

**Change the chapter heading for Diet 200 to read as follows:**

CHAPTER Diet 200 RULES OF PRACTICE AND PROCEDURE

**Repeal Diet 201 through Diet 204.02, effective 8/23/03 (Document #7937), as follows:**

~~[CHAPTER Diet 200 PROCEDURAL RULES~~

~~PART Diet 201 DEFINITIONS~~

~~—— Diet 201.01 Definitions.~~

~~—— (a) "Appearance" means a written notification to the board that a party, an intervenor or the representative of a party or intervenor intends to actively participate in a hearing.~~

~~—— (b) "Board" means the board of licensed dietitians established pursuant to RSA 326 H:7.~~

~~—— (c) "Complainant" means a person who alleges action on the part of a licensee that may give rise to the board's commencement of disciplinary proceedings against the licensee.~~

~~—— (d) "Contested case" means "contested case" as defined in RSA 541 A:1, IV, namely, "a proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing."~~

~~—— (e) "Declaratory ruling" means "declaratory ruling" as defined in RSA 541 A:1, V, namely "an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency."~~

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

~~—— (g) "Intervenor" means a person without the status of a party who participates in a hearing to the extent permitted by the presiding officer acting pursuant to RSA 541 A:32.~~

~~—— (h) "Motion" means a request to the presiding officer for an order or ruling directing some act to be done in favor of the party making the motion, including a statement of justification or reasons for the request.~~

~~—— (i) "Order" means "order" as defined in RSA 541 A:1, XI, namely, "the whole or part of an agency's final disposition of a matter, other than a rule, but does not include an agency's decision to initiate, postpone, investigate or process any matter, or to issue a complaint or citation."~~

~~—— (j) "Party" means "party" as defined in RSA 541 A:1, XII, namely, "each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party."~~

~~—— (k) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the board.~~

~~—— (l) "Presiding officer" means "presiding officer" as defined in RSA 541 A:1, XIV, namely, "that individual to whom the agency has delegated the authority to preside over a proceeding, if any; otherwise it shall mean the head of the agency."~~

~~—— (m) "Proof by a preponderance of the evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probably true than not.~~

~~—— (n) "Public comment hearing" means a proceeding held pursuant to RSA 541 A:11.~~

~~— (o) “Record” means, in a contested case, the materials set forth in RSA 541-A:31, VI.~~

~~— (p) “Rulemaking petition” means a petition made pursuant to RSA 541-A:4, I.~~

## ~~PART Diet 202 CONSTRUCTION OF RULES AND RIGHT TO A HEARING~~

~~— Diet 202.01 Principles of Dispute Resolution. The board shall resolve by agreement or by decision after hearing all disputes about matters within the scope of RSA 326-H and the administrative rules implementing that statute.~~

~~— Diet 202.02 Construction of Rules. Parts Diet 203-213 and Parts Diet 215-216 shall be construed to secure the just, accurate and efficient resolution of all disputes.~~

~~— Diet 202.03 Right to A Hearing. Any person having a dispute with the board shall be entitled to a hearing of the dispute if:~~

~~— (a) The legal rights, duties or privileges of that person will be determined in the course of deciding the outcome of the dispute; and~~

~~— (b) Constitutional, statutory or case law requires the board to hold a hearing before determination of those rights, duties or privileges.~~

## ~~PART Diet 203 CONDUCT OF HEARINGS BY PRESIDING OFFICER; WAIVER OF RULES~~

~~— Diet 203.01 Presiding Officer.~~

~~— (a) Hearings shall be conducted by a presiding officer designated by the board.~~

~~— (b) The presiding officer shall, as necessary:~~

~~(1) Regulate and control the course of the hearing;~~

~~(2) Facilitate settlement of the dispute that is the subject of the hearing;~~

~~(3) Administer oaths and affirmations;~~

~~(4) Request that the board, with the approval of the attorney general, issue subpoenas to compel the attendance of witnesses or the production of documents;~~

~~(5) Receive relevant evidence at hearings and exclude irrelevant, immaterial or unduly repetitious evidence;~~

~~(6) Rule on procedural requests at the request of a party or intervenor or on the presiding officer's own motion;~~

~~(7) Question anyone who testifies to the extent required to make a full and fair record;~~

~~(8) Cause a complete record of the hearing to be made, as specified in RSA 541-A:31, VII; and~~

~~(9) Take any other action consistent with applicable statutes, rules and case law necessary to conduct the hearing and complete the record in a fair and timely manner.~~

~~— Diet 203.02 Withdrawal of Presiding Officer.~~

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

~~— (b) Good cause shall exist if the presiding officer:~~

~~(1) Has a direct interest in the outcome of the hearing, including but not limited to, a financial or family relationship with any party or intervenor;~~

~~(2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of the case; or~~

~~(3) Personally believes that he or she cannot fairly judge the facts of the case.~~

~~— (c) Mere knowledge of the issues or acquaintance with any party, intervenor or witness shall not constitute good cause for withdrawal.~~

~~— Diet 203.03 Waiver or Suspension of Rules by Presiding Officer. The presiding officer, upon the motion of any party or intervenor, or on his or her own initiative, shall suspend or waive any requirement or limitation imposed by this chapter when the suspension or waiver:~~

~~— (a) Appears to be lawful; and~~

~~— (b) Is more likely to promote the just, accurate and efficient resolution of the pending dispute than would adherence to a particular rule or procedure.~~

~~PART Diet 204 FILING, FORMAT AND DELIVERY OF DOCUMENTS~~

~~— Diet 204.01 Date of Issuance or Filing.~~

~~— (a) All written documents governed by this chapter shall be rebuttably presumed to have been issued on the date noted on the document.~~

~~— (b) All written documents governed by this chapter shall be rebuttably presumed to have been filed with the board on the date of receipt, as evidenced by a date stamp placed on the document by the board or its staff in the normal course of business.~~

