

## **CHAPTER 12 HEALTH REGULATIONS**

In accordance with R.S.A. 147:1 the Town of Exeter Board of Selectmen adopt the current *FDA FOOD CODE* in accordance with the *New Hampshire Rules for the Sanitary Production and Distribution of Food He-P 2300*; and all future revisions and amendments.

### 1204.1(PART He-P 2301) DEFINITIONS

1204.1.01(He-P 2301.01 Definitions.) supplemental list to the FDA FOOD CODE DEFINITIONS

- (a) "Applicant" means the owner of a food establishment or an officer of the legal ownership who applies for a license under these rules.
- (b) "Approved source" means food that has been inspected by a federal, state, or local agency that has the authority, responsibility, and the technical ability to evaluate food for safety in protection of the public health.
- (c) "Bed and breakfast" means a type of food service establishment that is a transient lodging facility, which is the owner's or innkeeper's personal residence, is occupied by the owner or innkeeper at the time of rental to an in-house guest, and in which breakfast is the only meal served.
- (d) "Beverage" means "beverage" as defined in RSA 143:9.
- (e) "Bulk food" means processed or unprocessed food in aggregate containers from which quantities desired by the consumer or the employee is withdrawn. The term "bulk food" does not include fresh whole fruits or fresh whole vegetables.
- (f) "Caterer" means a person or entity which provides meals or food at private functions at off-site locations.
- (g) "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.
- (h) "Commissioner" means the commissioner of the New Hampshire department of health and human services, or his or her designee.
- (i) "Continental breakfast" means a light breakfast that may include coffee, tea, juices, toasts, breakfast cereals, assorted pastries, and uncut fruit.

- (j) “Corrective action plan (CAP)” means a plan developed and written by the licensee, which specifies the actions that will be taken to correct identified deficiencies.
- (k) “Department” means the Exeter Health Department.
- (l) “Food” means “food” as defined in RSA 143-A:3, III.
- (m) “Food establishment” means “food service establishment” as defined in RSA 143-A:3, IV, and “retail food store” as defined in RSA 143-A:3, VII. “Temporary food service” as defined in RSA 143-A:3, VIII.
- (n) “Food processing plant” means a type of food service establishment that is a commercial operation that manufactures, packages, labels, or stores food for human consumption, and provides food for sale and distribution to other business entities such as other food establishments. Food processing plants shall not include an operation that processes food under the oversight of NH Department of Agriculture for RSA’s 426,427, 428,429, and 434
- (o) “Food service establishment” means “food service establishment” as defined in RSA 143-A:3, IV.
- (p) “Foodborne disease outbreak” means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a common food.
- (q) “Homestead” means “homestead” as defined in RSA 143-A:12, which is a type of food service establishment. The Town of Exeter allows only home food manufacturers who prepare and package non-potentially hazardous foods (foods that do not need time/temperature control).
- (r) “Immediately endangers public health or safety” means that a condition exists that is an imminent health hazard.
- (s) “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.
- (t) “License” means the document issued by the department or other regulatory agency, which authorizes a license holder to operate a food establishment.
- (u) “License holder” means the entity legally responsible for the operation of a licensed food establishment, including, but not limited to, the owner, the owner’s agent, or other person.

- (v) "Mobile food unit" means a food service establishment mounted on wheels or otherwise designed to be immediately moveable.
- (w) "Person in charge" means the individual present at a food establishment who is responsible for the operation of the establishment at the time of inspection, including the duties described in section 2-103.11 of the FOOD CODE, and who can demonstrate the knowledge required by section 2-1-2.11 of the FOOD CODE with are pertinent to the risks inherent to the specific food establishment.
- (x) "Poultry" means "poultry" as defined in RSA 143-A:14, III.
- (y) "Poultry producer" means "poultry producer" as defined in RSA 143-A:14, IV.
- (z) "Priority item" means a provision of the Food Code, marked with a superscript P, whose application contributes directly to the elimination, prevention, or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard.(critical violation)
- (aa) "Public water system" means a public water system as defined in RSA 485:1-a.
- (ab) "Pushcart" means a type of food service establishment that is a non-self propelled vehicle limited to serving non-time/temperature control for safety foods, packaged time/temperature control for safety foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.
- (ac) "Rabbit" means "rabbit" as defined in RSA 143-A:14, VI.
- (ad) "Rabbit producer" means "rabbit producer" as defined in RSA 143-A:14, VII
- (ae) "Regulatory authority" means the local, state or federal enforcement body having jurisdiction over the food establishment. The Town of Exeter Health Department is the "regulatory authority" for the Town of Exeter.
- (af) "Remodeled" means having undertaken construction, which includes, but is not limited to, adding new seats, adding a food preparation area, or any construction affecting the kitchen or any other part of a food establishment that requires a plumbing modification.
- (ag) "Retail food store" means "retail food store" as defined in RSA 143-A:3, VII.
- (ah) "Risk Control Plan" means a plan developed and written by the licensee as a part of a CAP, which specifies the actions that will be taken to correct the uncontrolled hazards that were identified at inspection, and a repeat problem, known to contribute to foodborne illness(uncontrolled hazards include the

occurrence of any risk factor or lack of public health interventions as described in the FOOD CODE)

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

(aj) "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."

(ak) "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.

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

#### 1204.2(PART He-P 2302) LICENSE REQUIRED

1204.2.01(He-P 2302.01 License Required.) Unless exempted under RSA 143-A:5, RSA 143-A:5-a, or 1204.2.02(He-P 2302.02), no person shall operate a food establishment within the town of Exeter, New Hampshire without obtaining a license from the Town of Exeter Health Department

1204.2.02 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 Exeter Health Department a written notice which:
  - (1) Identifies the name and address of the person operating the soup kitchen;
  - (2) Identifies the clientele served by the soup kitchen;
  - (3) Lists the hours the soup kitchen will operate; and
  - (4) Provides a description of the food to be served.

## 1204.3(PART He-P 2303) INCORPORATION OF THE 2009 CURRENT F.D.A. FOOD CODE

### 1204.3.01(He-P 2303.01) Incorporation of the Current F.D.A. Food Code.

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

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

- (1) Amend section 3-201.11(A) so that (A) reads as follows: "Food shall be obtained from sources that comply with the law, except that the exemption under the Poultry Products Inspection Act at USC 464)c(4) shall not apply in New Hampshire";
- (2) Delete section 3-201.16
- (3) Chapter 8 used for reference and procedure

(c) Those food establishments applying for or licensed as bed and breakfasts shall comply with the Food Code. However, the exceptions to the Food Code listed in 1204.8.02(He-P 2308.02) shall apply.

(d) Those food establishments applying for or licensed as food processing plants or homesteads shall be exempt from the requirements of the Food Code, and shall instead comply with the requirements in 1204.9(He-P 2309) and 1204.10(He-P 2310), respectively.

