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CHAPTER He-P 2300 SANITARY PRODUCTION AND DISTRIBUTION OF FOOD

PART He-P 2301 DEFINITIONS

He-P 2301.01 Definitions.

- (a) “Applicant” means the owner of a food establishment or an officer of the legal ownership who applies for a license under these rules.
- (b) “Bed and breakfast” means a type of food service establishment that is a transient lodging facility, which is the owner’s or innkeeper’s personal residence, is occupied by the owner or innkeeper at the time of rental to an in-house guest, and in which breakfast is the only meal served.
- (c) “Beverage” means “beverage” as defined in RSA 143:9.
- (d) “Bulk food” means processed or unprocessed food in aggregate containers from which quantities desired by the consumer or the employee are withdrawn. The term “bulk food” does not include fresh whole fruits or fresh whole vegetables.
- (e) “Caterer” means a person or entity which provides meals or food at private functions at off-site locations.
- (f) “Change of ownership” means any time a controlling interest in a sole proprietorship, joint venture, partnership, corporation, limited liability company, or any other kind of entity is transferred to another sole proprietor, joint venture, partnership, corporation, limited liability company or any other kind of entity.
- (g) “Commissioner” means the commissioner of the New Hampshire department of health and human services, or his or her designee.
- (h) “Continental breakfast” means a light breakfast that includes items such as coffee, tea, juices, toasts, breakfast cereals, assorted pastries, and uncut fruit.
- (i) “Corrective action plan (CAP)” means a plan developed and written by the licensee, which specifies the actions that will be taken to correct identified deficiencies.
- (j) “Critical control point” means a point or procedure in a specific food system where loss of control might result in an unacceptable health risk.
- (k) “Critical limit” means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
- (l) “Department” means the New Hampshire department of health and human services.
- (m) “Food” means “food” as defined in RSA 143-A:3, III.
- (n) “Food Code” means the U.S. Department of Health and Human Services, Public Health Services, Food and Drug Administration, Food Code, 2009 edition.
- (o) “Food establishment” means “food service establishment” as defined in RSA 143-A:3, IV, or “retail food store” as defined in RSA 143-A:3, VII.

(p) “Food processing plant” means a type of food service establishment that is a commercial operation that processes food for human consumption, and provides processed food for sale and distribution to other business entities such as other food establishments. The term does not include an operation that processes food under the oversight of the New Hampshire department of agriculture in accordance with RSA 426, RSA 427, RSA 428, RSA 429 and RSA 434.

(q) “Food service establishment” means “food service establishment” as defined in RSA 143-A:3, IV.

(r) “Foodborne disease outbreak” means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a common food.

(s) “Homestead” means “homestead” as defined in RSA 143-A:12, which is a type of food service establishment.

(t) “Immediately endangers public health or safety” means that a condition exists that is an imminent health hazard.

(u) “Imminent health hazard” means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

(v) “Level One homestead” means a homestead that sells its products only at farmers’ markets, farm stands, or residences.

(w) “Level Two homestead” means a homestead that sells its products at farmers’ markets, farm stands, residences, or retail food stores.

(x) “License” means the document issued by the department or other regulatory agency, which authorizes a license holder to operate a food establishment.

(y) “License holder” means the entity legally responsible for the operation of a licensed food establishment, including, but not limited to, the owner, the owner’s agent, or other person.

(z) “Mobile food unit” means a food service establishment mounted on wheels or otherwise designed to be immediately moveable.

(aa) “Package” means a quantity or an amount of food that is bottled, canned, cartoned, securely bagged, or securely wrapped.

(ab) “Person in charge” means the individual present at a food establishment who is responsible for the operation of the establishment at the time of inspection, including the duties described in section 2-103.11 of the Food Code, and who can demonstrate the knowledge required by section 2-102.11 of the Food Code which are pertinent to the risks inherent to that specific food establishment.

(ac) “Priority item” means a provision of the Food Code, marked with a superscript P, whose application contributes directly to the elimination, prevention, or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard.

(ad) “Public water system” means “public water system” as defined in RSA 485:1-a, XV.

(ae) “Pushcart” means a type of food service establishment that is a non-self propelled vehicle limited to serving non-time/temperature control for safety foods, packaged time/temperature control for safety foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

(af) “Regulatory authority” means the local, state or federal enforcement body having jurisdiction over the food establishment.

(ag) “Remodeled” means having undertaken construction, which includes, but is not limited to, adding new seats, adding a food preparation area, or any construction affecting the kitchen or any other part of a food establishment that requires a plumbing modification.

(ah) “Retail food store” means “retail food store” as defined in RSA 143-A:3, VII.

(ai) “Sanitization” means the cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(aj) “Servicing area” means an operating base location to which a mobile food unit or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

(ak) “Sewage” means “sewage” as defined in RSA 485-A:2, X, namely “the water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.”

(al) “Soup kitchen” means a food service establishment operated by a charitable organization including religious societies and fraternal organizations organized pursuant to RSA 292, RSA 306, and RSA 418, that prepares and serves meals to the poor without charge.

(am) “Time/temperature control for safety (TCS) food” means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation. This term is also known as “potentially hazardous food.”

He-P 2302.01 License Required. Unless exempted under RSA 143-A:5, RSA 143-A:5-a, or He-P 2302.02, no person shall operate a food establishment in New Hampshire without obtaining a license from the department.

He-P 2302.02 Soup Kitchens Exempt from Licensure. In accordance with RSA 143-A:5-a, soup kitchens shall be exempt from licensure by the department provided:

- (a) They do not charge for meals; and
- (b) They submit to the department a written notice which:
 - (1) Identifies the name and address of the person operating the soup kitchen;
 - (2) Identifies the clientele served by the soup kitchen;
 - (3) Lists the hours the soup kitchen will operate; and
 - (4) Provides a description of the food to be served.

PART He-P 2303 INCORPORATION OF THE 2009 FOOD CODE

He-P 2303.01 Incorporation of the 2009 Food Code.

(a) All licensees shall comply with the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Food Code, 2009 edition, henceforth known as the Food Code, as amended in (b) below, unless exempted in (c) or (d) below.

(b) The following amendments shall apply to the document incorporated:

(1) Amend section 3-201.11(A) so that (A) reads as follows: “Food shall be obtained from sources that comply with law^P, except that the exemption under the Poultry Products Inspection Act at 21 USC 464(c)(4) shall not apply in the state of New Hampshire”;

(2) Delete section 3-201.16; and

(3) Delete Chapter 8.

(c) Those food establishments applying for or licensed as a bed and breakfast shall comply with the Food Code. However, the exceptions to the Food Code listed in He-P 2308.02 shall apply to a bed and breakfast.

(d) Those food establishments applying for or licensed as food processing plants or homesteads shall be exempt from the requirements of the Food Code, and shall instead comply with the requirements in He-P 2309 and He-P 2310, respectively.

(e) The 2009 Food Code may be viewed on the web at <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/> or via mail from the United States Department of Commerce, National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312 (refer to report number PB2009112613).

PART He-P 2304 APPLICATION AND LICENSING PROCEDURE

He-P 2304.01 Initial License Application Requirements.

(a) Each applicant for a license shall submit the following to the department:

(1) A completed application form entitled “Application for Annual Food Service License” (FSAPP, 01-01-11), “Application for Annual Food Processing Plant License” (FPAPP, 01-01-11), “Application for Annual Homestead License” (HAPP, 01-01-11), or “Application for Annual Mobile Food Unit License” (MFAPP, 01-01-11), as applicable, signed and dated by the applicant or the person who represents the applicant certifying the following:

“I certify that all information provided in or attached to this application is complete, accurate and up-to-date as of the date specified below. I further certify that there are no willful misrepresentations of the answers to questions herein, and that I have made no omissions with respect to any of my answers to the questions presented. I understand that it is my responsibility to immediately notify the Food Protection Section with regard to any changes, corrections or updates to the information provided.”;

(2) A check or money order for the applicable fees, in accordance with He-P 2304.05(a) and (c);

(3) Water system documentation, in accordance with He-P 2304.06;

(4) Wastewater system documentation, in accordance with He-P 2304.07, except that food establishments applying to be licensed as a bed and breakfast or a homestead shall not be required to submit such documentation;

(5) A completed "Plan Review Application" (PRAPP, 01-01-11), signed and dated by the applicant or the person who represents the applicant, if required by He-P 2304.12(a) and (b), and if not already submitted for review, except that food establishments applying to be licensed as a bed and breakfast, homestead, or a pushcart shall not be required to submit such an application;

(6) If the application is for a mobile food unit which uses a servicing area, one of the following:

a. A copy of the food establishment license, from the appropriate regulatory authority, of the facility being used as a servicing area; or

b. A separate license application for the facility to be used as a servicing area; and

(7) A HACCP plan if required by He-P 2304.13.

