

**NEW HAMPSHIRE  
DRAFTING AND PROCEDURE MANUAL  
FOR  
ADMINISTRATIVE RULES**



**Approved by the  
Joint Legislative Committee on Administrative Rules**

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## CHAPTER 1 ORGANIZATION

### PART 1 PURPOSE AND APPLICABILITY OF THE *MANUAL* AND RSA 541-A

#### 1.1 Purpose of the *Manual*.

The purpose of the *New Hampshire Drafting and Procedure Manual for Administrative Rules* (hereinafter "*Manual*") is to set out in one understandable and useable document for state agencies all the requirements relative to administrative rulemaking and declaratory rulings under RSA 541-A, the Administrative Procedure Act, in order that agencies can know not only what the law requires but also how to comply with it.

This amended *Manual* updates the last amended edition of May 1, 2016 including the form in Appendix II-H as amended through February, 2012. This *Manual* reflects administrative and statutory changes to rulemaking through the 2016 legislative session.

Selected text and "notes" are highlighted in boxes  for readability, to assist in interpretation, and to prevent important details from being overlooked by the reader.

#### 1.2 Applicability of RSA 541-A and the *Manual*.

The requirements set by RSA 541-A apply to each "agency" unless specifically exempted by statute or the Governor suspends the provisions of RSA 541-A under RSA 541-A:40.

#### NOTE:

Agencies should always check for amendments to RSA 541-A effective after the edition date of this *Manual*. Such amendments may state requirements or procedures that must be followed in addition to, or instead of, those covered in this *Manual*.

"Agency" is defined in RSA 541-A:1, II as:

*Each state board, commission, department, institution, officer, or any other state official or group, other than the legislature or the courts, authorized by law to make rules or to determine contested cases.*

Each agency must comply with the *Manual* as stated in RSA 541-A:8:

*Each agency shall conform to a drafting and procedure manual for rules, including agency forms, developed by the director of legislative services and the commissioner of administrative services, subject to amendment and final approval by the committee. The director may require any agency to rewrite any rule submitted for filing to conform to this manual until that rule is adopted and filed under RSA 541-A:14 and RSA 541-A:19 or the form is adopted pursuant to RSA 541-A:19-b.*

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### NOTE:

The rulemaking requirements for agencies are described in Chapters 1 through 5 of this *Manual*, including the required forms referenced in Chapter 3 and available in Appendix II.

The *Manual* also contains other useful information in its appendices, such as a copy of RSA 541-A and the rules of the Joint Legislative Committee on Administrative Rules (Committee) adopted under RSA 541-A:2, II. These documents are included for agency information because Chapters 1 through 5 of the *Manual* often cite their provisions but do not provide a full text. The rules of the Committee are not law like RSA 541-A but describe its organization and its operating procedures.

### WHY RULES AND RULEMAKING ARE IMPORTANT

Effective rules have the force of law, as stated in RSA 541-A:22, II:

*Rules shall be valid and binding on persons they affect, and shall have the force of law unless they have expired or have been amended or revised or unless a court of competent jurisdiction determines otherwise.*

Rules must be filed in accordance with RSA 541-A to become effective, as stated in RSA 541-A:22, I:

*No agency rule is valid or effective against any person or party, nor may it be enforced by the state for any purpose, until it has been filed as required by this chapter and has not expired.*

An effective rule remains valid and binding until it is amended, whereupon the amended version becomes valid and binding, or a court determines the rule is not valid. But if a rule expires, it is no longer valid and binding and does not have the force and effect of law. Once an expired rule is adopted and effective again, however, the rule could be enforced again.

An agency should check with its legal counsel if one or more of its rules has expired in order to determine the scope of the agency's authority under other law to enforce requirements formerly in the expired rules.

## PART 2 DEFINITIONS

### 2.1 Terms Used in This *Manual*.

The terms below have the following meanings in this *Manual*:

- “Administrative Rules office” means the unit within the Office of Legislative Services responsible for the functions of the Office of Legislative Services under RSA 541-A;
- “Agency” means “agency” as defined in RSA 541-A:1, II above. “Agency” as used in this *Manual* includes agency staff unless the agency action or responsibility is not a delegable duty, such as proposing, amending, and adopting the text in a rule;



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- “Committee” means the Joint Legislative Committee on Administrative Rules, established by RSA 541-A:2;
- “Committee staff” means the personnel in the Office of Legislative Services, Administrative Rules, who perform clerical and legal services to the Committee pursuant to RSA 541-A:2, II;
- “Director” means the Director of Legislative Services;
- “Electronic document” means “electronic document” as defined in RSA 541-A:1, V-a:

*A document which complies with requirements established in the drafting and procedures manual under RSA 541-A:8. For electronic documents, a requirement during the rulemaking process for a signature accompanying the filing of an electronic document shall be met if such signature complies with the requirements of RSA 294-E;*
- “File” means “file” as defined in RSA 541-A:1, VI:

*The actual receipt, by the director of legislative services, of a paper or electronic document required to be submitted during a rulemaking process established by this chapter. The term “file” shall also apply to any other response, submission, or written explanation required during a rulemaking process established by this chapter;*
- “Form” means “form” as defined in RSA 541-A:1, VII-a:

*A document that establishes a requirement for persons outside the agency to provide information to an agency and the format in which such information must be submitted. The term does not include any document, regardless of what the document is called, that (a) is provided by an agency to facilitate the submission of information that is required to be submitted to the agency by federal or state statute, regulation, or rule and does not add to or modify such requirement or (b) that is used only by the agency to provide information to persons outside the agency;*
- “Internet content” means “Internet content” as defined in RSA 541-A:1, VII-b, namely “material that exists only on a website on the Internet;”
- “Regular rule” means a rule proposed and adopted pursuant to RSA 541-A:5-14, as distinguished from an interim rule, emergency rule, expedited repeal, expedited revision to a form, etc.;
- “Rule” means “rule” as defined in RSA 541-A:1, XV:

*Each regulation, standard, form as defined in paragraph VII-a, or other statement of general applicability adopted by an agency to (a) implement, interpret or make specific a statute enforced or administered by such agency, or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies.*

*The term does not include (a) internal memoranda which set policy applicable only to its own employees and which do not affect private rights or change the substance of rules binding upon the public, (b) informational pamphlets, letters or other explanatory material which refer to a statute or rule without affecting its substance or interpretation, (c) personnel records relating to the hiring, dismissal, promotion, or compensation of any*

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*public employee, or the disciplining of such employee, or the investigating of any charges against such employee, or (d) declaratory rulings.*

*The term "rule" shall include rules adopted by the director of personnel, department of administrative services, relative to the state employee personnel system. Notwithstanding the requirements of RSA 21-I:14, the term "rule" shall not include the manual described in RSA 21-I:14, I or the standards for the format, content, and style of agency annual and biennial reports described in RSA 21-I:14, IX, which together comprise the manual commonly known as the administrative services manual of procedures. The manual shall be subject to the approval of the governor and council;*

- "Signature," for the purpose of agency documents filed with the Administrative Rules office, means an original signature unless a computer-generated facsimile signature is allowed pursuant to 1.7 in Chapter 3 or a scanned signature or electronic signature is allowed pursuant to 1.10 and Part 8 in Chapter 3 for documents filed electronically; and
- "Signed," for the purpose of agency documents filed with the Administrative Rules office, means having affixed a signature as defined above.

### NOTE:

The nature of a rule, including an agency form, is further explained in 1.1 of Chapter 3 on rulemaking procedure. "Electronic documents" are documents, including agency forms, that are filed electronically in compliance with 1.10 and Part 8 of Chapter 3. For forms placed by an agency online, see 3.12 and 3.13 of Chapter 3.

Requirements for numbering and drafting rules are contained in Chapter 4, including forms in 3.12-3.14. Since rules are organized into chapters, parts, sections, and so forth, the term "rule" as used in this *Manual* is synonymous with a proposal, which can contain several related rules and not just one chapter, part, or section.

## PART 3 DESCRIPTION OF THE ADMINISTRATIVE RULES OFFICE

### 3.1 Filing Office for Rules and Declaratory Rulings and the Official Version of Rules.

Each agency subject to RSA 541-A must file with the Administrative Rules office in hard copy or electronically in compliance with 1.10 and Part 8 of Chapter 3:

- The agency's proposed, final proposed, and adopted rules as described in Chapter 3 in order to make the adopted rules effective; and
- Declaratory rulings issued by the agency as described in Part 4 of Chapter 2.

The Administrative Rules office maintains agency filing histories for rules and declaratory rulings filed by each agency since 1974. Each agency's filing history is arranged chronologically by a document number assigned by the Administrative Rules office to each filing, with a brief description of the filing and the effective date. Relevant document numbers and effective dates appear in a published rule's source and revision notes. See Chapter 5 of this *Manual*.

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**OFFICIAL VERSION OF THE RULE**

Once an agency adopts and files a rule under RSA 541-A with the Administrative Rules office, the office enters the text into the office's word processing database and assists the agency in preparing an edited version of the rule in a camera-ready format for publication. See RSA 541-A:15, I and I-a and Chapter 5 of this *Manual*. The "as-filed" rule remains the "official version" of the rule unless or until the agency certifies that the camera-ready rule is the same in substance as originally filed. If the agency certifies, then this certified rule becomes the "official version." See 7.2 in Chapter 3 for information on the "official version" of rules filed electronically.

Each agency must maintain a file of its own currently effective rules in the "official version" open to the public. See RSA 541-A:14, IV and RSA 541-A:15, I. Agencies, legislators, and the public may also request a copy of the "official version" of currently effective rules from the Administrative Rules office. See Part 4 below.

The Administrative Rules office sends a hard copy of each rule, both as-filed and as certified, to the State Library and the N. H. Law Library at the Supreme Court. See RSA 541-A:15, I-a. These institutions also receive hard copy of the declaratory rulings and updated agency filing histories.

The Administrative Rules office maintains the following files and databases relative to the filings it receives:

- Hard copy files, and electronic files as appropriate, for all proposed and adopted rules and declaratory rulings filed, including all related rulemaking documents and Committee correspondence and staff comments, stored either in the office or by the Secretary of State's Division of Records Management and Archives;
- An online system to search all rulemaking proceedings under RSA 541-A, including rulemaking hearings and JLCAR meetings, and to view minutes;
- The "official version" of all effective rules, as required by RSA 541-A:14, IV and RSA 541-A:15, I, with the "as-filed" rules in hard copy, and electronically as appropriate, and the "certified" rules in hard copy and on a database;
- Agency filing histories as described above, both in hard copy and on a database; and
- A web site, containing the certified rules, agency filing histories, Committee rules, Committee final objections, the rulemaking search program described in 3.6 below, other relevant information, and the *New Hampshire Rulemaking Register* at <http://www.gencourt.state.nh.us/rules/index.html>. See Part 4 below.

### **3.2 Editing Rules for Agency Publication.**

New Hampshire rules are organized by agency in a compendium called the *New Hampshire Code of Administrative Rules*. There is no official publisher of the complete *New Hampshire Code of Administrative Rules*. The Administrative Rules office does not publish rules. Instead, each agency is required by the Director to publish all of its effective rules filed under RSA 541-A in the camera-ready format provided by

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the Administrative Rules office as described above. See RSA 541-A:15, I and I-a. See Chapter 5 of this *Manual* for a description of the process of editing rules for publication.

### **3.3 Publication of the *Rulemaking Register*.**

The Administrative Rules office compiles, edits, and publishes the *New Hampshire Rulemaking Register (Register)*. See RSA 541-A:9, I, RSA 541-A:2, III, and RSA 541-A:14, IV. The *Register* is published weekly both online and in paper. The official publication date for rulemaking notices filed since September 11, 2011 has been the online publication date of Thursday, or earlier if Thursday is a holiday. See Chapter 3 for how the *Register* is used in the rulemaking process. Much of the data in the notices published in the *Register*, including agency rulemaking hearing dates and times, is searchable online through the rulemaking search program on the web site of the Administrative Rules office. See 3.6 below.

#### **WHAT THE REGISTER CONTAINS**

- Notices of proposed rulemaking proceedings, including but not limited to a summary of the proposed rules, hearing dates, times, and location, written comment deadlines, and fiscal impact statements;
- Notices of postponed or continued rulemaking hearings or extension of public comment deadline;
- Notice of request for public comment on possible rulemaking;
- Notices of final proposals and proposed interim rules for Committee review;
- Notices of Committee regular and special meetings and hearings;
- Notices of adopted rules and declaratory rulings and modified effective dates of adopted rules;
- Attorney General's non-confidential opinions relative to rulemaking;
- Executive orders of the Governor;
- Committee final objections; and
- Any other notices or documents related to rulemaking as requested by an agency and approved by the Director.

The Director shall approve for publication in the *Register* a special notice or document from an agency provided that :

- The request is in writing;
- The notice or document is typewritten; and
- The notice or document relates to rulemaking.



**COPIES OF THE REGISTER**

The *Register* is available upon request by subscription at no charge for legislators, agencies, and municipalities, but legislators and municipalities shall be deemed to have requested an electronic copy unless a paper copy is requested. See RSA 541-A:9, II. Subscriptions for hard copies for all others run from July 1 to June 30 for \$65.00 per year or monthly at \$5.50 per month.

Requests for subscriptions shall be made to the Administrative Rules office at the address in Part 4 below. Checks shall be made payable to “Treasurer, State of New Hampshire.”

The *Register* may also be viewed on the web site of the Administrative Rules office in image-only PDF format at <http://www.gencourt.state.nh.us/rules/index.html>. The *Register* is viewable with Adobe® Acrobat® 3.0 or higher software available free by a link to Adobe.

### **3.4 Committee Support.**

The Administrative Rules office provides clerical and legal support to the Committee. See RSA 541-A:2, II and Part 103 and Chapter 200 of the Committee’s rules in Appendix IV of this *Manual*. The Committee’s rules, its current membership, and a summary description of the Committee and the role of the Administrative Rules office as Committee staff are also available by clicking on the link “**JLCAR**” on the web site of the Administrative Rules office.

The Administrative Rules office maintains the Committee’s files, including all correspondence to and from the Committee and all information relative to Committee meetings and the office’s review of rules for the Committee. A transcript of testimony relating to a rule given at a Committee meeting shall be provided upon a specific request.

All questions relative to the Committee or requests for copies of non-confidential documents relative to the Committee shall be made to “Joint Legislative Committee on Administrative Rules” at the Administrative Rules office as described in Part 4 below.

### **3.5 Publication of the *Manual*.**

The Administrative Rules office publishes this *Manual*. Copies are available from the Administrative Rules office upon request. There is no charge for agencies and legislators. The charge for the public shall be the actual cost of preparing a copy.

### **3.6 Online Rulemaking Search Program.**

The Administrative Rules office maintains an online database of information on regular, interim, and emergency rulemaking proceedings and declaratory rulings filed with the office. To access this information, click on the link “**NH Rulemaking Search**” on the office web site at <http://www.gencourt.state.nh.us/rules/index.html>.

For example, much of the data in the *Rulemaking Register*, including agency hearing dates and times, and Committee meeting dates and agendas, may be accessed. A user may also search the rulemaking history



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of a particular agency by effective and expiration dates for rules, with links to the rule currently on the Administrative Rules office web site.

## **PART 4 REQUESTS FOR INFORMATION**

### **4.1 Public Access and Copies from the Administrative Rules Office.**

The Director must maintain a file open to the public of the “official version” of all effective rules. See RSA 541-A:14, IV and RSA 541-A:15, I. The Administrative Rules office is also subject to the requirements of the Right-to-Know Law on inspection of governmental records. See RSA 91-A:4, IV.

The Administrative Rules office therefore has files open to the public for inspection and copying during regular office hours, 8:00 a.m. to 4:30 p.m. Monday-Friday, of the following information:

- Proposed and adopted rules filed by agencies with the Administrative Rules office under RSA 541-A, including all rulemaking documents filed with the rules, including but not limited to rulemaking notices, cover sheets, agency cover letters, and Incorporation by Reference Statements;
- The “official version” of all effective rules as described above, with the certified rules on a database;
- Declaratory rulings;
- Copies of the *New Hampshire Rulemaking Register* and documents published in it;
- Rules not subject to RSA 541-A but required by statute to be filed by an agency with the Administrative Rules office;
- Agency filing histories as described above, both hard copy and on the database; and
- All non-confidential documents related to the Committee and the role of the Administrative Rules office as Committee staff, including but not limited to agency and Committee correspondence, Committee meeting agendas, action minutes, and transcripts of Committee meetings.

Certain older documents, such as the original hard copy of adopted rules filed approximately 3 years or more before a request for inspection, are kept in storage with the Secretary of State’s Division of Archives and Records Management. These can be retrieved by the Administrative Rules office upon request and made available under the Right-to-Know Law. All requests for copies of documents on file with the Administrative Rules office or in storage, or questions about proposed or adopted rules and the rulemaking process, shall be made to:

**Mailing and Office Address:**

Office of Legislative Services  
Administrative Rules  
25 Capitol Street, Room 219  
Concord, NH 03301-6312

**Telephones and Fax:**

**Tel.** (603) 271-3680  
**Fax** (603) 271-7871  
**TDD Access:** Relay N. H. 1-800-735-2964  
or dial 711 (in N. H.)

**E-mail:** Contact the Administrative Rules office or see the web site for current e-mail addresses of office employees.

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**INFORMATION IS NOT LEGAL ADVICE**

Information from the Administrative Rules office shall not be construed as legal advice for agencies or the public. For example, the office shall provide rules but cannot interpret the rules or rulemaking authority for agencies or for the public. The office, on behalf of the Director, can interpret and enforce the *Manual*. For legal advice agencies must contact the Department of Justice.

**COST OF COPIES FROM THE ADMINISTRATIVE RULES OFFICE**

<u><b>FORMAT</b></u>	<u><b>COST</b></u>
<b>Hard copy:</b>	\$.20 per page for the public for all documents, but no charge to legislators or N. H. state agencies.
<b>E-mail:</b>	No charge for PDF files or Microsoft Word® documents as attachments, but, unless the agency has filed the requested document electronically, available only for certified rules, agency filing histories, and other documents on the database of the Administrative Rules office. The format used by the Administrative Rules office is Microsoft Word® 2003.
<b>Web site:</b>	No charge. Contains certified rules, agency filing histories, Committee rules and final objections, other relevant information, and the <i>New Hampshire Rulemaking Register</i> (image-only, but viewable with Adobe® software). Click on <a href="http://www.gencourt.state.nh.us/rules/index.html">http://www.gencourt.state.nh.us/rules/index.html</a> .

**ONLINE COPIES OF RULES FROM THE ADMINISTRATIVE RULES OFFICE WEB SITE**

An effective rule will not appear on the web site of the Administrative Rules office until the agency certifies the rule as described above. Once their expiration is known to the office, expired rules are either deleted or the word "EXPIRED" and the expiration date are inserted in their source notes. If an existing rule has been amended or superseded by a later filing, the online rule will not be updated until the agency certifies the updated rule. See the "[How to Double Check an Online Rule](#)" on the web site or contact the Administrative Rules office for information on how to double-check the online rule with the online agency filing history to make sure that the online rule is current.

The online rule text, including text of the Administrative Rules office's editorial work, such as source notes, revision notes, and tables of contents, is otherwise identical with the certified, "official version" of the rule. However, taken as a whole, the rules as they appear on the web site of the Administrative Rules office are **not** the "official version" under RSA 541-A of the *New Hampshire Code of Administrative Rules*. The format of online rules is not the same as the official version, the online rule text may have been amended or superseded by a later filing that has not yet been certified and placed online, and online rules may have expired, as noted above. Online style differences include different font style and spacing due to Hypertext Mark-up Language (HTML), and some deletion of underlining from section headings.

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**DIRECTOR'S CERTIFIED COPY OF A RULE BY AFFIDAVIT**

Upon an oral or written request by an agency, legislator, or the public for evidentiary purposes, the Administrative Rules office will prepare an affidavit signed by the Director or the Director's designee with a hard copy of the "official version" of effective rules, or a copy of expired rules. The affidavit in this sense "certifies" that the attached is a true copy of the rule. The affidavit will be either notarized or signed by a Justice of the Peace.

There is no charge for this service to an agency or a legislator. The charge to others is \$.20 per page for each rule.

## **4.2 Public Access and Copies from Sources Other Than the Administrative Rules Office.**

### ***AGENCIES***

Agencies are required to provide, upon public request, proposed and adopted rules and other public documents. See RSA 91-A:4, IV; RSA 541-A:11, VI; RSA 541-A:14, IV; and RSA 541-A:15, I. Copies of rules during the regular rulemaking process are also addressed in 2.7 in Chapter 3 of this *Manual*.

### ***STATE LIBRARY***

As noted above, the State Library receives the "official version" of rules, both as-filed and as certified, declaratory rulings, and agency filing histories from the Administrative Rules office. It may also have unofficial publications of rules from private publishers. Several state agencies also place rules on the "Webster" web site maintained by the State Library at <http://www.nh.gov>. The State Library is a subscriber to 25 copies each week of the hard copy version of the *Register* for distribution to depository libraries.

The Administrative Rules office makes no representation regarding the accuracy of rules published by private publishers or of rules placed by an agency on the "Webster" web site.

For copies, requests shall be made to:

New Hampshire State Library  
Reference and Information Services  
20 Park Street  
Concord, NH 03301-6314  
Tel. (603) 271-2144, 271-2239  
Fax (603) 271-2205  
TDD Access: Relay N. H. 1-800-735-2964  
or dial 711 (in N. H.)

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***N. H. LAW LIBRARY***

The N. H. Law Library at the State Supreme Court receives from the Administrative Rules office the same rules and other documents as the State Library.

For copies or questions, requests shall be made to:

John W. King New Hampshire Law Library  
Supreme Court Building  
One Charles Doe Drive  
Concord, NH 03301  
Tel. (603) 271-3777  
Fax (603) 513-5450  
TDD Access: Relay N. H. 1-800-735-2964  
or dial 711 (in N. H.)  
E-mail: lawlibrary@courts.state.nh.us

***PRIVATE PUBLISHERS***

As noted above, there is no official publisher of the entire *New Hampshire Code of Administrative Rules*. A few private publishers have published some or most of the state's rules, but they are not official publishers. The Administrative Rules office does not endorse any particular publisher and makes no representation about the accuracy of these products.

## CHAPTER 2 RULES REQUIRED OF ALL AGENCIES AND DECLARATORY RULINGS

### PART 1 PURPOSE

#### 1.1 Description.

The intent of Chapter 2 is to describe:

- The subjects of rulemaking required of all agencies under RSA 541-A:16, I;
- The rules of practice and procedure for adjudicative proceedings as required by RSA 541-A:16, I(b)(2) and RSA 541-A:30-a, I and III;
- The requirements for filing declaratory rulings with the Administrative Rules office under RSA 541-A:16, II(b); and
- Optional rules of practice and procedure.

**NOTE:**

The rules required by RSA 541-A:16, I are in addition to other rulemaking authority granted to an agency under its own statutes. So long as your agency meets the definition of “agency” under RSA 541-A:1, II, these requirements apply to it unless the agency has a statutory exemption. See RSA 541-A:41.

### PART 2 RULEMAKING SUBJECTS COMMON TO ALL AGENCIES

#### 2.1 Organizational Rules—Chapter 100.

Each agency with rulemaking authority under RSA 541-A must adopt “organizational rules.” See RSA 541-A:16, I(a).

An agency’s organizational rules all belong in chapter 100 of the agency’s rules. The rule numbering and drafting requirements are located in 1.8 and 3.5 in Chapter 4 of this *Manual*.

Organizational rules shall include only:

- Purpose and scope rules, if they describe the purpose and scope of all the agency’s rules under the agency’s title or subtitle;
- Definitions, if they apply title or subtitle wide and not just to one chapter, part, or section of the rules;
- A description of your agency’s structural divisions and their functions established by statute or administratively by the agency as follows:
  - State fully the areas over which your agency has control;



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- Cite but not quote all statutory provisions which give your agency rulemaking authority, and describe how that authority affects the public; and
- State how a member of the public can best deal with your agency and where he or she may go to obtain essential information, such as which division a person needs to contact to obtain a permit; and
- The procedures a member of the public must follow, and your agency’s address, telephone, fax, and TTY/TDD numbers to obtain governmental records and other public information under RSA 91-A, the Right-To-Know Law.

**NOTE:**

Organizational rules do not expire at some future date after adoption and filing in a rulemaking proceeding for a regular rule, provided that the Committee has approved the rules and the adoption or amendment of a statute does not render the organizational rules inaccurate. The source note for the certified rule will italicize the filing information for these rules. See 2.22 in Chapter 3, Chapter 5, and RSA 541-A:17, II.

**2.2 Rules of Practice and Procedure—Chapter 200.**

Each agency must adopt “rules of practice and procedure,” consisting of “rules of practice setting forth the nature and requirement of all formal and informal procedures available,” including certain specific areas listed below. See also 1.8 in Chapter 4 and RSA 541-A:16, I(b)-(d). To be properly in chapter 200 of an agency’s rules, these rules must apply to the entire title or subtitle of an agency’s rules, and not to a specific program within a title or subtitle. See the text box on “placement” on the next page. Mandatory practice and procedure rules are listed below. Optional areas for practice and procedure rules are listed on the next page, but, if an agency wants to give such procedures the force and effect of law, they must be adopted as rules.

Practice and procedure rules properly in chapter 200 in compliance with this *Manual*, as identified below, do not expire after adoption and filing in a regular rulemaking proceeding, provided the Committee has approved the rules and the adoption or amendment of a statute does not render the rules inaccurate. The source note for the certified rule will italicize the filing information for these rules. See 2.22 in Chapter 3, Chapter 5, and RSA 541-A:17, II.

**MANDATORY PRACTICE AND PROCEDURE RULES**

- Rules governing adjudicative proceedings, including the areas required by RSA 541-A:30-a, III.
- Rules governing rulemaking hearings under RSA 541-A:11.
- The format and procedure for petitioning the agency to adopt, amend, or repeal a rule pursuant to RSA 541-A. The rules must detail how petitions are submitted, considered, and disposed under the time frame in RSA 541-A:4. This includes setting out the criteria the agency will apply in deciding to grant or deny the petition.
- The format and procedure for filing petitions with the agency for declaratory rulings and their prompt disposition. See Part 4 below.
- Rules governing public requests for an agency statement explaining reasons for and against adoption of a rule and why arguments and considerations against the rule were overruled. See RSA 541-A:11, VII and 2.24 in Chapter 3.

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**OPTIONAL PRACTICE AND PROCEDURE RULES**

- Rules governing complaints and investigations on matters under the agency's jurisdiction, including on agency licensees, permit holders, or certificate holders.
- Rules governing settlement procedures, alternative dispute resolution, or other resolution of contested cases without an adjudicative proceeding, including voluntary surrender of a license if made as a result of a consent decree following a complaint or investigation.
- Rules on uniform waiver procedures and criteria to waive any of the agency's rules. See RSA 541-A:22, IV.
- Rules on uniform waiver procedures and criteria to waive statutory requirements enforced or administered by the agency, including waivers of penalties and interest, but only if such waivers are specifically authorized by statute.
- Procedures and criteria to assess and award attorney's fees as a result of an adjudicative proceeding, but only if such assessment and award is authorized by statute.
- Rules governing non-adjudicative hearings in general, not only rulemaking hearings.
- Rules governing uniform procedures for requests for confidential treatment of documents submitted to the agency and for release of such documents.
- Rules governing uniform procedures for the retention and destruction of documents.

**PLACEMENT OF PRACTICE AND PROCEDURE RULES**

The mandatory and optional rules of practice and procedure above belong in Chapter 200 of the agency's rules if they apply to the entire title or subtitle of an agency's rules, and not to a specific program within a title or subtitle. Otherwise, such rules and all other remaining "formal and informal procedures," must be placed with the specific chapter, part, or section to which they relate, and they become 10-year rules. These 10-year rules include rules governing adjudicative proceedings unique to a particular program. See 1.4 through 1.8 on rule numbering in Chapter 4.

### **2.3 Agency Actions Governed by RSA 541-A.**

When drafting your rules of practice and other rules governing "formal and informal procedures," do not conflict with the following provisions of RSA 541-A:

***RSA 541-A:4—RULEMAKING PETITIONS***

An agency must, within 30 days of receiving a rulemaking petition, or, if the agency is a group of individuals, within 30 days of the next scheduled meeting of the group following receipt of the petition, (1) determine whether to grant or deny the petition and (2) notify the petitioner in writing of its decision. If the agency denies the petition, it has to state the reasons for denial. If the agency grants the petition, it must, within 120 days of receipt of the petition, draft the rule and request a fiscal impact statement under RSA 541-A:5.

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***RSA 541-A:29—OTHER APPLICATIONS, PETITIONS, AND REQUESTS***

In processing an application, petition, or request in a matter other than rulemaking or a declaratory ruling, an agency under RSA 541-A:29 must:

- Within 60 days of receipt, determine if it is complete, notify the applicant of any errors or omissions, request any additional information allowed by law, and supply the name, title, address and telephone number of the agency person who can respond to the applicant's questions; and
- Within 120 days after receipt of the original application, petition, or request, or 120 days after receiving the response to the agency's request for more information above, approve or deny the application, petition, or request, or commence an adjudicative proceeding.

If other provisions of law conflict with these time limits, the other provisions apply instead.

***RSA 541-A:30—AGENCY ACTION AGAINST LICENSEES***

Under RSA 541-A:30, unless a licensed activity automatically expires by law, an existing license for which a "timely and sufficient" renewal application has been made does not expire until:

- Final agency action;
- The last day for seeking judicial review if the action is unfavorable; or
- A later date set by a court.

An agency shall not "revoke, suspend, modify, annul, withdraw, or amend" a license until notice is given to the licensee and an opportunity is provided for an adjudicative proceeding, unless:

- The "public health, safety or welfare requires emergency action" permitting immediate suspension of the license;
- The agency incorporates a finding to that effect in its order; and
- An adjudicative proceeding is commenced within 10 working days after the order suspending the license.

## **PART 3 ADJUDICATIVE PROCEEDINGS IN CONTESTED CASES**

### **3.1 Description of an Adjudicative Proceeding.**

An "adjudicative proceeding" is "the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36." See RSA 541-A:1, I.

A "contested case" is "a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and opportunity for hearing." See RSA 541-A:1, IV.

RSA 541-A, in addition to specifying rulemaking requirements, includes minimum due process procedures for adjudicative proceedings. See RSA 541-A:30-a, VI and VII and RSA 541-A:31-36. These procedures govern your agency's adjudicative proceedings unless your agency is exempt or the procedures in RSA 541-A conflict with another statute governing your agency. See RSA 541-A:41.

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The adjudicative procedures in RSA 541-A are not intended to promote “undue formality” in the resolution of disputes but to ensure the opportunity for the following:

- Informal settlement by non-adjudicative processes, which is encouraged but not required. See RSA 541-A:38;
- Informal disposition of a contested case unless precluded by law. See RSA 541-A:31, V(a);
- Informal prehearing conferences. See RSA 541-A:31, V(b); and
- Waiver by any member of the public of any formal procedure available to that person. See RSA 541-A:37 and RSA 541-A:22, IV.

### **3.2 Rules for an Adjudicative Proceeding.**

Although RSA 541-A specifies certain minimum due process procedures, they are often written as general statements, and RSA 541-A in any case does not address all areas in a full adjudicative proceeding. These missing details must be filled in by adopting rules. See RSA 541-A:16, I(b)(2) and RSA 541-A:30-a, I and III. These rules must be consistent with RSA 541-A unless other statutes apply.

Unless the procedures are already addressed by statutes governing the agency, an agency’s rules on adjudicative proceedings must cover at least the following areas:

- Filing and service of documents;
- Appearances before agencies;
- Procedures for pre-hearing exchange of information;
- Burden of proof;
- Standard of proof;
- Computation of time periods;
- Roles of complainants, intervenors, and agency staff in disciplinary and enforcement proceedings;
- Continuances;
- Reopening of the record;
- Waiver of rules governing adjudicative proceedings;
- Procedure and criteria for the withdrawal of the presiding officer; and
- Retention schedule for written decisions or orders pursuant to RSA 541-A:35, subject to any longer periods for retention set by the Director of the Division of Archives and Records Management of the Department of State under RSA 5:40.



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### **3.3 Model Rules for an Adjudicative Proceeding.**

The Attorney General has adopted model rules governing adjudicative proceedings, effective May 3, 2000. They address the areas in 3.2 above. The model rules are numbered Jus 800 MODEL RULES OF PRACTICE AND PROCEDURE.

You can view them on the web site of the Administrative Rules office at <http://www.gencourt.state.nh.us/rules/index.html> by clicking on “**Agency Administrative Rules**”, “**Rules Listed by State Agencies**”, and then “**Jus Department of Justice**.” They are also available from the Administrative Rules office in hard copy or by e-mail. See 4.1 in Chapter 1. You may also obtain hard copy from the Department of Justice.

The model rules shall apply to any adjudicative proceeding conducted by an agency:

- That has no effective rules for adjudicative proceedings; or
- To the extent that the agency’s effective rules or governing statutes do not already address the procedures in the model rules.

**NOTE:**

The model rules do not relieve an agency of the requirement to adopt its own rules on adjudicative proceedings. The model rules are intended to supplement the procedures established by RSA 541-A and any statute relating to agency conduct of an adjudicative proceeding. They are “one size fits all” and therefore are not a perfect fit for all agencies, which may need different or more detailed procedures for their own proceedings. For legal advice on the need for rules and the applicability of the model rules to a particular agency, agencies must contact the Department of Justice.

## **PART 4 DECLARATORY RULINGS**

### **4.1 Nature of a Declaratory Ruling.**

A declaratory ruling is not a rule. Both are written and made effective by an agency, but by definition a declaratory ruling can apply only to the petitioner because it is a ruling “as to the specific applicability of any statutory provision or of any rule or order of the agency.” See RSA 541-A:1, V. Rules by definition are regulations, standards, or other statements of “general applicability” and therefore will apply more broadly. See RSA 541-A:1, XV.

### **4.2 Filing of a Declaratory Ruling.**

Although declaratory rulings, unlike rules, do not require notice and a hearing, agencies must file them with the Director through the Administrative Rules office. See RSA 541-A:16, II(b).

Filing does not determine the effective date. Declaratory rulings become effective when issued by the agency. They may be filed electronically if in compliance with 1.10 and Part 7 of Chapter 3.

To be accepted and recorded by the Administrative Rules office as a declaratory ruling, the ruling must:

- Meet the definition of a declaratory ruling;



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- Identify the agency and the date of issuance; and
- Be signed (as described in 1.7 in Chapter 3) by the individual, or a member of the group of individuals, who made the ruling, or be filed with a cover letter so signed.

Upon agency filing of the declaratory ruling, the Administrative Rules office will assign a document number and send a receipt to the agency noting the ruling's issuance and filing dates. A brief description of the ruling will be published by the Administrative Rules office in the *Rulemaking Register*, usually on the second Thursday of the month. The agency's filing history on the web site of the Administrative Rules office will also be updated to identify the ruling, its document number, and effective date. This information is also accessible online by clicking on "**NH Rulemaking Search**" on the office's web site at <http://www.gencourt.state.nh.us/rules/index.html>.

## CHAPTER 3 RULEMAKING PROCEDURE

### PART 1 PRELIMINARY CONSIDERATIONS

#### 1.1 The Nature of a Rule.

The definition of a “rule” in RSA 541-A:1, XV was stated in Part 2 of Chapter 1. Note the following key words underlined in that definition and in other provisions of RSA 541-A quoted below. Before you start rulemaking, understand how a rule is different from a statute, a recommendation, and a strictly internal matter affecting only the agency, and when a rule has the force of law.

##### ***WHAT A RULE IS***

A “rule” is :

*Each regulation, standard, form as defined in paragraph VII-a, or other statement of general applicability adopted by an agency to (a) implement, interpret or make specific a statute enforced or administered by such agency or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies. [emphasis added]*

##### ***WHAT IS NOT A RULE***

The term “rule” does not include an agency’s:

*(a) Internal memoranda which set policy applicable only to its own employees and which do not affect private rights or change the substance of rules binding upon the public, (b) informational pamphlets, letters or other explanatory material which refers to a statute or rule without affecting its substance or interpretation, (c) personnel records relating to the hiring, dismissal, promotion, or compensation of any public employee, or the disciplining of such employee, or the investigating of any charges against him, or (d) declaratory rulings. [emphasis added]*

##### **DECIDING IF A POLICY OR PROCEDURE IS “INTERNAL”**

Pay special attention to the qualifying words “do not affect private rights or change the substance of rules binding on the public.” Do not be mistaken that your agency policy or procedure is necessarily “internal” simply by the way it is written, by seeming to place a requirement only on the agency, for example with words like “the department shall...”. The policy or procedure may in fact be a rule if it appears to “affect private rights”, such as, but not limited to, state licenses, certificates, or benefits deemed to be a property right, or if it changes another rule. Agencies should check with their legal counsel.

##### ***FORMS AS RULES—REQUIREMENTS ON FORMS ARE RULES***

As defined in RSA 541-A:1, VII-a, a “form” is:

*A document that establishes a requirement for persons outside the agency to provide information to an agency and the format in which such information must be submitted. The term does not include any document, regardless of what the document is called, that (a) is provided by an agency to facilitate the submission of information that is required to be submitted to the agency by federal or state statute,*

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*regulation, or rule and does not add to or modify such requirement or (b) that is used only by the agency to provide information to persons outside the agency.*

To be a “form”, therefore, an agency document must require the submittal of information and, by specifying how the information must be included on or with the document, mandate a “format.” “Information” in this context means the requirements on an agency’s form on how to complete and submit the form—the words or data to be placed on the form document itself or as extra sheets, signatures, and instructions. A mandatory list of information to be submitted to the agency, but without an agency document, would not be a form but would still be a “rule” if it otherwise meets the definition of a “rule” in RSA 541-A:1, XV.

To the extent that forms require information or contain other requirements that meet the definition of a “rule,” such as instructions on completing the form, then these requirements must be adopted as rules through adoption or amendment of the form. See the bulleted outline below on how to do that. The physical arrangement of the form, including the layout, appearance, and location of items on the form, are not rules, unless the agency form may also be generated by the public for submission to the agency, and the arrangement is mandatory. In that case, such an arrangement would be a rule.

***ADOPTING OR AMENDING A FORM***

See 3.12 and 3.13 in Chapter 4 on how to adopt or otherwise describe forms in numbered rules, including online forms. See 3.14 in Chapter 4 on format requirements for forms. Since January 1, 2010, there have been 3 routes to adopt or amend **substantively** an agency form:

- Write out and adopt the form’s requirements pursuant to RSA 541-A:19-b as numbered rules through the regular, interim, or emergency rulemaking processes, as applicable, as described in 3.13 of Chapter 4;
- Incorporate the form by reference pursuant to RSA 541-A:19-b in a numbered rule adopted through the regular, interim, or emergency rulemaking processes, as applicable, and citing to a particular date or edition of the form, as described in 3.12 of Chapter 4; or
- Use the expedited procedure for revision of forms pursuant to RSA 541-A:19-c, including further rulemaking if the form’s requirements have also been set forth in numbered rules. See Part 6 of Chapter 3.

For regular rulemaking initiated on or after January 1, 2010 where the rules were adopted before July 26, 2011, the numbered rules containing the requirements of a form or incorporating the form by reference expire only pursuant to RSA 541-A:17, II, just like organizational rules and rules of practice and procedure. However, subsequent re-adoption of such rules in regular rulemaking will make the requirements subject once again to an expiration date pursuant to RSA 541-A:16, III and RSA 541-A:17, I, except as extended pursuant to RSA 541-A:14-a.

***RULES HAVE THE FORCE OF LAW IF VALIDLY ADOPTED AND FILED AND HAVE NOT EXPIRED***

“No agency rule is valid or effective against any person or party, nor may it be enforced by the state for any purpose, until it has been filed as required by [RSA 541-A] and has not expired.” See RSA 541-A:22, I, as amended effective September 11, 2015. A rule which has not expired then has the **force of law**, even though it does not originate in the legislature. See RSA 541-A:22, II. Expired rules, oral rules, or other rules not properly filed do not have the force of law and must not be enforced as if they were valid. An agency

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should check with its legal counsel if one or more of its rules has expired in order to determine the scope of the agency's authority under other law to enforce requirements formerly in the expired rules..

### **1.2 The Scope of Rulemaking Authority.**

Because effective rules have the force of law, rulemaking is lawmaking. Yet lawmaking is a legislative function. Therefore, rulemaking authority exists for your agency only if the legislature has delegated its lawmaking power by enacting a law granting your agency the authority to adopt rules. For example, the statement in a statute that "the commissioner shall adopt rules pursuant to RSA 541-A relative to a license application fee" grants rulemaking authority to that commissioner.

The scope of rulemaking authority is always directly related to a statute which sets out the policy that the agency is authorized to implement. "Rules adopted by State boards and agencies may not add to, detract from, or in any way modify statutory law." *Kimball v. N.H. Board of Accountancy*, 118 N.H. 567, 568, 391 A.2d 888, 889 (1978). In the example above, the scope of the commissioner's rulemaking authority to set a fee would be determined not only by the statutory provision granting rulemaking authority but also by related provisions of the agency's statute governing the license application.

**NOTE:**

See the definition of "agency" in Chapter 1. The "agency" with rulemaking authority is an individual, like a commissioner, or group of individuals, like a board or commission. They cannot delegate that authority to anyone else unless specifically authorized by statute.

Rulemaking authority may be specific as above or broad, such as "the commissioner shall adopt rules pursuant to RSA 541-A to implement this chapter." However, an agency needs specific statutory or other specific legislative authority to adopt rules in certain areas. See RSA 541-A:22, III and RSA 541-A:3-b. These areas include:

- Penalties or fines;
- Licensing, as defined in RSA 541-A:1, IX;
- Fees;
- Non-consensual inspections of private property;
- Delegation of rulemaking authority;
- Adopting rules under another agency's authority;
- Expanding or limiting the scope of who may practice a profession;
- Requiring submission of a social security number unless mandated by state or federal law; and
- Incorporating by reference any code, rule, or document from another state government.

The Administrative Rules office cannot interpret rulemaking authority for agencies or the public. For legal advice agencies must contact the Department of Justice.



### 1.3 When Rulemaking May Begin.

An agency may begin the rulemaking process, and even adopt a rule, after the enactment and before the effective date of the statute granting rulemaking authority, **provided** that the effective date of the rule does not occur before the effective date of that statute. See RSA 541-A:20.

### 1.4 How Time Is Reckoned.

RSA 541-A has deadlines, unless waived pursuant to 1.9 below, and notice and comment periods which must be calculated as follows:

#### ***EXTENDING DEADLINES WHICH FALL ON WEEKENDS OR HOLIDAYS***

Any deadline for action imposed by RSA 541-A on an agency, the public, or the Committee that falls on a Saturday, Sunday, or state legal holiday is automatically extended to the next day that is not a Saturday, Sunday, or state legal holiday. See RSA 541-A:16, IV. This does not include Thursday filing deadlines imposed only by the *Manual* to allow timely publication of rulemaking notices in the *Rulemaking Register*.

#### ***CALCULATING NOTICE PERIODS AND DEADLINES***

The notice period for a public hearing and cut-off date for the submission of written testimony under Part 2 of this chapter shall begin on the day after the notice is published in the *Rulemaking Register*. See RSA 541-A:6, I.

This method of counting days is followed for all other time periods under RSA 541-A. This includes but is not limited to notice periods for postponed rulemaking hearings. When a period or limit of time is to be reckoned from a day or date, that day or date shall be excluded from the computation, and the day by which an act must or may occur shall be included in the computation. See RSA 21:35 on statutory construction.

### 1.5 Faxes and E-Mail.

“File” is defined in RSA 541-A as the “actual receipt... of a paper or electronic document” required to be submitted during rulemaking. See RSA 541-A:1, VI. For a document to be considered “filed” in paper, by an agency with the Administrative Rules office under Parts 2, 3, and 4 below, the document must be physically received as hard copy and not just reproduced by the Administrative Rules office from an electronic signal received by fax or e-mail. For a document to be considered as filed electronically, see 1.10 below and Part 8 of this chapter regarding the use of e-mail for this purpose after July 31, 2019.

Agency e-mail submissions of a rulemaking notice in Word® shall be made to facilitate the compilation of a notice in the Rulemaking Register under 2.5 in this chapter. For agency e-mail submissions to expedite the editing process of camera-ready rules after a rule is adopted, see 2.1 in Chapter 5.

Rulemaking documents for a rulemaking proceeding undertaken by an agency in paper may be sent to the Administrative Rules office by fax or e-mail:

- To seek office guidance prior to filing the hard copy; or
- To indicate corrections or supply missing information for initial proposals or proposed interim rules already filed in hard copy, provided that:



- These changes do not involve documents with required signatures, substantive changes to the rule text, or changes to the fiscal impact statement; and
- The complete and correct hard copy document or page is submitted in time for comparison to the fax or e-mail before the relevant notice must be cut and pasted into the *Rulemaking Register* for publishing.

## 1.6 Computer-Generated Copies of Forms from the Administrative Rules Office and the LBA.

For rulemaking under Parts 2, 3, and 4 below, your agency may use a computer-generated hard copy of the required forms of the Administrative Rules office and the Office of Legislative Budget Assistant (LBA) required in Appendix II, provided that the copy:

- Is of letter quality; and
- Is identical to the corresponding form in Appendix II including the page size and the wording, numbering, and arrangement of items but excluding the word “Appendix” and the form number. Special notice as to the kind of assistance available for disabled members of the public in a rulemaking hearing, such as sign language interpreters, may be included in rulemaking notices submitted for publishing in the *Rulemaking Register*.

Upon request, the Administrative Rules office can provide the forms by e-mail.

The copy of the “Rulemaking Notice Form” (Appendix II-C) may be less than 2 pages in length but the resulting copy must be readable. The copy may be more than 2 pages in length if necessary to adequately address the items on the form.

## 1.7 Signatures on Documents Filed with the Administrative Rules Office.

Various agency rulemaking documents as identified in this *Manual* and filed with the Administrative Rules office must be signed by the individual, or a member of the group of individuals, with rulemaking authority. See 4.2 in Chapter 2 for signatures when filing a declaratory ruling. See Part 8 of this chapter for requirements regarding electronic filing of signed documents and the use of electronic signatures in place of original, handwritten signatures.

For signed documents filed in paper to be accepted, the signature must be an original signature, but a computer-generated facsimile signature is acceptable instead if:

- The agency has already filed with the Director an authorization letter on agency letterhead, with the wording and format below, signed with an original signature by the individual whose facsimile signature will be used; and
- Any documents subsequently filed with the facsimile signature are countersigned with an original signature of the person authorized in the certification letter to affix the facsimile signature.

For documents filed electronically to be accepted with an electronic signature, the signature must be affixed onto the document by the person whose signature is represented, but delegated use of the electronic signature is acceptable instead if:

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- The agency has already filed with the Director an authorization letter on agency letterhead, with the wording and format below, signed with an electronic signature affixed by the individual whose electronic signature may be delegated; and
- Any electronic documents subsequently filed with the delegated electronic signature are countersigned with the electronic signature of the delegee authorized in the certification letter to affix the delegated electronic signature.

#### SIGNATURE AUTHORIZATION LETTER—REQUIRED ELEMENTS AND FORMAT

Director  
Office of Legislative Services  
c/o Administrative Rules  
25 Capitol Street  
State House Annex, Room 219  
Concord, New Hampshire 03301-6312

Dear Director:

I hereby certify that:

1. I have authorized \_\_\_\_\_ as the only person in this agency with authority and control to affix [FOR PAPER FILING: “a computer-generated facsimile of my signature to documents filed in paper”] [FOR ELECTRONIC FILING: “my electronic signature for documents filed electronically”] in the Office of Legislative Services, Administrative Rules, as described in Section 1.7 of Chapter 3 in the *New Hampshire Drafting and Procedure Manual for Administrative Rules*;
2. This authorization extends only to affixing [FOR PAPER FILING: “the computer-generated facsimile signature”] [FOR ELECTRONIC FILING: “my electronic signature”]. I have not delegated to this person the authority to make any decision or certification that I must make as required by RSA 541-A or the *Manual* pursuant to RSA 541-A:8; and
3. You, the Administrative Rules office, and the Joint Legislative Committee on Administrative Rules may rely upon [FOR PAPER FILING: “this computer-generated facsimile signature”] [FOR ELECTRONIC FILING: “my electronic signature”] as if it were the original for all purposes under RSA 541-A and the *Manual*.

Sincerely,

#### NOTE:

Some individuals whose facsimile or electronic signature will be used might have rulemaking authority **and** also be a member of a group with rulemaking authority. If that is the case, and the individual would like the authorization to apply to his or her signature given for more than one agency, then:

- Different letters with different letterheads must be used for each agency authorization; and
- The words “**this** agency” in #1 above must be amended to identify the agency if the authorized individual does not work in the agency given in the letterhead.

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**1.8 Number of Copies of Rulemaking Documents Filed in Paper with the Administrative Rules Office.**

Summarized below is the required number of copies of documents if filed in paper by an agency with the Administrative Rules office relative to rulemaking under Chapter 3:

<b><i>REGULAR RULES</i></b>		
<b><u>Rulemaking Stage</u></b>	<b><u>Document</u></b>	<b><u>Number of Copies</u></b>
Initial Proposal	“Rulemaking Notice Form” and fiscal impact statement	One
	Proposed rule, w/appendix	2
Final Proposal	“Cover Sheet,” w/ all attachments	One
	Final Proposal—Fixed Text w/appendix	One
	Final Proposal—Annotated Text	One
Amended Final Proposal	Cover letter & amended final proposed rule w/appendix	One
Conditional Approval Response	Cover letter & rule w/appendix	One
Preliminary Objection Response	Cover letter & rule w/appendix	One
Request for Approval with Further Amendment (Amended Preliminary Objection Response)	Cover letter & rule w/appendix	One
Revised Objection Response	Cover letter & rule w/appendix	One
Adopted Rule	Cover letter	One
	Adopted rule w/appendix	2

**NOTE:** One copy is required of any additional notices filed during the course of the regular rulemaking proceeding, such as extension of public comment deadlines, postponement and rescheduling of a rulemaking hearing, or notice of a hearing and public comment period for a draft final proposed rule.

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***INTERIM RULES***

<u>Rulemaking Stage</u>	<u>Document</u>	<u>Number of Copies</u>
Proposed Interim Rule	“Interim Rulemaking Notice Form”	One
	Newspaper notice (if any)	One
	Proposed interim rule, w/ appendix and “Cover Sheet”	2
Amended Proposed Interim Rule	Cover letter & amended proposed interim rule w/appendix	One
Conditional Approval Response	Cover letter & rule w/appendix	One
Objection Response	Cover letter & rule w/appendix	One
Adopted Interim Rule	Cover letter	One
	Adopted rule w/appendix	2

***EMERGENCY RULES***

<u>Rulemaking Stage</u>	<u>Document</u>	<u>Number of Copies</u>
Adopted Emergency Rule	Adopted rule and “Cover Sheet” w/attachments	2
Repeal of Emergency Rule	“Statement for Repeal of Emergency Rule”	2

***EXPEDITED REPEALS***

<u>Rulemaking Stage</u>	<u>Document</u>	<u>Number of Copies</u>
Proposed Expedited Repeal	“Expedited Repeal Notice Form”	One
	Proposed repealed rule	2
Adopted Expedited Repeal	Cover letter	One
	Repealed rule	2

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***EXPEDITED REVISIONS TO AGENCY FORMS***

<u>Rulemaking Stage</u>	<u>Document</u>	<u>Number of Copies</u>
Proposed Expedited Revisions to Agency Form	“Notice for Expedited Revisions to Agency Forms”	One
	Proposed revised form w/ any applicable attachments	2
Copies for the stages of JLCAR action, such as approval or objection, follow that of regular rules, with the form filed instead of a numbered rule.		
Adopted Form	Cover letter	One
	Adopted form w/ any applicable attachments	2

***EXPEDITED AMENDMENT TO INCORPORATION BY REFERENCE***

<u>Rulemaking Stage</u>	<u>Document</u>	<u>Number of Copies</u>
Proposed Expedited Amendt. to Incorporation by Reference	“Notice for Expedited Amendment to Incorporation by Reference”	One
	Proposed amended rule w/ appendices and Incorporation by Reference Statement(s)	2
Copies for the stages of JLCAR action, such as approval, conditional approval, or objection, follow that of regular rules.		
Adopted Expedited Amendt. to Incorporation by Reference	Cover letter	One
	Adopted rule w/appendices	2

**1.9 Waiver of Deadlines; Extension of Time Periods.**

Pursuant to RSA 541-A:40, IV, the Director of the Office of Legislative Services “after consultation with the chair and vice-chair” of the Committee, “may... for good cause shown, waive any deadline or otherwise extend any time period contained” in RSA 541-A. These include, most commonly, the 150-day deadline after notice publication to establish and file a final proposal under RSA 541-A:12, I, the 14-day filing deadline prior to a regularly scheduled Committee meeting to file a final proposal or proposed interim rule for placement on that meeting’s agenda, and the time period to respond to a conditional approval or preliminary or revised objection of the Committee under RSA 541-A:13, V(a) and V(c). Waivers may also be granted of Committee deadlines to act on a final proposal or amended final proposal, vote to sponsor a joint resolution, or file a joint resolution.

If a deadline is waived or a time period extended, the Director “shall, after consultation with the chair and vice-chair of the committee and the agency whose rules are affected, establish a new deadline.”



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The procedure to waive deadlines or extend time periods does not apply to:

- A reduction of the minimum public notice periods or public comment periods for rulemaking under RSA 541-A;
- Extension of public comment deadlines in regular rulemaking, which are instead subject to the agency's control as described in 2.8 of this chapter;
- The extension of the effective life of a rule, except to the extent allowed for regular rules pursuant to RSA 541-A:14-a, II and RSA 541-A:16, III;
- Acceptance after the Thursday filing deadline of a notice for a proposed regular rule, interim rule, expedited repeal, or expedited revision to a form for the *Rulemaking Register* published the following week. Late filings are accepted in limited circumstances as described in 2.5 and 3.3 of this chapter; or
- A 30-day extension to file a final proposal, which is addressed pursuant to RSA 541-A:8 and 2.10 in this chapter as part of a rewrite order to comply with the *Manual*.

An agency may request a waiver of an agency deadline or an extension of a time period either orally or in writing, either before or after a deadline has been reached. The request may be made by agency staff on behalf of the agency and does not have to be personally made by the individual, or group of individuals, with rulemaking authority. In the view of the Director, good cause for an agency waiver or extension includes:

- Illness or unavoidable absence of the individual, or a quorum of individuals, with rulemaking authority to approve the text of the proposed rule in time for it to be filed by the deadline;
- Illness or unavoidable absence of agency staff necessary to comply with the *Manual* or otherwise process and file the rule by the deadline;
- Inclement weather or other circumstances beyond the control of the agency affecting filing by the deadline;
- The public interest in granting the waiver or extension, allowing the rule to be subject to Committee review or subsequent agency adoption in a timely manner, after considering the nature and effect of the particular rule relative to public health, safety, or welfare, implementation of state or federal law, or to fiscal impact; or
- Any other factor where a delay in filing until after the deadline would facilitate greater input and participation by the public in the rulemaking process for a particular rule, or allow the agency to respond properly and completely to Committee objections or requests for information.

Committee requests for waivers of Committee deadlines shall be filed and acted upon pursuant to the Committee's rules.

### 1.10 Electronic Filing by E-Mail; Basic Principles.

Pursuant to RSA 541-A:1, VI, and until replaced by a web-based filing system, electronic filing of documents with the Administrative Rules office after July 31, 2019 will be acceptable by e-mail to AdminRules@leg.state.nh.us provided that the submission and the document comply with the requirements established in this *Manual*. The procedures for electronic filing as part of a rulemaking proceeding are contained in Part 8 of this chapter.

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As defined in RSA 541-A:1, VI, “file” means:

*The actual receipt, by the director of legislative services, of a paper or electronic document required to be submitted during a rulemaking process established by this chapter. The term “file” shall also apply to any other response, submission, or written explanation required during a rulemaking process established by this chapter.*

As defined in RSA 541-A:1, V-a, “electronic document” means:

*A document which complies with requirements established in the drafting and procedures manual under RSA 541-A:8. For electronic documents, a requirement during the rulemaking process for a signature accompanying the filing of an electronic document shall be met if such signature complies with the requirements of RSA 294-E.*

The basic principles governing all electronic filing are stated below.

**BASIC PRINCIPLES FOR ELECTRONIC FILING**

**Electronic filing is not mandatory**, but the following shall apply to each agency that chooses to file electronically with the Administrative Rules office:

- Unless already participating as of July 31, 2019 with the permission of the Director in e-filing using the Ipswitch WTS\_FTP Professional ® software, each agency must go through the preliminary steps of authorization by the Office of Legislative Services for electronic filing as outlined in Part 8;
- Once approved, an agency may file electronically in a rulemaking proceeding from the first step through the filing of the adopted rule, as well as file declaratory rulings, if in compliance with Part 8;
- All references in this *Manual* to number of copies for filings or other submissions do not apply to electronic filings but only to filings in paper;
- Signatures for documents filed electronically must comply with 1.7 and Part 8; and
- All other requirements under RSA 541-A and this *Manual* must still be met, including rule numbering and drafting in compliance with Chapter 4.

### **1.11 Extension of Currently Effective Rules Pending Readoption.**

Pursuant to RSA 541-A:14-a, if an agency files a **regular rulemaking notice** to readopt or readopt with amendments **existing regular rules**, the existing rules in the proposal which would otherwise expire prior to the completion of readoption of the rules will not expire but continue in effect until the proposed rules are adopted and effective.

The extension is subject to compliance with certain conditions, and failure to comply establishes a new expiration date of the existing rules as follows:

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### *NEW EXPIRATION DATE*

The existing rules will expire 30 days after an agency failure to meet any of the following conditions, unless the deadline or period specified is waived pursuant to RSA 541-A:40, IV:

- Filing a final proposal by the 150-day or 180-day deadline in RSA 541-A:12, I;
- Filing a response to a preliminary or revised objection of the Committee by the 45-day deadline in RSA 541-A:13, V;
- Adopt and file the proposed rule as required by RSA 541-A:14, III no later than 30 days after the date on which the agency is allowed to adopt pursuant to RSA 541-A:14, I (see 2.20 in this chapter); or
- Filing the adopted rule with an effective date not more than 60 days from the date of filing.

If any of the first 3 deadlines above is waived and a new deadline established, but the agency fails to take action by the new deadline, the existing rules will expire 30 days after the new deadline.

### *FILING AND MAKING THE PROPOSAL EFFECTIVE*

If the effective life of a rule is extended as described above, and the agency wants an effective date more than 60 days after filing of the adopted rule, the agency must request and obtain a waiver of the 60-day period before filing to prevent the existing rule from expiring 30 days after the filing.

#### **NOTE:**

The effect of RSA 541-A:14-a may be to reduce the need to file a proposed interim rule as described in 3.1 of this chapter in order to keep an existing regular rule from expiring before regular rulemaking were completed.

## PART 2 REGULAR RULES

### 2.1 Drafting the Rule and Planning the Rulemaking Process.

Unless your agency is holding a pre-process hearing to collect input for a draft rule, your agency must begin by drafting the proposed rule.

Drafting must comply with 2 standards—one general and one specific:

- Each rule shall be drafted in accordance with the clarity standard of RSA 541-A:7 as described in 2.1 in Chapter 4; and
- Each rule must comply with Chapter 4 of this *Manual* as required by RSA 541-A:8.



#### TIPS TO AVOID PITFALLS



When drafting a rule and planning the rulemaking process, keep the following things in mind to avoid problems later:

- **Don't panic, just plan ahead.** The rulemaking process is not an examination to test an agency's skill but a public process to give proposed rules the effect of law. It works under a particular time frame, but there is agency discretion in determining how much time is needed. See the flow chart on the following pages;
- Rules must be specific, not vague. Follow the rule numbering and drafting requirements in Chapter 4 of this *Manual*;
- Rules must not conflict with your own statutes or other law;
- Separate as necessary into 2 proposals any rule provisions that will expire in 10 years from those that will not expire, as described in "Tips to Avoid Pitfalls" in 2.3 below; and
- You may contact the Administrative Rules office (tel. 271-3680) for advice and assistance, but the Administrative Rules office as a legislative office is prohibited by the separation of powers from drafting the rule itself. The Rules and Procedures Administrator of the Department of Administrative Services (tel. 271-3204) may also be able to provide guidance to agencies engaged in the rulemaking process.

#### ADMINISTRATIVE RULES OFFICE INFORMATION TO HELP YOU

Upon agency request the Administrative Rules office will provide by e-mail:

- A "macro" as described in 1.7 in Chapter 4 to set up automatically the spacing for a new page of rules in the correct format;
- A copy of the agency's existing rules from the office's database to assist the agency in amending existing rules; and
- The rulemaking forms in Appendix II of this *Manual*.



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**SUMMARY OF PROCEDURE FOR ADOPTION OF REGULAR RULES**  
**(See RSA 541-A:5 through RSA 541-A:14)**

**FIRST STAGE:**  
 (RSA 541-A:5 through  
 RSA 541-A:12)

**NOTE:** Days are calendar days unless otherwise shown. Also, OLS Director may waive deadlines or extend time periods imposed by RSA 541-A in First and Second Stages pursuant to RSA 541-A:40, IV. See 1.9 in Chapter 3.

\*Allow 10 working days (after receipt by LBA of agency request) for LBA to complete the FIS.

20 days minimum

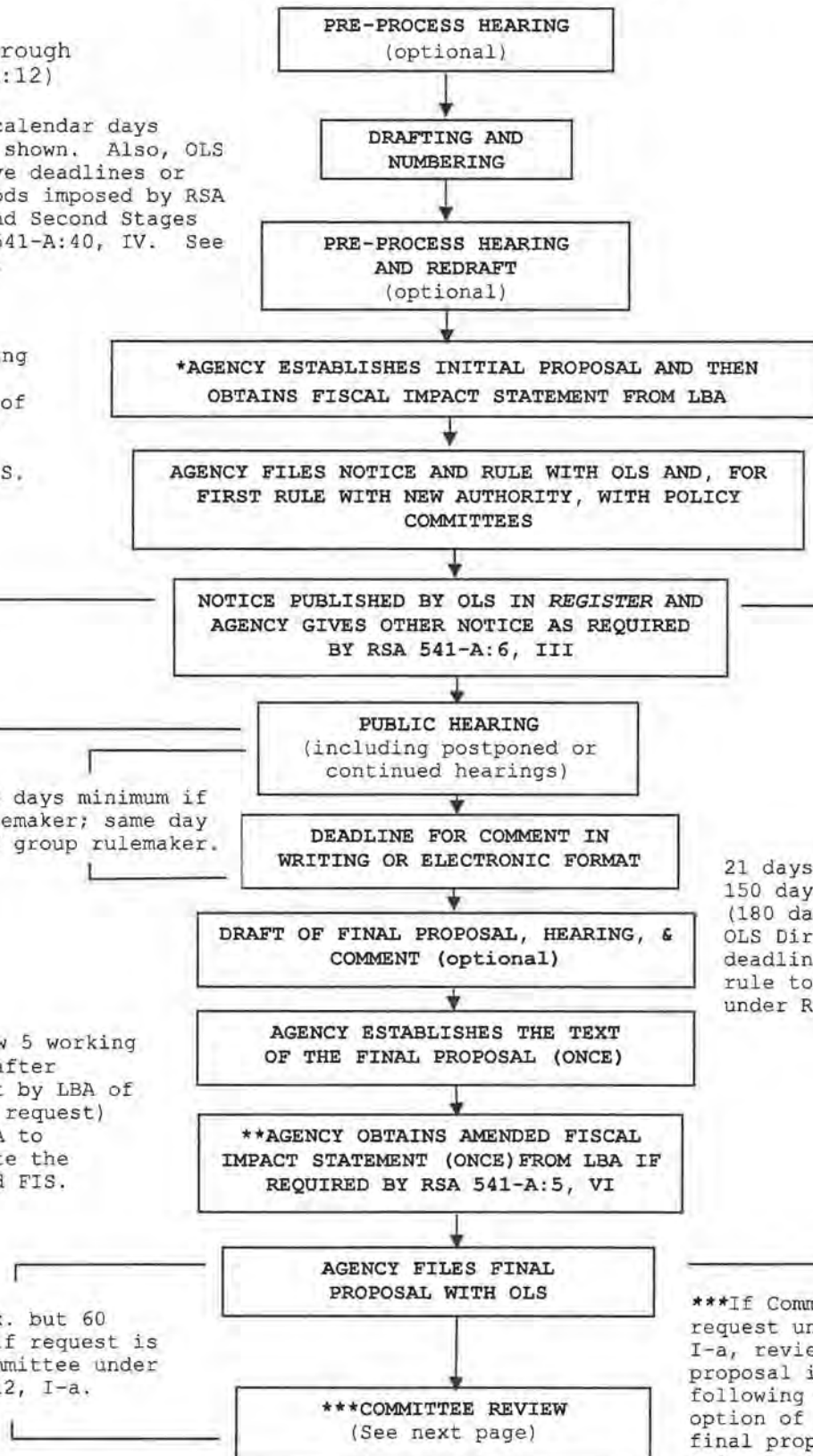
5 business days minimum if single rulemaker; same day minimum if group rulemaker.

\*\*Allow 5 working days (after receipt by LBA of agency request) for LBA to complete the amended FIS.

45 days max. but 60 days max. if request is made to Committee under RSA 541-A:12, I-a.

21 days minimum; 150 days maximum (180 days maximum if OLS Director extends deadline by requiring rule to be rewritten under RSA 541-A:8).

