

## RULEMAKING NOTICE

Notice Number _____	Rule Number _____	<b>Env-Dw 101.04</b>
1. Agency Name & Address:  Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action:	RSA 485:2, V 40 CFR Parts 141-143  Adoption <span style="float: right;"><u>  X  </u></span> Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____

5. Short Title: **Date of Incorporated Federal Regulations**

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

The proposed rule would explicitly identify an edition date for all federal regulations incorporated in subtitle Env-Dw. Under the *Drafting and Procedure Manual for Administrative Rules*, if an edition date for a federal regulation is not specified and the agency has been designated as an agent of the federal government for the program, then the most current edition applies. However, the federal court for the District of New Hampshire held in an unpublished 2013 decision that the edition is the one in effect at the time the rule was adopted. Stating the date explicitly will reduce the potential for confusion and arguments. EPA identified this as necessary to retain state primacy in its comments during the recent rulemaking for Env-Dw 717.

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

The rule will affect any owner or operator of a public water system that is subject to federal requirements.

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

Rule Section	State Statute(s) Implemented	Federal Requirement(s) Implemented
Env-Dw 101.04	RSA 485:1-16, 41, 43, & 58	40 CFR Parts 141, 142, & 143

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

Name: Holly Green	Title: DWGB Rules Coordinator
Address: Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #: (603) 271-3114 Fax#: (603) 271-0656 E-mail: <a href="mailto:Holly.Green@des.nh.gov">Holly.Green@des.nh.gov</a>

The rules also can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

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

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Wednesday, June 27, 2018**

**YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING**

Fax                                       E-mail                                       Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, June 19, 2018 at 10:00 AM**

Place: **Room 110, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 18:099, dated 05/15/18:

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

Not applicable. This is a new rule.

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

The EPA has informed the Department that explicitly identifying an edition date is now required for states to have primacy to implement federal drinking water requirements. Failure to adopt the rules could result in the loss of up to \$8 million in federal grant funding for the Department's drinking water program.

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

The proposed rule would explicitly identify an edition date for all federal regulations incorporated in subtitle Env-Dw. Under the Drafting and Procedure Manual for Administrative Rules, if an edition date is not specified then the most current edition applies. However, the federal court has held that the edition is the one in effect at the time the rule was adopted. Stating the date explicitly will reduce the potential for confusion and arguments.

**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:

There are no costs associated with the proposed rule. The proposed rule thus does not create, modify, or expand a program in such a way as to require political subdivisions to make any expenditures, and so does not violate Part I, Article 28-a of the N.H. Constitution.