(b) The applicant shall mail or hand deliver the documents to:

Department of Health and Human Services
Division of Public Health Services
Food Protection Section
29 Hazen Drive
Concord, NH 03301
(603) 271-4589

He-P 2304.02 Processing of Initial Applications and Issuance of Licenses.

(a) Applications shall be processed in accordance with RSA 541-A:29.

(b) An application for an initial license shall be complete when the department determines that all items required by He-P 2304.01(a) have been received.

(c) If an application does not contain all the items required by He-P 2304.01(a), the department shall:

(1) Not process that application; and

(2) Notify the applicant in writing of which items are required to be submitted before the application can be processed.

(d) Any licensing fee submitted to the department in the form of a check or money order and returned to the state for any reason shall be processed in accordance with RSA 6:11-a.

(e) Licensing fees shall not be transferable to any other application(s).

(f) Following an inspection, conducted pursuant to RSA 143:4 and in accordance with He-P 2305, a provisional license shall be issued if the department determines that an applicant is in compliance with RSA 143, RSA 143-A, and these rules.

(g) Pursuant to RSA 143-A:6, I:

- (1) A provisional license shall expire 90 days after the date of issuance; and
- (2) If a license is not issued following the expiration of a provisional license, the food establishment shall cease operation the day after the provisional license expires and not operate until a license is obtained.

(h) If, within 45 days of issuance of a provisional license the department conducts an inspection in accordance with He-P 2305 and determines that an applicant is in compliance with RSA 143, RSA 143-A, and these rules, the department shall issue to the applicant a license valid for a time period of one year following the date of issuance of the provisional license.

(i) All licenses and provisional licenses issued in accordance with RSA 143-A shall be issued for a specific license classification and category under He-P 2304.04.

(j) License holders shall operate in accordance with the class and category of license issued.

(k) All licenses and provisional licenses issued in accordance with RSA 143-A shall be non-transferable by person or location.

(l) Licenses shall be posted at all times in an area of the food establishment that is conspicuous to patrons.

He-P 2304.03 License Expirations and Procedures for Renewals.

(a) All licenses issued shall be valid for one year following the date of issuance, or one year following the date of issuance of a provisional license, as applicable.

(b) Each licensee shall apply to renew their license via an application form pursuant to He-P 2304.01(a)(1) at least 30 days prior to the expiration of the current license.

(c) The licensee shall submit with the renewal application:

(1) The materials required by He-P 2304.01(a)(1), (2), and (3); and

(2) A request for renewal of any existing variances previously granted by the department, in accordance with He-P 2304.14, if applicable.

(d) A license shall be renewed if the department determines that the licensee:

(1) Submitted an application containing all the items required by (c) above, as applicable, at least 30 days prior to the expiration of the current license;

(2) Has submitted a CAP that has been accepted by the department and implemented by the licensee if deficiencies were cited at the last licensing inspection; and

(3) Is found to be in compliance with RSA 143, RSA 143-A, and He-P 2300 at a renewal inspection, as applicable.

(e) If a license holder fails to submit a complete application for renewal as required under (b) and (c) above, the food establishment shall cease operation the day after the license expires, and shall not operate until a license is obtained.

(f) Any food establishment wishing to submit an application for a renewal license whose previous license has been expired in excess of 90 days shall apply in accordance with the requirements of an initial license in He-P 2304.01.

He-P 2304.04 License Classes.

- (a) For the purpose of licensure, food establishments shall be divided into the following classes:
- (1) Class A which shall include:
 - a. Category A-1, food processing plants which commercially process 100,000 packages of food or more, per year;
 - b. Category A-2, food service establishments with 200 or more indoor seats; or
 - c. Category A-3, retail food stores with 4 or more food preparation areas;
 - (2) Class B which shall include:
 - a. Category B-1, retail food stores with 2 to 3 food preparation areas; or
 - b. Category B-2, food service establishments with 100 to 199 indoor seats;
 - (3) Class C which shall include:
 - a. Category C-1, retail food stores with one food preparation area, including, but not limited to, an area for cutting cheese or fudge;
 - b. Category C-2, caterers serving food off-site;
 - c. Category C-3, food service establishments with 25 to 99 indoor seats;
 - d. Category C-4, bars/lounges with a food preparation area, excluding areas used for preparing garnish such as limes and lemons; or
 - e. Category C-5, food processing plants which commercially process less than 100,000 packages of food per year;
 - (4) Class D, which shall include:
 - a. Category D-1, food service establishments with 0 to 24 indoor seats, including, but not limited to, bakeries;
 - b. Category D-2, fraternities and sororities, except those where the members prepare all their own food;
 - c. Category D-3, mobile food units which cook or prepare food;
 - d. Category D-4, retail food stores that allow self-service of food, including, but not limited to, coffee, hot dogs, or soft drinks;
 - e. Category D-5, Level Two homesteads; or
 - f. Category D-6, servicing areas;
 - (5) Class E which shall include:
 - a. Category E-1, bed and breakfasts;
 - b. Category E-2, ice cream vendors which scoop ice cream; or

c. Category E-3, lodging facilities serving continental breakfasts;

(6) Class F which shall include:

- a. Category F-1, home delivery services of packaged frozen food;
- b. Category F-2, pushcarts and other mobile food units, including, but not limited to, those serving packaged food and non-TCS unwrapped foods only;
- c. Category F-3, retail food stores with no food preparation areas;
- d. Category F-4, wholesalers/distributors of TCS food;
- e. Category F-5, on-site vending machines, which serve TCS food; or
- f. Category F-6, bakeries which do not serve TCS food and have no seats;

(7) Class G shall include:

- a. Category G-1, bars/lounges without a food preparation area;
- b. Category G-2, arena/theater concessions serving non-TCS food;
- c. Category G-3, retail food stores serving pre-packaged ice cream;
- d. Category G-4, institutions including state, county, and municipal institutions;
- e. Category G-5, schools, including, but not limited to, private schools, colleges, and universities, and state-run schools. This term does not include schools whose food service is operated by a private, for-profit catering business;
- f. Category G-6, senior meal sites;
- g. Category G-7, sellers of pre-packaged frozen meat or poultry that is processed in a USDA-inspected plant; or
- h. Category G-8, food processing plants that package non-TCS bulk food;

(8) Class H, Category H-1, shall include level one homesteads; and

(9) Class O, Category O-1, shall include municipality-run school cafeterias.

(b) When a food establishment operates more than one type of business, the higher class shall determine the class of license, with Class A being the highest.

(c) When a food establishment has an additional food processing business, each shall be licensed separately, requiring separate applications and separate fees.

(d) When a hospital or school offers food to the general public in addition to its population, then the license class shall be determined by the number of seats the food service establishment has.

He-P 2304.05 Fees.

(a) For each class of license requested, the applicant shall pay the following annual fees:

- (1) Class A: \$875;

- (2) Class B: \$450;
- (3) Class C: \$350;
- (4) Class D: \$225;
- (5) Class E: \$175;
- (6) Class F: \$150;
- (7) Class G: \$100;
- (8) Class H: \$50; and
- (9) Class O: no charge.

(b) Licensees shall be charged and shall pay \$100 for each inspection conducted after the second inspection conducted in any licensing period, except that the inspections conducted during the provisional license period shall not be included in this count.

(c) An applicant or licensee shall pay a fee of \$75 for each plan review submitted under He-P 2304.12.

(d) Application materials shall be available free of charge on the department's website, but if an applicant requests that the department mail an application package to the applicant, the applicant shall be charged a \$15 materials and mailing fee.

(e) All fees shall be non-transferable and non-refundable.

