

## INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number

**2022-4**

Rule Number

**Saf-C 5901.571; Saf-C  
5922.02; Saf-C 5922.04;  
Saf-C 5922.11**

1. Agency Name & Address:

**Department of Safety  
33 Hazen Drive  
Concord, NH 03301**

2. RSA Authority:

**RSA 153-A:20**

3. Federal Authority:

**n/a**

4. Type of Action:

Adoption

**X**

Amendment

Repeal

Readoption

Readoption w/amendment

**X**

5. Filing Date: **4/13/22**

6. Short Title: **EMS Letters of Concern Rules**

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

Name: **Marta Modigliani**

Title: **Administrator**

Address: **33 Hazen Drive  
Concord, NH 03301**

Phone #: **603-227-0040**

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E-mail: **rules@dos.nh.gov**

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

8. Summary explaining the effect of the rule:

**Chapter 205, Laws of 2021 amended RSA 153-A:13, I to allow the commissioner of the Department of Safety to issue a letter of concern, as appropriate, when they determine that an applicant for an emergency medical services license or emergency medical provider is guilty of an act or offense listed in RSA 153-A:13, I. The proposed rules define “letter of concern”; specify that the letters of concern may be issued in lieu of a license suspension in accordance with the criteria set forth in Saf-C 5922.11; provides that in the case of a sustained complaint where a letter of concern is issued, the licensee shall not be placed on the division’s public list of licensees found to have violated RSA 153-A or Saf-C 5900; provides that in the case of a sustained complaint where a letter of concern is issued, the licensee shall not be reported to the National Registry of Emergency Medical Technicians, National Practitioner’s Data Bank, or the Centers for Medicare and Medicaid Services; and, in the case of sustained complaint where a letter of concern is issued, the head of the unit in which the licensee is affiliated, will be provided a copy of the investigation report and any hearing report upon request.**

9. Listing of people, enterprises, and government agencies affected by the rule:

**The groups affected by the proposed interim rules are individuals who are licensed EMS providers; owners of EMS units and vehicles; instructors for EMS providers; owners and operators of wheelchair vans for hire and chair van companies; and, the Bureau of Emergency Medical Services, Division of Fire Standards and Training and Emergency Medical Services.**

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

<b>Rule</b>	<b>Specific State Statute the Rule Implements</b>
Saf-C 5901.571	RSA 153-A:13, I; RSA 541-A:7
Saf-C 5922.02	RSA 153-A:14; RSA 153-A:20, VII
Saf-C 5922.04	RSA 153-A:13, III; RSA 541-A:29
Saf-C 5922.11	RSA 153-A:13, III, RSA 541-A:16, I(b)(2)

11. Summary of the effect upon the state if the rule were not adopted:

**The legislature amended RSA 153-A:13, I to allow the commissioner of the department of safety to issue a letter of concern, as appropriate, when they determine that an applicant for an emergency medical services license or emergency medical provider is guilty of an act or offense listed in RSA 153-A:13, I. Without the interim rules, the department may not have the option to issue a letter of concern for certain acts or offenses listed in RSA 153-A:13.**

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:

**May 20, 2022.**

13. The fiscal impact statement prepared by the Legislative Budget Assistant, if applicable.

FIS # 22-054, dated 4/07/22

Fiscal Impact Statement for Department of Safety interim rules governing INTERIM EMS Letters of Concern Rules. [Interim Various Saf-C 5900]

**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. Not applicable to Saf-C 5901.571 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:**

None

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

None

**C. To independently owned businesses:**

None

**Edit:** Please Bold AARL language.

Adopt Saf-C 5901.571 to read as follows:

Saf-C 5901.571 “Letter of concern” means a disciplinary sanction in lieu of license suspension, imposed by the commissioner in accordance with the criteria provided in Saf-C 5922.11 following a sustained complaint of violation of RSA 153-A:13, I, which does not change the status of a license issued under this chapter or impact the privileges associated with such license, unless otherwise provided in this chapter.

