

Readopt with amendment and renumber Liq 301 through Liq 306, Liq 308, and Liq 309, effective 11-21-13 (Document #10463), as Liq 301 through Liq 305, cited and to read as follows:

CHAPTER Liq 300 APPLICATION DE-LISTING AND LISTING PROCEDURES

Statutory Authority: RSA 176:14, RSA 176:13, II and RSA 177:7.

PART Liq 301 SYSTEM ESTABLISHED

Liq 301.01 Purpose. The purpose of this chapter is to set forth the manner in which liquor and wine representatives or manufacturers of spirits, wines, and nonalcoholic products apply to have items sold through the commission in the state of New Hampshire, and the manner in which the commission lists and delists, spirits, wines, and nonalcoholic products for sale in the state.

Liq 301.02 Definitions

(a) “Available wines and spirits” means those wines and spirits listed by the commission and given a brand code for sale to licensees through the bailment warehouse.

(b) “Bailment warehouse” means the contracted bailment warehouse in New Hampshire holding inventory owned by the commission, liquor and wine representatives, vendors, or manufacturers.

(c) “Brand” means the assigned name to a product or group of products.

(d) “Brand code” means a number assigned by the commission to each size and brand of a product for identification purposes.

(e) “Class” means spirits, wines, and nonalcoholic products having common characteristics and which are grouped for statistical purposes.

(f) “Chairman” means the chairman of the commission.

(g) “Commission” means the New Hampshire liquor commission.

(h) “Commission warehouse” means the warehouse operated by the commission for holding and distributing products not held in the bailment warehouse.

(i) “Delist” means that a spirit, wine, or nonalcoholic product will not be added to, or will be removed from, the commission’s list of products approved for sale in New Hampshire. The term includes “delisted.”

(j) “Dessert wine” means wine that has been fortified to an alcoholic content of over 15.5% by having brandy or spirits added.

(k) “Division” means the commission’s division of marketing, merchandising, and warehousing.

(l) “Fiscal month” means portion of each fiscal year consisting of either 5 or 4 fiscal weeks.

(m) “Fiscal week” means a 7-day accounting period used by the commission for accounting purposes.

(n) “Fiscal year” means the fiscal year of the state which commences on the first day of July and ends on the 30th day of June each year.

- (o) “Gross profit” means the difference between sales and costs calculated in dollars.
- (p) “Licensee” means the person to whom an on-premises, off-premises, agency, or other license to sell spirits or wines is issued by the commission.
- (q) “Listed item” means spirits, wines, and nonalcoholic products approved pursuant to Liq 302 through Liq 304, as applicable, for sale in state liquor stores, from the commission warehouse, or from the bailment warehouse.
- (r) “Liquor and wine representative” means “liquor and wine representative” as defined in RSA 175:1, XLIV.
- (s) “Manufacturer” means a New Hampshire-based person or company that produces finished products from raw materials by using various tools, equipment, and processes, who then sells such products to the commission.
- (t) “Nonalcoholic products” means any beverage containing less than 0.5 percent alcohol by volume, or spirit and wine related accessories.
- (u) “Point of sale materials” means materials used for merchandizing a product by advertising a product within state liquor stores.
- (v) “Primary source” means the domestic distiller, producer, owner of the commodity at the time it became a product, bottler, or the exclusive agent of any such domestic distiller, producer, owner of the commodity at the time it became a product, or bottler. In the case of products imported from outside the United States the primary source of supply means the foreign producer, owner, bottler, or agent or the primary importer or the exclusive agent in the United States or the foreign distiller, producer, or owner.
- (w) “Proof unit” means $\frac{1}{2}$ of one percent alcohol by volume at 68 degrees Fahrenheit.
- (x) “Proprietary” means used, made, or marketed by one having the exclusive right.
- (y) “Seasonal listing” means a limited number of spirits and wines in special packaging intended for sale during seasonal periods in state liquor stores and from warehouses.
- (z) “Spirits” means a distilled and rectified alcoholic product.
- (aa) “State liquor stores” means those retail stores operated by the commission for the sale of spirits, wine, and nonalcoholic products to consumers and licensees.
- (ab) “Test market” means the sale of a spirit, wine, or nonalcoholic product for a period, and in a manner, specified by the commission consistent with these rules during which that product is marketed in state liquor stores to determine consumer acceptance and product profitability.
- (ac) “Tax and Trade Bureau (TTB)” means the Alcohol and Tobacco, Tax and Trade Bureau of the United States Department of the Treasury.
- (ad) “Vendor” means an individual or company that sells goods to the commission or a liquor and wine representative.