(e) The F.D.A. Food Code is available on the web at <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/>

## 1204.4(PART He-P 2304) APPLICATION AND LICENSING PROCEDURE

### 1204.4.01(He-P 2304.01) Initial License Application Requirements.

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

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

"I certify that all information provided in or attached to this application is complete, accurate and up-to-date as of the date specified below. I further

certify that there are no willful misrepresentations of the answers to questions herein, and that I have made no omissions with respect to any of my answers to the questions presented. I understand that it is my responsibility to immediately notify the Exeter Health Department with regard to any changes, corrections or updates to the information provided.”;

(2) A check or money order for the applicable fees, in accordance with 1204.4.05(a) and (c) (He-P 2304.05(a) and (c));

(3) Water system documentation, in accordance with 1204.4.06(He-P 2304.06);

(4) Wastewater system documentation, in accordance with 1204.4.07(He-P 2304.07), except that food establishments applying to be licensed as a bed and breakfast or a homestead shall not be required to submit such documentation;

(5) A completed “Plan Review Application”, signed and dated by the applicant or the person who represents the applicant, if required by 1204.4.12(a) (He-P 2304.12(a)), and if not already submitted for review, except that food establishments applying to be licensed as a bed and breakfast, homestead, shall not be required to submit such an application;

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

- a. Commissary (service area) agreement form.
- b. A copy of the food establishment license, from the appropriate regulatory authority, of the facility being used as a servicing area; or
- c. A separate license application for the facility to be used as a servicing area; and
- d. All other items as required listed in this section (a)

(7) A HACCP plan if required by 1204.4.13(He-P 2304.13).

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

Exeter Health Department  
20 Court St  
Exeter, NH 03833  
603-773-6132

1204.4.02(He-P 2304.02) Processing of Initial Applications and Issuance of Licenses.

- (a) Applications shall be processed in accordance with RSA 541-A:29.
- (b) An application for an initial license shall be complete when the department determines that all items required by 1204.01.(a)(He-P 2304.01(a)) have been received.
- (c) If an application does not contain all the items required by 1204.4.01(a)(He-P 2304.01(a)), the department shall:
- (1) Not process that application; and
  - (2) Notify the applicant in writing of which items are required to be submitted before the application can be processed.
- (d) Any licensing fee submitted to the department in the form of a check or money order and returned to the Town for any reason shall be processed in accordance with RSA 6:11-a.
- (e) Licensing fees shall not be transferable to any other application(s).
- (f) Following an inspection, conducted pursuant to RSA 143:4 and in accordance with 1204.5 (He-P 2305), a provisional license shall be issued if the department determines that an applicant is in full compliance with RSA 143, RSA 143-A, and these rules.
- (g) Pursuant to RSA 143-A:6, I:
- (1) A provisional license shall expire 90 days after the date of issuance; and
  - (2) If a license is not issued following the expiration of a provisional license, the food establishment shall cease operation the day after the provisional license expires and not operate until a license is obtained.
- (h) If, within 90 days of issuance of a provisional license the department conducts an inspection in accordance with 1204.5 (He-P 2305) and determines that an applicant is in full compliance with RSA 143, RSA 143-A, and these rules, the department shall issue to the applicant a license valid for a time period of one year following the date of issuance of the provisional license.
- (i) All licenses and provisional licenses issued in accordance with RSA 143-A shall be issued for a specific license classification and category under 1204.4.04(He-P 2304.04).
- (j) License holders shall operate in accordance with the class of license issued.

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

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

1204.4.03(He-P 2304.03) License Expirations and Procedures for Renewals.

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

(b) Each licensee shall apply to renew their license via an application form pursuant to 1204.4.01(a)(1) (He-P 2304.01(a)(1)) at least 30 days prior to the expiration of the current license.

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

(1) The materials required by 1204.4.01(a)(1),(2), and (4) (He-P 2304.01(b)(1), (2), and (3)); and

(2) A request for renewal of any existing variances previously granted by the department, in accordance with 1204.14 (He-P 2304.14), if applicable.

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

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

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

(3) Is found to be in compliance with RSA 143, RSA 143-A, and 1204/FDA Food Code/He-P 2300 at a renewal inspection, as applicable.

(e) If a license holder fails to submit a complete application for renewal as required under (b) and (c) above, the food establishment shall cease operation the day after the license expires, and shall not operate until a license is obtained in accordance with RSA 143-A.

(f) Any food establishment wishing to submit an application for a renewal license whose previous license has been expired in excess of 90 days shall apply in accordance with the requirements of an initial license in 1204.4.01 (He-P 2304.01).

1204.4.04(He-P 2304.04) License Classes.



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

(1) Class A which shall include:

- a. Category A-1, food processing plants which commercially process 100,000 packages of food or more, per year;
- b. Category A-2, food service establishments with 200 or more indoor seats; or
- c. Category A-3, retail food stores with 4 or more food preparation areas;

(2) Class B which shall include:

- a. Category B-1, retail food stores with 2 to 3 food preparation areas; or
- b. Category B-2, food service establishments with 100 to 199 indoor seats;

(3) Class C which shall include:

- a. Category C-1, retail food stores with one food preparation area, including, but not limited to, an area for cutting cheese or fudge;
- b. Category C-2, caterers serving food off-site;
- c. Category C-3, food service establishments with 25 to 99 indoor seats;
- d. Category C-4, bars/lounges with a food preparation area, excluding areas used for preparing garnish such as limes and lemons; or
- e. Category C-5, food processing plants which commercially process less than 100,000 packages of food per year;

(4) Class D, which shall include:

- a. Category D-1, food service establishments with 0 to 24 indoor seats, including, but not limited to, bakeries;
- b. Category D-2, mobile food units which cook or prepare food;
- c. Category D-3, retail food stores that allow self-service of food, including, but not limited to, coffee, hot dogs, or soft drinks;
- d. Category D-4, servicing areas;

(5) Class E which shall include:

- a. Category E-1, bed and breakfasts;
- b. Category E-2, lodging facilities serving continental breakfasts; or
- c. Category E-3, ice cream vendors who scoop ice cream;

(6) Class F which shall include:

- a. Category F-1, home delivery services of packaged frozen food;
- b. Category F-2, pushcarts and other mobile food units, including, but not limited to, those serving packaged food and non-TCS/PHF unwrapped foods only;
- c. Category F-3, retail food stores with no food preparation areas;
- d. Category F-4, wholesalers/distributors of TCS/PHF food;
- e. Category F-5, on-site vending machines, which serve TCS/PHF food;
- f. Category F-6, bakeries which do not serve TCS/PHF food and have no seats;
- g. Category F-7, Level 2 homestead-sells products at farmers' markets, farm stands, residents, retail food stores, on-line;

(7) Class G shall include:

- a. Category G-1, bars/lounges without a food preparation area;
- b. Category G-2, sellers of pre-packaged frozen meat or poultry that is processed in a USDA –inspected plant;
- c. Category G-3, canteen/theater concessions serving non-TCS food;
- d. Category G-4, ice cream vendors/retail food stores serving pre-packaged ice cream;
- e. Category G-5, institutions whose food service is operated by a private, for-profit business, including but not limited to schools/public and private, colleges, hospitals, long term care facilities, fraternities and sororities;
- f. Category G-6, food processing plants that package non-TCS(PHF) bulk food;

(8) Class H, Category H-1, shall include:

- a. Category H-1, level 1 homesteads-homestead that sells products only at farmers' markets, farm stands, or residences;
- b. Senior meal sites;
- c. Institutions who prepare their own food, including but not limited to schools/public and private, colleges, hospitals, long term care facilities, fraternities and sororities

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

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

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

1204.4.05(He-P 2304.05) Fees.

