

STATE OF MAINE

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

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



**DEPARTMENT OF HEALTH AND HUMAN SERVICES
MAINE CENTER FOR DISEASE CONTROL AND PREVENTION**

**11 STATE HOUSE STATION
AUGUSTA, ME 04333-0011**

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

**Maine Center for Disease Control & Prevention
Department of Health and Human Services**

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SUMMARY STATEMENT:

This rule contains the requirements for eating establishments, lodging places, campgrounds, sporting camps, youth camps, public pools and public spas licensed or regulated in the State of Maine by the Department of Health and Human Services Health Inspection Program. This rule defines terms, describes the application and inspection process, provides specific standards for licensure, as well as compliance, enforcement and appeal protocols, when eating establishments, lodging places camps, campgrounds, public pools and public spas fail to meet the requirements within this rule.

This rule provides additional processes and requirements to the following rules: *Maine Food Code* (10-144 CMR Ch. 200), *Rules Relating to Campgrounds* (10-144 CMR Ch. 205), *Rules Relating to Lodging Establishments* (10-144 CMR Ch. 206), *Rules Relating to Youth Camps, Primitive, and Trip Camping* (10-144 CMR Ch. 208), and *Rules Relating to Public Pools and Spas* (10-144 CMR Ch. 202).

AUTHORITY:

22 M.R.S. §§ 2496 and 1551-A; 32 M.R.S. §§ 1242, 4251, 4313, 4326

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SECTION 1. DEFINITIONS

- A. The following definitions are intended to provide meanings for the terms used in this rule for the Department's regulation and licensure of eating establishments, lodging places, campgrounds, sporting/recreational camps, youth camps, public pools and public spas.
1. **Accredited program** means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals. Accredited program refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration. Accredited program does not refer to training functions or educational programs.
 2. **Active managerial control** means a food safety management system where managers develop and implement food safety protocols to prevent, eliminate or reduce the occurrence of foodborne illness.
 3. **Approved** means acceptable to the Department, based on its determination as to conformance with appropriate standards and good public health practice.
 4. **Bed and breakfast** means a unique eating establishment, where the general public can stay overnight and be provided with a "limited menu," serving only a breakfast meal. This meal can be either a full or continental breakfast. Unlike other eating establishments, the meal is prepared in the private home. Notwithstanding 22 M.R.S. §2501, all bed and breakfasts, regardless of the number of rooms rented, are subject to Departmental licensing requirements by this rule. The breakfast meal is served by the owner or the owner's designee, in the morning and included in the cost of the overnight guests' stay. This definition contains further clarification of the *Maine Food Code* (10-144 CMR Ch. 200, §1-201.10(B)(7)) and the *Rules Relating to Lodging Establishments* (10-144 CMR Ch. 206, §1-B(18)(a)), for the purposes of this rule.
 5. **Body artist** means a person who operates as a tattoo artist, body piercer, micropigmentation practitioner, and/or an electrologist.
 6. **Business Enterprise Program** is a program within the Maine Department of Labor that seeks to broaden economic opportunities for blind residents of Maine, by creating snack bars, cafeterias, and vending machine facilities located upon State, federal, and municipal properties.
 7. **Campground** means camping areas, recreational vehicle parks, seashore resorts, lakeshore places, picnic and lunch grounds or other premises where tents, recreational vehicles, rental cabins and cottages are permitted on 5 or more sites for compensation either directly or indirectly. Campground includes, but is not limited to, sites intended for recreational purposes rather than permanent residency. Campground does not include parking lots or areas where camping is not authorized.

8. **Catering** means preparing food for pre-arranged events, and requires a license. Catering does not include persons hired as personal chefs to prepare at-home meals in private households. Personal chefs are not licensed by the Department.
9. **Catering establishment** means any kitchen, commissary or similar place in which food or drink is prepared for sale or service elsewhere, or for service on the premises during special catered events.
10. **Certified food protection manager** means a person who is employed or engaged by the management of an eating establishment, who has the authority to implement food protection measures at that establishment, and who meets the certification requirements of Section 2(A) of this rule.
11. **Certified pool operator certificate** means evidence that a person meets the standards required for a certified pool operator in the *Rules Relating to Public Pools* at 10-144 C.M.R. Ch. 202.
12. **Commercial kitchen** means a kitchen used to prepare food for public consumption that meets all requirements of the *Maine Food Code* (10-144 C.M.R. Ch. 200). A commercial kitchen is not a private home kitchen.
13. **Commissary** means a kitchen that receives, stores, and prepares food for delivery to other meal sites or vending locations. Examples of commissaries include, but are not limited to, vending company production kitchens that prepare food for use in vending machines; senior citizen meals production kitchens that deliver either frozen or ready-to-eat meals; kitchens that prepare food for small boat day trips; kitchens located at an event hall or convention hall used by multiple caterers as part of specific events, or a commercial kitchen used by multiple food vendors.
14. **Commissioner** means the Commissioner of the Department of Health and Human Services.
15. **Commercial lot** means any property concerned with, or engaged in, the interchange of goods and services for money or in-kind. Commercial lot is referenced in the campground presumption provision in 22 M.R.S. §2492.
16. **Community event** means an event that is of a civic, political, public or educational nature, including State and county fairs, city or town festivals, circuses and other public gatherings.
17. **Complete license application** means an application for any license issued in Section 4(B) of this rule that includes all required establishment information, for the Department to review and determine if issuance of a license is appropriate.
18. **Compressed air** means a license required for a supplier either to fill or to supply any breathing apparatus with life-supporting gases.
19. **Continental breakfast** means a breakfast consisting of non-potentially hazardous baked goods, whole fruit or fruit sliced for same-day service, cereal, milk, juice, portion-

controlled butter, portion-controlled cream cheese, portion-controlled peanut butter and portion-controlled jam or jelly. For the purpose of this rule, portion-controlled means commercially pre-packaged individual items or foods portioned from bulk containers and presented in individual units to the consumer. Continental breakfast does not include heating/cooking and serving, or heating/cooking and hot-holding for service, eggs (or egg products), meats, or other potentially hazardous food items.

20. **Corrosion-resistant materials** means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other normal uses.
21. **Cottage/cabin** means a single structure rented or let to the public on a daily, weekly, monthly or seasonal basis. Cottages/cabins are intended for temporary occupancy for recreational purposes and not for permanent residency.
22. **Critical violation** means any violation deemed or marked as a critical violation within the *Maine Food Code* (10-144 C.M.R. Ch. 200), the *Rules Relating to Lodging Establishments* (10-144 C.M.R. Ch. 206), the *Rules Relating to Youth Camps, Primitive, and Trip Camping* (10-144 C.M.R. Ch. 208), and the *Rules Relating to Public Pools and Spas* (10-144 C.M.R. Ch. 202), and the *Rules Relating to Campgrounds* (10-144 C.M.R. Ch. 205).
23. **Day** means the period of time from 12:00 a.m. to 11:59 p.m. on any given calendar date, including a portion of this period.
24. **Delegated municipality** means a municipality in Maine that has applied for, and received authorization from, the Department to conduct inspections pursuant to 22 M.R.S. §2499.
25. **Department** means the Department of Health and Human Services, Maine Center for Disease Control and Prevention.
26. **Designated camping area** means an area where camping occurs, and may include, but is not limited to, fire rings, picnic tables, trash receptacles, water spigots, electrical hookups, signage, sites, or other improvements.
27. **Dormitory** means a room or a building used for living and sleeping by unrelated persons.
28. **Easily cleanable** means that surfaces are readily accessible and made of such materials and finish, and so fabricated, that residue may be effectively removed by normal cleaning methods.
29. **Eating establishment or eating place** means any place where food or drink is prepared and served or served to the public for consumption on the premises or prepared and served or served ready to eat to the public for consumption off-premises.
 - a. Eating establishment includes places in the entertainment, hospitality, recreation, restaurant and tourism industries; catering establishments; correctional facilities; hospital cafeterias, mobile eating places; public and private schools; retail frozen dairy product establishments; and workplace eating establishments and places where

food is prepared for vending machines dispensing food other than in original sealed packages.

