

APPENDIX II-C

RULEMAKING NOTICE FORM

Notice Number _____

Rule Number En 800

1. Agency Name & Address:	2. RSA Authority: <u>RSA 374:50;</u> <u>RSA 12-P:5, IV</u>
	3. Federal Authority: _____
	4. Type of Action:
	Adoption <u> X </u>
	Repeal _____
	Readoption _____
	Readoption w/amendment _____

5. Short Title: **En 800 RULES - UNDERGROUND DAMAGE PREVENTION PROGRAM**

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

The substance of the new En 800 rules regarding the underground damage prevention program, otherwise known as “Dig Safe,” proposed by the Department of Energy (the Department) is the same as various provisions of the existing Puc 800 rules. The En 800 rules replace the Puc 800 rules in their entirety, effectuating the transfer of regulatory responsibilities to the department when the Department was established on July 1, 2021. See RSA 12-P:2.

The Department intends to adopt new Chapter En 800 rules in accordance with RSA 12-P:5, IV.2.

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

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

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

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

Rule	Specific State Statute the Rule Implements
En 801.01	RSA 374:50; RSA 374:55,VII
En 801.02	RSA 374:50
En 802.01	RSA 374:50; RSA 374:48,VIII
En 802.02	RSA 374:50; RSA 374:48,I
En 802.03	RSA 374:50
En 802.04	RSA 374:50
En 802.05	RSA 374:50; RSA 374:48,III
En 802.06	RSA 374:50; RSA 374:48,IV
En 802.07	RSA 374:50
En 802.08	RSA 374:50
En 802.09	RSA 374:50; RSA 288:1; RSA 288:2
En 802.10	RSA 374:50
En 802.11	RSA 374:50
En 802.12	RSA 374:50; RSA 374:48,IV-a; RSA 362:2, II; RSA 362:7, III(e)
En 802.13	RSA 374:50; RSA 374:48,V
En 802.14	RSA 374:50; RSA 374:51,IV
En 802.15	RSA 374:50; RSA 374:48,I
En 802.16	RSA 374:50
En 802.17	RSA 374:50; RSA 374:48,VII
En 803.01	RSA 374:50, I; RSA 374:49, RSA 374:52
En 803.02	RSA 374:50,I
En 804.01	RSA 374:50
En 804.02	RSA 374:50; RSA 374:49; RSA 374:52
En 804.03	RSA 374:50
En 805.01	RSA 374:50, I; RSA 374:51
En 805.02	RSA 374:50
En 805.03	RSA 374:50; III; RSA 374:51,I
En 805.04	RSA 374:50; RSA 374:51,VII
En 805.05	RSA 374:50; RSA 374:54; 49 C.F.R. §198.55(a)(6) (iii)(A)
En 806.01	RSA 374:50; RSA 374:53
En 806.02	RSA 374:50; RSA 374:53
En 806.03	RSA 374:50; RSA 374:53
En 806.04	RSA 374:50,III
En 806.05	RSA 374:50; RSA 374:53
En 807.01	RSA 374:50,II
En 807.02	RSA 374:50; RSA 374:55,VII
En 807.03	RSA 374:50; RSA 374:55

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Rule	Specific State Statute the Rule Implements
En 807.04	RSA 374:50; RSA 374:55,VII
En 807.05	RSA 374:50; RSA 374:55
En 807.06	RSA 374:50; RSA 374:55,VII
En 807.07	RSA 374:50; RSA 374:55

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

Name: **Andrew J. Harmon, Esq.**

Title: **Hearings Examiner**

Mailing Address: **21 So. Fruit St., Ste. 10
Concord, NH 03301**

Phone #: **603-271-2443**

Fax#: **N/A**

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: **Tuesday, May 7, 2024**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, April 23, 2024 at 10:00 a.m.**
New Hampshire Public Utilities Commission
Hearing Room B
Place: **21 South Fruit Street, Suite 10**
Concord, NH 03301

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

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

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

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

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

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

The proposed rules do not modify an existing program or responsibility, and do not assign any responsibility to any political subdivision and therefore is not proposed in violation of Part I, Article 28-a.

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.

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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 and whether the proposal implements a state statute for the first time;
- (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, mailing 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.

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Item 9 shall be the date, time, , and physical location of the agency's public hearing(s) required by RSA 541-A:11, I(a) and, if applicable and consistent with RSA 91-A and RSA 541-A:11, I(d), “the necessary information to access the meeting electronically, and a mechanism for the public to alert the agency during the hearing if there are problems with access”. Pursuant to RSA 541-A:11, I(d):

If consistent with RSA 91-A and the provisions of this section, the agency under subparagraph I(a) may hold a virtual or hybrid hearing, provided that the public may participate by telephone, with additional access possibilities by video or other electronic means in accordance with the terms of the notice filed pursuant to RSA 541-A:3, I, including a mechanism for the public to alert the agency during the hearing if there are problems with access. Each participant in a virtual hearing or hybrid hearing shall be able to simultaneously hear and speak to the other agency and public participants and be audible or otherwise discernable to the public in attendance, whether attendance is in-person or by electronic means.

If the hearing is virtual, then insert “N/A” for the physical location. If the hearing is only in a physical location, then insert “N/A” for the electronic access information. Currently RSA 91-A does not allow virtual hearings by a state board or commission. RSA 91-A:2, IV sets limits on electronic participation by members of a state board or commission and permits electronic participation by the public in an otherwise in-person hearing only to the extent that the agency’s own rules and procedures allow.

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 or copy and paste this as part of the notice form and shall not amend it except for converting the font to Times New Roman. The agency shall also submit the original document as received from the Legislative Budget Assistant, and keep a copy 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.