(f) Payment of any fee to the department shall meet the following requirements:

- (1) Payment shall be made in the form of check or money order made payable to the "Treasurer, State of New Hampshire" in the exact amount due;
- (2) Money order or certified check shall be required when an applicant or licensee has issued payment to the department by check, and such check was returned for insufficient funds; and
- (3) Any payment made to the department by check which is returned for insufficient funds, and which an individual, applicant, or licensee has not made good by submitting a money order or certified check within 2 business days of notification by the department, including any penalty assessment allowed by RSA 6:11-a, shall be grounds for denial of the license.

He-P 2304.06 Water System Requirements.

(a) Food establishments which own and operate their own public water systems, as defined by RSA 485:1-a, XV, shall indicate, as part of their application for a license, the Public Water System (PWS) identification number which has been assigned by the New Hampshire department of environmental services (DES).

(b) For an application to be approved, food establishments which own and operate their own public water systems regulated by DES shall:

- (1) Be in compliance with all applicable water quality standards and monitoring and reporting requirements of Env-Dw 717 or successor rules in Subtitle Env-Dw; or

(2) Be in compliance with the requested actions in a letter of deficiency, or the required actions of an administrative order, issued by DES and established to obtain compliance with the regulations cited in (1) above.

(c) Food establishments which are classified as public water systems, as defined by RSA 485:1-a, XV, but whose water system infrastructure is owned by another party, shall indicate, as part of their application for a license, the PWS identification number which has been assigned by DES.

(d) For an application under this paragraph to be approved, the owner of the water system infrastructure shall:

(1) Be in compliance with all applicable water quality standards and monitoring and reporting requirements of Env-Dw 717 or successor rules in Env-Dw; or

(2) Be in compliance with the requested actions in a letter of deficiency, or the required actions of an administrative order, issued by the DES and established to obtain compliance with the regulations cited in (1) above.

(e) Food establishments which purchase their water from other public water systems, as defined by RSA 485:1-a, XV, and therefore do not fall under (a) above, shall indicate this information on the application.

(f) Food establishments which do not fall under (a) through (e), and are instead served by a water source other than a public water system, shall submit with the initial and renewal application the written results of a laboratory analysis of the water intended for use, which tests the level of the following:

(1) Bacteria;

(2) Nitrates; and

(3) Nitrites.

(g) The analyses required by (f) above shall be conducted not more than 6 months prior to the date of the application by a laboratory accredited by DES to perform such tests in accordance with Env-C 300.

(h) For an application to be approved, the results of the water analysis shall be as follows:

(1) The bacteria test required under (f) above shall not exceed the maximum contaminant level (MCL) for drinking water prescribed by Env-Dw 700; and

(2) The nitrate and nitrite tests required under (f) above shall not exceed the MCL for drinking water prescribed by Env-Dw 700 for those 2 contaminants.

He-P 2304.07 Wastewater System Requirements.

(a) Food establishments which discharge their wastewater to either public or private wastewater systems which hold either a state surface water discharge permit or a groundwater discharge permit issued by the New Hampshire department of environmental services (DES), shall indicate this information on the application.

(b) Food establishments which do not discharge their wastewater as described in (a) above shall submit, as part of their application, one of the following:

(1) Both:

a. A copy of the construction approval for the sewage or waste disposal system that indicates that the system is sufficient in capacity to serve the subject food establishment issued by DES in accordance with RSA 485-A:29 and Env-Wq 1000; and

b. A written statement signed by the applicant containing the following language: “I certify that there has been no increase in the loading on the wastewater system which would cause an exceedance of the capacity of the system approved by the NH department of environmental services under the provisions of Env-Wq 1000;” or

(2) A written statement signed by the applicant containing the following language: “I certify that the private sewage or waste disposal system serving this food establishment was constructed prior to 1971 and is presently not in failure. I further certify that I have not been notified by either the NH department of environmental services or the local health officer that the system serving this food establishment is in violation of any state or local statute, administrative rule, ordinance or bylaw.”

(c) If there is no increase in the loading of the waste disposal system serving the food establishments in (b) above, and the applicant is unable to produce the documentation required, the department shall inform DES that the applicant has not complied with (b)(1) above. In this case, the requirement of (b)(1) above shall be waived.

(d) Any increase in seating capacity in a licensed food establishment which has a private wastewater system shall comply with Env-Wq 1000.

He-P 2304.08 Change in Ownership of a Food Establishment.

(a) When there is a change of ownership of a food establishment, the new owner shall submit the items required for initial license applicants under He-P 2304.01 to the department at least 30 days prior to the change of ownership.

(b) Upon receipt and processing of the items required by (a) above, and after an inspection conducted in accordance with He-P 2305 which shall also determine compliance with Chapters 4, 5, and 6 of the Food Code, the department shall issue a provisional license reflecting the change in ownership.

(c) The issuance of a provisional license due to a change in ownership shall void the license of the previous owner on the date the change of ownership occurs.

He-P 2304.09 Change in Name of a Food Establishment.

(a) When a license holder intends to change the name of a food establishment, that license holder shall submit a written request to the department for a new license at least 30 days prior to the intended date of change in name.

(b) The written request shall include:

(1) The reason for requesting a new license;

(2) The name of the food establishment as it appears on the existing license;

(3) The name of the food establishment as the license holder requests it to appear on the new license; and

(4) The date upon which the change in name is intended to occur.

(c) Following receipt of the items required by (b) above, the commissioner shall issue a revised license reflecting the change in name. The establishment number and expiration date shall remain the same as it was on the immediately preceding license.

He-P 2304.10 Change in Location of a Food Establishment.

(a) When there is a change of location of a food establishment, the license holder shall submit the items required for initial license applicants under He-P 2304.01 to the department at least 30 days prior to the change of location.

(b) Upon receipt and processing of the items required under (a) above, and after an inspection conducted in accordance with He-P 2305, the department shall issue a provisional license reflecting the change of location.

(c) The issuance of a provisional license due to a change in location shall void the previous license on the date the change of location occurs.

(d) This section shall not apply to mobile food units, pushcarts or vehicles used to sell retail food.

He-P 2304.11 Change in License Class.

(a) A license holder wishing to request an upgrade to a higher-level class of license listed in He-P 2304.04 shall:

- (1) Be treated as an applicant for a new license; and
- (2) Apply for a new license in accordance with He-P 2304.01.

(b) The issuance of a provisional license due to an upgrade in license class shall void the previous license on the date the upgrade occurs.

(c) A license holder wishing to request a downgrade to a lower level class of license listed in He-P 2304.04 shall submit a written request for downgrade to the department.

(d) The written request in (c) above shall include:

- (1) The reason for requesting a downgrade; and
- (2) The date upon which the downgrade is intended to occur.

(e) Following receipt of the request under (c) above the licensee shall be issued a revised license reflecting the downgrade in class of license. The establishment number and expiration date shall remain the same as it was on the immediately preceding license.

He-P 2304.12 Submission of Plans and Specifications for New or Remodeled Food Establishments.

(a) An applicant or license holder shall complete and submit a "Plan Review Application" (PRAPP, 01-01-11) to the department for review and approval.

(b) The application in (a) above shall be submitted at least 45 days prior to:

- (1) Constructing a new food establishment;
- (2) Converting an existing structure for use as a food establishment;

- (3) Remodeling a food establishment; or
 - (4) Relocating a food establishment when the relocation also involves (1), (2), or (3) above.
- (c) Pushcarts, homesteads, and bed and breakfasts shall be exempt from submitting a plan review application.
- (d) An applicant or licensee shall pay a fee of \$75, for each plan review application submitted.
- (e) The department shall review plans for construction, renovation or structural alterations of a food establishment for compliance with all applicable sections of RSA 143, RSA 143-A, and He-P 2300 and notify the applicant or licensee as to whether the plan complies with these requirements.

He-P 2304.13 Hazard Analysis and Critical Control Point (HACCP) Plan Requirements.

