

CHAPTER Liq 200 PROCEDURAL RULES

Statutory Authority: RSA 176:14

**Repeal Liq 201 to read as follows:**

**Adopt Liq 201 to read as follows:**

PART Liq 201 DEFINITIONS

Liq 201.01 Definitions.

(a) "Address" means a postal address or, for the purposes of electronic communication, a fax number, or an e-mail address.

(b) "Adjudicative proceeding" means the procedure followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36.

(c) "Administrative fine" means any dollar amount allowed by law which is assessed by the commission for any violation of statute, order, or administrative rule.

(d) "Administrative notice" means the final disposition in an adverse commission order that results in an administrative penalty and remains on a licensee's violation history. It does not include an administrative notice issued by the marketing division pursuant to Liq 401.03.

(e) "Administrative penalty" means conditions, administrative fine, points, suspension, or revocation.

(f) "Aggravated violation" means any violation of statute, rule, or commission order that endangers the public or results in serious bodily injury or death.

(g) "Aggravating factor" means any conduct described in Liq 602.02 (c).

(h) "Chairman" means the chairman of the New Hampshire liquor commission.

(i) "Commission" means the New Hampshire liquor commission.

(j) "Commission order" means a document issued by the commission, the director, or the presiding officer making factual findings, declaring rights of parties, requiring a person to do or abstain from doing something, or determining a person's rights or privileges.

(k) "Contested case" means "contested case" as defined in RSA 541-A:1, IV, namely "a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing."

(l) "Director" means the director of the division of enforcement and licensing.

(m) "Division" means the division of enforcement and licensing.

(n) “Document” means any accounts, books, contracts, records, memoranda, and papers of any kind whatever including electronically stored material.

(o) "File" means to place a document in the actual possession of the commission.

(p) “Final recommendation of commission action” means the document reviewed by the division, provided to the presiding officer, and served on the licensee with a hearing notice.

(q) "Hearing" means “adjudicative proceeding” as defined by RSA 541-A:1, I, namely, “the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36,” .

(r) “Hearing notice” means a document containing the docket number and the schedule for a hearing.

(s) "Investigator" means a liquor enforcement officer who is authorized under RSA 126-K:9, RSA 176:9, and RSA 179:59 to enforce statutes administrative rules and commission orders.

(t) "License" means the authority granted by the commission to engage in the sale of liquor, wine, beverages, tobacco products, or e-cigarettes otherwise unlawful unless evidenced by such document.

(u) “Licensee” means the person to whom a license of any kind is issued by the commission.

(v) "Licensing" means the process including but not limited to the issuance, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license, or the imposition of terms for the exercise of a license.

(w) "Mitigating factor" means any conduct described in Liq 602.02 (d).

(x) "Nonadjudicative processes” means nonadjudicative processes as defined by RSA 541-A:1, X, namely, all agency procedures and actions other than an adjudicative proceeding.

(y) "Party" means ‘party’ as defined by RSA 541-A:1, XII, namely, each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.

(z) "Person" means "person" as defined by RSA 175:1, LIII, RSA 126-K:2, VI, or RSA 541-A:1 XIII, as applicable, and includes any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency or commission.

(aa) “Petition” means any application, complaint, request, or other communication to the commission other than a motion, seeking an order, license, or other relief.

(ab) "Point" means a numerical value assigned to a violation, used to determine a licensee's overall record for an administrative penalty or renewal of license.

(ac) "Presiding officer" means that individual to whom the chairman has delegated the authority to preside over a proceeding, if any; otherwise, it means the chairman.

(ad) “Proof by a preponderance of the evidence” means a demonstration by admissible evidence that a fact is more probable than not to be true.

(ae) “Public hearing and comment” means ‘public hearing and comment’ as described by RSA 541-A:11, I. (a), namely, at least one public hearing held on all proposed rules filed pursuant to RSA 541-A:3 that affords all interested persons reasonable opportunity to testify and to submit data, views, or arguments in writing or in electronic format, in accordance with the terms of the notice filed pursuant to RSA 541-A:3, I.

(af) “Recommendation of commission action” means the allegation of violation served on the person in charge of the premises licensed by the commission, by, or at the direction of, an investigator, setting forth the statute(s), commission orders, or rules violated, the facts supporting the violation(s), and the division’s recommendation.

(ag) "Revocation" means to void, annul by recalling, withdraw, or rescind any license issued by the commission.

(ah) “Serious bodily injury” means any harm to the body which causes severe, permanent, or protracted loss of or impairment to the health or of the function of any part of the body.

(ai) "Signature" means a person's written name used as a form of identification, whether in original, photocopied, or electronic form.

(aj) "Suspension" means that the license allowing sale of alcoholic beverages or tobacco, as applicable, is to be discontinued until such time as the suspension ends.

(ak) "Violation" means failure to comply with the requirements of RSA 175 through RSA 180, RSA 126-K, the commission administrative rules, or a commission order.

(al) “Violation history” means the record of violations.

(am) "Warning" means the final disposition in an adverse commission order that remains on the licensee’s violation history but does not impose an administrative penalty.

**Repeal Liq 202 through Liq 204, effective 7-1-06 (Document #8670-A):**

**Adopt Liq 202-Liq 204 to read as follows:**

**PART Liq 202 DECLARATORY RULING PROCEDURES**

Liq 202.01 Interpretation of Statutes/Administrative Rules. Any question relating to the specific applicability of RSA 175 through RSA 180, RSA 126-K relating to the commission, administrative rules adopted by the commission, or a commission order shall be submitted in writing as a petition to the commission requesting a declaratory ruling.

Liq 202.02 Declaratory Rulings by Commission.

(a) The chairman or the chairman’s designee shall, within 30 calendar days after submission of a petition under Liq 202.01, make a declaratory ruling in writing to the petitioner.

