered shall be admissible.

(b) Whenever necessary for a full and fair consideration of the matter, the presiding officer shall take official notice in accordance with RSA 541-A:33, V.

(c) The presiding officer or designee shall mark all documents, materials, and objects accepted as exhibits ***at an in-person hearing*** with the docket number and a number or other notation to identify the exhibits in a sequential manner.

(d) If the original of a document is not readily available, the documentary evidence shall be received in the form of copies or excerpts.

(e) All written testimony and documents, materials, and objects admitted into evidence at an oral adjudicative hearing shall be made available during the course of the hearing for examination by any participant. After the hearing, all such evidence shall be available for review in accordance with Env-C 210.05.

(f) In any proceeding involving an application, the division shall place into evidence the application, including any plans or other attachments and any amendments thereto but excluding any information determined to be confidential business information pursuant to Env-C 208.

***(g) For virtual hearings, written testimony and documents, materials, and objects to be offered as evidence shall be submitted prior to the hearing as provided in Env-C 204.08.***

***(gh)*** Any person who objects to a ruling of the presiding officer regarding evidence or procedure made during an oral adjudicative hearing shall state the objection and the grounds therefor at the time the ruling is made. Any person who objects to a ruling of the presiding officer regarding evidence or procedure made at a time other than during an oral adjudicative hearing shall file a written objection to the ruling in the form of a motion within 5 state business days of the date of the ruling. Nothing herein shall be construed as independent authorization for interlocutory appeal of rulings of the presiding officer on issues of evidence or procedure.

*Readopt with amendment Env-C 204.19 through Env-C 204.21, eff. 3-25-07 (doc. #8851-A), to read as follows:*

Env-C 204.19 Failure to Appear at ***or Otherwise Participate in an Oral Adjudicative Hearing***. If any participant to whom notice of an oral adjudicative hearing has been given in accordance with Env-C 204.06 fails to appear at ***or otherwise participate in*** the hearing and fails to advise the presiding officer of such non-appearance ***or non-participation*** in advance of the hearing, the presiding officer shall hear the evidence and testimony of the participant(s) attending ***or otherwise participating in*** the hearing and render an opinion based thereon, subject to Env-C 204.20.

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Env-C 204.20 Reconvening of Oral Adjudicative Hearings.

- (a) If an oral hearing is held in a participant's absence pursuant to Env-C 204.19, the participant may file a motion within 10 days after the date of the hearing to reconvene the hearing.
- (b) The motion to reconvene the hearing shall include an explanation of why the participant did not attend ***or otherwise participate in*** the hearing and why the participant did not notify the presiding officer in advance of the hearing, which explanation shall be supported by affidavits or other evidence.
- (c) If the submitted evidence shows that good cause exists to explain the participant's failure to appear at ***or otherwise participate in*** the hearing and to explain the participant's failure to notify the presiding officer in advance of the hearing, the hearing shall be reconvened and testimony and evidence offered by the participant shall be received.
- (d) For purposes of this section, good cause shall be limited to circumstances beyond the control of the participant which render the participant unable to attend ***or otherwise participate in*** the hearing and unable to notify the presiding officer in advance of the hearing.

Env-C 204.21 Rescheduling or Continuing Oral Adjudicative Hearings; Extension of Deadlines in Record Hearings.