(a) The following applicants or licensees shall submit to the department a complete hazard analysis and critical control point (HACCP) plan for approval prior to engaging in an activity that requires such a plan:

- (1) Food processing plants;
 - (2) Any food establishment engaging in an activity that requires a variance as specified under Food Code subparagraph 3-401.11 (D)(4), § 3-502.11, or ¶ 4-204.110 (B);
 - (3) Any food establishment engaging in a food preparation or processing method that the department determines requires a variance, based on the submission of plans and specifications in accordance with He-P 2304.12, an inspection finding, or a variance request;
 - (4) Any food establishment engaging in an activity specified under Food Code § 3-502.12; and
 - (5) Any food establishment which is required to have a HACCP plan by law.
- (b) A complete HACCP plan shall include the following:
- (1) A categorization of the types of TCS foods that are specified in the menu;
 - (2) A flow diagram by specific food or category type identifying critical control points and providing information on the following:
 - a. Ingredients, materials, and equipment used in the preparation of that food; and
 - b. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
 - (3) Food employee and supervisory training plan that addresses the food safety issues of concern;
 - (4) A statement of standard operating procedures for the plan under consideration including clearly identifying:
 - a. Each critical control point;
 - b. The critical limits for each critical control point;

- c. The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;
- d. The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;
- e. Action to be taken by the person in charge if the critical limits for each critical control point are not met; and
- f. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

(5) Additional scientific data or other information, as needed by the department to make its determination under (c) below, supporting the determination that food safety is not compromised by the proposal.

(c) The department shall review HACCP plans for compliance with all applicable sections of RSA 143, 143-A, and He-P 2300 and notify the applicant or licensee as to whether the plan complies with these requirements.

He-P 2304.14 Variances.

(a) Applicants or license holders seeking variances from specific rules or Food Code items shall submit a “Variance Request Form” (VRFORM, 01-01-11) to the:

Department of Health and Human Services
 Division of Public Health Services
 Food Protection Section
 29 Hazen Dr.
 Concord, NH 03301
 (603) 271-4589

(b) The variance request shall include:

- (1) Specific reference to the rule or Food Code item for which a variance is being sought;
- (2) Full explanation of why a variance is necessary;
- (3) Full explanation of alternatives proposed by the applicant or license holder, which shall be equally as protective of public health as the rule or Food Code item from which a variance is sought; and
- (4) A HACCP plan if required under He-P 2304.13.

(c) The commissioner shall approve a request for variance if:

- (1) The commissioner concludes that authorizing deviation from strict compliance with the rule or Food Code item from which a variance is sought does not contradict the intent of the rule or Food Code item; and
- (2) The alternative proposed by the applicant or license holder ensures that the objective or intent of the rule or Food Code item from which a variance is sought will be accomplished.

(d) If a variance is approved, the license holder's subsequent compliance with the alternatives approved in the variance shall be considered equivalent to complying with the rule or Food Code item from which a variance was sought.

(e) A variance shall be approved for one year or until the expiration of the current license or unless specified by the department.

(f) No request for a variance concerning the rules of other state agencies which are referred to in this chapter shall be approved.

He P 2304.15 Trade Secrets and Confidentiality.

(a) The department shall treat as confidential, in accordance with RSA 350-B, information that meets the criteria specified in RSA 350-B for a trade secret and is contained on inspection report forms, in the plans and specifications submitted as specified under He P 2304.12, and in any HACCP plans submitted.

(b) Consumer complaints received regarding illness or sanitation of a food establishment shall have the name, address, and phone number or other identifying information of the individual making the complaint maintained as confidential and such information shall not be released without written permission of the complainant.

PART He-P 2305 INSPECTIONS AND COMPLIANCE

He-P 2305.01 Inspections.

(a) For the purpose of determining compliance with RSA 143, RSA 143-A, and He-P 2300, as authorized by RSA 143:4 and RSA 143-A:6, II, the applicant or licensee shall admit and allow any department representative at any time to enter and inspect the following:

- (1) The licensed food establishment, including any mobile food units or vehicles used by the licensee for the transportation or retail sale of food; and
- (2) Any records required by RSA 143-A and He-P 2300, or pertaining to food and supplies purchased and distributed by the food establishment.

(b) At the time of inspection, or upon request, the applicant or licensee shall provide the department with the following:

- (1) A list of persons employed; and
- (2) Samples of food for bacteriological, chemical, and physical examination.

(c) The department shall conduct an inspection to determine full compliance with RSA 143, RSA 143-A, and He-P 2300, prior to:

- (1) The issuance of a provisional license;
- (2) The issuance of a full license;
- (3) A change in ownership;
- (4) A change in the licensee's physical location;

- (5) An upgrade in the license class;
 - (6) Occupation of space after construction, renovations or structural alterations; or
 - (7) The renewal of a license when the department has determined, in the interest of public health and based on the licensee's inspection and compliance history, that a renewal inspection is warranted.
- (d) In addition to (c) above, the department shall conduct an inspection:
- (1) Whenever the department has reason to believe a condition exists that places the food establishment in non-compliance with RSA 143, RSA 143-A, or He-P 2300; and
 - (2) As necessary to verify compliance with any corrective action plan (CAP) accepted by the department as part of an inspection.
- (e) The applicant, owner, or person in charge shall be present at time of inspection.
- (f) Upon completion of the inspection, the department shall complete a written inspection report in accordance with Food Code Annex 7, Form 3-A and Guide 3-B, or in the case of food processing plants and homesteads a "Food Processing Plant Inspection Report".
- (g) The inspection report shall contain:
- (1) Specific factual observations of deficiencies which violate He-P 2300 and/or the Food Code and which require correction; and
 - (2) For all food establishments except food processing plants, a color designation, described in (i) below, based on the results of the inspection findings.
- (h) The applicant, owner, or person in charge shall acknowledge receipt of the inspection report by signing the inspection report.
- (i) Color designations shall be as follows:
- (1) Green if there are no priority item violations identified or if all priority item violations identified are corrected immediately and permanently at the time of the inspection;
 - (2) Yellow if there are priority item violations identified and are not corrected immediately and permanently at the time of the inspection; and
 - (3) Red if it is determined that an imminent health hazard exists at the time of the inspection or if the food establishment is found to be operating without a current, valid license.

He-P 2305.02 Correction of Deficiencies Identified During an Inspection.

- (a) All deficiencies identified in the inspection report shall be corrected at the time of inspection, as practicable.
- (b) For all food establishments except food processing plants and homesteads, if a priority item violation is found during an inspection and cannot be corrected immediately and permanently in the presence of the inspector, the applicant or licensee shall:

(1) Agree to temporarily correct the priority item violation and to permanently correct it in a specified time frame, not to exceed 10 calendar days after the inspection; or

(2) Complete a CAP in the presence of the inspector in accordance with He-P 2305.03.

(c) For all food establishments except food processing plants and homesteads, if a violation of any items in Chapter 4, 5, or 6 of the Food Code is found during an inspection for an initial license or change of ownership license, and it cannot be corrected immediately in the presence of the inspector, the applicant or licensee shall:

(1) Agree to temporarily correct the deficiency and to permanently correct it in a specified time frame, not to exceed 10 calendar days after the inspection; or

(2) Complete a CAP in the presence of the inspector in accordance with He-P 2305.03.

(d) For food processing plants and homesteads, if any violation is found during an inspection and cannot be corrected immediately and permanently in the presence of the inspector, the applicant or licensee shall:

(1) Agree to temporarily correct the violation and to permanently correct it in a specified time frame, not to exceed 10 calendar days after the inspection; or

(2) Complete a CAP in the presence of the inspector in accordance with He-P 2305.03.

(e) All priority foundation items shall be corrected in a timely manner not to exceed 10 days.

(f) All core items shall be corrected in a timely manner, not to exceed 90 days

He-P 2305.03 Corrective Action Plan.

(a) When a deficiency identified in the inspection report cannot be corrected either immediately and permanently in the presence of the inspector or permanently within 10 calendar days after the inspection, pursuant to He-P 2305.02(b), (c), or (d), the licensee shall complete, date, and sign, at the time of inspection, a Corrective Action Plan form (CAPAPP, 01-01-11) provided by the inspector, including:

(1) How the licensee intends to correct each deficiency;

(2) The date by which each deficiency shall be corrected; and

(3) What measures will be put in place to ensure that the deficiency does not recur.