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

- (1) Class A: \$875;
- (2) Class B: \$450;
- (3) Class C: \$350;
- (4) Class D: \$225;
- (5) Class E: \$175;
- (6) Class F: \$150;
- (7) Class G: \$100;
- (8) Class H: \$50

(b) Licensees shall be charged up to, and shall pay up to \$100 for each inspection conducted after the second inspection conducted in any licensing period, except

that the inspections conducted during the provisional license period shall not be included in this count.

(c) An applicant or licensee shall pay a fee of \$25 for each plan review submitted under 1204.4.12(He-P 2304.12).

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

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

(1) Payment shall be made in the form of check or money order made payable to the "Town of Exeter, Health Dept." in the exact amount due;

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

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

1204.4.06(He-P 2304.06) Water System Requirements.

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

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

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

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

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

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

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

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

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

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

(1) Bacteria;

(2) Nitrates; and

(3) Nitrites.

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

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

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

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

1204.4.07(He-P 2304.07) Wastewater System Requirements.

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

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

(1) Both:

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

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

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

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

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

#### 1204.4.08(He-P 2304.08) Change in Ownership of a Food Establishment.

(a) When there is a change of ownership of a food establishment, the new owner shall submit the items required for initial license applicants under 1204.4.01 (He-P 2304.01) to the department at least 30 days prior to the change of ownership.

(b) Upon receipt and processing of the items required by (a) above, and after an inspection conducted in accordance with 1204.5 (He-P 2305) which shall also determine compliance with Chapters 4, 5, and 6 of the Food Code, the department shall issue a provisional license reflecting the change in ownership.

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

1204.4.09(He-P 2304.09) Change in Name of a Food Establishment.

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

(b) The written request shall include:

- (1) The reason for requesting a new license;
- (2) The name of the food establishment as it appears on the existing license;
- (3) The name of the food establishment as the license holder requests it to appear on the new license; and
- (4) The date upon which the change in name is intended to occur.

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

1204.4.10(He-P 2304.10) Change in Location of a Food Establishment.

(a) When there is a change of location of a food establishment, the license holder shall submit the items required for initial license applicants and plan review under 1204.4.01 (He-P 2304.01) to the department at least 30 days prior to the change of location.

(b) Upon receipt and processing of the items required under (a) above, and after an inspection conducted in accordance with 1204.5 (He-P 2305), the department shall issue a provisional license reflecting the change of location.

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

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

1204.4.11(He-P 2304.11) Change in License Class.

(a) A license holder wishing to request an upgrade to a higher-level class of license listed in 1204.4.04 (He-P 2304.04) shall:

- (1) Be treated as an applicant for a new license; and

- (2) Apply for a new license in accordance with 1204.4.01 (He-P 2304.01).
- (b) The issuance of a provisional license due to an upgrade in license class shall void the previous license on the date the upgrade occurs.
- (c) A license holder wishing to request a downgrade to a lower level class of license listed in 1204.4.04 (He-P 2304.04) shall submit a written request for downgrade to the department.
- (d) The written request in (c) above shall include:
  - (1) The reason for requesting a downgrade; and
  - (2) The date upon which the downgrade is intended to occur.
- (e) Following receipt of the request under (c) above the licensee shall be issued a revised license reflecting the downgrade in class of license. The establishment number and expiration date shall remain the same as it was on the immediately preceding license.

1204.4.12(He-P 2304.12) Submission of Plans and Specifications for New or Remodeled Food Establishments.

- (a) An applicant or license holder shall complete and submit a "Plan Review Application" to the department for review and approval at least 45 days prior to:
  - (1) Constructing a new food establishment; mobile or pushcart unit;
  - (2) Converting an existing structure for use as a food establishment;
  - (3) Remodeling a food establishment which may include but is not limited to the addition of seats, service, and lavatories; or
  - (4) Relocating a food establishment when the relocation also involves (1), (2), or (3) above.
- (b) Homesteads, and bed and breakfasts shall be exempt from submitting a plan review application.
- (c) An applicant or licensee shall pay a fee of \$25, for each plan review application submitted.
- (d) The department shall review plans for construction, renovation or structural alterations of a food establishment for compliance with all applicable sections of RSA 143, RSA 143-A, and Town 1204(He-P 2300) and notify the applicant or licensee as to whether the plan complies with these requirements. Plan includes



but is not limited to – menu, HACCP/Variance as needed, floor plan to scale, location of all equipment with specifications, locations of food prep, storage, refrigeration, sinks, lavatories, seating, etc.

1204.4.13(He-P 2304.13) Hazard Analysis and Critical Control Point (HACCP) Plan Requirements.

(a) The following applicants or licensees shall submit to the department a complete HACCP plan for approval prior to engaging in an activity that requires such a plan; such as but not limited to:

(1) Food processing plants;

(2) Any food establishment engaging in an activity that requires a variance as specified under Food Code subparagraph 3-401.11(D)(3), § 3-502.11, or ¶ 4-204.110 (B);

(3) Any food establishment engaging in a food preparation or processing method that the department determines requires a variance, based on the submission of plans and specifications in accordance with 1204.4.12(He-P 2304.12), an inspection finding, or a variance request; and

(4) Any food establishment engaging in an activity specified under Food Code § 3-502.11 and 3-502.12.

(5) Any food establishment which is required to have a HACCP plan by law.

(b) A complete HACCP plan shall include the following:

(1) A categorization of the types of TCS foods that are specified in the menu

(2) A flow diagram by specific food or category type identifying critical control points and providing information on the following:

a. Ingredients, materials, and equipment used in the preparation of that food; and

b. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

(3) Food employee and supervisory training plan that addresses the food safety issues of concern;

(4) A statement of standard operating procedures for the plan under consideration including clearly identifying:

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

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

(c) The department shall review HACCP plans for compliance with all applicable sections of RSA 143, 143-A, and Town 1204(He-P 2300) and notify the applicant or licensee as to whether the plan complies with these requirements.

1204.4.14(He-P 2304.14) Variations.

(a) Applicants or license holders seeking variations from specific rules or Food Code items shall submit a "Variance Request" to the:

Exeter Health Department  
20 Court St  
Exeter, NH 03833  
603-773-6132

(b) The variance request shall include:

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

(4) A HACCP plan if required under 1204.4.13(He-P 2304.13).

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

- (1) The department concludes that authorizing deviation from strict compliance with the rule or Food Code item from which a variance is sought does not contradict the intent of the rule or Food Code item; and
- (2) The alternative proposed by the applicant or license holder ensures that the objective or intent of the rule or Food Code item from which a variance is sought will be accomplished.
- (3) An approved variance may not be applicable if there is a change in class and/or menu item(s) change.

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

(e) A variance shall be approved for one year or until the expiration of the current license or unless specified by the department. The variance is not transferable.

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

#### 1204.4.15(He P 2304.15) Trade Secrets and Confidentiality.

(a) The department shall treat as confidential, in accordance with RSA 350-B, information that meets the criteria specified in RSA 350-B for a trade secret and is contained on inspection report forms, in the plans and specifications submitted as specified under 1204.4.12(He P 2304.12), and in any HACCP plans submitted.