~~— Diet 204.02 Format of Documents.~~

~~— (a) All correspondence, pleadings, motions or other documents filed shall:~~

~~(1) Include the title and docket number of the case, if known;~~

~~(2) Be completed using a keyboard or be legibly printed in ink on durable paper 8 1/2 by 11 inches in size;~~

~~(3) Be signed by the proponent of the document, or, if the proponent appears by a representative, by the representative; and~~

~~(4) Include a statement certifying that a copy of the document has been delivered to all parties and intervenors in compliance with Diet 204.03.~~

~~— (b) The signature of a party or intervenor or the representative of the party or the intervenor on a document filed with the board 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 and sufficient grounds to support it; and~~

~~- (4) The document has not been filed for purposes of delay.]~~

**Repeal Diet 204.03, effective 4/25/23 (Document #13571), as follows:**

~~[ Diet 204.03 Delivery of Documents.~~

~~— (a) Copies of all petitions, motions, exhibits, memoranda, or other documents filed by any party or intervenor shall be delivered by that party or intervenor to the board and to all other parties and intervenors~~

~~— (b) All notices, orders, decisions, or other documents issued by the presiding officer shall be delivered to all parties and intervenors.~~

~~— (c) Delivery of documents relating to a proceeding shall be made by depositing into the United States mail a copy of the document in an envelope bearing:~~

~~- (1) The name of the person intended to receive the document;~~

~~- (2) The full address, including zip code, last provided to the board by such person;~~

~~- (3) Prepaid first class postage; or~~

~~- (4) In the case of documents issued by the presiding officer, the information noted in (1) and (2) above together with prepaid certified mail postage, return receipt requested.~~

~~— (d) When a party or intervenor appears by a representative, delivery of a document to the party's or intervenor's representative at the address stated on the appearance filed by the representative shall constitute delivery to the party or intervenor.]~~

**Repeal Diet 205 through Diet 207.04, effective 8/23/03 (Document #7937), as follows:**

~~[PART Diet 205 TIME PERIODS~~

~~- Diet 205.01 Computation of Time.~~

~~— (a) Unless otherwise specified, the unit of time for time periods referenced in this chapter shall be calendar days.~~

~~— (b) Computation of any period of time referred to in this chapter shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.~~

~~— (c) If the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.~~

~~PART Diet 206 MOTIONS~~

~~Diet 206.01 Motions; Objections.~~

~~— (a) Motions shall be in written form and filed with the presiding officer, unless made in response to a matter asserted for the first time at a hearing or based on information that was not received in time to prepare a written motion.~~

~~— (b) Oral motions and any oral objections to such motions shall be recorded in full in the record of the hearing. If the presiding officer finds that the motion requires additional information in order to be fully and fairly considered, the presiding officer shall direct the proponent to submit the motion in writing and provide supporting information.~~

~~— (c) Except as otherwise provided by this chapter, objections to written motions shall be filed within 10 days of the date of the motion.~~

~~— (d) Failure by an opposing party or an intervenor to object to a motion shall not in and of itself constitute grounds for granting the motion.~~

~~— (e) When necessary to obtain information or to clarify an issue relating to the proceedings, the presiding officer shall hold a hearing on the motion.~~

~~— (f) The presiding officer shall rule upon a motion after full consideration of all objections and applicable law.~~

~~PART Diet 207 COMMENCEMENT OF THE HEARING; APPEARANCES; PRE-HEARING CONFERENCE; RECORDING THE HEARING~~

~~Diet 207.01 Commencement of The Hearing.~~

~~— (a) A hearing shall be commenced by:~~

~~(1) An order of the board giving the parties the notice specified in paragraph (b) below; and~~

~~(2) In the case of a hearing related to the board's emergency suspension of a license, the notice specified in (b) below, together with the order issued pursuant to Diet 207.03(a).~~

~~— (b) The hearing notice shall contain:~~

~~(1) A statement of the time, place and nature of the hearing;~~

~~(2) A statement of the legal authority under which the hearing is to be held;~~

~~(3) A reference to the applicable statutes and rules;~~

~~(4) A short and plain statement of the issues presented;~~

~~(5) A statement that each party has the right to have representation by an attorney at the party's own expense;~~

~~(6) The name of the presiding officer;~~

~~(7) In the case of a hearing not related to the board's emergency suspension of a license, the statement that:~~

~~a. A party has the right to have the board provide a certified shorthand court reporter at the party's expense; and~~

~~b. The party's request for a certified shorthand court reporter shall be submitted in writing at least 10 days before the beginning of the hearing; and~~

~~(8) In the case of a hearing related to the board's emergency suspension of a license pursuant to Diet 207.03, the statement that the board shall provide a certified shorthand court reporter at the board's expense.~~

~~— Diet 207.02 Complaints and Disciplinary Proceedings.~~

~~— (a) The board shall not act upon any complaint against any licensee unless such complaint is in writing.~~

~~— (b) Except in cases arising under Diet 207.03, at least 14 days before any hearing relative to a complaint against a licensee the board shall, either personally or by registered mail, serve the licensee and the complainant with:~~

~~(1) A copy of the written complaint; and~~

~~(2) The notice specified in Diet 207.01(b).~~

~~— (c) Except in cases arising under Diet 207.03, unless otherwise agreed by the board, the licensee and the complainant, a hearing shall be held on all written complaints received by the board within 3 months of the date that notice of the complaint was served upon the licensee under paragraph (b) above.~~

~~— Diet 207.03 Procedure for Emergency Suspension of Licenses.~~

~~— (a) Upon a finding that public health, safety or welfare requires emergency action, the board shall immediately and without a hearing suspend a license by issuing a written order of suspension incorporating the finding.~~

~~— (b) The board shall commence a hearing no later than 10 working days after the issuance of an order pursuant to (a).~~

