

Readopt with amendment Liq 402.01, effective 7-18-14 (Document #10643), cited and to read as follows:

PART Liq 402 PURCHASING AND SUPPLYING

Liq 402.01 Purchase of Supplies of Liquor or Wine from the Commission.

(a) All licensee orders to be picked up from a licensed or commission warehouse shall use the following procedure:

- (1) Orders shall be submitted to the commission office through the commission's internet ordering system;
- (2) Orders shall be on approved credit or shall be accompanied by acceptable payment;
- (3) All orders shall be picked up at a date and time set by the warehouse;
- (4) All orders shall be picked up:
 - a. By a licensed carrier who will make the delivery to the licensee; or
 - b. By the retail licensee, their employee, or other designated individual, only with presentation of a copy of the retail license at pickup; and
- (5) The licensee shall pay all transportation charges;

(b) For all orders to be picked up at a commission liquor store, licensees shall submit a written or a telephone order to the store providing:

- (1) The license number;
- (2) The licensee name;
- (3) The brand code(s);
- (4) The brand name(s);
- (5) The brand size(s); and
- (6) Number of cases; or number of bottles, if available.

(c) All orders shall be picked-up at the commission liquor store by the licensee or designee at a date and time set by the store.

(d) Order approval, processing, and invoicing shall be on approved credit or orders shall be paid in full upon pickup by acceptable payment.

(e) Orders to be picked directly from the commission liquor store shelves by a licensee shall be subject to the following conditions:

- (1) Orders shall be on approved credit or paid at the register by an acceptable form of payment; and

(2) Licensees picking directly from the store shelf shall pay “retail price”, which for the purposes of this rule means:

a. For off-premises licensees, the price listed in the quarterly price list for off-premises licensees; or

b. For on-premises licensees the prevailing shelf price at the time of the sale.

(f) Any customer may elect to use a special order to obtain supplies not listed with the commission using the following procedure:

(1) A quote may be obtained by completing and submitting a “Customer Order Inquiry” form (revised 2/2021) with the required information to a commission liquor store or the commission office;

(2) The commission shall obtain a quote from a licensed vendor and return the quote to the customer;

(3) The customer may place an order for the product referenced in the quote before the expiration date of the quote;

(4) The order shall be submitted to a store or the commission office; and

(5) All orders shall be picked up and paid for at the store designated.

(g) Nothing in these rules shall be construed as to prohibit on-premises and off-premises licensees or customers from purchasing, at their own risk, through permitted direct shippers.

(h) Errors in ordering, shipping, billing, or receiving shall be reported, processed and the supplies returned within 30 days of their receipt.

(i) Errors in an order from the warehouse shall be resolved pursuant to Liq 906.02 by contacting the commission office.

(j) Errors in an order from a commission liquor store shall be resolved pursuant to Liq 906.02 at the store where the sale was made.

(k) Incomplete orders and orders submitted without payment or not in compliance with Liq 900 shall not be processed and shall be returned stating the reasons therefore.

Adopt Liq 901, previously effective 11-28-96 (Document #6391), and expired 11-28-04, cited and to read as follows:

CHAPTER Liq 900 LICENSEE DISCOUNT, CREDIT AND BILLING PROCEDURES

PART Liq 901 SYSTEM ESTABLISHED

Liq 901.01 Purpose. The purpose of this chapter is to set forth the processes by which the commission may authorize licensees to make purchases from the commission on credit, including the terms and conditions that apply to such purchases, and to establish discounts for liquor and wine purchases made by on and off-premises licensees.

Readopt with amendment Liq 902 through Liq 906, effective 6-14-17 (Document #12210, to read as follows:

PART Liq 902 APPLICATION PROCEDURE

Liq 902.01 Credit Privilege.

(a) A licensee's approval from the commission to make credit-based purchases shall be deemed a privilege.

(b) No substantive or procedural guarantees shall attach to this privilege beyond those set forth in these rules.

Liq 902.02 Application Form.