(b) The department shall review and accept each CAP that:

(1) Achieves compliance with RSA 143, RSA 143-A, and He-P 2300;

(2) Addresses all deficiencies and deficient practices as cited in the inspection report;

(3) Prevents a new violation of RSA 143, RSA 143-A, or He-P 2300 as a result of the implementation of the CAP; and

(4) Specifies the date upon which the deficiencies will be corrected.

(c) The department shall verify the implementation of any CAP that has been accepted by:

(1) Reviewing materials submitted by the licensee;

- (2) Conducting a follow-up inspection; or
- (3) Reviewing compliance during a renewal inspection.

(d) If the department finds the licensee to be out of compliance with the CAP by the specified completion date at the time of the next inspection, the department shall:

- (1) Impose applicable fines, in accordance with He-P 2306.02(a)(13);
- (2) Revoke the license in accordance with He-P 2306.03(a)(7); and
- (3) Deny the application for a renewal of a license, as applicable, in accordance with He-P 2304.03(d)(2).

PART 2306 ENFORCEMENT ACTIONS

He-P 2306.01 Enforcement Actions and Notice of Right to Appeal.

(a) The department shall impose enforcement actions for violations of RSA 143, RSA 143-A, or He-P 2300, including the following:

- (1) Imposing fines upon an applicant, licensee, or unlicensed individual;
- (2) Denying a license application;
- (3) Revoking a license; or
- (4) Immediately closing the food establishment.

(b) When imposing a fine, denying a license application, or revoking a license, the department shall send to the applicant or licensee a written notice that sets forth:

- (1) The action to be taken by the department;
- (2) The reasons for the action, including the identification of each deficiency as applicable; and
- (3) The right of the applicant or licensee to request a hearing in accordance with RSA 541-A, He-C 200, and He-P 2306.04 prior to the enforcement action becoming final.

(c) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 143, RSA 143-A, RSA 541-A:30, III, or He-P 2300.

He-P 2306.02 Administrative Fines.

(a) The department shall impose fines as follows:

- (1) For providing false or misleading information on or with an application, in violation of He-P 2304.01(a), He-P 2311.01(a), or He-P 2304.12(a), the fine shall be \$1,000;
- (2) For failure to operate a food establishment only in the manner in which licensed to do so, in violation of He-P 2304.02(j), the fine shall be \$500;

- (3) For failure to cooperate during an inspection of a food establishment, including but not limited to failing to allow department representatives or inspectors to inspect food establishment premises, vehicles, and records at all times, in violation of He-P 2305.01, the fine shall be \$2,000;
- (4) For failure to notify the department by telephone within 24 hours of any fire or other disaster that jeopardizes the safety or sanitation of food provided in food establishments, in violation of He-P 2306.06(a), the fine shall be \$250;
- (5) For failure to notify the department pursuant to He-P 2304.08(a) at least 30 days prior to a food establishment ownership change, the fine shall be \$500;
- (6) For failure to notify the department pursuant to He-P 2304.10(a) at least 30 days prior to the change of location of a food establishment, the fine shall be \$500;
- (7) For failure to submit a plan for review as required in He-P 2304.12(a) and (b), the fine shall be \$300;
- (8) For failure to discard food as required by Food Code 3-701.11, and in the manner instructed to do so by the department, the fine shall be \$500;
- (9) For failure to cease operation upon notification by the department to do so, the fine shall be \$1,000. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;
- (10) For failure to cease operation after a license has expired, when an application has been denied, or when a license has been revoked, the fine shall be \$1,000. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;
- (11) For a violation of the same priority item on more than 2 consecutive inspections, the fine shall be \$500;
- (12) For failure to pay an administrative fine within 30 days of its imposition, or within 30 days of the decision to uphold the imposition of a fine that was appealed, the fine shall be \$500. Each day until the expiration of the current license, that a license holder fails to pay such a fine shall be considered a separate offense subject to an additional \$500 fine;
- (13) For a failure to comply with any CAP that has been accepted by the department, the fine shall be \$500;
- (14) For operation of a food service establishment without obtaining a food service license, as required by RSA 143-A:4, the fine shall be \$1,000. Each day that a food establishment operates without a license shall be considered a separate offense subject to an additional \$500 fine;
- (15) For failure to submit a HACCP plan for review if required by the department in accordance with He-P 2304.13, the fine shall be \$500;
- (16) For failure to display a valid license, in accordance with He-P 2304.02(1), the fine shall be \$200;
- (17) For failure of an applicant, owner, or person in charge to be present at the time of inspection and demonstrate the knowledge required by section 2-102.11 of the Food Code

which are pertinent to the risks inherent to the specific food establishment, in violation of He-P 2305.01(e), the fine shall be \$250;

(18) For violating a variance approved in accordance with He-P 2304.14, the fine shall be \$500; and

(19) For failure to submit a timely renewal application, in violation of He-P 2304.03(b), the fine shall be \$75.

(b) Except for violations of (a)(19) above, each day that an individual or licensee continues to be in violation of the provisions of RSA 143, RSA 143-A, or He-P 2300 shall constitute a separate violation and shall be fined in accordance with this section.

(c) Payment of any imposed fine to the department shall meet the following requirements:

(1) Payment shall be made in the form of check or money order made payable to the "Treasurer, State of New Hampshire" in the exact amount due;

(2) Money order, or certified check shall be required when an applicant or licensee has issued payment to the department by check, and such check was returned for insufficient funds; and

(3) Any payment made to the department by check which is returned for insufficient funds, and which an individual, applicant, or licensee has not made good by submitting money order or certified check within 2 business days of notification by the department, including any penalty assessment allowed by RSA 6:11-a, shall be grounds for revocation of the license.

He-P 2306.03 Denial or Revocation of a License.

(a) The department shall deny an application or revoke a license if:

(1) The operation of the licensed establishment immediately endangers public health or safety;

(2) An applicant or licensee has failed to pay any applicable fee in accordance with He-P 2304.05 or any administrative fine imposed under He-P 2306.02 or any other court authorized sanction or fee;

(3) An applicant or a licensee has had a check returned to the department for insufficient funds and has not re-submitted the outstanding fee and additional charges in the form of money order or certified check within 2 business days of notification by the department;

(4) After being notified of and given an opportunity to supply missing information, an applicant or licensee fails to submit an application that meets the requirements of He-P 2304.02(c);

(5) An applicant, licensee or any representative or employee of the applicant or licensee:

a. Provides false or misleading information to the department;

b. Prevents or interferes, or fails to cooperate with any inspection or investigation conducted by the department; or

c. Fails to provide, upon request, information or documents to the department;

- (6) There is a deficiency identified in the inspection report and the applicant or licensee does not either correct it or complete a CAP in accordance with He-P 2305.02(b) or (c);
- (7) The licensee fails to implement or continue to implement a CAP that has been accepted by the department in accordance with He-P 2305.03(d);
- (8) The licensee is cited 2 or more times under RSA 143, RSA 143-A, or He-P 2300 for the same priority violation within the last 12 months or the last 5 inspections;
- (9) A licensee has had a license revoked and submits an application during the 3-year prohibition period specified in (b) below; and
- (10) A food establishment fails to implement an approved HACCP plan in accordance with He-P 2304.13;

(b) When a food establishment's license has been denied or revoked, the applicant or licensee shall be prohibited from reapplying for a food establishment license for 3 years at a different location, if the enforcement action pertained to their role in the food establishment.

(c) The 3-year period referenced in (b) above shall begin on:

- (1) The date of the department's decision to revoke or deny the license, if no request for an administrative hearing is requested or if the request is withdrawn; or
- (2) The date a final decision upholding the action of the department is issued, if a request for a hearing is made and a hearing is held.

(d) Notwithstanding (b) and (c) above, the department shall consider an application submitted after the decision to revoke or deny becomes final, if the applicant provides proof that circumstances have changed and that the applicant has obtained the requisite degree of knowledge, skills and resources necessary to maintain compliance with the provisions of RSA 143, RSA 143-A, and He-P 2300.

(e) Reapplication for a license after revocation, pursuant to RSA 143-A:6, I, shall require submission of:

- (1) A written application for a license to the department, completed in accordance with He-P 2304.01;
- (2) A corrective action plan, completed in accordance with He-P 2305.03; and
- (3) Written proof that subsequent to the revocation, the person in charge has taken and passed a food safety class that meets the standards of The Conference for Food Protection.

