CHAPTER Lab 1500 EMPLOYEE LEASING COMPANIES

Readopt with amendment Lab 1500, effective 11/3/2012 (Document #10221) to read as follows

PART Lab 1501 PURPOSE

Lab 1501.01 Purpose. These rules are intended to carry out legislative intent by establishing standards for the operation, regulation, and licensing of employee leasing companies.

PART Lab 1502 DEFINITIONS

Lab 1502.01 "Applicant" means “applicant” as defined in RSA 277-B:2 I, namely “a person seeking to be licensed under RSA 277-B or seeking the renewal of a license issued under this chapter.”

Lab 1502.02 "Client company" means “client company” as defined in RSA 277-B:2, III, namely “a person who enters into an employee leasing arrangement with an employee leasing company.”

Lab 1502.03 "Commissioner" means “commissioner” as defined in RSA 277-B:2, II, namely “the commissioner of the department of labor.”

Lab 1502.04 "Employee leasing arrangement" means “employee leasing arrangement” as defined in RSA 277-B:2, IV, namely “an arrangement, under written contract, whereby:

(a) An employee leasing company assigns an individual who was previously employed by the client company or its predecessor, affiliate, or subsidiary, to perform services for the client company, and

(b) The arrangement is intended to be, or is, on-going rather than temporary in nature.”

Lab 1502.05 "Employee leasing company" means “employee leasing company” as defined in RSA 277-B:2, V, namely “any person:

(a) Engaged in providing the services of employees pursuant to one or more employee leasing arrangements; or

(b) Who otherwise regularly provides services of a nature customarily understood to be employer responsibilities including, but not limited to, the provision of health insurance plans, workers' compensation or retirement or other benefit plans in the name of an entity other than the company on site where the employees provide services.”

Lab 1502.06 “Fine” means a civil penalty as imposed by the department of labor.

Lab 1502.06.07 “Person” means “person” as defined in RSA 277-B:2, V-a, namely “any individual, partnership, corporation, limited liability company, association, or other legal entity.”

Lab 1502.07 "Temporary help service" means “temporary help service” as defined in RSA 277-B:2, VI, namely “a service whereby an organization hires its own employees and assigns them to clients to support or supplement the client work force in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.”
Lab 1502.08.09. "Temporary employee" means “temporary employee” as defined in RSA 277-B:2, VII, namely “an individual hired to perform temporary help service.”

PART Lab 1503 LICENSING; INITIAL APPLICATION

Lab 1503.01 License Required. No person shall engage in the business of employee leasing nor hold itself out to the public as an employee leasing company without first having secured a license under the provisions of RSA 277-B and these rules.

Lab 1503.02 Initial Application.

(a) Every applicant for an initial employee leasing company license shall complete, sign, have the signature acknowledged by a notary public, and file with the commissioner “Employee Leasing Initial Application” form WC-EMPLSNG-INTL Rev. 07/2012 (02/2022), together with a non-refundable application fee of $100. This application fee is shall be in addition to the annual license fee set by Lab 1504.

(b) The applicant for an employee leasing company license shall supply the following on or attached to form “Employee Leasing Initial Application”:

(1) A department of safety, division of state police, notarized “Criminal Record Release Authorization”, pursuant to rule Saf-C 5703, along with any required fee, with the commissioner identified as the recipient of the record or records, which will allow a criminal background check for each principal, officer, manager, or individual who owns 10 percent or more or exercises the power to control day to day operation or direction of the applicant;

(2) Proof of A copy of the applicant's workers compensation policy or policies covering all leased employees of the applicant coverage as defined by RSA 281-A:5 for all leased employees of the applicant;

(3) If applicable, a copy of the health insurance policy covering all leased employees certification that the health insurance policy provided complies with the requirements of RSA 277-B:11;

(4) Certification pursuant to RSA 277-B:5, VI that the applicant does not conduct a temporary help service through the same entity as the applicant's employee leasing company;

(5) The applicant’s most recent audited financial statement prepared by an independent certified public accountant in accordance with generally accepted accounting principles within 13 months prior to the date of application which shows a minimum working capital of $100,000, pursuant to RSA 277-B:6, I;

(6) A copy of the manual provided to the leased employees pursuant to the requirements of RSA 277-B:9, I (i);

(7) A complete description of the employee grievance system required by RSA 277-B:9, I (j);
Letters of good standing from the NH department of employment security and NH department of revenue administration, showing that the applicant has fulfilled the requirements of RSA 277-B:7;