- b. Eating establishment does not include the following:
 - i. A place preparing and serving food that is licensed pursuant to State law by a State agency other than the Department as long as the licensing of the place includes regular food safety inspections;
 - ii. A place serving food only to residents, such as a boarding home, a retirement home or an independent living place; and
 - iii. A farm stand that offers only whole, uncut fresh fruits and vegetables.

This definition is based on a new statutory definition at 22 MRS §2491(7), effective August 1, 2018. This statutory change supersedes the definition in the *Maine Food Code*.

- 30. **Eating Place – Limited Menu** means an establishment which contains only a bar where food is served but has no kitchen. This type of establishment may contain fewer sinks than are required by the *Maine Food Code* and serves only pre-packaged foods or pre-packaged, pre-cooked food to be heated prior to service. This type of establishment license does not permit catering operations.
- 31. **Eating Place – Mobile** means a mobile vehicle designed and constructed to transport, prepare, sell or serve food at a number of sites and is capable of being moved from its serving site at any time. This type of establishment is a self-contained food service operation, located in a vehicle or a movable stand on wheels, used to store, prepare, display or serve food intended for individual portion service.
- 32. **Eating Place – Mobile Stick Built** means food service equipment that may be assembled and disassembled for storage or transportation and may only operate at a fixed location for the duration of an approved community event.
- 33. **Eating Place – School** means a school kitchen for which the primary function is to provide meals to students in kindergarten through grade 12. Nursery schools, Headstart programs, pre-schools and before and after care are not included in this definition and do not require a license.
- 34. **Eating Place – School Satellite** means a school that receives food items that were prepared at a separate location for final assembly, rethermalization (reheating) and service at the school satellite location.
- 35. **Eating Place – Temporary** means an eating place or establishment that operates at a fixed location, for a period not exceeding 14 consecutive days, in conjunction with a single community event.
- 36. **Employee** means the permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in an

eating establishment. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(36) for the purposes of this rule.

37. **Employer** means the license holder or individual(s) having supervisory or management duties.
38. **Equipment** means stoves, ovens, ranges, hoods, slicers, meat blocks, tables, counters, mixers, refrigerators, sinks, dishwashing machines, steam tables, and similar items, other than utensils, used in the operation of an establishment licensed by the Department under this rule.
39. **Event camping** means overnight use of areas associated with events lasting four or fewer consecutive nights for 50 or fewer nights in a calendar year. Event camping may include, but is not limited to, race tracks, non-agricultural fairs, festivals, and shows where camping is incidental to the event occurring, and meets the event camping criteria in Section 4 of this rule.
40. **Food** means any raw, cooked or processed edible substance, ice, beverage, alcoholic beverage or ingredient used, or intended for use, or for sale, in whole, or in part, for human consumption. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(43) for the purposes of this rule.
41. **Foodborne outbreak** means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food and epidemiological and/or laboratory investigations implicate the food as the source of the illness. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(44) for the purposes of this rule.
42. **Food contact surface** means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(45) for the purposes of this rule.
43. **Food safety consultant** means an independent professional business advisor who specializes in food safety, in accordance with a defined scope of work for a related fee. The food safety consultant works as an advocate for the clients in achieving their goals through the design and implementation of foodservice facilities, operations and active managerial control.
44. **Guest body artist** means an out-of-state tattoo artist, body piercer, micropigmentation practitioner or electrologist who practices body art at a body artist shop licensed by the Department in the State of Maine for a period not to exceed 14 days. Guest body artists must comply with relevant health and safety standards contained in *Rules Relating to Body Piercing*, *Rules Relating to Tattooing*, *Rules Relating to Micropigmentation* and/or the *Rules for the Practice of Electrology*, at 10-144 C.M.R. Ch 209 - 212.
45. **Hazard analysis critical control point (HACCP)** means a systematic evaluation of food preparation procedures to identify opportunities for bacterial contamination and growth.

This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(53) for the purposes of this rule.

46. **HACCP plan** means a written document that describes the procedures required by HACCP principles. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(54) for the purposes of this rule.
47. **Health inspector** means a person employed by or contracted with the Department or delegated municipality to engage in the promotion and protection of public health and safety. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(57) for the purposes of this rule.
48. **Hermetically sealed container** means a container that is designed and intended to be secure against the entry of microorganisms and in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.
49. **Home kitchen** means a bed and breakfast kitchen which is only licensed to serve breakfast to its own overnight guests.
50. **Imminent health hazard** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on: (a) the number of potential injuries and (b) the nature, severity and duration of the anticipated injury. Imminent health hazard may include, but is not limited to, the following:
 - a. An extended loss of water supply;
 - b. An extended power outage;
 - c. Flood water or sewer back-up into the establishment;
 - d. Fire; or
 - e. Any other violation(s) that has/have the potential to pose an imminent threat to public health.

Failure to include other violations in this definition shall not be construed as a determination that other violations may not, in light of the circumstances, be found to pose an imminent health hazard. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10 (B)(61) for the purposes of this rule.

51. **Inspection** means an on-site regulatory review of an establishment licensed by the Department's Health Inspection Program and conducted by a health inspector. The types of inspections include: 1) pre-operational; 2) routine compliance; 3) follow-up; and 4) complaint.
52. **Law** includes federal, State, and local statutes, ordinances, and rules.
53. **Letter of enforcement** means a Department document that notifies a licensee of a violation(s), outlines the actions to resolve the violations, and sets a deadline for correction of the violation(s).

54. **Lodging place** means any place where four or more rooms, cottages or cabins are rented to the public for lodging. For purposes of this rule, lodging place does not include dormitories of charitable, educational, philanthropic institutions, fraternity and sorority houses affiliated with educational institutions, youth camps (as defined in Section 1(A)(84) of this rule), permanent residences, rooming houses or tenancies-at-will, or rental properties with a tenant-landlord relationship. This definition contains further clarification of the *Rules Relating to Lodging Establishments* at 10-144 C.M.R. Ch. 206, §1-B(18) for the purposes of this rule.
55. **Manager** means any person, 18 years or older, who operates, or is responsible for, operating an establishment.
56. **Mass gathering** means any gathering held outdoors at temporary facilities, with the intent to attract the continued attendance of at least 2,000 persons for 12 or more hours.
57. **Packaged** means bottled, canned, cartoned, or securely wrapped. Packaged does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200 §1-201.10(B)(73) for the purposes of this rule.
58. **Parking lot** means an area or space that provides no water, no sanitary facilities, contains no fire rings, no campsites, and camping is not authorized or endorsed.
59. **Person** means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.
60. **Person in charge** means the individual present in an eating establishment at the time of inspection who has the authority to make operational decisions. There must be a person in charge present at the establishment during all hours of operation who is able to demonstrate knowledge of the *Maine Food Code* and perform specific duties specified by the *Maine Food Code* in 10-144 C.M.R. Ch. 200, §2. This definition contains further clarification of the *Maine Food Code* in §1-201.10(B)(77) for the purposes of this rule.
61. **Portion controlled** means commercially pre-packaged individual items or food portioned by the person in charge from bulk containers, and presented individually to the consumer.
62. **Potentially hazardous food** means any food that requires time and/or temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation, and is further defined in the *Maine Food Code* (10-144 C.M.R. Ch. 200, §1-201.10(B)(84)(b)).
63. **Public pool** means any constructed or prefabricated pool, other than a residential pool, or medical facility pool that is intended to be used for swimming, recreational bathing, or wading and is operated by an owner, lessee, tenant, or concessionaire or by a person licensed by the Department. A pool on the premises of a child care facility that is licensed or required to be licensed under 22 M.R.S. §8301-A, is a public pool. This definition contains further details on the classifications of public pools in the *Rules Relating to Public Pools and Spas* at 10-144 C.M.R. Ch. 202, §1(B)(13).