(b) The chairman or the chairman’s designee shall notify the petitioner in writing of the reason for delay if more than 30 calendar days are required to obtain:

- (1) Data from outside sources; or

(2) A legal opinion of the department of justice.

(c) Upon receipt of the information required in (b) above, the chairman or the chairman’s designee shall make a declaratory ruling within 30 calendar days.

#### PART Liq 203 PETITIONS FOR RULEMAKING

##### Liq 203.01 Petition for Adoption of Rules.

(a) Any person may petition the chairman to adopt, amend, or repeal a rule.

(b) The petition shall:

(1) Be in writing;

(2) Be sent to the chairman of the liquor commission;

(3) If amendment or repeal of a rule is sought, include the specific section numbers and the precise text of the existing rule or rules that the petitioner seeks to amend or delete;

(4) If amendment or adoption of a rule is sought, include the specific section number or numbers at issue, or the new section number or numbers proposed, and the precise new language proposed; and

(5) State clearly:

a. The name and address of the petitioner and their representative, if any;

b. All relevant supporting information and arguments; and

c. Identification of any statutes, rules, or other authority which authorize the commission to act as requested.

Liq 203.02 Process. Upon receipt of a complete petition as described in Liq 203.01, the commission shall follow the process provided in RSA 541-A:4.

#### PART Liq 204 RULEMAKING PUBLIC HEARINGS AND COMMENT PROCEDURES

Liq 204.01 Purpose. The purpose of this part is to provide a uniform procedure for the conduct of public hearings and comment concerning rulemaking.

##### Liq 204.02 Scope.

(a) These rules shall apply to all public hearings and comment conducted by the commission to solicit public comment concerning rulemaking.

(b) If any requirement set by these rules conflicts with an applicable statute, that statutory authority shall control.

Liq 204.03 Notice. Notice for public hearings and comment concerning rulemaking shall appear within the commission state liquor stores at least 20 calendar days prior to the hearing date(s) and shall provide the same information as required by RSA 541-A:6.

Liq 204.04 Moderator.

- (a) The public hearing shall be presided over by a moderator who shall act as the presiding officer.
- (b) The moderator shall:
  - (1) Call the public hearing to order;
  - (2) Make a recording of the public hearing;
  - (3) Allow participation as specified in Liq 204.06;
  - (4) Remove or have removed any person who disrupts the public hearing; and
  - (5) Close the public hearing.

Liq 204.05 Media Access.

- (a) Public t hearings shall be open to print and electronic media.
- (b) Television cameras shall only be placed in designated locations in the hearing room and interviews shall not be conducted in the hearing room during the hearing.

Liq 204.06 Public Participation.

- (a) Any person who wishes to speak on the issue or issues that are the subject of the public hearing shall place their name, contact information, and the names and addresses of organizations, entities, or other persons whom they represent, if any, on a speakers list before the last speaker on the list has finished speaking.
- (b) All those whose names appear on the speakers list shall receive an opportunity to speak at the public hearing.
- (c) The moderator shall recognize speakers who have not put their names and contact information on the speakers list after those who were on the speakers list have spoken.
- (d) The commission through the moderator shall:
  - (1) Refuse to recognize a person who refuses to give their full name and contact information;
  - (2) Limit the amount of time each speaker may speak to a reasonable time, considering the number of people who wish to speak;
  - (3) Limit a group to no more than 3 spokespersons, provided the members who are present may enter their names and contact information into the record as supporting the position by the group or organization; and

- (4) Revoke recognition of a speaker who refuses to keep their comments relevant to the issue or issues that are subject of the hearing, exceeds the specified time limitations, or is otherwise disruptive to the hearing.

**Repeal Liq 205, effective 7-1-06 (Document #8670-A):**

**Adopt Liq 205 to read as follows:**

**PART Liq 205 ADJUDICATIVE PROCEEDINGS AND NONADJUDICATIVE PROCESSES**

Liq 205.01 Purpose. This part shall provide the rules of practice and procedure for the conduct of adjudicative proceedings in contested cases and nonadjudicative processes.

Liq 205.02 Applicability.

(a) Any statement required by the commission or law, made under oath and known to be false, shall constitute sufficient cause for the denial or revocation of a license.

(b) All licenses issued by the commission under RSA 175 through RSA 180 automatically expire at the end of the licensing year with no presumption of renewal.

(c) Pursuant to RSA 178:3, X any applicant denied a new or renewal license shall be granted a hearing upon the applicant's request.

Liq 205.03 Presiding Officer; Withdrawal and Waiver of Rules.

(a) All hearings shall be conducted by a presiding officer.

(b) A presiding officer shall as necessary:

- (1) Schedule and hold hearings;
- (2) Regulate and control the course of a hearing;
- (3) Facilitate an informal resolution of a hearing;
- (4) Administer oaths and affirmations;
- (5) Issue subpoenas to compel the attendance of witnesses at hearings or the production of documents as provided in RSA 179:56, I;
- (6) Receive evidence at hearings, including oral testimony and documentary evidence, as provided in RSA 541-A:33;
- (7) Rule on procedural requests, including adjournments or continuances at the request of a party or at the presiding officer's discretion;
- (8) Question any person who testifies;
- (9) Cause a complete record of any hearing to be made, as specified in RSA 541-A:31, VI; and

- (10) Take any other action consistent with applicable statutes, rules, and case law necessary to conduct the hearing and complete the record in a fair and timely manner.
- (c) Unless waived by the parties, at the presiding officer’s discretion, or upon the motion of any party, a presiding officer shall, for good cause withdraw from any hearing.
- (d) Good cause shall include but not be limited to if a presiding officer:
- (1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial interest or family relationship, within the third degree of relationship, with any party;
  - (2) Has made statements or engaged in behavior which objectively demonstrates that the presiding officer has prejudged the facts of a case; or
  - (3) Believes that the presiding officer cannot fairly judge the facts of a case.
- (e) Mere knowledge of the issues, the parties, or any witness shall not constitute good cause for withdrawal.

