

**RULEMAKING NOTICE FORM**

Notice Number	<b>2018-144</b>	Rule Number	<b>He-P 2101-2108 and He-P 2170</b>
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<p>1. Agency Name &amp; Address:</p> <p><b>Dept. of Health and Human Services Division of Public Health Food Protection Services 29 Hazen Drive Concord, NH 03301</b></p>	<p>2. RSA Authority:</p> <p>3. Federal Authority:</p> <p>4. Type of Action:</p> <p style="padding-left: 20px;">Adoption _____</p> <p style="padding-left: 20px;">Amendment _____</p> <p style="padding-left: 20px;">Repeal <u>  X  </u></p> <p style="padding-left: 20px;">Readoption <u>  X  </u></p> <p style="padding-left: 20px;">Readoption w/amendment <u>          X          </u></p>	<p style="text-align: center;"><b>RSA 143:6, I and II(a), (b), (e), and (f)</b></p> <hr/>
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5. Short Title: **Beverages and Bottled Water**

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

**He-P 2101-2108 specify requirements for the registration and licensing requirements for instate and out of state beverage and bottled water manufacturers including procedures for applications and inspections. He-P 2170 defines classes of bottlers and specifies fees to be charged for annual graduated licenses and the procedures for denial and revocation of licenses and permits. This proposal affects the beverage and bottled water industry in that it contains the process for becoming licensed or permitted and the reasons and procedure for actions taken against those holding licenses and permits.**

**The Department of Health and Humans Services (Department) is proposing to effectively readopt with amendment the provisions in He-P 2101-2108 and He-P 2170 concerning the beverage and bottled water rules and renumber the rules as He-P 2101-2107. A majority of the existing rules are not scheduled to expire until 4-19-22 with the exception of He-P 2170.02 on beverage fees which expired 4-22-18.**

**The proposal makes the following changes from the existing requirements in rules He-P 2101-2108 and He-P 2170:**

- **Adds definitions in He-P 2101.01 for “compliant facility”, “non-compliant facility”, and “wash”;**
- **Clarifies in He-P 2102.01(f) that all sources of water approved by the Department that have not maintained an annual beverage license with the Department shall be required to follow He-P 2102.01(a);**
- **Adds requirements in He-P 2102.05-2102.07 for bottled water and source water samples and the procedures for the analysis results;**
- **Removes the requirement from the existing He-P 2103.01 that bottling operations shall be separate from rest of the plant operations and storage areas;**
- **Removes the requirement from the existing He-P 2103.01 that washing and sanitizing of bottled water and beverage containers needs to be done in an enclosed area;**
- **Removes the requirement from the existing He-P 2103.01 that restrooms shall not open directly into any room where beverages or water are processed, packaged or stored in bulk storage tanks prior to processing, or where empty containers are de-palletized or sorted unless the containers are washed and sanitized just prior to filling;**

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

- Adds the requirement in He-P 2103.01(s) that plumbing shall be sized, installed, and maintained according to the provisions of the State of New Hampshire Building Code as authorized by RSA 155-A;
- Adds the requirement in He-P 2103.01(u) that premises shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence;
- Adds the requirement in He-P 2103.01(v) that the facility needs adequate lighting and proper shielding to prevent product contamination;
- Adds the requirement in He-P 2103.01(w) that private water supply wells shall be properly constructed and operated;
- Adds the requirement in He-P 2103.01(x) that the well or other source of water is located and constructed in such a manner that neither the underground nor surface contamination from any sewage system, privy, or other source of pollution, can reach such water supply;
- Adds the requirement in He-P 2103.01(y) that the beverage facility shall be maintained clean and in good repair;
- Clarifies cleaning steps to include wash and rinsing in He-P 2103.03;
- Adds the requirement in He-P 2103.03(h) that all chemical sanitizers shall be Environmental Protection Agency (EPA) approved, registered and used according to the label;
- Removes the requirement in the existing He-P 2103.05 that capping and filling be done with automated equipment;
- Removes the existing He-P 2103.06 containing the requirement for testing of containers and closures;
- Removes the following record keeping requirements from the existing He-P 2103.07 renumbered as section He-P 2103.06:
  - Approval of the source water by the governmental agency having jurisdiction;
  - Approval of the operations water by the government agency having jurisdiction;
  - Results of required testing of single-service containers and closures; and
  - Frequency of cleaning all product contact surfaces and the strength of the cleaning solutions;
- Removes the recall requirement in He-P 2103.08 formally He-P 2103.09 for a bottler who knows that a violation of the standard of quality or other circumstances exist which might cause a product to be a reportable food, as defined in 21 USC 350f.417(a)(2), to notify the department within 24 hours of learning of the violation or circumstances;
- Requires in He-P 2103.09 formally He-P 2103.10 that all products manufactured in which a process review was conducted must follow the food safety aspects of the review and document any required information in He-P 2103.09;
- Adds a requirement in the new rule He-P 2103.11 that fermented beverages demonstrate that the alcohol content in the food does not exceed 0.5% prior to the end of its shelf life;
- Adds a requirement in the new rule He-P 2103.13 that all labeling of beverages and bottled water must comply with the federal food labeling regulations, 21 CFR Part 101, and federal bottled water regulations, 21 CFR Part 165.110.
- Adds in the new rule He-P 2103.14 when the term “natural” is appropriate to be used, and that the name on the bottled water label must comply with the standard of identity of the water source.

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

- **Incorporates by reference Form ISB “Application for Beverage and Bottled Water License” in He-P 2104.01;**
- **Reduces the number of licensing categories from 5 to 3 in He-P 2104.04. This change moves bottlers of water classes to be based on amount bottled per day instead of one single category for all bottled water facilities. The current class 2 bottlers of 2500 to 5000 gallons per day and class 3 bottlers of 500 to 2500 bottlers per day will be combined to one license class of bottlers of 500-5000 gallons per day;**
- **Adds requirements in He-P 2104.05 through He-P 2104.07 for an application process upon change of ownership, change of license class, or change in location;**
- **Incorporates by reference Form BBFPAPP “Plan Review Application” in He-P 2104.09 and adds additional requirements to be submitted for new or remodeled beverage facilities at a charge of \$75 per plan review fee for each review;**
- **Provides mechanism for applicants or license holders in He-P 2104.10 to seek variances from specific rules;**
- **Incorporates by reference in He-P 2104.10 Form BBVR “Beverage and Bottles Water License Variance Request Form”;**
- **Allows for in-state licensees to submit payments via online payment for license fees in He-P 2104.01;**
- **Adds points associated with violations to the inspection report in He-P 2105.01 in order to assign a score following a regulatory inspection. The inspection score determines whether or not a facility is compliant or non-compliant. Compliant or non-compliant status determines the need for follow up inspection;**
- **Adds a requirement in He-P 2105.02 for a compliance agreement if a facility is in non-compliant status on 2 consecutive inspections;**
- **Incorporates by reference Form OSB “Application for Beverage and Bottled Water Registration” for out-of-state registrants in He-P 2107.01;**
- **Allows for out-of-state registrants to submit payments online for license fees in He-P 2107.01;**
- **Updates the Fine Schedule as follows:**
  - **Moves the fine schedule from the existing He-P 2108 to He-P 2106.02, and repeals the existing He-P 2108 but keeps the number in reserve;**
  - **For failure to notify the Department by telephone within 24 hours of any fire or other disaster that jeopardizes the safety or sanitation of bottled product in a bottled beverage establishment establishments, in violation of He-P 2106.06(a), the fine shall be \$250;**
  - **For failure to notify the Department pursuant to He-P 2107.05(a) at least 30 days prior to a beverage facility ownership change, the fine shall be \$500;**
  - **For failure to notify the Department pursuant to He-P 2107.07(a) at least 30 days prior to the change of location of a beverage facility, the fine shall be \$500;**
  - **For failure to submit a plan for review as required in He-P 2107.09(a) and (b), the fine shall be \$300;**
  - **For failure to cease operation upon notification by the Department to do so, the fine shall be \$1,000. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;**

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

- 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;
- 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;
- For a failure to comply with any compliance agreement that has been accepted by the department, the fine shall be \$500;
- For violating a variance approved in accordance with He-P 2104.10, the fine shall be \$500; and
- For failure to enter into a compliance agreement, when required by He-P 2105.02, the fine shall be \$500.
- Adds other amendments to the proposed rules including the reorganization of the existing He-P 2101-2108 and He-P 2170 to address fluidity.
- Due to the reorganization, keeps in reserve the number He-P 2170, which addressed the class of bottlers and the associated fees, and incorporates the requirements into He-P 2104.03.

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

**These rules affect the manufacturers and bottlers of beverages and bottled water.**

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

<b>Rule</b>	<b>Specific State or Federal Statute the Rule Implements</b>
He-P 2101.01	RSA 143:9; RSA 143:16; 9CFR 318.30 & 21 CFR 165.110
He-P 2102.01 - He-P 2102.02	RSA 143:16; RSA 485:3; 21 CFR 165.110
He-P 2102.03 - He-P 2102.04	RSA 143:16; RSA 155-A & 21 CFR 165.110
He-P 2102.05	RSA 143:16
He-P 2102.06	RSA 143:16 & 21 CFR 129.35
He-P 2102.07	RSA 143:16 & 21 USC 350.f417(a)(2)
He-P 2103.01	RSA 143:11; 21 CFR 129.20 & 21 CFR 129.80 (d)
He-P 2103.02 - He-P 2103.08	RSA 143:11 & 21 CFR 129.40
He-P 2103.09	RSA 143:11
He-P 2103.10	RSA 143:11 & 21 CFR 120
He-P 2103.11- He-P 2103.12	RSA 143:11
He-P 2103.13	21 CFR Part 101 & 21 CFR 165.110
He-P 2103.14	21 CFR Part 101 & 21 CFR 165.110
He-P 2104.01-He-P 2104.10	RSA 143:11
He-P 2105.01- He-P 2105.02	RSA 143:11
He-P 2106.01 - He-P 2106.05	RSA 143:7-a; RSA 143:11; RSA 143:14; RSA 541:A
He-P 2107.01	RSA 143:12
He-P 2107.02	RSA 541:A
He-P 2107.03 - He-P 2107.04	RSA 143:12
He-P 2107.05	RSA 143:14; RSA 541:A
He-P 2107.06	RSA 143:15
He-P 2107.07	RSA 143:12
He-P 2108.01- He-P 2108.03 (repealed)	RSA 143:7-a
He-P 2170.01 (repealed)	RSA 143:11

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

Name: **Allyson Zinno** Title: **Administrative Rules Coordinator**  
Address: **Dept. of Health and Human Services** Phone #: **271-9604**  
**Administrative Rules Unit** Fax#: **271-5590**  
**129 Pleasant St.** E-mail: **allyson.zinno@dhhs.nh.gov**  
**Concord, NH 03301**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

**The proposed rules may be viewed and downloaded at:**

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Friday, September 14, 2018**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, September 7, 2018 at 2:00 PM**

Place: **DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH**

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

FIS # **18:142 (Revised)**, dated **August 13, 2018**

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

When compared to the existing rules, the proposed rules have an indeterminable impact on state revenues and costs to independently-owned businesses.

**2. Cite the Federal mandate. Identify the impact of state funds:**

No federal mandate, no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

Changes to the schedule of fines will have an indeterminable impact on state general fund revenues. In addition, provisions of the rules relative to license fees expired in November 2017, and are contained elsewhere in the proposed rules, with the following change: due to the consolidation of two license categories into one, certain licensees will pay \$50 less per license than they do under the existing rules, resulting in reduced state revenue from the issuance of those licenses.

**B. To State citizens and political subdivisions:**

None.

**C. To Independently owned businesses:**

Changes to the fine schedule contained in the proposed rule may increase costs to independently-owned businesses to the extent that they are in noncompliance with the rule or law. In addition, due to the consolidation of two license categories into one, certain licensees will pay \$50 less per license than they do under the existing rules. Finally, there is a potential cost to licensees that are required to submit a floor plan review application.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rules modify an existing program or responsibility, but do not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.**

## CHAPTER He-P 2100 BEVERAGES AND BOTTLED WATER

**Readopt with amendment He-P 2101, effective 4-19-12 (Document #10116), to read as follows:**

## PART He-P 2101 DEFINITIONS

He-P 2101.01 Definitions.