64. **Public Spa** means any constructed spa, other than a residential spa or medical facility spa.
65. **Recreational vehicle (RV) park** means a campground that permits the use of RVs, as defined in the *Rules Relating to Campgrounds* (10-144 C.M.R. Ch. 205§1-P(13)). An RV park is designed for seasonal sites or temporary occupancy and not for permanent residency.
66. **Reconstituted** means dehydrated food products recombined with water or other liquids.
67. **Reduced oxygen packaging (ROP)** is a method of food preparation defined in the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(91).
68. **Repeat violation** means a violation determined and recorded during a previous inspection.
69. **Restriction** means a limitation placed on a license under this rule to further protect public health. Restrictions include, but are not limited to, requiring single-service articles only, bottled water exemptions, water meters or limiting meal service to breakfast, lunch or dinner, (or to two meals) per day.
70. **Safe temperatures**, as applied to potentially hazardous food, means temperatures of 41° F or below (for cold food) and 135° F or above (for hot food) unless otherwise specified in this rule, and 0°F or below for frozen foods.
71. **Salad bar operation** means an area or areas where cold salads and/or salad ingredients are prepared, stored and displayed for consumer self-service.
72. **Salad bar unit** means a refrigerated unit or properly drained ice-filled unit where food is displayed for consumer self-service.
73. **Sanitization** means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to 99.999% reduction of representative disease microorganisms of public health importance.
74. **Sealed** means free of cracks or other openings, which permit the entry or passage of moisture and bacterial, viral, or chemical contaminants.
75. **Senior citizen meal site** means an eating establishment that prepares or serves potentially hazardous food for compensation to a predominantly senior citizen population. A senior citizen meal site does not include a place serving food to only its residents.
76. **Servicing area** means an operating base location, to which a mobile eating place or vehicle returns to regularly, for services like vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and storing food. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(104) for the purposes of this rule.

77. **Single-service articles** means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, placemats, napkins, doilies, wrapping materials, toothpicks and similar articles which are constructed wholly, or in part, from paper, paper board, molded pulp, foil, wood, plastic, synthetic, or other readily destructible materials, and which are designed by the manufacturers and generally used by the public as for one-time, one-person use and then discarded. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(110) for the purposes of this rule.
78. **Sporting/recreational camp** means a building or group of buildings devoted primarily to the offering of eating and primitive lodging facilities to guests only, and not to the general public, primarily in pursuit of primitive recreation, hunting, fishing, snowmobiling or similar activities. Sporting/recreational camps do not include programs overseen by employees or volunteers of municipalities and educational institutions, when the activities generally take place at the municipal or institution property and buildings.
79. **Utensil** means any tableware and kitchenware used in the storage, preparation, conveying, or serving of food.
80. **Vending machine** means any self-service device offered for public use, which, upon insertion of money, or by other similar means, dispenses unit servings of food other than in original sealed packages without the necessity of replenishing the device between vending operations for each customer. This definition contains further clarification of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §1-201.10(B)(121) for the purposes of this rule.
81. **Vending machine company** means a company that places vending machines at any site.
82. **Violation** means a critical or non-critical regulatory finding of non-compliance with this rule.
83. **Wilderness recreational park** means a recreational park containing only primitive sites and adhering to the *Rules Relating to Campgrounds* (10-144 CMR Ch. 205).
84. **Youth camp** means a combination of program and facilities established for the primary purpose of providing an outdoor group living experience for children with social, recreational, spiritual, and educational objectives and operated and used for five or more consecutive days during one or more seasons of the year. Youth camps include day camps, residential camps and trip and travel camps. See *Rules Relating to Youth Camps* (10-144 CMR, Ch. 208). Youth camps do not include programs overseen by employees or volunteers of municipalities and educational institutions, when the activities generally take place at the municipal or institution property and buildings. This definition provides further clarification to the definition of youth camp in the *Rules Relating to Youth Camps, Primitive and Trip Camping* at 10-144 C.M.R. Ch. 208, §1(H) for the purposes of this rule.

SECTION 2. CERTIFIED FOOD PROTECTION MANAGERS

- A.** Unless otherwise provided in this rule, an eating establishment must have at least one employee granted supervisory and management responsibility and designated as a certified food protection manager (CFPM). The CFPM must have demonstrated appropriate proficiency and skills regarding food safety by successfully passing a CFPM exam that is part of an accredited program as described in Section 2(C)(1) below. The Department may approve a food safety consultant to serve as CFPM, if necessary, to assure food safety, when cultural, language, and literacy barriers prevent any of the establishment's employees from passing the CFPM exam.
- B.** In the event that, during an inspection by the Department, the person in charge is not able to make the demonstration required by the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §2-102.11, or there are multiple critical violations present during such inspection, the Department, or its designee, may thereafter require every person in charge for such eating establishment to be a certified food protection manager.
- C.** In the State of Maine, the following will be accepted as meeting the requirements for certification:
1. Having written proof of completion of specialized training in the preparation and serving of safe food, such as ServSafe[®] Food Protection Manager Certification from the National Restaurant Association Solutions, LLC, the National Registry of Food Safety Professionals, 360training.com, Inc., AboveTraining/StateFoodSafety.com and Prometric, or equivalent; and
 2. Receiving a passing grade on a competency test, approved by the National Conference for Food Protection. CFPM certification shall be renewed through re-training and re-testing every five years, or as required by the ANSI-CFP Accreditation standards used by the Department.
 3. The following establishments are exempt from the CFPM requirement:
 - a. Bed and breakfast establishments with five or fewer rooms;
 - b. Bed and breakfasts and lodging establishments that serve a continental breakfast, as defined in Section 1 of this rule. consisting of non-potentially hazardous baked goods, whole fruit or fruit sliced for same-day service, cereal, milk, juice, portion controlled cream cheese, portioned controlled peanut butter, and portion controlled jam or jelly.
 - c. Temporary eating establishments that operate fewer than 14 days;
 - d. Establishments that prepare, serve or sell non-potentially hazardous pre-packaged foods (non-time/temperature control for safety (TCS) foods);
 - e. Establishments that prepare only non-potentially hazardous foods (non-TCS foods);
 - f. Establishments that heat only commercially-processed, potentially hazardous foods (TCS foods) for hot holding. Cooling of potentially hazardous foods (TCS foods) are not exempt from the CFPM requirement;

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- g. Sporting/recreational camps operating 90 days or fewer and serving only their own residential guests; and
 - h. Eating establishments which pose minimal risk of causing, or contributing to, foodborne illness, based on the nature of the operation and the extent of food preparation.
 - 4. A valid CFPM certificate must be included with the license application for all new establishments and changes in ownership. This requirement for submission of a valid CFPM certificate at the time of application is in addition to all other CFPM requirements in the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §2.
 - 5. A CFPM must be hired within 60 days of the departure of the last CFPM leaving employment.
 - 6. Establishments requiring two repeat inspections, due to multiple critical violations, or repeated failure to successfully complete demonstration of knowledge required by 2-102.11 of the *Maine Food Code*, 10-144 C.M.R., Ch. 200, or being involved in a food-borne illness outbreak, must employ a CFPM, if not previously required to do so. If the above issues exist, the establishment may be required to employ an additional CFPM, at the discretion of the Department.
- D.** Nothing in this rule precludes the Department from requiring an eating establishment, as part of a compliance action, to hire, on a less than full-time basis, a food safety consultant who would provide recommendations on food safety.
- E.** Eating establishments must post the certification of the CFPM(s) in a conspicuous area, and the certificate must be made available to the Department, upon request.

