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[New Hampshire Code of Administrative Rules](#)
[Env-A 200](#)

CHAPTER Env-A 200 PROCEDURAL RULES

Statutory Authority: RSA 125-C:4; RSA 541-A:16, I(b)

PART Env-A 201 PURPOSE

Env-A 201.01 Purpose.

(a) The purpose of this chapter is to provide uniform procedures for public notice and comment, and for hearings held by the department on matters of air pollution control. These rules are intended to supplement the procedures established by RSA 541-A and Env-C 200.

(b) The purpose of any proceeding governed by this chapter is to permit the department to acquire sufficient information to make a reasoned decision, and to afford persons who may be affected by decisions of the department relative to air pollution control the opportunity to present data and argument prior to the making of that decision.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss by #6057-B, eff 6-30-95; EXPIRED: 6-30-03

New. #8128, eff 7-28-04

PART Env-A 202 VARIANCES

Env-A 202.01 Scope. This part shall apply to any person seeking a variance from any provision of RSA 125-C or any Env-A rule adopted thereunder.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss and moved by #6057-B, eff 6-30-95 (from Env-A 203.01); EXPIRED: 6-30-03

New. #8128, eff 7-28-04

Env-A 202.02 Limitations. Pursuant to RSA 125-C:16, III, no variance shall be granted for more than 12 months.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss and moved by #6057-B, eff 6-30-95 (from Env-A 203.02); EXPIRED: 6-30-03

New. #8128, eff 7-28-04

Env-A 202.03 Content of Petitions. A petition for variance shall be filed with the department and shall include the following:

(a) The name, address, and daytime telephone number of the petitioner and, if the petitioner is other than an individual, the name and telephone number of an individual who can answer questions about the petition;

(b) The specific relief requested by the petitioner, including the requirement(s) from which the petitioner is specifically seeking relief and the proposed timetables for partial or progressive abatement of the air pollution involved;

(c) Information addressing the criteria identified in RSA 125-C:16, II, including the following:

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- (1) The extent to which the variance would allow injury to or interference with the health and physical property of the people; and
- (2) The social and economic value of the source of air pollution; and
- (d) The nature of past actions, if any, that the petitioner has taken in eliminating or preventing air pollution.

Source. #8128, eff 7-28-04

Env-A 202.04 Notice of Petition.

- (a) Within 10 days after the receipt of a petition for a variance, the department shall issue public notice of the petition by publishing the notice in a newspaper of general daily statewide circulation.
- (b) The public notice shall contain the following information:
 - (1) The name and address of the petitioner;
 - (2) A brief description of the relief requested, including the requirement(s) for which suspension of enforcement is sought;
 - (3) The location(s) where persons may examine the petition for variance and other pertinent information and hours during which that examination may be conducted;
 - (4) The date by which, and the address where, written comments shall be filed; and
 - (5) The date and location of the public hearing to be held before the department as required by RSA 125-C:16, I and Env-A 202.05.

Source. #8128, eff 7-28-04

Env-A 202.05 Public Hearing.

- (a) The department shall schedule and hold a public hearing on the petition no sooner than 30 days following the public notice required by Env-A 202.04.
- (b) The hearing shall be conducted in accordance with Env-C 205 and Env-A 203.

Source. #8128, eff 7-28-04

Env-A 202.06 Decision. Within 15 days after the public hearing, the department shall:

- (a) Approve the petition, subject to any conditions necessary to minimize the threat to or impact on the public health and safety, and set forth in writing the findings on which the decision is based pursuant to RSA 125-C:16 and this part; or
- (b) Deny the petition and set forth in writing the findings on which the decision is based pursuant to RSA 125-C:16 and this part.

Source. #8128, eff 7-28-04

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Env-A 202.07 Appeals. Within 10 days of a decision by the department granting or denying a petition for a variance, any person aggrieved by the decision may file a petition for appeal with the air resources council in accordance with Env-AC 200.

Source. #8128, eff 7-28-04

PART Env-A 203 HEARINGS

Env-A 203.01 Applicability and Procedures.

(a) A non-adjudicative hearing shall be conducted in accordance with Env-C 205, as supplemented by this part, whenever requested or required to be held under the provisions of the following:

- (1) Env-A 621, with regard to the issuance of or amendment to a temporary permit or permit to operate;
- (2) Env-A 622, with regard to the issuance or renewal of, or significant modification to, a title V operating permit;
- (3) Env-A 609.19, with regard to a permit reopening of a title V operating permit;
- (4) Env-A 202, with regard to a petition for variance; and
- (5) Env-A 1204 or Env-A 1211, with regard to the issuance of a reasonably achievable control technology (RACT) order.