He-P 2306.04 Request for an Administrative Hearing.

(a) An applicant or licensee shall have 10 calendar days after receipt of the notice of an enforcement action to request in writing a hearing to contest the action.

(b) If a written request for a hearing is not received pursuant to (a) above, the applicant or licensee waives his right to a hearing and the action of the department shall become final.

(c) Hearings under this section shall be conducted in accordance with RSA 541-A and He-C 200.

(d) For administrative fines, the fines shall be paid to the department no later than 30 days from the receipt of the notice, unless a hearing has been requested.

He-P 2306.05 Effect of Denial of License Application, Revocation of License, or Expired License.

(a) Any applicant who has been denied a license or renewal license shall not operate or shall cease operation of the food establishment for which the license or renewal license was denied within 10 calendar days after receipt of the denial notice, unless a timely appeal is submitted.

(b) If a license is revoked by the department, the food establishment shall cease operation of the food establishment within 10 calendar days after receipt of the revocation notice, unless a timely appeal is submitted.

(c) If a food establishment is subject to immediate closure as defined in RSA 143:5-a, the food establishment shall immediately cease operation pending reinspection and pursuant to the adjudicative proceedings provisions of RSA 541-A.

(d) If a license expires without a timely application for renewal having been made, the food establishment shall immediately cease operation of the food establishment.

He-P 2306.06 Closure.

(a) A licensee shall immediately discontinue operations and notify the department at 603-271-4589, or if at night or during weekends at 603-271-5300, if an imminent health hazard may exist because of an emergency such as, but not limited to:

- (1) Interruption of water service that lasts for 2 or more hours;
- (2) Whenever a drinking water sample is found to have E. coli bacteria or exceed the MCL for nitrates or nitrites described by He-P 2304.06(f);
- (3) A failed sewer system or a sewage backup into the food establishment;
- (4) Interruption of electrical service for 2 or more hours;
- (5) A fire affecting a food establishment;
- (6) Flooding in a food establishment;
- (7) Chemical exposure in a food establishment;
- (8) Any other natural disaster or catastrophic event that could result in contamination of the food supply;
- (9) An employee has been found to be infected with a communicable disease as described in Food Code subparagraph 2-201.11 (A)(2); or
- (10) Any other severe unsanitary conditions that threaten to contaminate the food establishment and its food supply.

(b) A licensee shall not be required to discontinue operations in an area of the food establishment that is unaffected by the imminent health hazard.

(c) If operations are discontinued as specified in (a) above, the licensee shall obtain approval from the department before resuming operations.

(d) The department shall approve the resumption of operations if the imminent health hazard no longer exists or the licensee has offered a plan to mitigate all threats to health or safety.

(e) The failure to include other violations, practices, circumstances, or events in this section shall not be construed as a determination that other violations, practices, circumstances, or events are not or shall not be considered an imminent health hazard.

(f) The commissioner's order of an immediate closure of a food establishment shall be in accordance with the provisions of RSA 143:5-a.

PART 2307 EMPLOYEE HEALTH

He-P 2307.01 Suspected or Confirmed Foodborne Disease Outbreaks.

(a) Pursuant to RSA 141-C:9, II, during a suspected or confirmed foodborne disease outbreak, as determined by the department, all food employees in the implicated food establishment shall submit biological specimens upon department request.

(b) During a suspected or confirmed foodborne disease outbreak, as determined by the department, any food employee who has had any of the symptoms specified in Food Code subparagraph 2-201.11 (A)(1) within the previous 2 weeks shall be excluded from work until the appropriate biological specimens requested by the department under RSA 141-C:9, II, are submitted and found to be negative.

He-P 2307.02 Reporting by the Person in Charge.

(a) The person in charge shall notify the department's bureau of communicable disease control at 603-271-4496, or if at night or during weekends at 603-271-5300, of a food employee, or a person who applies for a job as a food employee, who is diagnosed with, or suspected of having, an illness or condition specified in Food Code subparagraph 2-201.11 (B), including:

- (1) Jaundiced;
- (2) Norovirus;
- (3) Hepatitis A virus;
- (4) Shigella spp.;
- (5) Enterohemorrhagic or shiga toxin-producing Escherichia coli; or
- (6) Salmonella Typhi.

(b) The person in charge shall report infectious and communicable disease as required by He-P 301, as applicable.

PART He-P 2308 SPECIAL REQUIREMENTS FOR BED AND BREAKFAST FACILITIES

He-P 2308.01 Application Requirements. Food service establishments applying for a license as a bed and breakfast facility shall comply with all of the application requirements of He-P 2304.01, except that they shall not be required to submit a plan review application as required under He-P 2304.01(a)(5) and wastewater items as required under He-P 2304.01(a)(4) and He-P 2304.07.

He-P 2308.02 Basic Requirements. A bed and breakfast facility shall comply with He-P 2302 through He-P 2307, however the following exceptions to the Food Code shall apply:

- (a) Commercial equipment shall not be required;
- (b) The kitchen shall be equipped with either:
 - (1) A 2-compartment sink; or
 - (2) A residential model dishmachine and a one-compartment sink;
- (c) A sink used for food preparation shall not be required to be equipped with an indirect wasteline;
- (d) A backflow device shall not be required for kitchen sinks provided with a spray hose;
- (e) Coved base at the juncture of the floor and wall shall not be required;
- (f) Only those bathrooms which open directly into the kitchen or into any hallway leading into the kitchen shall be required to have self-closing doors and mechanical ventilation;
- (g) The kitchen shall not be required to be separated from any living area or sleeping area by complete partitioning or solid, self-closing doors; and
- (h) Laundry facilities shall:
 - (1) Be allowed in the kitchen; and
 - (2) Not be used during processing, preparing, serving, or packaging of foods related to the business.

He-P 2308.03 Sanitization. Dishes, utensils, and food contact equipment and surfaces shall undergo sanitization as required in Food Code 4-703.11, except that sanitization, if done in the 2 compartment sink, shall occur in the second compartment after the dishes, utensils, and food contact equipment have been rinsed with clean water.

PART He-P 2309 SPECIAL REQUIREMENTS FOR FOOD PROCESSING PLANTS

He-P 2309.01 Application Requirements. Food service establishments applying for a license as a food processing plant shall:

- (a) Comply with all of the application requirements described in He-P 2304.01;
- (b) Submit with their application a list of all food products to be produced in the food processing plant; and
- (c) Submit a HACCP plan as part of the application as required by He-P 2304.13.

He-P 2309.02 Basic Requirements. Food processing plants shall:

- (a) Provide an updated list of food products to the department whenever new products are added;
- (b) If thermally processing and packaging low-acid foods in hermetically sealed containers, comply with applicable federal regulations under the Code of Federal Regulations in 21 CFR 113 and 21 CFR 110;

(c) If processing acidified foods, comply with applicable federal regulations under Code of Federal Regulations in 21 CFR 114 and 21 CFR 110; and

(d) Maintain production records and distribution records of all products produced.

He-P 2309.03 Food Processing Plant Standards.

(a) Those food establishments licensed as food processing plants shall be exempt from the requirements of the Food Code and shall instead comply with the requirements in this section.

(b) All food shall be from an approved source, as follows:

(1) “Approved source” means a source of food that has been inspected by a federal, state, or local agency that has the authority, responsibility, and the technical ability to evaluate food for safety in protection of public health;

(2) Raw agricultural plant commodities and products under the oversight of New Hampshire department of agriculture under RSA 426, RSA 427, RSA 428, RSA 429, and RSA 434 that do not require inspection shall be considered to be from an approved source; and

(3) Poultry that is exempt from federal inspection under the Poultry Products Inspection Act 21 USC 464(c)(4) shall not be considered to be from an approved source.

(c) All food products shall be stored in original containers. If food products are removed from the original container, they shall be stored in labeled and closed containers. Containers shall be of a material that will not cause the food to become adulterated.

(d) All food shall be in sound condition, free from spoilage, filth, or other contamination, and shall be safe for human consumption.

(e) All TCS food shall be refrigerated at 41°F or lower, or held at 135°F or higher, to control bacterial growth.

(f) Food storage facilities shall be kept clean and located to protect food from unsanitary conditions or contamination from any source at all times.

