

CHAPTER He-P 2300 SANITARY PRODUCTION AND DISTRIBUTION OF FOOD

PART He-P 2301 DEFINITIONS

He-P 2301.01 Definitions.

(a) "Acidified foods" means low-acid foods to which acid(s) or acid food(s), that have a natural pH of 4.6 or below, are added, which result in a water activity greater than 0.85 and have a finished equilibrium pH of 4.6 or below. These foods include, but are not limited to beans, cucumbers, cabbage, artichokes, cauliflower, puddings, peppers, tropical fruits, and fish, singly or in any combination.

(b) "Bed and breakfast" means 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 a patron, and in which the only meal served to in-house guests is breakfast.

(c) "Beverage" means "beverage" as defined in RSA 143:9.

(d) "Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(e) "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processed or unprocessed food in aggregate containers from which quantities desired by the consumer or the employee are withdrawn.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.

(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) "Clean in place (CIP)" means the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, including but not limited to the method used, in part, to clean and sanitize a frozen dessert machine. CIP does not include the cleaning of equipment, including but not limited to, band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

(h) "Colorimetric" means the method of determining the value of the pH of a food product using indicator dyes in solutions that gradually change color over limited pH ranges.

(i) "Commercial kitchen" means a room or building, or any part thereof, used for food preparation which meets all the requirements of He-P 2300 and is not a residential kitchen.

(j) "Commercial sterility" means the condition achieved by the application of heat, chemical sterilants, or other treatments or by the control of water activity with the application of heat that renders the equipment, containers and thermally processed foods free of viable microorganisms, including spores of public health significance as well as microorganisms of non-health significance, capable of reproducing in the food under normal non-refrigerated conditions of storage and distribution.

(k) "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing. Comminuted includes fish or meat products that are reduced in size and restructured or reformulated including but not limited to gefilte fish, gyros, ground beef, and sausage, and a mixture of 2 or more types of meat that have been reduced in size and combined, such as sausages made from 2 or more meats.

(l) "Commissary" means a catering establishment, restaurant, or any other place licensed in which food, containers, or supplies are kept, handled, prepared, packaged, cleaned or stored.

(m) "Commissioner" means the commissioner of the New Hampshire department of health and human services.

(n) "Condiment" means any food such as, but not limited to, chutney, ketchup, mayonnaise, mustard and relish that is used to enhance the flavor of other foods.

(o) "Conference for Food Protection" means a nationally recognized organization that brings together representatives from the food industry, government, academia, and consumer organizations to identify and address emerging problems of food

safety and to formulate guidance for model regulations and development and implementation of practices that ensure food safety.

(p) “Confirmed disease outbreak” means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.

(q) “Consumer” means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food service establishment, retail food store or food service establishment that commercially processes food, and does not offer the food for resale.

(r) “Corrosion-resistant” means the ability of a material to maintain surface cleanability characteristics required by He-P 2306 under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(s) “Critical control point” means a point or procedure in a specific food system where loss of control results in an imminent health hazard.

(t) “Critical factor” means any property, characteristic, condition, aspect, or other parameter, variation of which may affect the scheduled process and the attainment of commercial sterility.

(u) “Critical item” means an inspection item listed in He-P 2302.18, violation of which is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.

(v) “Critical limit(s)” mean criteria that must be controlled to insure prevention, elimination, or reduction of hazards within safety parameters determined by the Hazard Analysis Critical Control Point plan for each preventive measure associated with the critical control point.

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

(x) “Deviation” means a condition which occurs when one or more of the critical factors indicated in the scheduled process are not met or when failure to meet a required critical limit for a critical control point raises a question regarding the public health safety and the commercial sterility of the product.

(y) “Dishwashing” means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

(z) “Easily cleanable” means a characteristic of a surface that:

- (1) Allows effective removal of soil by normal cleaning methods;
- (2) Is dependent on the material, design, construction, and installation of the surface; and
- (3) Varies with the likelihood of the surface’s role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface’s approved placement, purpose, and use.

(aa) “Easily movable” means:

- (1) Portable, mounted on casters, gliders, or rollers, or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and
- (2) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(ab) “Egg” means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea.

(ac) “Employee” means the license holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food service establishment or retail food store.

(ad) “Equipment” means an article that is used in the operation of a food service establishment or retail food store including but not limited to a freezer, grinder, hood, ice maker, meat block, mixer oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or dishwashing machine. Equipment does

not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, including but not limited to hand trucks, forklifts, dollies, pallets, racks, and skids.

(ae) “Exclude” means to prevent a person from working as a food employee or entering a food establishment except for those areas open to the general public.

(af) “Finished equilibrium pH” means the pH of the product usually taken 24 hours after processing to ensure all components of the product have been acidified equally.

(ag) “Fish” means fresh or saltwater finfish, crustaceans, and other forms of aquatic life, including but not limited to alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals, other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. Fish also includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

(ah) “Food” means “food” as defined in RSA 143-A:3.

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

(aj) “Food contact surface” means a surface or a utensil with which food normally comes into contact; or a surface of equipment or a utensil from which food may drain, drip, or splash back into a food, or onto a surface normally in contact with food.

(ak) “Food employee” means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces in a food service establishment or retail food store.

(al) “Food preparation sink” means a separate and individual sink unit, with one or more compartments, which is used exclusively in conjunction with food preparation or production, included but not limited to the washing of fresh produce and the thawing of frozen food.

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

(an) “Hazard Analysis Critical Control Point” means Hazard Analysis Critical Control Point (HACCP) principles developed by The National Advisory Committee on Microbiological Criteria for Foods, 1997 edition.

(ao) “HACCP plan” means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(ap) “Hazard” means a biological, chemical, or physical property that may cause an imminent health hazard.

(aq) “Hermetically sealed container” means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its content after processing.

(ar) “Highly susceptible population” means persons who are more likely than other people in the general population to experience foodborne disease because they are:

- (1) Obtaining food at a facility that provides services including but not limited to custodial care, health care, or assisted living;
- (2) Older adults;
- (3) Pre-school age children; or
- (4) Immunocompromised.

(as) “Homestead” shall mean “homestead” as defined in RSA 143-A:12, namely “a residential, non-commercial kitchen where home-made foods are manufactured or processed, or both, primarily for retail sales at farmers’ markets, farm stands, or residences.”

(at) “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.

(au) "Injected meat" means manipulating a meat so that infectious or toxigenic microorganisms might be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat as with juices.

(av) "Juice" means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.

(aw) "License" means the document issued by the department or other regulatory agency which authorizes a license holder to operate a food service establishment or retail food store.

(ax) "License holder" means the person legally responsible for the operation of a licensed food service establishment or retail food store, including but not limited to the owner, the owner's agent, or other person.

(ay) "Linens" means fabric items including but not limited to cloth hampers, cloth napkins, table cloths, and work garments including cloth gloves.

(az) "Lot" means the amount of a product produced during a period of time indicated by a specific code.

(ba) "Low-acid foods" means any foods with a finished equilibrium pH greater than 4.6 and a water activity greater than 0.85, except alcoholic beverages and tomatoes or tomato products having a finished equilibrium pH less than 4.7.

(bb) "Meat" means the flesh of animals used as food including but not limited to dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish and poultry, that is offered for human consumption.

(bc) "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

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

(be) "Monitoring" means a planned sequence of observations or measurements of critical limits designed to produce an accurate record and intended to ensure that the critical limit maintains product safety.

(bf) "Natural pH" means the pH of the raw product.

(bg) "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food service establishment, a retail food store or a food service establishment processing food. Packaged does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

(bh) "Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

(bi) "Person in charge" means either the license holder or an individual designated as such by the license holder or the individual with whom the inspector communicates during the inspection.

(bj) "pH" means the symbol for the negative log of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

(bk) "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories including:

- (1) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents including but not limited to caustics, acids, drying agents, polishes, and other chemicals;
- (2) Pesticides, which include substances such as insecticides and rodenticides;
- (3) Substances necessary for the operation and maintenance of the establishment including but not limited to nonfood grade lubricants and personal care items that may be deleterious to health; and

(4) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, including but not limited to petroleum products and paints.

(bl) "Potentially hazardous food" means:

(1) A food which is natural or synthetic and that requires temperature control because it is in a form capable of supporting the:

a. Rapid and progressive growth of infectious or toxigenic microorganisms;

b. Growth and toxin production of *Clostridium botulinum*; or

c. In eggs, the growth of *Salmonella enteritidis*; and

(2) Those foods listed in He-P 2304.04 (a).

(bm) "Poultry" means any:

(1) Domesticated bird including but not limited to chickens, turkeys, ducks, geese, or guineas, whether live or dead; and

(2) Migratory waterfowl, game birds, including but not limited to pheasant, partridge, quail, grouse, or guinea, or pigeon or squab, whether live or dead.

(bn) "Processing food in a commercial kitchen" means an operation that manufactures, thermally processes, and/or packages food in a commercial kitchen.

(bo) "Processing authority" means those institutions listed in He-P 2329.

(bp) "Public water system" means a public water system as defined in RSA 485:1-a.

(bq) "Pushcart" means a non-self propelled vehicle limited to serving non-potentially hazardous foods, commissary wrapped food maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

(br) "Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food service establishment, retail food store or the consumer and that is reasonably expected to be consumed in that form including but not limited to:

(1) Potentially hazardous food that is unpackaged and cooked to temperature and time required for the specific food under He-P 2304.05 through He-P 2304.09, He-P 2304.11 and He-P 2304.12;

(2) Raw, washed, cut fruits and vegetables;

(3) Whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and

(4) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

(bs) "Recall" means a procedure for removing product from distribution and/or the marketplace for products that are contaminated.

(bt) "Reconstituted" means recombining dehydrated food products with water or other liquids.

(bu) "Reduced oxygen packaging" means:

(1) The reduction of the amount of oxygen in a package by removing oxygen, displacing oxygen and replacing it with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the surrounding, 21% oxygen atmosphere. Reduced oxygen packaging including but not limited to methods such as modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging including

sous vide and cook-chill, which is a specialized process of reduced oxygen packaging where large volumes of food are cooked, sealed in heat-stable cooking bags from which air has been expelled and rapidly chilled; and

(2) At least one of the following:

- a. Is a process as specified in (1) above of this definition that involves a food for which *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form;
- b. Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as but not limited to sous vide;
- c. Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food; or
- d. Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, including but not limited to using oxygen scavengers or a combination of total replacement of oxygen, non-respiring food, and impermeable packaging material.

(bv) "Refuse" means solid waste not carried by water through the sewage system.

(bw) "Regulatory authority" means the local, state or federal authority having jurisdiction over the food service establishment, retail food store or food service establishment processing food.

(bx) "Remodeled" means undertaking construction which involves adding new seats, adding a food preparation area or affects the kitchen or any other part of a food service establishment or retail food store that requires service by piped water.

(by) "Residential kitchen" means the kitchen in a private residence where food is customarily prepared for consumption only by the family.

(bz) "Retail food store" means retail food store as defined in RSA 143-A:3 VII.

(ca) "Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

(cb) "Sanitization" means the application of 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 99.999% reduction of representative disease microorganisms of public health importance.

(cc) "Scheduled process" means the process selected by the processor under the conditions of manufacture for a given product to achieve commercial sterility.

(cd) "Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

(ce) "Service animal" means an animal including but not limited to a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

(cf) "Servicing area" means an operating base location to which a mobile food establishment 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.

(cg) "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."

(ch) "Shellstock" means raw, in-shell molluscan shellfish.

(ci) "Shiga toxin-producing *Escherichia coli*" means any *E. coli* capable of producing Shiga toxins, including but not limited to *E. coli* reported as serotype 0157:H7, 0157:NM, and 0157:H-

(cj) "Shucked shellfish" means molluscan shellfish that have one or both shells removed.

(ck) “Single-service articles” means tableware, carry-out utensils, and other items including but not limited to bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

(cl) “Single-use articles” means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles also include but are not limited to wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the durability, strength, and cleanability specifications for multiuse utensils.

(cm) “Smooth” means a food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of 100 grit, number 3 stainless steel, and a nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale, and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

(cn) “Solid waste” means solid waste as defined in RSA 149-M:4.

(co) “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.

(cp) “Sous vide” means a specialized process of reduced oxygen packaging where raw or partially cooked food is placed in a pouch which is vacuum sealed, cooked or pasteurized, then rapidly chilled and refrigerated.

(cq) “Table-mounted equipment” means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

(cr) “Tableware” means eating, drinking, and serving utensils for table use, including but not limited to flatware including forks, knives, and spoons; hollowware including but not limited to bowls, cups, serving dishes, tumblers; and plates.

(cs) “Temperature measuring device” means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

(ct) “Utensil” means any food-contact implement or container used in the storage, preparation, transportation, dispensing, sale or service of food including but not limited to kitchenware or tableware that is multiuse, single-service, or single-use, gloves used in contact with food, temperature sensing probes of food temperature measuring devices and probe-type price or identification tags used in contact with food.

(cu) “Vacuum packaging” means a process that reduces the amount of air from a package and hermetically seals the package so that a near-perfect vacuum remains inside the package.

(cv) “Vending machine” means any self-service device that, upon insertion of a coin, paper currency, token, card or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

(cw) “Water activity (a_w)” means water activity which is a measure of the free moisture in a food, and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

(cx) “Whole-muscle, intact beef” means meat that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks might be cut.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; amd by #8368, eff 6-4-05; amd by #8863, eff 4-13-07

PART He-P 2302 APPLICATION AND LICENSING PROCEDURE

REVISION NOTE:

Document #6722, effective 3-27-98, readopted with amendments Chapter He-P 2300. He-P 2300 was edited for agency publication and placed on-line in 1998 by the Office of Legislative Services, Division of Administrative Rules. But He-P 2302.08 contained an error. He-P 2302.08(b)(1)b. omitted the word “or” at the end of the clause connecting subparagraphs (b)(1) and (b)(2). The word “or” was in the adopted rule as originally filed by the Department of Health and Human Services in Document #6722. The error was noted by the Department and the Division by 5-18-01, and the corrected copy of He-P 2300 was thereafter certified by the Department as the same in substance as originally filed.

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

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

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 natural person or other 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.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.03 Application Requirements.

(a) In order to operate a food service establishment or retail food store pursuant to RSA 143-A, a person shall obtain from the department the application form entitled “Application for Annual Food Service Licensure”.

- (b) An applicant for a new license or renewal of an existing license shall submit to the department:
 - (1) A completed application form in accordance with He-P 2302.04 and He-P 2302.07;
 - (2) A check, cash or money order for the applicable fees, in accordance with He-P 2302.06(a);
 - (3) If the application involves a new or remodeled food service establishment or retail food store, plans and specifications as required by He-P 2302.17;
 - (4) If the application is for a food service establishment which processes food in a residential kitchen or commercially processes food, a copy of the scheduled process review pursuant to He-P 2330.06 and He-P 2331.03 (b); and
 - (5) If the application is for a mobile food unit which uses a commissary, the identification of the commissary and a copy of the commissary license.

(c) In addition to the requirements in (b) above, an applicant for a new license shall submit to the department the items required by He-P 2302.08.

(d) License holders shall submit the applicable items required under (b) above to renew their license at least 30 days prior to the expiration date of their existing license in order for their application to be considered timely.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.04 Application Submission.

(a) All information entered on the application form shall be typewritten or legibly printed in ink.

(b) An applicant shall complete the application form required by He-P 2302.03 (b)(1) by furnishing the items required under (c) below:

(1) By writing in the blank spaces provided wherever applicable; or

(2) By checkmark next to the corresponding response.

(c) An applicant shall provide:

(1) Applicant information including:

a. Full legal name of owner or corporation;

b. Any name used to identify the food service establishment or retail food store which is different from the name supplied in response to (1) a. above;

c. The location address of the food service establishment or retail food store including:

1. The number and street;

2. The incorporated city or town;

3. The state; and

4. The zip code;

d. The mailing address, if different from the address supplied in response to c. above, including:

1. The number and street;

2. The city or town;

3. The state; and

4. The zip code;

e. The e-mail address of the food service establishment or retail food store, if applicable;

f. The telephone number of the food service establishment or retail food store;

g. An emergency telephone number where the legal owner or person in charge can be contacted after business hours;

h. The name of the person in charge of the food service establishment or retail food store;

i. The fax number of the food service establishment or retail food store, if applicable;

j. The previous business name in the case of a change of ownership; and

- k. The type of ownership identified as either sole proprietorship, joint venture, partnership, corporation, limited liability company or any other entity;
- (2) Identification of the kind of license applied for as follows:
 - a. By type, which shall be either:
 1. New;
 2. Change of ownership;
 3. Renewal, including the current license number; or
 4. Change in license classification, and
 - b. By classification according to He-P 2302.05;
 - (3) The previous establishment number, which is the number assigned by the department to the facility at that location, if the establishment has been previously licensed;
 - (4) The previous license number, if the establishment has been previously licensed;
 - (5) The seating count, to include indoor seats only;
 - (6) The type of water system serving the establishment, including the Environmental Protection Agency number, if applicable;
 - (7) The type of wastewater system serving the establishment;
 - (8) The schedule of operation of the food service establishment or retail food store which shall include:
 - a. Hours of operation;
 - b. Days of operation; and
 - c. Weeks of operation per year;
 - (9) A copy of the intended or existing menu, if the application is for a new license;
 - (10) A description of all vehicles used as mobile food units or vehicles used to sell retail food including:
 - a. Make of vehicle;
 - b. Vehicle identification number;
 - c. Year of manufacture;
 - d. Color; and
 - e. State motor vehicle registration number;
 - (11) The signature, title and printed or typed name of the person or applicant or the person who represents the applicant; and
 - (12) The date the applicant signed.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, 5-21-03

He-P 2302.05 License Classes.

(a) For the purpose of licensure, food service establishments and retail food stores shall be divided into the following classes:

(1) Class A which shall include:

- a. Food service establishments which commercially process more than 100,000 units of food, which are the packaged quantities of food offered to the retail consumer, per year; or
- b. Food service establishments with more than 199 seats;

(2) Class B which shall include:

- a. Retail food stores with more than 2 food preparation areas;
- b. Food service establishments with 100 to 199 seats; or
- c. Commercial fish processors;

(3) Class C which shall include:

- a. Retail food stores with 1 -2 food preparation areas;
- b. Caterers serving food off-site;
- c. Food service establishments with 25 to 99 seats;
- d. Bars/lounges that serve alcohol with a food preparation area;
- e. Food service establishments which commercially process less than 100,000 units of food per year; or
- f. Packagers of potentially hazardous foods;

(4) Class D, which shall include:

- a. Food service establishments with 0 to 24 seats, including but not limited to, bakeries;
- b. Level 2 homesteads if annual sales are greater than \$5000; or
- c. Fraternities and sororities, except those where the members prepare their own food;

(5) Class E which shall include:

- a. Bed and breakfasts and other lodging facilities serving continental breakfasts;
- b. Mobile food units which cook food;
- c. Vehicles used for retail sale of food including but not limited to shrimp and fish;
- d. Retail food stores that allow self-service of coffee, hot dogs, soft drinks and soft serve ice cream; or
- e. Ice cream vendors which scoop ice cream;

(6) Class F which shall include:

- a. Home delivery services of packaged potentially hazardous foods, including but not limited to, pizza, ice cream, meat and poultry;
- b. Mobile food units, including but not limited to, those serving pre-packaged food and non-potentially hazardous unwrapped foods only;
- c. Retail food stores with no food preparation areas;

- d. Wholesalers/distributors of potentially hazardous food;
- e. On site vending machines, which serve potentially hazardous food;
- f. Bakeries which do not serve potentially hazardous food and have no seats; or
- g. Packagers of non-potentially hazardous bulk food;

(7) Class G shall include:

- a. Bars/lounges that serve alcohol and that do not have a function room;
- b. Canteen/theater concessions;
- c. Ice cream vendors serving pre-packaged ice cream;
- d. Institutions including state, county and municipal institutions;
- e. 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; or
- f. Senior meal sites; or
- g. Sellers of pre-packaged frozen meat or poultry that is processed in a USDA-inspected plant; and

(8) Class H shall include level one homesteads if annual sales are \$5000 or less.

(b) When an establishment operates more than one type of business, the class of license shall be determined by the higher class.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; amd by #8368, eff 6-4-05; amd by #8863, eff 4-13-07

He-P 2302.06 Fees.

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

- (1) Class A: \$500;
- (2) Class B: \$250;
- (3) Class C: \$200;
- (4) Class D: \$125;
- (5) Class E: \$100;
- (6) Class F: \$75;
- (7) Class G: \$50;
- (8) Class H: One-time charge of \$25; or
- (9) Class O: No charge

(b) License holders shall be billed \$50 for each inspection conducted, except for:

- (1) The initial pre-licensing inspection for a provisional license; and

- (2) The 45-day inspection subsequent to the issuance of the provisional license; or
- (3) The first and second inspection conducted in any calendar year.
- (c) An applicant shall submit a fee of \$25, in advance, for each plan review submitted under He-P 2302.17.
- (d) All fees shall be:
 - (1) Nontransferable; and
 - (2) Nonrefundable.
- (f) Any instrument of fee payment returned to the state shall be processed in accordance with RSA 6:11-a.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; amd by #8863, eff 4-13-07

He-P 2302.07 Water System Requirements.

(a) Food service establishments or retail food stores which operate their own public water systems, as defined by RSA 485:1-a, which are considered transient non-community water systems, as defined by Env-Ws 302.02 (bt), shall submit, as part of their application for a license, the United States Environmental Protection Agency (EPA) identification number of the system which has been assigned by the New Hampshire department of environmental services.

(b) Food service establishments or retail food stores which purchase their water from other public water systems, as defined by RSA 485:1-a, and therefore do not fall under (a) above, shall submit, as part of their application for a license, a written statement identifying the name of the public water system regulated by the New Hampshire department of environmental services which provides their water.

(c) Food service establishments or retail food stores which do not fall under (a) or (b) above, and are instead served by a water source other than a public water system, shall submit:

(1) If applying for a new license, the written results of a laboratory analysis of the water intended for use which tests the level of the following:

- a. Bacteria;
- b. Nitrates; and
- c. Nitrites; or

(2) If applying to renew a license, the written results of an analysis of the water intended for use which tests the level of the following:

- a. Bacteria; and
- b. Nitrates.

(d) The analyses required by (c) above shall be conducted not more than 6 months prior to the date of the application by a laboratory certified by the department of environmental services to perform such tests in accordance with Env-C 300.

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

(1) For a new license:

- a. The bacteria test required under (c)(1) above shall not exceed the acceptable limits for drinking water prescribed by Env-Ws 315; and
- b. The nitrate and nitrite test required under (c)(1) above shall not exceed the acceptable limits for drinking

water prescribed by Env-Ws 316 for those 2 contaminants; or

(2) For license renewal:

- a. The bacteria test required by (c)(2) above shall not exceed the acceptable limits for drinking water prescribed by Env-Ws 315; and
- b. The nitrate test required by (c)(2) above shall not exceed the acceptable limits for drinking water prescribed by Env-Ws 316.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.08 Wastewater System Requirements.

(a) Food service establishments or retail food stores 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, shall submit as part of their application a written statement identifying the name of the municipality, private entity or state agency operating the wastewater treatment facility which holds the permit.

(b) Food service establishments or retail food stores which do not meet the requirements of (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 service establishment or retail food store issued by the New Hampshire department of environmental services in accordance with RSA 485-A:29 and Env-Ws 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 my system which would cause an exceedance of the capacity of the system approved by the department of environmental services under the provisions of Env-Ws 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 my food service establishment or retail food store was constructed prior to 1971 and is presently not in failure. I further certify that I have not been notified by either the department of environmental services or the local health officer that the system serving my food service establishment or retail food store 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 service establishments or retail food stores in (b) above, and the applicant is unable to produce the documentation required, the department shall inform the department of environmental services that the applicant has not complied with (b)(1) above. In this case, the requirement of (b)(1) above shall be waived.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98 (See Revision Note at part heading for He-P 2302 relative to corrected error in He-P 2302.08); ss by #7893, eff 5-21-03

He-P 2302.09 Processing of Applications.

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

(b) If an application does not contain all the items required by He-P 2302.03 the department shall:

- (1) Not process that application; and

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

(c) If all the items required by He-P 2302.03 are received, the application shall be deemed to be complete.

(d) If an inspection of a food service establishment or retail food store conducted in accordance with RSA 143-A:6 and He-P 2302.24 determines compliance with RSA 143, RSA 143-A and these rules, a license shall be issued.

(e) If an inspection of a mobile food unit or other vehicle used for the retail sale of food determines compliance with RSA 143, RSA 143-A and these rules, a decal shall be issued.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.10 Provisional Licenses.

(a) A provisional license shall be issued under RSA 143-A:6 upon approval of:

(1) An application for a new license in accordance with He-P 2302.03 and an inspection in accordance with He-P 2302.24;

(2) A request for a change of ownership in accordance with He-P 2302.13;

(3) A request for a change in location in accordance with He-P 2302.15;

(4) A request for upgrade of an existing license under He-P 2302.16(a); or

(5) A request for reinstatement of a revoked license, as authorized by RSA 143-A:6, I.

(b) A provisional license shall expire 90 days after the date of issuance.