~~— (c) Unless the 10 day deadline in (b) is expressly waived by the licensee, the failure of the board to meet the deadline shall result in the automatic vacating of the order of license suspension.~~

~~— (d) After the vacating of the order pursuant to (c) above, the board shall not again suspend the license on the basis of the same conduct that formed the basis for the vacated order without giving the licensee prior notice and the opportunity for a hearing under Diet 207.01.~~

~~— (e) The recording of a hearing on the emergency suspension of a license shall be made by a certified shorthand court reporter provided and paid for by the board.~~

~~— Diet 207.04 Appearances and Representation. A party or intervenor or the representative of the party or intervenor shall file an appearance that includes the following information:~~

~~— (a) The docket number assigned by the board, if any, or a brief identification of the case;~~

~~— (b) A statement as to whether or not the party or intervenor is appearing for him or herself or through a representative;~~

~~— (c) A statement as to whether the person filing the appearance is an attorney licensed to practice in the State of New Hampshire;~~

~~— (d) The daytime address and telephone number of the party, intervenor or representative filing the appearance and, if a representative, the name, daytime address and telephone number of the party or intervenor being represented; and~~

~~— (e) A statement that the person filing the appearance agrees to abide by the statutes, rules and other applicable law relating to the adjudicative proceedings of the board.]~~

**Repeal Diet 207.05, effective 4/25/23 (Document #13571), as follows:**

~~[ — Diet 207.05 Prehearing Conference.~~

~~— (a) A prehearing conference shall be scheduled on the request of any party or intervenor or on the initiative of the presiding officer if the presiding officer determines that to do so would facilitate the proceedings or encourage resolution of the dispute.~~

~~— (b) One or more of the following shall be addressed at the prehearing conference:~~

~~(1) Offers of settlement;~~

~~(2) Simplification of the issues;~~

~~(3) Stipulations or admissions as to issues of fact or proof;~~

~~(4) Limitations on the number of witnesses;~~

~~(5) Changes to standard hearing procedures;~~

~~(6) Consolidation of examination of witnesses; and~~

~~(7) Any other matters that advance the efficiency of the proceedings.]~~

**Repeal Diet 207.06 through Diet 215, effective 8/23/03 (Document #7937), as follows:**

~~[ — Diet 207.06 Recording the Hearing.~~

~~— (a) Except as otherwise provided in (d) below, the presiding officer shall record the hearing by tape recording or other method that will provide a verbatim record.~~

~~— (b) If any person requests a transcript of the taped record, the board shall cause a transcript to be prepared and, upon receipt of payment for the cost of the transcription, shall provide copies of the transcript to the person making the request.~~

~~— (c) Pursuant to RSA 541-A:31, VII, if a transcript is not provided by the board within 60 days of a request by licensee in a disciplinary hearing, the proceeding shall be dismissed with prejudice.~~

~~— (d) A hearing on the emergency suspension of a license pursuant to RSA 541-A:30, III shall be recorded by a certified shorthand court reporter provided and paid for by the board.~~

~~PART Diet 208 ROLES OF BOARD STAFF AND COMPLAINANTS~~

~~— Diet 208.01 Role of Complainants in Disciplinary Proceedings. Unless called as a witness, complainants alleging misconduct by a licensee shall have no role in any hearing, but may petition to intervene.~~

~~— Diet 208.02 Role of Board Staff in Disciplinary Proceedings. Unless called as witnesses, board staff shall have no role in any hearing.~~

~~PART Diet 209 INTERVENTION~~

~~— Diet 209.01 Intervention Procedure.~~

~~— (a) Petitions for intervention shall:~~

~~(1) Describe the petitioner's interest in the subject matter of the proceedings; and~~

~~(2) Be submitted in writing to the presiding officer.~~

~~— (b) A copy of a petition submitted pursuant to (a) above shall be mailed to the board and to all persons or entities identified in the notice commencing the adjudicative proceeding.~~

~~— (c) A petition for intervention shall be granted by the presiding officer if:~~

~~(1) The petitioner complied with (a) and (b) above at least 3 days before the adjudicative proceeding and the presiding officer determines that:~~

~~a. The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceedings or the petitioner qualifies as an intervenor under law; and~~

~~b. The intervention sought would not impair the interests of justice and the orderly and prompt conduct of the proceedings; or~~

~~(2) The petitioner complied with (a) and (b) above at any time and the presiding officer determines that the intervention sought would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.~~

~~— Diet 209.02 Effect of Intervention.~~

~~— (a) Approval of intervention by the presiding officer shall apply only to the proceeding in which the petition for intervention was granted.~~

~~— (b) Notwithstanding the provisions of this chapter, an intervenor's right to participate in an adjudicative proceeding shall be subject to any limitations or conditions imposed by the presiding officer pursuant to RSA 541-A:32, III.~~

~~— (c) An intervenor shall take the proceedings as he or she finds them and no portion of the proceeding shall be repeated because of the fact of intervention.~~

~~PART Diet 210 CONTINUANCES AND FAILURE TO ATTEND HEARING~~

~~— Diet 210.01 Continuances.~~



~~— (a) Any party or intervenor may make an oral or written motion that a hearing, or any other proceeding, be delayed or continued to a later date or time.~~

~~— (b) A motion for a delay or a continuance shall be granted if the presiding officer determines that there is good cause to do so.~~

~~— (c) Good cause shall include:~~

~~(1) The unavailability of parties, intervenors, witnesses or attorneys necessary to conduct the hearing;~~

~~(2) The likelihood that a settlement will make the hearing or its continuation unnecessary; and~~

~~(3) Any other circumstances that demonstrate that a delay or continuance would assist in resolving the case fairly.~~

