

10-144 CMR

CHAPTER 201

STATE OF MAINE

**RULES RELATING TO THE ADMINISTRATION AND ENFORCEMENT
OF ESTABLISHMENTS REGULATED BY THE
HEALTH INSPECTION PROGRAM**



**DEPARTMENT OF HEALTH AND HUMAN SERVICES
MAINE CENTER FOR DISEASE CONTROL AND PREVENTION
DIVISION OF ENVIRONMENTAL HEALTH
HEALTH INSPECTION PROGRAM
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AUGUSTA, ME 04333-0011**

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**10-144
CODE OF MAINE REGULATIONS
CHAPTER 201**

**Health Inspection Program
Division of Environmental Health
Maine Center for Disease Control & Prevention
Department of Health and Human Services**

**STATE OF MAINE
RULES RELATING TO THE ADMINISTRATION AND ENFORCEMENT OF
ESTABLISHMENTS REGULATED BY THE HEALTH INSPECTION PROGRAM**

SUMMARY STATEMENT:

These rules contain the requirements which must be met by eating and lodging establishments, campgrounds, sporting camps, and youth camps licensed or regulated in the State of Maine by the Department of Health and Human Services. These rules and regulations define relevant terms, describe the inspection process, provide specific standards for licensure, as well as compliance, enforcement and appeal protocols, when eating and lodging establishments fail to meet the requirements within these Rules.

BASIS STATEMENT:

These rules are established to protect public health, by providing specific compliance and enforcement requirements for the eating and lodging establishments, campgrounds, sporting/recreational camps and youth camps licensed or regulated by the Health Inspection Program in the Division of Environmental Health, Department of Health and Human Services.

AUTHORITY:

22 M.R.S. §2496; 32 M.R.S. §§ 4251-4252; 32 M.R.S. §§ 4325 – 26;
22 M.R.S. §§ 1601-1607; 32 M.R.S. §§ 4312-4314; 22 M.R.S. §§ 2661 – 2669, and 22 M.R.S. §§ 1551-A

LAST AMENDED:

These regulations were last amended October 7, 2012.

Nondiscrimination Notice

In accordance with Title VI of the Civil Rights Act of 1964, as amended by the Civil Rights Restoration Act of 1991 (42 U.S.C. 1981, 2000e *et seq.*), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), and Title IX of the Education Amendments of 1972, the Maine Department of Health and Human Services does not discriminate on the basis of sex, color, national origin, disability or age in admission or access to or treatment or employment in its programs and activities.

TABLE OF CONTENTS

SECTION	PAGE
SECTION 1: GENERAL PROVISIONS	
A. Purpose.....	1
B. Definitions	1
SECTION 2: CERTIFICATION OF PERSONNEL	
A. Certified Food Protection Managers	11
SECTION 3: DELEGATION OF INSPECTION DUTIES TO MUNICIPALITIES	
A. Statutory Authority to Delegate Inspection Duties	13
B. Department’s Licensing Authority for Delegated Inspections.....	13
C. Conditions for Delegation.....	13
D. Food Outbreak Protocols	14
SECTION 4: LICENSING PROCEDURES	
A. Licenses Required.....	15
B. Issuance of Licenses	15
SECTION 5: FEE	
SCHEDULE	17
SECTION 6: INSPECTIONS	
A. Right of Entry.....	21
B. Frequency.....	2
C. Inspectors’ Findings.....	22
D. Inspection Failure.....	22
E. Alternative Determination for Compliance for Youth Camps.....	23
F. Imminent Health Hazards.....	23
SECTION 7: ENFORCEMENT PROTOCOLS	
A. Intent	26
B. Authorization	26
C. Referral for Enforcement Action	26
D. Initial Letter of Enforcement.....	26
E. Menu Labeling Compliance/Enforcement	26
SECTION 8: ADMINISTRATIVE PENALTIES	
A. Scope of Administrative Penalties	26
B. Process	26
C. Risk Assessment and Analysis.....	26
D. Authority.....	26
E. Penalty Schedule for Violations (Except Operating Without a License).....	28
F. Penalty Schedule for Operating Without a License Violations.....	29
G. Attorney General Injunctions.....	30
SECTION 9: SUSPENSION OR REVOCATION OF LICENSES	
A. Department Filing of Complaint for Suspension/Revocation.....	31
B. Emergency Suspension/Revocation	31
C. Expedited Hearing	31
SECTION 10: APPEALS	
A. Right to Appeal.....	32
B. Collection of Fines Prior to Department Renewal	32
SECTION 11 VARIANCES	
A. Variances and Waivers.....	33

B.	Documentation of Proposed Variance and Justification.....	
	..33	
C.	Conformance with Approved	
	Procedures.....	33

10-144 DEPARTMENT OF HEALTH AND HUMAN SERVICES**Chapter 201: RULES RELATING TO THE ADMINISTRATION AND ENFORCEMENT OF ESTABLISHMENTS REGULATED BY THE HEALTH INSPECTION PROGRAM**

SUMMARY: These rules contain the requirements which must be met by eating and lodging establishments, campgrounds, sporting camps, and youth camps licensed or regulated in the State of Maine by the Health and Human Services. These rules and regulations define relevant terms, describe the inspection process, provide specific standards for licensure, as well as compliance, enforcement and appeal protocols, when eating and lodging establishments fail to meet the requirements within these Rules.

SECTION 1. GENERAL PROVISIONS**A. Purpose**

These rules shall be liberally construed and applied to promote their underlying purpose of protecting the public health.

B. Definitions

1. **Accredited Program** means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals. “Accredited Program” refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor’s mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration. “Accredited Program” does not refer to training functions or educational programs.
2. **Approved** means acceptable to the Department, based on its determination as to conformance with appropriate standards and good public health practice.
3. **Bed and Breakfast** is a unique eating establishment, where the general public can stay overnight and be provided with a “limited menu,” serving only a breakfast meal. This meal can be either a full or continental breakfast. Unlike other eating establishments, the meal is prepared in the private home. Notwithstanding 22 M.R.S.A. §2501, all bed and breakfasts, regardless of the number of rooms rented, are subject to Departmental licensing requirements by these rules.
4. **Business Enterprise Program** is a program within the Maine Department of Labor, that seeks to broaden economic opportunities for blind residents of Maine,

by creating snack bars, cafeterias, and vending machine facilities located upon state, federal, and municipal properties.

