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# New Hampshire

*Department of Agriculture,  
Markets, and Food*

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**STATUS OF NHDAMF AS ACCREDITED CERTIFYING AGENT OF:  
USDA NATIONAL ORGANIC PROGRAM  
AGRICULTURAL MARKETING SERVICE**

The mission of the Division of Regulatory Services (DRS), a division within the New Hampshire department of agriculture, markets, and food (NHDAMF), is to assure regulatory compliance relative to product content, marketing, and quality of agricultural and horticultural products. Currently the DRS is tasked with overseeing 20 programs, 16 of which are statutorily mandated and 4 are not. Regulatory compliance, within the context of the mission, is necessary to support human and animal welfare, consumer protection, and fraud prevention. This mission is implemented by three inspectors, one administrative assistant, and the division director. A 2017 audit of adherence to this mission and resulting review of staffing constraints, program efficiencies, modernization, and funding throughout NHDAMF have and continue to drive difficult decisions regarding many treasured NHDAMF programs. This work is necessary to meet expectations prior to the next audit. For the DRS, this includes evaluating the continuation of programs, justification of which is required via the New Hampshire Biennium Review of Goals and Performance Measures. These reports are meant to protect the use of taxpayer funds and adherence to legislative mandates.

After significant consideration and thorough discussions with various stakeholders, NHDAMF will be ending accreditation as a National Organic Program (NOP) Accredited Certifying Agent (ACA), effective at the close of business on June 30, 2024. This is a program into which organic facilities voluntarily enter, is not mandated by NH law and is a privatized federal program for which several other NOP ACAs offer certification services in NH. Although this originated as an unmandated NH program in 1987, it was later nationalized, and program administration was taken over by USDA. Since then, demands on state staff derived from the federal program have grown exponentially. Further, increasing product registrations, laws, and rules relative to statutorily mandated DRS programs have similarly increased, without increased in-kind DRS restructuring or funding.

Based on discussions with the NOP, NHDAMF has been assured that NHDAMF ACA Certified CROP Producers will be given sufficient time to transition to another NOP ACA. During this transition period, **NO NOP CROP PRODUCER, CURRENTLY CERTIFIED BY NHDAMF WILL LOSE THEIR ACCREDITATION if they maintain their adherence to NOP organic rules and expectations.** The Organic program is not a NH state program for which NH executive

branch employees have authorization to make certification decisions outside of federal NOP law or rule. The process by which the NHDAMF decouples from this program and the transition process for CROP Producers is not determined by NHDAMF or its staff. Working through NHDAMF, the NOP will instruct current NHDAMF NOP ACA Certified CROP Producers on transitioning to ACAs of their choosing. These other ACAs will be determining each producer's adherence to federal NOP law and rule. At the NOP's direction, NHDAMF will soon be providing additional written information and instruction to each current NHDAMF Certified Crop Producer relative to transitioning. NHDAMF reminds producers that their certification remains **ACTIVE** and offers that additional information and instruction, as dictated by the NOP, will be forwarded directly to producers in writing via US mail return certified receipt. Thus, no information will be provided by NHDAMF staff via phone. The use of NHDAMF NOP certification stickers is allowed now and will be for some time during the transition period, as will be explained in the forthcoming NOP instructions. NHDAMF ACA will be completing Organic Maple certification this season. Certification costs for all other Crop Producers will be reimbursed.

The decision to decouple from this program was not easy nor taken without significant and thorough consideration to alternative solutions. Last week HB1184, proposing to employ an additional 1.5 full time DRS employees was voted on and failed to pass in the House of Representatives. Given this result and the additional work necessary to meet DRS' current and forthcoming mandates, NHDAMF believes that continuation of the organic program at this point is unsustainable. A review of staff time dedicated to the organic program shows 31% of investigator's time and 45% of the division director's time was dedicated to the program. As a result of this review, discussions toward organic program solutions began with stakeholders last year resulting, in part, to the proposed legislation referenced above.