(c) If a license is not issued following the automatic expiration by law of a provisional license in accordance with RSA 143-A:6, the affected food service establishment or retail food store shall cease operation the day after the license expires, and shall not operate until a license is obtained.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.11 Licenses.

(a) All licenses shall be non-transferable.

(b) All licenses shall be issued for a specific license classification under He-P 2302.05.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.12 Expiration of Licenses.

(a) All licenses issued shall be valid for one year following the date of issuance.

(b) All license holders shall apply for renewal of their license as required by He-P 2302.03 (d).

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

(d) Any food service establishment or retail food store submitting an application for a license whose previous license has been expired in excess of 90 days shall:

- (1) Apply in accordance with the requirements of a new license; and
- (2) Be issued a provisional license under He-P 2302.10 if its application is approved.

(e) Whenever a change of ownership of a food service establishment or retail food store occurs, the food service license shall be void the date of the change of ownership occurs.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.13 Change in Food Service Establishment or Retail Food Store Ownership.

(a) When there is a change of ownership of a food service establishment or retail food store, the new owner shall submit the following to the department at least 30 days prior to the change of ownership:

- (1) A written request for a new license which shall contain the following:
 - a. The reason for requesting the license;
 - b. The name of the food service establishment or retail food store as it appears on the current license;
 - c. The name of the legal owner of the food service establishment or retail food store which will appear on the new license; and
 - d. The date upon which the change of ownership will take effect;
- (2) A copy of any certificate of amendment of organizational filings issued by the NH secretary of state, if applicable;
- (3) The items required for new license applicants under He-P 2302.03; and
- (4) A letter from the most recent owner containing the following shall be submitted with the application:
 - a. An acknowledgment of the impending transfer of ownership; and
 - b. An identification of the date when the change of ownership will become final.

(b) Upon receipt and processing, in accordance with these rules, of the items required by (a) above, and after an inspection in accordance with He-P 2302.24 which shall also determine compliance with the construction requirements of He-P 2302.19 if applicable, the commissioner shall issue a provisional license reflecting the change in ownership.

(c) The owner of the previously licensed food establishment or retail food store shall return the previous license to the department within 10 days of the date the provisional license is issued under (b) above.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.14 Change in Name of Food Service Establishment or Retail Food Store.

(a) When a license holder intends to change the name of a food service establishment or retail food store, 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 service establishment or retail food store as it appears on the existing license;
- (3) The name of the food service establishment or retail food store as the license holder requests it to appear on the new license; and
- (4) An identification of the date when 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 license number and expiration date shall remain the same as it was on the immediately preceding license.

(d) The license holder shall return the previous license to the department within 10 days of issuance of the revised license.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.15 Change in Location of Food Service Establishment or Retail Food Store.

(a) When there is a change of location of a food service establishment or retail food store, the license holder shall submit the following to the department at least 30 days prior to the change of location:

- (1) The items required by He-P 2302.03 (b) and (c); and
- (2) A written identification of the date when the change of location is intended to occur.

(b) Upon receipt and processing, in accordance with these rules, of the items required under (a) above, and after an inspection in accordance with He-P 2302.24, the commissioner shall issue a provisional license reflecting the change of location.

(c) The license holder shall return the previous license to the department within 10 days of the date the provisional license is issued under (b) above.

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

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.16 Change in License Class.

(a) A license holder wishing to request an upgrade to a higher level class of license listed in He-P 2302.05 shall:

- (1) Be treated as an applicant for a new license;
- (2) Apply for a new license in accordance with He-P 2302.03; and
- (3) Upon approval of the application under (a) (2) above and after an inspection in accordance with He-P 2302.24 be issued a provisional license.

(b) A license holder wishing to request a downgrade to a lower level class of license listed in He-P 2302.05 shall submit a written request for downgrade to the department.

(c) The written request shall include:

- (1) The reason for requesting a downgrade; and
- (2) An identification of the date when the downgrade is requested to take effect.

(d) Following receipt of the request under (b) above the commissioner shall issue a revised license reflecting the downgrade in class of license. The license number and expiration date shall remain the same as it was on the immediately preceding license.

(e) The license holder shall return the previous license to the department within 10 days of issuance of the revised license.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.17 Submission of Plans and Specifications for New or Remodeled Food Service Establishments or Retail Food Stores.

(a) A license applicant or license holder shall submit plans and specifications to the department for review and approval at least 45 days prior to:

- (1) Constructing a new food service establishment or retail food store;
- (2) Converting an existing structure for use as a food service establishment or retail food store;
- (3) Remodeling a food service establishment or retail food store; or
- (4) Relocating a food service establishment or retail food store.

(b) Plans and specifications shall:

(1) Be submitted in duplicate to:

Department of Health and Human Services
Division of Public Health Services
Food Protection Section
29 Hazen Dr.
Concord, NH 03301;

- (2) Be drawn to scale using a scale of less than or equal to 1/4 inch equals one foot;
- (3) Show all areas of the food service establishment or retail food store including food preparation areas and restrooms;
- (4) Designate all fixed and non-fixed equipment with numbers and a legend which states what each number represents;
- (5) Indicate the number of seats in the “no smoking” area, if one is provided, on the plan; and
- (6) Contain the following information printed on the drawing:
 - a. The name of the food service establishment or retail food store;
 - b. The physical address, and the mailing address if different; and

c. The name and telephone number of the primary contact person with knowledge of the contents of the plans and specifications.

(c) The following items, typewritten or legibly written in ink, shall be submitted with the plans and specifications:

- (1) A copy of the intended menu;
- (2) A detailed explanation of the method(s) by which potentially hazardous foods will be cooled and maintained at a temperature below 5°C, 41°F, or lower and how hot temperatures will be maintained above 60°C, 140°F;
- (3) An explanation of the anticipated volume of food to be stored, prepared, and sold or served daily;
- (4) Proposed layout, mechanical schematics, construction materials and finish schedules;
- (5) A list of proposed equipment including manufacturer, model number, location, dimension, performance capacity, and installation specifications;
- (6) A detailed description of all special operations, including but not limited to salad bars, catering or vacuum packaging; and
- (7) A list of names, mailing addresses, and phone numbers of all persons accountable for design and construction of the establishment.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.18 Critical Items.

(a) On the inspection report outlined in He-P 2302.25(b), the following subparagraphs shall be considered critical items:

- (1) He-P 2302.25 (b)(1);
- (2) He-P 2302.25 (b)(3);
- (3) He-P 2302.25 (b)(4);
- (4) He-P 2302.25 (b)(7);
- (5) He-P 2302.25 (b)(11);
- (6) He-P 2302.25 (b)(12);
- (7) He-P 2302.25 (b)(22);
- (8) He-P 2302.25 (b)(27);
- (9) He-P 2302.25 (b)(28);
- (10) He-P 2302.25 (b)(30);
- (11) He-P 2302.25 (b)(31);
- (12) He-P 2302.25 (b)(35); and
- (13) He-P 2302.25 (b)(41).

(b) All critical items in violation shall be corrected immediately in the presence of the commissioner's authorized representative, if possible.

(c) If temporary measures are used by the license holder to correct the critical items for the short term, a compliance agreement for permanent corrections shall be submitted in accordance with He-P 2302.31.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.19 Construction Items.

(a) Items listed in (b) below shall be subject to correction prior to the issuance of a provisional license.

(b) On the inspection report outlined in He-P 2302.25(b), the following subparagraphs shall be considered as construction items:

- (1) He-P 2302.25 (b)(14);
- (2) He-P 2302.26 (b)(15);
- (3) He-P 2302.25 (b)(16);
- (4) He-P 2302.25 (b)(34);
- (5) He-P 2302.25 (b)(36);
- (6) He-P 2302.25 (b)(37);
- (7) He-P 2302.25 (b)(38);
- (8) He-P 2302.25 (b)(39); and
- (9) He-P 2302.25 (b)(43).

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.20 Denial of License Applications.

(a) The department shall deny applications for any license if:

- (1) The applicant has failed to pay any fees imposed under He-P 2302.06 or administrative fines imposed under He-P 2302.29;
- (2) There remain missing or incomplete items, or items that do not meet the requirements of He-P 2302.03, and the applicant has been notified of and given an opportunity to supply such items;
- (3) A food service establishment or retail food store applying for a new license does not meet all of the following:
 - a. A minimum inspection score of 70 pursuant to He-P 2302.25;
 - b. No violation of any critical items pursuant to He-P 2302.18; and
 - c. No violation of any construction items pursuant to He-P 2302.19;
- (4) A food service establishment or retail food store that has a change of ownership does not meet all of the following:
 - a. A minimum inspection score of 70 pursuant to He-P 2302.25;

b. No violation of any critical items pursuant to He-P 2302.18; and

c. No violation of any construction items pursuant to He-P 2302.19;

(5) A food service establishment or retail food store which has had its previous license revoked does not meet the following upon reapplication:

a. A minimum inspection score of 70 pursuant to He-P 2302.25;

b. No violation of any critical items pursuant to He-P 2302.18; and

c. No violation of any construction items pursuant to He-P 2302.19;

(6) A food service establishment or retail food store applying for a renewal license does not meet all of the following:

a. A minimum inspection score of 70 pursuant to He-P 2302.25; and

b. No outstanding critical item violations pursuant to He-P 2302.18;

(7) The applicant prevents the department from conducting an inspection;

(8) The applicant has failed to comply with a compliance agreement under He-P 2302.31; or

(9) The applicant is found to be in violation of RSA 143-A;

(b) Any applicant aggrieved by the denial of an application may request the right to be heard in accordance with He-P 2302.23.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.21 Revocation of License; Reinstatement.

(a) The department shall revoke a license if:

(1) A violation of a critical item is detected during an inspection and the person in charge fails to either:

a. Correct the deficiency during the inspection, if possible; or

b. Enter into a compliance agreement under He-P 2302.31 to correct the deficiency;

(2) An establishment receives a sanitary score of less than 70% with no critical item violations on more than 2 inspections within a period of one year;

(3) A compliance agreement is violated; or

(4) A license holder fails to provide payment in accordance with He-P 2302.30 (d), and as allowed by RSA 143-A:9-a.

(b) The notice of revocation, as per RSA 143-A:7, shall:

(1) Be in writing;

(2) Enumerate the reason or reasons for revocation;

(3) Outline the remedial action necessary to correct the revocation; and

(4) Inform the owner or his agent of his rights and options for redress or grievances as enumerated in RSA 541-A.

(c) Any person who has had a license revoked shall be prohibited from applying to renew their license while it remains revoked.

(d) Reinstatement of revoked licenses, in accordance with RSA 143-A:8, shall include:

- (1) A written application to the department for a re-inspection from the person whose license has been revoked;
- (2) A re-inspection by the department within 10 days of receipt of the written request; and
- (3) The immediate reinstatement of the license if the reasons for revocation have been corrected.

(e) If a revoked license expires without having been reinstated, the former license holder shall apply for a new license in accordance with He-P 2302.03 before again operating a food service establishment or retail food store.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; amd by #8368, eff 6-4-05

He-P 2302.22 Effect of Denial of Application, Revocation of License or Expired License.

(a) Any applicant who has been denied a license shall not operate that food service establishment or retail food store.

(b) If a license has been revoked or has expired without timely application for renewal having been made, operation of that food service establishment or retail food store shall be discontinued immediately.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.23 Right To Be Heard.

(a) Before the department takes any adverse administrative action affecting an application for the renewal of an existing license, the applicant or license holder shall be provided with a written notice identifying the action to be taken including:

- (1) An explanation of the reasons for the action; and
- (2) Notice of the availability of an adjudicative proceeding in accordance with RSA 541-A:31, II.

(b) If an applicant or license holder fails to request an adjudicative proceeding in writing within 10 days of receipt of the notice required by (a) above, the department action shall become final.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.24 Food Service Establishment or Retail Food Store Inspection.

(a) Comprehensive inspections of food service establishments or retail food stores, including mobile food units and vehicles used for the retail sale of food, shall be conducted in accordance with RSA 143-A:6 II.

(b) The applicant or licensee shall acknowledge receipt of the inspection report by signing the report.

(c) Upon completion of an inspection, the department shall provide the person-in-charge of the food service establishment or retail food store at the time of the inspection with a written inspection report including:

- (1) The name and address of the food service establishment or retail food store;
- (2) The class of license;
- (3) The date of the inspection;
- (4) The name of the person(s) conducting the inspection;
- (5) The results of the inspection according to He-P 2302.25; and
- (6) The signature of the person in charge of the food service establishment or retail food store during the inspection, as required by (b) above or a notation by the person conducting the inspection indicating any refusal to sign.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.25 Documentation of Inspections.

(a) The inspection report shall include:

- (1) The owner's name and address;
- (2) The type of water and sewage system;
- (3) The non-smoking dining capacity;
- (4) Information about the license;
- (5) Information about the sanitarian;
- (6) The name and signature of the person interviewed, as required by He-P 2302.24 (b); and
- (7) An inspection checklist containing 44 items with debit points as noted in (b) below, which are subtracted from 100 to arrive at the score of the inspection.

(b) The point values of the items on the inspection checklist, which shall be subtracted from 100 if not met during the inspection, shall include:

- (1) Five points if food is not in sound condition and from approved sources as required by He-P 2303.01 and He-P 2303.02 (a) through (m);
- (2) One point if food is not in the original container or labeled, as required by He-P 2303.02 (n) and (o) and He-P 2304.01 through He-P 2304.03;
- (3) Five points if food does not meet the temperature requirements of He-P 2304.04 through He-P 2304.22;
- (4) Four points if facilities are not provided to maintain food at temperatures as required in He-P 2304.23 and He-P 2304.24;
- (5) One point if thermometers are not provided or are not accurate to determine if the temperatures required by He-P 2304.25 and He-P 2304.26 are achieved;
- (6) Two points if potentially hazardous food is not thawed as required by He-P 2304.27 and He-P 2304.28;
- (7) Four points if:
 - a. Unwrapped food or potentially hazardous food served to the public is reserved as prohibited by He-P

- 2304.29 and He-P 2304.30;
- b. Food is not protected from cross-contamination as required by He-P 2304.31;
 - c. Food is not protected during consumer self-service operations as required by He-P 2304.32;
 - d. Food is not protected from contact with unclean utensils and equipment as required by He-P 2304.33;
 - e. Food is not protected during tasting as required by He-P 2304.34; or
 - f. Raw fruits and vegetables are not washed in a food preparation sink as required by He-P 2304.35;
- (8) Two points if food is not protected from contamination during storage, preparation, display, service and transportation as required by He-P 2304.36 through He-P 2304.45;
- (9) Two points if food or ice is not protected from contamination when handled as required by He-P 2304.46 through He-P 2304.48;
- (10) One point if in-use utensils are stored so as to contaminate the utensils, and subsequently the food, as prohibited by He-P 2304.49;
- (11) Five points if personnel are not free of infections which can be transmitted by food as required by He-P 2305.01 through He-P 2305.03 or if there is not a person in charge who meets the requirements of He-P 2305.04 and He-P 2305.05;
- (12) Five points if personnel do not wash and clean their hands and maintain good hygienic practices as required by He-P 2305.06 through He-P 2305.08;
- (13) One point if food service workers do not wear clean clothes and hair restraints as required by He-P 2305.09;
- (14) Two points if food equipment and utensils are not designed, maintained and used as required by He-P 2306;
- (15) One point if non-food contact equipment and utensils are not designed, maintained and used as required by He-P 2307;
- (16) Two points if food equipment and utensils are not washed, rinsed, sanitized and stored using equipment and procedures required by He-P 2308.01 through He-P 2308.11;
- (17) One point if:
- a. Dishwashing machines do not automatically dispense detergents and sanitizers, as is required by He-P 2308.05(d);
 - b. Temperature measuring devices are not provided in all dishwashing operations, as is required by He-P 2308.12; or
 - c. Test kits are not provided when using chemicals for sanitizing in order to determine that the strength of the sanitizer meets the requirements of He-P 2308.13;
- (18) One point if single-service articles are not stored and dispensed as required by He-P 2309.01;
- (19) Two points if single-service articles are re-used in violation of He-P 2309.02;
- (20) One point if equipment and utensils are not pre-flushed and scraped as required by He-P 2310.01;
- (21) Two points if equipment and utensil wash water and rinse water are not kept clean and at the temperatures required by He-P 2310.02;
- (22) Four points if food equipment and utensils are not sanitized either manually or by machine as required by He-P 2310.03;
- (23) One point if wiping cloths are not used as required by He-P 2310.05;

- (24) Two points if kitchenware and food-contact surfaces of equipment are not washed, rinsed, and sanitized at the frequency required by He-P 2310.06;
- (25) One point if non-food contact surfaces of equipment are not kept clean as required by He-P 2310.07;
- (26) One point if food equipment and utensils are not air dried as required in He-P 2310.04 or if clean equipment and utensils are not handled and stored as required by He-P 2310.08 through He-P 2310.12;
- (27) Five points if the water supply is not in accordance with the rules and referenced statutes listed by He-P 2311;
- (28) Four points if the sewage disposal is not in accordance with the rules and referenced statutes listed by He-P 2312;
- (29) One point if plumbing is not sized, installed, and maintained as required by Plu 700 of the state plumbing code, He-P 2313.01, and He-P 2313.03;
- (30) Five points if plumbing is not installed and maintained to protect against backflow and back siphonage as required by He-P 2313.02;
- (31) Four points if toilet and handwashing facilities are not installed according to the provisions of Plu 700 of the state plumbing code and He-P 2314.01 and He-P 2314.03;
- (32) Two points if toilet and handwashing facilities do not meet the requirements of He-P 2314.02 and He-P 2314.04;
- (33) Two points if solid waste disposal is not in accordance with He-P 2315.01;
- (34) One point if solid waste is not stored in accordance with He-P 2315.02;
- (35) Four points if insect, rodent and animal control are not in accordance with He-P 2316;
- (36) One point if the floors are not constructed, drained, clean, and in good repair as required by He-P 2317.01;
- (37) One point if the walls and ceilings are not constructed, clean, and in good repair as required by He-P 2317.02;
- (38) One point if the lighting is not shielded and of the intensity required by He-P 2318;
- (39) One point if sufficient ventilation is not provided as required by He-P 2319;
- (40) One point if dressing rooms are not located and cleaned as required by He-P 2320;
- (41) Five points if toxic materials are not used, stored and labeled as required by He-P 2321;
- (42) One point if the premises are not maintained as required by He-P 2322;
- (43) One point if there is not complete separation from living quarters and laundry facilities as required by He-P 2323 and He-P 2324; and
- (44) One point if clean and soiled linen are not stored as required by He-P 2325.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; amd by #8368, eff 6-4-05

He-P 2302.26 Requirements for All License Holders.

- (a) License holders shall operate in accordance with the class of license issued under He-P 2302.05.

(b) Department representatives or inspectors shall be admitted to food service establishments or retail food stores to inspect the premises at all times, as authorized by RSA 143:4.

(c) Department representatives or inspectors shall be afforded access at all times to mobile food units or vehicles used by license holders for the transportation of food for the purpose of inspecting them.

(d) Samples of food shall be provided to the department for bacteriological, chemical and physical examination upon request.

(e) Licenses shall be posted at all times in an area of the food service establishment or retail food store that is conspicuous to patrons entering the premises.

(f) Vehicle decals, issued in accordance with He-P 2302.09(e), shall be affixed to the front left hand side of the body of the vehicle or in a place which is conspicuous to patrons.

(g) In the event of an occurrence, including but not limited to a fire, flood, power outage, or similar event which might result in the contamination of food, or which might prevent potentially hazardous food from being held at required temperatures, the person in charge shall notify the department within 24 hours.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.27 Waivers.

(a) Applicants or license holders seeking waivers of specific rules in this chapter shall submit a written request for a waiver to the commissioner.

(b) The waiver request shall include:

(1) Specific reference to the rule for which a waiver is being sought;

(2) Full explanation of why a waiver is necessary; and

(3) Full explanation of alternatives proposed by the applicant or license holder, which shall be equally as protective of public health as the rule from which a waiver is sought.

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

(1) The commissioner concludes that authorizing deviation from strict compliance with the rule from which a waiver is sought does not contradict the intent of the rule; and

(2) The alternative proposed by the applicant or license holder ensures that the objective or intent of the rule from which a waiver is sought will be accomplished.

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

(e) No request for a waiver concerning the rules of other state agencies which are referred to in this chapter shall be accepted.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.28 Procedure for Administrative Fines. Whenever the department determines that a violation of RSA 143-A or the provisions of these rules has occurred, the license holder shall be provided with a written notice:

- (a) Identifying each violation;
- (b) Informing the license holder of the amount of the proposed fine under He-P 2302.29; and
- (c) Informing the license holder of the right to appeal the department's decision to assess a fine by submitting a written request for a hearing to the commissioner no later than 10 calendar days from the date of receipt of the notice;
- (d) Informing the license holder of the opportunity to waive the right to a hearing by paying the fine within 10 days of the receipt of the department notice of proposed administrative fine; and
- (e) Informing the license holder that if he or she does not request an appeal as specified in (c) above, the department's decision to assess a fine shall become final after the 10 day period specified in (c) above and the fine shall be paid to the department no later than 10 days from that date.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.29 Schedule of Administrative Fines. The commissioner shall impose administrative fines in the specified amounts for the following violations:

- (a) For willful submission of false or fraudulent information on or with an application, in violation of He-P 2302.03, the fine shall be \$500;
- (b) For failure to operate a food service establishment or retail food store only in the manner in which licensed to do so, in violation of He-P 2302.26(a), the fine shall be \$500;
- (c) For failure to cooperate during an inspection of a food service establishment, retail food store, mobile food unit or vehicle used to sell retail food, including but not limited to failing to allow department representatives or inspectors to inspect food service establishment or retail food store premises and vehicles at all times, in violation of He-P 2302.26 (b) and (c), the fine shall be \$2,000;
- (d) 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 service establishments or retail food stores, in violation of He-P 2302.26 (g), the fine shall be \$50;
- (e) For failure to notify the department pursuant to He-P 2302.13 (a) 30 days prior to a food service establishment or retail food store ownership change, the fine shall be \$500;
- (f) For failure to notify the department pursuant to He-P 2302.15 (a) prior to moving the location of a food service establishment or retail food store, the fine shall be \$250;
- (g) For failure to submit a plan for review as required in He-P 2302.17, the fine shall be \$200;
- (h) For failure to discard food as required by He-P 2303.01 (h), and in the manner instructed to do so by the department, the fine shall be \$250;
- (i) For failure to cease operation upon notification by the department to do so, the fine shall be \$500. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;
- (j) 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 \$500. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;
- (k) For a violation of the same critical item as defined in He-P 2302.18 (a) for more than 2 inspections in a period of 12 months, the fine shall be \$500;
- (l) For failure to pay an administrative fine within 30 days of its imposition, or the completion of any appeal of the administrative fine, the fine shall be \$100 per day for the duration of the license;

(m) For failure to comply with a compliance agreement signed by the owner, as per He-P 2302.31, the fine shall be \$100; and

(n) For operation of a food service establishment without obtaining a food service license, as required by RSA 143-A:4, the fine shall be \$500 plus \$100 for each day for which the department has proof that the establishment has operated.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; amd by #8368, eff 6-4-05

He-P 2302.30 Form of Payment of Fees and Administrative Fines. Whenever an applicant or license holder makes a payment to the department in satisfaction of a fee or administrative fine, the following shall apply:

(a) Payment shall be made in the form of cash, check, credit card or money order for the exact amount due;

(b) Cash, money order, or certified check shall be required when an applicant or license holder has issued payment to the department by check, and such check was returned for insufficient funds;

(c) A check or money order shall be made payable to the “Treasurer--State of New Hampshire”; and

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

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.31 Compliance Agreement.

(a) If critical violations are found and can not be corrected immediately in the presence of the inspector, the applicant or licensee shall complete a compliance agreement in the presence of the inspector.

(b) If construction items, delineated in He-P 2302.19, are found during an inspection for a new or change of ownership license, and can not be corrected immediately in the presence of the inspector, the applicant or licensee shall complete a compliance agreement in the presence of the inspector.

(c) The compliance agreement shall be completed on the “Compliance Agreement” form provided by the inspector.

(d) The following shall be provided by the licensee on the compliance agreement:

(1) The date of the agreement;

(2) The name of the establishment;

(3) The address of the establishment;

(4) The name of the person in charge of the establishment at the time of the inspection;

(5) The telephone number of the person in charge;

(6) Attestation to the agreement to make repairs, corrections, or changes that are necessary to bring the establishment into compliance with He-P 2300;

(7) A list of each repair, correction or change to be made including the date of intended completion and an explanation as to why the correction can not be made immediately;

- (8) The signature of the person in charge;
- (9) Title of the signee;
- (10) Date;
- (11) Signature of the inspector; and
- (12) Establishment identification number.

(e) Failure to make the necessary corrections by the specified date shall result in the licensee being required to attend a compliance meeting with the department.

(f) If a waiver to a critical item or a construction item is desired by the applicant or licensee, the applicant or licensee shall request a waiver pursuant to He-P 2302.27.

Source. #2802, eff 8-8-84-EXPIRED 8-8-90

New. #6503, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2302.32 Closure.