5. **Catering** means preparing food for pre-arranged events, and a license is required. Events are contracted for a flat rate of pay and not charged per customer.
6. **Catering Establishment** means any kitchen, commissary or similar place in which food or drink is prepared for sale or service elsewhere, or for food service on the premises during special catered events. For clarification, catering establishments are licensed to prepare food at a specific location, yet the food is prepared for a pre-arranged event at another location and the food may be served anywhere the event is held.
7. **Campground** means a parcel of land where camping takes place and contains 5 or more sites in any combination. Specific requirements are contained in Rules Relating to Campgrounds (10-144 CMR 205). At any such campground, the sites are intended for temporary occupancy for recreational purposes only, and not for permanent residency.
8. **Certified Food Protection Manager** means a person who is employed or engaged by the management of an eating establishment, who has the authority to implement food protection measures at that establishment, and who meets the certification requirements of section 2(A).
9. **Chain Restaurant** means an eating establishment that does business under the same trade name in 20 or more locations, at least one of which is located in the State that offers predominantly the same type of meals, food, beverages, or menus, regardless of the type of ownership of an individual location. "Chain restaurant" does not include a grocery store. "Chain restaurant" does not include a hotel or motel that provides a separately owned eating establishment, but does include the separately owned eating establishment, if the eating establishment meets the criteria of this subsection. "Chain restaurant" does not include a movie theater.
10. **Commissary** means a kitchen that receives, stores, and prepares food for delivery to other meal sites or vending locations, and does not qualify for any other Department license. Examples of commissaries include, but are not limited to, vending company production kitchens that prepare food for use in vending machines; senior citizen meals production kitchens that deliver either frozen or ready-to-eat meals; kitchens that prepare food for small boat day trips; kitchens located at an event hall or convention hall used by multiple caterers as part of specific events, or a commercial kitchen used by multiple food vendors.
11. **Commissioner** means the Commissioner of the Department of Health and Human Services.
12. **Complete License Application** means an application that includes all relevant establishment information, proper license category checked, proper license type checked, business owner information completed, including proper mailing address and physical location of establishment, previous owner's information,

applicant's name signed and printed, date of application, and planned opening date. If the establishment is an eating establishment, a menu or draft menu must be provided, along with completion of the business plan table within the license application. The completed application must also include the following: (a) a floor plan for review of newly constructed or extensively renovated establishments; (b) a site plan for review of newly constructed or expanded campground operations; and (c) written approval statements relative to plumbing, water supply, waste disposal, and compliance with state and/or municipal codes.

13. **Compressed Air** means a license required for a supplier either to fill or to supply any breathing apparatus with life supporting gases.
14. **Corrosion-Resistant Materials** means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other normal uses.
15. **Cottage** means a single structure where sleeping accommodations are furnished to the public as a business for day, week or month, but not for more than the entire summer season.
16. **Critical Violation** means regulatory noncompliance that is more likely than other regulatory violations to pose a risk of contamination, illness, or an imminent health hazard. Critical violations relate directly to factors which lead to illness and must receive immediate attention and be corrected as soon as possible, but, in any event, within 10 days. Operators of establishments with critical violations shall notify the Department when corrections have been made. Critical violations may include, but are not limited to, the following:
 - (a) Food from an unapproved or unknown source, or food which is or may be adulterated, contaminated, or otherwise unfit for human consumption is found in an eating establishment;
 - (b) Potentially hazardous food that is held longer than necessary for preparation or service at a temperature between 41°F and 140°F;
 - (c) Insufficient facilities to maintain product temperature;
 - (d) Re-service of potentially hazardous food or unwrapped food that has been previously served to customers;
 - (e) A person infected with a communicable disease that can be transmitted by food is working as a food handler in a food service establishment;
 - (f) A person not practicing strict standards of cleanliness and personal hygiene which may result in the transmission of illness through food, is employed in a food service establishment;

- (g) Equipment, utensils and, food-contact surfaces are not cleaned and sanitized effectively and may contaminate food during preparation, storage or service;
 - (h) Sewage or liquid waste is not disposed of in an approved and sanitary manner, or the sewage or liquid waste may contaminate any food, areas used to store or prepare food, or any areas frequented by customers or employees [Regulated under the Maine Subsurface Wastewater Disposal Rules, 10-144 CMR 241, or the Maine Internal Plumbing Code, 10-144 CMR 238];
 - (i) Toilets and facilities for washing hands are not provided, properly installed or designed, accessible or convenient;
 - (j) The supply of water is not from an approved source or is not under pressure and the food service establishment does not use single service articles and/or bottled water from an approved source [Regulated under Rules Relating to Drinking Water, 10-144 CMR 231];
 - (k) A defect exists in the system supplying potable water that may result in the contamination of the water;
 - (l) Plumbing not installed by a licensed master plumber, and/or without the proper permits and/or not inspected by the Local Plumbing Inspector shall be considered defective.
 - (m) Insects, rodents or other animals are present on the premises in such numbers as to increase the risk of communicable disease being transmitted to the public.
 - (n) Toxic items are improperly labeled, stored or used; or
 - (o) Any other violation of these regulations which has the potential to seriously affect the public health.
17. **Delegated Community** means a municipality in Maine that has applied for, and received authorization from, the Department to conduct inspections pursuant to 22 M.R.S.A. §2499.
18. **Department** means the Department of Health and Human Services Health Inspection Program.
19. **Dormitory** means a room in any establishment used for sleeping purposes by 4 or more unrelated persons.
20. **Easily Cleanable** means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

21. **Eating Establishment or Eating Place** means any place where food or drink is prepared and served, or served to the public for consumption on the premises, or catering establishments or establishments dispensing food from vending machines, or establishment preparing foods for vending machines dispensing foods other than in original sealed packages, such as hotels, motels, boarding homes, restaurants, mobile eating places, coffee shops, cafeterias, short order cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, bars, cocktail lounges, night clubs, roadside stands, industrial feeding establishments, private or public institutions routinely serving foods, retail frozen dairy product establishments, airports, parks, theaters, take-outs, or any other catering or nonalcoholic drinking establishments or operations where food is prepared and served or served for consumption on the premises, or catering establishments where food is prepared, or where foods are prepared for vending machines dispensing food other than in original sealed packages.
22. **Eating Place – Limited Menu** means an establishment which contains only a bar where food is served but has no kitchen. This type of establishment may contain fewer sinks than are required by the Maine Food Code and serves only pre-packaged food that does not require preparation, handling, or the use of reusable utensils to serve it. This type of establishment license does not permit use as a commercial kitchen for catering operations.
23. **Eating Place-Mobile** means a Mobile Eating Place. See definition for Mobile Eating Place.
24. **Eating Place-Temporary** means a Temporary Eating Place. See definition for Temporary Eating Place.
25. **Eating Place – School** means a school kitchen facility whose primary function is to provide meals to students in grades 12 or less. Career Technical Education classes or Culinary Arts Programs may carry this license type if they do not sell food to the public.
26. **Eating Place – School Satellite** means a school facility that receives food items prepared at a separate location for final assembly, rethermalization (reheating) and service.
27. **Employee** means the permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, Person performing work under contractual agreement, or other person working in an eating establishment. Volunteers providing services in an eating establishment are subject to the same standards as other employees.
28. **Employer** means the license holder or individual(s) having supervisory or management duties.
29. **Equipment** means stoves, ovens, ranges, hoods, slicers, meat blocks, tables, counters, mixers, refrigerators, sinks, dishwashing machines, steam tables, and

similar items, other than utensils, used in the operation of an establishment licensed by the Department under these rules.