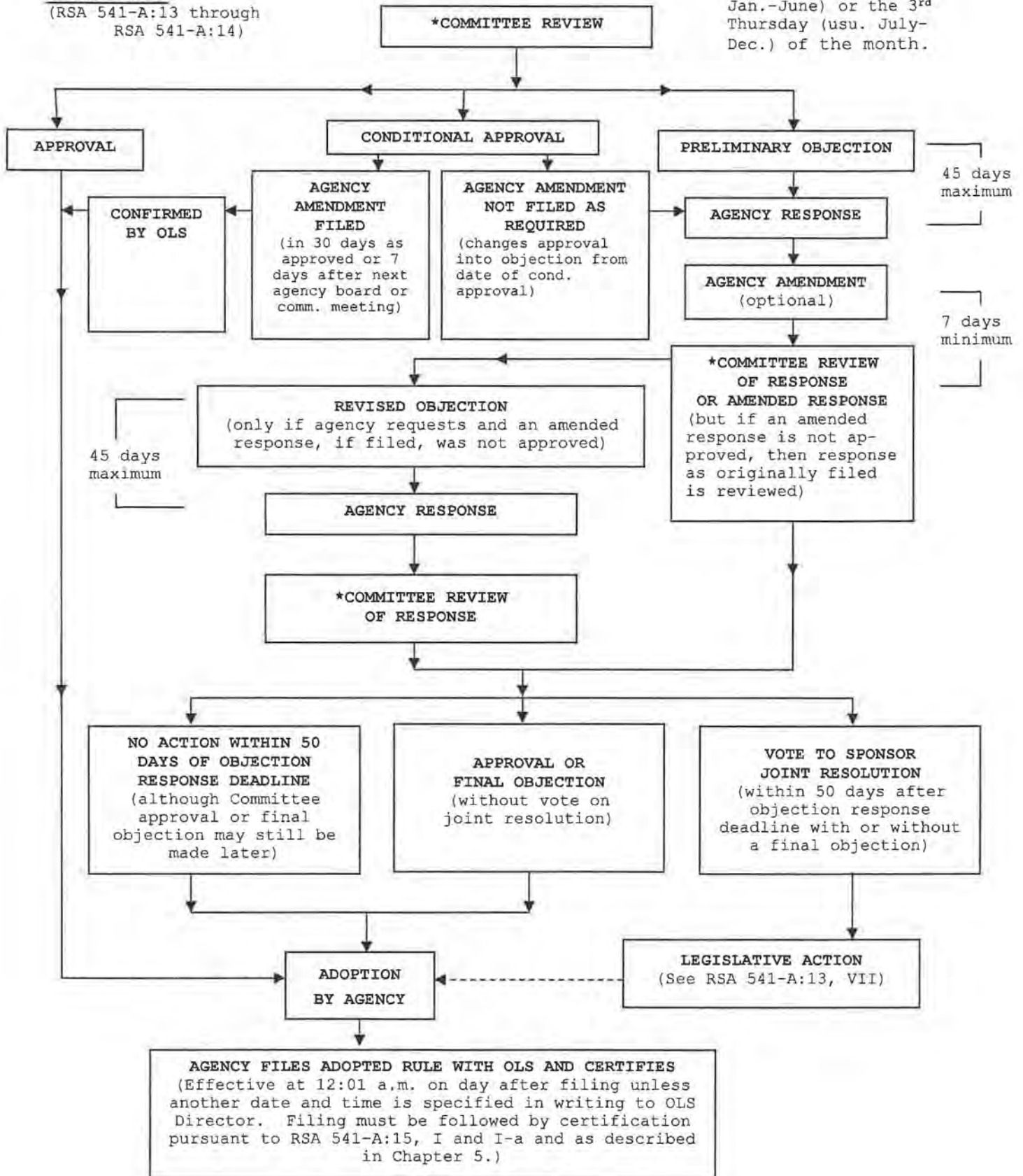
\*\*\*If Committee approves request under RSA 541-A:12, I-a, review of the final proposal is postponed to the following meeting. Agency has option of filing an amended final proposal at least 7 days prior to that meeting. See 2.12-2.14 in Chapter 3.



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**SECOND STAGE:**  
 (RSA 541-A:13 through  
 RSA 541-A:14)

\*Committee meets at least once a month on the 3<sup>rd</sup> Friday (usu. Jan.-June) or the 3<sup>rd</sup> Thursday (usu. July-Dec.) of the month.



## 2.2 Solicitation of Public Comments Before Rulemaking Notice Published.

To gather information in drafting a rule, your agency may solicit public comment in written form as well as in a public hearing or hearings prior to establishing the initial proposal and filing a rulemaking notice. You may complete and file the “Request for Advance Public Comment on Subject Matter of Possible Rulemaking” (Appendix II-A) to be published in the *Rulemaking Register*. See RSA 541-A:11, VIII.

Public comment may be solicited more than once as rules are drafted or redrafted before the initial proposal is established. No minimum notice period has to be met outside of those imposed by other statutes, such as RSA 91-A.

## 2.3 Initial Proposal and Fiscal Impact Statement.

Once the proposed rule is drafted, the individual, or quorum of individuals, with rulemaking authority must approve the final draft of the rule as the initial proposal. Then your agency must obtain a Fiscal Impact Statement (FIS) from the Legislative Budget Assistant (LBA) as specified below:

- Your agency must send the proposed rule and the completed “Request for a Fiscal Impact Statement” form (Appendix II-B) including all attachments to the LBA, Room 102, State House. You may duplicate the form instead of requesting a copy from the LBA. You must make the following notation in the lower left-hand corner of the envelope if one is used: “Attention: Fiscal Impact Statement re: rulemaking.” You may also e-mail the request to [lba\\_rules@leg.state.nh.us](mailto:lba_rules@leg.state.nh.us) or fax the request to 271-1097. If using e-mail, please use the following naming convention for attached files: Agency name rule number. The LBA will not consider a request sent by e-mail to be received unless it is sent using the LBA e-mail address above. Questions may be directed by telephone to 271-3161;
- The FIS is then prepared by the LBA with information supplied by the agency as specified on the “Request for Fiscal Impact Statement” form. See RSA 541-A:5, IV;
- **Allow 10 working days** from the date of receipt by the LBA of the “Request for a Fiscal Impact Statement” for the LBA to complete the FIS. In other words, submit your request **at least 3 weeks prior to the intended date of publication of the rulemaking notice in the *Rulemaking Register*** in order to allow time for the LBA to complete the FIS and for the Administrative Rules office to have it published as part of the rulemaking notice; and
- You may retype the FIS as part of the notice form without amending the FIS, or you may submit the original FIS document provided you keep a photocopy for your agency’s own records.

### COMMITTEE’S CONCERN ABOUT ACTION BY TELEPHONE OR ELECTRONIC COMMUNICATION

As noted above, if the “agency” is a group of individuals, like a board or commission, then a quorum must approve the specific text of the initial proposed rule. In the view of the Committee, this vote constitutes “governmental proceedings” under RSA 91-A:1-a because it is the transaction of an official function by a quorum and therefore must be open to the public under RSA 91-A:2. Amendments to RSA 91-A:2 effective July 1, 2008 now permit such voting individuals to participate and vote in the proceeding by telephone or electronic communication under certain circumstances. Please check with your legal counsel in the Department of Justice.

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**TIPS TO AVOID PITFALLS**



To avoid problems later with potentially inadequate fiscal impact statements or with filing adopted rules, comply with the following:

- Examine the FIS after it is prepared and contact the LBA if you have any questions, especially if you believe the FIS contains a factual, typographical, or grammatical error or does not adequately reflect the information that your agency provided. An FIS is a summary of the costs and benefits of the proposed rule, or a comparison of the costs and benefits with an existing rule, to individuals, businesses, political subdivisions, and the state government. Factual, typographical, or grammatical errors in particular can be quickly corrected by the LBA upon agency request, and a revised FIS issued for the rulemaking notice.
- Subdivide the proposal into more than one proposal as necessary, with separate requests for each FIS, if any of the following conditions exist:
  - You plan separate notices. Only one FIS will be issued for one notice;
  - You want different portions of the proposal to have different effective dates. All rules within one proposal will have the same effective date as required by RSA 541-A:14, IV;
  - Your proposal contains some rules that, when adopted and filed, will expire in 10 years and other rules that will expire, if at all, only pursuant to RSA 541-A:17, II. **Keep the 10-year and non-expiring rules in separate proposals under separate notices if possible, but such proposals will not be refused for filing later if they remain undivided and one FIS is issued.** The non-expiring rules are organizational rules (the rules in Chapter 100 of the agency's rules) and rules of practice and procedure (in Chapter 200 of the agency's rules) as identified in 2.1 and 2.2 of Chapter 2 on organizational rules and rules of practice and procedure.
  - The proposal contains dissimilar subject areas in selected amendments, or dissimilar subtitles. The rules in each notice must have a common theme under one title or subtitle. See 2.4 below.
- Identify in your proposed rule, with appropriate annotations to the LBA as described in Part 5 of Chapter 4, any changes to **existing** rules. An existing policy being proposed for adoption as a rule for the first time, or an expired rule that is being adopted again, is **not** an existing rule.
- Analyze the proposed adoption of an expired rule, or of a current agency policy as a rule, as a new rule would be, not as if it were the readoption of an existing rule. If a change is proposed from an expired rule, identify also any costs of the change.
- Differentiate in your "Request for a Fiscal Impact Statement" between costs imposed by statute and costs imposed by the rule.
- After the FIS is obtained, the proposed rule cannot officially change (without starting over with a new FIS) until the public hearing is held and the deadline for consideration of written material has passed.



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## **2.4 Completing the Rulemaking Notice Form.**

Once the required fiscal impact statement is obtained from the LBA, the agency must complete the “Rulemaking Notice Form” (Appendix II-C). Since this notice will initiate the public comment phase of the rulemaking process by being published in the *Rulemaking Register*, all information must be typewritten and grammatically correct. Leave the “Notice Number” blank. The Administrative Rules office fills that in.

If filing in paper, You may attach extra sheets to complete the form if the space on the form is inadequate. See also 1.6 above about using computer-generated copies of the “Rulemaking Notice Form.”

### ***WHAT MUST BE IN THE NOTICE***

- **The rule number(s) of the proposed rule(s):** For example, “Abc 100,” “Abc 302-307,” or “Abc 301.02(e),” all under one title or subtitle prefix, in order to correctly identify as specifically as possible the unit(s) being filed. A summary may be used, such as “Abc 402, various sections,” if the space available on the form is too small, but do not say “Abc 402” if only selected sections or paragraphs of Abc 402 are included;
- **Agency name and address:** The individual or group with rulemaking authority who actually proposes the rule, although where an individual rulemaker is involved, such as a Commissioner, Division Director, or Bureau Chief, the name of the office may be used, such as “Department of,” “Division of,” or “Bureau of”;
- **Citation to state rulemaking authority:** The specific statutory passage indicating RSA chapter, section, and paragraph, or federal statute, delegating the agency rulemaking authority. See the difference on the next page between “rulemaking authority” and the statutes being implemented;
- **Citation to the federal authority (if applicable):** The federal statute with associated CFR citation;
- **The type of rulemaking action:** Indicating all the types of actions in the proposal being filed, such as “adoption” or “readoption with amendment,” in accordance with Chapter 4 of this *Manual*;
- **The “Short Title”:** A brief description of the subject matter of the proposed rule in key words identifying what the proposed rule is about and not merely repeating the rule number affected;
- **Summary and analysis of the proposed rule:**
  - A concise summary of the proposed rule if the rule is being adopted, or a concise summary of both the existing rule and any proposed amendments, if the existing rule is being amended, readopted, or readopted with amendments. Clarify any ambiguity due to multiple rulemaking actions in one proposal, and clarify what the consequences will be if the rule is not adopted;
  - A brief description of the groups affected; and
  - The specific section(s) of state statute or federal statute or regulation which the rule is intended to implement, pursuant to RSA 541-A:3-a. If different provisions of the rule implement different statutes or federal regulations, then reference the provisions and the statutes or regulations side-by-side in a cross-reference table. See “Completing the Cross-Reference Table” on the next pages;

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- **The contact person:** The name, title, address, telephone and fax numbers, and e-mail address of an individual in the agency who can supply copies of the proposed rule and answer questions about it, including requests to accommodate persons with disabilities in the rulemaking process;
- **Deadline for comment in writing or electronic format:** The deadline established in accordance with RSA 541-A:11, I for submission of materials to the agency in writing or, if practicable for the agency, in electronic format (fax, e-mail, diskette if still used, or other format). The deadline shall be at least 5 business days after the public hearing(s). If the agency is a group, such as a board or commission, it may specify a shorter period in its notice provided that the deadline is not earlier than the scheduled conclusion of the public hearing(s). Specify the electronic format, if any, that is practicable for your agency;
- **The public hearing identification:** The date, time, and place of the agency's public hearing(s) required by RSA 541-A:11, I, scheduled no sooner than 3 weeks after the online publication date of the *Rulemaking Register* containing the notice. The online publication date is the Thursday of the week after filing, or earlier if Thursday is a holiday;
- **The fiscal impact statement prepared by the LBA;** and
- **The Part 1, Article 28-a Statement:** The statement required by RSA 541-A:6, I(j) as described on the next pages.



### TIPS TO AVOID PITFALLS



### COMPLETING THE CROSS-REFERENCE TABLE

- **Identify the statute or federal regulation being implemented as follows:**

Item 6(c) must identify the specific provisions of state or federal statutes or regulations that the rules in your proposal carry out or “implement.” The statute or regulation being implemented establishes the legal framework (the “substantive authority”) for which the rules provide the details. This is not the same thing as “rulemaking authority”, although sometimes one RSA provision may contain both. Rulemaking authority is the specific state or federal statute that tells your agency what rules it must adopt, with the state statute citing “pursuant to RSA 541-A”.

For example, one statute (rulemaking authority) might require an agency to adopt rules on license application procedures. Another statutory provision (implemented by rules on license application procedures) might require that a person obtain a license from the agency.

Item 6(c) would not contain the same citation as the rulemaking authority on Item 2 in the form unless the rulemaking authority and the corresponding statute that the rule implements are in the same statutory provision.

- **Be as specific as you can be in citing rules, statutes, and regulations as follows:**

Use a cross-reference format, with the rules in one column and the state or federal statute or federal regulation in the other column, as in the example to the right.

<u>Rule Number</u>	<u>State Statute/Federal Regulation Implemented</u>
Abc 4304.01	RSA 167:68 42 CFR 435.4

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If specific provisions of the proposed rules in your proposal are designed to implement different sections or provisions of state or federal statutes or regulations, then reference the specific rule provision with the corresponding statutory or regulatory provision in a two-column table, as in the example to the right.

Be as specific in citing the provisions of the rule and the statutes or regulations as necessary so that the table accurately indicates that the specific provision of the rule cited in one row and column implements the specific provision in the statute or regulation cited in the corresponding row in the other column.

If an existing rule is being renumbered, reference the rule number of the renumbered rule. If an existing rule is being entirely repealed, reference the number of the repealed rule. If individual rules within a proposal are being renumbered, you may indicate what the existing rule number is for clarification as necessary, as in the example to the right, or using the same annotation format as used in the Initial Proposal if in compliance with the *Manual*.

<u>Rule Number</u>	<u>State Statute Implemented</u>
Abc 1102	RSA 431:10
Abc 1103.01	RSA 431:5, I
Abc 1103.02	RSA 431:5, II
Abc 1103.03(a)	RSA 431:9
Abc 1103.03(b)-(c)	RSA 431:6

<u>Rule Number</u>	<u>State Statute Implemented</u>
Abc 1202 (repealed)	RSA 431:10
Abc 1202 (renumbered from Abc 1203)	RSA 431:5, I

**COMPLETING THE PART 1, ARTICLE 28-a STATEMENT**

**PART 1, ARTICLE 28-a—UNFUNDED STATE MANDATES**

Part 1, Article 28-a of the N.H. Constitution, effective on November 28, 1984, provides that:

*The state shall 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 unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.*

The Part 1, Article 28-a Statement is Item 11 on the "Rulemaking Notice Form." It must be "a statement with adequate details and supporting data that the proposed rule does not violate the New Hampshire constitution, Part 1, Article 28-a." See RSA 541-A:6, I(j).

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**HOW TO COMPLETE THE PART 1, ARTICLE 28-a STATEMENT**

Include a concise explanation of the agency's reasons why the proposed rule does not violate Part 1, Article 28-a, by addressing the following issues:

1. Whether the rule creates a new program or responsibility or expands or modifies an existing program or responsibility. "Existing" means effective prior to November 28, 1984 and "new" means effective on or after November 28, 1984;
2. Whether the rule "mandates" or "assigns" this program or responsibility "to any political subdivision" in such a way as to increase the costs the political subdivision must pay;
3. If the rule so mandates or assigns, then whether the state has provided the political subdivision with the requisite funding or the local legislative body of the political subdivision has approved funding for the new, modified or expanded program or responsibility; and
4. Any other reason why the agency believes that the rule does not violate Part 1, Article 28-a.

**NOTE:**

The Administrative Rules office can answer an agency's general questions about completing Item 11 in the "Rulemaking Notice Form," but it cannot provide legal advice on whether the proposed rule violates Part 1, Article 28-a. Your agency may contact the Department of Justice for legal advice on any constitutional or statutory question that may arise concerning any part of the Part 1, Article 28-a statement. The Administrative Rules office, as the Committee's legal staff, may inform the agency whether potential bases exist for a Committee objection to a proposed rule based on the constitutional provision. Whether an objection is made on such grounds is a matter for the Committee's decision. Whether the rule is ultimately a violation of the Constitution is a matter for the courts to decide.

## **2.5 Filing a Rulemaking Notice and 2 Copies of the Proposed Rule.**

File the following with the Administrative Rules office by 4:30 p.m. on the Thursday before the intended date of publication of the rulemaking notice, that is, one week prior to the online publication, unless a late filing is accepted under the limited, urgent circumstances described below:

- **ONE COPY** of the completed "Rulemaking Notice Form" (Appendix II-C) and the FIS;
- **2 COPIES** of the proposed rule or, if a rulemaking proceeding is repealing a rule, then **2 COPIES** of the rule to be repealed, with correct headers, the adopting, amending, and repealing language, and annotations in compliance with Chapter 4 of this *Manual*; and
- **2 COPIES**, as appendices to the rule, of (1) an appendix containing the same information given as a cross-reference table in Item 6(c) of the "Rulemaking Notice Form" relative to implementation of statutes or federal regulations as required by RSA 541-A:3-a, II and (2) an appendix if necessary pursuant to RSA 541-A:12, VII and as described in 3.12 of Chapter 4 on



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how the public may obtain material incorporated by reference in the final proposed rule, and at what cost;

#### ADMINISTRATIVE RULES OFFICE INITIAL REVIEW

The Administrative Rules office will perform an initial review for completeness and accuracy of the contents of the initial proposal and contact your agency if there are any questions at this stage. **Your agency is responsible for the completeness and accuracy of all materials it submits to the Administrative Rules office**, regardless of whether the office does not discover there are missing or incorrect elements. The Administrative Rules staff will first check that the 3 documents above are present—the notice, including the FIS, the proposed rule as approved by the agency, and the cross-reference table appendix—as required by RSA 541-A:6, RSA 541-A:10, and RSA 541-A:3-a, II.

See the boxes below on “Significant Noncompliance” and “Editorial Errors” in the notice, and “Compliance with Chapter 4.” As part of its initial review, the Administrative Rules staff reviews the notice and the rule accordingly.

Therefore, **proofread your agency’s notice and rule carefully before filing**, especially for (1) incompleteness, such as any missing rule pages or the absence of the appendix containing the cross-reference table—the same information as on Item 6(c) in the notice form, and (2) the correct text—the rule text filed is the rule text the agency approved, it was approved before the FIS was requested from the LBA, and it is the text for which the FIS was issued. Absence of an appendix on incorporation by reference pursuant to RSA 541-A:12, VII shall be deemed a procedural violation of RSA 541-A but will not invalidate the filing.

Once the filings are complete and correct, the Administrative Rules office will update its online database, which is accessible through the online search program, to indicate the initial proposal filed and the *Rulemaking Register* containing the notice. See 3.6 of Chapter 1.

#### PLANNING, SCHEDULING, AND THE ONLINE RULEMAKING REGISTER

The filing date of the initial proposal above has a potential ripple effect in scheduling all subsequent steps in your rulemaking proceeding. **See the flow chart in 2.1, and plan accordingly.**

The filing date determines in which *Rulemaking Register* the rulemaking notice is published. The publication date for notices filed since September 11, 2011 has been the online date, a Thursday, or earlier if Thursday is a holiday.

The publication date in turn affects how soon the rulemaking hearing(s) may be held (see 2.4 above), and the 150-day deadline for filing the final proposal (see 2.11 below). The date the agency’s hearing, or final hearing, is held determines what the earliest public comment deadline may be, and therefore how soon the final proposal may be established and filed for Committee review (see 2.11 through 2.13 below).

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***REFUSING AN INITIAL PROPOSAL FOR FILING***

The Director, through the Administrative Rules office, has the authority to refuse for filing an agency's initial proposal under certain conditions set by RSA 541-A as follows:

- The Director determines there is "significant noncompliance" with the format of the notice or the information required on the "Rulemaking Notice Form." See below and RSA 541-A:6, II; or
- The Director requires the agency to rewrite any rule submitted for filing to conform to Chapter 4 of this *Manual*. See below and RSA 541-A:8.

**SIGNIFICANT NONCOMPLIANCE RELATIVE TO THE RULEMAKING NOTICE**

RSA 541-A:6, II defines "significant noncompliance" with RSA 541-A:6, I in a submitted rulemaking notice as "one or more errors of such magnitude that a reasonable person would not be able to discern what rules are the subject of the rulemaking proceeding and/or what the agency is proposing to do. The term includes the absence of elements required by paragraph I." The following errors are deemed "significant noncompliance" by the Director leading to refusal of a notice if left uncorrected, thus delaying the rulemaking process:

- Blank items on the form, which otherwise have to be completed;
- A missing FIS, an FIS filed that was issued for a rule different in substance from the rule filed, or an FIS altered from what the LBA had issued;
- Hearing dates and deadlines for comment in writing or electronic format which fall on holidays or do not meet the minimum periods for public notice and comment required by RSA 541-A:6, I and RSA 541-A:11, I;
- Patently incorrect or misleading statements or information not in compliance with 2.4 of this chapter, such as, but not limited to, incorrect agency name or address, rulemaking authority, rulemaking action, or rule number if they are not "editorial errors" as described below; and
- Submission of computer-generated copies of the form which do not comply with this *Manual*.

**EDITORIAL ERRORS IN THE NOTICE**

Pursuant to RSA 541-A:9, I-a, typographical, spelling, punctuation, and similar errors in the notice, including unintentional errors in references and citations, will be brought to the attention of your agency by Administrative Rules staff for your correction. If your agency is unable to make corrections to assure timely publication of the notice, the Administrative Rules staff will make the corrections prior to publication provided that the corrections do not affect the substance of the notice. But your agency is strongly urged to consider seriously all corrections to the notice. The *Rulemaking Register* is an official state publication of the OLS disseminated online and in hard copy, and its quality reflects on the OLS and your agency in the care given to the public process of adopting rules with the force and effect of law.

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**COMPLIANCE WITH CHAPTER 4 OF THIS *MANUAL* FOR INITIAL PROPOSALS**

***REFUSAL FOR FILING***

Just as the Director has authority to refuse a notice for “significant noncompliance”, the Director uses the following criteria to determine whether the proposed rule is so noncompliant with Chapter 4 of the *Manual* that it will be refused for filing at the initial proposal stage and ordered to be rewritten pursuant to RSA 541-A:8:

1. The public could not reasonably understand what text is intended to be adopted, amended, or repealed or what it says, or what rulemaking action, such as repeal of an existing rule vs. its readoption with amendments, is proposed as described in 5.5 of Chapter 4;
2. The proposed rule would misinform the public about which agency is proposing the rules;
3. The public could not accurately cite to the requirements in the rules;
4. The public could not reasonably distinguish in the text between requirements or options which are rules and recommendations or other statements that are not rules, as defined in RSA 541-A:1, XV, such as helpful information or interpretative notes more properly in a rulemaking notice which are mixed with text in a manner that makes it unclear what are rules vs. notes. See 2.1 and 2.11 of Chapter 4; or
5. Corrections would require such extensive changes to the substance of the rules that the public could not reasonably comment on what the rules would eventually require or permit when they are adopted and filed.

The criteria above reflect that the proposed rule must be extremely noncompliant with the *Manual* before it would be refused for filing at this stage of initial review. Also, in order not to delay commencement of the rulemaking proceeding, more detailed review of the initial proposal for compliance with Chapter 4 is performed by Committee legal staff later as described in 2.9 below.

***EDITORIAL CHANGES***

Just as the notice might contain editorial errors as described above, the proposed rule might contain errors requiring “editorial changes” as described in 2.2 of Chapter 5. But the Administrative Rules Office will not refuse for filing a proposed rule for errors which would require only editorial changes to correct. Changes to headers (see 2.3 of Chapter 4), the rule titles or subtitles with rule numbering (see Part 1 of Chapter 4), or the adopting, amending, and repealing language (see 2.4 and Part 5 of Chapter 4), will also be considered editorial unless the errors are so significant that they fit the criteria above for refusing to accept the rule for filing.

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**FILING CORRECTIONS OR MISSING INFORMATION**

The agency must file any missing or corrected FIS or rule text by the Thursday filing deadline for the filing to be deemed “complete” by that date, and the notice published in the following week’s *Rulemaking Register*. Acceptance of late filing under limited, urgent circumstances is described below. Any change in the filed “Rulemaking Notice Form” (other than the FIS), or any change in the initial proposal (other than non-editorial changes to the rule), may be made before the rulemaking notice must be compiled with other notices in the *Rulemaking Register* for publishing. See below. That is usually by 12 noon on the Monday after filing.

Substantive changes to the rule text must be approved by the individual, or quorum of individuals, with rulemaking authority, and a new FIS obtained, before they can be filed. But once the notice is published, the rule text shall not be changed until after the conclusion of the public hearing and the cut-off date for written public comment. See RSA 541-A:10.

**AIM TO FILE BEFORE DEADLINE**

Thursday is a filing deadline, **not** a target date for filing. Please be considerate of those processing your filed documents and mindful of your fellow agencies. Routinely filing on Thursdays—especially of multiple proposals—may burden the process for everyone.

Filing early allows more time for the Administrative Rules office to perform its initial review, and your agency to correct any errors, so that your notice can be published when you want. Even if filed on Thursday, a rulemaking notice will not necessarily appear in the next *Rulemaking Register* when there are errors in the notice or proposed rule, as the Administrative Rules office will not jeopardize timely publication of the other notices in the *Rulemaking Register* because of delays in waiting for and processing corrections. The *Rulemaking Register* is published online on Thursday of the week after filing, or earlier if Thursday is a holiday, but is also published in paper, requiring delivery to the printer before the online date.

**LATE FILINGS—URGENT CIRCUMSTANCES ONLY**

The Director will accept a late-filed initial proposal after Thursday, or substantive changes after Thursday to an incomplete filing, for notice publication in the next *Rulemaking Register* if:

- The agency requests it;
- Adoption of the proposed rule is not simply important but urgent, such as, but not limited to, matters related to public health or safety or fiscal impact. Unforeseen circumstances delaying a filing past the deadline do not necessarily make the filing urgent, but the resulting delay in publication may be a reason for accepting the late filing as noted below;
- The publication of the notice in that *Register* is critical to allowing the rulemaking hearing to be held on the date specified with the minimum notice pursuant to RSA 541-A:6, I;
- The hearing cannot be rescheduled later consistent with adopting the rule by the date necessary; and
- The *Register* has not already been sent from the Administrative Rules office for publishing in paper, or published online, and examination of the notice and proposed rule for correctness and completeness will not jeopardize timely publication of the *Register*.



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**WITHDRAWAL**

Once your agency has filed its initial proposal, it may withdraw an entire proposal at any time prior to final adoption of the rule. This withdrawal terminates that particular rulemaking proceeding, however. If your agency wants to withdraw only a portion of a proposal, that can be done by amending the rules when establishing the text of the final proposal, by responding to a Committee objection, or at other times allowed by RSA 541-A to make substantive changes to the proposed rule. See 2.11 and 2.14 through 2.18 in this chapter.

If your agency decides to terminate its rulemaking proceeding other than in response to a Committee objection, send a written statement of withdrawal to the Administrative Rules office. The office will include the statement in its files as the agency's acknowledgment that the rulemaking proceeding is over.

## **2.6 Public Notice Requirements Beyond the *Rulemaking Register*.**

### ***NOTICE REQUIRED BY RSA 541-A:6, III***

In addition to filing a rulemaking notice with the Administrative Rules office, your agency must also send notice as required by RSA 541-A:6, III to the following **not less than 20 days** before the first hearing:

- Upon request, the President of the Senate, the Speaker of the House, and the Chairpersons of the appropriate committees in the House and Senate with jurisdiction over the subject matter of the proposed rule;
- All persons who have made “timely request for advance notice of rulemaking proceedings”; and
- All persons “regulated by the proposed rules who hold occupational licenses issued by the agency,” where “license” is defined in RSA 541-A:1, VIII. Notice must be by:
  - U. S. Mail;
  - Electronic means, including an agency web site;
  - Agency bulletin or newsletter;
  - Public notice advertisement in a publication of daily statewide circulation;
  - Any additional method deemed sufficient by the Committee, that is, any combination of one or more of the above with individual licensee fax or e-mail if the combination is sufficient to reach all licensees; or
  - Such other manner that is reasonably calculated to inform such licensees of the proposed rulemaking.

### ***NOTICE REQUIRED BY RSA 541-A:10, I***

The “first time a rule is proposed under RSA 541-A:3 to implement newly-enacted state authority” (and “rule” would include amendments to an existing rule), the agency shall send:

- An electronic copy of the notice and proposed rule to the chair of each House and Senate standing policy committee, as defined in RSA 541-A:1, XVI, for distribution to the members of such standing policy committees; or

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- An electronic copy of the notice and proposed rule to the Speaker of the House and Senate President for appropriate distribution, if the newly-enacted state authority was not referred originally to a standing policy committee;

“Newly enacted state authority” means as defined in RSA 541-A:10, I, namely “a state statute or session law adopted or amended after July 30, 2011.”

The members of the standing policy committees receiving proposed rules have the option to review them “to determine whether the proposed rule is consistent with the intent of the authorizing legislation” as follows:

- If a standing policy committee concludes that the proposed rule is not consistent with the intent of the authorizing legislation, the standing policy committee must send written notice to the agency, with a copy to the Director of the OLS, identifying the provision or provisions the committee believes to be inconsistent with legislative intent;
- Such written notice may be sent to the agency via e-mail but must be delivered so as to be received by the agency **no later than the deadline for public comment** specified in the rulemaking notice; and
- If the agency does not receive notice from any standing policy committee by the end of the public comment period, “the agency may proceed on the basis that the rule is consistent with the intent of the authorizing legislation.” **NOTE:** This does not impact the authority of the Committee pursuant to RSA 541-A:13, IV(b) to object that a proposed rule is “contrary to the intent of the legislature.”

### ***NOTICE REQUIRED BY RSA 541-A:39***

Your agency must also provide notice to municipalities for certain agency actions affecting municipalities. See RSA 541-A:39. Direct any questions on whether this applies to a particular rulemaking proceeding or adopted rule to the Department of Justice.

## **2.7 Public Hearing and Comment.**

Public hearings and deadlines for comment in writing or electronic format are governed by RSA 541-A:6, I and RSA 541-A:11. Each agency must:

- Hold at least one public hearing on all proposed rules;
- “Afford all interested persons reasonable opportunity to testify and to submit data, views or arguments in writing, or, if practicable for the agency, in electronic format, in accordance with the terms of the notice”; and
- Schedule the hearing no earlier than 3 weeks after the online publication date of the *Rulemaking Register* containing the notice.

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**If Rulemaking Authority Is Granted To A Group**

The cut-off date for submission of materials in writing or electronic format shall be:

- At least 5 business days after the hearing unless the notice specifies a shorter period;
- No earlier than the scheduled conclusion of the hearing; and
- Extended accordingly if the hearing is continued or postponed.

Each hearing shall be attended by at least a quorum of the members of the group with rulemaking authority.

**If Rulemaking Authority Is Granted To An Individual Official**

The cut-off date for submission of materials in writing or electronic format shall be:

- At least 5 business days after the hearing; and
- Extended accordingly if the hearing is continued or postponed.

Each hearing shall be attended by the individual official having rulemaking authority, or designee, "who shall be knowledgeable in the particular subject area of the proposed rules." See RSA 541-A:11, II.



**TIPS TO AVOID PITFALLS**

Plan **ahead** for public comment as follows:

- Adopt rulemaking hearing rules as required of all agencies pursuant to RSA 541-A:16, I(b);
- Provide the public a "reasonable opportunity to testify and to submit data, views, or arguments in writing" or electronic format as required by RSA 541-A:11 by:
  - Providing enough days' notice prior to the hearing date and the public comment deadline not only to maximize the public's opportunity to attend the hearing but also to allow time for the public to obtain and examine copies of the rule and prepare oral or written testimony;
  - Scheduling more than one hearing date if necessary;
  - Scheduling the most convenient date, time of day, and location of the hearing to allow opportunity for interested persons to attend and submit their views orally or in writing; and
  - Postponing or continuing hearings, or extending the public comment deadline, as necessary to accommodate public comment, as described in 2.8 below;
- Require all materials submitted in writing to be signed by the person who submits them, and transfer to hard copy, if practicable for your agency, all materials submitted as diskette or e-mail or in other electronic format. See RSA 541-A:11, I; and
- Keep a verbatim recording, transcript, or very good notes of oral testimony so the agency can fully consider all public comment submitted pursuant to RSA 541-A:11. See RSA 541-A:12, I.

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**PERSONS WITH DISABILITIES**

The Americans with Disabilities Act (ADA) imposes obligations on your agency to ensure that persons with disabilities are not excluded from participation in the rulemaking process. See 42 USC 12132. This may include, but is not limited to, holding hearings in architectural barrier-free hearing locations and providing qualified sign language interpretation services, large print or Braille copies of rules, and special modes of communication between agencies and persons with speech or hearing impairments. Check with your legal counsel in the N. H. Department of Justice as to what the ADA requires of your agency. See also <http://www.ada.gov> for the U. S. Department of Justice ADA home page.

**MAKING AND PROVIDING COPIES OF RULES**

The agency after a public request “shall promptly provide a copy of any rule as filed with the director at any stage of the rulemaking process.” See RSA 541-A:11, VI. “Rule as filed” includes copies of initial proposals, final proposals, responses to Committee objections, and adopted rules. If the copy is mailed, it shall be sent not later than the third working day after the request is received. Note that this is faster than the “5 business days” allowed for other governmental records by the Right-to-Know Law, RSA 91-A:4, IV. But your agency may charge the actual cost of providing the copy allowed by that law.

Notwithstanding these maximum times, copies of the initial proposal must be available for immediate distribution to the public at least 5 calendar days prior to the rulemaking hearing. See RSA 541-A:11, I.



## 2.8 Continuing, Postponing, or Moving the Location of Public Hearings or Extending the Public Comment Deadline.

Your agency may continue, postpone, or move the location of a hearing, or extend the deadline for comment in writing or electronic format. See RSA 541-A:11.

### *EXTENDING THE DEADLINE FOR COMMENT OR CONTINUING THE HEARING*

To provide “reasonable opportunity for public comment,” your agency may continue an ongoing public hearing past the scheduled time or to another date, or extend the deadline for comment in writing or electronic format, as follows:

- The agency **shall** “notify the public by any means it deems appropriate, including notice in the rulemaking register whenever practicable”; and
- If the *Rulemaking Register* is used, your agency must complete, as appropriate, the “Continuation of Rulemaking Hearing” form (Appendix II-D1) or the “Extension of Public Comment Deadline” form (Appendix II-D2) and file it with the Administrative Rules office no later than 4:30 p.m. on the Thursday the week before publication. Although there is no minimum notice period under RSA 541-A between the publication date and the date of the continued hearing, the notice period must be calculated so as to provide “reasonable opportunity for public comment.” If the hearing is continued to a later date, the deadline for public comment pursuant to RSA 541-A:11, I must be extended also, unless this previously-established deadline meets the minimum applicable deadline in 2.7 of this chapter relative to the continued hearing date.

#### **NOTE:**

If your agency would like, after the rulemaking notice is published, to schedule additional hearing dates, then either plan to continue the scheduled hearing as described above or postpone the hearing as described below. Otherwise, there is no other way under RSA 541-A to give proper notice of other hearing dates except for stopping and starting the proceeding over with a new rulemaking notice.

### *POSTPONING THE HEARING*

A scheduled public hearing need not be held but may be postponed to a later date in case of:

- Inclement weather;
- Illness or unavoidable absence of the official with rulemaking authority;
- Lack of a quorum of the group of individuals with rulemaking authority due to illness or unavoidable absence; or
- Determination by the agency that postponement of the hearing shall facilitate greater participation by the public.

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**NOTE:**

RSA 541-A does not compel your agency to postpone the hearing in case of the 4 circumstances above. But if the official with rulemaking authority (or the official's designee to attend) is absent, or there is a lack of a quorum of the group of individuals with rulemaking authority, then the hearing will not comply with RSA 541-A. So your agency will have to postpone the hearing or start the proceeding over with a new rulemaking notice in order to meet RSA 541-A:11.

If your agency postpones a hearing to a later date, the agency:

- Shall provide a notice in the *Rulemaking Register* at least 5 days before the new date of the hearing by completing the "Postponement and Rescheduling of a Rulemaking Hearing" form (Appendix II-D3) and filing it with the Administrative Rules office no later than 4:30 p.m. on the Thursday the week before the publication date;
- Shall extend the deadline for public comment pursuant to RSA 541-A:11, I unless this previously-established deadline meets the minimum applicable deadline in 2.7 of this chapter relative to the postponed hearing date; and
- "May also provide additional notice by any other means it deems appropriate."

***MOVING THE HEARING***

Your agency may move a public hearing to another location than the one identified in the rulemaking notice if the agency determines for any reason that the original location is inadequate to accommodate the public.

The agency must provide notice by:

- Posting notice of the new location at the originally scheduled facility, provided that changing the hearing location does not also require a change in the hearing date; or
- Providing notice in the *Rulemaking Register* as for a postponed hearing if the hearing date has to be changed.

## **2.9 Committee Staff Review of Initial Proposal.**

After the rulemaking notice is published, the Committee legal staff in the Administrative Rules office will review your agency's initial proposal on behalf of the Committee as described in Committee Rule 201.01 the Committee Legal Staff Looks For" below:

- The Committee legal staff makes comments pursuant to RSA 541-A:11, I as annotations or orally to the rule text, noting any problems which may serve as potential bases for Committee objection. See RSA 541-A:13, IV as further explained by the criteria in Chapter 400 of the Committee's own rules in Appendix IV of the *Manual*;
- Your agency will be asked for an electronic copy of the initial proposal on which the Committee legal staff will type the annotations, such as in a "text box" format;

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- Since agency forms are rules, your agency will also be asked for a copy pursuant to RSA 541-A:11, VII and RSA 91-A:4, IV of any agency form documents or draft form documents referenced in the initial proposal to verify compliance with RSA 541-A:19-b. Your agency may always file the forms anyway at the time of filing the initial proposal, such as by attaching them as appendices to the rules;
- If there is an amendment to the date or edition of a document or Internet content incorporated by reference in the proposed rule in comparison with the existing rule, your agency will also be asked pursuant to Committee rule 201.02(d) for a written explanation of any differences between the document or Internet content incorporated by reference in the proposed rule and the document or Internet content in the existing rule; and
- An electronic copy is sent to your agency of the annotated proposal or, if applicable, the proposal marked “Consent” or “Consent Edit” when there are no substantive Committee legal staff comments or the comments are only editorial in nature. See “Editorial vs. Substantive Comments” below.

#### EDITORIAL VS. SUBSTANTIVE COMMENTS

Committee legal staff will mark with the word “Edit” those annotated comments where a change to the rule to address the comment would be editorial in nature, that is, would not change the meaning of the rule, as described in 2.2 of Chapter 5. Any other comments should be considered “substantive”. These would remove the proposal from placement on the “consent agenda” list for Committee approval at the final proposal stage if the rule were left unchanged. See 2.13 of Chapter 3. If there are no staff comments, or only editorial comments, the electronic copy of the initial proposal sent to your agency will be marked by staff as “Consent.”

If an existing rule is being amended, readopted, or readopted with amendments, or if the prior rule had expired, Committee legal staff will also check its archives to see whether there were comments made by staff or what the prior Committee action had been to the rule. Comments made to a rule which the Committee had approved before will indicate whether the comment had been raised before and the rule approved anyway.

**WHAT COMMITTEE LEGAL STAFF LOOKS FOR**

The Committee legal staff examines the proposed rule to see if there are any issues which should be brought to the Committee's attention as potential bases for Committee objection as listed in RSA 541-A:13, IV and as further explained by the criteria in Chapter 400 of the Committee's own rules. The 4 bases for Committee objections under RSA 541-A:13, IV are that the proposed rule is:

- Beyond the authority of the agency;
- Contrary to the intent of the legislature;
- Determined not to be in the public interest; or
- Deemed by the Committee to have a substantial economic impact not recognized in the fiscal impact statement.

The Committee is not a policy committee, so the legal staff does not, as the public may do, examine whether the rule is simply a good or bad policy. Instead, the Committee legal staff is essentially checking whether the proposed rule conforms to the existing law in all its aspects. The most common issues under the 4 bases for objection are as follows:

- **AUTHORITY**—The agency's enabling statute(s) does not delegate relevant and adequate rulemaking authority for the proposed rule. For example, RSA 541-A:22, III requires specific statutory authority in certain areas, such as penalties, licenses, and fees, and requiring social security numbers, regardless of whether the agency has been granted broad but unspecific authority like "adopt rules pursuant to RSA 541-A as necessary to implement the chapter." The Committee Rule 401.05(c) also lists areas that the legislature has traditionally addressed by statute, such as subpoenas, and therefore, in the Committee's view, require specific authority. Possible constitutional violations, such as of Part 1, Article 28-a in the N. H. Constitution on unfunded mandates, could also raise an issue of lack of authority;
- **LEGISLATIVE INTENT**—The rule conflicts with a state or federal statute or a federal regulation. Your agency's cross-reference table in the appendix—identifying which statutes or regulations are implemented by the rule—can be very helpful in resolving this issue. A rule may also be contrary to legislative intent due to any apparent violation of RSA 541-A during the rulemaking process, or noncompliance with this *Manual*, because agency compliance is required by RSA 541-A:8;
- **PUBLIC INTEREST**—The rule is not clear and understandable and therefore may not be capable of uniform application. This issue very often also raises a basis of potential objection regarding legislative intent, to the extent that an unclear written rule may lead to oral rules in order to be implemented, in violation of RSA 541-A:22, I. That statute prohibits the enforcement of rules unless filed pursuant to RSA 541-A. For example, the more general the standards or criteria for an agency action, such as licensing, that there are in a rule, the more likely it is that this issue will arise. The Committee also requires its staff to report on whether the agency has operated under expired rules; and
- **FISCAL IMPACT STATEMENT (FIS)**—The FIS is not complete and correct in addressing the potential fiscal impact of the rule. Normally, however, this issue comes up due to public comment. In any case of a potential inadequate FIS, the Committee legal staff will make the Committee aware of the content of the agency's request for the fiscal impact statement in case the issue arises not from the agency but because of certain information not included by the LBA in the FIS.



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If your agency receives Committee legal staff comments, it:

- Shall consider the annotations or oral comments along with public comment pursuant to RSA 541-A:12, I in amending the proposed rule before the final proposal is established and filed; and
- May telephone 271-3680 or meet with Committee legal staff as schedules permit to discuss the comments if necessary to clarify the comments, understand how to resolve a potential problem, or point out any misunderstanding of a rule or statute.

Committee legal staff comments are:

- Not legal advice for your agency;
- Not Committee objections unless the Committee votes to make them so in a final proposal since Committee staff has no authority to make decisions which properly belong to the Committee, such as whether to object to a proposed rule; and
- Not a requirement under RSA 541-A:8 to rewrite the rule to comply with this *Manual* unless so designated by the Director under 2.10 below.

**COMMITTEE LEGAL STAFF PRIORITIZATION OF REVIEW**

The Committee legal staff prioritizes its review of initial proposals based on the deadline for public comment established by the agency pursuant to RSA 541-A:11, I in its rulemaking notice. That is done because, pursuant to RSA 541-A:10, the final proposal potentially could be established any time after that deadline. Also, pursuant to RSA 541-A:12, I, an agency is not compelled by law to consider fully comment received after the comment deadline, although it still must consider “any other relevant information.” The Committee legal staff comment is not like public comment but is the agency’s “heads-up” of the issues the staff would otherwise bring to the Committee’s attention in subsequent review of the final proposal.

To help with the prioritization of staff review of your initial proposal, you may notify the Committee legal staff of (1) the date when you need the staff comment in order to consider it, especially for presentation to a board or commission, and (2) the Committee meeting date for which your agency plans to file its final proposal. This notification is especially important if your agency is planning to establish and file a final proposal for placement on the earliest Committee agenda possible after the comment deadline, as described in 2.13 below. The staff tries to assure that the issues which it determines are potential bases for Committee objection are brought to the agency’s attention in time to be addressed before the final proposal is established. This may minimize the time spent by all concerned in a Committee meeting.

**2.10 Rewrite Orders and Extensions of the Final Proposal Filing Deadline.**

Unless a rule is excepted from RSA 541-A pursuant to RSA 541-A:21, the Director can require an agency to rewrite any rule, including agency forms, to conform to the drafting and numbering requirements in Chapter 4 of this *Manual*. See RSA 541-A:8. If the Director does so after publication of the notice, the agency has up to 180 days after publication instead of 150 days to establish and file its final proposal. See RSA 541-A:12, I. Your agency may request such an extension orally or in writing. This is a different procedure from requesting a waiver of the filing deadline under 1.9 in this chapter.

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The Director will order that the rule be rewritten, and thereby grant the extension, only if the Director determines, after considering Committee legal staff comments, that noncompliance with Chapter 4 is so serious or so extensive, apart from issues editorial in nature as described in 2.2 in Chapter 5, that:

- The agency will need up to 180 days pursuant to RSA 541-A:12, I to re-write the rule to comply with Chapter 4;
- Adoption of the rule as organized, written, and numbered would violate the overall purpose of Chapter 4 in assuring clarity and consistency in a uniform state code of administrative rules; and
- If left uncorrected, the violations would lead to ultimate refusal by the Director to accept an adopted rule for filing under 2.21 in this chapter.

#### 2.11 Drafting the Final Proposal, Establishing the Final Text, and Obtaining Amended FIS.

The individual with rulemaking authority, or a quorum of individuals, if rulemaking authority is granted to a group, shall establish the text of the final proposed rule only after:

- The conclusion of the public comment period, as required by RSA 541-A:10, II; and
- “Fully considering” all public, Committee, or Committee legal staff comment received pursuant to RSA 541-A:11 and any other relevant information, as required by RSA 541-A:12, I.

Prior to establishing the final proposal, the agency may hold a public hearing or solicit public comment on a draft final proposed rule pursuant to RSA 541-A:11, I(c). Notice of the hearing or comment period “shall be provided by such means as are deemed appropriate to reach interested persons.” This may include publishing a notice in the *Rulemaking Register*. See the “Draft Final Proposed Rule: Hearing and Public Comment Period” form (Appendix II-E). The agency shall annotate the draft rule pursuant to RSA 541-A:10, II to show how the initial proposal would be changed. The agency may revise the draft after the hearing or comment period before establishing and filing the final proposal.

After the final proposed rule is established, your agency must obtain an amended FIS from the LBA **only if**, as a result of notice and hearing, a change has been made to the proposed rule which affects the original FIS. See RSA 541-A:5, VI. If there is no change in fiscal impact as a result of a change in the proposed rule, but your agency would like to amend the original FIS for other reasons, please check with the LBA.

Establish the final proposal, and request an amended FIS if required, no more than once. The amended FIS states how a change to the rule affects the original FIS. Follow these steps **only if an amended FIS is required**:

- Complete a “Request for Amended Fiscal Impact Statement” form (Appendix II-F) and submit the form to the LBA;
- Include a copy of the final proposed rule in annotated form if there is any change at all from the text of the initial proposal including any editorial changes to the text;
- **Allow 5 working days** from the date of receipt by the LBA of the request for the amended FIS to be returned; and
- File the amended FIS as part of the final proposal.

**COMMITTEE'S CONCERN ABOUT ACTION BY TELEPHONE OR ELECTRONIC COMMUNICATION**

In the view of the Committee, a vote above by a quorum of the agency to establish a final proposal constitutes "governmental proceedings" under RSA 91-A:1-a that must be open to the public under RSA 91-A:2. Since July 1, 2008 telephone or electronic communication by voting members is permitted under certain circumstances. See "Committee's Concern About Action by Telephone or Electronic Communication" in 2.3 in this chapter.

**2.12 Filing the Final Proposal and Any Applicable Incorporation by Reference Statement.**

An agency must file the final proposal in complete form with the Administrative Rules office by the deadline below. The Administrative Rules office will try to contact the agency prior to the 150 or 180-day deadline as a reminder to file.

**FINAL PROPOSAL FILING DEADLINE**

No earlier than **21 days** after the date of publication of the original rulemaking notice in the *Rulemaking Register*.

No later than **150 days** after the date of publication of the original rulemaking notice in the *Rulemaking Register*, **unless** the Director has, by a rewrite order, granted an extension to **180 days** as described in 2.10 in this chapter or has waived the deadline as described in 1.9 in this chapter.

Before filing a final proposal, your agency must complete the "Cover Sheet for Final Proposal" form (Appendix II-G) by including the following information:

- The same identifying information as required for Items 1 through 5 on the "Rulemaking Notice Form" (Appendix II-C), including the Notice Number from the published notice;
- The name of the contact person, title, address, and phone number;
- Whether your agency is requesting Committee legal staff review and placement of the final proposal on the Committee meeting agenda pursuant to RSA 541-A:12, I-a;
- Whether the rule incorporates any document by reference for which an incorporation by reference statement is required;
- Whether the rule has changed from the initial proposal and whether that change affects the original fiscal impact statement; and
- The date the original rulemaking notice appeared in the *Rulemaking Register*.



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**FILING FOR REVIEW AT A PARTICULAR COMMITTEE MEETING**

Unless the deadline is waived as described in 1.9 in this chapter, final proposals must be filed no later than **14 days** prior to a regularly-scheduled Committee meeting:

- To be placed on the agenda for review at that meeting; or
- To have a request considered that the final proposal be reviewed by Committee legal staff and placed on the agenda for the following meeting.

See 2.13 and 2.14 below, RSA 541-A:12, I, and RSA 541-A:12, I-a.

Although this *Manual* characterizes the 14-day period as a filing “deadline” for purposes of a waiver, the 14-day period determines only the meeting at which the final proposal will be reviewed or the above request considered. The period cannot be automatically shortened pursuant to RSA 541-A:16, IV if the 14<sup>th</sup> day prior to the meeting is a holiday. Absent a waiver, if the final proposal is filed within 14 days prior to the meeting, the Administrative Rules office must place the final proposal on the agenda for the following regularly scheduled monthly meeting.

**REGULAR VS. CONTINUED MEETINGS**

Since 2003 it has been the Committee practice to schedule its “regular” meetings on the 3<sup>rd</sup> Friday of the month from January through June to accommodate the legislative calendar, and the 3<sup>rd</sup> Thursday of the month from July through December. The 14-day filing deadline is based on those meetings. The Committee has also scheduled “continued meetings”, usually 2 or 3 weeks after the regular meetings, as necessary to address items originally included on the regular meeting agenda but for which discussion or action was postponed. For rulemaking purposes these continued meetings are simply a continuation of a recessed, regular meeting. They do not affect filing deadlines.

The Administrative Rules office includes the Committee schedule of regular and continued meetings for the calendar year in the *Rulemaking Register* and on its web site.

To file a final proposal, your agency must include **ONE COPY** of the following:

- A completed cover sheet;
- An amended FIS, if a change to the initial proposal affects the original FIS;
- The established text of the final proposed rule as the “Final Proposal—Fixed Text”:
  - In a clean form without annotations to the text in accordance with Chapter 4 of the *Manual*; and
  - Including the text of rules to be repealed, or deleted if the rulemaking action is only a deletion, annotated in accordance with 5.4 and 5.5 in Chapter 4 of the *Manual*, if the rulemaking proceeding is repealing a rule.
- As appendices to the rule, (1) an appendix containing the cross-reference table relative to implementation of statutes or federal regulations, updated if necessary from the same appendix



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filed with the initial proposal as described in 2.3 and 2.4 above, and (2) an appendix if necessary pursuant to RSA 541-A:12, VII and as described in 3.12 of Chapter 4 on how the public may obtain material incorporated by reference in the final proposed rule, and at what cost;

- The established text of the final proposed rule as the “Final Proposal—Annotated Text” if the text of the final proposed rule differs in any way from the text of the rule as initially proposed, indicating additions and deletions, whether editorial or substantive, in accordance with 5.4 in Chapter 4 of the *Manual* to show changes between the initial and final proposals; and
- Any “Incorporation by Reference Statement” (Appendix II-H) if required pursuant to RSA 541-A:12, IV and as described in 3.12 in Chapter 4 of the *Manual* when the agency incorporates into its rules any document prepared by any entity outside the agency.

***ADMINISTRATIVE RULES OFFICE REVIEW FOR ACCURACY, COMPLETENESS, AND DEADLINE***

The Administrative Rules office examines the final proposal at the time of filing to see if it is complete and correct and filed within the 150 or 180-day deadline. The office will contact your agency if it discovers missing elements or other errors. Absent a waiver of the deadline, filings received after the deadline will be refused.

**FILING CORRECTIONS OR MISSING INFORMATION**

Final proposals will not be recorded as filed until they appear to the Administrative Rules office to be complete, based on the list above and the agency’s check-off on the cover sheet whether the rule has changed from the initial proposal, whether that change affects the original FIS, and whether an “Incorporation by Reference Statement” is required.

Corrections to the proposal can be made after filing without affecting the recorded filing date if the corrections do not make non-editorial changes to the fixed text or annotated text of the final proposed rule. **However, in all cases the agency is responsible for the completeness and accuracy of all materials submitted to the Administrative Rules office,** regardless of whether the office does not discover missing or incorrect elements.

If the issue arises during Committee review whether a final proposal is incomplete pursuant to RSA 541-A:12, II, this will be a threshold issue for the Committee before voting is possible on the proposal. If the Committee determines that it is incomplete, the agency shall be notified by Committee staff.

Corrections that do not affect the filing date include, but are not limited to:

- Incorrect information on the cover sheet;
- Incorrect or missing headers on the copies of the “Final Proposal—Fixed Text” and the “Final Proposal—Annotated Text”; and
- Incorrect or missing amending and repealing language on the “Final Proposal—Fixed Text.” and the “Final Proposal—Annotated Text.”

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**NOTE:**

If your agency concludes **after** filing the final proposal that an “Incorporation by Reference Statement” (Appendix II-H) is required, and therefore an appendix is necessary pursuant to RSA 541-A:12, VII, then go ahead and complete and file the Statement and appendix anyway. Although such late filing is a technical violation of the requirement in RSA 541-A that the Statement be filed **with** the proposal and the appendix with the rule, it does not affect the recorded filing date of the final proposal.

**COMPLIANCE WITH CHAPTER 4 OF THIS MANUAL FOR FINAL PROPOSALS**

Aside from a final proposal being incomplete, incorrect, or filed past deadline, the Director shall refuse the final proposed rule at the time of filing under RSA 541-A:8 if the Director determines, after considering the following factors, that noncompliance with Chapter 4 is so serious or so extensive that it cannot be adequately addressed through the Committee objection process:

- The time provided through the Committee objection process is not long enough under the circumstances for the Director reasonably to expect that corrections can be made by the agency; or
- The agency did not make a good faith effort in the Director’s view to comply with Chapter 4, as shown by a lack of response to an order of the Director to rewrite the rule.

**2.13 Placement on the Committee Agenda and Staff Review.**

Once your agency has filed a complete final proposal with the Administrative Rules office, the following occurs:

- The Administrative Rules office places the final proposal on the agenda for the next regularly scheduled Committee meeting unless the final proposal is filed **within 14 days** of such a meeting, and the deadline has not been waived. In that event, the office places the final proposal on the agenda for the following regularly scheduled monthly meeting pursuant to RSA 541-A:12, I. The Committee meets at least once a month. See “Regular vs. Continued Meetings” in 2.12 of this chapter;
- The Administrative Rules office will update its online database accessible through the online search program to indicate the final proposals on a particular agenda. See 3.6 of Chapter 1. The office will also publish notice of final proposals filed for review at a Committee meeting in the *Rulemaking Register* the week before the regularly scheduled meeting date;
- Absent a waiver, the Committee has **45 days** in which to approve or object to a complete final proposal, or **60 days** if a final proposal has been filed with a request pursuant to RSA 541-A:12, I-a. The failure of the Committee to approve or object during that period means that the rule is automatically approved at the end of the **45 or 60 days**. Corrections of an editorial nature after a complete filing do not affect the 45-day or 60-day period; and
- After the close of the minimum 14-day final proposal filing period prior to a regularly scheduled Committee meeting, the Committee legal staff in the Administrative Rules office will review the final proposal on behalf of the Committee pursuant to Committee Rule 201.02 as described below.

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Committee legal staff review of the final proposal as follows is very similar to that for an initial proposal review as described in 2.9 except that all comments are in writing:

- The Administrative Rules office and the Committee legal staff use the clean “Final Proposal—Fixed Text” filed by the agency as the official text of what the agency established. Differences with the “Final Proposal—Annotated Text,” if it had to be filed, will be resolved in favor of the fixed text;
- Your agency will be asked for an electronic copy of the “Final Proposal—Fixed Text” on which the Committee legal staff will type its comments, such as in a “text box” format;
- The Committee legal staff makes comments as annotations to the fixed text, noting any potential bases for Committee objection as for the initial proposal, or otherwise marks the text as “Consent” or “Consent Edit.” See “What Committee Legal Staff Looks for” in 2.9 of this chapter and “Editorial vs. Substantive Comments” below;
- An electronic copy of the proposal as annotated is sent to your agency; and
- The Committee staff also notifies your agency if no potential problems are found.

Committee legal staff comments are:

- Not legal advice for your agency;
- Not Committee objections to the final proposal unless the Committee votes to make them so; and
- Not a requirement under RSA 541-A:8 to rewrite the final proposed rule to comply with Chapter 4 of this *Manual* unless so ordered by the Director under 2.10.

Committee staff comments in memos can be distributed only as described in Committee Rule 302.04.

**EDITORIAL VS. SUBSTANTIVE COMMENTS**

If **all** the issues addressed in the Committee legal staff’s annotated comments are only editorial in nature as described in 2.2 in Chapter 5 and Committee Rule 201.02(a), that is, they are not “substantive”, then, pursuant to Committee Rule 201.02(f), the legal staff will not present such annotations to the Committee as grounds for potential objection. The final proposal will be marked “Consent Edit” and go on the Committee’s “**consent agenda**” for approval as described below in “Preparing the Tentative Agenda, Including the Consent Agenda.” Your agency may address these issues as minor editorial corrections in the adopted rule as described in 2.21 in this chapter or as editorial changes in the publication process in Chapter 5.

If your agency receives Committee legal staff comments, it may:

- Consider the annotations prior to the Committee meeting so as to prepare testimony and decide which issues the agency would be willing to address in response to a Committee preliminary objection or in a request for a conditional approval; and

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- Telephone 271-3680 or meet with Committee legal staff to discuss the comments if necessary to clarify the comments, understand how to resolve a potential problem, or point out any misunderstanding of a rule or statute.

**PREPARING THE TENTATIVE AGENDA INCLUDING THE CONSENT AGENDA**

The Committee staff prepares a tentative agenda for the Committee meeting and assigns estimated times for Committee review of the items. Staff will inform your agency of its time prior to the meeting. See Committee Rule 202.01. The tentative agenda is also placed online on the web site of the Administrative Rules office, usually at least 2 days prior to the meeting.

Committee review can be accelerated as described in Committee Rules 202.02 and 202.03 with the “**consent agenda**”:

- If your agency informs the Committee staff prior to the meeting that the agency could address the issues outlined in the Committee legal staff’s annotations if the Committee were to object to the final proposal based on these grounds, then the staff will place the final proposal item on the “**consent agenda**” list for Committee preliminary objection without further testimony. However, if a Committee member has questions, or other legislators or the public wish to testify on the final proposal, the final proposal shall not be placed on the list and shall be assigned a separate time on the regular agenda for Committee review.
- A final proposal shall be placed on the “**consent agenda**” list for Committee approval, or the “**consent agenda**” list for Committee conditional approval **provided** a conditional approval request has been submitted pursuant to 2.15, if:
  - Committee legal staff has no potential bases for objection to put before the Committee for the final proposal;
  - The issues are all editorial in nature; or
  - The only substantive issues involve agency operation under expired rules prior to September 11, 2015 or a potential violation of Part 1, Article 28-a of the N. H. Constitution due exclusively to a “pass-through” of federal requirements.
- However, if Committee staff determines that a Committee member, the agency, or the public wishes to testify about the final proposal before the Committee decides on any action, the final proposal shall not be placed on either “**consent agenda**” list but shall be assigned a separate time on the regular agenda for Committee review.
- Agency responses to preliminary and revised objections made in prior meetings shall be placed on the “**consent agenda**” list for approval under the same conditions as for final proposals.
- Agency requests for a preliminary or revised objection shall be placed on the “**consent agenda**” list for a preliminary or revised objection, as appropriate, if based on all Committee legal counsel annotations. See 2.15, 2.17, and 2.18 below.



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**TENTATIVE AGENDA REMAINS TENTATIVE**

Any person may inquire at any time about the tentative agenda, even as it is being drafted. Your agency may inform the Committee staff whether the time for review of its final proposals or other items is suitable, or you may request an alternate time. The draft is not final until after review by the Chairperson or Vice-Chairperson, usually by the Tuesday or Wednesday prior to the meeting. However, agenda times and order specified for items are always tentative even after the Committee meeting has begun. The final draft of the agenda is available upon request.

The order or the amount of time allotted for such items may be changed as necessary by the Chairperson or Vice-Chairperson prior to the meeting or by the Committee during the meeting to accommodate the Committee, agency requests, and the public in facilitating Committee review.

### **2.14 Amended Final Proposal.**

When filing a final proposal, your agency may make a request that the proposal be reviewed by Committee legal staff and placed on the agenda for the regularly scheduled or special Committee meeting that is **28 to 60 days** after filing. See RSA 541-A:12, I-a. The request must be made by checking off the appropriate "Yes" box on the "Cover Sheet for Final Proposal" (Appendix II-G) when your agency files the final proposal.

**NOTE:**

Since this option of an amended final proposal was added to RSA 541-A in 2000, it has been rarely used. Instead, agencies have usually requested a conditional approval as described in 2.15 below as it is procedurally simpler and can lead to adoption more quickly.

In effect, if your agency makes a request that would allow for an amended final proposal, it is requesting a postponement of Committee action under 2.15 below to a later meeting instead of the meeting at which the proposal would normally be heard under RSA 541-A:12, I. With such a request filed, the Committee deadline for acting on the proposal will be 60 days instead of 45 days after filing, even if the Committee denies the request. But the original final proposal with your request must still be filed at least 14 days before the first regularly scheduled meeting at which the **request** could be considered, absent a waiver of the deadline.

The Committee may choose to review the final proposal and act upon it as originally filed. However, if the Committee approves the request instead, your agency in return receives the following opportunity:

- The comments of the Committee legal staff as annotations identifying potential bases for Committee objection on the final proposal will be sent to your agency (if not already done so) at least **14 days** prior to the next meeting, presuming that a waiver is not granted; and
- The individual, or quorum of individuals, with rulemaking authority may establish an amended final proposal to address those comments. Absent a waiver, your agency must file the amended proposal as described below at least **7 days** prior to that next meeting for the amendment to be considered. As time allows, the Committee legal staff will review the amended final proposal in the same manner as for the final proposal as described in 2.13 in this chapter, including

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placement on the “consent agenda” for approval or conditional approval, as appropriate. However, the Committee can choose to review the proposal under 2.15 in that meeting either as originally filed or as amended.

#### COMMITTEE’S CONCERN ABOUT ACTION BY TELEPHONE OR ELECTRONIC COMMUNICATION

In the view of the Committee, a vote above by a quorum of the agency to establish the text of the amended final proposed rule constitutes “governmental proceedings” under RSA 91-A:1-a that must be open to the public under RSA 91-A:2. Since July 1, 2008 telephone or electronic communication by voting members is permitted under certain circumstances. See “Committee’s Concern About Action by Telephone or Electronic Communication” in 2.3 and 2.11 in this chapter.

#### FORMAT OF AN AMENDED FINAL PROPOSAL

The agency’s amended final proposal must consist of the following for each final proposal to which amendment is made:

- **ONE COPY OF THE RULES** in the proposal, which must:
  - Be identified as the amended final proposal with headers in compliance with Chapter 4 and annotated to indicate how any rule has been amended in response to the Committee legal staff’s comments; and
  - Include an appendix, updated if necessary, containing the cross-reference table under 2.12 above and an appendix if necessary pursuant to RSA 541-A:12, VII; and
- **A COVER LETTER** to the Committee which must:
  - Identify the agency and be signed by the individual with rulemaking authority, or a member of the group of individuals with rulemaking authority, subject to 1.7; and
  - Identify that the amended final proposal is enclosed and ask for Committee approval.