SECTION 3. DELEGATION OF INSPECTION DUTIES TO MUNICIPALITIES

- A.** Pursuant to 22 M.R.S. §2499, the Department may delegate authority to a municipality to conduct inspections. Delegated municipalities must enter and adhere to a memorandum of understanding with the Department, in order to engage in these duties.
- B.** In delegated municipalities, the Department continues to be the State of Maine licensing and enforcement authority, and may issue a license to establishments on the basis of an inspection performed by an inspector who works for, and is compensated by, the municipality in which such establishment is located.
- C.** The following conditions must be met:
1. The municipality has adopted the most recent rules or ordinances, which were approved by the Department and consistent with the Department's rules and statutes for such licensure at the time of inspection.
 2. A municipally-employed health inspector may not inspect any establishment under this rule, unless certified as qualified by the Department.
 3. The Department may, from time to time, inspect such municipally-inspected establishments, to ascertain that the intent of this rule is being followed.
 4. Delegated municipalities must use the same operating system, hardware and screen resolution that the Department uses, in order for the Department to properly record and store inspection and complaint information.
 5. The delegated municipalities are responsible for ensuring that all establishments within their jurisdiction renew their State of Maine license, prior to renewing their municipal license. An establishment operating without the necessary State of Maine license will result in the establishment being assessed an administrative penalty, as specified in this rule. The Department may allow a dual municipal/State of Maine license, issued by the delegated municipality on the Department's behalf.
 6. When the Department issues a license on the basis of a municipal inspection, the licensee shall pay a fee to the Department in an amount not to exceed \$60, to support the costs of shipping, handling and record keeping.
 7. Licenses issued by the Department under such delegation must be displayed, renewed, and, in every other way, treated as the same license issued through inspections by the Department.
 8. Three-year certification of municipally-employed health inspectors must be in accordance with standards set by the Department. No municipally-employed health inspector may conduct inspections under the provisions of this rule, unless he or she is duly certified. Such certification will be determined through formal and informal training and education, and other such criteria as the Department may determine. Such standards may include items, such as staff competency, enforcement and compliance status,

inspection practices, attendance at training meetings and seminars and routine reporting to the Department.

9. Every three years, the Department shall review the inspection program of each delegated municipality.
10. Delegated municipalities may not charge the Department for performing such inspections.
11. Delegated municipalities may not post or release protected health information or medical information that could reasonably be used to identify a person, except to the Department, or in accordance with law, due to this information being confidential as described in 22 MRS §2499(9).
12. Delegated municipalities shall determine the primary language of individuals requesting licensing and inspection services and ensure that the services are provided, either by a qualified interpreter when English is not the primary language, or a qualified sign language interpreter. These municipalities shall obtain the service at their own expense and shall not charge the establishment or the Department for this service.

These delegated municipalities shall use only qualified in-house interpreters or Maine-State approved interpreters found at www.maine.gov.

Vendors are approved in each of the following areas:

- American Sign Language Interpretation Services;
- In-Person Spoken Language Interpreting;
- Telephonic Interpreting Services; and
- Video Remote Interpreting Services

13. Delegated municipalities shall respond to after-hour calls and holiday emergencies to the greatest extent practicable, understanding that vacation and sick time may prevent those health inspectors from responding. Expenses shall be incurred by the delegated municipalities, and these expenses may not be charged to the Department for such calls and emergencies. The Department shall provide back-up coverage for after-hour calls and holiday emergencies, in the event that a delegated municipal health inspector is sick or on vacation, and no other delegated municipal inspector is able to cover their district.

D. Foodborne outbreak protocols. In the event of a suspected or confirmed foodborne outbreak, the delegated municipality shall notify the Department. Or, if the Department learns of the outbreak first, then it shall notify the delegated municipality as soon as practicable, but no longer than one hour after learning of the suspected or confirmed outbreak. Outbreaks suspected or confirmed outside of business hours shall be reported to the Department's Maine CDC Disease Reporting line at 1-800-821-5821.

SECTION 4. APPLICATION AND LICENSING

- A. Fees.** Unless otherwise stated in this section, applicants must pay the appropriate license fee to the Department at the time of submitting the application. Fee amounts for each license are outlined in Section 5 of this rule. If the Department receives overpayment, then the check or money order will be returned to the applicant. The applicant must re-submit the correct fee payment, in order for the Department to continue its review of the application.
1. The maximum fee for each establishment in municipalities with delegated authority is a flat fee of \$60.00.
 2. No fee is assessed for non-profit establishments that conduct 12 or fewer events and meals per year.
 3. License fees established herein provide for one licensure inspection and one follow-up inspection, in accordance with 22 M.R.S. §2494. When additional inspections are necessary, the Department is authorized to charge an additional \$100 fee for each additional inspection or visit.
- B. Complete application.** A complete application for a license must be filed with the Department, along with full license fee payment. License applicants must also comply with the following:
1. **Be at least 18 years of age;**
 2. **Include a floor plan** of the establishment;
 3. **Include a water testing report**, if the establishment has its own well or source and does not meet the Drinking Water Program requirements to be a regulated Public Water System (PWS). If the establishment pays a water bill and receives its water from a municipality or water district, or has a PWS ID#, then a water test report is not required as part of the application;
 4. **Include a written approval statement from the municipality (local plumbing inspector)**, on the “Local Review and Verification Form” within the application, for applicants with private septic systems;
 5. **Eating establishment applicants**, in addition to the requirements of the *Maine Food Code* at 10-144 C.M.R. Ch. 200, §8-302, must include the following information at least 30 calendar days prior to opening:
 - a. Menu or draft menu;
 - b. Eating establishment business plan;
 - c. Kitchen or food preparation area plan; and
 - d. Valid CFPM certificate;

6. **Campground applicants**, in addition to other application requirements for applicants in the *Rules Relating to Campgrounds* at 10-144 C.M.R. Ch. 205, must include a site plan of the campground operations; and
 7. **Public pool/spa operator applicants**, in addition to other application requirements for applicants in the *Rules Relating to Public Pools and Spas*, 10-144 C.M.R. Ch. 202, must include a valid certified pool operator certificate.
- C. Application requirement for changes.** In addition to the requirement to submit license applications for new licenses, a license application is also required whenever a licensee's establishment or building where the licensing action is occurring, undergoes new construction or extensive renovation. A new license application is required for any change of ownership.
- D. Department review and decision.** The Department will review applications within 30 days of receipt of the completed application and full license fee payment. The Department will, in its review, determine whether to grant a full license, deny the license, issue a restricted license or issue a conditional license.
1. When the Department determines that all application and fee requirements are satisfied according to Section 4(A) and (B) above, a pre-operational inspection will be scheduled by a health inspector. If the inspection is satisfactory, a license will be issued within 30 days of receiving a completed license application.
 2. **Denial of application for license** When the Department determines that conditions present a serious danger to the health and safety of the public, or the actions required to correct the conditions are impossible to complete under a conditional license, then the Department will deny the license application. The Department will notify the applicant of its denial of application within 30 days of receipt of the completed application and fee payment. This notification of license denial from the Department shall include the following:
 - a. The specific reasons and relevant rule citations for the license denial;
 - b. The actions, if any, that the applicant must take to qualify for a license; and
 - c. Notice of the applicant's right of appeal and the process and time frames for appeal that are provided in this rule.
 3. **Conditional licenses.** When the Department decides to issue a conditional license to an applicant, it will notify the applicant of the specific reasons and relevant rule citations for the conditional license, the specific conditions and actions required to receive a full license, the duration of the conditional license, as well as notice of the applicant's right of appeal and the process time frames for appeal provided in this rule. Conditional licenses will only be issued by the Department when it determines that the conditions are such that they may be achieved within the conditional licensing period.
 - a. The Department shall issue a conditional license for a specific length of time that is in accordance with managing public health risk.