Liq 205.04 Filing of Documents.

- (a) All documents filed under this part shall:
- (1) Unless provided solely in electronic format, be on good quality, non-clinging paper, 8-1/2 x 11 inches in size, clear, legible, and printed only on one side of the page or typed in clear size 12 font;
  - (2) Contain the title of the proceeding and the docket number when assigned on the first page;
  - (3) Be dated and signed; and
  - (4) State the signer's title, if applicable, and e-mail address, and telephone number.
- (b) A document conforming to the above requirements shall be considered filed with the presiding officer when it is actually received by the office of the commission in hard copy through the mail or at [HearingsOffice@liquor.nh.gov](mailto:HearingsOffice@liquor.nh.gov).
- (c) Copies of all petitions, motions, exhibits, memoranda, or other documents filed by any party to a proceeding governed by these rules shall be served by that party on all other parties to the proceeding.
- (d) All notices, orders, decisions, or other documents issued by the presiding officer or commission shall be served on all parties to the proceeding.
- (e) Service of all documents relating to a proceeding shall be made by personal delivery, e-mail, or first-class mail, postage prepaid, addressed to the last address given to the commission by the party.
- (f) When a party appears by a representative, service of a document on the party's representative at the postal or e-mail address stated on the appearance shall constitute delivery to the party.

Liq 205.05 Signature and Certification of Veracity.

(a) All petitions, motions, objections, and replies filed with the presiding officer shall be signed by the party, or if represented, by their representative.

(b) The signature on the document shall constitute certification by the signer that the signer:

(1) Has read the document;

(2) Is authorized to file it;

(3) To the best of the signer's information, knowledge, or belief, there are reasonable grounds to support it; and

(4) Has not filed it for the purpose of delaying the proceedings or any other improper purpose.

Liq 205.06 Waiver or Suspension of Rules by Presiding Officer. The presiding officer, acting at the presiding officer's discretion, or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to parties when the proposed waiver or suspension is lawful, and more likely to promote the fair, accurate, and efficient resolution of pending issues than adherence to a particular rule or procedure.

Liq 205.07 Computation of Time; Changes in Time.

(a) Any time period specified in this part shall:

(1) Begin with the day following the event, act, or default;

(2) Include the last day of the period unless it is a Saturday, Sunday, federal, or state legal holiday, in which event the period shall run to the end of the next day that is not a Saturday, Sunday, federal, or state legal holiday; and

(3) Unless otherwise provided by rule or statute, all time periods for days shall be calendar days.

(b) When the period prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, federal, and state legal holidays shall be excluded from the computation.

Liq 205.08 Limitations.

(a) Prosecutions shall be commenced within the following time periods:

(1) Violations, 2 years;

(2) Aggravated violations that endanger the public or result in serious bodily injury, 2 years; and

(3) Aggravated violations involving a fatality, 3 years provided that the violation was not discovered, and could not reasonably be discovered, by the division within 2 years.

(b) Time shall begin to run on the day after a violation occurs or, in the case of a violation comprised of a continuous course of conduct, on the day after that conduct or the licensee's complicity



therein terminates.

(c) A prosecution shall be commenced on the day when a recommendation of commission action is served on the licensee.

Liq 205.09 Settlements.

(a) In the case of a violation as defined by Liq 201.01(ak), except aggravated violations as defined in Liq 201.01(f), the director or the director’s designee and the licensee shall consult on a settlement by a nonadjudicative process in advance of an initial hearing. No party shall be required to settle.

(b) Upon agreement, if any, the parties shall complete a Form E-153 “Terms and conditions of Settlement” (revised 6/2024) containing the terms of settlement.

(c) The agreement shall not be final and binding until all parties sign the document, the presiding officer issues a commission order after a hearing, and all parties receive copies of the fully executed document. Upon agreement of the parties, the presiding officer shall waive the hearing or review the settlement document in a remote proceeding.

(d) By signing the document, the parties agree to the settlement in lieu of an adjudicative proceeding as a knowing and voluntary waiver of the licensee's due process rights.

(e) Settlement agreements shall be in accordance with the requirements of RSA 179:57 or RSA 126-K.

Liq 205.10 Standard and Burden of Proof. In all proceedings governed by this chapter the party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.

Liq 205.11 Appearance Before the Presiding Officer.

(a) An individual shall file a written appearance in a proceeding either on the individual’s own behalf or by a representative appointed in writing by the individual no later than 10 calendar days prior to the hearing.

(b) Persons other than individuals shall file a written appearance by:

(1) A licensed attorney;

(2) An officer, director, member, owner, or designated manager; or

(3) A representative of good character appointed in writing by an individual with authority to act for the person.

(c) Anyone who ceases a representation for which a written notice of appearance is filed shall immediately file a written notice of withdrawal of appearance.

Liq 205.12 Recommendation of Commission Action and Hearing Notice.

(a) When a violation occurs, a recommendation of commission action” shall be served on the licensee. The recommendation of agency action shall include the licensee’s name and license number, the facts supporting the alleged violation, and the law or rule allegedly violated.

(b) After service, the recommendation shall be reviewed by a division supervisor and approved in its final form.

(c) The final recommendation of commission action of administrative notice or contested waiver shall be filed with the presiding officer within 30 days of initial service on the licensee.

(d) The presiding officer shall issue a hearing notice after receiving the recommendation of commission action. The hearing notice shall include the time, date, and location of the hearing.

(e) The presiding officer shall serve the hearing notice and the final recommendation of commission action on the division and the licensee within 30 days after receipt of the final recommendation of commission action.

(f) The hearing notice shall contain the docket number and the date for a hearing, which shall be at least 60 days from the date of service.