(9) If the applicant is required to hold any additional license issued by a State or Federal agency relative to its operations, provide certified copies of the licenses granted;

(10) If the applicant is not a New Hampshire domiciliary, a copy of the applicant’s employee-leasing license or registration issued by its state of domicile, or if no license or registration is issued by that state, then a certificate or letter of good standing;

A completed form 6WC LE, Rev. 09/2003 for each client company in New Hampshire;

(11) A written statement explaining how the applicant will meet the financial assurances required by RSA 277-B:6;

(12) For any applicant domiciled in New Hampshire, a written safety summary of the applicant as required by RSA 281-A:64, II; and

(123) If the applicant is a subsidiary of a parent company, a document signed by the parent company agreeing and guaranteeing the direct payment of benefits if the applicant fails or defaults in its obligation to do so, which agreement shall not be terminated without 60 days notice to the commissioner; the parent company shall complete, sign, have the signature acknowledged by a notary public, and file with the commissioner the “parent company agreement” form WC-EMPLSNG-PC (03/2022)

(c) The workers' compensation policy or policies as required in (b)(2) above shall reflect the workers' compensation classification based on the work performed by the employees of the leasing company.

(d) The workers' compensation policy or policies as required in (b)(2) above shall comply with RSA 281-A and Lab 100 through Lab 500 rules adopted thereunder.

(e) If meeting the requirement of (b)(3) above, the health insurance policy shall be in the name of the applicant and must be current.

(f) When meeting the requirements of (b)(5) above, applicant shall supply a statement which shall show a minimum working capital of $100,000.

(g) If the applicant is meeting the requirement of (b)(11) above by providing a surety bond, the bond shall be in the sum of $100,000 and shall remain in effect unless the commissioner agrees to an applicant’s request to substitute another bond or other guarantee approved by the commissioner, and shall obligate the surety to pay all liabilities of the applicant under RSA 277-B.

Lab 1503.03 Information Evaluated.

(a) Every applicant for an initial employee leasing company license shall file with the commissioner the material required by Lab 1503.02. The information shall be evaluated as set forth in this section.
(b) The department shall first verify compliance with Lab 1503.02.

(c) Matters addressed by Lab 1503.02 shall be evaluated as follows:

(1) Before issuing a license, the commissioner shall review the application to assure that the applicant is able to provide the services of an employee-leasing company as required by law, and

(2) To make this determination, the commissioner shall review information about the applicant’s history, operations, and financial abilities, including:

   a. The applicant's identity;

   b. The existence of workers' compensation coverage in the name of the applicant for all leased employees;

   c. The health insurance coverage, if any;

   d. The business activities of principals during the 5 years immediately preceding the date of application;

   e. If the applicant has had its leasing license suspended, or limited, or denied in any other jurisdiction;

   f. If the applicant has not paid employee wages or benefits or federal or state payroll taxes or unemployment compensation contributions when due in this state or any other jurisdiction;

   g. If the potential leased employee will be informed via the employee manual that he or she is in an employee-leasing arrangement;

   h. If a complete copy of the employee manual has been provided is available for distribution to the leased employees pursuant to the requirements of RSA 277-B:9, I (i);

   i. If a complete description of the employee grievance system as required by RSA 277-B:9, I (j), and is included in the employee manual;

   j. If the applicant is in good standing in the state of domicile through the applicant providing a copy of the license, or if no license by a letter of good standing;

   k. If the applicant has outstanding unpaid civil penalties owed to New Hampshire; and

   l. If any person named in the license application has been convicted of a crime, failed to pay business taxes required, or civil penalties owed, or in any other way avoided financial responsibility in this state.

Lab 1503.04 Temporary Help Employee Prohibited. No employee leasing company shall provide temporary help employees through the same entity as the applicants leased employees.
Lab 1503.05 Use of an Approved Assurance Organization.

(a) If the commissioner determines that it would provide greater financial protection or access to additional compliance information, or assist the commissioner in minimizing the cost of administration, then the commissioner shall approve an independent and qualified assurance organization in accordance with RSA 277-B:6, IV. Such approved assurance organization shall assure that applicants and licensed employee leasing companies comply with the requirements of RSA 277-B and these rules.