(b) An adjudicative hearing shall be conducted in accordance with Env-C 204, when required to be held under the provisions of Env-A 623, with regard to the suspension, revocation, or modification of a permit.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss and moved by #6057-B, 6-30-95 (formerly Env-A 204.01); EXPIRED: 6-30-03

New. #8128, eff 7-28-04

Env-A 203.02 Public Participation in Non-Adjudicative Hearings. Any person may participate in a non-adjudicative hearing while the hearing record is open by testifying orally or submitting written testimony pursuant to Env-C 205.06 of such person's position on the issue(s), submitting written or oral questions through the presiding officer, or both.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss and moved by #6057-B, eff 6-30-95 (formerly Env-A 204.02); EXPIRED: 6-30-03

New. #8128, eff 7-28-04

Env-A 203.03 Record. The record of a non-adjudicative hearing shall consist of the following:

- (a) An application or petition;
- (b) All written comments;
- (c) The recorded testimony;
- (d) The transcript of the hearing, where requested by a person; and

(e) All exhibits.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss and moved by #6057-B, eff 6-30-95 (formerly Env-A 204.03); EXPIRED: 6-30-03

New. #8128, eff 7-28-04

PART Env-A 204 PUBLIC HEARINGS ON THE STATE IMPLEMENTATION PLAN

Env-A 204.01 Applicability and Procedures.

(a) Public hearings requested or required pursuant to the state implementation plan (SIP) shall be conducted in accordance with Env-C 205 as applicable to non-adjudicatory public hearings.

(b) At least 30 days before the date of any public hearing related to SIP revisions, public notice shall be published in a newspaper of general daily statewide circulation.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; rpld by #6057-B, eff 6-30-95; ss by #6782-B, eff 6-30-98; ss by #8128, eff 7-28-04

PART Env-A 205 WAIVER

Env-A 205.01 Purpose. The rules applicable to air pollution control are intended to apply to a variety of conditions and uses. It is recognized that strict compliance with all such rules proscribed may cause hardship or not fit every conceivable situation. Pursuant to RSA 541-A:22, IV, the department therefore establishes these procedures and criteria to accommodate those situations where strict adherence would not be in the best interest of the public.

Source. #6506-B, eff 5-1-97; ss by #8128, eff 7-28-04

Env-A 205.02 Scope. Any person who is or would be directly and adversely affected by the strict application of a rule in Env-A 300, et seq., may request a waiver, provided that such rule does not reflect a federal or state statutory or constitutional requirement.

Source. #6506-B, eff 5-1-97; ss by #8128, eff 7-28-04

Env-A 205.03 Procedure for Requesting a Waiver.

(a) Any person who wishes to request a waiver shall submit a written request for a waiver.

(b) The request for a waiver shall include the following information:

- (1) The identification of the facility or activity to which the request relates;
- (2) The specific citation to the Env-A rule from which a waiver is sought;
- (3) A full explanation of why a waiver is being requested, including an explanation of the hardship or harm that would be otherwise caused by compliance with the rule;

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(4) A full explanation of any alternate procedure, method, or other activity that is sought to be substituted for the procedure, method, or other activity that is required by the rule from which a waiver is being sought;

(5) The limit of duration requested for the waiver; and

(6) A full explanation of why the person believes that having the waiver granted will not adversely impact the public health, public safety, the environment, or natural resources of the state of New Hampshire.

(c) All requests for a waiver shall be submitted to the department.

(d) Where a request for a waiver relates to an application for a permit, the person requesting the waiver shall submit the request as part of such application, or as soon thereafter as the person identifies the need for the request.

(e) Upon receipt of the request for waiver, the department shall review the request as part of the application review procedures.

(f) Submission of a request shall be considered an agreement that the time period for processing the request or application shall be considered to commence upon submission of the request.

Source. #6506-B, eff 5-1-97; ss by #8128, eff 7-28-04

Env-A 205.04 Criteria. The department shall grant a request for a waiver if the requesting party demonstrates that:

(a) The waiver shall not result in an adverse effect to public health, public safety, the environment, or the natural resources of the state of New Hampshire; and

(b) Strict compliance with the Env-A rule:

(1) Will result in an adverse effect to the public health, public safety, the environment, or the natural resources of the state of New Hampshire;

(2) Will result in economic hardship for the person requesting the waiver; or

(3) Is technologically infeasible.

Source. #6506-B, eff 5-1-97; ss by #8128, eff 7-28-04

Env-A 205.05 Notification. The department shall send written notification to the person requesting the waiver of the determination on the request. If the waiver is submitted as part of the permit application and is granted, it shall become part of the permit if the permit is granted.

Source. #6506-B, eff 5-1-97; ss by #8128, eff 7-28-04

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APPENDIX

RULE	STATUTE IMPLEMENTED
Env-A 201.01	RSA 541-A:16, I(b) and RSA 125-C:6, X
Env-A 202.01, 202.04 – 202.06	RSA 125-C:16, I
Env-A 202.02	RSA 125-C:16, III
Env-A 202.03	RSA 125-C:16, II
Env-A 202.07	RSA 125-C:14
Env-A 203.01	RSA 541-A:30-a and RSA 125-C:6, X
Env-A 203.02 – 203.03	RSA 541-A:31 and RSA 125-C:6, X
Env-A 204.01	RSA 541-A:16, I(b) and RSA 125-C:6, X
Env-A 205.01 – 205.05	RSA 541-A:22, IV and RSA 125-C:6, X