



NEW HAMPSHIRE RULEMAKING REGISTER

OFFICE OF LEGISLATIVE SERVICES

ROOM 219, STATE HOUSE ANNEX

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VOLUME XXXIX, Number 4, January 24, 2019

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NOTE: POSSIBLE RULE EXTENSION

If the proposed rules contain existing, regular rules being readopted or readopted with amendments, and are not adopted and effective until after the expiration date(s) of the existing rules(s), then the existing rules will nevertheless continue in effect pursuant to RSA 541-A:14-a until the proposed rules are adopted and effective.

2. COMMITTEE (JLCAR)

CONTINUED MEETING Previously Scheduled for February 1, 2019 Has Been Cancelled

REGULAR MEETING: **Friday, February 15, 2019 9:00 a.m.**
Rooms 306/308, Legislative Office Building

JLCAR MEETING DATES AND RELATED FILING DEADLINES FEBRUARY-JUNE, 2019

The JLCAR has voted to hold its regularly scheduled meetings for February through June, 2019 on the third Friday of the month as listed below, except as noted. The minimum 14-day “deadline” prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules* for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Fridays to address items postponed from the prior regular meetings.

Regular Meeting Filing Deadline*	Regular Meeting Date	Continued Meeting Date
February 1	February 15	March 1
March 1	March 15	April 5
April 12	April 26 (4 th Friday)	May 3
May 3	May 17	June 7
June 7	June 21	June 28

***NOTE:** The filing deadlines relate to JLCAR meetings pursuant to RSA 541-A. However, if a proposed interim rule is filed with a rulemaking notice for publication in the *Rulemaking Register*, be aware that Thursdays—not Fridays—remain the filing deadline under the *Drafting and Procedure Manual for Administrative Rules* to have the rulemaking notice published the following week. Therefore, filing the notice together with the proposed interim rule no later than the Thursday **before** the 14-day statutory deadline would assure that both the 14-day deadline for filing the rule and the deadline for publication in the *Rulemaking Register* would be met. See description in §3.3 of Chapter 3 of the *Drafting and Procedure Manual for Administrative Rules*.

Notices of Proposed Rules

<u>Notice Number</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Page No.</u>
2019-13	Agr 1200	Department of Agriculture, Markets, and Food Commercial Feeds.	1
2019-14	Env-Wq 402 various sections & paragraphs	Department of Environmental Services Water Quality and Quantity Programs Discharges to Groundwater of Wastewater Containing Certain Perfluorochemicals.	3
2019-15	Env-Or 603.03(b) intro & (2) and (c) intro & Table 600-1 pertaining to certain compounds	Department of Environmental Services Oil and Remediation Programs Amendments to Ambient Groundwater Quality Standards (AGQS).	5
2019-16	Env-Dw 700 and 800 various sections & paragraphs	Department of Environmental Services Drinking Water Programs Water Quality Standards, Monitoring, Compliance, Reporting, and Public Notification for Certain Perfluorochemicals.	7
2019-17	He-W 837	Department of Health and Human Services Former Division of Human Services NH Granite Advantage Health Care Program.	10

**JLCAR MEETING DATES AND RELATED FILING DEADLINES
JULY-DECEMBER, 2019**

The JLCAR has voted to hold its regularly scheduled monthly meetings for July through December, 2019 on the third Thursday of the month as listed below. The minimum 14-day “deadline” prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Thursdays to address any items postponed from the prior regular meetings.

Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
July 3 (Wednesday)	July 18	August 1
August 1	August 15	September 5
September 5	September 19	October 3
October 3	October 17	November 7
November 7	November 21	December 5
December 5	December 19	None

Notice Number 2019-13

Rule Number Agr 1200

1. Agency Name & Address:
Dept. of Agriculture, Markets & Food
25 Capitol Street, Room 218
PO Box 2042
Concord, NH 03302-2042

2. RSA Authority: RSA 435:25
 3. Federal Authority: _____
 4. Type of Action:
 Adoption X
 Amendment _____
 Repeal _____
 Readoption _____
 Readoption w/amendment _____

5. Short Title: **Commercial Feeds**

6. (a) Summary of what the rule says and of any proposed amendments:

The proposed rule regulates commercial feed, including pet food. The former rule was an interim rule, effective 3-1-18, which expired 8-28-18, which had adopted the former regular rule that expired 7-20-07. The proposed rule adds to the expired rule by expanding upon defined terms, updating approved ingredients, addressing drugs and feed additives, current good manufacturing practices, and provides specific additional feed labeling requirements for both livestock and pet food products.