(a) In accordance with RSA 143:5-a, imminent health hazard shall include but not be limited to the following:

- (1) A loss of operations water supply;
- (2) The use of an unapproved source of water within the plant;
- (3) The source water is out of compliance with the quality standard in a way that presents an imminent danger to public health;
- (4) A failed sewer system or a sewage backup into the establishment;
- (5) An power outage;
- (6) The plant has been subject to one or more of the following:
 - a Flood;
 - b Fire;
 - c Chemical exposure;
 - d Natural disaster; or
 - e Other catastrophic event that could result in contamination of the food supply;
- (7) An employee has been found to be infected with a communicable disease as described in He-P 2305.01(b); or
- (8) Severe unsanitary conditions that threaten to contaminate the source, the plant, a part of the plant or a particular product.

(b) 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.

Source. #7893, eff 5-21-03

PART He-P 2303 CONDITION AND SOURCES OF FOOD

He-P 2303.01 Condition.

(a) Food in food service establishments and retail food stores shall be:

- (1) In sound condition, free from spoilage, filth, or other contamination; and
- (2) Safe for human consumption.

(b) A food that is unsafe or adulterated, as defined by RSA 146:3, shall be either:

- (1) Salvaged according to a procedure proposed by the license holder subject to approval by the department; or
- (2) Discarded.

(c) Ready-to-eat food that might have been contaminated by an employee who has been restricted or excluded as specified in He-P 2305.02 shall be discarded.

(d) Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, including but not limited to nasal or oral discharges, or other means shall be discarded.

(e) Only the following egg products shall be acceptable for sale or use:

- (1) Clean and sound eggs which are labeled and graded in accordance with the requirements of the NH department of agriculture under the provisions of RSA 428:22-30 and Agr 905;
- (2) Liquid, frozen, or dry eggs and egg products if obtained pasteurized; and
- (3) Hard boiled, peeled eggs, commercially prepared and packaged.

(f) Retail food store or food service establishment operators shall not apply sulfiting agents to fresh fruits and vegetables intended for raw consumption nor serve or offer for sale for raw consumption these foods if so treated before receipt by others, with the exception of grapes.

(g) Only the following milk products shall be acceptable for sale or use:

- (1) Pasteurized fluid milk and fluid milk products; and
- (2) Dry milk and dry milk products made from pasteurized milk and milk products.

(h) The following foods shall be discarded as solid waste in accordance with He-P 2315:

- (1) Spoiled foods;
- (2) Refrozen foods;
- (3) Foods from swollen, rusty or leaky cans;
- (4) Foods damaged by fire, smoke, water or other contaminating substance; and
- (5) Dented cans with compromised hermetic seals.

(i) Shellstock shall meet the requirements of He-P 2150.03(a).

(j) Mushroom species, if picked in the wild, shall not be considered to be from an approved [Source](#).

[Source.](#) #2802, eff 8-8-84; amd by #4234, eff 2-23-87; ss by #5051, eff 1-22-91; amd by #5631, eff 5-26-93; amd by #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

[New.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2303.02 Sources of Food.

- (a) Food in food service establishments and retail food stores shall not be obtained from sources that the purchaser knows are out of compliance with the food and food labeling laws of the state or country from which the food was obtained.
- (b) Food that is not from an approved source as specified in this section shall be discarded.
- (c) Food in hermetically sealed containers that was not prepared in a food service establishment that commercially processes food shall not be sold or used by food service establishments or retail food stores.
- (d) Ice shall be:
 - (1) Manufactured from potable water and handled in a sanitary manner if used or offered for sale by license holders; and
 - (2) Packaged if offered for sale by license holders.
- (e) All bottled water used or served in food service establishments or retail food stores shall be from a source which is licensed or registered by the department in accordance with RSA 143:10.
- (f) Molluscan shellfish shall be obtained from sources certified under RSA 143:21.
- (g) Fish, other than molluscan shellfish, intended for consumption in their raw form shall be:
 - (1) Obtained from a supplier which freezes the fish as specified under He-P 2304.20; or
 - (2) Frozen on the premises as specified under He-P 2304.20 and records of freezing temperature and time to which the fish is subjected shall be retained for a period of 90 calendar days beyond the time of service or sale of the fish.
- (h) Raw and frozen shucked shellfish shall be obtained in non-returnable packages legibly bearing:
 - (1) The name and address of the shucker-packer of the shellfish;
 - (2) The shucker-packer's authorized certificate number; and
 - (3) The "sell by" date for packages with a capacity of less than 1.87 liter (L), one-half gallon, or the date shucked for packages with a capacity of 1.87 L, one-half gallon, or more.
- (i) Food service establishments and retail food stores shall not sell or provide fish unless they are commercially caught or harvested.
- (j) Molluscan shellfish which have been recreationally caught or harvested shall not be sold by license holders.
- (k) For highly susceptible populations:
 - (1) Pasteurized shell eggs or pasteurized liquid, frozen or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:
 - a. Foods including but not limited to Caesar salad, hollandaise or bernaise sauce, mayonnaise, eggnog, ice cream, and egg fortified beverages that are not cooked as specified in He-P 2304.05(a)(1) or He-P 2304.05(a)(2); or included in He-P 2304.05(b)(1); and
 - b. Cooked eggs if the eggs are broken, combined in a container, and not cooked immediately or if the eggs are held before service following cooking.
 - (2) Apple juice, apple cider, and other beverages containing apple juice shall be obtained pasteurized, or in a commercially sterile shelf-stable form in a hermetically sealed container.
- (l) Pre-packaged juice shall:
 - (1) Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120; or

(2) Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganisms of public health significance as specified in 21 CFR 120.24; or

(3) Bear a warning label as specified in 21 CFR Section 101.17(g).

(m) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in He-P 2304.03 shall be:

(1) Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef; or

(2) Deemed acceptable by the department based on other evidence, including but not limited to written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; and

(3) If individually cut in a food establishment:

a. Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in (1) above or identified as specified in (2) above;

b. Prepared so they remain intact; and

c. If packaged for undercooking in a food establishment, labeled as specified in (1) above or identified as specified in (2) above .

(n) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified 9 CFR 317.2(l) and 9 CFR 381.125(b).

(o) Shell eggs that have not been specifically treated to destroy all viable *Salmonellae* shall be labeled to include safe handling instructions as specified in 21 CFR Section 101.17(h).

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2304 FOOD PROTECTION

He-P 2304.01 Bulk Foods. Unless its identity is unmistakable, bulk food, including but not limited to cooking oil, syrup, salt, sugar, or flour, not stored in the product container or package in which it was obtained, shall be stored in a container identifying the food by common name.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.02 Shellstock and Shucked Shellfish Identification and Original Container.

(a) Except as specified in (b) and (c) below, molluscan shellfish shall not be removed from the container in which they were received other than immediately before sale or preparation for service.

(b) Shellstock removed from the container in which they were received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer shall only be removed from the display or display container and provided to the consumer if:

(1) The source of the shellstock on display is identified and recorded as specified under He-P 2150.03 (a);

(2) The shellstock are protected from contamination; and

(3) The shellfish tag on the container in which they were received are retained by the retailer for 90 days.

(c) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:

(1) The labeling information for the shellfish on display as specified under He-P 2303.02 (h) is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

- (2) The shellfish are protected from contamination.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.03 Consumption of Raw or Undercooked Animal Foods.

(a) Except as specified in He-P 2304.05 (b), if a raw or undercooked animal food, including but not limited to, beef, eggs, fish, lamb, pork, poultry, or shellfish, is offered in a ready-to-eat form as a deli, menu, vended, or other item, or as a raw ingredient in another ready-to-eat food, the license holder shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards or other effective written means of the significantly increased risk associated with especially vulnerable consumers eating such foods raw or undercooked.

(b) Especially vulnerable consumers mean individuals who are more likely than other consumers to experience foodborne disease, including but not limited to persons who:

- (1) Have a liver disease;
- (2) Have reduced stomach acidity;
- (3) Have a weakened immune system; or
- (4) Are older adults, pregnant women and children 3 years old or younger.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.04 Potentially Hazardous Food Meets Temperature Requirements.

(a) Potentially hazardous foods, as defined in He-P 2301.01 (bo), shall include but not be limited to:

- (1) An animal food, or a food of animal origin, that is raw or heat-treated;
- (2) A food of plant origin that is heat-treated or consists of raw seed sprouts;
- (3) Cut melons; and
- (4) Garlic and oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified in He-P 2301.01 (bo);

(b) Potentially hazardous foods shall not include:

- (1) An air-cooled hard-boiled egg with shell intact;
- (2) A shell egg that is not hard-boiled, but has been treated to destroy all viable *Salmonellae*;
- (3) A food with an a_w value of 0.85 or less;
- (4) A food with a pH level of 4.6 or below when measured at 24°C, 75°F;
- (5) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
- (6) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *Salmonella enteritidis* in eggs or *Clostridium botulinum* can not occur, including but not limited to a food that has an a_w value above 0.85 and a pH level above 4.6 when measured at 24°C, 75°F, and that might contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or
- (7) A food that does not support the growth of microorganisms as specified in He-P 2301.01 (bo) even though the food might contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

(c) The temperature of potentially hazardous food shall be 5°C, 41°F, or below or 60°C, 140°F, or above at all times, except that:

- (1) Raw shell eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 7°C, 45°F or less; and
- (2) Foods, including but not limited to milk and molluscan shellfish, for which temperatures other than 5°C, 41°F are specified in law, shall be received at the temperatures required by laws governing their distribution.

(d) Refrigerated, potentially hazardous food shall be at a temperature of 5°C, 41°F, or below when received, except as provided in He-P 2304.13 (c).

(e) Potentially hazardous food cooked to the temperature and time specified in He-P 2304.05 through He-P 2304.09 which is received hot shall be maintained at a temperature of 60°C, 140°F, or above.

(f) Potentially hazardous food shall be at proper temperatures in accordance with He-P 2304 and shall show no signs of spoilage when received.

(g) A food that is labeled frozen and is shipped frozen shall be received frozen.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.05 Raw Animal Foods.

(a) Except as specified in (b) and (c) below, raw animal foods, including but not limited to eggs, fish, poultry, meat, and foods containing these raw animal foods, shall be cooked so that the entire portion of each of the identified foods meets the following time and temperature requirements:

- (1) 63° C, 145°F, or above for 15 seconds for:
 - a. Raw shell eggs that are broken and prepared in response to a consumer's order for immediate service; and
 - b. Fish, meat and pork, except for those identified in (c) below;
- (2) For comminuted fish and meats, injected meats, and eggs that are not prepared as specified in (a)(1)a. above, 68°C, 155°F, for 15 seconds or the temperature specified in He-P 2304.06 that corresponds to the cooking time;
- (3) As specified in He-P 2304.08 for whole beef roasts, pork roasts and corned beef roasts; and
- (4) 74°C, 165°F or above for 15 seconds for poultry, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, or stuffing containing fish, meat or poultry.

(b) The requirements of (a) above shall not apply if, except for food establishments serving a highly susceptible population, the food is:

- (1) A raw animal food, including but not limited to, raw egg, raw fish, raw marinated fish, raw molluscan shellfish, steak tartare, and the consumer is informed under He-P 2304.03 that to ensure its safety, the food should be cooked as specified under (a) above;
- (2) A partially cooked food, including but not limited to, lightly cooked fish, rare meat, or soft cooked eggs served or offered for sale in a ready-to-eat form; and the consumer is informed under He-P 2304.03 that to ensure its safety, the food should be cooked as specified under (a) above; or
- (3) A raw or undercooked whole-muscle, intact beef steak if:
 - a. The steak is labeled to indicate that it meets the definition of whole-muscle, intact beef as specified under He-P 2301.01 (db); and
 - b. The steak is cooked on both the top and bottom to a surface temperature of 63°C, 145°F or above and a cooked color change is achieved on all external surfaces .

(c) Roasts of beef, pork roasts and corned beef roasts shall be cooked:

- (1) In an oven that is preheated to the temperature specified for the roast's weight in He-P 2304.07 and that is held at that temperature; and
- (2) To the temperature specified in He-P 2304.08 and held for the corresponding amount of time required by He-P 2304.08 for that temperature.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.06 Minimum Food Temperature and Holding Time Required Under He-P 2304.05(a)(2) for Cooking all Parts of Comminuted Fish and Meats, and Injected Meats. The minimum food temperature and holding time required under He-P 2304.05(a)(2) for cooking all parts of comminuted fish, and injected meats shall be in compliance with the requirements set forth in Table 2.4.1, below:

Table 2.4.1 Minimum Temperature and Holding Time for Cooking All Parts of Comminuted Fish and Meats, and Injected Meats

| <u>Minimum Temperature °C (°F)</u> | <u>Minimum Time</u> |
|------------------------------------|---------------------|
| 63 (145) | 3 minutes |
| 66 (150) | 1 minute |

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.07 Oven Parameters Required for Destruction of Pathogens on the Surface of Whole Beef Roasts, Corned Beef Roasts, Pork Roasts and Cured Pork Roasts.

(a) Whole beef roasts, corned beef roasts, pork roasts and cured pork roasts shall be cooked in an oven that is preheated to the temperature specified for the roast's weight and held at that temperature, as specified in the requirements set forth in Table 2.4.2, below:

Table 2.4.2 Cooking Temperatures for Beef Roasts, Corned Beef Roasts, Pork Roasts and Cured Pork Roasts Based on Oven Type and Weight

| <u>Oven Type</u> | <u>Oven Temperature</u> | <u>Roast Weight</u> |
|----------------------|-------------------------------------|--------------------------------|
| - | <u>Less than to 4.5 kg (10 lbs)</u> | <u>4.5 kg (10 lbs) or more</u> |
| <u>Still Dry</u> | 177°C (350°F) or more | 121°C (250°F) or more |
| <u>Convection</u> | 163°C (325°F) or more | 121°C (250°F) or more |
| <u>High Humidity</u> | 121°C (250°F) or less | 121°C (250°F) or less |
| | | |

(b) For cooking whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts in high humidity oven types:

- (1) The relative humidity shall be greater than 90% for at least one hour as measured in the cooking chamber or exit of the oven; or
- (2) The roasts of beef, corned beef roasts, pork roasts or cured pork roasts shall be in a moisture-impermeable bag that provides 100% humidity.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.08 Minimum Holding Cooking Required at Specified Temperatures for Cooking All Parts of Roasts of Beef, Corned Beef, Pork Roasts and Cured Pork Roasts.

(a) Whole beef roasts, corned beef roasts, pork roasts and cured pork roasts shall be cooked to heat all parts of the roast to a temperature and for the holding time that corresponds to that temperature, as specified in Table 2.4.3, below:

Table 2.4.3 Minimum Holding Cooking Required at Specified Temperatures for Cooking
All Parts of Roasts of Beef, Corned Beef, Pork Roasts and Cured Pork Roasts

| <u>Temperature</u> °C (°F) | <u>Time</u> | <u>Temperature</u> °C (°F) | <u>Time</u> | <u>Temperature</u> °C (°F) | <u>Time</u> |
|-------------------------------|-------------|-------------------------------|-------------|-------------------------------|-------------|
| 54.4 (130) | 112 minutes | 60 (140) | 12 minutes | 66.1 (151) | 54 seconds |
| 55 (131) | 89 minutes | 61.1 (142) | 8 minutes | 67.2 (153) | 34 seconds |
| 56.1 (133) | 56 minutes | 62.2 (144) | 5 minutes | 68.3 (155) | 22 seconds |
| 57.2 (135) | 36 minutes | 62.8 (145) | 4 minutes | 69.4 (157) | 14 seconds |
| 57.8 (136) | 28 minutes | 63.9 (147) | 134 seconds | 70 (158) | 0 |
| 58.9 (138) | 18 minutes | 65 (149) | 85 seconds | | |

(b) Holding times in Table 2.4.3 may include post-oven heat rise.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.09 Microwave Cooking. Raw animal foods cooked in a microwave oven shall be:

- (a) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
- (b) Covered to retain surface moisture;
- (c) Heated to a temperature of at least 74°C, 165° F, in all parts of the food; and
- (d) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.10 Cooked Fruits and Vegetables. Fruits and vegetables cooked for hot holding shall be cooked to a temperature of 60°C, 140°F.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.11 Reheating for Hot Holding.

- (a) Potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74°C, 165° F, for 15 seconds.
- (b) Potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74°C, 165° F, and the food is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating.
- (c) Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a licensed food service establishment commercially processing food that is heated for hot holding shall be heated to a temperature of at least 60°C, 140°F.
- (d) Reheating for hot holding shall be done so that the temperature of the food goes from 5°C, 41°F, to 74° C, 165°F, within 2 hours.
- (e) Remaining unsliced portions of roasts cooked as specified in He-P 2304.05(c) shall be reheated for hot holding using oven parameters and minimum time and temperature conditions specified in He-P 2304.05(c).

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.12 Reheating for Immediate Service. License holders shall serve cooked and refrigerated food prepared for immediate service in response to an individual consumer order, including but not limited to a roast beef sandwich au jus, at any temperature.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.13 Cooling.

(a) Cooked potentially hazardous food not being hot held or served immediately to consumers shall be cooled as follows:

- (1) From 60°C, 140°F, to 21°C, 70°F, within 2 hours; and
- (2) From 21°C, 70°F, to 5°C, 41°F, or below, within 4 hours.

(b) Potentially hazardous food shall be cooled to 5°C, 41°F, or below within 4 hours if prepared from ingredients at ambient temperature, including but not limited to reconstituted foods and canned tuna.

(c) A potentially hazardous food, including but not limited to shellfish received in compliance with laws allowing a temperature above 5°C, 41° F, during shipment from the supplier shall be cooled to 5°C, 41°F, or below within 4 hours.

(d) Raw shell eggs shall be received as specified under He-P 2304.04 (c)(1) and immediately placed in refrigerated equipment that maintains an ambient air temperature of 7°C, 45°F or less.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.14 Cooling Methods.

(a) Cooling shall be accomplished by one or more of the following methods based on the type of food being cooled including but not limited to:

- (1) Placing the food in shallow pans;
- (2) Separating the food into smaller or thinner portions;
- (3) Using rapid cooling equipment;
- (4) Stirring the food in a container placed in an ice water bath;
- (5) Using containers that facilitate heat transfer; or
- (6) Adding ice or frozen ingredients.

(b) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

- (1) Arranged in the equipment to provide maximum heat transfer through container walls; and
- (2) Loosely covered, or uncovered if protected from overhead contamination as specified He-P 2304.36, during the cooling period to facilitate heat transfer from the surface of the food.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.15 Potentially Hazardous Food: Hot and Cold Holding. Except during preparation, cooking or cooling, or when time is used as a public health control as specified in He-P 2304.18, potentially hazardous food shall be maintained:

(a) At 60°C, 140°F, or above, except that roasts, cooked to a temperature and for a time specified in He-P 2304.08, may be held at a temperature of 54°C, 130 °F; or

(b) At a temperature and time specified in the following:

- (1) At 5°C, 41°F or less for a maximum of 7 days; or
- (2) At 7°C, 45°F or between 5°C, 41°F and 7°C, 45°F for a maximum of 4 days in existing refrigeration equipment that is not capable of maintaining the food at 5°C, 41°F or less if:

- a. The equipment is in place and in use in the food establishment; and

b. Within 2 years of the adoption of these rules, the equipment is upgraded or replaced to maintain food at a temperature of 5°C, 41°F or less.

(c) Shell eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of 7°C, 45°F or less.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.16 Vending Machines, Automatic Shutoff.

(a) A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food if there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as required under He-P 2304.04 until the machine is serviced and restocked with food that has been maintained at required temperatures.

(b) It shall be permissible for the temperature specified for activation of the automatic shutoff within a machine vending potentially hazardous food to deviate from the temperature required under (a) above in accordance with the following:

- (1) In a refrigerated vending machine, at an ambient temperature of 7°C, 45°F, or more, for no more than 30 minutes immediately after the machine is filled, serviced or restocked; or
- (2) In a hot holding vending machine, at an ambient temperature of 60°C, 140°F, or less, for no more than 120 minutes after the machine is filled, serviced, or restocked.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.17 Ready-to-Eat, Potentially Hazardous Food, Date Marking and Disposition.

(a) Except as specified in (d) below, refrigerated, ready-to-eat, potentially hazardous food prepared and held for more than 24 hours in a food service establishment and a retail food store shall be clearly marked to indicate the date or day by which the food shall be consumed on the premise, sold, or discarded, based on the temperature and time combinations specified in He-P 2304.15 (b). The day of preparation shall be counted as day one.

(b) Except as specified in (d) and (e) below, a container of refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by another food service establishment, retail food store or a food service establishment commercially processing food shall be clearly marked, at the time the original container is opened in the food service establishment and if the food is held for more than 24 hours, to indicate the date or day, based on the temperature and time combinations specified in He-P 2304.15 (b), by which the food shall be consumed on the premise, sold, or discarded.

(c) For purposes of (b) above:

- (1) The day the original container is opened in the food service establishment shall be counted as day one; and
- (2) The day or date marked by the food service establishment shall not exceed a manufacturer's use-by date.

(d) The requirements of (a) and (b) above shall not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(e) The requirements of (b) above shall not apply to the following when the face has been cut, but the remaining portion is whole and intact:

- (1) Fermented sausages produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated" and which retain the original casing on the product;
- (2) Shelf stable, dry, fermented sausages; and
- (3) Shelf stable salt-cured products including but not limited to prosciutto and Parma ham produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated".

(f) A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

(g) A food specified in (a) or (b) above shall be discarded if it:

- (1) Exceeds either of the temperature and time combinations specified in He-P 2304.15 (b), except time that the product is frozen;
- (2) Is in a container or package that does not bear a date or day; or
- (3) Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in He-P 2304.15 (b).

(h) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food service establishment or retail food store and dispensed in a vending machine with an automatic shut-off control shall be discarded if it exceeds a temperature and time combination as specified in He-P 2304.15 (b).

(i) A food specified in (b) above shall be discarded if not consumed within 7 calendar days after the original package is opened in a food establishment.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.18 Time as a Public Health Control.

(a) Except as specified under (b) below, if time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:

- (1) The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control;
- (2) The food shall be cooked and served, served if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control; and
- (3) Written procedures shall be maintained in the food establishment and made available to the department upon request, that ensure compliance with:
 - a. Subparagraphs (a)(1)-(3) of this section; and
 - b. He-P 2304.13 for food that is prepared, cooked, and refrigerated before time is used as a public health control; or

(4) The food in unmarked containers or packages or marked to exceed a 4 hour limit shall be discarded.

(b) In a food service establishment that serves a highly susceptible population, time only, rather than time in conjunction with temperature, shall not be used as the public health control for raw eggs.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.19 Pasteurized Foods. In a food service establishment that serves a highly susceptible population:

(a) The following criteria shall apply to juice:

- (1) For the purposes of this paragraph only, children who are age 9 or less and receive food in a school, day care setting, or similar facility that provides custodial care shall be included as highly susceptible populations;
- (2) Pre-packaged juice or a pre-packaged beverage containing juice, that bears a warning label as specified in 21 CFR, Section 101.17(g) Food Labeling, or a packaged juice or beverage containing juice, that bears a warning label as specified in 21 CFR, Part 120 shall not be served or offered for sale.

(b) Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:

- (1) Foods including but not limited to Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages; and
- (2) Recipes in which more than one egg is broken and the eggs are combined, except as specified in (e) below.

(c) Food in an unopened original package shall not be re-served.

(d) The following foods shall not be served or offered for sale in a ready-to-eat form:

- (1) Raw animal foods including but not limited to raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;
- (2) A partially cooked animal food including but not limited to lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; and
- (3) Raw seed sprouts.

(e) Subparagraph (b)(2) above shall not apply if:

- (1) The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under He-P 2304.05 (a)(1), and served immediately, including but not limited to an omelet, souffle, or scrambled eggs;
- (2) The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, including but not limited to a cake, muffin, or bread; or
- (3) The preparation of the food is conducted under a HACCP plan that:
 - a. Identifies the food to be prepared;
 - b. Prohibits contacting ready-to-eat food with bare hands;
 - c. Includes specifications and practices that ensure:
 1. Salmonella enteritidis growth is controlled before and after cooking; and
 2. Salmonella enteritidis is destroyed by cooking the eggs according to the temperature and time specified in He-P 2304.05 (a)(2);
 - d. Contains the information specified under a HACCP plan including procedures that:
 1. Control cross contamination of ready-to-eat food with raw eggs; and
 2. Delineate cleaning and sanitization procedures for food-contact surfaces; and
 - e. Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.20 Parasite Destruction.

(a) Before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

- (1) -20°C, -4°F, or below for 168 hours, 7 days, in a freezer; or
- (2) -35°C, -31°F, or below for 15 hours in a blast freezer.

(b) Records of freezing temperatures and time to which the fish are subjected shall be recorded and records shall be retained for 90 calendar days beyond the time of service or sale of the fish.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.21 Non-dairy Creaming, Whitening, or Whipping Agents. Non-dairy creaming, whitening, or whipping agents reconstituted on the premises shall be stored in sanitized, covered containers not exceeding one gallon in capacity and cooled to 5°C, 41°F, or below within 4 hours after preparation.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.22 Frozen Foods. Frozen foods shall be kept frozen until cooked or thawed as provided under He-P 2304.27.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.23 Refrigeration and Hot Food Facilities to Maintain Product Temperature. Refrigeration and hot food facilities shall be provided to assure the maintenance of all potentially hazardous food at required temperatures during storage, preparation, display, service and transportation.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.24 Cooling, Heating and Holding Capacities.