Readopt with amendment Saf-C 5922.02, effective 5-24-19 (Doc. #12790), to read as follows:

Saf-C 5922.02 Complaints and Investigations Relating to Unit, Provider, PEETE, or EMS Instructor Coordinator License Application.

(a) Any person may file a complaint regarding the actions of any unit or provider licensed under RSA 153-A, or any person or entity believed to be in violation of RSA 153-A or Saf-C 5900 provided that the complaint shall be:

- (1) Submitted in writing to the commissioner;
- (2) Typewritten, electronic, or legibly printed; and
- (3) Reported within 60 days of the discovery of the alleged violation, except that any complaint involving criminal activity shall be investigated as long as the investigation is initiated, either by the division or other law enforcement authority, within the statute of limitations of any indicated criminal offense.

(b) The written complaint shall include:

- (1) The name of the unit, provider, PEETE, or EMS IC against whom the complaint is filed, hereinafter called the “respondent;”
- (2) A concise statement of the facts that establish the alleged violation; and
- (3) The date of the alleged violation.

(c) Complaints shall be assigned to an investigator by the director in accordance with RSA 153-A:14. A complaint shall be deemed non-actionable if assuming the allegations in the complaint to be true, there would be a no violation of RSA 153-A or Saf-C 5900.

(d) If there are sufficient factual allegations in a complaint to suspect a criminal violation has been committed, the matter shall be referred to the appropriate law enforcement authorities.

(e) If the director determines that a complaint is actionable, a letter shall be sent to the respondent, notifying him or her of an investigation. With the letter, the respondent shall also receive a copy of the complaint or a version of the complaint redacted as necessary to preserve the integrity of the investigation, or a description of the complaint containing sufficient detail to provide the respondent with notice of the allegation or allegations being made.

(f) The letter and enclosures shall be sent by certified mail, and a copy of the letter shall be sent no earlier than 48 hours later to:

- (1) The head of the unit on whose behalf the respondent was acting at the time the alleged violation took place, or, if at the time of the alleged violation the respondent was not acting on behalf of a unit with which the respondent is affiliated, to the respondent's primary unit;
- (2) If the bureau is seeking immediate suspension pursuant to RSA 541-A:30, III, to the heads of all units with which the respondent is affiliated; and
- (3) If the bureau is not seeking immediate suspension pursuant to RSA 541-A:30, III but the director determines that the allegations constitute a potential threat to public health or safety, to the heads of all units with which the respondent is affiliated.

(g) The investigator shall document facts collected in a report of investigation. The investigator shall recommend findings to the commissioner.

(h) If, after investigation, the complaint is determined to be exonerated, not sustained, or unfounded, the commissioner shall issue a written order dismissing the complaint and shall send a copy of such order to the complainant and respondent within 10 days by certified mail.

(i) If, after investigation, the complaint is determined to be sustained, the commissioner shall issue a written order reflecting the finding within 10 days and send a copy of such order by certified mail to the complainant and respondent which shall:

- (1) Specify the violation(s) of RSA 153-A or Saf-C 5900, or both;
- (2) Direct the respondent to comply with the provisions of RSA 153-A or Saf-C 5900, or both;
- (3) Inform the respondent that he or she may request a hearing within 10 days pursuant to RSA 541-A:31 and Saf-C 5903.13 for the purpose of challenging such finding;
- (4) Describe the facts surrounding the decision in sufficient detail to provide the respondent with the basis for the decision; and
- (5) Specify any sanction permissible under the law and these rules.

(j) Upon issuing the order specified in paragraphs (h) and (i) above, the commissioner shall send a copy of such order to the heads of all units who received notification of the investigation in accordance with paragraph (g) above.

**Edit: "(f)"**

(k) Investigation information shall be confidential, and shall not be released except in accordance with these rules.

(l) Notwithstanding paragraph (k) above, investigation information shall be released:

- (1) To the department of justice in its capacity as legal counsel to the division;
- (2) Pursuant to court order directing the division to release such information;

(3) During an adjudicative hearing subject to the provisions set forth in RSA 541-A:31 and Saf-C 200; or

**Edit:** lowercase highlighted letters.

(4) In the case of a possible violation affecting public health, to the Department of Health and Human Services, Division of Public Health and Bureau of Infectious Disease Control.

