



# NEW HAMPSHIRE RULEMAKING REGISTER

## OFFICE OF LEGISLATIVE SERVICES

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CONCORD, NEW HAMPSHIRE 03301-6312

Tel. (603) 271-3680

Website: [www.gencourt.state.nh.us/rules/index.html](http://www.gencourt.state.nh.us/rules/index.html)

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VOLUME XL, Number 26, June 25, 2020

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### CORRECTION

When this Rulemaking Register went online on June 25, 2020, the year “2019” was incorrectly stated instead of “2020” on page 12 for the hearing date and deadline for public comment in the rulemaking notice for NN 2020-59 from the Department of Environmental Services, Air Related Programs, “Purpose and Definitions for Subtitle Env-A relative to Air-Related Programs”. The same error occurred on Page 14 and 15 in the rulemaking notice for NN 2020-60 from the Department of Environmental Services, Cross-Program Rules, “Non-Confidential Information.” The errors in the years have now been corrected as of 3:00 p.m. on June 26, 2020.

#### 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 June 26, 2020 has been cancelled**

REGULAR MEETING: **Thursday, July 16, 2020 9:00 a.m.**  
**This remote meeting will take place as a Zoom webinar, with further instructions on Page 19 of this Register.**  
<http://gencourt.state.nh.us/rules/default.htm>.

CONTINUED MEETING: **Thursday, August 6, 2020 9:00 a.m.**  
**This remote meeting will take place as a Zoom webinar, with further instructions TBA.**

*See 2020 JLCAR Meeting dates and deadlines on page i.*

**JLCAR MEETING DATES AND RELATED FILING DEADLINES  
JULY-DECEMBER, 2020**

The JLCAR has voted to hold its regularly scheduled monthly meetings for July through December, 2020 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.

<b>Regular Meeting Filing Deadline</b>	<b>Regular Meeting Date</b>	<b>Continued Meeting Date</b>
July 2	<b>July 16</b>	August 6
August 6	<b>August 20</b>	September 3
September 3	<b>September 17</b>	October 1
October 1	<b>October 15</b>	November 5
November 5	<b>November 19</b>	December 3
December 3	<b>December 17</b>	None

Notices of Proposed Rules

<u>Notice Number</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Page No.</u>
2020-56	He-C 900	Department of Health and Human Services, Commissioner Limitations on Child Restraints and Seclusion Practices	1
2020-57	He-E 802	Department of Health and Human Services Former Division of Elderly and Adult Services Nursing Facility Services	4
2020-58	Ed 306.14 and Ed 306.18(a)(7)	Board of Education Remote Instruction: Basic Instructional Standards and School Year	
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## RULEMAKING NOTICE FORM

Notice Number 2020-56Rule Number He-C 900

1. Agency Name &amp; Address:

**Dept. of Health & Human Services  
Office of the Commissioner  
129 Pleasant Street, Brown Bldg.  
Concord, NH 03301**

2. RSA Authority: RSA 126-U:9, I

3. Federal Authority: \_\_\_\_\_

4. Type of Action:

Adoption X

Amendment \_\_\_\_\_

Repeal \_\_\_\_\_

Readoption \_\_\_\_\_

Readoption w/amendment \_\_\_\_\_

5. Short Title: **Limitations on Child Restraints and Seclusion Practices**

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

**The Department of Health and Human Services (Department) is proposing to adopt Chapter He-C 900 entitled “Child Restraint and Seclusion Practices” containing He-C 901, entitled “Limitations on Child Restraint and Seclusion Practices”. He-C 901 establishes the uniform standards and requirements for how the Department reviews records maintained by facilities regarding the use of seclusion and restraint as described in RSA 126-U:9, I(a). He-C 901 also establishes a uniform process for how the Department receives and investigates complaints of improper use of seclusion and restraint in facilities as described in RSA 126-U:9, I(b). He-C 901 applies to facilities as defined in RSA 126-U:1, III and foster family homes as defined in RSA 170-E:25, II(a)(1).**

The proposed He-C 901:

- Provides the purpose and scope of the rule;
- Provides the definitions associated with the rule;
- Establishes the written policy requirements for facilities and foster family homes;
- Establishes requirements for facilities on the duty to report and on record-keeping;
- Establishes requirements for foster family homes on the duty to report;
- Establishes annual reporting requirements for facilities, foster family homes, and the Department;
- Establishes the process and requirements in which the Department shall review restraint and seclusion records; and
- Establishes a complaint procedure to include the filing of complaints, review of complaints, and the investigation of complaints.