- (a) “Adequate” means that which is needed to accomplish the intended purpose.
- (b) “Approved source” means the source(s) of the water and the water therefrom, which has been approved by the New Hampshire department of environmental services (DES) in accordance with RSA 143:16 or RSA 485:3.
- (c) “Artesian water” means “artesian water” as defined in 21 CFR 165.110 (a)(2)(i), namely “water from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer.”
- (d) “Beverages” means “beverage” as defined in RSA 143:9, namely “all still and carbonated drinks, fruit juices and all beverages compounded therefrom; all bottled waters, whether for medicinal or table use; and all packaged liquids intended for use in the manner of drink. Milk and unmixed products thereof, and fruit juices and waters retailed exclusively by the producer or manufacturer direct, are not included.”
- (e) “Bottled water” means “bottled water” as defined in 21 CFR 165.110(a)(1).
- (f) “Bottler” means any person, firm or corporation engaging in the business of bottling beverages and/or water for sale or distribution.
- (g) “Bulk water” means a source of water, not bottled by its owner, but which is transported via tanker truck or an equivalent means from one area to another for the purpose of treatment, packaging and human consumption.
- (h) “Commissioner” means the commissioner of the New Hampshire department of health and human services or his or her designee.
- (i) “Compliant facility: means a facility that achieves a score of 90 or greater on an inspection, in accordance with He-P 2108.01.
- (j) “Corrosion resistant material” means those materials that maintain their original surface characteristics when exposed to the conditions encountered during intended use including expected contact with product and cleaning, sanitizing or sterilization compounds or solutions.
- (k) “Deionized water” means “deionized water” as defined in 21 CFR 165.110(a)(2)(iv), namely water that “has been processed by deionization.”
- (l) “Demineralized water” means “demineralized water” as defined in 21 CFR 165.110(a)(2)(iv), namely “water that has been produced by distillation, deionization or reverse osmosis, or other suitable processes and that meets the definition of ‘purified water’ in the United States Pharmacopeia, 23rd Revision, January 1, 1995.”
- (m) “Department” means the New Hampshire department of health and human services.
- (n) “Distilled water” means “distilled water” as defined in 21 CFR 165.110(a)(2)(iv), namely water that “has been produced by distillation.”

~~(o#)~~ “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.

~~(p#)~~ “Mineral water” means “mineral water” as defined in 21 CFR 165.110(a)(2)(iii), namely “water containing not less than 250 parts per million (ppm) total dissolved solids (TDS) coming from a source tapped at one or more bore holes or springs, originating from a geologically and physically protected underground water source.”

~~(q#)~~ “Multiservice containers” means containers intended for use more than one time.

~~(r#)~~ “Natural water” means ground water that is not modified in its mineral content by addition or subtraction except the modification that might occur through minimal treatment such as filtration, aeration, ozonation, ultraviolet light or equivalent disinfection processes intended to remove undesirable elements.

~~(s)~~ “Non-complaint facility” means a facility that scores less than 90 on an inspection, in accordance with He-P 2108.01.

~~(t#)~~ “Nontoxic materials” means materials for product contact surfaces utilized in the transporting, processing, storing and packaging of bottled beverages or drinking water, which are free of substances which could render the water injurious to health or which could adversely affect the flavor, color, odor or bacteriological quality of the beverage or water.

~~(u#)~~ “Operations water” means water which is delivered under pressure to a plant for container washing, hand washing, plant and equipment cleanup and for other sanitary purposes.

~~(v#)~~ “Person” means an individual or firm, partnership, company, corporation, trustee, association or any public or private entity.

~~(w#)~~ “Primary container” means the immediate container in which product water is packaged.

~~(x#)~~ “Processing authority” means “processing authority” as defined in 9 CFR 318.300 (q), namely “the person(s) or organization(s) having expert knowledge of thermal processing requirements for foods in hermetically sealed containers, having access to facilities for making such determinations, and designated by the establishment to perform certain functions as indicated in this subpart.”

~~(y#)~~ “Product water” means water that is processed by a plant for bottled drinking water or for the manufacture of beverages.

~~(z#)~~ “Purified water” means “purified water” as defined in 21 CFR 165.110 (a)(2)(iv), namely “water that has been produced by distillation, deionization, reverse osmosis, or other suitable processes, and which meets the definition of ‘purified water’ in the United States Pharmacopeia, 23rd Revision, January 1, 1995.”

~~(aa#)~~ “Sanitization” means the application of cumulative heat, chemicals or equivalent processes on cleaned product 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.

~~(ab#)~~ “Single-service container” means a container intended for one time usage only.

(a~~c~~a) “Sparkling bottled water” means “sparkling bottled water” as defined in 21 CFR 165.110 (a)(2)(v), namely “water that after treatment and possible replacement with carbon dioxide, contains the same amount of carbon dioxide from the source that it had at emergence from the source.”

(a~~b~~b) “Spring water” means “spring water” as defined in 21 CFR 165.110 (a)(2)(vi), namely “water derived from an underground formation from which water flows naturally to the surface of the earth.”

(a~~c~~c) “Sterile water” means “sterile water” as defined in 21 CFR 165.110 (a)(2)(vii), namely “water that meets the requirements under ‘Sterility Tests’ in the United States Pharmacopeia, 23rd Revision, January 1, 1995.”

(a~~d~~d) “Unit package” means a standard commercial package of a beverage or bottled drinking water.

(a~~e~~e) “Vended water” means water that is dispensed by a water vending machine that is not placed by a bottler in sealed containers.

(a~~h~~h) “Wash” means cleaning with a solution that contains soap, detergent, acid cleaner, alkaline cleaner, or other cleaning agents according to the cleaning agents manufacturing label instructions.

(a~~i~~f) “Well water” means “well water” as defined in 21 CFR 165.110 (a)(2)(viii), namely “water from a hole bored, drilled, or otherwise constructed in the ground which taps the water of an aquifer.”

**Readopt with amendment He-P 2102, effective 4-19-12 (Document #10116), to read as follows:**

PART He-P 2102 BOTTLED, BULK AND VENDED WATER

He-P 2102.01 Approval of Sources for Bottled, Bulk and Vended Water.

(a) All in-state sources of water intended for use as bottled water, bulk water ~~and~~/or vended water, including mineral water, shall be approved by DES in accordance with RSA 143:16 and Env-Dw 303 or Env-Dw ~~305304~~ or Env-Dw 302 if applicable.

(b) All in-state sources of water which have been approved in accordance with Env-Dw ~~305304~~ or Env-Dw 302 shall obtain written approval from DES stating that the source can be used for bottled water in addition to its previously approved use.

(c) All out-of-state and foreign water sources shall be licensed or approved by the government agency having jurisdiction.

(d) All bottled water sources shall be of safe and sanitary quality and be in conformance at all times with the applicable laws and regulations of the government agency or agencies having jurisdiction.

(e) Bottlers shall not utilize any source for bottled water until written source approval, as required in (a), (b) or (c) above, is obtained from DES or the government agency having jurisdiction if the source is located in another state or country.

(f) All sources of water approved by the department that have not maintained an annual beverage license with the department shall be required to follow He-P 2102.01(a).

He-P 2102.02 Standards of Quality for Bottled Water.

(a) All sources of water for bottled, bulk or vended water, under the regulatory authority of DES shall meet the quality standards required by DES in accordance with RSA 485:3.

(b) All finished bottled water products, regardless of state or country of origin, shall meet the FDA standards of quality for bottled water in 21 CFR 165.110(b).

He-P 2102.03 Spring Water. Spring water shall meet all requirements set forth in 21 CFR 165.110(a)(2)(vi), as follows:

(a) Spring water, as defined in He-P 2101.01(ad~~b~~), shall be collected only at the spring or through a bore hole tapping the underground formation feeding the spring.

(b) There shall be a natural force causing the water to flow to the surface through a natural orifice.

(c) The location of the spring shall be identified.

(d) Spring water collected with the use of an external force shall:

(1) Be from the same underground stratum as the spring, as shown by a measurable hydraulic connection using a hydrogeologically valid method between the borehole and the natural spring; and

(2) Have all the physical properties, before treatment, and be of the same composition and quality, as the water that flows naturally to the surface of the earth.

(e) If spring water is collected with the use of an external force, water shall continue to flow naturally to the surface of the earth through the spring's natural orifice.

(f) Plants shall demonstrate on request, to appropriate regulatory officials, using hydrogeologically valid methods, that a hydraulic connection exists between the natural orifice of the spring and the borehole.

He-P 2102.04 Artesian Water. Artesian water, as defined in He-P 2101.01(c), may be collected with the assistance of external force to enhance the natural underground pressure.

#### He-P 2102.05 Bottled Water Sample Requirements.

(a) All samples of bottled water sources or finished product shall be analyzed in a laboratory which has been certified by the Environmental Protection Agency (EPA) or which has been certified or accredited by DES or any National Environmental Laboratory Accreditation Program approved accrediting authority.

(b) To assure that the plant's production of bottled water is in compliance with the quality standards set forth in He-P 2102.02, the plant ownership shall collect samples of finished product for analysis as follows:

(1) For microbiological standards, analyze, at least once each week, a sample from a batch or segment of the continuous production for each type of finished bottled water produced by the plant; and

(2) For chemical, physical, and radiological standards, analyze, at least once each calendar year, a sample from a batch or segment of a continuous product run for each type of finished bottled water produced by the plant.

(c) The samples required by (1) and (2) above shall be derived from primary containers or unit packages of the product.

He-P 2102.06 Source Water. To assure that the source used by a plant for bottled water is in compliance with the quality standards set forth in He-P 2102.02, the plant or bulk source ownership shall collect or direct the collection of samples of source water for analysis, in accordance with 21 CFR 129.35, as follows:

(a) For chemical and physical standards, samples of source water shall be collected and analyzed at least once each calendar year;

(b) For radiological standards, samples of source water shall be collected and analyzed at least once every 4 years; and

(c) For microbiological standards, samples of source water shall be collected and analyzed at least once each calendar year if the source is a public water supply, or once each week if the source is not a public water supply.

He-P 2102.07 Analysis Results.

(a) Sample analysis results shall be maintained at the plant for at least 2 years.

(b) The plant ownership shall make all analysis results available for review by the commissioner or an agent of the commissioner.

(c) Whenever any sampling result indicates that a water sample contains contaminants above the quality standards set forth in He-P 2102.02 or a bottler has reason to believe that a substance might be present in a water source or finished product that might cause a product to be a reportable food, as defined in 21 USC 350f.417(a)(2), the person responsible for the bottling plant shall:

(1) File an oral report with the department within 24 hours; and

(2) File a written report to the department within 3 days that explains the contamination levels and what action was taken by the ownership because of the contaminant level.

(d) When a water sample result does not meet the quality standard as set forth in He-P 2102.02, bottling plant personnel shall conduct additional testing as follows:

(1) For microbiological samples test results which show coliform bacteria in the water, samples shall be tested at least 2 times each week on non-consecutive days for one month following the original sample and after any corrective actions have been taken;

(2) For chemical, physical and radiological contaminants, samples shall be tested at least once each month for 3 months following the original sample and after any corrective actions have been taken; and

(3) The plant or bulk source ownership shall submit results of all follow-up tests to the department.

**Readopt with amendment He-P 2103, effective 4-19-12 (Document #10116), to read as follows:**

## PART He-P 2103 BEVERAGE AND BOTTLED WATER FACILITIES, EQUIPMENT AND OPERATIONS

He-P 2103.01 Construction and Design of Building and Facilities.

(a) ~~All bottling rooms shall be separated from other plant operations or storage areas by Floors,~~ walls and ceilings ~~which are~~shall be tight, ~~smooth~~impervious, easily cleanable and maintained in good repair.

~~—(b) Floors shall be smooth, impervious and maintained in good repair.~~

~~(b)~~ Floors in the bottling ~~room~~area shall be graded to drain.

~~(c)~~ All drains shall be properly trapped to prevent access of odors and sewer gases into the plant.

~~(d)~~ All doors into the bottling ~~room~~area shall be solid, tight, and self-closing.