(a) Any licensee that has not established a credit basis with the commission, and seeks to make credit-based purchases from the commission shall complete and submit on a "Licensee Credit Application" form (revised 2/2021), <https://www.nh.gov/liquor/crdtapp200.doc>, the required information.

(b) All requests for credit shall be subject to a credit check.

(c) In the event a licensee submits an incomplete form, such form shall not be processed, and the commission shall notify the licensee that its application is incomplete.

(d) Licensees with multiple business locations shall submit a distribution list that sets forth the amount of credit requested for each of the licensees' business locations.

(e) Licensees shall provide the commission with a revised distribution list in the event that additional locations are added.

Liq 902.03 Credit Approval.

(a) The commission shall allow a licensee to access credit if it determines that the licensee has an acceptable credit history in an amount equal to or exceeding the requested limit.

(b) The commission shall deem a credit history acceptable if it establishes that the licensee will repay credited purchase in a timely fashion, as evidenced by one or more of the following factors:

(1) A demonstrated history of making timely payments to the commission;

(2) Credit and trade references establishing that the licensee is credit worthy; or

(3) Any other information establishing that the licensee will timely repay credited purchases.

(c) A new licensee without a credit history requesting credit who is unable to meet the standards set forth in Liq 902.02(a), shall be granted credit up to \$2,500 for a probationary period not to exceed 6 months from the time of the first purchase if such amount and time period is calculated to increase commission revenue.

(d) A licensee who is granted credit and maintains an acceptable credit history with the commission may, at any time, request additional credit.

(e) The commission shall notify each licensee applying for credit of the disposition of the application within 30 business days of the commission's receipt of a complete application.

Liq 902.04 Completing Forms. Whenever a person is required to complete a form, as described in RSA 178 and this chapter, the following provisions shall apply:

(a) Forms shall be filled out completely and truthfully;

(b) Forms shall be completed in a legible manner;

(c) Forms shall be completed in non-fading, non-erasable graphic such as ink or typewritten; and

(d) Nothing in this section shall be construed to prohibit completion or filing of forms by electronic means, including internet based forms, scanned documents, or facsimile, provided that the division has the capability to accept such submissions and they are not otherwise specifically prohibited by law or rule.

PART Liq 903 BILLING AND PRICING OF ORDERS

Liq 903.01 Pricing. The prevailing price on the date that goods are packed for shipment from a warehouse or at time of purchase at a commission liquor store shall be the price of the merchandise.

Liq 903.02 Ownership. Ownership of merchandise shall shift to the licensee at the time the merchandise is signed for by the transportation agent at the shipping point, or at the time the merchandise is purchased at a commission liquor store by the licensee or the licensee's designated agent.

Liq 903.03 Payment Deadlines for Credit Purchases. Licensees shall pay for merchandise purchased through credit within 18 calendar days, computed as follows:

(a) For merchandise delivered from a warehouse, the 18-day timeline shall begin on the day the transportation agent signs for the merchandise;

(b) For merchandise ordered from a commission liquor store, the 18-day timeline shall begin on the day the licensee or agent of the licensee takes the merchandise from the store; and

(c) A payment shall be late if it is not received by the commission on or before 18 calendar days of the licensee taking ownership.

PART Liq 904 LATE/NON PAYMENT

Liq 904.01 Operating Conditions Governing Licensees.

(a) For purposes of this section a depletion allowance (depletion) shall be the amount the retail shelf price of a liquor and wine vendor or representative, or liquor or wine manufacturer licensee's product at the commission liquor stores is reduced, and a special purchase allowance (SPA) shall be an agreement by such licensees to reduce the price the commission pays for product in a purchase order.

(b) A licensee may offer an SPA to reduce the cost of product on a purchase order for a specific cost amount and a certain number of product and the commission shall accept the offer unless, based on inventory, the product and the terms of the offer, it will not optimize profitability.

(c) Upon written request by a licensee, the commission shall accept the offer of a depletion from the shelf price of the licensee's product for a specific amount and period of time unless, based on inventory, the product and the terms of the offer, it will not optimize profitability.