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

### 1204.5(PART He-P 2305) INSPECTIONS AND COMPLIANCE

#### 1204.5.01(He-P 2305.01) Inspections.

(a) For the purpose of determining compliance with RSA 143, RSA 143-A, and Town 1204(He-P 2300), as authorized by RSA 143:4 and RSA 143-A:6, II, the applicant or licensee shall admit and allow any department representative at any time to enter and inspect the following:

- (1) The licensed food establishment, including any mobile food units or vehicles used by the licensee for the transportation or retail sale of food; and
  - (2) Any records required by RSA 143-A and Town 1204(He-P 2300), or pertaining to food and supplies purchased and distributed by the food establishment.
- (b) At the time of inspection, or upon request, the applicant or licensee shall provide the department with the following:
- (1) A list of persons employed; and
  - (2) Samples of food for bacteriological, chemical, and physical examination.
- (c) The department shall conduct an inspection to determine full compliance with RSA 143, RSA 143-A, and Town 1204(He-P 2300), prior to:
- (1) The issuance of a provisional license;
  - (2) The issuance of a full license;
  - (3) A change in ownership;
  - (4) A change in the licensee's physical location;
  - (5) An upgrade in the license class;
  - (6) Occupation of space after construction, renovations or structural alterations; or
  - (7) The annual renewal of a license.
- (d) In addition to (c) above, the department shall conduct an inspection:
- (1) Whenever the department has reason to believe a condition exists that places the food establishment in non-compliance with RSA 143, RSA 143-A, or Town 1204(He-P 2300); and
  - (2) As necessary to verify compliance with any corrective action plan (CAP) and/or Risk Control Plan accepted by the department as part of an inspection.
- (e) The applicant, owner, or person in charge shall be present at time of inspection.
- (f) Upon completion of the inspection, the department shall complete a written or digital inspection report in accordance with Food Code Annex 7, Form 3-A and

Guide 3-B, or in the case of food processing plants and homesteads a “Food Processing Plant Inspection Report”.

(1) It is the responsibility of the facility to download a digital inspection sent via email.

(g) The inspection report shall contain:

(1) Specific factual observations of deficiencies which violate Town 1204(He-P 2300) and/or the Food Code and which require correction; and

(2) For all food establishments except food processing plants, a color designation, described in (i) below, based on the results of the inspection findings.

(h) The applicant, owner, or person in charge shall acknowledge receipt of the inspection report by signing the inspection report (paper copy or digital).

(i) Color Score Designation shall be as follows:

(1) Green if there are no priority item violations identified at the time of the inspection (no priority/critical = no further action)

(2) Yellow if there are one to three priority/critical item violations and/or *repeat violations* at the time of inspection; (priority/critical item will trigger a follow-up inspection)

(3) Red if it is determined that an imminent health hazard exists at the time of the inspection, there are four or more priority/critical item violations, or if the food establishment is found to be operating without a current, valid license.(follow-up inspection triggered *and closure of facility possible*)

1204.5.02(He-P 2305.02) Correction of Deficiencies Identified During an Inspection.

(a) All deficiencies identified in the inspection report shall be corrected at the time of inspection, as practicable.

(b) For all food establishments except food processing plants and homesteads, if a priority item violation and/or a priority foundation violation is found during an inspection and cannot be corrected immediately and permanently in the presence of the inspector, the applicant or licensee shall:

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

(2) Complete a CAP in the presence of the inspector in accordance with 1204.5.03 (He-P 2305.03) Repeat violations of the same code # violation will be placed in a corrective action plan, or a Risk Control Plan for repeat risk factor violations and lack of proper public health interventions

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

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

(2) Complete a CAP in the presence of the inspector in accordance with 1204.5.03 (He-P 2305.03).

(d) All core items shall be corrected in a timely manner a CAP *may be* completed and accepted by the inspector); not to exceed a 6 month period for corrective action.

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

(1) Agree to temporarily correct the violation and to permanently correct it in a specified time frame—

Priority items not to exceed 10 calendar days after the inspection

Priority foundation items not to exceed 10 calendar days after the inspection

Core items shall be corrected in a timely manner, not to exceed 6 months.

(2) A CAP may be completed for a core item violation or a priority foundation item, at the discretion of the inspector

#### 1204.5.03(He-P 2305.03) Corrective Action Plan.

(a) When a deficiency identified in the inspection report cannot be corrected either immediately and permanently in the presence of the inspector or permanently within 10 calendar days after the inspection, pursuant to 1204.5.02(b), (c),(d), or (e) (He-P 2305.02(b), (c), or (d)), the licensee shall complete, date, and sign, at the time of inspection, a Corrective Action Plan form provided by the inspector, including:

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

- (2) The date by which each deficiency shall be corrected; and
- (3) What measures will be put in place to ensure that the deficiency does not recur.

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

- (1) Achieves compliance with RSA 143, RSA 143-A, and Town 1204(He-P 2300);
- (2) Addresses all deficiencies and deficient practices as cited in the inspection report;
- (3) Prevents a new violation of RSA 143, RSA 143-A, or Town 1204(He-P 2300) as a result of the implementation of the CAP; and
- (4) Specifies the date upon which the deficiencies will be corrected.

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

- (1) Reviewing materials submitted by the licensee;
- (2) Conducting a follow-up inspection; or
- (3) Reviewing compliance during a renewal inspection.

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

- (1) Impose applicable fines, in accordance with 1204.6.02(a)(13) (He-P 2306.02(a)(13));
- (2) Revoke the license in accordance with 1204.6.03(a)(7) (He-P 2306.03(a)(7)); and
- (3) Deny the application for a renewal of a license, as applicable, in accordance with 1204.4.03(d)(2) (He-P 2304.03(d)(2)).

#### 1204.5.04 RISK CONTROL PLAN AS PART OF THE CAP 1204.5.03(a)-(d)

(a) The Risk Control Plan will be indicated for repeat violations of the:

- (1) 5 CDC Risk Factors: improper holding temperatures; inadequate cooking; contaminated equipment; food from unsafe sources; and poor personal hygiene and/or
- (2) 5 Key Public Health Interventions: demonstration of knowledge; employee health; controlling hands as a vehicle of contamination; time and temperature parameters for controlling pathogens; and consumer advisory

(b) The Risk Control Plan will identify the risk factors, the uncontrolled process step or CCP, the hazard, the critical limit and the corrective action when the critical limits are not met: to establish active managerial control of the identified uncontrolled/repeat hazards.

(c) The Risk Control Plan delineates what needs to be controlled and how it will be controlled, along with necessary records and responsible personnel. It should also indicate what training is necessary.

#### 1204.6(PART He-P 2306) ENFORCEMENT ACTIONS

##### 1204.6.01(He-P 2306.01) Enforcement Actions and Notice of Right to Appeal.

(a) The department shall impose enforcement actions for violations of RSA 143, RSA 143-A, or Town 1204(He-P 2300), including the following:

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

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

- (1) The action to be taken by the department;
- (2) The reasons for the action, including the identification of each deficiency as applicable; and
- (3) The right of the applicant or licensee to request a hearing in accordance with RSA 541-A, He-C 200, and 1204.6.04 (He-P 2306.04) prior to the enforcement action becoming final.