#### NOTE:

If the amended final proposal changes the information in the “Incorporation by Reference Statement” (Appendix II-H) filed with the final proposal, then update and file a completed Statement again. If it is not filed with the amended final proposal, such late filing will not affect the recorded filing date of the amended final proposal.

### **2.15 Committee Meeting—Approval, Preliminary Objection, or Conditional Approval.**

The Committee meeting to review proposed rules is a public hearing conducted by the Chairperson or Acting Chairperson under the Committee’s rules contained in Appendix IV. Since the Committee is not a policy committee, testimony must focus upon the issues in the proposed rules and not debate that the policy of a statute should be changed.

Your agency will have the opportunity to:

- Explain the rules directly to the Committee and address public or Committee legal counsel comment on the proposed rules; and
- Request a Committee objection or conditional approval if your agency wants to amend the proposed rule substantively without having to go through the rulemaking process again.

#### **AGENCY REQUESTS FOR OBJECTION OR CONDITIONAL APPROVAL**

If your agency knows prior to the meeting that it will request an objection or conditional approval, put the request in writing. Submit the request to Committee staff before the meeting, if possible, to expedite Committee action. See “Preparing the Tentative Agenda Including the Consent Agenda” in 2.13 above. For objections, identify the rule or rules to which objection is requested, and the grounds for objection. For conditional approvals, submit a cover letter and the text of the rule, with the heading “Conditional Approval Request”, and annotated to indicate the amendment or amendments that your agency would like the Committee to require as the condition for approval. The entire text of the proposal does not have to be submitted in the request. The cover letter may be signed by a staff person instead of the individual, or a member of the group of individuals, with rulemaking authority.

The Committee shall act after considering oral or written testimony from the agency, Committee staff, and the public by:

- Approving the final proposal or amended final proposal, with or without a petition pursuant to RSA 541-A:4 or a recommendation for future rulemaking or legislative action;
- Making a preliminary objection on the grounds as stated in RSA 541-A:13, IV and Chapter 400 of the Committee’s rules; or
- Conditionally approving the final proposal or amended final proposal, instead of making a preliminary objection, and with or without a petition or recommendation.

Written notification is sent by Committee staff to the agency about the Committee action as follows:

- If the final proposal or amended final proposal is approved without any other action, a form letter of approval is sent;
- If the Committee also, in addition to the approval, petitions the agency pursuant to RSA 541-A:4 or recommends further rulemaking or legislative action, a specially written letter is sent outlining the Committee approval and other action;

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- If the Committee objects to the rule, a written preliminary objection letter is sent. The reason or reasons why the Committee objects are stated in the letter, written attachments, annotations to the final proposal or amended final proposal, or both. The agency deadline to respond in writing is given in the letter. The Committee may also send a copy of the preliminary objection to the appropriate policy committees of the House and Senate for their input by a 30-day deadline pursuant to RSA 541-A:13, V(b). If the Committee does send a copy, the agency is notified; or
- If the Committee conditionally approves the final proposal or amended final proposal, a letter is sent specifying the language of an amendment that will meet the condition for approval set by the Committee.

#### NOTE:

An agency may adopt an approved rule and file it with the Administrative Rules office as described in 2.20 and 2.21 in this chapter as soon as Committee approval (but not conditional approval) is given and even before written notification is sent. No rule shall take effect until both adopted and filed.

### 2.16 Agency Response to a Conditional Approval.

Absent a waiver of the time period, within **30 days** of a conditional approval of a final proposal or amended final proposal, **or**, in the case of an agency board or commission, **7 days** following the board's or commission's next regularly scheduled meeting:

- Your agency must amend the rule exactly in accordance with the conditional approval; and
- You must submit what RSA 541-A:13, V(a) calls a "written explanation"—that is, a conditional approval response—to the Administrative Rules office as described below.

#### NOTE:

The "agency" is the individual or group with rulemaking authority. As with the final proposal, the individual, or quorum of individuals if rulemaking authority is granted to a group, must approve the specific text of the rule in the conditional approval response.

When the response is received, the Committee legal staff will promptly check it to see if the rule has been amended in accordance with the conditional approval and RSA 541-A:13, V(a). If it has been, the Office of Legislative Services will send written confirmation to the agency. The agency may then adopt the rule. See 2.20 below.

Failure to submit a written response, with the rule amended exactly as approved, and within the time frame above, causes the conditional approval to become a preliminary objection as of the date of the approval. The agency must then respond to the objection as described in 2.17 below. If simply more time is needed to respond, then the agency must request a waiver of the response deadline and have it granted.



**AGENCY DEFINITION AND COMMITTEE'S CONCERN ABOUT ACTION BY TELEPHONE OR ELECTRONIC COMMUNICATION**

The "agency" is the individual or group with rulemaking authority. As with the final proposal, the individual, or quorum of individuals if rulemaking authority is granted to a group, must approve the specific text of the rule in the conditional approval response in accordance with the conditional approval. See RSA 541-A:13, V(a).

In the view of the Committee, a vote above by a quorum of the agency to approve the text of the rule as amended constitutes "governmental proceedings" under RSA 91-A:1-a that must be open to the public under RSA 91-A:2. Since July 1, 2008 telephone or electronic communication by voting members is permitted under certain circumstances. See the "Committee's Concern About Action by Telephone or Electronic Communication" in 2.3, 2.11, and 2.14 in this chapter.

**FORMAT OF A RESPONSE TO A CONDITIONAL APPROVAL**

The agency's written explanation—its conditional approval response—detailing how the rule has been amended in accordance with the conditional approval must consist of the following for each final proposal or amended final proposal to which conditional approval was given:

- **ONE COPY OF THE RULES** in the proposal, which must:
  - Be identified as the conditional approval response with headers in compliance with Chapter 4 and annotated as described in 5.4 of Chapter 4 to indicate how any rule has been amended exactly in accordance with the conditional approval; and
  - Include an appendix, updated if necessary, containing the cross-reference table under 2.12 above and an appendix if necessary pursuant to RSA 541-A:12, VII; and
- **A COVER LETTER** to the Committee which must:
  - Identify the agency and be signed by the individual with rulemaking authority, or a voting member of the group of individuals with rulemaking authority, subject to 1.7; and
  - Identify that the rule amended in accordance with the conditional approval is enclosed.

**2.17 Agency Response to Committee Objections.**

To respond to a preliminary or revised objection (see 2.18 below), your agency:

- Must amend the rule to remove the grounds for objection, withdraw the rule, or make no change;
- May only make changes to the final proposal or amended final proposal in direct response to the objection; and
- Must respond in writing as described below, with the response received by the Administrative Rules office **within 45 days** of the objection or **within 45 days** of a conditional approval if the approval has become a preliminary objection, unless a waiver of the 45-day-deadline has been granted.

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**COMMITTEE'S CONCERN ABOUT ACTION BY TELEPHONE OR ELECTRONIC COMMUNICATION**

In the view of the Committee, a vote above by a quorum of the agency to approve the text of the rule in the objection response constitutes "governmental proceedings" under RSA 91-A:1-a that must be open to the public under RSA 91-A:2. Since July 1, 2008 telephone or electronic communication by voting members is permitted under certain circumstances. See "Committee's Concern About Action by Telephone or Electronic Communication" in 2.3, 2.11, 2.14, and 2.16 in this chapter.

**NOTE:**

The "agency" is the individual or group with rulemaking authority. As with the final proposal, the individual, or quorum of individuals if rulemaking authority is granted to a group, must approve the specific text of the rule in the objection response.

Unless a waiver of the deadline has been granted, failure to respond in writing by the 45-day deadline means that the rulemaking proceeding for the proposed rule is invalid. But this does not prevent the agency from beginning the process over again with a new FIS and rulemaking notice.

**FORMAT OF AN OBJECTION RESPONSE**

The agency's written response to a Committee objection must consist of the following for each final proposal to which objection was made:

- **ONE COPY OF THE RULES** in the proposal, which must:
  - Be identified as the preliminary or revised objection response with headers in compliance with Chapter 4 and annotated, if necessary, as described in 5.4 of Chapter 4 to indicate how any rule has been amended in response to the Committee's objection; and
  - Include an appendix, updated if necessary, containing the cross-reference table under 2.12 above and an appendix if necessary pursuant to RSA 541-A:12, VII; and
- **A COVER LETTER** to the Committee which must:
  - Identify the agency and be signed by the individual with rulemaking authority, or a voting member of the group of individuals with rulemaking authority;
  - Identify that the response to the objection is enclosed; and
  - Detail to the extent deemed necessary by the agency why and to what extent the final proposal has been amended or not amended in response to the Committee's objection.

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Committee legal staff will review the response and annotate the copy of the rule in the same manner as the initial and final proposals to indicate which issues if any appear to remain from the objection or if any issues have been created by the response. A copy of the annotated rule will be sent to the agency if there are issues.

If there are no issues, or the issues are all editorial in nature, the objection response will be placed on the Committee's "consent agenda" for approval and a copy marked "Consent" or "Consent Edit" will be sent to the agency. If there are issues which are not editorial, the objection response will be placed on the "consent agenda" for objection under certain circumstances. See 2.13 above.

***REFUSING AN OBJECTION RESPONSE FOR FILING***

The Director will refuse the written response at the time of filing under RSA 541-A:8 if the Director determines that:

- The agency has not approved the response as filed or the filing deadline has passed; or
- Noncompliance with Chapter 4 of this *Manual* is so serious or so extensive in the rules that the public and the Committee cannot determine where changes have been made to the rules and that therefore the rules should be refused for filing. The Director, however, shall not refuse the response for filing if the agency makes a written request for a revised objection from the Committee, at least in part to comply with Chapter 4.

**2.18 Committee Meeting—Approval with Further Amendment or Revised Objection.**

Your agency may request the Committee to approve the rule in the preliminary objection response with further amendment or issue a revised objection, but the Committee is under no obligation to do either but instead can proceed to the action described in 2.19. The rule subject to Committee action would then be the text of the response to the preliminary objection without further amendment.

***APPROVAL WITH FURTHER AMENDMENT***

The individual, or quorum of individuals, with rulemaking authority must approve the specific text of the rule in the request before it is submitted. Grounds for amendment must be selected as for a revised objection below. A request for an approval with further amendment must be submitted in writing:

- After the response to the preliminary objection is submitted;
- Prior to the adoption of the rule in the preliminary objection response; and
- **At least 7 days** prior to the Committee meeting at which the response to the preliminary objection will be considered, unless a waiver of the deadline has been granted.

**COMMITTEE'S CONCERN ABOUT ACTION BY TELEPHONE OR ELECTRONIC COMMUNICATION**

In the view of the Committee, a vote above by a quorum of the agency to approve the text of the rule as amended constitutes "governmental proceedings" under RSA 91-A:1-a that must be open to the public under RSA 91-A:2. Since July 1, 2008 telephone or electronic communication by voting members is permitted under certain circumstances. See "Committee's Concern About Action by Telephone or Electronic Communication" in 2.3, 2.11, 2.14, 2.16, and 2.17 in this chapter.

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**FORMAT OF A REQUEST TO APPROVE THE RULE WITH FURTHER AMENDMENT**

The agency's written request must consist of the following for each preliminary objection response to which amendment is made:

- **ONE COPY OF THE RULES** submitted in the response, which must:
  - Be identified as the amended objection response with headers in compliance with Chapter 4 and annotated as indicated in 5.4 of Chapter 4 only to indicate the amendment(s) requested to the rules in the preliminary objection response; and
  - Include an appendix, updated if necessary, containing the cross-reference table under 2.12 above and an appendix if necessary pursuant to RSA 541-A:12, VII; and
- **A COVER LETTER** to the Committee which must:
  - Identify the agency and be signed by the individual with rulemaking authority, or a voting member of the group of individuals with rulemaking authority, subject to 1.7; and
  - Request approval of the enclosed rules in the amended response.

The Director shall refuse or accept the request for approval with further amendment in the same manner as for a response to the preliminary objection. If accepted, the request will be reviewed by Committee legal staff as for an objection response in 2.17. The Committee can approve the rule as for an objection response in 2.19. The agency will be notified of the Committee's approval. If the Committee does not approve the rule with further amendment, your agency may still request a revised objection as described below, in order to make the amendment in response to the revised objection.

***REVISED OBJECTION***

A request for a revised objection may be made **only**:

- After submitting the response to the preliminary objection;
- After a denial of a request for approval with further amendment, if a request was submitted;
- Prior to the final Committee vote after reviewing the response to the preliminary objection; **and**
- Prior to the adoption of the rule by the agency.

**HOW A REVISED OBJECTION IS DIFFERENT FROM A PRELIMINARY ONE**

A revised objection may be made only if the agency requests one, selecting the grounds from the bases for objection under RSA 541-A:13, IV as further explained by the criteria in Chapter 400 of the Committee's own rules.

The grounds requested do not have to be identical with those enumerated in the preliminary objection but are entirely up to the agency.

The revised objection is the last opportunity in the particular rulemaking proceeding for the agency to make substantive changes to the rule to correct any potential problems and thereby avoid further rulemaking, final objections, or votes by the Committee to sponsor a joint resolution.

The Committee cannot add grounds for objection that are not included in the agency's request, but can decline to include any grounds.



**HOW A REVISED OBJECTION IS SIMILAR TO A PRELIMINARY ONE**

If the Committee makes a revised objection, the Committee staff shall promptly notify the agency in writing as for a preliminary objection.

The agency must respond in writing in the same manner and within a 45-day deadline as for the preliminary objection, unless a waiver of the deadline has been granted. See 2.17 and “Format of an Objection Response” and 5.4 of Chapter 4 on annotation format.

Committee legal staff shall review the response to the revised objection in the same manner as for the preliminary objection.

**2.19 Committee Meeting—Action on Objection Responses.**

After the receipt of your agency’s response to a preliminary objection, or, if appropriate, to a revised objection, the Committee has the following options:

- Accept the response and approve the rule;
- Make a final objection to the rule or a portion of the rule on any grounds which still exist from the prior objection(s) or were newly created in the objection response(s);
- Vote to support the introduction of a joint resolution to the legislature **in lieu of or in addition to a final objection** to implement the Committee’s recommendation; or
- Do any of the following in addition to one of the 3 above:
  - Petition the agency pursuant to RSA 541-A:4 on any new or remaining issues;
  - Recommend that the agency or legislators seek appropriate legislation to address remaining issues; or
  - Recommend to the agency that it address remaining issues in a future rulemaking proceeding.

The Committee staff will send written notification to your agency of the Committee action.

**FINAL OBJECTION**

A final objection shall be made only by a vote to do so by at least 6 members of the Committee. There is no time limit to make a final objection. It may be made before or after an agency adopts the rule. After the final objection is made, the objection is published in the next available issue of the *Rulemaking Register*. The effect of a final objection is to shift the burden of proof onto the agency in any action for judicial review or for enforcement of the affected provision of the rule to show that the identified grounds for objection do not exist. See RSA 541-A:13, VI. The final objections are also on the Administrative Rules office web site at <http://www.state.nh.us/gencourt/ols/rules>.

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**JOINT RESOLUTION**

A Committee vote to sponsor a joint resolution relative to a rule:

- May be made in lieu of or in addition to a final objection but only on the grounds available for a final objection;
- Shall be made by an affirmative vote of a majority of the entire Committee, that is, by at least 6 members, and **no later than 50 days** from the date by which the objection response was due, unless a waiver of the deadline has been granted; and
- Prevents the agency from adopting and filing the rule for the period of time specified in RSA 541-A:13, VII(c).

See RSA 541-A:13, VII and 2.20 in this chapter. The agency is free to adopt and file other rules in a proposal if they were not addressed in a vote to support the introduction of a joint resolution. This is the only exception to all rules in the same proposal becoming effective at the same time. The agency may also withdraw a rule which is addressed by the vote.

**2.20 Final Adoption by Agency.**

Provided that the rule was properly filed in a final proposal, and, if applicable, your agency is in compliance with RSA 541-A:14-a, III, your agency—that is, the individual or quorum of individuals with rulemaking authority—may adopt its rule after whichever of the following occurs first as required by RSA 541-A:14, I:

- The Committee approves the proposal;
- The rule is automatically approved by the passage of **45 days from agency filing of the final proposal**, or **60 days from filing under RSA 541-A:12, I-a**, without receiving Committee approval or objection, unless a waiver of the deadline has been granted;
- Written confirmation is sent to your agency by the Office of Legislative Services relative to agency compliance with the Committee’s conditional approval;
- An objection was made, or deemed made under RSA 541-A:13, V(a), and a written response filed, but **50 days have passed since the objection response filing deadline** without further Committee action, unless a waiver of the deadline has been granted; or
- The Committee takes any action on the rule in an objection response in lieu of voting to support the introduction of a joint resolution.

**COMMITTEE’S CONCERN ABOUT ACTION BY TELEPHONE OR ELECTRONIC COMMUNICATION**

As noted above, if the agency is a group, such as a board or commission, then a quorum is necessary to adopt the rule. In the Committee’s view, the vote to adopt constitutes “governmental proceedings” under RSA 91-A:1-a. Please note the “Committee’s Concern About Action by Telephone or Electronic Communication ” in 2.3, 2.11, 2.14, 2.16, 2.17, and 2.18 in this chapter.

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**DELAYS IN ADOPTION BY A VOTE TO SPONSOR A JOINT RESOLUTION**

If the Committee votes to sponsor a joint resolution to a rule, an agency may adopt that rule only after whichever of the following occurs first, unless a waiver of the relevant deadline has been granted:

- The Committee does not introduce the joint resolution within **20 business days** of the vote, or within 20 business days of the start of the following legislative session if the vote occurs when the legislature is not in session;
- Final legislative action is taken as defined in RSA 541-A:1, VI-a;
- The passage of **90 consecutive calendar days** during a legislative session, with the 90-day period commencing on the date such joint resolution is introduced;
- The passage of **90 calendar days** in the next legislative session *if* the legislature adjourns prior to the 60th calendar day after the joint resolution has been introduced; or
- The resolution becomes law and the resolution specifically authorizes adoption of all or part of the rule.

**ADOPTING AND FILING RULES WHOSE EFFECTIVE LIFE HAS BEEN EXTENDED**

See 1.11 of this chapter for the time frame for adopting and filing rules, and setting their effective date, if the effective life of the existing rules has been extended pursuant to RSA 541-A:14-a during the course of the rulemaking proceeding to readopt the rules or readopt them with amendments.

## **2.21 Filing the Adopted Rule; Acceptance or Refusal.**

To become effective, a rule must be filed with the Director in care of the Administrative Rules office at the office's address.

### ***FORMAT FOR FILING***

Your agency shall file its adopted rule with a cover letter as follows:

- **2 COPIES** of the adopted rule in the format required in Chapter 4, including **2 COPIES** of (1) the appendix containing the cross-reference table required by RSA 541-A:3-a, II, updated if necessary from the same appendix filed with the final proposal under 2.12 above and (2) the appendix if necessary pursuant to RSA 541-A:12, VII; and
- **ONE COPY** for each proposal of a cover letter containing the following:
  - The name and address of the agency adopting the rule;
  - Identification of the rule by rule number(s);
  - The date of the rule's adoption or, if appropriate, the date of the repeal, but in either case no later than the filing date;

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- The effective date and time if other than 12:01 a.m. of the day after filing and, if applicable, in compliance with RSA 541-A:14-a, III(b);
- Identification of any editorial changes (see 2.2 in Chapter 5) made in the adopted rule from the text of the final proposal after Committee review; and
- Signature by the individual with rulemaking authority, or a voting member of the group of individuals with rulemaking authority, subject to 1.7, certifying that:
  - ◆ The material enclosed is a true copy of the rule adopted by the agency on the date given; or
  - ◆ The agency has repealed the specified rule on the date given and that the enclosed is the repeal.

**NOTE:**

The header date on the adopted rule must be the date the individual or quorum of individuals with rulemaking authority adopted or repealed the rule. This is not necessarily the filing date. Please note also the “Committee’s Concern About Action by Telephone or Electronic Communication” in 2.3, 2.11, 2.14, 2.16, 2.17, 2.18, and 2.20 in this chapter.

If the agency is simply repealing a rule outright, follow the format for repeals in 5.5 of Chapter 4.

There must be no substantive changes in the adopted rule than those made pursuant to the objection or conditional approval process, or the adopted rule will be refused for filing. Substantive changes found after the rule is filed shall cause the Director to revoke acceptance. See “Not Accepting a Rule for Filing” and “ ‘Voiding’ a Document Number” on the next pages.



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**FILING EXPIRING AND NON-EXPIRING RULES**

If your adopted rule contains some provisions that will expire in 10 years and some that will not expire except pursuant to RSA 541-A:17, II, then the non-expiring provisions must not be included on the same page(s) as the 10-year rules. This problem would occur when non-expiring organizational rules (in Chapter 100) or non-expiring practice and procedure rules (in Chapter 200) are in the same proposal with 10-year rules. See 2.3 of this chapter and 2.1 and 2.2 of Chapter 2.

Editorially separate the non-expiring rules from the 10-year rules and place the 10-year rules toward the end of the proposal, beginning on a separate page, with the correct amending and repealing language for them. The numbering of the rules need not be changed, only their placement. This is necessary so that the Administrative Rules office can record in separate documents the non-expiring and expiring provisions of the adopted rule, and issue separate receipts. Please contact the Administrative Rules office for assistance, especially if this editorial work might otherwise delay the filing and effective dates for the adopted rules past the time desired by your agency.

If the filing is urgent, then your agency may still file the adopted rule with the expiring and non-expiring provisions mixed together, so the rule may still become effective as a matter of law. The Administrative Rules Office will request another copy of the adopted rule for recording purposes, with the expiring and non-expiring provisions properly separated. The agency must attach a cover letter certifying this copy is the same in substance as the rule originally filed. This may delay issuing of a receipt. See the "Note" below on effect of not issuing a receipt.

***DIRECTOR'S ACCEPTANCE BY ISSUING A RECEIPT***

The Director indicates acceptance of an adopted rule by having the Administrative Rules office send a receipt with the Director's signature to the agency specifying:

- From whom the rule was received;
- A 4-digit or 5-digit "document number" (with an "-A" and "-B" suffix to indicate the non-expiring and expiring provisions if necessary) that has been assigned to the filing by the Administrative Rules office, and that will appear along with the effective date in the agency's filing history on the office's web site and the source note in the published rule;
- Adoption date;
- Filing date, that is, the date received by the Administrative Rules office;
- Effective date;
- Expiration date, if applicable; and
- Any other notes relevant to the filing.

Notices of adopted and filed rules, including effective and expiration dates, will be created and published by the Administrative Rules office in the *Rulemaking Register*, usually on the second Thursday of each month. The agency's filing history on the office's web site will be updated to indicate the new filing.

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#### *NOT ACCEPTING A RULE FOR FILING*

An adopted rule shall be refused for filing, and no receipt issued, if the Director determines, after consultation with the Committee if a Committee recommendation or objection is involved, that:

- The individual, or quorum of individuals, with rulemaking authority did not adopt the rule or adopted it before allowed to do so by RSA 541-A:14 as described in 2.20 above;
- The filed rule is not the same as the adopted rule;
- The rule contains changes from the final proposal, other than minor editorial changes, that are not specifically authorized in the Committee's preliminary or revised objection;
- The agency failed to file a final proposal, or to respond to a preliminary or revised objection of the Committee, by the statutory deadline, and no waiver of the deadline was granted;
- The Committee voted to support the introduction of a joint resolution addressing the rule, and the time for introduction of the joint resolution has not yet passed; or
- Noncompliance with Chapter 4 of this *Manual* is so serious or so extensive that the Director has concluded, after considering the following factors, that the overall purpose of the *Manual* in assuring clarity and consistency in a uniform state code of administrative rules in conformance with RSA 541-A would be violated if the rules were accepted:
  - The agency has not made a good faith effort to address noncompliance with Chapter 4 during the rulemaking process as shown by responses to Committee objections or the Director's order to rewrite the rule;
  - The issues of noncompliance are not editorial in nature as described in Chapter 5; and
  - The agency has indicated that it will not address outstanding issues in future rulemaking.

#### **"VOIDING" A DOCUMENT NUMBER**

If the Director determines, after a receipt has been issued, that any of the circumstances above exist, the Director shall, if necessary, "void" the document number in the Administrative Rules office records and notify the agency. In effect, the Director revokes acceptance based on new information.

Not issuing a receipt, or voiding the document number after a receipt has been issued, **does not** change a valid, effective rule into an invalid, ineffective rule. Only a court can declare a rule invalid as a matter of law. The Director's actions indicate **the Director's view for record purposes** that the rule is not effective, and no copy of the rule will thereafter be issued by the Administrative Rules office **as an effective rule**. See RSA 541-A:8, RSA 541-A:14, II, and RSA 541-A:23, I.

#### *EFFECTIVE DATES*

A rule becomes effective under RSA 541-A:14, IV and RSA 541-A:16, III at:

- 12:01 a.m. on the day after filing;

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- 12:01 a.m. on the effective date specified by the agency in the adoption letter, and, if applicable, in compliance with RSA 541-A:14-a, III; or
- Such other date and time as specified in the adoption letter, provided that filing occurs before such effective date and time.

**CHANGING THE EFFECTIVE DATE AFTER FILING**

If your agency has specified a later effective date in its cover letter than the day after filing, the agency may still change the date later by providing a statement to the Director indicating the new effective date and all reasons for changing the date. The statement is then published in the *Rulemaking Register*. However, the modified effective date cannot be earlier than the publication date. See RSA 541-A:14, IV. Such a request may be made more than once, provided that the publication of the modified effective date always occurs before the modified date.

**NOTE:**

**When filing the adopted rule, your agency must not establish different effective dates for different rules within the same proposal.** See RSA 541-A:14, IV. All rules contained within the same final proposal become effective at the same time, unless a Committee vote to sponsor a joint resolution to one or more rules in the proposal prevents adoption and filing only of those particular rules. However, when the proposal is drafted, different **compliance dates** for requirements may be written as substantive conditions in the rules. See 3.4 in Chapter 4.

## **2.22 Expiration Dates.**

A validly adopted and filed regular rule is effective under RSA 541-A:17:

- For 10 years from its effective date (or 8 years if the rulemaking notice were filed prior to September 11, 2011), unless the rule is readopted, amended, or superseded before it expires, or the effective life is extended pursuant to RSA 541-A:14-a; or
- Indefinitely, if the rule is an “organizational rule” or a designated “rule of practice and procedure” proposed and adopted pursuant to RSA 541-A:16, I **as identified in 2.1 and 2.2 of Chapter 2 of this Manual**, and:
  - The Committee has approved the rule; and
  - Adoption or amendment of a statute governing the agency does not render the rule inaccurate.

**EXPIRATION OF ORGANIZATIONAL RULES  
AND CERTAIN RULES OF PRACTICE AND PROCEDURE**

Rules that may not expire are indicated by an italicized “source note” as explained in 1.3 of Appendix I. But, if the adoption or amendment of a statute governing the agency renders the organizational rules or the rules of practice and procedure identified in 2.1 and 2.2 of Chapter 2 of this *Manual* no longer accurate, then these rules expire one year after the effective date of the statute that makes these changes. The agency also has to commence rulemaking to amend these rules no later than 90 days after the effective date of the statute. See RSA 541-A:17, II.

### 2.23 Public Access to Rules and Publication of Rules.

Your agency must send copies of its adopted rules to the public within 3 working days of a request. See “Making and Providing Copies of Rules” in 2.7 in this chapter.

The adopted rule as filed becomes the “official version” of the effective rule unless or until an edited, camera-ready version, prepared by the Administrative Rules office for publication by your agency, is certified as the same in substance as originally filed. Then the certified rule becomes the “official version.” Your agency must publish its own rules in this format. See RSA 541-A:15, I and I-a and Chapter 5 of this *Manual*.

#### AGENCY CHANGES IN ITS ORGANIZATION AND RESPONSIBILITIES

If the agency on its own initiative reorganizes its organization and responsibilities in a way that the organizational rules are no longer accurate, the agency has to amend its organizational rules “as soon as is practicable.” No expiration date is explicitly stated in RSA 541-A, but the agency has to commence rulemaking no later than 90 days after the agency makes the changes. See RSA 541-A:17, II.

Your agency must maintain a file open to the public of the “official version” of the agency’s currently effective rules. See RSA 541-A:14, IV and RSA 541-A:15, I. These rules are also governmental records and must be open and available as required by the Right-to-Know Law, RSA 91-A:4, IV.

### 2.24 Public Request for Agency Statement Explaining Rule.

Up to 30 days after the adoption of a rule, an interested person may request your agency in writing to issue a statement which explains:

- The principal reasons for and against adoption of your rule in its final proposed form; and
- The reasons why your agency overruled arguments and considerations against adoption.

Your agency has to make this statement available to anyone, including the Committee, upon request. See RSA 541-A:11, VII. The procedure for handling requests for explanations is up to your agency, but to the extent that such a procedure is a rule, it must be adopted as a rule and be placed with your agency’s other “rules of practice and procedure.” See 2.2 in Chapter 2. See 2.1 in Chapter 3 for assistance.

## PART 3 INTERIM RULES

### 3.1 Grounds for an Interim Rule.

An interim rule is governed by RSA 541-A:19. Interim rulemaking is limited to a rule which is new, or amends or repeals an existing rule, and is “designed solely to allow the agency to:”

- Conform with a “new or amended codified state statute or chaptered session law”, provided that the rulemaking notice is published no later than **120 days** after the effective date of the new statute, the relevant amendment, or the session law, unless a waiver of the deadline has been granted;



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- Conform with a controlling decision by a court;
- Conform with a federal requirement which must be met sooner than is possible through permanent rulemaking under RSA 541-A:3, I through VII;
- Continue the agency's rules which would otherwise expire prior to the completion of readoption of the rules by the agency; or
- Minimize the time between the expiration of the rules and their readoption.

**MATTER OF URGENCY**

Your agency may propose a rule as an interim rule only when adoption is a matter of urgency so serious as to require use of the abbreviated process of interim rulemaking with its minimal public notice and absence of an agency hearing. See RSA 541-A:19, I and RSA 541-A:19, IV(e). Be aware that the automatic extension under the conditions specified in RSA 541-A:14-a to the effective life of existing regular rules during regular rulemaking may make unnecessary an interim rulemaking under RSA 541-A:19, I(d) to readopt the existing rules.

An agency shall document, when filing a proposed interim rule, that it is not adopting the rule solely to avoid the time periods imposed by permanent rulemaking. See RSA 541-A:19, IV(e).

Agencies may begin the rulemaking process for an interim rule once a statute is enacted and before its effective date, provided that the effective date of the adopted rule does not occur before the effective date of the statute. See RSA 541-A:20.

However, adoption must take place within a particular time frame after the interim rule is proposed by an agency and approved by the Committee. See 3.5 below.

### **3.2 Drafting of an Interim Rule; Fiscal Impact Statement.**

When writing interim rules, your agency must comply with RSA 541-A:7 and the drafting and numbering requirements of Chapter 4 in this *Manual*, **unless** the rule is proposed on the following grounds pursuant to RSA 541-A:19, I(d) and (e):

- To continue the agency's rules which would otherwise expire prior to the completion of readoption of the rules by the agency; or
- To minimize the time between the expiration of the rules and their readoption.

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**WHAT TO INCLUDE IF THE INTERIM RULE IS AN EXPIRED OR EXPIRING RULE**

If proposed only on one or both of the 2 grounds above, the proposed interim rule as filed by your agency must not contain substantive changes from the existing rule, or formerly existing rule. The purpose of interim rulemaking in these 2 instances is simply to keep existing rules in effect or put expired rules back into effect temporarily. That is the reason for the exemption above, to avoid requiring compliance with RSA 541-A:7 or RSA 541-A:8 that might necessitate substantive changes. If substantive changes are desired, such as to avoid conflict with a statute amended since the rules were last made effective, your agency may request a conditional approval or preliminary objection from the Committee.

If existing provisions are included in the proposed interim rule for readability of the proposal, but are not about to expire, the Committee has traditionally not objected. But be aware that the same effective and expiration dates will be assigned to all provisions in the proposal when the rule is finally adopted and filed. This would replace a provision potentially effective for several more years with a rule effective for only 180 days.

The individual, or the quorum of individuals, with rulemaking authority must approve any proposed interim rule before filing.

Once the proposed interim rule is so approved, your agency must then obtain a fiscal impact statement from the Office of Legislative Budget Assistant (LBA) **unless the rule is proposed on one of the 2 grounds above**. To request a fiscal impact statement, complete and file a "Request for a Fiscal Impact Statement" form (Appendix II-B) with the LBA.

### **3.3 Filing the Proposed Interim Rule; Public Notice.**

Use one of 2 procedures as follows for notice and filing of proposed interim rules:

#### ***#1—USING RULEMAKING REGISTER NOTICE***

- The following documents must be filed with the Administrative Rules office by 4:30 p.m. on the Thursday before the intended date of publication of the rulemaking notice, unless a late filing is accepted under 2.5 of this chapter:
  - **ONE COPY** of the completed "Interim Rulemaking Notice" form (Appendix II-J);
  - **2 COPIES** of a fiscal impact statement, if necessary;
  - **2 COPIES** of the proposed interim rule, including **2 COPIES** of an appendix containing a cross-reference table relative to implementation of statutes or federal regulations, as filed for an initial proposal under 2.4 and 2.5 above; and
  - **2 COPIES** of a completed "Cover Sheet for Proposed Interim Rule" (Appendix II-I).

#### ***#2—USING NOTICE IN A NEWSPAPER OF DAILY STATEWIDE CIRCULATION***

- The newspaper notice must contain at least the information specified in RSA 541-A:19, III; and

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- The following documents must be filed:
  - **2 COPIES** of the proposed interim rule as described above, including **2 COPIES** of the appendix containing a cross-reference table, **2 COPIES** of a fiscal impact statement, if necessary, and **2 COPIES** of a completed “Cover Sheet for Proposed Interim Rule” (Appendix II-I) with the Administrative Rules office by the date of publication of the newspaper notice; and
  - **ONE COPY** of the newspaper notice with the Administrative Rules office no later than 3 days after the date of publication.

The completed “Cover Sheet for Proposed Interim Rule” must contain an explanation stating why the interim rule is necessary under RSA 541-A:19, I. The cover sheet must be signed by the individual, or a member of the group of individuals, with rulemaking authority, certifying that this statement is accurate.

The Administrative Rules office will examine the filing of a proposed interim rule, and the Director will refuse or accept, in the same manner as for initial and final proposals. The Administrative Rules office will contact the agency if it discovers missing elements or other errors. **The agency is still responsible for the completeness and accuracy of all materials submitted to the office.**

#### NOTICE FILING DEADLINES AND MINIMUM NOTICE PERIOD

As noted in 2.12 of this chapter, since 2003 it has been the Committee practice to schedule its “regular” meetings on the 3<sup>rd</sup> Friday of the month from January through June to accommodate the legislative calendar, and the 3<sup>rd</sup> Thursday of the month from July through December. The 14-day filing deadline described below to be placed on the Committee agenda is based on those meetings, and therefore will change every 6 months from the Friday to the Thursday that is 14 days prior to the regular meeting.

For rulemaking notices filed since September 11, 2011, the official publication date for the *Rulemaking Register* is the date on which the *Register* is placed online by the Administrative Rules office. That placement is Thursday of the week following filing, except in the case of holidays, when it will be sooner. **The minimum 7-day notice publication requirement below is not subject to waiver.** Therefore, filing the *Rulemaking Register* notice with the proposed interim rule together no less than 14 days prior to the regularly scheduled Committee meeting, but also by the Thursday notice filing deadline, would assure that the 14-day deadline for filing **and** the 7-day notice publication requirement are met. The Administrative Rules office includes the Committee schedule of regular and continued meetings for the calendar year online and in the *Rulemaking Register*.

### 3.4 Committee Review and Option of Filing an Amended Proposal.

Filing for Committee review of a proposed interim rule is governed by the following procedure:

- Absent a waiver, your agency must file the rule **no less than 14 days** before a regularly scheduled monthly Committee meeting to be on the agenda for review at that meeting. If filed less than 14 days prior to such a meeting, the rule will be on the agenda for the following regularly scheduled monthly meeting, or at a special meeting if so voted by the Committee. See RSA 541-A:19, V. The *Rulemaking Register* published at least one week before the regularly scheduled meeting will list the proposed interim rules on the Committee’s agenda for that meeting. This list may also be accessed through the online rulemaking search program.

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- Publication of the rulemaking notice, whether in a newspaper or the *Rulemaking Register*, must occur **no less than 7 days** before the regularly scheduled monthly Committee meeting at which the rule is to be reviewed. See RSA 541-A:19, V.

Committee review of a proposed interim rule is governed by the following procedure:

- Committee legal staff will review the rule mostly in the same manner as described in 2.13 of this chapter for final proposals, including provision of annotations notifying your agency of potential bases for objection applicable to proposed interim rules and preparation of a “consent agenda” for Committee approval or conditional approval of the rule, as appropriate. See “Preparing the Tentative Agenda, Including the Consent Agenda” in 2.13. However, for a proposed interim rule filed under RSA 541-A:19, I(d) or (e), the inclusion by the agency of additional, existing text for context, which has otherwise not expired or is not about to expire, will not prevent the rule being placed on the “consent agenda.”
- Comments, if any, by Committee legal staff outlining potential bases for Committee objection will be sent to your agency as annotations at least 7 days prior to the Committee meeting. Your agency may then amend the rule to address those comments and present an amended proposed interim rule to the Committee in the same manner as for an amended final proposal under 2.14, except that the amended proposed interim rule may be filed any time before the Committee takes action on the rule.
- By a majority of the votes cast, the Committee shall approve, conditionally approve, or object to the rule, either as originally proposed or as amended. Objections are made on the grounds specified in RSA 541-A:19, VII, as further explained in Chapter 400 of the Committee’s rules.
- If the Committee approves, conditionally approves, or objects to the rule, the approval, conditional approval, or objection will be made in writing.
- If the Committee conditionally approves the rule, your agency must amend the rule and submit a cover letter and annotated rule **within 14 days**, absent a waiver, but otherwise in the same manner as for a final proposal under 2.16. Otherwise, the vote to conditionally approve the rule is deemed an objection as of the date of approval. Once the Committee legal counsel confirms that the agency has amended the rule on time and as approved, written confirmation of compliance will be sent to your agency. Your agency may then adopt the rule.
- If the Committee makes an objection, or the conditional approval is deemed an objection, your agency may respond by amending or withdrawing the rule. Your agency shall respond, only once, in writing as for a preliminary objection under 2.17 above, except the response must be received by the Administrative Rules office **prior to the next regularly scheduled monthly meeting**. If your agency withdraws the rule in response to the objection, or if it does not respond prior to the next regularly scheduled meeting, the rulemaking proceeding shall be over. See RSA 541-A:19, VIII(d). Your agency may start the interim rulemaking process over again provided that the requirements of RSA 541-A:19, I are met.
- If your agency responds to a Committee objection prior to the next regularly scheduled meeting, the Committee legal counsel will review the response in the same manner as for a response to a preliminary objection to a final proposal. The Committee shall also review the response and vote either to approve the rule by approving the response or to continue the objection.



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### **3.5 Adoption and Filing.**

The individual, or quorum of individuals, with rulemaking authority may adopt a proposed interim rule only if the Committee has voted to approve the rule **within 90 days of publication** of the rulemaking notice, unless the deadline is waived. See RSA 541-A:19, IX.

However, regardless of a Committee objection, your agency may proceed to adopt the substance of the proposed interim rule through the regular rulemaking process in Part 2 of this chapter.

For the interim rule to become effective, your agency shall file the adopted interim rule with a cover letter **no later than 30 days**, unless the deadline is waived, following Committee approval or conditional approval (not confirmation of conditional approval) as follows:

- **2 COPIES** of the adopted interim rule, including **2 COPIES** of the appendix containing the cross-reference table required by RSA 541-A:3-a, II, updated if necessary from the same appendix filed with the proposed interim rule; and
- **ONE COPY** of a cover letter in the format for filing with a signature and certification as for a regular adopted rule under 2.21.

The Director shall review the rule and accept (with a receipt issued) or refuse the filing in the same manner and under the same criteria as for a regular adopted rule under 2.21. The Administrative Rules office will publish a notice in the *Rulemaking Register* and update the agency's filing history on the office's web site as for a regular adopted rule.

The adopted interim rule shall be effective pursuant to RSA 541-A:16, III at 12:01 a.m. on the day after filing, or at a later date and time, provided that:

- Your agency so specifies the later date and time in the cover letter as described in 2.21; and
- The effective date is **within 30 days** following Committee approval or conditional approval, unless the 30-day deadline above to adopt and file was waived. See RSA 541-A:19, X.

Interim rules are effective for 180 days unless repealed or superseded before that date. Before or during this effective period, your agency may begin the regular rulemaking process to replace the interim rule with a regular rule. Your agency shall not, however, adopt another interim rule to replace an expiring interim rule.

### **3.6 Public Access to Interim Rules and Publication of Rules.**

Requirements on public access and publication of interim rules are the same as for regular rules under 2.23 in this chapter, except that the maximum "3 working days" to respond to public requests for copies of the rule does not apply to interim rules. However, the maximum "5 business days" to respond to requests under the Right-to-Know Law does apply. See RSA 91-A:4, IV.

## PART 4 EMERGENCY RULES

### 4.1 Grounds for an Emergency Rule.

See RSA 541-A:18, I. Your agency may proceed to adopt an emergency rule only if your agency finds either that:

- “An imminent peril to the public health or safety requires adoption with less notice than is required” for rules adopted under the regular rulemaking steps in Part 2 in this chapter; or
- “Substantial fiscal harm to the state or its citizens could occur if rules are not adopted with less notice than is required” by regular rulemaking.

### 4.2 Adoption and Filing of the Emergency Rule.

In order to take effect, an emergency rule must be:

- Adopted by the individual, or quorum of individuals, with rulemaking authority, just like other rules; and
- Filed with the Administrative Rules office.

Follow Chapter 4 of this *Manual* for the style of numbering and drafting. The rule goes into effect immediately upon filing. No later effective date is allowed under RSA 541-A. See RSA 541-A:18, II-IV.

Your agency must file **2 COPIES** of the following:

- The emergency rule;
- The completed “Cover Sheet for Emergency Rule” (Appendix II-K), and
- All attachments needed to complete the items in the cover sheet.

The completed “Cover Sheet for Emergency Rule” must contain an explanation of the basis for the emergency rule demonstrating that the rule is necessary as an emergency rule. That includes an explanation of the nature of either the imminent peril to public health and safety demonstrating that the emergency rule is necessary to prevent the imminent peril, or the substantial fiscal harm to the state or its citizens which could occur if the rule were not adopted as an emergency rule. The cover sheet must be dated and signed by the individual, or a voting member of the group of individuals, with rulemaking authority, certifying that the statement is accurate.

If the filing is complete, the Administrative Rules office will send a receipt with the Director’s signature, have a notice published in the *Rulemaking Register*, and update the agency’s filing history on the web site of the Administrative Rules office as for a regular adopted rule under 2.21. An emergency rule remains in effect no longer than 180 days. Your agency shall not adopt the same emergency rule when the emergency rule expires. See RSA 541-A:18, II.

The Committee legal staff will review the agency’s statement of emergency in Item 8 of the cover sheet for accuracy, and the Committee shall petition the agency to repeal the rule if it determines this statement is inadequate.

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If an emergency rule amends or repeals an effective rule, then that rule shall again be effective in its original form upon the expiration of the emergency rule.

**HOW TO REPEAL AN EMERGENCY RULE**

Your agency may repeal its emergency rule by completing and filing **2 COPIES** of the “Statement for Repeal of Emergency Rule” (Appendix II-L) with the Administrative Rules office. The statement must be dated, signed, and certified as for adoption of the emergency rule.

### **4.3 Public Access to Emergency Rules and Publication of Rules.**

Public access to, and publication of, emergency rules must comply with RSA 91-A:4, IV and RSA 541-A:15, I.

## **PART 5 EXPEDITED REPEALS**

### **5.1 Grounds for an Expedited Repeal.**

An expedited repeal is governed by RSA 541-A:19-a, effective June 1, 2004, as amended effective January 1, 2010. The requirements of RSA 541-A:5-7 and RSA 541-A:9-14 applicable to regular rulemaking do not apply. Compliance with the *Manual* pursuant to RSA 541-A:8 is still required.

An agency may repeal a rule using the expedited repeal process if the proposed repeal rule meets all of the following grounds pursuant to RSA 541-A:19-a, I:

- The proposed repeal has been approved by the individual, or group of individuals, with rulemaking authority;
- The rule to be repealed is at least a full rules section, such as Env-A 1611.01, and not just a paragraph or smaller, such as Env-A 1611.01(b);
- The rule to be repealed will not be superseded by adoption of another rule amended from the repealed rule; and
- The repeal “does not deprive a person of any right, duty, or privilege of that person which is protected by the due process provisions of the state or federal constitutions.”

For example, the expedited repeal process would be appropriate for a rule chapter that had governed a program that the agency has discontinued because the statute implemented by the rule had been repealed.

### **5.2 Filing the Proposed Expedited Repeal; Public Notices.**

A fiscal impact statement pursuant to RSA 541-A:5 is not required for expedited repeals.

An agency must file the following with the Administrative Rules office:

- **ONE COPY** of the completed “Expedited Repeal Notice Form” (Appendix II-M), which will be published in the *Rulemaking Register*; and

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- **2 COPIES** of the text of the rule to be repealed, in compliance with the format for repeals in Part 5 of Chapter 4 of the *Manual*.

#### 5.3 Public Hearing.

An agency must hold a public comment hearing on the proposed repeal no sooner than **7 calendar days** after the publication of the notice in the *Rulemaking Register*. An agency must also provide for a period for submission of written or electronic public comment ending no sooner than **the 3<sup>rd</sup> calendar day** after the hearing. Copies of the text of the rule to be repealed must be available at the hearing.

#### 5.4 Effect of Public Comment; Placement on Committee Agenda.

If the individual, or the group of individuals, with rulemaking authority determines that the rule should not be repealed, the agency must notify the Administrative Rules office, and the rule shall not be repealed.

Otherwise, the Administrative Rules office shall place the proposed repeal on the agenda for Committee review at the first regularly scheduled or special meeting that is **at least 5 calendar days** after the public comment period.

#### 5.5 Committee Review.

Committee legal staff will review the proposed repeal in the same manner as for final proposals as described in 2.13 of this chapter, including placement on the “consent agenda” for approval if appropriate, except that, pursuant to RSA 541-A:19-a, VII, the potential bases for objection are more limited than for final proposals and there is no conditional approval of an expedited repeal.

The Committee may approve the proposed repeal, or it may object on the following grounds:

- The repeal is beyond the authority of the agency;
- The repeal is contrary to legislative intent; or
- The Committee determines that the repeal does not meet the grounds for an expedited repeal as stated in 5.1 above.

Written notification of the Committee’s action shall be sent to the agency as for final proposals under 2.15 of this chapter. If the Committee objects to the repeal, the agency shall not adopt the repeal by the expedited process, but the agency may still use the process for regular rules in Part 2 of this chapter.

#### 5.6 Adoption and Filing.

If the Committee approves the repeal, the agency may adopt the repeal and file a written statement of the repeal with the Administrative Rules office in the following format:

- **ONE COPY** of a cover letter in the format for filing with a signature and certification as for a regular adopted rule under 2.21; and
- **2 COPIES** of the text of the repealed rule, in compliance with the format for repeals in Part 5 of Chapter 4 of the *Manual*.



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The repeal shall be effective pursuant to RSA 541-A:19-a, IX at 12:01 a.m. on the day after filing of the statement, or at 12:01 a.m. on the date specified by the agency in the cover letter, or such other date and time as specified, provided that the filing occurs before such effective date and time.

## **PART 6 EXPEDITED REVISIONS TO AGENCY FORMS**

### **6.1 Grounds for an Expedited Revision.**

An agency form is a rule. See 1.1 of this chapter. An expedited revision to an agency form to make a substantive change is governed by RSA 541-A:19-c, effective January 1, 2010. The requirements of RSA 541-A:5-7 and RSA 541-A:9-14 applicable to regular rulemaking do not apply, except as stated in 6.5 below. Compliance with the *Manual* pursuant to RSA 541-A:8 is still required. Editorial changes to the form do not require rulemaking. See 2.2 and 2.8 of Chapter 5.

**REVISED FORMS AND CURRENT, NUMBERED RULES CONTAINING OR  
INCORPORATING THE REQUIREMENTS OF THE FORM**

An agency may revise or “amend” an existing form using the expedited revision process. Essentially, by adopting the revised form the agency will readopt the form with amendment. However, if the requirements of the existing form are currently set forth in a numbered rule, as described in 3.13 of Chapter 4, then that rule must also be amended, but through the regular, interim, or emergency rulemaking process, as applicable, so that the numbered rule is consistent with the form. This rulemaking may be done simultaneously or at a later date. In the view of the Committee, since the revised form itself is also a “rule”, the revised form adopted through the expedited process would be the valid and enforceable rule so long as it remains the later rule governing the form.

But **if** an existing, numbered rule **only** incorporates the form by reference, then the edition or date of the form in the numbered rule may be changed editorially as described in 2.2 and 2.8 in Chapter 5 **after** the revised form is effective through the expedited revision process.

### **6.2 Filing the Proposed Revised Form; Public Notices.**

A fiscal impact statement pursuant to RSA 541-A:5 is not required for expedited revisions to forms.

An agency must file the following with the Administrative Rules office:

- **ONE COPY** of the completed “ Notice of Expedited Revisions to Agency Forms” (Appendix II-N), which will be published in the *Rulemaking Register*, but, if multiple forms are filed, more than one notice may be filed in order to group the forms by similar subject matter ; and
- **2 COPIES** of the revised form, with a header and annotated if possible to show the changes in compliance with Part 5 of Chapter 4 of the *Manual*. If the form cannot be annotated because of the software program in which the form was created, then the filing must also include a summary of the changes and a copy of the existing form, so that the public can readily determine how the form has changed. The summary may include the header and the adopting, amending, and repealing language required for forms as provided in Part 5 of Chapter 4.

### 6.3 Public Comment.

No public comment hearing is required in the expedited revision process to agency forms. However, an agency must provide for a period for submission of written or electronic public comment ending no sooner than the 7<sup>th</sup> calendar day after the date of publication of the notice in the *Rulemaking Register*.

### 6.4 Effect of Public Comment; Placement on Committee Agenda.

If the individual, or the group of individuals, with rulemaking authority determines that the form should not be adopted as amended, the agency must notify the Administrative Rules office, and the form as amended shall not be adopted.

Otherwise, the Administrative Rules office shall place the proposed form as amended on the agenda for Committee review at the first regularly scheduled or special meeting that is at least 5 calendar days after the public comment period, unless the deadline is waived. Committee legal staff will review the proposed form, and place it on the "consent agenda" if appropriate, in the same manner as for final proposals under 2.13 of this chapter, except that, pursuant to RSA 541-A:19-c, VI, the potential bases for objection are more limited than for final proposals and there is no conditional approval of an expedited revision to a form.

### 6.5 Committee Review.

The Committee may approve the form as amended, or it may object to the adoption of the form as amended if the form is:

- Beyond the authority of the agency;
- Contrary to legislative intent; or
- Deemed by the Committee not to meet the requirements of RSA 541-A:19-c.

Written notification of the Committee's action shall be sent to the agency as for final proposals under 2.15 of this chapter. If the Committee objects to the adoption of the form as amended, the agency must respond as for a regular rule pursuant to RSA 541-A:13, V and 2.17 of this chapter. Subsequent Committee review shall be as provided in RSA 541-A:13 and in 2.18 and 2.19.

### 6.6 Adoption and Filing.

If the Committee approves the form as amended, the agency may adopt the form and file the form with the Administrative Rules office in the following format:

- **ONE COPY** of a cover letter in the format for filing with a signature and certification as for a regular adopted rule under 2.21; and
- **2 COPIES** of the form including the adopting, amending, and repealing language required for forms as provided in Part 5 of Chapter 4.

The form as amended shall be effective pursuant to RSA 541-A:16, III on the day after filing of the form, or at 12:01 a.m. on the date specified by the agency in the cover letter, or such other date and time as specified. However, the filing must occur before such effective date and time. Effective dates can be subsequently changed as described in 2.21 of this chapter.

## PART 7 EXPEDITED AMENDMENT TO INCORPORATION BY REFERENCE

### 7.1 Grounds for an Expedited Amendment.

An expedited amendment to an incorporation by reference is governed by RSA 541-A:19-d, effective September 11, 2015. The requirements of RSA 541-A:5 on fiscal impact statements, RSA 541-A:6 on rulemaking notices, and RSA 541-A:9-14 on process applicable to regular rulemaking do not apply except as noted below. Compliance with the *Manual* pursuant to RSA 541-A:8 is still required.

An agency may amend an existing rule which incorporates by reference a document or Internet content using the expedited amendment process if the proposed amendment meets all of the following grounds pursuant to RSA 541-A:19-d, I:

- The proposed amendment has been approved by the official, or group of individuals, with rulemaking authority;
- The proposed amendment only updates or changes the document or Internet content incorporated by reference, or amends related text, in the existing rule;
- The amended rule does not encompass more than a full rules section, such as Env-A 1611.01, and may be just a paragraph or smaller, such as Env-A 1611.01(b);
- The proposed amendment has no fiscal impact which would otherwise require a fiscal impact statement pursuant to RSA 541-A:5; and
- The requirements of RSA 541-A:12, III-VII are met as they would be for final proposals as described in 2.12 of this chapter and 3.12 of Chapter 4.

Expedited amendment to an incorporation by reference of an agency form is not governed by RSA 541-A:19-d but instead by the expedited revision to agency forms process pursuant to RSA 541-A:19-c as described in Part 6 of this chapter.

### 7.2 Filing the Proposed Expedited Amendment; Public Notice.

A fiscal impact statement pursuant to RSA 541-A:5 is not required for an expedited amendment to an incorporation by reference.

An agency must file the following with the Administrative Rules office:

- **ONE COPY** of the completed “Notice for Expedited Amendment to Incorporation by Reference” form (Appendix II-O), which will be published in the *Rulemaking Register*;
- **ONE COPY** of the text of the rule to be amended, as the “Proposed Amendment to Incorporation by Reference”, in compliance with the format for an amendment or readoption with amendment, as applicable, in Part 5 of Chapter 4 of the *Manual*, and including (1) an appendix pursuant to RSA 541-A:3-a as a cross-reference table relative to implementation of statutes or federal regulations, as described in 2.4 and 2.5 of this chapter and (2) an updated appendix pursuant to RSA 541-A:12, VII relative to how the public can obtain the incorporated material, and at what cost, as described in 3.12 of Chapter 4; and



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- **ONE COPY** of an “Incorporation by Reference Statement” (Appendix II-H) if required pursuant to RSA 541-A:12, IV and as described in 3.12 in Chapter 4, for each document or internet content incorporated by reference.

**EXPLANATION OF DIFFERENCES BETWEEN THE EXISTING AND PROPOSED  
INCORPORATED MATERIAL**

The notice form pursuant to RSA 541-A:19-d, II(e) requires an explanation of the differences between the existing document or Internet content incorporated by reference and the document or Internet content in the amended rule. Note that this is not required in the notice form for regular rulemaking but is otherwise subject to JLCAR legal staff request under JLCAR rule 201.02(d), as described in 2.9 of this chapter.

### **7.3 Public Comment; Copies.**

No public comment hearing is required in the expedited amendment process for an incorporation by reference. However, an agency must provide a period for submission of written or electronic public comment ending no sooner than the **14<sup>th</sup> calendar day** after the date of publication of the notice in the *Rulemaking Register*.

Copies of the amended rule must be available to the public at the time the notice is filed, and a copy of the document or Internet content incorporated by reference shall also be available for public inspection pursuant to RSA 541-A:12, VI.

### **7.4 Effect of Public Comment; Placement on Committee Agenda.**

If the official, or the group of individuals, with rulemaking authority determines, based on public comment, that the rule should not be amended by the expedited procedure, the agency must notify the Administrative Rules office, and the rule shall not be amended under RSA 541-A:19-d. But this does not preclude the agency from using the regular rulemaking process.

Otherwise, the Administrative Rules office shall place the amended rule on the agenda for Committee review at the first regularly scheduled or special meeting that is **at least 5 calendar days** after the public comment period.

### **7.5 Committee Review.**

Committee legal staff will review the proposed expedited amendment to incorporation by reference in the same manner as for final proposals as described in 2.13 of this chapter, including placement on the “consent agenda” for approval or conditional approval if appropriate, except that, pursuant to RSA 541-A:19-d, VII, the potential bases for objection are more limited than for final proposals.

The Committee may approve or conditionally approve the amended rule, or it may object pursuant to RSA 541-A:13, V-VII if the rule is:

- Beyond the authority of the agency;
- Contrary to legislative intent;



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- Deemed not to be in the public interest; or
- Deemed by the Committee not to meet the requirements for an expedited amendment to incorporation by reference as stated in 7.1 above.

Written notification of the Committee's action shall be sent to the agency as for final proposals under 2.15 of this chapter. If the Committee objects to, or conditionally approves, the amended rule, the agency must respond as for a regular rule pursuant to RSA 541-A:13, V and 2.16 and 2.17 of this chapter. Subsequent Committee review for objection responses shall be as provided in RSA 541-A:13 and in 2.18 and 2.19 of this chapter.

### **7.6 Adoption and Filing.**

If the Committee approves the amended rule, the agency may adopt the rule and file it in the Administrative Rules office in the following format:

- **ONE COPY** of a cover letter in the format for filing with a signature and certification as for a regular adopted rule under 2.21; and
- **2 COPIES** of the text of the adopted, amended rule, in compliance with the format for an amendment or readoption with amendment of a rule including appendices and the adopting, amending, and repealing language as provided in Part 5 of Chapter 4.

The amended rule shall be effective pursuant to RSA 541-A:16, III on the day after filing of the rule, or at 12:01 a.m. on the date specified by the agency in the cover letter, or such other date and time as specified. However, the filing must occur before such effective date and time.

## PART 8 ELECTRONIC FILING OF RULES AND OTHER DOCUMENTS AFTER JULY 31, 2019

### 8.1 Authorization.

The use of the Ipswitch WTS\_FTP Professional ® software to file electronically will end on July 31, 2019 as the Office of Legislative Services will not renew the licenses which expire after that date.

**Electronic filing (“e-filing”) of documents with the Administrative Rules office will remain an option** through e-mail to a special e-mail address AdminRules@leg.state.nh.us in compliance with this part until replaced by a web-based filing system currently in the development stage. **Electronic filing is not mandatory.** But **to be acceptable** the document filed electronically **must** comply with the procedures of this *Manual*. Your agency must first be authorized by the Director to file electronically unless your agency has already been participating in e-filing using the Ipswitch WTS\_FTP Professional ® software.

The Director’s authorization is simplified from the one formerly employed with the Ipswitch® software, as follows:

- If your agency has already been participating in e-filing using the Ipswitch® software, no further authorization by the Director is necessary to commence e-filing with e-mail, but the Administrative Rules office will presume that only the agency personnel authorized by the agency to file with the Ipswitch® software are also authorized to file by e-mail unless your agency notifies the office by regular e-mail or letter of the names of other authorized individuals;
- Your agency otherwise must request authorization from the Director by regular e-mail or letter through the Administrative Rules office for e-filing. The e-mail or letter shall include the name(s) of agency personnel who are authorized by the agency to perform the filing and a confirmation that the agency has the technical and software capability as described in this part. Once authorization by the Director to e-file is granted, the agency shall notify the Administrative Rules office by regular e-mail or letter of any additional individuals whom the agency has authorized to e-file; and
- Once authorization to commence e-filing is given, your agency must thereafter file electronically in compliance with 8.2 through 8.5 below for each rulemaking proceeding.

#### CURRENT TECHNICAL AND SOFTWARE REQUIREMENTS FOR E-FILING

Your agency will need:

- At least one personal computer with internet access, with one or two individuals who will be identified in your authorization request to the Director as the individual(s) who are authorized by the agency to actually perform the filing;
- Rules and rulemaking documents originally prepared in Microsoft Word® software except for agency forms or other attachments that use other software; and
- Equipment that can scan your documents for rulemaking into PDF files for signed documents, such as adoption cover letters and Incorporation by Reference Statements, or for other documents that the agency did not create in Word®.

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**8.2 Filing Steps.**

To file electronically at any stage of a rulemaking proceeding through filing of a certified rule, your agency must:

- File only through the special e-mail address AdminRules@leg.state.nh.us;
- Use Word® for each of the appropriate documents in the rulemaking filing as described in Part 2 through Part 7, with the exception of:
  - Signed documents such as Incorporation by Reference Statements, cover letters, and so forth, which shall be scanned into PDF format provided that the signed, original document, if required to be signed by RSA 541-A or this Manual, is also filed in paper as soon as possible after e-filing; and
  - Other documents that are not available in Word® which shall also be scanned as a PDF file;
- Follow a consistent naming protocol in the subject line for each e-mail submission as specified below, so that Administrative Rules can identify the type of rulemaking proceeding and the stage in that proceeding:

<b>SUBJECT LINES FOR E-MAIL SUBMISSIONS</b>		
<b>REGULAR RULES</b>	<b>INTERIM RULES</b>	<b>EMERGENCY RULES</b>
Initial Proposal	Proposed Interim Rule	Emergency Rule (adopted)
Final Proposal	Amended Proposed Interim Rule	Repeal of Emergency Rule
Amended Final Proposal	Adopted Interim Rule	
Waiver Request*	Newspaper Notice	
Continuation of Rulemaking Hearing		
Extension of Public Comment Deadline		
Postponement and Rescheduling of Hearing		
Special Notice		
Conditional Approval Request*		
Conditional Approval Response*		
Draft Final Proposed Rule		
Objection Response*		
Amended Objection Response		
Revised Objection Response		
Adopted Rule		
Change to Effective Date		
Certified Rule*		

**\*NOTE:** The subject lines “Conditional Approval Request”, “Conditional Approval Response”, and “Objection Response” may also apply, as necessary, for interim rules and expedited amendments to incorporation by reference (see next page). “Certified Rule” shall apply to any rulemaking proceeding. A “Waiver Request” may apply to any rulemaking proceeding except for emergency rules. In such filings that are not regular rules, also include the rulemaking type in the subject line.

**Continued on next page**



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**SUBJECT LINES FOR E-MAIL SUBMISSIONS (Continued)**

**EXPEDITED REPEALS**

Proposed Expedited Repeal  
Adopted Expedited Repeal

**EXPEDITED REVISIONS TO FORM**

Proposed Expedited Revisions to Form  
Adopted Expedited Revisions to Form

**EXPEDITED AMENDMENTS TO INCORPORATION BY REFERENCE**

Proposed Expedited Amendment to Incorporation by Reference  
Adopted Expedited Amendment to Incorporation by Reference

**DECLARATORY RULINGS**

Declaratory Ruling (adopted ruling)

- Include in the subject line your agency’s rule letter title or subtitle, with the rule number(s) if there is more than one submission at the same time with the same title or subtitle, and the notice number (once it is assigned by the Administrative Rules office) or document number (for documents filed after an adopted rule or declaratory ruling is filed and a document number assigned). For example, “Initial Proposal He-W” would be the subject line for an initial proposal submission by the Department of Health and Human Services for proposed rules with the subtitle “He-W”, but once the Notice Number 2019-84 was assigned, the final proposal submission subject line would be “Final Proposal 2019-84 He-W”;
- File each e-mail submission only for one rulemaking proceeding and do not attach documents in a single e-mail submission for more than one rulemaking proceeding;
- Divide e-mail submissions into more than one submission, and an attachment into more than one attachment, if the total file size of the attachments is too large for your agency to submit in a single transmission. In that case, identify in the e-mail subject line or attachment file name, as applicable, “Part 1” or “Part 2” as appropriate;
- Follow the “Special Considerations for E-Filing Via E-Mail” below relative to corrections to the e-mail submission or attachments;
- Follow a consistent naming protocol for each e-mail attachment. Contact the Administrative Rules office for recommended file names, but for approval the file names for the attachments must contain at least the following information:
  - Your agency’s rule letter prefix, the “Title/Subtitle” as described in 1.2 and 1.3 of Chapter 4, with or without a rule number. This identifies your agency;
  - The stage of the rulemaking process—and the document type, such as “IP Notice” for the Initial Proposal rulemaking notice, “IP Rule” for the rule in the Initial Proposal, and “FP Cover Sheet” for the Final Proposal Cover Sheet; “FP—Fixed Text” for the clean text of the Final Proposed Rule, “FP-Annotated Text” for the annotated text of the Final Proposed Rule, and “Incorporation by Reference Statement” or “IBRS” for such statements. File names tell the Administrative Rules staff which type of rulemaking proceeding—regular, interim, emergency, and so forth—your agency has



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undertaken consistent with the subject line, and what type of document is being filed. Do not combine one type of document, like a notice, with another document, like a rule, into a single Word® or PDF file attachment; and

- The notice number or document number, if applicable, and
  - The word “Corrected” if the rule, notice, or other document is corrected from a document filed earlier; and
- Send the e-mail with attachments to AdminRules@leg.state.nh.us.

Once the submission is made, your agency will receive an e-mail notification of receipt. This notification does not mean the filing has been accepted. In case of errors or incompleteness in the electronic documents filed, the Administrative Rules staff will notify the agency by e-mail through the AdminRules@leg.state.nh.us address or by telephone as for a paper filing. See “E-Filing and Office Hours” on the next page.

The Administrative Rules office will transfer the e-filed Word® or PDF document into an electronic storage folder in the Administrative Rules database for that particular rulemaking proceeding or declaratory ruling. Your agency will **not** be able to view this storage folder online but may request a copy. The Administrative Rules office will also print on paper a copy of each e-filed Word® or PDF document and place these copies into a counterpart paper folder for purposes of public access, JLCAR copies, and record-keeping for long-term integrity and storage.