6. (b) Brief description of the groups affected:

Those who manufacture and distribute commercial feeds, including pet treats, are affected. Approximately, over 13,000 products are registered with the state annually.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Specific State Statute the Rule Implements
Agr 1200	RSA 435:25
(Specific rules implementing specific statutes are listed below)	
Agr 1202	RSA 435:21 & 435:23
Age 1203	RSA 435:19 XVIII, 435:21 & 435:23

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Jennifer Z. Gornnert**
 Address: **25 Capitol Street, Room 218**
Concord, NH 03301

Title: **Director**
 Phone #: **271-7761**
 Fax#: **271-1109**
 E-mail: **Jennifer.gornnert@agr.nh.gov**
 TTY/TDD Access: Relay NH 1-800-735-2964
 or dial 711 (in NH)

NN 2019-13 Continued

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **March 15, 2019**

 Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **March 5, 2019 at 10:00 am**

Place: **Department of Agriculture, Room 201
25 Capitol Street, Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:004, dated January 14, 2019

- 1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**
Not applicable as the Interim Agr 1200 rules expired in August 2018.

- 2. Cite the Federal mandate. Identify the impact on state funds:**
No federal mandate, no impact on state funds.

- 3. Cost and benefits of the proposed rule(s):**
There is no cost associated with the proposed rules or the expired rule. Any costs are attributable RSAs 435:25, 435:21, 435:23, and 435:19, XVIII and not the rules.

- A. To State general or State special funds:**
None.

- B. To State citizens and political subdivisions:**
None.

- C. To independently owned businesses:**
None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rule does not violate Part I, Article 29-a of the NH Constitution. The rule neither mandate nor assigns any responsibility or cost to any political subdivision.

Notice Number	2019-14	Rule Number	Env-Wq 402 various sections and paragraphs
1. Agency Name & Address:	Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority:	RSA 485:3, X; RSA 485-A:6, VII
		3. Federal Authority:	n/a
		4. Type of Action:	
		Adoption	_____
		Amendment	_____ X _____
		Repeal	_____
		Readoption	_____
		Readoption w/amendment	_____ X _____

5. Short Title: **Discharges to Groundwater of Wastewater Containing Certain Perfluorochemicals**

6. (a) Summary of what the rule says and of any proposed amendments:

Env-Wq 402 implements RSA 485-A:13, I(a) and the permit program for the regulation and remediation of groundwater contamination from previous discharges or wastewater discharge to groundwater authorized by RSA 485:3, X. For discharges of treated wastewater to groundwater, the rules are applied in conjunction with the ambient groundwater quality standards (AGQS) established in Env-Or 603.03. The rules are proposed to be amended as noted below in response to the new AGQS being proposed in a separate rulemaking, as treating large quantities of wastewater for PFAS may not be possible with current technologies.

RSA 485:16-e directs the Department to establish maximum contaminant levels (MCLs) for four compounds: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorononanoic acid (PFNA), and perfluorohexane sulfonic acid (PFHxS). These perfluorochemicals (PFCs) are water contaminants of increasing concern associated with a number of health effects when consumed at the part per trillion (ppt) level. These and other per- and poly-fluoroalkyl substances (PFAS) are ubiquitous and persistent in the environment and are found in blood serum of people and animals throughout the world. MCLs are being proposed in a separate rulemaking; once the MCLs are established, they become AGQS based on RSA 485-C:6, I. Also in a separate rulemaking, the current AGQS for PFOA and PFOS are being revised and new AGQS are proposed for PFNA and PFHxS.