(c) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 143, RSA 143-A, RSA 541-A:30, III, or Town 1204(He-P 2300).

1204.6.02(He-P 2306.02) Administrative Fines.

(a) The department shall impose fines as follows:

(1) For providing false or misleading information on or with an application, in violation of 1204.4.01(a) (He-P 2304.01(a)), 1204.11.01(a) (He-P 2311.01(a)), or 1204.4.12(a) (He-P 2304.12(a)), the fine shall be \$1,000;

(2) For failure to operate a food establishment only in the manner in which licensed to do so, in violation of 1204.4.02(j) (He-P 2304.02(j)), the fine shall be \$500;

(3) For failure to cooperate during an inspection of a food establishment, including but not limited to failing to allow department representatives or inspectors to inspect food establishment premises, vehicles, and records at all times, in violation of 1204.5.01 (He-P 2305.01), the fine shall be \$2,000;

(4) For failure to notify the department by telephone within 24 8 hours of any fire or other disaster that jeopardizes the safety or sanitation of food provided in food establishments, in violation of 1204.6.06(a) (He-P 2306.06(a)), the fine shall be \$250;

(5) For failure to notify the department pursuant to 1204.4.08(a) (He-P 2304.08(a)) at least 10 days prior to a food establishment ownership change, the fine shall be \$500;

(6) For failure to notify the department pursuant to 1204.4.10(a) (He-P 2304.10(a)) at least 30 days prior to the change of location of a food establishment, the fine shall be \$500;

(7) For failure to submit a plan for review as required in 1204.4.12(a) (He-P 2304.12(a)), the fine shall be \$300;

(8) For failure to discard food as required by Food Code 3-701.11, and in the manner instructed to do so by the department, the fine shall be \$500;

(9) For failure to cease operation upon notification by the department to do so, the fine shall be \$1000. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;

- (10) For failure to cease operation after a license has expired, when an application has been denied, or when a license has been revoked, the fine shall be \$1,000. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;
- (11) For a violation of the same priority item on more than 2 consecutive inspections, the fine shall be \$500;
- (12) For failure to pay an administrative fine within 30 days of its imposition, or within 30 days of the decision to uphold the imposition of a fine that was appealed, the fine shall be \$500. Each day until the expiration of the current license, that a license holder fails to pay such a fine shall be considered a separate offense subject to an additional \$500 fine;
- (13) For a failure to comply with any CAP or Risk Control Plan that has been accepted by the department, the fine shall be \$500;
- (14) For operation of a food service establishment without obtaining a food service license, as required by RSA 143-A:4, the fine shall be \$1,000. Each day that a food establishment operates without a license shall be considered a separate offense subject to an additional \$500 fine;
- (15) For failure to submit a HACCP plan for review if required by the department in accordance with 1204.4.13 (He-P 2304.13), the fine shall be \$500;
- (16) For failure to display a valid license, in accordance with 1204.4.02(I) (He-P 2304.02(I)), the fine shall be \$200;
- (17) For failure of a food protection certified applicant, owner, or person in charge to be present at the time of inspection and demonstrate the knowledge required by section 2-102.11 and certification by section 2-102.20 of the Food Code which are pertinent to the risks inherent to the specific food establishment, in violation of 1204.5.01(e) ((He-P 2305.01(e)), the fine shall be \$250; and
- (18) For violating a variance approved in accordance with 1204.4.14 (He-P 2304.14), the fine shall be \$500.
- (19) For failure to submit a timely renewal application, in violation of He-P 2304.03(b), the fine shall be \$75;
- (20) For failure of an exempt or non-exempt homestead food operation to label products in accordance with He-P 2310.01(d) or He-P 2311.04, the fine shall be \$250 per product line;

(21) For failure of a poultry producer or a rabbit producer to comply with training requirements of He-P 2313.02, the fine shall be \$500;

(22) For failure to cooperate during an outbreak investigation in violation of He-P 2313.01, the fine shall be \$500;

(23) For failure to maintain files, for at least 90 days, on the receipt of purchase of uninspected poultry or uninspected rabbits in accordance with RSA 143-A:15, II, the fine shall be \$500; and

(24) For failure to correctly label a menu relative to the sale of uninspected, poultry or uninspected rabbits in accordance with He-P 2314(c), the fine shall be \$500.

(b) Each day that an individual or licensee continues to be in violation of the provisions of RSA 143, RSA 143-A, or Town 1204(He-P 2300) shall constitute a separate violation and shall be fined in accordance with this section.

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

(1) Payment shall be made in the form of check or money order made payable to the "Town of Exeter" in the exact amount due;

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

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

#### 1204.6.03(He-P 2306.03) Denial or Revocation of a License.

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

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

(2) An applicant or licensee has failed to pay any applicable fee in accordance with 1204.4.05 (He-P 2304.05) or any administrative fine imposed under 1204.6.02 (He-P 2306.02) or any other court authorized sanction or fee;

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

(4) After being notified of and given an opportunity to supply missing information, an applicant or licensee fails to submit an application that meets the requirements of 1204.4.02(c) (He-P 2304.02(c));

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

a. Provides false or misleading information to the department;

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

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

(6) There is a deficiency identified in the inspection report and the applicant or licensee does not either correct it or complete a CAP in accordance with 1204.5.02(b) or (c) (He-P 2305.02(b) or (c));

(7) The licensee fails to implement or continue to implement a CAP that has been accepted by the department in accordance with 1204.5.03(d) (He-P 2305.03(d));

(8) The licensee is cited 2 or more times under RSA 143, RSA 143-A, or Town 1204(He-P 2300) for the same critical/priority violation within the last 12 months or the last 5 inspections;

(9) A licensee has had a license revoked and submits an application during the 3-year prohibition period specified in (b) below; and

(10) A food establishment fails to implement an approved HACCP plan in accordance with 1204.4.13 (He-P 2304.13);

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

(c) The prohibition period referenced in (b) above shall begin on:

(1) The date of the department's decision to revoke or deny the license, if no request for an administrative hearing is requested or if the request is withdrawn; or

(2) The date a final decision upholding the action of the department is issued, if a request for a hearing is made and a hearing is held.

(d) Notwithstanding (b) and (c) above, the department may consider an application submitted after the decision to revoke or deny becomes final, if the applicant provides proof that circumstances have changed and that the applicant has obtained the requisite degree of knowledge, skills and resources necessary to maintain compliance with the provisions of RSA 143, RSA 143-A, and Town 1204(He-P 2300).

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

(1) A written application for a license to the department, completed in accordance with 1204.4.01 (He-P 2304.01);

(2) A corrective action plan, completed in accordance with 1204.5.03 (He-P 2305.03); and

(3) Written proof that subsequent to the revocation, the person in charge has taken and passed a food safety class that meets the standards of The Conference for Food Protection.

1204.6.04(He-P 2306.04) Request for an Administrative Hearing.

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

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

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

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

1204.6.05(He-P 2306.05) Effect of Denial of License Application, Revocation of License, or Expired License.

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

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

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

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

1204.6.06(He-P 2306.06) Closure.