**OFFICIAL COPIES AND OFFICIAL VERSION**

The “official version” of the “text of an adopted rule as filed” pursuant to RSA 541-A:15, I will be the printed copy of the e-filed Word® document of the adopted rule. The “official version” of a certified rule pursuant to RSA 541-A:15, I that is placed on the Administrative Rules web site will in all cases be a printed copy of the rule in Microsoft Word®.

**E-FILING AND OFFICE HOURS**

One of the potential advantages of filing electronically is that the Administrative Rules office does not have to be open physically for the agency to file. Filing at any stage of the rulemaking process may occur during non-business hours (see 4.1 in Chapter 1). This may be especially important for an agency if an adopted rule, such as an emergency rule, has to be filed after hours or on a holiday or weekend. But be aware that there will be no one in the office to catch immediately any errors or omissions that may render a filing invalid or refused for filing. The e-mail notification of receipt sent to the agency indicates only that the e-document(s) were received, not that they were accepted.

Filing of initial proposals or rulemaking notices for publication in the Rulemaking Register, as described in 2.5 of Chapter 3, must still be completed by 4:30 p.m. on Thursday, or earlier if Thursday is a holiday. The Administrative Rules Office strongly encourages all other e-filings to be made before 4:30 p.m. on a weekday when the office is open, especially when filing on any deadline day under RSA 541-A.

If rulemaking notices are filed electronically with a proposal on a weekend or after 4:30 p.m. on a Thursday filing deadline day (see 2.5 in this chapter), the proposal will be subject to the “urgent circumstances” criterion of late filing as described in 2.5 if the agency would want the notice published in the next week’s *Rulemaking Register*.

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**SPECIAL CONSIDERATIONS FOR E-FILING VIA E-MAIL**

Your agency will **not** be able to retrieve electronically a document filed electronically by mistake or containing errors. Contact the Administrative Rules staff instead through the [AdminRules@leg.state.nh.us](mailto:AdminRules@leg.state.nh.us) filing address of any errors or omissions, and the staff will return a copy if necessary.

File any corrected document with the word “Corrected” added to the email subject line and the applicable Word® or PDF file name. **Do not** file a corrected document with the identical file name as the original filing. Maintain one e-mail chain for all subsequent corrections to a particular e-mail submission.

Your submission does not need an extra copy in Word® of the notice in order to facilitate electronic compilation of the *Rulemaking Register*.

Send the Administrative Rules office by messenger mail or hand delivery the original paper copy of any signed document that is required to be signed by RSA 541-A or this Manual and which has been filed as a scanned PDF document and not as a Word® or PDF document with an electronic signature. This must be done as soon as possible after e-filing. The original copy is for public inspection purposes. Its submission does not affect the filing date and time of the e-filed document.

If your agency has received approval from the Director to file entirely by electronic means, e-filing is still not mandatory. But **do not change the filing method during a particular rulemaking proceeding** from e-mail to paper or vice versa **unless** there is a technical or staffing problem necessitating the change. In either case, notify the Administrative Rules office of the problem and, once the problem is solved and normal filing practice restored for that proceeding, send the Administrative Rules office the e-filing or paper filing, as appropriate, so the electronic folder or paper folder in the office is complete for that proceeding. The later submission will not affect the filing date of the earlier document.

### **8.3 Electronic Signatures.**

Pursuant to RSA 541-A:1, V-a, for an electronic document “a requirement during the rulemaking process for a signature accompanying the filing of an electronic document shall be met if such signature complies with the requirements of RSA 294-E.” An “electronic signature” is defined in RSA 294-E:2, VIII as “an electronic sound, symbol, or process attached to or logically associated with a record and executed by a person with an intent to sign the record.” The Department of Administrative Services and the Secretary of State have authority to develop standards pursuant to RSA 294-E:17 and RSA 294-E:18 governing such electronic signatures but as of 2019 have not adopted such standards.

Agencies filing electronically may replace the handwritten signature required by RSA 541-A or this *Manual*, or replace the initials of an individual on an optional agency document like a cover memo, with an electronic signature as follows:

- Prior to initial submission of a document with an electronic signature, the agency must submit a sample of the signature to the Administrative Rules office with the identity of the individual to whom it belongs;

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- The electronic signature, such as available on a PDF file created on Adobe Acrobat Professional® 9, must be password-protected, unique to the person whose signature or initials the electronic signature is designed to replace; and
- To maintain the security and uniqueness of the electronic signature, the use of the electronic signature must comply with one of the following:
  - The electronic signature must be affixed onto the electronic document only by the person whose handwritten signature or initials are replaced by the electronic signature; or
  - If the use of the electronic signature has been delegated to another individual, then prior to its use the agency must file an authorization letter in compliance with 1.7 of this chapter as for use of a computer-generated facsimile signature. Any electronic document filed with the delegated electronic signature must be countersigned with the delegee's own electronic signature.

If these conditions for use of electronic signatures cannot be met, then the agency must submit the original paper document containing an original signature or initials as a scanned PDF file as described in 8.2 above. The agency must send the Administrative Rules office, by messenger mail or hand delivery, the original paper document for public inspection purposes.

### **8.4 Editing Adopted Rules for Agency Certification.**

The process for certification of adopted rules and rules publication remains as described in Chapter 5, with exchange between your agency and the Administrative Rules office of edited rules in paper or as Microsoft Word® attachments to regular e-mail, not the AdminRules@leg.state.nh address, until the certified rule is filed. The Administrative Rules staff converts the rule from Word® into HTML for placement on the Administrative Rules web site.

At the conclusion of the camera-ready process as required in 2.5 in Chapter 5, your agency must provide a Word® copy through the AdminRules@leg.state.nh.us address of certified rules in Word® with the **original, signed certification letter** submitted as a scanned PDF document. The certified rules will be placed on the Administrative Rules website as soon as the certification letter is filed, but the original in hard copy must be submitted in a timely manner. This signed certification is necessary to establish what is the "official version" of an effective, certified rule pursuant to RSA 541-A:15, I. The Administrative Rules office will include the certification letter as a PDF file to complete the electronic folder containing the other electronic documents for that rulemaking proceeding.

### **8.5 Filing Declaratory Rulings.**

If your agency has received approval to file rules entirely electronically, it may also file declaratory rulings electronically.

Signed documents may be submitted as scanned PDF files with electronic signatures as described in 8.3 above. If scanned PDF files are submitted, then send the Administrative Rules office by messenger mail or hand delivery the original paper copy for public inspection purposes. This must be done as soon as possible after e-filing, but the submission does not affect the filing date and time of the e-filed document.

## CHAPTER 4 RULE NUMBERING AND DRAFTING

### NOTE:

Have questions? Contact the Administrative Rules office (tel. 271-3680). The Rules and Procedures Administrator of the Department of Administrative Services (tel. 271-3204) may also be able to provide guidance to agencies engaged in the rulemaking process. See 2.1 in Chapter 3. However, the Administrative Rules office cannot write the rule for your agency.



## PART I REQUIRED NUMBERING SYSTEM

### 1.1 Overview.

Each rule in the *New Hampshire Code of Administrative Rules* is identified by a rule number consisting of 2 components:

- The **letter designation** of the title, such as “Env” and, if applicable, the subtitle, such as “Env-A.” These letters are assigned by the Administrative Rules office to identify the rulemaking agency and, if appropriate, rule organization within the agency by agency structure or programs pursuant to 1.2 and 1.3 below; and
- A **number** assigned by the agency pursuant to this part to indicate where particular rules can be found.

TITLE Env DEPARTMENT OF ENVIRONMENTAL SERVICES

SUBTITLE Env-A DIVISION OF AIR RESOURCES

CHAPTER Env-A 700 PERMIT FEE SYSTEM

PART Env-A 701 PURPOSE AND APPLICABILITY

Section Env-A 701.01 Purpose.

Here’s an example of numbering in the Code. An agency submitting a rule for filing shall number each chapter, part, section, and further subdivisions and supply headings for each chapter, part, and section.

### GETTING STARTED



Need help in organizing? Try drafting the rule first, and assign each rule a section number and heading. Then group these sections into the larger units of parts and chapters. If you are still having difficulty in numbering your rules or providing headings, you may request assistance from the Administrative Rules office, but the office has no authority to write the rules. The Rules and Procedures Administrator of the Department of Administrative Services may also be able to provide guidance to agencies.



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## **1.2 Titles.**

Titles are the largest units within the Code. They are cited as alphabetic abbreviations of 2 or more letters designating each agency with rulemaking authority. For example, “Ac” designates the Board of Accountancy. Click on “**Agency Administrative Rules**” and then “**Rules Listed by State Agencies**” on the web site of the Administrative Rules office at <http://www.gencourt.state.nh.us/rules/index.html> for a complete list of titles and subtitles.

Titles are assigned by the Administrative Rules office with the approval of the Director. Titles follow the name of the rulemaking agency as it appears in RSA passages granting rulemaking authority. A title is assigned to an individual or to an entire board or commission, depending upon to whom the legislature has granted rulemaking authority. Each title is unique to a particular agency, which may use only the title assigned to it.

## **1.3 Subtitles.**

Subtitles are the largest subdivisions within a title and are cited by a letter designation containing the title followed by a hyphen and a letter or letters. For example, “Env-A” designates “Air Related Programs” of the Department of Environmental Services.

Subtitles are assigned by the Administrative Rules office with the approval of the Director, to designate in a consistent arrangement in the agency’s rules:

- The persons with rulemaking authority if the chief executive of the agency and the executive’s subordinates have separate rulemaking authority; **or**
- The agency’s organization or program areas as established by statute or administratively by the agency consistent with its statutory authority, subject to the following criteria:
  - The agency has only one person with rulemaking authority, but the number of chapters of agency rules is so large that subtitles are needed to make the arrangement of rules clear and coherent; **and**
  - Subtitles are used consistently in the agency’s rules and do not designate the agency’s organization in some instances and program areas in others.

## **1.4 Chapters.**

Chapters are the largest subdivisions within a title or, if applicable, a subtitle. Chapter numbers are either a 3 or 4-digit number in units of 100—ending with the double zero such as “100,” “200,” and “300.”

Use the double zero number itself only to identify the subject heading of a chapter and not to designate any individual rules. It is incorrect to number a group of rules as “400.01,” “400.02,” and so forth. Only Part 401, Part 402, and so on, can be further subdivided.

Assign chapter numbers to:

- Large units which correspond to rules implementing whole chapters of the statutes; or
- Rules which implement a broad category of agency requirements under a unifying theme, such as done for licensing boards in 1.8 in this chapter.

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**1.5 Parts.**

Parts are the largest subdivisions within chapters and correspond to major subject areas under an agency's statutory authority. They are indicated by the last 2 numbers in a chapter number. For example, "Ac 301" is the first part of chapter Ac 300, and "Ac 517" is the seventeenth part of Ac 500.

**1.6 Sections.**

Sections are the largest units within parts and are designated by the part number followed by a decimal point and a 2-digit number. A 3-digit number after the decimal point may be used as a temporary measure as described in 1.7 below.

Each individual rule must be numbered as a section within a chapter and part.

If you divide a section into 2 or more paragraphs, number each paragraph in accordance with 1.7 below. In the case of a section with only a single paragraph, no paragraph letter is required. If, however, you expect to add paragraphs to this section in the future, you may assign a letter to a single paragraph.

**1.7 Paragraphs and Formatting within a Section.**

For formatting within a section, subdivide the sections further as follows. A "macro" is available from the Administrative Rules office to assist you in creating this format. See the next page.

<p><b>SAMPLE RULE FORMATTING</b></p> <p>PART Ac 301 PART HEADING</p> <p>Ac 301.01 <u>Section Heading</u></p> <p>(a) Paragraph paragraph paragraph paragraph paragraph paragraph:</p> <p style="padding-left: 40px;">(1) Subparagraph subparagraph subparagraph subparagraph:</p> <p style="padding-left: 80px;">a. Clause clause clause clause clause clause clause clause:</p> <p style="padding-left: 120px;">1. Subclause subclause subclause subclause subclause:</p> <p style="padding-left: 160px;">(i) Sub-subclause sub-subclause sub-subclause:</p> <p style="padding-left: 200px;">i. Smallest subdivision in a section smallest subdivision in a section.</p>
--

**NOTE:**

- The names of each subdivision.
- Alternating letters and numerals.
- Indents of 3/8 inch for each subdivision.
- Single and double-spacing.
- One-inch margins top, bottom, and left side.

See 1.2 and 2.2 in Chapter 5 regarding final certification editing after adoption in order to "fine tune" the spacing, tabs, and indents.

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**PERMISSIBLE EXCEPTIONS**

As a temporary measure to avoid extensive renumbering to existing rules that are not in a proposal, a new rule may use:

- For sections, a 3-digit number after the decimal point instead of a 2-digit number. For example, Ac 301.021 may be inserted between existing Ac 301.02 and Ac 301.03; and
- For paragraphs, a letter and a number within parentheses. For example, “(a1)” may be inserted between existing paragraphs (a) and (b).

When readopting the entire chapter, part, or section, renumber to conform to the regular system.

**MACRO AVAILABLE TO FORMAT RULES**

If your agency uses Microsoft Word® for word processing for drafting rules, the Administrative Rules office can provide by e-mail at no charge a “macro” for you to use to set up the spacing for a page of rules in the “Sample Rule Formatting” on the previous page. Telephone the Administrative Rules office at 271-3680.

A “macro” is a series of Word® commands and instructions that are grouped together as a single command to accomplish a task automatically. The macro will set up the margins, tabs at 3/8 inch indents, and space for a header and a footer. Text is single-spaced. You will have to insert double-spacing between subdivisions where necessary.

## **1.8 Uniform Chapters and Parts.**

### ***ALL AGENCIES***

Certain chapter and part numbers are standardized for all agencies in order to construct a uniform code of administrative rules for the state.

Assign chapter 100 to the “organizational rules.” See 3.5 below and Chapter 2 of this *Manual*. Organize the parts applicable to the entire title or subtitle of your agency’s rules as follows, depending on whether you want purpose or scope statements, or both, applicable to all rules under the title or subtitle:

CHAPTER Ac 100 ORGANIZATIONAL RULES PART Ac 101 DEFINITIONS PART Ac 102 DESCRIPTION OF AGENCY PART Ac 103 PUBLIC REQUESTS FOR INFORMATION
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CHAPTER Ac 100 ORGANIZATIONAL RULES PART Ac 101 PURPOSE AND SCOPE PART Ac 102 DEFINITIONS PART Ac 103 DESCRIPTION OF AGENCY PART Ac 104 PUBLIC REQUESTS FOR INFORMATION
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**NOTE:**

The definitions must apply to terms used in all the rules organized under that title or subtitle for the definitions to be in chapter 100. Also, do not include a description of the “agency” in chapter 100 of a subtitle if the subtitle does not indicate an entity with rulemaking authority. The “agency” as defined in RSA 541-A:1, II is the department, individual, or group with rulemaking authority, and not simply a subdivision of an agency.

Assign chapter 200 to “rules of practice and procedure” spanning the whole title or, if a subtitle is used, uniquely applicable to the subtitle. See 2.2 in Chapter 2 of this *Manual*. Rules of practice and procedure include:

- Appeal procedures and adjudicative hearing rules, placed separately from the parts governing rulemaking hearings;
- Hearing rules for rulemaking hearings;
- Rules governing the format, content, and procedures for submitting, considering and disposing of rulemaking petitions;
- Rules relating to the format, content, and procedure for filing petitions for declaratory rulings and their prompt disposition;
- Rules governing public requests for an agency statement explaining reasons for and against adoption of a rule and why arguments and considerations against the rule were overruled; and
- Other formal and informal agency procedures identified in 2.2 of Chapter 2.

***PROFESSIONAL LICENSING BOARDS***

In the case of professional licensing boards only, the following chapters and parts are standardized:

**STANDARDIZED CHAPTERS AND PARTS FOR PROFESSIONAL LICENSING BOARDS**

CHAPTER Abc 100 ORGANIZATIONAL RULES  
PART Abc 101 DEFINITIONS  
PART Abc 102 DESCRIPTION OF AGENCY  
PART Abc 103 PUBLIC REQUESTS FOR INFORMATION  
CHAPTER Abc 200 PRACTICE AND PROCEDURES  
CHAPTER Abc 300 CERTIFICATION, REGISTRATION OR LICENSING REQUIREMENTS  
PART Abc 301 APPLICATION PROCEDURE  
PART Abc 302 QUALIFICATIONS  
PART Abc 303 EXAMINATION  
PART Abc 304 RECIPROCITY  
CHAPTER Abc 400 CONTINUED STATUS  
PART Abc 401 RENEWAL  
PART Abc 402 REVOCATION, SUSPENSION AND OTHER SANCTIONS  
PART Abc 403 CONTINUING EDUCATION  
PART Abc 404 ONGOING REQUIREMENTS  
CHAPTER Abc 500 ETHICAL STANDARDS  
PART Abc 501 CODE OF ETHICS



## PART 2 BASIC DRAFTING AND STRUCTURE PRINCIPLES

### 2.1 Clarity.

All rule writing must follow the requirement of RSA 541-A:7:

*Rules shall be written in a clear and coherent manner using words of common and everyday meanings for those persons who engage in the activities regulated by the rules, which may include technical language as necessary.*

DON'T SAY:	WHEN WHAT YOU MEAN IS:
shall be 18 years old	shall be <u>at least</u> 18 years old
shall be responsible for ensuring that the rule is complied with	<u>shall comply</u> with the rule

Here are 2 examples. Be clear and precise so that the substance of the rule is readily understood by the person regulated. Use language that does not leave the rule open to different interpretations.

Vague or general words or phrases must be defined or avoided altogether in favor of precise language. Select one term in the rules, instead of several terms, to express the same concept.

Technical or scientific terms may be used instead of words with common or everyday meanings for the lay person, provided the technical or scientific terms are common and everyday for those regulated by the rule.

Do not include on a rule page filed with the Administrative Rules office any notes, rule summaries, or helpful information that are not rules or editorial material specified in this *Manual* and which might more properly be placed in a rulemaking notice when the rule is proposed or in a revision note in a published rule. See 1.2 and 2.2 of Chapter 5.

### 2.2 Specificity.

See “The Nature of a Rule” in 1.1 in Chapter 3. As defined, a rule is adopted to “implement, interpret or make specific a statute enforced or administered” by an agency.

Be specific in your rules. Rules that need oral clarifications or interpretations to be understood are not detailed enough. This leads to so-called “oral rulemaking” where the written rules need oral rules in order to be implemented. Enforcement of such “unadopted” rules is prohibited:

*No agency rule is valid or effective against any person or party, nor may it be enforced by the state for any purpose, until it has been filed as required by this chapter. RSA 541-A:22, I.*

Usually	Significant
Normally	Hardship
Substantially	Reasonable
Appropriate	

Avoid ambiguous words, as in these examples. The words leave it unclear when the rule applies or when less than full compliance is acceptable. These kinds of words imply a case-by-case variation in meaning but with unstated criteria.

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### 2.3 Headers on Every Page.

As indicated in the example to the right, place a header on one line in the upper right-hand corner of each page of a rule filed to indicate 3 things:

Initial Proposal 3-28-12 1
----------------------------

- The **stage** of the proposal, as in the box to the right;
- The **date** the individual, or quorum of individuals, with rulemaking authority **approved** the text **at that stage**; and
- The **page number** of the proposal.

If the header cannot be placed on a form subject to the expedited revision process, place it on an attached sheet.

Initial Proposal	Proposed Interim Rule
Final Proposal—Fixed Text	Amended Proposed Interim Rule
Final Proposal—Annotated	Adopted Interim Rule
Amended Final Proposal	
Conditional Approval Request	Emergency Rule
Conditional Approval Response	
Objection Response	Proposed Expedited Repeal
Amended Objection Response	Adopted Expedited Repeal
Revised Objection Response	
Adopted Rule	
Proposed Expedited Revisions to Form	
Adopted Expedited Revisions to Form	
Proposed Expedited Amendment to Incorporation by Reference	
Adopted Expedited Amendment to Incorporation by Reference	
<b>NOTE:</b> The headers for a Conditional Approval Request, Conditional Approval Response, and Objection Response also apply, as necessary, for interim rules and expedited amendments to incorporation by reference.	

### 2.4 Adopting, Amending, and Repealing Language.

Adopting, amending, and repealing language (AARL) must be set for proposed and adopted rules to identify the rulemaking action and provide document numbers and effective dates to show the version of the existing or expired rule affected. See Part 5 of this chapter.

Here is an example. AARL is placed just above the rule it identifies. See Part 5 for more detailed examples and pitfalls to avoid.

<b>Readopt with amendment and renumber Abc 301.04, effective 11-19-10 (Document #9816), as Abc 403.04 to read as follows:</b>
---

### 2.5 Chapter and Part Headings.

Label each chapter and part of a rule with a heading that is specific enough to give the reader at least a general understanding of the subject covered by the chapter or part. The headings are all in capital letters.

### 2.6 Section Headings.

Start each section with a concise and specific heading to identify the subject of the section before the text begins, unless excepted below. Underline the headings, and be specific enough to let the reader know what the section contains. Headings like “General” or “Miscellaneous” are not helpful and must be avoided.

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Ac 301.04 Application Copies.  
The applicant shall provide 2 of them.

Ac 301.04 Application Copies.  
The applicant shall provide 2 copies of the application.

The heading is not part of the text of the rule but merely helps to locate the subject, just like a table of contents. Draft the rule so that its meaning is clear independent of its heading. See how the first rule on the left is improper because it makes no sense without its heading.

**NOTE:**

A definition that is a section by itself does not have a heading, as in this example:

Fis 101.01 “Department” means the new hampshire fish and game department.

## 2.7 Complete Sentences and Consistency.

Rules are organized by chapter, part, section, and so forth like an outline, but rules at the section level must be written in complete sentences as follows:

- If a rule in a section is subdivided, use introductory language to lead into the subdivisions so that, when read together with the introductory part, a complete sentence is formed;
- The introductory part of a rule shall only introduce the subdivisions and not contain separate requirements, since the subdivisions are the rule’s component parts and not mere appendages;
- All subdivisions must be grammatically consistent and logically follow the introductory part of the rule; and
- Headings must **not** be used on paragraphs or other subdivisions **smaller than a section.**

**DON’T SAY:**

Abc 301.02 Application Process.

(a) Application. The applicant shall sign the application. The application shall be:

- (1) Typewritten or be legibly printed in ink;
- (2) Have all sections complete; and
- (3) Include certified copies of grade transcripts for each undergraduate or graduate school attended.

**NOTE WHAT’S WRONG:**

←Paragraph (a) has its own heading. Also, (a) has a separate requirement on signing. The subparagraphs become subdivisions not of (a) but only of the 2<sup>nd</sup> sentence in (a).

←Language in subparagraphs (2) and (3) is grammatically inconsistent with the introductory phrase “shall be” and does not form a complete sentence when read with the phrase.

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Here is one way to fix these problems by creating 3 paragraphs which read as complete sentences telling the applicant what to do and how the application must look.

<b>SAY:</b>	<b>NOTE WHAT'S FIXED:</b>
Abc 301.02 <u>Application Process.</u>	
(a) The applicant shall sign the application.	←The heading in paragraph (a) has been deleted, and (a) reads as its own requirement.
(b) The application shall:	←(b) merely introduces its subdivisions.
(1) Be typewritten or be legibly printed in ink; and	←The subparagraphs (1) and (2) are grammatically consistent with "shall" and form a complete sentence with the introduction.
(2) Have all sections complete.	
(c) The applicant shall include certified copies of grade transcripts for each undergraduate or graduate school attended.	←The former subparagraph (3) is now its own grammatically correct paragraph with a correct subject.

## **2.8 Simplicity in Organizing and Subdividing.**

A rule, or a sentence in a rule, shall not be so long so that it is not "clear and coherent" to the person regulated by the rule.

Simplify your rules to aid reading and comprehension by the average person as follows:

- Break complex sentences up into simpler sentences, remove redundant or otherwise unnecessary words, and subdivide chapters and parts as necessary;
- Divide parts into sections by placing only a single subject, or closely related subjects, in each section to avoid confusion for the reader;
- Divide sections into paragraphs to reflect separate themes or concepts within the subject area of the section heading; and
- Limit each paragraph to a single theme, and each subdivision to a single requirement.



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**Here is an actual example of a rule that was a single, undivided sentence more than 90 words long.**

**DON'T SAY:**

(a) Insurers using rates that do not exceed the actual premium rates established by this part and which are shown in Table 1200-2 in Abc 1201.19 shall satisfy the requirements of RSA 408-A:7 with respect to the filing of premium rates by submitting to the commissioner for his or her approval as set forth in this part a complete table of such premium rates, or, alternatively, the insurer may submit a written statement signed by an authorized official certifying that the premium rates to be used by the insurer will not exceed the actual premium rates shown in Abc 1201.19.

← Shading indicates unnecessary words, about 1/3 of this paragraph.

**WHEN WHAT YOU MEAN IS:**

(a) To comply with the premium rate filing requirements of RSA 408-A:7, an insurer using rates that do not exceed the actual premium rates in Table 1200-2 in Abc 1201.19 shall submit to the commissioner for approval:

← The “theme” is submission of a document.

(1) A complete table of the insurer’s premium rates; or

← Option #1 for the document.

(2) A written statement signed by an authorized official certifying that the premium rates to be used will not exceed the actual premium rates.

← Option #2 for the document.

## **2.9 Stating Requirements Directly.**

Be direct in the rule by:

- Using the active voice—for example, “the licensee shall report”—instead of the passive voice—“it shall be reported by the licensee”;
- Indicating who is required to comply with the rule, such as “each person,” “the licensee,” or the “applicant”; and
- Stating what is required and not just implying it.

## **2.10 Limited Repetition of a Statute.**

Statutes are not rules, so don’t repeat a statute verbatim as a rule, except for:

- Definitions in compliance with 3.7 in Chapter 4; or
- Brief statutory passages within quotation marks to indicate the source of a requirement or the authority for it, with the passage identified as required in 4.7 in Chapter 4.

Place lengthy statutory passages in an appendix.

## **2.11 Excluding Recommendations from the Rules.**

Because rules set forth requirements, limitations, or prohibitions, don’t include statements that merely recommend.

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**NOT A RULE:**

It is recommended that the licensee keep accurate records.

Preferably the licensee shall keep accurate records.

The licensee is encouraged to keep accurate records.

The licensee should keep accurate records.

Here are just a few examples of what to avoid. Note that in none of the examples on the left is the licensee actually required to keep accurate records, but simply that it is a good idea to do so.

**THIS IS A RULE:**

The licensee shall keep accurate records.

**NOTE:**

Recommendations may be included in appendices attached to the rules.

**2.12 Gender Neutral Terms.**

Use gender-neutral terms wherever gender is irrelevant instead of “he,” “she,” “his,” “her”, or nouns referring only to men or only to women. Use such terms as “person,” “applicant,” “licensee,” “permittee,” or “owner” and their possessive forms or simply reword to make the singular pronoun unnecessary.

**PART 3 SPECIFIC DRAFTING STYLES**

**3.1 Rulemaking Authority.**

Rulemaking authority for the subject matter of the rules must not be cited as a numbered rule. See 1.2 in Chapter 3. Place the citation immediately below the relevant chapter, part, or section heading.

CHAPTER Fis 400 FRESHWATER FISHING  
RULES

Statutory Authority: RSA 206:10, I

PART Fis 401 DEFINITIONS

You must not cite as your rulemaking authority a statute that the agency is implementing but does not necessarily grant authority to adopt rules relative to the subject matter. Citations to these “substantive” statutes belong in Item 6(c) of the “Rulemaking Notice Form” and in an attached cross-reference table. For example, see 2.4, 2.5, and 3.3 in Chapter 3. These statutes may also be cited in a numbered rule and in purpose or scope statements pursuant to 3.3 and 3.6 below.

### 3.2 Use of Verbs “Shall” and “May.”

Use the verb “shall” when setting a requirement or limitation and “shall not” for a prohibition.

To the right are just some examples of improper wording for a requirement and prohibition and how to use “shall” and “shall not” instead.

DON'T SAY:	SAY:
The applicant must sign the form.	The applicant shall sign the form.
The applicant is required to sign the form.	
The owner is prohibited from transferring the permit.	The owner shall not transfer the permit.

DON'T SAY:	SAY:
The party has the right to have an attorney.	The party may have an attorney.
The party shall be permitted to have an attorney.	

Use the verb “may” to indicate that the agency is granting a person or entity **other than the agency** the right to exercise an option or a privilege to act.

At left is an example. Note how “has the right to” and “shall be permitted to” mean the same thing as “may.”

Do not use “may” in the following circumstances, but instead use the words indicated:

- To denote uncertainty or mere possibility, use “might”;
- To mean “is able to” or “are able to,” use “can”; and
- To govern discretionary actions or decisions by the agency, use “shall” instead in phrases like “the agency shall...if” or “the agency shall...unless” or “the agency shall...when,” followed by the conditions or criteria that are required to exist or be met for the agency to take the action specified. The legislature often grants discretionary authority to an agency to act by using the word “may” in a statute, but repeating the statutory “may” in a rule is inappropriate because it simply means that the agency “might” act. Instead, a rule must be specific enough that the reader can know how the agency will “implement, interpret, or make specific” the discretionary authority the legislature has given it without resorting to oral interpretations to be understood. See 3.8 in this chapter for how to draft discretionary decisions.

Since packages **might** be damaged, the licensee shall examine all packages received.

“Safe working load” means the maximum rated load as established by the manufacturer which **can** be safely handled by the structure.

The department **shall** revoke the license after opportunity for a hearing **if** the licensee has committed a felony.

### 3.3 Purpose and Scope Statements.

Purpose statements are rules which simply explain the goals of other rules, as for example, “The purpose of this part is to...” Do not use “shall.” Place any purpose statement separately as an individual part, section, or paragraph at the beginning of the relevant chapter, part, or section, respectively, to which the purpose statement refers.

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Purpose statements are required only if rules are based on a federal mandate. See RSA 541-A:27. In that case, include the federal statute or regulation in a purpose statement at the beginning of the relevant chapter, part, or section.

Scope or “applicability” statements are rules which state to whom, or to what, the rule chapter, part, or section applies. Use “shall.” For example, “This part shall apply to all licensees who....” Place the scope statements immediately after or instead of a purpose statement and separately from other rules.

### **3.4 Effective Dates.**

Do not specify “effective” dates for rules in the text itself, because an effective date depends on the filing date of an adopted rule or specification of a later date in an adoption cover letter or other statement. See RSA 541-A:14, IV; RSA 541-A:16, III; RSA 541-A:18, II; RSA 541-A:19, X; and 2.21 of Chapter 3.

<b>DON'T SAY:</b>  Effective July 1, 2001, the licensee shall acquire at least 20 CEU's.	<b>SAY:</b>  By July 1, 2001, the licensee shall have acquired at least 20 CEU's.  <b>OR</b>  After July 1, 2001, the licensee shall acquire each year at least 20 CEU's.
--	---

However, rules may contain dates on which an action shall begin or by which it shall have been done.

Here is what is meant. Note that the 2 correct examples mean different things, depending upon what is intended by the phrase “effective July 1, 2001.”

### **3.5 Drafting of Organizational Rules.**

See 2.1 in Chapter 2 and 1.8 in Chapter 4. When drafting organizational rules (those in chapter 100), follow these requirements:

- Purpose and scope rules are optional but shall use the format and wording in 3.3;
- Definitions apply title or subtitle wide and use the format and wording in 3.7;
- Rules on the description of the agency must describe the agency's structural divisions and functions established by statute or administratively by the agency;
- Use “shall” if the rules set requirements or describe discretionary decisions by the agency and “may” if the rules set rights or options for the public. Otherwise, use present tense verbs;
- For rules on public requests for information, include an agency address written out as it would appear on an envelope, as well as telephone, fax, and TTY/TDD numbers; and
- Where an agency uses more than one address, indicate clearly in an introduction which address is acceptable and for which purpose.



### 3.6 Requiring Compliance with Other Law.

If a rule paraphrases, or requires compliance with, requirements in court decisions, statutes, or the rules of another agency, then identify the source of the requirement with the phrase “pursuant to...,” “as provided by...,” or similar wording.

### 3.7 Definitions.

There are 2 things to address concerning definitions in rules—how to write them and where to place them.

#### *DRAFTING*

Fis 101.02 “Department” means the new hampshire fish and game department.

To define a word, put quotation marks around it, followed by the verb “means,” and then insert the definition, as in the example to the left.

When drafting a definition, follow these do’s and don’t’s:

- Don’t use “shall” or “may” in a definition. These words denote substantive requirements. Unless quoting a definition in a statute or federal regulation, either number and file the requirement separately or rewrite it so that it no longer sets a requirement, as in the example to the right;
- Don’t simply repeat the term as part of the definition unless you are referencing or quoting a statutory definition;
- If a term is already defined by statute, don’t define it differently by rule but instead define the words in the statutory definition or specify what the term includes, as in the example to the right;
- Don’t define an acronym but instead the term it represents;
- Do define terms in a manner consistent with their usage, that is, define nouns as nouns, verbs as verbs, and so forth; and

#### **DON’T SAY:**

Abc 201.05 “Presiding officer” means an individual who presides over a proceeding and shall be a board member.

#### **SAY:**

Abc 201.05 “Presiding officer” means a board member who presides over a proceeding.

Abc 101.08 “Hotel” means “hotel” as defined in RSA 78-A:3, III. The term includes an adult summer or recreational camp which offers sleeping accommodations to the public.

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- Do use **one term** in the rules and define that term instead of using several terms to mean the same thing, unless quoting a definition in a statute or federal regulation. To clarify the term defined, the definition may specify examples of the term, or synonyms in use by the public or regulated community, as in the example to the right, so long as **the**

**term defined is the term used in the substantive rules.**

**DON'T SAY:**

Abc 102.14 "Property owner" or "Landowner" means the record owner of the parcel of land or structures, or both, where a facility is or is proposed to be located.

**SAY:**

Abc 102.14 "Property owner" means the record owner of the parcel of land or structures, or both, where a facility is or is proposed to be located. The term includes "landowner."

As noted above, you may include a statutory definition, or a definition in a federal regulation enforced by your agency, as a rule definition. Cite the statute or regulation or quote it verbatim as in the example below, but with the following limitations and exceptions:

**Citing the statute:**

Abc 101.01 "Asbestos" means "asbestos" as defined in RSA 141-E:2.

**Quoting the statute verbatim:**

Abc 101.01 "Asbestos" means "asbestos" as defined in RSA 141-E:2, namely "amosite, chrysolite, crocidolite, or asbestiform tremolite, actinolite, or anthophyllite."

- The statute or regulation must be cited specifically;
- The definition must be prefaced with the word "namely" and enclosed within quotation marks; and
- The quotation must be used in its entirety without any substantive or editorial

changes to the material within quotation marks.

***WHERE TO PLACE THE DEFINITION***

Once a definition is drafted, number and place it as follows:

- If a word appears in the rule more than once, then define it in the beginning of the relevant chapter, part, section, or paragraph. For definitions that apply to the entire title or subtitle, place them in the Chapter 100 organizational rules, as described in 3.5;
- If a word is used only once in the body of an agency's rules, then define it in context, not in the subdivision of the rules used for definitions; and
- If definitions are grouped together, then arrange them in alphabetical order and number them accordingly.

### **3.8 How to Include Criteria for Discretionary Decisions.**

Discretionary decisions by an agency involve situations where the legislature has granted authority by statute—by using the word "may"—to an agency to act, and the agency must apply its judgment on a case-by-case basis—such as to approve or deny a permit, to continue or suspend or revoke a license, or to grant or deny a waiver.

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“May” in a statute—whether state or federal—granting authority to the agency to act does not mean the same thing as “may” in an agency’s own rule, which the agency must use, as discussed in 3.2 above, when it is granting the public the right to exercise an option or a privilege to act. To simply repeat in a rule the statutory authorization that the agency “may” act, such as to suspend or revoke a license, means the agency “might” act, leaving the agency action ambiguous and subject to non-uniform enforcement and oral rulemaking in violation of RSA 541-A:22, I because of unstated criteria—rules—governing the decision. Through rulemaking the agency must “implement, interpret, or make specific” that statute. Use “shall” in the manner described below to show how your agency will act.

**MAKING SURE YOUR ACTIONS ARE VALID AND ENFORCEABLE**

To avoid being arbitrary in your decision, some requirements (in the form of criteria) must be met by the public or considered by your agency for the decision to be made one way or the other. Since these criteria meet the definition of a “rule,” then they will have to be proposed and adopted as rules. Otherwise your agency will not be specific and might fall inadvertently into the “oral rulemaking” trap. See 2.2.

Even if it is impossible to foresee all the particular criteria that will govern your agency’s discretion for every conceivable situation, you can still avoid oral rulemaking by determining what overall theme or goal governs your agency’s decision-making process. You have to give both your agency personnel who must make the decision and the public who must comply a good idea of what you are requiring.

To “implement, interpret, or make specific” your agency’s discretionary authority in a rule, choose one of the following 2 formats using “shall”, with the option of a concluding or “catch-all” phrase:

- **There are preconditions that must exist or be met for your agency to make its decision.**

As in the example below, use the word “shall”, state what shall happen if the specified criteria that trigger the decision exist or are met, and insert the criteria.

Abc 408.06 Mooring Lights.

(a) The licensee shall light the corners or perimeter of a mooring field containing fewer than 10 moorings if the board determines that:

- (1) The moorings are situated in the path of boating traffic;
- (2) The mooring is in a shallow or rocky area;
- (3) A public launch site is within 100 feet of the mooring field perimeter; or
- (4) Any other condition exists in the mooring location which poses a hazard to navigation.

**NOTE THESE ELEMENTS:**

←The discretionary requirement indicated by “shall light...if.”

←Specific criteria in subparagraphs (1) through (3) the agency shall apply to reach the discretionary decision indicated by the words “the board determines.”

←The optional “catch-all” clear enough to establish a theme or limiting criterion so that the reader is put on notice that other criteria within this theme or limitation could be considered.

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- **There is a single criterion or goal that must be met for your agency to make its decision after considering certain factors.**

As in the example below, **use the word “shall”** and state what shall happen if the agency finds that the criterion or goal has been met after considering the specified factors.

Abc 408.06 Mooring Lights.

(a) The licensee shall light the corners or perimeter of a mooring field containing fewer than 10 moorings if the board determines, after considering the following factors, that the mooring field will be a hazard to navigation:

- (1) The moorings are situated in the path of boating traffic;
- (2) The mooring is in a shallow or rocky area;
- (3) A public launch site is within 100 feet of the mooring field perimeter; and
- (4) Any other factor exists which negatively impacts public boating safety due to the location of the mooring field.

**NOTE THESE ELEMENTS:**

←The discretionary requirement indicated by “shall light...if.”

←The criterion—“will be a hazard to navigation”—to be met.

←The factors as in subparagraphs (1), (2), and (3) so that it is clear how the agency shall apply them in deciding if the overall criterion or goal has been met.

←The optional “catch-all” phrase as in subparagraph (4) to establish a theme set by the factors so the reader is put on notice that other factors within this theme might be considered.

**NOTE:**

Don’t use a “catch-all” phrase with the words “shall include, but not be limited to” when introducing the factors as in paragraph (a) in the example above. This implies that even the “catch-all” phrase is not broad enough and that rules might be added orally.

### **3.9 Use of Parentheses in Rules.**

Use parentheses in rules only in the following 5 instances:

- Rule numbering pursuant to Part 1;
- Enclosing acronyms or initials when they are first used after the word spelled out, such as “intermediate care facility (ICF)”;
- Pairing Latin scientific terms with their English equivalent, such as “Ammophila breviligulata (American beach grass)” or “American beach grass (Ammophila breviligulata)” and the Latin in italics or underlined;
- Indicating that both the singular and plural of a word is intended, such as “year(s)”;
- Indicating publication dates, editions, access and print dates, or website directions when citing and incorporating by reference documents or Internet content pursuant to 3.12 and 4.7.



### **3.10 Waivers and Exemptions Distinguished.**

The words “waivers” and “exemptions” have different meanings with respect to rules, and it is incorrect to use the terms interchangeably. Use them as follows:

- Use the term “waiver” when an agency provides that, upon individual request, a requirement or group of requirements shall not apply to that individual; and
- Use the term “exemption” when a requirement or group of requirements in a statute or rule simply do not apply to the class of persons specified. No individual request is required.

Be careful, however, that you do not grant waivers or exemptions to requirements contained in a statute, unless there is specific statutory authority to do so.

### **3.11 Waiver Procedure.**

If your agency might want to waive a rule, then establish by rule a procedure by which requests for waivers are judged against criteria established by the agency. See RSA 541-A:22, IV.

### **3.12 Incorporation by Reference.**

Your agency may incorporate the requirements of other documents or Internet content into its rules, provided that:

- The document or Internet content (1) has not been prepared by or on behalf of the agency but instead by an unrelated third party, unless it is the agency’s own form pursuant to RSA 541-A:19-b or comes under the exception on the next page, and (2) is not from another state’s government unless there is specific N. H. legislative authorization pursuant to RSA 541-A:3-b;
- The agency identifies in the rule, and abides by, a specific edition or date of the document or a read-only, dated copy of otherwise undated Internet content and does not automatically adopt future amendments unless allowed by statute;
- The agency, or the entity that produced the document or Internet content, makes the document or Internet content available for inspection to those who request it but, if the public makes a request of the agency to provide a copy, the agency must make the document or downloaded Internet content available for inspection by the person who requests it. See “Caution: Incorporation by Reference and Copyright Issues” below;
- The agency files a separate and complete “Incorporation by Reference Statement” in Appendix II-H with the final proposal for each document or Internet content incorporated, unless an exemption applies as stated on the next pages, such as, for example, that the document incorporated is an agency’s own form; and
- The agency includes an appendix in compliance with this section with each filing of the proposed or adopted rule indicating how the public may obtain a copy, and at what cost, of each document or Internet content for which an “Incorporation by Reference Statement” would be required.

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**“PREPARED BY OR ON BEHALF OF THE AGENCY”**

RSA 541-A:12, III requires that the material incorporated by reference be “prepared by an unrelated third party,” with exceptions. It prohibits an agency from incorporating by reference “any document or Internet content prepared by or on behalf of the agency”, with the exception of the agency’s own forms as allowed by RSA 541-A:19-b or a document prepared by a group or association of which the agency is a member. Please check with your legal counsel if you have a concern whether material may be incorporated under RSA 541-A.

**NOTE:**

**Each** “Incorporation by Reference Statement” filed must be dated and signed by the individual, or a member of the group of individuals, with rulemaking authority, subject to 1.7 in Chapter 3, who certifies that the agency has reviewed the material incorporated in the rule and has the capability and intent to enforce the material.

File the “Incorporation by Reference Statement” with the final proposal. See 2.12 in Chapter 3. Statements are not filed for interim or emergency rules. The completed Statement may be included in an appendix for better public access to the information, but that is entirely up to your agency.

***CREATING AN APPENDIX FOR THE RULES***

Pursuant to RSA 541-A:12, VII, each proposal where an Incorporation by Reference Statement is required must include an appendix, as in the examples below, attached to the proposal as follows:

- The appendix must contain a statement “explaining how the text of the incorporated document or Internet content can be obtained by the public, and at what cost”, which is the same information required in Item #6 of the “Incorporation by Reference Statement”;
- The appendix must be filed at each stage of filing the proposed or adopted regular rule—not just the final proposal stage;
- The appendix must be **in addition to** the appendix required as a cross-reference table pursuant to RSA 541-A:30-a, II as described in 2.4 and 2.5 in Chapter 3 and need not be on a separate sheet; and
- The appendix may be placed before or after the cross-reference table appendix but must be designated with a letter or number to distinguish it from the cross-reference table appendix.

Failure to file the appendix will not invalidate the filing of the proposed or adopted rule, which shall still be recorded by the Administrative Rules office as of the date of filing, but the absence of a required appendix shall be considered a procedural violation of RSA 541-A in the same manner as if an Incorporation by Reference Statement were not filed as required by RSA 541-A:12, III with the final proposal.

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Sample appendices for existing agency rules of 2 different agencies are provided below. Either format is acceptable. In the first example, the appendix designated “Appendix A” has been placed by the agency **before** the cross-reference table appendix, which was designated “Appendix B”. In the second example, the appendix designated “Appendix B” has been placed **after** the cross-reference table, which was designated “Appendix A”.

**APPENDIX A: Incorporation by Reference Information**

<b>Rule</b>	<b>Title</b>	<b>Publisher; How to Obtain; and Cost</b>
He-M 401.02(s)	Diagnostic and Statistical Manual of Mental Disorders, (Fourth Edition, Text Revision) (DSM-IV-TR, 2000)	Available from the publisher, American Psychiatric Publishing ( <a href="http://www.appi.org/Home">http://www.appi.org/Home</a> ), a division of the American Psychiatric Association (APA) ( <a href="http://www.psychiatry.org">www.psychiatry.org</a> ). Cost is \$121.00.

**Appendix B: Incorporation by Reference**

<b>Rule</b>	<b>Title</b>	<b>Obtain at:</b>
Env-Wq 704.03(d) Env-Wq 708.07(1)(1) & (2) Env-Wq 711.03(b)(3)	TR-16 Guides for the Design of Wastewater Treatment Works, prepared by the New England Interstate Water Pollution Control Commission, 2011 Edition	Online: <a href="http://www.neiwpcc.org/tr16guides.asp">http://www.neiwpcc.org/tr16guides.asp</a> Telephone: 978/323-7929  Email: <a href="mailto:mail@neiwpcc.org">mail@neiwpcc.org</a> .  Cost: \$95.00 per copy (hardcopy) or \$25.00 (CD). These prices include shipping & handling (US Media Mail).

***HOW TO INCORPORATE PRINTED MATERIAL***

To incorporate printed material by reference in a rule:

- Make sure to specify an **edition or date** in the rule for the material with which persons must comply, and who created or published the material, as in the example to the right, where the edition is identified by a document number and the copyright holder is given;
- Make clear who or what must actually comply with the material. Do not simply state that the agency “hereby incorporates by reference” the material; and
- Include a reference to an appendix detailing how the public may obtain a copy of the document, and at what cost, as described in this section.

Abc 701.02 State Electrical Code. All licensees shall install electrical installations as defined by RSA 319-C:4, III, in accordance with the National Electrical Code NFPA-70-2011 copyrighted by the National Fire Protection Association, available as noted in Appendix A.

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If the printed material is in a traditional printed source but **substantively identical** content is also available on the Internet, then **incorporate the material in the printed source** as above. If it will improve access to the material cited, you may **also cite** to the Internet source by introducing the uniform resource locator (URL) with the phrase “available at”, after citing the printed source, as in the example to the right. See the format for the URL in 4.7 of this chapter.

Abc 501.02 Ethics Code. All licensees shall comply with the National Association of Code Installers Code of Ethics, 2005 edition, available as noted in Appendix A at <http://www.installers.org/ethics.html>.

See “How to Incorporate Internet Content” below if the material is **not available** in a traditional printed source but **available only** on the Internet.

***HOW TO INCORPORATE AN AGENCY FORM***

To incorporate your agency’s own form by reference:

- Make sure to specify an edition or date for the form, as in the example to the right where the last date of amendment is identified after the form’s number, and include the form’s title if one exists; and
- Make clear who must complete the form, as in the phrase “An applicant...shall complete...” in the example, but requirements on the form that go beyond information or format may require additional rulemaking. See below.

Wil 301.02 Form A-3 Application for a Permit to Conduct a Youth Fishing Tournament. An applicant for a permit to conduct a youth trout fishing tournament under RSA 485-A:3 shall complete and submit Form A-3 “Application for a Permit to Conduct a Youth Trout Fishing Tournament”, as amended 1-10-10.

**INCORPORATING THE REQUIREMENTS ON AN AGENCY FORM**

Forms may be incorporated by reference like other documents, except that no Incorporation by Reference Statement or appendix described above is required. But which requirements on the form are subject to incorporation are limited by the definition of a “form” in RSA 541-A:1, VII-a and the definition of a “rule” in RSA 541-A:1, XV. See 1.1 of Chapter 3 for an explanation of these definitions.

The requirements on an agency’s form on how to complete and submit the form—the mandatory “information”—words or data—to be placed on the form document itself or as extra sheets, the signature, and the instructions—are the requirements subject to incorporation by reference by incorporating the form. The purpose of incorporating the form by reference is to save the time and effort in writing all those requirements into a numbered rule. Other requirements that might be printed on the form but which are not directly related to the form’s completion and submission must be separately written out as numbered rules if they are not addressed in a statute. See 3.13 below. These requirements include statements repeated from other rules or statutes, such as, but not limited to, separate documents to be attached, substantive licensing qualifications like minimum age and education, fee amounts, ethical requirements, and affirmations or certifications about more than just the truthfulness or correctness of the completed document.

See below about attachments to forms and certification statements. See also 4.8 in this chapter about attaching incorporated forms as optional appendices.



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**ATTACHMENTS AND CERTIFICATIONS**

As noted in the text box “Incorporating the Requirements on an Agency Form,” not all requirements written on a form are subject to incorporation by reference. Distinguish between the requirements on how to complete and submit a form document, which are subject to incorporation by reference, and the additional requirements for a complete application package or submission to an agency, which happen to be printed on a form but are in addition to a completed form.

Information that must be attached as extra sheets because the form document does not have enough space may be incorporated by reference. This includes, but is not limited to, professional licensing qualifications like names of schools attended or degrees received on a license application form. But **additional** kinds of information needed for a complete application, such as a facility floor plan for a facility permit, copies of applicable licenses or other documents, and documentation of local approvals, must be separately written out in the rules even if they are mentioned on the form.

A certification, such as placed at the end of the form document near a line for a signature, will be subject to incorporation by reference if the person signing the form certifies simply that the information on the form is true and correct to the best of his or her knowledge and belief, subject to RSA 641, or similar language, and that the signor certifies that he or she or the information complies or will comply with all applicable laws and rules. See the sample certification in 3.13 of this chapter which would be subject to incorporation by reference.

**Certifications that go beyond attestations of truthfulness, or compliance with other rules or laws, to include additional agreements or understandings must be separately written in the rules and must not be incorporated by reference.** See 3.13 of this chapter. These could include agreements on liability, permission granted for inspections to verify compliance or information submitted, or the rights of persons under the care of the licensee. Otherwise the certifications on the forms would not have the force and effect of law as rules and their enforceability may remain ambiguous except as case-by-case contractual obligations of the signor.

**INCORPORATING ONLINE FORMS**

The requirements on online forms which are also available in hardcopy are subject to incorporation by reference in the same manner and to the same degree as for the hardcopy forms. Since incorporation by reference requires a date or edition to the form, this will require your agency to **use a date or edition in the online form** as well if it does not already do so.

RSA 541-A does not yet address forms which are “Internet content” as defined in RSA 541-A:1, VII-b, that is, exist only online, because a “form” is defined in RSA 541-A:1, VII-a as a “document”, not an “electronic document” as defined in RSA 541-A:1, V-a, which is filed. However, it is the view of the Committee that “Internet content” online forms be subject to incorporation by reference in the same manner and to the same degree as hardcopy forms. Also, this will require your agency to **use a date or edition in the online form**. The online software instructions to navigate through an online form would also be covered by the incorporation by reference of the form.

In the case of either an online form that has a hardcopy counterpart, or an “Internet content” online form, **the web address for the form must be included in the rule** as for incorporating Internet content by reference. The web address must take the viewer to the form itself or, if the document is password-protected, to the screen where a password is required.

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***HOW TO INCORPORATE INTERNET CONTENT***

Incorporating “Internet content” means incorporating material which is **not available** in a traditional printed source but is **available only** on a website on the Internet, either as dated or undated material.

To incorporate dated Internet material in a rule:

Abc 304.01. Cancer Reports. All facilities shall report cancer with the items listed in the North American Association of Central Cancer Registries (NAACCR), 12<sup>th</sup> Edition, Version 11.2, [http://www.naacr.org/index.asp?Col\\_SectionKey=7&Col\\_ContentID=133](http://www.naacr.org/index.asp?Col_SectionKey=7&Col_ContentID=133), available as noted in Appendix A.

- Make sure to specify an edition or date in the rule for the material with which persons must comply, who created or published the material on the Internet, as in the example above, and the URL where the material may be directly accessed, in compliance with the format in 4.7 of this chapter. **NOTE:** Since the Internet is the **only** source for the material, **do not use “available at”** or other introductory words before the URL as is done if the material is also published in a traditional printed source;
- Cite to the web document format of the material which preserves pagination and other characteristics of a printed document, such as the portable document format (PDF) of Adobe®, if the material is available in both a hypertext markup language (HTML) format and the other format;
- Make clear who or what must actually comply with the material; and
- Include a reference to an appendix detailing how the public may obtain a copy of the document, and at what cost, as described in this section.

To incorporate undated Internet material in a rule:

- Make “ a read-only copy of the incorporated Internet content no later than the date of filing the incorporation by reference statement, and make the dated copy available to the public.” See RSA 541-A:12, V. This “locks in” the dated copy as the Internet content incorporated in the rule and effective in New Hampshire when the rule becomes effective. **NOTE:** The version in this dated copy therefore must be the same version approved by the individual, or group of individuals, with rulemaking authority when the final proposal is established. Therefore, it is advisable to access and print the copy from the Internet at that time;
- Follow the same requirements as for dated Internet content, but in place of a date or edition, **include the date the material was accessed and printed** for the purposes of filing with the Incorporation by Reference Statement, as in the example to the right; and
- Identify the material as completely as possible as it appears on the web site.

Abc 529.03. Outpatient Cardiac Rehabilitation Service. A service for outpatient cardiac rehabilitation shall comply with the commercial coverage insurance criteria for medical necessity in the “Aetna Clinical Policy Bulletin: Cardiac Rehabilitation 0021”, [http://www.aetna.com/cpb/medical/data/1\\_99/0021.html](http://www.aetna.com/cpb/medical/data/1_99/0021.html) (as accessed and printed on July 29, 2011), available as noted in Appendix A.

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**CAUTION: INCORPORATION BY REFERENCE AND COPYRIGHT ISSUES**

Although RSA 541-A:12, V requires the agency to make available to the public a dated copy of otherwise undated Internet content, an agency should check with its legal counsel before reproducing or distributing any copyrighted material incorporated by reference. This includes distribution by posting the material on the agency's own web site or including the material in a printed appendix to the numbered rules. The material might not be in the public domain but protected by copyright, and permission from the copyright owner might be necessary for reproduction or distribution of the owner's work.

This concern includes not only undated Internet content but also dated Internet content and traditionally printed documents. The absence of a copyright notice symbol © on the material does not mean that a copyright does not exist.

RSA 541-A:12, VI requires that "upon request for a copy of any document or Internet content incorporated by reference in the agency's rules," the agency must "make available for inspection any such document or downloaded Internet content." This does not require that copies be made beyond that permissible by federal copyright law.

***MAKING AMENDMENTS***

To make any change to the incorporated material that is not the agency's own form, write the replacement, exception, or addition as a rule and indicate where it shall be inserted into the incorporated material. For a deletion, state what provisions from the incorporated material are not being incorporated and therefore will not be part of the rules.

Abc 701.01 State Plumbing Code.

(a) All licensees shall install plumbing as defined in Abc 101.15 in accordance with the 2000 edition of the BOCA National Plumbing Code published by the Building Officials and Code Administrators International, Inc., available as noted in Appendix A, and as amended in (b) below.

(b) The following amendments shall apply to the code incorporated:

- (1) Amend P-100.1 by deleting the words "Plumbing Code of" and replacing them with "New Hampshire State Plumbing Code";
- (2) Delete P-122.0 entirely; and
- (3) Amend P-201.0 by adding to the definitions the following: "Common vent" means a vent connecting at the junction of 2 fixture drains and serving as a vent for both fixture drains."

← Make clear who must actually comply with the material, as in the phrase "All licensees shall install" in the example to the left.

← Note that paragraph (a) incorporates the identified Code by reference, but only as amended by the changes indicated in paragraph (b).

← Amendments may replace words in the incorporated material, as in subparagraph (b)(1).

← Provisions may be entirely deleted, as in subparagraph (b)(2).

← Additions can also be made to the provisions of the material, as in subparagraph (b)(3).

To amend your agency's incorporated form, you may change the date or edition in the rule text through the regular rulemaking process as with any other update to an incorporated document, if the form is being amended substantively. You may also use the expedited process to revise the form substantively

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pursuant to RSA 541-A:19-c as described in Part 6 of Chapter 3, and then change or update the date or edition in the rule text afterward as an editorial change. Also, pursuant to RSA 541-A:19-c, I, editorial changes to the form itself do not require rulemaking. See 2.2 and 2.8 of Chapter 5 describing editorial changes to forms and other rules and the procedure to make them.

***INCORPORATION BY REFERENCE BUT NO STATEMENT REQUIRED***

An “Incorporation by Reference Statement” is not required in 4 instances:

- The agency has been designated an agent of the federal government by federal statute, regulation or a written agreement to implement a federal program at the state level. The agency may incorporate by reference citations to federal law, the *Federal Register*, or the *Code of Federal Regulations* governing this program without filing the “Incorporation by Reference Statement” and without a specific date or edition. However, other federally prepared or created documents incorporated by reference, because the agency chooses to adopt their requirements as a state rule, shall be adopted with an “Incorporation by Reference Statement” and a date or edition;
- A New Hampshire statute has already incorporated the relevant material by reference and the agency is charged with enforcing it. No specific date or edition is required;
- An agency incorporates the rules of another New Hampshire agency by reference or incorporates instruction manuals for specific models of specific equipment. No specific date or edition is required; or
- The document incorporated is an agency’s own form pursuant to RSA 541-A:19-b. A specific date or edition of the form is required. See above.

***NOT AN INCORPORATION BY REFERENCE***

Even if a rule requires compliance with a standard outside the agency, that standard is not being incorporated by reference if one of the following is true:

**#1—The standard is already law in this state regardless of the rule, as in the example to the right.**

This example is not an incorporation by reference of local ordinances or federal regulations if the agency leaves direct enforcement up to the local or federal office that has responsibility for enforcement and does not alter the standard or specify a particular edition. The state agency in this circumstance is not the agent of the local or federal office for enforcement and does not decide whether a violation of the ordinance or regulation has actually occurred.

All licensees shall comply with local zoning ordinances.

The facility shall comply with all applicable OSHA regulations.

**#2—The standard is really a goal or objective and the agency is not mandating compliance with the requirements to reach it, as in this example.**

This is not an incorporation by reference of the specific technical requirements for UL approval if the agency is only requiring that approval shall have been received.

All equipment shall be Underwriters Laboratory (UL) approved.



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**3.13 Setting Forth the Requirements of Forms in Rules.**

Since January 1, 2010, a “rule” has been defined in RSA 541-A:15, XV to include a “form” as defined in RSA 541-A:1, VII-a:

*“A document that establishes a requirement for persons outside the agency to provide information to an agency and the format in which such information must be submitted. The term does not include any document, regardless of what the document is called, that (a) is provided by an agency to facilitate the submission of information that is required to be submitted to the agency by federal or state statute, regulation, or rule and does not add to or modify such requirement or (b) that is used only by the agency to provide information to persons outside the agency.”*

Pursuant to RSA 541-A:19-b an agency may adopt a form by reference **or** “by setting forth the requirements of the form in rules,” whether the form is online or in hardcopy. See 1.1 of this chapter for a discussion of forms as rules, what is “information” required on a form, and 3.11 on how to incorporate forms by reference. Minimum format requirements for the form document itself are in 3.14 of this chapter.

Therefore, if your agency uses a form as defined in RSA 541-A:1, VII-a that contains requirements, including instructions on how to complete the form, and the form is not otherwise incorporated by reference, then those requirements which are not statutory shall be adopted separately as rules.

Changes to the form’s number, title, or arrangement of items do not require a new rulemaking proceeding and are editorial in nature. If, however, the requirements on the form, how the form shall be used, or the mandatory arrangement of a self-generated form also change, then a new rulemaking proceeding will be required.

Below is a sample form whose requirements are set forth on the next page.

Department of Wildlife 20 Hazen Drive Concord, NH 03301	FOR OFFICE USE ONLY: License# _____ Date Issued _____
<b>FORM A-3 APPLICATION FOR A PERMIT TO CONDUCT A YOUTH TROUT FISHING TOURNAMENT (RSA 485-A:3)</b> (All information must be typewritten)	
<b>Sponsoring Organization</b> Name: _____ Address: _____ _____	<b>Inclusive Dates of Tournament</b> _____
<b>Individual Responsible for Tournament</b> Name: _____ Address: _____ Telephone Number: _____	<b>Name of Commercial Hatchery Source</b> _____ <b>Number of Fish Being Purchased</b> _____
<b>Waterbody for Tournament</b> Name: _____ Location (Town(s) ): _____	<b>Number of Prizes and Total Value</b> No. of Prizes: _____ Total Value: _____
<b>Include a \$20.00 fee and a copy of any public announcement or notice of tournament, if one is used.</b> <b>I hereby certify that the information above is true and correct to the best of my knowledge and belief subject to the penalty of making unsworn false statements under RSA 641:3.</b>	
_____ Signature of responsible individual	_____ Date
<b>MAIL OR HAND-DELIVER TO THE DEPARTMENT.</b>	
<b>Last amended 1-10-10</b>	

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See the example on the next page of the requirements of the sample form written as rules. State as rules and not as questions:

- What information the person completing the form shall or may provide; and
- Any other actions or instructions the person shall or may follow as specified on the form.

The form's requirements may be paraphrased, but all requirements set by the agency must be specified in the rule setting forth the requirements of the form.

**ONLINE FORMS**

If an online agency form is not incorporated by reference as described in 3.12 of this chapter, the requirements on the online form, including the instructions on how to complete the form, must be set forth in the rules as for any agency form not incorporated by reference, except for (1) the requirements on the form that are already set forth in other rules or statutes, and (2) the online software instructions to navigate through an online form. But **the web address for the form must be included in the rule** to take the viewer to the form itself or, if the document is password-protected, to the screen where a password is required.

Your agency **must use a date or edition in the online form** as required for all forms by 3.14 of this chapter.

**CERTIFICATION STATEMENTS**

When the requirements of a form are set forth in rules, certification statements at the end of a form, where a signature is usually required, must either be quoted verbatim or be paraphrased provided that the paraphrasing does not change the meaning. That is because the requirements in the certification are themselves rules by meeting the definition of a "rule" in RSA 541-A:1, XV when they apply to all persons completing the form. They are not simply contractual obligations negotiated by the individual signor. See the sample rule on the next page to address a certification in the sample form on the previous page. It may be necessary to quote or paraphrase even where the remainder of the form is incorporated by reference. See 3.12 of this chapter.

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Wil 301.01 Form A-3 Application For a Permit to  
Conduct a Youth Trout Fishing Tournament.

(a) An applicant for a permit to conduct a youth trout fishing tournament under RSA 485-A:3 shall supply on Form A-3 the following information:

- (1) Name and address of sponsoring organization;
- (2) Name, address, and telephone number of individual responsible for the tournament;
- (3) Waterbody and location by town or towns;
- (4) Inclusive dates of tournament;
- (5) Name of commercial hatchery source used for obtaining fish;
- (6) Number of fish being purchased; and
- (7) Number of prizes and total value.

(b) All information shall be typewritten.

(c) The applicant shall include a copy of any public announcement or notice, if one is used.

(d) The individual responsible for the tournament shall:

- (1) Sign and date the form; and
- (2) Certify by the individual's signature that the information on the form is true and correct to the best of the individual's knowledge and belief, subject to the penalty for making unsworn false statements under RSA 641:3.

(e) The applicant shall include a fee of \$20.00.

(f) The applicant shall mail or hand-deliver the completed application to:

Department of Wildlife  
20 Hazen Drive  
Concord, NH 03301

← If the form is described in its own section, then include in the section heading the agency's designation of the form by number, title, or both, as in the example to the left. In the rule text, capitalize the designation. If the title is used in the text, put quotes around it. Note in (a) that, when describing the form, you state who in the public must comply. The information "FOR OFFICE USE ONLY" on the form is an internal requirement upon agency employees and therefore not a rule.

← Subparagraphs (1) through (7) specify information that must be provided on the form itself. Note the interpretation in (5) of the form's shorter reference to "source."

← Paragraphs (b) through (e) are instructions on the form requiring the applicant or the responsible individual to do something,

← When the applicant can be an entity and not necessarily an individual, be clear who must sign.

← If a form requires not only a signature but also that the signor certify something, then place the certification requirement separately from any signature requirement so it is clear what the effect is of signing. The rule could have quoted the certification instead and said that the individual shall comply with it.

← Put mailing address as it would appear on an envelope.

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Wil 301.01 Form A-3 Application For a Permit to Conduct a Youth Trout Fishing Tournament.  
Applicants for a permit to conduct a youth trout fishing tournament shall comply with RSA 485-A:3.

If all the requirements of the form were specified in a statute, then the rule only has to state that the person or entity subject to the rule shall comply with the statute, as in the example to the left.

**SPECIAL FORMATS**

If a form requires a calculation, then place the required information separately from how the calculation shall be made. See 3.17 on formulas. You may provide a sample calculation, but place it in an appendix because a sample is a specific application of a rule and not the rule itself.

If there are agency instructions to supply “additional information” at the agency’s discretion than what is in the form, examine what your agency actually intends. If this discretion is used only if something is missing or inadequate about the information provided on a form, do not say in the rule that the agency “may require additional information.” See 3.8 on discretionary decisions. Instead, say, for example, that “The applicant shall fill out the form completely” or “The applicant shall provide additional information if the agency determines that the information provided is unclear or inadequate to have the agency review the application.”

If your agency’s form is being incorporated by reference pursuant to RSA 541-A:19-b, see 3.12 in this chapter for the format.