30. **Food** means any raw, cooked or processed edible substance, ice, beverage, alcoholic beverage or ingredient used, or intended for use, or for sale, in whole, or in part, for human consumption.
31. **Foodborne Disease Outbreak** means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a common food.
32. **Food Contact Surface** means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.
33. **Food Employee** means any individual employed or working in an eating establishment who handles food and/or drink during preparation or serving, or who comes in contact with any eating, drinking or cooking utensils, or who works in a room or rooms in which food or drink is prepared, served, or stored.
34. **Hazard Analysis Critical Control Point (HACCP)** means a systematic evaluation of food preparation procedures to identify opportunities for bacterial contamination and growth. From this perspective, a public health inspector may then determine those circumstances which could result in the development of food-borne diseases.
35. **HACCP Plan** means a written document that delineates the formal procedures for following the HACCP principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
36. **Health Inspector** means a person whose education and experience in the biological and sanitary sciences qualify him/her to engage in the promotion and protection of the public health. A health inspector applies technical knowledge to solve problems of a sanitary nature and develops methods and carries out procedures for those factors of man's environment which affect health, safety and the well-being of others.
37. **Hermetically Sealed Container** means a container designed, and intended, to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.
38. **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: (a) the number of potential injuries and (b) the nature, severity and duration of the anticipated injury. Imminent Health Hazard includes, but is not limited to, the following:
 - (1) an extended loss of water supply,
 - (2) an extended power outage,
 - (3) flood water or sewer back-up into the establishment,
 - (4) fire, or

(5) any other violation(s) that has/have the potential to pose an imminent threat to public health.

Failure to include other violations in this definition shall not be construed as a determination that other violations may not, in light of the circumstances, be found to pose an imminent health hazard.

39. **Inspection** means an on-site regulatory review of an establishment licensed by the Department's Health Inspection Program and conducted by an authorized health inspector. The types of inspections include: 1) Pre-operational, 2) Routine Compliance, 3) Follow-up, and 4) Complaint.
40. **Kitchenware** means food preparation and storage utensils.
41. **Law** includes Federal, State, and local statutes, ordinances, and regulations.
42. **Lodging Place** means every building or structure, or any part thereof, used, maintained, advertised or held out to the public as a place where sleeping accommodations are furnished to the public for business purposes in an establishment where 4 or more rooms or cottages are available for rental to the public. The term includes, but not by way of limitation, hotels, motels, guest homes or cottages wherein the owner customarily maintains the sleeping accommodations, and condominium associations that rent units to the public. For purposes of these rules, Lodging Place does not include dormitories of charitable, educational, philanthropic institutions, fraternity and sorority houses affiliated with educational institutions, permanent residences, rooming houses or tenancies-at-will, or rental properties with a tenant-landlord relationship.
43. **Manager** means any person, 18 years or older, who operates, or is responsible for, operating an establishment.
44. **Mass Gatherings** means any gatherings held outdoors at temporary facilities, with the intent to attract the continued attendance of at least 2,000 persons for 12 or more hours.
45. **Mobile Eating Place** means a mobile vehicle designed and constructed to transport, prepare, sell or serve food at a number of sites and is capable of being moved from its serving site at any time.
46. **Packaged** means bottled, canned, cartoned, or securely wrapped.
47. **Person** includes any individual, partnership, corporation, association, or other legal entity.
48. **Person in Charge** means the individual present in an eating establishment who is the apparent supervisor of the establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge.

49. **Portion Controlled** means commercially pre-packaged individual items or food portioned by the Person in Charge from bulk containers, and presented individually to the consumer.
50. **Public Pool** means any constructed or prefabricated pool, other than a residential pool, or medical facility pool that is intended to be used for swimming, recreational bathing, or wading and is operated by an owner, lessee, tenant, or concessionaire or by a person licensed by the Department, regardless of whether a fee is charged for use. A pool on the premises of a child care facility that is licensed or required to be licensed under 22 M.R.S.A. §8301-A, is a public pool.
51. **Public Spa** means any constructed spa, other than a residential spa or medical facility spa.
52. **Potentially Hazardous Foods** means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or their ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.
53. **Proprietor** means any person, 18 years or older, corporation, firm, organization, municipality or partnership who operates, or is responsible for, operating an eating establishment or eating and lodging place.
54. **Recreational Vehicle (RV) Park** means a campground that permits the use of RVs where an RV consists of a travel RV, pick-up coach, motor home, camping trailer, dependent RV or self-contained independent RV, as defined in the Rules Relating to Campgrounds (10-144 CMR 205). An RV park is designed for seasonal sites or temporary occupancy and not for permanent residency.
55. **Reconstituted** means dehydrated food products recombined with water or other liquids.
56. **Regulated Establishment** means an establishment that is required to be licensed and/or inspected for compliance by the Department. Regulated establishments shall display the license at their place of sale or service.
57. **Repeat Violation** means a violation determined and recorded during a previous inspection.
58. **Safe Temperatures**, as applied to potentially hazardous food, means temperatures of 41° F or below (for cold food) and 135° F or above (for hot food) unless otherwise specified in these regulations, and 0°F or below for frozen foods.
59. **Salad Bar Operation** means an area or areas where cold salads and/or salad ingredients are prepared, stored and displayed for consumer self-service.
60. **Salad Bar Unit** means a refrigerated unit or properly drained ice-filled unit where food is displayed for consumer self-service.

61. **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.
62. **Sealed** means free of cracks or other openings, which permit the entry or passage of moisture and bacterial, viral, or chemical contaminants.
63. **Senior Citizen Meals** means any kitchen or eating place/ establishment that prepares or serves potentially hazardous food to a predominantly senior citizen population.
64. **Servicing Area** means an operating base location, to which a mobile Eating Establishment or transportation vehicle returns to regularly, for services like vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and storing food.
65. **Single-Service Articles** means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, placemats, napkins, doilies, wrapping materials, toothpicks and similar articles which are constructed wholly or in part from paper, paper board, molded pulp, foil, wood, plastic, synthetic, or other readily destructible materials, and which are designed by the manufacturers and generally used by the public as for one-time, one-person use and then discarded.
66. **Sporting/Recreational Camp** means a building or group of buildings devoted primarily to the offering of eating and primitive lodging facilities to guests only, and not to the general public, primarily in pursuit of primitive recreation, hunting, fishing, snowmobiling or similar activities. Sporting/ recreational camps generally do not include summer sports programs overseen by employees or volunteers of municipalities and educational institutions, when the activities generally take place at the municipal or institution property and buildings.
67. **Tableware** means all multi-use eating and drinking utensils, including flatware (knives, forks, spoons, dishware).
68. **Temporary Eating Place/ Temporary Eating Establishment** means an eating place or establishment that operates at a fixed location for a period of time of not more than 14 consecutive days, in conjunction with a single event or celebration.
69. **Utensil** means any tableware and kitchenware used in the storage, preparation, conveying, or serving of food.
70. **Vending Machine** means any self-service device offered for public use, which, upon insertion of money, or by other similar means, dispenses unit servings of food other than in original sealed packages without the necessity of replenishing the device between vending operations.

71. **Vending Machine Company** means a company that places vending machines at any site.
72. **Violation** means a critical, or non-critical regulatory non-compliance with these Rules.
73. **Wilderness Recreational Park** means a recreational park containing only primitive sites and adhering to the Rules Relating to Campgrounds (10-144 CMR 205).
74. **Youth Camp** means a combination of program and facilities established for the primary purpose of providing an outdoor group living experience for children with social, recreational, spiritual, and educational objectives and operated and used for 5 or more consecutive days during 1 or more seasons of the year. Youth camps include day camps, residential camps and trip and travel camps. See Rules Relating to Youth Camps (10-144 CMR 208). Youth camps do not include summer sports programs overseen by employees or volunteers of municipalities and educational institutions, when the activities generally take place at the municipal or institution property and buildings.