- Proposed amendments in this rulemaking include the following:
- Env-Wq 402.05 would include residual PFOA, PFOS, PFNA, and PFHxS in the conditional exemption from meeting AGQS;
 - Env-Wq 402.24 would establish a discharge limit for PFOA, PFOS, PFNA, and PFHxS in wastewater discharged to groundwater;
 - Env-Wq 402.25 would account for exceedances of the applicable limits for PFOA, PFOS, PFNA, and PFHxS; and
 - Env-Wq 402.251 would include PFOA, PFOS, PFNA, and PFHxS in the treatment/alternative response requirements established for 1,4-dioxane.

6. (b) Brief description of the groups affected:

The rules will affect any person that discharges wastewater to groundwater if any regulated contaminant in the groundwater discharge exceeds an AGQS.

6. (c) Specific section(s) of state statute or federal statute or regulation the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented	Federal Regulations Implemented
Env-Wq 402.05 intro & (c)	RSA 485-C:6	40 CFR 144, 145, & 146
Env-Wq 402.24; 402.25(a) intro, (4) & (5); 402.251	RSA 485-A:13, I(a)	40 CFR 144, 145, & 146

NN 2019-14 Continued

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Stephen Roy, P.G.	Title:	DWGB Technical Section Manager - Groundwater Permitting
Address:	Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-3918
		Fax#:	(603) 271-0656
		E-mail:	stephen.roy@des.nh.gov

The rules also can be viewed in PDF at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm> TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, April 12, 2019**

YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING Fax E-mail Fax

9. Public hearing scheduled for:

Date and Time: **Monday, March 4, 2019 at 5:30 PM**

Place: **All Purpose Room, James Masticola Upper Elementary School, Merrimack, NH**

Date and Time: **Tuesday, March 5, 2019 at 1:00 PM**

Place: **Auditorium, DES Offices, 29 Hazen Drive, Concord NH**

Date and Time: **Tuesday, March 12, 2019 at 5:30 PM**

Place: **NHDES Pease Field Office, Room A, 222 International Drive, Suite 175, Portsmouth, NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS #19:003, dated 01/14/19:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules. Any cost or benefit associated with the proposed rules is attributable to RSA 485-A:6, VII, 485:3, X, to implement RSA 485-A:13, I(a) and 485-C:6 relative to groundwater discharges of perfluorochemicals (PFOA, PFOS, PFNA, and PFHxS).

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):**A. To State general or State special funds:**

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

Because any costs are attributable to the statute, not the rules, the rules do not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision, and so do not violate Part I, Article 28-a of the New Hampshire Constitution. In any event, any costs that might be associated with the rules are within the scope of modifications allowable under *City of Concord v. State of New Hampshire*, 164 N.H. 130 (N.H. 2012).

Notice Number 2019-15 Rule Number Env-Or 603.03(b) intro & (2) and (c) intro & Table 600-1 pertaining to certain compounds

<p>1. Agency Name & Address:</p> <p>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority: <u>RSA 485-C:4, III</u></p> <p>3. Federal Authority: <u>n/a</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment <u> X </u></p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment _____</p>
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5. Short Title: **Amendments to Ambient Groundwater Quality Standards (AGQS)**

6. (a) Summary of what the rule says and of any proposed amendments:

Env-Or 603.03(c), Table 600-1, establishes ambient groundwater quality standards (AGQS) for regulated contaminants that result from human operations or activities. Two of the existing AGQS in Table 600-1 are proposed to be revised and two chemicals are proposed to be added to reflect the concurrent rulemaking to establish drinking water maximum contaminant levels (MCLs) for four compounds: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorohexane sulfonic acid (PFHxS), and perfluorononanoic acid (PFNA). Per RSA 485-C:6, I, where state MCLs have been adopted under RSA485:3, I(b), the AGQS must be equivalent to such standards.

6. (b) Brief description of the groups affected:

Those affected by the proposed revisions include any person responsible for the remediation of a site that is contaminated with any of the above-noted compounds.

