

CHAPTER Liq 200 PROCEDURAL RULES

Statutory Authority: RSA 176:14

REVISION NOTE:

Document #5180, effective 7-22-91, made extensive changes to the wording and format of Chapter Liq 200. Document #5180 supersedes all prior filings for the sections in this chapter. The filings prior to Document #5180 for former Liq 200 include the following documents:

#94, filed 12-05-73, as in effect 8-31-73 under 1973, 507:4
#727, eff 12-18-75
#1585, eff 6-2-80
#2137, eff 9-30-82
#2931, eff 12-26-84 - EXPIRED 12-26-90
#5043, eff 1-11-91

Please note that the rules in former Liq 200 were out of effect between 12-26-90 and 1-11-91.

The rules in former Liq 200 filed as part of Document #5043 were numbered Liq 201.01, 202.01 through 202.03, and 203.01 through 203.05. These rules have been amended and renumbered in Liq 200 by Document #5180. Former Liq 201.01 has been amended and renumbered as Liq 202.01. Former Liq 202.01 has been amended and renumbered as Liq 201.01. Former Liq 202.02 has been amended and renumbered as Liq 201.02. Former Liq 202.03 has been amended and renumbered as Liq 201.03. The rules in former Part Liq 203 have been amended and incorporated into different sections of Liq 200 by Document #5180.

Former rules Liq 602.03 through Liq 602.09 have been amended and incorporated into different sections of Liq 200 by document #5180. See the source notes to former Liq 602.03 through Liq 602.09 for the prior filings for these rules.

PART Liq 201 DECLARATORY RULING PROCEDURES

Liq 201.01 Interpretation of Statutes/Administrative Rules. Any question arising, relating to an interpretation of RSA 175 - RSA 180, RSA 126-K, or administrative rules adopted by the commission shall be submitted in writing as a petition to the chairman of the liquor commission requesting a declaratory ruling.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 201.02 Declaratory Rulings by Agency.

(a) The commission shall within 30 days after submission of a petition under Liq 201.01 make a declaratory ruling in writing to the petitioner; or

(b) The commission shall notify the petitioner in writing of the reason for delay if more than 30 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 commission shall make a declaratory ruling within 30 days.

Source. #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 201.03 Interpretation of Statutes. Any question arising, relating to an interpretation of RSA 175 - RSA 180 or the sections of RSA 126-K relating to the commission not specifically covered by liquor rules, and for which a declaratory ruling is not requested, shall be submitted in writing to the commission for a ruling.

Source. #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

PART Liq 202 PETITIONS FOR RULEMAKING:

Liq 202.01 Petition for Adoption of Rules.

(a) Any person may petition the commission 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; and

(3) Be limited to a single subject matter;

(4) State clearly:

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

b. The objectives of the petition;

c. Why the petition should be adopted;

d. Pertinent factual data supporting the petition;

e. Identification of any statutes, rules, or other authority which would authorize the commission to act; and

f. Views or arguments to be considered.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

PART Liq 203 RULEMAKING HEARINGS PROCEDURES

Liq 203.01 Purpose. The purpose of this part is to provide a uniform procedure for the conduct of public hearings at which comment from the general public shall be solicited.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 203.02 Scope.

(a) These rules shall apply to all hearings conducted by the commission at which public comment is solicited.

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

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 203.03 Notice. Notice for public comment hearings concerning rulemaking shall appear within the commission state liquor stores at least 20 days prior to the hearing date(s) and shall provide the same information as required by RSA 541-A:6.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 203.04 Media Access.

(a) Public comment hearings shall be open to the print and electronic media.

(b) The moderator shall place limits on the activities of the media in the following ways:

- (1) Limit the number of media representatives when their presence is disproportionate to the number of other citizens present and would cause other citizens to be excluded;
- (2) Limit the placement of television cameras to certain locations in the hearing room; and
- (3) Prohibit interviews from being conducted within the hearing room during the hearing.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97;

ss by #6667, eff 1-1-98 EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 203.05 Moderator.

(a) The hearing shall be presided over by a moderator who shall be the chairman of the commission or his/her designee.

(b) The moderator shall:

- (1) Call the hearing to order;
- (2) Cause a recording of the hearing to be made;
- (3) Place limits on the media as set out in Liq 203.04;
- (4) Recognize those who wish to be heard and establish the order thereof;
- (5) Limit the time for each speaker, as set out in Liq 203.06(d)(1-5);
- (6) Recognize or revoke recognition of a speaker for cause as set out in Liq 203.06(b);
- (7) Remove or have removed any person who disrupts the hearing; and
- (8) Close the hearing.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRES: 6-29-06, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 203.06 Public Participation.