~~— (d) If the later date, time and place are known when the hearing is being delayed or continued, the information shall be stated on the record. If the later date, time and place are not known at that time, the presiding officer shall as soon as practicable issue a written scheduling order stating the date, time and place of the delayed or continued hearing.~~

~~— Diet 210.02 Failure of a Party to Attend or Participate in the Hearing.~~

~~— (a) A party shall be in default if the party:~~

~~(1) Has the overall burden of proof;~~

~~(2) Has been given notice in accordance with Diet 207.01; and~~

~~(3) Fails to attend the hearing.~~

~~— (b) If a party is in default under (a) above, the case shall be dismissed.~~

~~— (c) If a party who does not have the overall burden of proof fails to attend a hearing after having been given notice in accordance with Diet 207.01, the testimony and evidence of any other parties or intervenors shall be received and evaluated.~~

~~— (d) If a party who has the overall burden of proof attends a hearing but fails to participate by presenting evidence or argument, a decision shall be entered against that party.~~

~~— (e) The board shall not dismiss the case under (b) above if there exists good cause for the failure to appear.~~

~~— (f) For the purposes of (e) above, good cause means circumstances which are beyond the control of the party.~~

~~PART Diet 211 REQUESTS FOR INFORMATION AND DOCUMENTS~~

~~— Diet 211.01 Voluntary Production of Information.~~

~~— (a) Each party and intervenor shall attempt in good faith to make complete and timely response to requests for the voluntary production of information and documents relevant to the hearing.~~

~~— (b) When a dispute arises concerning a request for the voluntary production of information or documents, any party or intervenor may file a motion under Diet 211.02 to compel the production of the requested information or documents.~~

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~~— Diet 211.02 Motions to Compel Production of Information and Documents.~~

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~~— (a) Any party or intervenor may make a motion seeking an order for compliance with an information or document request. The motion shall be filed at least 30 days before the date scheduled for the hearing, or as soon as possible after receiving the notice of the hearing if such notice is issued less than 30 days in advance of the hearing.~~

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~~— (b) The motion to compel shall:~~

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~~(1) Set forth in detail those facts which justify the request for information or documents; and~~

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~~(2) List with specificity the information or documents being sought.~~

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~~— (c) The presiding officer shall grant the motion to compel if its proponent has demonstrated that an order for compliance is necessary for a full and fair presentation of evidence at the hearing.~~

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~~— Diet 211.03 Mandatory Pre-Hearing Disclosure of Witnesses and Exhibits.~~

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~~— (a) Whether or not stated in a scheduling order issued by the presiding officer, at least 5 days before the hearing the parties and intervenors shall provide to the other parties and intervenors:~~

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~~(1) A list of all witnesses that may be called at the hearing together with the address and telephone number of each witness and a brief summary of their testimony, said list separately identifying:~~

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~~a. Those witnesses that the party or intervenor intends to call; and~~

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~~b. Those witnesses that the party or intervenor reserves the right to call if the need arises.~~

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~~(2) A list of all documents and exhibits that may be offered as evidence at the hearing together, said list separately identifying:~~

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~~a. Those documents and exhibits that the party or intervenor intends to submit as evidence; and~~

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~~b. Those documents and exhibits that the party or intervenor reserves the right to submit as evidence if the need arises.~~

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~~(3) A copy of each document that may be offered as evidence at the hearing; and~~

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~~(4) An offer to inspect at times and places of convenience to the other parties and intervenors the non-documentary exhibits that may be offered as evidence at the hearing.~~

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~~— (b) In the event that a party or intervenor attempts to present evidence not disclosed in accordance with paragraph (a) above, the presiding officer shall, upon the objection of a party or intervenor, prohibit the introduction of such evidence if:~~

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~~(1) The objecting party would be prejudiced by the admission of the evidence; and~~

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~~(2) No good cause has been presented by the proponent of the evidence for the failure to disclose in conformity with paragraph (a) above.~~

~~— (c) Good cause shall exist under paragraph (b) above if:~~

~~(1) The evidence was not, in the exercise of reasonable diligence, available to the proponent at least 5 days prior to the hearing;~~

~~(2) The proponent of the evidence disclosed the evidence to all other parties and intervenors within sufficient time prior to the hearing so as to allow the objecting party to submit any necessary rebuttal evidence; and~~

~~(3) The proponent of the evidence does not object to the submission of rebuttal evidence under subparagraph (2) above on the basis that such evidence has not been timely disclosed.~~

## ~~PART Diet 212 HEARING PROCEDURE~~

~~— Diet 212.01 Standard and Burden of Proof. The party or intervenor asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.~~

~~— Diet 212.02 Testimony; Order of Proceeding.~~

~~— (a) Any individual offering testimony, evidence or arguments shall state for the record his or her name and role in the hearing. If the individual is representing another person, the person being represented shall also be identified.~~

~~— (b) Testimony on behalf of the parties shall be offered in the following order:~~

~~(1) The testimony of the party or parties bearing the overall burden of proof and such witnesses as such party or parties may call; and~~

~~(2) Thereafter the testimony of the party or parties opposing the party who bears the overall burden of proof and such witnesses as such party or parties may call.~~

~~— (c) The testimony of intervenors shall be offered at the time directed by the presiding officer.~~

~~— (d) Each party may cross examine any witness offered against that party.~~

~~— Diet 212.03 Evidence.~~

~~— (a) Receipt of evidence shall be governed by the provisions of RSA 541 A:33.~~

~~— (b) All documents, materials and objects offered as exhibits shall be admitted into evidence unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.~~

~~— (c) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered.~~

~~— (d) Transcripts of testimony as well as documents, materials and objects admitted into evidence shall be public records unless the presiding officer determines that all or part of them is exempt from disclosure under RSA 91 A:5 or applicable case law.~~

~~— (e) All of the rules of privilege recognized under the laws of the state of New Hampshire shall apply in proceedings before the board.~~