6. (c) Specific section(s) of state statute or federal statute or regulation the rule is intended to implement:

Rule	State Statutes Implemented
Env-Or 603.03(b) intro & (2) and (c) intro & Table 600-1	RSA 485:16-e; RSA 485-C:4, III; RSA 485-C:6, V & VI

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Lea Anne S. Atwell, P.G.	Title:	Hazardous Waste Remediation Bureau, Emerging Contaminants Coordinator
Address:	Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-6572
		Fax#:	(603) 271-0656
		E-mail:	leanne.atwell@des.nh.gov

The rules also can be viewed in PDF at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, April 12, 2019**

YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING A PUBLIC HEARING

- Fax E-mail Other format (specify):

NN 2019-15 Continued

9. Public hearing scheduled for:

Date and Time: **Monday, March 4, 2019 at 5:30 PM**Place: **All Purpose Room, James Mastricola Upper Elementary School, Merrimack, NH**Date and Time: **Tuesday, March 5, 2019 at 1:00 PM**Place: **Auditorium, DES Offices, 29 Hazen Drive, Concord NH**Date and Time: **Tuesday, March 12, 2019 at 5:30 PM**Place: **NHDES Pease Field Office, Room A, 222 International Drive, Suite 175, Portsmouth, NH**10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS #19:002, dated 01/14/19:**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules. Any cost or benefit associated with the proposed rules is attributable to RSA 485-C:6, I, and not the rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):**A. To State general or State special funds:**

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

Because any costs are attributable to the statute, not the rules, the rules do not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision, and so do not violate Part I, Article 28-a of the New Hampshire Constitution. In any event, any costs that might be associated with the rules are within the scope of modifications allowable under *City of Concord v. State of New Hampshire*, 164 N.H. 130 (N.H. 2012).

Env-Dw 700 various sections and paragraphs; Env-Dw 800 various sections and paragraphs

Notice Number	2019-16	Rule Number	
1. Agency Name & Address:		2. RSA Authority:	RSA 485:2, V; RSA 485:3, I(b)
		3. Federal Authority:	n/a
Department of Environmental Services		4. Type of Action:	
29 Hazen Drive		Adoption	X
P.O. Box 95		Amendment	X
Concord, NH 03302-0095		Repeal	
		Readoption	
		Readoption w/amendment	X

5. Short Title: **Water Quality Standards, Monitoring, Compliance, Reporting, and Public Notification for Certain Perfluorochemicals**

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules in Env-Dw 700 establish drinking water standards as maximum contaminant levels (MCLs) and/or maximum contaminant level goals (MCLGs) for numerous regulated chemicals, and require public water systems to monitor and comply with the standards and to report monitoring results to the Department. The existing rules in Env-Dw 800 establish public notice requirements for public water systems. The rules are proposed to be amended to establish MCLs and MCLGs and to add monitoring, compliance, reporting, and public notification requirements for four perfluorochemicals (PFCs) to the regulated contaminants list as required by RSA 485:16-e. The standards are specific to the State of New Hampshire as these contaminants are not currently regulated under the federal Safe Drinking Water Act.

Proposed amendments would (1) identify nanograms per liter (ng/L) as a unit of measure for MCLs and MCLGs; (2) eliminate the requirement for the owner or operator (O/O) of a laboratory that is seeking approval for an alternate analysis method to identify the specific PWSs for which the alternate method would be used, meaning that once an alternate method is approved, it could be used for any PWS; (3) adjust the language of Env-Dw 808.01, Env-Dw 811.02(d), and Env-Dw 811.07(c) to reflect the addition of four PFC contaminants. Proposed new rules would establish new NH-specific, enforceable MCLs for perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorononanoic acid (PFNA), and perfluorohexane sulfonic acid (PFHxS), as well as monitoring, compliance, reporting, and public notification requirements for those PFCs. The new MCLs would be applicable to all community and non-transient/non-community public water systems in the State of New Hampshire.

6. (b) Brief description of the groups affected:

The rules affect owners and operators of community and non-transient/non-community public water systems.