(ae) “Vermouth” means a wine-based product which has been mixed with herbs and has an alcohol content of greater than 15.5% by volume.

(af) “Vintage” means the year that wine grapes are harvested.

(ag) “Wine” means, collectively, “wine-domestic” as defined in RSA 175:1, LXVII, “wine-fortified” as defined in RSA 175:1, LXVIII, “wine-table” as defined in RSA 175:1, LXIX, and includes dessert wine and vermouth. Wine does not include beverages as defined in RSA 175:1, VIII.

PART Liq 302 GENERAL REQUIREMENTS

Liq 302.01 Purpose. The purpose of this part is to establish and maintain a procedure for listing products in 2 situations:

(a) Approval of products for sale only through the commission warehouse, bailment warehouse, or both to licensees and not through state liquor stores;

(b) Approval for products to be sold in state liquor stores; and

(c) For products to be sold in state liquor stores:

(1) In addition to the requirements of this part Liq 302, a request for listing of a spirit or nonalcoholic product for sale in state liquor stores shall meet the requirements of part Liq 303.

(2) In addition to the requirements of this part Liq 302, a request for listing of a wine for sale in state liquor stores shall meet the requirements of part Liq 304.

Liq 302.02 Procedure. A liquor and wine representative or manufacturer, as applicable, requesting that any spirit, wine, or nonalcoholic products be considered for listing by the commission shall adhere to the following:

(a) Each request for listing of a spirit, wine, or nonalcoholic product for sale through state liquor stores shall be submitted by a liquor and wine representative or manufacturer to the commission, by mail or electronic format to the attention of the chairman, and shall contain:

(1) The information required by Form M-1 “Offer Letter” (revised 6/2024);

(2) The information required by Form M-220 A “Control State Standard Quotation & Specification Form” (revised 6/2024);

(3) A certificate of label approval or exemption “COLA” issued by TTB, as applicable; and

(4) Product samples, as required by the commission;

(b) Each request for listing of a spirit or wine for sale only through the warehouse, and not in state liquor stores, shall be submitted by a liquor and wine representative or manufacturer to the commission, by mail or in electronic format to the attention of the chairman, and shall contain:

(1) The information required by Form M-220 A “Control State Standard Quotation & Specification Form” (revised 6/2024); and

- (2) A certificate of label approval or exemption “COLA” issued by TTB, as applicable;
- (c) Only one brand item shall be submitted per request;
- (d) Forms and documents included in each request shall be filled in a legible manner with complete information presented;
- (e) In the event of an incomplete or incorrect request, such request shall not be processed until all required information has been corrected or completed. The division shall, within 5 business days of the initial filing of the request, inform the requestor of any omissions or errors and any additional information needed; and
- (f) Consistent with RSA 179:31, VII(b), and Liq 506.09, the commission shall reject, as ineligible for listing, any products with packaging or promotional materials that include subject matter or illustrations the commission determines are reasonably likely to induce minors to drink.

Liq 302.03 Packaging and Defects.

- (a) All products, whether provided as samples or at any other time, shall be securely packaged, which shall, at a minimum, include that:
 - (1) The cases are sturdy and well made;
 - 2) The caps on the individual containers are properly fitted and sealed; and
 - (3) The labels are properly and securely affixed to the original containers.
- (b) All products, whether provided as samples or at any other time, which are defective, whether due to insecure packaging, expiration, or any other impairment rendering the product unsellable, shall be removed from listing and the liquor and wine representative or manufacturer, as applicable, shall:
 - (1) Be billed by the commission for any defective inventory, as applicable; and
 - (2) Make appropriate arrangements, at its expense, for the removal or destruction of all defective inventory at state liquor stores, warehouses, or in the possession of licensees.