- b. Failure by the conditional licensee to meet the conditions specified by the Department is grounds for the Department to void the conditional license.
 - c. If the conditional licensee submits another license application, but the conditions from the previous conditional license are still not met, then the Department will not issue the new or renewed license.
4. **Restricted licenses.** The Department may place restrictions on licenses, when there is a greater public health risk, which include, but are not limited to, under-sized septic systems, inadequate water quality or any other public health risk. Restrictions may include requiring single-service articles, bottled water exemptions, water meters, limiting meal service or any other requirement that protects public health.

E. Licensing

- 1. Any person, corporation, firm or co-partnership who conducts, controls, manages or operates, for compensation, directly or indirectly, any eating establishment, lodging place, sporting/recreational camp, youth camp, campground, or recreational vehicle park, must be licensed by the Department.
- 2. **Campground License and Event Camping License:** Maine statute (22 M.R.S. §2492) establishes the legal presumption that a campground license is required, when five or more tents or recreational vehicles are on a commercial lot, regardless of compensation.
 - a. **Event Camping License:** In lieu of issuing a campground license, the Department will issue an event camping license when the following criteria are presented to the Department:
 - i. Potable water is offered: If potable water is offered, the applicant must report satisfactory water results annually to the Department; or
 - ii. Sanitary facilities are offered: If such facilities are offered, the applicant must provide at least one portable toilet per 150 people, minimally; or
 - iii. A designated camping area is provided; and
 - iv. The total number of event days does not exceed 50 nights in any calendar year; or
 - v. Overnight stays do not exceed four consecutive nights.
 - b. **Event Camping License Requirements:** The event camping license requirements are the same requirements for the temporary campground license within the *Rules Relating to Campgrounds* at 10-144 C.M.R. Ch. 205, §10.
 - c. **Campground License Required:** If overnight stays exceed 50 nights in any calendar year, or if the number of overnight stays exceed four consecutive nights, then a campground license is required. This requirement provides further clarification to the requirements within the *Rules Relating to Campgrounds* at 10-144 C.M.R. Ch. 205, §10(E).

3. Licenses, conditional licenses, inspection reports or other notices issued by the Department must be displayed in a place readily visible to customers or other persons using a licensed establishment. Department correspondence shall be made readily available to the public, upon request. The Department will assure that medically identifiable information is removed from inspection reports, in accordance with 22 M.R.S. §42(5).
4. **Term.** The Department shall issue licenses for a term of one year for all licenses described in this rule, under 22 M.R.S. Ch. 562.
5. **Compliance.** Licensees are responsible for ensuring compliance with this rule and applicable rules and statutes.
6. **Renewal of licenses:** The Department will notify licensees of an upcoming license renewal at least 30 days prior to the current license expiration date. The licensee must demonstrate compliance with Department rules, including, but not limited to, the Maine CDC Drinking Water Program's *Rules Relating to Drinking Water* (10-144 C.M.R. Ch. 231) and *Subsurface Wastewater Rules* (10-144 C.M.R. Ch. 241). When the Department is determining whether to renew a license, it will review the licensee's compliance history. When the Department finds that the licensee is in non-compliance, the Department may either deny the renewal or issue a conditional license instead of full renewal.
 - a. All establishment licenses are renewed annually, upon both payment of a fee, and compliance with Maine statutes and rules.
 - b. It is the responsibility of the licensee to renew licenses prior to the expiration date. Operation of the licensed activity after the license expiration date without renewing the license is prohibited.
 - c. When conditions exist where the violations are not corrected by the Department's deadlines or the licensee repeatedly incurs the same violations after technical assistance and guidance, the Department determines that correction of violations is not likely to be achieved during a conditional license and/or there is an immediate threat to public health and safety, then the Department will deny renewal of a license.
 - d. Pursuant to 22 M.R.S. §2498(3)(B), eating, lodging, campground, youth camp, public pool and spa licensees must pay all fines to the Department prior to the Department renewing a license.
7. No license granted by the Department may be transferred or assigned.
8. The issuance of the license does not provide exemption from other State or local laws, ordinances or regulations, notwithstanding any other provision of law.
9. Licenses erroneously issued by the Department are considered void and must be returned to the Department.

F. Right to Appeal. Appeals by an applicant or licensee, in accordance with 5 M.R.S. Ch. 375, are limited to appeals contending that a licensing decision by the Department misapplied applicable laws, procedures or rules.

1. The following Department actions are subject to the licensee's right of appeal:
 - a. Issuance of a conditional license;
 - b. Amendment, modification or restriction on a license;
 - c. Voiding of a conditional license;
 - d. Denial of issuing a new license or denial of renewal of a license; or
 - e. Assessment of administrative penalties.
2. When appealing, the applicant or licensee shall request a hearing, in accordance with the instructions provided by the Department correspondence, this rule and the Department's Administrative Hearings Regulations at 10-144 C.M.R., Ch. 1.
 - a. The request must state in writing the specific issue(s) being appealed; and
 - b. The request must be submitted to the Department within 30 days of receipt of notice of Department action subject to the right of appeal.

SECTION 5. FEE SCHEDULE

TABLE 1 - LICENSE FEES

EATING PLACES	LICENSE FEES
Business Enterprise PR (Division of the Blind)	No Charge
Catering	\$200.00 <u>270.00</u>
Correctional Facility	\$200.00 <u>270.00</u>
Eating Place — Mobile	\$200.00 <u>270.00</u>
Eating Place - Mobile Stick Built	\$200.00 <u>270.00</u>
Eating Place — Takeout	\$160.00 <u>220.00</u>
Eating Place, Tier 1: 1-29 seats	\$160.00 <u>220.00</u>
Eating Place, Tier 2: 30-75 seats	\$195.00 <u>265.00</u>
Eating Place, Tier 3: More Than 75 seats	\$230.00 <u>300.00</u>
Eating Place - Temporary: 1- 4 Days	\$95.00 <u>130.00</u>
Eating Place - Temporary : 5 - 14 Days	\$150.00 <u>205.00</u>
Eating Place - Limited Menu	\$150.00 <u>205.00</u>
Eating Place — School	\$100.00
Eating Place - School Catering	\$100.00
Eating Place - School Satellite	\$100.00
Eating Place — Commissary	\$250.00 <u>300.00</u>
Vending Company	\$75.00 <u>105.00</u>
Senior Citizen Meal Site	\$30.00
LODGING PLACES	
Bed and Breakfast - 6 Rooms or More	\$150.00 <u>205.00</u>
Bed and Breakfast - 5 Rooms or Less	\$100.00 <u>135.00</u>
Lodging Place, Tier 1: 4-15 Rooms	\$150.00 <u>205.00</u>
Lodging Place, Tier 2: 16-75 Rooms	\$175.00 <u>240.00</u>
Lodging Place, Tier 3: More Than 75 Rooms	\$200.00 <u>270.00</u>
COMBINATION LICENSES	
Eating and Catering	\$275.00 <u>300.00</u>
Eating and Lodging	\$275.00 <u>300.00</u>
Eating and Campground	\$275.00 <u>300.00</u>
Food Service at Youth Camp (Eating & Catering)	\$275.00 <u>300.00</u>
CAMPS	
Sporting-Recreational Camp	\$175.00 <u>240.00</u>
Campground - Agricultural Fair	\$200.00 <u>270.00</u>
Campground — Wilderness	\$150.00 <u>205.00</u>
Campground - Self-Contained RV Only	\$150.00 <u>205.00</u>
Campground Tier 1: 5-24 Sites	\$150.00 <u>205.00</u>
Campground Tier 2: 25-124 Sites	\$175.00 <u>240.00</u>
Campground Tier 3: More Than 124 Sites	\$200.00 <u>270.00</u>
Event Camping	\$200.00 <u>270.00</u>
CAMPS	LICENSE FEES
Youth Camp-Day	\$100.00 <u>135.00</u>