(a) A licensee shall immediately discontinue operations and notify the department at 603-773-6132, or if at night or during weekends at 603-772-1212, if an imminent health hazard may exist because of an emergency such as, but not limited to:

- (1) Interruption of water service that lasts for 2 or more hours;
- (2) Whenever a drinking water sample is found to have E.coli bacteria or exceed the MCL for nitrates or nitrites described by 1204.4.06(f) (He-P 2304.06(f));
- (3) A failed sewer system or a sewage backup into the food establishment;
- (4) Interruption of electrical service for 2 or more hours;
- (5) A fire affecting a food establishment;
- (6) Flooding in a food establishment;
- (7) Chemical exposure in a food establishment;
- (8) Any other natural disaster or catastrophic event that could result in contamination of the food supply;
- (9) An employee has been found to be infected with a communicable disease as described in Food Code subparagraph 2-201.11 (A)(2); or

- (10) Any other severe unsanitary conditions that threaten to contaminate the food establishment and its food supply.
- (b) A licensee shall not be required to discontinue operations in an area of the food establishment that is unaffected by the imminent health hazard.
- (c) If operations are discontinued as specified in (a) above, the licensee shall obtain approval from the department before resuming operations.
- (d) The department shall approve the resumption of operations if the imminent health hazard no longer exists or the licensee has offered a plan to mitigate all threats to health and safety
- (e) The failure to include other violations, practices, circumstances, or events in this section shall not be construed as a determination that other violations, practices, circumstances, or events are not or shall not be considered an imminent health hazard.
- (f) The ~~commissioner's~~(Exeter Health Department's) order of an immediate closure of a food establishment shall be in accordance with the provisions of RSA 143:5-a.

#### 1204.7(PART He-P 2307) EMPLOYEE HEALTH

##### 1204.7.01(He-P 2307.01) Suspected or Confirmed Foodborne Disease Outbreaks.

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

##### 1204.7.02(He-P 2307.02) Reporting by the Person in Charge.

- (a) The person in charge shall notify the department as well as the state department's bureau of communicable disease control at 603-271-4496, or if at night or during weekends at 603-271-5300; the person in charge will also notify the Exeter Health Department at 603-773-6132, of a food employee, or a person who applies for a job as a food employee, who is diagnosed with, or suspected of having, an illness or condition specified in Food Code subparagraph 2-201.11 (B), including:

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

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

#### 1204.8(PART He-P 2308) SPECIAL REQUIREMENTS FOR BED AND BREAKFAST FACILITIES

1204.8.01(He-P 2308.01) Application Requirements. Food service establishments applying for a license as a bed and breakfast facility shall comply with all of the application requirements of 1204.4.01 (He-P 2304.01), except that they shall not be required to submit a plan review application as required under 1204.4.01(a)(5) (He-P 2304.01(a)(5)) and wastewater items as required under 1204.4.01(a)(4) (He-P 2304.01(a)(4) and 1204.4.07(He-P 2304.07).

1204.8.02(He-P 2308.02) Basic Requirements. A bed and breakfast facility shall comply with 1204.2 through 1204.7 (He-P 2302 through He-P 2307), however the following exceptions to the Food Code shall apply:

- (a) Commercial equipment shall not be required;
- (b) The kitchen shall be equipped with either:
  - (1) A 2-compartment sink; or
  - (2) A residential model dish machine and a one-compartment sink;
- (c) A sink used for food preparation shall not be required to be equipped with an indirect waste line;
- (d) A backflow device shall not be required for kitchen sinks provided with a spray hose;
- (e) Coved base at the juncture of the floor and wall shall not be required;



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

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

(h) Laundry facilities shall:

(1) Be allowed in the kitchen; and

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

1204.8.03(He-P 2308.03) Sanitization. Dishes, utensils, and food contact equipment and surfaces shall undergo sanitization as required in Food Code 4-703.11, except that sanitization, if done in the 2 compartment sink, shall occur in the second compartment after the dishes, utensils, and food contact equipment have been rinsed with clean water.

#### 1204.9(PART He-P 2309) SPECIAL REQUIREMENTS FOR FOOD PROCESSING PLANTS

1204.9.01(He-P 2309.01) Application Requirements. Food service establishments applying for a license as a food processing plant shall:

(a) Comply with all of the application requirements described in 1204.4.01 (He-P 2304.01);

(b) Submit with their application a list of all food products to be produced in the food processing plant; and

(c) Submit a HACCP plan as part of the application as required by 1204.4.13 (He-P 2304.13).

(d) Submit a finished product label with date code.

1204.9.02(He-P 2309.02) Basic Requirements. Food processing plants shall:

(a) Provide an updated list of food products to the department whenever new products are added;

(b) If thermally processing and packaging low-acid foods in hermetically sealed containers, comply with applicable federal regulations under the Code of Federal Regulations in 21 CFR 113 and 21 CFR 110;

- (c) If processing acidified foods, comply with applicable federal regulations under Code of Federal Regulations in 21 CFR 114 and 21 CFR 110; and
- (d) Maintain production records and distribution records of all products produced.
- (e) Provide a written recall procedure.

1204.9.03(He-P 2309.03) Food Processing Plant Standards.

- (a) Those food establishments licensed as food processing plants shall be exempt from the requirements of the Food Code and shall instead comply with the requirements in this section.
- (b) All food shall be from an approved source-as defined 1204.1.01(b)(1)(2)(3)
- (c) All food products shall be stored in original containers. If food products are removed from the original container, they shall be stored in labeled and closed containers. Containers shall be of a material that will not cause the food to become adulterated.
- (d) All food shall be in sound condition, free from spoilage, filth, or other contamination, and shall be safe for human consumption.
- (e) All TCS food shall be refrigerated at 41°F or lower, or held at 135°F or higher, to control bacterial growth.
- (f) Food storage facilities shall be kept clean and located to protect food from unsanitary conditions or contamination from any source at all times.
- (g) The floors, walls, ceilings, utensils, machinery, equipment, and supplies in the food preparation area and all vehicles used in the transportation of food shall be kept thoroughly clean.
- (h) All food contact surfaces shall be kept clean and undergo sanitization as frequently as necessary to protect against contamination of food—maximum 4 hour intervals
- (i) All food contact surfaces shall be non-toxic, easy to clean, smooth, nonabsorbent, and free of cracks or open seams. Sanitation shall comply with applicable federal regulations under the Code of Federal Regulations in 21 CFR:110.
- (j) All food shall be protected against insects and rodents at all times. Outside doors, windows, and other openings shall be fitted with screens and self-closing doors, if not otherwise protected. No dogs, cats, or other pets shall be allowed in the room where food is prepared or stored.

