

Notice Number 2024-28Rule Number En 800

1. Agency Name & Address:  <b>Department of Energy 21 S. Fruit St., Ste. 10 Concord, NH 03301</b>	2. RSA Authority:	<b>RSA 374:50; RSA 12-P:5, IV</b>
	3. Federal Authority:	
	4. Type of Action:	
	Adoption	<b>X</b>
	Repeal	
	Readoption	
	Readoption w/amendment	

5. Short Title: **Underground Utility Damage Prevention Program**

6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:

**The substance of the new En 800 rules regarding the underground damage prevention program, otherwise known as “Dig Safe,” proposed by the Department of Energy (the Department) is the same as various provisions of the existing Puc 800 rules of the Public Utilities Commission, with changes to the timeframes for reports under En 804.01(a), a change as to when a call to 911 is required under En 805.05(a), and the addition of excavator compliance in making a timely report under En 805.05 as a factor the Department shall consider in determining a civil penalty under En 807.07. The En 800 rules replace the Puc 800 rules in their entirety, effectuating the transfer of full regulatory responsibilities over Dig Safe to the Department when the Department was established on July 1, 2021. See RSA 12-P:2.**

**The Department proposes to adopt new Chapter En 800 rules in accordance with RSA 12-P:5, IV.**

**The En 800 rules continue the protection of the public, operators, and excavators from physical harm, property damages, and interrupted service resulting from damage to underground facilities. These rules also continue procedures and requirements relative to minimum requirements for the operation of the system, including notification procedures, the investigation of complaints including enforcement, emergency situations for which notice of excavation is not required, and minimum standards for marking a tolerance zone.**

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

**These rules affect persons or entities performing excavation activities and those who own underground utility facilities. This also includes persons or entities that perform excavations on private property, public ways, rights-of-way, easements, public streets, or any other public place.**

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
En 801.01	RSA 374:50; RSA 374:55, VII
En 801.02	RSA 374:50
En 802.01	RSA 374:50; RSA 374:48, VIII
En 802.02	RSA 374:50; RSA 374:48, I
En 802.03	RSA 374:50
En 802.04	RSA 374:50
En 802.05	RSA 374:50; RSA 374:48, III

<b>Rule</b>	<b>Specific State Statute the Rule Implements</b>
En 802.06	RSA 374:50; RSA 374:48, IV
En 802.07	RSA 374:50
En 802.08	RSA 374:50
En 802.09	RSA 374:50; RSA 288:1; RSA 288:2
En 802.10	RSA 374:50
En 802.11	RSA 374:50
En 802.12	RSA 374:50; RSA 374:48, IV-a; RSA 362:2, II; RSA 362:7, III(e)
En 802.13	RSA 374:50; RSA 374:48, V
En 802.14	RSA 374:50; RSA 374:51, IV
En 802.15	RSA 374:50; RSA 374:48, I
En 802.16	RSA 374:50
En 802.17	RSA 374:50; RSA 374:48, VII
En 803.01	RSA 374:50, I; RSA 374:49; RSA 374:52
En 803.02	RSA 374:50, I
En 804.01	RSA 374:50
En 804.02	RSA 374:50; RSA 374:49; RSA 374:52
En 804.03	RSA 374:50
En 805.01	RSA 374:50, I; RSA 374:51
En 805.02	RSA 374:50
En 805.03	RSA 374:50; III; RSA 374:51, I
En 805.04	RSA 374:50; RSA 374:51, VII
En 805.05	RSA 374:50; RSA 374:54; 49 C.F.R. §198.55(a)(6) (iii)(A)
En 806.01	RSA 374:50; RSA 374:53
En 806.02	RSA 374:50; RSA 374:53
En 806.03	RSA 374:50; RSA 374:53
En 806.04	RSA 374:50, III
En 806.05	RSA 374:50; RSA 374:53
En 807.01	RSA 374:50, II
En 807.02	RSA 374:50; RSA 374:55, VII
En 807.03	RSA 374:50; RSA 374:55
En 807.04	RSA 374:50; RSA 374:55, VII
En 807.05	RSA 374:50; RSA 374:55
En 807.06	RSA 374:50; RSA 374:55, VII
En 807.07	RSA 374:50; RSA 374:55

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

Name:	<b>Andrew J. Harmon, Esq.</b>	Title:	<b>Hearings Examiner</b>
Mailing Address:	<b>21 So. Fruit St., Ste. 10 Concord, NH 03301</b>	Phone #:	<b>603-271-2443</b>
		Fax#:	<b>N/A</b>
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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: **Tuesday, May 7, 2024**

☐ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, April 23, 2024 at 10:00 a.m.**  
Physical Location: **New Hampshire Public Utilities Commission  
Hearing Room B 21 South Fruit Street, Suite 10  
Concord, NH 03301**  
Electronic Access **N/A**  
(if applicable):

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

FIS # 24:025 , dated 02/20/2024

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

Not applicable as these are new rules. However, there is no difference in costs when comparing the proposed rules to the existing Puc 800 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:

**Although the rules reflect the transfer of regulatory responsibilities over Dig Safe from the Public Utilities Commission to the Department of Energy, the proposed rules otherwise do not modify an existing program or responsibility, and do not assign any responsibility to any political subdivision and therefore is not proposed in violation of Part I, Article 28-a.**