**3.14 Requirements for Agency Form Documents.**

An agency form as defined in RSA 541-A:1, VIIa must identify the agency by name and contain:

- **A title, form number, or both** at the top of the form, such as “Form A-3 Application for a Permit to Conduct a Youth trout Fishing Tournament”; and
- **A footer** with the page number, if there is more than one page to the form, and **the latest revision or effective date** indicating at least the month and year, such as “Rev 10/14” or “October 2014”.

Since a form is a rule, it shall comply with RSA 541-A:7 on rules as follows:

*Rules shall be written in a clear and coherent manner using words of common and everyday meanings for those persons who engage in the activities regulated by the rules, which may include technical language as necessary.*

Unless the form is self-explanatory as to how it must be completed and submitted, the agency shall include instructions as necessary as part of the form specifying clearly how to complete and submit the form.

If the form exists only as an electronic document without pagination which may be completed only online, the form shall not have to have footers or page numbers, but the form must still have a revision or effective date so placed that it is clear to the user what version of the form is being completed.



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See 3.12 and 3.13 of this chapter on how to adopt a form as a rule. The form document shall not be written or numbered in a manner inconsistent with the rule which refers to it. For inconsistencies which may be corrected by editorial changes, see 2.1 of Chapter 5 relative to editorial changes to forms. Substantive changes to forms may be made through regular rulemaking pursuant to RSA 541-A:5-14 or through the expedited revisions to form process pursuant to RSA 541-A:19-c as described in 6.1 of Chapter 3.

**3.15 Use of Representative Examples.**

Representative word examples, but not sample calculations, are acceptable in a rule to clarify a particular word or phrase in the rule or to explain how they are used. Examples shall have a clear similarity or theme if there is more than one. Sample calculations may be placed in an appendix. See 4.8.

Write the rule to avoid any ambiguity over whether the examples presented in a rule are the only examples of the word or phrase being clarified. Words like “includes, but is not limited to,” and “such as, but not limited to,” may be used in this way. If merely listing some examples does not establish a clear similarity or theme, then use a concluding catch-all phrase with the list of examples instead of the words “but not limited to.”

**3.16 Use of Tables.**

A rule in a table format is acceptable if:

- The table is introduced with correct use of “shall” or “may”; and
- The table makes the requirements clearer and easier to understand.

Follow these steps in creating a table format:

- Organize and number tables sequentially by chapter or part;
- Use Arabic numbers reflecting the chapter or part number and the table’s position, as in the example below; and
- Use the method consistently throughout all chapters of the agency’s rules.

Abc 701.06 Restricted Use Pesticides.

(a) The following compounds, listed by common chemical name, shall be restricted use:

Table 7.1 Restricted Use Pesticides

Common Chemical Name	Use/Concentration Affected
Amitrole	all above 2%
Arsenic Acid	all
Cyanazine	all

For example, a sequential number by chapter could be “Table 700-1” “Table 7.1” for the first table in Chapter 700, as in the example to the left. A sequential number by part could be “Table 7.1.1” or “Table 701-1” for the first table in the first part in Chapter 700.

If new tables are inserted between existing tables, renumber the tables editorially or use the number of the preceding table and put “-a”, “-b”, and so forth after the number, but as a temporary device.

As in the example here, designate the table by the word “Table,” followed by the table number and a description title, and underline the designation. Place the designation above the table.

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### **3.17 Use of Illustrations.**

Illustrations, such as figures or drawings, may be used as follows in rules to eliminate any ambiguities in the text, but not as a substitute for a written requirement:

- Use “shall” or “may” correctly to introduce and specifically identify the illustration;
- Designate illustrations by the word “Figure” followed immediately by a number and a descriptive title. Assign numbers in the same manner as tables in 3.15; and
- Underline the word “Figure”, the number, and the descriptive title and center it on a single line, if possible, above the figure included in the rule, as with table designations.

### **3.18 Use of Mathematical Formulas.**

A mathematical formula may be used in a rule to eliminate any ambiguities in the text, but not as a substitute for a requirement written as a rule. A formula is simply a mathematical representation of the computation that the rule requires.

Abc 805.06 Percentage Accuracy Calculation.

(a) “W<sub>1</sub>” means the 3-run average of the wet standard cubic feet per hour flow rate as measured by the plant stack flow monitor.

(b) “W<sub>2</sub>” means the 3-run average of the wet standard cubic feet per hour flow rate as measured by the method in Abc 805.05(a)(2).

(c) To calculate the percentage accuracy of the plant stack flow monitor, the licensee shall calculate the difference between W<sub>1</sub> and W<sub>2</sub>, divide the difference by the value of W<sub>2</sub>, and then multiply the result by 100, as in the formula below:

$$\% \text{ Accuracy} = ( (W_1 - W_2) / W_2 ) \times 100$$

Use rule language as in the example to the left to:

- Define the factors or terms in the formula as in (a) and (b);
- State how the computation shall be made, as in (c); and
- Introduce the formula, as in (c).

The formula may then employ mathematical symbols such as “% Accuracy = ( (W<sub>1</sub>-W<sub>2</sub>)/W<sub>2</sub> ) X 100” at the end of the example.

## **PART 4 EDITORIAL MATTERS**

### **4.1 Title Pages and Tables of Contents.**

A cover or title page may be filed with a proposal or adopted rule, but it is not required.

A table of contents for chapters, parts, and sections is not required when filing a proposed or adopted rule, but if a table of contents is included, use lower case Roman numerals as page numbers in a header. See 2.3. If page numbers for each section are included in the table of contents, place the numbers after the section heading.

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## **4.2 Underlining.**

The only underlined items in rules are:

- Section headings;
- Foreign words or phrases, including Latin words, unless they are italicized;
- Numbers and descriptive titles of tables;
- Numbers and descriptive titles of illustrations; and
- Case names of New Hampshire or other court cases, unless they are italicized.

## **4.3 Capitalization.**

Capitalize words as follows:

- Words as capitalized in state statutes;
- Acronyms, such as “BAT” for “best available technology”;
- Every letter in the headings for titles, subtitles, chapters, and parts, except for the letter designation of the agency’s title or subtitle, which shall remain as assigned by the Administrative Rules office. For example, “CHAPTER Ac 100 ORGANIZATIONAL RULES”;
- Each principal word in a section heading, a form’s designation, and the descriptive titles for tables and illustrations. For example, “Abc 401.05 Eligibility Criteria for Adults.,” “Form B-3 ‘License Application’,” and “Table 4.1.1 Ponds and Lakes”;
- Only the first word of 2 or more words being defined, such as “Motor vehicle,” unless the words being defined contain proper nouns, such as “Clean Water Act”;
- The first word in each subdivision of a rule following an introductory sentence, as in examples in 2.7 and 2.8 in this chapter;
- The Latin names of biological classes, families, and all other groups above genera. For example, “Gastropoda”; and
- The Latin names of genera but not of species in binomial scientific names in biology. For example, “Spartina patens.”

Do not capitalize:

- The names of New Hampshire agencies, such as boards, departments, and commissions, or the titles of personnel, such as commissioner, director, or bureau administrator, unless you are providing an address.

## **4.4 Use of Numerals to Denote Quantity.**

Use of numerals with rules follows statutory practice. Describe quantities in a rule only with numerals and not with words or in combination with words except:

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- The word “one” instead of the numeral shall be used; and
- Numerals which begin a provision must be written out as words.

**NOTE:**

Do not begin a provision with a number, such as “Ten days...,” unless it is not possible to restructure the sentence so the number does not appear at the beginning.

#### **4.5 Punctuation and Conjunctions—The Use of “And” and “Or”.**

When using an introductory clause followed by a series of subdivisions of a rule, apply the following punctuation:

- The introductory clause ends with a colon; and
- Each subdivision ends with a semicolon, except:
  - The second to last subdivision has the conjunction “and” or “or” after the semicolon ; and
  - The last subdivision ends with the same punctuation as the other units of the section at the same level as the introductory sentence.

When using conjunctions, connect provisions placed in a list or series by the use of the term “and” or “or” so that it is clear from the context what is required. Avoid using the term “and/or.” Such use leads to confusion and ambiguity because the reader might not know when “and” applies and when “or” applies. The term may be used only when it is clear what is intended.

**DON’T SAY:**

Each corporation and/or bank shall...

(a) The applicant shall:

- (1) Sign the form; and
- (2) Date the form; and
- (3) Mail the form; or
- (4) Hand-deliver the form.

**SAY:**

Each corporation, bank, or both shall...

(a) The applicant shall:

- (1) Sign and date the form; and
- (2) Mail or hand-deliver the form.

To the left is an example of punctuation and how to use conjunctions. Instead of “and/or,” use “or both” at the end of the series or clarify the introductory language.

Do not mix mandatory provisions using “and” with alternatives using “or.” As in the example above, you may either place the mandatory provisions connected with “and” in a separate subdivision from those connected with “or”, and use the mandatory provisions first, or rewrite the provisions as in the examples below. In the first example below, the mandatory provision (“shall be enrolled”) applies regardless of the alternative provisions. In the second example below, there are 2 alternatives for license qualification connected by “or”, but there are also mandatory provisions denoted by “and” within each alternative, indicated by subdividing and numbering the rule’s provisions accordingly.



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<b>DON'T SAY:</b>	<b>SAY:</b>
(a) A provider shall be:  (1) A residential treatment program licensed by the department; or  (2) A licensed foster care program; and  (3) Enrolled as a Medicaid provider.	(a) A provider shall be enrolled as a Medicaid provider and be either:  (1) A residential treatment program licensed by the department; or  (2) A licensed foster care program.

<b>DON'T SAY:</b>	<b>SAY:</b>
(a) All applicants shall:  (1) Hold a bachelor's degree;  (2) Have 5 or more years of professional experience; and  (3) Pass the examination established by the board; or  (4) Hold a master's degree;  (5) Have 2 or more years of professional experience; and  (6) Pass the examination established by the board.	(a) All applicants shall either:  (1) Meet the following requirements:  a. Hold a bachelor's degree;  b. Have 5 or more years of professional experience; and  c. Pass the examination established by the board; or  (2) Meet the following alternative:  a. Hold a master's degree;  b. Have 2 or more years of professional experience; and  c. Pass the examination established by the board.

#### **4.6 Abbreviations and Acronyms.**

The use of abbreviations follows statutory practice.

Do not use abbreviations such as "etc.," "i.e.," "e.g.," and "ref." They are often misunderstood and used incorrectly. Instead, state clearly in English what is intended.

If an acronym or initials are used for a term, then use them consistently. For example, if "intermediate care facility (ICF)" is given in a rule, then use the acronym ICF in all subsequent references. Do not use an acronym if the term is used only once.

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### **4.7 Citation Style of Statutes, Rules, Cases within Rules, and Internet Sources.**

Cite New Hampshire statutory passages in the text of a rule only in the following form:

- Give chapter, section and relevant further subdivisions of the statute, without additional words or incorrect capitalization, such as “RSA 541-A:16, I(a).”
- Identify the statute precisely, down to the section and paragraph intended.
- Identify consecutive provisions within a statute as follows: “RSA 541-A:31 through RSA 541-A:36” or “RSA 541-A:31-36” but not “RSA 541-A:31 through :36.”

Cite New Hampshire rules in the following form:

- To cite to a rule in another section, or to the rule of another agency, use the letter designation of the agency title or subtitle followed by the complete rule number. For example, cite “Fis 301.01(a)(1)” for the rule in subparagraph (1) of paragraph (a) in Fis 301.01 of the rules of the Fish and Game Department, or “Fis 300” for all the rules in the chapter numbered Fis 300.
- Identify consecutive provisions in a rule as follows: “Fis 300 through Fis 500” or “Fis 300-500”, and “Fis 301.01 through Fis 301.05” or “Fis 301.01-301.05.”
- Do not use terms such as “chapter,” “part,” or “section” in a citation with the rule number.
- Another provision within the same section of your own rule may be cross referenced without citation to the agency title or subtitle or section number if it is clear that the same section is intended. For example, a reference to “paragraph (a) above” or “(a) above” is acceptable in paragraph (b) of the same section.

Cite New Hampshire state court cases in the following form:

- Use citations to *New Hampshire Reports* when referring to decisions of the New Hampshire Supreme Court. Citations to the *Atlantic Reporter* are acceptable, but only after giving the citation from *New Hampshire Reports*.
- If the decision cited is too recent for a full citation, use the docket number assigned by the court. For example the citation “*N.H. Municipal Trust Workers’ Comp. Fund v. Flynn, Commissioner*, Docket No. 89-069” would be correct if the case had not yet been published in the *New Hampshire Reports*.
- To cite a reported New Hampshire Supreme Court decision, identify the decision by the case name in italics if possible, or underlined if not, the volume number of the *New Hampshire Reports* in which the case appears, the abbreviation “N.H.,” the page number for the first page of the decision, and the year of the decision in parentheses. Thus, the case that stands for the proposition that Part 1, Article 28-a of the N. H. Constitution applies to rules would be cited as “*N.H. Municipal Trust Workers’ Comp. Fund v. Flynn, Commissioner*, 133 N.H. 17 (1990).”

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Cite to Internet sources in the following form:

- To cite to Internet content which is being incorporated by reference, comply with 3.12 of this chapter and cite to the entire uniform resource locator (URL), without the introductory words “available at”, as it appears on the address bar of the browser and where the material may be directly accessed. Do not cite only to a root URL providing access with an intervening page of links, unless the links involve completing a user form or responding to a query. In that case, insert parenthetical directions. For example, for the “International Classification of Diseases for Oncology, 3<sup>rd</sup> Edition (ICD-O-3)”, accessing the URL “<http://www.who.int/classifications/icd/adaptations/oncology/en/>” will only reach the log-in page, not the online document. So the complete citation after the material’s edition would be “<http://www.who.int/classifications/icd/adaptations/oncology/en/> (follow the “Log In” hyperlink; then follow the “License Terms” hyperlink)”.
- To cite to an Internet source whose content is not being incorporated by reference as Internet content but which is cited only to improve access to a cited, printed document (which might be incorporated by reference in the rule), introduce the URL with a phrase. Use “available at” in compliance with 3.12 of this chapter if the printed document is incorporated by reference, or something similar if it is not incorporated by reference. For example, “The hydraulic modeling program developed by the U.S. Army Corps of Engineers may be available at <http://www.hec.usace.army.mil/software/hec%2Dras/>.”
- Cite to the web document format of the material, if possible, which preserves pagination and other characteristics of a printed document, such as the portable document format (PDF) of Adobe®, if the material is available in both a hypertext markup language (HTML) format and the other format.

#### **4.8 Use of Appendices.**

Appendices must be included as described in 2.4 and 2.5 in Chapter 3 as cross-reference tables pursuant to RSA 541-A:3-a, II. They must also be included, as appropriate, pursuant to RSA 541-A:12, VII if a document or Internet content is incorporated by reference as described in 3.12 in this chapter.

Appendices to rules may also be included to provide information that might be useful to the regulated community, such as statutes, sample mathematical calculations, recommendations, agency forms that have been incorporated by reference, and Incorporation by Reference Statements. Do not place requirements, limitations, prohibitions or permissible options in appendices unless they are already in the rules or a statute.

To refer in a rule to materials contained in an appendix such as “Appendix I,” write “as contained in Appendix I” or “in Appendix I” or simply “See Appendix I”, except for appendices related to incorporation by reference pursuant to RSA 541-A:12, VII. In that case follow the format in 3.12.

#### **4.9 Use of Source Notes.**

Do not include source notes in proposed rules, final proposals, objection responses, or adopted rules filed with the Administrative Rules office. Source notes are assigned by the office as part of the required format for publishing rules. See Chapter 5 of this *Manual*.

#### **4.10 The Term “Reserved.”**

Use the term “reserved” in the rules only as a temporary device to indicate chapters, parts, or sections which will be added in the future. For example, if a professional licensing board has not filed ethics rules but is required by statute to do so, Chapter 500 of its rules shall be marked “reserved” in anticipation of eventual filing.

Since use of the term “reserved” is only a temporary device, remove the “reserved” designation and renumber the rules when readopting an entire chapter, part, or section if the particular rules are not mandated by statute.

Do not use the “reserved” designation for the last chapter in a title or subtitle, the last part in a chapter, or the last section in a part unless the provision is mandated by statute.

#### **4.11 Letter Quality Printing.**

All proposed and adopted rules must be typewritten in letter-quality type or printed with a letter-quality printer.

#### **4.12 Use of Quotation Marks.**

Use quotation marks in a rule only when quoting language verbatim, such as from statute or other rule, or citing an agency form’s title or the title of a document. See 2.10, 3.7, and 3.12.

Do not use quotation marks around words or phrases simply as shorthand for “so-called” or to indicate doubt or disapproval.



## PART 5 ADOPTION, AMENDMENTS, REPEALS, AND ANNOTATED RULES

### 5.1 Purpose.

The purpose of this part is to provide a uniform method of:

- Identifying a rulemaking action; and
- Relating proposals for the adoption, amendment, or repeal of rules as precisely as possible to any existing or expired rules.

In this way the public will be able to understand what the agency intends to accomplish through the rulemaking proceeding and will be able to track prior versions of the rule.

### 5.2 Definitions.

**“Adoption”** means that a new section, part, or chapter is being inserted or an expired one is being reinstated. The term only applies to the insertion of whole sections, parts, and chapters, but does not apply to insertions of text less than an entire section.

**“Adopting, amending, and repealing language (AARL)”** means the statement above the text of the proposal that identifies the objective(s) of the rulemaking proceeding, and relates the text of the proposal to any existing rule.

**“Amendment”** means that a subdivision in a section of an existing rule is being changed, either by insertion or deletion of text, but the text of that entire section is not intended to be readopted and has not been included for readoption. The term applies only to insertion or deletion of text at the level of a paragraph or lower, and does not apply to insertions of whole sections, parts, and chapters.

**“Annotate”** means to mark or otherwise indicate that text which is proposed by the agency to be added or deleted from a proposed or existing rule.

**“Change”** means a revision proposed to be made by the agency *only* to a chapter, part, or section heading, or simply to a rule number, in an existing or proposed rule.

**“Existing rule”** means a currently effective text.

**“Readoption”** means that an existing rule is being adopted again without change.

**“Readoption with amendment(s)”** means that one or more provisions in a section, such as a paragraph, or in a larger unit of an existing rule are being changed, and the entire text of that section, or larger unit, of the existing rule is also being included for purposes of readoption. “Readoption with amendment” includes revision of an agency form filed through the expedited revision process.

**“Renumber”** means assigning a different rule number, including subdivisions of sections, to an existing rule whether or not that rule is also being amended or readopted.

**“Repeal”** means to eliminate an entire section or sections of an existing rule with no rule in its place or with a rule on a different subject area instead.

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**RULEMAKING ACTION AND SOURCE NOTE INFORMATION FOR AN EXISTING  
RULE**

See 2.3 of Chapter 5 and Appendix I for a description of the rulemaking information in a published rule's source note. In the sample below of a source note at the end of a rule section, the document number #8109 assigned by the Administrative Rules office to the 2004 filing is not preceded by any letters, thereby denoting an "adoption" of the rule section. The "ss" for 2006 means "supersede", and indicates that the section was either readopted or readopted with amendment in 2006. The "amd" for 2008 means "amended", indicating either an "amendment" as defined above, or a "readoption" of only a paragraph, or smaller provision, to the rule section in 2008. Therefore, the existing rule section has some provisions effective in 2006 and others in 2008, when rules were effective for 8 years (and expiring in 2014 and 2016, respectively).

Source. #8109, eff 6-24-04; ss by #8598, eff 4-1-06; amd by #9112, eff 10-1-08

### **5.3 Adopting, Amending, and Repealing Language (AARL).**

When filing proposed or adopted rules at any stage of the rulemaking process, place adopting, amending, and repealing language (AARL) above where the proposed text, or text to be repealed, begins. Reference existing rules as precisely as possible. Clearly state the relationship of the new filing to the existing rule.

AARL has 5 components, as in the examples to the right:

- **The rulemaking action**, such as "Readopt with amendment" or "Adopt";
- **The rule number**, such as "Abc 701.02";
- **The filing history of the existing or expired rule**, if any, by effective date and document number assigned by the Administrative Rules office in the source note of the published rule, beginning with the last superseding document if an entire section is involved, and identifying amending documents, such as "effective 6-25-10 (Document #9737), as amended effective 7-1-11 (Document #9943)", in order that all of the text of the rule proposed is in the documents cited;
- **Other commands as necessary** to describe the rulemaking action, such as "and renumber existing Abc 603.03 as Abc 603.04"; and
- **The conclusion**, such as "to read as follows" or "so that Abc 603.03 reads as follows," to introduce the text that follows on the page. Use "cited and to read as follows" if the text immediately thereafter has a section, part, or chapter heading, but not all of the text for the section, part, or chapter is included in the rulemaking. See "Amendment" in 5.5.

**Readopt with amendment Abc 701.02, effective 6-25-10 (Document #9737), as amended effective 7-1-11 (Document #9943), to read as follows:**

text text text text text text text  
text text text text

**Adopt Abc 603.03, and renumber existing Abc 603.03 as Abc 603.04, so that Abc 603.03 reads as follows:**

text text text text text text text text

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Place the AARL as follows:

- If either the rulemaking action or the filing history of an existing rule is different for different rules in the same proposal, then use different AARL above the corresponding rules within the proposal;
- The rulemaking action must reflect the situation when the filing takes place. For example, if an existing rule Abc 502.01 is being readopted but expires after the initial proposal is filed, the rulemaking action changes from “Readopt Abc 502.01” to “Adopt Abc 502.01” in subsequent filings;
- The AARL must clearly identify the rule and be consistent with the text that follows. For example, if the rulemaking action is to “Readopt Abc 401.01...to read as follows”, but not all of Abc 401.01 appears in the proposal, then you will unintentionally repeal the provisions that were not included; and
- Arrange rules within the proposal so that they read in proper numerical order when finally adopted.

#### **5.4 Annotating the Proposed Rules.**

##### *WHEN TO ANNOTATE*

To indicate changes or amendments, annotate the text and numbering of rules filed with the Administrative Rules office at the following stages of the rulemaking process. Although tables of contents are optional when filing, annotate the table if it is filed.

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**ANNOTATING A RULE FILED WITH THE ADMINISTRATIVE RULES OFFICE**

**Rulemaking Stage**

**What Annotations Must Show**

Initial Proposal, Proposed Interim Rule, Proposed Expedited Repeal, Proposed Expedited Revisions to Form, or Proposed Expedited Amendt. to Incorporation by Reference	Changes/Amendments from the existing rule or form
Final Proposal—Annotated	Changes/Amendments from the Initial Proposal
Amended Final Proposal or Amended Proposed Interim Rule	Changes/Amendments from Final Proposal or Proposed Interim Rule
Conditional Approval Request	Same as for the Conditional Approval Response
Conditional Approval Response (Explanation after Conditional Approval)	Changes/Amendments from Final Proposal, Amended Final Proposal, Proposed Interim Rule, or Amended Proposed Interim Rule, whichever is conditionally approved
Response to Preliminary Objection	Changes/Amendments from the Final Proposal or Amended Final Proposal
Response to Objection to Proposed Interim Rule	Changes/Amendments from Proposed Interim or Amended Proposed Interim Rule
Request for Approval with Further Amendment (Amended Preliminary Objection Response)	Changes/Amendments from the Response to the Preliminary Objection
Response to Revised Objection	Changes/Amendments from the Response to the Preliminary Objection

**EXCEPTIONS:**

See 6.12 of Chapter 3 about annotations if a revised form is being filed pursuant to the expedited revision process for forms but cannot be annotated.

For numbered rules, the exception to “when to annotate” above is when the rulemaking action in the AARL is a “**repeal**” or “**amend by deleting**” as described in 5.2 and 5.5. The repealed or deleted text as annotated must be repeated in the “**Final Proposal—Fixed Text**” for regular rulemaking and in the **adopted rule** for all rules, so the Committee will know what it is being asked to approve, and the public could understand what is actually changing. The public includes the State Library, the Supreme Court Law Library, or anyone else who receives copies of the as-filed adopted rule from the Administrative Rules office.

A “repeal” and “amend by deleting” are fairly rare rulemaking actions in an AARL—there will be no rule text to be adopted or readopted in these actions, only text to be removed, and the only words to be filed for this action on the rule page at the final proposal or adopted rule stages would otherwise be the AARL. Without the repealed or deleted text on the page, the public may need the “Initial Proposal”, “Proposed Interim Rule”, or “Proposed Expedited Repeal” to know what the adoption means in terms of regulatory compliance.



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### *ANNOTATION STYLES*

Use one of the following annotation styles consistently in a particular rulemaking proceeding:

<u>Inserting New Text and Numbers</u>	<u>Example</u>
Underlining	(a) A document <u>conforming to these requirements</u> shall be considered filed when it is received.
Different font, bold type, or both, provided that such other font or bold type clearly distinguishes the new text and numbers from the existing ones.	(a) A document <i>conforming to these requirements</i> shall be considered filed when it is received.
<u>Deletions of Existing Text and Numbers</u>	<u>Example</u>
Bracketing, provided that the brackets clearly distinguish the text to be deleted.	[(a)] (b) The [division] <u>department</u> shall conduct an inspection.
Striking through with hyphens or solid lines.	(a) (b) The <del>division</del> <u>department</u> shall conduct an inspection.
Shading, provided that the text is legible.	(a) (b) The <del>division</del> <u>department</u> shall conduct an inspection.
Any combination of the above.	

### *AVAILABLE SHORTCUT IN AARL*

If a proposal contains an entire part or chapter, with only some existing sections to be changed, but the filing history is the same for all existing sections in the proposal, then the agency need only describe the action in one AARL as “Readopt with amendments” of the part or chapter. But the annotations to show the changes to the text and numbering would still be made.

**Readopt with amendments** **Abc 304, effective 7-1-07 (Document # 8904), to read as follows:**

Place Abc 304.01 proposed to be “readopted”.

Place Abc 304.02 proposed to be “readopted with amendments”, with annotations of the amendments.

Place Abc 304.03 proposed to be “repealed”, and annotated to show removal.

Place Abc 304.04 proposed to be “readopted and renumbered” as Abc 304.03, annotated to indicate renumbering.

In the example to the left, a part has four sections, all currently effective in the same document filed in 2007. If the AARL had been inserted for each part, then 2 sections would be readopted, one would be repealed, and one would be readopted with amendments.

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### AVAILABLE SHORTCUTS IN ANNOTATION

If amendments in a proposal would involve such extensive revision that, in the agency's view, annotating each proposed change would render the proposed rule or the AARL not clear and understandable, the agency does not have to annotate each proposed change:

**Readopt with amendments Abc 304, effective 7-1-07 (Document # 8904), so that Abc 304 reads as follows:**

[Place existing text for Abc 304 here in a style indicating deletion.]

Place the proposed Abc 304 here, with or without a style indicating insertion.

If the filing history is the same for all sections in the proposal, the agency need only describe the action as precisely as possible in the AARL as "Readopt with amendments" and place the existing rule followed by the proposed text without special annotation, as in the example to the left.

**Readopt with amendments Abc 901, effective 5-23-09 (Document # 9480), as amended effective 7-1-11 in Abc 901.01 and Abc 901.02 (Document # 9925), with Abc 901.01 and Abc 901.02 renumbered as Abc 901.01(a) and (b), so that Abc 901 reads as follows:**

[Place existing text for Abc 901 here in a style indicating deletion.]

Place the proposed Abc 901 here, with or without a style indicating insertion.

If the filing history is different for different sections in the proposal, **and** the sections are extensively reorganized and renumbered, then describe the action as "Readoption with amendments." Note in the AARL the different document numbers and effective dates of the filing history as amendments. Identify the sections affected by those amendments and, if possible, use cross-references in the AARL to relate the proposed rules to the existing rules, as in the example to the left.

## 5.5 Required Formats for AARL with Annotated Rules.

Follow the following formats to identify the rulemaking action and write the other 4 components in the AARL:

### **ADOPTION:**

There is no existing rule to identify or annotate, as in the example to the right.

An adoption of a new rule with the same number as an existing rule will necessitate the renumbering, but not readoption, of the existing rule to avoid the implication of its repeal, as in the second example to the right.

**Adopt Abc 603.03 to read as follows:**

Abc 603.03 Routes. A driver of a motor vehicle which contains hazardous materials shall operate the vehicle over routes according to 49 CFR 397.9.

**Adopt Abc 603.03, and renumber the existing Abc 603.03 as Abc 603.04, so that Abc 603.03 reads as follows:**

Abc 603.03 Routes. A driver of a motor vehicle which contains hazardous materials shall operate the vehicle over routes according to 49 CFR 397.9.

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An “adoption” includes rules that have expired, regardless of whether the text of the expired rule is being changed, because the rule is no longer “existing.” However, to let the reader know that the rule has a filing history, use the format in the example to the right to identify the “previously effective” version.

**Adopt Abc 538.02, previously effective 3-5-02 (Document #7657), and expired 3-5-10, to read as follows:**

Abc 538.02 Complaints from a Group of Persons. A complaint filed by a group of persons shall be signed by each person in the group.

**AMENDMENT:**

The word “amend” identifies the rulemaking action only if the text below the AARL being changed is less than an entire section, as in the example to the right. See the explanation in the box below on how including the section heading, and saying “cited as,” helps the reader understand the larger context. See also Appendix I on how “amd” in a certified rule’s source note indicates that an “amendment” less than a an entire section was filed.

**Amend Abc 641.09(d), effective 8-5-11 (Document #9962), cited and to read as follows:**

Abc 641.09 Application Process.

(d) The applicant shall submit a fee of [\$5] \$10 with each application.

**HEADINGS AND TEXT AS CONTEXT—USE OF “CITED AND” IN THE AARL**

As in the example above, use the phrase “cited as” in the AARL only when you have provided the chapter, part, or section heading for context after the AARL, but your rulemaking proceeding does not include the entire text of the chapter, part, or section that you have cited.

All rule text included in the proposal, even if included with the heading to provide context for the amendment, is part of the rulemaking proceeding and subject to a new effective date when the rule is adopted and filed. The words “cited and” are not used for rule text included as context, such as for readability. See further examples below of AARL with “cited and” when amending or readopting an existing rule.

Amendments may be made to select provisions of a rule, without the remainder of the rule being subject to the rulemaking proceeding, but this requires careful identification in the AARL as provided below:

**Amend the introductory language of Abc 602.09(e), effective 9-19-09 (Document # 9548), to read as follows:**

(e) A vessel may possess lobsters, caught by non-trap legal methods, to exceed more than [75] 100 lobsters per day provided that:

**Amending introductory language only**

If only the introductory language for a series of subdivisions of a rule, such as subparagraphs, is being amended, place the words “the introduction to,” “the introductory language of,” or similar phrases between the word “Amend” and the rule number, as in the example to the left. This will make it clear that the rest of the rule is not part of the rulemaking proceeding.

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**Amend Abc 701.06(a), Table 7.1 Restricted Use Pesticides, effective 4-23-10 (Document #9697), by amending the “Use/Concentration Affected” for “Amitrole”, so that Abc 701.06(a) intro. and “Use/Concentration Affected” for “amitrole” in Table 7.1 are cited and read as follows**

Abc 701.06 Restricted Use Pesticides.

(a) The following compounds, listed by common chemical name, shall be restricted use:

Table 7.1 Restricted Use Pesticides

Common Chemical Name	Use/Concentration Affected
Amitrole	all[ above 2%]

**Amending a table**

If the amendment makes a change in a table, but the entire table is not being readopted with the amendment, then identify in the AARL the table number and the items being amended as in the example to the left.

**Amend Abc 701.04(a), effective 4-23-10 (Document #9697), by inserting a new subparagraph (a)(11), and renumbering the existing subparagraph (a)(11) as (a)(12), so that Abc 701.04(a) intro. and (a)(11) are cited read as follows:**

Abc 701.04 Prohibited Compounds.

(a) No person shall sell or use any of the following compounds, listed by common chemical name:

(11) Mercury and its compounds;

**Amend by inserting**

Identify the action by the word “Amend,” and use the term “by inserting” in the AARL to identify the subdivision being inserted, and then indicate any provisions to be renumbered, as in the example to the left. Note how including the introductory phrase makes the rule’s context more understandable.

**Amend Abc 601.06, previously effective 3-23-07 (Document #9130), as amended effective 4-23-10 (Document #9697), and expired 3-23-15 in paragraph (a), by inserting paragraph (a), cited and to read as follows:**

Abc 601.06 License Application.

(a) The applicant shall submit a fee of \$50.00 with each application.

**Amend by inserting when the inserted provision had expired**

Identify the action by the word “Amend”, and use the term “by inserting” in the AARL to identify the subdivision being inserted, but also indicate when the provision had expired, as in the example to the left.



**NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL**  
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Amend Abc 701.05, effective 4-23-10 (Document #9697), by deleting paragraph (c) and renumbering the remaining paragraphs so that, for example, paragraph (d) becomes (c), as follows:

Abc 701.05 Prohibited-Limited Use Compounds.

[(c) Mercury and its compounds shall be limited to use as a turf fungicide and as a dormant application to strawberries to control stem end rot.]

**Amend by deleting**

Identify the action by the word “Amend,” use the term “by deleting” in the AARL to identify the subdivision being deleted, and indicate any provisions to be renumbered, as in this example. This rulemaking action and repeals are the only kinds of rulemaking actions where you must repeat the annotated, repealed rule or

deleted rule in the “Final Proposal—Fixed Text” and in the “Adopted Rule” so that the Committee and the public, respectively, can see what is being repealed or deleted. See 5.4 above.

**READOPTION:**

An existing rule is being kept in effect without change. Therefore there is no annotation but a clean rule, as in the examples to the right and below.

A readoption may encompass a smaller unit than a section, such as a paragraph, as in the example to the right. The document number cited in the AARL would be the most recent document containing that paragraph.

**READOPTION AND RENUMBERING:**

For readoptions where you propose also to renumber the rule identified in the AARL, but not change the text itself, use the term “Readopt and renumber,” identify the existing rule and filing history, and state what the new rule number will be. The rule must be annotated to show the numbering change, as in the example to the right.

**READOPTION WITH AMENDMENT:**

**Numbered rule**

Use the term “Readopt with amendment” if you are readopting a section or larger of an existing rule but with amendments somewhere within the text, as in the example to the right.

**Readopt Abc 1203.04, effective 7-1-10 (Document #9744), to read as follows:**

Abc 1203.04 Muzzle Loader. All nonresident muzzle loader licensees shall carry a nonresident muzzle loader license in addition to a current hunting license.

**Readopt Abc 701.05(d), effective 7-1-10 (Document #9744), cited and to read as follows:**

Abc 701.05 Application Process.

(d) The applicant shall submit a fee of \$25 with each application.

**Readopt and renumber Abc 1203.04, effective 7-1-10 (Document #9744), as Abc 1303.04 to read as follows:**

Abc [1203.04] 1303.04 Muzzle Loader. All nonresident muzzle loader licensees shall carry a nonresident muzzle loader license in addition to a current hunting license.

**Readopt with amendment Abc 1223.01, effective 3-15-11 (Document #9887), to read as follows:**

Abc 1223.01 Free Fishing Day. No fishing license shall be required to take fish, by angling, in any public waters within the jurisdiction of the state on [June 8<sup>th</sup>] the first Saturday in June.

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

Chapter 4 Rule Numbering and Drafting

Form and Expedited Revision

When filing a revised or “amended” form through the expedited revision process under RSA 541-A:19-c, use the term “Readopt with amendment” when referring to the form. Place the AARL on an attached sheet if necessary. Cite to the numbered rule where the form is either incorporated by reference, as in the first example to the right, or where its requirements are set forth as described in 3.13.

If the form has been filed through the expedited process before, cite also to the document number and effective date of that filing, as in the second example.

**READOPTION WITH AMENDMENT AND RENUMBERING:**

For readoptions that include not only amendments but also a renumbering of the rule identified in the AARL, use the term “Readopt with amendment and renumber” before the existing rule number. Insert the new rule number later in the AARL.

A re adoption with amendment and renumbering may also exist if one section will be created from several sections which are thereby rewritten and their former numbers deleted. The eliminated sections are not technically “repealed” when the subject matter has been incorporated into one rule, as in the example to the right. See also the examples of “Repeal” on the next page.

Readopt with amendment Form A-1 “Application for a License”, incorporated by reference in Abc 301.02, effective 2-8-11 (Document #9860), to read as follows:

[Insert amended form]

Readopt with amendment Form A-2 “Application for a Renewal License”, effective 10-1-11 (Document #10010, Expedited), and incorporated by reference in Abc 401.02, effective 2-8-11 (Document #9861), to read as follows:

[Insert amended form]

Readopt with amendment and renumber Abc 1223.01, effective 3-15-11 (Document #9887), as Abc 1224.01 to read as follows:

Abc [1223.01] 1224.01 Free Fishing Day. No fishing license shall be required to take fish, by angling, in any public waters within the jurisdiction of the state on [June 8<sup>th</sup>] the first Saturday in June.

Readopt with amendment and renumber Abc 301.02-301.04, effective 6-2-14 (Document #10619), as Abc 301.02 to read as follows:

Abc 301.02 [Fee for] Deer Permit on Long Island

(a) The fee for a Long Island Deer permit shall be \$10.00.

(b) The hunter shall carry the deer permit when taking the deer on Long Island.

(c) The deer permit shall expire on December 15 of the year issued.

[Abc 301.03 Carrying the Deer Permit. The hunter shall carry the deer permit while taking deer on Long Island.

Abc 301.04 Expiration of Permit. Deer permits for Long Island shall expire on December 15<sup>th</sup>.]

# NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

## Chapter 4 Rule Numbering and Drafting

### **REPEALS:**

Use the term “repeal” when a section or larger unit of a rule is not simply being rewritten but instead entirely eliminated with no rule in its place or with a rule in a different subject area. The existing rule is annotated to show it is being deleted.

**Repeal Abc 601.04, effective 7-31-09 (Document #9524), as follows:**

[Abc 601.04 Record Keeping. Each licensee shall place all shipping records in a locked filing cabinet or other secure container.]

“Repeal” is **not** the same thing as “amend by deleting,” which applies only to units of a rule less than a section. But see 5.4 above for when a “repeal” of a rule may be characterized as an “amendment” to a larger unit as a shortcut. Otherwise, a “repeal” and “amend by deleting” are the only kinds of rulemaking actions where you must repeat the annotated, repealed rule or the deleted rule in the “Final Proposal—Fixed Text” and in the “Adopted Rule” so that the Committee and the public, respectively, can see what is being repealed or deleted.

**Repeal Abc 602.01, effective 7-31-09 (Document #9524), and renumber the remaining sections in Part Abc 602 so that, for example, Abc 602.02 becomes Abc 602.01, as follows:**

[Abc 602.01 Inventory List. All licensees shall maintain an inventory list of licenses issued.]

**Repeal Abc 602.01, effective 7-31-09 (Document #9524), and hold said section in reserve as follows:**

Abc 602.01 [Inventory List. All licensees shall maintain an inventory list of licenses issued.] RESERVED

Always specify if you want to renumber the subsequent rules to fill in the gap left by the repeal or if you intend to “reserve” the rule number for future use. This is always a concern if the rule being repealed is not the last rule in the unit where it is located. But do not include the text of the rules being renumbered unless you intend to readopt them as well.

### **RENUMBERING A RULE OR CHANGING THE RULE HEADING:**

Identify in the AARL any rule numbers for rules which are not part of the proposal but whose numbers must be changed to accommodate the proposal. Use the word “renumber” as in the examples above.

An agency may make changes to a rule’s number or heading even though the text is not included as part of the proposal and the changes are not necessary to accommodate the rulemaking action in the proposal. Such changes could be made editorially outside of the rulemaking process provided that they do not affect the substance of the rule by changing its meaning.

However, if such changes are included in the proposal, use the term “renumber” to indicate a change in number. If a heading is changed, use the word “change” and include an annotated heading, as in the example to the right.

**Change the section heading for Abc 702.03, effective 10-1-09 (Document #9549), to read as follows:**

Abc 701.02 [Payment] Reimbursement

## CHAPTER 5 PUBLICATION OF RULES

### PART 1 THE REQUIRED FORMAT FOR PUBLISHING RULES

#### 1.1 Agency Responsibility.

There is no official publisher of the complete *New Hampshire Code of Administrative Rules*. Each agency is responsible for publishing all of its effective rules filed under RSA 541-A. See RSA 541-A:15, I. Each agency must maintain a file of its own currently effective rules open to the public. See RSA 541-A:14, IV.

Once your agency adopts and files a rule with the Administrative Rules office, the agency must still publish the rule in the format as prepared by the office, except that a rule does not have to be published if:

- It would be “unduly cumbersome, expensive, or otherwise inexpedient” to publish; and
- The Director agrees that it need not be published, using the procedure and criteria in 3.1 below. See RSA 541-A:15, III.

To publish its rules, an agency must cooperate with the Administrative Rules office in preparing an edited, camera-ready copy. The editing process concludes when the agency “certifies” that the camera-ready rule is the same in substance as originally filed. See Part 2 for the steps in this editing process.

#### OFFICIAL VERSION OF THE RULE

The “as-filed” version of the adopted rule is the “official version” of the rule unless or until the agency certifies that the camera-ready rule provided by the Administrative Rules office is the same in substance as originally filed. Once the agency certifies, then this certified rule becomes the “official version.” Both the agency and the office must make the “official version” of the rule available to the public. See RSA 541-A:15, I and RSA 541-A:14, IV.

As required by law, the Administrative Rules office sends a copy of each rule, both as filed and as certified, to the State Library and the N. H. Law Library at the Supreme Court. See RSA 541-A:15, I-a.

#### OPTIONS FOR AGENCIES

##### ***BINDING***

Each 8 1/2 x 11-inch camera-ready rule page must be published in a 3-hole punched, loose-leaf format for easy insertion of replacement pages, but binding is up to the agency. Your agency may bind the camera-ready rules as by stapling, but if a binding is chosen, the binding must allow for supplementation when rules are amended or superseded by subsequent filings.

##### ***OTHER FORMATS***

Your agency may distribute its rules in other formats **in addition to, but not as a substitute for**, the required format. See 2.6 below on publishing in the required format.

The availability of rules by private publishers or on web sites on the Internet does not relieve an agency of the publication requirement.



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## **1.2 Rule Page Format.**

See Appendix I for a sample page and a sample table of contents describing the correct format for a camera-ready rule prepared by the Administrative Rules office.

Aside from tables of contents, a published rule in the *New Hampshire Code of Administrative Rules* differs from the format for a proposed rule by containing:

- Source notes;
- Revision notes, if necessary;
- “New Hampshire Code of Administrative Rules” as a header;
- A footer with page numbers and rule title or subtitle prefixes;
- Standard margins on 4 sides; and
- A standard font and point size.

### **“FINE TUNING” THE SPACING, TABS, AND INDENTS**

Experience has shown that the preparation in Part 2 by the Administrative Rules office of a camera-ready rule for agency certification in conformance with the uniform format in Appendix I may require time-consuming adjustments to the agency’s spacing, tabs, and indents prior to any other editing. Please contact the Administrative Rules office before your agency supplies an electronic copy of the adopted rule so that the office may guide your agency through any necessary “fine tuning” in order to make the certification process move along as quickly as possible.

## **PART 2 EDITING BY THE ADMINISTRATIVE RULES OFFICE, AGENCY PROOFING, AND AGENCY PUBLISHING**

### **2.1 Preparation of Manuscript.**

After your agency’s adopted rules are filed with the Administrative Rules office, the office will prepare a draft manuscript of the rules based on the rules as filed, including the cross-reference appendix under RSA 541-A:3-a. The Administrative Rules office editing will be limited to editorial changes as described in 2.2 below, including the preparation of source notes, revision notes, and, if necessary, a table of contents, all formatted as in Appendix I. See RSA 541-A:15, I.

### **SPEEDING THINGS UP**

The preparation by the Administrative Rules office of the draft manuscript is done in chronological order of filing unless the agency makes an oral or written request to the Administrative Rules office for its rules to be taken out of order, and provided that this request can be accommodated with the prior requests of other agencies.

In any case, to help the Administrative Rules office prepare the draft manuscript of your agency’s rules quickly, you may supply to the office an electronic copy of the rules in Microsoft Word® by e-mail. See 1.2 in this chapter about “fine tuning” the format before submission of the electronic copy.

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## **2.2 Editorial Changes.**

The Administrative Rules office limits its editing to “editorial changes.” “Editorial changes” are those that do not affect the substance of the rule. See RSA 541-A:15, I. Rules include both numbered rules and agency forms. The meaning of a text, including the requirements on an agency form, shall not appear to change, selecting one available interpretation over another, because of an amendment made editorially. Alterations to the text of a numbered rule or to the requirements on a form to make them more clearly reflect the agency’s intent or to avoid conflict with statutes shall not be made as editorial changes since they are more than stylistic and affect the substance of the rule. Such changes require a rulemaking proceeding.

Editorial changes **to a numbered rule** include the following:

- Correcting grammar, punctuation, and spelling;
- Correcting capitalization to conform with this *Manual*;
- Drafting missing chapter, part, or section headings;
- Adjusting spacing, margins, and other format to conform with Appendix I;
- Citing authority at the beginning of a chapter or part, not as a numbered section within the body of the rules;
- Changing the order and numbering of rules to reflect a more logical arrangement;
- Changing “must,” “should,” or similar words to “shall” or “may” as appropriate provided that the substance of the rule is not affected;
- Drafting source notes and revision notes and a table of contents as described in Appendix I;
- Correcting any cross-references pointed out by the agency in the appendix under RSA 541-A:3-a, II;
- Updating statutory citations in the rules provided that there is no other change to the rules, the updated citation does not make the rule unclear, there is nothing provided by rule that is not also provided for in the statute, and the requirement or option specified in the rule is thereby outside of the agency’s control;
- Updating a URL cited for an Internet source in a rule, provided that the requirements in the rule or incorporated by reference in the rule do not thereby substantively change;
- Amending the date or edition of an agency form in an existing rule which incorporates the form by reference if the amendment is (1) due to an editorial change to the form (see below) or (2) is due to a substantive change to the form and the form has already been revised through the expedited revision process pursuant to RSA 541-A:19-a; and
- Any other changes related to matters of style and format that do not relate to substance as explained above.

**OPTIONS FOR AGENCIES IN NUMBERED RULES**

***PAGINATION AND FOOTERS***

At agency request, and as a temporary device when camera-ready replacement pages are being prepared, pages can be numbered sequentially with a number followed by a period and another digit beginning with "1." For example, page "25.1" can be used for a page inserted between pages 25 and 26. However, the pagination must be standardized when the entire set of agency rules, or the affected chapter if appropriate, are being republished.

Pages are usually numbered sequentially from one to the end of the entire set of an agency's rules, but they will be numbered sequentially by chapter instead if requested by the agency. The footer of an agency's rules, for example, would say "Abc 100" if paginated by chapter or "Abc 100-500" if paginated according to the entire set of rules.

***AGENCY ADDRESS***

Your agency may insert its agency mailing address, telephone, and fax numbers as an editorial change during the preparation of the camera-ready rule. The address and numbers will be centered above the chapter heading for the organizational rules on the first page of the agency's rules.

**EDITORIAL CHANGES TO AGENCY FORMS**

Pursuant to RSA 541-A:1, XV, as amended effective January 1, 2010, an agency's forms as defined in RSA 541-A:1, VII-a are rules. Pursuant to RSA 541-A:19-b, an agency may adopt a form by reference or by setting forth the requirements of the form in rules adopted pursuant to RSA 541-A. See 3.12 and 3.13 of Chapter 4.

Pursuant to RSA 541-A:19-c, I, "an agency may make editorial changes to a previously adopted form without following the procedure required in RSA 541-A:19-b, in this section, or in RSA 541-A:3." Changes to the form's number, title, date, or arrangement of items would be editorial in nature and do not require a new rulemaking proceeding, **provided that** the meaning of the requirements on the form also do not change, just like a numbered rule above. But your agency must inform the Administrative Rules office as described in 2.8 below. If editorial changes to the form after its adoption would also require editorial changes to the related, certified, numbered rule that sets forth the requirements of the form or incorporates the form by reference, then editorial changes may also be made to the numbered rule as described in 2.8 below.

If your agency would like to make substantive changes to a form, the expedited procedure to amend a form is available pursuant to RSA 541-A:19-c to amend the form itself. As noted above, the date or edition of the form in a rule incorporating the form by reference may thereafter be made as an editorial change. However, regular rulemaking will still be required to amend any related, numbered rule setting forth the requirements of the form. See 1.1 of Chapter 3 and 3.13 of Chapter 4.

### **2.3 Annotations by the Administrative Rules Office.**

The annotations inserted by the Administrative Rules office in the draft manuscript rule are described below. As with other editorial changes, your agency must check them. Inform the Administrative Rules office of any information in the annotations that your agency believes is inaccurate or misleading.

#### ***SOURCE NOTES***

Source notes are annotations inserted by the Administrative Rules office at the end of every section for a published rule. The source note tracks the filing history of the rule with that particular section number. A revision note or a special citation in the source note is used as necessary to indicate renumbering.

A source note begins with the word “Source” below the last line of the section. A 4-digit or 5-digit document number assigned by the Administrative Rules office to each filing affecting that section is given with the effective date, such as “Source. #9931, eff 5-26-11.” The filing information in the source note will be italicized for organizational rules and those rules of practice and procedure which do not expire except pursuant to RSA 541-A:17, II. See Appendix I for a more detailed description of source notes.

#### ***REVISION NOTES***

Revision notes are editorial notes in a narrative format, beginning with the words “REVISION NOTE,” inserted as annotations by the Administrative Rules office at the beginning of a chapter or part of rules. There are cross-references to the revision note in the relevant source notes.

Revision notes are used when the source note is inadequate to:

- Describe the circumstances of the rules’ filing history when rules have been renumbered and reformatted so much by a filing that the source note cannot track the filing history of the rules; or
- Provide other public information such as, but not limited to, explaining the absence of selected rules exempted from publication pursuant to RSA 541-A:15, III or exempted by statute from the requirements of RSA 541-A.

See Appendix I for a more detailed description of revision notes.

### **2.4 Proofreading by Agency.**

The Administrative Rules office will send the edited, draft manuscript to your agency in paper and indicate with a question mark “?” any issues discovered by the office for your agency’s editorial correction. These issues can include, for example, problems of missing text, missing section headings, and so forth. A cover sheet containing proofreading instructions will be enclosed.

#### **NOTE:**

Receipt by your agency of this first edited text starts your agency’s own editing clock. Review and return the edited copy promptly to the address of the Administrative Rules office so that the office can prepare a final camera-ready version. Your agency must certify **within 120 days** of receiving the first edited text for proofreading. This 120-day limit does not apply to interim or emergency rules. See RSA 541-A:15, I-a. The cover sheet of the Administrative Rules office accompanying the first edited text will note the date mailed and an estimated 120-day deadline date based on a reasonable delivery by messenger mail.



**NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL**  
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Your agency must proofread the edited copy against the text of the adopted rule as filed as follows:

- Identify any material left out or inappropriately amended;
- Check the editing by the Administrative Rules office to make certain that the editorial changes do not change the substance of the rule;
- Check the information in the source notes and revision notes for anything that appears inaccurate or misleading;
- Check for typing errors and spelling errors, but note that capitalization conforms with 4.3 in Chapter 4; and
- Use a red pen or pencil to:
  - Underline any errors and place a check mark in the left margin to indicate in which line the errors appear; and
  - Indicate editorial changes your agency would like to make in compliance with 2.2 above.

Direct your questions related to editing of a draft manuscript to the Administrative Rules office support staff.

## **2.5 Camera-Ready Copy and Agency Certification.**

After your agency returns the draft manuscript to the Administrative Rules office, the office will prepare a camera-ready copy of the rules incorporating the editorial changes and including any cross-reference appendix under RSA 541-A:3-a or appendix under RSA 541-A:12, VII.

The Administrative Rules office will then send the camera-ready copy to your agency with:

- A cover letter with instructions signed by the Director of Legislative Services;
- A sample certification letter for the agency to type, sign, and return on its own letterhead; and
- A request form to be filled out by the public to request updated supplement pages from the agency as described in 2.7 below.

**NOTE:**

Your agency must proofread your camera-ready copy carefully. This is your last convenient opportunity to make the editorial changes listed in 2.2. If you want them, mark them in the same way as for the first, edited manuscript and return the camera-ready copy. Also, if the camera-ready copy of the rules is not the same in substance as the rules originally filed with the Administrative Rules office, then return it with a written explanation of which changes affect the substance of the rule. The Administrative Rules office will make editorial changes, delete substantive changes, and send a new camera-ready copy for certification.

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If your agency concludes that the camera-ready copy is the same in substance as the rules originally filed, then send:

- **ONE COPY** of the rule to the Administrative Rules office, and
- **ONE COPY** of a certification letter on agency letterhead, signed (as described in 1.7 in Chapter 3) by the individual with rulemaking authority, or any member of the group of individuals with rulemaking authority, with the wording and format below. No meeting and vote of a quorum of the group with rulemaking authority is necessary to certify.

**CERTIFICATION LETTER—REQUIRED ELEMENTS AND FORMAT**

Office of Legislative Services  
Administrative Rules  
25 Capitol Street  
State House Annex, Room 219  
Concord, New Hampshire 03301-6312

Reference Doc. #

Rule Number

Dear Director:

Pursuant to RSA 541-A:15, I-a, I hereby certify that the enclosed rules are the same in substance as the rules originally filed with the Office of Legislative Services, Administrative Rules.

I further certify that the enclosed rules, as edited for format by the Administrative Rules office, are the official version of these rules which this agency is required to publish in an 8 1/2 x 11 inch loose-leaf format as part of the New Hampshire Code of Administrative Rules, under Chapter 5 of the *New Hampshire Drafting and Procedure Manual for Administrative Rules* and RSA 541-A:15, I.

Sincerely,

**EFFECT OF CERTIFICATION**

Signature by a person in authority as required above is important because certification has important legal and practical effects. Upon certification, the camera-ready rule becomes the official version, replacing the as-filed rule as the "official version." The certification letter will be kept in the files of the Administrative Rules office to explain any differences between the version of the rules as originally filed and the camera-ready version as published. The Administrative Rules office will send a copy of the certified rule to the State Library and the N. H. Law Library at the Supreme Court. See RSA 541-A:15, I-a. The Administrative Rules office will also place the rules on the office's web site at <http://www.gencourt.state.nh.us/rules/index.html>.

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**2.6 Publishing the Rule in the Required Format.**

Your agency must print in hard copy the camera-ready copy of the rule to comply with the publishing requirement in RSA 541-A:15, I.

**HOW MANY TO PRINT?**

RSA 541-A specifies no minimum number of rules to "publish," but your agency must print at least the number of copies in the required format to satisfy public requests relative to public documents and rules. See RSA 91-A:4, IV; RSA 541-A:11, VI; RSA 541-A:14, IV; and RSA 541-A: 15, I. You may charge the actual cost of providing a copy.

Check with your legal counsel in the Department of Justice about the applicability of other laws, including RSA 202-B:2, that requires deposit with the State Library of 25 copies of an agency's publications.

When publishing the entire set of your agency's rules, or when publishing and distributing an entire chapter or part, your agency must print as the initial page with the camera-ready copy the following statement supplied by the Administrative Rules office. Insert the relevant chapter or part number and the name, address, telephone and fax numbers, and the e-mail address of the agency contact person for copies. The statement serves as the standard request form to be filled out by any member of the public who wants updated, supplement pages to the rules.

**STANDARD PUBLIC REQUEST FORM FOR REPLACEMENT PAGES**

Chapter/Part \_\_\_\_\_

These rules are published in loose-leaf form in order that they may be amended as frequently as necessary. If you wish to receive updated supplement pages, you must fill out this form and return it as indicated below. In this way you will automatically be added to the agency's list of permanent subscribers for this set of rules. The agency may charge the actual cost of providing the copy pursuant to RSA 541-A:11, VI and RSA 91-A:4, IV and may require payment before the copy is sent.

If you wish to receive updated pages in electronic format as a substitute for the loose-leaf, hard copy format, please check off the appropriate space below and complete. Please note that not all rules may be available in the electronic format requested.

Name \_\_\_\_\_ Phone #: \_\_\_\_\_  
Street Address \_\_\_\_\_  I want rules by fax. Fax #: \_\_\_\_\_  
City/Town \_\_\_\_\_  I want rules by e-mail. E-mail: \_\_\_\_\_  
State \_\_\_\_\_ Zip \_\_\_\_\_  I want rules in another format (specify): \_\_\_\_\_

Send this sheet to:

Agency Name: \_\_\_\_\_ Phone #: \_\_\_\_\_ TTY/TDD Access: \_\_\_\_\_  
Address: \_\_\_\_\_ Fax #: \_\_\_\_\_ Relay NH 1-800-735-2964  
E-mail: \_\_\_\_\_ or dial 711 (in N. H.)

## **2.7 Publication and Distribution of Replacement Pages.**

Whenever your agency's published rules are amended, the Administrative Rules office follows the steps in 2.1 through 2.6 above. However, the Administrative Rules office will delete from the draft manuscript and camera-ready rule whatever text has expired since the last filing and keep only the source notes and section headings. The office will ask your agency if it wants to reserve or delete the section numbers. The office will send camera-ready copy of replacement pages so that the agency can publish them and distribute them to holders of the original compilation of rules.

The request form in 2.6 allows an agency to send supplements of its rules or replacement pages to those who request them. It also allows the public to specify that rules be sent electronically, if your agency has that capability. However, sending rules in electronic format or making them available through a web site is not a substitute for publishing the rules in the 8 1/2 x 11-inch hard copy format, which must be available upon request.

To be in compliance with the publication requirement for replacement pages, your agency must:

- Keep an active file of everyone who requests updating supplements;
- Send copies to persons on this list as described above; and
- Instruct them in where and how the pages shall be inserted.

## **2.8 Editorial Changes after Agency Certification.**

If your agency would like to make an editorial change as described in 2.2 to its certified, numbered rules, or to an agency form, then make an oral or written request to the Director in care of the Administrative Rules office outlining the change your agency would like to make and why it is editorial in the view of your agency.

### ***EDITORIAL CHANGES TO A NUMBERED RULE***

Editorial changes to a numbered rule after certification will be made by the Administrative Rules office only if the editorial changes:

- Correct an error the office made in the editing process;
- Remove a substantive change made to the as-filed rule in the editing process;
- Make simple corrections, such as, but not limited to, changes in spelling, rule title or subtitle prefixes, source or revision note information, statutory citations, form citations, citations to a URL, or agency addresses and phone numbers; or
- Amend the date or edition of a form incorporated by reference in the rule if the form has already been amended substantively through the expedited revision process of RSA 541-A:19-c or editorially.

A corrected camera-ready page or pages will be sent to your agency. Further proofreading and certification as described in 2.5 above are necessary only for changes within the rule's text, including statutory citations. Once the Administrative Rules office makes the editorial change, or receives the new certification if appropriate, the "official version" of the rule in the office's database and the certified rule on



## NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

### Chapter 5 Publication of Rules

its web site will contain the editorial change. The office will also send corrected pages to the State Library and the N. H. Law Library at the State Supreme Court.

Your agency must also update its copy of the “official version” once corrected pages or a new certification are sent and follow 2.6 and 2.7 in publishing and providing replacement pages to the public.

#### ***EDITORIAL CHANGES TO AN AGENCY FORM***

Editorial changes to a form as described in 2.2 above may be made by your agency after certification of the related, numbered rule in which the form was incorporated by reference or in which the form’s requirements are described.

But your agency must inform the Administrative Rules office of all proposed changes to forms that your agency believes are editorial. There are 2 reasons for this: (1) An editorial change may also be necessary to the related, certified rule, in which case the Administrative Rules office will send a corrected camera-ready page or pages will be sent to your agency as described above; and (2) If the Administrative Rules office determines that the proposed change to the form is a substantive change, then it will inform the Committee, which may wish to petition or recommend to the agency to make the substantive changes to the form pursuant to the expedited process described in Part 6 of Chapter 3, or undertake other rulemaking.

### **PART 3 ADMINISTRATIVE RULES OFFICE PROCEDURES IN EXEMPTIONS TO PUBLICATION**

#### **3.1 Waiver of Publication Requirement.**

Agencies may make a written request to the Director for a waiver under RSA 541-A:15, III of the publication requirements after the rule is adopted and filed but before the camera-ready copy is prepared.

Requests shall include the following:

- Name and address of agency;
- The agency’s explanation why, pursuant to RSA 541-A:15, III, it believes the publication “would be unduly cumbersome, expensive, or otherwise inexpedient”;
- Statement that the rule in “printed or written form” shall be made available by the agency upon request of any person;
- A copy of the suggested revision note to be printed in place of the rule stating the general subject matter of the omitted rule and how a copy of the rule may be obtained; and
- Signature of the individual with rulemaking authority or the chairperson of the agency if the rulemaking agency is a board or commission.

The Director shall grant a waiver if the Director determines that the requirements in RSA 541-A:15, III have been met.

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**Chapter 5 Publication of Rules**

**NOTE:**

The waiver of the publication requirement applies only to publication under RSA 541-A:15, I. A notice stating the general subject matter of the omitted rule and how a copy may be obtained must be included in a revision note in the agency's certified rules through the process in Part 2.

An agency must still:

- Comply with the rule numbering and drafting requirements in Chapter 4 and follow the steps in the rulemaking process pursuant to RSA 541-A:3 and Chapter 3 to adopt and file the rule; and
- Comply with all other statutory requirements relative to making the rules available to the public, including but not limited to RSA 91-A:4, IV, RSA 541-A:11, VI, and RSA 541-A:14, IV.

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APPENDIX I

SAMPLES

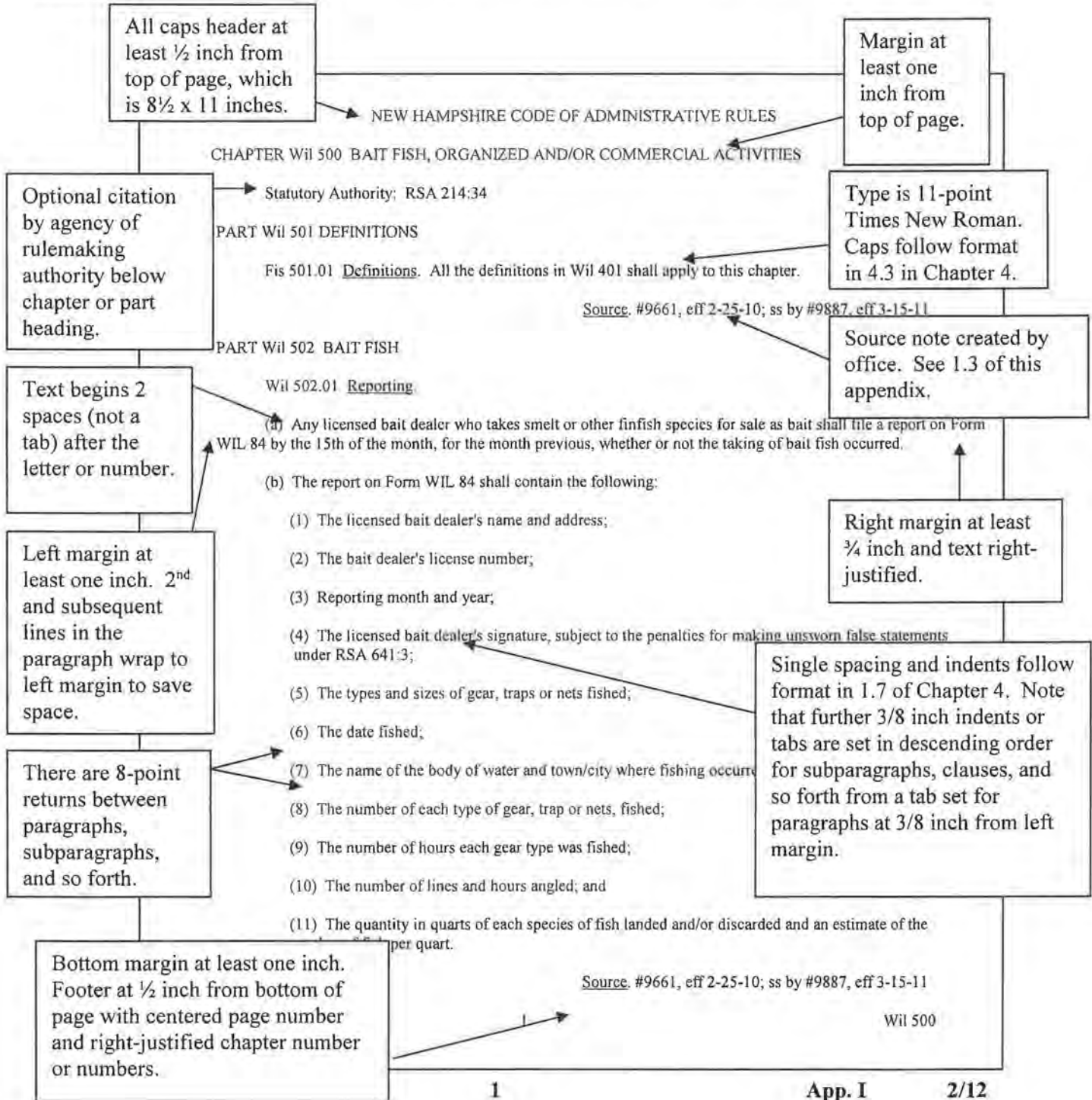
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FORMAT AND ANNOTATIONS BY THE ADMINISTRATIVE RULES OFFICE OF A CAMERA-READY RULE FOR PUBLICATION

1.1 Sample Rule Page Format.

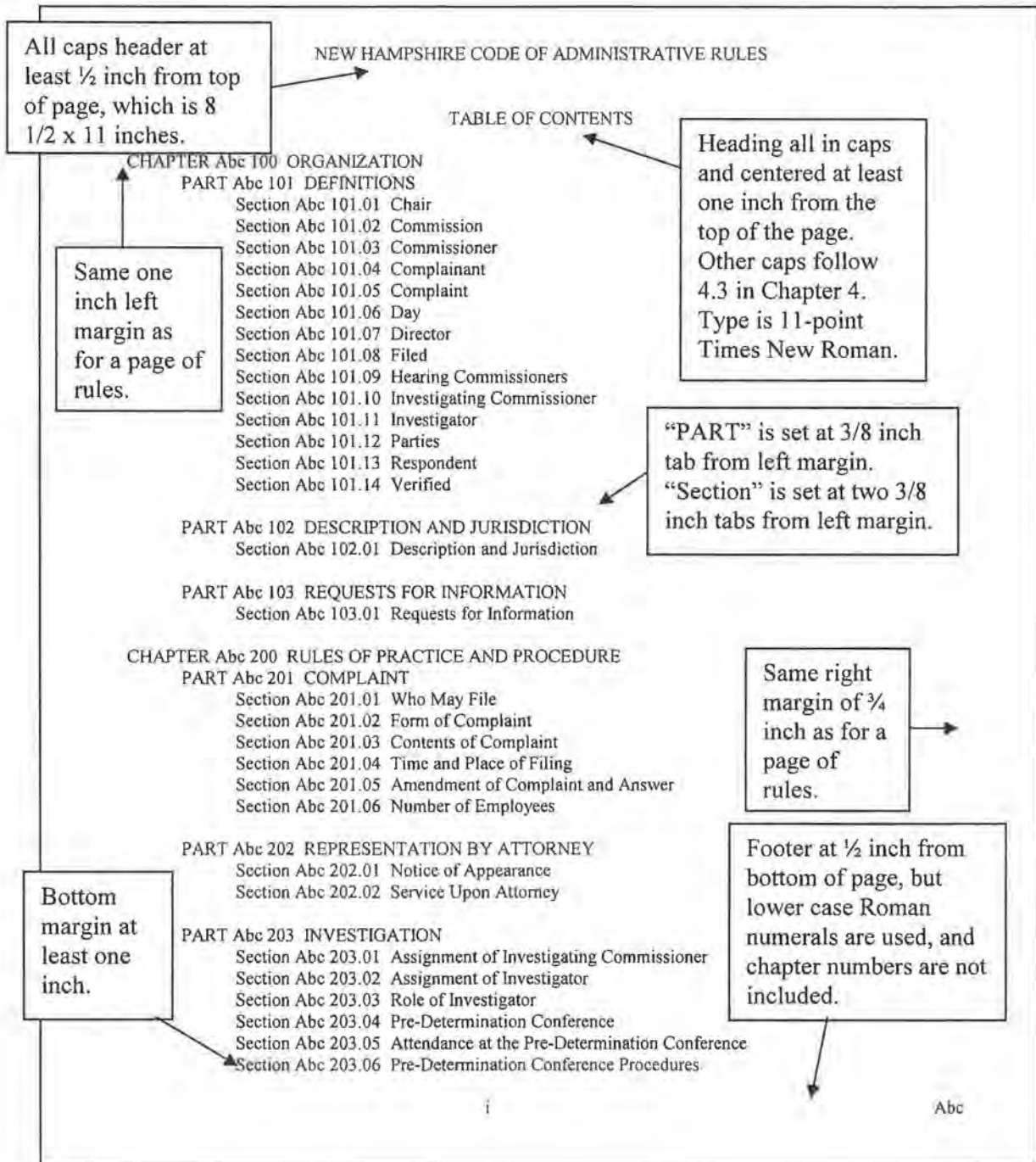
This is the format the Administrative Rules office follows in creating a camera-ready rule under Chapter 5 of this Manual:





1.2 Sample Table of Contents.

Camera-ready rules have a table of contents. A sample page below shows the Administrative Rules office format.