~~(e)~~ All outer openings into the plant operation ~~or~~and storage areas ~~other than the bottling room~~ shall be tight to prevent access by insects and rodents.

~~(f)~~ All outer doors into the facility shall be solid, tight, and self-closing.

~~—(g) Conveyor openings into the bottling room shall be only large enough to allow the passage of the largest container used.~~

~~(h)~~ Ventilation shall be provided to minimize odors and condensation in processing rooms, bottling ~~rooms~~areas, and in container washing and sanitizing areas.

~~(i)~~ The intake of all pressure ventilation systems shall be properly filtered to remove particulate contamination.

~~(j)~~ There shall be no cross-connections between beverages or product water and any non-potable water supplies.

~~(k)~~ If the product is bottled water, there shall be no cross-connections between the operations water and the product water.

~~—(l) The washing and sanitizing of containers for beverages or bottled drinking water shall be performed in an enclosed area.~~

~~(m)~~ The washing and sanitizing operation shall be positioned so as to minimize any possible post-sanitizing contamination of the containers before they are filled.

~~(n)~~ Rooms in which beverages or water are handled, processed, or held, or in which containers, utensils, or equipment are washed or held, shall not open directly into any living quarters, ~~or rooms which are not used as part of the bottling plant operations.~~

~~(o)~~ When employee locker and lunch rooms are provided, they shall be kept clean and be separated from plant operations and storage areas with self-closing doors.

~~(nq)~~ Hand wash stations shall be provided in locations convenient to the processing room, ~~and to the locker rooms,~~ and lunch rooms, and be equipped with soap, paper towels or electric hand dryers, and hot and cold or warm running water.

~~—— (r) Restrooms shall not open directly into any room where beverages or water are processed, packaged or stored in bulk storage tanks prior to processing, or where empty containers are depalletized or sorted unless the containers are washed and sanitized just prior to filling.~~

~~(os)~~ Restrooms shall be maintained in a clean and sanitary manner, and in good repair.

~~(pt)~~ Restrooms shall be equipped as follows:

- (1) Hand washing facilities with hot and cold running water, soap and paper towels or air dryers shall be provided;
- (2) Doors shall be solid and self-closing;
- (3) Adequate ventilation shall be provided to minimize odors and condensation;
- (4) Ventilation ducts shall vent to the outside; and
- (5) All windows shall be effectively screened against entry by insects when open.

~~(qh)~~ Signs shall be posted in all rest rooms, locker rooms, and lunch rooms reminding employees to wash hands before starting or returning to work.

~~(rv)~~ Disposal of sewage and other wastes shall be in a public sewage system or in a manner in compliance with state and local regulations.

~~(s) All plumbing shall be sized, installed, and maintained according to the provisions of the State of New Hampshire Building Code as authorized by RSA 155-A.~~

~~(t) Each facility shall be equipped with a minimum of a 2 compartment sink of adequate size to wash, rinse, and sanitize manually washed equipment and be installed and plumbed according to the State of New Hampshire Building Code as authorized by RSA 155-A.~~

~~(u) The premises shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents and other pests shall be controlled to eliminate their presence.~~

~~(v) Provide adequate lighting and proper shielding to prevent product contamination.~~

~~(w) Private water supply wells shall be properly constructed and operated.~~

~~(x) The well or other source of water shall be located and constructed in such manner that neither the underground nor surface contamination from any sewage system, privy, or other source of pollution, can reach such water supply.~~

~~(y) The beverage facility shall be maintained in clean and good repair.~~

He-P 2103.02 Equipment.

(a) All plant equipment and utensils shall be suitable for their intended use and in sound condition.

~~(b) Plant equipment and utensils shall include collection and storage tanks, piping, fittings, connections, bottle washers, fillers, cappers and other equipment which might be used to store, handle, process, package or transport the beverages or water.~~

(be) Self contained units for washing, sanitizing, and filling multiservice containers shall be located in a properly ~~constructed bottling room~~ designed and constructed facility, in accordance with He-P 2103.01.

(cd) All product contact surfaces, including containers and closures, shall be constructed of nontoxic, nonabsorbent and corrosion resistant materials.

(de) Storage tanks shall be of the type that can be closed to exclude all foreign matter, and have properly protected vents.

~~(f) Plants in which containers, utensils and equipment are washed manually shall be equipped with a 2 compartment sink of adequate size for this purpose.~~

#### He-P 2103.03 Cleaning and Sanitizing.

(a) The product contact surfaces of all multiservice containers, utensils, pipes, fillers, and equipment used in the transportation, processing, handling, and storage of beverages or water shall be:

(1) ~~Clean and sanitized just prior to being used~~ Washed and rinsed after each use and shall be sanitized just prior to being used;

(2) Inspected as often as necessary by plant personnel to maintain the sanitary condition of such surfaces and to assure they are kept free of scale, oxidation, and other residue or foreign matter; and

(3) Cleaned immediately if the inspection shows the presence of any unsanitary condition, scale, residue, or oxidation.

(b) After cleaning, all multiservice containers, utensils, and disassembled piping and equipment shall be transported and stored in a self draining position.

~~(c) All multiservice containers shall be washed, rinsed and sanitized by mechanical washers or by any other method giving adequate sanitary results.~~

(cd) Mechanical washers shall be inspected as often as is necessary to assure adequate performance.

(de) Filling equipment used for bottled ~~water~~ beverages shall not be used for ~~dairy products or any~~ non-beverage foods.

(ef) When filling equipment used for bottled water is also utilized for other beverages, such equipment shall be thoroughly ~~cleaned~~ washed, rinsed, and sanitized before being used for water.

~~(g) When filling equipment for beverages other than bottled water is utilized for dairy products or other beverages containing fat and protein, such equipment shall be thoroughly cleaned and sanitized before being used for beverages which do not contain fat or protein.~~

(fh) Fillers, storage tanks, piping, and any other processing equipment used for non-food products shall not be used for beverages or bottled water.

~~(i) Sanitizing operations shall be adequate to effect sanitization of the intended product contact surfaces.~~

~~(g) The following times and intensities, as Any methods prescribed in 21 CFR 129.80(d) or any subsequent amendments thereto, shall be considered the minimum levels ~~adequate~~ to effect proper sanitization.:~~

~~(1) When steam is used in an enclosed system, the temperature of the drainage at the outflow shall be at least 170° F for at least 15 minutes or at least 200° F for at least 5 minutes;~~

~~(2) When hot water is used in an enclosed system, the water temperature at the outlet end of the assembly shall be at least 170° F for at least 15 minutes or at least 200° F for at least 5 minutes;~~

~~(3) When chemical sanitizers are used as an immersion or circulating solution, they shall be equivalent in bactericidal action to a 2 minute exposure of 50 ppm of available chlorine at 57° F;~~

~~(4) When chemical sanitizers are applied as a spray or fog, they shall have as a minimum 100 ppm of available chlorine at 57° F or its equivalent in bactericidal action; or~~

~~(5) When an ozone water solution is circulated in an enclosed system, it shall contain 0.1 ppm ozone for a minimum of 5 minutes.~~

~~(k) When containers are sanitized using a substance other than one provided for in 21 CFR 178.1010, such substance shall be removed from the surface of the container by rinsing with disinfected water.~~

(h) All chemical sanitizers shall be approved by the Environmental Protection Agency, registered, and used according to the label.

#### He-P 2103.04 Product and Operations Water.

(a) All product water that is used for bottled water shall be from an approved source as required in He-P 2102.01.

(b) All product and operations water ~~used in the manufacture of beverages~~ shall be:

(1) From a source which is properly located, protected, and operated to avoid contamination;

(2) Of adequate quantity; and

(3) Analyzed at least annually for bacteria, nitrates, and nitrite to assure the water is of a safe, sanitary quality.

(c) All treatment of product water by distillation, ion-exchange, filtration, ultraviolet treatment, ozonation, reverse osmosis, carbonation, mineral addition, or any other process shall be done in a manner so as to be effective in accomplishing its intended purpose and in accordance with section 409 of the Federal Food, Drug, and Cosmetic Act.

(d) All such treatment processes shall be performed in and by equipment designed for the purpose and with substances which will not adulterate the product water.

(e) Product water samples shall be taken after processing and prior to bottling by the plant and analyzed as often as necessary to assure uniformity and effectiveness of the treatment processes.

(f) Water that has been treated with ozone for purposes of disinfection shall not exceed 0.4 mg/l of residual ozone in the bottled water.

~~(g) The operations water, if different from the product water, shall be obtained from a source which is properly located, protected and operated to avoid contamination, of adequate quantity and of a safe, sanitary quality.~~

#### He-P 2103.05 Filling and Capping.

(a) Filling, capping, and sealing of all beverage and bottled water containers shall be done in a sanitary manner ~~by automated equipment designed for the use it is given.~~

~~(b) Capping, closing or sealing of all beverage and bottled water containers shall be done in a sanitary manner using automated equipment designed for the use it is given.~~

(~~b~~e) The performance of the filler, capper, or sealer shall be monitored and the filled containers visually or electronically inspected.

(~~c~~d) Single-service or multiservice containers which are damaged or defective shall not be used ~~not sealed shall be reprocessed or rejected.~~

~~(e) Multiservice containers shall be cleaned, sanitized and inspected just prior to being filled, capped and sealed.~~

~~(f) Multiservice containers found to be unclean or defective shall be reprocessed or discarded.~~

(~~d~~g) Whenever air under pressure is directed at the beverage or product water or a product contact surface:

(1) It shall be from a filtered source and be free of oil, dust, rust, moisture, and extraneous materials;

(2) It shall not affect the bacteriological or chemical quality of the beverage or water; and

(3) It shall not adversely affect the flavor, color or odor of the beverage or water.

(~~e~~h) Single-service containers and caps or seals shall be stored in an enclosed container in an area that is clean and dry.

(~~f~~i) Packaging or wrapping material or other processing supplies shall not be stored in locker or lunch rooms.

(g) All containers and closures shall be visually inspected just prior to being filled to ensure they are free from contamination.

#### ~~He P 2103.06 Testing of Containers and Closures.~~

~~(a) All containers and closures shall be visually inspected to ascertain that they are free from contamination.~~

~~(b) At least once each 3 months a bacterial swab and/or rinse count shall be made from at least 4 containers and closures selected just prior to filling and capping.~~

~~(c) All containers and closures shall be free of coliform bacteria.~~

~~— (d) Not more than one of the 4 samples shall exceed more than one bacteria per milliliter of capacity or one colony per square centimeter of surface area.~~

~~— (e) Testing shall be performed by either qualified plant personnel or a commercial laboratory.~~

He-P ~~2103.07~~2103.06 Record Keeping.

(a) The plant shall maintain the following records:

~~(1) Approval of the source water by the governmental agency having jurisdiction;~~

~~(2) Approval of the operations water by the government agency having jurisdiction;~~

(13) Analysis results of all required testing of the water, along with sampling date, type of product sampled, and production code;

~~(4) Results of required testing of single service containers and closures;~~

~~(5) Frequency of cleaning all product contact surfaces and the strength of the cleaning solutions;~~

(26) Sanitization records including the date of sanitization, intensity of the sanitizing agent, and the duration of time the agent was in contact with the item or surfaces being sanitized;

(37) Kind of product, volume produced, date produced, production code used, the source(s) used, if the plant bottles water from more than one source, and the distribution of the finished product to wholesale or retail outlets; and

(48) Plants which treat water with methods prescribed in 21 CFR 129.80(d) listed in He-P 2103.04 shall keep a record of the type and date of physical inspections of the treatment equipment, the conditions found and the performance and effectiveness of the treatment equipment; ~~and~~

~~(9) Plants using multiservice containers shall maintain records of the physical maintenance, inspections and conditions found, and performance of the mechanical washer.~~

(b) All records ~~except for those required in (a)(1) (2)~~ above shall be kept on file at the plant for at least 2 years.

~~— (c) Records of source and operations water approvals shall be kept on file permanently.~~

(c4) The bottling facility shall make records available to the department upon request.

He-P ~~2103.08~~2103.07 Product Coding.

(a) Each unit package from a batch or segment of a continuous production run of a beverage or bottled drinking water shall be identified by a production code.

(b) The production code shall identify a particular batch or segment of a continuous production run and the day produced.