Youth Camp-Resident Less Than 100 Campers	\$190.00 <u>260.00</u>
Youth Camp-Resident 100-200 Campers & Property Tax-Exempt: More Than 200 Campers	\$225.00 <u>285.00</u>
Youth Camp-Resident: More Than 200 Campers	\$285.00 <u>300.00</u>
Youth Camp - Trip And Travel	\$100.00 <u>135.00</u>
PUBLIC POOLS/SPAS	
First Pool/Spa	\$50.00 <u>70.00</u>
Additional Pools/Spas	\$25.00 <u>35.00</u> each
BODY ARTISTS	
Tattoo Artist	\$225.00 <u>250.00</u>
<u>Tattoo Artist Additional Location</u>	<u>\$50.00</u>
Tattoo Show	\$75.00
Body Piercer	\$200.00 <u>250.00</u>
Tattoo Artist and Body Piercer	\$275.00 <u>300.00</u>
Electrologist	\$125.00
Micropigmentation Practitioner	\$150.00
Guest Body Artist	\$90.00
MISCELLANEOUS FEES	
Reprint License	\$25.00
Compressed Air	\$10.00
Mass Gatherings	Application Review: \$100/Permit: \$400 - \$750
Late Renewal: within 30 days of expiration date	\$25.00
Late Renewal: more than 30 days after expiration date	\$100.00 for 1 st offense + \$25 for first 30 days \$200.00 for 2 nd consecutive offense + \$25 for first 30 days
Additional Inspection	\$100.00
Insufficient Funds	\$25.00

TABLE 2 - DELEGATED MUNICIPALITY LICENSES

DELEGATED MUNICIPALITY EATING PLACES	LICENSE FEES
Eating Place - Catering	\$60.00
Correctional Facility	\$60.00
Eating Place	\$60.00
Eating Place - Commissary	\$60.00
Eating Place - Mobile	\$60.00
Eating Place – Mobile Stick-Built	\$60.00
Eating Place - Limited Menu	\$60.00
Eating Place – Takeout	\$60.00
Eating Place - Temporary	\$60.00
Eating Place - School	\$60.00
Eating Place - School Catering	\$60.00
Eating Place - School Satellite	\$60.00
DELEGATED MUNICIPALITY LODGING PLACES	
Bed and Breakfast	\$60.00
Lodging	\$60.00
DELEGATED MUNICIPALITY COMBINATION	
Eating and Catering	\$60.00
Eating and Lodging	\$60.00

SECTION 6. INSPECTIONS

A. Right of Entry

1. The Department and any duly designated officer or employee of the Department shall have the right, without an administrative inspection warrant, to enter upon and into the premises of any establishment licensed at any reasonable time, in order to determine the state of compliance with any rules in force, in accordance with 22 M.R.S. §§2497 and 2667.
2. Such right of entry and inspection shall extend to any premises which the Department has reason to believe is being operated or maintained without a license.
3. No such entry and inspection of any premises may be made without the permission of the owner or person in charge, unless a search warrant is obtained authorizing entry and inspection.
4. In the event that a person denies access to the Department, the Department may secure access through an administrative search warrant or pursuant to such process as provided by law.

B. Frequency

1. In accordance with 22 M.R.S. §§2497 and 2667, the Department will either inspect or otherwise determine whether an establishment is in regulatory compliance, in accordance with the provisions of this rule. Based on the result of these routine inspections, the Department may increase frequency for establishments from every two years to more frequent inspections, based on the following criteria:
 - a. **Quarterly inspections:** The Department's finding of the following factors will increase inspection frequency for an establishment, from a minimum of every two years to quarterly, for a period of one year:
 - i. Two failed inspections occurred within one year of each other;
 - ii. Three failed inspections under the same owner occurred within the past five years;
 - iii. Other uncorrected health hazards occurred, where the Department required correction of such health hazards; or
 - iv. Any other conditions posing a risk to public health and safety and listed in Section 6(B)(2) below.
 - b. **Monthly inspections:** The Department will increase the frequency of inspections from quarterly to monthly, for a period of four months, if, after being placed on a quarterly inspection frequency, (due to findings in Section 6(B)(1)(a) above), the establishment failed an inspection during that year of quarterly inspections.

2. The Department may, at its discretion, inspect or determine whether an establishment is in regulatory compliance at more frequent intervals, as necessary, to follow-up on complaints or other problems noted on previous inspections.
 - a. Any eating establishment may be assigned more or less frequent inspections, based on a risk-based assessment uniformly applied by the Department, based on the following factors:

Category 1: Classified as low-risk establishments with an inspection frequency of 24 months, include the following criteria:

 - i. Serve or sell only pre-packaged, non-potentially hazardous foods;
 - ii. Prepare only non-potentially hazardous foods;
 - iii. Heat only commercially processed, potentially hazardous foods for hot holding;
and/or
 - iv. Does not cool any potentially hazardous foods.
 - b. Category 2: Classified as medium risk with an inspection frequency of at least 24 months or more frequently, include those establishments with the following criteria:
 - i. Most products are prepared/cooked and served immediately;
 - ii. May involve hot and cold holding of potentially hazardous foods after preparation and cooking; and/or
 - iii. Complex preparation of potentially hazardous foods requiring cooking, cooling, and reheating for hot holding is limited to five or fewer potentially hazardous foods.
 - c. Category 3: Classified as high risk with an inspection frequency of at least 24 months or more frequently, include those establishments with the following criteria:
 - i. Extensive menu and handling of raw ingredients;
 - ii. Complex preparation, including cooking, cooling and reheating for hot holding, involves more than five potentially hazardous foods; and/or
 - iii. Variety of processes require hot and cold holding of potentially hazardous food.
 - d. Category 4: Classified as the Highest Risk with an inspection frequency of one to 12 months, include those establishments with the following criteria:

- i. Serve a highly susceptible population who include, are not limited to, immune-compromised, pre-school children and the elderly;
 - ii. Conduct specialized processes, including but not limited to, smoking and curing; reduced oxygen packaging for extended shelf life or are under Department enforcement;
 - iii. Determined by the Department to require greater frequency of inspections and are in enforcement with the Department; and/or
 - iv. Any eating establishment preparing food via reduced oxygen packaging, HACCP or a variance.
3. **Criteria for returning to standard, routine inspection frequency.** The Department will review the following factors to determine whether the establishment may return to a less frequent inspections:
- a. **Monthly to quarterly inspections:** When an establishment is subject to monthly inspections for a four-month time period (due to factors in Section 6(B)(1)(b) above) and the establishment passes those monthly inspections for all four consecutive months, then the Department may reduce inspection frequency of the establishment to two quarterly inspections.
 - b. **Quarterly to biennial inspections:** When an establishment passes quarterly inspections for either one year under Section 6(B)(1)(a) or two consecutive quarters under Section 6(B)(3)(a), then the Department may reduce inspection frequency to every other year. In order for the establishment to resume routine inspections every other year, the Department will consider whether the establishment committed repeat violations during the increased frequency period.

C. **Inspection report**

1. The health inspection findings may refer to the compliance history of an establishment, including any prior violations and corrective action. The findings shall identify violations by the following means:
 - a. Site inspection or investigation;
 - b. Review of laboratory analyses or inspection reports; and/or
 - c. Complaints or referrals from the public or other agencies.
2. The inspection report must note any violations of applicable rules, and the inspector will provide a copy of the report to the person in charge at the establishment at the time of the inspection.
 - a. Should the establishment fail the inspection, the inspector must inform the person in charge in writing of the failed inspection, the remedies to correct the violation(s) and deadlines for corrective action.