SECTION 2. CERTIFICATION OF PERSONNEL

A. Certified Food Protection Managers

1. Unless otherwise provided in these Rules, an eating establishment must have at least one employee granted supervisory and management responsibility designated a Certified Food Protection Manager (CFPM). The CFPM must have demonstrated appropriate proficiency and skills regarding food safety by successfully passing a CFPM exam included in an Accredited Program. The Department may approve a Food Consultant to serve as CFPM, if necessary to assure food safety, when cultural, language, and literacy barriers prevent any of the establishment's employees from passing the CFPM exam.
2. In the event that during an inspection by the Department, the person in charge is not able to make the demonstration required by Section 2-102.11 of the Maine Food Code, or there are multiple critical violations present during such inspection, the Department or its designee may thereafter require every person in charge for such eating establishment to be a certified food protection manager.
3. In the State of Maine, the following will be accepted as meeting the requirements for certification:
 - (a) Having written proof of completion of specialized training in the preparation and serving of safe food, such as ServSafe[®] Food Protection Manager Certification from the National Restaurant Association Solutions, LLC, the National Registry of Food Safety Professionals, and Prometric (formerly Experior Assessments), or equivalent; and
 - (b) Receiving a passing grade on a competency test, approved by the National Conference for Food Protection (CFP). Certified food protection manager certification shall be renewed through re-training and re-testing every 5 years, or as required by standards adopted by the Department.
 - (c) The following establishments are exempt from the certified food protection manager requirement:
 - Bed and breakfast establishments with 5 rooms or less;
 - Bed and breakfast and lodging establishments that serve a continental breakfast consisting of non-potentially hazardous baked goods, whole fruit or fruit sliced for same-day service, cereal, milk, juice, portion controlled cream cheese, portioned controlled peanut butter, and portion controlled jam or jelly.
 - Temporary eating establishments that operate fewer than 14 days;
 - Establishments that serve or sell non-potentially hazardous pre-packaged foods (non-time/temperature control for safety (TCS) foods);

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- Establishments that prepare only non-potentially hazardous foods (non-TCS foods);
 - Establishments that heat only commercially processed, potentially hazardous foods (TCS foods) for hot holding. No cooling of potentially hazardous foods (TCS foods);
 - Sporting/ Recreational Camps operating 90 days or less and serving only their own residential guests; and
 - Eating establishments which pose minimal risk of causing, or contributing to, foodborne illness, based on the nature of the operation and the extent of food preparation.
- (d) A certified food protection manager must be hired within 90 days of a new eating establishment opening or when a certified food protection manager leaves employment.
- (e) Establishments requiring two repeat inspections, due to multiple critical violations, or repeated failure to successfully complete demonstration of knowledge required by 2-102.11 of the Maine Food Code, 10-144 CMR 200, or being involved in a food-borne illness outbreak, must employ a certified food protection manager, if not previously required to do so. If the above issues exist, the Establishment may be required to employ additional certified food protection managers, at the discretion of the Department.
4. Nothing in these rules precludes the Department from requiring an eating establishment, as part of a compliance action, to hire, on a less than full-time basis, an outside, or third-party, consultant who would provide recommendations as a food safety consultant.
5. Eating establishments must post in a conspicuous area the certification of the certified food protection manager(s), and the certificate must be made available to the Department, upon request.

SECTION 3. DELEGATION OF INSPECTION DUTIES TO MUNICIPALITIES

- A. Pursuant to 22 M.R.S. §2499, the Department may delegate licensing inspection duties to municipalities.
- B. In delegated municipalities, the Department continues to be the licensing authority, and may issue a license to establishments on the basis of an inspection performed by an inspector who works for, and is compensated by, the municipality in which such establishment is located.
- C. The following conditions must be met:
 - 1. The municipality holding, or requesting to hold, such delegation must adopt an ordinance that incorporates the Department's Rules.
 - 2. No municipally employed health inspectors are authorized to perform inspections under the provisions of these Rules, unless certified as qualified by the Commissioner. Such certification will be determined through formal and informal training and education, and other such criteria, as the Department may determine.
 - 3. For quality control purposes, the Department may, from time to time, inspect such municipally inspected establishments, to ascertain that these Rules are being followed.
 - 4. A municipality must furnish electronic copies of its inspection reports in a format, and on a schedule, determined by the Department.
 - 5. The municipalities are responsible to ensure that all establishments within their jurisdiction apply for a State license. Failure of an establishment to operate without the necessary State license will result in the establishment being assessed an administrative fine as specified in these rules. Pursuant to 22 M.R.S. §2498, the Department retains its right to pursue other sanctions against non-licensed establishments, including seeking injunctive relief to enjoin further violations.
 - 6. In lieu of the prescribed fee, the licensee shall pay a fee to the Department for delegated municipalities, (as outlined in Table 1, Fee Schedule).
 - 7. Licenses issued by the Department under 22 M.R.S. §2499, must be displayed, renewed and, in every other way, treated the same as licenses issued under these Rules, on the basis of inspection by the Department. The inspection reports must be made available to the Department, upon request.
 - 8. Pursuant to 22 M.R.S. §2499, the certification of municipally employed health inspectors must be in accordance with standards set by the Department and for a period of 3 years.
 - 9. The establishment inspection delegation will be reviewed by the Department every 3 years for staff competency, enforcement/compliance status, inspection practices, and routine reporting to the Department.

10. According to 22 M.R.S. §2499 (5), the municipalities may not charge the Department for performing such inspections.

D. **Food Outbreak Protocols.** In the event of food borne disease outbreaks, upon learning of same, the delegated municipalities shall immediately contact the Department's Health Inspection Program. Authority for this requirement is contained in Rules for the Control of Notifiable Conditions, 10-144 CMR 258, which governs the reporting of certain diseases, clusters of unusual cases of a disease or outbreaks of a disease, epidemics, and extreme public health emergencies.

SECTION 4. LICENSING PROCEDURES

A. Licenses Required

1. No person, corporation, firm or co-partnership may conduct, control, manage or operate, for compensation, directly or indirectly, any eating establishment, eating and lodging place, lodging place, sporting/ recreational camp, youth camp, campground, or recreational vehicle park, unless the establishment is licensed by the Department. Licenses issued must be displayed in a place readily visible to customers or other persons using a licensed establishment.
2. Cottages are intended for temporary occupancy for recreational purposes only, and are not for permanent residency. Licenses are required for any individual, establishment or corporation that rents out structures.
3. Youth camps do not include summer sports programs overseen by employees or volunteers of municipalities and educational institutions, when the activities generally take place at the municipal or institution property and buildings.
4. Each application for either a license or license renewal, to operate an eating establishment, eating and lodging place, lodging place, youth camp, campground, or sporting/ recreational camp, must be accompanied by a fee, in accordance with the fee schedule established in Tables 1A-1C, listed in this Section.
 - (a) Application submittal. A complete application must be submitted with the proper fee. The Department shall take action upon any completed application within 30 days, pursuant to 22 M.R.S.A. §2495.
 - (b) No such fee may be refunded. Should the applicant make an overpayment, the excess payment shall be applied to the next year's license fee.
 - (c) License fees established herein provide for one licensure inspection and one follow-up inspection, in accordance with 22 M.R.S.A § 2494. When additional inspections are necessary, the Department is authorized to charge an additional \$100 fee for each additional inspection or visit.
5. The fee for each establishment in municipalities that have received inspection delegation authority, is a flat fee of \$60.00.
6. No fee is assessed for non-profit establishments that conduct 12 or fewer events and meals per year.