He-P ~~2103.09~~2103.08 Recall Procedure.

(a) Each bottler shall develop and maintain on file a written procedure for the recall of their product.

(b) The recall procedure shall include procedures for the notification of the department and consumers, and removal of the product from commerce.

(c) Production records as required in He-P ~~2103.07(a)(7)~~2103.06(a)(3) shall be used to enable location of products if a recall is initiated.

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

~~— (e) A bottler who knows that a violation of the standard of quality or other circumstances exist which might cause a product to be a reportable food, as defined in 21 USC 350f.417(a)(2), shall notify the department within 24 hours of learning of the violation or circumstances.~~

~~— (f) Any owner or operator of a bulk water source who knows that a violation of the standard of quality or other circumstances exist which might cause a product to be a reportable food, as defined in 21 USC 350f.417(a)(2), shall notify the department within 24 hours of learning of the violation or circumstances.~~

~~— (g) Circumstances that might adversely affect the safety of a beverage or bottled water shall include but are not limited to source contamination, spills, accidents, natural disasters or breakdowns in treatment processes.~~

~~(eh)~~ 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 ~~advisedirect~~ the bottler to initiate a product recall. ~~as directed by the department.~~

~~(fi)~~ The bottler shall be responsible for disseminating notification of the recall to all wholesale and retail outlets in a manner that allows quick response in an effort to protect the public health.

~~(gi)~~ If directed by the department, the bottler shall issue notification to consumers who might be affected by the problem using such methods, including the media, as will assure timely notification to the consumers.

He-P ~~2103.10~~2103.09 Storage and Transportation of Bulk Water for Bottling.

(a) Bulk water shall be stored, loaded, transported, and unloaded in a manner that prevents contamination.

(b) Facilities for the storage and transfer of bulk water for bottling shall be constructed and maintained as follows:

- (1) Walls and ceilings shall be tight, smooth, easily cleanable, and maintained in good repair;
- (2) Floors shall be smooth, impervious, graded to drain, and maintained in good repair;
- (3) All drains shall be properly trapped to prevent access of odors and sewer gases;
- (4) All outer openings shall be tight to prevent access by insects and rodents;
- (5) Doors shall be self-closing;
- (6) Ventilation shall be provided to minimize odors and condensation;
- (7) The intake of all pressure ventilation systems shall be properly filtered;

(8) The transfer facility shall not open directly into any room which is not used as part of the water operations;

(9) Hand wash stations equipped with soap, paper towels, and hot and cold or warm running water or hand sanitize stations shall be located conveniently to the transfer facility; and

(10) Restrooms shall not open directly into the transfer facility.

(c) Facilities for the transfer of bulk water for bottling shall be equipped and operated as follows:

(1) All equipment, including storage tanks, piping, pumps, and transport tankers shall be suitable for their intended use;

(2) All product water contact surfaces shall be made of nontoxic, nonabsorbent, and corrosion resistant materials and maintained in good repair;

(3) All equipment shall be cleaned, sanitized, and inspected on a routine basis;

(4) Storage tanks and transport tankers shall be of the type that can be closed to exclude all foreign matter;

(5) All connections, hoses, and pumps used for loading and unloading bulk water shall be stored to prevent contamination;

(6) Vents on storage tanks and transport tankers shall be properly protected during filling and emptying;

(7) Manhole covers on transport tankers shall be closed while filling and emptying;

(8) Transport tankers used for bulk water shall not be used or have previously been used for any non-food products;

~~(9) Transport tankers used for bulk water shall not have been used to transport fat or protein containing food products except in the event of an emergency;~~

~~(9)~~ If the transport tanker is used for any food product containing fat or protein it shall be cleaned and sanitized immediately after such use and before it is used for bulk water;

~~(10)~~ Product contact surfaces of all transport tankers, storage tanks, and related equipment shall be cleaned, sanitized, and inspected as frequently as necessary to maintain the sanitary condition of such surfaces and to assure they are kept free of scale, oxidation and other residue or foreign matter; and

~~(11)~~ A record of all cleaning and sanitizing showing the date, time, place, and signature of person doing the work shall be maintained with the vehicle or at the bulk storage and transfer facility for a minimum of 2 years.

(d) Each shipment of bulk water shall be accompanied by a shipping statement that provides at least the following information:

(1) Name and address of the owner of the source water;

(2) Site of the water source;

(3) Date of loading;

- (4) Name of facility the water is delivered to;
  - (5) Gallons of water delivered;
  - (6) Date and time delivered to facility; and
  - (7) Any treatment, such as ozonation, provided at the bulk water source.
- (e) The shipping statement shall be retained by the plant receiving the bulk water for at least 2 years.
- (f) Upon filling, all access points to the tanker shall be sealed using a tamper evident seal printed with a unique identifier.
- (g) Seals shall only be removed by the receiving plant.

He-P ~~2103.11~~2103.10 Special Requirements for Juices and Non-Carbonated Beverages.

(a) Manufacturers of juices shall comply with all applicable requirements for Hazard Analysis and Critical Control Point Systems in 21 CFR Part 120.

(b) Beverage Manufacturers of non-carbonated beverages which are not subjected to heat treatment or other steps intended to consistently produce, at a minimum, a 5 log or 99.999% reduction of viable microorganisms for at least as long as the shelf life of the product, shall have a process review conducted by a processing authority on each product prior to its being produced.

(c) If the processing authority declares in writing that there are no biological concerns with the ~~foodbeverage~~ after ~~evaluating the scheduled~~conducting the process review, the beverage shall be allowed to be produced.

(d) All products manufactured in which a process review was conducted shall be required to follow the food safety aspects of the review and document any required information.

~~(e)~~ Manufacturers shall keep all process review information on file and retained on site for as long as the product is being manufactured. ~~and~~All process review information shall be available for review by the department upon request.

~~(f)~~ A list of processing authorities described in (b) above, or a website link to the same, shall be available on the department's website at <http://www.dhhs.nh.gov/dphs/fp/beverage/index.htm>. More extensive lists of processing authorities may be found through web search or via industry specific manufacturers' associations.

He-P 2103.11 Alcohol Content Review.

(a) Any product that may produce alcohol shall not exceed 0.5% alcohol by volume and must be maintained at 0.5% or below for the entirety of the listed shelf life.

(b) Testing for alcohol shall be performed on the product, at minimum, at the end of the product's shelf life.

(c) Testing of products shall be the responsibility of the licensee and shall be tested at an accredited lab.

He-P 2103.12 Personnel.

(a) All employees shall be adequately trained and monitored by responsible supervisory personnel with regards to proper food handling procedures and the danger of poor personal hygiene and unsanitary practices.

(b) Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination by which there is a reasonable possibility of the beverage, product water, product contact surfaces, or containers or closures becoming contaminated, shall be excluded from any operations which might be expected to result in such contamination until the condition is corrected.

(c) Personnel shall report any such health conditions, described in (b) above, to their supervisors.

(d) Employees shall maintain good personal hygiene to prevent contamination.

(e) Employees shall thoroughly wash their hands and the exposed portions of their arms in an adequate hand washing facility before starting work, after each absence from the work station, and at any other time when the hands might have become soiled or contaminated.

(f) Employees shall refrain from eating food, chewing gum, drinking beverages, or using tobacco in areas where beverages or water are processed, packaged, or stored.

(g) Employees shall wear clean outer clothing.

(h) Employees shall wear, in an effective manner, hair nets, caps, beard covers, or other effective hair restraints.

(i) Employees shall remove all unsecured jewelry or other objects that might fall into equipment, or containers.

(j) Gloves, if used, shall:

(1) Be impermeable;

(2) Be maintained in an intact, clean, and sanitary condition; and

(3) Not be a substitute for handwashing.

(k) Employees shall store all clothing or other personal belongings in areas other than where the beverages or water are processed, bottled, and stored.

(l) Employees shall take all precautions necessary to avoid the contamination of the beverages product water, product contact surfaces, containers, and closures with microorganisms or foreign substances ~~that include~~including, but not limited to, perspiration, hair, tobacco, chemicals, and medicines applied to the skin, and any other microorganisms and foreign substances.

He-P 2103.13 Labeling of Beverages and Bottled Waters. All labeling shall be in compliance with the applicable requirements of the federal food labeling regulations, 21 CFR Part 101, and federal bottled water regulations 21 CFR Part 165.110.

(a) The label shall state the name of the product in accordance with 21 CFR 165.110 and He-P 2103.14.

(b) When bottled water comes from a community or municipal water system, except when it has been treated by deionization, distillation, or reverse osmosis, or meets the definitions of purified or sterile water, and is labeled as such, the water shall be labeled as follows:

(1) The statement “from a community water system” or, alternatively, “from a municipal source”, as appropriate, shall be on the principal display panel; and

(2) This statement shall immediately and conspicuously precede or follow the name of the water without intervening written, printed, or graphic matter, in type size at least one half the size of the statement of identity but in no case less than one-sixteenth of an inch.

(c) Water labeled as sodium free, low sodium, or very low sodium shall be in compliance with labeling requirements for sodium in 21 CFR 101.61.

(d) Spring water, as defined in He-P 2101.01(ad), shall be labeled as follows:

(1) The term “spring”, “springs” or “spring water” shall not be used as a product name or a brand name on a label unless the water source meets the definition of spring water in He-P 2101.01(ad); and

(2) If the word “spring” appears in the company name and the water source does not meet the definition of spring water, the word(s) designating the type of water source shall be no smaller than one-half the size of the word “spring” in the company name.

(e) Mineral water, as defined in He-P 2101.01(p), shall be labeled as follows:

(1) Mineral water which contains total dissolved solids of less than 500 ppm shall include the statement “low mineral content”;

(2) Mineral water which contains total dissolved solids of 1,500 ppm or higher shall include the statement “high mineral content”; and

(3) Statements of low or high mineral content shall appear on the principal display panel, following the statement of identity, in type size at least one-half the size of the statement of identity but in no case less than one-sixteenth of an inch.

(f) If the word “natural” appears in the company name and the finished product has been subject to treatment such that it does not meet the definition of natural water in He-P 2101.01(r), the word(s) designating the type of water, such as distilled, deionized, demineralized, or drinking water, shall be no smaller than one-half the size of the word “natural” in the company name.

(g) The words in the product name shall be in letters of the same style, size, and color on a background of contrasting color.

(h) Supplemental printed information and graphics concerning recognized uses of the water when appearing on the label shall not infer properties of the product or preparation methods which are not factual.

(i) When the label or labeling of a bottled water product states or implies through label statements or vignettes that the bottled water is for use in feeding infants, and the product does not meet the definition of “sterile water” in He-P 2101.01(ae), the product label shall bear the statement “not sterile” conspicuously and on the principal display panel.

(j) Bottled water which has on its principal display panel, or primary label, a statement of identity such as spring water, purified water, or drinking water and contains added ingredients, including ~~but not limited to~~ minerals, caffeine, ~~or~~ flavorings, or any other additional ingredients, shall be clearly labeled as containing additional ingredients.

He-P 2103.14 Name of Product.

(a) The term “natural” may be used with mineral, spring, artesian, or well water provided that the particular product also meets the definition of natural water in He-P 2101.01(r).

(b) All bottled water labeling shall comply with the standard of identity of the water source as defined in 21 CFR 165.110, He-P 2101, and as follows:

(1) Artesian water as defined in He-P 2101.01(c) shall be labeled “artesian water” or “artesian well water”;

(2) Deionized water as defined in He-P 2101.01(kj) shall be labeled as “deionized water” or “deionized drinking water”;

(3) Demineralized water as defined in He-P 2101.01(l) shall be labeled as “demineralized water” or “demineralized drinking water”;

(4) Distilled water as defined in He-P 2101.01(n) shall be labeled as “distilled water” or “distilled drinking water”;

(5) Mineral water as defined in He-P 2101.01(p) shall be labeled “mineral water”;

(6) Purified water as defined in He-P 2101.01(z) shall be labeled “purified water” or “purified drinking water”;

(7) Spring water as defined in He-P 2101.01(ad) shall be labeled “spring water”;

(8) Sterile water as defined in He-P 2101.01(ae) shall be labeled as “sterile water” or “sterile drinking water”; and

(9) Well water as defined in He-P 2101.01(ai) shall be labeled as “well water”.