Liq 302.04 Approval or Rejection

- (a) The commission’s decision to approve or reject a product shall include but not be limited to a consideration of the following:
 - (1) The product background, including type, size, and proof;
 - (2) The historical sales and statistics for the product;
 - (3) Advertising support for the product by the broker;
 - (4) Financial support for the product by the broker;
 - (5) Projected gross profit for the product;

(6) Proposed retail cost of the product compared to surrounding markets; and

(7) Recommended location for the product on shelving within a store in relation to other products.

Liq 302.05 Notification of Decision.

(a) Requesters shall be notified of any commission decision regarding a listing request no later than 45 calendar days following the date a completed request is received.

(b) Requesters whose products are listed shall be notified of the brand code number assigned to their products.

(c) Upon request, requesters whose products are not accepted for listing shall be informed of the reason(s) for that decision.

Liq 302.06 Effect of Decision.

(a) The commission's acceptance of any product for listing shall make the product eligible for recurring review as provided in these rules.

(b) The failure by a broker to satisfy the requirements of any recurring review shall result in delisting of the product as provided in these rules.

(c) Upon listing, available wines and spirits shall be eligible to be offered for sale by liquor and wine representatives and manufacturers through the commission to licensees.

Liq 302.07 Sacramental Wines. Notwithstanding any other provision of these rules, and consistent with RSA 175:3, the commission shall, upon request, modify any requirement for listing or distribution that would otherwise prevent the offering or sale of sacramental wine in the state.

Liq 302.08 Depletion of delisted products. Upon delisting of a product for any reason provided in these rules, the liquor and wine representative or manufacturer shall maintain any depletion allowance through the sale of the remaining inventory in state liquor stores to support the delist pricing the commission places on the product to deplete any remaining inventory.

PART Liq 303 SPIRITS AND NONALCOHOLIC PRODUCTS LISTING FOR SALE IN STATE LIQUOR STORES

Liq 303.01 Purpose. The purpose of this part Liq 303 is to establish and maintain a system for listing by which the commission shall secure spirits and nonalcoholic products for sale in state liquor stores.

Liq 303.02 Definitions. For purposes of this part Liq 303, the following definitions shall apply:

(a) "Full distribution" means that a product is eligible to be ordered by and stocked in all state liquor stores;

(b) "Limited distribution" means that a product is eligible to be marketed and stocked in a minimal number of commission-designated state liquor stores; and

(c) “Specialty distribution” means that a product is eligible to be marketed and stocked in a greater number of commission-designated state liquor stores than is available for limited distribution, but fewer than those available for full distribution.

Liq 303.03 Test Market.

(a) The division shall be responsible for making recommendations to the commission for the inclusion of spirits and non-alcoholic products in a test market or other evaluation.

(b) The commissioner shall approve or reject any such recommendation in accordance with Liq 302 and Liq 303.04.

(c) Except as specified in (d) below, before selecting any spirit or non-alcoholic product for limited distribution, specialty distribution, or full distribution, the commission shall subject that product to a test market of 6 months beginning at the date the product has been distributed for sale at retail, to ensure a demand for that product exists.

(d) Consistent with RSA 176:3, I, in the event the commission anticipates that the introduction of a specific product will create an immediate, significant increase in revenue to the state, the commission shall waive the test market and set the product for full distribution immediately, subject to the product meeting all other requirements for listing.

Liq 303.04 Test Market Procedure.

(a) The commission shall accept, in one size only, all eligible products for test market.

(b) In addition to meeting the requirements for listing in part Liq 302, to be eligible for test market, the product shall meet the following requirements:

- (1) The product shall be available for inventory in the bailment warehouse at the start of the test market;
- (2) The product shall have an assured continuity of supply; and
- (3) The product shall not have been delisted in any size in the state within the past 12 fiscal months.

Liq 303.05 Test Market Performance.