Over the past several months, DRS prepared for two contingencies, pending the outcome of proposed legislation. Regardless of the legislation, it was the intent of NHDAMF to finish out the 2024 season and reassess the resulting staffing impacts for the following season. However, recent staffing changes caused reconsideration of this plan. The DRS must now consider that, if any staff inspector was unable to conduct their NOP certification obligations, the NHDAMF as an NOP ACA would immediately fall out of federal expectations, resulting in an immediate stop to the organic certification program. During previous discussions with stakeholders, it was agreed that stopping certification services mid-season is a worst-case scenario. The Commissioner has consistently presented, should this ever be the case, NHDAMF would reconsider providing such services. NHDAMF decoupling as a NOP ACA now eliminates the possibility of such an untenable situation. The Commissioner believes this to be the responsible course of action, thus allowing NH organic crop producers to work with other ACAs. This increases NHDAMF confidence in the uninterrupted availability of NH grown organic products for all NH state residents, upon whom all the Commissioner's decisions ultimately affect.

The State of New Hampshire department of agriculture, markets, and food, Financial Audit Report, March 31, 2017, can be found at:

<https://www.nh.gov/transparentnh/audit/agriculture/index.htm>

New Hampshire State Laws (RSAs) and Rules can be found at:

<https://www.gencourt.state.nh.us/rsa/html/indexes/default.aspx>  
[https://www.gencourt.state.nh.us/rules/state\\_agencies/agr.html](https://www.gencourt.state.nh.us/rules/state_agencies/agr.html)

The NHDAMF decoupling from the NOP certification program as an ACA will result in no net impact to some DRS programs and significant impacts to others. The DRS expects that decoupling will provide additional time to implement (to the extent possible) existing mandates, forthcoming mandates, and modernization efforts, as further described below.

## **MANDATED PROGRAMS – POSITIVELY IMPACTED**

### **Fertilizer (RSA 431:2)**

Minimize risk to environment via product registration and public notification of percent nutrients and intended uses of fertilizer. The DRS receives registrations for hundreds of fertilizer products sold throughout New Hampshire, checks every ingredient from each product and each label for compliance with informational requirements and presentation, inputs registration and label information into databases, reconciles registration fees against each product, provides approval and denial letters, conducts enforcement inspections, and prepares higher level enforcement when necessary. The DRS is also mandated to conduct fertilizer sampling for ingredient and percent confirmation against guaranteed analyses, performing penalty calculations and pursuing penalties that are then reimbursed to the farming community. Changes anticipated for this program include regular inspection and sampling of product, the initiation of modernized information management, and the creation, implementation, and oversight of forthcoming bio-stimulant requirements.

### **Liming (RSA 431:23)**

Registration, content and label reviews, sampling, posting inspections, and enforcement. The requirements of this legislation, and associated mandates, will be evaluated for current and future objectives, including inspection, sampling, and enforcement requirements.

### **Horticulture Growing Media (RSA 433-A:2)**

Assure product registration and public notification of analysis, ingredients, and intended uses of HGM. Receive registrations for hundreds of HGM products sold in New Hampshire, check every ingredient from each product, check each label for compliance with informational requirements and presentation, input registration and label information into database, reconcile registration fees against each product, provide denial letters, conduct enforcement inspections, and conduct higher level enforcement when necessary.

### **Seed (RSA 433:7)**

Assure conformance with product date requirements, germination rates, and intended uses of seed through inspection and testing of seed sold throughout New Hampshire. Receive applications for approximately 50 licenses to sell seed in New Hampshire. The DRS has objective evidence that out-of-date seed, in violation of these laws, is regularly offered for sale throughout NH and hopes to conduct appropriate enforcement actions to minimize such violations in the future.

**Feed (RSA 435:18)**

Minimize risk to pet health via product registration, analyses, and public notification of ingredient amount and kind. Receive registrations for thousands of feed products sold in New Hampshire, check every ingredient from each product, check each label for compliance with informational requirements and presentation, input registration and label information into database, reconcile registration fees against each product, provide denial letters, conduct enforcement inspections, and prepare higher level enforcement when necessary. Although feed sampling for ingredient and percent confirmation is mandated, such sampling is not regularly conducted. The DRS hopes to implement an active, continuous feed sampling program, means of public notification for failed pet food products, and implement significant pet food label and information technology modernization requirements.

**Shell eggs (RSA 428:27)**

Conduct inspections toward current grade standards and conduct higher level enforcement as necessary. Regular, sustained inspections, associated follow-up and enforcement are not currently conducted.