**Readopt with amendment He-P 2104, effective 4-19-12 (Document #10116), to read as follows:**

PART He-P 2104 ~~LABELING OF BEVERAGES AND BOTTLED WATER~~ APPLICATION AND LICENSING OF IN-STATE BEVERAGE AND BOTTLED WATER FACILITIES

He-P 2104.01 ~~Labels.~~ All labeling shall be in compliance with the applicable requirements of the federal food labeling regulations, 21 CFR Part 101, and federal bottled water regulations 21 CFR Part 165.110.

~~He-P 2104.02 Additional Label Requirements for Bottled Water.~~

~~(a) The label shall state the name of the product in accordance with 21 CFR 165.110 and He-P 2104.03.~~

~~—— (b) When bottled water comes from a community or municipal water system, except when it has been treated by deionization, distillation or reverse osmosis or meets the definitions of purified or sterile water, and is labeled as such, the water shall be labeled as follows:~~

~~(1) The statement “from a community water system” or, alternatively, “from a municipal source”, as appropriate, shall be on the principal display panel; and~~

~~(2) This statement shall immediately and conspicuously precede or follow the name of the water without intervening written, printed or graphic matter, in type size at least one half the size of the statement of identity but in no case less than one sixteenth of an inch.~~

~~—— (c) Water labeled as sodium free, low sodium or very low sodium shall be in compliance with labeling requirements for sodium in 21 CFR 101.61.~~

~~—— (d) Spring water, as defined in He P 2101.01(ab), shall be labeled as follows:~~

~~(1) The term “spring”, “springs” or “spring water” shall not be used as a product name or a brand name on a label unless the water source meets the definition of spring water in He P 2101.01(ab); and~~

~~(2) If the word “spring” appears in the company name and the water source does not meet the definition of spring water, the word(s) designating the type of water source shall be no smaller than one half the size of the word “spring” in the company name.~~

~~—— (e) Mineral water, as defined in He P 2101.01(o), shall be labeled as follows:~~

~~(1) Mineral water which contains total dissolved solids of less than 500 ppm shall include the statement “low mineral content”;~~

~~(2) Mineral water which contains total dissolved solids of 1,500 ppm or higher shall include the statement “high mineral content”; and~~

~~(3) Statements of low or high mineral content shall appear on the principal display panel, following the statement of identity, in type size at least one half the size of the statement of identity but in no case less than one sixteenth of an inch.~~

~~—— (f) If the word “natural” appears in the company name and the finished product has been subject to treatment such that it does not meet the definition of natural water in He P 2101.01(q), the word(s) designating the type of water, such as distilled, deionized, demineralized or drinking water, shall be no smaller than one half the size of the word “natural” in the company name.~~

~~—— (g) The words in the product name shall be in letters of the same style, size and color on a background of contrasting color.~~

~~—— (h) Supplemental printed information and graphics concerning recognized uses of the water when appearing on the label shall not infer properties of the product or preparation methods which are not factual.~~

~~—— (i) When the label or labeling of a bottled water product states or implies through label statements or vignettes that the bottled water is for use in feeding infants, and the product does not meet the definition of “sterile water” in He P 2101.01(ac), the product label shall bear the statement “not sterile” conspicuously and on the principal display panel.~~

~~—— (j) Bottled water which has on its principal display panel, or primary label, a statement of identity such as spring water, purified water or drinking water and contains added ingredients, including but not limited to minerals, caffeine or flavorings, shall be clearly labeled as containing additional ingredients.~~

~~He P 2104.03 Name of Product.~~

~~(a) The term “natural” may be used with mineral, spring, artesian or well water provided that the particular product also meets the definition of natural water in He P 2101.01(q).~~

~~(b) All bottled water labeling shall comply with the standard of identity of the water source as defined in 21 CFR 165.110, He P 2101 and as follows:~~

~~(1) Artesian water as defined in He P 2101.01(e) shall be labeled “artesian water” or “artesian well water”;~~

~~(2) Deionized water as defined in He P 2101.01(j) shall be labeled as “deionized water” or “deionized drinking water”;~~

~~(3) Demineralized water as defined in He P 2101.01(k) shall be labeled as “demineralized water” or “demineralized drinking water”;~~

~~(4) Distilled water as defined in He P 2101.01(m) shall be labeled as “distilled water” or “distilled drinking water”;~~

~~(5) Mineral water as defined in He P 2101.01(o) shall be labeled “mineral water”;~~

~~(6) Purified water as defined in He P 2101.01(x) shall be labeled “purified water” or “purified drinking water”;~~

~~(7) Spring water as defined in He P 2101.01(ab) shall be labeled “spring water”;~~

~~(8) Sterile water as defined in He P 2101.01(ac) shall be labeled as “sterile water” or “sterile drinking water”; and~~

~~(9) Well water as defined in He P 2101.01(af) shall be labeled as “well water”.~~

He-P 2104.01 Initial License Application Requirements

(a) All applicants for licensure under RSA 143:10 shall submit to the department, a complete, signed, and dated, Form ISB “Application for Beverage and Bottled Water License” (October 2018 Edition), obtained from the department or available as noted in Appendix A at <https://www.dhhs.nh.gov/dphs/fp/beverage/license.htm>.

(b) The applicant shall include the following in the application submittal:

(1) Copies of all types of labels to be used in New Hampshire;

(2) Copies of any FDA approval issued relative to labels making claims of medicinal or health giving properties;

(3) Laboratory results of the water analysis required by He-P2102, with the exception of He-P 2102.05 (b) (1) for both the source and the finished product, if the product is bottled water, or source water analysis if the product is a beverage; and

(4) Cash, check, money order, or on-line payment for the applicable fees, in accordance with He-P 2104.04.

He-P 2104.02 Processing of Initial Applications and Issuance of Licenses.

- (a) An application shall be processed in accordance with RSA 541-A:29.
- (b) An application for an initial license shall be complete when the department determines that all items required by He-P 2104.01 have been received.
- (c) If an application does not contain all of the items required by He-P 2104.01, 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 cash, check, money order, or online payment and returned to the state for any reason shall be processed in accordance with RSA 6:11-a.
- (e) Licensing fees shall not be transferable to any other application(s).
- (f) Following an inspection, conducted pursuant to RSA 143:11 and in accordance with He-P 2105, a provisional license shall be issued if the department determines that an applicant is in compliance with RSA 143:—and these rules.
- (g) Pursuant to RSA 143:11:
- (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 beverage or bottled water facility shall cease operation the day after the provisional license expires and not operate until a license is obtained.
- (h) All licenses and provisional licenses issued in accordance with RSA 143-A shall be issued for a specific license classification under He-P 2104.04.
- (i) License holders shall operate in accordance with the class of license issued.
- (j) Laboratory analysis of the source water, as required in He-P 2102.06., shows the source water to be in compliance with the standards set forth in He-P 2102.02, provided the plant is bottling water;
- (k) The labels are in compliance with He-P 2103.
- (l) An inspection of the facility while in operation shall be conducted by the department within the 90 days that the provisional license is in effect.
- (m) If the operational inspection and the analysis results of the finished product determine that the facility is in compliance with He-P 2100, a full annual license shall be issued.

He-P 2104.03 License Expirations and Procedures for License Renewal

- (a) Licenses issued following a provisional license shall expire on the first day of January of the year following issuance unless revoked prior to that date.

(b) Each licensee shall apply to renew their license at least 30 days prior to the expiration of the current license.

(c) The licensee shall submit all requirements listed in 2104.01 (b) and any changes to information provided to the department in the initial application.

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

(1) Submitted the renewal information 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 Compliance Agreement that has been accepted by the department and implemented by the licensee if the deficiencies were cited at the last licensing inspection; and

(3) Is found to be in compliance with RSA 143, and He-P 2100.

(e) If a license holder fails to submit all required information and documentation required for the renewal process as required under (b) and (c) above, the facility shall cease operation the day after the license expires, and shall not operate until a license is obtained.

(f) License renewal applications shall be processed and issued or denied in accordance with He-P 2104.02 and 2106.04.

#### He-P 2104.04 Beverage License Classes and In State Beverage Fees

(a) Licensure fees shall be non-refundable and graduated by class in accordance with the following schedule:

(1) "Class 1" means bottlers of 5,000 gallons or more per day, averaged over a period of one years. Bottlers contained in class 1 shall pay a licensure fee of \$300;

(2) "Class 2" means bottlers of 500 gallons or more but less than 5000 gallons per day, averaged over a period of one year. Bottlers contained in class 2 shall pay a licensure fee of \$175;

(3) "Class 3" means bottlers of less than 500 gallons per day, averaged over a one year period. Bottlers contained in class 3 shall pay a licensure fee of \$75; and

(b) Fees shall be due and payable prior to the issuance of a license.

#### He-P 2104.05 Change in Ownership of a Beverage or Bottled Water Facility.

(a) When there is a change of ownership of a bottled water or beverage facility, the new owner shall submit the items required for initial license applicants under He-P 2104.01 to the department at least 30 days prior to the change of ownership.

(b) Upon receipt and processing of the items required by (a) above, and after an inspection conducted in accordance with He-P 2105.01 which shall also determine compliance with the beverage rules He-P 2100, the department shall issue a provisional license reflecting the change in ownership.

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

He-P 2104.06 Change in Name of a Beverage or Bottled Water Facility.

(a) When a license holder intends to change the name of a bottled water or beverage facility, 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 bottled water or beverage facility as it appears on the existing license;

(3) The name of the bottled water or beverage facility as the license holder requests it to appear on the new license; and

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

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

He-P 2104.07 Change in Location of a Bottled Water or Beverage Facility.

(a) When there is a change of location of a bottled water or beverage facility, the license holder shall submit the items required for initial license applicants under He-P 2104.01 to the department at least 30 days prior to the change of location.

(b) Upon receipt and processing of the items required under (a) above, and after an inspection conducted in accordance with He-P 2105.01, 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.

He-P 2104.08 Change in License Class.

(a) A license holder wishing to request an upgrade to a higher-level class of license listed in He-P 2104.04 shall:

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

(2) Apply for a new license in accordance with He-P 2104.01.

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

(c) A license holder wishing to request a downgrade to a lower level class of license listed in He-P 2104.04 shall submit a written request for downgrade to the department.

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

(1) The reason for requesting a downgrade; and

(2) The date upon which the downgrade is intended to occur.

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

He-P 2104.09 Submission of Plans and Specifications for New or Remodeled Beverage Facilities.

(a) A new applicant or a current license holder undergoing remodeling of a beverage facility shall submit a complete, signed, and dated Form BBFPAPP "Plan Review Application"(October 2018 Edition), available as noted in Appendix A, to the department for review and approval.

(b) In addition to submitting a completed application in (a) above, an applicant or license holder shall provide the following with the application:

(1) A copy of the plans and specifications for the beverage facility that include:

a. Location of all equipment which clearly identifies the piece of equipment;

b. Location of all refrigeration;

c. Location of all sinks; and

d. Location of all restrooms, employee locker, and lunch rooms.

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

(1) Constructing a new beverage facility;

(2) Converting an existing structure for use as a beverage facility;

(3) Remodeling a beverage facility; or

(4) Relocating a beverage facility when the relocation also involves (1), (2), or (3) above.

(d) An applicant or licensee shall pay a fee of \$75, in the form of cash, check, money order or online payment, submitted with the application, for each plan review application submitted.

(e) The department shall review plans for construction, renovation or structural alterations of a beverage facility for compliance with all applicable sections of RSA 143 and He-P 2100 and notify the applicant or licensee as to whether the plan complies with the requirements set forth therein.

He-P 2104.10 Variances.

(a) Applicants or license holders seeking variances from specific rules shall contact the department by telephone at (603) 271-4589 or by mail, to obtain Form BBVR "Beverage and Bottled Water License Variance Request Form" (October 2018 Edition).

(b) Applicants or license holders shall complete, sign and date, Form BBVR “Beverage and Bottled Water License Variance Request Form” (October 2018 Edition) and submit to the department by mailing to:

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

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

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

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

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

(e) A variance shall be approved until the expiration of the current license or as specified by the department.