(a) The commission shall determine and approve the required minimum gross profit to be met for each class and price segment of products for purposes of determining the appropriate distribution level for spirits and nonalcoholic products.

(b) Liquor and wine representatives, manufacturers, and any others retained to support the product shall be responsible for advertising the product during the test market to produce the required minimum gross profit, including through point of sale materials.

(c) Liquor and wine representatives, manufacturers, and any others retained to support the product shall be prohibited from purchasing any products for purposes of meeting the required minimum gross profit. If the commission finds that a liquor and wine representative, manufacturer, or other entity retained to support the product has purchased products for the purpose of assuring achievement of the required minimum gross

profit, the commission shall terminate the participation of such product in any test market and shall delist the product.

(d) Products meeting the required minimum gross profit for their class during the test market shall be eligible for full distribution.

(e) Should a product fail to meet the required minimum gross profit for its class during the test market, it shall not be eligible for full distribution, but shall be eligible for limited distribution or specialty distribution if the commission determines that the product has met the required minimum gross profit for the price segment relevant to that product.

(f) Products failing to meet the requirement for full distribution, and failing to qualify for limited or specialty distribution, during the test market shall be delisted and shall not be approved for additional test marketing in any size for a period of at least one year from the date the product was determined to have failed and any remaining inventory owned by the commission has been depleted.

(g) All products that have been listed for at least 12 months following the end of the test market, excluding those offered on a limited-supply basis, such as seasonal listings, shall be subject to a recurring review to assure they continue to meet the required minimum gross profit applicable to their classes and price segments.

Liq 303.06 Distribution Limitation and Delisting Criteria.

(a) The commission shall change the distribution level or shall delist a product for any of the following reasons:

- (1) The product fails to meet the required minimum gross profit during the test market period;
- (2) The product fails to meet the required minimum gross profit during any recurring review, as applicable to that product;
- (3) The product fails to meet the required minimum gross profit specified by the commission for any particular class of products not subject to a recurring review;
- (4) The product becomes unavailable to the commission for any reason; or
- (5) The liquor and wine representative or manufacturer of the product requests that the product be delisted.

(b) The commission shall notify the liquor and wine representative or manufacturer of the change in distribution level or delisting.

Liq 303.07 Warning Status.

(a) As part of the recurring review for listed products, the division shall review the gross profit requirements and warn a liquor and wine representative or manufacturer of a pending delisting or change in distribution level when its product has not met the required minimum gross profit for its class and distribution level, but has met at least 85 percent of the required minimum gross profit.

(b) The warning specified in (a) shall contain:

- (1) The name of the product, the brand code, and the size;

- (2) The current gross profit and the required minimum gross profit for the product;
- (3) The date by which the required minimum gross profit shall be met, which shall be the end of 90 calendar days following issuance of the warning notice; and
- (4) A statement that the product shall be delisted or its distribution level changed if it has not attained the required minimum gross profit by the specified date.

(c) Any product failing to attain the required minimum gross profit following the required warning and 90-day cure period shall be delisted or its distribution level shall be changed.

(d) Any product failing to meet at least 85 percent of the required minimum gross profit during a recurring review shall be delisted without a prior warning.

Liq 303.08 Sale of Delisted Products. Upon delisting of a product, prices of existing inventory shall be reduced as the commission deems necessary to deplete any remaining inventory. All inventory shall be depleted as provided in Liq 302.07.

Liq 303.09 Requests for Review.

(a) Liquor and wine representatives or manufacturers, as applicable, may request a review of a commission decision regarding the listing, delisting, or change in distribution level of a product or item by submitting a letter to the commission stating the reason(s) for the review within 15 business days from the receipt of the commission's decision.

(b) The commission shall respond to the request for review within 15 calendar days of receipt of the letter in writing setting forth its determination with regard to the review and the reasons for its determination.

(c) Except as provided in (e) below, the commission shall overturn its decision only when good cause is shown.

