



# NEW HAMPSHIRE RULEMAKING REGISTER

## OFFICE OF LEGISLATIVE SERVICES

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VOLUME XXXII, Number 28, July 12, 2012

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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)

REGULAR MEETING      **Thursday, July 19, 2012** 9:00 a.m.  
Rooms 305/307, Legislative Office Building

CONTINUED MEETING:    **Thursday, August 2, 2012** 9:00 a.m.  
Rooms 305/307, Legislative Office Building

a.	List of Final Proposals for Review	7
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Notices of Proposed Rules

<u>Notice Number</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Page No.</u>
2012-92	Env-A 200	Department of Environmental Services Air Related Programs Procedural Rules for DES Air Resources Division.	1
2012-93	Ed 506.01, 506.02, & 614.05	Board of Education Superintendent and Assistant Superintendent.	3
2012-94	Saf-C 5506.051	Department of Safety, Commissioner Request for Reconsideration Rule.	5

**JLCAR MEETING DATES AND RELATED FILING DEADLINES  
JULY-DECEMBER, 2012**

The JLCAR has voted to hold its regularly scheduled monthly meetings for July through December, 2012 on the third Thursdays 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 5	<b>July 19</b>	August 2
August 2	<b>August 16</b>	September 6
September 6	<b>September 20</b>	October 4
October 4	<b>October 18</b>	November 1
November 1	<b>November 15</b>	December 6
December 6	<b>December 20</b>	None

Notice Number	2012-92	Rule Number	Env-A 200
1. Agency Name & Address:		2. RSA Authority:	RSA 125-C:4, I(m); RSA 541-A:16, I(b)
Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095		3. Federal Authority:	N/A
		4. Type of Action:	
		Adoption	_____
		Amendment	_____
		Repeal	_____
		Readoption	_____
		Readoption w/amendment	<b>X</b>
5. Short Title: Procedural Rules for DES Air Resources Division			

## 6. (a) Summary of what the rule says and the effect of the rule on those regulated:

The existing rules, Env-A 200, provide uniform procedures for air-related variance and waiver requests and public notices of hearings and public comment periods relative to the State Implementation Plan (SIP) and other matters. The rules supplement procedures established by RSA 541-A and Env-C 200. The rules are proposed to be readopted with amendments at this time because they are scheduled to expire on July 28, 2012.

Revisions are proposed to (1) clarify procedures for filing a petition for a variance; (2) include explicit requirements for variance petitions to be signed; (3) require the notice published by DES to be in a newspaper of general daily circulation in the area in which the source is located and on the DES web site (instead of just in newspaper of general daily statewide circulation); (4) require the notice published by DES to include the location of the source for which the variance is being requested; (5) increase the amount of time DES has to issue a decision on a variance petition from 15 days to 15 working days to ensure adequate time for review; (6) clarify the requirements for notices of State Implementation Plan (SIP) hearings; (7) clarify the requirements applicable to waiver requests and the criteria that must be met to obtain a waiver; (8) state explicitly that any person who receives a waiver must comply with any/all conditions specified in the waiver; and (9) revise existing language for clarity and consistency with other DES rules.

**Pursuant to RSA 541-A:14-a, the existing rules will be extended through completion of this rulemaking.**

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

The proposed rules affect any one who participates in hearings and rulemaking activities of the DES Air Resources Division and regulated entities who request waivers or variances from the Env-A rules.

## 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 Implemented
Env-A 201.01	RSA 541-A:16, I(b); RSA 125-C:6, X
Env-A 202.01	RSA 125-C:16, I
Env-A 202.02	RSA 125-C:16, III
Env-A 202.03	RSA 125-C:16, II
Env-A 202.04 - Env-A 202.06	RSA 125-C:16, III
Env-A 202.07	RSA 125-C:14
Env-A 203.01	RSA 541-A:30-a; RSA 125-C:6, X
Env-A 203.02, Env-A 203.03	RSA 541-A:31; RSA 125-C:6, X
Env-A 204.01, Env-A 204.02	RSA 541-A:16, I(b); RSA 125-C:6, X
Env-A 205.01 - Env-A 205.08	RSA 541-A:22, IV; RSA 125-C:6, X