B. Issuance of Licenses

1. New licenses: Except as otherwise provided for herein, the Department, upon review, will issue an annual license to operate an establishment within 30 days following receipt of a complete application and the prescribed fee. When any applicant is found, based upon an inspection by the Department or by municipal

inspection, not in compliance with the requirements of departmental regulations, the Department may refuse issuance of the initial (first-time) license but will issue a conditional license for up to 90 days, except when conditions are found which present a serious danger to the health and safety of the public. Failure by the conditional licensee to meet the conditions specified by the Department permits the Department to void the license, requiring the establishment to cease operation. Should the establishment continue to operate without a valid license, the penalties set forth in Section 6 (Penalties) shall be administered. The Department may assign multiple licenses for establishments with multiple functions, such as a hotel and a restaurant within the hotel.

2. **Renewal of licenses:** The Department will notify license applicants of an upcoming license renewal at least 30 days prior to the current license. The applicant must provide evidence of compliance with the Maine Drinking Water Program's Rules Relating to Drinking Water (10-144 CMR 231). If any such establishment is not in compliance with relevant regulations, the Department may apply conditions to such renewal.
 - (a) All establishment licenses are renewed annually, upon payment of a fee, and compliance with Maine statutes, rules and/or regulations.
 - (b) It is the responsibility of the License Applicant to renew licenses prior to the expiration date.
3. No license granted by the Department will be transferable or assignable.
4. The issuance of the license does not provide exemption from other state or local laws, ordinances or regulations, notwithstanding any other provision of law.
5. Licenses erroneously issued by the Department are deemed to have been issued in error and are void and must be returned to the Department.
6. **Denial of Application for License, Notice.** If an application for a license to operate is denied, the Department shall provide the applicant with a notice that includes:
 - (a) The specific reasons and relevant rule citations for the license denial;
 - (b) The actions, if any, that the applicant must take to qualify for a license; and
 - (c) Notice of the applicant's right of appeal and the process and time frames for appeal that are provided in Law.

SECTION 5 - FEE SCHEDULE**TABLE 1 (A) – FISCAL YEAR 2013: July 1, 2012 – June 30, 2013**

EATING LICENSE TYPES	FEES FOR FISCAL YEAR 2013
Business Enterprise PR	No Charge
Catering	\$175.00
Correctional Facility	\$175.00
Eating Place - Mobile	\$175.00
Eating Place, 0-29 seats	\$150.00
Eating Place, 30-75 seats	\$185.00
Eating Place, >75 seats	\$220.00
Eating Place-Temporary 1-4 Days	\$95.00
Eating Place, Temporary 5-14 Days	\$150.00
Eating Place - Limited Menu	\$150.00
Eating Place - School	\$100.00
Eating Place - School Catering	\$100.00
Eating Place - School Satellite	\$100.00
Commissary	\$250.00
Vending Company	\$75.00
Senior Citizen Meals	\$30.00
LODGING LICENSE TYPES	
Bed and Breakfast - 6 Rooms or More	\$150.00
Bed and Breakfast - 5 Rooms or Less	\$100.00
Lodging 4 - 15 Rooms	\$150.00
Lodging 16 - 75 Rooms	\$175.00
Lodging >75 Rooms	\$200.00
COMBINATION LICENSE TYPES	
Eating and Catering	\$275.00
Eating and Lodging	\$275.00
Eating and Campground	\$275.00
CAMP LICENSE TYPES	
Sporting-Recreational Camp	\$175.00
Campground - Agricultural Fair	\$200.00
Campground 5-24 Sites	\$150.00
Campground 25-124 Sites	\$175.00
Campground >124 Sites	\$200.00
Campground - Temporary	\$200.00
Youth Camp - Day	\$95.00
Youth Camp - Resident <100 Campers	\$185.00
Youth Camp - Resident 100 - 200 Campers & Property Tax - Exempt >200 Campers	\$215.00
Youth Camp-Resident >200 Campers	\$275.00
Youth Camp - Trip And Travel	\$95.00
Compressed Air	\$10.00
BODY ARTIST LICENSE TYPES	
Tattooing Practitioner	\$225.00
Tattooing Show	\$75.00
Body Piercing Practitioner	\$200.00
Tattoo - Body Piercing Practitioner	\$275.00
Electrologist Practitioner	\$125.00
Micropigmentation Practitioner	\$150.00
MISCELLANEOUS FEES	FEES FOR FISCAL YEAR 2013

Reprint License	\$25.00
MISCELLANEOUS FEES	FEES FOR FISCAL YEAR 2013
Late Renewal within 30 days of license expiration date	\$25.00
Additional Inspection	\$100.00
Late Renewal more than 30 days after expiration date	\$100.00 for 1 st offense / \$200.00 for 2 nd offense
Insufficient Funds	\$25.00

TABLE 1 (B) FISCAL YEAR 2014: July 1, 2013 – June 30, 2014

EATING LICENSE TYPES	FEES FOR FISCAL YEAR 2014
Business Enterprise PR	No Charge
Catering	\$200.00
Correctional Facility	\$200.00
Eating Place-Mobile	\$200.00
Eating Place, 0-29 seats	\$160.00
Eating Place, 30-75 seats	\$195.00
Eating Place, >75 seats	\$230.00
Eating Place - Temporary 1-4 Days	\$95.00
Eating Place - Temporary 5-14 Days	\$150.00
Eating Place - Limited Menu	\$150.00
Eating Place - School	\$100.00
Eating Place - School Catering	\$100.00
Eating Place - School Satellite	\$100.00
Commissary	\$250.00
Vending Company	\$75.00
Senior Citizen Meals	\$30.00
LODGING LICENSE TYPES	
Bed and Breakfast - 6 Rooms or More	\$150.00
Bed and Breakfast - 5 Rooms or Less	\$100.00
Lodging 4-15 Rooms	\$150.00
Lodging 16-75 Rooms	\$175.00
Lodging >75 Rooms	\$200.00
COMBINATION LICENSE TYPES	
Eating and Catering	\$275.00
Eating and Lodging	\$275.00
Eating and Campground	\$275.00
CAMP LICENSE TYPES	
Sporting-Recreational Camp	\$175.00
Campground - Agricultural Fair	\$200.00
Campground 5-24 Sites	\$150.00
Campground 25-124 Sites	\$175.00
Campground >124 Sites	\$200.00
CAMP LICENSE TYPES	
Campground-Temporary	\$200.00
Youth Camp-Day	\$100.00
Youth Camp-Resident <100 Campers	\$190.00
Youth Camp-Resident 100-200 Campers & Property Tax-Exempt >200 Campers	\$225.00
Youth Camp-Resident >200 Campers	\$285.00
Youth Camp-Trip And Travel	\$100.00
Compressed Air	\$10.00
Mass Gatherings	Application Review: \$100/Permit: \$400 - \$750

BODY ARTIST LICENSE TYPES	FEES FOR FISCAL YEAR 2014
Tattooing Practitioner	\$225.00
Tattooing Show	\$75.00
Body Piercing Practitioner	\$200.00
Tattoo - Body Piercing Practitioner	\$275.00
Electrologist Practitioner	\$125.00
Micropigmentation Practitioner	\$150.00
MISCELLANEOUS FEES	
Reprint License	\$25.00
Late Renewal within 30 days of license expiration date	\$25.00
Late Renewal more than 30 days after expiration date	\$100.00 for 1 st offense \$200.00 for 2 nd offense
Additional Inspection	\$100.00
Insufficient Funds	\$25.00