~~— Diet 212.04 Proposed Findings of Fact and Conclusions of Law.~~

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

~~— (b) The presiding officer shall require the submission of proposed findings of fact and conclusions of law and specify a date after the close of the hearing for their submission when:~~

~~(1) Any party or intervenor has requested such action;~~

~~(2) The presiding officer determines that proposed findings of fact and conclusions of law would clarify the issues presented at the hearing.~~

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

~~— Diet 212.05 Decision.~~

~~— (a) The board shall issue a final decision or order, whether or not the record has been reopened pursuant to Diet 212.07, based on:~~

~~(1) A hearing attended by a quorum of the board;~~

~~(2) A written proposal for decision meeting the requirements of paragraph (c); or~~

~~(3) A hearing held pursuant to paragraph (d)(2).~~

~~— (b) A board member shall not participate in the board's decision if he or she has not personally heard all of 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.~~

~~— (c) If a presiding officer has been delegated the authority to conduct the hearing in the absence of a quorum of the board, the presiding officer shall submit to the board a written proposal for decision containing:~~

~~(1) The decision proposed by the presiding officer;~~

~~(2) A statement of the reasons for the proposed decision; and~~

~~(3) Findings of fact and rulings of law necessary to the proposed decision.~~

~~— (d) If a proposal for decision submitted pursuant to paragraph (c) is adverse to a party or an intervenor, the board shall:~~

~~(1) Serve a copy of the proposal for decision on each party and intervenor; and~~

~~(2) Provide an opportunity to file objections and present briefs and oral arguments to the board.~~

~~— (e) The board shall keep a final 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.~~

~~— Diet 212.06 Closing the Record. After the conclusion of the hearing and the filing of such post-hearing submissions as may be ordered by the presiding officer, the record shall be closed and no additional evidence shall be received into the record except or allowed by Diet 212.07.~~

~~— Diet 212.07 Reopening the Record.~~

~~— (a) If no written proposal for decision pursuant to Diet 212.05(c) or final decision pursuant to Diet 212.05(a) has been issued, any party or intervenor may move to reopen the record for the inclusion in the record of specified evidence or claims of law.~~

~~— (b) A motion pursuant to (a) above shall be granted if there is no objection from any other party or intervenor and:~~

~~(1) The evidence sought to be included in the record was not available at the time of the hearing or the claim of law was inadvertently omitted; and~~

~~(2) The presiding officer determines that the evidence or claim of law is relevant, material and non-duplicative and its inclusion in the record is necessary to a full and fair consideration of the issues to be decided.~~

~~— (c) If there is an objection from a party or intervenor to a motion made pursuant to (a) above, the hearing shall be reopened for the purpose of receiving evidence, permitting cross-examination and permitting argument on the issue of reopening the record.~~

~~— (d) The presiding officer shall grant a motion made pursuant to (a) above if, after the reopened hearing described in (c) above, the hearing officer determines that the evidence sought to be included in the record was not available at the time of the hearing or the claim of law was inadvertently omitted and the evidence or claim of law is relevant, material and non-duplicative and its inclusion in the record is necessary to a full and fair consideration of the issues to be decided.~~

~~(e) If the presiding officer permits the reopening of the record for the admission of specified evidence or claim of law, the hearing officer shall extend the hearing reopened pursuant to (c) for the purpose of receiving evidence, permitting cross-examination and permitting argument on the substance of the evidence or on the claim of law.~~

~~— Diet 212.08 Rehearing.~~

~~— (a) Any party or person directly affected by the board's decision or order pursuant to Diet 212.05 may request rehearing of any matter determined in the proceeding or covered by the decision or order by, within 10 days of the date of the decision or order, submitting a written motion specifying:~~

~~(1) The issues to be considered at the rehearing; and~~

~~(2) Every ground on which it is claimed that the decision or order is unlawful or unreasonable.~~

~~— (b) Any objection to a motion for rehearing shall be submitted within 5 days of the submission of the motion.~~

~~— (c) Within 10 days of submission of the motion for rehearing the board shall:~~

~~(1) Grant the motion;~~

~~(2) Deny the motion; or~~

~~(3) Suspend the board's decision or order pending further consideration.~~

~~— (d) The board shall grant the motion for rehearing if it determines that, in the original hearing it:~~

~~(1) Incorrectly assessed the relevant evidence;~~

~~(2) Incorrectly applied the relevant law; or~~

~~(3) Failed substantially to comply with this chapter.~~

## ~~PART Diet 213 RULEMAKING~~

### ~~— Diet 213.01 Petitions for Rulemaking.~~

~~— (a) Any person may seek the adoption, amendment or repeal of a rule by submitting to the board a petition pursuant to RSA 541-A:4.~~

~~— (b) Each petition for rulemaking shall contain:~~

~~(1) The name and address of the individual petitioner or, if the request is that of an organization or other entity, the identity of such organization or entity and the name and address of the representative authorized by the entity to file the petition;~~

~~(2) A statement of the purpose of the petition, whether the adoption, amendment or repeal of a rule;~~

~~(3) If amendment or adoption of a rule is sought, the text proposed;~~

~~(4) If amendment or repeal of a rule is sought, identification of the current rule sought to be amended or repealed;~~

~~(5) Reference to the statutory provision that authorizes or supports the rulemaking petition; and~~

~~(6) Information or argument useful to the board when deciding whether to begin the rulemaking process.~~

### ~~— Diet 213.02 Disposition of Petitions for Rulemaking.~~

~~— (a) The board shall request additional information or argument from a person petitioning for rulemaking or from others if such additional information or argument is required to reach a decision.~~

~~— (b) The board shall grant the petition for rulemaking if the adoption, amendment or repeal sought would not result in:~~

~~(1) A rule that is not within the rulemaking authority of the board;~~

~~(2) Duplication of a rule or of a statutory provision;~~

~~(3) Inconsistency between the existing rules and the statutory mandate of the board;~~

