

**Readopt with amendment He-P 1905 and He-P 1906, effective 12/29/07 (Document #9054), cited and to read as follows:**

CHAPTER He-P 1900 INDOOR SMOKING RULES

PART He-P 1905 NOTIFICATION OF INVESTIGATION FINDINGS

He-P 1905.01 Notification of a Finding of Compliance. If the department determines that the person in charge is in compliance with the Act, both the complainant and the person in charge shall be notified in writing of that determination.

He-P 1905.02 Notification of a Finding of Non-Compliance. If the department determines that a person in charge is not in compliance with the Act, the following procedures shall be followed:

(a) The person in charge shall be issued a factual summary of the investigation, along with a statement of the department's finding of non-compliance;

(b) The notification in (a) shall include:

(1) Specific directives as to the necessary steps to be taken to come into compliance with the Act, including one or more of the following:

a. When smoking continues to occur in a facility where smoking is prohibited pursuant to He-P 1902.01 and RSA 155:66, I, the facility shall be designated no-smoking in its entirety;

b. When the facility has no written policies or the facility's written policies do not comply with the Act, that the facility's written policies shall be written or revised to meet specifications set forth in RSA 155:68 and these rules;

c. When the facility has no written procedures or the facility's written procedures do not comply with the Act, that the facility's written procedures shall be written or revised to meet specifications set forth in RSA 155:69 and these rules;

d. When written policies and procedures exist but are not enforced, that the written policies and procedures shall be fully implemented pursuant to the Act; or

e. When a smoking-permitted area is not effectively segregated, that the facility shall be designated no-smoking in its entirety;

(2) The deadline by which the person in charge shall comply with the directives in the notification and the Act;

(3) A statement that the facility in question shall be subject to on-site inspection(s) to determine compliance with the directives and the Act; and

(4) A description of the possible consequences for not complying with the directives, including a description of the penalty scale to be used in assessing the fine, as described in He-P 1906.01.

(c) The deadline in (b)(2) shall be 30 days from the date of the notification of finding of non-compliance;

JLCAR Note: RSA 155:78, which authorizes administrative fines for violations of the Indoor Smoking Act, will not take effect until January 1, 2008. As a consequence, Rule He-P 1906.01, which allows the Department to impose administrative fines cannot take effect until that time.

(d) Upon request of the person in charge, the department may extend the deadline by which the person in charge shall comply with the directives in the notification and the Act;

(e) The facility shall be subject to an on-site inspection by the department to determine if the person in charge has come into compliance with the directives in the notification and the Act by the deadline established in the notification or by an extension granted in (d); and

(f) The complainant shall be notified in writing of the determination of a finding of non-compliance and of the directives issued by the department to the person in charge, to be carried out in order to achieve compliance with the Act.

**PART He-P 1906 ADMINISTRATIVE FINES**

**He-P 1906.01 Administrative Fines.**

(a) If the department determines that the person in charge has not complied with the Act by the deadline established in He-P 1905.02(c) or (d), the department shall, pursuant to RSA 155:78, impose upon the person in charge an administrative fine of \$100 per day for the first offense and \$200 per day for each subsequent offense.

(b) The penalties prescribed in (a) above shall be imposed for each day that the person in charge is not in compliance with the Act, beginning with the date that the notification under He-P 1905.02 is issued and continuing for each day of non-compliance, or until the date of compliance.

(c) The department shall provide written notice to the person in charge:

- (1) Identifying each finding of non-compliance;
- (2) Informing the person in charge of the amount of the assessed fine under (a) and (b) above;
- (3) Informing the person in charge of the right to appeal the department’s decision to assess a fine, pursuant to RSA 541-A and He-C 200, 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;
- (4) Informing the person in charge 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
- (5) Informing the person in charge that if he or she does not request an appeal as specified in (4) above, the department’s decision to assess a fine shall become final after the 10 day period specified in (4) above and the fine shall be paid to the department no later than 10 days from that date.

**Appendix**

<b><u>Rule Section</u></b>	<b><u>Statute Implemented</u></b>
He-P 1905	RSA 155:71, III
He-P 1906	RSA 155:78