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

**Groups affected by this rule include any facility as defined in RSA 126-U:1, III and foster family homes as defined in RSA 170-E:25, II(a)(1).**

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

<b>Rule Section</b>	<b>State or Federal Statute the Rule Implements</b>
He-C 901.01	RSA 126-U:9, I(a); RSA 126-U:9, I(b)
He-C 901.02	RSA 126-U:1, III; RSA 170-E:25, II(a)
He-C 901.03	RSA 126-U:1; RSA 170-E:25, II(a)
He-C 901.04	RSA 126-U:2; RSA 126-U; RSA 126-U:1, I; RSA 126-U:7-a; RSA 126-U:10
He-C 901.05	RSA 126-U:7; RSA 126-U:9
He-C 901.06	RSA 126-U:7-a; RSA 126-U:7, II
He-C 901.07	RSA 126-U:7-a; RSA 126-U:9
He-C 901.08	RSA 126-U:9
He-C 901.09	RSA 126-A:4.; RSA 126-U:9
He-C 901.10	RSA 126-A:4, III; RSA 126-U:1; RSA 125-U:7; RSA 126-U:7-a
He-C 901.11	RSA 169-C:29; RSA 126-U:4, RSA 126-U:5, RSA 126-U:5-a and RSA 126-U:5b; RSA 126-U:9

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

Name: **Allyson Zinno** Title: **Administrative Rules Coordinator**  
Address: **Dept. of Health and Human Services** Phone #: **(603) 271-9604**  
**Administrative Rules Unit** Fax#: **(603) 271-5590**  
**129 Pleasant Street, 2<sup>nd</sup> Floor** E-mail: **allyson.zinno@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>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Tuesday, August 11, 2020**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, August 4, 2020 at 1:00pm.**

Place: [\*\*DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH\*\*](#)

**This meeting can also be accessed via zoom using the below information:**

Join Zoom Meeting: <https://nh-dhhs.zoom.us/j/2744551778?pwd=RnJxZFVPMlIIOQ3pqQW5FZ09YR2xidz09>

Meeting ID: 274 455 1778

Password: 866326

One tap mobile: +13126266799,,2744551778#,,1#,866326# US (Chicago)  
+16465588656,,2744551778#,,1#,866326# US (New York)

Dial by your location: +1 312 626 6799 US (Chicago)  
+1 646 558 8656 US (New York)  
+1 301 715 8592 US (Germantown)  
+1 346 248 7799 US (Houston)  
+1 669 900 9128 US (San Jose)  
+1 253 215 8782 US (Tacoma)

**The following email address will be monitored during the meeting if there is any public access or technical problem during the meeting: [allyson.zinno@dhhs.nh.gov](mailto:allyson.zinno@dhhs.nh.gov).**

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

FIS # 20:040, dated June 10, 2020

**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):**

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

The Department of Health and Human Services states that while the proposed rule is consistent with current practice, it may nonetheless require additional administrative hours to review and complete an annual report on restraint and seclusion records and for the review and investigation of complaints. The Department states that any impact on costs is indeterminable. There will be no cost or benefit to any State special fund.

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

None.

**C. To independently owned businesses:**

The proposed rule may require additional administrative hours on the part of facilities and foster family homes, in order to ensure they have written policies, maintain records, and report appropriately on child seclusion and restraint. Any such cost is indeterminable.

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

**The proposed rule modifies an existing program or responsibility, but 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.**

## RULEMAKING NOTICE FORM

Notice Number 2020-57Rule Number He-E 802

1. Agency Name &amp; Address:

**Dept. of Health & Human Services  
Division of Long Term Supports and Services  
Bureau of Elderly & Adult Services  
105 Pleasant Street, Main Building  
Concord, NH 03301**

2. RSA Authority: RSA 161:4-a, IX and  
RSA 151-E:123. Federal Authority: 42 USC 1396a and 1396r;  
42 CFR 483.132

4. Type of Action:

Adoption   X  Amendment           Repeal               Readoption           Readoption w/amendment           5. Short Title: **Nursing Facility Services**

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

**He-E 802 describes the Medicaid coverage of nursing facility services, including provider participation requirements, clinical eligibility requirements, covered and non-covered services, resident rights, and resident transfer and discharge requirements. He-E 802 was an interim rule and expired on September 16, 2019.**

