

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number	2021-104	Rule Number	Agr 1702.01 (f) & (i); Agr 1707.02
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<p>1. Agency Name & Address:</p> <p>Dept. of Agriculture, Markets & Food Division of Animal Industry State House Annex 25 Capitol Street Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 437:1, IV and RSA 437:9</u></p> <p>3. Federal Authority: <u>N/A</u></p> <p>4. Type of Action:</p> <p><input type="checkbox"/> Adopt</p> <p><input type="checkbox"/> Amendment</p> <p><input type="checkbox"/> Repeal</p> <p><input type="checkbox"/> Readoption</p> <p><input checked="" type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **Transfer of Animals and Birds**

6. Contact person for copies and questions:

Name:	Stephen Crawford, DVM	Title:	state veterinarian
Address:	Dept. of Agriculture, Markets, & Food Division of Animal Industry State House Annex 25 Capitol Street, Room 220 Concord, NH 03301	Phone #:	603-271-2404

7. Yes No Agency requests review by Committee legal staff in the Office of Legislative Services and delayed Committee review pursuant to RSA 541-A:12, I-a.

8. The rulemaking notice appeared in the Rulemaking Register on **October 14, 2021; Volume XLI, Number 41.**

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

9. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

10. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

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11. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).
12. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

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INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

The first and second unnumbered items, and Items 1 through 5, shall be completed with the same information as appeared in the “Rulemaking Notice Form” (Appendix II-C) as published for the Initial Proposal in the Rulemaking Register. Item 6 shall identify the name, title, address, and telephone number of the person in the agency who can answer questions about the proposed rule and supply copies.

The agency shall then indicate, by checking the appropriate box on Item 7, whether it is requesting that it receive and respond to comments of the Committee legal staff prior to the Committee meeting that is at least 28 days, but not more than 60 days, after the proposal is filed. In effect, this would be a request for postponement of Committee action. See RSA 541-A:12, I-a and Section 2.14 of Chapter 3 in the Drafting and Procedure Manual for Administrative Rules (Manual).

In Item 8 the agency shall list the full date, by month, day, and year, on which the “Rulemaking Notice Form” was published in the Rulemaking Register.

Items 9 through 12 all relate to required attachments to the “Final Proposal Cover Sheet”. PROVIDE ONE COPY OF EVERYTHING SUBMITTED. IT IS OPTIONAL TO NUMBER THEM ACCORDINGLY. Item 9 is required in every filing, and therefore is listed without a check-box. Items 10 through 12 will be required only under the circumstances set forth in the description of the items listed below. The agency shall determine whether such attachment is required and then check either the “Yes” box to indicate that the document is required and has been attached or the “N/A” box if the document is not required and therefore not applicable:

- Item 9. The “Final Proposal—Fixed Text,” required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.
- Item 10. An “Incorporation by Reference Statement” (Appendix II-H) if the agency has incorporated a third-party document or Internet content by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.
- Item 11. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.
- Item 12. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

Notice Number **2021-104**

Rule Number **Agr 1702.01; Agr 1707.02**

<p>1. Agency Name & Address:</p> <p>Dept. of Agriculture, Markets & Food Division of Animal Industry State House Annex 25 Capitol Street Concord, NH 03301</p>	<p>2. RSA Authority: RSA 437:1, IV and RSA 437:9</p> <p>3. Federal Authority: N/A</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment X</p>
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5. Short Title: **Transfer of Animals and Birds**

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

Agr 1702.01 contains the definitions for Chapter Agr 1700 on the transfer of animals and birds. Agr 1702.01 is being readopted with amendments as follows:

Agr 1702.01 (f) defining “license holder” is being amended to correct a conflict with statutes. RSA 437:1, IV defines “pet vendor” to include those transferring certain numbers of animals “whether or not a physical facility is owned by the licensee in New Hampshire.”.

RSA 437:3 specifies that “no pet vendor shall transfer...without a license.”. The current rule Agr 1702.01(c) defines “broker” as an entity “that does not own or operate a physical facility within New Hampshire”. The current rule Agr 1702.01(f) also defines “license holder” as “any person to whom a license has been issued by the department for a premises...”. The proposed amendment to Agr 1702.01(f) addresses the conflict with legislative intent by clearly including brokers as potential license holders.

Agr 1702.01 (i) defining “reasonable times” is being amended to change a reference to an RSA in the definition of “reasonable times” pursuant to a reorganization of statutory sections.