(d) For purposes of (c) above, good cause shall include, but is not limited to, consideration of the following:

- (1) The product is packaged in a unique bottle or other container;
- (2) The product is a unique or proprietary item;
- (3) The product is manufactured or bottled in New Hampshire, and therefore whenever feasible shall receive preferential treatment pursuant to RSA 176:12;
- (4) Certain extenuating circumstances outside the control of the liquor and wine representative or manufacturer affected sales or product availability; or
- (5) Clerical errors caused a material negative impact on the price or sales volume of the product.

(e) If the commission determines that even when good cause is shown the product shall not maintain the required minimum gross profit, the commission shall, rather than overturn its decision, grant an extension of no longer than 6 months from date of its decision and shall review the product again during any such extension.

(f) The commission's determination to delist or change the distribution level of the product following the requested review or extension shall constitute a final decision.

Liq 303.10 Spirits One-Time Buy.

(a) For spirits that are not intended for full distribution including, but not limited to, those spirits of intentionally limited-availability or a limited run of bottles, the commission shall purchase and stock those spirits on a one-time buy basis.

(b) Spirits procured on a one-time buy basis shall not be required to go through a test market and shall not be subject to a recurring review but shall otherwise comply with all listing requirements of these rules.

(c) Spirits procured on a one-time buy basis shall be purchased and warehoused by the commission and sold until depleted in a manner, at a price, and on a schedule determined by the commission.

Liq 303.11 Additional Sizes.

(a) In addition to meeting all requirements of part Liq 302, any requests that the commission list additional sizes of product that is already listed shall include information demonstrating that all currently approved and available sizes of the listed brand have obtained a gross profit that equals or exceeds 1.5 times the rolling 12-month required minimum gross profit for the relevant class of spirits.

(b) Any newly approved size shall be required to meet the test market performance criteria for full distribution in these rules following the commission's approval of the new size.

Liq 303.12 Change in Size.

(a) In addition to meeting all other requirements of part Liq 302 and part Liq 303, any requests that the commission list a changed size of a product that is already listed shall include information:

- (1) Describing the reasons justifying or explaining the change in size, and the liquor and wine representative or manufacturer's plan for depletion of inventory in the currently-listed size;
- (2) Demonstrating that the currently-listed product has obtained a gross profit that equals or exceeds 1.5 times the 12-month required minimum gross profit for the relevant class of spirits for the current consecutive 12-month period at the time of the request; and
- (3) Confirming that the new size is replacing a currently-listed size and no similar replacement size container is available.

(b) Any product with a changed size shall be required to meet the test market performance criteria in these rules following the commission's approval of the change in size.

(c) For any remaining inventory in state liquor stores or the warehouses of the currently-listed size of the product, the liquor and wine representative or manufacturer shall maintain any depletion allowance on that item through the sale of the remaining inventory as required by Liq 302.07.

Liq 303.13 Change in Container Shape or Label.

(a) In addition to meeting all other requirements of part Liq 302 and part Liq 303, any requests for a change in the shape of the container or the label shall include information:

- (1) Describing the currently-listed product for which the change is proposed; and
- (2) Comparing the current shape or label with the proposed shape or label of the product for which the request is made.

Liq 303.14 Change in Proof.

(a) A request for a change in the alcohol content of a currently-listed product shall be treated as a request for delisting of the currently-listed product and a new listing for the replacement product if the change in alcohol content is greater than or equal to 10 proof units. Such new listing request shall comply with all listing requirements of these rules.

(b) For changes in alcohol content of less than 10 proof units, and prior to any product at the revised proof unit level arriving into the commission warehouse or the bailment warehouse, the liquor and wine representative or manufacturer shall notify the commission in writing of the change. Such notification shall include information:

- (1) Describing the product for which the change is made;
- (2) Specifying the current proof and the proposed proof of the product for which the request is made; and
- (3) Specifying the size of the container for which the request is made.

PART Liq 304 WINE LISTING PROCEDURE FOR SALE IN STATE LIQUOR STORES

Liq 304.01 Purpose. The purpose of this part is to establish and maintain a system for listing of wine for sale in state liquor stores.

Liq 304.02 Requests for Listing.