(d) The licensee shall pay the agreed upon depletion to the commission in accordance with a schedule agreed upon by the commission and the licensee.

(e) The commission shall track the amount of product sold and the depletion owed by the licensee.

(f) The commission shall request a depletion from a licensee regarding a specific product or products if the request is designed to increase commission revenue. The licensee shall respond within 7 business days.

(g) Any licensee or licensee's agent that fails to pay the depletion in violation of the agreed schedule shall be assessed a fee equal to 18% per annum of the amount overdue if the assessment increases commission revenue.

(h) When any invoice for merchandise is not paid in full under the terms of Liq 903.03 or there is a return of any payment submitted by a licensee by a bank or other collection agent, the commission shall suspend all credit sales of liquor and wine to the licensee until the account is paid unless, based on the licensee's history of payments to the commission and the circumstances of the specific instance of nonpayment, such a suspension will reduce commission revenue.

(i) When a licensee is late with payment more than once in the prior 12 consecutive months, the commission shall suspend credit privileges for up to 6 months unless, based on the licensee's history of payments to the commission and the circumstances of the specific instance of nonpayment, such a suspension will reduce commission revenue. A licensee seeking to re-establish credit may reapply after the period of suspension subject to the rules and conditions of this chapter.

(j) When a licensee has 2 or more checks returned within the prior 12 consecutive months due to insufficient funds, the commission shall require cash, certified check, debit card, or credit card payments for a period of up to 12 consecutive months after receiving payment unless, based on the licensee's history of payments to the commission and the circumstances of the specific instance of nonpayment, such a suspension will reduce commission revenue.

(k) The commission shall apply a fee to checks or money orders returned for insufficient funds, pursuant to RSA 6:11-a, unless the licensee provides the commission with a written statement from the issuing institution establishing that the negotiable instrument was returned due to an error on the part of the drawee.

(l) The commission shall refer all accounts that are 60 or more days in arrears to the commission's legal unit or the department of justice for collection, unless a payment plan under Liq 904.02 is in effect with the commission.

(m) The licensee shall, in any event, be responsible for the payment of all protest and bank fees, if any, in addition to the face value of the check.

(n) The commission shall cancel telecommunication and internet orders awaiting payment if payment is not received within 14 days of order placement.

Liq 904.02 Payment Plan.

(a) If a licensee fails to meet the payment requirements of this chapter, the commission may enter into a payment plan with the licensee as follows:

(1) The commission shall notify in writing any licensee whose account is 30 days in arrears of its delinquency and the commission shall make contact with the licensee;

(2) Continued failure to pay shall result in a payment plan with the commission;

(3) The payment plan shall consist of at least 2 and no more than 12 equal consecutive weekly payments, and shall result in the full satisfaction of the licensee's outstanding balance with the commission; and

(4) One total payment on a specified date not more than 60 days after the payment deadline established in Liq 903.03 shall be allowed under special circumstances impacting the licensee's immediate ability to pay, such as:

a. The sale of a business;

b. Removal of a pending lien; or

c. A natural or biological disaster impacting the business, such as a flood, fire or epidemic.

PART Liq 905 BANKRUPTCY

Liq 905.01 Licensee Bankruptcy. Any applicant for credit, who has in the past 7 years declared bankruptcy, either personally or as a principal of a corporation or other business entity, shall be bound by the following provisions:

(a) If the licensee is other than a natural person, that entity shall post a bond or irrevocable letter of credit from a state or federally recognized financial institution in the amount of the credit requested;

(b) Any licensee who declares bankruptcy shall forfeit all credit privileges and shall pay for product with cash, certified check, or debit card while in bankruptcy; and

(c) Upon emerging from bankruptcy, said licensee may reapply for credit privileges subject to the provisions of this chapter.

PART Liq 906 ERRORS, RETURNS, DISCONTINUED BUSINESS

Liq 906.01 Payment.

- (a) Licensees shall pay their account in full within the 18-day timeline.
- (b) In the event there is an alleged error, it shall be resolved pursuant to Liq 402.01 (h) and Liq 906.02.