Agr 1707.02 on forms is also being readopted with amendment to implement the new requirement for local zoning approval only once a pet vendor transfers 50 or more dogs, cats, ferrets, or birds pursuant to Chapter 215 of the Laws of 2021 (HB 250), effective 8-17-2021.

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

These rules affect entities engaged in the transfer of fish, reptiles, amphibians, or small mammals.

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

Rule	State Statute
Agr 1702.01	RSA 437:1, IV & RSA 437:9, I
Agr 1707.02	RSA 437:9, I

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

Name: **Stephen K. Crawford, DVM** Title: **state veterinarian**
Address: **Dept. of Agriculture, Markets & Food** Phone #: **603-271-2404**
Division of Animal Industry Fax#: **603-271-1109**
State House Annex E-mail: **stephen.k.crawford@agr.nh.gov**
25 Capitol Street, Room 220
Concord, NH 03301

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: **December 10, 2021, 4pm**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **November 22, 2021, 9am**

Place: **State House Annex, 25 Capitol Street – Room 201, Concord, NH 03301**

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

FIS # 21-097, dated 10/04/2021

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

There is no difference in cost when comparing the proposed rules to the existing 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:

These rules do not violate Part I, Article 28-a of the NH Constitution. The rules neither mandate nor assign any responsibility or cost to any political subdivision.

CHAPTER Agr 1700 TRANSFER OF ANIMALS AND BIRDS

Edit. The adopting, amending, and repealing language (AARL) is missing. Please be sure to include it at the time of adoption.

Agr 1702.01 Definitions. As used herein:

- (a) "Animal" means an animal customarily used as a household pet;
- (b) "Bird" means any bird customarily used as a household pet;
- (c) "Broker" means a "pet vendor" as defined in RSA 437:1, IV that does not own or operate a physical facility within New Hampshire;
- (d) "Carapace" means a bony or chitinous case or shield covering the back or part of the back of an animal;
- (e) "Foster facilities" means premises which are not in the business of transferring animals because they house animals solely for medical or behavioral rehabilitation when the animals are owned by a license-holder for another premises;
- (f) "License holder" means any person to whom a license has been issued by the department either as a broker or for a premises used to house, harbor, or display animals intended for transfer to the public;
- (g) "Person" means any individual, firm, corporation, or other entity engaged in the business of transferring to the public animals customarily used as household pets;
- (h) "Primary enclosure" means a four-sided structure that is used as a housing unit for an animal;
- (i) "Reasonable times" means a minimum of eight regular, posted open hours maintained by the license holder at the same time every week between 8 am and 4pm, Monday through Friday, which are subject to unannounced inspection by the department and access to the public for the return of pets in accordance with RSA 437:3;
- (j) "State" means the state of New Hampshire;
- (k) "Turtles" means all chelonia, including tortoises and terrapins being sold as household pets; and
- (l) "Zoonotic disease" means an illness that is transmissible to humans from animals customarily used as household pets.

Edit. A later date is needed as the form was not approved by JLCAR in September.

Agr 1707.02 Application Form and Zoning Approvals.

- (a) Persons seeking a pet vendor license shall apply for that license by completing and submitting form “Application to License Pet Vendor Premises” (Revised 9/21) with a non-refundable fee required by RSA 437:3.
- (b) Pursuant to RSA 437:3, local zoning approval shall not be required for pet vendors transferring 49 or fewer dogs, cats, ferrets, or birds between January 1 and December 31 of a year.
- (c) Pursuant to RSA 437:3, local zoning approval shall be required for pet vendors transferring 50 or more dogs, cats, ferrets, or birds between January 1 and December 31 of a year.
- (d) Any pet vendor license issued by the department without sufficient proof provided by the applicant of local zoning approval shall automatically be suspended when a pet vendor transfers 49 such animals between January 1 and December 31.
- (e) If the license is suspended as described in (d) above, the person shall not transfer any more such animals until the license holder submits sufficient proof of local zoning approval to the department and receives from the department written approval reinstating the suspended license.
- (f) Any pet vendor found in violation of any of these provisions shall be subject to the penalties in RSA 437:10 for operating as an unlicensed pet vendor.

Unclear/Legis. Intent. Absent specific authority, automatic suspension can only be imposed under the conditions specified in RSA 541-A:30, III. Also, RSA 437:4, as amended by 2021, 215:4 (HB 250), authorizes suspension only after notice to the licensee and an opportunity for a hearing.

APPENDIX

Rule	State Statute
Agr 1702.01	RSA 437:1, IV & RSA 437:9, I
Agr 1707.02	RSA 437:9, I