(g) The docket number shall appear on all subsequent pleadings by the parties and orders or decisions of the commission.

(h) The presiding officer shall carry out service in the following manner:

(1) The presiding officer shall serve the hearing notice and final recommendation upon all parties to the proceeding by certified mail, e-mail, or by personal service, at least 60 days before the first hearing date;

(2) The date of service shall be the date of personal delivery, receipt of certified mail, or date sent by e-mail; and

(3) Service to the licensee at the address provided to the commission pursuant to RSA 178:3, VIII or the address provided by the licensee’s representative shall constitute *prima facie* evidence that the licensee received the document.

(i) Upon a written motion to change a hearing date showing good cause, which shall include, but not be limited to a party requesting a speedy hearing, the presiding officer shall reschedule the hearing, provided that the change does not result in prejudice to any party.

(j) The presiding officer shall provide reasonable notice of any change to the hearing notice to all parties. All hearing notices shall be prepared and forwarded to all parties or their representatives to afford all parties sufficient opportunity to prepare for and develop the issues to be considered and decided at the hearing.

Liq 205.13 Production of Information. The director shall provide the party or the party’s duly appointed representative with all exculpatory evidence, reports, and a list of any documents obtained during an investigation within 15 days after the service of the hearing notice. Production of newly obtained evidence shall be an ongoing obligation for the director.

Liq 205.14 Pleadings, Petitions, and Responses.

- (a) The following procedures shall apply to all pleadings, petitions, and responses:
  - (1) The only pleadings permitted other than motions shall be petitions and replies thereto;
  - (2) Unless otherwise specified by statute or rule, all petitions shall contain:
    - a. The name and address of the petitioner;
    - b. The name and address of the petitioner's representative, if any;
    - c. A concise statement of the facts which cause the petitioner to request the commission to act;
    - d. The action which the petitioner requests the commission to take;
    - e. The identification of any statutes, rules, orders, or other authority which entitles the petitioner to have the commission to act as requested; and
    - f. The name and address of the licensee, if any, against whom the petitioner complains, or against whom the petitioner requests the commission to act;
  - (3) Unless otherwise required by rule or statute, all replies shall contain the following:
    - a. The name and address of the respondent;
    - b. The name and address of the respondent's representative, if any;
    - c. A statement admitting, denying, or claiming to have insufficient information to respond to, each and every fact in the petition;
    - d. A statement admitting or denying the authority identified in support of the action requested by the petitioner;
    - e. A statement admitting or denying the authority identified in support of the action requested by the petitioner;
    - f. A concise statement of each and every additional or different fact which causes the respondent to request the commission not to act, or to act differently from that requested by the petitioner; and
    - g. The action which the respondent requests the commission to take;
  - (4) Unless otherwise provided by statute or rule, a reply shall be filed within 30 days after service of a petition;
  - (5) Any fact contained in the petition shall be deemed admitted unless specifically denied by the respondent or the respondent states that the respondent lacks sufficient information to deny or admit the fact; and

- (6) The petitioner shall be presumed to deny all allegations in the reply and no response shall be permitted to the reply without advance authorization requested from and granted by the presiding officer for good cause.
- (b) The following procedures and criteria shall apply to all motions and objections thereto:
- (1) Unless presented in an oral session of a proceeding, all motions and replies shall be served in writing upon all parties;
  - (2) All motions shall state clearly and concisely:
    - a. The purpose of the motion;
    - b. The statutes, rules, orders, or other authority authorizing the relief sought in the motion; and
    - c. The facts claimed to constitute the grounds requiring the relief requested by the motion;
  - (3) Objections to motions shall state clearly and concisely:
    - a. The grounds for the objection of the party;
    - b. The action which the party requests the presiding officer to take on the motion; and
    - c. The statutes, rules, order, or other authority relied upon in opposition to the motion;
  - (4) An objection shall admit, deny, or state that the respondent has insufficient information to admit or deny each and every fact contained in the motion;
  - (5) Failure to object or claim insufficient information shall constitute the admission of fact for the purpose of the motion only;
  - (6) All motions shall be decided upon the writings submitted or statements made during an oral session of a proceeding;
  - (7) Repetitious motions shall not be accepted;
  - (8) Unless provided by statute, this chapter, or orders of a court, objections to written motions shall be filed within 10 calendar days after the party receives a copy of the motion; and
  - (9) Failure to object to a motion within the time allowed shall constitute a waiver of objection to the motion.

Liq 205.15 Exhibits.

- (a) The division shall mark all exhibits with numbers and the other party(ies) shall mark all exhibits with capital letters. If there are multiple other parties, each party's exhibits shall also be marked with its name.
- (b) Other than original documents, all exhibits shall be PDF documents and bates stamped.

Liq 205.16 Calendar of Hearings. The person delegated authority by the chairman shall maintain a calendar of all hearings scheduled before the commission.

Liq 205.17 Pre-Hearing Conferences.

(a) Any party may request, or the presiding officer shall schedule at the presiding officer's discretion, one or more nonadjudicative pre-hearing conferences in accordance with RSA 541-A:31, V and RSA 541-A:38.

(b) The presiding officer shall provide notice to all parties prior to holding any pre-hearing conference.

(c) Topics addressed during pre-hearing conferences may include, but are not limited to, consideration of the following:

- (1) Offers of settlement;
- (2) Changes to standard procedures desired during the hearing, by consent of the parties;
- (3) Consolidation of examination of witnesses by the parties;
- (4) Stipulation of the maximum and minimum penalties for the alleged offense under statute or rule;
- (5) Stipulation of the issues;
- (6) Stipulations or admissions of the issues of fact or proof;
- (7) Limiting the number of witnesses;
- (8) Stipulation as to the recommendation of the director or the director's designee for the disposition of the alleged violation;
- (9) Identification of, and stipulation to, evidence and exhibits; and
- (10) Any other matters that may aid in the disposition of the case.