NN 2012-92 Continued

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

Name: Karla McManus Title: Planning and Rules Manager  
Address: Department of Environmental Services Phone #: (603) 271-6854  
29 Hazen Drive Fax#: (603) 271-1381  
P.O. Box 95 E-mail: Karla.McManus@des.nh.gov  
Concord, NH 03302-0095

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: **August 14, 2012 at 4 PM**

Fax  E-mail  Other format (specify):

## 9. Public hearing scheduled for:

Date and Time: **Tuesday, August 7, 2012 at 9:30 AM**  
Place: **Rooms 113-114, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 12:092, dated 07/05/12:1. **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 proposed rule does not violate Part I, Article 28-a of the New Hampshire Constitution, because it does not assign any new, modified, or expanded programs or responsibilities to any political subdivision of the state in such a way as to increase local expenditures.

Notice Number 2012-93

Rule Number

Ed 506.01, Ed 506.02,  
Ed 614.05

## 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,II(s),(r) and  
RSA 186:11,X(a),(c)

## 3. Federal Authority:

## 4. Type of Action:

Adoption   x    
Amendment             
Repeal             
Readoption             
Readoption w/amendment   x  

## 5. Short Title: Superintendent and Assistant Superintendent

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

Ed 506.01 and Ed 506.02 describe what an individual has to do and know to be certified as a Superintendent, and Assistant Superintendent. Ed 614.05 sets the program requirements for institutions of higher education regarding superintendents. The skills competencies and knowledge have been updated to reflect current standards and practices. Rules Ed 506.01 and Ed 614.05 had expired on 7-1-12 and are being adopted again with updates as noted.

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

Those citizens who choose these certifications.

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

Ed 506.01	RSA 186:11, X(a)
Ed 506.02	RSA 186:11, X(a)
Ed 614.05	RSA 186:6; RSA 186:11, X(c)

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

Name: Mary Mayo

Title: Program Assistant

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

Phone #: 271-3189

Fax#: 271-4034

E-mail: mary.mayo@doe.nh.gov

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

NN 2012-93 Continued

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **August 28, 2012**

X Fax

X E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **August 15, 2012, 11:30 a.m.**

Place: **State Board Room, NH Department of Education,**

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

FIS # 12:089, dated July 3, 2012

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

A portion of the existing rules expired on July 1, 2012. The Department continued to operate under the provisions of the expired rules. There is no difference in cost when comparing the proposed rules to either the existing or the expired 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 proposed rules do not mandate fees, or additional local expenditures on a political subdivision of the state and therefore do not violate Part I, Article 28-a of the NH Constitution.

Notice Number 2012-94

Rule Number Saf-C 5506.051

<p>1. Agency Name &amp; Address:  <b>Department of Safety</b>  <b>33 Hazen Drive</b>  <b>Concord, New Hampshire 03305</b></p>	<p>2. RSA Authority: <u>RSA 651-B:8</u></p> <p>3. Federal Authority: <u>n/a</u></p> <p>4. Type of Action:</p> <p style="padding-left: 20px;">Adoption <u>X</u></p> <p style="padding-left: 20px;">Amendment _____</p> <p style="padding-left: 20px;">Repeal _____</p> <p style="padding-left: 20px;">Readoption _____</p> <p style="padding-left: 20px;">Readoption w/amendment _____</p>
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5. Short Title: **Request for Reconsideration Rule**

6. (a) Summary of what the rule says and of any proposed amendments:  
**The proposed rule provides a sex offender/offender against children a right to reconsideration of any decision of the Department in which the offender's interests are adversely affected. The proposed rule also grants the individual the right to appeal to the state Supreme Court any denial of a reconsideration/rehearing. This rule would only apply where the law or rules do not already provide for a different process for appeal.**