6. (c) Specific section(s) of state statute or federal statute or regulation the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented	Federal Regulation(s) Implemented
Env-Dw 701.03(d)-(f)	RSA 485:3, I; RSA 485:16-e	
Env-Dw 705.06	RSA 485:3, I; RSA 485:16-e	
Env-Dw 707.06(d)-(e)	RSA 485:3, I; RSA 485:16-e	
Env-Dw 708.01(e)	RSA 485:3, I; RSA 485:16-e	
Env-Dw 712.23 - 712.30	RSA 485:3, I; RSA 485:16-e	
Env-Dw 808.01; Env-Dw 808.27-808.30	RSA 485:43; RSA 485:16-e	

NN 2019-16 Continued

(Item 6.(c) continued)

Rule Section(s)	State Statute(s) Implemented	Federal Regulation(s) Implemented
Env-Dw 811.02(d); Env-Dw 811.07(c); Env-Dw 811.22(b), Table 811-1; Env-Dw 811.25(a), Table 811-2	RSA 485:43; RSA 485:16-e	

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: Harrison "Chip" Mackey Title: DWGB, Drinking Water Quality Manager
Address: Dept. of Environmental Services Phone #: (603) 271-0655
29 Hazen Drive; P.O. Box 95 Fax#: (603) 271-0656
Concord, NH 03302-0095 E-mail: harrison.mackey@des.nh.gov

The rules also can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-

800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: 4:00 p.m. on Friday, April 12, 2019

YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING A PUBLIC HEARING Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Monday, March 4, 2019 at 5:30 PM**Place: **All Purpose Room, James Mastricola Upper Elementary School, Merrimack, NH**Date and Time: **Tuesday, March 5, 2019 at 1:00 PM**Place: **Auditorium, DES Offices, 29 Hazen Drive, Concord NH**Date and Time: **Tuesday, March 12, 2019 at 5:30 PM**Place: **NHDES Pease Field Office, Room A, 222 International Drive, Suite 175,
Portsmouth, NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS #19:001, dated 01/14/19:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules. Any cost or benefit associated with the proposed rules is attributable to RSA 485:16-e and not the rules. Not applicable to Env-Dw 712.23 through Env-Dw 712.30 which are new.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

Any cost or benefit associated with the proposed rules is attributable to RSA 485:16-e and not the rules.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

NN 2019-16 Continued

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

Because any costs are attributable to the statute, not the rules, the rules do not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision, and so do not violate Part I, Article 28-a of the New Hampshire Constitution. In any event, any costs that might be associated with the rules are within the scope of modifications allowable under *City of Concord v. State of New Hampshire*, 164 N.H. 130 (N.H. 2012).

Notice Number 2019-17

Rule Number He-W 837

<p>1. Agency Name & Address:</p> <p>Dept. of Health & Human Services Division of Medicaid Services 129 Pleasant Street, Brown Bldg. Concord NH 03301</p>	<p>2. RSA Authority: <u>RSA 126-AA:2, III(b) intro. & (b)(4)</u></p> <p>3. Federal Authority: <u>42 U.S.C. 1315, Pub.L. 111-148, 42 U.S.C. 1396(a)(10)(A)(i)(VIII)</u></p> <p>4. Type of Action:</p> <p>Adoption <u> X </u></p> <p>Amendment <u> </u></p> <p>Repeal <u> </u></p> <p>Readoption <u> </u></p> <p>Readoption w/amendment <u> </u></p>
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5. Short Title: **NH Granite Advantage Health Care Program**

6. (a) Summary of what the rule says and of any proposed amendments:

The proposed new rule, He-W 837, describes the community engagement requirements for the Granite Advantage program, exemptions from the work and community engagement program, qualifying activities for community engagement, impacts of noncompliance with the community engagement requirement, and how to cure deficit community engagement hours.

In 2018, Chapter Law 342 (SB 313) replaced the New Hampshire Health Protection Program (NHHPP), which expires on 12/31/18, with the Granite Advantage Health Care Program (Granite Advantage) under RSA 126-AA effective on January 1, 2019. In accordance with SB 313, the Department of Health and Human Services filed a waiver amendment and extension with the Centers for Medicare and Medicaid Services (CMS) to continue its existing authority to implement work and community engagement requirements as a condition of continued eligibility under section 1902(a)(10)(A)(i)(VIII) [42 U.S.C 1396(a)(10)(A)(i)(VIII)] of the Social Security Act. The waiver was approved by CMS on November 30, 2018.