- (a) Any participant in an adjudicative proceeding in which an oral adjudicative hearing has been scheduled or for which deadlines in a record hearing have been set may request the presiding officer to reschedule the hearing or extend the deadlines, as applicable, for reasonable cause. Reasonable cause shall include, but not be limited to, that an individual participant, a representative, or critical witness is unavailable or that the participants believe a settlement is possible and need more time to resolve the matter.
- (b) Prior to requesting the rescheduling of an oral adjudicative hearing or the extension of deadlines in a record hearing, the participant shall seek concurrence with the request from the other participant(s).
- (c) A request to reschedule an oral adjudicative hearing or to extend the deadlines in a record hearing shall:
- (1) Be in writing;
  - (2) Be made as much in advance of the hearing or deadline, as applicable, as practicable given the reason for the request; and
  - (3) State whether the other participant(s) agree to the request.
- (d) The participant making the request shall serve a copy of the request on each other participant in accordance with Env-C 204.08.
- (e) The presiding officer shall notify the participants of his/ ***or*** her ruling on a request that is filed in accordance with (a) - (d), above, in advance of the hearing or deadline, as applicable. If the request is not received sufficiently in advance of the hearing or deadline, as applicable, to allow a decision to be mailed and received prior to the scheduled hearing date or deadline, as applicable, the presiding officer shall inform the participants of the ruling by telephone, fax, or e-mail.
- (f) If the need for an oral adjudicative hearing to be continued arises after the start of the hearing or within such time of the hearing as to make filing a written motion impracticable, a participant may request a continuance orally on the record.
- (g) The presiding officer shall grant the requested continuance if ~~she~~ ***or she*** determines that reasonable cause exists and that any prejudice caused by granting the request would be outweighed by any prejudice caused by denying the request.



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(h) If the presiding officer grants a request for a continuance made orally on the record and the date, time, and ~~place~~ ***location or information for participating via electronic means*** for the continued hearing are known at the time of the hearing that is being continued, the presiding officer shall state the new date, time, and ~~place~~ ***location or information for participating via electronic means*** on the record. If such later date, time, and ~~place~~ ***location or information for participating via electronic means*** are not known at the time of the hearing that is being continued, the presiding officer shall notify all participants, all representatives that have filed an appearance in accordance with Env-C 204.07, and all other persons who received the notice of the original hearing pursuant to Env-C 204.06(e) ***or (k), as applicable***, in accordance with (e), above.

*Readopt with amendment Env-C 204.23, eff. 3-25-07 (doc. #8851-A), to read as follows:*

Env-C 204.23 Reopening of the Record.

(a) At any time prior to the issuance of the decision on the merits of the issue(s) that form the subject of the adjudicative proceeding, the presiding officer on his~~l~~ ***or*** her own motion or on the motion of any participant shall reopen the record to receive relevant, material, and non-duplicative testimony, evidence, or arguments not previously received.

(b) If a request to reopen the record is not made while all participants are in attendance at ***or otherwise participating in*** an oral adjudicative hearing, the requesting participant shall put the request in writing and file the request with the presiding officer and serve the request on each other participant in accordance with Env-C 204.08.

(c) If the presiding officer determines that such testimony, evidence, or arguments are necessary to a full consideration of the subject of the proceeding, the presiding officer shall reopen the record to accept the offered items.

(d) To reopen the record, the presiding officer shall:

- (1) Give written notice of such further proceedings if the participants are no longer present;
- (2) Notify other interested persons in a manner as is appropriate to ensure that reasonable notice is given of the further proceedings; and
- (3) Notify the other participants of the deadline by which they may respond to or rebut the items made part of the record.

*Readopt with amendment Env-C 205.04 and Env-C 205.05, eff. 3-25-07 (doc. #8851-A), to read as follows:*

Env-C 205.04 Notice for Non-Adjudicative Hearings. Notice of the date, ***and*** time, ~~and place~~ of an oral public hearing ***together with information identifying the location of an in-person hearing or the information necessary to connect to a virtual hearing, or both for an in-person hearing with remote participation***, shall be given as follows:

(a) For a rulemaking hearing held pursuant to RSA 541-A:3, IV, by publication as specified in RSA 541-A:6;

(b) For an oral public hearing held on a license application, as specified in the department's rules specific to such license; or

(c) For any other oral public hearing, by such means as the commissioner determines will notify those persons likely to be interested in the most cost-effective manner.

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Env-C 205.05 Record of Non-Adjudicative Proceedings.