~~(4) Inconsistency of administrative rules one with another; or~~

~~(5) Excessive burden upon the board in terms of cost or a reduction in efficiency or effectiveness.~~

~~— (c) Within 30 days of receipt of a sufficient petition the board shall dispose of it in the following manner:~~

~~-~~

~~(1) By notifying the petitioner that the petition is granted and beginning rulemaking proceedings as required by RSA 541-A:4; or~~

~~-~~

~~(2) By notifying the petitioner in writing that the petition is denied and the reasons for its denial.~~

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~~— (d) The denial of a petition for rulemaking shall not entitle the petitioner to a hearing.~~

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#### **PART Diet 214 PUBLIC COMMENT HEARINGS**

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~~— Diet 214.01 Purpose. The purpose of this part is to provide uniform procedures for the conduct of public comment hearings held pursuant to RSA 541-A:11.~~

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~~— Diet 214.02 Public Access and Participation.~~

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~~— (a) Public comment hearings shall be open to the public, and members of the public shall be entitled to testify, subject to the limitations of Diet 214.03.~~

~~-~~

~~— (b) People who wish to testify shall be asked to write on the speaker's list:~~

~~-~~

~~(1) Their full names and addresses; and~~

~~-~~

~~(2) The names and addresses of organizations, entities or other persons whom they represent, if any.~~

~~-~~

~~— (c) Written comments, which may be submitted in lieu of or in addition to oral testimony, shall be accepted for 10 days after the adjournment of a hearing or after the adjournment of a postponed or continued hearing.~~

~~-~~

~~— Diet 214.03 Limitations on Public Participation. The board's chair or other person designated by the board to preside over a hearing shall:~~

~~-~~

~~— (a) Refuse to recognize for speaking or revoke the recognition of any person who:~~

~~-~~

~~(1) Speaks or acts in an abusive or disruptive manner;~~

~~-~~

~~(2) Fails to keep comments relevant to the proposed rules that are the subject matter of the hearing; or~~

~~-~~

~~(3) Restates more than once what he or she has already stated;~~

~~-~~

~~— (b) Limit presentations on behalf of the same organization or entity to no more than 3, provided that all those representing such organization or entity may enter their names and addresses into the record as supporting the position of the organization or entity.~~

~~-~~

~~— Diet 214.04 Media Access. Public comment hearings shall be open to print and electronic media, subject to the following limitations when such limitations are necessary to allow a hearing to go forward:~~

~~-~~

~~— (a) Limitation of the number of media representatives when their number together with the number of members of the public present exceeds the capacity of the hearing room;~~

- ~~— (b) Limitation on the placement of cameras to specific locations within the hearing room; or~~
- ~~— (c) Prohibition of interviews conducted within the hearing room before or during the hearing.~~

~~— Diet 214.05 Conduct of Public Comment Hearings.~~

~~— (a) Public comment hearings shall be presided over by the board chair or a board member knowledgeable in the subject area of the proposed rules who has been designated by the board to preside over the hearing.~~

~~— (b) The chair or other person presiding over a hearing shall:~~

- ~~(1) Call the hearing to order;~~
- ~~(2) Identify the proposed rules that are the subject matter of the hearing and provide copies of them upon request;~~
- ~~(3) Cause a recording of the hearing to be made;~~
- ~~(4) Recognize those who wish to be heard;~~
- ~~(5) If necessary, establish limits pursuant to Diet 214.03 and Diet 214.04;~~
- ~~(6) If necessary to permit the hearing to go forward in an orderly manner, effect the removal of a person who speaks or acts in a manner that is personally abusive or otherwise disrupts the hearing;~~
- ~~(7) If necessary, postpone or move the hearing; and~~
- ~~(8) Adjourn or continue the hearing.~~

~~— (c) A hearing shall be postponed in accordance with RSA 541-A:11, IV when:~~

- ~~(1) The weather is so inclement that it is reasonable to conclude that people wishing to attend the hearing will be unable to do so;~~
- ~~(2) The board chair or other person designated by the board to preside over the hearing is ill or unavoidably absent; or~~
- ~~(3) Postponement will facilitate greater participation by the public.~~

~~— (d) A hearing shall be moved to another location in accordance with RSA 541-A:11, V when the original location is not able to accommodate the number of people who wish to attend the hearing.~~

~~— (e) A hearing shall be continued past the scheduled time or to another date in accordance with RSA 541-A:11, III when:~~

- ~~(1) The time available is not sufficient to give each person who wishes to speak a reasonable opportunity to do so; or~~
- ~~(2) The capacity of the room in which the hearing is to be held does not accommodate the number of people who wish to attend and it is not possible to move the hearing to another location.~~



~~PART Diet 215 DECLARATORY RULINGS~~

~~— Diet 215.01 Requests for Declaratory Rulings by the Board.~~

~~— (a) Any person directly affected by any statute or rule relating to the board may request a declaratory ruling by the board regarding the specific applicability of any statutory provision or administrative rule relating to the board.~~

~~— (b) A request for a declaratory ruling shall be in a writing containing:~~

~~(1) The name and address of the individual or entity making the request;~~

~~(2) The text of the ruling being requested;~~

~~(3) The reasons for the request; and~~

~~(4) The following declaration signed by the individual making the request, the authorized representative of such individual, or the authorized representative of the entity making the request:~~

~~"I declare that I have examined the request for a declaratory ruling, including the accompanying documents, and state that, to the best of my knowledge and belief, the facts presented in support of the requested declaratory ruling are true, correct, and complete."~~

~~— Diet 215.02 Documents Required to Support Requests for Declaratory Rulings.~~

~~— (a) A request for a declaratory ruling shall be accompanied by:~~

~~(1) A statement citing the statutory law, regulatory law and orders believed to support the ruling being requested;~~