(b) To be considered for approval as an assurance organization, the assurance organization shall submit a written request for approval to the commissioner, including evidence that the assurance organization:

1. Is independent;
2. Is licensed or approved by one or more states to certify the qualifications of employee leasing companies;
3. Has an established national program for the accreditation and financial assurance of employee leasing companies acceptable to the commissioner; and
4. Is capable of determining a failure of any employee leasing company to meet the qualifications for licensure under RSA 277-B or to meet the requirements for certification by the assurance organization, and is capable of providing written notice to the commissioner within 2 business days of such failure.

(c) The commissioner shall, by letter to the assurance organization, approve an assurance organization that meets the requirements of paragraphs (a) and (b).

(d) Once approved, the assurance organization may act on behalf of an employee leasing company to provide the commissioner with an application that has been executed by the authorized signatory of each employee leasing company requesting licensing under RSA 277-B:6, IV.

(e) Such application of the employee leasing company shall:

1. Authorize the approved assurance organization to share with the commissioner the application and compliance reporting information that has been provided to the assurance organization by the employee leasing company;
2. Authorize the commissioner to accept information shared by the assurance organization for licensing or renewal of licensing of the employee leasing company;
3. Certify that the information provided by the assurance organization to the commissioner is true and complete and that the employee leasing company is in full and complete compliance with all requirements of RSA 277-B; and
4. Provide the certification of the assurance organization that the employee leasing company is in compliance with the assurance organization’s standards and procedures and is qualified for licensure or renewal of licensure under RSA 277-B.
(f) If an approved assurance organization no longer meets the requirements of paragraph (b), the commissioner shall begin the process to suspend such approval under RSA 541-A:30 and conduct a detailed review of all information provided by the assurance organization on behalf of each employee leasing company that was licensed based upon that assurance organization’s certification. In such case, the commissioner shall notify each such employee leasing company in writing of any deficiencies, and each such employee leasing company shall have sixty 60 days to correct any deficiencies as may be required necessary to maintain licensure.

(g) The approval issued to an assurance organization shall remain in effect until the assurance organization withdraws from the state or until approval is suspended.

(h) An employee leasing company may authorize an approved assurance organization to act on its behalf in complying with the licensing and licensing renewal requirements of RSA 277-B, including the electronic filing of applications and other information and the payment of application and licensing fees. Use of an approved assurance organization shall be optional and not mandatory for an employee leasing company.

(i) If an employee leasing company, which has been licensed pursuant to the certification of an approved assurance organization, fails to comply with any provision of RSA 277-B or these rules, the commissioner shall provide the assurance organization 30 days written notice prior to taking action against any bond provided by the assurance organization. During these 30 days, the assurance organization may cure the failure to comply. The assurance organization may request a hearing pursuant to Lab 200 should it disagree with the decision of the Commission concerning the withdrawal of approval of the assurance bond.

(j) Nothing in these rules shall limit or change the commissioner’s authority to issue licenses, revoke licenses, conduct investigations, or enforce any provision of RSA 277-B.

PART Lab 1504  ISSUANCE OF LICENSE AND FEES

Lab 1504.01  License and Fees.

(a) The commissioner shall issue a license to operate as an employee leasing company, valid for one year from date of issue, to any person who qualifies for the license under the provisions of RSA 277-B:7, I and these rules.

(b) The applicant, if a domiciliary of New Hampshire, shall pay an annual license fee of $500. If the applicant is not domiciled in New Hampshire, the applicant shall pay an annual license fee in the amount of $500 or the amount required by the domiciliary state, whichever is greater.

PART Lab 1505  REQUIREMENTS DURING OPERATION AS A LICENSED EMPLOYEE LEASING COMPANY

Lab 1505.01  Adding or Terminating Clients. The licensee shall submit to the department updated information on new and terminated client companies within the state of New Hampshire within 20 business days of such event by completing and filing form 6WC-LE, Rev. 09/2003. A client company shall be considered “new” if it commences to be subject to New Hampshire labor laws, regardless whether the client was previously a client of the licensee in another jurisdiction.
Lab 1505.02  Financial Information Update. The licensee shall submit to the department within 60 days after the end of each calendar quarter a certification by an independent certified public accountant that for such quarter all applicable federal and state payroll taxes have been paid on a timely basis in all such jurisdictions.

Lab 1505.03  Client List. Within 30 days of receipt of certification and thereafter, the licensee shall submit to the department a list of current clients. This list shall not be considered a substitute for the individual notification on form 6WC-LE required by Lab 1505.01.