(a) The record of a non-adjudicative proceeding in which an oral public hearing is not held shall comprise:

- (1) The application or request, together with all supporting or supplemental information, filed by the applicant;
- (2) All correspondence between the department and the applicant or between the department and any other interested person(s) regarding the application or request;
- (3) A copy of the draft license, if one is required to be prepared and circulated for public comment by the departmental rules specific to the license; and
- (4) Any other information relevant to the application or request that is considered by the department in reaching a decision.

(b) The record of a non-adjudicative proceeding for which an oral public hearing is held shall comprise:

- (1) All information specified in (a), above;
- (2) Copies of all notices of the oral public hearing that were published or otherwise distributed by the department;
- (3) Any exhibits or written testimony received pursuant to Env-C 205.07;
- (4) For rulemaking proceedings, a copy of all documents prepared and filed under RSA 541-A; and
- (5) Subject to (c), below, ~~an tape-audio~~ recording or other method that provides a verbatim record of the oral public hearing, ***including, if applicable, the recording made of a virtual hearing,*** or notes of the hearing prepared by the presiding officer or designee.

(c) If no member of the public attends an oral public hearing for which notice in accordance with Env-C 205.04 was given, the record of the oral hearing shall consist of a memo from the presiding officer stating that no member of the public was present.

(d) The record of a non-adjudicative proceeding shall be available for inspection by any person in accordance with Env-C 210.05.

*Readopt with amendment Env-C 205.07 through Env-C 205.09, eff. 3-25-07 (doc. #8851-A), to read as follows:*

Env-C 205.07 Testimony at an Oral Public Hearing.

(a) Any individual wishing to submit exhibits or written testimony at an ***in-person*** oral 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 an ***in-person*** oral public hearing shall submit his ~~or~~ her name; ~~address,~~ and whom ~~she~~ ***or she*** represents, if anyone, in writing to the presiding officer. The presiding officer shall call each individual to present his ~~or~~ 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.

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Explanatory comments in *{bracketed blue italics}*

(c) ***Any individual wishing to submit exhibits or written testimony at a virtual oral public hearing shall do so to the presiding officer via email, provided that submitting the email shall be equivalent to the individual signing and dating such testimony or exhibit(s).***

(d) ***Any individual wishing to testify at a virtual oral public hearing shall so indicate using the mechanism provided on the applicable platform, such as by clicking on “raise hand”. When called upon by the presiding officer, the individual shall state his or her name and whom he or she represents, if anyone, on the record. The presiding officer shall encourage individuals who plan to testify orally to submit their testimony in writing to the presiding officer prior to the close of the record.***

(ee) 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.

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

Env-C 205.08 Closing the Hearing and the Record.

(a) The presiding officer shall close the oral public hearing when ~~she~~ ***or she*** determines that no one has further questions or comments that are relevant to the subject of the hearing.

(b) At an oral public hearing other than a rulemaking hearing, if additional time is requested to submit written testimony as specified in Env-C 205.07(b) or supplemental information which the presiding officer determines to be relevant to the subject of the hearing, the presiding officer shall designate a specific time period for the record to remain open to receive such information.

(c) For rulemaking hearings, the record shall remain open until the date specified in the notice published pursuant to Env-C 205.04(a), ***subject to being extended pursuant to RSA 541-A:11, III.***

Env-C 205.09 Continuances.

(a) Hearings on proposed rules shall be continued only in accordance with RSA 541-A.

(b) At any oral public hearing other than a hearing on proposed rules, 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, ***and*** time, ~~and place.~~

(c) If such later date, ***and*** time, and ~~place~~ ***the location of an in-person hearing or the information necessary to participate in a virtual hearing*** are known at the time of the hearing that is being continued, the presiding officer shall state the date, time, and ~~place~~ ***location or information, as applicable,*** on the record.

(d) If such later date, time, and ~~place~~ ***location of an in-person hearing or information necessary to participate in a virtual hearing*** 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~~ ***location or information, as applicable,*** of the continued hearing.

