

CHAPTER Agr 3900 PRODUCE SAFETY FARM INSPECTIONS

PART Agr 3901 FARM INSPECTONS

Agr 3901.01 Purpose. These rules implement the procedures of the department of agriculture, markets and food, pursuant to RSA 426-A:6 for the inspection of farms engaged in covered activities including the growing, harvesting, packing, and holding of covered produce in accordance with the Food Safety Modernization Act, 21 C.F.R. Part 112, 2016.

Agr 3901.02 Scope. These rules shall apply to any farm that engages in covered activities including growing, harvesting, packing, and holding of covered produce that is a raw agriculture commodity pursuant to the Food Safety Modernization Act, 21 C.F.R. Part 112, Subpart A General Provisions.

Agr 3901.03 Definitions. As used in these rules, the following terms shall have the meanings indicated:

- (a) "Commissioner" means the commissioner of the department of agriculture, markets, and food of the state of New Hampshire;
- (b) "Covered activity" means "covered activity" as defined in 21 C.F.R. Part 112.3, 2016;
- (c) "Covered produce" means "covered produce" as defined in 21 C.F.R. Part 112.3, 2016;
- (d) "Department" means the New Hampshire department of agriculture, markets, and food;
- (e) "Egregious condition" means a practice, condition, or situation on a farm or in a packing house that is reasonably likely to lead to:
 - (1) Serious adverse health consequences or death from the consumption of or exposure to covered produce; or
 - (2) An imminent public health hazard if corrective action is not taken immediately; and
- (f) "Farm" means "farm" as defined in RSA 426-A:1, III.

Agr 3901.04 Produce Safety Practices. The owner or operator of a farm shall comply with 21 C.F.R. Part 112, 2016, "Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption" of the Food and Drug Administration.

Agr 3901.05 Inspections.

- (a) The department shall conduct farm inspections pursuant to RSA 426-A:4.
- (b) Initial inspections shall be conducted:
 - (1) On farms whose farming practices include covered activity as defined in 21 C.F.R. Part 112.3, 2016;
 - (2) As the first regulatory inspection activity to evaluate compliance with applicable regulations;

- (3) With a focus on education unless egregious conditions are observed; and
- (4) When covered produce is being grown, harvested, packed, or held for distribution.

(c) Routine inspections shall be conducted:

- (1) On farms whose farming practices include covered activity as defined in 21 C.F.R. Part 112.3, 2016;
- (2) When covered produce is being grown, harvested, packed, and held for distribution; and
- (3) Once every 3 years on or after the date of initial inspection.

(d) Follow-up inspections shall be conducted:

- (1) To review changes in farming practices, or recordkeeping, on a farm, when noncompliance was noted during a routine inspection; and
- (2) Within 30 days from the date received, of a written notification to the farm.

(e) For-cause inspections shall be conducted in response to a specific issue or produce safety concern, such as an outbreak, reported complaint, or recall.

Agr 3901.06 Recordkeeping. The owner or operator of a farm shall maintain records as stated in Subpart O-Records, in 21 C.F.R. Part 112, 2016, “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption” of the Food and Drug Administration.

Agr 3901.07 Enforcement. The commissioner shall enforce the requirements of these rules when inspection findings cite non-compliances with any part of 21 C.F.R. Part 112, 2016, “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption” of the Food and Drug Administration.

Agr 3901.08 Compliance.

(a) Failure to comply with the requirements of 21 C.F.R. Part 112, shall result in issuance of written notice of non-compliance which includes the following:

- (1) A description of each noncompliance;
- (2) The facts upon which the notification of noncompliance is based; and
- (3) The date by which the farm must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) Each response to such notification shall be sent to the recipient's place of business via a delivery service which provides dated return receipts.

(c) When a farm demonstrates that each noncompliance has been resolved, the commissioner shall send a written notification of noncompliance resolution.

Agr 3901.09 Stop Sale, Use or Removal Orders.

(a) When the commissioner, or his agents, believe farm products are being distributed in violation of the rules, the commissioner or agent shall issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such farm products.

(b) The farm products shall not be sold, used, or removed until the provisions of these rules have been complied with.

(c) Farm products shall be released by the commissioner once the violation has been corrected as provided for in these rules, or by an order of a court of competent jurisdiction.

Rule	Specific State Statute the Rule Implements
Agr 3900	RSA 426-A:6; 21 U.S.C. 301 et seq.; and 21 CFR 112
(Specific rules implementing specific statutes are listed below)	
Agr 3901.03	RSA 426-A:1
Agr 3901.04	RSA 426-A:2
Agr 3901.05	RSA 426-A:4
Agr 3901.06	RSA 426-A:5
Agr 3901.07	RSA 426.A:2
Agr 3901.08	RSA 426:A:2
Agr 3901.09	RSA 426:A:4(b)II

APPENDIX B: Incorporated by Reference

Rule	Title	Obtained at:
Agr 3901.04	Food Safety Modernization Act, 21 C.F.R. Part 112, 2016, Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption” of the Food and Drug Administration.	Online: https://www.fda.gov/Food/GuidanceRegulation/FSMA