~~(2) A statement of the facts believed to support the ruling being requested; and~~

~~(3) Supplementary material necessary to establish or clarify the facts set forth in the statement of facts.~~

~~— (b) A request for a declaratory ruling may be accompanied by additional material chosen by the person making the request.~~

~~— Diet 215.03 Processing Requests for Declaratory Rulings.~~

~~— (a) Within 30 days of receiving a request for a declaratory ruling the board shall advise the person requesting it if the ruling will be delayed by the need for additional information or the complexity of the issues presented.~~

~~— (b) If additional information should be needed, the board shall specify the additional information required and request that it be provided in a statement of additional information that includes the declaration specified in Diet 215.01(b)(4), and is accompanied by any material necessary to establish or clarify the facts set forth in the statement.~~

~~— Diet 215.04 Issuance and Publication of Declaratory Rulings.~~

~~— (a) When facts sufficient to support a declaratory ruling have been established, the board shall issue a written declaratory ruling which applies all relevant law to the established facts.~~

~~— (b) When the established facts show that the board lacks subject matter or personal jurisdiction to issue a declaratory ruling, the board shall issue a written decision stating that it lacks jurisdiction to issue a declaratory ruling and identifying the lack of jurisdiction.~~

~~— (c) Declaratory rulings shall be filed on the day of issuance with the director of legislative services in accordance with RSA 541-A:16, II(b).~~

~~— Diet 215.05 Effect of Declaratory Rulings. A declaratory ruling shall apply only to the board and to the person requesting it and shall be confined to the facts presented pursuant to Diet 215.02(a)(2) (a)(3) and in response to a request of the board made pursuant to Diet 215.03(b).]~~

**Repeal Diet 216, effective 10-9-14 (Document #10690), as follows:**

~~[PART Diet 216 EXPLANATION OF ADOPTED RULES~~

~~— Diet 216.01 Requests for Explanation of Adopted Rules. Any interested person may, within 30 days of the final adoption of a rule, request a written explanation of that rule by making a written request to the board including:~~

~~— (a) The name and address of the person making the request; or~~

~~— (b) If the request is that of an organization or other entity, the name and address of such organization or entity and the name and address of the representative authorized by the organization or entity to make the request.~~

~~— Diet 216.02 Contents of Explanation. The board shall, within 90 days of receiving a request in accordance with Diet 216.01, provide a written response which:~~

~~— (a) Concisely states the meaning of the rule adopted;~~

~~— (b) Concisely states the principal reasons for and against the adoption of the rule in its final form; and~~

~~— (c) States, if the board did so, why the board overruled any arguments and considerations presented against the rule.]~~

**Adopt Diet 201 to read as follows:**

PART Diet 201 APPLICABILITY AND WAIVER OF SUBSTANTIVE RULES

Diet 201.01 Rules of Practice and Procedure. The Plc 200 rules shall govern with regards to all procedures for:

(a) Adjudicatory proceedings;

(c) Rulemaking submissions, considerations, and dispositions of rulemaking petitions;

(d) Public comment hearings;

(e) Declaratory rulings;

- (f) All statements of policy and interpretation;
- (g) Explanation of adopted rules; and
- (h) Voluntary surrender of licenses.

Diet 201.02 Waiver of Administrative Rules.

(a) The board shall initiate a waiver of a substantive rule upon its own motion by providing affected parties with notice and opportunity to be heard, and issuing an order which finds that waiver would be necessary to advance the purpose of the rules of the board.

(b) Individuals who wish to request a waiver of a rule shall submit a written request to the board, which includes:

- (1) The rule for which a waiver is requested;
- (2) The anticipated length of time the requested waiver will be needed;
- (3) The reason for requesting the waiver;
- (4) Evidence of how the waiver will provide for the health and safety of the consumer or licensee;
- (5) A time-limited written compliance plan which sets forth plans to achieve compliance including an estimated date of compliance; and
- (6) The signature of the applicant.

(c) The board shall consider the following when determining whether to approve or deny a waiver:

- (1) If adherence to the rule would cause the petitioner unnecessary or undue hardship;
- (2) If the requested waiver is necessary because of any neglect or misfeasance on the part of the practitioner;
- (3) If enforcement of the rule would injure a third person(s); and
- (4) If waiver of the rule would injure a third person(s).

(d) The board shall approve a waiver of an administrative rule request only if:

- (1) Granting a waiver does not have the effect of waiving or modifying a provision of RSA 326-H;
- (2) The petitioner has shown good cause exists pursuant to (c) above to waive the rule; and
- (3) The board determines that the individual's plans for compliance with the rule includes an estimated date of compliance and eventual compliance.

(e) If the board, after receiving and reviewing a request for a waiver, requires further information or documentation to grant or deny the waiver, the board shall:

- (1) Notify the applicant in writing within 30 days; and
- (2) Specify the information or documentation the board requires.

(f) The board shall issue a written approval or denial of the waiver within 60 days of the date the request is received, unless additional information or documentation is required. If additional information and documentation is required, then the board shall issue a written approval or denial within 60 days of receiving the requested information or documentation.