- (a) Requests for listing of wine shall be made as provided in part Liq 302.
- (b) In addition to meeting the requirements for listing in part Liq 302, to be eligible for listing, the wine shall meet the following requirements:

- (1) The wine shall be available for inventory at the start of the program; and
- (2) The wine shall have an assured continuity of supply.

Liq 304.03 Definitions. For the purposes of this part Liq 304, the following definitions shall apply:

(a) “Limited distribution” means a wine that is eligible to be marketed and stocked in a minimal number of commission–designated state liquor stores;

(b) “Primary listing or primary listed” means any brand code of wine that achieves a gross profit that exceeds the gross profit achieved by the 325th listed brand code, arranged in order of gross profit, in state liquor stores;

(c) “Secondary listing or secondary listed” means any brand code of a wine that achieves a gross profit that exceeds the gross profit achieved by the 750th listed brand code, arranged in order of gross profit, in state liquor stores, but does not achieve the level to be primary listed;

(d) “Specialty distribution” means that a product is eligible to be marketed and stocked in a greater number of commission–designated state liquor stores than is available for limited distribution, but fewer than those available for primary, secondary, or tertiary listed items; and

(e) “Tertiary listing or tertiary listed” means any brand code of wine that achieves a gross profit that exceeds the gross profit achieved by the 1200th listed brand code, arranged in order of gross profit, in state liquor stores, but does not achieve the level required to be secondary listed.

Liq 304.04 Program Evaluation.

(a) The division shall be responsible for making recommendations to the commission for the inclusion of wine in any particular program and the commission shall approve or reject any such recommendations.

(b) The commission shall evaluate each wine recommended by the division, and approved by the commission to be sold in state liquor stores, through one of the programs authorized by the commission and implemented by the division.

(c) This rule describes the minimum requirements of the programs that shall be authorized by the commission for the evaluation of wine. The commission shall require the division to implement additional programs, or alter or discontinue programs, as necessary to optimize profitability as required by RSA 176:3.

(d) The commission shall provide notice of not less than 30 calendar days of its intent to implement, alter, or discontinue any program. Such notice shall be distributed to all liquor and wine representatives and manufacturers and shall describe any change from the then-existing programs.

(e) Liquor and wine representatives, manufacturers, and any others retained to support the product are prohibited from purchasing any products for purposes of meeting the required minimum gross profit. If the commission finds that a liquor and wine representative, manufacturer, or other entity retained to support the product has purchased products for the purpose of assuring achievement of the required minimum gross profit, the commission shall terminate the participation of such product in any test market or roll out and shall delist the product.

Liq 304.05 Program Description.

(a) The wine test market program shall be subject to the following requirements:

(1) A wine approved for inclusion in the wine test market program shall be assigned a required minimum gross profit based upon categorical and seasonal sales as determined by the commission;

(2) A wine in the wine test market program shall be distributed to commission-designated state liquor stores for inclusion on those stores’ shelves for a period of 4 consecutive promotional months as listed in the commission’s promotional calendar, which the commission shall provide to all liquor and wine representatives and manufacturers;

(3) The liquor and wine representative or manufacturer, as applicable, shall be responsible for assuring a sufficient supply and availability of the wine to meet expected sales during the 4-month period;