(a) Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity, based upon the amount and type of food, to provide food temperatures as specified under He-P 2304.04 through He-P 2304.15.

(b) Cooling systems which use outside air to cool walk-ins shall be acceptable provided that:

- (1) The regulatory authority is notified prior to installation;
- (2) The air intake is located where it will not receive exhaust from idling vehicles, restrooms, hoods or any toxic fumes;
- (3) Air filters are used; and
- (4) The walk-in compressor automatically starts when the outside air is unable to cool the walk-in to 5°C, 41°F.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.25 Temperature Measuring Devices.

(a) The licensee shall provide and make readily accessible food temperature measuring devices for use in assuring attainment and maintenance of food temperatures as specified under He-P 2304.04 through He-P 2304.15.

(b) When thin mass foods including but not limited to meat patties and fish filets are provided by the establishment, a temperature measuring device with a small-diameter probe that is designed to measure the temperature of these thin masses shall be provided and readily accessible to accurately measure the temperature in these foods.

(c) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(d) Except as specified in (e) below, cold or hot holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(e) The requirements of (d) above shall not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of design, type, and use of the equipment, including but not limited to heat lamps, cold plates, steam tables, insulated food transport containers, and salad

bars.

- (f) Temperature measuring devices shall be designed to be easily readable.
- (g) Food temperature measuring devices and water temperature measuring devices on dishwashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 1°C or 2°F in the intended range of use.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.26 Accuracy of Ambient Temperature Measuring Devices.

- (a) Ambient air and water temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to +/-1.5°C, 2.7°F, in the intended range of use.
- (b) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to +/-3°F in the intended range of use.
- (c) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to +/- 1°C, 1.8°F, in the intended range of use.
- (d) Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to +/-2°F in the intended range of use.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.27 Potentially Hazardous Foods Properly Thawed. Potentially hazardous food shall be thawed:

- (a) By keeping it under refrigeration that maintains the food temperature at 5°C, 41°F, or below;
- (b) By completely submerging it under running water:
 - (1) At a water temperature of 21°C, 70°F, or below;
 - (2) With sufficient water velocity to agitate and float off loose particles in an overflow;
 - (3) For a period of time that does not allow thawed portions of ready-to-eat food to rise above 5°C, 41°F; and
 - (4) For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified in He-P 2304.05 (a)(1) through (4) to be above 5°C, 41°F, for more than 4 hours including:
 - a. The time the food is exposed to the running water; and
 - b. The time needed for preparation for cooking or the time it takes under refrigeration to lower the food temperature to 5°C, 41°F.
- (c) As part of a cooking process if the frozen food is:
 - (1) Cooked as specified in He-P 2304.05(a)(1) through (4); or
 - (2) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process.
- (d) Using any procedure that thaws a portion of frozen ready-to-eat food that is prepared for immediate service in response to an individual consumer's order.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.28 Potentially Hazardous Food, Slacking. Frozen potentially hazardous food that is slacked, which is the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23°C, -10°F, to -4°C, 25°F, in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously

block-frozen food including but not limited to spinach, shall be held:

- (a) Under refrigeration that maintains the food temperature at 5°C, 41°F, or less;
- (b) Under refrigeration that maintains the food temperature at 7°C, 45°F, or less, as specified under He-P 2304.15; or
- (c) At any temperature if the food remains frozen.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.29 Returned Food, Reservice or Sale.

(a) Except as specified under (b) below, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer shall not be offered as food for human consumption.

(b) Except as specified under He-P 2304.30, a container of food that is not potentially hazardous shall only be transferred from one consumer to another if:

- (1) The food is dispensed so that it is protected from contamination and the container is closed between uses, including but not limited to a narrow-neck bottle containing catsup, steak sauce, or wine; or
- (2) The food, including but not limited to crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.30 Reservice, Prohibited for Certain Populations. Food, in an unopened original package, shall not be reserved in a food service establishment that serves highly susceptible populations.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.31 Packaged and Unpackaged Food: Separation, Packaging and Segregation.

(a) Food shall be protected from cross contamination by:

(1) Separating raw animal foods during storage, preparation, holding, and display from:

- a. Raw ready-to-eat food including other raw animal food, including but not limited to, fish for sushi, molluscan shellfish, or other raw ready-to-eat food such as vegetables; and
- b. Cooked ready-to-eat food;

(2) Separating types of raw animal foods from each other, including but not limited to, beef, fish, lamb, pork, and poultry during storage, preparation, holding and display, except when combined as ingredients, by:

- a. Using separate equipment for each type of food;
- b. Arranging each type of food in equipment so that cross contamination of one type with another is prevented; or
- c. Preparing each type of food at different times or in separate areas;

(3) Cleaning and sanitizing equipment and utensils as specified under He-P 2310.03;

(4) Except as specified in (b) below, storing the food in packages, containers, or wrappings;

(5) Cleaning hermetically sealed food containers of visible soil before opening;

(6) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(7) Storing damaged, spoiled or recalled food being held in the establishment in designated areas and segregated

from other food, equipment, utensils, linens, and single-service and single use articles; and

(8) Separating fruits and vegetables, before they are washed as specified under He-P 2304.35 from ready-to-eat food.

(b) The requirements of (a)(4) above shall not apply to:

(1) Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;

(2) Primal cuts, which are basic major cuts, including, but not limited to beef round, pork loin, lamb flank, or veal breast, that are hung on clean, sanitized hooks or placed on clean, sanitized racks;

(3) Quarters, or sides of raw meat or slab bacon, that are hung on clean, sanitized hooks or placed on clean, sanitized racks;

(4) Whole, uncut, processed meats including but not limited to country hams, and smoked or cured sausages that are placed on clean, sanitized racks;

(5) Food being cooled as specified under He-P 2304.14(b)(2); and

(6) Shellstock.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.32 Consumer Self-Service Operations.

(a) Unpackaged, raw animal food, including but not limited to beef, lamb, pork, poultry, frozen shrimp and fish shall not be offered for consumer self-service, except for :

(1) Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods, including but not limited to sushi or raw shellfish; or

(2) Ready-to-cook individual portions for immediate cooking and consumption on the premises including but not limited to consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue.

(b) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

(c) Consumer self-service operations including but not limited to buffets and salad bars shall be monitored by employees trained in food safety procedures.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.33 Food Contact with Equipment and Utensils. Food shall only contact surfaces of utensils and equipment that are cleaned as specified under He-P 2310 of these rules.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.34 Preventing Contamination When Tasting Food. A food employee shall not use a utensil more than once to taste food that is to be sold or served.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.35 Washing of Raw Fruits and Raw Vegetables. Except for raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and raw vegetables shall be thoroughly washed in a food preparation sink with potable water before being cooked or served.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.36 Food Protection From Contamination. Food shall be protected from potential contamination, including but not limited to dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding,

drainage, and overhead leakage or overhead drippage from condensation at all times including while being:

- (a) Stored;
- (b) Prepared;
- (c) Displayed;
- (d) Served; or
- (e) Transported.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.37 Transportation of Food and Food Utensils.

(a) During transportation, food and food utensils shall be kept in covered containers or completely wrapped so as to be protected from contamination.

(b) Foods in original individual packages shall not be required to be overwrapped or covered if the original package has not been torn or broken.

(c) During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of these rules relating to food protection and food storage.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.38 Food on Display. Food on display shall be protected from contamination by the use of:

- (a) Packaging;
- (b) Counter, service line or salad bar food guards;
- (c) Enclosed display cases; or
- (d) Other means which protect food from contamination.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.39 Using Clean Tableware for Second Portions and Refills.

(a) Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees shall not use tableware and single-service articles soiled by the consumer to provide second portions or refills.

(b) Except as specified in (c) below, self-service consumers shall not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.

(c) Self-service consumers shall be allowed to reuse cups and glasses if refilling is a contamination-free process, as specified under He-P 2306.28(a) and (b).

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.40 Refilling Returnables. A take-home food container returned to a food service establishment or retail food store shall not be refilled with a potentially hazardous food.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.41 Storage of Food and Containers.

- (a) Containers of food shall be stored either:

(1) A minimum of 6 inches, 15 cm, above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area; or

(2) On dollies, racks or pallets, provided that equipment can be moved.

(b) Food and containers of food shall not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads required by law.

(c) Food shall not be stored in toilet rooms, dressing rooms, locker rooms, garbage rooms, in mechanical rooms or vestibules.

- [Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.42 Ice as a Cooling Medium. Ice shall not be used as food after use as a medium for cooling:

(a) The exterior surfaces of food, including but not limited to melons and fish;

(b) Packaged foods such as canned beverages; or

(c) Cooling coils and tubes of equipment.

- [Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.43 Storage or Display of Food in Contact with Water or Ice.

- (a) Packaged food shall not be stored in direct contact with ice or water if the food is subject to the entry of water because of:

(1) The nature of its packaging, wrapping, or container; or

(2) Its positioning in the ice or water.

(b) Unpackaged food shall only be stored in direct contact with drained ice, except for immersion of:

(1) Whole, raw fruits or vegetables;

(2) Cut, raw vegetables, including but not limited to celery, carrot sticks and cut potatoes;

(3) Tofu in ice or water; or

(4) Raw chicken and raw fish that are received immersed in ice in shipping containers and that remain in that condition while in storage awaiting preparation, display, service or sale.

- [Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.44 Service of Cream, Half and Half, Non-dairy Creaming or Whitening Agents.

Cream, half and half, non-dairy creaming or whitening agents shall be provided in an individual service container, covered pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

- [Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.45 Service of Condiments, Sugar, Seasonings and Dressings.

(a) Condiments, seasonings and dressings for self-service use shall be provided in individual packages, from dispensers, or from containers protected in accordance with He-P 2304.36.

(b) Except for catsup and other sauces served in the original container or pour-type dispenser, condiments provided for table or counter service shall be individually portioned.

(c) Sugar for consumer usage shall be provided in individual packages or in pour-type dispensers.

- [Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.46 Single-Use Gloves, Used for One Purpose and Discarded. If used, single-use gloves shall be:

- (a) Worn for only one task, including but not limited to working with ready-to-eat food or with raw animal food, and then discarded;
- (b) Discarded if damaged or soiled, or when interruptions occur in the operation; and
- (c) Used in conjunction with the requirements of He-P 2305.06 (c).

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.47 Utensils, Consumer Self-Service. A food dispensing utensil shall be available for each container displayed at a consumer self-service unit, including but not limited to a buffet or salad bar.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.48 Ice for Consumers. Ice for consumer use shall be dispensed by:

- (a) Employees with scoops, tongs, or other ice dispensing utensils; or
- (b) Through automatic self-service, ice dispensing equipment.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2304.49 In-Use Utensils, Between-Use Storage. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

- (a) Except as specified under (d)(1) below, in the food with their handles above the top of the food and the container;
- (b) On a clean portion of the food preparation table or cooking equipment which is cleaned and sanitized at a frequency specified under He-P 2310.03 (e);
- (c) In running water of sufficient velocity to flush particulates to the drain, if used with moist food including but not limited to ice cream or mashed potatoes; or
- (d) When the food is not potentially hazardous:
 - (1) With their handles above the top of the food within containers or equipment that can be closed, including but not limited to bins of sugar, flour, or cinnamon; or
 - (2) In a clean, protected location.

Source. #7893, eff 5-21-03

PART He-P 2305 PERSONNEL

He-P 2305.01 Responsibility of the Person in Charge to Require Reporting of a Diagnosis or Symptoms Suggestive of Foodborne Illness by Food Employees and Applicants.

- (a) The license holder shall ensure that a person in charge is present at the food service establishment or retail food store during all hours of operation.
- (b) The person in charge shall require food employees and food employee applicants to whom a conditional offer of employment is made to report information about their health and activities, as they relate to diseases that are transmissible through food, in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission if the food employee or food employee applicant:
 - (1) Is diagnosed with an illness due to:
 - a. Any *Salmonella* species;

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- (1) Is diagnosed with an illness due to:

- a. Any *Salmonella* species;

- b. Any *Shigella* species;
 - c. Shiga toxin-producing *Escherichia coli*;
 - d. Hepatitis A virus infection;
 - e. Amebiasis;
 - f. Campylobacteriosis;
 - g. Cryptosporidiosis; or
 - h. Yersiniosis.
- (2) Has a symptom caused by illness, infection, or other source that is:
- a. Associated with an acute gastrointestinal illness, including but not limited to diarrhea, fever, vomiting, or jaundice;
 - b. Sore throat with fever; or
 - c. A lesion containing pus, including but not limited to a boil or infected wound that is open or draining and is:
 - 1. On the hands or wrists, unless an impermeable cover such as finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;
 - 2. On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or
 - 3. On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;
- (3) Had a past illness from an infectious agent specified in (b)(1) above; or
- (4) Meets one or more of the following high-risk conditions:
- a. Is suspected of causing, or being exposed to a confirmed disease outbreak caused by *Salmonella* species, *Shigella* species, Shiga toxin-producing *E.coli* or hepatitis A virus illness including an outbreak at an event including but not limited to a family meal, church supper, or ethnic festival because the food employee or applicant:
 - 1. Prepared food implicated in the outbreak;
 - 2. Consumed food implicated in the outbreak; or
 - 3. Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent;
 - b. Lives in the same household as, and has knowledge about, a person who is diagnosed with a disease caused by *Salmonella* species, *Shigella* species, Shiga toxin-producing *E. coli* , or hepatitis A virus infection;
 - c. Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by *Salmonella* species, *Shigella* species, Shiga toxin-producing *E.coli*, or hepatitis A virus infection;
 - d. Traveled out of the United States or to a United States territory within the last 50 calendar days to an area that is identified as having epidemic or endemic disease caused by hepatitis A based on information published by the Centers for Disease Control and Prevention, including but not limited to the document titled Health Information for International Travel; or
 - e. Traveled out of the United States or to a United States territory within the last 7 calendar days to an area that is identified as having epidemic or endemic disease caused by *Salmonella* species, *Shigella* species or

Shiga toxin-producing *E. coli*.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2305.02 Exclusions and Restrictions.

(a) “Restrict” within this section, means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.

(b) A food employee shall be excluded from a food service establishment or retail food store if diagnosed with an infectious agent specified in He-P 2305.01(b)(1) until the provisions of He-P 301.05 are met and the person excluded provides to the license holder written medical documentation from a physician licensed to practice medicine that specifies that the excluded person is able to work in an unrestricted capacity in a food service establishment or retail food store.

(c) A food employee shall be restricted from working with exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles until the food employee is no longer experiencing a symptom specified in He-P 2305.01(b)(2) but has a stool specimen that yields a specimen culture that is positive for an infectious agent specified in He-P 2305.01(b)(1).

(d) If the population served is a highly susceptible population, a food employee shall be excluded if the employee:

- (1) Is experiencing a symptom of acute gastrointestinal illness specified under He-P 2305.01 (b)(2) and meets a high-risk condition specified under He-P 2305.01 (b)(4)a 1-3;
- (2) Is not experiencing a symptom of acute gastrointestinal illness specified under He-P 2305.01 (b)(2) but has a stool that yields a specimen culture that is positive for *S. Typhi*, *Shigella* species, or Shiga Toxin-producing *Escherichia coli*;
- (3) Had a past illness from *S. Typhi* within the last 3 months; or
- (4) Had a past illness from *Shigella* species, or Shiga Toxin-producing *Escherichia coli* within the last month.

(e) For a food employee who is jaundiced:

- (1) Exclude the food employee from the food establishment if the onset of jaundice occurred within the last 7 calendar days;
- (2) Exclude the food employee from a food establishment that serves a highly susceptible population if the onset of jaundice occurred more than 7 calendar days before; or
- (3) Restrict the food employee from activities specified in (b) above if the food establishment does not serve a highly susceptible population and if the onset of jaundice occurred more than 7 calendar days before.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2305.03 Suspected or Confirmed Foodborne Disease Outbreaks.

(a) During a suspect or confirmed foodborne disease outbreak, as determined by the department, all food employees in the implicated establishment shall submit biological specimens as required under RSA 141-C:9.

(b) During a suspect or confirmed foodborne disease outbreak, as determined by the department, any food employee who has had any of the symptoms specified in He-P 2305.01 (b)(2) within the previous 2 weeks shall be excluded from work until the appropriate biological specimens requested by the department under RSA 141-C:9 are submitted and found negative.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2305.04 Reporting by the Person in Charge. The person in charge shall notify the department’s bureau of communicable disease control 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 due to any foodborne disease that is reportable under He-P 301.02.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2305.05 Person in Charge. The person in charge shall ensure that:

- (a) Food establishment operations are not conducted in a room used as living or sleeping quarters;
- (b) Except for brief visits and tours authorized by the person in charge where steps are taken to ensure that exposed food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles are protected from contamination, persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or dishwashing areas;
- (c) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and dishwashing areas comply with these rules;
- (d) Employees are effectively cleaning their hands, by routinely monitoring the employees' hand washing;
- (e) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;
- (f) Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as but not limited to eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under He-P 2304.26;
- (g) Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within 4 hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;
- (h) Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under He-P 2304.03 that the food is not cooked sufficiently to ensure its safety;
- (i) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;
- (j) Consumers are notified that clean tableware is to be used when they return to self-service areas such as but not limited to salad bars and buffets as specified under He-P 2304.39;
- (k) Except when otherwise approved as specified in He-P 2305.07(a), employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as but not limited to deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment; and
- (l) Employees are properly trained in food safety as it relates to their assigned duties.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2305.06 Personal Cleanliness.

- (a) Employees shall keep their hands and exposed portions of their arms, or prosthetic devices for hands or arms, clean.
- (b) Employees shall clean their hands and exposed portions of their arms, or prosthetic devices for hands or arms, with a cleaning compound in a handwashing sink that is equipped as specified under He-P 2314.03(a)(2).
- (c) Except those employees with prosthetic devices, the cleaning shall consist of vigorously rubbing together the surfaces of their lathered hands, including the areas underneath the fingernails and between the fingers, and arms for at least 20 seconds and thoroughly rinsing with clean, warm water.
- (d) Employees shall clean their hands and exposed portions of their arms, or prosthetic devices for hands or arms, as specified in (b) above:

- (1) Before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles;
- (2) After touching bare human body parts other than clean hands and clean, exposed portions of arms;
- (3) After using the toilet room;
- (4) After caring for or handling service animals or aquatic animals;
- (5) Except as specified in He-P 2305.08 (b), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating or drinking;
- (6) After handling soiled equipment or utensils;
- (7) During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
- (8) When switching between working with raw foods and working with ready-to-eat foods;
- (9) Before donning gloves for working with food; and
- (10) After engaging in any other activity that contaminates the hands.

(e) Employees shall:

- (1) Clean their hands in a handwashing sink; and
- (2) Not clean their hands in a:
 - a. Sink used for food preparation;
 - b. Three-compartment sink used for dishwashing; or
 - c. Service sink or curbed cleaning facility used for the disposal of mop water and similar liquid waste.

(f) A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall not be used in lieu of handwashing, as required by this section.

(g) Employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are smooth and cleanable and not rough.

(h) While preparing food, employees shall not wear jewelry, including medical information jewelry, on their arms and hands except for a plain wedding band.

(i) Unless wearing intact gloves in good repair, a food employee shall not wear fingernail polish or artificial fingernails when working with exposed food.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2305.07 Preventing Contamination from Hands.

(a) Except when washing fruits and vegetables as specified under He-P 2304.35, food employees shall not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils including but not limited to deli tissue, spatulas, tongs, single-use gloves or dispensing equipment.

(b) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2305.08 Hygienic Practices.

(a) An employee shall not eat, drink, or use any form of tobacco except in designated areas which are protected against

causing contamination of:

- (1) Exposed food;
- (2) Clean equipment;
- (3) Utensils;
- (4) Linens; or
- (5) Unwrapped single-service and single-use articles.

(b) A food employee may drink from a closed beverage container if the container is handled so as to prevent contamination of:

- (1) The employee's hands;
- (2) The container;
- (3) Exposed food;
- (4) Clean equipment;
- (5) Utensils;
- (6) Linens; and
- (7) Unwrapped single-service and single-use articles.

(c) Utensil washing, equipment-washing or food preparation sinks shall not be used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2305.09 Clean Clothes; Hair Restraints.

(a) Food employees shall wear clean outer clothing.

(b) When moving from a raw food operation to a ready-to-eat operation, food employees shall wear a clean outer covering or change to clean clothing if their clothing is soiled.

(c) Employees working with exposed food, clean equipment, utensils, linens, or unwrapped single-service and single-use articles shall wear hair restraints, including but not limited to hats or hair nets.

(d) Food employees shall remove aprons when using the restroom.

[Source.](#) #7893, eff 5-21-03

PART He-P 2306 FOOD EQUIPMENT AND UTENSILS: FOOD CONTACT SURFACES, CONDITION AND USAGE

He-P 2306.01 Equipment to Meet Standards. All food equipment shall be certified or classified for sanitation for the intended use by an American National Standards Institute (ANSI) accredited certification program.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.02 Characteristics of Multiuse Materials. Materials used in the construction of utensils and food contact surfaces of equipment shall:

- (a) Not allow the migration of deleterious substances;
- (b) Not impart colors, odors, or tastes to food; and
- (c) Be:

- (1) Safe;
- (2) Durable, corrosion-resistant, and nonabsorbent;
- (3) Sufficient in weight and thickness to withstand repeated dishwashing;
- (4) Finished to have a smooth, easily cleanable surface; and
- (5) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.03 Good Repair and Proper Adjustment.

(a) Equipment shall be maintained in a state of repair and condition that meets the requirements specified in He-P 2306 and He-P 2307.

(b) Equipment components, including but not limited to doors, seals, hinges, fasteners and kick plates, shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

(c) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.04 Multiuse Food Contact Surfaces. Multiuse food-contact surfaces shall be:

- (a) Smooth;
- (b) Free of breaks, open seams, cracks, chips, pits, and similar imperfections;
- (c) Free of sharp internal angles, corners, and crevices;
- (d) Finished to have smooth welds and joints; and
- (e) Accessible for cleaning and inspection by one of the following methods:
 - (1) Without being disassembled;
 - (2) By disassembling without the use of tools; or
 - (3) By easy disassembling with the use of hand-held tools commonly available to maintenance and cleaning personnel, including but not limited to screwdrivers, pliers, open-end wrenches, and allen wrenches.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.05 Single-Service Articles. Single-service articles shall be made from clean, sanitary, food grade materials.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.06 CIP Equipment.

- (a) CIP equipment shall meet the characteristics specified under He-P 2306.02.
- (b) CIP equipment shall be designed and constructed so that:
 - (1) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces; and
 - (2) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions.
- (c) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points

to assure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.07 New or Remodeled Walk-in Refrigerators and Freezers.

- (a) New or remodeled walk-in refrigerators and freezers shall not contain interior wood surfaces.
- (b) Upon change of ownership, all existing walk-in refrigerators and freezers shall not contain interior wood surfaces.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.08 Limitation on Use of Wood.

(a) Except for the following hard maple or an equivalently hard, close-grained, nonabsorbent wood, wood and wood wicker shall not be used as a food-contact surface:

- (1) Cutting boards;
- (2) Cutting blocks;
- (3) Bakers' tables;
- (4) Utensils, including but not limited to rolling pins, doughnut dowels, salad bowls, and chopsticks; and
- (5) Paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110°C, 230°F or above.

(b) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received until used.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.09 Limitation on Use of Cast Iron. Cast iron shall not be used for utensils or food-contact surfaces of equipment except as:

- (a) A surface for cooking; or
- (b) In utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.10 Limitation on Use of Lead in Solder and Flux. Solder and flux containing lead in excess of 0.2% shall not be used on surfaces that contact food.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.11 Limitation on Use of Lead in Ceramic, China, and Crystal Utensils. Ceramic, china, crystal utensils, and decorative utensils, including but not limited to hand painted ceramic or china that are used in contact with food, shall be lead-free or contain levels of lead not exceeding the limits of the utensil categories specified in Table 2.6.1, below:

Table 2.6.1 Maximum Lead Limits Allowed in Certain Utensil Categories

| <u>Utensil Category</u> | <u>Description</u> | <u>Maximum Lead (mg/L)</u> |
|-------------------------|----------------------|----------------------------|
| Hot Beverage Mugs | Coffee Mugs | 0.5 |
| Large Hollowware | Bowls>1.1L (1.16 QT) | 1 |
| Small Hollowware | Bowls<1.1L (1.16 QT) | 2.0 |
| Flat Utensils | Plates, Saucers | 3.0 |

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.12 Limitation on Use of Copper, Copper Alloys and Brass. Copper, copper alloys, and brass shall not be used:

- (a) In contact with a food that has a pH below 6, including but not limited to vinegar, fruit juice or wine; or
- (b) For a fitting or tubing installed between a backflow prevention device and a carbonator.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.13 Limitation on Use of Galvanized Metal. Galvanized metal shall not be used for utensils or food-contact surfaces of equipment used in contact with an acidic foods, including but not limited to vinegar, fruit juice, or wine.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.14 Limitation on Use of Linens, Napkins, and Sponges.