**The Department of Health and Human Services (Department) is proposing to adopt He-E 802. The proposed changes to this rule, as compared to the expired rule, include:**

- **Updating the rule for better clarity, program integrity, and consistency with other Departmental rules;**
- **Updating the definitions by:**
  - **Adding the definitions of “Division of Long Term Supports and Services”, “institution for individuals with intellectual disabilities or persons with related conditions”, and “skilled medical professional”;**
  - **Clarifying the definitions of “activities of daily living (ADLs)”, “institution for mental disease (IMD)”, “nursing facility”, and “swing bed”; and**
  - **Removing the definition of “intermediate care facility for the mentally retarded (ICF/MR)”;**
- **Updating the rule to clarify that eligibility for atypical services shall not begin prior to the completion of an assessment;**
- **Updating the rule to allow for a skilled medical professional to make the clinical eligibility determination of an applicant;**

- Clarifying the request for redetermination after a clinical denial process;
- Updating the rule to add that behavioral health services in accordance with 42 CFR 483.40 shall be covered nursing facility services;
- Updating the rule to require nursing facilities to contact the Department when a discharge to the community is planned to ensure targeted transitional case management pursuant to RSA 151-E:17;
- Updating the rule to include a new section He-E 802.18 on specialized rate requests establishing a formal process to request a specialized rate;
- Updating the rule to address changes to state and federal law; and
- Updating the rule by making minor substantive and editorial changes throughout.

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

**Groups affected by this rule include nursing facilities, providers, and the individuals that are residing in those facilities.**

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

<b>RULE</b>	<b>STATUTE/FEDERAL REGULATION</b>
He-E 802.01	RSA 161:4-a, IX and RSA 151
He-E 802.02	42 USC 1396r and RSA 151:2
He-E 802.03	RSA 151-E:3
He-E 802.04	42 USC 1396r; 42 CFR 483.132; RSA 151-E
He-E 802.05	RSA 151-E:3
He-E 802.06	RSA 151-E:3
He-E 802.07	42 USC 1396a and 1396r
He-E 802.08	42 USC 1396r
He-E 802.09	RSA 161:4-a, IX, 42 USC 1396r and RSA 161:4-a, IX
He-E 802.10	42 CFR 483.10(i)(F)
He-E 802.11	42 USC 1396r and RSA 151:21
He-E 802.12	42 USC 1396r
He-E 802.13	42 USC 1396r
He-E 802.14	42 USC 1396r and RSA 151:21
He-E 802.15	42 USC 1396r; 42 CFR 447.40; RSA 151:25
He-E 802.16	42 USC 1396r and RSA 151:26
He-E 802.17	42 USC 1396r and RSA 151:26
He-E 802.18	RSA 541-A:19-b
He-E 802.19	RSA 541-A:19-b



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

Name: **Allyson Zinno** Title: **Administrative Rules Coordinator**  
 Address: **Dept. of Health and Human Services** Phone #: **(603) 271-9604**  
**Administrative Rules Unit** Fax#: **(603) 271-5590**  
**129 Pleasant Street, 2<sup>nd</sup> Floor** E-mail: **allyson.zinno@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>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Wednesday, August 5, 2020**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Wednesday, July 29, 2020 at 2:00pm.**  
 Place: **[DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH](#)**

**This meeting can also be accessed via zoom using the below information:**

Join Zoom Meeting:

<https://nh-dhhs.zoom.us/j/2744551778?pwd=RnJxZFVPMlIIOQ3pqQW5FZ09YR2xidz09>

Meeting ID: **274 455 1778**

Password: **866326**

One tap mobile: **+13126266799,,2744551778#,,1#,866326# US (Chicago)**  
**+16465588656,,2744551778#,,1#,866326# US (New York)**

Dial by your location: **+1 312 626 6799 US (Chicago)**

**+1 646 558 8656 US (New York)**

**+1 301 715 8592 US (Germantown)**

**+1 346 248 7799 US (Houston)**

**+1 669 900 9128 US (San Jose)**

**+1 253 215 8782 US (Tacoma)**

**The following email address will be monitored during the meeting if there is any public access or technical problem during the meeting: [allyson.zinno@dhhs.nh.gov](mailto:allyson.zinno@dhhs.nh.gov).**

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

FIS # 20:052, dated June 11, 2020

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**  
 Not applicable; the existing interim rule expired in September 2019.
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):**

The proposed rule describes Medicaid coverage of nursing facility services, including provider participation requirements, clinical eligibility requirements, covered and non-covered services, resident rights, and resident transfer and discharge requirements. There may be costs and benefits for nursing facilities related to each of these elements. Sections A-C below describe the fiscal impacts of the rule as they compare to the previous rule that expired September 16, 2019.