- (4) Upon completion of the 4 month period, wine in the wine test market program shall be evaluated to determine whether it has met the required minimum gross profit as follows:
 - a. A wine meeting or exceeding the required minimum gross profit shall be eligible for specialty distribution by the commission;
 - b. A wine failing to meet the required minimum gross profit, but meeting at least 90 percent of the gross profit threshold, shall not be eligible for specialty distribution, but shall remain in designated state liquor stores and shall be subject to a recurring review to determine if the wine meets the required minimum gross profit threshold; and
 - c. A wine failing to meet at least 90 percent of the required minimum gross profit in the 4 month period shall be delisted by the commission and any remaining inventory shall be discounted for sale until depleted as provided in Liq 302.07.
- (b) The rollout program shall be subject to the following requirements:
 - (1) A wine approved for inclusion in the rollout program, which includes enhanced marketing and promotional requirements as specified by the division, shall be assigned a required minimum gross profit based upon designated category and price point as determined by the commission;
 - (2) A wine in the rollout program shall be distributed to commission-designated state liquor stores for a period of 2 consecutive promotional months as listed in the commission's promotional calendar, which the commission shall provide to all liquor and wine representatives and manufacturers;
 - (3) The liquor and wine representative or manufacturer, as applicable, shall be responsible for assuring a sufficient supply and availability of the wine to meet expected sales during the 2 month period; and
 - (4) Upon completion of the 2 month period, wine in the rollout program shall be evaluated to determine whether it has met the required minimum gross profit threshold, as follows:
 - a. A wine meeting or exceeding the required minimum gross profit threshold shall be eligible for specialty distribution;
 - b. A wine failing to meet the required minimum gross profit threshold, but meeting at least 90 percent of the required minimum gross profit threshold, shall not be eligible for specialty distribution, but shall remain in designated state liquor stores and shall be subject to a recurring review to determine if the wines meet the required minimum gross profit threshold; and
 - c. A wine failing to meet at least 90 percent of the required minimum gross profit threshold in the 2 month period shall be delisted by the commission and any remaining inventory shall be discounted for sale until depleted as provided in Liq 302.07.
- (c) The specialty status program shall be subject to the following requirements:
 - (1) A wine included in the specialty status program shall be a wine listed by the commission but which has sales outside the level required to be at least a tertiary listing;

- (2) A wine in the specialty status program shall be subject to an evaluation for one calendar year from the date it is accepted into the program, with a review conducted semi-annually to verify whether the wine is on-track to meet the required minimum gross profit threshold; and
 - (3) Upon completion of the evaluation period, a wine in the specialty status program failing to meet the required minimum gross profit threshold set by the commission shall be delisted by the commission and any remaining inventory shall be discounted for sale until depleted as provided in Liq 302.07.
- (d) The allocated wines program shall be subject to the following requirements:
- (1) The allocated wines program shall apply to wines that are of a special, short-term, small-quantity, or other type of limited availability or limited stock;
 - (2) Wines included in the allocated wines program shall not be subjected to a test market but will be distributed to specified state liquor stores as determined by the commission and sold until the limited stock is depleted; and
 - (3) Wines included in the allocated wines program, and which have not been depleted after one calendar year shall be delisted by the commission and any remaining inventory shall be discounted for sale until depleted as provided in Liq 302.07.
- (e) The one-time buy program and the power buy program shall be subject to the following requirements:
- (1) Wines in the one-time buy program and the power buy program shall not be required to go through a test market and shall not be subject to a recurring review, but shall otherwise comply with all listing requirements of these rules; and
 - (2) Wines included in the one-time buy program and the power buy program shall be purchased and warehoused by the commission and sold until depleted, at a price, and on a schedule, determined by the commission.

Liq 304.06 Delisting Procedure for Wines in State Liquor Stores.

- (a) For purposes of a recurring review, the division shall determine the required minimum gross profit threshold during the preceding, rolling 12-month period and shall regularly inform all liquor and wine representatives and manufacturers of the minimum threshold necessary to reach primary, secondary, and tertiary listing status.
- (b) Any wine included as a primary, secondary, or tertiary listing in the state liquor stores shall be subject to a recurring review to ensure that it is listed at the appropriate level.
- (c) Failure of any listed wine to meet at least the required minimum gross profit required during any recurring review shall result in delisting of the product and depletion as provided in Liq 302.07.

Liq 304.07 Additional Sizes.

- (a) Requests for listing of additional sizes of a primary listed wine shall comply with part Liq 302 and Part Liq 304.

(b) The commission shall list the requested additional size if all currently approved and available sizes of the listed brand of wine have obtained a gross profit that equals or exceeds 1.5 times the required gross profit as it has been provided to liquor and wine representatives and manufacturers.

Liq 304.08 Change in Container Shape or Label.

(a) Upon written request of the liquor and wine representative or manufacturer for a change in the shape of the container or label of a currently listed product, the commission shall approve or reject the request as provided in (b).