The Granite Advantage program is currently also the subject of Proposed Interim Rule INT 2018-26, where rulemaking notice was published in the Rulemaking Register on December 13, 2018. The Joint Legislative Committee on Administrative Rules (JLCAR) objected to the rule on December 20, 2018, and the Department responded by submitting an amended proposal on January 10, 2019, which is now being considered by JLCAR.

This initial proposal differs from the Department’s Objection Response to the Interim Rule as follows:

- Editorial changes were made throughout the rule to remove extra spacing, and insert semicolons, periods, and verbs as needed. References to He-W 837.04 were inserted in He-W 837.05.
- No major substantive changes were made.

6. (b) Brief description of the groups affected:

The proposed rule affects the newly eligible Medicaid beneficiaries who are currently receiving their Medicaid benefits through the NH Health Protection Program. These beneficiaries will be transitioned to the Granite Advantage Health Care Program and if not otherwise exempted, be required to engage in 100 hours per month of qualifying community engagement activities as a condition of eligibility for Granite Advantage.

NN 2019-17 Continued

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section	Statute Implemented
He-W 837.01	RSA 126-AA; 42 U.S.C. §12101 et seq.; Pub. L. No. 93-112; Pub. L. 111-148; 42 CFR 435.916
He-W 837.02	42 CFR 435.603(a)-(h)
He-W 837.03	RSA 126-AA
He-W 837.04	RSA 126-AA; RSA 167:82,II(g); 42 CFR 435.4; 42 CFR 440.315(f)
He-W 837.05	RSA 126-AA; RSA 167:3-i; RSA 167:6, IV-VI; RSA 167:3-e; RSA 167:3-f; §1902(a)(10)(A)(ii)(XV); 42 CFR 435.4; 42 CFR 435.121; §1902(e)-(f); §1915(c); 42 U.S.C. Chapter 7; 42 U.S.C. 1381 et seq.
He-W 837.06	RSA 126-AA
He-W 837.07	RSA 126-AA; RSA 641:3; RSA 167:82,II(g)
He-W 837.08	RSA 126-AA; 45 CFR 475
He-W 837.09	RSA 126-AA; 45 CFR 400.75
He-W 837.10	RSA 126-AA; 42 U.S.C. §12101 et seq.
He-W 837.11	RSA 126-AA
He-W 837.12	RSA 126-AA; 24 CFR 5.2005; 24 CFR 5.2009
He-W 837.13	RSA 126-AA
He-W 837.14	RSA 126-AA; 24 CFR 5.2005; 24 CFR 5.2009
He-W 837.15	RSA 126-AA
He-W 837.16	RSA 126-AA
He-W 837.17	RSA 126-AA
He-W 837.18	RSA 126-AA
He-W 837.19	RSA 126-AA

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Kim Reeve, Esq.** Title: **Legal Counsel – Admin Rules**
Address: **NH Dept. of Health & Human Services** Phone #: **271-9640**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant St. E-mail: **Kimberly.reeve@dhhs.nh.gov**
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

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8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **February 26, 2019**

 Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, February 19, 2019 5:30 PM**

Place: **DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:008, dated January 16, 2019

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**

Not applicable, as this is a new rule.

2. **Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

3. **Cost and benefits of the proposed rule(s):**

Chapter 342:1, Laws of 2018 (SB 313) established the New Hampshire Granite Advantage Health Care Program and imposed a work and community engagement requirement for participation in the program. Specifically, the bill established RSA 126-AA:2, III(a), which reads as follows:

“Newly eligible adults who are unemployed shall be eligible to receive benefits under this paragraph if the commissioner finds that the individual is engaging in at least 100 hours per month based on an average of 25 hours per week in one or more work or other community engagement activities...”

RSA 126-AA:2, III(b)-(d) provides for a number of good cause exemptions to this requirement, as well as a list of circumstances under which the work requirement shall not apply. To the extent that the work requirement provisions contained in the proposed rule implement these statutory provisions, any cost is attributable to statute rather than to the rule.

- A. **To State general or State special funds:**

None.

- B. **To State citizens and political subdivisions:**

None.

- C. **To independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposal does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.