6. (b) Brief description of the groups affected:  
**The proposed rule affects sex offenders and offenders against children, along with the Division of State Police, New Hampshire Department of Safety**

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

Rule	Specific State or Federal Statutes or Regulations which the Rule is Intended to Implement
Saf-C 5506.051(a)	RSA 541:3
Saf-C 5506.051(b)	RSA 541:6

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

Name:	<b>Mr. Aaron Keller</b>	Title:	<b>Legal Aide</b>
Address:	<b>Department of Safety Commissioner's Office 33 Hazen Drive Concord, New Hampshire 03305</b>	Phone #:	<b>603-223-3892</b>
		Fax#:	<b>603-271-3903</b>
		E-mail:	<b>aaron.keller@dos.nh.gov</b>
		TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)	

NN 2012-94 Continued

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **August 10, 2012 at 8:15 a.m.**

 Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **August 2, 2012 at 10:30 a.m.**  
**Second Floor Conference Room**  
Place: **Department of Safety**  
**33 Hazen Drive**  
**Concord, New Hampshire 03305**

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

FIS # 12:088, dated 07/03/12

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

Not applicable, these are new 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):

There are no additional costs or benefits attributable to the proposed 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:

1. The proposed rules do not create a new program or responsibility or expand or modify an existing program or responsibility to any political subdivision.
2. The proposed rules do not mandate or assign a program or responsibility to any political subdivision of the state in such a way as to increase the costs the political subdivision must pay.
3. No state funding is necessary because the proposed rules do not mandate or assign a program or responsibility to any political subdivision so as to increase the costs the political subdivision must pay.



FINAL PROPOSALS FOR COMMITTEE REVIEW ON JULY 19, 2012

<u>Final Proposal #</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>
2011-161	Lab 1500	Department of Labor Employee Leasing Companies.
2012-11	Tra 311	Department of Transportation Driving While Impaired (DWI) Victim Fatality Sign Program.
2012-16	Ph 1300	Pharmacy Board Pharmacist Administration of Vaccines.
2012-37	Agr 1412	Department of Agriculture, Markets, and Food Dating Prewrapped Sandwiches.
2012-46	Agr 911	Department of Agriculture, Markets, and Food Organic Commodities Certification.
2012-47	Agr 1405.25-1405.38	Department of Agriculture, Markets, and Food Certification Seal Rules.
2012-51	Pod 217.01, 302.01, 402.01, 402.02, 403.01, 403.02, & 501.01	Board of Podiatry Rules Regarding Explanation After Adoption of Rules, Educational and Continuing Educational Requirements for Licensure, Severance of Connection of Practice, Replacement of Wall Certificates and Ethical Guidelines for Podiatrists.
2012-52	Occ 305.09 & 305.11	Governing Board of Occupational Therapists Required Documents.
2012-54	He-E 700	Department of Health and Human Services Division of Elderly and Adult Services Adult Protective Services Program.
2012-59	He-W 671.02 & 671.04	Department of Health and Human Services Former Division of Human Services Expiring Rules Related to Electronic Funds Transfer and Paper Checks.
2012-65	Fis 603.09 (c), (g), & (l)	Fish and Game Department Groundfish Restrictions - Atlantic Cod Length and Creel Limits for Recreational Fishing.
2012-66	He-W 600 various sections	Department of Health and Human Services Former Division of Human Services Elimination of the Unemployed Parent (UP) Cash Assistance Program.
2012-70	Rev 2903.07(a)	Department of Revenue Administration Offset of Refund or Credit.
2012-71	He-E 720	Department of Health and Human Services Division of Elderly and Adult Services Bureau of Elderly and Adult Services State Registry.
2012-72	He-C 6429	Department of Health and Human Services, Commissioner Children Left at Hospitals or Safe Havens.