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

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

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

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

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

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

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

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

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

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

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

1204.9.04(He-P 2309.04) Labeling of All Packaged Foods. All packaged food shall bear a label showing:

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

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

- (1) In the case of an individual, partnership, or association be the name under which the business is conducted;
  - (2) In the case of a corporation, be the name of the parent corporation; or
  - (3) Where the food is not processed by the person whose name appears on the label, the name on the label shall be qualified by a phrase which reveals the connection such a person has with the food, including but not limited to, "Manufactured for \_\_\_\_\_", "Distributed by \_\_\_\_\_", or any other wording which expresses the facts;
- (c) The ingredients in descending order of predominance by weight; and
  - (d) The net weight, volume, or numerical count in both U.S. customary and metric; and
  - (e) A product code which includes date of manufacture, container size, and product lot or batch number to aid in a recall of product in case of a public health hazard; and
  - (f) Allergen information ie; WHEAT, SOY
  - (g) Directions as needed; reheat, refrigerate, cook in accordance with section 3-201.11 Ref. CFR of the food code.

1204.9.05(He-P 2309.05) Recall Procedure.

- (a) The food processing plant shall develop and maintain on file a written procedure for the recall of their product, including procedures for the notification of the department and consumers and the removal of the product from commerce.
- (b) Production and distribution records shall be used to enable location of products if a recall is initiated.
- (c) A food processing plant shall recall any product which the food processing plant or the department knows or has reason to believe might adversely affect the health and safety of the public.
- (d) A food processing plant that knows that the standard of quality has been violated or has reason to believe that circumstances exist which might adversely affect the safety of the product shall notify the department within 24 hours of learning of the violation or circumstances.
- (e) Circumstances in (d) requiring notification shall include, but are not limited to, source contamination, spills, accidents, natural disasters, or breakdowns in treatment processes.

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

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

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

#### 1204.10 SPECIAL REQUIREMENTS FOR LEVEL ONE AND LEVEL TWO HOMESTEADS PRODUCING FOOD IN A RESIDENTIAL NON COMMERCIAL KITCHEN

##### 1204.10.01 Application Requirements.

(a) Food service establishments applying for a license as a level one or level two homestead shall comply with all of the application requirements of 1204.2.04 (He-P 2302.04) except that they shall not be required to submit the plan review application required under 1204.4.01(a)(5) (He-P 2304.01(a)(5)) and wastewater items required under 1204.4.01(a)(4) (He-P 2304.01(a)(4) and 1204.4.07(He-P 2304.07).

(b) Level One Homestead license holder-offers product only at a farm stand, farmers' market or from the holder's residence/Class H-1 license

(c) Level Two Homestead license holder-may offer product to other food establishments and retail food stores, as well as farmers markets, farm stands, online, or license holder's residence/Class D-4 license

(d) Finished product label

1204.10.02(He-P 2310.02) Approved Products. Only the following food products shall be produced and sold from a homestead:

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

(1) Baked goods integrated with fruits or vegetables (i.e. banana bread, zucchini bread) or other similar baked items require a process review.

(b) Double-crust fruit pies;

- (c) Candy and fudge;
- (d) Packaged dry products, which include, but are not limited to, spices and herbs;
- (e) Acid foods, including, but not limited to, vinegars and mustards; and
- (f) Jams and jellies-process review required (1204.10.06/He-P 2301.05)

1204.10.03(He-P 2310.03) Prohibited Products. License holders producing food in a homestead shall not produce or sell TCS food, including any food which requires refrigeration.

1204.10.04(He-P 2310.04) Basic Requirements.

(a) Homesteads shall comply with all requirements of Town 1204.9.04(He-P 2309.04) and 1204.9.05(He-P 2309.05) regarding labeling of products and recall of products respectively.

(b) Homesteads shall label each product with the following statement: "This product is made in a residential kitchen". Labels shall contain ingredients list in order, Name and address for identification, all ingredients in descending order by weight, net volume weight or count, food allergen information, and product date code.

(c) Level Two Homesteads selling to retail shall also submit:

- (1) Copies of all finished product labels
- (2) A list of sources of all ingredients to be used
- (3) A flow chart describing the manufacturing steps for each product to be made
- (4) A description of how each product is packaged; and
- (5) A description of the records that are maintained during production including but not limited to temperatures and pH readings, where applicable

1204.10.05-Homestead Standards.

(a) Those food establishments licensed as homesteads shall be exempt from the requirements of the Food Code, and shall instead comply with the requirements of 1204.9.03(He-P 2309.03) and the requirements in this section.

(b) Commercial equipment shall not be required.

(c) The kitchen shall be equipped with either:

- (1) A 2-compartment sink; or

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

1204.10.06(He-P 2310.05) Process Review Required

(a) Level One or Level Two homesteads producing foods listed in 1204.10.02(f) that do not use recipes approved by the National Center for Home Food Preservation shall comply with the following:

- (1) A process review shall be conducted by a food processing authority on each product prior to its being produced by the license holder. If the food processing authority declares in writing that there are no biological concerns with the food after evaluating the scheduled process, the food shall be allowed to be produced;
- (2) License holders shall keep records of all pHs on file and available for review by the regulatory authority upon request;
- (3) A process review shall be conducted for a product that has been previously tested if the ingredients are altered or the process changes;
- (4) License applicants shall submit process review documentation with the license application in accordance with Town 1204.10.01;

- (5) License holders shall keep all process review information on file and available for review by the regulatory authority upon request.

1204.11(PART He-P 2312) OUT-OF-STATE FOOD PRODUCERS IN RESIDENTIAL, NON-COMMERCIAL KITCHENS

1204.11.01(He-P 2312.01) Registration of Out-of-State Producers in Residential, Non-Commercial Kitchens.

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

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

- (2) One of the following:

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

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

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

- (3) A fee in the amount of \$25, pursuant to RSA 143:29, payable by check or money order, in the exact amount of the fee made payable to the "Town of Exeter".

- (4) A complete list of the products manufactured.

1204.11.02(He-P 2312.02) Processing of Registrations.

(a) The registration application required by 1204.11.01(He-P 2312.01) shall be processed in accordance with RSA 541-A:29.

(b) If the registration application does not contain all of the items required by 1204.11.01(He-P 2312.01), the department shall:

- (1) Not process the registration application; and

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



(c) If all the items required by 1204.11.01(He-P 2312.01) are received, the application shall be deemed to be complete.

1204.11.03(He-P 2312.03) Registration Issuance and Duration.

(a) A registration shall be issued if the registration application meets the requirements of 1204.11.01(He-P 2312.01).

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

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

1204.11.04(He-P 2312.04) Denial of Registration Applications. The department shall deny a registration application when the application submitted is incomplete and any information requested in accordance with 1204.11.02(b) ((He-P 2312.02(b)) is not provided.

1204.11.05(He-P 2312.05) Renewal of Registrations.

(a) Registration applications for renewal of registrations shall be completed as required in 1204.11.01(He-P 2312.01).

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

(d) Registration renewal applications shall be processed and issued or denied in accordance with 1204.11.02(He-P 2312.02) through 1204.11.04(He-P 2312.04).

1204.12 TEMPORARY FOOD SERVICE EVENT PERMIT REQUIREMENTS

RSA143-A:3 VIII “Temporary food service establishment means any food service establishment which operates at a fixed location for a temporary period of time not to exceed 2 weeks, in connection with a fair, carnival, circus, public exhibition, or similar transitory gathering”

The event may be held indoors or outdoors. Vendor types may include, but not limited to one selling or offering any prepared, prepackaged potentially hazardous or non-hazardous foods, as well as cooking.

The *Coordinator* of the event must submit a completed *Coordinator’s Application* at least one month prior to the event to the Exeter Health Department.