- (a) Linens and napkins shall not be used in contact with food except:
 - (1) To line containers used for the service of foods if the linens and napkins are replaced with clean ones each time the container is refilled for a new customer; and
 - (2) When cloth gloves are used in direct contact with food that is subsequently cooked.
- (b) Sponges shall not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.15 Limitation on Use of Lead in Pewter Alloys. Pewter alloys containing lead in excess of 0.05% shall not be used as a food-contact surface.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.16 Use of Mollusk and Crustacea Shells. Mollusk and crustacea shells shall be used only once as a serving container.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.17 Molluscan Shellfish Tanks. Molluscan shellfish life support system display tanks shall:

- (a) Only be used to display shellfish that are not offered for human consumption; and
- (b) Be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.18 Fixed Equipment. Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.19 Location of Equipment. Equipment, including but not limited to ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines or water lines, open stairwells, or other sources of contamination, except for automatic fire protection sprinkler heads required by law.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.20 Slash-Resistant Gloves, Use Limitation. Slash-resistant gloves used to protect hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified in He-P 2304.05 through He-P 2304.10, including but not limited to frozen food and prime cuts of meat.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.21 Limitation on Use of “V” Threads. “V” type threads in connectors on equipment shall not be used on food-contact surfaces, except for hot oil cooking or filtering equipment.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.22 Hot Oil Filtering Equipment. Hot oil filtering equipment shall:

- (a) Meet the characteristics specified under He-P 2306.02 or He-P 2306.04; and
- (b) Be readily accessible for filter replacement and cleaning of the filter.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.23 Can Openers. Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.24 Food Temperature Measuring Devices. Except for thermometers with glass sensors or stems encased in a shatterproof coating, including but not limited to a candy thermometer, food temperature measuring devices shall not have sensors or stems constructed of glass.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.25 Equipment Containing Bearings and Gears. Equipment containing bearings and gears requiring other than food grade lubricants shall be designed and constructed so that the lubricant cannot leak, drip or be forced into food or onto food-contact surfaces. Only food grade lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.26 Beverage Tubing, Separation. Beverage tubing and cold-plate beverage cooling devices shall not be installed in contact with stored ice which is to be used for consumption.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.27 Ice Units, Separation of Drains. Liquid waste drain lines shall not pass through an ice machine or ice storage bin.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.28 Dispensing Equipment, Protection of Equipment and Food. In equipment that dispenses or vends liquid food or ice in unpackaged form:

- (a) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed so that drips from condensation and splash are diverted from the opening of the container receiving the food;
- (b) The delivery tube, chute, and orifice shall be protected from manual contact by being recessed or by some equally effective design approved by the department;
- (c) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:
 - (1) Located in an area outside the confines of a licensed food service establishment or retail food store which otherwise afford protection against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment, or
 - (2) Available for self-service during hours when it is not under the full-time supervision of an employee; and

(d) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.29 Can Openers on Vending Machines. Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2306.30 Exceptions to Equipment Requirements.

(a) Equipment installed in a given food service establishment or retail food store as of March 27, 1998 which does not meet fully all of the design and fabrication requirements of these rules shall be deemed acceptable in that same establishment as long as:

- (1) There is no change of ownership;
- (2) The equipment is in good repair;
- (3) The equipment is able to be maintained in a sanitary condition; and
- (4) The food-contact surfaces are non-toxic.

(b) Upon change of ownership of any food service establishment or retail food store governed by (a) above, all equipment shall meet the requirements of these rules.

(c) If (a)(2), (3) or (4) above cannot be complied with, the license holder shall immediately remedy the non-compliance, or enter into a compliance agreement under He-P 2302.31 which shall state when the non-compliance will be remedied.

(d) All equipment installed after March 27, 1998 shall meet the provisions of this section.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2307 FOOD EQUIPMENT AND UTENSILS: NON-FOOD CONTACT SURFACES

He-P 2307.01 Non-Food Contact Surfaces. Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be:

- (a) Designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning; and
- (b) Constructed of such material and in such repair as to be easily maintained in a clean and sanitary condition.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2307.02 Fixed Equipment, Spacing or Sealing.

(a) A unit of equipment that is fixed because it is not easily movable shall be installed so that it is:

- (1) Spaced to allow access for cleaning along the sides, behind, and above the unit;
- (2) Spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter or one thirty-second inch; or
- (3) Sealed to adjoining equipment or walls, if the unit is exposed to spillage or seepage.

(b) Table-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

- (1) Sealed to the table; or

(2) Elevated on legs as specified under He-P 2307.03 (d).

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2307.03 Fixed Equipment, Elevation or Sealing.

(a) Except as specified in (b) and (c) below, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least 15 centimeters, 6 inches, clearance between the floor and the equipment.

(b) If no part of the floor under the floor-mounted equipment is more than 15 centimeters, 6 inches, from the point of cleaning access, the clearance space shall be not less than 10 centimeters, 4 inches.

(c) This section shall not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained in a clean condition.

(d) Table-mounted equipment that is not easily movable shall be elevated on legs that provide at least 10 centimeters, 4 inches, clearance between the table and equipment, except that:

(1) It shall be acceptable for the clearance space between the table and table-mounted equipment to be not less than 7.5 centimeters, 3 inches, if the horizontal distance of the table top under the equipment is no more than 50 centimeters, 20 inches, from the point of access for cleaning; and

(2) It shall be acceptable for the clearance space between the table and table-mounted equipment to be not less than 5 centimeters, 2 inches, if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters, 3 inches, from the point of access for cleaning.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2307.04 Aisles and Working Spaces.

(a) Aisles and working spaces between units of equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(b) All easily movable storage equipment, including but not limited to pallets, racks and dollies, shall be positioned to provide accessibility to working areas.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2307.05 Kick Plates, Removable. Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2307.06 Vending Machines, Vending Stage Closure. The dispensing compartment of vending machines that serve potentially hazardous food shall be equipped with a self-closing door or cover if the machines are:

(a) Located in an area that is outside the confines of a licensed food establishment or retail food store which otherwise afford protection against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(b) Available for self-service during hours when it is not under the full-time supervision of a food employee.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2307.07 Vending Machines, Liquid Waste Products.

(a) Vending machines designed to store beverages which are potentially hazardous food packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(b) Vending machines that dispense liquid potentially hazardous food in bulk shall be:

- (1) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and
- (2) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(c) Shutoff devices specified in (b)(2) above, shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2307.08 Vending Machine Doors and Openings.

(a) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or one-sixteenth inch.

(b) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2307.09 Equipment Compartments, Drainage. Equipment compartments that are subject to conditions inviting accumulation of moisture, including but not limited to condensation, food or beverage drip, or water from melting ice, shall be sloped to an outlet that allows complete draining.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2307.10 Sinks and Drain Boards Self-Draining. Sinks and drain boards shall be self-draining.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2308 DISHWASHING EQUIPMENT REQUIREMENTS

He-P 2308.01 Manual Dishwashing, Sink Compartment Requirements.

(a) A sink with at least 3 compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils unless a waiver is granted under He-P 2302.27 for a sink with fewer than 3 compartments.

(b) When a waiver is issued, as allowed by (a) above, it shall:

- (1) Limit the number of kitchenware items cleaned and sanitized in the sink;
- (2) Limit dishwashing to batch operations for cleaning kitchenware; and
- (3) Require the operator to:
 - a. Make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use; and
 - b. Implement one of the following:
 1. Apply the sanitizer in accordance with the manufacturer's label instructions; or
 2. Use a hot water sanitization immersion step.

(c) A sink with fewer than 3 compartments shall not be used for dishwashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing dishwashing process.

(d) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils.

(e) If equipment or utensils are too large for the dishwashing sink, a dishwashing machine or the following alternative manual dishwashing equipment shall be used:

- (1) High-pressure detergent sprayers;
- (2) Low- pressure or line-pressure spray detergent foamers;
- (3) Other task-specific cleaning equipment;
- (4) Brushes or other implements; or
- (5) Two-compartment sinks if a waiver is granted as per (a) above and per He-P 2302.27.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.02 Manual Dishwashing Equipment: Wash Solution Temperature. The temperature of the wash solution used in manual dishwashing equipment shall be maintained at not less than 43°C, 110°F, unless a different temperature is specified on the cleaning agent manufacturer's label instructions.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.03 Manual Dishwashing; Washing, Rinsing and Sanitizing. Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing and sanitizing shall be conducted in the following sequence:

- (a) Sinks shall be cleaned prior to use;
- (b) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean;
- (c) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment; and
- (d) Equipment and utensils shall be sanitized in the third compartment.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.04 Dishwashing Sinks, Alternative Uses. Food service establishments and retail food stores that use only single-service equipment and utensils and that use the sanitizing sink of the 3 compartment dishwashing sink to wash produce or thaw food shall clean and sanitize the sink and the adjacent drainboard before and after each time it is used to wash produce or thaw food, provided that the sink compartment is plumbed as required by He-P 2313.02 (c) and (e).

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.05 Dishwashing Machines.

- (a) Equipment and utensils shall be cleaned and sanitized by:
 - (1) Spray-type or immersion dishwashing machines; or
 - (2) By any other type of machine or device that thoroughly cleans and sanitizes.
- (b) Dishwashing machines and devices shall be properly installed and maintained in good repair.
- (c) Dishwashing machines and devices shall:
 - (1) Be operated in accordance with manufacturers' instructions; and
 - (2) Utensils and equipment placed in the machine or device shall be exposed to all dishwashing cycles.

(d) Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors shall be properly installed and maintained.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.06 Dishwashing Machine, Data Plate Operating Specifications. A dishwashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

(a) Temperatures required for washing, rinsing, and sanitizing;

(b) Pressure required for the fresh water sanitizing rinse, unless the machine is designed to use only a pumped sanitizing rinse; and

(c) Conveyor speed and timing for conveyor machines or cycle time for stationary rack machines.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.07 Conveyors. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.08 Rinse Water Tanks. Rinse water tanks shall be protected by baffles, curtains, or other effective means to minimize the entry of wash water into the rinse water.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.09 Mechanical Dishwashing Equipment, Sanitization Pressure.

(a) The flow pressure of the fresh hot water sanitizing rinse in a dishwashing machine shall be not less than 100 kilopascals, 15 pounds per square inch, or more than 170 kilopascals, 25 pounds per square inch, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.

(b) A 1/4 inch, Iron Pipe Size (IPS) valve shall be provided immediately upstream from the final rinse control valve on all spray-type dishwashing machines to permit checking the flow pressure of the final rinse water.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.10 Drainboards.

(a) All food service establishments and retail food stores shall be equipped with drainboards for the purpose of holding soiled utensils prior to washing and air-drying cleaned utensils following sanitization.

(b) A drainboard shall be:

(1) Located on the exterior of each of the outer compartments of a 3-compartment sink, or a 2-compartment sink if a variance is granted per He-P 2308.01(a) and He-P 2302.27, for the purpose of holding soiled utensils prior to washing and air-drying cleaned utensils following sanitization;

(2) Equivalent in size to the length and width of the compartment on which it rests; and

(3) Constructed so as not to interfere with the use of the dishwashing facilities.

(c) The use of easily moveable dish tables for the storage of soiled utensils or clean utensils following sanitization shall be permitted.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.11 Manual Dishwashing Equipment, Heaters and Baskets. If hot water is used for sanitization in manual dishwashing operations, the sanitizing compartment of the sink shall be:

(a) Designed with an integral heating device capable of maintaining water at a temperature not less than 77°C, 171°F; and

(b) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2308.12 Temperature Measuring Devices in Dishwashing.

(a) Machine or water line mounted numerically scaled indicating thermometers, accurate to +/-1.5°C. 2.7°F, shall be provided for all mechanical dishwashers to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(b) In manual dishwashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03; ss by #8368, eff 6-4-05

He-P 2308.13 Chemical Sanitization. When chemicals are used for sanitization:

(a) The licensee shall have available and use, whenever operating the dishmachine, a test kit or other device that accurately measures the parts per million concentration of the sanitizing agent; and

(b) The concentration shall not exceed that permitted under He-P 2310.03 (a) (2)-(4), unless specified in the manufacturer's specifications.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2309 SINGLE SERVICE ARTICLES

He-P 2309.01 Single-Service Articles Stored and Dispensed.

(a) Single-service articles shall be:

(1) Stored at least 6 inches, 15 cm, above the floor in closed cartons or containers which protect them from splash, dust or other contamination; and

(2) Not placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads.

(b) Single-service articles shall be handled and dispensed in a manner that prevents contamination of surfaces which might come in contact with food or with the mouth of the user.

(c) Single-service knives, forks and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed his hands immediately prior to sorting or wrapping the utensils, except as provided in (d) below.

(d) If single-service knives, forks and spoons are not pre-wrapped or pre-packaged, holders which present the handle of the utensil to the consumer shall be provided.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2309.02 Single Service Articles, Usage. Single service and single use articles shall not be reused.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2310 CLEANLINESS OF FOOD EQUIPMENT AND UTENSILS

He-P 2310.01 Equipment and Utensils Pre-Flushed and Scraped.

(a) If the dishwashing machine operation does not include a pre-wash cycle, equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove food debris prior to being washed.

(b) Equipment and utensils shall be placed in racks, trays, baskets, or on conveyors which permit free draining so that food contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2310.02 Food Equipment and Utensils Wash and Rinse Water.

(a) Food equipment and utensil wash water and rinse water shall be kept clean.

(b) Food equipment and utensil wash water and rinse water shall meet the temperature requirements of He-P 2310.03 (b) and (c).

(c) Concentrations of washing detergent shall be maintained in the wash water according to the manufacturer's recommendations.

Source. #2802, eff 8-8-84; EXPIRED 8-8-90

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2310.03 Sanitization Rinse.

(a) Manual sanitizing of all equipment and utensils shall be performed in the third sink compartment by one of the following methods:

(1) Immersion for at least 30 seconds in clean, hot water at a temperature of at least 77°C, 171°F, using:

- a. An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 77°C, 171°F;
- b. A numerically scaled indicating thermometer, accurate to +/-1.5°C, 2.7°F, convenient to the sink for frequent checks of water temperature; and
- c. Dish baskets of a size and design which permits complete immersion of the tableware, kitchenware, and equipment in the hot water;

(2) Immersion for at least 10 seconds in a clean solution containing 50 parts per million of available chlorine as a hypochlorite which is maintained at not less than 24°C, 75°F;

(3) Immersion for at least 30 seconds in a clean solution containing 12.5 parts per million of available iodine having a pH range which the manufacturer has demonstrated to be certified or classified for sanitization by an ANSI accredited certification program and which is maintained not less than 24°C, 75°F; or

(4) Immersion for at least 30 seconds in a clean solution containing 200 parts per million of a quaternary ammonium compound which is maintained at not less than 24°C, 75°F, or the concentration specified in the manufacturer's recommendations.

(b) If commercial machines using hot water for sanitizing are used, wash water and pumped rinse water shall be:

(1) Kept clean;

(2) Maintained at not less than the following temperatures:

- a. A single-tank, stationary-rack, dual-temperature machine shall have a wash temperature of not less than 66°C, 150°F, and a final rinse temperature of not less than 82°C, 180°F;

- b. A single-tank, stationary-rack, single-temperature machine shall have a wash temperature not less than 74°C, 165°F, and a final rinse temperature of not less than 74°C, 165°F;
- c. A single-tank, conveyor machine shall have a wash temperature of not less than 71°C, 160°F, and a final rinse temperature of not less than 82°C, 180°F;
- d. A multi-tank, conveyor machine shall have a wash temperature of not less than 66°C, 150°F, a pumped rinse temperature of not less than 71°C, 160°F, and a final rinse temperature of not less than 82°C, 180°F; and

(3) A single-tank, pot, pan, and utensil washer, either stationary or moving-rack, shall have a wash temperature of not less than 60°C, 140°F, and a final rinse temperature of not less than 82°C, 180°F.

(c) If machines, including but not limited to single-tank, stationary-rack, door-type machines and spray-type glass washers using chemicals for sanitization are used:

- (1) The temperature of the wash water shall not be less than 49°C, 120°F;
- (2) The wash water shall be kept clean;
- (3) Chemicals added for sanitization purposes shall be automatically dispensed;
- (4) There shall be a visual and audible alarm to indicate the lack of sanitizer;
- (5) Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with the manufacturer's specifications for time and concentration;
- (6) The chemical sanitizing rinse water temperature shall be not be less than the temperature specified by the machine's manufacturer; and
- (7) Chemical sanitizers used shall meet the concentration requirements of (a)(2), (3), or (4) above.

(d) The temperature of the utensil surface in hot water mechanical operations in (b)(2) above shall achieve 71°C, 160°F, as measured by an irreversible registering temperature indicator.

(e) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production-line basis, utensils and the food-contact surfaces of equipment shall be washed, rinsed, and sanitized:

- (1) Each time there is a change in processing between types of raw animal products, including but not limited to beef, fish, lamb, pork and poultry, except when the equipment and utensils are used in contact with a succession of different raw animal foods each requiring a higher cooking temperature than the previous food;
- (2) Each time there is a change from raw to ready-to-eat foods;
- (3) Between uses with raw fruits or vegetables and with potentially hazardous food;
- (4) Every 4 hours, if used with potentially hazardous food, and the food is not maintained at the temperatures specified in He-P 2304;
- (5) After any interruption of operations in which contamination may have occurred; and
- (6) After final use each working day.

(f) Before using or storing a food temperature measuring device, it shall be washed, rinsed and sanitized.

(g) Equipment food-contact surfaces and utensils shall be clean to sight and touch.

(h) A food service establishment without facilities specified under He-P 2310.01 through He-P 2310.03 and He-P for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2310.04 Air Drying Equipment and Utensils After Sanitization. After sanitization all equipment and utensils shall be air dried.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2310.05 Wiping Cloths.

- (a) Cloths that are in use for wiping food spills shall be used for no other purpose.
- (b) Cloths used for wiping food spills shall be:
 - (1) Dry and used for wiping food spills from tableware and carry-out containers; or
 - (2) Wet and clean, stored in a chemical sanitizer at a concentration specified in He-P 2310.03 (a) (2)-(4), and used for wiping spills from food-contact and nonfood-contact surfaces of equipment.
- (c) Dry or moist cloths used with raw animal foods shall be:
 - (1) Kept separate from cloths used for other purposes; and
 - (2) Kept in a separate sanitizing solution.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2310.06 Cleaning Food Contact Surfaces.

- (a) To prevent cross-contamination, kitchenware and food-contact surfaces of equipment shall be washed, rinsed, and sanitized after each use and following any interruption of operations during which contamination may have occurred.
- (b) The cavities and door seals of microwave ovens and the food-contact surfaces of grills, griddles, and similar cooking devices shall be cleaned at least once a day, except for hot oil cooking equipment and hot oil filtering systems.
- (c) The food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.
- (d) Tableware shall be washed, rinsed, and sanitized after each use.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2310.07 Cleaning Non-Food Contact Surfaces.

- (a) Non-food contact surfaces of equipment shall be kept cleaned so they are free of accumulations of dust, dirt, food particles, and other debris.
- (b) All dishwashing machines shall be thoroughly cleaned at least once a day.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2310.08 Storage and Handling of Clean Equipment and Utensils.

- (a) Except for items that are kept in closed packages less than 15 cm, 6 inches, above the floor on dollies, pallets, racks, and skids, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:
 - (1) In a clean, dry location;
 - (2) Where they are not exposed to splash, dust, or other contamination; and
 - (3) At least 15 cm, 6 inches, above the floor.
- (b) Clean equipment and utensils shall be stored:

- (1) As specified under (a) above;
- (2) In a self-draining position that allows air drying; and
- (3) Covered or inverted.

(c) Single-service and single-use articles shall be:

- (1) Stored as specified under (a) above; and
- (2) Kept in the original protective package or stored by using other means affording protection from contamination until used.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2310.09 Kitchenware and Tableware.

(a) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented.

(b) If consumer self-service is provided, knives, forks and spoons that are not pre-wrapped shall be presented so that only the handles are touched by employees and by consumers.

(c) Single-service articles not intended for food or lip contact shall be furnished for consumer self-service:

- (1) With the original individual wrapper intact; or
- (2) From an approved dispenser.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2310.10 Prohibitions. Cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles shall not be stored:

- (a) In toilet rooms;
- (b) In garbage rooms;
- (c) In mechanical rooms;
- (d) Under sewer lines that are not shielded to intercept potential drips;
- (e) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
- (f) Under open stairwells; or
- (g) In locker rooms, except for laundered linens and single-service and single-use articles packaged or stored in a cabinet.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2310.11 Soiled Tableware. Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03 He-

P 2310.12 Preset Tableware. If tableware is preset, it shall be:

- (a) Protected from contamination by being wrapped, covered, or inverted; or

(b) If exposed and unused, settings shall be:

- (1) Removed when a consumer is seated; or
- (2) If not removed when a consumer is seated, cleaned and sanitized before further use.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2311 WATER SYSTEM

He-P 2311.01 Potable Water.

(a) Food service establishments and retail food stores shall have access to enough potable water to meet their needs at all times.

(b) In all food preparation areas license holders shall assure that:

- (1) Hot and cold water is available at all times; and
- (2) Water pressure meets the requirements of Plu 701 of the state plumbing code.

(c) Food service establishments and retail food stores served by a water source referenced in He-P 2302.07 (c) shall assure that the bacteria level in their water does not exceed the acceptable bacteria levels for drinking water prescribed by department of environmental services rule Env-Ws 315.01 (e).

(d) If the water serving a food service establishment or retail food store is found to be bacteriologically contaminated, the person in charge shall:

- (1) Notify the regulatory authority within 12 hours;
- (2) Boil all water used for drinking purposes or to reconstitute frozen juices, until:
 - a. Notified by the public water supply that it is safe to discontinue boiling, if the license holder is served by a public water supply; or
 - b. The license holder receives results from water samples taken on two consecutive days which show results which comply with (c) above, if served by other than a public water supply;
- (3) Disconnect coffee and juice machines connected directly to the water supply;
- (4) Disconnect the ice machine if it is connected directly to the water supply and discard the ice contained in the machine;
- (5) Use only boiled water or bottled water pursuant to He-P 2311.04 to wash fresh fruits and vegetables which are eaten raw;
- (6) Clean and sanitize equipment in (3) and (4) above prior to reuse; and
- (7) Use only single-service and single-use articles for food service.

(e) All potable water not provided directly by pipe to the food service establishment or retail food store from the source shall:

- (1) Be transported in a water transport system designed to carry potable water;
- (2) Be delivered in a closed water system; and
- (3) Have a minimum free available chlorine residual of 0.2 mg/L.

(f) Steam used in contact with food or food-contact surfaces shall be free from any toxic materials or additives.

(g) Bottled and packaged potable water shall be:

- (1) Obtained from a source licensed by the department in accordance with RSA 143:11 or registered under RSA 143:12;
- (2) Handled and stored in a manner which protects it from contamination; and
- (3) Dispensed from the original container.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2311.02 System Flushing and Disinfection. All parts of the drinking water system controlled by a license holder shall be flushed and disinfected before being placed into service:

- (a) After any construction, repair, or modification connected with the food service establishment or retail food store which could disturb that system; and
- (b) After an emergency situation connected with the food service establishment or retail food store which could disturb that system, including but not limited to floods and other natural disasters.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2311.03 Water Reservoir of Fogging Devices, Cleaning. A reservoir used to supply water to a mechanical device, including but not limited to a produce fogger, shall be:

- (a) Maintained in accordance with manufacturer's specifications; and
- (b) Cleaned in accordance with manufacturer's specifications.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2311.04 Alternative Water Supply. Water meeting the requirements specified in He-P 2311.01 and He-P 2311.02 shall be made available for mobile food units and for a food service establishment or retail food store with a temporary interruption of its water supply through:

- (a) A supply of containers of commercially bottled drinking water licensed under RSA 143:11 or registered under RSA 143:12; or
- (b) One or more closed portable water containers;
- (c) An enclosed vehicular water tank designed to carry potable water; or
- (d) An on-premises water storage tank.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2311.05 Conditioning Device, Design. A water filter, screen, and other water conditioning device installed on

water lines shall be:

- (a) Designed to facilitate disassembly for periodic servicing and cleaning; and
- (b) Provided with a replaceable water filter element.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2312 SEWAGE DISPOSAL

He-P 2312.01 Proper Operation.

- (a) All sewage shall be disposed of through a wastewater system which meets the requirements of He-P 2302.08.
- (b) Existing wastewater systems shall not create a public health hazard.

(c) No increase in seating capacity in an existing food service establishment which has a private wastewater system, as referred to in He-P 2302.08 (b), shall be approved prior to the department receiving written documentation from the department of environmental services that such increase complies with department of environmental services rules Env-Ws 1000.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2313 PLUMBING

He-P 2313.01 Installation and Maintenance of Plumbing.

- (a) Plumbing shall be sized, installed, and maintained according to the provisions of Plu 700, the state plumbing code.

(b) Upon change of ownership of food service establishments or retail food stores, and in new or remodeled food service establishments or retail food stores, at least one utility sink or curbed cleaning facility with a floor drain shall be provided and shall be the only drain used for:

- (1) Cleaning mops or similar wet floor cleaning tools; and
- (2) Disposing of mop water or similar liquid wastes.