<b>RULE</b>	<b>STATUTE</b>
Diet 201 (repeal)	RSA 541-A:7
Diet 202.01 (repeal)	RSA 541-A:16, I(b); RSA 541-A:31, V(a); RSA 541-A:35; RSA 541-A:38
Diet 202.02 (repeal)	RSA 541-A:16, I(b)
Diet 202.03(repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I; RSA 541-A:31, I; RSA 326-H:10, I(g)
Diet 203.01(a) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I
Diet 203.01(b)(1) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I
Diet 203.01(b)(2) (repeal)	RSA 541-A:16, I(b); RSA 541-A:31, V(b); RSA 541-A:31, V(c)(1)
Diet 203.01(b)(3) (repeal)	RSA 541-A:33, I
Diet 203.01(b)(4) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I
Diet 203.01(b)(5) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I; RSA 541-A:33, II
Diet 203.01(b)(6) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I; RSA 541-A:31, VI(b); RSA 541-A:33, II
Diet 203.01(b)(7) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I
Diet 203.01(b)(8) (repeal)	RSA 541-A:31, VI(g); RSA 541-A:31, VII
Diet 203.01(b)(9) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I
Diet 203.02 (repeal)	RSA 541-A:30-a, III(k)
Diet 203.03 (repeal)	RSA 541-A:30-a, III(j)
Diet 204.01 (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, III(a); RSA 541-A:30- a, III(f)
Diet 204.02 (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, III(a)
Diet 204.03 (repeal)	RSA 541-A:30-a, III(a)
Diet 205.01 (repeal)	RSA 541-A:30-a, III(f)
Diet 206.01(a) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, III(a); RSA 541-A:31, IV
Diet 206.01(b) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, III(a); RSA 541-A:31, VI(b); RSA 541-A:31, VII; RSA 541-A:33, II

Diet 206.01(c) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, III(a); RSA 541-A:31, VII; RSA 541-A:33, II
Diet 206.01(d) (repeal)	RSA 541-A:16, I(b); RSA 541-A:31, VII; RSA 541-A:33, II
Diet 206.01(e) (repeal)	RSA 541-A:16, I(b); RSA 541-A:31, IV
Diet 206.01(f) (repeal)	RSA 541-A:16, I(b); RSA 541-A:31, IV; RSA 541-A:33, II
Diet 207.01(a)(1) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I; RSA 541-A:31, III
Diet 207.01(a)(2) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30, III; RSA 541-A:30-a I; RSA 541-A:31, III
Diet 207.01(b)(1) (repeal)	RSA 541-A:31, III(a)
Diet 207.01(b)(2) (repeal)	RSA 541-A:31, III(b)
Diet 207.01(b)(3) (repeal)	RSA 541-A:31, III(c)
Diet 207.01(b)(4) (repeal)	RSA 541-A:31, III(d)
Diet 207.01(b)(5) (repeal)	RSA 541-A:31, III(e)
Diet 207.01(b)(6) (repeal)	RSA 541-A:16, I(b)
Diet 207.01(b)(7) (repeal)	RSA 541-A:31, III(f)
Diet 207.01(b)(8) (repeal)	RSA 541-A:30, III
Diet 207.02 (repeal)	RSA 541-A:16, I(a); RSA 541-A:30-a, I
Diet 207.03 (repeal)	RSA 541-A:30, III
Diet 207.04 (repeal)	RSA 541-A:30-a, III(b)
Diet 207.05 (repeal)	RSA 541-A:31, V(b)-(c)
Diet 207.06 (repeal)	RSA 541-A:31, VII; RSA 541-A:30, III
Diet 208.01 (repeal)	RSA 541-A:30-a, III(g)
Diet 208.02 (repeal)	RSA 541-A:30-a, III(g)
Diet 209.01 (repeal)	RSA 541-A:16, I(b); RSA 541-A:32
Diet 209.02 (repeal)	RSA 541-A:16, I(b); RSA 541-A:32
Diet 210.01 (repeal)	RSA 541-A:30-a, III(h)
Diet 210.02 (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I; RSA 541-A:30-a, III(d)
Diet 211.01 (repeal)	RSA 541-A:30-a, III(c)
Diet 211.02 (repeal)	RSA 541-A:30-a, III(c)
Diet 211.03 (repeal)	RSA 541-A:30-a, III(c)
Diet 212.01 (repeal)	RSA 541-A:30-a, III(d); RSA 541-A:30-a, III(e)
Diet 212.02 (repeal)	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, I
Diet 212.03(a)-(c) (repeal)	RSA 541-A:33
Diet 212.03(d)-(e) (repeal)	RSA 541-A:16, I(a); RSA 541-A:30-a, I
Diet 212.04(a)-(b) (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I; RSA 541-A:31, VI(e)
Diet 212.04(c) (repeal)	RSA 541-A:35
Diet 212.05(a)-(d) (repeal)	RSA 541-A:34
Diet 212.05(e) (repeal)	RSA 541-A:30-a, III(l)
Diet 212.06 (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I

Diet 212.07 (repeal)	RSA 541-A:30-a, III(i)
Diet 212.08 (repeal)	RSA 541-A:16, I(b); RSA 541-A:30-a, I
Diet 213.01 (repeal)	RSA 541-A:4; RSA 541-A:16, I(c)
Diet 213.02 (repeal)	RSA 541-A:4; RSA 541-A:16, I(c)
Diet 214.01 (repeal)	RSA 541-A:11; RSA 541-A:16, I(b)(3)
Diet 214.02 (repeal)	RSA 541-A:11; RSA 541-A:16, I(b)(3)
Diet 214.03 (repeal)	RSA 541-A:11, I; RSA 541-A:16, I(b)(3)
Diet 214.04 (repeal)	RSA 541-A:11; RSA 541-A:16, I(b)(3)
Diet 214.05 (repeal)	RSA 541-A:11; RSA 541-A:16, I(b)(3)
Diet 215.01 (repeal)	RSA 541-A:16, I(d)
Diet 215.02 (repeal)	RSA 541-A:16, I(d)
Diet 215.03 (repeal)	RSA 541-A:16, I(d); RSA 541-A:29
Diet 215.04 (repeal)	RSA 541-A:16, I - II
Diet 215.05 (repeal)	RSA 541-A:16, II(b)
Diet 216.01 (repeal)	RSA 541-A:16, I(b)
Diet 216.02 (repeal)	RSA 541-A:16.I(b); RSA 541-A:11,VII
Diet 201.01	RSA 310:6, II
Diet 201.02	RSA 541-A:16, I (b)