(d) The presiding officer shall issue and serve upon all parties a pre-hearing order incorporating the matters determined at the pre-hearing conference.

(e) Any party to a pre-hearing conference may waive their right to a hearing based on the stipulations agreed to, provided that any such stipulations and waiver are signed in writing or are electronically recorded with the consent of the party.

Liq 205.18 Role of Division Staff and Complainants.

(a) Division staff shall participate in adjudicatory proceedings as assigned by the director.

(b) Unless called as a witness or granted party or intervener status, a person who initiates an investigation by petition, complaint, or other inquiry to the commission about the conduct of a licensee who becomes a party shall have no role in any enforcement or disciplinary hearing.

Liq 205.19 Intervention, Joinder, and Severance.

- (a) Petitions to intervene in an adjudicative proceeding shall meet the following requirements:
  - (1) Petitions for intervention shall be filed at least 3 business days before the commencement of a hearing or at any time if the presiding officer determines that such intervention is in the interests of justice and shall not impair the orderly and prompt conduct of the proceeding;
  - (2) Petitions for intervention shall state, with particularity:
    - a. The petitioner's interest in the subject matter of the proceeding;
    - b. The petitioner's position with respect to the subject matter of the hearing;
    - c. Why the interest of the parties and the orderly and prompt conduct of the proceeding shall not be impaired; and
    - d. Any other reasons why the petitioner should be permitted to intervene;
  - (3) An intervener shall be subject to the same limitations that are applicable if the intervenor had been a party from the commencement of the proceeding; and
  - (4) An intervener shall participate in the remaining aspects of the proceeding from the time of intervention, and no phase or portion of the proceeding shall be repeated for the benefit of the intervener.
- (b) Joinder and severance shall be carried out in the following manner:
  - (1) Whenever it appears to the presiding officer, upon motion or at the presiding officer's discretion, that 2 or more proceedings involve substantially similar or substantially related issues, the presiding officer shall join those proceedings for hearings, decision, or both, provided no party shall be prejudiced by the joinder; and
  - (2) Whenever it appears to the presiding officer, upon motion or at the presiding officer's discretion, that prejudice to a party or parties or undue delay might be avoided, the presiding officer shall sever one or more issues or parties, and dispose of those issues in a separate proceeding.

Liq 205.20 Conduct of Hearings.

- (a) All parties shall have the opportunity to present testimonial and documentary evidence, cross-examine adverse witnesses, and make opening and closing statements.
- (b) Introduction and admissibility of evidence shall be governed by the following:
  - (1) Hearings shall not be bound by the New Hampshire rules of evidence or the federal rules of evidence;
  - (2) All relevant, reliable, and material evidence shall be admissible;

- (3) Evidence that is irrelevant, immaterial, unduly repetitive, or legally privileged shall be excluded; and
  - (4) Evidence may include, but not be limited to, depositions, affidavits, official documents, and testimony of witnesses.
- (c) The presiding officer shall:
- (1) Officially notice facts;
  - (2) So state in the official record; and
  - (3) Set a time for any party to show the contrary.
- (d) Any person offering testimony, evidence, or arguments shall state for the record their name, and role in the proceeding and if the person is representing another person, the represented person shall also be identified.
- (e) Testimony shall be offered in the following order:
- (1) The party or parties bearing the burden of proof and such witnesses as the party may call;
  - (2) The opposing party or parties and such witnesses as the party may call;
  - (3) Rebuttal witnesses; and
  - (4) Surrebuttal witnesses.
- (f) During a hearing, the process shall be:
- (1) In a hearing concerning proof of an alleged violation, the director or the director's designee shall open the proceedings through presentation of the director's witnesses and exhibits;
  - (2) The presiding officer shall, if the presiding officer has questions, ask them of the witnesses during or subsequent to direct or cross-examination;
  - (3) The opposing party may present witnesses, their own statements, or choose to provide a narrative presentation of their testimony;
  - (4) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered; and
  - (5) Transcripts of testimony and documents or other materials, admitted into evidence shall be public records unless a party establishes that all or part of a transcript or document is exempt from disclosure under RSA 91-A:5 or other applicable law.

Liq 205.21 Continuances.

(a) Any party to an adjudicative proceeding may make an oral or file a written motion with the presiding officer establishing good cause that a hearing or the time provided for the filing of any documents be continued to a later date or time. Written motions shall be filed at least 5 days before the hearing.

(b) Good cause shall include but not be limited to the unavailability of parties, witnesses, or attorneys necessary to conduct the hearing, the likelihood that a hearing will not be necessary because the parties have reached a settlement, or any other circumstances that demonstrate that a continuance will assist in resolving the case fairly.

(c) If the later date, time, and place are known at the time the continuance is granted, the date, time, and place shall be stated on the record. If the later date, time, and place are not known at the time the continuance is granted, the presiding officer shall issue a written scheduling order stating the date, time, and place of the new hearing as soon as practicable.

(d) Any party to whom notice was served in accordance with this chapter who fails to appear and advise the commission of inability to appear prior to the start of the hearing at which evidence shall be presented, shall be in default. The presiding officer shall either:

- (1) Dismiss the proceeding if the party with the burden of proof fails to appear; or
- (2) Hear the testimony and receive evidence by offer of proof from the party with the burden of proof.

Liq 205.22 Mandatory Pre-Hearing Disclosure of Witnesses and Exhibits.

(a) At least 20 days before a scheduled evidentiary hearing, the parties shall serve each other and file with the presiding officer a list of all witness's names and addresses to be called at the hearing with a brief summary of their testimony, a list of all documents or exhibits to be offered as evidence at the hearing, and a copy of each document or exhibit.