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

Expenses associated with the proposed rules are paid for with a combination of federal Medicaid funds, state general funds, and other sources, such as county funds. Because the general fund appropriation is established in each budget by the NH state legislature, any increase or decrease in service utilization as a result of these rules must fall within the budgeted appropriation. Hence, only with a new appropriation would there be any impact on general fund expenditures.

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

There will be no impact to political subdivisions in the current FY 2020/21 budget. Any impact in later years will be determined by the cap on county costs established in each biennial budget.

The proposed rule clarifies that coverage is for generic or over-the-counter products. This rule may result in an indeterminable cost for state citizens who must pay for other products not covered by the rule.

**C. To independently owned businesses:**

The proposed rule may result in an indeterminable cost to nursing facilities related to a requirement that they contact the Department of Health and Human Services for targeted case management services. In addition, the proposed rule outlines new requirements for nursing facilities to submit a request for a specialized rate outside of rate setting calculated in accordance with He-E 806. The rule language requires nursing facilities to submit requests pursuant to the Department's "specialized rate request" form and describes the process once a request is submitted. This requirement could increase administrative costs to nursing facilities, but the Department expects the impact to be minimal.

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

**The proposed rule modifies an existing program or responsibility, but 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.**

## RULEMAKING NOTICE FORM

Notice Number

**2020-58**

Rule Number

**Ed 306.14 and Ed  
306.18(a)(7)**

1. Agency Name &amp; Address:

**State Board of Education  
c/o Department of Education  
101 Pleasant Street  
Concord, NH 03301**

2. RSA Authority:

**RSA 21-N:9, I**

3. Federal Authority:

4. Type of Action:

Adoption

Amendment

Repeal

Readoption

Readoption w/amendment

**x****x**

5. Short Title:

**Remote Instruction: Basic Instructional Standards and School Year**

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

**Ed 306.14 on basic instructional standards is being readopted with amendment by inserting a new paragraph requiring school districts to have the capability to offer remote instruction as necessary. Ed 306.18(a)(7) on school year is being amended to allow discretion for school districts to determine how often remote instruction is used and for what reasons. The current Ed 306.18(a)(7) is an emergency rule which will expire on September 8, 2020 and will revert back to rule language as effective 3-27-14, Document #10556.**

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

**School districts, staff, students, and parents of students are affected by these rules.**

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

<b>Rule</b>	<b>State or Federal Statute or Federal Regulation Implemented</b>
Ed 306.14	RSA 186:5; RSA 189:1-a; RSA 193-C:3, I(a)
Ed 306.18(a)intro and (a)(7)	RSA 189:1; RSA 189:24

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

Name: **Amanda Phelps**

Title: **Administrative Rules  
Coordinator**

Address: **Department of Education  
101 Pleasant Street  
Concord, NH 03301**

Phone #: **(603) 271-2718**

Fax#: **(603) 271-1953**

E-mail: **Amanda.phelps@doe.nh.gov**

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: **August 20, 2020**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **August 13, 2020 at 10:00 a.m.**

Place:

**In-Person: 101 Pleasant Street, Concord, NH 03301 Room 100f**

**In order for the agency ensure compliance with social distancing recommendations due to the COVID-19 pandemic, members of the public wishing to testify on the rule in person must complete the following steps:**

**1. Email [amanda.phelps@doe.nh.gov](mailto:amanda.phelps@doe.nh.gov)**

**2. In the subject line type the following “WISHING TO TESTIFY IN PERSON ON Ed 306.14 and Ed 306.18(a)(7)”**

**3. In the body of the email type the following: Your name, the organization you may be representing, your town of residence, your phone number**

**If you have written comment in addition to oral testimony, please submit it in the email as a word or pdf attachment.**