All *vendors* must submit a completed *Temporary Food Service Application* at least 14 days prior to the event to the Exeter Health Department.

*Applications* not received in the Health Department by the deadline date will not be considered for permitting.

Vendor and event requirements may include, but not limited to the following; having a current food service license, commissary agreement, foods from an approved source, hand wash station, ground covering, overhead protection, food thermometers, sanitize solution, hot/cold hold equipment, single service customer items, extra utensils, disposable gloves, garbage and trash disposal. This is not a complete listing.

The Health Department may impose additional requirements to protect against a health hazard related to the conduct of the temporary food service establishment, prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may modify requirements of the regulations when warranted.

#### 1204.13 (PART He-P 2313) POULTRY PRODUCERS AND RABBIT PRODUCERS SELLING POULTRY AND RABBITS TO RESTAURANTS LICENSED UNDER RSA 143-A

##### 1204.13.01 (He-P 2313.01) Requirements for Poultry Producers and Rabbit Producers to Sell to Restaurants Licensed Under RSA 143-A.

Poultry producers and rabbit producers who are exempt from food service licensure under RSA 143-A:5, VIII, but who sell to restaurants licensed under RSA 143-A shall:

- (a) Register with the NH department of agriculture, markets, and food;
- (b) Complete an education course meeting the requirements of He-P 2313.02 at a minimum of every 5 years;
- (c) Maintain production records showing that no more than 1,000 whole poultry or 1,000 rabbits are offered to restaurants within a calendar year;
- (d) Label each poultry and rabbit with the following information:
  - (1) The name of the producer;
  - (2) The address of the producer;
  - (3) The date of slaughter of the poultry or rabbit; and
  - (4) Safe handling instructions as stated in the Food Code Section 3-201.11(F); and
- (e) Provide information to the department during an investigation of a foodborne illness outbreak linked to any poultry or rabbits supplied by the producer.

(f) Prior to selling poultry or rabbit to restaurants, poultry and rabbit producers who are exempt and meet the requirements of this section shall obtain documentation from the NH department of agriculture, markets, and food that shows:

- (1) Registration with NH department of agriculture, markets, and food; and
- (2) Completion of the education course as set forth in He-P 2313.02 below.

(g) Documentation obtained in (f) shall be presented to any licensed restaurant to demonstrate that the producer has met the requirements of RSA 143-A:16, RSA 143-A:17 and these rules.

1204.13.02 (He-P 2313.02) Education Requirements for Poultry Producers and Rabbit Producers Exempt from Food Service Licensure.

(a) Producers shall complete department approved training, offered by UNH Cooperative Extension or another training program which includes training in required slaughtering, processing, packaging, handling, labeling, transportation practices, and any other specific requirements for producers set forth in RSA 143-A:14-16.

(b) Producers shall complete the training in (a) above every 5 years.

(c) A producer shall provide proof of successful completion of the required training to the department of agriculture, markets and food with its registration.

(d) At a minimum, one individual involved in the producer's, operations shall obtain the required training.

(e) The producer shall maintain records of the completed training.

Source. #10867, eff 6-25-15

**1204.14 (PART He-P 2314) REQUIREMENTS FOR RESTAURANTS LICENSED TO SELL RABBIT OR POULTRY EXEMPT FROM INSPECTION**

He-P 2314.01 Requirements for Restaurants Licensed Under RSA 143-A to Sell Rabbit or Poultry That are Exempt from Inspection Pursuant to RSA 143-A:15.

(a) Restaurants shall only offer uninspected poultry or rabbits from poultry producers or rabbit producers that meet the requirements of He-P 2313.

(b) Restaurants shall maintain receipts of purchase of uninspected poultry or uninspected rabbits for 90 days, which include the following information:

- (1) The date of purchase;
- (2) The name of the poultry producer or rabbit producer;
- (3) The address of the producer; and
- (4) The phone number of the producer.

(c) The restaurant shall label any menu item containing uninspected poultry or uninspected rabbits in font at least 10 point, and in a color that provides clear contrast to the background, and which states the following: "This product has been raised and processed on a New Hampshire farm and is exempt from state and federal inspection."

Severability:

To the extent that any provisions of this policy conflict with state law, the state law shall prevail.

Approved this 25<sup>th</sup> day of September, 2017

\_\_\_\_\_  
Don Clement, Chairman

\_\_\_\_\_  
Julie Gilman

\_\_\_\_\_  
Anne Surman, Vice Chair

\_\_\_\_\_  
Dan Chartrand

\_\_\_\_\_  
Kathy Corson, Clerk

## APPENDIX

<b>RULE</b>	<b>STATUTE RULE IMPLEMENTS</b>
He-P 2301.01	RSA 143-A; RSA 143-A:3
He-P 2302.01	RSA 143-A:4; RSA 143-A:5; RSA 143-A:12, II
He-P 2302.02	RSA 143-A:5-a
He-P 2303.01	RSA 143-A:9, V
He-P 2304.01	RSA 143-A:6, I, V
He-P 2304.02	RSA 143-A:4, II; RSA 143-A:6, I-V
He-P 2304.03	RSA 143-A:6, I-V
He-P 2304.04	RSA 143-A:9, I; RSA 143-A:12, II
He-P 2304.05	RSA 143-A:6, V; RSA 143-A:9, I-a; RSA 143-A:13, V
He-P 2304.06	RSA 143:3; RSA 143-A:9, V
He-P 2304.07	RSA 143:3; RSA 143-A:9, V
He-P 2304.08	RSA 143-A:6; RSA 143-A:9, V
He-P 2304.09	RSA 143-A:6; RSA 143-A:9, V
He-P 2304.10	RSA 143-A:6; RSA 143-A:9, V
He-P 2304.11	RSA 143-A:6; RSA 143-A:9, V
He-P 2304.12	RSA 143-A:9, V
He-P 2304.13	RSA 143-A:9, V
He-P 2304.14	RSA 143-A:9, V
He P 2304.15	RSA 143-A:9, V
He-P 2305.01	RSA 143:4; RSA 143-A:6
He-P 2305.02	RSA 143:4; RSA 143-A:6
He-P 2305.03	RSA 143:4; RSA 143-A:6
He-P 2306.01	RSA 143:5-a; RSA 143-A:6; RSA 143-A:7; RSA 143-A:9-a, I
He-P 2306.02	RSA 143:7-a; RSA 143-A:10-a
He-P 2306.03	RSA 143-A:6; RSA 143-A:7; RSA 143-A:9-a, I
He-P 2306.04	RSA 143-A:9, IV-c
He-P 2306.05	RSA 143-A:4; RSA 143-A:6; RSA 143-A:11
He-P 2306.06	RSA 143:5-a; RSA 143-A:9, V
He-P 2307.01	RSA 141-C:9, II; RSA 143:5
He-P 2307.02	RSA 141-C:6, III
He-P 2308.01 – He-P 2308.03	RSA 143-A:9, V
He-P 2309.01 – He-P 2309.05	RSA 143-A:9, V
He-P 2310.01 – He-P 2310.05	RSA 143-A:12-13
He-P 2311.01 – He-P 2311.05	RSA 143:29