Lab 1505.04  Financial Statement. Annually, the licensee shall submit to the department an audited financial statement prepared by an independent certified accountant showing the licensee has a minimum working capital of $100,000, or if the licensee does not have that level of working capital then the licensee shall explain how it will deal with any shortfall using the alternatives of RSA 277-B:6, 1.

PART Lab 1506  RENEWAL LICENSE

Lab 1506.01  Application for a Renewal License. Every licensee shall complete, sign, have the signature acknowledged by a notary public, and file form Employee Leasing Renewal Application, Rev. 07/2012, for renewal of license at least 60 days prior to expiration of its license, together with the renewal application fee of $100. The applicant for a renewal license shall supply the information required in Lab 1503.02(b)(1)-(13).

(a) Every licensee shall complete, sign, have the signature acknowledged by a notary public, and file form WC-EMPLSNG-INTL Rev. 07/2012 (02/2022) for renewal of license at least 60 days prior to expiration of its license, together with the renewal application fee of $100;

(b) The applicant for a renewal license shall supply the information required in Lab 1503.02(b)(1)-(23);

(c) A completed form 6WC-LE, Rev 07/2021 for each client company in New Hampshire;

(d) If the applicant for renewal has received commissioner’s approval as to Lab 1503.02 (b) 10 by providing a surety bond, the bond shall be in the sum of $100,000 and shall remain in effect unless an applicant’s receives approval pursuant to Lab 1503.05 to substitute another bond or other guarantee and shall obligate the surety to pay all liabilities of the applicant under RSA 277-B.

Lab 1506.02  Renewals After 5 Years. If an employee leasing company has been continuously licensed without revocation or suspension for a period of 5 years or more since September 29, 2009, a renewal license shall remain in force for 2 years from the date of issue, provided that financial information required under RSA 277-B:6 is submitted on an annual basis. The licensing fee for a 2 year license shall be twice the annual amount.

PART Lab 1507  RESTRICTED LICENSE

Lab 1507.01  Application for a Restricted License.

(a) An employee leasing company domiciled in any other state may apply for a restricted license for limited operation within this state if the applicant:
(1) Establishes that its domiciliary state provides substantially the same conditions for licensure of a New Hampshire domiciled employee leasing company in such jurisdiction;

(2) Neither maintains an office in the state, nor maintains a sales force nor has sales representatives in this state, nor solicits clients residing or domiciled in this state; and

(3) Does not have more than 100 leased employees working in this state.

(b) An applicant for a restricted license shall complete, sign, have the signature acknowledged by a notary public, and file form “Restricted Employee Leasing Application”, Rev.03/2022, together with an application fee of $100. The applicant shall pay an annual license fee of $100 or amount required by state of domicile pursuant to RSA 277-B:5, III(c), whichever is greater.

(c) The applicant shall attach the following information to completed form “Restricted Employee Leasing Application”, Rev. 03/2022:

(1) A detailed explanation, including relevant documentation, showing compliance with Lab 1507.01(a)(1)-(3); and

(2) That information required by Lab 1503.02(b)(1)-(13).

(d) The application for Restricted License shall be reviewed pursuant to the criteria outlined in Lab 1503.03.

PART Lab 1508 FINES

Lab 1508.01 Fine. Any person or employee leasing company who violates the provisions of RSA 277-B shall be subject to fines by the commissioner up to $1,000 per employee for each day the violation continues.

Lab 1508.02 Commensurate Fines. Any fines for violations of the labor laws of this state shall be assessed either against the employee leasing company or the client company based upon the commensurate level of control of the worksite and each party’s responsibility for compliance with the applicable violation.

Lab 1508.03 Successive Violations. Any such fines assessed by the state to an employee leasing company for violations of the labor laws of New Hampshire shall specify at which client company the violation occurred. Unless successive labor law violations occur within the same client company, the state shall treat each violation assessed to an employee leasing company for violations at a specific client company as a first violation and shall not aggregate violations at separate client companies to assess additional and successive fines.

Lab 1508.04 Calculation of Proposed Fines.

(a) The total fine proposed by the department shall be the sum of $100 not be more than the sum of $1,000 per employee per each day the violation continues.

(b) In any case of a continuing violation activity, each day during which such violation occurs shall be considered to be a separate violation.
(c) When calculating the proposed fine, the department shall apply the following mitigating factors or aggravating factors as described in Lab 1508.04 (d) and (e) to determine mitigating circumstances or aggravating circumstances.