(a) Any person who wishes to speak on the issue or issues which are the subject of the hearing shall place his or her name and address 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 be afforded an opportunity to speak at the hearing.

(c) The moderator shall recognize speakers who have not put their names and addresses on the speakers list after those who were on the speakers list have spoken.

(d) The agency through the moderator shall:

- (1) Refuse to recognize a person who refuses to give his/her full name and address;
- (2) Limit the amount of time each speaker may speak to a reasonable time, considering the number of people who wish to be heard;
- (3) Limit a group to no more than 3 spokespersons, provided the members who are present may enter their names and addresses into the record as supporting the position by the group or organization; and

(4) Revoke recognition of a speaker who refuses to keep his/her comments relevant to the issue or issues which are subject of the hearing, or exceeds the specified time limitations.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

PART Liq 204 - RESERVED

Liq 204.01 - Reserved

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-B, eff 7-1-06, EXPIRED: 7-1-14

Liq 204.02 - 204.05 - Reserved

Source. #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-B, eff 7-1-06, EXPIRED: 7-1-14

PART Liq 205 ADJUDICATIVE HEARINGS AND OTHER HEARINGS

Liq 205.01 Purpose and Scope.

(a) This part shall provide the rules of practice and procedure for the conduct of hearings which affect the rights or privileges of any person.

(b) The rules in this section shall apply to all hearings conducted by the commission except public hearings for rulemaking purposes.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 205.02 Definitions.

(a) "Adjudicative hearing" means any proceeding in which the rights, duties, or privileges of a person are determined by the commission, including action on reports of violation, permission requests of licensees and licensing, but not including non-adjudicatory hearings or rulemaking.

(b) "Data" means all information other than argument, including, but not limited to:

(1) Oral or written descriptions;

- (2) Reports;
- (3) Maps;
- (4) Charts;
- (5) Drawings;
- (6) Photographs;
- (7) Audio or video recordings;
- (8) Computer printouts;
- (9) Testimony;
- (10) Notes; and
- (11) Memoranda or documents, whether finished or unfinished.

(c) "Commission" means a quorum of the liquor commission or an individual appointed by vote of the commission for the purpose of conducting specific adjudicatory hearings.

(d) "Ex-parte communication" means ex-parte communication as defined in RSA 541-A:36.

(e) "Field administrative notice" means the notification given the person in charge of the premises licensed by the commission, by a commission investigator setting forth the statutes and/or rules alleged to have been violated with the procedure and times for requesting a hearing on those allegations.

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

(g) "Hearing" means the process by which the parties actually present evidence, data, and/or argument by methods appropriate to the circumstances and includes but is not limited to:

- (1) Conducting trial type evidentiary procedures;
- (2) Directing the filing of exhibits, affidavits, memoranda, briefs;
- (3) Directing the delivery of oral argument; or
- (4) Any combination of the above or similar procedures.

(h) Licensee means a licensee as defined by either RSA 126-K or RSA 175:1, as applicable.

(i) "Motion" means any request by a party to a proceeding for an order relating to that proceeding.

(j) "Non-adjudicative hearing" means a formal or informal search for data by the commission concerning matters within its jurisdiction.

(k) "Order" means a document issued by the commission requiring a person to do or abstain from doing something, or determining a person's rights or privileges.

(l) "Party" means any person who participates in the proceeding and will be directly affected by the outcome of the proceeding.

(m) "Person" means "person" as defined by RSA 175:1, LIII or RSA 126-K, as applicable, and includes any association, governmental subdivision, or public or private organization.

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

(o) "Presiding officer" means the chairman of the liquor commission or an individual appointed by vote of the commission to conduct a specific adjudicatory hearing.

(p) "Rulemaking" means the process by which the commission adopts rules.

(q) "Violation" means "violation" as defined in Liq 601.03(x).

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 205.03 Adjudicative Pre-hearing Requirements for Licensees. Any licensee who has been charged with a violation shall contact the office of the chief of enforcement within 5 working days after receiving the investigator's field administrative notice to schedule a hearing and/or a prehearing conference, unless the licensee wishes to waive his or her right to a hearing.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 205.04 Prehearing Conferences.

(a) Upon request of any party, or his/her own request and with agreement of all parties, the chief of enforcement or the chief's designee shall schedule one or more informal conferences prior to the commencement of formal proceedings.