(b) Absent a showing of accident, mistake, or misfortune, only witnesses listed in the pre-hearing disclosure shall be allowed to testify and only documents or exhibits, so listed, shall be received in evidence.

Liq 205.23 Motions to Compel Production of Information.

(a) Any party may make a motion requesting that the presiding officer order the parties to comply with Liq 205.21. The motion shall be filed at least 15 days before the hearing.

(b) The moving party's motion shall:

- (1) Set forth in detail those factors which it believes justify its request for information; and
- (2) List with specificity the information it is seeking to discover.

(c) An objection, if any, shall be filed within 10 days of receipt of the motion.

(d) When a party has demonstrated that such requests for information are necessary for a full and fair presentation of the evidence at the hearing, the presiding officer shall grant the motion and shall continue the hearing as may be necessary to assure complete production of information.

Liq 205.24 Record of the Hearing.



(a) The commission shall record the hearing by tape recording or other method that will provide a verbatim record.

(b) If any person requests a transcript of the taped record and provides payment for the cost of the transcription, the commission shall cause a transcript to be prepared and shall provide copies of the transcript to all parties.

(c) At the request of a party to any proceeding involving disciplinary action, the record of the proceeding shall be made by a certified shorthand court reporter provided by the commission at the requesting party's expense. A request for a certified shorthand court reporter shall be filed at least 10 business days prior to the hearing.

(d) The record of the proceeding shall be maintained for a period of one year from the date of the final commission order.

Liq 205.25 Proposed Findings of Fact and Conclusions of Law.

(a) Any party may submit proposed findings of fact and conclusions of law to the presiding officer prior to or at the hearing.

(b) Upon request of any party, or if the presiding officer determines that proposed findings of fact and conclusions of law would serve to clarify the issues presented, the presiding officer shall specify a date after the hearing for the submission of proposed findings of fact and conclusions of law.

(c) In any case where proposed findings of fact and conclusions of law are submitted, the decision shall include rulings on the proposals.

Liq 205.26 Closing the Record.

(a) After the conclusion of the hearing, the record shall be closed and no other evidence shall be received into the record, except as allowed by paragraph (b) of this section and Liq 205.24.

(b) Before the conclusion of the hearing, a party may request that the record be left open to allow the filing of specified evidence not available at the hearing.

(c) If the other parties to the hearing have no objection, or if the presiding officer determines that such evidence is necessary to a full consideration of the issues raised at the hearing, the presiding officer shall keep the record open for the period of time necessary for the party to file the evidence.

Liq 205.27 Reopening the Record. At any time prior to the issuance of the decision on the merits, the presiding officer, at the presiding officer's discretion, or on the motion of any party, shall reopen the record to receive relevant, material, and non-duplicative testimony, evidence, or arguments not previously received, if the presiding officer determines that such testimony, evidence, or arguments are necessary to a full and fair consideration of the issues to be decided.

Liq 205.28 Public Access.

(a) Except as otherwise provided by law, hearings shall be open to the public.

(b) Members of the media shall be admitted to the hearings whenever the public is permitted.

Liq 205.29 Control of Hearing.

(a) In cases of disorder or refusal to comply with the rules of the hearing, the presiding officer shall use reasonable means to control the hearing such as the actions set out below.

(b) Parties, representatives, and witnesses shall not engage in bitter exchanges, vulgarities, or abuse or make offensive or insulting comments. When such an act is committed, the presiding officer shall admonish the offender reminding the offender that such behavior does not contribute to a fair hearing and impedes the orderly disposition of a proceeding.

(c) If the offense is repeated and further admonition appears fruitless, the presiding officer shall exclude a disorderly person from the hearing.

(d) A disorderly person shall not lose or have an administrative penalty assessed solely because of the person's offensive conduct or the offensive conduct of the person's representative or witness.

(e) Notwithstanding (d) above, if a disorderly person's offensive conduct is so flagrant that it prevents the completion of the proceeding, the disorderly person shall be warned that their conduct shall result in a default judgment entered for the proceeding. The proceeding shall be reopened if such party submits their offer of proof or argument within 10 days in an orderly fashion.

Liq 205.30 Sequestering of Witnesses.

(a) If there is a dispute of facts between the parties in which the credibility of testimony might determine the outcome of the hearing, the presiding officer, on the request of a party, shall sequester witnesses until they are called to testify.

(b) Notwithstanding (a) above, a witness shall be sequestered only if the parties shall have at least one individual present throughout the process to ensure neither side is placed at an unfair advantage.

Liq 205.31 Oaths or Affirmations.

(a) In any adjudicative hearing, an oath or affirmation shall be administered by the presiding officer to each witness prior to identifying each witness and receiving testimony.

(b) If a witness asserts an objection to the taking of an oath for religious or other related reasons, an affirmation shall be administered.

(c) Interpreters shall be administered an oath or affirmation to translate truthfully and accurately, to the best of their ability, all questions asked, and answers given.

(d) Once a witness or interpreter has taken the oath or made the affirmation at any hearing it shall not be necessary for the witness or interpreter to be sworn again for subsequent testimony on the same day and in the same case. The record of the proceeding shall indicate that a person was recalled to testify and reminded that the witness or interpreter was still under oath or affirmation.

Liq 205.32 Commission Orders.

(a) All commission orders of the presiding officer shall:

(1) Be made based on evidence of record only;

- (2) Be based on a preponderance of the evidence considering that the burden of proof is on the party alleging a fact or circumstance;
  - (3) Provide the legal analysis and conclusions supporting the order; and
  - (4) Take no account of any ex-parte communication of any kind made regarding the proceeding.
- (b) The presiding officer shall prepare a written commission order setting forth the findings of fact, the action to be taken, and the reasons therefore.
- (c) If the violation was not proven, the presiding officer shall issue a commission order that the licensee’s violation history be cleared of the allegation.