(d) The department shall apply the following mitigating factors when calculating a proposed fine:

1. The violation of law was remedied within 30 days;
2. The respondent has a history of non-compliance with the statute(s) or rule(s) of the department;
3. The respondent has not derived direct or indirect economic benefit from the violation; and
4. The respondent has made a good faith basis to comply with the statute(s) or rule(s) involved and the violation occurred despite those efforts.

(e) The department shall consider the following aggravating factors when calculating the proposed fine:

1. The respondent was aware of the requirements applicable to the activity(ies) that formed the basis for the department’s allegations as of the time of the violation;
2. The respondent derived some direct or indirect economic benefit from the offense;
3. The respondent did not act in good faith to remedy the violation(s) for which the fine is sought; and
4. The respondent has a history of non-compliance with the statute(s) or rule(s) of the department.

Lab 1508.05 Notice of Proposed Fine: Contents. To initiate an administrative fine proceeding, the department of labor shall notify the respondent in writing of the following:

(a) The violation(s) alleged by the department and the facts on which the allegations are based;
(b) The statute that authorizes the commissioner to impose a fine;
(c) The statutory section(s) or rule(s) that specify the amount of the fine and the amount of the fine specified therein;
(d) The total amount of fine(s) being sought;
(e) An explanation of the mitigating and aggravating factors used to determine the amount of the proposed fine;
(f) That the respondent has a right to a hearing prior to the imposition of the fine; and
(g) That the respondent is required to respond to the notice by the date specified in the notice.

Lab 1508.06  Notice of Proposed Fine: Delivery.  The notice required by Lab 1508.06 shall be delivered by:

(a) Mailing the notice first class mail certified mail, return receipt requested, to the respondent at the address listed on the initial application; or

(b) Emailing a copy of the proposed fine to the respondent at the email address listed on the initial application; or

(c) Delivering the notice in hand to the respondent or, if the respondent is not available, to the respondent’s representative.

Lab 1508.07  Required Response to Notice of Proposed Fine.

(a) After receiving a notice of proposed fine, the respondent shall respond to the notice by either:

(1) Indicating that the respondent will attend a hearing;

(2) Waiving the hearing and paying the proposed fine; or

(3) Requesting an informal meeting with the department to discuss the proposed fine.

(b) The respondent shall file the response by the date specified in the notice, which shall be no sooner than 14 days from the date of the notice.

(c) Any respondent who does not waive the hearing shall inform the department of any change in the respondent’s mailing address that occurs prior to the final resolution of the matter.

(d) If the respondent does not respond to the Notice of proposed fine pursuant to Lab 1508.07 (a) (1) to (a)(3) the department shall file a petition for hearing pursuant to Lab 200.

Lab 1508.08  Notice of Hearings.  Notice of a hearing held to determine whether to impose an administrative fine shall be given in accordance with RSA 541-A:31 and the provisions of Lab 200 that apply to notice of adjudicative proceedings.

Lab 1508.09  Conduct of Hearings.  Administrative fine hearings shall be held in accordance with the provisions of RSA 541-A and Lab 200 that apply to the conduct of adjudicative proceedings.

Lab 1508.10  Determination of Total Fine Due Following a Hearing.  If a hearing is held on a proposed fine, the fine shall be determined in accordance with the following:

(a) If the department does not prove by a preponderance of the evidence that the violation for which a fine is sought occurred, the commissioner shall impose no fine for that specific violation; and
(b) Subject to Lab 1508.12 and Lab 1508.13, if the department proves by a preponderance of the evidence that the violation for which a fine is sought occurred, the commissioner shall impose the appropriate fine pursuant to Lab 1508.04 for that specific violation.

Lab 1508.11 Reduction in Fine Imposed Following Hearing. The amount of fine imposed pursuant to Lab 1508.04 for a specific violation shall be reduced by 10% for each of the following that apply to that specific violation:

(a) In the case of a non-continuing or one-time offense, where all of the following are true:

(1) The respondent proves, by a preponderance of the evidence, respondent’s ignorance, as of the time of the violation, of the statute(s) or rule(s) which were violated;

(2) The violation has not continued or recurred as of the time of the hearing;

(3) Any employee threat or harm caused by the offense has been alleviated; and

(4) The respondent did not derive any direct or indirect economic benefit from the offense;

(b) The respondent proves, by a preponderance of the evidence, that respondent made a good faith effort to comply with the statute(s) or rule(s) involved and that the violation occurred despite those efforts;

(c) The respondent proves, by a preponderance of the evidence, that respondent has no history of non-compliance with the statute(s) or rule(s) of the department; or

(d) The respondent proves, by a preponderance of the evidence, information favorable to respondent’s case which was not known to the department at the time the fine was proposed.