(b) Matters to be considered at a prehearing conference shall include but not be limited to the following:

- (1) Stipulation of the maximum and minimum penalties for the alleged offense under statute and/or rule;
- (2) Stipulation of the issues;
- (3) Stipulations or admissions as to the issues of fact or proof;
- (4) Limiting the number of witnesses;
- (5) Stipulation as to the recommendation of the chief of enforcement or his/her designee for the disposition on the violation;
- (6) Identify and stipulate to evidence and exhibits; and
- (7) Any other matters which may aid in the disposition of the case.

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

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 205.05 Settlements.

(a) In the case of a violation as defined by Liq 601.03(x), the chief of enforcement or his/her designee shall try to negotiate a settlement.

(b) Upon agreement by all parties to an offer of settlement, the chief of enforcement or his/her designee shall cause a formal document to be drawn which specifies the terms and conditions of the settlement.

(c) The agreement shall not be final and binding until the document is signed by all parties and a quorum of the commission, and all parties receive copies of the fully executed document.

(d) By signing the document the parties agree to the settlement in lieu of an adjudicatory hearing and 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.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 205.06 Appearance Before the Commission.

(a) An individual may appear in a proceeding by personal attendance or through the attendance of a representative appointed in writing by the individual.

(b) Persons other than individuals may be represented by:

(1) A licensed attorney; and/or

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

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

Source. #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

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; and

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

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

(c) Except where the time is fixed by statute, the commission shall, upon motion for good cause shown, including but not limited to personal illness or injury or illness, injury, or death in the immediate family of any of the parties, increase or decrease the time provided for the filing of any documents, or advance or postpone the time set for any oral hearings.

(d) A motion for a change in time shall be granted upon a finding of diligence and probable injury to the moving party which outweighs any detriment likely to be suffered by any other party to the proceeding.

(e) The presiding officer shall set the new date and time and notify each party by phone and by regular or certified mail of the new date and time.

Source. #6545, eff 7-23-97; ss by #6667, eff 1-1-98,
EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05,
EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 205.08 Filing of Documents.

(a) All documents filed under this part shall:

(1) Be on strong, durable, opaque, unglazed paper at least 8-1/2 x 11 inches in size;

(2) Be reproduced by printing, or other process providing a clear, legible copy and printed or typed in clear type not smaller than elite;

(3) Be printed only on one side of the page;

(4) Contain the title of the proceeding;

(5) Be dated and signed in ink; and

(6) State the title, if applicable, and address of the signer;

(b) A document conforming to these requirements shall be considered filed with the commission when it is actually received by the office of the commissioners.

Source. #6545, eff 7-23-97; ss by #6667, eff 1-1-98,
EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05,
EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 205.09 Signature and Certification of Veracity.

(a) All petitions, motions and replies filed with the commission shall be signed by the party, or if represented, by his/her 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) That to the best of his or her information, knowledge, or belief, there are reasonable grounds to support it; and
- (4) It has not been filed for delay.

(c) A willful violation of this section shall result in rejection of the filing.

Source. #6545, eff 7-23-97; ss by #6667, eff 1-1-98,
EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05,
EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 205.10 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 wishes 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 person, if any, against whom the petitioner complains, or against whom the petitioner wishes 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 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

f. The action which the respondent wishes 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 indicates that he or she lacks sufficient information to deny or admit the fact and so states; and

(6) The petitioner shall be presumed to deny all allegations in the reply and no response shall be permitted to the reply.

(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 thereto 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 filing the reply wishes the presiding officer to take on the motion; and

c. The statutes, rules, order, or other authority relied upon in defense of 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) Unless otherwise specifically ordered by a court, all motions shall be decided upon the writings submitted;

(7) Repetitious motions shall not be accepted;

(8) Unless provided by statute, this chapter or orders of a court, objections to 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.

Source. #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 205.11 Adjudicative Proceedings.