Liq 205.33 Timing and Service of Commission Orders.

- (a) The presiding officer shall issue commission orders:
- (1) Within 15 business days after closing of the record or within 15 business days of receipt of a legal opinion sought by the presiding officer in conjunction with an adjudicative proceeding; and
  - (2) Served on all parties through the mail, postage prepaid, e-mail, or by personal delivery;
- (b) The parties may agree to waive the deadline for the presiding officer to issue a commission order.
- (c) Proof of the date of receipt of the commission order by the party shall be:
- (1) A receipted copy of the commission decision to any owner, partner, member, officer, attorney, director, or person in charge of the party;
  - (2) The affidavit of the employee making in-hand service attesting to that in-hand service; or
  - (3) Record of transmission of e-mail.
- (d) Service to the licensee at the address provided to the commission pursuant to RSA 178:3, VIII or the address provided by the licensee’s representative shall constitute *prima facie* evidence that the licensee received the document;
- (e) The commission order shall constitute a final decision for rehearing purposes.

Liq 205.34 Rehearing.

- (a) Any motion for rehearing pursuant to RSA 177:11, V or RSA 179:57, II from a final commission order shall be in accordance with RSA 541 and determined by the presiding officer.
- (b) Any motion for rehearing pursuant to RSA 178:3, (X) shall be filed within 30 days of receipt of the decision, determined by the presiding officer, and denied unless it demonstrates that the commission acted illegally in respect to jurisdiction, authority, or observance of law, whereby it arrived at a conclusion

which could not legally or reasonably be made, or unsustainably exercised its discretion or acted arbitrarily, unreasonably, or capriciously.

**Readopt with amendment Liq 206, effective 6-14-17 (Document #12207-B), to read as follows:**

PART Liq 206 PROCEDURES AND CONSIDERATIONS AFTER ADVERSE COMMISSION ORDER

Liq 206.01 Presiding Officer Consideration.

(a) In determining the administrative penalty to impose following a finding of a violation, the presiding officer shall consider:

- (1) All testimony or evidence admitted;
- (2) Any aggravating factor or mitigating factor that is offered in any defense or prosecution, as required by RSA 179:56 III (a), and provided in Chapter Liq 600;
- (3) The licensee's violation history including all prior violations and warnings in the past 7 years;
- (4) The danger posed to public health and safety by the violation;
- (5) Any adverse impact on the community of the licensee's business as operated; and
- (6) The requirements of Liq 602.

Liq 206.02 Administrative Penalties After Presiding Officer Hearings. After hearing all evidence regarding a violation and considering all aggravating and mitigating factors presented, the presiding officer shall:

- (a) Determine the administrative penalty based on the preponderance of evidence;
- (b) Impose an appropriate penalty considering all circumstances, subject to the limitations of RSA 179:57, I, and Chapter Liq 600; and
- (c) Issue a decision within 15 business days of the final hearing, provided, however, a licensee or their appointed representative may waive the 15-day deadline for the presiding officer to issue a decision.

Liq 206.03 Fines. All administrative fines imposed by the presiding officer shall be paid within 5 business days of receipt of the commission order.

**Repeal Liq 207 and Liq 208, effective 6-14-17 (Document #12207-A):**

**Adopt Liq 207 and Liq 208 to read as follows:**

PART Liq 207 PETITIONS FOR REVOCATION

Liq 207.01 Petition for Revocation.

(a) The governing body of any city or town which has accepted the provisions of RSA 663:5, I(b)-(d), may petition the commission pursuant to RSA 179:57, I-a, for the revocation of a liquor license for a licensed premise located within that community.

(b) The petition shall:

- (1) Be in writing;
- (2) Be sent to the chairman of the liquor commission;
- (3) Be limited to a single licensed location; and
- (4) State clearly:
  - a. The name and address of the petitioner and its representative, if any;
  - b. Why the commission should adopt the request specified in the petition;
  - c. Pertinent factual data supporting the petition; and
  - d. Views or arguments in support of the petition.

(c) The governing body shall provide a copy of the petition, with supporting evidence, to the licensee by email, certified mail, or hand delivery to the licensed premise.

(d) The governing body shall file the petition and all supporting evidence with the commission.

Liq 207.02 Commission Response.

(a) Within 10 business days after submission of a complete petition, the presiding officer shall consider it and:

- (1) Require specific written information be furnished to clarify the petition, if necessary;
- (2) Set a date for the licensee to respond;
- (3) Deny the petition in writing, stating the reasons therefore; or
- (4) Accept the petition, schedule a hearing within 10 business days from the date the petition is accepted, and notify the petitioner and licensee of the hearing by telephone and either certified mail or electronic mail with receipt confirmation requested.

(b) Any notice to the licensee as required by Liq 207.02(a)(2) or (4) above, shall include a docket number, and a copy of the petition and all supporting documentation.

Liq 207.03 Defense of Petitions.

(a) The presiding officer shall deny the petition for any of the following:

- (1) Lack of information documenting the charges in the petition; or

- (2) The facts or practices alleged in the petition are not sufficient to support revocation.
- (b) The following shall not be a defense to the petition:
  - (1) The licensee not receiving notice sent as required in Liq 207.01(c);
  - (2) The alleged problems caused by a manager or employee with or without the knowledge of the licensee; or
  - (3) The alleged problems caused by patrons on the premises.

Liq 207.04 Revocation Petition Hearings.

- (a) The presiding officer shall hold hearings initiated under this part subject to the provisions of Liq 205, with the exception that Liq 205.09, Liq 205.21, and Liq 205.20 (f)(1) and (2) shall not apply.
- (b) The burden of proof shall be on the municipality.