(b) In addition to meeting all other requirements of part Liq 302 and part Liq 304, any requests for a change in the shape of the container or the label shall:

- (1) Describe the currently-listed product for which the change is proposed; and
- (2) Compare the current shape or label with the proposed shape or label of the product for which the request is made.

PART Liq 305 SEASONAL ITEMS AND SPECIAL ORDERS

Liq 305.01 Seasonal Listing.

(a) To include a product as a seasonal listing, a liquor and wine representative or manufacturer shall submit a request for seasonal listing each year or season as specified below.

(b) The commission shall notify liquor and wine representatives and manufacturers of the seasonal listing periods each year.

(c) The notices provided pursuant to (b) above shall include the dates for which a listing may be requested and the dates by which requests for seasonal listing must be received by the commission.

(d) Products for which seasonal listing is requested shall meet all requirements for listing in Part Liq 302 and either Part Liq 303 or Part Liq 304, as applicable, and shall include guaranteed delivery date(s) for the products.

(e) Products with a seasonal listing shall not be selected for listing by gross profit and shall not be required to submit to a test market or program.

(f) Products with a seasonal listing shall be selected for listing based upon their availability for specified sales periods and the commission's determination regarding whether such items will provide well-rounded product offerings for seasonal purchases.

(g) Factors which show well-rounded product offerings shall include but are not limited to:

- (1) Products' retail price ranges;
- (2) Seasonal packaging which has sold well in previous years; and
- (3) Items packaged in a gift pack or other promotional presentation.

(h) Items not received by the delivery date(s) specified in the seasonal listing request shall be delisted, and any shipment of the product refused, unless the liquor and wine representative or manufacturer establishes to the satisfaction of the commission, that:

- (1) The product is necessary to round out the seasonal listings; and
- (2) The product will, despite late delivery, sell out during the seasonal period.

(i) Any product with a seasonal listing that does not sell out during the relevant seasonal period shall be delisted and discounted as determined by the commission to deplete any remaining inventory and consistent with the requirements for depletion as provided in Liq 302.07.

Liq 305.02 Special Orders.

(a) Customers may place requests with the commission by contacting the commission's customer service representatives through the contact methods provided on the commission's website for items not currently listed.

(b) The commission shall attempt to obtain the requested item in a timely manner, subject to the following conditions:

- (1) When ordering, the customer shall provide a complete description of the item;
- (2) Each order shall be for a minimum of one case of the item;
- (3) A special order shall not be canceled by the customer once accepted by the commission; and
- (4) Special orders for retail customers shall be shipped to a state liquor store designated by the customer for pick up and payment.

Readopt with amendment and renumber Liq 307.01, effective 10-26-17 (Document #12410), as Liq 306.01, cited and to read as follows:

PART Liq 306 COST CHANGES AND PROHIBITIONS

Liq 306.01 Cost Changes; Quarterly Price Change.

(a) Requests for cost changes by liquor and wine representatives and manufacturers may be filed up to 4 times per year.

(b) All liquor and wine representatives and manufacturers shall report a cost change in one of the following ways:

- (1) For single items, the cost change shall be submitted via the secure portal; or
- (2) For cost changes of multiple items or groups of items, the cost change shall be submitted on a batch basis via email to the designated operations email account or via the secure portal;

(c) Cost changes by liquor and wine representatives and manufacturers shall be sent to the commission in line with the current year promotional calendar periods, which shall include due dates for cost change filings.

(d) The commission shall not accept cost change filings received after the relevant due date.

(e) The commission shall consider the effect of the cost changes on gross profit to determine whether to accept or reject the request.

Readopt with amendment and renumber Liq 307.02 and Liq 307.03, effective 11-21-13 (Document #10463), as Liq 306.02 and Liq 306.03 to read as follows:

Liq 306.02 Exchanges Prohibited. Exchanges of new items for listed items shall be prohibited.

Liq 306.03 Listing Limitations.

(a) Every product listed by the commission shall include a brand code.

(b) For a wine marketed under different vintages, each vintage shall be considered a different product for purposes of brand codes.

APPENDIX

RULE	STATUTE
Liq 301 – Liq 306	RSA 176:13 II; 176:14; RSA 177:7