- b. A copy of the most recent inspection report must be maintained at the establishment and be made available to the public upon request.
 - i. The inspector must document details of any denial of access to perform an inspection.
 - ii. The inspector will ask the licensee or person in charge to sign the inspection report, acknowledging the receipt of the inspection report, findings and requirements.
3. When a licensee or person in charge refuses to sign an acknowledgement of receipt of an inspection report, the Department will state the following items:
 - a. An acknowledgment of receipt does not constitute an agreement with the inspection report findings;
 - b. Refusal to sign an acknowledgment of receipt will not affect the licensee's obligation to correct the violations noted in the inspection report within the time frames specified;
 - c. Refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the Department's historical record for the establishment; and
 - d. Statement of a final request for the licensee or person in charge to sign an acknowledgment receipt of inspection findings. Should the licensee or person in charge continue to refuse to sign, the inspector shall document the refusal upon the inspection report.

D. Inspection failure

1. A failed inspection occurs when an establishment:
 - a. Receives more than three critical violations; or
 - b. Receives more than ten non-critical violations.
2. Critical violations should be corrected on site, but, in any event, within ten calendar days. The licensee must contact the Department when the critical violation has been addressed.
3. Non-critical violations must be corrected in a period to be determined by the Department, but no later than 90 calendar days after the inspection. The Department may approve a compliance schedule that extends beyond the time limits specified in this section, if a written schedule of compliance is submitted by the licensee and no health hazard exists or will result from allowing an extended schedule for compliance.
4. Failure to correct these violations satisfactorily within the time periods set in paragraphs (2) and (3) above may result in enforcement proceedings by the Department, which are outlined in Sections 7, 8 and 9 of this rule.

5. Any failed inspection requires the health inspector to follow up with a later inspection, to assure that all corrections were completed and remain corrected.

E. Alternative determination of compliance for youth camps

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

1. Accreditation by a nationally recognized accreditation organization
 - a. Requirements for re-licensure. A youth camp applying for license renewal by means of accreditation by a nationally recognized accreditation organization must demonstrate the following:
 - i. Submission of a complete Department youth camp inspection variance application on or before March 15 of each year, which demonstrates compliance, on the basis of accreditation by a nationally recognized accreditation organization;
 - ii. The youth camp complies in all material aspects with the regulatory requirements established by the Department's 10-144 C.M.R. Ch. 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping*;
 - iii. The youth camp is presently fully accredited by a nationally recognized accreditation organization and demonstrates that its accreditation process was at least as protective of public health as the Department's process for licensing inspections of youth camps;
 - iv. Since its most recent licensure, the youth camp has not undergone extensive renovations or expansions of any youth camp buildings, as defined in 10-144 C.M.R., Ch. 208, §1(H);
 - v. Since its most recent licensure, the youth camp has not undergone a change of camp ownership, a change of camp director, or both;
 - vi. The Department did not grant an inspection variance during the previous two consecutive years; and
 - vii. There is no other reason to deny the variance (including, but not limited to, uncorrected repeat critical violations from previous inspections).
 - b. Substantive review of Department rules. In the event of a significant revision of the Department's 10-144 C.M.R., Ch. 208 -*Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping* since the issuance of the most recent license to the youth camp, the Department reserves the right to require a full licensing inspection of the premises.

2. Determination of compliance by certification of regulatory compliance
 - a. Requirements for re-licensure. A youth camp applying for license renewal by means of certification of regulatory compliance must demonstrate the following :
 - i. Submission of a completed Department youth camp inspection variance application on or before March 15 of each year that certifies the following:

“I, _____, certify that the camp has (within the past five years) passed its two most recent Department inspections, and the camp, during its period of licensure, will be in substantial compliance with the Department’s 10-144 C.M.R. Ch. 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping*. In making this certification, I have reviewed the Department’s rules, the camp facilities, the camp operating procedures and the required documentation. I further certify that the documents required, pursuant to 10-144 C.M.R. Chapters 200, 201 and 208 are on file at the camp and available for Department review.”
 - ii. The youth camp has successfully passed its most recent (i.e. within the past five years) two licensing inspections by the Department;
 - iii. Since its most recent licensing inspection, the youth camp has not extensively renovated or expanded youth camp buildings, as defined in 10-144 C.M.R. Ch. 208, §(1)(H);
 - iv. Since its most recent licensure, the youth camp has not undergone a change of camp ownership, a change of camp director, or both;
 - v. The Department did not grant an inspection variance during the two previous consecutive years; and
 - vi. There is no other reason for the Department to deny the variance, including, but not limited to, uncorrected repeat critical violations from previous inspections.
 - b. Substantial review of Department’s rules. In the event of a significant revision of the Department’s 10-144 C.M.R. Ch. 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping* since the issuance of the most recent license to the youth camp, the Department reserves the right to require a full licensing inspection of the premises.
3. General licensing requirements
 - a. Applicants for youth camp re-licensure shall submit applications on Departmental approved forms.

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

F. Imminent health hazards

1. Ceasing operations and reporting. A licensee shall immediately discontinue operations and notify the Department if an imminent health hazard (IHH) may exist because of an emergency, such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent food-borne illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may endanger public health.
2. If operations are discontinued, or a license is temporarily suspended, the licensee must obtain approval from the Department before resuming operations.
3. For those establishments with conditions that pose an imminent health hazard, and conditions are not corrected within the time period set by the Department, then the Department may require suspension of a license, in accordance with the requirements of the *Maine Administrative Procedure Act* at 5 M.R.S. §10003, on, an ex-parte basis, under 4 M.R.S. §184.
4. Specialized food processes. In accordance with the *Maine Food Code* (10-144 C.M.R. Ch. 200), eating establishments that perform specialized food processes, such as, but not limited to, vacuum packaging, cook chill packaging, sous vide packaging, acidifying foods for preservation, fermenting of vegetables and curing foods, must develop and implement a hazard analysis critical control point (HACCP) plan prior to performing these processes. Some of these specialized processes may also require a variance. Because it is the licensee's responsibility to develop a HACCP plan, the licensee must contact the Department for guidance prior to performing any specialized processing.
 - a. Applicants for a variance must demonstrate an appropriate level of training and/or experience to process the product safely;
 - b. The Department may mandate a HACCP training course, depending upon the knowledge, compliance history and experience with the specialized food processes they are performing;
 - c. The development of a HACCP plan is the responsibility of the licensee; and

- d. The Department will review requests for, and issue, variances, on a case-by-case basis for specialized food processes.

SECTION 7. ENFORCEMENT PROTOCOLS

- A. Intent:** This enforcement protocol is to establish an effective system for initiating enforcement against violators to protect the public health and promote the public welfare by regulating the safety and sanitation of all eating establishments, lodging places, sporting/recreational camps, youth camps, campgrounds and public pools and spas requiring licensure by the Department.
- B. Authorization:** Pursuant to 22 M.R.S. §§2498 and 2669, the Department is authorized to impose one or more of the following sanctions when a violation of this rule occurs, and the Department determines that a sanction is necessary and appropriate to ensure compliance with Department licensing rules, or to protect the public health.
- C. Referral for enforcement action:** The health inspector will refer an establishment to enforcement when the establishment fails to meet the compliance deadline set by the inspector to correct the cited violations, within the inspection report. The Department may issue a letter of enforcement to an establishment to require compliance.
- D. Penalty assessment notice:** When the licensee does not complete corrective action for violation(s) by the Department's deadline(s), then the Department may assess penalties per the penalty schedule outlined in Section 8 of this rule.
- E. Referral to the Office of the Attorney General:** A licensee may be referred to the State of Maine Office of the Attorney General for appropriate civil litigation, if the establishment fails to comply with the Department deadlines.