(g) The floors, walls, ceilings, utensils, machinery, equipment, and supplies in the food preparation area and all vehicles used in the transportation of food shall be kept thoroughly clean.

(h) All food contact surfaces shall be kept clean and undergo sanitization as frequently as necessary to protect against the contamination of food.

(i) All food contact surfaces shall be non-toxic, easy to clean, smooth, nonabsorbent, and free of cracks or open seams.

(j) All food shall be protected against insects and rodents at all times. Outside doors, windows, and other openings shall be fitted with screens and self-closing doors, if not otherwise protected. No dogs, cats, or other pets shall be allowed in the room where food is prepared or stored.

(k) All garbage and refuse shall be kept in containers and removed from the premises regularly to prevent insects and rodents, offensive odors, or health or fire hazards. Garbage and refuse containers shall be durable, easy to clean, insect- and rodent-resistant, and of material that neither leaks nor absorbs liquid.

(l) Employees shall be free from contagious or communicable diseases, sores, or infected wounds, and shall keep their hair covered and restrained.

(m) Employees shall keep themselves and their clothing clean. Hands shall be washed as frequently as necessary to maintain good sanitation.

(n) Employees shall not smoke while handling or preparing food or in food preparation or storage areas.

(o) All establishments shall have an adequate supply of hot and cold potable water under pressure from an approved source.

(p) All establishments shall have toilet facilities, which do not open directly into food processing areas, equipped with a hand washing lavatory, complete with hot and cold potable water under pressure and hand soap. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near the hand-washing facility.

(q) Hand sinks shall be conveniently located to all food processing areas.

(r) Adequate lighting shall be provided where food is stored, processed, or examined.

(s) Adequate ventilation shall be provided to eliminate objectionable odors and vapors, including steam, and constructed in such a manner as to avoid possible airborne contamination.

(t) Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service, and single-use articles.

(u) Food processing plants shall comply with all provisions of the state plumbing code as included as part of the state building code defined in RSA 155-A:1, IV, as amended by the Building Code Review Board pursuant to RSA 155-A:10, V.

He-P 2309.04 Labeling of All Packaged Foods. All packaged food shall bear a label showing:

(a) The common or usual name of the product;

(b) The name and address of the manufacturer's, packer's, or distributor's business which shall:

(1) In the case of an individual, partnership, or association be the name under which the business is conducted;

(2) In the case of a corporation, be the name of the parent corporation; or

(3) Where the food is not processed by the person whose name appears on the label, the name on the label shall be qualified by a phrase which reveals the connection such a person has with the food, including but not limited to, "Manufactured for _____", "Distributed by _____", or any other wording which expresses the facts;

(c) The ingredients in descending order of predominance by weight;

(d) The net weight, volume, or numerical count in both U.S. customary and metric; and

(e) A product code which includes date of manufacture, container size, and product lot or batch number to aid in a recall of product in case of a public health hazard.

He-P 2309.05 Recall Procedure.

(a) The food processing plant shall develop and maintain on file a written procedure for the recall of their product, including procedures for the notification of the department and consumers and the removal of the product from commerce.

(b) Production and distribution records shall be used to enable location of products if a recall is initiated.

(c) A food processing plant shall recall any product which the food processing plant or the department knows or has reason to believe might adversely affect the health and safety of the public.

(d) A food processing plant that knows that the standard of quality has been violated or has reason to believe that circumstances exist which might adversely affect the safety of the product shall notify the department within 24 hours of learning of the violation or circumstances.

(e) Circumstances in (d) requiring notification shall include, but are not limited to, source contamination, spills, accidents, natural disasters, or breakdowns in treatment processes.

(f) If the department determines that the circumstances present an imminent health hazard and that consumer notification and/or product recall can significantly minimize the threat to health and safety of the public, the department shall advise the food processing plant to initiate a product recall.

(g) In cases of a product recall, the food processing plant shall disseminate notification of the recall to all wholesale and retail outlets to which the product was distributed.

(h) If directed by the department, the food processing plant shall issue notification to consumers who might be affected by the recall using such methods, including the media, as will assure timely notification to the consumers.

**PART He-P 2310 SPECIAL REQUIREMENTS FOR LEVEL ONE HOMESTEADS
PRODUCING FOOD IN A RESIDENTIAL NON-COMMERCIAL KITCHEN**

He-P 2310.01 Application Requirements.

(a) If food from a homestead is only offered at a farm stand, farmers' market, or from the license holder's residence, the applicant or license holder shall apply for a class H license.

(b) Food service establishments applying for a license as a level one homestead shall comply with all of the application requirements of He-P 2304.01 except that:

(1) They shall not be required to submit the plan review application required under He-P 2304.01(a)(5) and wastewater items required under He-P 2304.01(a)(4) and He-P 2304.07; and

(2) They shall also submit process review documentation in accordance with He-P 2310.05, as applicable.

He-P 2310.02 Approved Products. Only the following food products shall be produced and sold from a homestead:

(a) Baked items, including, but not limited to, breads, rolls, muffins, cookies, brownies, and cakes;

(b) Double-crust fruit pies;

- (c) Candy and fudge;
- (d) Packaged dry products, which include, but are not limited to, spices and herbs;
- (e) Acid foods, including, but not limited to, vinegars and mustards; and
- (f) Jams and jellies.

He-P 2310.03 Prohibited Products. License holders producing food in a homestead shall not produce or sell TCS food, including any food which requires refrigeration.

He-P 2310.04 Basic Requirements.

(a) Homesteads shall comply with all requirements of He-P 2309.04, regarding labeling of products.

(b) Homesteads shall label each product with the following statement: “This product is made in a residential kitchen.”

He-P 2310.05 Process Review Required.

(a) Level one homesteads producing foods listed in He-P 2310.02(f) that do not use recipes approved by the National Center for Home Food Preservation shall comply with the following:

- (1) A process review shall be conducted by a food processing authority on each product prior to its being produced by the license holder. If the food processing authority declares in writing that there are no biological concerns with the food after evaluating the scheduled process, the food shall be allowed to be produced;
- (2) License holders shall keep records of all pHs on file and available for review by the regulatory authority upon request;
- (3) A process review shall be conducted for a product that has been previously tested if the ingredients are altered or the process changes;
- (4) License applicants shall submit process review documentation with the license application in accordance to He-P 2310.01; and
- (5) License holders shall keep all process review information on file and available for review by the regulatory authority upon request.

(b) A list of food processing authorities described in (a)(1) above and a list of recipes approved by the National Center for Home Food Preservation, described in (a) above, or a website link to the same, shall be available on the department’s website at www.dhhs.nh.gov.

He-P 2310.06 Homestead Standards.

(a) Those food establishments licensed as homesteads shall be exempt from the requirements of the Food Code, and shall instead comply with the requirements of He-P 2309.03 and the requirements in this section.

(b) Commercial equipment shall not be required.

- (c) The kitchen shall be equipped with either:
 - (1) A 2-compartment sink; or
 - (2) A residential model dishmachine and a one-compartment sink.
- (d) A sink used for food preparation shall not be required to be equipped with an indirect wasteline.
- (e) A backflow device shall not be required for kitchen sinks provided with a spray hose.
- (f) Coved base at the juncture of the floor and wall shall not be required.
- (g) Only those bathrooms which open directly into the kitchen or into any hallway leading into the kitchen shall be required to have self-closing doors and mechanical ventilation.
- (h) The kitchen shall not be required to be separated from any living area or sleeping area by complete partitioning or solid, self-closing doors.
- (i) Laundry facilities shall:
 - (1) Be allowed in the kitchen; and
 - (2) Not be used during processing, preparing, serving, or packaging of foods related to the business.

**PART He-P 2311 SPECIAL REQUIREMENTS FOR LEVEL TWO HOMESTEADS
PRODUCING FOOD IN A RESIDENTIAL NON-COMMERCIAL KITCHEN**

He-P 2311.01 Application Requirements.