### 1.3 Source Notes.

As described in 2.3 of Chapter 5 of the *Manual*, source notes are annotations inserted by the Administrative Rules office at the end of every section for a published rule. As in the example below, the source note tracks the filing history of the rule with that particular section number, not necessarily that particular subject. A revision note or a special citation in the source note is used as necessary to indicate renumbering. See 1.4 and 1.5 below.

A source note begins with the word “Source” capitalized and underlined at 3 inches from the left margin of the rule page. A 4-digit or 5-digit document number assigned by the Administrative Rules office to the filing affecting that section is given with the effective date.

#### SAMPLE RULE SECTION WITH SOURCE NOTE

Wil 603.06 Smelt.

(a) No person shall take salt water smelt, by use of net or weir, between March 1 and December 15, in the waters under the jurisdiction of the state which lie north of the Memorial Bridge in Portsmouth.

(b) The daily limit for smelt taken by any method from coastal and estuarine waters shall be 10 quarts liquid measure of whole, head and tail intact, smelt.

Source. #1041, eff 10-15-77; ss by #2263, eff 1-7-83; ss by #2741, eff 6-13-84; amd by #4460, eff 7-29-88; ss by #4865, eff 5-17-90; amd by #5412, eff 6-18-92; ss by #6291, eff 4-20-96; ss by #8047, eff 3-27-04; ss by #9744, eff 7-1-10

The following symbols and abbreviations are the most common in source notes. See the sample source note above:

- “# – The pound sign, with the number following it, identifies the document number assigned by the Administrative Rules office to the filing affecting the text in this section. For rules which will not expire except pursuant to RSA 541-A:17, II, the document number is in italic type. This includes organizational rules (Chapter 100 of an agency's rules) and rules of practice and procedure (Chapter 200 of an agency's rules) identified in 2.2 of Chapter 2 in this *Manual*.
- “**eff**” – The document noted was effective on the date specified.
- “**ss** – The text of the entire section was superseded by the document noted which readopted or readopted with amendments the text of the entire section.
- “**amd**” – The text of the section was amended by the document noted, or a provision within the section was readopted, but the entire section was not readopted as part of the document. See “amendment” defined in 5.2 in Chapter 4. Therefore, the existing section is contained in more than one document and different provisions in the section will expire at different times.

APPENDIX I-A (Continued)

- “**rpld**” – The text of the section was repealed by the document noted. See definition of “repeal” in 5.2 in Chapter 4.

**SAMPLE RULE SECTION WITH SOURCE NOTE**

Abc 1503.02 Castor Lake.

- (a) No person shall operate a motorboat at a speed exceeding 10 miles per hour on Castor Lake in Derry.
- (b) All water skiing on Castor Lake shall be in a counter-clockwise direction at all times.

Source. #1901, eff 12-28-81; ss by #2596, eff 1-20-84; ss by #4725, eff 12-21-89; ss by #6141, INTERIM, eff 12-20-95, EXPIRED 4-18-96

New. #6300, eff 7-26-96; amd by #6770, EMERGENCY, eff 6-18-98 EXPIRES: 10-16-98; amd by #6790, REPEAL OF EMERGENCY RULE, eff 7-2-98; ss by #8107, INTERIM, eff 6-22-04; ss by #8172, eff 9-21-04; ss by #9731, eff 6-24-10

The following terms are less common in source notes but are also used to identify the circumstances in the filing history. See the example above:

- “**INTERIM**” – The document noted was an interim rule. See RSA 541-A:19.
- “**EXPIRED**” – The text of the entire section had expired on the date specified.
- “**New**” – Double-spaced below the note with “**Source**”, “**New**” indicates that the prior text in this section has expired, been repealed, or been moved to another section as noted, and the documents after the word “**New**” apply to what is effectively a new rule in this section.
- “**EMERGENCY**” – The document noted was an emergency rule. See RSA 541-A:18.
- “**REPEAL OF EMERGENCY RULE**” – The document noted was simply a statement of repeal of an emergency rule. See RSA 541-A:18, VI.
- “**EXPIRES**” – The text of the entire section in the interim rule or emergency rule noted will expire on the date specified unless amended, superseded, or repealed before that date. The word “**EXPIRES**” is only used when the editing process is completed, and the rule certified by the agency, before the interim or emergency rule expires.

**NOTE:**

When an existing text is superseded or amended by an emergency rule, the existing text will come back into effect, with the same effective and expiration dates as before, upon the expiration or repeal of the emergency rule. See RSA 541-A:18, V. The relevant and effective documents in the source note prior to the filing of the emergency rule would again be the documents describing the existing rule.

### 1.4 Special Source Note Citations to Track a Renumbered Rule.

Special terms will be used in a source note as necessary to help the reader trace the filing history of a rule which has been renumbered. For example:

**“formerly”** – When followed by a rule number, this indicates that the text used to have the number cited but has been renumbered by the document noted. The source note information for the prior document(s) applies to the rule text when it had the prior number. In the example above, the text of rule *Abc 402.22* as filed in Document #9030 had been superseded by Document #9544, which also renumbered the rule *Abc 402.22* as *Abc 402.21*. “Formerly” is often utilized due to additions or deletions of other rules, requiring a renumbering of existing rules.

**Source Note for *Abc 402.21***

Source. #9030, eff 11-17-07; ss by #9544, eff 9-15-09 (formerly *Abc 402.22*)

**“from”** – When followed by a rule number, this also indicates that the text used to have the number cited but has been renumbered by the document noted. Unlike use of the word “formerly”, however, “from” is used when any source note information stays with the rule number, not necessarily the rule text. In the example above, the reader would go to the source note for *Abc 402.04* (or the agency’s filing history) to find the applicable document numbers and effective dates when the text for rule *Abc 402.05* had been numbered *Abc 402.04*.

**Source Note for *Abc 402.05***

Source. #9030, eff 11-17-07 (from *Abc 402.04*)

**“renumbered by”** – When followed by a document number, this indicates that the rule text used to have the rule number cited, and the rule has been renumbered, but not superseded, by the document noted, as in the example to the right. Therefore, the effective date of the rule does not change due to the new document.

**Source Note for *Abc 403.10***

Source. #9030, eff 11-17-07; renumbered by #9887 (formerly *Abc 403.09*)

### 1.5 Revision Notes.

As described in 2.3 in Chapter 5 of this *Manual*, revision notes are editorial notes in a narrative format inserted as annotations by the Administrative Rules office at the beginning of a chapter or part with cross-references in the relevant source notes. Revision notes are used when the source note is inadequate to:

- Describe the circumstances of the rules’ filing history when rules have been renumbered and reformatted so much that the source note cannot track the filing history of the rules; or
- Provide other public information such as, but not limited to, explaining the absence of selected rules exempted from publication pursuant to RSA 541-A:15, III or exempted by statute from the requirements of RSA 541-A.

If there is a revision note, the source notes in the relevant chapter or part state in parentheses “See Revision Note at chapter heading for” or “See Revision Note at part heading for” along with the chapter or part number. This statement is followed by normal source note format for existing and subsequent filings. If a revision note is used to describe the prior filing history, the revision note essentially “clears the deck” in the source note of information on prior filings to allow normal format to resume.



**SAMPLE PART HEADING WITH REVISION NOTE AND RELATED SOURCE NOTE**

PART Wil 807 AQUACULTURE—INLAND OR MARINE

REVISION NOTE:

Document #9887, effective 3-15-11, made extensive changes to the wording, format, and numbering of Wil 807. Document #9887 replaces all prior filings for the sections in Wil 807. The prior filings for former Wil 807 include the following documents:

#9332, INTERIM, effective 11-27-08, EXPIRED 5-26-09  
#9493, effective 6-25-09

---

Source. (See Revision Note at part heading for Abc 807) #9887, 3-15-11

A revision note will contain as appropriate:

- An identification of any filing by document number and effective date, or any other circumstances, that prompted the revision note;
- A concise explanation of how the rules in the relevant chapter or part have been changed; and
- A list by document number and effective date of all prior filings and expired rules in the relevant chapter or part.

**NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL**

**APPENDIX II**

**REQUIRED FORMS**

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Appendix II-N	Notice for Expedited Revisions to Agency Forms
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NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-A

REQUEST FOR ADVANCE PUBLIC COMMENT ON SUBJECT  
MATTER OF POSSIBLE RULEMAKING

		Rule Number	_____
			(If applicable)
1. Agency Name & Address:	2. RSA Authority:	_____	_____
	3. Federal Authority:	_____	_____
	4. Type of Action:		
	Adoption	_____	_____
	Amendment	_____	_____
	Repeal	_____	_____
	Readoption	_____	_____
	Readoption w/amendment	_____	_____
5. Short Title: _____			

IN ACCORDANCE WITH RSA 541-A:11, VIII THIS AGENCY IS SOLICITING PUBLIC COMMENT ON A SUBJECT MATTER OF POSSIBLE RULEMAKING UNDER ACTIVE CONSIDERATION PRIOR TO FORMALLY PROPOSING RULES IN THE RULEMAKING PROCESS. WHERE, WHEN, AND HOW PERSONS MAY PROVIDE COMMENT ARE INDICATED BELOW.

6. (a) Summary of the subject matter, or summary of the rule if drafted, and the effect on those regulated:

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

**NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL**

APPENDIX II-A (Continued)

**REQUEST FOR ADVANCE PUBLIC COMMENT ON SUBJECT  
MATTER OF POSSIBLE RULEMAKING - Page 2**

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

Name:

Title:

Address:

Phone #:

Fax#:

E-mail:

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

8. Deadline for submission of comment in writing or, if practicable for the agency, in the electronic format specified:

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time:

Place:



NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-B

OFFICE OF LEGISLATIVE BUDGET ASSISTANT  
REQUEST FOR FISCAL IMPACT STATEMENT (FIS)

FIS Number \_\_\_\_\_

Rule Number \_\_\_\_\_

1. Agency Name & Address:	2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____ Interim rule _____ 5. Have the rules expired? Yes <input type="checkbox"/> No <input type="checkbox"/> Date Expired: _____
---------------------------	---

6. Short Title: \_\_\_\_\_

7. Contact Person:

Name:

Title:

Address:

Phone #:

Fax #:

E-mail:

Remember:

- (a) A copy of the proposed rule or an annotated copy of the amended rule must accompany this form. The annotated copy shall use [brackets] to indicate deleted material, and underlining for added material, or any other annotation style allowed in Section 5.4 in Chapter 4 of the Drafting and Procedure Manual for Administrative Rules.
- (b) Please provide the methodology and any calculations used in determining the fiscal impact. Where appropriate or necessary, please attach a worksheet detailing the methodology and associated calculations.
- (c) This form may be replicated to expedite preparation.
- (d) Please allow 10 working days from day of receipt for the Office of Legislative Budget Assistant to complete the fiscal impact statement. Additional information about this form is in Section 2.3 in Chapter 3 of the Drafting and Procedure Manual for Administrative Rules.

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-B (Continued)

REQUEST FOR FISCAL IMPACT STATEMENT (FIS) - Page 2

- (e) Please provide the following information and attach additional sheets if necessary:

**NOTE: Pursuant to RSA 541-A:5, IV the fiscal impact of the proposed rule which was previously effective but has expired, or of a proposed rule which adopts a current agency policy, procedure or practice as a rule for the first time, shall not be assessed as an existing rule but as a proposed rule which is not yet effective.**

- (1) Summarize the intended action and the proposed rule. The intended action is defined by RSA 541-A:5, VII as the proposed adoption, amendment, readoption, readoption with amendment, or repeal of a rule pursuant to RSA 541-A.
- (2) Is the cost associated with this intended action mandated by the rule or by state statute? If the cost is mandated by statute, then the rule itself may not have a cost or benefit associated with it. Please state either the statute or chapter law that is instigating this rule.
- (3) Compare the cost of the proposed rule with the cost of the existing rule, if there is an existing rule. Please provide the methodology and any calculations used in making your determination. If there is no cost, please explain why.
- (4) To the extent the proposed rule had expired, please indicate the cost of the expired rule as you do for a new rule, and if applicable, the difference in cost of any proposed change from the expired rule. Please provide the methodology and any calculations used in making your determination. If there is no cost, please explain why.
- (5) Describe the costs and benefits to the state general fund which would result from this intended action.
- (6) Explain and cite the federal mandate for the intended action, if there is such a mandate. How would the mandate affect state funds?

**NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL**

APPENDIX II-B (Continued)

**REQUEST FOR FISCAL IMPACT STATEMENT (FIS) - Page 3**

- (7) Describe the cost and benefits to any state special fund which would result.
  
- (8) Describe the costs and benefits to the political subdivisions of the state.
  
- (9) Describe the costs and benefits to the citizens of the state.
  
- (10) Describe the costs and benefits to any independently owned business, including a description of the specific reporting and recordkeeping requirements upon those employing fewer than 10 employees.

APPENDIX II-C

**RULEMAKING NOTICE FORM**

Notice Number \_\_\_\_\_

Rule Number \_\_\_\_\_

1. Agency Name & Address:	2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Repeal _____ Readoption _____ Readoption w/amendment _____
---------------------------	--

5. Short Title:

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

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

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



APPENDIX II-C (Continued)

**RULEMAKING NOTICE FORM - Page 2**

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone #: \_\_\_\_\_  
Fax#: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
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:

Fax  E-mail  Other format (specify): \_\_\_\_\_

9. Public hearing scheduled for:

Date and Time: \_\_\_\_\_

Place: \_\_\_\_\_

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

FIS # \_\_\_\_\_, dated \_\_\_\_\_

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

**INSTRUCTIONS FOR THE RULEMAKING NOTICE FORM**

**NOTE:**

Completion of this notice is required pursuant to RSA 541-A:6, I for publication by the Administrative Rules office in the New Hampshire Rulemaking Register pursuant to RSA 541-A:9, I(a). Other notice may also be required to be sent by the agency to other persons pursuant to RSA 541-A:6, III and RSA 541-A:39. See Section 2.6 of Chapter 3 of the Drafting and Procedure Manual for Administrative Rules (Manual) about these other notices.

The first unnumbered item to the left of the form is labeled "Notice Number" and shall be left blank. The number of each notice will be assigned by the Administrative Rules office.

The second unnumbered item to the right of the form is the rule number of the proposed rule(s) in the codification scheme described in Part 1 of Chapter 4 in the Manual. The number shall be correctly identified, such as Agr 501.03(e) and not Agr 501.03 if only paragraph (e) is being filed. A summary may be used, such as "Agr 502, various sections," if there is not enough space to list all the rules.

Item 1 is the name and address of the agency with rulemaking authority. This is the individual or group named in the RSA passage delegating authority, which is cited in Item 2. However, where an individual rulemaker is involved, such as a Commissioner, Division Director, or Bureau Chief, the name of the office may be used, such as "Department of," "Division of," or "Bureau of."

Item 2 shall be a citation to the specific statutory passage indicating RSA chapter, section, and paragraph delegating the agency rulemaking authority, for example: RSA 309-A:2, III, not RSA 309-A.

Item 3 shall cite the Federal authority, if applicable.

Item 4 shall be checked to indicate the type(s) of rulemaking action proposed. Four types are listed, as described below. **NOTE: The text of each rule filed must encompass at least a full rules section pursuant to RSA 541-A:10, I, as amended by 2020, 37:72, effective 9/27/20:**

(a) "Adoption" means that a new section, part, or chapter is being inserted or an expired one is being reinstated. The term only applies to the insertion of whole sections, parts, and chapters, but does not apply to insertions of text less than an entire section.

(b) "Repeal" means to eliminate an entire section or sections of an existing rule with no rule in its place or with a rule on a different subject area instead.

(c) "Readoption" means that an existing rule is being adopted again without change.

(d) "Readoption with amendment" means that a section or a larger unit of an existing rule is being changed, and the entire text of that section, or larger unit, of the existing rule is being included for purposes of readoption.

Item 5 is a "short title", and shall be a brief description of the subject matter in key words and not merely repeat the rule number affected. The rule's "short title" is a quick way of identifying what the rule is about.

**INSTRUCTIONS - Page 2**

Item 6 is the summary and analysis required by RSA 541-A:6, I(f) and (g) and the identification required by RSA 541-A:3-a, which shall include at least the following:

- (a) A summary of what the rule says and of any amendments, clarifying any ambiguity due to multiple rulemaking actions in one proposal;
- (b) A brief description of groups affected; and
- (c) The specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

The agency shall number the paragraphs in its analysis of Items 6(a), 6(b), and 6(c) to correspond to the above.

It shall also be clear from the context in the summary and analysis in Item 6(a) what the consequences would be if the rule were not adopted.

See Section 2.4 of Chapter 3 in the Manual. Item 6(c) is not the rulemaking authority under Item 2 or Item 3. Item 6(c) contains the specific section(s) or provisions of the RSA or federal statute or regulation, that the rule is meant to implement. For example, authority to adopt rules pursuant to RSA 541-A on license procedures could be in one RSA section, but a provision requiring that a person obtain a license (implemented by rules on license procedures) might be in a different section. The citation under Item 2 would be the same as in Item 6(c) only if the RSA rulemaking authority and the specific RSA provision being implemented are in the same RSA section or provision.

A list of cross-references will be necessary in Item 6(c) if different portions of the rule relate to different sections or provisions of state or federal statutes or regulations. Pursuant to RSA 541-A:3-a, III:

*General references to the name or title of a state or federal statute or regulation shall not suffice for the purposes of this section. To the extent that specific provisions of the proposed rule are designed to implement different sections or provisions of state or federal statutes or regulations, the agency shall reference the state or federal statutes or regulation with the provision of the proposed rule that is intended to implement that statute or regulation.*

Item 6(c) may be submitted as an attached cross-reference table on a separate sheet if necessary. The same information must be submitted as an appendix to the rules. See Section 2.5 of Chapter 3 in the Manual.

Item 7 shall identify the name, title, address, telephone and fax numbers, and e-mail address, of a person in the agency who can supply copies of the proposed rule and answer questions about it including requests to accommodate persons with disabilities in the rulemaking process.

Item 8 shall be the deadline for submission of materials in writing or, if practicable for the agency, in electronic format (such as fax, e-mail, or on diskette). Pursuant to RSA 541-A:11, I, this deadline shall be at least 5 business days after the public hearing(s), but if the rule is proposed by a group, such as a board or commission, that agency may specify a shorter period in the notice provided that the deadline is not earlier than the scheduled conclusion of the public hearing(s). Specify the electronic format, if any, that is practicable for your agency.

APPENDIX II-C (Continued)

**INSTRUCTIONS - Page 3**

Item 9 shall be the date, time, and place of the agency's public hearing(s) required by RSA 541-A:11, I. Pursuant to RSA 541-A:6, I, the agency shall give at least 20 days' notice of the hearing. The notice period shall begin on the day after the date of publication in the Rulemaking Register. Therefore the date of the first hearing shall be no earlier than 3 weeks after the online publication date of the Rulemaking Register containing the notice, which is Thursday, or earlier if Thursday is a holiday.

Item 10 shall consist of the fiscal impact statement prepared by the Legislative Budget Assistant. When it receives the fiscal impact statement, the agency shall either retype this as part of the notice form and shall not amend it, or submit the original document as received from the Legislative Budget Assistant, provided the agency keeps a photocopy for its own records.

Item 11 shall contain a statement which the agency shall prepare. Pursuant to RSA 541-A:6, I(j), it is the statement that the proposed rule does not violate Part I, Article 28-a of the N.H. Constitution. It shall contain the agency's concise rationale, in compliance with Section 2.4 of Chapter 3 in the Manual, why it does not.



NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-D1

CONTINUATION OF RULEMAKING HEARING

Notice Number \_\_\_\_\_

Rule Number \_\_\_\_\_

1. Agency Name & Address: _____	2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____
---------------------------------	---

5. Short Title: \_\_\_\_\_

6. In accordance with RSA 541-A:11, III, a rulemaking hearing has been continued past its scheduled time and date for this proposed rule for which notice appeared in the Rulemaking Register on \_\_\_\_\_ under Notice Number \_\_\_\_\_. The public hearing will continue at the following time and place:

Date and Time: \_\_\_\_\_

Place: \_\_\_\_\_

7. New deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified:

Fax

E-mail

Other format (specify): \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Fax#: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-D2

EXTENSION OF PUBLIC COMMENT DEADLINE

Notice Number \_\_\_\_\_

Rule Number \_\_\_\_\_

1. Agency Name & Address:	2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____
---------------------------	---

5. Short Title:

6. In accordance with RSA 541-A:11, III, the public comment deadline for this proposed rule has been extended past its scheduled date for which notice appeared in the Rulemaking Register on \_\_\_\_\_ under Notice Number \_\_\_\_\_.

7. New deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified:

Fax                       E-mail                       Other format (specify):

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

Name:

Title:

Address:

Phone #:

Fax#:

E-mail:

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

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-D3

POSTPONEMENT AND RESCHEDULING OF A RULEMAKING HEARING

Notice Number \_\_\_\_\_

Rule Number \_\_\_\_\_

1. Agency Name & Address:	2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____
---------------------------	---

5. Short Title:

6. In accordance with RSA 541-A:11, IV, a rulemaking hearing has been postponed for this proposed rule for which notice appeared in the Rulemaking Register on \_\_\_\_\_ under Notice Number \_\_\_\_\_. The public hearing has therefore been rescheduled for:

Date and Time:

Place:

7. New deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified:

Fax

E-mail

Other format (specify):

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

Name:

Title:

Address:

Phone #:

Fax#:

E-mail:

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

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-E

DRAFT FINAL PROPOSED RULE:  
HEARING AND PUBLIC COMMENT PERIOD

Notice Number \_\_\_\_\_

Rule Number \_\_\_\_\_

1. Agency Name & Address:	2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____
---------------------------	---

5. Short Title:

In accordance with RSA 541-A:11, I(c), public comment is being solicited on a draft final proposed rule in a rulemaking proceeding for which notice first appeared in the Rulemaking Register on \_\_\_\_\_ under Notice Number \_\_\_\_\_.

6. A public hearing has therefore been scheduled for:

Date and Time:

Place:

7. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified:

Fax

E-mail

Other format (specify):

8. Contact person for copies of the draft final proposed rule and questions including requests to accommodate persons with disabilities:

Name:

Title:

Address:

Phone #:

Fax#:

E-mail:

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

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-F

OFFICE OF LEGISLATIVE BUDGET ASSISTANT  
REQUEST FOR AMENDED FISCAL IMPACT STATEMENT

FIS Number \_\_\_\_\_

Rule Number \_\_\_\_\_

1. Agency Name & Address:	2. Date First Notice Published in <u>Rulemaking Register</u> : _____
---------------------------	---

3. Short Title: \_\_\_\_\_

4. Contact Person:

Name:

Title:

Address:

Phone #:

Fax #:

Please submit this form only after your public comment period has concluded and only if, as a result of the public hearing and comment process, a change has been made to the proposed rule which affects the original fiscal impact statement. Please include a copy of the final, annotated proposed rule to the Office of Legislative Budget Assistant. Allow 5 working days from day of receipt for the amended fiscal impact statement to be returned. For additional information, see Section 2.11 of Chapter 3 in the Drafting and Procedure Manual for Administrative Rules.

As a result of notice and hearing, the following changes (described below or in an attachment) have been made to this proposed rule which affect the original fiscal impact statement, and the agency hereby requests an amended fiscal impact statement:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



APPENDIX II-G

**COVER SHEET FOR FINAL PROPOSAL**

Notice Number \_\_\_\_\_

Rule Number \_\_\_\_\_

1. Agency Name & Address:

2. RSA Authority: \_\_\_\_\_

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

4. Type of Action:

Adopt

Amendment (only if Initial Proposal was filed before 9/27/20.)

Repeal

Readoption

Readoption w/amendment

5. Short Title:

6. Contact person for copies and questions:

Name:

Title:

Address:

Phone #:

7. The rulemaking notice appeared in the Rulemaking Register on

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING:  
(optional to number correspondingly)**

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

9. Yes  N/A  Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

10. Yes  N/A  The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

11. Yes  N/A  The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

## INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

The first and second unnumbered items, and Items 1 through 5, shall be completed with the same information as appeared in the “Rulemaking Notice Form” (Appendix II-C) as published for the Initial Proposal in the Rulemaking Register. Item 6 shall identify the name, title, address, and telephone number of the person in the agency who can answer questions about the proposed rule and supply copies.

In Item 7 the agency shall list the full date, by month, day, and year, on which the “Rulemaking Notice Form” was published in the Rulemaking Register.

Items 8 through 11 all relate to required attachments to the “Final Proposal Cover Sheet”. PROVIDE ONE COPY OF EVERYTHING SUBMITTED. IT IS OPTIONAL TO NUMBER THEM ACCORDINGLY. Item 8 is required in every filing, and therefore is listed without a check-box. Items 9 through 11 will be required only under the circumstances set forth in the description of the items listed below. The agency shall determine whether such attachment is required and then check either the “Yes” box to indicate that the document is required and has been attached or the “N/A” box if the document is not required and therefore not applicable:

- Item 8. The “Final Proposal—Fixed Text,” required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.
- Item 9. An “Incorporation by Reference Statement” (Appendix II-H) if the agency has incorporated a third-party document or Internet content by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.
- Item 10. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.
- Item 11. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

**\*\*PLEASE LIST THE FOLLOWING:**

- 1. Name of Agency.
- 2. Person who has reviewed the material to be incorporated into the agency's rules:

Name:	Title:
Address:	Phone #:

- 3. Specific rule number where the material is incorporated:

**\*\*PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the number on this sheet (a separate sheet is not required for every item):

- 4. The complete title of the material which is to be incorporated including the date on which the material became effective (or a document identification number) or, if the material is undated Internet content, the date the material was accessed and printed, and the title of the entity that created or promulgated the material.
- 5. How the agency modified the text of the material incorporated, clearly identifying where amendments have been made to the text.
- 6. How the material incorporated can be obtained by the public (include cost and the address of the party which published the material, and the Internet source URL if it appears in the rule, for example if the material is Internet content only available online).
- 7. Why the agency did not choose to reproduce the incorporated material in full in its rules. The discussion shall include more than the obvious reason that it is less expensive to incorporate by reference.

**\*\*PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,\* certify that the text of the material which the agency is incorporating by reference in these rules has been reviewed by this agency. To the best of my knowledge and belief, this agency has complied with the requirements of RSA 541-A:12, IV and Section 3.12 of Chapter 4 of the Drafting and Procedure Manual for Administrative Rules. I further certify that the agency has the capability and the intent to enforce the material incorporated into the rules, as identified above.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-I

COVER SHEET FOR PROPOSED INTERIM RULE

Proposed Interim Rule Number \_\_\_\_\_ Rule Number \_\_\_\_\_

1. Agency Name & Address: _____	2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____
---------------------------------	---

5. Short Title: \_\_\_\_\_

6. Contact person for copies and questions:

Name: _____	Title: _____
Address: _____	Phone #: _____

**\*\*PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

7. An explanation of why the interim rule is necessary, including documentary evidence to prove that the agency is acting in accordance with RSA 541-A:19, I, and is not adopting an interim rule solely to avoid the time periods imposed in RSA 541-A.

8. A description of the people, enterprises, and government agencies affected by the rule.

9. The fiscal impact statement prepared by the Legislative Budget Assistant, if required by RSA 541-A:19, II. See Section 3.2 of Chapter 3 of the Drafting and Procedure Manual for Administrative Rules.

**\*\*PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET** and all attachments along with 2 copies of the interim rule to the Office of Legislative Services, Administrative Rules. The rule must include an appendix containing the same information about statutes or federal regulations as in Item 10 of Appendix II-J.

**\*\*PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,\* hereby certify that the attached is an accurate statement explaining why an interim rule is necessary.

Date: _____	Signature: _____
	Name: _____
	Title: _____

\*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-J

INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number \_\_\_\_\_ Rule Number \_\_\_\_\_

<p>1. Agency Name &amp; Address:</p>          <p>5. Filing Date:</p>	<p>2. RSA Authority: _____</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p style="padding-left: 20px;">Adoption _____</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>
--	--

6. Short Title: \_\_\_\_\_

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

Name: _____	Title: _____
Address: _____	Phone #: _____
	Fax#: _____
	E-mail: _____
	TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

- 8. Summary explaining the effect of the rule:
- 9. Listing of people, enterprises, and government agencies affected by the rule:
- 10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.
- 11. Summary of the effect upon the state if the rule were not adopted:
- 12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:
- 13. The fiscal impact statement prepared by the Legislative Budget Assistant, if applicable.

FIS # \_\_\_\_\_, dated \_\_\_\_\_



NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-K

COVER SHEET FOR EMERGENCY RULE

Document Number \_\_\_\_\_ Rule Number \_\_\_\_\_

1. Agency Name & Address: _____          5. Date of Filing: _____	2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Amendment _____ Repeal _____
---	---

6. Short Title: \_\_\_\_\_

7. Contact person for copies and questions:

Name: _____	Title: _____
Address: _____	Phone #: _____

**\*\*PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

9. A summary of the effect if the rule were not adopted.

10. A description of those affected.

**\*PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET** and all attachments along with 2 copies of the emergency rule to the Office of Legislative Services, Administrative Rules.

**\*\*PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,\* hereby certify that the attached is an accurate statement explaining why an emergency rule is necessary.

Date: _____	Signature: _____
	Name: _____
	Title: _____

\*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-L

STATEMENT FOR REPEAL OF EMERGENCY RULE

Document Number \_\_\_\_\_ Rule Number \_\_\_\_\_

1. Agency Name & Address:          4. Effective Date of the Repeal: _____	2. RSA Authority: _____ 3. Federal Authority: _____
---	--

5. Short Title: \_\_\_\_\_

6. Contact person to answer questions about the repeal:

Name:	Title:
Address:	Phone #:

7. An explanation of why the emergency rule is being repealed.

**\*\*PLEASE SUBMIT 2 COPIES OF THIS STATEMENT** to the Office of Legislative Services, Administrative Rules.

**\*\*PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,\* hereby certify that this is an accurate statement explaining why an emergency rule is being repealed.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

**NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL**

APPENDIX II-M

**EXPEDITED REPEAL NOTICE FORM**

Proposed Expedited Repeal Number \_\_\_\_\_ Rule Number \_\_\_\_\_

1. Agency Name & Address:	2. RSA Authority: _____ 3. Federal Authority: _____
---------------------------	--

4. Short Title: \_\_\_\_\_

5. Explanation of the reason for the proposed repeal: \_\_\_\_\_

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

Name:	Title:
Address:	Phone #:
	Fax#:
	E-mail:
	TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

**NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL**

APPENDIX II-M (Continued)

**EXPEDITED REPEAL NOTICE FORM - Page 2**

7. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified:

Fax

E-mail

Other format (specify):

8. Public hearing scheduled for:

Date and Time:

Place:

**NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL**

**APPENDIX II-N**

**NOTICE FOR EXPEDITED REVISIONS TO AGENCY FORMS**

Proposed Expedited Revision Number \_\_\_\_\_ Form Number \_\_\_\_\_

1. Agency Name & Address: \_\_\_\_\_

2. RSA Authority: \_\_\_\_\_

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

4. Short Title: \_\_\_\_\_

5. Explanation of the reason for the proposed readoption with amendment of the form: \_\_\_\_\_

6. Contact person for copies and questions about the proposed form:

Name:

Title:

Address:

Phone #:

Fax#:

E-mail:

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

7. Deadline for submission of materials in writing or in the electronic format specified:

Fax

E-mail

Other format (specify): \_\_\_\_\_



NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-O

NOTICE FOR EXPEDITED AMENDMENT TO INCORPORATION BY REFERENCE

Notice Number \_\_\_\_\_

Rule Number \_\_\_\_\_

1. Agency Name & Address:	2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action: Amendment _____ Readoption w/amendment _____
---------------------------	---

5. Short Title: \_\_\_\_\_

6. (a) Summary of what the rule says and of any proposed amendment, and an explanation of the differences between the existing document or Internet content incorporated by reference and the document or Internet content in the amended rule:

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

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

Name:	Title:
Address:	Phone #:
	Fax#:
	E-mail:
	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:

- Fax
  E-mail
  Other format (specify):

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-O (Continued)

**INSTRUCTIONS FOR THE NOTICE FOR  
EXPEDITED AMENDMENT TO INCORPORATION BY REFERENCE**

**NOTE:**

Completion of this notice is required pursuant to RSA 541-A:19-d, I and II for publication by the Administrative Rules office in the New Hampshire Rulemaking Register pursuant to RSA 541-A:19-d, III. The expedited procedure to amend an incorporation by reference is limited pursuant to RSA 541-A:19-d, I to an amendment, or readoption with amendment, of an existing rule where the amended rule does not encompass more than a full rules section and for which there is no fiscal impact for which a fiscal impact statement would be required pursuant to RSA 541-A:5 for regular rulemaking. The requirements for incorporation by reference apply pursuant to RSA 541-A:12, III-VII. This expedited procedure does not apply to agency forms incorporated by reference.

**PLEASE SUBMIT ONE COPY OF THIS FORM AND ONE COPY OF THE FOLLOWING**

- An amended rule pursuant to RSA 541-A:19-d, III and IV, including updated appendices (1) pursuant to RSA 541-A:3-a, with the same information as in Item #6(b) of the notice, and (2) pursuant to RSA 541-A:12, VII, in the same manner as described in the Drafting and Procedure Manual for Administrative Rules when documents or Internet content is incorporated by reference.
- A completed Incorporation by Reference Statement (Appendix II-H) for each document or Internet content incorporated by reference, in compliance with RSA 541-A:12, III and IV, as for filing Final Proposals.

---

The first unnumbered item to the left of the form is labeled "Notice Number" and shall be left blank. The number of each notice will be assigned by the Administrative Rules office.

The second unnumbered item to the right of the form is the rule number of the proposed rule(s) in the codification scheme described in Part 1 of Chapter 4 in the Manual. The number shall be correctly identified, such as Agr 501.03(e) and not Agr 501.03 if only paragraph (e) is being filed. A summary may be used, such as "Agr 502, various sections," if there is not enough space to list all the rules.

Item 1 is the name and address of the agency with rulemaking authority. This is the individual or group named in the RSA passage delegating authority, which is cited in Item 2. However, where an individual rulemaker is involved, such as a Commissioner, Division Director, or Bureau Chief, the name of the office may be used, such as "Department of," "Division of," or "Bureau of."

Item 2 shall be a citation to the specific statutory passage indicating RSA chapter, section, and paragraph delegating the agency rulemaking authority, for example: RSA 309-A:2, III, not RSA 309-A.

Item 3 shall cite the Federal authority, if applicable.

Item 4 shall be checked to indicate the type(s) of rulemaking action proposed. Two types are listed for this expedited procedure, as described below:

(a) "Amendment" means that a subdivision in a section of an existing rule (that is, a currently effective text) is being changed, either by insertion or deletion of text, but the text of that entire section is not intended to be readopted and has not been included for readoption. The term applies only to insertion or deletion of text at the level of a paragraph or lower, and does not apply to insertions of whole sections, parts, and chapters.

## NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

### APPENDIX II-O (Continued)

#### INSTRUCTIONS - Page 2

(b) "Readoption with amendment" means that a section or a larger unit of an existing rule is being changed, and the entire text of that section, or larger unit, of the existing rule is being included for purposes of readoption.

Item 5 is a "short title", and shall be a brief description of the subject matter in key words and not merely repeat the rule number affected. The rule's "short title" is a quick way of identifying what the rule is about.

Item 6 is the summary and explanation required by RSA 541-A:19-d, II(e) and the identification required by RSA 541-A:19-d, II(f) and RSA 541-A:3-a, which shall include at least the following:

(a) Summary of what the rule says and of any proposed amendment, and an explanation of the differences between the existing document or Internet content incorporated by reference and the document or Internet content in the amended rule; and

(b) The specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

See Section 2.4 of Chapter 3 in the Manual as for regular rulemaking. Item 6(b) is not the rulemaking authority under Item 2 or Item 3. Item 6(b) contains the specific section(s) or provisions of the RSA or federal statute or regulation, that the rule is meant to implement. For example, authority to adopt rules pursuant to RSA 541-A on license procedures could be in one RSA section, but a provision requiring that a person obtain a license (implemented by rules on license procedures) might be in a different section. The citation under Item 2 would be the same as in Item 6(b) only if the RSA rulemaking authority and the specific RSA provision being implemented are in the same RSA section or provision.

A list of cross-references will be necessary in Item 6(b) if different portions of the rule relate to different sections or provisions of state or federal statutes or regulations. Pursuant to RSA 541-A:3-a, III:

*General references to the name or title of a state or federal statute or regulation shall not suffice for the purposes of this section. To the extent that specific provisions of the proposed rule are designed to implement different sections or provisions of state or federal statutes or regulations, the agency shall reference the state or federal statutes or regulation with the provision of the proposed rule that is intended to implement that statute or regulation.*

Item 6(b) may be submitted as an attached cross-reference table on a separate sheet if necessary. The same information must be submitted as an appendix to the rules. See Section 2.5 of Chapter 3 in the Manual.

Item 7 shall identify the name, title, address, telephone and fax numbers, and e-mail address, of a person in the agency who can supply copies of the proposed rule and answer questions about it including requests to accommodate persons with disabilities in the rulemaking process.

Item 8 shall be the deadline for submission of written or electronic public comment (such as fax, e-mail, or on diskette). Pursuant to RSA 541-A:19-d, II(g), this deadline shall be no sooner than the 14<sup>th</sup> calendar day after the date of publication of the notice in the Rulemaking Register. Specify the electronic format that is practicable for your agency.

# NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

## APPENDIX III

### NEW HAMPSHIRE REVISED STATUTES ANNOTATED CHAPTER 541-A ADMINISTRATIVE PROCEDURE ACT

**541-A:1 Definitions.** In this chapter:

I. "Adjudicative proceeding" means the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36.

II. "Agency" means each state board, commission, department, institution, officer, or any other state official or group, other than the legislature or the courts, authorized by law to make rules or to determine contested cases.

III. "Committee" means the joint legislative committee on administrative rules, unless the context clearly indicates otherwise.

IV. "Contested case" means a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing.

V. "Declaratory ruling" means an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency.

V-a. "Electronic document" means a document which complies with requirements prescribed by the director for filing under paragraph VI and established in the drafting and procedure manual under RSA 541-A:8. For electronic documents, a requirement during the rulemaking process for a signature accompanying the filing of an electronic document shall be met if such signature complies with the requirements of RSA 294-E.

VI. "File" means the actual receipt, by the director of legislative services, of a document required to be submitted during a rulemaking process established by this chapter, under the terms and in the format prescribed by the director. The term "file" shall also apply to any other response, submission, or written explanation required during a rulemaking process established by this chapter.

VI-a. "Final legislative action" means the defeat of a joint resolution sponsored by the legislative committee on administrative rules pursuant to RSA 541-A:13, VII(b) in either the house or the senate, or the failure of the general court to override the governor's veto of the joint resolution.

VII. "Fiscal impact statement" means a statement prepared by the legislative budget assistant, using data supplied by the rulemaking agency, and giving consideration to both short and long-term fiscal consequences and includes the elements required by RSA 541-A:5, IV.

VII-a. "Form" means a document that establishes a requirement for persons outside the agency to provide information to an agency and the format in which such information must be submitted. The term does not include any document, regardless of what the document is called, that (a) is provided by an agency to facilitate the submission of information that is required to be submitted to the agency by federal or state statute, regulation, or rule and does not add to or modify such requirement or (b) that is used only by the agency to provide information to persons outside the agency.

VII-b. "Internet content" means material that exists only on a website on the Internet.

VIII. "License" means the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law.

IX. "Licensing" means the agency process relative to the issuance, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license, or the imposition of terms for the exercise of a license.

X. "Nonadjudicative processes" means all agency procedures and actions other than an adjudicative proceeding.

XI. "Order" means the whole or part of an agency's final disposition of a matter, other than a rule, but does not include an agency's decision to initiate, postpone, investigate or process any matter, or to issue a complaint or citation.

## NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

XII. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.

XIII. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

XIV. "Presiding officer" means that individual to whom the agency has delegated the authority to preside over a proceeding, if any; otherwise it shall mean the head of the agency.

XV. "Rule" means each regulation, standard, form as defined in paragraph VII-a, or other statement of general applicability adopted by an agency to (a) implement, interpret or make specific a statute enforced or administered by such agency or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies. The term does not include (a) internal memoranda which set policy applicable only to its own employees and which do not affect private rights or change the substance of rules binding upon the public, (b) informational pamphlets, letters or other explanatory material which refer to a statute or rule without affecting its substance or interpretation, (c) personnel records relating to the hiring, dismissal, promotion, or compensation of any public employee, or the disciplining of such employee, or the investigating of any charges against such employee, or (d) declaratory rulings. The term "rule" shall include rules adopted by the director of personnel, department of administrative services, relative to the state employee personnel system. Notwithstanding the requirements of RSA 21-I:14, the term "rule" shall not include the manual described in RSA 21-I:14, I or the standards for the format, content, and style of agency annual and biennial reports described in RSA 21-I:14, IX, which together comprise the manual commonly known as the administrative services manual of procedures. The manual shall be subject to the approval of governor and council.

XVI. "Standing policy committee" means a committee listed in rules of the house of representatives or the senate to which legislation including rulemaking authority was originally referred for hearing and report.

### **541-A:2 Joint Legislative Committee on Administrative Rules.**

I. There is hereby created a joint legislative committee to be known as the joint legislative committee on administrative rules. The committee shall be composed of 10 members of the general court and 10 alternates to be appointed for 2-year terms ending on the first Wednesday in December of even-numbered years as follows: 5 members of the house of representatives, appointed by the speaker of the house in consultation with the minority leader, not more than 3 of whom shall be from the same party; 5 members of the senate, appointed by the senate president in consultation with the minority leader, not more than 3 of whom shall be from the same party; 5 alternate members of the house of representatives appointed by the speaker of the house in consultation with the minority leader, not more than 3 of whom shall be from the same party; and 5 alternate members of the senate, appointed by the senate president in consultation with the minority leader, not more than 3 of whom shall be from the same party. If a member of the committee is unable, for any reason, to attend a meeting or a portion of a meeting of the committee, the chair shall designate an alternate member to serve regardless of the number of other senators or representatives who attend the meeting. The committee shall elect a chair and a vice-chair from among its members, provided that the chair shall rotate biennially between the house and senate members.

II. The joint legislative committee on administrative rules shall meet at least once each month and more often as necessary for the prompt discharge of its duties. The director of legislative services shall provide services to the committee. The joint legislative committee on administrative rules shall adopt rules to govern its operation and organization. A quorum of the committee shall consist of 6 members. Members of the committee shall be entitled to legislative mileage as provided to members for attendance at sessions of the general court.

III. The committee may hold public hearings on a proposed or previously adopted rule on its own initiative. The committee shall give public notice of any hearing at least 7 days in advance in the rulemaking register. Any public hearing shall be scheduled at a time and place chosen to afford opportunity for affected persons to present their views. The committee may consult with the standing legislative committee having jurisdiction in the area of the rule under review.

IV. In addition to its ongoing review of proposed and adopted rules, the committee shall:

(a) Petition an agency under RSA 541-A:4 to adopt rules if the agency has clear rulemaking authority which it has not used.



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(b) Review statutory passages granting rulemaking authority. On the basis of this review, the committee shall, before each regular legislative session, make written recommendations to the president of the senate and the speaker of the house as to how such passages should be amended to eliminate confusing, inefficient, or unnecessary statutory language.

(c) Make written recommendations, when appropriate, to the president of the senate and the speaker of the house as to how the legislative oversight of rulemaking might be improved. These recommendations may include proposed amendments to RSA 541-A.

(d) Have the authority to amend and provide the final approval of the drafting and procedure manual developed by the director of legislative services and the commissioner of administrative services under RSA 541-A:8.

(e) Notify the chairpersons of appropriate standing committees of the general court in writing when committee recommendations are made to agencies relative to legislation as a result of reviewing proposed and adopted rules.

(f) Make written recommendations, when appropriate, to the president of the senate, the speaker of the house of representatives, and the chairs of standing committees of the general court having jurisdiction over the subject matter of an agency concerning the amendment or repeal of the statutory authority of an agency that has enforced rules which are not effective or not otherwise valid, or that has not commenced rulemaking or adopted rules as required by statute.

**541-A:3 Procedure for Adoption of Rules.** Except for interim or emergency rules, an agency shall adopt a rule by:

I. Filing a notice of the proposed rule under RSA 541-A:6, including a fiscal impact statement and a statement that the proposed rule does not violate the New Hampshire constitution, part I, article 28-a;

II. Providing notice to occupational licensees or those who have made timely requests for notice as required by RSA 541-A:6, III;

III. Filing the text of a proposed rule under RSA 541-A:10;

IV. Holding a public hearing and receiving comments under RSA 541-A:11;

V. Filing a final proposal under RSA 541-A:12;

VI. Responding to the committee when required under RSA 541-A:13; and

VII. Adopting and filing a final rule under RSA 541-A:14.

**541-A:3-a Specificity of Rules; Identification of State or Federal Law.**

I. If an agency proposes a rule pursuant to RSA 541-A:3 or 541-A:19, the agency shall identify the specific section or sections of state or federal statutes or regulations which the rule is intended to implement in the notice required pursuant to RSA 541-A:6 and 541-A:19, II, and either in the rule, or in a separate cross-reference table pursuant to paragraph II. The notice shall be in such form as the director of legislative services shall prescribe until otherwise provided by the drafting and procedure manual adopted pursuant to RSA 541-A:8. The identification in the rule shall be made in the manner specified in the drafting and procedure manual.

II. If the specific section or sections of state statute or federal statute or regulation required by paragraph I are not identified in the rule itself, the agency shall file the information in a separate cross-reference table with each filing of the proposed or adopted rule other than an emergency rule. The agency shall make the table available to the public with a proposed or adopted rule whenever the rule is made available to or requested by the public. Unless otherwise specified by the drafting and procedure manual, the table shall be filed as an appendix to the rule and, when the rule is published pursuant to RSA 541-A:15, shall be published as an appendix to the rule chapter containing the rule. The table shall not be required to be filed on a separate page.

III. General references to the name or title of a state or federal statute or regulation shall not suffice for the purposes of this section. To the extent that specific provisions of the proposed rule are designed to implement different sections or provisions of state or federal statutes or regulations, the agency shall reference the state or federal statute or regulation as provided in paragraph I, with the provision of the proposed rule that is intended to implement that statute or regulation.

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**541-A:3-b Restriction on Rules Incorporating Documents by Reference.** No agency may propose or adopt a rule under RSA 541-A:3 or RSA 541-A:19 that incorporates by reference any code, rule, or document from another state government without specific authority in the authorizing legislation or specific legislative approval for such a rule.

### **541-A:4 Petition for Adoption of Rules.**

I. Any interested person may petition an agency to adopt, amend, or repeal a rule. Within 30 days of receiving the petition, or 30 days after the next scheduled meeting of a board, commission, or group receiving the petition, the agency shall determine whether to grant or deny the petition and notify the petitioner. If the agency decides to deny the petition, the agency shall notify the petitioner of its decision in writing and shall state its reasons for denial. If the agency grants the petition, it shall notify the petitioner and commence the rulemaking proceeding by requesting a fiscal impact statement pursuant to RSA 541-A:5 within 120 days of receipt of the petition and continuing the proceeding as specified in RSA 541-A:3.

II. Notwithstanding paragraph I, if the committee petitions an agency to adopt, amend, or repeal a rule, and the agency does not notify the committee that rulemaking has commenced within one year of receiving the petition, or does not file a final proposal under RSA 541-A:12 within 2 years of receiving the petition, the committee may file legislation to repeal the agency's rulemaking authority or otherwise amend the agency authority.

### **541-A:5 Fiscal Impact Statements.**

I. The agency shall provide the legislative budget assistant with adequate details of the intended action and supporting data to enable the legislative budget assistant to prepare a fiscal impact statement.

II. The legislative budget assistant shall develop a form which shall specify the details and supporting data necessary to assess the fiscal impact of the intended action. The fiscal impact of a proposed rule which was previously effective but has expired, or of a proposed rule which adopts a current agency policy, procedure, or practice as a rule for the first time, shall not be assessed as an existing rule but as a proposed rule which is not yet effective.

III. The legislative budget assistant shall establish a schedule of deadlines for submission of the fiscal impact form, and the agency shall file the completed form with the legislative budget assistant in accordance with such deadlines.

IV. The fiscal impact statement issued by the legislative budget assistant shall not be limited to dollar amounts, but shall include a discussion of the methodology used to reach any stated amounts. In addition, the fiscal impact statement shall consist of:

(a) A narrative stating the costs and benefits to the citizens of the state and to the political subdivisions of the intended action.

(b) A conclusion as to the cost or benefit to the state general fund or any state special fund of taking the intended action.

(c) An explanation of, and citation to, the federal mandate for the intended action, if there is such a mandate, and how that mandate affects state funds.

(d) A comparison of the cost of the intended action with the cost of the existing rule, if there is an existing rule, and, to the extent that the proposed rule had expired, indicating the cost of the expired rule and, if applicable, the difference in cost of any proposed change from the expired rule.

(e) An analysis of the general impact of the intended action upon any independently owned businesses, including a description of the specific reporting and recordkeeping requirements upon small businesses which employ fewer than 10 employees.

V. All agencies are directed to cooperate with the legislative budget assistant in the preparation of fiscal impact statements.

VI. Agencies shall also obtain an amended fiscal impact statement from the legislative budget assistant only if as a result of notice and hearing a change has been made which affects the original fiscal impact statement. Agencies shall file the amended fiscal impact statement as part of the final proposal pursuant to RSA 541-A:12, II.

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VII. In this section, “intended action” means the proposed adoption, amendment, reoption, reoption with amendment, or repeal of a rule pursuant to RSA 541-A, as described in the drafting and procedure manual for administrative rules pursuant to RSA 541-A:8.

### **541-A:6 Notice of Rulemaking Proceedings.**

I. The agency shall give at least 20 days' notice of its intent to hold a public hearing and shall also give notice of the cut-off date for the submission of written testimony pursuant to RSA 541-A:11, I, on any proposed adoption, amendment, reoption, reoption with amendment, or repeal of a rule. The notice periods shall begin on the day after the date of publication in the rulemaking register. The notice shall be in such form as the director of legislative services shall prescribe and shall include:

- (a) The name and address of the agency.
- (b) The statutory authority for the rule.
- (c) Whether the intended action is an adoption, amendment, repeal, reoption, or reoption with amendment.
- (d) The rule number and title.
- (e) The date of the first agency public hearing and the cut-off date for the submission of written materials to the agency.
- (f) If existing rules are being amended, reoptioned, or reoptioned with amendment, a concise summary of the existing rules and any proposed amendments, and if the proposed rules are being adopted, a concise summary of the proposed rules.
- (g) A listing of people, enterprises, and government agencies affected by the rule.
- (h) The name, address, and telephone number of an individual in the agency able to answer questions on the proposed rule.
- (i) The fiscal impact statement completed by the legislative budget assistant.
- (j) A statement, with adequate details and supporting data, that the proposed rule does not violate the New Hampshire constitution, part I, article 28-a.

II. The director of legislative services may refuse to publish a notice if the director determines that the notice does not conform to the requirements of the drafting and procedure manual under RSA 541-A:8.

III. The agency shall send notice to the director of legislative services, to all persons regulated by the proposed rules who hold occupational licenses issued by the agency, and to all persons who have made timely request for advance notice of rulemaking proceedings. Upon request the agency shall send notice to the president of the senate, to the speaker of the house of representatives, and to the chairpersons of the legislative committees having jurisdiction over the subject matter. Notice shall be made not less than 20 days before the first agency public hearing required by RSA 541-A:11, I. Notice to occupational licensees shall be by U.S. Mail, electronically, agency bulletin or newsletter, public notice advertisement in a publication of daily statewide circulation, or in such other manner that is reasonably calculated to inform such licensees of the proposed rulemaking. The committee may identify additional methods of notifying occupational licensees that are deemed sufficient.

**541-A:7 Style of Rules.** Rules shall be written in a clear and coherent manner using words with common and everyday meanings for those persons who engage in the activities that are regulated by the rules, which may include technical language as necessary.

**541-A:8 Drafting and Procedure Manual.** Each agency shall conform to a drafting and procedure manual for rules, including agency forms, developed by the director of legislative services and the commissioner of administrative services, subject to amendment and final approval by the committee. The director may require any agency to rewrite any rule, including any agency form, submitted for filing to conform to this manual until that rule is adopted and filed under RSA 541-A:14 or RSA 541-A:19 or the form is adopted pursuant to RSA 541-A:19-b.

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### 541-A:9 Rulemaking Register.

- I. The director of legislative services shall publish directly online a weekly rulemaking register which shall contain:
  - (a) Notice of intended rulemaking actions.
  - (b) Notice of rules adopted under RSA 541-A:14, RSA 541-A:18, and RSA 541-A:19.
  - (c) Nonconfidential opinions of the attorney general under RSA 541-A:28.
  - (d) Final objections under RSA 541-A:13, V.
  - (e) Notices of continued or postponed public comment hearings under RSA 541-A:11.
  - (f) Notices of declaratory rulings issued pursuant to rules adopted under RSA 541-A:16, I (d).
  - (g) Notice for the submission of comments on possible rulemaking under RSA 541-A:11, VIII.
  - (h) Publication of notice of the list of regulated toxic air pollutants and classifications by the department of environmental services under RSA 125-I:4.
  - (i) At the request of any agency, any other notices or documents related to rulemaking, at the discretion of the director.
  - (j) A list of proposals filed under RSA 541-A:12, I and proposed interim rules filed under RSA 541-A:19, II, and placed on the agenda for committee review at a regularly scheduled or special committee meeting.

I-a. Prior to publication, the director of legislative services may correct clarity, formatting, typographical, spelling, and punctuation errors, as well as unintentional errors in references and citations in a submission. Consistent with RSA 541-A:6, II, the director shall notify the agency prior to publication of the notice of any amendments made to the notice and may set a deadline for agency comments on the amendments.

I-b. The date of publication of the rulemaking register shall be the date on which the register is available to the public on the general court information services web site.

I-c. The director of legislative services may prescribe the specific electronic file format for all documents provided by state agencies for inclusion in the register.

II. The rulemaking register shall be made available free of charge.

### 541-A:10 Filing of Proposed Rule Text.

I. At the same time the notice required by RSA 541-A:6, I is filed, the agency shall file the text of the proposed rule with the director of legislative services. The text of each proposed rule filed shall encompass at least a full rules section. The text of the proposed rules as filed by the agency pursuant to RSA 541-A:3, II shall not be changed prior to the hearing held pursuant to RSA 541-A:11, I(a).

II. The agency shall not establish the text of the final proposal until after the conclusion of the public comment period established pursuant to RSA 541-A:11, I(b). If the agency elects to solicit comment pursuant to RSA 541-A:11, I(c), the agency shall prepare a draft final proposal that is annotated to show how the rules as initially proposed are proposed to be changed. In response to comment received, the agency may revise the draft prior to filing the final proposal in accordance with RSA 541-A:12.

### 541-A:11 Public Hearing and Comment.

I.(a) Each agency shall hold at least one public hearing on all proposed rules filed pursuant to RSA 541-A:3 and shall afford all interested persons reasonable opportunity to testify and to submit data, views, or arguments in writing or, if practicable for the agency, in electronic format, in accordance with the terms of the notice filed pursuant to RSA 541-A:3, I and the provisions of this section. The office of legislative services shall provide oral or written comments on potential bases for committee objection under RSA 541-A:13, IV in a form and manner determined by the director of the office of legislative services. Each agency shall require all materials submitted in writing to be signed by the person who

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submits them, and the agency shall transfer to hard copy, if practicable for the agency, all materials submitted as diskette, electronic mail, or other electronic format. Copies of the proposed rule shall be available to the public under RSA 91-A and at least 5 days prior to the date of the hearing.

(b) For rules proposed by a board or commission, a period of at least 5 business days after the hearing shall be provided for the submission of materials in writing or in electronic format, unless a shorter period is specified in the notice. If a shorter period is specified in the notice, the deadline for the submission of such materials shall not be earlier than the scheduled conclusion of the public hearing. For rules proposed by an agency official, a period of at least 5 business days after the hearing shall be provided in all instances. If a hearing is continued or postponed as provided in paragraph III or IV of this section, the period for the submission of materials in writing or in electronic format shall be extended unless the previously-established deadline meets the applicable requirement specified above.

(c) An agency may hold a public hearing or otherwise solicit public comment on a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541-A:3, V. Notice of such hearing or comment period shall be provided by such means as are deemed appropriate to reach interested persons, which may include publishing a notice in the rulemaking register.

II. For rules proposed by a board or commission, each hearing shall be attended by a quorum of its members. For rules proposed by an agency official, each hearing shall be held by the official having the rulemaking authority, or designee, who shall be knowledgeable in the particular subject area of the proposed rules.

III. To provide reasonable opportunity for public comment, the agency may continue a public hearing past the scheduled time or to another date, or may extend the deadline for submission of written comment. If the agency continues the hearing or extends the deadline, it shall notify the public by any means it deems appropriate, including notice in the rulemaking register whenever practicable.

IV. A public comment hearing may be postponed in the event of any of the following:

(a) Inclement weather.

(b) Illness or unavoidable absence of the official with rulemaking authority.

(c) Lack of a quorum due to illness or unavoidable absence.

(d) Determination by the agency that postponement of the public comment hearing shall facilitate greater participation by the public. If a public comment hearing is postponed, the agency shall provide notice in the rulemaking register at least 5 days before such postponed public comment hearing, and may also provide notice by any other means it deems appropriate.

V. A public comment hearing may be moved to another location if the agency determines for any reason that the original location is not able to accommodate the public. If changing the location does not also necessitate a change in the date of the public comment hearing, the agency shall post notice of the new location at the originally scheduled facility. If changing the location necessitates a change in the date of the public comment hearing, the agency shall provide notice as required by paragraph IV.

VI. On request, the agency shall promptly provide a copy of any rule as filed with the director at any stage in the rulemaking process. If the copy is mailed, it shall be sent not later than the end of the third working day after the request is received. The agency may, pursuant to RSA 91-A:4, IV, charge the actual cost of providing such copy.

VII. If requested by an interested person at any time before 30 days after final adoption of a rule, the adopting authority shall issue an explanation of the rule. The explanation shall include:

(a) A concise statement of the principal reasons for and against the adoption of the rule in its final form.

(b) An explanation of why the adopting authority overruled the arguments and considerations against the rule.

VIII. In addition to seeking information by other methods, an agency, before publication of a notice of proposed rulemaking under RSA 541-A:6, may solicit comments from the public on a subject matter of possible rulemaking under active consideration within the agency by causing notice to be published in the rulemaking register of the subject matter and indicating where, when, and how persons may provide comment on the rules under consideration.



**541-A:12 Filing Final Proposal.**

I. After fully considering public comment and any committee comments or comments by the office of the legislative services received pursuant to RSA 541-A:11, and any other relevant information, a quorum of the members of the agency or the agency official having rulemaking authority shall establish the text of the final proposed rule. After the text of the final proposed rule has been established, the agency shall file the final proposal no earlier than 21 days and no later than 180 days after the date of publication of the notice in the rulemaking register. The agency shall file the final proposal with the director of legislative services. Final proposals filed no later than 21 days before a regularly scheduled committee meeting shall be placed on the agenda for that meeting. Final proposals filed fewer than 21 days before a regularly scheduled committee meeting shall be placed on the agenda of the following regularly scheduled committee meeting.

II. The final proposal shall include:

(a) A cover sheet listing:

- (1) The number of the notice and the date the notice appeared in the rulemaking register;
- (2) The name and address of the agency;
- (3) The title and number of the rule; and
- (4) A citation to the statutory authority for the rule.

(b) One copy of the established text of the final proposed rule.

(c) If required pursuant to RSA 541-A:5, VI, an amended fiscal impact statement from the legislative budget assistant stating that as a result of notice and hearing the rule did change and explaining how this change affects the original fiscal impact statement.

(d) A copy of the fixed text of the final proposed rule annotated clearly to show how the final proposed rule differs from the rule as initially proposed, if the text has changed.

III. An agency may establish requirements in its rules by citing to a document or to Internet content prepared by an unrelated third party. If state-enforceable requirements are so established, the agency shall file an incorporation by reference statement as specified in paragraph IV with the final proposal. No agency shall incorporate by reference any document or Internet content prepared by or on behalf of the agency, provided that documents prepared by a group or association of which the agency is a member may be incorporated by reference.

IV. Any incorporation by reference statement required by paragraph III shall include a statement signed by the adopting authority:

(a) Certifying that the text of the incorporated document or Internet content has been reviewed by the agency, with the name of the reviewing official;

(b) Explaining how the text of the incorporated document or Internet content can be obtained by the public, and at what cost;

(c) Explaining any modifications to the incorporated document or Internet content;

(d) Discussing the comparative desirability of reproducing the incorporated document or Internet content in full in the text of the rule; and

(e) Certifying that the agency has the capability and the intent to enforce the requirements being incorporated.

V. If an agency establishes requirements by incorporating undated Internet content by reference, the agency shall make a read-only copy of the incorporated Internet content no later than the date of filing the incorporation by reference statement, and make the dated copy available to the public.

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VI. Each agency shall, upon request for a copy of any document or Internet content incorporated by reference in the agency's rules, make available for inspection any such document or downloaded Internet content.

VII. Each agency shall include the information required in subparagraph IV(b) as an appendix with each filing of the proposed or adopted rule. The agency shall make the information available to the public with a proposed or adopted rule whenever the rule is made available to or requested by the public. When the rule is published pursuant to RSA 541-A:15, the information shall be published as an appendix to the rule chapter containing the rule with a reference in the rule to the appendix. The information shall not be required to be filed on a separate page.

### **541-A:13 Review by the Joint Legislative Committee on Administrative Rules.**

I. The committee shall either approve the rule or enter a conditional approval or objection under paragraph V within 60 days of the filing of a final proposal under RSA 541-A:12, I, unless the deadline is waived for good cause pursuant to RSA 541-A:40. Objections to a rule may be made only once. The committee may not add or amend grounds for objection after a preliminary objection is made under paragraph V unless the agency's response to the objection creates the grounds or the agency requests a revised objection which includes them.