Liq 207.05 Grounds for Holding Revocation Hearings. The presiding officer shall hold revocation hearings when the petitioner provides evidence that:

- (a) There is continual or longstanding disregard of state or local law or administrative rules at the licensed business; or
- (b) The location of the business is not appropriate considering either the nature of the business as currently operated, the nature of the neighborhood, or the number of similar businesses in the neighborhood, as required by RSA 178:3, VII(f), as shown by:
  - (1) Negative economic impact directly attributable to the licensed business on neighboring businesses, other than competitive;
  - (2) Reduction of neighborhood property values attributable to the licensed business;
  - (3) Negative impact on the quality of life of area residents, as shown by:
    - a. Increased traffic attributable to the licensed business;
    - b. Litter attributable to the licensed business;
    - c. Harassment or threatening behavior by patrons at the business toward residents or passersby; or
    - d. Increased crime or disorderly behavior in the neighborhood directly attributable to the licensed business;
- (c) The licensed business is not operated primarily for the purposes indicated by the license type;
- (d) The licensee has failed to meet the requirements of RSA 178:21, II (a)(1) or RSA 178:22, V(e)(1)(A); or
- (e) The license holders do not meet the requirements of RSA 178:3, VII (b).

Liq 207.06 Licensee Record. The presiding officer shall consider the following information for the purposes of revocation:

- (a) The record of violations of the licensee taken as a whole for the past 7 years; and
- (b) The truthfulness of the licensee in their answers to the original and renewal applications and any amendments thereto.

Liq 207.07 Evidence.

(a) The presiding officer shall consider evidence as provided in RSA 541-A:33, including but not limited to:

- (1) Police logs and reports;
- (2) Documented complaints made to:
  - a. Local or state police;
  - b. Other local officials; or
  - c. State officials or the commission;
- (3) Orders, correspondence, or other documents from town officials to the licensee and any responses;
- (4) Police and court records concerning the licensee, licensed premise, or persons in charge;
- (5) Petitions or other statements by area residents or neighboring businesses;
- (6) Commission records of licensee conduct; and
- (7) Records demonstrating licensee non-compliance with:
  - a. Zoning requirements;
  - b. Health or safety requirements; or
  - c. Other local or state ordinances.

(b) The licensee may introduce exculpatory evidence for the presiding officer's consideration.

Liq 207.08 Revocation. The presiding officer shall revoke the license as requested by the petitioner upon finding that the facts and law support revocation. The commission order shall constitute a final decision for appeal purposes.

Liq 207.09 Appeal. Appeals from a decision of the commission shall be in accordance with RSA 541.

## PART Liq 208 LICENSING PROCESS

Liq 208.01 Purpose. The purpose of this part is to set forth the manner in which the commission will provide notice to municipalities prior to issuing or renewing licenses, the manner in which the commission will communicate denials of licenses to license applicants, and how the commission will hold hearings following such denials upon the request of an applicant.

### Liq 208.02 Notice to Municipalities.

(a) Prior to renewing or issuing a new license, the commission shall notify all affected municipalities and afford them an opportunity to submit data, views, or comments as required by RSA 541-A:39. Such opportunity shall include but not be limited to, requesting a public comment hearing in the affected municipality or municipalities.

(b) The notices shall be by first class mail to the town or city clerk.

Liq 208.03 License Denials. When denying a license application, either new or renewal, the chairman shall:

(a) Notify the applicant in writing, specifying the reason(s) for denying the application;

(b) Notify the applicant of its right to request a hearing;

(c) Notify the applicant, if a renewal, that the license shall lapse on the expiration date and that no extensions shall be granted; and

(d) Notify the applicant that denials based on points as defined in Liq 601.03 include the number of points accumulated, the violations causing the points, and the *prima facie* evidence that any licensee accumulating 12 or more points in a license year does not meet the criteria of RSA 178:3 VII (b) and (e).

Liq 208.04 License Denial Hearings. License denial hearings shall be conducted under the provisions of Liq 205, with the exception that Liq 205.09, Liq 205.12, and Liq 205.20 (f)(1) and (2) shall not apply.

## **Readopt Liq 209, effective 6-14-17 (Document #12208), to read as follows:**

## PART Liq 209 SUSPENSIONS OF LICENSES PRIOR TO A HEARING

### Liq 209.01 Immediate Suspensions Requiring a Hearing.

(a) When the commission receives information, which the commission deems credible, indicating that a licensee has engaged in conduct that poses an immediate danger to public health, safety, or welfare, the commission shall, pursuant to RSA 541-A:30, III, immediately suspend such person's license and commence an adjudicative proceeding not later than 10 working days after the date of the commission order suspending the license.

(b) Suspension orders under this section shall include a notice of hearing as provided in Liq 205-206 setting forth all information required by RSA 541-A:31, III.

(c) No hearing date established in a proceeding conducted under this section shall be postponed at the request of the licensee unless the licensee agrees in writing to waive the 10 working day requirement. If the licensee waives the 10 working day requirement, the suspension shall remain in effect until the



completion of the hearing.

Liq 209.02 Emergency Suspensions – No Hearing Required.

(a) In accordance with RSA 179:56, III (c), if the commission possesses credible information indicating that a licensee is engaging in conduct or that circumstances exist that present a risk to public health, safety, or welfare constituting an emergency, the commission shall suspend, for a period of not more than 24 hours, any license issued under the provision of this title.

(b) Any such suspension shall be approved directly by the chairman or deputy commissioner before taking effect.

**APPENDIX**

<b>RULE</b>	<b>STATUTE</b>
Liq 201	RSA 541-A:30-a
Liq 202	RSA 176:14, IV
Liq 203	RSA 176:14, II
Liq 204	RSA 541-A: 1 <i>et seq</i>
Liq 205-206	RSA 179:56; RSA 541-A:30-a
Liq 207	RSA 176:14, V
Liq 208	RSA 541-A:39; RSA 178:3, VII, X
Liq 209	RSA 179:56, III(c); RSA 541-A:30, III