Liq 906.02 Returning Merchandise. Any licensee wishing to return merchandise shall notify the commission's marketing bureau's customer service representative.

(a) Returns of less than \$100 may be made to the licensee's commission liquor store within 30 days of purchase and shall be accompanied by the original receipt;

(b) The commission shall accept or reject any return requests as follows:

(1) In determining whether to accept a return, the commission shall consider criteria affecting whether the commission can resell the merchandise, such as the conditions under which the merchandise was stored, the age of the merchandise, and the merchandise's overall condition;

(2) If the commission accepts the return into its inventory, it shall issue a written acceptance and return merchandise to the commission's stock account; and

(3) If a commission liquor store accepts a return, the store shall bring the product into its inventory.

(c) The licensee shall bear all shipping costs unless the merchandise was received in defective condition, the merchandise was shipped by commission error, or the licensee demonstrates that it is experiencing financial hardship.

(d) Once the commission has accepted merchandise back into its inventory, the commission shall issue a credit memo to the licensee's account.

Liq 906.03 Discontinued Business. If a licensed business discontinues operation while merchandise is in transit, the transportation agent shall return the merchandise to the warehouse of origin.

PART Liq 907 DISCOUNT ON SALES TO LICENSEES

Liq 907.01 On-premises Licensees Discounts.

- (a) The commission shall allow discounts for sale of liquor and wine to on-premises licensees.
- (b) The discount shall be a percentage from the regular retail price F.O.B. the warehouse as follows:
 - (1) The discount shall be on case lot orders or bottles; and
 - (2) The discount shall be no less than 10%.

Liq 907.02 Hours and Procedures. On-premise licensees approved for credit purchases under Liq 902.02 may purchase wine and liquor from the warehouse or the commission liquor stores as provided in Liq 402.01.

Liq 907.03 Credit Cards.

(a) Licensees may purchase by credit card liquor or wine for resale at the warehouse or the commission liquor stores.

(b) The process for credit card purchases shall be as specified in Liq 402.01.

Liq 907.04 Off-premises Licensees Schedule.

(a) Off-premise licensees may purchase fortified wines and table wines by the bottle at the commission liquor stores or the warehouse.

(b) The process for such purchases at the commission liquor store or the warehouse shall be as provided in Liq 402.01.

Liq 907.05 Off-premises Licensees Discounts with Annual Wine Purchases under \$350,000.

(a) The commission shall allow discounts for sale of fortified and table wines to off-premises licensees with annual sales under \$350,000.

(b) The \$350,000 wine purchase sales shall be calculated by totaling annual sales for all off-premises licenses held by a licensee under RSA 178:18.

(c) The discount shall be a percentage from the regular retail price at the warehouse or commission liquor stores as follows:

(1) The percentage shall be no less than 15% less than the regular retail price at the commission liquor stores; and

(2) The percentage shall be no less than 20% less than the regular price F.O.B. at the warehouse;

(d) The process for such purchases at the commission liquor store or the warehouse shall be as provided in Liq 402.01.

Liq 907.06 Off-premises Licensees Discounts with Combined Annual Wine Purchases over \$350,000.

(a) The commission shall allow discounts for sale of fortified and table wines to off-premises licensees with combined annual sales over \$350,000.

(b) The \$350,000 annual wine purchase sales shall be calculated by totaling annual sales for all off-premises licenses held by a licensee under RSA 178:18.

(c) The discount shall be no less than 10% less than the regular price F.O.B at the warehouse.

Liq 907.07 Discount Adjustments for Off-premises Licensees.

(a) The commission shall adjust discounts for off-premises licensees in order to optimize the profitability of the commission and maintain proper controls, provided that the commission shall not reduce discounts below the minimum percentages stated in this rule.

APPENDIX

RULE	STATUTE
Liq 402.01	RSA 178:28
Liq 901	RSA 178:28
Liq 902	RSA 176:14
Liq 903	RSA 176:14
Liq 904	RSA 176:14
Liq 905	RSA 176:14
Liq 906	RSA 176:14
Liq 907	RSA 178:28