II. (a) If an agency has filed a final proposal, the director of legislative services shall notify the agency of any potential bases for committee objection identified by the office of legislative services by forwarding a copy of the final proposal with the counsel's comments noted thereon.

(b) In response to the comments, or for other reasons in lieu of requesting a preliminary objection, an agency may then file a request for conditional approval with the director for review by the committee and request that the committee conditionally approve the rule with an amendment. Both the request and the amendment shall be in writing and shall be filed at least 7 days prior to the regularly scheduled meeting or special meeting for which the final proposal has been placed on the agenda. An agency may request a waiver pursuant to RSA 541-A:40, IV of the 7-day deadline for good cause as established in the drafting and procedure manual under RSA 541-A:8, but the committee may for compelling reasons under the committee's rules pursuant to RSA 541-A:2, II accept a request for a conditional approval in the meeting under paragraph V.

(c) The committee may:

- (1) Approve the rule as originally filed; or
- (2) Act under paragraph V.

(d) If the committee approves the rule as filed pursuant to RSA 541-A:12, it shall notify the agency in writing of its approval.

(e) Failure to give notice of either approval, conditional approval, or objection at the end of the 60-day period under paragraph I shall be deemed approval.

III. If the rule is approved under subparagraph II(c) or (e), the agency may adopt the rule.

IV. The committee may object to a proposed rule if the rule is:

- (a) Beyond the authority of the agency;
- (b) Contrary to the intent of the legislature;
- (c) Determined not to be in the public interest; or
- (d) Deemed by the committee to have a substantial economic impact not recognized in the fiscal impact statement.

V. The following procedures shall govern committee objections and conditional approvals:

(a) If the committee objects to the final proposal as filed, it shall so inform the agency. In lieu of a preliminary objection, and with or without a written request under subparagraph II(b), the committee may vote to conditionally approve the rule with an amendment, provided that the committee specifies in its conditional approval the language of the amendment to address the basis for a preliminary objection. The committee shall notify the agency in writing of its

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conditional approval. Within 30 days of the meeting, or in the case of a board or commission, 7 days following its next regularly scheduled meeting, the agency shall submit a written explanation to the committee in the form of a letter and an annotated text of the final proposed rule detailing how the rule has been amended in accordance with the conditional approval. The written explanation shall be signed by the individual holding rulemaking authority, or, if a body of individuals holds rulemaking authority, by a voting member of that body, provided that a quorum of the body has approved. Failure to submit a written explanation in accordance with the conditional approval and this paragraph shall cause the conditional approval to be deemed a committee vote to make a preliminary objection on the date of the conditional approval. If the office of legislative services determines that the agency has amended the rule in accordance with the conditional approval and this paragraph, the office of legislative services shall promptly send written confirmation of compliance to the agency. The agency may then adopt the rule as amended.

(b) If the committee objects to the final proposal as filed or as amended pursuant to paragraph II, the committee shall send the agency a preliminary written objection stating the basis for the objection. A preliminary objection or conditional approval shall require the assent of a majority of the votes cast, a quorum being present. If a preliminary objection is made, the committee may send a copy of the preliminary objection to the appropriate house and senate standing policy committees and, if so, shall give notice to the agency. Within 30 days of the date the preliminary objection was entered, the standing policy committees at properly convened executive sessions shall review the proposed rules and the preliminary objection and shall adopt recommendations or comments relative to the basis for the preliminary objection and shall communicate the same to the committee.

(c) The agency shall respond to the preliminary objection by withdrawing the rule, by amending the rule to remove the basis for objection, or by making no change. The agency shall respond to a committee objection only once, and shall report its response in writing to the committee within 45 days of the committee's vote to make a preliminary objection. Failure to respond to the committee in accordance with this subparagraph shall mean the rulemaking procedure for that proposed rule is invalid; however, the agency is not precluded from initiating the process over again for a similar rule. After receipt of the agency response, the committee may modify its objections made under paragraph IV or approve the rule.

(d) After submitting its preliminary objection response and prior to the final committee vote on the final proposal, and in all cases, prior to the adoption of the rule by the agency, the agency may request that the committee approve the rule with further amendment or issue a revised objection. The committee may approve the rule with further amendment only if the agency submits the request and proposed amendments, in writing to the committee at least 7 days prior to the committee meeting at which the agency presents the rule. Submission of such a request shall not preclude the agency from requesting a revised objection if the committee does not approve the rule as requested.

(e) A revised objection may be made only once by the committee and may be made only at the request of the agency. The agency shall respond and the committee may review the response in the same manner as a preliminary objection. No further amendment may be made by the agency after it responds to the committee except as provided in RSA 541-A:14, II.

(f) If the agency responds but the basis for the committee's preliminary or revised objection has not been removed or the response creates a new basis for objection, the committee may, by majority vote of the entire committee, file a final objection. The final objection shall be filed in certified form with the director of legislative services for publication in the next issue of the rulemaking register.

VI. After a final objection by the committee to a provision in the rule is filed with the director under subparagraph V(f), the burden of proof shall be on the agency in any action for judicial review or for enforcement of the provision to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the legislature, is in the public interest, or does not have a substantial economic impact not recognized in the fiscal impact statement. If the agency fails to meet its burden of proof, the court shall declare the whole or portion of the rule objected to invalid. The failure of the committee to object to a rule shall not be an implied legislative authorization of its substantive or procedural lawfulness.

VII. (a) The provisions of this paragraph may be used by the committee as an alternative to or in addition to the final objection procedure employed by the committee in paragraph V.

(b) If an agency responds to a preliminary or revised objection but the basis for objection has not been removed or the response creates a new basis for objection, the committee may, within 50 days from the date on which the objection

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response was due and by majority vote of the entire committee, recommend legislative action through sponsorship of a joint resolution to implement its recommendation. Such vote shall prevent the rule from being adopted and filed by the agency for the period of time specified in subparagraph VII(c).

(c) If the committee votes to sponsor a joint resolution pursuant to subparagraph VII(b), the joint resolution shall be introduced in the house of representatives or senate within 20 business days of such vote when the general court is in session and 20 business days of the start of the following legislative session if such vote occurs when the general court is not in session. If a joint resolution is not introduced within this time frame, the agency may adopt the rule. If a joint resolution is introduced within this time frame, the agency shall be prevented from adopting and filing such rule until final legislative action is taken on the resolution or the passage of 90 consecutive calendar days during which the general court shall have been in session, whichever occurs first. The 90 calendar day period shall commence on the date such joint resolution has been introduced. If the session of the general court adjourns prior to the sixtieth calendar day after such joint resolution has been introduced, then the agency shall be prevented from adopting and filing such rule until 90 calendar days, beginning with the next session of the general court, have passed.

(d) The provisions of this paragraph shall apply to only the specific portion of the agency's rule identified in the joint resolution. The provisions of this paragraph shall not prevent an agency from adopting and filing the remainder of the rules in the final proposal under RSA 541-A while the committee pursues legislative action under this paragraph, nor shall it prevent the committee from also voting to enter a final objection pursuant to paragraph V.

(e) Nothing in this section shall prevent the general court from introducing legislation which addresses any matter included in a joint resolution introduced under the provisions of this section.

(f) Notwithstanding any house or senate rules to the contrary, a joint resolution which the committee votes to sponsor under subparagraph VII(b) may be introduced at any time during the legislative session. It shall be subject to the same rules as any other bill introduced at the beginning of the legislative session.

### **541-A:14 Final Adoption.**

I. An agency may adopt a properly filed final proposed rule after:

(a) The passage of 45 days from filing of a final proposal under RSA 541-A:12, I, or 60 days from filing under RSA 541-A:12, I-a, without receiving notice of objection from the committee;

(b) Receiving approval from the committee;

(c) Written confirmation is sent to the agency by committee legal counsel relative to agency compliance with the committee's conditional approval pursuant to RSA 541-A:13, V(a);

(d) Passage of the 50-day period for committee review of the preliminary objection response, or revised objection response, if applicable, provided that the committee has not voted to sponsor a joint resolution pursuant to RSA 541-A:13, VII; or

(e) Final legislative action, as defined in RSA 541-A:1, VI-a, is taken on the joint resolution sponsored pursuant to RSA 541-A:13, VII(b) or the passage of the 90 consecutive calendar days specified by RSA 541-A:13, VII(c), whichever occurs first.

II. The text of the adopted rule shall be the same as the text of the final proposed rule submitted under RSA 541-A:12, unless revised by the agency in direct response to the committee's written objection or as otherwise provided in RSA 541-A:13. The director of legislative services may refuse to accept for filing any final rule which contains changes, other than minor editorial changes, that are not specifically made in accordance with the procedures provided in RSA 541-A:13, II(b) or RSA 541-A:13, V. The agency shall identify each minor editorial change in writing to the director of legislative services.

III. The agency shall file all adopted rules with the director of legislative services.

IV. Adopted rules shall become effective under RSA 541-A:16, III on the day after filing by the agency, or at a later date, provided that the agency so specifies in a letter to the director of legislative services, and further provided that the agency does not establish different effective dates for different provisions within the same rule. If the agency has specified a later effective date, the agency may modify the date by providing a statement to the director of legislative

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services which shall indicate the new effective date and all reasons for modifying the date. The statement shall be published by the director of legislative services in the rulemaking register. No modified effective date shall occur earlier than the date of publication in the rulemaking register. The director shall maintain a file of all currently effective rules, and each agency shall maintain a file of its own currently effective rules, both of which shall be open to the public.

### **541-A:14-a Extension of Currently Effective Rules Pending Readoption.**

I. If an agency files a notice pursuant to RSA 541-A:6 to readopt existing rules, with or without amendments, the currently effective rules in the filing which would otherwise expire prior to the completion of the readoption of the rules by the agency shall continue in effect until the proposed rules are adopted and effective.

II. If, after filing a notice pursuant to paragraph I, an agency fails to file a final proposal by the deadline specified in RSA 541-A:12, fails to file a response to objection as specified in RSA 541-A:13, or fails to adopt and file the proposed rule as specified in paragraph III, the existing rules which would otherwise expire prior to the completion of the readoption of the rules by the agency shall expire 30 days after such deadline unless the agency has obtained a waiver of the deadline pursuant to RSA 541-A:40, IV(a). If the agency has obtained a waiver to a deadline, such existing rules shall expire 30 days after the deadline established pursuant to RSA 541-A:40, IV(b) if the required action is not taken.

III. If rules are extended pursuant to this section, the agency shall:

(a) Adopt and file the proposed rules as required by RSA 541-A:14, III no later than 30 days after the date on which the agency is allowed to adopt the rules under RSA 541-A:14, I; and

(b) File the rules as required by RSA 541-A:14, III with an effective date that is not more than 60 days from the date of filing, except that an agency may specify an effective date that is more than 60 days from the date of filing if a waiver is obtained pursuant to RSA 541-A:40.

### **541-A:15 Publication of Rules.**

I. The director of legislative services shall compile, index, and publish, or require agencies to publish, all effective rules adopted by each agency. The text of an adopted rule as filed with the director and which is effective shall be the official version of the rule, unless or until a version prepared for publication, which may have editorial changes not affecting the substance of the rule, is certified by the agency as the same in substance as originally filed. The certified version shall be the official version. Both the adopted rule as-filed and as-certified may be an electronic document and still be the official version if in compliance with RSA 541-A:1, V-a and VI and the drafting and procedure manual for administrative rules under RSA 541-A:8. The official version of the rule shall be available to the public by the agency and the director pursuant to RSA 541-A:14, IV.

I-a. The director shall send the text of a rule to be certified to the agency adopting the rule. The agency shall certify the rule under paragraph I within 120 days of receiving the first edited text. The 120-day deadline shall not apply to interim rules or emergency rules. A copy of each rule as filed and each as certified shall be sent by the director to the state library and the New Hampshire law library at the supreme court.

I-b. Compilations shall be supplemented, revised, or published as often as necessary. The compilation, indexing, or publishing of fiscal impact statements shall not be required. The director of legislative services, in consultation with state agencies, may enter into a contract for the preparation and publishing of the compilation of agency rules or any portion of it, or may certify a commercially prepared version of the compilation. Any version or portion of the code published under this section shall conform to all requirements of this chapter.

II. The director of legislative services shall assist the agencies in developing a publicly accessible electronic rules database.

III. The director of legislative services may omit from the compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

### **541-A:16 Rules; Filing Required.**

I. In addition to other rulemaking requirements imposed by law, each agency shall:



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(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods by which the public may obtain information or make submissions or requests.

(b) Adopt rules of practice setting forth the nature and requirement of all formal and informal procedures available, including:

(1) [Repealed]

(2) Rules governing adjudicative proceedings pursuant to RSA 541-A:30-a; and

(3) Rules governing public comment hearings for rulemaking.

(c) Adopt rules setting the format and procedures for submitting, considering, and disposing of rulemaking petitions under RSA 541-A:4.

(d) Adopt rules relating to filing petitions for declaratory rulings and their prompt disposition.

II. Each agency shall also:

(a) Make available to the public all written statements of policy or interpretations, other than rules, formulated or used by the agency in the discharge of its functions.

(b) File with the director of legislative services all declaratory rulings issued.

III. A rule shall become effective as of 12:01 a.m. on the day after the filing of the adopted rule or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541-A:14, IV, RSA 541-A:14-a, III, or RSA 541-A:19, X, or such other date and time as specified, provided that filing occurs before such effective date and time. Except as provided in RSA 541-A:14-a, a rule adopted under RSA 541-A:14, IV shall expire after the last day of the tenth year following its becoming effective, unless sooner amended, readopted, or repealed.

IV. If any deadline for action by an agency, the public, or the committee imposed by this chapter falls on a Saturday, Sunday, or state legal holiday, the deadline for such action shall be extended to the next day that is not a Saturday, Sunday, or state legal holiday.

### **541-A:17 Time Limit.**

I. No rule shall be effective for a period of longer than 10 years except as extended pursuant to RSA 541-A:14-a, but the agency may adopt an identical rule under RSA 541-A:5 through RSA 541-A:14-a, in conformance with the drafting and procedure manual adopted under RSA 541-A:8.

II. Notwithstanding the provisions of paragraph I, any organizational and procedural rules proposed and adopted pursuant to RSA 541-A:16, I and as identified in the drafting and procedure manual shall not expire, provided that they have been approved by the committee. No changes to such organizational and procedural rules may be made by the agency, other than editorial changes not affecting the substance of the procedural rules, without following the rulemaking procedures in this chapter. However, if the adoption or amendment of a statute governing the agency renders the agency's organizational and procedural rules no longer accurate, such rules shall expire one year after the effective date of the statute that makes such change, unless such organizational and procedural rules are amended, superseded, or repealed before such expiration. The agency shall commence rulemaking to amend its rules no later than 90 days after the effective date of such statute. If the agency reorganizes its organization and responsibilities in such a way that the agency's rules under RSA 541-A:16, I(a) describing its organization are no longer accurate, the agency shall amend its rules as soon as is practicable, but shall commence rulemaking not later than 90 days after such changes occur.

### **541-A:18 Emergency Rules.**

I. An agency may proceed to adopt an emergency rule if it finds either that an imminent peril to the public health or safety requires adoption of a rule with less notice than is required under RSA 541-A:6 or that substantial fiscal harm to the state or its citizens could occur if rules are not adopted with less notice than is required under RSA 541-A:6. The rule may be adopted without having been filed in proposed or final proposed form and may be adopted after whatever notice

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and hearing the agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to ensure that emergency rules are made known to persons who may be affected by them.

II. Notwithstanding RSA 541-A:16, III, emergency rules adopted under this section shall not remain in effect for more than 180 days from the date and time of filing with the director of legislative services. An agency may propose a permanent rule on the same subject at the same time that it adopts an emergency rule, but it shall not adopt the same emergency rule when the emergency rule expires.

III. Emergency rules adopted under this section shall include:

- (a) The name and address of the agency.
- (b) The statutory authority for the rule.
- (c) Whether the intended action is an adoption, amendment, or repeal.
- (d) The rule number and title.
- (e) A signed and dated statement by the adopting authority explaining the nature of the basis for the emergency rule, including an explanation of the effect upon the state if the emergency rule were not adopted.
- (f) A listing of people, enterprises, and government agencies affected by the rule.
- (g) The name, address, and telephone number of an individual in the agency able to answer questions on the emergency rule.

IV. Emergency rules adopted under this section shall not be adopted solely to avoid the time requirements of this chapter. The committee may petition the adopting agency to repeal the rule if it determines that the statement of emergency required by RSA 541-A:18, III(e) is inadequate and does not demonstrate that the rule is necessary to prevent an imminent peril to the public health or safety.

V. Effective rules which are amended or repealed by adoption of an emergency rule shall again be effective in their original form upon expiration of the emergency rule.

VI. An agency may repeal an emergency rule by filing a statement with the director of legislative services which includes:

- (a) The name and address of the agency.
- (b) The rule number and title.
- (c) The effective date of the repeal.
- (d) The name, address, and telephone number of an individual within the agency able to answer questions about the repeal.
- (e) An explanation of why the rule is being repealed.

### **541-A:19 Interim Rules.**

I. An agency may adopt as an interim rule any rule which amends an existing rule, repeals an existing rule, or creates a new rule, and which is designed solely to allow the agency to:

- (a) Conform with a new or amended codified state statute or chaptered session law, provided, however, that an agency shall not publish notice of a proposed interim rule more than 180 days after the effective date of the new or amended codified state statute or chaptered session law;
- (b) Conform with a controlling judicial decision;
- (c) Conform with a federal requirement which must be met sooner than the time periods allowed under RSA 541-A for a rule adopted under the procedures listed in RSA 541-A:3;

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(d) Continue its rules which would otherwise expire prior to the completion of the readoption of the rules by the agency; or

(e) Minimize the time between the expiration of rules and their subsequent readoption by the agency.

II. An agency may adopt an interim rule under subparagraphs I(a), (b), or (c) without meeting the requirements of RSA 541-A:6 and RSA 541-A:9 through RSA 541-A:14 and an agency may adopt an interim rule under subparagraph I(d) or (e) without meeting the requirements of RSA 541-A:5 through RSA 541-A:14 provided the agency:

(a) Publishes notice of a proposed interim rule in a newspaper of daily statewide circulation and files the proposed interim rule, with the cover sheet as provided in paragraph IV, with the director of legislative services no later than the date of publication of the notice; or

(b) Files the proposed interim rule with the cover sheet as provided in paragraph IV, and the notice of the proposed interim rule with the director of legislative services, and has published notice in the rulemaking register.

III. Notice of an agency's intent to propose an interim rule shall include:

(a) The name and address of the agency.

(b) Citation to the statutory or other rulemaking authority for the proposed interim rule.

(c) Whether the proposed interim rule is an adoption, readoption, amendment, readoption with amendment, or repeal.

(d) The rule number and title.

(e) A concise summary explaining the effect of the proposed interim rule.

(f) A listing of people, enterprises, and government agencies affected by the proposed interim rule.

(g) A summary of the effect upon the state if the proposed interim rule were not adopted.

(h) The name, address, and telephone number of an individual in the agency able to answer questions on the proposed interim rule.

(i) The date the proposed interim rule will be filed with the director of legislative services.

(j) The expected date of review by the committee.

IV. Proposed interim rules filed under paragraph II shall include a cover sheet stating:

(a) The name and address of the agency.

(b) Citation to the statutory rulemaking authority for the proposed interim rule.

(c) Whether the intended action is an adoption, readoption, amendment, readoption with amendment, or repeal.

(d) The rule number and title.

(e) A signed and dated statement by the adopting authority explaining why an interim rule is necessary, including documentary evidence to prove the agency is acting in accordance with the terms of this section and is not adopting an interim rule solely to avoid the time periods imposed by RSA 541-A, except as provided in paragraph I of this section.

(f) A listing of people, enterprises, and government agencies affected by the proposed interim rule.

(g) The name, address, and telephone number of an individual in the agency able to answer questions on the proposed interim rule.

V. A proposed interim rule filed under paragraph II no less than 21 days before a regularly scheduled committee meeting shall be placed on the committee's agenda for review for that meeting. Publication of notice shall occur no less

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than 14 days before a regularly scheduled meeting. If the agency has published notice in a newspaper, pursuant to subparagraph II(a), the agency shall file a copy of the notice as it was published no later than 3 days after the date of publication. Proposed interim rules filed less than 21 days before a regularly scheduled committee meeting shall be placed on the agenda for review at the following regularly scheduled committee meeting or at a special meeting, as determined by the committee.

VI. The committee shall vote to approve or conditionally approve the rule or object under paragraph VII. Objections to a proposed interim rule may be made only once.

VII. The committee may object to a proposed interim rule if the rule is:

- (a) Beyond the authority of the agency;
- (b) Contrary to the intent of the legislature;
- (c) Determined not to be in the public interest; or
- (d) Deemed by the committee not to meet the requirements of paragraph I.

VIII. The following procedures shall govern committee review of interim rules:

(a) The director of legislative services shall notify the agency of any potential bases for committee objection by forwarding a copy of the proposed interim rule with comments noted thereon to the agency at least 7 days prior to the committee meeting at which the rule will be considered. Following receipt of the comments an agency may file a request for conditional approval of its interim rule with an amendment to address the noted potential bases for objection, or for other reasons in lieu of requesting an objection. Both the request for conditional approval and the amendment shall be in writing and shall be filed at least 3 days prior to the meeting for which the proposed interim rule has been placed on the agenda. An agency may request a waiver pursuant to RSA 541-A:40, IV of the 3-day deadline for good cause as established in the drafting and procedure manual under RSA 541-A:8, but the committee may for compelling reasons under the committee's rules pursuant to RSA 541-A:2, II accept a request for a conditional approval in the meeting. The committee may approve the rule as originally proposed or conditionally approve the rule under subparagraph (b).

(b) If the committee objects to the proposed interim rule as filed, it shall so inform the agency. In lieu of an objection, and with or without a written request under subparagraph (a), the committee may vote to conditionally approve the rule with an amendment, provided that the committee specified in its conditional approval the language of the amendment to address the basis for a preliminary objection. The committee shall notify the agency in writing of its conditional approval. Within 14 days of the meeting, the agency shall submit a written explanation to the committee in the form of a letter and an annotated text of the final proposed rule detailing how the rule has been amended in accordance with the conditional approval. The written explanation shall be signed by the individual holding rulemaking authority, or, if a body of individuals holds rulemaking authority, by a voting member of that body, provided that a quorum of the body has approved. Failure to submit a written explanation in accordance with the conditional approval and this paragraph shall cause the conditional approval to be deemed a committee vote to make a preliminary objection on the date of the conditional approval. If the committee legal counsel determines that the agency has amended the rule in accordance with the conditional approval and this paragraph, the committee legal counsel shall promptly send written confirmation of compliance to the agency. The agency may then adopt the rule as amended.

(c) If the committee objects to the proposed interim rule as filed pursuant to subparagraph VIII(a), the committee shall send the agency a written objection stating the basis for the objection. An objection or a conditional approval shall require the assent of a majority of the votes cast, a quorum being present.

(d) If the committee makes an objection to the proposed interim rule pursuant to subparagraph VIII(c), the agency may cure the defect or withdraw the interim rule. The agency shall respond to a committee objection only once, and shall report its response in writing to the committee prior to its next regularly scheduled meeting. Failure to respond to the committee in accordance with this subparagraph shall mean the rulemaking procedure for that proposed interim rule is invalid; however, the agency is not precluded from initiating the process over again for a similar rule, provided that the conditions in paragraph I are met.

(e) The committee shall review the response and vote to approve the response or continue the objection.

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(f) The committee's objection shall not preclude the agency from adopting the substance of an interim rule by meeting the requirements of RSA 541-A:3.

IX. No proposed interim rule shall be adopted unless within 90 days of publication of the notice the committee votes to approve or conditionally approve the proposed interim rule.

X. No proposed interim rule shall be adopted unless the committee has voted to approve the proposed interim rule or conditionally approve the proposed interim rule, provided that the committee legal counsel has sent written confirmation to the agency pursuant to RSA 541-A:19, VIII(b). An adopted interim rule shall be filed with the director of legislative services no later than 30 days following committee approval or conditional approval. An interim rule shall be effective under RSA 541-A:16, III on the day after filing with the director of legislative services, or at a later date, provided the agency so specifies in a letter to the director of legislative services and the effective date is within 30 days following committee approval or conditional approval. Interim rules shall be effective for a period not to exceed 180 days. During the time an interim rule shall be in effect, the agency may propose a permanent rule to replace the interim rule once it expires, but it shall not adopt another interim rule to replace the expiring interim rule.

### **541-A:19-a Expedited Repeal of Rules.**

I. An agency may repeal any rules using the expedited procedures of this section and without meeting the requirements of RSA 541-A:5-7 and RSA 541-A:9-14 if:

(a) The proposed repeal has been approved by the official or the group of individuals with rulemaking authority.

(b) The rule proposed for repeal encompasses at least a full rules section, as described in the drafting and procedure manual for administrative rules pursuant to RSA 541-A:8.

(c) The repeal is not being proposed for purposes of being superseded later by adoption of a new rule with a text amended from the repealed rule.

(d) The repeal of the rule pursuant to this section does not deprive a person of any right, duty, or privilege of that person which is protected by the due process provisions of the state or federal constitutions.

II. Notice of an agency's intent to repeal a rule shall include:

(a) The name and address of the agency.

(b) The statutory rulemaking authority for the rule.

(c) The rule number and title.

(d) An explanation of the reason for the proposed repeal.

(e) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the proposed repeal and to arrange for reasonable accommodation for persons with disabilities wishing to attend the public comment hearing.

(f) The date, time, and location of the public comment hearing.

III. The notice required by paragraph II shall be filed with the director of legislative services for publication in the rulemaking register.

IV. The agency shall file the text of the rule to be repealed with the notice filed pursuant to paragraph III.

V. There shall be a public comment hearing on the proposed repeal no sooner than 7 calendar days after the date of publication of the notice in the rulemaking register. There shall be a period for the submission to the agency of written or electronic public comment ending no sooner than the 3rd calendar day after the date of the public comment hearing. Copies of the text of the rules subject to repeal shall be available at the public comment hearing.

VI. If on the basis of public comment the official or the group of individuals with rulemaking authority determines that the rule should not be repealed, the agency shall so notify the director of legislative services and the rule shall not be repealed.



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VII. The proposed repeal shall be placed on the agenda of the committee for review at the first regularly scheduled or special meeting at least 5 calendar days after the close of the period for written or electronic comment described in paragraph V. The committee may approve or object to the repeal. The committee may object to the repeal if the repeal is:

- (a) Beyond the authority of the agency;
- (b) Contrary to the intent of the legislature; or
- (c) Deemed by the committee not to meet the requirements of paragraph I.

VIII. If the committee objects to the repeal, the repeal shall not be adopted. The committee's objection shall not preclude the agency from repealing the rule by meeting the requirements of RSA 541-A:3.

IX. If the committee approves the repeal, the agency may adopt the repeal and file a statement of the repeal with the director of legislative services. The repeal shall be effective as of 12:01 a.m. on the day after filing of the statement or as of 12:01 a.m. on the date specified by the agency, or such other date and time as specified, provided that the filing occurs before such effective date and time.

**541-A:19-b Adoption of Forms.** An agency may adopt a form as defined in RSA 541-A:1, VII-a by incorporating the actual form by reference or by setting forth the requirements of the form in rules adopted according to the procedures in this chapter.

### **541-A:19-c Revisions to Forms; Expedited Procedure.**

I. An agency may make editorial changes to a previously adopted form without following the procedures required in RSA 541-A:19-b, in this section, or in RSA 541-A:3.

II. An agency may revise a form as defined in RSA 541-A:1, VII-a without meeting the requirements of RSA 541-A:5-7 and RSA 541-A:9-14 either in accordance with RSA 541-A:19-b or by providing notice and adopting the form in accordance with paragraphs III through VII.

III. Notice of an agency's intent to adopt a form or amendment to a form shall include:

- (a) The name and address of the agency.
- (b) The statutory authority for the form.
- (c) An explanation of the reason for the proposed adoption or amendment of a form.
- (d) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the proposed form.
- (e) The deadline for receipt by the agency of written or electronic public comment, which shall be no sooner than the 7th calendar day after the date of publication of the notice in the rulemaking register.

IV. The notice required by paragraph III shall be filed with the director of legislative services for publication in the rulemaking register. A copy of the form to be adopted shall be filed with the notice.

V. If on the basis of public comment the official or the group of individuals with rulemaking authority determines that the form should not be adopted, the agency shall so notify the director of legislative services and the form shall not be adopted.

VI. The proposed form shall be placed on the agenda of the committee for review at the first regularly scheduled or special meeting at least 5 calendar days after the close of the period for written or electronic comment described in subparagraph III(e). The committee may approve or object to the form. The committee may object to the adoption of the form if the form is:

- (a) Beyond the authority of the agency;

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- (b) Contrary to the intent of the legislature; or
- (c) Deemed by the committee not to meet the requirements of this section.

VII. Subsequent review and adoption of the form shall be as provided in RSA 541-A:13 for final proposed rules.

### **541-A:19-d Expedited Amendment to Incorporation by Reference.**

I. An agency may amend any existing rules which incorporate by reference documents or Internet content pursuant to RSA 541-A:12, III-VII by using the expedited procedures of this section, and without meeting the requirements of RSA 541-A:5 and RSA 541-A:6 and RSA 541-A:9 through RSA 541-A:14 except as provided below, if:

- (a) The proposed amendment has been approved by the official or the group of individuals with rulemaking authority.
- (b) The proposed amendment only updates or changes the document or Internet content incorporated by reference, or amends related text, in the existing rule.
- (c) The amended rule does not encompass more than a full rules section, as described in the drafting and procedure manual for administrative rules pursuant to RSA 541-A:8.
- (d) The proposed amendment has no fiscal impact which would otherwise require a fiscal impact statement pursuant to RSA 541-A:5.
- (e) The requirements of RSA 541-A:12, III-VII are met as they would be for final proposals as described in paragraph IV.

II. Notice of an agency's intent to amend a rule which incorporates by reference documents or Internet content shall include:

- (a) The name and address of the agency.
- (b) The statutory rulemaking authority for the rule.
- (c) Whether the action is an amendment or readoption with amendment as described in the drafting and procedure manual for administrative rules pursuant to RSA 541-A:8.
- (d) The rule number and title.
- (e) A concise summary of the existing rule and the proposed amendment, and an explanation of the differences between the existing document or Internet content incorporated by reference and the document or Internet content in the amended rule.
- (f) Identification of the state or federal statute or regulations which the rule is intended to implement pursuant to RSA 541-A:3-a.
- (g) The deadline for receipt by the agency of written or electronic public comment, which shall be no sooner than the fourteenth calendar day after the date of publication of the notice in the rulemaking register.
- (h) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the amended rule.

III. The notice required by paragraph II shall be filed with the director of legislative services for publication in the rulemaking register.

IV. The agency shall file the amended rule with the notice filed pursuant to paragraph III, including an appendix pursuant to RSA 541-A:3-a, as described in the drafting and procedure manual for administrative rules pursuant to RSA 541-A:8. The agency shall also comply with RSA 541-A:12, III-VII as for filing final proposals, including filing of an incorporation by reference statement for each document or Internet content incorporated by reference.

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V. Copies of the text of the amended rule shall be available to the public at the time the notice is filed, and a copy of the document or Internet content incorporated by reference shall also be available for inspection pursuant to RSA 541-A:12, VI.

VI. If on the basis of public comment the official or the group of individuals with rulemaking authority determines that the rule should not be amended by the expedited procedure, the agency shall so notify the director of legislative services and the rule shall not be amended under this section.

VII. The amended rule shall be placed on the agenda of the committee for review at the first regularly scheduled or special meeting at least 5 calendar days after the close of the period for written or electronic comment described in subparagraph II(g). The committee may approve, conditionally approve, or object to the amended rule pursuant to RSA 541-A:13, V-VII. The committee may object to the amended rule if the rule is:

- (a) Beyond the authority of the agency;
- (b) Contrary to the intent of the legislature;
- (c) Deemed not to be in the public interest; or
- (d) Deemed by the committee not to meet the requirements of paragraph I.

VIII. Subsequent review and adoption of the amended rule shall be as provided in RSA 541-A:13, V-VII and RSA 541-A:14 as for final proposed rules.

**541-A:20 Initiating Rulemaking Prior to Effective Date of Statutory Authority.** After the enactment and before the effective date of any statute granting rulemaking authority, the agency to whom such authority is granted may initiate procedures to adopt such rules; provided that the effective date of the rule, under RSA 541-A:14, IV or RSA 541-A:19, X shall not occur before the effective date of the act granting statutory authority for that rule.

### **541-A:20-a Initiating Rulemaking Prior to Expiration Date of Existing Rule; Expired Rule.**

I. Provided that the relevant statute granting rulemaking authority for an existing rule is valid and in effect and requires the agency to adopt the rule, the agency to which such authority is granted shall act expeditiously to commence rulemaking pursuant to RSA 541-A to prevent expiration of such rules and to allow adequate time for the committee to consider the rules.

II. If an agency consistently fails to readopt its rules prior to their expiration as provided in paragraph I, the committee may direct the agency to contact the director to develop a timetable of readoption or readoption with amendments.

III. An agency shall not be precluded from adopting an interim rule pursuant to RSA 541-A:19, I(d) to keep rules from expiring or RSA 541-A:19, I(e) to put expired rules back into effect.

### **541-A:21 Exceptions.**

- I. Authority granted under the provisions of the following statutes shall be exempt from RSA 541-A:
- (a) RSA 230:53, relative to the use of limited access highway facilities.
  - (b) RSA 236:1, II, relative to regulating, permanently or seasonally, the use of certain class I, II and III highways by the posting of traffic control stop signs, devices, and signals thereon.
  - (c) RSA 265:22, relative to painted marking of highways.
  - (d) RSA 265:62, relative to the establishment of state speed zones.
  - (e) RSA 265:71, relative to stopping, standing, or parking and the placing of signs relative thereto on certain highways.
  - (f) RSA 236:9, relative to excavation permits.

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- (g) RSA 236:13, relative to driveway permits.
- (h) RSA 231:161, relative to licensing utility poles and appurtenances within public highways.
- (i) RSA 266:18-c, V, relative to bridge weight limits.
- (j) RSA 651-A:22, II, relative to credit for good conduct of prisoners.
- (k) RSA 111, relative to the state guard.
- (l) RSA 284:12, IV, relative to the sale of pari-mutuel pools as authorized under RSA 284:22 and RSA 284:22-a.
- (m) RSA 237:5, II; 237:9; 237:17; 237:24, I; 237:34; and 237:40, relative to the establishment of toll rates for turnpikes.
- (n) Except for rules adopted by the authority acting through the division of ports and harbors under RSA 12-G:42, X, which shall be subject to the provisions of RSA 541-A:3 through RSA 541-A:15, RSA 12-G, relative to the Pease development authority.
- (o) [Repealed 2007, 263:175, eff. July 1, 2007.]
- (p) [Repealed 1998, 207:9, IV, eff. June 18, 1998.]
- (q) RSA 374:8, relative to a uniform system of accounts for regulated utilities.
- (r) RSA 21-P:27, II(a) and (b), relative to educational, training and evidentiary standards for fire service personnel and curriculum requirements for schools training fire service personnel.
- (s) RSA 106-L:5, VI, relative to educational, training and evidentiary standards and curriculum requirements for police and corrections personnel and courses and tuition students at such courses.
- (t) RSA 260:65-b, relative to the multi-jurisdictional fuel tax agreement.
- (u) RSA 162-A, relative to the business finance authority.
- (v) Rules adopted under RSA 195-D, relative to the New Hampshire health and education facilities authority.
- (w) RSA 485:16-b, II, relative to limits on the concentration of methyl tertiary butyl ether in gasoline.
- (x) RSA 204-C:53, relative to the housing finance authority.
- (y) RSA 237:16-d, relative to the E-Z Pass Interagency Agreement for Operations.
- (z) RSA 21-L:12-b, relative to bridge and highway construction requirements in AASHTO design standards and manuals.
- (aa) RSA 21-H:8, III, relative to internal practices and procedures in the department of corrections.
- (bb) RSA 170-B:18, VII, relative to background checks conducted as part of an adoption assessment, and RSA 170-E:29, II-a relative to background checks of prospective foster parents.
- (cc) RSA 106-B:14, I-a, relative to the fee for criminal record checks of department of health and human services employees, service providers, and licensed and license-exempt child day care providers.
- (dd) RSA 270:12, relative to boat operating restrictions.
- (ee) RSA 155-A:10, V, relative to the amendments to the state building code and state fire code for the codes described in RSA 155-A:1, IV and IV-a.
- (ff) RSA 153:5, I, relative to the adoption of the state fire code.

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(gg) RSA 21-R:4, XX, relative to the telephony services manual developed by the department of information technology.

(hh) [Effective as provided in 2014, 290:4.]

(ii) [Repealed by 2016, 277:5, eff. 7-1-17.]

(jj) RSA 162-S, relative to the extraterritorial financing powers of the business finance authority.

(kk) RSA 162-L, relative to the community development finance authority.

II. Rules adopted under RSA 394-A:7 prior to the effective date of the repeal of that chapter shall be exempt from committee review under RSA 541-A:13.

III. Rules adopted under RSA 161:4, VI, relative to rates of reimbursement to providers of medical services under the medical assistance program, shall be exempt from the requirements of RSA 541-A:5 through RSA 541-A:14.

III-a. Rules adopted relative to the budget adjustment factor contained within the Medicaid rate of reimbursement methodology for nursing facilities shall be exempt from the provisions of 541-A:5 through RSA 541-A:14 provided that the budget adjustment factor applied to the reimbursement methodology is equal to or less than 28.76 percent. If the budget adjustment factor to be applied to the reimbursement methodology is greater than 28.76 percent, the provisions of 541-A shall apply.

IV. Rules adopted under RSA 125-F:5, IV and V, RSA 125-F:7, RSA 125-F:8, RSA 125-F:8-a, III, and RSA 125-F:22, III, to conform to 10 CFR and 21 CFR shall be exempt from the uniform system of numbering and drafting rules required by 1994, 412:52 and the drafting and numbering requirements of RSA 541-A:8. These rules shall be in compliance with RSA 541-A:7 if the wording is consistent with the language of the corresponding federal regulations.

V. Requirements on forms as specified in RSA 21-J:13-a shall be exempt from RSA 541-A.

VI. (a) Rules adopted under title XXXVII, relative to insurance regulation, shall be exempt from RSA 541-A:7 and RSA 541-A:8 and shall permit the use of terminology allowing for discretionary authority by the commissioner when:

(1) The wording is consistent with the language of corresponding National Association of Insurance Commissioners guidelines or models.

(2) The rule relates to technical instructions concerning the implementation of electronic or computerized programs or systems.

(3) The rule implements a federal benefit or program that requires the adoption of uniform language.

(b) As specified in RSA 400-A:15-d, forms adopted by the commissioner shall be exempt from RSA 541-A:7 and RSA 541-A:8.

VII. RSA 170-G:4, XVII, relative to the publication of rates for services, placements, and programs which are paid for by the department of health and human services pursuant to RSA 169-B:40, RSA 169-C:27, and RSA 169-D:29 shall be exempt from RSA 541-A.

VIII. Rules relative to the department of health and human services medical assistance program coverage criteria for medical services and items, adopted under either RSA 161:4-a, IX or other rulemaking authority of the commissioner of the department relative to the medical assistance program, shall be exempt from RSA 541-A:12, V and may incorporate by reference these criteria as Internet content without specifying a date or edition for the content incorporated. Amendments to these criteria shall be exempt from the requirements of RSA 541-A:5 through RSA 541-A:14.

IX. Rules of the department of transportation relating to the state bridge aid program or the state highway aid program, adopted under rulemaking authority of the commissioner of the department, shall be exempt from RSA 541-A:12, III and may incorporate by reference the department of transportation's Standard Specifications for Road and Bridge Construction, Highway Design Manual, and Bridge Design Manual without specifying a date or edition for the content incorporated, as provided in RSA 234:5, II and RSA 235:14, II.



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### 541-A:22 Validity of Rules.

I. No agency rule is valid or effective against any person or party, nor may it be enforced by the state for any purpose, until it has been filed as required in this chapter and has not expired.

II. Rules shall be valid and binding on persons they affect, and shall have the force of law unless they have expired or have been amended or revised or unless a court of competent jurisdiction determines otherwise. Except as provided by RSA 541-A:13, VI, rules shall be prima facie evidence of the proper interpretation of the matter that they refer to.

III. An agency shall not by rule:

(a) Provide for penalties or fines unless specifically authorized by statute.

(b) Require licensing, as defined in RSA 541-A:1, IX, unless authorized by a law which uses one of the specific terms listed in RSA 541-A:1, VIII.

(c) Require fees unless specifically authorized by a statute enforced or administered by an agency. Specific authorization shall not include the designation of agency fee income in the operating budget when no other statutory authorization exists.

(d) Provide for non-consensual inspections of private property, unless the statute enforced or administered by the agency specifically grants inspection authority.

(e) Delegate its rulemaking authority to anyone other than the agency named in the statute delegating authority.

(f) Adopt rules under another agency's authority.

(g) Expand or limit a statutory definition affecting the scope of who may practice a profession.

(h) Require a submission of a social security number unless mandated by state or federal law.

IV. No agency shall grant waivers of, or variances from, any provisions of its rules without either amending the rules, or providing by rule for a waiver or variance procedure. The duration of the waiver or variance may be temporary if the rule so provides.

### 541-A:23 Remedies for Procedural Failures.

I. The following shall prevent a rule from taking effect:

(a) Failure to file with the director of legislative services;

(b) Failure to file with the committee;

(c) Failure to respond to an objection of the committee as required by RSA 541-A:13, V; or

(d) Failure to receive approval of the committee for a proposed interim rule, as required by RSA 541-A:19, X.

II. The following shall not affect the validity of a rule:

(a) Inadvertent failure to make required assurances relating to an incorporation by reference;

(b) Failure to certify that all procedures required by this chapter have been satisfied;

(c) Failure to meet the style requirements of RSA 541-A:7; or

(d) Inadvertent failure to mail notice or copies of any rule.

III. For other violations of this chapter, the court may fashion appropriate relief.

IV. An action to contest the validity of a rule for noncompliance with any of the provisions of this chapter other than those listed in paragraph I shall be commenced within one year after the effective date of the rule. Such actions shall be brought in the Merrimack county superior court. The plaintiff shall give notice of the action to the office of legislative

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services, division of administrative rules, at the time of filing. Upon receiving a judgment on the merits, the respondent agency or department shall also file a copy of that judgment with the office of legislative services, division of administrative rules.

**541-A:24 Declaratory Judgment on Validity or Applicability of Rules.** The validity or applicability of a rule may be determined in an action for declaratory judgment in the Merrimack county superior court if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. The plaintiff shall give notice of the action to the office of legislative services, division of administrative rules, at the time of filing. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question. Upon receiving a declaratory judgment, the respondent agency or department shall also file a copy of that judgment with the office of legislative services, division of administrative rules.

### **541-A:25 Unfunded State Mandates.**

I. A state agency to which rulemaking authority has been granted, including those agencies, the rulemaking authority of which was granted prior to May 6, 1992, shall not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision in such a way as to necessitate further expenditures by the political subdivision unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision. Such programs include those functions of a nature customarily undertaken by municipalities whether or not performance of such functions is required by statute.

II. Such programs also include, but are not limited to, functions such as police, fire and rescue, roads and bridges, solid waste, sewer and water, and construction and maintenance of buildings and other municipal facilities or other facilities or functions undertaken by a political subdivision.

III. Included in the scope and nature of such programs are those municipal functions which might be undertaken by a municipality or by a private entity and those functions which a municipality may legally choose not to undertake.

**541-A:26 Administration of Federal Mandates.** Any state agency, when administering federal mandates, shall not mandate or assign to any political subdivision any new, expanded or modified programs or responsibilities additional to the federal mandate in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

**541-A:27 Notification of Federal Statute and Regulation.** Any new, expanded, or modified programs or responsibilities based upon a federal mandate and lawfully mandated or assigned to any political subdivision shall specifically state the federal statute and regulation requiring such new, expanded, or modified programs or responsibilities.

**541-A:28 Opinions of the Attorney General.** The attorney general shall transmit a copy of every non-confidential opinion relative to rulemaking or rulemaking authority issued by the attorney general or in the attorney general's name to the director of legislative services. The director shall publish such opinions in the rulemaking register.

**541-A:29 Agency Action on Applications, Petitions and Requests.** In processing an application, petition or request, in any matter other than rulemaking or a declaratory ruling, in which a response is specifically addressed to the applicant, petitioner or requester, the agency shall:

I. Within 30 days of receipt, examine the application, petition or request, notify the applicant of any apparent errors or omissions, request any additional information that the agency is permitted by law to require, and notify the applicant of the name, official title, address, and telephone number of an agency official or employee who may be contacted regarding the application.

II. Within a reasonable time, not to exceed 60 days, after receipt of the application, petition or request, or of the response to a timely request made by the agency pursuant to paragraph I, the agency shall:

(a) Approve or deny the application, in whole or in part, on the basis of nonadjudicative processes, if disposition of the application by the use of these processes is not precluded by any provision of law; or

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(b) Commence an adjudicative proceeding in accordance with this chapter.

III. If the time limits prescribed by this section conflict with specific time limits provided for by other provisions of law, the specific time limits provided for by such other provisions shall control.

IV. An agency may extend the time periods for review provided for in this section or in any other provision of law upon written agreement of the applicant.

### **541-A:29-a Failure of Agency to Act.**

I. If an agency fails to take any required action on an application, petition, or request within the time limits prescribed by RSA 541-A:29 or any other provisions of law, the application, petition, or request shall be deemed approved and any permit, approval or other item requested shall be deemed granted to or received by the applicant, petitioner, or requestor.

II. If a permit, approval, or other item has been granted under paragraph I, the applicant may request written confirmation of such grant from an agency. The agency shall provide an applicant written confirmation of such an approval within 14 days of the applicant's request.

III. A permit, approval, or other item shall not be granted by default if an applicant has agreed in writing to extend an agency's time for review pursuant to RSA 541-A:29, IV or any other provision of law.

IV. A grant of a permit, approval, or other item under this section shall not relieve the applicant, petitioner, or requestor from the obligation to comply with all federal, state, and local requirements applicable to activities authorized by the permit, approval, or other item.

### **541-A:30 Agency Action Against Licensees.**

I. If a timely and sufficient application has been made in accordance with agency rules for renewal of a license for any activity of a continuing nature that does not automatically expire by law, the existing license shall not expire until the agency has taken final action upon the application for renewal. If the agency's final action is unfavorable, the license shall not expire until the last day for seeking judicial review of the agency's action, or a later date fixed by the reviewing court.

II. An agency shall not revoke, suspend, modify, annul, withdraw, or amend a license unless the agency first gives notice to the licensee of the facts or conduct upon which the agency intends to base its action, and gives the licensee an opportunity, through an adjudicative proceeding, to show compliance with all lawful requirements for the retention of the license.

III. If the agency finds that public health, safety or welfare requires emergency action and incorporates a finding to that effect in its order, immediate suspension of a license may be ordered pending an adjudicative proceeding. The agency shall commence this adjudicative proceeding not later than 10 working days after the date of the agency order suspending the license. A record of the proceeding shall be made by a certified shorthand court reporter provided by the agency. Unless expressly waived by the licensee, agency failure to commence an adjudicative proceeding within 10 working days shall mean that the suspension order is automatically vacated. The agency shall not again suspend the license for the same conduct which formed the basis of the vacated suspension without granting the licensee prior notice and an opportunity for an adjudicative proceeding.

### **541-A:30-a Rules for Adjudicative Proceedings.**

I. Subject to paragraph V, each agency shall adopt rules pursuant to RSA 541-A governing the nature and requirement of all formal and informal procedures available in an adjudicative proceeding.

II. The attorney general, in consultation with agencies that conduct adjudicative proceedings, and with the approval of the director of the office of legislative services, shall draft proposed rules on model procedures relative to adjudicative proceedings and request a fiscal impact statement pursuant to RSA 541-A:5 within 90 days of the effective date of this section. The attorney general shall adopt the model rules pursuant to RSA 541-A on behalf of agencies, for purposes described in paragraph V, that do not have adopted effective rules on adjudicative proceedings. The attorney general shall amend the model rules pursuant to RSA 541-A as necessary after consultation and approval as required for the original proposed model rules. Neither the original proposed model rules nor any amendments shall be adopted by the

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attorney general unless the committee has voted to approve then. Notwithstanding RSA 541-A:17, I the original model rules and any amendments shall not expire.

III. The model rules adopted pursuant to paragraph II, and all rules on adjudicative proceedings, unless authorized otherwise by statutes governing an agency, shall address at least the following areas:

- (a) Filing and service of documents;
- (b) Appearances before agencies;
- (c) Procedures for pre-hearing exchange of information;
- (d) Burden of proof;
- (e) Standard of proof;
- (f) Computation of time periods;
- (g) Roles of complainants, intervenors, and agency staff in disciplinary and enforcement proceedings;
- (h) Continuances;
- (i) Reopening of the record;
- (j) Waiver of rules governing adjudicative proceedings;
- (k) Procedure and criteria for the withdrawal of a presiding officer; and

(l) Retention schedule for written decisions or orders pursuant to RSA 541-A:35, subject to any longer periods for retention set by the director of the division of archives and records management of the department of state pursuant to rules adopted under RSA 5:40.

IV. Each agency may adopt, pursuant to RSA 541-A, the text of the model rules. In order to adopt any supplements or modifications to the model rules, each agency shall adopt, pursuant to RSA 541-A, the text of the model rules as amended by the supplements or modifications.

V. Notwithstanding the provisions of RSA 541-A:22, I, an agency shall apply the model rules as necessary in a particular adjudicative proceeding to the extent that the agency's rules or governing statutes do not address the procedures in the model rules, and provided that:

- (a) Such use shall not conflict with a statute, judicial decision, or other rules of the agency;
- (b) Notice shall be given to all parties with the notice pursuant to RSA 541-A:31, III of the extent to which the model rules will apply to the proceeding; and
- (c) The agency shall provide copies of the notice to the attorney general, the director of the office of legislative services, and the joint legislative committee on administrative rules.

VI. A copy of the written decision or order pursuant to RSA 541-A:35 shall be readily available to the public pursuant to the provisions of RSA 91-A unless:

- (a) Otherwise provided by statute; or
- (b) The written decision or order has been disposed after a retention period adopted pursuant to paragraph III.

VII. Each agency shall retain a copy of the verbatim recording of all oral proceedings pursuant to RSA 541-A:31, VII at least 30 days after the opportunity for all administrative and judicial appeals has been exhausted.

VIII. The attorney general shall prepare and distribute to all agencies authorized to conduct contested cases copies of the model rules and any amendments thereto, along with recommended guidelines for presiding officers in an adjudicative proceeding. These guidelines shall be available to the public pursuant to RSA 91-A. The guidelines shall be updated annually to address relevant changes in statutes, rules, or judicial decision. Each agency that receives the

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guidelines shall provide a copy to all presiding officers in a contested case and to all members of the agency who may render the final decision in a contested case.

### **541-A:31 Availability of Adjudicative Proceeding; Contested Cases; Notice, Hearing and Record.**

I. An agency shall commence an adjudicative proceeding if a matter has reached a stage at which it is considered a contested case or, if the matter is one for which a provision of law requires a hearing only upon the request of a party, upon the request of a party.

II. (a) An agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction, except that no disciplinary proceeding against an occupational licensee shall be initiated unless such action is commenced within 5 years of the date upon which the alleged violation of an applicable rule or statute occurred, or within 5 years of the date upon which the violation could reasonably have been discovered.

(b) The time limitation provided in subparagraph (a) shall be tolled (1) during the period of time during which a criminal action on the matter is pending in a trial court of this state, or of another state, or of the United States, (2) during the time in which a complainant is a minor or incapacitated, and (3) during any time which the accused prevents discovery of the subject matter of the alleged violation.

(c) The time limitations established in this paragraph shall not apply to the commencement of actions initiated by the real estate appraiser board under RSA 310-B.

III. In a contested case, all parties shall be afforded an opportunity for an adjudicative proceeding after reasonable notice. The notice shall include:

(a) A statement of the time, place, and nature of the hearing.

(b) A statement of the legal authority under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the issues involved. Upon request an agency shall, when possible, furnish a more detailed statement of the issues within a reasonable time.

(e) A statement that each party has the right to have an attorney present to represent the party at the party's expense.

(f) For proceedings before an agency responsible for occupational licensing as provided in paragraph VII-a, a statement that each party has the right to have the agency provide a certified shorthand court reporter at the party's expense and that any such request be submitted in writing at least 10 days prior to the proceeding.

IV. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

V. (a) Unless precluded by law, informal disposition may be made of any contested case, at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default.

(b) In order to facilitate proceedings and encourage informal disposition, the presiding officer may, upon motion of any party, or upon the presiding officer's own motion, schedule one or more informal prehearing conferences prior to beginning formal proceedings. The presiding officer shall provide notice to all parties prior to holding any prehearing conference.

(c) Prehearing conferences may include, but are not limited to, consideration of any one or more of the following:

(1) Offers of settlement.

(2) Simplification of the issues.

(3) Stipulations or admissions as to issues of fact or proof, by consent of the parties.

(4) Limitations on the number of witnesses.



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- (5) Changes to standard procedures desired during the hearing, by consent of the parties.
- (6) Consolidation of examination of witnesses by the parties.
- (7) Any other matters which aid in the disposition of the proceeding.

(d) The presiding officer shall issue and serve upon all parties a prehearing order incorporating the matters determined at the prehearing conference.

VI. The record in a contested case shall include all of the following that are applicable in that case:

- (a) Any prehearing order.
- (b) All pleadings, motions, objections, and rulings.
- (c) Evidence received or considered.
- (d) A statement of matters officially noticed.
- (e) Proposed findings and exceptions.
- (f) Any decision, opinion, or report by the officer presiding at the hearing.

(g) The tape recording or stenographic notes or symbols prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding.

(h) Staff memoranda or data submitted to the presiding officer, except memoranda or data prepared and submitted by agency legal counsel or personal assistants and not inconsistent with RSA 541-A:36.

- (i) Matters placed on the record after an ex parte communication.

VII. The entirety of all oral proceedings shall be recorded verbatim by the agency. Upon the request of any party, or upon the agency's own initiative, such record shall be transcribed by the agency if the requesting party or agency shall pay all reasonable costs for such transcription. If a transcript is not provided within 60 days of a request by a person who is a respondent party in a disciplinary hearing before an agency responsible for occupational licensing, the proceeding shall be dismissed with prejudice. Any party may record an oral proceeding, have a transcription made at the party's expense, or both, but only the transcription made by the agency from its verbatim record shall be the official transcript of the proceeding.

VII-a. At the request of a party in any oral proceeding involving disciplinary action before an agency responsible for occupational licensing except for an emergency action under RSA 541-A:30, III, the record of the proceeding shall be made by a certified shorthand court reporter provided by the agency at the requesting party's expense. A request shall be submitted to the agency in writing at least 10 days prior to the day of the proceeding.

VIII. Findings of fact shall be based exclusively on the evidence and on matters officially noticed in accordance with RSA 541-A:33, V.

### **541-A:32 Intervention.**

I. The presiding officer shall grant one or more petitions for intervention if:

(a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;

(b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

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II. The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.

III. If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include, but are not limited to:

(a) Limitation of the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition.

(b) Limitation of the intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings.

(c) Requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings.

IV. Limitations imposed in accordance with paragraph III shall not be so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention.

V. The presiding officer shall render an order granting or denying each petition for intervention, specifying any conditions and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification.

### **541-A:33 Evidence; Official Notice in Contested Cases.**

I. All testimony of parties and witnesses shall be made under oath or affirmation administered by the presiding officer.

II. The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing requirements, any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.

III. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

IV. A party may conduct cross-examinations required for a full and true disclosure of the facts.

V. Official notice may be taken of any one or more of the following:

(a) Any fact which could be judicially noticed in the courts of this state.

(b) The record of other proceedings before the agency.

(c) Generally recognized technical or scientific facts within the agency's specialized knowledge.

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

VI. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

**541-A:34 Examination of Evidence by Agency.** If a majority of the officials of the agency who are to render the final decision in a contested case have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the final decision. The proposal for decision shall contain a statement of the reasons for the decision and shall set forth each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

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**541-A:35 Decisions and Orders.** A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed promptly to each party and to a party's recognized representative.

**541-A:36 Ex Parte Communications.** Unless required for the disposition of ex parte matters authorized by law, officials or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue before the agency, with any person or party, except upon notice and opportunity for all parties to participate. This notice requirement shall not apply to:

- I. Communications between or among agency personnel, or between the agency and legal counsel.
- II. Communications between or among the presiding officer and one or more personal assistants.

**541-A:37 Waiver.** Except to the extent precluded by law, a person may waive any right conferred upon that person by this chapter.

**541-A:38 Informal Settlements.** Except to the extent precluded by law, informal settlement of matters by nonadjudicative processes is encouraged. This section does not require any party or other person to utilize informal procedures or to settle a matter pursuant to informal procedures.

**541-A:39 Notice to Municipalities.**

I. In addition to any other requirements imposed by this chapter, each agency shall give notice to and afford all affected municipalities reasonable opportunity to submit data, views, or comments with respect to the issuance of a permit, license, or any action within its boundaries that directly affects the municipality. Such actions shall include those which may have an effect on land use, land development, or transportation; those which would result in the operation of a business; or those which would have an immediate fiscal impact on the municipality or require the provision of additional municipal services.

II. Each agency shall give notice by first class mail to the town or city clerk.

III. In the event of emergency circumstances which require prompt attention, prior notice or opportunity to comment shall not be required. However, notice contemporaneous with the action shall be required.

IV. This section shall not apply to the issuance of professional or occupational licenses unless such issuance also results in actions meeting the criteria set forth in paragraph I. This section shall not apply to reissuance or renewal of licenses or permits issued prior to August 23, 1985.

**541-A:40 Suspension of Provisions.**

I. To the extent necessary to avoid a denial of funds or services from the United States which would otherwise be available to the state, the governor may suspend, in whole or in part, one or more provisions of this chapter. When the governor determines that a suspension is no longer necessary to prevent the loss of funds or services from the United States, the governor shall issue an order specifying the dates of termination of a suspension.

II. The original copy of any suspension order or order recognizing the termination of a suspension issued by the governor shall be dated, certified and filed in the office of legislative services.

III. If any provision of this chapter is suspended pursuant to this section, the governor shall promptly report the suspension to the general court. The report shall include recommendations with respect to any desirable legislation that may be necessary to conform this chapter with federal law.

IV. (a) Notwithstanding any other provision of this chapter, the director of legislative services may, after consultation with the chair and vice-chair of the joint legislative committee on administrative rules, and for good cause

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shown, waive any deadline or otherwise extend any time period contained in any provision of this chapter which relates to the rulemaking process.

(b) If a deadline is waived or a time period is extended, the director shall, after consultation with the chair and the vice-chair of the committee and the agency whose rules are affected, establish a new deadline by which the required action shall be taken.

**541-A:41 Effect of Prior Law.** This chapter shall govern all agency rulemaking procedures, hearings, and appeals, except as specifically exempted by this chapter. Conflicts between this chapter and prior or existing statutes shall be resolved by following the stricter requirements.

**APPENDIX IV**

**RULES FOR THE JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES**

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### PART 401 RULES BEYOND AGENCY AUTHORITY

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- Section 402.01 Violation of Statutory Purpose
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Section 402.03 Matters Requiring Statutory Authority  
Section 402.04 Violation of a Constitutional Provision

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Section 403.01 Responsiveness  
Section 403.02 Uniform Application  
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## RULES FOR THE JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

### CHAPTER 100 ORGANIZATIONAL RULES

#### PART 101 DEFINITIONS

101.01 “Committee” means the Joint Legislative Committee on Administrative Rules established by RSA 541-A:2, I.

Source. Committee meeting, 11-15-83; 7-15-94; 11-13-98

101.02 “Committee legal counsel” means the Committee attorneys in the Division of Administrative Rules who have been specially designated by the Director of Legislative Services pursuant to RSA 541-A:2, II, to assist the Committee in the review of state agency administrative rules and other tasks as necessary to carry out the role of the Division of Administrative Rules in the rulemaking process.

Source. Committee meeting, 11-13-98; 11-17-00

101.03 “Committee staff” means the Division of Administrative Rules in the Office of Legislative Services.

Source. Committee meeting, 11-15-83; 11-13-98

101.04 “Proposed rule” means a rulemaking proposal filed by an agency pursuant to RSA 541-A:5-13, RSA 541-A:19, RSA 541-A:19-a, RSA 541-A:19-c, or RSA 541-A:19-d, at any step of the rulemaking process prior to final adoption. The term includes an initial proposal, final proposal, , proposed interim rule, , conditional approval request, proposed expedited repeal, proposed expedited revision to agency form, proposed expedited amendment to incorporation by reference, conditional approval explanation, and responses to Committee objections.

Source. Committee meeting, 9-21-01; 11-19-20

#### PART 102 DESCRIPTION OF COMMITTEE

102.01 Membership. The Committee is composed of 10 members, and 4 alternate members, as appointed under RSA 541-A:2, I. The members are appointed for 2-year terms ending on the first Wednesday in December of even-numbered years. The Committee shall elect a Chairperson and Vice Chairperson at the first organizational meeting, which shall be held as soon as possible after the new members are appointed.

Source. Committee meeting, 11-15-83; 3-20-92; 7-15-94; 11-17-00

102.02 Role of Committee. The Committee shall conduct an ongoing review of administrative rulemaking. The Committee’s primary concern shall be to ensure agency rules are consistent with the specific criteria in RSA 541-A:13, IV, RSA 541-A:19, IV, RSA 541-A:19-a, VII, RSA 541-A:19-c. VI, or RSA 541-A:19-d, VII, as appropriate.

Source. Committee meeting, 11-15-83; 3-20-92; 7-15-94; 11-13-98; 11-19-20

#### 102.03 Powers and Duties.

(a) The Committee’s primary statutory duty is to review both the proposed and the previously adopted rules of state agencies.

(b) Review of proposed rules is carried out as follows:

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- (1) The Committee may review proposed rules beginning from the date the notice of the initial proposal is published in the *New Hampshire Rulemaking Register (Register)* or, in the case of proposed interim rules, the date the proposed rule is filed. The Committee staff shall, upon request, distribute copies of the *Register* to the Committee and copies of the initial proposals or proposed interim rules to a Committee member.
  - (2) Committee members or Committee staff may attend agency hearings on the proposed rule.
  - (3) After the agency has considered all public oral, written, and electronic comment and Committee legal counsel comment submitted pursuant to RSA 541-A:11 regarding the initial proposal and filed a final proposal, the Committee has 60 days under RSA 541-A:12, I, to approve, conditionally approve, or object to the final proposal under RSA 541-A:13.
  - (4) The Committee shall review agency requests for conditional approval, including those received to respond to Committee legal counsel comments as specified in RSA 541-A:13, II (b) for final proposals and RSA 541-A:19, VIII(a) for proposed interim rules.
  - (5) During the 60-day Committee review period for a final proposal, unless the period is waived, the Committee shall hold at least one Committee meeting, and the Committee and Committee staff may consult with representatives of the adopting agency or with any other interested parties.
  - (6) The Committee shall review responses to objections to final proposals, amended responses to objections, and requests for revised objections pursuant to RSA 541-A:13, V through VII.
  - (7) The Committee shall review proposed interim rules pursuant to RSA 541-A:19.
  - (8) The committee shall review proposed expedited repeals, proposed expedited revisions to forms, and proposed expedited amendments to incorporation by reference pursuant to RSA 541-A:19-a, RSA 541-A:19-c, and RSA 541-A:19-d.
  - (9) Committee staff shall assist the Committee under this paragraph as described in Part 103, Chapter 200, and rule 301.03 of the Committee's rules.
- (c) Review of previously adopted rules is carried out as follows:
- (1) The Committee may vote to hold a public hearing on any previously adopted rule, but has no authority to object to the rule under RSA 541-A:13, which applies only to a proposed rule.
  - (2) The Committee may also petition any agency for action on a rule under RSA 541-A:4, which grants the agency 30 days after receipt of the petition, or 30 days after the next scheduled meeting of the board, commission, or group receiving the petition, in which to respond to the petition in writing. If the agency denies the Committee petition, the Committee may vote to hold a further public hearing or hearings on the reasons for the agency's denial.
  - (3) The Committee shall review emergency rules to determine if a genuine emergency exists. The Committee shall also examine each emergency rule to determine if a permanent rule is necessary once the emergency rule expires.
  - (4) Committee staff shall assist the Committee under this paragraph as described in Part 103, Chapter 200, and rule 301.03 of the Committee's rules.
- (d) The Committee shall respond to a written request from any person concerning any proposed or adopted rule. Such request shall be addressed to the Chairperson or any member of the Committee.

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(e) In addition to reviewing proposed and adopted rules, the Committee pursuant to RSA 541-A:2, IV may petition an agency to adopt a rule if the agency has not exercised its rulemaking authority in a specific area.

(f) The Committee may make recommendations pursuant to RSA 541-A:2, IV to the full Legislature or to standing committees for legislation to clarify or repeal any statutory passage delegating rulemaking authority. It may also recommend legislation to supersede a part or whole of any rule, including, but not limited to, rules adopted over the Committee's objection. Pursuant to RSA 541-A:4, II, the Committee itself may file legislation to repeal or amend an agency's rulemaking authority.