**Telephonic: (800) 356-8278 Pin: 125563 State name and affiliation when prompted**

**Members of the public wishing to testify over the phone must complete the following steps:**

**1. Email [amanda.phelps@doe.nh.gov](mailto:amanda.phelps@doe.nh.gov)**

**2. In the subject line type the following “WISHING TO TESTIFY OVER THE PHONE ON Ed 306.14 and Ed 306.18(a)(7)”**

**3. In the body of the email type the following: Your name, the organization you may be representing, your town of residence, your phone number**

**If you have written comment in addition to oral testimony, please submit it in the email as a word or pdf attachment.**

**Written Testimony**

Members of the public wishing only to submit written testimony at any time, either prior to the hearing, or up to August 20, 2020, must complete the following steps 1 or 2:

1. (a) Email [amanda.phelps@doe.nh.gov](mailto:amanda.phelps@doe.nh.gov);  
(b) In the subject line type the following “SUBMITTING TESTIMONY ON Ed 306.14 and Ed 306.18(a)(7)”; and  
(c) In the body of the email type the following: Your name, the organization you may be representing, your town of residence, your phone number; OR
2. Submit testimony in writing via mail or fax to the contact information referenced in #7 above.

If any member of the public has any issue with access to the meeting, please email, or call Amanda Phelps at the contact information referenced in item #7 above.

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

FIS # 20:049 , dated 6/10/2020

**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.

**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:

**Relative to Part I, Article 28-a of the N.H. Constitution, there are no added costs for these proposed rules to the state or political subdivisions. The proposed rules do not create an unconstitutional, unfunded mandate because they do not represent a new, expanded, or modified program or responsibility to the school district in such a way as to necessitate additional local expenditures. The capability for remote instruction exists in some fashion in every district and can be complimented by the Virtual Learning Academy Charter School (VLACS).**

## RULEMAKING NOTICE

Notice Number	<b>2020-59</b>	Rule Number	<b>Env-A 100</b>
1. Agency Name & Address:		2. RSA Authority:	RSA 125-C:4, I
		3. Federal Authority:	42 U.S.C. 7401, <u>et seq.</u>
Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095		4. Type of Action:	
		Adoption	<u>  X  </u>
		Amendment	<u>          </u>
		Repeal	<u>  X  </u>
		Readoption	<u>  X  </u>
		Readoption w/amendment	<u>  X  </u>

5. Short Title: **Purpose and Definitions for Subtitle Env-A relative to Air-Related Programs**

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

The existing rules contain definitions for terms used throughout subtitle Env-A. Pursuant to RSA 541-A, definitions have not expired since 1995; since then new definitions have been added all in Part Env-A 101, resulting in more than half of the 200+ definitions having 3-digit section numbers and in existing definitions being repeatedly renumbered. Section numbers having 3 digits are both contrary to the Drafting and Procedure Manual for Administrative Rules and potentially confusing to users of the rules. The rules are proposed to be readopted with amendments in order to split the 200+ definitions into several parts so that no section has a 3-digit section number and to accommodate future additions without extensive renumbering. As part of this effort, a section will be added to explain the purpose of subtitle Env-A and of chapter Env-A 100, certain definitions will be clarified, and existing Env-A 103.01 - Env-A 103.05 (relative to claims of confidentiality) will be repealed as they are no longer needed because the subject is covered by Env-C 208.

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

The rules affect any individual or entity that engages in any activities that are subject to regulation under RSA 125-C, RSA 125-D, RSA 125-I, RSA 125-J, RSA 125-L, RSA 125-M, RSA 125-N, RSA 125-O, RSA 125-R, or RSA 141-E.

## 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 Statutes, Regulations Implemented
Env-A 100 (see below for specific sections)	RSA 125-C, RSA 125-D, RSA 125-I, RSA 125-J, RSA 125-L, RSA 125-M, RSA 125-N, RSA 125-O, RSA 125-R; RSA 141-E	
Env-A 102.34	RSA 125-C:4, I(a)	40 CFR § 52.21
Env-A 102.53	RSA 125-C:4, I(k); RSA 125-C:6, XI	42 U.S.C. § 7651a(7)
Env-A 103.01	RSA 125-I:5, V	
Env-A 103.04	RSA 125-D:3	42 U.S.C. § 7651a(26); 40 CFR 72.2
Env-A 103.11	RSA 125-C:4, I(a); RSA 125-C:6, XIV; RSA 125-C:11, I & III	42 U.S.C. §§ 7410, 7502(c), 7511c
Env-A 103.14	RSA 125-C:4, I(a)	42 U.S.C. § 7661a(b)(10)
Env-A 103.21	RSA 125-C:4, I(a); RSA 125-I:6, II;	