- (c) Utility sinks or curbed cleaning facilities shall be installed on the main food preparation level.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2313.02 Backflow and Back Siphonage Prevention. All plumbing shall be installed and maintained as follows:

(a) Devices shall be installed to protect against backflow and back siphonage at all fixtures and equipment where an air gap at least twice the diameter of the water supply inlet, but not less than 25 mm, 1 inch, is not provided between the water supply inlet and the fixture's flood level rim;

- (b) A back siphonage device shall be installed on all faucets to which hoses are attached;

- (c) There shall be no direct connection between the wastewater system and:

(1) Any drains originating from refrigerator coils, walk-in freezers, ice boxes, ice making machines, coffee urns or similar types of enclosed equipment; or

(2) Food preparation sinks;

(d) Each waste pipe from the equipment listed in (c) above shall discharge into an open, accessible, individual waste sink, floor drain or other fixture which is trapped and vented; and

(e) Each waste pipe from the equipment listed in (c) above shall contain an air gap in the fixture waste line which is at least twice the effective diameter of the drain served.

[Source.](#) #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

[New.](#) #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

[New.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2313.03 Use of Non-potable Water. Non-potable water shall be allowed for appropriate uses including but not limited to air conditioning and fire protection provided that:

(a) The system is installed according to the provisions of Plu 701, the state plumbing code;

(b) Non-potable water does not come into contact with food or utensils; and

(c) The piping of the water system is durably identified so that it is readily distinguishable from piping that carries potable water.

[Source.](#) #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

[New.](#) #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

[New.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2314 TOILET AND HANDWASHING FACILITIES

He-P 2314.01 Toilet Facilities, Design and Installation.

(a) Toilet facilities shall be:

(1) Provided for employees;

(2) Installed according to the provisions of Plu 701, the state plumbing code;

(3) Conveniently located and accessible to employees at all times.

(b) At least one toilet room shall be provided in any food service establishment or retail food store with a seating capacity between one and 24 patrons.

(c) Toilet rooms shall be:

(1) Installed according to the provisions of Plu 701, the state plumbing code;

(2) Conveniently located and accessible to patrons at all times;

(3) Designed to be easily cleanable; and

(4) Located so patrons do not have to pass through food preparation and dishwashing areas to gain access to them.

(d) Any food service establishment or retail food store designed to seat 25 or more patrons at one time shall have at least 2 toilet rooms which meet the requirements of (b) above.

[Source.](#) #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2314.02 Toilet Facilities, Cleaning and Waste Receptacles.

(a) Toilet facilities shall be:

- (1) Completely enclosed and provided with a tight fitting and self-closing door;
- (2) Kept clean and in good repair;
- (3) Provided with a supply of toilet tissue at all times; and
- (4) Designed to be easily cleanable.

(b) At least one easily cleanable and covered waste receptacle shall be provided in each toilet room, and those used by female patrons shall have one covered waste receptacle in each stall.

(c) Waste receptacles in toilet rooms shall be emptied at least once a day and more frequently when necessary to prevent overflow of waste material to the floor.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2314.03 Handwashing Facilities, Design and Installation.

(a) Handwashing sinks shall be:

- (1) Designed and installed in food preparation, display and dispensing areas so as to protect food and food contact surfaces from splash;
- (2) Equipped to provide water at a temperature of at least 38°C, 100°F , through a mixing valve or combination faucet;
- (3) Provided in all areas where there is hand to food contact by employees;
- (4) Provided in or immediately adjacent to toilet rooms or vestibules; and
- (5) Functioning and accessible to employees at all times.

(b) Self-closing, slow-closing, or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2314.04 Handwashing Facilities, Supplies and Cleaning.

(a) A supply of hand-cleansing soap or detergent shall be available at each handwashing sink.

(b) A supply of paper towels or a hand-drying device providing heated air shall be conveniently located near each handwashing sink.

(c) Common towels shall not be used.

(d) A sign requiring handwashing after using the restroom shall be placed at each handwashing sink where it can be readily seen and read by employees.

(e) Handwashing sinks, soap dispensers, hand-drying devices and all related fixtures shall be kept clean and in good repair.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2315 SOLID WASTE DISPOSAL

He-P 2315.01 Solid Waste Containers.

(a) Solid waste shall be kept in durable, easily cleanable, insect-proof and rodent-proof containers which:

- (1) Do not leak;
- (2) Do not absorb liquids; and
- (3) Are lined with plastic bags or wet-strength paper bags.

(b) Solid waste containers used in food preparation and utensil washing areas shall be kept covered after they are filled.

(c) Solid waste containers stored outside the establishment, dumpsters, compactors and compactor systems shall be:

- (1) Easily cleanable; and
- (2) Provided with tight-fitting lids, doors or covers which shall be kept closed.

(d) In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

(e) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(f) Solid waste shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(g) Suitable facilities, including hot water and detergent or steam, shall be provided and used for washing containers, including:

- (1) Cleaning soiled containers frequently enough to prevent insect and rodent attraction; and
- (2) Thoroughly cleaning each container on the inside and outside in a way that does not contaminate food equipment, utensils, or food-preparation areas.

(h) Refuse receptacles shall not be located within a vending machine, except for receptacles for beverage bottle crown closures.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2315.02 Solid Waste Storage.

(a) Solid waste stored on the premises shall be inaccessible to insects and rodents.

(b) Unprotected plastic bags or wet-strength paper bags or baled units containing solid waste shall not be stored

outside.

(c) Cardboard or other packaging material not containing food wastes shall not be required to be stored in covered containers.

(d) Solid waste storage rooms, if used, shall be:

- (1) Constructed of easily cleanable, nonabsorbent, washable materials;
- (2) Kept clean;
- (3) Insect-proof and rodent-proof; and
- (4) Large enough to store the solid waste containers that accumulate.

(e) Outside storage areas or enclosures shall be:

- (1) Large enough to store the solid waste containers that accumulate; and
- (2) Kept clean.

(f) Solid waste containers, dumpsters and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, including but not limited to concrete or machine-laid asphalt, which is:

- (1) Kept clean;
- (2) Maintained in good repair; and
- (3) Curbed, graded and designed so that liquid waste that results from the refuse and from cleaning the area and waste receptacles is not released into the environment.

Source. #2802, eff 8-8-84; EXPIRED 8-8-90

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2316 INSECT, RODENT AND ANIMAL CONTROL

He-P 2316.01 Measures to Minimize Infestation with Insects, Rodents, and Animals.

(a) The premises of food service establishments and retail food stores shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(b) Measures intended to minimize the presence of rodents, flies, cockroaches, and others insects on the premises, including but not limited to extermination by a pesticide applicator licensed under RSA 430, shall be utilized.

(c) Only pesticide applicators authorized under RSA 430 shall be allowed to apply poisons for rodent or cockroach control in the food storage, food preparation or food service area of a license holder.

(d) Openings to the outdoors shall be protected against the entry of insects and rodents by:

- (1) Filling or closing holes and other gaps along floors, walls and ceilings;
- (2) Installing closed, tight-fitting windows and solid self-closing, tight-fitting doors;
- (3) Keeping all windows and doors closed that open to the outside; or
- (4) Installing:
 - a. 16 mesh to 25.4 mm screens; or

b. Properly designed air curtains to control flying insects.

(e) Screen doors shall be self-closing.

(f) Screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting, free of breaks and use screening material not less than 16 mesh to 25.4 mm.

(g) Insect control devices used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(h) Any insect control devices used shall be installed so that:

(1) The devices are not located over a food contact surface or food preparation area; and

(2) Dead insects and insect fragments are prevented from being impelled onto or falling on:

a. Exposed food;

b. Clean equipment, utensils, and linens; and

c. Unwrapped single-service and single-use articles.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2316.02 Prohibiting Animals.

(a) Live animals shall not be allowed in dining, kitchen or storage areas of food service establishments or retail food stores except for:

(1) Edible fish or decorative fish in aquariums;

(2) Shellfish or crustacea on ice or under refrigeration;

(3) Shellfish and crustacea in display tanks;

(4) Pets in the common dining areas of institutional care facilities including but not limited to nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

a. Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

b. Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present;

c. Dining areas including but not limited to tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

(5) Patrol dogs accompanying police or security officers in offices, dining, sales, and storage areas.

(b) Service animals, including but not limited to guide dogs trained to assist an employee or patron who is handicapped shall be allowed in areas of a food service establishment or retail food store not used for food preparation, including but not limited to dining areas, provided they are:

(1) Controlled by the handicapped employee or person; and

(2) Kept off seats or tables.

Source. #2802, eff 8-8-84; EXPIRED 8-8-90

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2316.03 Storage of Fish Bait. Contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles shall not result from the storage of live or dead fish bait in retail food stores.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2317 FLOORS, WALLS AND CEILINGS

He-P 2317.01 Floors, Construction and Maintenance.

(a) Floors and floor coverings in food service establishments and retail food stores, except for those in dining areas, shall be:

- (1) Constructed of smooth durable material including but not limited to sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or wood impregnated with plastic; and
- (2) Maintained in good repair.

(b) Carpeting shall be prohibited in:

- (1) Food preparation, equipment-washing and utensil-washing areas;
- (2) Food storage areas; and
- (3) Toilet room areas where urinals or toilet fixtures are located.

(c) Carpeting, if used as a floor covering, shall be:

- (1) Of closely woven construction;
- (2) Properly installed;
- (3) Easily cleanable; and
- (4) Maintained in good repair.

(d) Sawdust, wood shavings, peanut hulls, or similar material shall not be used as a floor covering.

(e) Floors that are water flushed for cleaning, receive discharges of water or other fluid waste from equipment, or are located in areas where pressure spray methods for cleaning equipment are used shall be:

- (1) Constructed only of sealed concrete, terrazzo, ceramic tile or similar material;
- (2) Graded so as to drain; and
- (3) Provided with properly installed, trapped floor drains.

(f) Mats and slatted wooden floorings shall be:

- (1) Constructed of nonabsorbent, grease resistant material; and
- (2) Sized, designed, and constructed to facilitate easy cleaning.

(g) In all new or remodeled food service establishments or retail food stores in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1 mm, one thirty-second inch.

(h) The floors in all new or remodeled food service establishments or retail food stores in which water flush cleaning

methods are used shall be:

- (1) Provided with drains;
- (2) Graded so as to drain; and
- (3) Provided with coved and sealed floor and wall junctures.

(i) Exposed utility service lines and pipes shall be installed so as not to obstruct or prevent cleaning of the floor.

(j) Exposed horizontal utility service lines and pipes shall not be installed on the floor of new or remodeled food service establishments and retail food stores.

(k) Floors, mats, and slatted wooden flooring shall be:

- (1) Kept clean;
- (2) Cleaned with dustless methods of cleaning, including but not limited to vacuum cleaning, wet cleaning, or the use of dust-arresting compounds with brooms; and
- (3) Except for emergency cleaning, cleaned during periods when the least amount of food is exposed, including but not limited to after closing or between meals.

(l) Notwithstanding the provisions of this section, anti-slip floor covering shall be allowed in areas where its use is necessary for safety reasons.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2317.02 Walls and Ceilings, Construction and Maintenance.

(a) Walls and ceilings in food service establishments and retail food stores, including doors, windows, skylights and similar closures, shall be:

- (1) Maintained in good repair; and
- (2) Kept clean.

(b) The walls, including nonsupporting partitions, wall coverings, and ceilings of walk-in refrigerating units, food preparation areas, equipment-washing and utensil-washing areas, toilet rooms and vestibules shall be:

- (1) Light-colored, smooth, nonabsorbent, and easily cleanable; and
- (2) If constructed of concrete or pumice blocks, finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

(c) Studs, joists, and rafters shall not be exposed in:

- (1) Walk-in refrigerator and freezer units;
- (2) Food preparation areas;
- (3) Equipment and utensil washing areas; or
- (4) Toilet rooms and vestibules.

(d) Utility service lines and pipes shall:

- (1) Not be exposed on walls or ceilings in:

- a. Walk-in refrigerator and freezer units;
- b. Food preparation areas;
- c. Equipment and utensil washing areas; or
- d. Toilet rooms and vestibules; and

(2) If exposed, be installed so as not to obstruct or prevent cleaning of the walls and ceilings.

(e) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be:

- (1) Easily cleanable;
- (2) Maintained in good repair; and
- (3) Kept clean.

(f) Wall and ceiling covering materials shall be attached and sealed in a manner which renders them easily cleanable.

(g) Walls, ceilings, attached equipment, and decorative materials shall be:

- (1) Kept clean;
- (2) Cleaned with dustless methods of cleaning, including but not limited to vacuum cleaning or wet cleaning; and
- (3) Except for emergency cleaning, cleaned during periods when the least amount of food is exposed, including but not limited to after closing or between meals.

(h) In new or remodeled establishments all construction of walls and ceilings in the vicinity of high heat and/or steam producing equipment, including but not limited to grills and hot water sanitizing dishwashers, shall be constructed of materials resistant to such heat and/or steam.

(i) Concrete or pumice blocks used for interior wall construction in food preparation areas, equipment and utensil washing areas, toilet rooms and vestibules shall be finished and sealed to provide a smooth and easily cleanable surface.

(j) Ventilation hoods and devices shall be designed to prevent grease or condensation from collecting on walls and ceilings, and from dripping into food or onto food-contact surfaces.

(k) Filters or other grease extracting equipment shall be installed and readily removable for cleaning and replacement if not designed to be cleaned in place.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2318 LIGHTING

He-P 2318.01 Lighting Intensity.

(a) The light intensity in food service establishments and retail food stores shall be:

- (1) At least 110 lux, 10 foot candles, at a distance of 75 cm, 30 inches, above the floor at all times in walk-in refrigeration units and dry food storage areas, and in other areas and rooms during periods of cleaning;
- (2) At least 220 lux, 20 foot candles:
 - a. At a surface where food is provided for consumer self-service, including but not limited to buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;

- b. Inside equipment, including but not limited to reach-in and under-counter refrigerators; and
- c. At a distance of 75 cm, 30 inches, above the floor in areas used for handwashing, dishwashing, equipment and utensil storage, and in toilet rooms; and

(3) At least 540 lux, 50 foot candles, at a surface where a food employee is working with food or working with utensils or equipment, including but not limited to knives, slicers, grinders, or saws, where employee safety is a factor.

(b) Light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is:

- (1) Exposed food;
- (2) Clean equipment, utensils, and linens;
- (3) Unwrapped single-service and single-use articles; and
- (4) Food stored in unopened packages, except when:
 - a. The integrity of the packages can not be affected by broken glass falling onto them; and
 - b. The packages are capable of being cleaned of debris from broken bulbs before being opened.

(c) Infra-red or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2319 VENTILATION

He-P 2319.01 Adequate Ventilation.

(a) All rooms in food service establishments or retail food stores shall have sufficient ventilation to keep them free of steam, condensation, vapors, obnoxious odors, smoke and fumes.

(b) Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.

(c) In new or remodeled food service establishments or retail food stores, all rooms from which obnoxious odors, vapors or fumes originate shall be mechanically vented to the outside.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2320 DRESSING ROOMS

He-P 2320.01 Provision and Use of Dressing Rooms.

(a) If employees routinely change clothes within the establishment:

- (1) Rooms or areas shall be designated as dressing rooms and used for that purpose; and
- (2) These designated rooms or areas shall not be used for food preparation, food service, utensil-washing or storage, or for food storage, except as provided in (b)(1) below.

(b) Lockers or other suitable facilities shall be:

- (1) Located in the designated dressing rooms, or in food storage rooms or areas containing only completely packaged food or packaged single-service articles; and
- (2) Provided and used for the orderly storage of employee clothing and other belongings.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2321 TOXICS

He-P 2321.01 Toxic Materials.

(a) No toxic materials shall be kept in food service establishments or retail food stores except those:

- (1) Offered for retail sale; or
- (2) Necessary to maintain the premises, clean and sanitize equipment and utensils, and control insects and rodents.

(b) Containers of toxic materials used in food service establishments or retail food stores shall be prominently and distinctly labeled for easy identification of contents.

(c) All toxic materials shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose.

(d) Toxic materials shall not be stored above food, food equipment, utensils, or single-service articles, except that this requirement shall not prohibit the convenient availability of detergent or sanitizers at utensil or dishwashing stations.

(e) Bactericides, cleaning compounds or other compounds intended for use on food-contact surfaces shall not be used so as to leave a toxic residue on such surfaces, nor in a way which constitutes a hazard to employees or other persons.

(f) Toxic materials shall be used:

- (1) In full compliance with the manufacturer's labeling;
- (2) In a manner which precludes contaminating food, equipment, or utensils; and
- (3) In a manner which protects against hazards to employees or other persons.

(g) Personal medications shall not be stored in food storage, preparation or service areas.

(h) First-aid supplies shall be stored so as to prevent them from contaminating food and food-contact surfaces.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2321.02 Prohibition Against Use of Food Containers for Storage of Toxic Materials. Food containers shall not be used to store, transport, or dispense poisonous or toxic materials.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2321.03 Prohibition Against Use of Poisonous or Toxic Material Containers. Containers previously used to store poisonous or toxic materials shall not be used to store, transport, or dispense food.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2322 MAINTAINING PREMISES

He-P 2322.01 Litter. Food service establishments and retail food stores and all parts of the property used in connection with operation of them shall be kept free of litter.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2322.02 Walking and Driving Surfaces.

(a) The walking and driving surfaces of all exterior areas of food service establishments and retail food stores shall be surfaced with:

- (1) Concrete;
- (2) Asphalt;
- (3) Gravel; or
- (4) Similar material effectively treated to facilitate maintenance and minimize dust.

(b) These surfaces shall be graded to prevent pooling of water.

Source. #2802, eff 8-8-84; EXPIRED 8-8-90

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2322.03 Storage on the Premises. Only articles necessary to the operation and maintenance of the food service establishment or retail food store shall be stored on the premises.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2322.04 Traffic in Food-Preparation and Utensil Washing Areas. The traffic of unnecessary persons through the food-preparation and utensil-washing areas shall be prohibited.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2322.05 Storage and Maintenance of Tools and Cleaning Equipment. Tools and cleaning equipment including but not limited to brooms, mops, and vacuum cleaners, shall be:

- (a) Maintained and stored so as to prevent contamination of food, utensils, equipment or linens; and
- (b) Stored in an orderly manner which facilitates the cleaning of the storage location.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2323 LIVING QUARTERS

He-P 2323.01 Living Quarters. Food service establishment or retail food store operations shall:

- (a) Not be conducted in any room used as living or sleeping quarters; and
- (b) Be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

[Source.](#) #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

[New.](#) #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

[New.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2324 LAUNDRY FACILITIES

He-P 2324.01 Use of Laundry Facilities.

(a) Laundry facilities in food service establishments or retail food stores shall be restricted to the washing and drying of linens, cloths, uniforms and aprons necessary to the operation.

(b) If the items included under (a) above are laundered on the premises, the food service establishment or retail food store shall provide and use an electric or gas dryer.

(c) If only wiping cloths are laundered on the premises, (b) above shall not apply.

[Source.](#) #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

[New.](#) #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

[New.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2324.02 Location of Laundry Facilities. Laundry facilities shall be located in rooms separate from the food preparation area, or in storage rooms containing only packaged foods or packaged single-service articles.

[Source.](#) #2802, eff 8-8-84; EXPIRED 8-8-90

[New.](#) #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

[New.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2325 LINENS AND CLOTHING

He-P 2325.01 Clean Clothes and Linens. Clean clothes and linens shall be stored in a clean place and protected from contamination until used.

[Source.](#) #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

[New.](#) #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

[New.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2325.02 Soiled Clothes and Linens. Soiled clothes and linens shall be stored in non-absorbent containers or washable laundry bags until removed for laundering.

[Source.](#) #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

[New.](#) #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

[New.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2326 MOBILE FOOD UNITS AND PUSHCARTS

He-P 2326.01 Requirements Based on Type of Food Served.

(a) Mobile food units shall display their department license numbers, in numerals no less than 2 inches in height, on the driver's side door no lower than 2 inches above the bottom of the door.

(b) Mobile food units serving unwrapped, potentially hazardous food shall:

(1) Comply with He-P 2304, He-P 2305, He-P 2306, He-P 2307, He-P 2317, He-P 2326.04 and He-P 2326.05; and

(2) Provide:

- a. Water which complies with He-P 2311;
- b. Hot and cold water under pressure;
- c. Protection against contamination, as required by He-P 2304.31;
- d. A handwash sink which complies with He-P 2314.03(a)(2);
- e. A 3-compartment sink or a licensed commissary at which utensils can be washed daily; and
- f. Protection for all outer openings against the entrance of insects, as required by He-P 2316.01(d).

(c) Mobile food units serving unwrapped, non-potentially hazardous food shall comply with He-P 2305, He-P 2306, He-P 2307, He-P 2317, He-P 2326.04, He-P 2326.05 and He-P 2326.01 (b)(2) a, b, c, d, and f;

(d) Mobile food units serving only wrapped, potentially hazardous food shall:

- (1) Meet the temperature requirements of He-P 2304.05; and
- (2) Comply with He-P 2306, He-P 2307 and He-P 2317.

(e) Mobile food units serving only steamed hot dogs and wrapped, potentially hazardous food shall:

- (1) Meet the temperature requirements of He-P 2304.05; and
- (2) Comply with He-P 2305, He-P 2306, He-P 2307, He-P 2317, He-P 2326.04, He-P 2326.05, and He-P 2326.01 (b)(2) a, b and d.

(f) Mobile food units and pushcarts shall provide only single-service articles for use by the consumer.

(g) Registered mobile food units and pushcarts shall provide to the department the following:

- (1) Vehicle identification number; and
- (2) The registration number from the state in which it is registered.

(h) Mobile food units shall provide the department with a list of stops where their business is conducted upon each submission of application for food service license.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2326.02 Commissary Requirement.

(a) Mobile food units and pushcarts that do not have the sink requirements of He-P 2326.01 (b)(2) d and e shall:

- (1) Operate from a commissary or other fixed food service establishment licensed as per He-P 2302.03(b); and
- (2) Report at least daily to the commissary in (1) above for all supplies and for all cleaning and servicing operations.

(b) The commissary or other fixed food service establishment used as a base of operation for mobile food units shall be constructed and operated in compliance with the requirements of these rules or shall be licensed by the jurisdiction in which it

is located.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2326.03 Servicing Area.

(a) Except as noted in (c) below, servicing areas for mobile food units and pushcarts shall:

(1) Be provided at the commissary or other fixed food service establishment location;

(2) Have a surface which is:

a. Constructed of a smooth nonabsorbent material, including but not limited to concrete or machine-laid asphalt; and

b. Maintained in good repair, kept clean, and graded so as to drain; and

(3) Include at least overhead protection for any supplying, cleaning, or servicing operation.

(b) Within the servicing area required under (a) above, there shall be a location provided for the flushing and drainage of liquid wastes which is separate from the location provided for water servicing and loading and unloading of food and related supplies.

(c) Potable water servicing equipment shall be installed, stored and handled so as to protect the water and equipment from contamination.

(d) If a mobile food unit uses a liquid waste retention tank, it shall be thoroughly flushed and drained during the servicing operation.

(e) A servicing area shall not be required if:

(1) Only packaged food is placed on the mobile food unit or pushcart; or

(2) A mobile food unit does not contain waste retention tanks.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2326.04 Mobile Food Unit Water Systems.

(a) Water systems, including water tanks and their appurtenances, used in mobile food units shall:

(1) Be constructed of materials which meet the requirements of He-P 2306.02 (c)(1), (2) and (4);

(2) Be enclosed from the filling inlet to the discharge outlet;

(3) Be sloped to an outlet which allows complete drainage of the tank; and

(4) If designed with an access port for inspection and cleaning, have an opening in the top of the tank which is:

a. Flanged upward at least 13 mm, one-half inch; and

b. Equipped with a port cover assembly which is:

1. Provided with a gasket and a device for securing the cover in place; and

2. Flanged to overlap the opening and sloped to drain.

- (b) A fitting with “v” type threads on a water tank inlet or outlet shall be used only when a hose is permanently attached.
- (c) If provided, a water tank vent shall terminate in a downward direction and be covered with:
- (1) 16 mesh to 25.4 mm, 16 mesh to 1 inch, screen or equivalent, when the vent is in a protected area; or
 - (2) A protective filter, when the vent is in an area that is not protected from windblown dirt and debris.
- (d) A water tank and its inlet and outlet shall be sloped to drain.
- (e) A water tank inlet shall be positioned so that it is protected from contaminants, including but not limited to waste discharges, road dust, oil, or grease.
- (f) Hoses used for conveying drinking water from a water tank shall be:
- (1) Composed of food-grade material, durable, corrosion-resistant and nonabsorbent;
 - (2) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
 - (3) Have a smooth interior surface; and
 - (4) If not permanently attached, be clearly and durably identified as to their use.
- (g) When compressed air is used to pressurize the water tank system, a filter which does not pass oil or oil vapors shall be installed in the air supply line between the compressor and the drinking water system.
- (h) A cap and keeper chain, closed cabinet, closed storage tube, or other protective cover or device shall be provided for a water tank’s inlet, outlet, and hose.
- (i) A mobile food unit’s water tank inlet shall:
- (1) Have an inner diameter of 19.1 mm, three-fourths inch, or less; and
 - (2) Be provided with a hose connection of a size and type which will prevent its use for any other service.
- (j) Water tanks, pumps, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification and periods of nonuse longer than 24 hours.
- (k) Water tanks, pumps, and hoses shall be operated to prevent backflow and other contamination of the water supply.
- (l) If not in use, water tanks and hose inlet and outlet fittings shall be protected as specified under (h) above.
- (m) Except as specified in (n) below, water tanks, pumps, and hoses used for conveying drinking water shall be used for no other purpose.
- (n) Water tanks, pumps, and hoses approved for liquid foods shall be used for conveying drinking water only if they are cleaned and sanitized after each use.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2326.05 Mobile Food Unit Wastewater Systems. Wastewater systems in mobile food units shall comply with the following.