**TABLE 1 (C) MUNICIPAL LICENSES
FISCAL YEARS 2011 – 2014: July 1, 2010 – June 30, 2014**

MUNICIPAL EATING LICENSES	FEE – FISCAL YEARS 2011 - 2014
Catering	\$60.00
Eating Place - Mobile	\$60.00
Eating Place	\$60.00
Eating Place - Temporary	\$60.00
Eating Place - Limited Menu	\$60.00
Eating Place - School	\$60.00
Eating Place - School Catering	\$60.00
Eating Place - School Satellite	\$60.00
Eating Place - Commissary	\$60.00
MUNICIPAL LODGING LICENSES	
Bed and Breakfast	\$60.00
Lodging	\$60.00
MUNICIPAL COMBINATION LICENSES	
Eating & Catering	\$60.00
Eating & Lodging	\$60.00

TABLE 2 – RETAIL TOBACCO LICENSE FEES*

License Type	April 1 – June 30	July 1 – September 30	October 1 – December 31	January 1 – March 31
Retail Tobacco I License: < 30 % annual gross revenue from total cigarette tobacco sales	\$100	\$75	\$50	\$25
Retail Tobacco II License: > or = 30 – 50% of annual gross revenue from total cigarette tobacco sales	\$125	\$94	\$63	\$32
Retail Tobacco III License: > 50% of annual gross revenue from total cigarette tobacco sales	\$150	\$113	\$75	\$38
Seasonal Mobile Fair Tobacco Vendor License	\$50 for first fair location and \$10 for each additional fair location	\$50 for the first fair location and \$10 for each additional fair location	\$50 for the first fair location and \$10 for each additional fair location	\$50 for the first fair location and \$10 for each additional fair location
Tobacco Vending Machine License	\$50	\$38	\$25	\$25

- Fees in Table 2 are also found in the Rules Relating to the Sale and Delivery of Tobacco Products in Maine (10-144 CMR 203).

SECTION 6. INSPECTIONS

A. Right of Entry:

1. The Department and any duly designated officer or employee of the Department shall have the right, without an administrative inspection warrant, to enter upon and into the premises of any establishment licensed at any reasonable time, in order to determine the state of compliance with any rules in force, in accordance with 22 M.R.S. § 2497.
2. Such right of entry and inspection shall extend to any premises which the Department has reason to believe is being operated or maintained without a license.
3. No such entry and inspection of any premises may be made without the permission of the owner or person in charge, unless a search warrant is obtained authorizing entry and inspection.
4. In the event that a Person denies access to the Department, the Department may secure access through an administrative search warrant or pursuant to such process as provided by law.

B. Frequency:

1. In accordance with 22 M.R.S. §2497, the Department will either inspect or otherwise determine whether an establishment is in regulatory compliance in accordance with the provisions of these Rules.
2. The Department may, at its discretion, inspect, or determine whether an establishment is in regulatory compliance at more frequent intervals as necessary to follow-up on complaints or other problems noted on previous inspections. Factors considered by the Department include the following:
 - (a) Whether the eating establishment is fully operating under an approved and validated HACCP Plan as specified under the Maine Food Code, §8-201.14 and §§ 8-103.12(A) and (B);
 - (b) Whether the eating establishment should be assigned a less frequent inspection frequency based on a written risk-based inspection schedule uniformly applied throughout the jurisdiction; or
 - (c) The eating establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not Potentially Hazardous (Time/Temperature Control For Safety Food) such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.

C. Inspector's Findings

1. (Identification of Violations): The health inspector's findings may refer to the compliance history of an establishment, including any prior violations and corrective action. The findings shall identify violations by the following means:
 - (a) Site Inspection or Investigation;
 - (b) Internal Review of Laboratory Analyses or Inspection Reports; and/or
 - (c) Complaints or Referrals from the public or other agencies.
2. The inspector must note any violations of applicable rules on the inspection report and leave a copy of the report at the establishment.
 - (a) Should the establishment fail the inspection, the inspector must inform the person in charge of the administrative remedies stated within these rules, and leave a copy of such information with the report.
 - (b) A copy of the most recent inspection report must be maintained at the establishment and be made available to the public upon request.
 - (c) The inspector must document details of any denial of access to perform an inspection.
3. When a Person in Charge declines to sign an acknowledgement of receipt of inspectional findings, the Department will state the following items:
 - (a) An acknowledgment of receipt does not constitute an agreement with the Investigation Report findings;
 - (b) Refusal to sign an acknowledgment of receipt will not affect the Permit Holder's obligation to correct the violations noted in the inspection report within the time frames specified;
 - (c) Refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the Department's historical record for the Establishment; and
 - (d) Statement of a final request for the Person in Charge to sign an acknowledgment receipt of inspectional findings. Should the Person in Charge continue to refuse to sign, the inspector shall document the refusal upon the inspection report.

D. Inspection Failure

1. A failed inspection occurs when an establishment:
 - (a) Receives more than 3 critical violations; or

- (b) Receives more than 10 non-critical item violations.
- 2. Critical Violations should be corrected on site, but, in any event, within 10 days. The licensee must contact the Department when the critical violation has been addressed.
- 3. Non-critical violations must be corrected no later than 90 calendar days after the inspection. The Department may approve a compliance schedule that extends beyond the time limits specified in this section, if a written schedule of compliance is submitted by the Permit Holder and no health hazard exists or will result from allowing an extended schedule for compliance.
- 4. Failure to correct these violations satisfactorily within the time periods set in paragraphs (2) and (3) above may result in enforcement proceedings by the Department, which are outlined in Sections 6, 7, 8 and 9 of these Rules.
- 5. Any failed inspection requires the health inspector to follow up with a later inspection, to assure that all corrections were completed and remain corrected.

E. Alternative Determination of Compliance for Youth Camps

This section delineates alternative methods of determination of compliance which the Department, in its discretion, may apply in the consideration of renewal of a youth camp license, in lieu of an on-site compliance inspection.

1. Accreditation by a Nationally Recognized Accreditation Organization
 - (a) **Requirements for Re-Licensure.** A youth camp applying for license renewal by means of accreditation by a nationally recognized accreditation organization must demonstrate the following:
 - (i) On or before March 1st of each year, the youth camp has submitted a request for determination of compliance on the basis of accreditation by a nationally recognized accreditation organization;
 - (ii) The youth camp in all material respects complies with the regulatory requirements established by the Department's 10-144 CMR 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping*;
 - (iii) The youth camp is presently fully accredited by a nationally recognized accreditation organization and demonstrates that its accreditation process was at least as protective of public health as the Department's process for licensing inspections of youth camps;
 - (iv) Since its most recent licensure, the youth camp has not undergone extensive renovations or expansions of any youth camp buildings, as defined in 10-144 CMR 208, Section 1(H); and

(v) Since its most recent licensure, the youth camp has not undergone a change of camp ownership, a change of camp director, or both.

- (b) **Substantive Review of Department Rules.** In the event of a significant revision of the Department's 10-144 CMR 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping* since the issuance of the most recent license to the youth camp, the Department reserves the right to require a full licensing inspection of the premises.

