

RULEMAKING NOTICE FORM

Notice Number 2016-160

Rule Number He-C 210

1. Agency Name & Address:

**Dept. of Health & Human Services
Office of the Commissioner
129 Pleasant Street
Concord, NH 03301**

2. RSA Authority: RSA 21-G:37, V

3. Federal Authority: _____

4. Type of Action:

Adoption X

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Short Title: **Waiver of Procurement Provisions**

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

He-C 210 is a new rule that implements a portion of SB 86 (Chapter 185:1 of the Laws of 2015) by setting forth the circumstances under which the procurement provisions of RSA 21-G:37 II – IV on requests or bids for proposals for goods and services shall be waived by the Department and by establishing the circumstances constituting an emergency or loss of funding under RSA 21-G:37, V.

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

This rule affects those persons or entities who wish to engage in the process for the procurement of goods and services by the Department through a request for bid, (RFB), request for application (RFB), or a request for proposal (RFP), or through a similar invitation.

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

<u>RULE</u>	<u>STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS</u>
He-C 210	RSA 21-G:37, V

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

Name: **Michael Holt**

Title: **Rules Coordinator**

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

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, October 6, 2016**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, September 29, 2016 at 11:00 a.m.**

Place: **DHHS Brown Bldg., Room 232, 129 Pleasant St., Concord, NH**

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

FIS # 16:171 , dated 08/26/16

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 of state funds:

No federal mandate, no impact on state funds.

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

The proposed rules implements a portion of Chapter 185:1, Laws of 2015 by setting forth the circumstances under which the procurement provisions of RSA 21-G:37, II-IV shall be waived by the Department and by establishing the circumstances constituting an emergency or loss of funding under RSA 21-G:37, V. There is no cost or benefit associated with the proposed rule.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

None.

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

The proposed rule creates a new program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Adopt He-C 210, cited and to read as follows:

CHAPTER He-C 200 RULES OF PRACTICE AND PROCEDURE

PART He-C 210 WAIVER OF PROCUREMENT PROVISIONS

Statutory Authority: RSA 21-G:37, V

He-C 210.01 Scope. Unless otherwise specified, He-C 210 shall apply to the procurement of goods and services by the New Hampshire department of health and human services through a request for bid, (RFB), request for application (RFB), or a request for proposal (RFP), or through a similar invitation.

He-C 210.02 Purpose. These rules implement RSA 21-G:37, V, by:

(a) Setting forth the circumstances under which the provisions of RSA 21-G:37 II – IV shall be waived by the department; and

(b) Establishing the circumstances constituting an emergency or loss of funding under RSA 21-G:37, V.

He-C 210.03 Definitions.

(a) “Commissioner” means the commissioner of the department of health and human services or his or her designee.

(b) “Department” means the New Hampshire department of health and human services.

(c) “Emergency situation” means a situation, condition, or set of circumstances, the source of which is natural, technological, or human made, that has or might:

(1) Place the health and safety of individuals served by the department at risk;

(2) Impede or diminish the department’s ability to provide materials or services to an individual or group;

(3) Inhibit or interrupt the continuity of services provided by the department; or

(4) Prevent the department from complying with the law.

(d) “Request for application (RFA)” means an invitation to submit an offer to provide identified services to an agency where the amount of funding available and the particulars of how the services are to be provided are defined by the agency and where the selection of qualifying vendors will be according to identified criteria as provided in RSA 21-I:22-a and RSA 21-I:22-b.

(e) “Request for bid (RFB)” means an invitation to submit an offer to provide specified commodities or services to an agency at a price proposed by the bidder where selection is based on the lowest price meeting or exceeding specifications as stated in the bid.

(f) “Request for proposal (RFP)” means an invitation to submit a proposal to provide specified goods or services, where the particulars of the goods or services and the price are proposed by the vendor

and, for proposals meeting or exceeding specifications, selection is according to identified criteria as provided in RSA 21-I:22-a and RSA 21-I:22-b.

He-C 210.04 Waiver of Requirements.

(a) The commissioner shall waive any or all of the provisions of RSA 21-G:37, II – IV for any RFA, RFB, RFP, or similar invitations in order to prevent the loss of federal or other funds subject to recapture or if the commissioner determines that there is an emergency situation and such waiver would prevent or mitigate one of the provisions in He-C 210.03(c)(1)-(4).

(b) The department shall post the information required by RSA 21-G:37, II and III as soon as practicable after the circumstances which gave rise to the waiver have been mitigated.

Appendix

Rule	Specific State Statute the Rule Implements
He-C 210	RSA 21-G:37, V