- (a) Wastewater holding tanks in mobile food units shall:
- (1) Have a capacity which is 15 percent larger than the water supply tank capacity; and
 - (2) Be sloped to a drain which is 25 mm, one inch, or larger in inner diameter and equipped with a shut-off valve.

(b) Wastewater shall be disposed of by:

- (1) Removing it from mobile food units without spillage and in a manner which prevents creating a public health hazard or nuisance; and
- (2) Conveying it to either:
 - a. A public or private wastewater system which holds either a valid state surface water discharge permit or groundwater discharge permit issued by the department of environmental services under RSA 485-A; or
 - b. A sewage or waste disposal system holding a valid permit from the department of environmental services under RSA 485-A:29 and Env-Ws 1000.

(c) Whenever tanks for liquid waste retention are serviced they shall be thoroughly flushed and drained in a sanitary manner.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2327 SPECIAL REQUIREMENTS FOR BED AND BREAKFAST FACILITIES

He-P 2327.01 Exception to Application Requirements. Food service establishments applying to license bed and breakfast facilities shall comply with all of the application requirements of He-P 2302.03, except that they need not submit plans as required under He-P 2302.03 (b)(3).

Source. #2802, eff 8-8-84, EXPIRED 8-8-90

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2327.02 Basic Requirements. Food service establishments applying to license bed and breakfast facilities shall comply with He-P 2303 through He-P 2325, with the following exceptions:

- (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 with 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 bathrooms which open directly into the kitchen, or 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 and 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.

Source. #2802, eff 8-8-84, EXPIRED 8-8-90

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2327.03 Sanitization. Dishes, utensils and food contact equipment and surfaces shall undergo sanitization as required in He-P 2310.03, except that sanitization, if done in the 2 compartment sink required by He-P 2327.02(b)(1) shall occur in the second compartment after the dishes, utensils and food contact equipment have been rinsed with clean water.

Source. #2802, eff 8-8-84, EXPIRED 8-8-90

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2328 SPECIAL REQUIREMENTS FOR LEVEL ONE HOMESTEADS IF ANNUAL SALES ARE \$5000 OR LESS

He-P 2328.01 Exception to Application Requirements. Level one homesteads shall comply with all of the application requirements of He-P 2302.03 except that they need not:

- (a) Submit the plans required under He-P 2302.03 (b)(3); or
- (b) Submit the wastewater items required under He-P 2302.08.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; ss by #8863, eff 4-13-07

He-P 2328.02 Basic Requirements. Level one homesteads shall comply with He-P 2303 through He-P 2325, with the following exceptions:

- (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 with 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 bathrooms which open directly into the kitchen, or 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 and 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.

Source. #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2328.03 Sanitization. Dishes, utensils and food contact equipment and surfaces shall undergo sanitization as required in He-P 2310.03, except that sanitization, if done in the 2-compartment sink required by He-P 2328.02(b)(1) shall occur in the second compartment after the dishes, utensils and food contact equipment have been rinsed with clean water.

[Source.](#) #2802, eff 8-8-84; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

[New.](#) #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

[New.](#) #6722, eff 3-27-98; amd by #7893, eff 5-21-03

He-P 2328.04 Products Approved to be Made in a Level One Homestead. Only the following food products shall be produced and sold from a level one homestead:

- (a) Baked items, including but not limited to, breads, rolls, muffins, cookies, brownies and cakes;
- (b) Double-crusteD 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.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03; ss by #8863, eff 4-13-07

He-P 2328.05 Producing Potentially Hazardous Food Prohibited. License holders producing food in a level one homestead shall not produce or sell potentially hazardous food, including any food which requires refrigeration.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03; ss by #8863, eff 4-13-07

He-P 2328.06 Labeling of Food Products Produced in a Level One Homestead.

(a) Each product produced by a level one homestead shall bear a label, which complies with He-P 2331.04 when sold:

- (1) To stores;
- (2) Wholesale for further distribution; or
- (3) Retail by any manner of public marketing.

(b) No label shall be required when the licensee producing food in a residential, non-commercial kitchen sells directly from the residence to a consumer.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03; ss by #8863, eff 4-13-07

He-P 2328.07 List of Food Products. The licensee shall:

- (a) Provide a list of all products to the department; and
- (b) Provide an updated list to the department whenever new products are added.

[Source.](#) #7893, eff 5-21-03

He-P 2328.08 Food Service License. Level one homesteads shall apply for an initial food service license with:

- (a) A fee of \$25;
- (b) Contact information required in He-P 2302.04 (c)(1); and
- (c) Annual sales figures.

[Source.](#) #8863 eff 4-13-07

He-P 2328.09 Annual Renewal Form.

(a) After obtaining the food service license, the licensee of a level one homestead shall, on an annual basis, provide to the department:

- (1) Contact information required in He-P 2302.04 (c)(1); and
- (2) Annual sales figures.

(b) If annual sales are greater than \$5000, the licensee shall apply for a class D license, as per He-P 2302.05 (a)(4) b.

Source. #8863 eff 4-13-07

He-P 2328.10 Scheduled Process Review Required.

(a) Level one homesteads producing foods listed in He-P 2328.04 (f) that do not use recipes approved by the National Center for Home Food Preservation shall comply with the same requirements of He-P 2330.06 as for a level 2 homestead.

(b) The recipes approved by the National Center for Home Food Preservation may be accessed at www.uga.edu/nchfp/publications/usda/utah_can_guide_07.pdf or www.uga.edu/nchfp/how/can7_jam_jelly.html.

Source. #8863 eff 4-13-07

PART He-P 2329 FOOD PROCESSING AUTHORITIES

He-P 2329.01 List of Food Processing Authorities. Whenever He-P 2330 or He-P 2331 requires a submission to a food processing authority, the information shall be sent to one of the food processing authorities listed in Table 2.29.1, below:

Table 2.29.1

FOOD PROCESSING AUTHORITIES

CORNELL UNIVERSITY

Types of Testing: Process reviews for processed fish, acidified foods, tomato-based products. Charges: \$75.

Contact Person: Olga Padilla-Zakour, PhD
Geneva Experiment Station Campus
NYS Food Venture Center
Food Science & Technology
NYSAES, Cornell University
630 W. North Street
Geneva, New York 14456 Telephone: (315)-787-2259

RUTGERS UNIVERSITY, CENTER FOR ADVANCED FOOD TECHNOLOGY

Types of Testing: Process reviews. Charges: \$75-\$150/hour
Contact Person: Rieks Bruins Telephone: (732)-445-6135
Larry Hood, PhD Telephone: (908)-253-3837

Center for Advanced Food Technology
Food Manufacturing Technology Facility
Rutgers University
120 New England Avenue
Piscataway, New Jersey 08854

TEXAS A&M UNIVERSITY

Types of Testing: Process reviews for acidified foods only. Charges: \$250 for first product; \$200 for each additional product from same company.
Contact Person: Al Wagner, PhD Telephone: (979)-845-7023 (979)-845-8906
Fax: 8906

Texas A&M University-2134
225 Horticulture Department
College Station, Texas 77843-2134

UNIVERSITY OF ARIZONA

| | | | |
|-------------------|--|------------|---|
| Types of Testing: | Process reviews for acidified foods. | Charges: | \$50-\$200 per product depending on complexity. |
| Contact Person: | Ralph Price, PhD or Ralph Meer University of Arizona 332 Shantz Tucson, Arizona 85721 | Telephone: | (520)-621-1728 or 9058 |

UNIVERSITY OF MAINE, FOOD SCIENCE AND HUMAN NUTRITION

| | | | |
|-------------------|---------------------|------------|--|
| Types of Testing: | Process reviews. | Charges: | \$35/hour after 9/1/02 |
| Contact Person: | Alfred Bushway, PhD | Telephone: | (207)-581-1629 |
| | | E-mail: | bushway@maine.edu |

5735 Hitchner Hall
Dept. of Food Science & Human Nutrition
University of Maine
Orono, Maine 04469

UNIVERSITY OF MINNESOTA, DEPARTMENT OF FOOD SCIENCE AND NUTRITION

| | | | |
|-------------------|---|------------|---|
| Types of Testing: | Process reviews for acidified. | Charges: | Charges differ based on complexity/nature of request and time required. |
| Contact Person: | Dr. Bill Schafer (Acidified foods.) Department of Food Science and Nutrition 1334 Eckles Ave. St. Paul, MN 55108 | Telephone: | (612)-624-4793 |

UNIVERSITY OF MISSOURI

| | | | |
|-------------------|---|------------|----------------|
| Types of Testing: | Process reviews for acidified foods. Recommend low acid products go to NFPA. | Charges: | \$150. |
| Contact Person: | Doug Holt, PhD Extension Specialist for Food Safety University of Missouri 122 Eckles Hall Columbia, Missouri 65211 | Telephone: | (573)-882-0593 |

Source. #4234, eff 2-23-87; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

PART He-P 2330 SPECIAL REQUIREMENTS FOR LEVEL 2 HOMESTEADS AND REGISTRATION OF OUT-OF-STATE PRODUCERS IN RESIDENTIAL, NON-COMMERCIAL KITCHENS

He-P 2330.01 Exception to Application Requirements. Level 2 homesteads shall comply with all of the application requirements of He-P 2302.03, except that they need not:

- (a) Submit the plans required under He-P 2302.03 (b)(3); or
- (b) Submit the wastewater items required under He-P 2302.08.

Source. #4234, eff 2-23-87; amd by #4736-a, eff 1-23-90; ss by #5051, eff 1-22-91; amd by #5160, eff 6-3-91; amd by #6503, Interim, eff 4-24-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; ss by #8863, eff 4-13-07

He-P 2330.02 Basic Requirements. Level 2 homesteads shall comply with He-P 2303 through He-P 2325 with the following exceptions:

- (a) Commercial equipment shall not be required; and
- (b) The kitchen shall be equipped with either:
 - (1) A 2-compartment sink; or

(2) A domestic dishmachine with a one-compartment sink;

(c) A sink used for food preparation shall not be required to have 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 bathrooms which open directly into the kitchen, or a 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 and 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.

Source. #4234, eff 2-23-87; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; amd by #8863, eff 4-13-07

He-P 2330.03 Sanitization. Dishes, utensils and food contact equipment and surfaces shall undergo sanitization as required in He-P 2310.03, except that sanitization, if done in the 2-compartment sink required by He-P 2330.02(b)(1) shall occur in the second compartment after the dishes, utensils and food contact equipment have been rinsed with clean water.

Source. #4234, eff 2-23-87; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2330.04 Products Approved to be Produced in a Level 2 Homestead. Only the following food products shall be produced and sold from a level 2 homestead:

(a) Acid foods, including but not limited to vinegars and mustards;

(b) Jams and jellies;

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

(d) Double-crusteD fruit pies; and

(e) Candy and fudge.

Source. #4234, eff 2-23-87; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; ss by #8863, eff 4-13-07

He-P 2330.05 Producing Potentially Hazardous Food Prohibited. Level 2 homesteads shall not produce or sell potentially hazardous food, including any food which requires refrigeration.

Source. #4234, eff 2-23-87; ss by #5051, eff 1-22-91; EXPIRED 1-22-97

New. #6503, Interim, eff 4-25-97; EXPIRED 8-23-97

New. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; ss by #8663, eff 4-13-07

He-P 2330.06 Scheduled Process Review Required. Level 2 homesteads producing foods listed in He-P 2330.04(b) that do not use recipes approved by the National Center for Home Food Preservation shall comply with the following:

(a) A scheduled 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;

(b) In order for the review required under (a) above to be conducted, the following shall be submitted to the food processing authority:

(1) Recipe(s) with all the ingredients and quantities listed;

(2) Processing times and procedures; and

(3) Sample(s) of prepared and processed product as ready for sale and distribution;

(c) The natural pH and finished equilibrium pH shall be recorded for each batch of product produced;

(d) License holders shall keep records of all pHs on file and available for review by the regulatory authority upon request;

(e) Another scheduled process review shall be conducted for a product that has been previously tested if the ingredients are altered or the process changes;

(f) License applicants shall submit scheduled process reviews with license applications pursuant to He-P 2302.03; and

(g) License holders shall keep all scheduled process review information on file and available for review by the regulatory authority upon request.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; amd by #8663, eff 4-13-07

He-P 2330.07 Labeling of Food Products Produced in a Level 2 Homestead with Annual Sales Greater than \$5000.

(a) Each product produced by a level 2 homestead shall bear a label, which complies with He-P 2331.04 when sold:

(1) To stores;

(2) Wholesale for further distribution; or

(3) Retail by any manner of public marketing.

(b) No label shall be required when the licensee producing food in a level 2 homestead sells directly from the residence to a consumer.

Source. #6722, eff 3-27-98; ss by #7893, eff 5-21-03; ss by #8863, eff 4-13-07

He-P 2330.08 List of Food Products.

(a) The licensee shall provide a list of all food products that the licensee will be producing in a level 2 homestead to the department.

(b) Whenever new products are added, the licensee shall provide an updated list of all food products that the licensee will be producing to the department.

Source. #7893, eff 5-21-03; ss by #8663, eff 4-13-07

He-P 2330.09 Food Service License. Level 2 homesteads with annual sales that are greater than \$5000 shall apply for

an initial food service license with:

- (a) A fee of \$125;
- (b) Contact information required in He-P 2302.04 (c)(1); and
- (c) Annual sales figures.

Source. #8863, eff 4-13-07

He-P 2330.10 Annual Renewal Form.

(a) After obtaining the food service license, the licensee of a level 2 homestead shall, on an annual basis, provide to the department a renewal form and include:

- (1) A fee of \$125;
- (2) Contact information required in He-P 2302.04 (c)(1); and
- (3) Annual sales figures.

(b) If the annual sales decrease to less than \$5001, the licensee shall apply for a class H license, as per He-P 2328.08.

Source. #8863, eff 4-13-07

He-P 2330.11 Class of License. Level 2 homesteads shall be class D establishments and shall submit an annual application for food service license.

Source. #8863, eff 4-13-07

He-P 2330.12 Food Safety Certification. -

(a) Level 2 homesteads shall:

- (1) Take and pass a food protection employee certification program that meets the Conference for Food Protection, Standards for Accreditation of Food Protection Manager Certification Programs, 2004 edition; and
- (2) Be re-certified at least every 5 years.

(b) The Standards for Accreditation of Food Protection Manager Certification Programs, 2004 edition may be accessed at <http://www.foodprotect.org/pdf/standards.pdf>.

Source. #8863, eff 4-13-07

He-P 2330.13 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 to the department a registration application which is typed or legibly printed in ink.

(b) The registrant shall provide the following on an application obtained from the department:

- (1) Name and mailing address of the registrant;
- (2) Telephone number and fax number of the registrant;
- (3) Name of contact person for the business;
- (4) E-mail address for the contact person, if available; and
- (5) Date of application.

(c) The registrant shall include a copy of the following in the registration submittal:

- (1) A sanitary inspection conducted within the previous 12 months by the regulatory authority with jurisdiction;
- (2) A letter from the regulatory authority confirming compliance with local regulations; or
- (3) A health certificate for the facility issued within the previous 12 months.
- (d) The registrant shall include cash, check or money order for the registration application fee of \$25.
- (e) Payment for the registration fee, in accordance with RSA 143:29 shall be submitted with the registration application.

[Source.](#) #8863, eff 4-13-07

He-P 2330.14 Processing of Registrations.

- (a) The registration application required by He-P 2330.13 shall be processed in accordance with RSA 541-A:29.
- (b) If the registration application required by He-P 2330.13 does not contain all of the items required by He-P 2330.13, 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 2330.13 are received, the application shall be deemed to be complete.

[Source.](#) #8863, eff 4-13-07

He-P 2330.15 Registration Issuance and Duration.

- (a) A registration shall be issued if the registration application meets the requirements of He-P 2330.11.
- (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.

[Source.](#) #8863, eff 4-13-07

He-P 2330.16 Denial of Registration Applications. The department shall deny a registration application when the application submitted is incomplete and the information requested in accordance with He-P 2330.13 is not provided.

[Source.](#) #8863, eff 4-13-07

He-P 2330.17 Renewal of Registrations.

- (a) Registration applications for renewal of registrations shall be completed as required in He-P 2330.13.
- (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 2330.14, He-P 2330.15 and He-P 2330.16.

[Source.](#) #8863, eff 4-13-07

PART He-P 2331 SPECIAL REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS PROCESSING FOOD IN A COMMERCIAL KITCHEN

He-P 2331.01 Basic Requirements. Food service establishments commercially processing food shall comply with:

- (a) All of the application requirements of He-P 2302.03; and

(b) He-P 2303 through He-P 2325.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.02 Products Approved for Processing in a Commercial Kitchen. The following food products shall only be produced in food service establishments licensed to commercially process food:

(a) Acidified foods, including but not limited to pickles, “pickled” products, relishes, salsas, and sauces;

(b) Potentially hazardous foods;

(c) Foods processed under reduced oxygen packaging methods; and

(d) Foods which undergo aseptic processing and packaging, which is the filling of a commercially sterile, cooled product into pre-sterilized containers, followed by hermetic sealing, with a pre-sterilized closure in an atmosphere free of microorganisms.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.03 Processing Requirements. Food service establishments processing food in a commercial kitchen shall comply with the following:

(a) Develop and implement HACCP plans containing the information required by He-P 2331.11 and He-P 2331.12;

(b) A scheduled process review shall be conducted by a food processing authority on each product listed in He-P 2330.04 (a) and (b) and He-P 2331.02 (a), (c) and (d) above 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.

(c) In order for the review required under (b) above to be conducted, the following shall be submitted to the food processing authority:

(1) Recipe(s) with all the ingredients and quantities listed;

(2) Processing times and procedures; and

(3) Sample(s) of prepared and processed product as ready for sale and distribution;

(d) The natural pH and equilibrium pH shall be recorded for each batch of product produced;

(e) License holders shall keep records of all pH's on file and available for review by the regulatory authority upon request;

(f) Another scheduled process review shall be conducted for a product that has been previously tested if the ingredients are altered or the process changes;

(g) License holders shall keep all scheduled process review information on file and available for review by the regulatory authority upon request; and

(h) License applicants shall submit scheduled process review information with license applications pursuant to He-P 2302.03.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.04 Labeling of all Packaged Foods. All packaged food, unless exempt under (b)(3) below, 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 or numerical count in both US 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.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.05 Production and Process Controls.

- (a) License holders shall provide finished foods that do not present a health hazard.
- (b) Food service establishments commercially processing foods shall process such foods in accordance with the scheduled process evaluated under He-P 2331.03 (b) above.
- (c) Acidified foods shall be manufactured, processed, and packaged so that a finished equilibrium pH value of 4.6 or lower is achieved within the time designated in the scheduled process and maintained in all finished foods, by imposing controls, including but not limited to frequent testing and recording of results, to ensure that the finished equilibrium pH values for acidified foods are not higher than 4.6.
- (d) If the finished equilibrium pH of the food is above 4.0, the measurement of the finished equilibrium pH shall be performed by a potentiometric method, which is the method used to determine the value of pH of a food product with the use of a pH meter or potentiometer, and the in-process measurements by titration or colorimetry shall be related to the finished equilibrium pH.
- (e) If the finished equilibrium pH is 4.0 or below, then the measurement of acidity of the final product may be made by any method.
- (f) Acidified foods shall be thermally processed to an extent that is sufficient to destroy vegetative cells of microorganisms of public health significance and those of non-health significance capable of reproducing in food under the conditions in which the food is stored, distributed, retailed and held by the user.
- (g) Containers of acidified foods shall be tested and examined often to ensure that the container suitably protects the food from leakage or contamination.
- (h) Each hermetically sealed container of acidified food shall be marked with an identifying code visible to the naked eye.
- (i) Each container of acidified food shall:
 - (1) Specify in code the establishment where packed, the product contained therein, and the year, day, and period during which it was packed; and
 - (2) Be changed with sufficient frequency to enable ready identification of lots during their sale and distribution.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.06 Deviations from Scheduled Processes. Whenever any process operation deviates from the scheduled process for any acidified food or the equilibrium pH of the finished product is higher than 4.6, the commercial processor of the acidified food shall either:

- (a) Fully reprocess that portion of the food; or

- (b) Discard that portion of the food.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.07 Methodology for Determining pH or Acidity. One of the following methods shall be used to determine pH or acidity for acidified food:

- (a) Potentiometric by the use of a pH meter; or
- (b) Colorimetric by the use of:
- (1) Indicator solutions, which are the aqueous solutions used in comparing the test color of a solution of a food product to a set of color standards in which the comparison determines an approximate value of pH;
 - (2) Indicator papers, which are paper tapes treated with indicator dye which changes color when dipped into the sample solution of the food product which determines the approximate value of the pH of the food when the color is compared to a standard color chart; or
 - (3) Titratable acidity, which is a method of determining the acidity of a food in terms of the smallest amount of reagent of known concentration required to bring about a given effect in reaction with a known volume of test solution.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.08 Records Required for Food Service Establishments Processing Food.

- (a) License holders shall maintain written, dated records of the entire food processing operation including:
- (1) Examinations of raw materials, packaging materials and finished products;
 - (2) Processing and production records showing adherence to scheduled processes, including records of pH measurements and other critical factors, including but not limited to temperature, intended to ensure a safe product;
 - (3) Information, including but not limited to product code, date, container size, and product, to permit a public health hazard evaluation of the processes applied to each lot, batch, or other portion of production;
 - (4) Whenever there is a deviation under He-P 2331.06, the details shall be recorded and kept in a separate file delineating the deviation, the action taken to rectify it, and the disposition of the product involved; and
 - (5) Identification of the initial distribution of the finished product to facilitate, when necessary, the segregation of specific food lots that might have become contaminated or otherwise unfit for their intended use.

(b) Copies of all records, except those required under (a)(1) above, shall be retained at the processing facility or other reasonably accessible location for a period of 3 years from the date of manufacture.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.09 Special Requirements for Reduced Oxygen Packaging.

- (a) Food service establishments that package food using a reduced oxygen packaging method shall have a HACCP plan that:
- (1) Contains the information specified under He-P 2331.11 and He-P 2331.12;
 - (2) Identifies the food to be packaged;
 - (3) Limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it:
 - a. Has an a_w of 0.91 or less;
 - b. Has a pH of 4.6 or less;

c. Is a meat product cured at a processing plant regulated by the US Department of Agriculture using a combination of nitrites, nitrates, and salt that at the time of processing consists of 120 mg/L or higher concentration of sodium nitrite and a brine concentration of at least 3.50% and is received in an intact package; or

d. Is a food with a high level of competing organisms such as raw meat or raw poultry;

(4) Specifies methods for maintaining food at 5°C, 41°F, or below;

(5) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

a. Maintain the food at 5°C, 41°F, or below; or

b. Discard the food if, within 14 calendar days of its packaging, it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;

(6) Limits the shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

(7) Includes operational procedures that:

a. Prohibit contacting food with bare hands;

b. Identify a designated area and the method by which:

1. Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination; and

2. Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and

c. Delineate cleaning and sanitization procedures for food contact surfaces; and

(8) Describes the training program that assures that the individual responsible for the reduced oxygen packaging operation understands the:

a. Concepts required for a safe operation;

b. Equipment and facilities; and

c. Operational procedures stated in (7) above and HACCP plan information as stated in He-P 2331.11 and He-P 2331.12.

(b) Except for fish that is frozen before, during, and after packaging, a processor shall not package fish using a reduced oxygen packaging method.

(c) Food service establishments that commercially process food shall meet all the requirements of this section regarding reduced oxygen packaging, including the following:

(1) Only unopened packages of food products obtained from approved sources relating to food safety shall be used to package at retail in a reduced oxygen atmosphere; and

(2) If it is necessary to stop packaging for a period in excess of 30 minutes, the remainder of the product shall be diverted for another use in the food service establishment.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.10 Processed Fish and Smoked Fish. Processed fish, smoked fish and caviar shall not be packaged in reduced oxygen packaging unless establishments are approved for the activity and inspected by the regulatory authority.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.11 Hazard Analysis Critical Control Point (HACCP) Plans.

- (a) Food service establishments processing food in a commercial kitchen shall:
- (1) Develop and follow a HACCP plan; and
 - (2) Keep the plan on file at the processing site for review by the regulatory authority.
- (b) The HACCP plan and specifications shall indicate:
- (1) The specific foods to be produced;
 - (2) A flow diagram of specific food 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) 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;
 - d. The method and frequency to routinely verify that the standard operating procedures and monitoring of the critical control points are being followed;
 - e. Action to be taken if the critical limits for each of the critical control points are not met; and
 - f. Records to be maintained to demonstrate that the HACCP plan is properly operated and managed; and
 - (4) Additional scientific data or other information, supporting the determination that food safety is not compromised by the proposal.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.12 Special HACCP Requirements for Reduced Oxygen Packaging. All license holders who use reduced oxygen packaging shall develop a HACCP plan in accordance with He-P 2331.11, including:

- (a) A complete description of the processing, packaging, and storage procedures designated as critical control points, with attendant critical limits, corrective action plans, monitoring and verification schemes, which are methods, procedures, and tests used to determine if the HACCP system in use is in compliance with the HACCP plan, and records required;
- (b) A list of equipment and food-contact packaging supplies used, including compliance standards meeting ANSI certification requirements;
- (c) A description of the lot identification system;
- (d) A description of the employee training program;
- (e) A listing and proportion of food-grade gasses used; and
- (f) A standard operating procedure for method and frequency of cleaning and sanitizing food-contact surfaces in the designated processing area.