Rule Section(s)	State Statute(s) Implemented	Federal Statutes, Regulations Implemented
	RSA 141-E:4, II	
Env-A 103.32	RSA 125-C:4, I(a)	
Env-A 103.40	RSA 125-C:4, I(a); 125-L:1, IV	40 CFR § 52.21
Env-A 103.48	RSA 125-C:6, II	
Env-A 104.02	RSA 125-C:4, I(a)	42 U.S.C. § 7661(2); 40 CFR 70.2
Env-A 104.06	RSA 125-C:10, I	
Env-A 104.07	RSA 125-C:10, II	42 U.S.C. § 7661a(b)(6); 40 CFR 70.7(e)(2)
Env-A 104.22	RSA 125-C:4, I(a)	
Env-A 104.53	RSA 125-C:4, I(g)	42 U.S.C. § 7661b; 40 CFR 70.2
Env-A 105.17	RSA 125-C:11, I & III	
Env-A 105.31 - 105.38	RSA 125-C:4, I(a)	
Env-A 105.42	RSA 125-C:4, I(a)	
Env-A 105.45	RSA 125-C:4, I(a); RSA 125-C:6, II	40 CFR 51.110(s)
Env-A 105.47	RSA 125-C:4, I(a)	
Env-A 105.50	RSA 125-C:4, I(a)	

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

Name: Karla McManus Title: ARD Planning and Rules Manager  
Address: Dept. of Environmental Services Phone #: (603) 271-6854  
29 Hazen Drive; P.O. Box 95 Fax#: (603) 271-1381  
Concord, NH 03302-0095 E-mail: [Karla.McManus@des.nh.gov](mailto:Karla.McManus@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, July 31, 2020**

**YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Wednesday, July 22, 2020 at 10:00 AM**

Place: **This will be a virtual hearing via WebEx. Contact Karla McManus at [Karla.McManus@des.nh.gov](mailto:Karla.McManus@des.nh.gov) to obtain the link, meeting number, and password.**

**You also may call in to the meeting:**

**Call in Number: +1-415-655-0001**

**Access Code: 126 907 4596**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS #20:027 , dated 03/18/2020:

**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.

**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:**

There are no costs associated with these rules. The rules thus 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.



## RULEMAKING NOTICE

Notice Number	<b>2020-60</b>	Rule Number	<b>Env-C 208.06</b>
1. Agency Name & Address:	2. RSA Authority: <u>RSA 541-A:16, I(b)</u>		
Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	3. Federal Authority: _____		
	4. Type of Action:		
	Adoption	_____	
	Amendment	_____	
	Repeal	_____	
	Readoption	_____	
	Readoption w/amendment	<u>  <b>X</b>  </u>	

5. Short Title: **Non-Confidential Information**

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

The existing rules in Env-C 208 establish procedures for persons wishing to protect information submitted to the Department that they believe is confidential (primarily confidential business information). Env-C 208.06 identifies information that cannot be claimed as confidential. The rule is proposed to be readopted with amendments in order to ensure that the information currently identified as non-confidential by Env-A 103 remains non-confidential after that part is repealed in a separate rulemaking.

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

The rule affects anyone who submits information to the Department.

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

Rule Section(s)	State Statute(s) Implemented
Env-C 208.06	RSA 91-A:5, IV

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

Name:	Peter Brunette	Title:	Legal Coordinator
Address:	Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-2464
		Fax#:	(603) 271-8805
		E-mail:	<a href="mailto:Peter.Brunette@des.nh.gov">Peter.Brunette@des.nh.gov</a>

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, July 31, 2020**

**YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING**

Fax

E-mail

Other format (specify):

## 9. Public hearing scheduled for:

Date and Time: **Wednesday, July 22, 2020 at 10:00 AM**

Place: **This will be a virtual hearing via WebEx. Contact Karla McManus at [Karla.McManus@des.nh.gov](mailto:Karla.McManus@des.nh.gov) to obtain the link, meeting number, and password.**

**You also may call in to the meeting:**

**Call in Number: +1-415-655-0001**

**Access Code: 126 907 4596**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS #20:026 , dated 03/18/2020:**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.

**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:

There are no costs associated with this rule. The rule thus does 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 does not violate Part I, Article 28-a of the New Hampshire Constitution.