Source. Committee meeting, 11-15-83; 6-21-85; 9-3-87; 3-20-92; 7-15-94; 11-13-98; 11-17-00; 9-21-01; 11-19-20

### 102.04 Committee Meetings.

(a) The Committee is required pursuant to RSA 541-A:2, II to meet at least once a month, and more often as necessary. The regular monthly meeting shall be on the third Friday of every month unless the date is changed by prior approval of the Committee. Other meetings shall be called by the Chairperson, or in the Chairperson's absence, by the Vice-Chairperson. A schedule of meetings and agendas shall be available for public inspection during regular working hours or posted online on the website of the Office of Legislative Services, Administrative Rules, at:

Office of Legislative Services  
Administrative Rules  
State House Annex, Room 219  
25 Capitol Street  
Concord, NH 03301-6312  
<http://www.gencourt.state.nh.us/rules/default.htm>

(b) Committee meetings shall be held in-person in the Legislative Office Building, unless otherwise announced. Meetings shall be held remotely, with opportunity for remote participation by members, agencies, and the public, at the direction of the Chairperson or, in the Chairperson's absence, the Vice-Chairperson, if in compliance with RSA 91-A. Notice of meetings and remote access instructions shall be given in the *Register*, the House and Senate *Calendars*, and on the website of the Office of Legislative Services, Administrative Rules.

(c) The Committee shall give at least 7 days' notice of any public hearing in the *Register* and on the website of the Office of Legislative Services, Administrative Rules. Under RSA 541-A:2, IV, the Committee may schedule a hearing on any proposed or adopted rule.

(d) Under RSA 541-A:2, II, 6 members constitute a quorum of the Committee.

(e) All meetings of the Committee shall be transcribed verbatim by the staff of the Legislative Budget Assistant's Office or by persons with whom the Legislative Budget Assistant has contracted to provide transcription services.

(f) All meetings shall be open to the public, unless the Committee votes to meet in non-public session under RSA 91-A:3, I.

(g) Committee staff shall prepare an agenda for each meeting in consultation with the Chairperson or Vice-Chairperson as described in Committee rule 202.

(h) The agenda for each regularly scheduled monthly meeting shall include:



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- (1) All final proposals and proposed interim rules filed at least 21 days prior to the meeting pursuant to RSA 541-A:12, I and RSA 541-A:19, V, unless the deadline is waived pursuant to RSA 541-A:40, IV
- (2) All conditional approval requests filed by agencies for final proposals or proposed interim rules pursuant to RSA 541-A:13, II(b) and RSA 541-A:19, VIII(a), respectively;
- (3) All responses to preliminary objections, amended responses to preliminary objections filed in accordance with RSA 541-A:13, V(d), revised objections, and petitions made in prior meetings and awaiting Committee action; and
- (4) All other correspondence to the Committee.

Source. Committee meeting, 11-15-83; 2-15-85; 6-21-85; 7-17-87; 3-20-92; 7-15-94; 11-13-98; 11-17-00; 9-21-01; 11-19-20

102.05 Notification of Attendance or Absence. Committee staff shall send an attendance sheet for an upcoming Committee meeting in writing or electronically by fax or e-mail to each Committee member. Committee members shall notify the Committee staff at least 7 days prior to a Committee meeting of attendance at the meeting or any absence from all or a portion of the Committee meeting. However, if such absence is due to illness or other reason beyond the control of the Committee member, the member shall notify the Committee staff as soon as is practicable. Such notification of attendance or absence by Committee members shall be made directly to the Committee staff orally in person or by telephone, in writing, or electronically by fax or e-mail. Upon receiving notification of an absence, the Committee staff shall inform the Chairperson of such absence.

Source. Committee meeting, 11-15-91; 3-20-92; 11-13-98; 9-21-01

### 102.06 Designation of Alternates.

(a) Following notification to the Chairperson regarding the Committee member's absence, the Chairperson shall designate an alternate member to serve in the place of the absent member, pursuant to RSA 541-A:2, I, regardless of the number of other senators or representatives who attend the meeting.

(b) When the Chairperson designates an alternate member pursuant to (a), above, the designation of the alternate shall be in the order of priority set forth below:

- (1) An alternate from the same chamber and political party as the absent member shall be designated, if available;
- (2) An alternate from the same chamber but from a different political party as the absent member shall be designated, if available;
- (3) An alternate from a different chamber but from the same political party as the absent member shall be designated, if available; or
- (4) If no alternate from the same chamber (or from the same party) is available, then any available alternate shall be designated.

(c) Upon the designation of the alternate member to serve in the place of an absent member, the Chairperson shall notify the alternate member and Committee staff of such designation.

Source. Committee meeting, 11-15-91; 7-15-94; 11-13-98

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102.07 Committee Voting. Unless otherwise specified, a majority of the votes cast, a quorum being present, shall be required to decide the question or to take official action on any matter.

Source. Committee meeting, 11-15-83; 9-21-01

102.08 Committee Rules. The Committee is required to adopt rules under RSA 541-A:2, II. The Committee rules may be amended or suspended by a minimum of 6 affirmative votes.

Source. Committee meeting, 11-15-83; 7-15-94; 9-21-01

102.09 Committee Records. All Committee records, including transcripts of meetings, shall be available for public inspection during regular working hours or online on the website of the Office of Legislative Services, Administrative Rules, at

Office of Legislative Services  
Administrative Rules  
State House Annex, Room 219  
25 Capitol Street  
Concord, NH 03301-6312  
<http://www.gencourt.state.nh.us/rules/default.htm>

Source. Committee meeting, 11-15-83; 11-13-98; 11-17-00;  
11-19-20

### PART 103 DESCRIPTION OF COMMITTEE STAFF

103.01 Committee Staff. The Committee staff which the Committee may use pursuant to RSA 541-A:2, II consists of the Administrative Rules Director, Committee legal counsel, and clerical support staff in the Division of Administrative Rules in the Office of Legislative Services. The Committee staff's functions and responsibilities shall be as described in this part.

Source. Committee meeting, 11-13-98; 11-17-00

#### 103.02 Administrative Rules Director.

(a) The Administrative Rules Director of the Office of Legislative Services functions as the head of Committee staff.

(b) The responsibilities as head of Committee staff include:

- (1) Providing legal advice to the Committee on rulemaking issues if the Administrative Rules Director is an attorney licensed in New Hampshire;
- (2) Managing, supervising, and coordinating all Committee staff functions for the Committee, including clerical staff and the Committee legal counsel;
- (3) Consulting with the Chairperson and Vice-Chairperson on matters relative to the Division's role as Committee staff;
- (4) Providing oral and written information and assistance to legislators, agencies, and the public on Committee legal counsel review of proposed rules and other matters within the Committee's jurisdiction;
- (5) Reviewing all proposed written comments, memoranda, and letters prepared by the Committee legal counsel relative to proposed or adopted rules;

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- (6) Receiving and reviewing correspondence from agencies, legislators, and the public relative to matters within the Committee's jurisdiction;
- (7) Submitting notice to the *Register* of all regular and special Committee meetings and of all final proposals and proposed interim rules to be reviewed at those meetings;
- (8) Preparing the tentative agenda and summary minutes of Committee meetings;
- (9) Attending Committee meetings to assist the Chairperson and Committee members as needed;
- (10) Assisting the Committee legal counsel as necessary in review of proposed rules and emergency rules;
- (11) Reviewing rulemaking related legislation as requested by the Committee;
- (12) Assisting the Committee in reviewing adopted rules as requested, including rules for which a special Committee hearing is held pursuant to RSA 541-A:2, III;
- (13) Assisting the Committee in its duties pursuant to RSA 541-A:2, IV, including, but not limited to, review of rulemaking authority which has not been used, making improvements to rulemaking statutes and the rulemaking process, and drafting and review of amendments to the *New Hampshire Drafting and Procedure Manual for Administrative Rules (Drafting and Procedure Manual)*; and
- (14) Assisting Committee members on any other matters within the Committee's jurisdiction.

Source. Committee meeting, 11-13-98; 11-17-00; 9-21-01

### 103.03 Committee Legal Counsel.

(a) Pursuant to RSA 541-A:2, II, the Committee attorneys in the Division of Administrative Rules function as the Committee's legal counsel.

(b) The responsibilities of Committee legal counsel include:

- (1) Reviewing proposed rules, conditional approval requests, and emergency rules on behalf of the Committee to determine if there are any potential bases for Committee objections, petitions, and other actions pursuant to RSA 541-A and Chapter 200 of the Committee's rules;
- (2) Distributing comments and memoranda to agencies at the Committee's discretion pursuant to Chapter 200 of the Committee's rules;
- (3) Attending Committee meetings to present testimony and legal advice to the Committee relative to proposed or existing rules;
- (4) Preparing letters to agencies on behalf of the Committee relative to Committee actions, including objections, joint resolutions, petitions, and recommendations;
- (5) Assisting the Committee in reviewing adopted rules as requested, including rules for which a special Committee hearing is held pursuant to RSA 541-A:2, III;
- (6) Assisting the Committee in its duties pursuant to RSA 541-A:2, IV, including, but not limited to, review of rulemaking authority which has not been used, improvements to rulemaking statutes and the rulemaking process, and amendments to the *Drafting and Procedure Manual*;
- (7) Responding to questions on rulemaking issues and the rulemaking process from legislators, agencies, and the public; and

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(8) Assisting Committee members on any other matters within the Committee's jurisdiction.

Source. Committee meeting, 11-13-98; 11-17-00; 9-21-01;  
11-19-20

### 103.04 Clerical Staff.

(a) The support staff in the Division of Administrative Rules functions as clerical staff to the Committee.

(b) The responsibilities of clerical staff include:

- (1) Receiving, copying, and mailing all correspondence to and from the Committee;
- (2) Maintaining files of all Committee correspondence and Committee legal counsel comments on proposed rules and emergency rules;
- (3) Responding to questions from legislators, agencies, and the public on Committee actions and Committee meetings;
- (4) Maintaining an electronic record of all Committee actions on proposed rules;
- (5) Notifying Committee members of regular and special Committee meetings;
- (6) Preparing and mailing electronically copies to agencies of Committee staff work pursuant to Chapter 200 of the Committee's rules;
- (7) Preparing individual packets of materials, including Committee legal counsel work and all related correspondence to be reviewed by the Committee, and posting online for Committee members attending a Committee meeting;
- (8) Maintaining Committee meeting files, including material reviewed and transcripts of Committee meetings made by the Office of Legislative Budget Assistant; and;
- (9) Other clerical duties relative to Committee staff work.

Source. Committee meeting, 11-13-98; 11-17-00; 9-21-01;  
11-19-20

## CHAPTER 200 COMMITTEE STAFF PRACTICE AND PROCEDURES

### PART 201 PROPOSED RULES, RESPONSES TO OBJECTIONS, AND EMERGENCY RULES

#### 201.01 Examining an Initial Proposal.

(a) As soon as possible after the rulemaking notice is published, the Committee legal counsel shall examine the initial proposal, including the rulemaking notice, and notify the agency if there are any potential problems which might serve as grounds for an objection by the Committee pursuant to RSA 541-A:13, IV as further explained by Chapter 400 Criteria for Review of Proposed Rules.

(b) As time allows, the Committee legal counsel shall annotate the rule text, noting potential problems, and shall send a copy to the agency and to the Department of Justice. The Committee staff shall also notify the agency if it finds no potential problems.

(c) The Committee legal counsel shall note cases of noncompliance with the *Drafting and Procedure Manual* required by RSA 541-A:8 and approved by the Committee.

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(d) The Committee legal counsel shall provide all annotations and other comment on initial proposals to the Committee upon request.

Source. Committee meeting, 11-13-98; 11-17-00; 9-21-01

201.02 Examining a Final Proposal, , Proposed Interim Rule, , Conditional Approval Request, Proposed Expedited Repeal, Proposed Expedited Revision to Agency Form, or Proposed Expedited Amendment to Incorporation by Reference.

(a) “Editorial change” means a change to a proposed or adopted rule that does not change the meaning of the rule or select one available interpretation over another. These changes include, but are not limited to, issues of spelling, grammar, punctuation, and numbering.

(b) After the Director of Legislative Services has accepted a final proposal for filing as apparently complete, and Committee staff has placed it on the agenda for a Committee meeting pursuant to RSA 541-A:12, I, the Committee legal counsel shall examine the final proposal to see if there are any potential problems which might serve as grounds for an objection pursuant to RSA 541-A:13, IV.

(c) The Committee legal counsel shall rely on the fixed text of the final proposal pursuant to RSA 541-A:12, II(b) as the intended text of the final proposed rule.

(d) If there is any amendment to the date or edition of a document or Internet content incorporated by reference in the proposed rule in comparison with the existing rule, the Committee legal counsel shall request the agency to provide an authorized explanation of the differences between the existing document or Internet content and the document or Internet content in the proposed rule. The authorized explanation may be a narrative or a side-by-side comparison but shall identify any substantive changes in the document or Internet content incorporated by reference. The Committee staff shall distribute this explanation to the Committee upon receipt from the agency.

(e) After the Director of Legislative Services has accepted a proposed interim rule for filing as apparently complete, and placed it on the agenda for a Committee meeting pursuant to RSA 541-A:19, V, or RSA 541-A:19, VIII(a), the Committee legal counsel shall examine the proposed interim rule to see if there are any potential problems which might serve as grounds for an objection pursuant to RSA 541-A:19, VII.

(f) The Committee legal counsel shall examine a conditional approval request for a final proposal or proposed interim rule, if submitted by deadline pursuant to RSA 541-A:13, II(b) or RSA 541-A:19, VIII(a), respectively, in the same manner as for a final proposal or proposed interim rule. If the deadline is waived, the request shall be examined as time allows.

(g) The Committee legal counsel shall prepare an annotated copy of the final proposal, proposed interim rule, or, as time allows, conditional approval request, for the Committee outlining any potential problems. A copy of the fiscal impact statement shall be included for all final proposals. Committee staff shall send a copy of the annotated final proposal, proposed interim rule, or, if time allows conditional approval request, to the agency. The Committee staff shall also notify the agency if there are no potential problems with the final proposal, proposed interim rule, or conditional approval request and shall present a copy of the final proposal, proposed interim rule, or conditional approval request to the Committee.

(h) If all of the issues addressed in the annotated copy of the final proposal, proposed interim rule or conditional approval request would involve only editorial changes and therefore can be made without a Committee objection to the final proposal or proposed interim rule, or a new rulemaking proceeding pursuant to RSA 541-A, then the Committee legal counsel shall not present the potential problems and the related annotations to the Committee as grounds for objection but shall still provide the annotated copy to the Committee.



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(i) The Committee legal counsel shall examine and annotate a proposed expedited repeal, a proposed expedited revision to agency form, and a proposed expedited amendment to incorporation by reference in the same manner as for a final proposal under paragraphs (b), (g), and (h), to see if there are any potential problems which might serve as grounds for an objection pursuant to, respectively, RSA 541-A:19-a, VII, RSA 541-A:19-c, VI, and RSA 541-A:19-d, VII.

(h) Except as provided under paragraph(g), all cases of noncompliance with the *Drafting and Procedure Manual* mandated by RSA 541-A:8 shall be brought to the attention of the Committee as potential bases for objection.

### 201.03 Examining Conditionally-Approved Texts.

(a) After an agency has received conditional approval of its final proposal or proposed expedited revision to agency form pursuant to RSA 541-A:13, V(a) or RSA 541-A:19-d, VII, or conditional approval of a proposed interim rule pursuant to RSA 541-A:19, VIII(b), the agency shall file its explanation within the time specified by RSA 541-A:13, V(a) or RSA 541-A:19, VIII(b).

(b) Once the explanation has been received by Committee staff, Committee legal counsel shall examine the explanation to determine whether the agency has amended the rule in accordance with the Committee's conditional approval.

(c) If the Committee legal counsel determines that the rule has been amended in accordance with the Committee's conditional approval, Committee legal counsel shall promptly send written confirmation of such compliance, and then the agency may adopt the rule as amended.

(d) If the Committee legal counsel determines that the rule has not been amended in accordance with the Committee's conditional approval or that the explanation was not filed with the Committee as required by RSA 541-A:13, V(a) or RSA 541-A:19, VIII(b), Committee legal counsel shall promptly send written notice to the agency that the conditional approval has been deemed to be a preliminary objection of the Committee as of the date the Committee voted for conditional approval.

Source. Committee meeting, 11-17-00; 11-19-20

### 201.04 Examining a Response to Objection or Amended Response to Objection.

(a) After an agency has filed a complete preliminary objection response pursuant to RSA 541-A:13, V(c), or revised objection response pursuant to RSA 541-A:13, V(f), the Committee legal counsel shall examine the rules to see if there are any potential problems which might serve as grounds for a final objection pursuant to RSA 541-A:13, V(f), sponsorship of a joint resolution pursuant to RSA 541-A:13, VII, or, if available, a revised objection response pursuant to RSA 541-A:13,V(e).

(b) After an agency has filed an amended response to preliminary objection pursuant to RSA 541-A:13, V(d), the Committee legal counsel shall examine the rules to see if there are any potential problems which might serve as grounds for further objection. If the Committee determines that there are such problems with the rules, the Committee shall not accept the amended response to preliminary objection but shall inquire of the agency as to whether the agency will request that a revised objection be made or whether the agency will request that the Committee take some other action on the response to preliminary objection.

(c) After an agency has filed a complete response to an objection to a proposed interim rule pursuant to RSA 541-A:19, VIII(b), the Committee legal counsel shall examine the rules to see if there are any problems which might serve as grounds to continue the objection pursuant to RSA 541-A:19, VIII(c).

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(d) The Committee legal counsel shall prepare an annotated copy of the rules in the amended proposal or response if necessary and present it to the Committee in the same manner as for final proposals and proposed interim rules under rules 201.02(e), (g), and(h). Committee staff shall send a copy of any annotated response to the agency and to the Department of Justice. The Committee staff shall also notify the agency if there are no potential problems remaining, and a copy of the objection response in that case shall be provided to the Committee only upon request.

Source. Committee meeting, 11-13-98; 11-17-00; 11-19-20

### 201.05 Examining an Emergency Rule.

(a) After an agency has filed a complete emergency rule with the Director of Legislative Services pursuant to RSA 541-A:18, II, the Committee legal counsel or Administrative Rules Director shall examine the rule to see if the statement of emergency included with the rule pursuant to RSA 541-A:18, III adequately explains the imminent peril to the public health or safety, or whether there is substantial fiscal harm to the state or its citizens, that could occur if the rule were not adopted with less notice than required for regular rulemaking.

(b) If the statement of emergency does not demonstrate that the rule is necessary to prevent an imminent peril to the public health or safety, or substantial fiscal harm to the state or its citizens, in the judgment of the Committee legal counsel or Administrative Rules Director, then they shall bring the matter to the attention of the Committee. The agency shall be informed by Committee staff of the potential problem.

(c) The Committee shall apply its own judgment and may petition the agency during any regularly scheduled or special meeting to repeal the emergency rule pursuant to RSA 541-A:18, IV.

Source. Committee meeting, 11-13-98; 11-17-00; 11-19-20

## PART 202 COMMITTEE AGENDAS

### 202.01 Preparation of a Tentative Agenda.

(a) Committee staff shall prepare in consultation with the Chairperson or Vice-Chairperson a tentative agenda as described in Committee rule 102.04(h) for each regularly scheduled or special Committee meeting. The agenda shall assign approximate times for commencement and duration of Committee review of the items.

(b) The times and order specified for the items listed shall be tentative and subject to change by the Chairperson or Vice-Chairperson prior to the Committee meeting or by the Committee during the meeting.

(c) Committee staff shall inform each agency prior to the meeting of the assigned time on the tentative agenda for the items involving rules of that agency.

(d) Notwithstanding any provision in these rules to the contrary, Committee staff shall place as a discussion item on the agenda any final proposal that would otherwise receive automatic approval pursuant to RSA 541-A:13, II(e). Following such discussion at the meeting, the Committee may vote to suspend rule 302.01(a)(2) to approve the final proposal or rule 303.01(b)(2) to enter a preliminary objection.

Source. Committee meeting, 11-13-98; 11-17-00; 9-21-01

202.02 Consent Agenda for Final Proposals, Proposed Interim Rules, Objection Responses, Conditional Approval Requests, Proposed Expedited Repeals, Proposed Expedited Revisions to Agency Forms, or Proposed Expedited Amendments to Incorporation by Reference.

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(a) Committee staff shall place final proposals, proposed interim rules, proposed expedited repeals, proposed expedited revisions to agency forms, or proposed expedited amendments to incorporation by reference on a consent agenda for approval by the Committee if the Committee legal counsel:

- (1) Determines that there are no potential bases for objection or other issues to put before the Committee; and
- (2) Has no information that a Committee member, agency, other legislator, or member of the public wishes to testify about the proposed rule before the Committee takes any action.

(b) Committee staff shall place responses to preliminary or revised objections on a consent agenda for acceptance and approval by the Committee if the Committee legal counsel:

- (1) Determines that there are no further potential bases for objection or petition, or issues to discuss, either remaining from the objection or newly created by the agency in the response; and
- (2) Has no information that a Committee member, the agency, other legislator, or member of the public wishes to testify about the objection response before the Committee takes final action.

(c) Committee staff shall place final proposals, proposed interim rules, or proposed expedited amendments to incorporation by reference, for which a conditional approval request has been filed, on a consent agenda for conditional approval by the Committee if the Committee legal counsel:

- (1) Determines that the request affecting a final proposal or proposed interim rule has been filed by the deadline pursuant to RSA 541-A:13, V(b) or RSA 541-A:19, VIII(a) or the deadline has been waived pursuant to RSA 541-A:40, IV;
- (2) Determines that the request removes all potential bases for objection or petition, or issues to discuss, in the proposal; and
- (3) Has no information that a Committee member, the agency, other legislator, or member of the public wishes to testify about the proposal or request before the Committee takes final action

Source. Committee meeting, 11-13-98; 11-17-00; 11-19-20

### 202.03 Consent Agenda for Consent Objections.

(a) The Committee staff shall place a final proposal, proposed interim rule, proposed expedited revision to agency form, or proposed expedited amendment to incorporation by reference on a consent list for preliminary objection by the Committee without further testimony if:

- (1) The agency informs Committee staff prior to a Committee meeting that the agency could address the issues outlined by the Committee legal counsel to the item if the Committee were to object based solely on those grounds; and
- (2) No Committee member or member of the public has questions or wishes to testify on the item before the Committee takes any action.

Source. Committee meeting, 11-13-98; 11-17-00; 11-19-20

## PART 203 COMMITTEE STAFF CONTACT WITH AGENCIES, LEGISLATORS, AND THE PUBLIC

### 203.01 Agency Staff.

(a) The Committee legal counsel and the Administrative Rules Director shall be available to discuss with the relevant agency any comments by them regarding the agency's proposed rules or emergency rules as

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necessary to clarify the comments, understand how to resolve a potential problem, or to point out any misunderstanding of a rule or statute.

(b) The Committee legal counsel and the Administrative Rules Director shall be available to discuss issues to which the agency requests an objection.

(c) The comments by Committee legal counsel shall not be considered by the agency as Committee objections unless the Committee votes to make them so during the Committee meeting.

(d) Committee legal counsel, the Administrative Rules Director, or both, shall be available as time permits to discuss with an agency the agency's concerns on any matter within the Committee's jurisdiction under RSA 541-A:2, RSA 541-A:13, RSA 541-A:18, RSA 541-A:19, RSA 541-A:19-a, RSA 541-A:19-c, and RSA 541-A:19-d, and advise the agency of Committee procedures and agendas of meetings. Committee staff shall not provide legal advice to the agency.

(e) Committee staff shall not distribute to any non-Committee member any staff documents except as allowed by Committee rule 302.05.

(f) The Committee legal counsel or Administrative Rules Director shall not make decisions properly belonging to the Committee, such as whether to object to a proposed rule. Committee legal counsel shall not negotiate a Committee objection with the agency but shall bring to the Committee's attention all potential bases for objection. Only the Committee shall decide whether it should object after considering the comments by Committee staff and testimony from the agency and the public.

(g) The agency shall always have an opportunity to state its views and explain its position directly to the Committee when the agency's proposed rule is reviewed.

Source. Committee meeting, 11-13-98; 11-17-00; 9-21-01; 11-19-20

### 203.02 Legislators and the Public.

(a) Committee staff shall provide oral or written information and assistance to the public or other legislators on Committee procedures, agendas of meetings, and other matters within the Committee's jurisdiction under RSA 541-A:2, RSA 541-A:13, RSA 541-A:18, RSA 541-A:19, RSA 541-A:19-a, RSA 541-A:19-c, and RSA 541-A:19-d.

(b) Committee legal counsel or the Administrative Rules Director shall bring to the attention of the Committee Chairperson or Vice-Chairperson all matters within the Committee's jurisdiction that are referred to the Committee legal counsel or Administrative Rules Director on behalf of the Committee from a member of the public or a legislator.

(c) Committee staff shall not provide legal advice to any person who is not a legislator. A staff member shall not provide legal advice to legislators unless the member is a licensed attorney in New Hampshire.

(d) Committee staff shall not distribute to any non-Committee member any staff documents except as allowed by Committee rule 302.05.

Source. Committee meeting, 11-13-98; 11-17-00; 11-19-20

### 203.03 Committee Staff Ethical Obligations.

(a) Committee staff shall comply with the latest edition of the "Ethics Guidelines and Procedural Rules" of the NH General Court's Legislative Ethics Committee as approved by the General Court in accordance with RSA 14-B:3.

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(b) The Committee shall be the client of the Committee legal counsel, who shall comply with the latest edition of the “NH Rules of Professional Conduct” in their capacity as legal counsel to the Committee.

Source. Committee meeting, 11-13-98; 11-17-00

### CHAPTER 300 COMMITTEE REVIEW OF PROPOSED RULES

#### PART 301 COMMITTEE MEETINGS

301.01 Order of Items. The Committee meeting shall follow the order of items to be reviewed as stated in the tentative agenda unless the Committee changes the order to accommodate Committee members or testimony from agencies, Committee legal counsel, the Administrative Rules Director, the public, or other legislators.

Source. Committee meeting, 11-13-98; 11-17-00

#### 301.02 Testimony on Proposed Rules and Adopted Rules.

(a) Agency representatives, members of the public, or other legislators who wish to testify about a proposed rule or adopted rule shall, if the meeting is in-person, complete a testimony card and provide it to the Chairperson or Acting Chairperson. Persons who wish only to register their support for, or opposition to, a rule shall note that on the card and provide it to the Chairperson or Acting Chairperson. If the meeting is held remotely, testimony may be given pursuant to the instructions in the *Register*, the House and Senate *Calendars*, and on the website of the Office of Legislative Services, Administrative Rules, and in accord with any further direction provided by the Chairperson or Acting Chairperson and the Committee staff person facilitating the remote meeting.

(b) Since the Committee is not a policy committee, testimony shall not be considered relevant that does not focus upon issues in the rules and instead argues only that a statute should be changed.

(c) All persons with relevant testimony shall be heard, but the Chairperson or Acting Chairperson shall limit the time if necessary in order to hear all relevant testimony and to accommodate Committee review of other items in the meeting.

(d) Public testimony and testimony from other legislators shall focus on the following to the degree relevant to the item being discussed:

- (1) Which proposed rules or adopted rules the witness supports and why;
- (2) Which proposed rules or adopted rules the witness opposes and the potential bases that exist for Committee petition pursuant to RSA 541-A:4, or Committee objection or sponsorship of a joint resolution pursuant to RSA 541-A:13, IV through VII, RSA 541-A:19, VII, and Chapter 400 of the Committee’s rules; or
- (3) How the emergency rule does not meet the criteria for an emergency rule pursuant to RSA 541-A:18, IV.

(e) Witnesses shall identify in their testimony the action that they want the Committee to take relative to the rules, such as approval, conditional approval, objection, petition for rulemaking, sponsorship of a joint resolution, or recommendation to the agency.

(f) An agency requesting a preliminary or revised objection shall identify the particular rule or rules to which it wants the Committee to object and the grounds for the objection consistent with RSA 541-A and the Committee’s rules.

Source. Committee meeting, 11-13-98; 11-17-00; 9-21-01; 11-19-20



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301.03 Acceptance of Agency Requests for Conditional Approval of a Final Proposal or Proposed Interim Rule. If an agency files a request for conditional approval of a final proposal or proposed interim rule with a rule amendment pursuant to RSA 541-A:13, II(b) or RSA 541-A:19, VIII(a), the Committee shall accept the request and consider a conditional approval under Committee rule 302.01 if:

(a) The request is filed before the deadline pursuant to RSA 541-A:13, II(b) or RSA 541-A:19, VIII(a) or the deadline has been waived pursuant to RSA 541-A:40, IV; or

(b) The request is filed in the meeting, either orally or in writing, and a motion to accept is made, seconded, and adopted by the Committee based on one or more compelling reasons as follows:

(1) The Committee determines that the rule amendment will remove all potential bases for preliminary objection identified by Committee staff, the agency, or the public;

(2) Although the request does not remove all potential bases for preliminary objection, the agency agrees to accept further amendments in the meeting as identified by the Committee in the meeting; or

(3) The agency has worked out with stakeholders or the public during the meeting an amendment which is submitted as a request to resolve an issue which would otherwise serve as a potential basis for preliminary objection.

Source. Committee meeting, 11-17-00; 11-19-20

### 301.04 Committee Staff.

(a) The Committee legal counsel and the Administrative Rules Director shall attend Committee meetings to assist the Committee as needed.

(b) The Committee legal counsel, and the Administrative Rules Director as necessary and if licensed to practice law in New Hampshire, shall provide legal advice in their review for the Committee of proposed rules, objection responses, and emergency rules.

(c) The Committee legal counsel and the Administrative Rules Director shall bring to the Committee's attention any other issues of fact or law relevant to an agenda item being discussed before the Committee takes action. The Committee legal counsel and the Administrative Rules Director may ask questions of a witness with the permission of the Chairperson or Acting Chairperson.

Source. Committee meeting, 11-13-98; 11-17-00

## PART 302 APPROVALS AND CONDITIONAL APPROVALS

### 302.01 Motions.

(a) A motion is in order to approve or conditionally approve a final proposal, , proposed interim rule, or proposed expedited amendment to incorporation by reference, or approve a proposed expedited repeal or proposed expedited revision to agency form, at any meeting, provided:

(1) The Director of Legislative Services has received the proposal filed by the agency;

(2) Committee staff has placed it on the agenda;

(3) In the case of an applicable conditional approval request from an agency, the Committee accepted the request pursuant to Committee rule 301.03; and

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(4) In the case of a motion to conditionally approve in lieu of an objection, the motion specifies the conditional approval request if one was filed, or the language of the amendment to be used by the agency in its explanation to address each basis for objection identified by the Committee.

(b) A motion to approve a final proposal, , proposed interim rule, , proposed expedited repeal, proposed expedited revision to agency form, or proposed expedited amendment to incorporation by reference shall not contain any instructions to an agency to make any substantive change in the rule, unless such instruction is made in the context of a conditional approval of a final proposal pursuant to RSA 541-A:13, V(a), a proposed interim rule pursuant to RSA 541-A:19, VIII(b), or a proposed expedited amendment to incorporation by reference pursuant to RSA 541-A:19-d, VII. The Committee may instruct an agency to make a change in the final proposal only if the procedures under rule 303.01 and 303.02 are followed.

(c) A motion to approve may include a petition under RSA 541-A:4 or a recommendation for further rulemaking or legislation.

Source. Committee meeting, 11-15-83; 7-17-87; 7-15-94; 11-13-98; 11-17-00; 9-21-01; 11-19-20

### 302.02 Vote on Motions.

(a) To pass, a vote on a motion to approve or conditionally approve a proposal under rule 302.01, including petitions or recommendations, shall require a majority of the votes cast, a quorum being present, as specified in rule 102.07.

(b) Once the Committee votes to approve a proposal, the agency may adopt the rule only as approved. The agency has no authority to amend the rule further, unless the changes are made in conformance with a conditional approval pursuant to RSA 541-A:13, V(a), RSA 541-A:19, VIII(b), or RSA 541-A:19-d, VII.

Source. Committee meeting, 11-15-83; 7-17-87; 3-20-92; 7-15-94; 11-13-98; 11-17-00; 9-21-01; 11-19-20

### 302.03 Reconsideration of Approval or Conditional Approval.

(a) A motion to reconsider a vote to approve or conditionally approve a proposal under rule 302.02 shall be in order if made by any Committee member during the same meeting and calendar day in which the vote to approve or conditionally approve was taken. To pass, a vote on a motion to reconsider a vote to approve or conditionally approve shall require the affirmative vote of a majority of the votes cast, a quorum being present.

(b) For the purpose of making subsequent motions only, the effect of adopting a motion to reconsider a vote to approve or conditionally approve shall be to cancel the vote to approve or conditionally approve as if it had never been taken. All motions that were available prior to the vote to approve or conditionally approve shall be available after the motion to reconsider has been adopted.

(c) If a preliminary or final objection is made pursuant to Committee rules 301.01 or 303.02 after reconsideration of an approval or conditional approval, the written notice to the agency pursuant to Committee rule 303.05 shall include the fact of reconsideration and an offer by Committee legal counsel to discuss with agency representatives, at the agency's request, the grounds for the objection.

Source. Committee meeting, 9-21-01; amd 7-17-08; 11-19-20

### 302.04 Written Notice to Agency.

(a) The Committee staff shall inform the agency in writing of the Committee vote to approve a final proposal, , proposed interim rule, , proposed expedited repeal, proposed expedited revision to agency form, or

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proposed expedited amendment to incorporation by reference or to grant conditional approval of the final proposal, , proposed interim rule, or proposed expedited amendment to incorporation by reference.

(b) The letter informing the agency of the Committee’s conditional approval shall specify the conditional approval request or the language of the amendment to be included by the agency in its explanation to address each basis for the objection identified by the Committee.

(c) Once the Committee legal counsel has reviewed the agency’s explanation submitted after receiving conditional approval, the Committee legal counsel shall, pursuant to RSA 541-A:13, V(a), RSA 541-A:19, VIII(a), or RSA 541-A:19-d, VIII send a letter either confirming that the explanation was made in accordance with the conditional approval or indicating that the explanation was not in accordance with the conditional approval. If the Committee legal counsel determines that the explanation was not in accordance with the conditional approval, the conditional approval shall, pursuant to RSA 541-A:13, V(a), RSA 541-A:19, VIII(a), or RSA 541-A:19-d, VIII be deemed to be a preliminary objection as of the date of the conditional approval.

(d) If the Committee takes no action within 60 days of the filing of the final proposal pursuant to RSA 541-A:12, I, the Committee staff shall notify the agency that the rule has been approved under RSA 541-A:13.

Source. Committee meeting, 11-15-83; 6-21-85; 9-3-87; 7-15-94; 11-17-00; 11-19-20

### 302.05 Access to Staff Memoranda and Other Documents.

(a) Legal memoranda prepared by the Committee legal counsel or Administrative Rules Director for the Committee which only outline potential bases for Committee objection, petition, or other Committee action relative to proposed or adopted rules shall be available to any person for inspection and copying after the memoranda are actually received by the Committee. Notwithstanding the foregoing, these memoranda shall be available to the Director and Deputy Director of Legislative Services when the memoranda are prepared, but with the understanding that they will not be further distributed prior to receipt by the Committee.

(b) Documents prepared by Committee staff for the Committee or individual Committee members that are confidential pursuant to RSA 91-A or are privileged under New Hampshire law shall be available for inspection and copying only:

- (1) Upon permission or disclosure by a majority of the Committee, a quorum being present, for documents prepared for the entire Committee;
- (2) Upon permission or disclosure by the individual Committee member or members for whom the documents were prepared; or
- (3) If disclosure is otherwise required by other Committee rules.

Source. Committee meeting, 9-3-87; 11-13-98; 2-19-99; 11-17-00; 11-19-20

## PART 303 OBJECTIONS

### 303.01 Motion for Preliminary Objection.

(a) For purposes of Part 303, a “preliminary objection” means the objection to a proposed expedited repeal or the first written objection to a final proposal, , proposed interim rule, proposed expedited revision to agency form, or proposed expedited amendment to incorporation by reference for which the Committee is

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awaiting a response from the adopting agency before taking further action. The Committee may modify its objection or approve the rule in accordance with rule 303.07.

(b) A motion to make a preliminary objection to a final proposal, , proposed interim rule, proposed expedited repeal, proposed expedited revision to agency form, or proposed expedited amendment to incorporation by reference is in order if:

- (1) The Committee staff has received the proposal filed by the agency;
- (2) The proposed rule has been placed on the agenda by Committee staff, pursuant to RSA 541-A:12, I, RSA 541-A:19, V, RSA 541-A:19-a, VII, RSA 541-A:19-c, VI, and RSA 541-A:19-d, VII or the Committee's rules; and
- (3) The Committee determines that the final proposal falls into any of the 4 categories listed in RSA 541-A:13, IV, the proposed interim rule meets any of the criteria in RSA 541-A:19, VII, or the proposed expedited repeal, the proposed expedited revision to agency form, or the proposed expedited amendment to incorporation by reference meets any of the criteria, respectively, under RSA 541-A:19-a, VII, RSA 541-A:19-c, VI, and RSA 541-A:19-d, VII as interpreted by Chapter 400 of these rules;

(c) Pursuant to RSA 541-A:13, IV, the Committee may make a preliminary objection to a final proposal if the rule is:

- (1) Beyond the authority of the agency;
- (2) Contrary to the intent of the legislature;
- ....
- (3) Determined not to be in the public interest; or
- (4) Deemed by the Committee to have a substantial economic impact not recognized in the fiscal impact statement.

(d) Pursuant to RSA 541-A:19, VII, the Committee may object to a proposed interim rule if the rule is:

- (1) Beyond the authority of the agency;
- ..
- (2) Contrary to the intent of the legislature;
- (3) Determined not to be in the public interest; or
- (4) Not designed solely to allow the agency to:
  - a. Conform with a new or amended statute effective no more than 90 days prior to the publication of the notice of the proposed interim rule;
  - b. Conform with a controlling judicial decision;
  - c. Conform with a federal requirement which must be met sooner than the time periods allowed under the formal procedure in RSA 541-A:3;
  - d. Continue rules which would otherwise expire prior to the completion of the rules' readoption; or
  - e. Minimize the time between the expiration of rules and their subsequent readoption.

(e) Pursuant to RSA 541-A:19-a, VII, the Committee may make an objection to a proposed expedited repeal if the repeal is:

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- (1) Beyond the authority of the agency;
- (2) Contrary to the intent of the legislature;
- ....
- (3) Deemed by the Committee not to meet the requirements of RSA 541-A:19-a, I.

(f) Pursuant to RSA 541-A:19-c, VI, the Committee may make a preliminary objection to a proposed expedited revision to agency form if the adoption of the form is:

- (1) Beyond the authority of the agency;
- (2) Contrary to the intent of the legislature; or
- ....
- (3) Deemed by the Committee not to meet the requirements of RSA 541-A:19-c.

(g) Pursuant to RSA 541-A:19-d, VII, the Committee may make a preliminary objection to a proposed expedited amendment to incorporation by reference the amended rule is:

- (1) Beyond the authority of the agency;
- (2) Contrary to the intent of the legislature;
- (3) Deemed not be to in the public interest; or
- (4) Deemed by the Committee not to meet the requirements of RSA 541-A:19-d, I.

(h) Such a motion shall identify the rule or rules that are objectionable and the grounds for the objection as explained in Chapter 400 of the Committee's rules. If the rules and the grounds are sufficiently detailed in Committee legal counsel memoranda or annotations to the proposed rules or in written public testimony, the motion shall only have to identify the number of the final proposal, proposed interim rule, , proposed expedited repeal, proposed expedited revision to agency form, and proposed expedited amendment to incorporation by reference and state that the motion to object is based upon Committee legal counsel annotations or memoranda or public testimony.

(i) A motion to make any objection to a final proposal shall not be in order if it is made after 60 days from the filing of the final proposal pursuant to RSA 541-A:12, I with the Director of Legislative Services.

(j) A motion to make any objection to a proposed interim rule shall not be in order if it is made after 90 days from publication of the notice for the interim rule.

Source. Committee meeting, 11-15-83; 9-3-87; 3-20-92;  
7-15-94; 11-13-98; 11-17-00; 9-21-01; 11-19-20

### 303.02 Motion for Revised Objection.

(a) For purposes of Part 303, a "revised objection" shall be a written objection requested by an agency pursuant to RSA 541-A:13, V(d) to a final proposal , RSA 541-A:19-c, VII to a expedited revision to agency form, or RSA 541-A:19-d, VIII to an expedited amendment to incorporation by reference after the agency has submitted its response to a preliminary objection and prior to a final committee vote on the proposed rule or form.

(b) A motion to make a revised objection to a proposed rule is in order if:

- (1) The Committee has issued a preliminary objection;
- (2) The agency has responded to the preliminary objection in accordance with RSA 541-A:13, V(c);



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- (3) The Committee has not yet taken a final vote on the proposed rule;
- (4) The agency requests a revised objection; and
- (5) The Committee determines that the proposed rule after the response to the preliminary objection falls into any of the 4 categories described in rule 303.01(c) as interpreted by Chapter 400 of these rules.

(c) Such a motion shall state the reasons for the objection and shall specify which section or sections of the rule are objectionable under which category.

Source. Committee meeting, 7-15-94; 11-13-98; 11-17-00; 9-21-01; 11-19-20

### 303.03 Vote on Motions for Preliminary, Revised, or Final Objections.

(a) To pass, a vote on a motion to make a preliminary or revised objection under rule 303.01 or 303.02, as appropriate, shall require a majority of the votes cast, a quorum being present. A minimum of 4 affirmative votes is needed if only a quorum is present.

(b) To pass, a vote on a motion to make a final objection under rule 303.07(b) shall require a minimum of 6 affirmative votes.

Source. Committee meeting, 11-15-83; 8-16-85; 7-15-94; 11-13-98

### 303.04 Reconsideration of Preliminary, Revised, or Final Objections.

(a) A motion to reconsider a vote to make a preliminary or revised objection made pursuant to Committee rule 303.03(a) shall be in order if made by any Committee member during the same meeting and calendar day in which the respective vote to make the preliminary or revised objection was taken. To pass, a vote on a motion to reconsider a vote to make a preliminary or revised objection shall require the affirmative vote of a majority of the votes cast, a quorum being present. For the purpose of making subsequent motions only, the effect of adopting a motion to reconsider a vote to make a preliminary or revised objection shall be to cancel the respective vote to make the preliminary or revised objection as if it had never been taken. All motions that were available prior to the respective vote to make a preliminary or revised objection shall be available after the motion to reconsider has been adopted.

(b) A motion to reconsider a vote to make a final objection made pursuant to Committee rule 303.03(b) shall be in order if made by any Committee member during the same meeting and calendar day in which the vote to make the final objection was taken. To pass, a vote on a motion to reconsider a vote to make a final objection shall require a minimum of 6 affirmative votes. For the purpose of making subsequent motions only, the effect of adopting a motion to reconsider a vote to make a final objection shall be to cancel the vote to make a final objection as if it had never been taken. All motions that were available prior to the vote to make a final objection shall be available after the motion to reconsider has been adopted.

(c) If a preliminary or final objection is made pursuant to Committee rules 301.01 or 303.02 after reconsideration of an objection, the written notice to the agency pursuant to Committee rule 303.05 shall include the fact of reconsideration and an offer by Committee legal counsel to discuss with agency representatives, at the agency's request, the grounds for the objection.

Source. Committee meeting, 9-21-01; amd 7-17-08

### 303.05 Written Notice to Agency.

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(a) The Committee legal counsel or Administrative Rules Director shall prepare a written preliminary objection which shall be sent to the appropriate agency in accordance with RSA 541-A:13, V(b), Section 2.15 of Chapter 3 of the *Drafting and Procedure Manual*, RSA 541-A:19, VIII(b), RSA 541-A:19-c, VII, and RSA 541-A:19-d, VIII.

(b) If the Committee legal counsel has reviewed an agency's explanation submitted after receiving conditional approval and determines that the explanation was not in accordance with the conditional approval, the Committee legal counsel shall so inform the agency, and the conditional approval shall, pursuant to RSA 541-A:13, V(b), RSA 541-A:19, VIII(b), or RSA 541-A:19-d, VIII be deemed to be a preliminary objection as of the date of the conditional approval.

(c) The Committee legal counsel or Administrative Rules Director shall prepare a written revised objection which shall be sent to the agency in accordance with Section 2.18 of Chapter 3 of the *Drafting and Procedure Manual*.

(d) The Committee legal counsel or Administrative Rules Director shall prepare a written final objection as it will appear in the *Register* pursuant to RSA 541-A:13, V(f) and send a copy to the agency in accordance with Section 2.18 of Chapter 3 of the *Drafting and Procedure Manual*.

Source. Committee meeting, 11-15-83; 6-21-85; 3-20-92; 7-15-94; 11-13-98; 11-17-00; 9-21-01; 11-19-20

### 303.06 Agency Action.

(a) The agency shall respond in writing to the preliminary or revised objection within 45 days of the respective Committee vote in accordance with RSA 541-A:13, V for a final proposal, RSA 541-A:19-c, VII for a proposed expedited revision to agency form, or RSA 541-A:19-d for a proposed expedited amendment to incorporation by reference or by the next regularly scheduled monthly Committee meeting in accordance with RSA 541-A:19, VIII(b) for a proposed interim rule

(b) The agency shall respond to the objection by:

- (1) Amending the rule;
- (2) Withdrawing the rule; or
- (3) By making no change.

(c) The agency may adopt the rule after responding to a preliminary or revised objection only if the Committee thereafter:

- (1) Approves the preliminary objection response, amended preliminary objection response, or revised objection response;
- (2) Takes no further action within 50 days of the deadline for submitting the response to the objection; or
- (3) Takes any action other than a joint resolution under rule 304 and RSA 541-A:13, VII, although the agency may adopt any portion of the proposal to which a joint resolution does not attach.

(d) The agency shall not, pursuant to RSA 541-A:19, X, adopt a rule as an interim rule unless it has been approved by the Committee or the explanation has been confirmed to Committee legal counsel to comply with the Committee's conditional approval.

Source. Committee meeting, 11-15-83; 6-21-85; 9-3-87; 3-20-92; 7-15-94; 11-13-98; 11-17-00; 9-21-01; 11-19-20

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### 303.07 Committee Action on Objection Responses.

(a) If the agency responds to a preliminary or revised objection by removing the basis for objection to the Committee's satisfaction, the Committee may vote to approve the rule. The Committee may also in the same motion petition the agency under RSA 541-A:4 or recommend further rulemaking or legislation to address any remaining issues.

(b) If the agency responds to a preliminary or revised objection to a final proposal, proposed expedited revision to agency form, or proposed expedited amendment to incorporation by reference but the basis for the Committee's preliminary or revised objection, as appropriate, has not been removed or the preliminary objection response or revised objection response creates a new basis for objection, the Committee may, with a minimum of 6 affirmative votes, make a final objection. The Committee staff shall proceed as specified in RSA 541-A:13, V(f).

(c) The Committee may, in addition or as an alternative to a final objection, vote to support the introduction of a joint resolution pursuant to rule 304 and RSA 541-A:13, VII.

(d) The Committee may vote, in addition to a final objection but in a separate motion by a majority of the votes cast, a quorum being present, to petition the agency under RSA 541-A:4 or recommend further rulemaking or legislation to address any remaining issues.

(e) If the agency responds to an objection to a proposed interim rule but the basis for the objection has not been removed, or the response creates a new basis for objection, the Committee shall either continue the objection or approve the rule. The continued objection shall prevent the agency from adopting the rule. Pursuant to RSA 541-A:19, IX, no rule shall be adopted as an interim rule unless within 90 days of publication of the notice the Committee votes to approve the rule.

(f) Reconsideration of a vote to approve the rule in an objection response under paragraph (a) shall be made pursuant to Committee rule 302.03. Reconsideration of a vote to continue the objection to a proposed interim rule or amended proposed interim rule under paragraph (e) shall be made pursuant to Committee rule 303.04(a).

Source. Committee meeting, 11-15-83; 6-21-85; 9-3-87; 7-15-94; 11-13-98; 11-17-00; 9-21-01; 11-19-20

## PART 304 JOINT RESOLUTION

### 304.01 Motion on Joint Resolution.

(a) A vote to support the introduction of a joint resolution may be used as an alternative to a final objection or in addition to a final objection and only on the same grounds as available for a final objection to a final proposal, proposed expedited revision to agency form, or proposed expedited amendment to incorporation by reference.

(b) A motion to support the introduction of a joint resolution is in order if:

(1) The agency has responded to the preliminary objection in accordance with RSA 541-A:13, V(c), or, if applicable, to a revised objection pursuant to RSA 541-A:13, V(e);

(2) The Committee determines that the basis for the preliminary or revised objection has not been removed or the response to the objections creates a new basis for objection; and

(3) The motion is made no later than 50 days from the date by which the response was due to the preliminary objection or, if applicable, the revised objection.

(c) Such a motion shall:

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- (1) State the reason or reasons for introduction of the joint resolution in the same terms as for a final objection;
  - (2) Identify which provisions of the proposed rule are subject to the vote to support the introduction of the joint resolution; and
  - (3) Recommend in terms suitable for a resolution specific legislative and/or agency action concerning the proposed rule and relevant statutes.
- (d) To pass, a vote on a motion to support the introduction of a joint resolution shall require a majority of the Committee, that is, a minimum of 6 votes.
- (e) The wording of the resolution shall be specified by its sponsors.

Source. Committee meeting, 7-15-94; 11-13-98; 11-17-00; 9-21-01; 11-19-20

### 304.02 Effect of a Vote to Support the Introduction of a Joint Resolution.

- (a) A vote to support the introduction of a joint resolution shall prevent the rule or rules identified in the motion from being adopted and filed by the agency until whichever of the following occurs first:
- (1) The joint resolution is not introduced within 20 business days of such vote when the General Court is in session or 20 business days of the start of the following legislative session if such vote occurs when the General Court is not in session;
  - (2) Final legislative action is taken, that is, the joint resolution is defeated or the General Court fails to override the Governor's veto;
  - (3) The passage of 90 consecutive calendar days during which the General Court shall have been in session, with the 90-day period commencing on the date such joint resolution is introduced;
  - (4) The passage of 90 calendar days in the next session of the General Court if it adjourns prior to the 60th calendar day after the joint resolution has been introduced; or
  - (5) The resolution becomes law and the wording allows adoption.
- (b) Such a vote shall not prevent the Committee from also voting to enter a final objection.
- (c) The vote to support the introduction of a joint resolution shall apply to only the portions of the final proposal identified in the joint resolution. The agency may proceed to adopt and file the remainder of the rules in the final proposal under RSA 541-A.

Source. Committee meeting, 7-15-94; 11-19-20

### 304.03 Reconsideration of Vote to Support the Introduction of a Joint Resolution.

- (a) A motion to reconsider a vote to support the introduction of a joint resolution made pursuant to Committee rule 304.01 shall be in order if made by any Committee member at any time before the actual introduction of such joint resolution in either the House or the Senate. To pass, a vote on a motion to reconsider support for the introduction of a joint resolution shall require a minimum of 6 affirmative votes.
- (b) For the purpose of making subsequent motions only, the effect of adopting a motion to reconsider a vote to support the introduction of a joint resolution shall be to cancel the vote to support the introduction of a joint resolution as if it had never been taken. Only motions that would have otherwise been in order on the date of the Committee vote to reconsider support for the introduction of a joint resolution shall be in order. A

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motion to vote to support the introduction of a new or amended joint resolution shall not be in order if the time pursuant to RSA 541-A:13, VII(c) to introduce a joint resolution has passed.

Source. Committee meeting, 9-21-01; 7-17-08

### 304.04 Written Notice to Agency.

(a) The Committee legal counsel or Administrative Rules Director shall prepare a letter concerning the vote to sponsor the joint resolution which shall be sent to the agency in accordance with Section 2.18 of Chapter 3 of the *Drafting and Procedure Manual*.

(b) If a vote to support the introduction of a joint resolution is made pursuant to Committee rule 304.01 after reconsideration of a prior action, the written notice to the agency shall include the fact of reconsideration and an offer by Committee legal counsel to discuss with agency representatives, at the agency's request, the vote to support the introduction of a joint resolution.

Source. Committee meeting, 9-21-01

### 304.05 Introduction of a Joint Resolution.

(a) Pursuant to RSA 541-A:13, VII(e), the joint resolution shall not prevent the introduction of legislation which addresses any matter included in the joint resolution.

(b) Pursuant to RSA 541-A:13, VII(f), the joint resolution may be introduced at any time during the legislative session and be subject to the same rules as any other bill introduced at the beginning of the legislative session.

Source. Committee meeting, 7-15-94; 11-13-98

## PART 305 REQUESTS FOR WAIVER OF COMMITTEE DEADLINES

### 305.01 Who May Make Requests.

(a) When any proposed rule which is placed on the agenda is subject pursuant to RSA 541-A to a deadline for Committee action, a request to the Director of the Office of Legislative Services to waive the deadline pursuant to RSA 541-A:40, IV may be made as follows:

- (1) By the Chairperson or Vice-Chairperson for good cause pursuant to Committee rule 305.02 if the agency has not already adopted and filed the proposed rule; or
- (2) By the Committee by vote on a motion by any Committee member pursuant to Committee rules 305.02 and 305.03 if the motion is made before the deadline is exceeded.

Source. Committee meeting, 7-17-08

305.02 Good Cause for a Waiver Request. Good cause for a waiver request by the Chairperson, Vice-Chairperson, or the Committee shall include the following:

(a) The proposed rule is a final proposal which would otherwise be automatically approved pursuant to RSA 541-A:13, II(e) because of the placement of the final proposal on the agenda under RSA 541-A:12, I in a regularly scheduled monthly meeting more than 60 days after filing;

(b) There is, or is expected to be, the absence of a Committee quorum to address and act on the proposed rule by the deadline;

(c) Agency staff who are knowledgeable in the subject area are, or are expected to be, unavailable to testify on the agency's proposed rule until after the deadline;



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(d) A request has been filed by the agency for conditional approval of a proposed rule under RSA 541-A:13, II(b) or RSA 541-A:19, VIII(a) or for postponement of Committee action on a proposed rule, but the next scheduled Committee meeting for Committee action is after the deadline; or

(e) Any other factor exists where postponement of action on the item to a meeting after the deadline would facilitate greater input and participation by the public, legislators, or the agency or otherwise allow provision of necessary information for the Committee to consider before taking action.

Source. Committee meeting, 7-17-08; 11-19-20

### 305.03 Vote on Motions.

(a) A motion is in order for the Committee as a whole to request a waiver of a Committee deadline under RSA 541-A if the motion is made before the deadline is exceeded, and the motion states the good cause from Committee rule 305.02.

(b) To pass, a vote on a motion to request a waiver shall require a majority of the votes cast, a quorum being present, as specified in Committee rule 102.07.

(c) A motion to request a waiver may include a recommendation to the agency that the agency not adopt and file the rule if the request is still pending with the Director after the deadline has passed.

Source. Committee meeting, 7-17-08

305.04 Agency Notification. The Committee staff shall notify the agency orally or in writing of a waiver request by the Chairperson, Vice-Chairperson, or the Committee.

Source. Committee meeting, 7-17-08

## CHAPTER 400 CRITERIA FOR REVIEW OF PROPOSED RULES

### PART 401 RULES BEYOND AGENCY AUTHORITY

#### 401.01 Specific Delegation.

(a) In order to decide whether to object under paragraph (c), the Committee shall review each statutory passage delegating rulemaking authority to determine if the agency is authorized to adopt the proposed rule.

(b) The Committee shall consider the rule to be within an agency's authority, and shall not object pursuant to paragraph (c) below, if:

- (1) The delegation of authority is specifically worded;
- (2) The delegation is directly relevant to the subject matter of the rule; and
- (3) The delegation is correctly cited by the agency in the notice.

(c) The Committee may object to a proposed rule as being beyond the agency's authority if the agency has relied upon a specific statutory delegation of authority to require those regulated to supply information or to take an action, but the Committee determines that the statute does not authorize the agency to set such a requirement.

Source. Committee meeting, 11-15-83; 9-21-01

401.02 Broad Delegation. If the passage delegating rulemaking authority is worded broadly and contains phrases such as "the agency may adopt rules for the proper administration of this chapter," the Committee may require an agency to clarify the agency's interpretation of broad phrases such as "proper administration." The Committee may object to a proposed rule as being beyond an agency's authority if the

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Committee determines that the rule goes beyond the duties of the agency because the rule addresses an agency duty not specifically identified in the statute.

Source. Committee meeting, 11-15-83; 9-21-01

401.03 Incorrect Citation. The Committee may object to a proposed rule as being beyond an agency's authority if the agency has cited a delegation of rulemaking authority which the Committee determines is not applicable to the subject matter of the rule.

Source. Committee meeting, 11-15-83; 9-21-01

401.04 No Authority for Constitutional Violations. The Committee may object to a proposed rule as being beyond an agency's authority if the Committee determines that the rule violates a provision of the New Hampshire Constitution or the Constitution of the United States.

Source. Committee meeting, 11-15-91; 9-21-01

### 401.05 Specific Authority Needed.

(a) The Committee may object to a proposed rule as being beyond the agency's authority if it is prohibited under RSA 541-A:22, III because there is no specific statutory authority for the rules.

(b) The Committee may also object to a proposed rule under paragraph (a) if the proposed rule creates categories or levels of a license as defined in RSA 541-A:1, VIII or a system of fees to engage in a profession, business, or other activity but the statute does not specifically authorize categories or levels of a license or a system of fees. For purposes of this paragraph, statutory authority to set fees for services provided by the agency may be considered by the Committee to be adequate to charge different fees for different services.

(c) The Committee may object to a proposed rule as being beyond an agency's authority if the proposed rule without specific statutory authority:

- (1) Grants subpoena power;
- (2) Delegates subpoena power to anyone other than the agency or individual named in the statute;
- (3) Requires continuing education for professional licensees, except that authority to set license renewal qualifications may be considered by the Committee as adequate to require continuing education;
- (4) Requires liability insurance for licensees; or
- (5) Requires providing social security numbers by a regulated community unless provision is required by state statute or federal statute or regulation, or the number is necessary to identify an individual to prevent criminal acts such as fraud or to identify tax or criminal records.

Source. Committee meeting, 9-21-01

## PART 402 RULES CONTRARY TO LEGISLATIVE INTENT

402.01 Violation of Statutory Purpose. A proposed rule shall be considered contrary to legislative intent if the Committee determines that:

(a) The rule attempts to implement a bill which the Legislature defeated, unless there is evidence that the bill was defeated at least in part because its content could be implemented with existing rulemaking authority.

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(b) The rule violates a statutory purpose clause.

(c) The rule violates the overall purpose of the statute, provided that any objection shall be based first on the plain meaning of the statute as a whole and secondly on the written legislative history if the meaning cannot be agreed upon. The objection shall not be based on the statute as interpreted solely by a sponsor, a representative of a standing committee, or any other single member of the Legislature.

Source. Committee meeting, 11-15-83; 9-21-01

### 402.02 Violation of a Specific Statute or Regulation.

(a) The Committee may object to a proposed rule as contrary to legislative intent if the Committee determines that the rule violates or otherwise conflicts with a specific state or federal statutory provision or federal regulation.

(b) The Committee may object to a proposed rule filed pursuant to RSA 541-A:12 or RSA 541-A:13 as contrary to legislative intent if the Committee determines:

- (1) That the agency has violated a provision of RSA 541-A during the rulemaking process for the final proposal, including failure to consider fully all public comment received under RSA 541-A:11 when establishing the final proposal pursuant to the criteria in rule 403.01; or
- (2) That the rule as written leads to requirements, limitations, or prohibitions being set outside the process mandated by RSA 541-A:3.

(c) The Committee may object to a proposed rule filed pursuant to RSA 541-A:19 as contrary to legislative intent if the Committee determines:

- (1) That the agency has violated a provision of RSA 541-A:19 during the rulemaking process for the proposed interim rule, including failure to meet the requirements for an interim rule under RSA 541-A:19, I; or
- (2) That the rule as written leads to requirements, limitations, or prohibitions being set outside the process mandated by RSA 541-A:19.

Source. Committee meeting, 11-15-91; 9-21-01

### 402.03 Matters Requiring Statutory Authority.

(a) The Committee may object to a proposed rule as contrary to legislative intent if the Committee determines that the subject matter of the proposed rule is a matter that requires specific statutory authority.

(b) The Committee may object to a proposed rule as contrary to legislative intent under paragraph (a) if the Committee determines that the proposed rule is prohibited under RSA 541-A:22, III because there is no specific statutory authority for the matter in the proposed rule.

(c) The Committee may also object to a proposed rule as contrary to legislative intent if the proposed rule creates categories or levels of a license as defined in RSA 541-A:1, VIII or a system of fees to engage in a profession, business, or other activity but the statute does not specifically authorize categories or levels of a license or a system of fees. For purposes of this paragraph, statutory authority to set fees for services provided by the agency may be considered by the Committee to be adequate to charge different fees for different services.

(d) The Committee may object to a proposed rule as contrary to legislative intent under paragraph (a) if the proposed rule without specific statutory authority:

- (1) Grants subpoena power;

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- (2) Delegates subpoena power to anyone other than the agency or individual named in the statute;
- (3) Requires continuing education for professional licensees, except that authority to set license renewal qualifications may be considered by the Committee as adequate to require continuing education ;
- (4) Requires liability insurance for licensees; or
- (5) Requires providing social security numbers by a regulated community unless provision is required by state statute or federal statute or regulation, or the number is necessary to identify an individual to prevent criminal acts such as fraud or to identify tax or criminal records.

Source. Committee meeting, 1-18-85; 9-21-01

402.04 Violation of a Constitutional Provision. The Committee may object to a proposed rule as being contrary to legislative intent if the Committee determines that a statute being implemented by the rule is consistent with the New Hampshire Constitution and the Constitution of the United States, but the rule implementing the statute violates one or both constitutions.

Source. Committee meeting, 11-15-91; 9-21-01

### PART 403 RULES CONTRARY TO PUBLIC INTEREST

403.01 Responsiveness. The Committee may object to a proposed rule as contrary to the public interest if the Committee determines that the rule is not responsive to a public need. A proposed rule shall be considered not responsive to a public need if the Committee determines that:

(a) The agency has failed to consider fully all public comment pursuant to RSA 541-A:11 for an initial proposal either at an oral hearing or in written or electronic form, because:

- (1) The agency allotted insufficient time to consider public comment before the final proposal or amended final proposal was established, based upon the complexity or extent of the comment or both;
- (2) The agency did not provide the Committee with evidence, in response to a claim to the contrary, that the public comment was overruled on the merits; or
- (3) The Committee received evidence that the agency restricted or prevented submission of testimony that was otherwise relevant under the terms of the notice, and the agency failed to refute the evidence.

(b) The agency claims the rule is necessary to respond to a federal requirement when in fact no federal requirement exists, or the federal requirement is other than the agency claims.

(c) The agency has used broad language when a more specific requirement is needed, as may be indicated by such phrases in the proposed rules as "to be determined by the agency," when the rule itself is the proper place to make such a determination.

(d) The rule is not drafted in clear and understandable language.

(e) The agency has incorporated rules by reference which are overbroad or too general, when the delegation calls for the agency to adopt rules specifically suited to state needs.

(f) The agency has incorporated by reference a document or Internet content with an amended date or edition but did not provide the Committee, in response to a request by legal counsel under Committee rule

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201.02(d), with an adequate explanation of the differences between the existing document or Internet content in the existing rule and the document or Internet content in the proposed rule.

(g) The rule is designed to benefit the administrative convenience of the agency to the detriment of the public.

Source. Committee meeting, 11-15-83; 9-18-84; 11-17-00; 9-21-01; 2-17-12

### 403.02 Uniform Application.

(a) The Committee may object to a proposed rule as contrary to the public interest if the Committee determines that the proposed rule cannot be uniformly applied once it is adopted.

(b) A proposed rule shall be considered incapable of uniform application if the Committee determines that:

(1) Instead of simply prohibiting an activity directly, the rule indirectly prohibits an activity by setting requirements that are:

a. Technically infeasible given the present state of the art of scientific and technical knowledge;

b. Impossible to meet financially by the regulated community as a whole and not simply by selective members of that community; or

c. In any other way so unlikely to be met as to become effectively a prohibition;

(2) The rule conflicts with an existing rule;

(3) The rule cannot be uniformly enforced by the agency; or

(4) The rule does not treat like entities in a similar manner.

Source. Committee meeting, 11-15-83; 9-21-01

## PART 404 ECONOMIC IMPACT OF RULES

### 404.01 Substantial Economic Impact Not Recognized in Fiscal Impact Statement.

(a) The Committee may object to a proposed rule filed pursuant to RSA 541-A:12 or RSA 541-A:13 as having a substantial economic impact not recognized in the fiscal impact statement if any of the following are true:

(1) The fiscal impact statement does not completely and correctly state the costs and benefits to the citizens of the state and to political subdivisions of the intended action;

(2) The conclusions in the fiscal impact statement as to the cost or benefit to the state general fund or any state special fund of taking the intended action are incomplete or incorrect;

(3) An explanation of, or citation to, any federal mandate for the proposed rule, or how that mandate affects state funds, is incomplete or incorrect;

(4) The comparison of the cost of the proposed rule with the cost of any existing rule is incomplete or incorrect; or

(5) The analysis of the general impact of the proposed rule upon any independently owned business is incomplete or incorrect.

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(b) The Committee may object to a proposed rule filed pursuant to RSA 541-A:12 or RSA 541-A:13 as having a substantial economic impact not recognized in the fiscal impact statement if the agency did not allow or take into account criticism of the content of the fiscal impact statement in oral or written testimony when requesting an amended fiscal impact statement.

Source. Committee meeting, 11-15-83; 6-21-85; 11-15-91;  
9-21-01