(m) Any respondent against whom a complaint is determined to be sustained may request a hearing within 10 days of receipt of the order in paragraph (l) above, pursuant to RSA 541-A:31 and Saf-C 5922 for the purpose of challenging such finding.

**Edit:** "(i)"

(n) In the case of a sustained complaint, except cases in which a letter of concern is issued, if no hearing is requested, or following the conclusion of the requested hearing and any timely appeal, the division shall publish a public list of licensees found to have violated RSA 153-A or these rules, on the division website. The division shall not be limited to that method of publication.

(o) Such public list shall specify:

- (1) The name of the licensee;
- (2) The unit or provider license number;
- (3) The provision(s) of RSA 153-A or the rules that have been violated;
- (4) The date of the violation;
- (5) Any action resulting in a change in status of the licensee's license, including any prerequisites to full restoration of license privileges; and
- (6) The date of implementation and conclusion of any change in status.

(p) In the case of a sustained complaint, except cases in which a letter of concern is issued, if no hearing is requested, or following the conclusion of the requested hearing and any timely appeal, the division shall also notify the National Registry of Emergency Medical Technicians, National Practitioner's Data Bank and the Centers for Medicare and Medicaid Services of any unit or provider license revocation, suspension, or limitation.

(q) In the case of a sustained complaint, including cases in which a letter of concern is issued, if no hearing is requested, or following the conclusion of the requested hearing and any timely appeal, a copy of the report of investigation, a copy of the order in (l) above, and a copy of any hearing report shall be released to the heads of all units with which the respondent is affiliated, upon their request.

(r) Notwithstanding the provisions of this section, the release of any hearing report shall be in accordance with RSA 91-A.

**Edit:** Please Bold AARL language.

**Unclear/Leg. Intent:** What criteria are applied in determining whether this shall occur? Lack of criteria allows for oral rulemaking in violation of RSA 541-A.

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Readopt with amendment Saf-C 5922.04 effective 5-24-19 (Doc. #12790), to read as follows:

Saf-C 5922.04 Suspension of Unit, Provider, PEETE, EMS Instructor Coordinator License, Chair Van Company, or Wheelchair Vans for Hire.

(a) Any suspension of a unit, provider, PEETE, EMS Instructor Coordinator's license, chair van company, or wheelchair van for hire shall be assessed for a period of up to one calendar year.

(b) All or any portion of the division's suspension imposed pursuant to (a) above may be deferred for a period of one year, conditioned upon good behavior and the completion of any requirements ordered as part of the suspension. If any misconduct occurs during the period of deferred time or the unit or provider fails to comply with any requirements ordered, a hearing shall be conducted to determine if the deferred suspension shall be imposed, in addition to any further disciplinary action taken on any misconduct that occurred during the deferred period.

(c) The division's period of suspension imposed pursuant to (a) above may be rescinded upon the licensee's correction of the violation(s) that caused the suspension.

(d) Any suspension of a transport unit's license shall also result in the suspension of all vehicle licenses of the unit.

(e) If a licensee's license expires during the suspension period, the unit or provider may apply for a license in accordance with Saf-C 5903.02 following the expiration of the suspension period.

(f) After notice and an opportunity for a hearing pursuant to Saf-C 5903.13, the commissioner shall suspend a unit's license for:

(1) Negligence or incompetence in the provision of emergency medical care as specified in RSA 153-A:13, I(a);

(2) Rendering unauthorized treatment as specified in RSA 153-A:13, I(b);

(3) Unethical conduct as specified in RSA 153-A:13, I(d);

(4) Fraud in representations as to skills or ability of the licensed level as specified in RSA 153-A:13, I(f);

(5) Negligent, unsafe, or illegal operation of a vehicle, or negligent or unsafe use or maintenance of a vehicle's safety systems as specified in RSA 153-A:13, I(j);