- (a) If food from a homestead is offered at other food establishments other than at a farm stand, farmer's market, or from the license holder's residence, including, but not limited to retail food stores, then the applicant or license holder shall apply for a class D license.
- (b) Food service establishments applying for a license as a level two homestead shall comply with all of the application requirements of He-P 2304.01 except that:
 - (1) They shall not be required to submit the plan review application required under He-P 2304.01(a)(5) and wastewater items required under He-P 2304.01(a)(4) and He-P 2304.07;
 - (2) They shall submit process review documentation in accordance with He-P 2311.05, as applicable; and
 - (3) They shall also submit the following:
 - a. Copies of all finished product labels;
 - b. A list of sources of all ingredients to be used;
 - c. A flow chart describing the manufacturing steps for each product to be made;
 - d. A description of how each product is packaged; and
 - e. A description of the records that are maintained during production including but not limited to temperatures and pH readings, where applicable.

He-P 2311.02 Approved Products. Only the following food products shall be produced and sold from a homestead:

- (a) Baked items, including, but not limited to, breads, rolls, muffins, cookies, brownies, and cakes;
- (b) Double-crust fruit pies;
- (c) Candy and fudge;
- (d) Packaged dry products, which include, but are not limited to, spices and herbs;
- (e) Acid foods, including, but not limited to, vinegars and mustards; and
- (f) Jams and jellies.

He-P 2311.03 Prohibited Products. License holders producing food in a homestead shall not produce or sell TCS food, including any food which requires refrigeration.

He-P 2311.04 Basic Requirements.

(a) Homesteads shall comply with all requirements of He-P 2309.04 and He-P 2309.05, regarding labeling of products and recall of products, respectively.

(b) Homesteads shall label each product with the following statement: “This product is made in a residential kitchen.”

He-P 2311.05 Process Review Required.

(a) Level two homesteads producing foods listed in He-P 2311.02(f) that do not use recipes approved by the National Center for Home Food Preservation shall comply with the following:

- (1) A process review shall be conducted by a food processing authority on each product prior to its being produced by the license holder. If the food processing authority declares in writing that there are no biological concerns with the food after evaluating the scheduled process, the food shall be allowed to be produced;
- (2) License holders shall keep records of all pHs on file and available for review by the regulatory authority upon request;
- (3) A process review shall be conducted for a product that has been previously tested if the ingredients are altered or the process changes;
- (4) License applicants shall submit process review documentation with the license application in accordance to He-P 2311.01; and
- (5) License holders shall keep all process review information on file and available for review by the regulatory authority upon request.

(b) A list of food processing authorities described in (a)(1) above and a list of recipes approved by the National Center for Home Food Preservation, described in (a) above, or a website link to the same, shall be available on the department’s website at www.dhhs.nh.gov.

He-P 2311.06 Homestead Standards.

(a) Those food establishments licensed as homesteads shall be exempt from the requirements of the Food Code, and shall instead comply with the requirements of He-P 2309.03 and the requirements in this section.

(b) Commercial equipment shall not be required.

(c) The kitchen shall be equipped with either:

(1) A 2-compartment sink; or

(2) A residential model dishmachine and a one-compartment sink.

(d) A sink used for food preparation shall not be required to be equipped with an indirect wasteline.

(e) A backflow device shall not be required for kitchen sinks provided with a spray hose.

(f) Coved base at the juncture of the floor and wall shall not be required.

(g) Only those bathrooms which open directly into the kitchen or into any hallway leading into the kitchen shall be required to have self-closing doors and mechanical ventilation.

(h) The kitchen shall not be required to be separated from any living area or sleeping area by complete partitioning or solid, self-closing doors.

(i) Laundry facilities shall:

(1) Be allowed in the kitchen; and

(2) Not be used during processing, preparing, serving, or packaging of foods related to the business.

PART He-P 2312 OUT-OF-STATE FOOD PRODUCERS IN RESIDENTIAL, NON-COMMERCIAL KITCHENS

He-P 2312.01 Registration of Out-of-State Producers in Residential, Non-Commercial Kitchens.

(a) All applicants registering their products in accordance with RSA 143:29 shall submit the following to the department:

(1) A completed "Application for Registration of Out-of-State Producers in Residential, Non-Commercial Kitchens" (OSPAPP, 01-01-11);

(2) One of the following:

a. A copy of a sanitary inspection conducted within the previous 12 months by the regulatory authority with jurisdiction;

b. A letter from the regulatory authority confirming compliance with local regulations;
or

c. A health certificate for the facility issued within the previous 12 months; and

(3) A fee in the amount of \$25, pursuant to RSA 143:29, payable by check or money order, in the exact amount of the fee made payable to the “Treasurer, State of New Hampshire”.

He-P 2312.02 Processing of Registrations.

(a) The registration application required by He-P 2312.01 shall be processed in accordance with RSA 541-A:29.

(b) If the registration application does not contain all of the items required by He-P 2312.01, the department shall:

(1) Not process the registration application; and

(2) Notify the registrant in writing that all required items shall be submitted within 30 days in order for the registration application to be processed.

(c) If all the items required by He-P 2312.01 are received, the application shall be deemed to be complete.

He-P 2312.03 Registration Issuance and Duration.

(a) A registration shall be issued if the registration application meets the requirements of He-P 2312.01.

(b) All registrations shall remain in effect until the first day of January of the year following issuance unless revoked prior to that date.

(c) Registrations shall not be transferable with respect to persons or locations.

He-P 2312.04 Denial of Registration Applications. The department shall deny a registration application when the application submitted is incomplete and any information requested in accordance with He-P 2312.02(b) is not provided.

He-P 2312.05 Renewal of Registrations.

(a) Registration applications for renewal of registrations shall be completed as required in He-P 2312.01.

(b) There shall be no fee for renewal of registrations.

(c) Registration renewal applications shall be processed and issued or denied in accordance with He-P 2312.02 through He-P 2312.04.

Appendix

Rule	Specific State Statute which the Rule Implements
He-P 2301.01	RSA 143-A; RSA 143-A:3
He-P 2302.01	RSA 143-A:4; RSA 143-A:5; RSA 143-A:12, II
He-P 2302.02	RSA 143-A:5-a
He-P 2303.01	RSA 143-A:9, V
He-P 2304.01	RSA 143-A:6, I, V
He-P 2304.02	RSA 143-A:4, II; RSA 143-A:6, I-V
He-P 2304.03	RSA 143-A:6, I-V
He-P 2304.04	RSA 143-A:9, I; RSA 143-A:12, II
He-P 2304.05	RSA 143-A:6, V; RSA 143-A:9, I-a; RSA 143-A:13, V
He-P 2304.06	RSA 143:3; RSA 143-A:9, V
He-P 2304.07	RSA 143:3; RSA 143-A:9, V
He-P 2304.08	RSA 143-A:6; RSA 143-A:9, V
He-P 2304.09	RSA 143-A:6; RSA 143-A:9, V
He-P 2304.10	RSA 143-A:6; RSA 143-A:9, V
He-P 2304.11	RSA 143-A:6; RSA 143-A:9, V
He-P 2304.12	RSA 143-A:9, V
He-P 2304.13	RSA 143-A:9, V
He-P 2304.14	RSA 143-A:9, V
He P 2304.15	RSA 143-A:9, V
He-P 2305.01	RSA 143:4; RSA 143-A:6
He-P 2305.02	RSA 143:4; RSA 143-A:6
He-P 2305.03	RSA 143:4; RSA 143-A:6
He-P 2306.01	RSA 143:5-a; RSA 143-A:6; RSA 143-A:7; RSA 143-A:9-a, I
He-P 2306.02	RSA 143:7-a; RSA 143-A:10-a
He-P 2306.03	RSA 143-A:6; RSA 143-A:7; RSA 143-A:9-a, I
He-P 2306.04	RSA 143-A:9, IV-c
He-P 2306.05	RSA 143-A:4; RSA 143-A:6; RSA 143-A:11
He-P 2306.06	RSA 143:5-a; RSA 143-A:9, V
He-P 2307.01	RSA 141-C:9, II; RSA 143:5
He-P 2307.02	RSA 141-C:6, III
He-P 2308.01 – He-P 2308.03	RSA 143-A:9, V
He-P 2309.01 – He-P 2309.05	RSA 143-A:9, V
He-P 2310.01 – He-P 2310.06	RSA 143-A:12-13
He-P 2311.01 – He-P 2311.06	RSA 143-A:12-13
He-P 2312.01 – He-P 2312.05	RSA 143:29