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

**Readopt with amendment He-P 2105, effective 4-19-12 (Document #10116), to read as follows:**

**PART He-P 2105 INSPECTIONS AND COMPLIANCE~~BOTTLED WATER SAMPLE REQUIREMENT~~**

~~He P 2105.01 Laboratories. All samples of bottled water sources or finished product shall be analyzed in a laboratory which has been certified by EPA or which has been certified or accredited by DES or any National Environmental Laboratory Accreditation Program approved accrediting authority.~~

~~He P 2105.02 Finished Product.~~

~~(a) To assure that the plant’s production of bottled water is in compliance with the quality standards set forth in He P 2102.02, the plant ownership shall collect samples of finished product for analysis as follows:~~

~~(1) For microbiological standards, analyze, at least once each week, a sample from a batch or segment of the continuous production for each type of finished bottled water produced by the plant; and~~

~~(2) For chemical, physical and radiological standards, analyze, at least once each calendar year, a sample from a batch or segment of a continuous product run for each type of finished bottled water produced by the plant.~~

~~—— (b) The samples required by (1) and (2) above shall be derived from primary containers or unit packages of the product.~~

~~—— He P 2105.03 Source Water. To assure that the source used by a plant for bottled water is in compliance with the quality standards set forth in He P 2102.02, the plant or bulk source ownership shall collect or direct the collection of samples of source water for analysis, in accordance with 21 CFR 129.35, as follows:~~

~~—— (a) For chemical and physical standards, samples of source water shall be collected and analyzed at least once each calendar year;~~

~~—— (b) For radiological standards, samples of source water shall be collected and analyzed at least once every 4 years; and~~

~~—— (c) For microbiological standards, samples of source water shall be collected and analyzed at least once each calendar year if the source is a public water supply, or once each week if the source is not a public water supply.~~

~~—— He P 2105.04 Analysis Results.~~

~~—— (a) Sample analysis results shall be maintained at the plant for at least 2 years.~~

~~—— (b) The plant ownership shall make all analysis results available for review by the commissioner or an agent of the commissioner.~~

~~—— (c) Whenever any sampling result indicates that a water sample contains contaminants above the quality standards set forth in He P 2102.02 or a bottler has reason to believe that a substance might be present in a water source or finished product that might cause a product to be a reportable food, as defined in 21 USC 350f.417(a)(2), the person responsible for the bottling plant shall:~~

~~(1) File an oral report with the department within 24 hours; and~~

~~(2) File a written report to the department within 3 days that explains the contamination levels and what action was taken by the ownership because of the contaminant level.~~

~~—— (d) When a water sample result does not meet the quality standard as set forth in He P 2102.02, bottling plant personnel shall conduct additional testing as follows:~~

~~(1) For microbiological samples test results which show coliform bacteria in the water, samples shall be tested at least 2 times each week on non consecutive days for one month following the original sample and after any corrective actions have been taken;~~

~~(2) For chemical, physical and radiological contaminants, samples shall be tested at least once each month for 3 months following the original sample and after any corrective actions have been taken; and~~

~~(3) The plant or bulk source ownership shall submit results of all follow up tests to the department.~~

He-P 2105.01 Inspection of Beverage Facilities.

~~(a) Inspections shall be conducted:~~

~~(1) Prior to issuance of a license~~

(2) At least once annually; or

(3) Whenever the department has reason to believe a condition exists that places the bottling facility in non-compliance with RSA 143 and He-P 2100.

(b) Inspections shall be scored by a point system with the following points being assigned to each item:

(1) Item 1a (Floors, Walls, Ceilings), 2 points;

(2) Item 1b (Outer Openings and Doors), 2 points;

(3) Item 1c (Lighting and Ventilation), 2 points;

(4) Item 1d1 (Plumbing, Constructed and Installed); 4 points;

(5) Item 1d2 (Plumbing in good repair), 2 points;

(6) Item 1e (Sewage Disposal), 4 points;

(7) Item 1f (Handwash Stations), 2 points;

(8) Item 1g (Restrooms), 2 points;

(9) Item 1h (Separate Rooms), 2 points;

(10) Item 1i (Plant Cleanliness), 2 points

(11) Item 1j (Evidence of Insects or Rodents), 2 points;

(12) Item 1k (Well Head Maintenance and Construction), 2 points;

(13) Item 2a (Equipment properly, designed and stored), 2 points;

(14) Item 2b (Proper Tank Ventilation), 2 points;

(15) Item 2c1 (Contact Surfaces Cleaned), 4 points;

(16) Item 2c2 (Contact Surfaces Sanitized), 4 points;

(17) Item 3a1 (Preventing Contamination), 2 points;

(18) Item 3a2 (Facilities for Storage), 2 points;

(19) Item 3a3 (Facilities for Transfer), 2 points;

(20) Item 3a4 (Shipping Statements), 2 points

(21) Item 3a5 (Filling Access Points and Seals), 2 points;

- (22) Item 3b1 (Process Review on Site), 2 points;
  - (23) Item 3b2 (Process Review Followed), 4 points;
  - (24) Item 3b3 (Records Maintained and Properly Retained), 2 points
  - (25) Item 3c1 (Approved Treatment), 4 points;
  - (26) Item 4a (Container Integrity), 2 points;
  - (27) Item 4b (Performance of filler, capper and sealer monitored), 2 points;
  - (28) Item 4c (Air under pressure cleaned and filled), 2 points;
  - (29) Item 4d (Operation conducted to preclude the contamination of product), 2 points;
  - (30) Item 4e (Container and Cap Storage), 2 points;
  - (31) Item 5a (Product Properly Labeled), 2 points;
  - (32) Item 5b (Date Coding), 2 points;
  - (33) Item 6a (Source Water Testing), 4 points;
  - (34) Item 6b (Finished Product Testing), 4 points;
  - (35) Item 6c (Recall Procedure Developed), 4 points;
  - (36) Item 6d (Sanitizing Log), 2 points;
  - (37) Item 6e (Records maintained and properly retained), 2 points;
  - (38) Item 7a (Health and Reporting), 4 points;
  - (39) Item 7b (Personal Cleanliness), 2 points;
  - (40) Item 7c (Proper Handwashing), 4 points;
- (c) The license holder shall be notified in writing of violations and the compliance status of the facility.
- (d) Follow-up inspections shall be conducted on noncompliant facilities.
- (e) If a second follow-up inspection determines the facility is still non-compliant, the licensee shall enter into a compliance agreement in accordance with He-P 2105.02
- He-P 2105.02 Compliance Agreements.

(a) Compliance agreements shall be completed at the conclusion of an inspection or at a compliance meeting to be held at a later date if the license holder is not available at the time of the inspection and compliance is not already achieved.

(b) The following shall be provided in the compliance agreement:

(1) The date of the agreement;

(2) The name of the establishment;

(3) The license number of the establishment;

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

(5) Attestation to the agreement to make repairs, corrections or changes that are necessary to bring the establishment into compliance with He-P 2100;

(6) A list of each repair, correction, or change to be made including the date of intended completion;

(7) The signature of the person in charge;

(8) The title of the signee; and

(9) The signature of the inspector or department representative making the agreement.

(c) Failure on the part of the license holder to comply with the signed compliance agreement shall result in action against the license as specified in He-P 2105.01(e) and He-P 2106.02.

**Readopt with amendment He-P 2106, effective 4-19-12 (Document # 10116), to read as follows:**

**PART He-P 2106 ~~LICENSING OF IN STATE BEVERAGE AND BOTTLED WATER~~  
~~PLANTSENFORCEMENT ACTIONS~~**

**~~He-P 2106.01 Submission of License Applications:~~**

~~(a) All applicants for licensure under RSA 143:10 shall submit to the department an application which is typewritten or legibly printed in ink.~~

~~(b) The applicant shall provide the following on the application obtained from the department:~~

~~(1) Full legal name of corporations or owner and mailing address of the applicant;~~

~~(2) Name of company to go on license if different from applicant name;~~

~~(3) Name and mailing address of the bottling plant;~~

~~(4) Telephone number and fax number of the bottling plant;~~

~~(5) Telephone number and fax number of the applicant;~~

~~(6) Name of contact person for applicant;~~

~~(7) E-mail address for contact person for applicant, if available;~~

~~(8) Name of contact person for the facility;~~

~~(9) E-mail address for the contact person for facility, if available;~~

~~(10) A name and telephone number where the person in charge or contact person can be contacted after hours in the event of an emergency;~~

~~(11) Type of beverage or water bottled;~~

~~(12) Source of water used for plant operations;~~

~~(13) Source of water used for product bottling, if product is bottled water;~~

~~(14) List of products to be bottled, including brand names;~~

~~(15) Signature and title of applicant; and~~

~~(16) Date of application.~~

~~(c) The applicant shall include the following in the application submittal:~~

~~(1) Copies of all types of labels to be used in New Hampshire;~~

~~(2) Copies of any FDA approval issued relative to labels making claims of medicinal or health giving properties;~~

~~(3) Laboratory results of the water analysis required by He P 2105 for both the source and the finished product, if the product is bottled water, or source water analysis if the product is a beverage; and~~

~~(4) Cash, check or money order for the applicable fees, in accordance with He P 2170.01.~~

~~He P 2106.02 Processing of Applications.~~

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

~~(b) If the application does not contain all of the items required by He P 2106.01, the department shall:~~

~~(1) Not process that application; and~~

~~(2) Notify the applicant in writing that all required items must be submitted within 30 days in order for the application to be processed.~~

~~(c) If all the items required by He P 2106.01 are received, the application shall be deemed to be complete.~~

~~He P 2106.03 License Issuance and Duration.~~

~~(a) Upon receipt of an application for licensure and designated license fee, the commissioner shall approve or deny the application in accordance with RSA 143:11 and He P 2106.03 below.~~

~~(b) A license shall be issued if:~~

~~(1) The license application meets the requirements of He P 2106.02 above;~~

~~(2) The most recent inspection of the facility conducted in accordance with He P 2106.09 determines compliance with He P 2100;~~

~~(3) The water analysis results submitted with the application show that the water is in compliance with the standards set forth in He P 2102.02; and~~

~~(4) The labels are in compliance with He P 2104.~~

~~————(e) All licenses shall remain in effect until the first day of January of the year following issuance unless revoked prior to this date.~~

~~————(d) Licenses shall not be transferable with respect to persons or locations.~~

~~(e) Information required with the license application, including water sources, product labels or FDA labeling approvals, which changes before the license expires shall be submitted to the department for review within 30 days of when the change is made.~~

~~———— He P 2106.04 Provisional Licenses for New Facilities.~~

~~————(a) In accordance with RSA 143:11, a provisional license shall be issued to all beverage or bottled water manufacturers which are new, have changed ownership or have had their previous license revoked by the department.~~

~~————(b) A provisional license for a new facility shall be issued if:~~

~~(1) The license application for a new facility meets the requirements of He P 2106.01;~~

~~(2) An inspection of the facility conducted in accordance with He P 2106.09 determines compliance with He P 2100;~~

~~(3) Laboratory analysis of the source water, as required in He P 2105.03, shows the source water to be in compliance with the standards set forth in He P 2102.02, provided the plant is bottling water;~~

~~(4) Laboratory analysis of the finished product, as required in He P 2105.02, shows the finished water to be in compliance with the standards set forth in He P 2102.02, provided the plant is bottling water; and~~

~~(5) The labels are in compliance with He P 2104.~~

~~————(c) All provisional licenses shall remain in effect for 90 days from the date of issuance.~~

~~————(d) An inspection of the facility while in operation shall be conducted by the department within the 90 days that the provisional license is in effect.~~

~~————(e) If the operational inspection and the analysis results of the finished product determines that the facility is in compliance with He P 2100, a full annual license shall be issued.~~

~~————(f) Licenses issued following a provisional license shall expire on the first day of January of the year following issuance unless revoked prior to that date.~~

~~He P 2106.05 Denial of License Applications.~~

~~———— (a) The department shall deny a license application if:~~

~~(1) The application submitted is incomplete and the information requested in accordance with He P 2106.02(b) is not provided;~~

~~(2) An inspection of the facility shows non-compliance with He P 2100;~~

~~(3) The source or finished product water does not meet the quality requirements in He P 2102.02, provided the plant is bottling water; or~~