SECTION 8. ADMINISTRATIVE PENALTIES

- A. Scope of administrative penalties:** An administrative penalty may be assessed for a violation or a failure to comply with Department requirements, that, at the time it occurred, constituted noncompliance with statutes or rules under the jurisdiction of the Department. Pursuant to 22 M.R.S. §2498(2), the Department establishes the following schedule of penalties within this section for establishments failing to correct violations by the Department's deadline(s).
- B. Process:** An inspection report or letter of enforcement must be issued by the Department, prior to the Department imposing an administrative penalty.
1. An administrative penalty is assessed via a penalty assessment notice.
 2. A penalty assessment notice may be imposed, once an establishment fails to complete or maintain corrective action required by the Department in the inspection report or letter of enforcement.
 3. Imposing an administrative penalty is not deemed, in any way, to extend any deadline for compliance.
 4. Eating, lodging, campground, youth camps and public pool/spa licensees are required to pay the full amount of the penalties to the Department, owed at the time of license renewal, or prior to the Department processing any license application.
- C. Risk assessment and analysis:** In order to determine the amount of a penalty assessment, the following factors are considered in the determination of penalty amounts:
1. Degree of risk (critical and non-critical violations) - The level of risk to public health and safety;
 2. Duration of the violation - The length of time that a violation persists without corrective action; and
 3. Repeat violations: Whether there is a recurrence of the same violations.
- D. Authority** The Department may direct any of its licensed establishments to correct any violations in a manner, and within a time frame, that the Department determines is appropriate to ensure compliance with State rules and/or to protect the public health. Failure to correct violations within the time frames, or failure to maintain compliance, constitutes a separate fineable violation.
- E. Penalty schedule for eating establishments, lodging places, recreational camps, youth camps, public pools/public spas or campgrounds operating without a license:** Pursuant to 22 M.R.S. §2498(1)(C), the Department is authorized to assess penalties to those establishments operating without a Department license:
1. It is the responsibility of the establishment to be licensed at all times of operation and to notify the Department, if there are any questions or concerns regarding proper licensure.

2. If an establishment operates without a license, the Department may assess the following penalty amounts, according to the following time periods:
 - a. Unlicensed for more than 30 days, but fewer than 45 days: \$200.
 - b. Unlicensed for 45 days to 60 days: \$500.
 - c. Unlicensed for 60 days or more: \$1,000.
3. The penalty amounts assessed by the Department for operating without a license are in addition to, not in place of, the license fees owed for the current year that the establishment should have been licensed.
4. Upon the Department's second finding of the same owner of an establishment operating without a license, the Department will assess penalties that are at least double the amount listed in Section 8(E)(2) above.

F. Penalty schedule for all other violations for eating establishments, lodging places, recreational camps, youth camps, public pools/public spas and campgrounds:

1. For any establishment with a critical violation, the penalty amount is \$100.00 per repeat critical violation.
2. For any establishment with a non-critical violation, the penalty amount is \$50.00 per repeat non-critical violation, or day out of compliance.
3. For operating in violation of an imminent health hazard, the penalty amount is \$100.00 for each violation. Each day that the violation remains uncorrected may be counted by the Department as a separate offense.
4. Pursuant to 22 M.R.S. §2498(3)(B), all penalties must be paid to the Department prior to the Department's approval of license applications or renewals.
5. Pursuant to 22 M.R.S. §1633, the Department will give 30 days' written notice of any violation of public pool violations, prior to imposing any penalties.

SECTION 9. SUSPENSION OR REVOCATION OF LICENSES

- A. **Department filing of complaint for suspension/revocation:** When the Department determines that a license should be suspended or revoked, it will file a complaint with the district court, in conformity with the *Maine Administrative Procedure Act*.
- B. **Emergency suspension/revocation:** Whenever, upon inspection, conditions are found, which violate this rule, or which may be an immediate threat to the public health, safety or welfare, or endanger the life, health or safety of persons living in, or attending, any regulated establishment, the Department may request an emergency suspension of license by the District Court, pursuant to 4 M.R.S. §184, and the court may grant suspension subject to reinstatement following a hearing, before the court, if cause is not shown.
- C. **Temporary license suspension:** If the licensee refuses to comply with an imminent health hazard notice, the Department may take further action, including immediately suspending a license temporarily and without court proceedings, in accordance with 5 M.R.S. §10004.

SECTION 10. APPEALS

- A. **Right to appeal:** The Department may impose any penalty in conformity with the Maine Administrative Procedure Act, 5 M.R.S., Chapter 375, Subchapter IV, providing the licensee the opportunity for an administrative hearing.
- B. **Collection of penalties prior to Department renewal:** Eating establishment, lodging place, campground, sporting/recreational camp, youth camp, public pool or public spa licensees who are fined pursuant to this rule are required to pay the full amount of any penalties to the Department. If any of these licensees have not paid any collectible penalties by the license renewal, then the Department will collect such payment prior to the processing of any license renewal.
- C. **Stay during appeal:** An appeal of the Department's decision to assess a penalty against any licensee stays the collection of any penalty. Interest must accrue on penalties at a rate described in 14 M.R.S. §1602, prior to the completion of any appeal. After the completion of any appeal process, or after any appeal period has passed, interest must accrue, pursuant to 14 M.R.S. §1602-A.
- D. **Denial of new or renewed license, voided conditional license, non-compliance with variance:** The Department may deny a license application, void a conditional license or refuse to renew a license, when it determines that the applicant or licensee failed to comply with Department rules or law. In such cases, the establishment applicant or licensee is afforded the opportunity for an administrative hearing, in accordance with the Department's Administrative Hearings Regulations at 10-144 C.M.R., Ch. 1.

SECTION 11. VARIANCES

- A. Variances.** The Department may grant a variance by modifying or waiving the requirements of Department rules, if the Department determines that a health hazard will not result from the variance. If a variance is granted, the Department will retain the establishment's information specified under such rule, in its records.
- B. Documentation of Proposed Variance and Justification.** A person seeking a variance of any provision of this rule is required to submit the following information, in support of the request:
1. A statement of the proposed variance of the requirement of the rule, citing appropriate section numbers;
 2. An analysis of the rationale for how the potential public health hazards and nuisances addressed by the rule will be alternatively addressed by the proposal; and
 3. A HACCP plan, if required, as specified under the relevant rule, that includes the information specified under this rule, as it is relevant to the variance requested.
- C. Conformance with approved procedures.** If the Department grants a variance as specified, the licensee permit holder will:
1. For eating establishments:
 - a. Comply with the HACCP plans and procedures that are submitted as specified under *Maine Food Code*, 10-144 C.M.R., Ch. 200, §8-201.14 and approved as a basis for the modification or waiver; and
 - b. Maintain and provide to the Department, upon request, records specified under the *Maine Food Code*, 10-144 C.M.R., Ch. 200, §§8-201.14(D) and (E), that demonstrate that the following are routinely employed:
 - i. Procedures for monitoring critical control points;
 - ii. Monitoring of the critical control points;
 - iii. Verification of the effectiveness of an operation or process; and
 - iv. Necessary corrective actions, if there is failure at a critical control point.
 2. For all other establishments, meet the terms and conditions of the variance.
- D. Violation of variance.** When the licensee does not maintain compliance with the variance, the Department may take enforcement action, subject to appeal by the licensee, who may request an administrative hearing.

STATUTORY AUTHORITY:

22 M.R.S. §§ 2496, 2664, 1551-A; 32 M.R.S. §§ 1242, 4251, 4326

EFFECTIVE DATE:

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