[Source.](#) #6722, eff 3-27-98; ss by #7893, eff 5-21-03

He-P 2331.13 List of Commercially Processed Food Products. The licensee shall:

- (a) Provide a list to the department of all commercially processed food products to be produced in the commercial kitchen; and
- (b) Provide an updated list of food products to the department whenever new products are added.

[Source.](#) #7893, eff 5-21-03

PART He-P 2332 REQUIREMENTS RELATIVE TO CERTIFICATION OF FOOD PROTECTION EMPLOYEES

[Source.](#) #7893, eff 5-21-03, rpld by #8034, eff 2-7-04

PART He-P 2350 NEW HAMPSHIRE COLD STORAGE RULES

Statutory Authority: RSA 145 He-

P 2350.01 Declaration of Purpose.

(a) The purpose of these rules is:

- (1) To assure that food being stored in a cold storage warehouse complies with the provisions of RSA 145;
- (2) To outline the procedures for the licensing of persons, firms or corporations storing food in a cold storage warehouse; and
- (3) To outline the procedures for the closure of a cold storage warehouse or the suspension of a license.

[Source.](#) #8659, eff 6-14-06

He-P 2350.02 Definitions.

- (a) "Air temperature" means the equilibrated temperature of the air environment in question.
- (b) "Break-up room" means any area or space within a warehouse used for the purpose of organizing cased food into lots of individual consignment for route delivery.
- (c) "Commissioner" means the commissioner of the New Hampshire department of health and human services.
- (d) "Internal product temperature" means the equilibrated product temperature of food.
- (e) "Operator" means any person, firm, or corporation operating or maintaining a cold food warehouse for the purpose of commercially storing food.
- (f) "Sale" means any and every transaction relative to food storage including:
 - (1) Dispensing;
 - (2) Giving;
 - (3) Delivering;
 - (4) Serving;
 - (5) Exposing;
 - (6) Storing; or
 - (7) Any other processing of food wherein food is subject to transfer to another person.
- (g) "Storage room" means any space, within a warehouse, used for the purpose of storing food.

(h) "Warehouse" means any structure, room, or part thereof, used for the purpose of storing commercially manufactured food.

[Source.](#) #8659, eff 6-14-06

He-P 2350.03 Application Requirements.

(a) In order to operate a cold storage warehouse pursuant to RSA 145, a person shall obtain from the department the form "Application for Cold Storage Warehouse License", as described in He-P 2350.04 below:

(b) The applicant shall submit to the department:

- (1) A completed application form which meets the requirements of He-P 2350.04;
- (2) A check, cash or money order for the license fee, required by He-P 2350.05; and
- (3) The documents required by He-P 2350.06 and He-P 2350.07.

[Source.](#) #8659, eff 6-14-06

He-P 2350.04 Application Form.

(a) All responses entered on the "Application for Cold Storage Warehouse License" shall be typewritten or legibly printed in ink.

(b) Applicants shall provide the following:

- (1) The full legal name of the person, firm or corporation applying for the cold storage warehouse license;
- (2) The physical location of the cold storage warehouse including the:
 - a. Street;
 - b. City or town;
 - c. State; and
 - d. Zip code;
- (3) The owner's telephone number;
- (4) The cold storage warehouse's telephone number;
- (5) The telephone number to be called in case of an emergency;
- (6) The name of the person-in-charge of the cold storage warehouse; and
- (7) The business mailing address of the owner, if different from the address listed in (2) above including the:
 - a. Street;
 - b. City or town;
 - c. State; and
 - d. Zip code;
- (8) The type of cold storage warehouse license applied for described as:
 - a. New;
 - b. Renewal; or

- c. Change of ownership;
- (9) The current license number, if applicable;
- (10) The cold storage warehouse's schedule including:
 - a. The hours of operation;
 - b. The days of the week when the plant operates; and
 - c. The annual number of weeks of operation;
- (11) Type of water system servicing the business;
- (12) Type of wastewater system servicing the business;
- (13) The authorized signature of the applicant; and
- (14) The date the application was signed.

[Source.](#) #8659, eff 6-14-06

He-P 2350.05 Fees.

- (a) The fee for a cold storage license shall be \$200.
- (b) All fees paid shall be:
 - (1) Nontransferable; and
 - (2) Nonrefundable.
- (c) Any instrument of payment returned to the state shall be processed in accordance with RSA 6:11-a.

[Source.](#) #8659, eff 6-14-06

He-P 2350.06 Water System Requirements.

(a) Cold storage warehouses served by water systems which are considered public water systems, as defined by RSA 485:1-a XV, subject to regulation by the New Hampshire department of environmental services shall submit as part of their application for a cold storage license a written statement identifying the name of the public water system which provides their water.

(b) Cold storage warehouses which do not meet the requirements of (a) above, and are instead served by a water source other than a public water system, shall submit, as part of their application, the written results of a bacteria test of the water they intend to use.

(c) The bacteria test described in (b) above shall be conducted not more than 180 days prior to the date of the application by a laboratory certified by the department of environmental services to perform such tests in accordance with Env-C 300.

(d) In order for the application to be approved, the results of the bacteria test required under (b) above shall not exceed the acceptable limits for drinking water prescribed by Env-Ws 315.01 (e).

[Source.](#) #8659, eff 6-14-06

He-P 2350.07 Wastewater System Requirements.

(a) Cold storage warehouses 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, shall submit as part of their application a written statement identifying the name of the

municipality, private entity or state agency operating the wastewater treatment facility which holds the permit.

(b) A cold storage warehouse which does not meet the requirements of (a) above shall submit, as part of its application:

(1) A copy of the construction approval for the sewage or waste disposal system serving the subject cold storage warehouse, as it is currently being operated, issued by the New Hampshire department of environmental services in accordance with RSA 485-A:29; and;

(2) A written statement signed by the applicant containing the following language: "I certify that there has been no increase in the loading on my system which would cause an exceeding of the capacity of the system approved by the department of environmental services under the provisions of Env-Ws 1000"; or

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

[Source.](#) #8659, eff 6-14-06

He-P 2350.08 Approval Process.

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

(b) If all the information and documents required by He-P 2350.03 are received, the application shall be deemed to be complete.

(c) The department shall inspect the cold storage warehouse to determine compliance with RSA 145 and He-P 2350.10 prior to issuance of a cold storage license.

(d) If the inspection of the cold storage warehouse described in (c) above determines compliance with RSA 145, He-P (a) - (c) and He-P 2350.27, a cold storage license shall be issued which includes the following:

(1) The effective date of the license;

(2) The expiration date of the license;

(3) The license number;

(4) The name of the cold storage warehouse; and

(5) The signature of the commissioner of the department of health and human services.

[Source.](#) #8659, eff 6-14-06

He-P 2350.09 Expiration of Cold Storage Licenses.

(a) All cold storage licenses issued shall expire one year after date of issuance.

(b) All licensees shall apply for renewal of their licenses 30 days prior to the expiration date of their previous license, as required by He-P 2350.04 and He-P 2350.05.

(c) If a license expires, the cold storage warehouse shall cease operation until a new license is obtained.

[Source.](#) #8659, eff 6-14-06

He-P 2350.10 Cold Storage Warehouse Inspection.

(a) A comprehensive on-site inspection of the cold storage warehouse shall be conducted by the department.

(b) Inspections shall be required prior to:

- (1) Initial licensure;
- (2) A change in license holder; or
- (3) A change in the location of the cold storage warehouse.

(c) A written report, which complies with RSA 145:6, detailing the results of any inspection conducted by the department shall be provided to the owner.

[Source.](#) #8659, eff 6-14-06

He-P 2350.11 Requirements for Licensees.

(a) Department inspectors shall be admitted to cold storage warehouses to inspect the premises at all times as authorized by RSA 145.

(b) A licensee shall notify the department by telephone within 24 hours of any fire or other disaster that jeopardizes the safety or sanitation of the food stored in the cold storage warehouse.

(c) The cold storage warehouse license shall be posted at all times on the premises.

[Source.](#) #8659, eff 6-14-06

He-P 2350.12 Change in Cold Storage Warehouse Ownership.

(a) At least 30 days prior to any change in ownership of a cold storage warehouse the owner shall submit to the department:

- (1) A written statement:
 - a. Explaining the nature of the change of ownership, such as, but not limited to, a statement that the business has been sold or passed by inheritance;
 - b. Identifying the name of the cold storage warehouse as it appears on the current license; and
 - c. Identifying the effective date of the change;
- (2) A copy of any certificate of amendment issued by the New Hampshire secretary of state for the particular type of business organization involved in the change in ownership;
- (3) A new application in accordance with He-P 2350.04; and
- (4) A letter from the seller(s) or owners transferring the ownership acknowledging the change of ownership.

(b) Upon receipt of the information and submissions required by this section and compliance with RSA 145, He-P 2350.26 (a) – (c) and He-P 2350.27, the commissioner shall issue a new license reflecting the change in ownership.

(c) The new license issued as described in (b) above shall contain the same number and shall expire one year after the date of issuance.

(d) The owner shall return the previous license to the department within 10 days of the issuance of a new license.

[Source.](#) #8659, eff 6-14-06

He-P 2350.13 Change in Cold Storage Warehouse Name.

(a) When the name of the cold storage warehouse changes, but the ownership does not change, the owner shall submit to the department at least 30 days prior to the name change a written request for an updated license.

(b) The request for a new license as described in (a) above shall include:

- (1) The reason for requesting the new license;

- (2) The names of the owner and cold storage warehouse as they appear on the current license;
- (3) The names of the owner and cold storage warehouse as they will appear on the updated license; and
- (4) The effective date of the change.

(c) Upon receipt of the information required by this section, the commissioner shall issue an updated license reflecting the name change.

(d) The updated license issued as described in (c) above shall contain the same number and expiration date as the previous license.

(e) The owner shall return the previous license to the department within 10 days of receipt of the updated license.

[Source.](#) #8659, eff 6-14-06

He-P 2350.14 Change in Cold Storage Warehouse Location.

(a) A new cold storage warehouse license and license number shall be required whenever an owner changes the physical location of a cold storage warehouse.

(b) A new license shall be obtained in accordance with He-P 2350.04, He-P 2350.26 (a) – (c) and He-P 2350.27 prior to the owner operating at the new location.

(c) The owner shall return the previous license to the department within 10 days of receipt of the new license.

[Source.](#) #8659, eff 6-14-06

He-P 2350.15 Denial of a Cold Storage Warehouse License Application. Applications shall be denied for any of the following reasons:

(a) Failure to meet the requirements of He-P 2350.04 through He-P 2350.07;

(b) The preliminary inspection finds violations of He-P 2350.26 (a) and He-P 2350.27;

(c) The applicant prevents the inspection from being conducted by the department; or

(d) The applicant is found to be in violation of any provision in RSA 145.

[Source.](#) #8659, eff 6-14-06

He-P 2350.16 Closure of Cold Storage Warehouse. A cold storage warehouse shall be closed, in accordance with the procedure specified in RSA 145 if:

(a) A routine inspection finds violations of He-P 2350.26; or

(b) The dealer prevents any inspection or investigation conducted by the department.

[Source.](#) #8659, eff 6-14-06

He-P 2350.17 Suspension of Cold Storage Warehouse License. A cold storage warehouse license shall be suspended in accordance with RSA 145:4, if:

(a) The violations found during a routine inspection which resulted in closure of the cold storage warehouse are not corrected within 15 days; or

(b) An owner goes out of business.

[Source.](#) #8659, eff 6-14-06

He-P 2350.18 Effect of Denial of Application, Suspension of License or Closure of Cold Storage Warehouse or

Expired License.

(a) Any owner whose cold storage warehouse license has expired shall discontinue the storage, sale and shipment of food.

(b) Any owner whose cold storage warehouse license has been suspended, denied, expired or whose cold storage warehouse has been closed shall discontinue operations as required by RSA 145:4.

Source. #8659, eff 6-14-06

He-P 2350.19 Reinstatement of License after Suspension. A license which has been suspended shall be reinstated in accordance with the following:

(a) Requests for reinstatement shall be submitted in writing to the commissioner;

(b) Requests for reinstatement of a suspended license shall not be accepted until the deficiencies which caused the suspension to be imposed are corrected;

(c) Upon accepting a written request for reinstatement, the department shall conduct an investigation within 30 days to determine whether the deficiencies or violation which resulted in the suspension have been corrected;

(d) If the investigation described in (c) above indicates that the deficiencies or violation which resulted in the suspension have been corrected, the commissioner shall reinstate the cold storage warehouse license; and

(e) If any cold storage warehouse license expires during a period of suspension, the owner shall reapply in accordance with He-P 2350.04.

Source. #8659, eff 6-14-06

He-P 2350.20 Appeals of Administrative Actions, Including Administrative Fines.

(a) Appeals of administrative actions, including administrative fines and suspension of license, against an applicant or holder of a cold storage warehouse license shall be governed by the provisions of RSA 126-A:5, VIII.

(b) Failure by an applicant or holder of a cold storage warehouse license to appeal within 10 days of receipt of a notice under RSA 126-A:5, VIII and He-C 200 shall result in the proposed action becoming final.

Source. #8659, eff 6-14-06

He-P 2350.21 Waivers.

(a) A written request shall be made by the license holder to the commissioner for a waiver of specific procedures, other than statutory, as outlined in this part.

(b) A request for a waiver shall include:

(1) A specific reference to the rule for which a waiver is being sought;

(2) A full explanation of why a waiver is necessary; and

(3) A full explanation of alternative procedures proposed by the license holder.

(c) The commissioner shall approve a request for waiver upon his/her determination that strict compliance with the procedure sought to be waived does not contradict the intent of He-P 2350 and that:

(1) The alternative procedures proposed by the license holder are at least equivalent to the specific procedures contained in the rule; or

(2) The alternative procedures proposed by the license holder are not equivalent to the procedures contained in the rule but are sufficient to ensure that the objective or intent of the relevant provisions of the rule will be accomplished.

(d) Upon receipt of approval of a waiver, the license holder's subsequent compliance with the alternative procedures approved in the waiver shall be considered to be in compliance with the rule for which waiver was sought.

[Source.](#) #8659, eff 6-14-06

He-P 2350.22 Procedure for Administrative Fines.

(a) When an inspector provides the cold storage warehouse owner with an inspection report as required by He-P 2350.10 the inspector shall include an identification of any fines the inspector will recommend to the commissioner under He-P 2350.23.

(b) The commissioner shall inform the cold storage warehouse owner in writing and by certified mail of the amount of any administrative fine proposed under He-P 2350.23, in accordance with RSA 145:17.

(c) Within 10 days of receipt of the notice described in (b) above, the cold storage warehouse owner may waive the right to a hearing in writing and pay the administrative fine.

(d) The administrative fine shall not take effect until after an administrative hearing is held and the fine is upheld, unless the person against whom the fine was imposed waives the right to a hearing, as in (c) above.

(e) Administrative fines shall be paid by:

(1) Cash; or

(2) Checks, or money orders, made payable to "Treasurer, State of New Hampshire."

(f) Administrative fines shall be mailed or brought to:

Department of Health and Human Services
Food Protection Section
29 Hazen Drive
Concord, NH 03301

[Source.](#) #8659, eff 6-14-06

He-P 2350.23 Schedule of Fines.

(a) Administrative fines shall be imposed in the following amounts for each specified violation listed below:

(1) For willful submission of materially false or fraudulent material on or with an application, \$500;

(2) For failure to have a valid cold storage warehouse license posted and available for inspection at a cold storage warehouse, as required by He-P 2350.11 (c), \$100;

(3) For failure to cooperate during an inspection of a cold storage warehouse, \$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, as required by He-P 2350.11 (b), \$200;

(5) For failure to notify the department at least 30 days prior to a change in cold storage warehouse ownership, as required by He-P 2350.12, \$100;

(6) For failure to notify the department at least 30 days prior to a change in the name of an owner or cold storage warehouse, as required by He-P 2350.13, \$100;

(7) For failure to comply with He-P 2350.14 when moving the location of a cold storage warehouse, \$1,000;

(8) For failure to cease operating an unlicensed cold storage warehouse, in violation of RSA 145:2, when notified by the department to do so, \$2,000;

(9) For failure to cease operating after denial or suspension of a cold storage warehouse license, \$2,000;

(10) For citation for the same deficiency for more than 2 consecutive inspections, the fine shall be \$250;

(11) For the first repeat violation of He-P 2350.23 (a)(1) - (10), the fine shall be double the amount assessed for the original fine, but shall not exceed \$2,000;

(12) For failure to pay an administrative fine within 30 days of its imposition, or the completion of any appeal of the administrative fine, the fine shall be \$100.

(b) A new administrative fine shall be imposed for each day a violation of He-P 2350.23 (a) (9) continues.

[Source.](#) #8659, eff 6-14-06

He-P 2350.24 Documentation of Inspections.

(a) The results of the inspections shall be documented on the cold storage warehouse form.

(b) The inspector and the license holder shall sign all forms used to document the results of the inspection.

(c) A section of the form shall be available for comments by the license holder.

[Source.](#) #8659, eff 6-14-06

He-P 2350.25 Product Recall Procedures. Upon learning that food products have actually or potentially been contaminated with any poisonous or deleterious substances and have been shipped by the licensed owner, the owner shall:

(a) Immediately notify the department that a product recall is being initiated;

(b) Immediately initiate the recall of all the contaminated product; and

(c) Keep records available of all products recalled for review by the department of the:

(1) Type of product;

(2) Quantity; and

(3) Names of all customers to whom the product has been distributed.

[Source.](#) #8659, eff 6-14-06

He-P 2350.26 Equipment and Handling Practices.

(a) Each cold storage warehouse shall be equipped with suitable refrigeration equipment to provide, under extreme conditions of outside temperature and under peak load conditions, for maintaining an internal product temperature of:

(1) 0°F or below for all rooms in which frozen foods are stored; and

(2) 41°F or below for all rooms in which all other foods are stored.

(b) Each storage room shall be equipped with a thermometer or other temperature-recording device which is easily visible and is graduated in 2°F increments.

(c) The sensing element of the thermometer or other temperature-recording device shall not be located:

(1) Less than 4 feet above the floor;

(2) In a direct blast of refrigerated air; or

(3) Near entrance doors.

(d) The operator of the cold storage warehouse shall:

(1) Take product temperatures at the front, middle, and rear of the trailer as product is removed during receipt of

food;

(2) Record temperatures taken in (1) above; and

(3) Maintain records of temperatures taken in (1) above for a period of at least one calendar year.

(e) When frozen foods are received with an internal temperature of 25°F or above, the owner or consignee, after notification from the warehouse operator, shall request the warehouse operator to reduce the internal product temperature to 0°F or below as rapidly as possible.

(f) Frozen foods shall be maintained at an air temperature of 0°F while in storage, except that a tolerance of 15°F, internal product temperature, shall be allowed during:

(1) Loading and unloading;

(2) Defrosting cycles; or

(3) Any temporary condition that might arise.

(g) Food products shall be stored:

(1) So as to permit free circulation of refrigerated air or other gas;

(2) No closer than 18 inches from the ceiling; and

(3) On:

a. Pallets;

b. Racks; or

c. Skids.

(h) Food products shall be stored under conditions that preclude injury and contamination from, or to, other foods held within the warehouse.

(i) During the defrosting of overhead coils in storage rooms, food shall be protected from contamination.

[Source.](#) #8659, eff 6-14-06

He-P 2350.27 Sanitary Provisions.

(a) Floors, walls, and ceilings shall be:

(1) Constructed of smooth, nonabsorbent, easily cleanable material;

(2) Maintained in good repair; and

(3) Kept clean.

(b) Toilet facilities shall be:

(1) Provided for employees;

(2) Installed according to the provisions of RSA 155-A;

(3) Conveniently located and accessible to employees at all times.

(c) Handwashing sinks shall be:

(1) Designed and installed in or immediately adjacent to toilet rooms or vestibules all toilet facilities;

(2) Equipped to provide water at a temperature of at least 38°C, 100°F, through a mixing valve or combination faucet; and

(3) Functioning and accessible to employees at all times.

(d) Toilet rooms shall be:

(1) Provided with liquid or powdered soap in a dispenser;

(2) Single service towels;

(3) Provided with mechanical ventilation; and

(4) Provided with full-length, self-closing doors.

(e) Dressing rooms shall be:

(1) Provided;

(2) Well lit;

(3) Provided with mechanical ventilation;

(4) Kept clean; and

(5) Kept free of disagreeable odors.

(f) Openings to the outdoors shall be protected against the entry of insects and rodents by:

(1) Filling or closing holes and other gaps along floors, walls and ceilings;

(2) Installing closed, tight-fitting windows and solid self-closing, tight-fitting doors;

(3) Keeping all windows and doors closed that open to the outside; or

(4) Installing:

a. 16 mesh to 25.4 mm screens; or

b. Properly designed air curtains to control flying insects.

(g) Measures intended to minimize the presence of rodents, flies, cockroaches, and others insects on the premises, including but not limited to extermination by a pesticide applicator licensed under RSA 430, shall be utilized.

(h) Outside storage areas or enclosures shall be:

(1) Large enough to store the solid waste containers that accumulate; and

(2) Kept clean.

(i) Solid waste containers, dumpsters and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, including but not limited to concrete or machine-laid asphalt, which is:

(1) Kept clean;

(2) Maintained in good repair; and

(3) Curbed, graded and designed so that liquid waste that results from the refuse and from cleaning the area and waste receptacles is not released into the environment.

Source. #8659, eff 6-14-06

Appendix

| Rule | Specific State Statute which the Rule Implements |
|---|--|
| He-P 2301.01 | RSA 143:6 & 143-A:9 |
| He-P 2301.01(ba)(deleted); (bo) | RSA 143-A:12, RSA 143-A:13 |
| He-P 2302.01-2302.05 | RSA 143:6, 143-A:6 & 143-A:9 |
| He-P 2302.05(a)(4) & (6) & (8) | RSA 143-A:12, RSA 143-A:13 |
| He-P 2302.06 | RSA 143:6, II(a), 143:11, II, 143-A:9, I-a & 143-A:6, IV |
| He-P 2302.07-2302.16 | RSA 143:6, 143-A:6 & 143-A:9 |
| He-P 2302.17 | RSA 143:6, 143-A:9 & 143-A:6 |
| He-P 2302.18-2302.19 | RSA 143:6 & 143-A:9 |
| He-P 2302.20 | RSA 143:6 & 143-A:9 |
| He-P 2302.21 | RSA 143:9, 143-A:7 & 143-A:9, IV |
| He-P 2302.22-2302.23 | RSA 143:9, 143-A:9 & 541-A:31 |
| He-P 2302.24-2302.25 | RSA 143:6, 143-A:6 & 143-A:9, III |
| He-P 2302.26 | RSA 143:4, 143:6 & 143-A:9 |
| He-P 2302.27 | RSA 143:6, 143-A:9 & 541-A:22, IV |
| He-P 2302.28-2302.30 | RSA 143:6, II(e), 143-A:9, IV-b, 143-A:10-a, 6:11-a |
| He-P 2302.31 | RSA 143:6 & 143-A:9 |
| He-P 2302.32 | RSA 143:5-a, 143:6 & 143-A:9 |
| He-P 2308.12 | RSA 143:6 & 143-A:9 |
| He-P 2328.01, 2328.02intro, 2328.04-06, 2328.08-10 | RSA 143-A:12, RSA 143-A:13 |
| He-P 2330.01, 2330.02 intro, 2330.04, 2330.05, 2330.06 intro and (a), 2330.07-17 | RSA 143-A:12, RSA 143-A:13, RSA 143:29; RSA 143-A: |
| He-P 2332.01-2332.06 - REPEALED | RSA 143:6 & 143-A:9 |
| He-P 2350.01 | RSA 145:15 |
| He-P 2350.02 | RSA 145:15 |
| He-P 2350.03 - 2350.05 | RSA 145:3 |
| He-P 2350.06 - 2350.07 | RSA 145:15 |
| He-P 2350.08 | RSA 145:3, RSA 145:6 & RSA 145:15 |
| He-P 2350.09 | RSA 145:3 |
| He-P 2350.10 | RSA 145:6 |
| He-P 2350.11 | RSA 145:6, RSA 145:15 |
| He-P 2350.12 - 2350.14 | RSA 145:3 |
| He-P 2350.15 - 2350.17 | RSA 145:A:4 |
| He-P 2350.19 | RSA 126-A:5, RSA 145:15 |
| He-P 2350.20 | RSA 145:15, III & RSA 541-A:31 |
| He-P 2350.21 | RSA 145:15 |
| He-P 2350.22 | RSA 145:17 |
| He-P 2350.23 | RSA 145:178 |
| He-P 2350.24 | RSA 145:15,RSA 145:6 |
| He-P 2350.25 - 2350.27 | RSA 145:15 |