**RULEMAKING NOTICE FORM**

Notice Number 2020-61

Rule Number Saf-C 7006.04

<p>1. Agency Name &amp; Address:</p> <p><b>Department of Safety 33 Hazen Drive Concord, NH 03305</b></p>	<p>2. RSA Authority: <u><b>RSA 21-P:14, VIII(c) and (d)</b></u></p> <p>3. Federal Authority: <u>N/A</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>  <b>X</b>  </u></p>
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5. Short Title: **Emergency Communication Rules, Confidentiality of Records**

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

**Saf-C 7006.04 includes a provision for the Bureau of Emergency Communications to comply with court orders for the release of 911 recordings. The existing rule also provides for the release of a 911 recordings to the caller whose voice is captured on the recording. Since the adoption of this rule, Superior Courts have held that Saf-C 7006.04 exceeds the scope of RSA 106-H:14. Furthermore, the Attorney General’s Office has advised that the current rule is unenforceable. RSA 106-H:14 limits the Bureau’s release of 911 records to law enforcement for investigative purposes on a case by case basis and to the Department of Environmental Services for the sole purpose of locating certain wells.**

**The proposed amendments remove the provisions in Saf-C 7006.04 that exceed the scope of RSA 106-H:14. In addition, the amendments reorganize subsections and make edits to clarify the meaning of the rule.**

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

**Those affected include:**

**People who obtain court orders in contravention of RSA 106-H:14, who will no long receive 911 recordings from the bureau; and**

**Callers who will no longer be able to obtain copies of their recorded 911 calls.**

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

<b>Rule</b>	<b>Statute</b>
Saf-C 7006.04	RSA 106-H:12; RSA 106-H:14

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

Name: **Heidi Barba** Title: **Staff Counsel**  
Address: **Department of Safety** Phone #: **(603) 223-4341**  
**Legal Unit** Fax#: **(603) 271-1033**  
**33 Hazen Drive** E-mail: **Heidi.Barba@dos.nh.gov**  
**Concord, NH 03305**

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: **July 31, 2020 at 4:30 pm.**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **July 24, 2020 at 1:00 pm**

Place: **Department of Safety**  
**2<sup>nd</sup> Floor Conference Room**  
**33 Hazen Drive**  
**Concord, NH 03305**

**To attend in person or to make arrangements to attend by telephone:**  
email [Heidi.Barba@dos.nh.gov](mailto:Heidi.Barba@dos.nh.gov) or call  
**603.223-4341 by 4:30 pm on July 23, 2020. Advance notice is necessary**  
**for COVID-19 safety planning purposes.**

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

FIS # 20-054, dated 6/18/2020

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.
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:

**The proposal does not violate Part I, Article 28-a because:**

- 1. Although the proposed amended rule mandates or assigns a program or a responsibility to political subdivisions with law enforcement agencies, the rule does not increase the cost any political subdivision must pay.**
- 2. The proposed amended rule also does not require any state funding because it does not mandate or assign a program or a responsibility to any political subdivision in such a way as to increase the cost any political subdivision must pay.**

**REMOTE REGULAR MEETING  
LOGIN INSTRUCTIONS**

**THURSDAY, JULY 16, 2020 @ 9:00 A.M.**

The Regular Meeting of the Joint Legislative Committee on Administrative Rules (JLCAR) on July 16, 2020 will be held as a Zoom webinar.

Committee and staff members will receive secure Zoom invitations by e-mail.

Members of the public and state agency personnel who plan to attend the meeting do not have to pre-register, but if they wish to speak they should contact Cheryl Walsh in the Administrative Rules office at [cheryl.walsh@leg.state.nh.us](mailto:cheryl.walsh@leg.state.nh.us). This makes it easier to keep track of how many persons may have to be upgraded in the meeting as participants and therefore to ensure participation by agency staff and the public.

Members of the public and state agency personnel may attend using one of the following alternatives:

1. Join the webinar: <https://zoom.us/j/96467054129>

2. iPhone one-tap:

US: +13126266799,,96467054129# or +19292056099,,96467054129#

3. Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782

Webinar ID: 964 6705 4129

International numbers available: <https://zoom.us/u/adQ2uZO3Km>

The following e-mail address will be monitored throughout the meeting by JLCAR staff who can assist with and alert the JLCAR to any technical issues: [diane.oneil@leg.state.nh.us](mailto:diane.oneil@leg.state.nh.us), or call 603-271-6647.