*Readopt with amendment Env-C 210.05 and Env-C 210.06, eff. 3-25-07 (doc. #8851-A), to read as follows:*

Env-C 210.05 Review of Department Records.

(a) Any person who wishes to review department records shall submit a written request that contains the information specified in (b), below, to:

Text added to existing rule in ***bold italics***  
Text deleted from existing rule shown ~~struck through~~  
Text that is all new (introduced with ***Adopt***) in regular font  
Explanatory comments in *{bracketed blue italics}*

Department of Environmental Services  
Public Information Center  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095

- (b) The request filed pursuant to (a), above, shall:
- (1) Specify the name, mailing address, and daytime telephone number of the individual making the request and, if available, a fax number and e-mail address;
  - (2) Identify the record(s) the person wishes to review with as much specificity as possible, including as applicable:
    - a. The docket number assigned to an adjudicative proceeding;
    - b. The file number or permit number assigned to an application proceeding;
    - c. The complete address of the property that is the subject of the records requested; and
    - d. If a specific division is believed to have the requested record(s), the name of the division.
- (c) Requested records shall be made available:
- (1) ***Electronically, using a web-based application that is available via the department's website at [www.des.nh.gov](http://www.des.nh.gov); or***
  - (2) ***In paper format*** during normal business hours at the department's offices in Concord or in such field office as is the normal repository for the requested record.

Env-C 210.06 Oral Hearing Records.

***(a) The department shall make the recording of an oral adjudicative hearing or an oral public hearing available via its website at [www.des.nh.gov](http://www.des.nh.gov).***

***(ab)*** Copies of the recording of an oral adjudicative hearing or an oral public hearing shall be provided to any person upon request and payment of the costs of the ~~tape(s)-~~***electronic media***, or at no charge if the person supplies enough blank ~~tapes-media-~~to copy the ~~hearing tape(s)-recording.~~

***(bc)*** If any person desires a transcript of the recording of an oral adjudicative hearing or an oral public hearing, the department shall prepare or cause to be prepared a transcript provided the actual cost of the transcription is paid by the person(s) requesting the transcript. If the department hires an outside person to prepare the transcript, the person requesting the transcript shall be billed directly by and shall directly pay the person preparing the transcript.

Text added to existing rule in ***bold italics***  
 Text deleted from existing rule shown ~~struck through~~  
 Text that is all new (introduced with ***Adopt***) in regular font  
 Explanatory comments in *{bracketed blue italics}*

**APPENDIX A: STATE STATUTES IMPLEMENTED**

<b>Rule Section(s)</b>	<b>State Statute(s) Implemented</b>
Env-C 201.01	RSA 541-A:16, I(b); RSA 541-A:30-a, III; all other statutes identified in this table
Env-C 202.05, 202.09 -.12, 202.16 [new], 202.18 -.19 [new]	RSA 541-A:16, I(b); RSA 541-A:30-a, III; all other statutes identified in this table
Env-C 204.06, 204.08, 204.11- .12, 204.14, 204.16, 204.19 - .21, 204.23	RSA 541-A:16, I(b)(2); RSA 541-A:30, II; RSA 125-C:15, I-b; RSA 125-D:4; RSA 125-I:3-a; RSA 125-J:8, I-a; RSA 141-E:16; RSA 146-A:15; RSA 146-C:10-a; RSA 147-A:17-a; RSA 149-M:16; RSA 149-M:37, IV; RSA 482:79-a; RSA 482:89, II; RSA 482-A:13; RSA 483-B:18, III(c); RSA 485:58, IV; RSA 485-A:22, V; RSA 485-A:28, II; RSA 485-A:43, V; RSA 485-A:54, V; RSA 485-C:18; RSA 487:7, II
Env-C 205.04- .05, 205.07 -.09	RSA 541-A:11, I; RSA 541-A:16, I(b)
Env-C 210.05-.06	RSA 541-A:11, I; RSA 541-A:16, I(b)