~~(4) Labels are not in compliance with the provisions of He P 2104.~~

~~———— (b) License applications shall be denied in accordance with RSA 143:14.~~

~~———— He P 2106.06 Revocation of Licenses:~~

~~———— (a) Revocation of licenses shall occur when:~~

~~(1) Inspection of the facility indicates that conditions or operations are such that contamination of the beverages or water is occurring or might occur which might cause a threat to the public health and safety and steps are not taken immediately to bring the conditions or operations into compliance;~~

~~(2) The licensee fails to meet the requirements of a compliance agreement entered into in accordance with He P 2106.10 below;~~

~~(3) The licensee fails, without prior notification to the department, to attend a compliance meeting; or~~

~~(4) The licensee is bottling water and analysis of the source or finished product water indicates one or more parameters of public health significance exceed the quality standards set forth in He P 2102.02 and immediate steps are not taken to remove the contaminants.~~

~~———— (b) The department shall revoke a license in accordance with RSA 143:14 and RSA 541-A:30, II.~~

~~———— (c) Hearings and appeals of decisions of the department resulting from an adjudicative proceeding shall be in accordance with He C 200.~~

~~———— He P 2106.07 Effect of Denial of Application or Revocation:~~

~~———— (a) Any applicant who has been denied a license shall not operate a beverage or water bottling facility.~~

~~———— (b) If a license has been revoked, the facility shall cease operation immediately.~~

~~———— He P 2106.08 Renewal of Licenses:~~

~~———— (a) License renewal applications shall be completed as required in He P 2106.01, except that only labels which have changed since the previous license was issued or labels for new products need to be submitted.~~

~~———— (b) License renewal applications shall be processed and issued or denied in accordance with He P 2106.02, He P 2106.03 and He P 2106.05.~~

~~—— (c) License renewal applications shall be made pursuant to He P 2106.01 at least 30 days prior to the expiration of the current license.~~

~~—— He P 2106.09 Inspection of Bottling Facilities.~~

~~—— (a) Inspections shall be conducted:~~

~~(1) Prior to issuance of licenses for new facilities;~~

~~(2) At least once annually; or~~

~~(3) Whenever the department has reason to believe a condition exists that places the bottling facility in non-compliance with RSA 143 and He P 2100.~~

~~—— (b) The license holder shall be notified in writing of violations.~~

~~—— (c) Follow up inspections shall be conducted as necessary to determine that compliance has been achieved.~~

~~—— (d) If the follow up inspection determines that compliance has not been achieved and the items which are non-compliant represent a risk to the public health and safety, procedures to revoke the license shall be initiated.~~

~~(e) If the follow up inspection determines that compliance has not been achieved but the items in non-compliance do not represent a risk to the public health and safety, the licensee shall enter into a compliance agreement in accordance with He P 2106.10 below.~~

~~—— He P 2106.10 Compliance Agreements.~~

~~—— (a) If a licensee fails to correct items which have been in non-compliance on 2 consecutive inspections of their bottling facility, but which do not represent imminent health hazard, the licensee shall enter into a compliance agreement with the department.~~

~~—— (b) Compliance agreements shall be completed at the conclusion of an inspection or at a compliance meeting to be held at a later date if the license holder is not available at the time of the inspection and compliance is not already achieved.~~

~~—— (c) The following shall be provided in the compliance agreement:~~

~~(1) The date of the agreement;~~

~~(2) The name of the establishment;~~

~~(3) The license number of the establishment;~~

~~(4) The name of the person in charge of the establishment;~~

~~(5) Attestation to the agreement to make repairs, corrections or changes that are necessary to bring the establishment into compliance with He P 2100;~~

~~(6) A list of each repair, correction or change to be made including the date of intended completion;~~

~~(7) The signature of the person in charge;~~

~~(8) The title of the signee; and~~

~~(9) The signature of the inspector or department representative making the agreement.~~

~~(d) Failure on the part of the license holder to comply with the signed compliance agreement shall result in action against the license as specified in He-P 2106.06.~~

He-P 2106.01 Enforcement Actions and Notice of Right to Appeal.

(a) The department shall impose enforcement actions for violations of RSA 143, or He-P 2100, 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 beverage facility.

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

(1) The action to be taken by the department;

(2) The reasons for the action, including the identification of each deficiency as applicable; and

(3) The right of the applicant or licensee to request a hearing in accordance with RSA 541-A, He-C 200, and He-P 2106 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 541-A:30, III, or He-P 2100.

He-P 2106.02 Schedule of Administrative Fines. The department shall impose administrative fines not to exceed the specified amounts for the following violations:

(a) For willful submission of fraudulent or materially false information on or with an application, in violation of He-P 2104.01 or He-P 2107.01 , the fine shall be \$1,000;

(b) For failure to cooperate during an inspection of a beverage or water bottling facility, the fine shall be \$2,000;

(c) For operating a beverage or water bottling facility in the state without first obtaining a license, as required in RSA 143:10, the fine shall be \$1,000. Each day that an individual or business continues to operate without obtaining a license shall be considered a separate offense subject to an additional \$500 fine;

(d) For failure to cease operation upon notification by the department to do so, the fine shall be \$1,000. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;

(e) 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;

(f) For failure to notify the department within 24 hours of receiving an analysis result indicating that a quality standard as set forth in He-P 2102.02 has been exceeded or identifying other circumstances that might adversely affect the safety of the bottled product as required in He-P 2103.08 (e) and He-P 2102.07 the fine shall be \$100;

(g) For failure to obtain a registration before offering for sale within the state any beverage or bottled water which is bottled outside New Hampshire, the fine shall be \$500. Each day the beverage or bottled water is offered for sale in New Hampshire shall be considered a separate offense subject to an additional \$250 fine;

(h) For failure to remove a product from commerce in New Hampshire when a registration has been revoked, the fine shall be \$1,000. Each day the beverage or bottled water is offered for sale after revocation shall be considered a separate offense subject to an additional \$500 fine;

(i) For failure to submit a timely license renewal application in accordance with He-P 2104.03 (c), the fine shall be \$75;

(j) For failure to submit a timely registration renewal application in accordance with He-P 2104.03, the fine shall be \$75;

(k) For failure to notify the department by telephone within 24 hours of any fire or other disaster that jeopardizes the safety or sanitation of bottled product in a bottled beverage establishment establishments, in violation of He-P 2106.06(a), the fine shall be \$250;

(l) For failure to notify the department pursuant to He-P 2104.05(a) at least 30 days prior to a beverage facility ownership change, the fine shall be \$500;

(m) For failure to notify the department pursuant to He-P 2104.07(a) at least 30 days prior to the change of location of a beverage facility, the fine shall be \$500;

(n) For failure to submit a plan for review as required in He-P 2104.09(a) and (b), the fine shall be \$300;

(o) For failure to cease operation upon notification by the department to do so, the fine shall be \$1,000. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;

(p) 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;

(q) 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;

(r) For a failure to comply with any compliance agreement that has been accepted by the department, the fine shall be \$500;

(s) For violating a variance approved in accordance with He-P 2104.10, the fine shall be \$500; and

(t) For failure to enter into a compliance agreement, when required by He-P 2105.02, the fine shall be \$500.

He-P 2106.03 Form of Payment of Fees and Administrative Fines. Whenever an applicant or license or registration holder makes a payment to the department in satisfaction of a fee or administrative fine, the following shall apply:

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

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

(c) Any instrument described in (a) or (b) above shall be made payable to the “Treasurer–State of New Hampshire”; and

(d) Any payment made to the department by check which is returned for insufficient funds, and which an applicant or license or registration holder has not made good by submitting cash, money order or certified check within 2 business days of notification by the department, including any penalty assessment required by RSA 6:11-a, shall result in denial of the application or revocation of the license or registration after notice and opportunity for a hearing.

He-P 2106.04 Denial or Revocation of License.

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

(1) Inspection of the facility indicates that conditions or operations are such that contamination of the beverages or water is occurring or might occur which might cause a threat to the public health and safety and steps are not taken immediately to bring the conditions or operations into compliance

(2) An applicant or licensee has failed to pay any applicable fee in accordance with He-P 2104.04 or any administrative fine imposed under He-P 2106.02 or any other court authorized sanction or fee;

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

(4) After being notified of and given an opportunity to supply missing information, an applicant or licensee fails to submit an application that meets the requirements of He-P 2104.01(b);

(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 Compliance Agreement in accordance with He-P 2105.02;

(7) The licensee fails to implement or continue to implement a Compliance Agreement that has been accepted by the department in accordance with He-P 2105.02;

(8) The licensee fails, without prior notification to the department, to attend a compliance meeting; or

(9) The licensee is bottling water and analysis of the source or finished product water indicates one or more parameters of public health significance exceed the quality standards set forth in He-P 2102.02 and immediate steps are not taken to remove the contaminants.

(b) The department shall revoke a license in accordance with RSA 143:14 and RSA 541-A:30, II.

(c) Hearings and appeals of decisions of the department resulting from an adjudicative proceeding shall be in accordance with He-C 200.

He-P 2106.05 Effect of Denial of Application or Revocation.

(a) Any applicant who has been denied a license or renewal license shall not operate or shall cease operation of the beverage facility 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 beverage facility shall cease operation of the beverage production within 10 calendar days after receipt of the revocation notice, unless a timely appeal is submitted.

(c) If a beverage facility is subject to immediate closure as defined in RSA 143:13, the beverage facility 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 beverage facility shall immediately cease operation of the beverage production.

He-P 2106.06 Closures.

(a) A licensee shall immediately discontinue operations and notify the department at 603-271-4589, or if at night or during weekends at 603-271-5300, if an imminent health hazard may exist because of an emergency such as:

(1) A failed sewer system or a sewage backup into the beverage or bottled water facility;

(2) A fire affecting a beverage or bottled water facility;

(3) Flooding in a beverage or bottled water facility;

(4) Chemical exposure in a beverage or bottled water facility;

(5) Any other natural disaster or catastrophic event that could result in contamination of the beverage or bottled water; and

(6) Any other severe unsanitary conditions that threaten to contaminate the beverage or bottled water or its ingredient supply.

(b) A licensee shall not be required to discontinue operations in an area of the beverage or bottled water facility that is unaffected by the imminent health hazard.

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

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

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

(f) The commissioner's order of an immediate closure of a beverage or bottled water facility shall be in accordance with the provisions of RSA 143:13.

#### PART He-P 2107 REGISTRATION OF OUT-OF-STATE BEVERAGES AND BOTTLED WATER

**Readopt with amendment He-P 2107.01, previously effective 11-5-09 (Document #9589), as amended effective 10-22-15 (Document #10956), and expired 11-5-17 in paragraphs (a), (b), (d) and (e), to read as follows:**

##### He-P 2107.01 Submission of Initial Registration Applications.

(a) All applicants registering their products in accordance with RSA 143:12 shall submit to the department a complete, signed, and dated Form OSB APP "Application for Beverage and Bottled Water Registration" (October 2018 Edition), obtained from the department or available as noted in Appendix A at <https://www.dhhs.nh.gov/dphs/fp/beverage/license.htm>.

(be) The applicant shall include the following information in the application submittal:

(1) A copy of a sanitary inspection conducted within the previous 12 months by the regulatory authority with jurisdiction or a recognized national third party audit organization, a letter from the regulatory authority confirming compliance with local regulations or a health certificate for the bottling facility issued within the previous 12 months; and

(2) If the product is bottled water, a copy of the approval of the source for bottled water, including the approval for the designation "spring water", if the product is labeled as such, issued by the federal, state, local, provincial or other government agency with the authority to approve sources for bottled water.

(c) Cash, check, money order, or online payment for the application fee of \$400, in accordance with RSA 143:12 shall be submitted with the registration application.

(d) Upon receipt of an application for registration and appropriate registration fee, the commissioner shall approve or deny the application in accordance with He-P 2107.04.

**Readopt He-P 2107.02, effective 4-19-12 (Document #10116), to read as follows:**

He-P 2107.02 Processing of ~~Out of State Registration~~ Applications.