2. Determination of Compliance by Certification of Regulatory Compliance

- (a) **Requirements for Re-Licensure.** A youth camp applying for license renewal by means of certification of regulatory compliance must demonstrate that:

- (i) On or before March 1st of each year, it has submitted a request for determination of regulatory compliance without inspection on the basis of a certification statement, executed by its Camp Director, which states:

"I, _____, certify that Camp _____, during its period of licensure will be in substantial compliance with the Department's 10-144 C.M.R. Ch. 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping*. In making this certification, I have reviewed the Department's rules, the camp facilities, the camp operating procedures and the required documentation. I further certify that the documents required, pursuant to 10-144 C.M.R. Chapters 200, 201 and 208, are on file at the camp and available for Department review".

- (ii) The youth camp has successfully passed its most recent two licensing inspections by the Department;
- (iii) Since its most recent licensing inspection, the youth camp has not extensively renovated or expanded youth camp buildings, as defined in 10-144 C.M.R. Ch. 208(1)(H).
- (iv) Since its most recent licensure, the youth camp has not undergone a change of camp ownership, a change of camp director, or both.

- (b) **Substantial Review of Department's Rules.** In the event of a significant revision of the Department's 10-144 C.M.R. Ch. 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping* since the issuance of the most recent license to the youth camp, the Department reserves the right to require a full licensing inspection of the premises.

3. General Licensing Requirements

- (a) Applicants for youth camp re-licensure shall submit applications on Departmental approved forms.

- (b) No later than May 15th, the Department will notify youth camp applicants whether they qualify for re-licensure on the basis of alternate determination of compliance.
- (c) The Department reserves the right to inspect a youth camp, notwithstanding the issuance of a renewal license under this Section, in order to investigate a licensing complaint or upon reasonable cause that a condition exists at the youth camp which is not protective of public health.
- (d) Except as otherwise provided in this Section, the Department reserves the right to conduct an inspection of a youth camp, in order to determine compliance with these rules, the Maine Food Code (10-144 CMR 200), or the Public Pool/Public Spa Rules (10-144 CMR 202).

F. Imminent Health Hazards

1. **Ceasing Operations and Reporting.** A Permit Holder shall immediately discontinue operations and notify the Department if an Imminent Health Hazard may exist because of an emergency, such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of Poisonous or Toxic Materials, onset of an apparent food-borne illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may endanger public health.
2. If operations are discontinued, the Permit Holder must obtain approval from the Department before resuming operations.
3. For those establishments which pose an Imminent Health Hazard not corrected within the time period set by the Department, the Department will require suspension of a license, in accordance with the requirements of the Maine Administrative Procedure Act at 5 M.R.S.A. §§ 10003 & 10004.

SECTION 7. ENFORCEMENT PROTOCOLS

- A. **Intent:** This enforcement protocol is to establish an effective system for initiating enforcement against violators to protect the public health and promote the public welfare by regulating the safety and sanitation of all licensed eating and lodging establishments, sporting/recreational camps, youth camps, and campgrounds.
- B. **Authorization:** Pursuant to 22 M.R.S. §2498, the Department is authorized to impose one or more of the following sanctions when a violation of these Rules occurs, and the Department determines that a sanction is necessary and appropriate to ensure compliance with state licensing rules, or to protect the public health.
- C. **Referral for Enforcement Action:** The health inspector will refer an establishment to enforcement staff when the establishment fails to meet the compliance deadline within the inspection report.
- D. **Initial Letter of Enforcement:** The Department will issue an initial letter of enforcement, describing the noncompliance, outlining the actions to resolve the violations and setting a new deadline to correct the violations.
- E. **Menu Labeling Compliance/Enforcement:** Unless preempted by Section 4205 of the Patient Protection and Affordable Care Act of 2010, the Department or an agent authorized to inspect an eating establishment under 22 M.R.S. §2499 must ensure compliance with the provisions of 22 M.R.S. §2500-A, but is not required to verify the accuracy of the caloric information required by Section 2500-A.

Upon request, a chain restaurant must provide to the Department documentation of the accuracy of the information required by 22 M.R.S. §2500-A (1).

SECTION 8. ADMINISTRATIVE PENALTIES

- A. **Scope of Administrative Penalties:** An administrative penalty may only be assessed for a violation or a failure to comply that, at the time it occurred, constituted noncompliance with statutes or regulations under the jurisdiction of the Department's Health Inspection Program: (i) which were then in effect; and (ii) to which the person was then subject; and (iii) to which these rules apply.
1. Any person who commits an act prohibited by an applicable statute or rule is subject to the imposition of the Administrative Penalty.
- B. **Process:** A Letter of Enforcement (described in Section 7(D) above) must be issued, prior to imposing an Administrative Penalty.
1. An Administrative Penalty is assessed via a Notice of Penalty Assessment.
 2. A Notice of Penalty Assessment may be imposed once an establishment fails to pursue corrective action required by the Department described in the Letter of Enforcement.
 3. Imposing an Administrative Penalty is not deemed, in any way, to extend any deadline for compliance.
 4. Licensees are required to pay the Department the amount of the penalties. If a licensee has not paid any collectible fines by the time of its license renewal, the Department may collect such penalty assessments by requiring their payment, prior to the processing of any license renewal application.
- C. **Risk Assessment and Analysis:** In order to determine the amount of a penalty assessment, the following factors are considered in the determination of penalty amounts:
1. Degree of Risk (Critical and Non-Critical Violations)- The seriousness of the violation shall be determined in prioritizing enforcement actions by the actual risk to health that the violation poses. Therefore, critical violations will incur larger penalty amounts than non-critical violations, due to the greater threat to public health.
 2. Duration of the Violation- The duration that a violation persists without corrective action will be factored, in determining appropriate action and priority for enforcement.
 3. Repeat Violations: If the same violations were committed by the establishment in the past, then the Department will assess a larger administrative penalty, due to the reoccurrence of violations.
- D. The Department may direct any of its licensed establishments to correct any violations in a manner, and within a time frame, that the Department determines is appropriate to

ensure compliance with state rules or to protect the public health. Failure to correct violations within the time frames constitutes a separate fineable violation.

- E. **Penalty Schedule for Violations (Except Operating Without a License):** Pursuant to 22 M.R.S. §2498 (2), the Department shall establish a schedule of penalties and impose penalty assessments, according to the nature and duration of the violation. The following schedule shall apply to establishments that fail to comply with the Department's initial enforcement deadline, referred to in Section 7(D):
1. For any establishment with a critical violation (other than operating without a license), the base penalty amount is \$50.00 per critical violation. If an establishment incurs a critical violation that is a repeat violation, then the base penalty amount is \$100.00 per critical violation.
 2. For any establishment with a non-critical violation, the base penalty amount is \$25.00 per non-critical violation. If an establishment incurs a non-critical violation that is a repeat violation, then the base penalty amount is \$50.00 per non-critical violation.
 3. The base penalty amount(s) determined from Section 8(E)(1) and (2) above must be multiplied by the number of violations incurred by that establishment, at the time of the Notice of Penalty Assessment.
 4. For establishments with both critical and non-critical violations, the Department will add the results of both critical and non-critical formulas from paragraphs 8(E)(1) through (3) above, to determine the penalty owed.
 5. The Department will assess an additional penalty amount for violations (other than operating without a license) that exist for a particular duration of time. The following amounts will be added to the amounts determined by the Department in paragraphs 8(E)(1) through (3) above:
 - (a) If any of the establishment's violations remain unresolved for more than 30 days and less than 60 days from the deadline set by the initial enforcement letter deadline, then the Department will add \$250 to the penalty amount determined from the formulas within Section 8(E)(1)-(4);
 - (b) If any of the establishment's violations remain unresolved for more than 60 days and less than 90 days from the deadline of the initial enforcement letter, then the Department will add \$500 to the penalty amount determined from the formulas within 8(E)(1)-(4); and
 - (c) If any establishment's violations remain unresolved for more than 90 days from the deadline set in the initial enforcement letter, then the Department will add \$750 to the penalty amount determined from the formulas within 8(E)(1)-(4).
 6. The Penalty Formula for violations, other than operating without a license, consists of the following:

[Base penalty for critical violations] multiplied by [number of critical violations]

+ [Base penalty for non-critical violations] multiplied by [number of non-critical violations]

+ Duration Amount determined from Section 8 (E)(5)

= Total Penalty Assessment for Violations other than Operating Without a License

F. **Penalty Schedule for Operating Without a License Violations:** According to 22 M.R.S. §2498 (1)(C), “any person, corporation, firm or copartnership that operates any eating establishment, eating and lodging place, lodging place, youth camp, sporting camp, or camping area, without first obtaining a license, as required by these rules, must be punished, upon adjudication of unlicensed operation, by a fine of not less than \$ 25, nor more than \$200, and upon a 2nd or subsequent adjudication of unlicensed operation must be punished by a fine of not less than \$200 nor more than \$500. Each day any such person, corporation, firm or copartnership operates without obtaining a license constitutes a separate offense.”

1. It is the responsibility of the establishment to be licensed at all times of operation and to notify the Department if there are any questions or concerns, regarding proper licensure.
2. If an establishment operates without a license, the Department may assess the following penalty amounts, according to the following time periods:
 - (a) Unlicensed for more than 30 days but fewer than 90 days: \$200.
 - (b) Unlicensed for 90 days to 120 days: \$500.
 - (c) Unlicensed for more than 120 days: \$1,000.
3. For each year that the establishment has operated without such license, the base amount of \$1,000 shall be multiplied by the number of years unlicensed.
4. The penalty amounts assessed by the Department for operating without a license are in addition to, not in place of, the license fees owed for the current year that the establishment should have been licensed.
5. Upon the Department’s second finding of an Establishment operating without a license, the Department will assess an additional administrative penalty of \$500.
6. The penalty formula for operating without a license consists of the following:

[Base Penalty of \$200, \$500 or \$1,000 (depending on the length of time unlicensed; see Section 8(F)(2) above), if first offense]

+ \$1,000 for each year that the establishment operated without a license.

+ [Repeat penalty of \$500, if repeat operating without a license violation]

= Total Penalty Assessment for Operating Without a License Violations.

- G. In the event of any violation of this section or any rule pursuant to these rules, the Attorney General may seek to enjoin any further violation, in addition to any other remedy.

SECTION 9. SUSPENSION OR REVOCATION OF LICENSES

- A. Department Filing of Complaint for Suspension/Revocation: When the Department believes a license should be suspended or revoked, it shall file a complaint with the District Court, in conformity with the Maine Administrative Procedure Act. A person aggrieved by the refusal of the Department to issue a license may request a hearing in conformity with the Maine Administrative Procedure Act.
- B. Emergency Suspension/Revocation: Whenever, upon inspection, conditions are found, which violate these rules, or which may be an immediate threat to the public health, safety or welfare, or endanger the life, health or safety of persons living in or attending any regulated establishment, the Department may request an emergency suspension of license by the District Court pursuant to 4 M.R.S. §184, and the court may grant suspension subject to reinstatement following a hearing, before the court, if cause is not shown.
- C. Expedited Hearing: Upon issuance of an order revoking or suspending a license under this section, the Department shall promptly request District Court to schedule an expedited hearing on an agency's complaint. Any order temporarily suspending or revoking a license expires within 30 days of issuance, unless renewed by the court after such hearing as it may determine necessary.

SECTION 10. APPEALS

- A. Right to Appeal: The Department may impose any fine in conformity with the Maine Administrative Procedure Act, 5 M.R.S., Chapter 375, Subchapter IV, providing the licensee the opportunity for an administrative hearing.

- B. Collection of Fines Prior to Department Renewal: Licensees that are fined pursuant to these rules are required to pay the Department the amount of the penalties. If a licensee has not paid any collectible fines by the time of its license renewal, the Department will collect such fines by requiring their payment prior to the processing of any license renewal application. An appeal of the Department's decision to fine a licensee stays the collection of any fine. Interest must accrue on fines at a rate described in 14 M.R.S. §1602, prior to the completion of any appeal. After the completion of any appeal process, or after any appeal period has passed, interest must accrue, pursuant to 14 M.R.S. §1602-A.

SECTION 11. VARIANCES

- A. Variances and Waivers.** The Department may grant a variance by modifying or waiving the requirements of relevant Department rules if the Department determines that a health hazard will not result from the variance. If a variance is granted, the Department will retain the information specified under such rules, in its records for the establishment.
- B. Documentation of Proposed Variance and Justification.** A person seeking a variance or waiver of any provision of these Rules is required to submit the following information, in support of the request:
- (1) A statement of the proposed variance of the relevant rules requirement, citing relevant section numbers;
 - (2) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rule sections will be alternatively addressed by the proposal; and
 - (3) A HACCP Plan, if required, as specified under the relevant rules, that includes the information specified under these Rules, as it is relevant to the variance requested.
- C. Conformance with Approved Procedures.** If the Department grants a variance as specified in the relevant rules, the permit holder will:
- (1) For eating establishments:
 - (a) Comply with the HACCP Plans and procedures that are submitted as specified under Maine Food Code, §8-201.14 and approved as a basis for the modification or waiver; and
 - (b) Maintain and provide to the Department, upon request, records specified under Maine Food Code, §§ 8-201.14(D) and (E) that demonstrate that the following are routinely employed;
 - (i) Procedures for monitoring critical control points;
 - (ii) Monitoring of the critical control points;
 - (iii) Verification of the effectiveness of an operation or process; and
 - (iv) Necessary corrective actions, if there is failure at a critical control point.
 - (2) For all other establishments, meet the terms and conditions of the variance.
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STATUTORY AUTHORITY: 22 M.R.S. § 2496; 32 M.R.S. §§ 4251-4252; 32 M.R.S. §§ 4325-26; 22 M.R.S. §§ 1601-1607; 32 M.R.S. §§ 4312-4314; 22 M.R.S. §§ 2661-2669, and 22 M.R.S. § 1551-A.

EFFECTIVE DATE:

March 1, 1979

AMENDED:

November 4, 1981
October 1, 1982 - Section 14 (added)
May 15, 1983 - Section 2 and Section 4
October 17, 1983 - Section 7
June 27, 1984 - Section 12 (J)
January 1, 1985 - Section 14
October 28, 1985 - Section 14
January 1, 1987
January 1, 1989

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 5, 1996

AMENDED:

August 1, 2004 – filing 2004-252
January 18, 2011 – filing 2011-5
October 7, 2012