**Maple Voluntary Registration Program (RSA 429:13-a)**

This is a registration program for persons who produce or pack maple sap or products for sale. The DRS hopes to increase efforts to seek out registrants and additional stakeholder input regarding improved implementation moving forward.

**Apples (RSA 434:29)**

Conduct apple inspections relative to grading of apples sold throughout the state, followed by follow-up and higher-level enforcement as necessary. Regular, sustained inspections, associated follow-up and enforcement are not currently conducted.

**Cider (RSA 434:40-d)**

Conduct inspections throughout the state specific to sale and labelling of cider, follow-up, and higher-level enforcement as necessary. Regular, sustained inspections, associated follow-up and enforcement are not currently conducted.

**Agricultural Land Preservation (432:21)**

Review deed restrictions, conduct site visits, reporting and higher-level enforcement as necessary to assure compliance with restrictions of the agricultural lands owned by the citizens of NH. The DRS hopes to re-initiate mandated reporting requirements and follow-up enforcement.

**MANDATED PROGRAMS – UNIMPACTED****Native, Local, Our Own (RSA 426:5)**

Assure consumer confidence in farm commodities marketed and produced in New Hampshire. Administer state laws relative to the labeling of farm products identified as “Native” or “Local,” via on-site inspection of labels and trace back via review of purchase orders and producer inspections and verification of custody from production to sales. The Division issues Stop Sales orders as necessary and pursues higher-level enforcement of violations when appropriate.

**Maple and Honey Labelling (429:25)**

Dictates label requirements to which staff verifies via inspections at sales facilities throughout NH and as follow-up to public complaints. Results in higher-level enforcement and associated follow-up throughout the year.

**Lumber (RSA 434:60)**

Minimize risk of structural failure via the certification of Lumber Grading Professionals. Administer state laws relative to the certification of individuals expert in the Grading of Native Lumber for structural use.

**Potatoes (RSA 434:16)**

Existing house bill to eliminate program.

**Best Management Practices (RSA 431:34)**

Prevent adverse impacts to water, soil, and air via inspection and guidance for the management of manure, agricultural compost, and chemical fertilizer. Respond to and document complaints involving the mismanagement of manure, agricultural compost, and chemical fertilizer. The Division coordinates inspections at sites where these materials are suspected of causing environmental contamination. Publish and distribute the “Manual of Best Management Practices for Agriculture in New Hampshire.” Complaint resolution focuses on non-punitive methods. Higher-level enforcement is conducted in cooperation with the NH Department of Environmental Protection.

**NON-MANDATED PROGRAMS****Seal of Quality Program (SOQ)**

Assure superior quality standards for NH farm products. Producers maintain high quality standards verified by DRS inspectors via established standards and includes maple products, Apples, Cider, Eggs, Honey, and Raspberries. This involves registration, fees, reconciliation, producer production, labelling and grading, review and inspection, and denial/approval letters as appropriate. Pursue higher-level enforcement and issue Stop Sales orders as necessary.

**USDA Good Agricultural Practices (GAP)**

Minimize microbial contamination for fresh fruits and vegetables. This is a federal program for which DRS staff are licensed to conduct audits based on federal law and rule. Some major NH sales facilities only purchase GAP certified produce.

**USDA Country of Origin Labeling Program (COOL)**

Assure the public is provided information regarding the source country of ~~certain~~ produce. Certain nuts, ginseng, fish and shellfish, chicken, goat, and lamb. This is a federal program for which NH Executive branch staff are certified to conduct reviews.

## MANDATES - FORTHCOMING

Further, and in anticipation of additional impacts to staff time, the DRS must implement the following efficiencies and modernization requirements:

- Creation of bio stimulant regulations, registration, inspection, and enforcement platform
- Phosphorus rules and assessment of changes to registration, inspections, and enforcement
- Information Technology Modernization
- Pet Food Modernization
- Update expired rules, including, but not limited to:
  - Agr 3200 Horticultural Growing Media
  - Agr 901 Apples
  - Agr 905 Eggs
  - Agr 1300 Controlled Atmosphere (*House Bill to Remove*)
  - Agr 907 Cider
  - Agr 908 Grading and Certification or Stamping of Native Lumber
  - Agr 700 Acquisition of Agricultural Land Development Rights