- (a) An application shall be processed in accordance with RSA 541-A:29.
- (b) If the application does not contain all of the items required by He-P 2107.01, the department shall:
  - (1) Not process that application; and
  - (2) Notify the applicant in writing that all required items must be submitted within 30 days in order for the application to be processed.
- (c) If all the items required by He-P 2107.01 are received, the application shall be deemed to be complete.

**Readopt with amendment He-P 2107.03 and He-P 2107.04, effective 4-19-12 (Document #10116), to read as follows:**

He-P 2107.03 Registration Issuance and Duration.

- (a) A registration shall be issued if the following are met:
  - (1) The application meets the requirements of He-P 2107.01; and
  - ~~(2) Results of the complete analysis show that the finished product water is in compliance with the water quality standards in He-P 2102.02, provided the plant is bottling water;~~
  - (2) The inspection report or health certificate submitted with the application indicates that the bottling facility meets the equivalent requirements of He-P 2100.
  - ~~(4) The labels are in compliance with He-P 2104.~~
- (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.(d) Information required with the registration application, including water sources, product labels or FDA labeling approvals, which changes before the registration expires shall be submitted to the department for review at the time the change is made.

He-P 2107.04 Denial of Registration Applications. The department shall deny a registration application when:

- (a) The application submitted is incomplete and the information requested in accordance with He-P ~~2107.02~~2107.01 is not provided; or
- (b) The inspection of the facility submitted with the application shows noncompliance with He-P 2100.
- ~~(c) The analysis of the water shows that the finished product does not meet the quality requirements in He-P 2102.02, provided the product is bottled water; or~~

~~— (d) The labels are not in compliance with the provisions of He-P 2104.~~

**Readopt He-P 2107.05 and He-P 2107.06, effective 4-19-12 (Document #10116), to read as follows:**

He-P 2107.05 Revocation of Registrations.

(a) The department shall revoke a registration if the department has reason to believe that the beverage or bottled water being sold in the State of New Hampshire represents a threat to the public health and safety and there is no effort to correct the situation on behalf of the regulatory authority with control over the bottling facility.

(b) The department shall revoke a registration in accordance with the procedures set forth in RSA 143:14 and RSA 541-A:30, II.

(c) Hearings and appeals of decisions of the department, resulting from an adjudicative proceeding shall be in accordance with He-C 200.

He-P 2107.06 Effect of Denial of Application or Revocation.

(a) Any applicant who has been denied a registration shall not sell beverages or bottled water in the State of New Hampshire.

(b) If a registration has been revoked, the registrant shall immediately remove all product from commerce in the State of New Hampshire.

**Readopt with amendment He-P 2107.07, effective 10-22-15 (Document #10956), to read as follows:**

He-P 2107.07 Renewal of Registrations.

~~(a) A request to renew the registration shall be made to the department at least 30 days prior to the expiration of the registration. Registration renewal applications shall be completed as required in He-P 2107.01 except that the description of the source does not need to be resubmitted unless the source has changed.~~

~~(b) To renew, an applicant must supply the requirements with supporting documentation required in He-P 2107.01, any changes to information provided to the department on the initial application, and payment as specified in He-P 2107.01(c), except the description of the source does not need to be resubmitted unless the source has changed.~~

~~(c) Registration renewal applications shall be processed and issued or denied in accordance with He-P 2107.02, He-P 2107.03, and He-P 2107.04.~~

~~(e) Registration renewal applications shall be made pursuant to He-P 2107.01 at least 30 days prior to the expiration of the current registration.~~

**Repeal He-P 2108.01, effective 4-19-12 (Document #10116), and hold said part in reserve as follows:**

PART He-P 2108 ADMINISTRATIVE FINES RESERVED

~~He-P 2108.01 Procedure for Administrative Fines. Whenever the department determines that a violation of RSA 143 or the provisions of He-P 2100 has occurred, the license holder or registration holder shall be provided with a written notice:~~

~~(a) Identifying each violation;~~

~~——(b) Informing the license or registration holder of the amount of the proposed fine under He P 2108.02;~~

~~——(c) Informing the license or registration holder of the right to appeal the department's decision to assess a fine by submitting a written request for a hearing to the commissioner no later than 10 calendar days from the date of receipt of the notice;~~

~~——(d) Informing the license or registration holder of the opportunity to waive the right to a hearing by paying the fine within 10 days of the receipt of the department notice of assessed administrative fine; and~~

~~——(e) Informing the license or registration holder that if he or she does not request an appeal as specified in (c) above, the department's decision to assess a fine shall become final after the 10 day period specified in (c) above and the fine shall be paid to the department no later than 10 days from that date.~~

**Repeal He-P 2108.02, effective 10-22-15 (Document #10956), as follows:**

~~He P 2108.02 Schedule of Administrative Fines. Subject to He P 2108.03, the commissioner shall impose administrative fines not to exceed the specified amounts for the following violations:~~

~~——(a) For willful submission of fraudulent or materially false information on or with an application, in violation of He P 2106.01 or He P 2107.01, the fine shall be \$1,000;~~

~~——(b) For failure to cooperate during an inspection of a beverage or water bottling facility, the fine shall be \$2,000;~~

~~——(c) For operating a beverage or water bottling facility in the state without first obtaining a license, as required in RSA 143:10, the fine shall be \$1,000. Each day that an individual or business continues to operate without obtaining a license shall be considered a separate offense subject to an additional \$500 fine;~~

~~——(d) For failure to cease operation upon notification by the department to do so, the fine shall be \$1,000. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;~~

~~——(e) 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;~~

~~——(f) For failure to notify the department within 24 hours of receiving an analysis result indicating that a quality standard as set forth in He P 2102.02 has been exceeded or identifying other circumstances that might adversely affect the safety of the bottled product as required in He P 2103.09 (e) and He P 2105.04 the fine shall be \$100;~~

~~——(g) For failure to obtain a registration before offering for sale within the state any beverage or bottled water which is bottled outside New Hampshire, the fine shall be \$500. Each day the beverage or bottled water is offered for sale in New Hampshire shall be considered a separate offense subject to an additional \$250 fine;~~

~~——(h) For failure to remove a product from commerce in New Hampshire when a registration has been revoked, the fine shall be \$1,000. Each day the beverage or bottled water is offered for sale after revocation shall be considered a separate offense subject to an additional \$500 fine;~~

~~—— (i) For failure to pay an administrative fine within 30 days of its imposition, or the completion of any appeal of the administrative fine, the fine shall be \$500 per day until the fine is paid;~~

~~—— (j) For failure to submit a timely license renewal application in accordance with He P 2106.08(e), the fine shall be \$75; and~~

~~—— (k) For failure to submit a timely registration renewal application in accordance with He P 2107.07(e), the fine shall be \$75.~~

**Repeal He-P 2108.03, effective 4-19-12 (Document #10116), to read as follows:**

~~He P 2108.03 Form of Payment of Fees and Administrative Fines. Whenever an applicant or license or registration holder makes a payment to the department in satisfaction of a fee or administrative fine, the following shall apply:~~

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

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

~~—— (c) Any instrument described in (a) or (b) above shall be made payable to the “Treasurer State of New Hampshire”; and~~

~~—— (d) Any payment made to the department by check which is returned for insufficient funds, and which an applicant or license or registration holder has not made good by submitting cash, money order or certified check within 2 business days of notification by the department, including any penalty assessment required by RSA 6:11-a, shall result in denial of the application or revocation of the license or registration after notice and opportunity for a hearing.~~

**Repeal He-P 2170.01, effective 4-19-12 (Document #10116), and hold Part He-P 2170 in reserve as follows:**

PART He-P 2170 ~~BEVERAGE FEES RESERVED~~

~~He P 2170.01 Classes of Bottlers.~~

~~—— (a) “Class 1” means bottlers of 5,000 gallons or more per day, averaged over a period of one year, of beverages or beverage concentrates other than water.~~

~~—— (b) “Class 2” means bottlers of 2,500 or more but less than 5,000 gallons per day, averaged over a period of one year, of beverages or beverage concentrates other than water.~~

~~—— (c) “Class 3” means bottlers of 500 or more but less than 2,500 gallons per day, averaged over a period of one year, of beverages or beverage concentrates other than water.~~

~~—— (d) “Class 4” means bottlers of less than 500 gallons per day, averaged over a period of one year, of beverages or beverage concentrates other than water.~~

~~—— (e) “Class 5” means bottlers of water.~~

**APPENDIX A: Incorporation by Reference Information**

<b>Rule</b>	<b>Title</b>	<b>Publisher; How to Obtain; and Cost</b>
He-P 2104.01(a)	Application for Beverage and Bottled Water (October 2018 Edition)	<p>Publisher: New Hampshire Department of Health and Human Services, Division of Public Health Services, Food Protection</p> <p>The incorporated document is available free of charge at the DHHS website at: <a href="https://www.dhhs.nh.gov/dphs/fp/beverage/license.htm">https://www.dhhs.nh.gov/dphs/fp/beverage/license.htm</a>.</p> <p>Or a copy may be obtained by calling (603) 271-4589</p>
He-P 2104.09(a)	Plan Review Application (October 2018 Edition)	<p>Publisher: New Hampshire Department of Health and Human Services, Division of Public Health Services, Food Protection</p> <p>The incorporated document is available free of charge at the DHHS website at: <a href="https://www.dhhs.nh.gov/dphs/fp/beverage/license.htm">https://www.dhhs.nh.gov/dphs/fp/beverage/license.htm</a>.</p> <p>Or a copy may be obtained by calling (603) 271-4589</p>
He-P 2104.10(a)	Beverage and Bottled Water License Variance Request Form (October 2018 Edition)	<p>Publisher: New Hampshire Department of Health and Human Services, Division of Public Health Services, Food Protection</p> <p>The incorporated document is available free of charge from the department and can be requested by mail:</p> <p>Department of Health and Human Services Division of Public Health Services Food Protection Section 29 Hazen Drive Concord, NH 03301</p> <p>Or a copy may be obtained by calling (603) 271-4589.</p>
He-P 2107.01(a)	Application for Beverage and Bottled Water Registration (October 2018 Edition)	<p>Publisher: New Hampshire Department of Health and Human Services, Division of Public Health Services, Food Protection</p> <p>The incorporated document is available free of charge at the DHHS website at: <a href="https://www.dhhs.nh.gov/dphs/fp/beverage/license.htm">https://www.dhhs.nh.gov/dphs/fp/beverage/license.htm</a>.</p> <p>Or a copy may be obtained by calling (603) 271-4589</p>

**APPENDIX B**

<b>Rule</b>	<b>Specific State or Federal Statute the Rule Implements</b>
He-P 2101.01	RSA 143:9; RSA 143:16; 9CFR 318.30 & 21 CFR 165.110
He-P 2102.01 - He-P 2102.02	RSA 143:16; RSA 485:3; 21 CFR 165.110
He-P 2102.03 - He-P 2102.04	RSA 143:16; RSA 155-A & 21 CFR 165.110
He-P 2102.05	RSA 143:16
He-P 2102.06	RSA 143:16 & 21 CFR 129.35
He-P 2102.07	RSA 143:16 & 21 USC 350.f417(a)(2)
He-P 2103.01	RSA 143:11; 21 CFR 129.20 & 21 CFR 129.80 (d)
He-P 2103.02 - He-P 2103.08	RSA 143:11 & 21 CFR 129.40
He-P 2103.09	RSA 143:11
He-P 2103.10	RSA 143:11 & 21 CFR 120
He-P 2103.11- He-P 2103.12	RSA 143:11
He-P 2103.13	21 CFR Part 101 & 21 CFR 165.110
He-P 2103.14	21 CFR Part 101 & 21 CFR 165.110
He-P 2104.01-He-P 2104.10	RSA 143:11
He-P 2105.01- He-P 2105.02	RSA 143:11
He-P 2106.01 - He-P 2106.05	RSA 143:7-a; RSA 143:11; RSA 143:14; RSA 541:A
He-P 2107.01	RSA 143:12
He-P 2107.02	RSA 541:A
He-P 2107.03 - He-P 2107.04	RSA 143:12
He-P 2107.05	RSA 143:14; RSA 541:A
He-P 2107.06	RSA 143:15
He-P 2107.07	RSA 143:12
He-P 2108.01- He-P 2108.03 (repealed)	RSA 143:7-a
He-P 2170.01 (repealed)	RSA 143:11