Lab 1508.12 Increase in Fine Imposed Following Hearing. The amount of fine imposed pursuant to Lab 1508.04 for a specific violation shall be increased by 10% for each of the following that apply to that specific violation:

(a) The department proves, by a preponderance of the evidence, that the respondent was aware of the requirements applicable to the activity(ies) that formed the basis for the department’s allegations as of the time of the violation;

(b) The department proves, by a preponderance of the evidence, that any employee threat or harm caused by the offense has not been alleviated as of the date of the hearing;

(c) The department proves, by a preponderance of the evidence, that the respondent derived some direct or indirect economic benefit from the offense;

(d) The department proves, by a preponderance of the evidence, that the respondent did not act in good faith to remedy the violation(s) for which the fine is sought;

(e) The department proves, by a preponderance of the evidence, that the respondent has a history of non-compliance with the statute(s) or rule(s) of the department; or
(f) The department proves, by a preponderance of the evidence, other factors, not specifically identified above, that cause the violation to be more serious.

Lab 1508.13 Notice of Decision.

(a) After the close of the record the hearing officer shall issue a written decision stating the final determination on the proposed administrative fine.

(b) In the decision, the hearing officer shall state the findings of fact and rulings of law upon which the determination is based.

(c) The hearing officer shall send the decision by first class mail to the respondent and shall give a copy of the decision to the department that proposed the fine.

Lab 1508.14 Payment of Fines.

(a) If the respondent waives the right to a hearing, the respondent shall pay the fine:

(1) By the date specified in the notice, which shall not be less than 14 days from the date of the notice of the proposed fine; or

(2) If the case is settled, in accordance with the settlement agreement signed by the respondent, and the commissioner.

(b) In all other cases where a fine is imposed, the respondent shall pay the fine within 30 days of the date of the hearing officer’s decision, or such longer time period as is specified in the decision.

(c) Payment shall be sent to the commissioner or such other person as is identified in the notice, decision, or settlement agreement, as applicable. Payment made by check or money order shall be made payable to “Treasurer, State of New Hampshire”.

Appendix

<table>
<thead>
<tr>
<th>Rule</th>
<th>Specific State Statute which the Rule Implements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lab 1501.01</td>
<td>RSA 277-B:1</td>
</tr>
<tr>
<td>Lab 1502.01</td>
<td>RSA 277-B:2</td>
</tr>
<tr>
<td>Lab 1503.01</td>
<td>RSA 277-B:12, 1</td>
</tr>
<tr>
<td>Lab 1503.02</td>
<td>RSA 277-B:5-7</td>
</tr>
<tr>
<td>Lab 1503.04</td>
<td>RSA 277-B:5,VI</td>
</tr>
<tr>
<td>Lab 1503.05</td>
<td>RSA 277-B:6,IV</td>
</tr>
<tr>
<td>Lab 1504.01</td>
<td>RSA 277-B:5,1, RSA 277-B:7, RSA 277-B:8</td>
</tr>
<tr>
<td>Lab 1505.01</td>
<td>RSA 277-B:9,III</td>
</tr>
<tr>
<td>Lab 1505.02</td>
<td>RSA 277-B:6,III</td>
</tr>
<tr>
<td>Lab 1505.03</td>
<td>RSA 277-B:15-a</td>
</tr>
<tr>
<td>Lab 1505.04</td>
<td>RSA 277-B:6,1</td>
</tr>
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</tr>
<tr>
<td>Lab 1506.01</td>
<td>RSA 277-B:5,1</td>
</tr>
<tr>
<td>Lab 1506.02</td>
<td>RSA 277-B:8</td>
</tr>
<tr>
<td>Lab 1507.01</td>
<td>RSA 277-B:5,III</td>
</tr>
<tr>
<td>Lab 1507.01 through Lab 1508.03</td>
<td>RSA 277-B:12</td>
</tr>
<tr>
<td>Lab 1508.04</td>
<td>RSA 277-B:15</td>
</tr>
<tr>
<td>Lab 1508.05 to Lab 1508.14 08</td>
<td>RSA 277-B:12</td>
</tr>
</tbody>
</table>