NOTICE OF ADOPTED RULES

Document # (Final Proposal)	Rule Number	Agency and Short Title of Rule	Effective Expires
10142 (FP 2012-35)	Fis 300 various sections, 1101.08, 1102.12, & 1401.01-1401.03	Fish and Game Department 2012 Wildlife Rules, Wildlife Control Operator Rules, and Nongame Rules.	06/05/2012 06/05/2022
10143-A (FP 2011-157)	Ahp 203.01, 214.01, 218	Board of Directors, Office of Licensed Allied Health Professionals Procedural Rules. <i>(As practice and procedure rules they do not expire except pursuant to RSA 541-A:17, II).</i>	06/07/2012
10143-B (FP 2011-157)	Ahp 219	Board of Directors, Office of Licensed Allied Health Professionals Voluntary Surrender of Licenses Issued by Governing Boards.	06/07/2012 06/07/2022
10144 (FP 2011-179)	Bar 301.03 & 404.08	Board of Barbering, Cosmetology and Esthetics Apprenticeship Hours, Violation Points for a School.	06/07/2012 06/07/2022
10145 (FP 2012-42)	Env-A 1201.04(b)(1) & (c), 1203.38, 1212.04 intro. & (a), & 1222.01(b)	Department of Environmental Services Air Related Programs. VOC RACT Minor Core Activity Rules.	06/19/2012 06/19/2022
10146 (FP 2012-25)	Rea 103.01	Real Estate Commission Commission Contact Information. <i>(As organizational rules they do not expire except pursuant to RSA 541-A:17, II).</i>	06/20/2012
10147 (FP 2012-26)	Rea 301.02, 301.03(j) & (m), 301.04(b), & 303.01	Real Estate Commission Real Estate Examination and License Fees, Examination Schedule, Broker Education, and Dishonored Checks.	08/01/2012 08/01/2022
10148 (FP 2012-27)	Rea 404.03 & 404.05(a)	Real Estate Commission Copies of Written Instruments and Advertisements by Salespersons.	06/20/2012 06/20/2022
10149 (FP 2012-28)	Rea 501.01(f)	Real Estate Commission Code of Ethics for Commissioners and Commission Employees.	06/20/2012 06/20/2022
10150 (FP 2012-29)	Rea 702.03	Real Estate Commission Broker Accounting of Receipts and Disbursements.	06/20/2012 06/20/2022
10151 (FP 2012-4)	Ed 507.21 & 614.11	Board of Education Library Media Specialist.	06/22/2012 06/22/2022
10152 (FP 2012-53)	He-W 658.01	Department of Health and Human Services Former Division of Human Services Financial Assistance to Needy Families Standard of Need.	07/01/2012 07/01/2022

NOTICE OF ADOPTED RULES

<u>Document #</u> (Final Proposal)	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Effective</u> <u>Expires</u>
10153 (FP 2012-49)	Ins 1400	Insurance Department Automobile Insurance.	07/01/2012 07/01/2022
10154 (FP 2012-50)	Ins 3601	Insurance Department Long-Term Care Insurance.	06/25/2012 06/25/2022
10155 (FP 2012-14)	He-Hea 700	Health Services Planning and Review Board c/o Dept. of Health and Human Services Physical Rehabilitation Hospitals.	06/26/2012 06/26/2022
10156 (FP 2012-15)	He-Hea 800	Health Services Planning and Review Board c/o Dept. of Health and Human Services Inpatient Psychiatric Facilities.	06/26/2012 06/26/2022
10157 (FP 2012-57)	Acp 200	Board of Acupuncture Licensing Practice and Procedure. <i>(As practice and procedure rules they do not expire except pursuant to RSA 541-A:17, II).</i>	06/27/2012
10158 (FP 2012-58)	Acp 300-600	Board of Acupuncture Licensing Licensing, Renewals, Licensee Responsibilities and Scope of Practice.	06/27/2012 06/27/2022
10159 (EXEMPT)	HFA 111	NH Housing Finance Authority New Hampshire Housing Finance Authority Design and Construction Standards.	06/28/2012 Exempt
10160 (EXEMPT)	Fis 602.15	Fish and Game Department Transfer of Limited Commercial and Commercial Lobster License.	07/16/2012 Exempt