(6) Failure to maintain insurance pursuant to these rules;

(7) Call jumping;

(8) Failure to maintain requirements specified in Saf-C 5903.04, or Saf-C 5903.05;

(9) A second offense of:

a. Failure to license a vehicle pursuant to Saf-C 5904.01 through Saf-C 5904.03;

b. Failure to have 2 licensed providers in the land or water vehicle pursuant to Saf-C 5902.07;

c. Failure to have at least one nationally registered EMT-basic, EMT-intermediate or EMT-paramedic provider in the air medical transport vehicle; or

**Edit:** Insert comma

d. Use of the vehicle's emergency warning lights or siren during EMS calls for purposes other than the response to or transport of an emergent sick or injured patient, pursuant to RSA 266:78-g; or

(10) A third offense of:

a. Failure to maintain the land vehicle's inside air temperature at a minimum of 50 degrees while the vehicle is not in use pursuant to these rules;

b. Failure to maintain the vehicle shelter pursuant to these rules;

c. Failure to maintain vehicle equipment and supplies; or

d. Failure to maintain the vehicle in good operating condition.

(g) After notice and an opportunity for a hearing, the commissioner shall suspend a licensee's license for:

(1) Negligence or incompetence in the provision of emergency medical care as specified in RSA 153-A:13, I(a);

(2) Rendering unauthorized treatment as specified in RSA 153-A:13, I(b);

(3) Unethical conduct as specified in RSA 153-A:13, I(d);

(4) Acts or offenses as set forth in RSA 153-A:13, I(e) and (h);

(5) Having a license or registration to practice suspended in another jurisdiction or having disciplinary action taken by the registering authority of another jurisdiction or the National Registry as specified in RSA 153-A:13, I(i);

(6) Negligent, unsafe, or illegal operation of a vehicle, or negligent or unsafe use or maintenance of a vehicle's safety systems as specified in RSA 153-A:13, I(j);

(7) Call jumping pursuant to Saf-C 5902.05;

(8) Failure to renew certification(s), within 30 days, after notice has been given;

(9) Failure to supervise an educational program and insure that all materials presented by guest lecturers or assistant instructors are in accordance with NREMT educational curricula and these rules;

(10) Failure to provide appropriate training materials or equipment in working order;



(11) Failure to maintain requirements specified in Saf-C 5909; or

(12) A conviction of criminal offense:

- a. Relating to the performance of duties or practice of EMS; or
- b. That endangers the health or safety of the public.

(h) After notice and an opportunity for a hearing, any violation(s) which has not been corrected at the end of the period of suspension, shall result in the revocation of the licensee's license.

(i) Notwithstanding the provisions of this section, the commissioner may issue a letter of concern in lieu of a suspension, in accordance with the criteria provided in Saf-C 5922.11.

Readopt with amendment Saf-C 5922.11, effective 5-24-19 (Doc. #12790), to read as follows:

Saf-C 5922.11 Criteria. In imposing any sanctions under this part, including letters of concern, the division shall consider the factors to determine the level of disciplinary sanction imposed and duration of disciplinary sanctions in order to prevent actual or potential harm to the public or any patient, and to deter licensees from engaging in misconduct in the future:

(a) The seriousness of the offense;

**Edit: "the following factors"**

(b) The licensee's prior disciplinary record, including previous letters of concern;

(c) The licensee's acknowledgement of his or her wrongdoing;

(d) The licensee's willingness to cooperate with the division;

(e) The potential harm to the public health and safety if the licensee retains his or her license; and

(f) Any mitigating or extenuating circumstances.

**APPENDIX A**

<b>Rule</b>	<b>Specific State Statute the Rule Implements</b>
Saf-C 5901.571	RSA 153-A:13, I; RSA 541-A:7
Saf-C 5922.02	RSA 153-A:14; RSA 153-A:20, VII
Saf-C 5922.04	RSA 153-A:13, III; RSA 541-A:29
Saf-C 5922.11	RSA 153-A:13, III, RSA 541-A:16, I(b)(2)