- (a) This section shall apply to all adjudicative proceedings.
- (b) The commission shall commence an adjudicative proceeding by issuing an order of notice which:
 - (1) Identifies the parties to the proceeding as of the date of the order;
 - (2) Briefly summarizes the subject matter and issues to be resolved;
 - (3) Specifies the statutory authority for the proposed action and identify any agency rules;
 - (4) Specifies the date by which, and place where, appearance shall be filed;
 - (5) Specifies the date, time and place of the first day of oral hearing, if any, which may be limited to procedural matters; and
 - (6) Specifies the date and address for submission of written materials;
- (c) The commission shall carry out the service of order of notice in the following manner:
 - (1) The presiding officer shall serve notice upon all parties to the proceeding by certified mail or by personal service, at least 10 days before the first date of oral hearing or the first date action is required in response to the order; and
 - (2) The date of service shall be the date of personal delivery or receipt through the mail.
- (d) Upon a written petition showing good cause which shall include, but shall not be limited to the licensee requesting a speedy hearing, the presiding officer shall shorten the 10 day notice requirement, provided no party shall be prejudiced thereby.
- (e) All subsequent official communications between parties including, but not limited to, petitions, responses, motions, orders, and memoranda, shall be served on all parties, either by the United States Mail or personal service.
- (f) Orders, notices, memoranda, exhibits, and all other material submitted in a case shall be kept in a case file.
- (g) The presiding officer shall provide reasonable notice of any change to the order of notice to all parties.
- (h) Any party, to whom notice has been served in accordance with this chapter, who fails to appear and fails to advise the agency of non-appearance prior to the scheduled time of the hearing at which evidence shall be presented, shall have a decision rendered against him or her which shall result in adverse administrative action by default.

- (i) Orders of the commission shall be carried out in the following manner.
- (1) Within the time prescribed in Liq 206.03(a) after the conclusion of a hearing, the presiding officer shall issue an order stating the action to be taken by the commission and the reasons therefore;
 - (2) The order shall be sent to all parties through the United States mails or by personal delivery; and
 - (3) The order shall constitute a final decision on the part of the commission for appeal purposes.
- (j) Intervention petitions shall be carried out in the following manner:
- (1) Petitions for intervention shall be filed at least 3 days before the commencement of a proceeding or at any time if the presiding officer determines that such intervention would be in the interests of justice and would 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 would 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 which would have been applicable if she or he 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.
- (k) Joinder and severance shall be carried out in the following manner:
- (1) Whenever it appears to the agency, upon motion or its own initiative, that 2 or more proceedings involve substantially similar or substantially related issues the commission shall join those proceedings for hearings, decision or both, provided no party would be prejudiced by the joinder; and
 - (2) Whenever it appears to the agency, upon motion or its own initiative, that prejudice to a party or parties or undue delay might be avoided, the commission shall sever one or more issues or parties, and dispose of those issues in another proceeding.

Source. #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

Liq 205.12 Notice and Conduct of Hearings.

- (a) Unless otherwise provided in this chapter all notices of hearings shall:

(1) Be prepared and forwarded to all parties or their representatives so as to afford all parties sufficient opportunity to prepare for and develop the issues to be considered and decided at the hearing; and

(2) Be forwarded to all parties or their representatives in sealed envelopes, either in the United States mails or by personal service.

(b) Scheduling of hearings shall be carried out in the following manner:

(1) Unless otherwise provided for by statute or rule, hearings shall be scheduled as soon as possible following the events giving rise to the necessity for the hearing;

(2) The date set shall allow sufficient and reasonable time for the preparation of the case by the agency and all other parties; and

(3) Upon written motion with good cause, which shall include, but shall not be limited to illness or injury to one of the parties, the presiding officer shall continue the hearing or reschedule it for a date later than that specified in the notice.

(c) Powers and duties of the presiding officer shall be to:

(1) Schedule and hold hearings;

(2) Regulate and control the course of hearings;

(3) Administer oaths or affirmations;

(4) Receive relevant evidence;

(5) Take official notice of facts which are of common knowledge and general notoriety;

(6) Dispose of procedural requests, including those of the parties or those made on the motion of the presiding officer;

(7) Hold informal conferences;

(8) Interview or examine witnesses;

(9) Cause a complete record of the proceeding to be made; and

(10) Take any other action, consistent with applicable statutes and rules necessary to conduct and complete the proceeding in a fair and timely manner.

(d) All parties shall have the opportunity to present testimonial and documentary evidence, cross examine adverse witnesses and make opening and closing statements.

(e) In all proceedings governed by this chapter that party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.

(f) 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 which is irrelevant, immaterial or unduly repetitive, shall be excluded;

(4) Evidence may include, but not be limited to, depositions, affidavits, official documents, and testimony of witnesses;

(5) The presiding officer shall:

- a. Officially notice facts;
- b. So state in the official record; and
- c. Allow any party, on a timely request, the opportunity to show the contrary;

(6) The chief of enforcement or his/her designee shall open the proceedings through presentation of his/her witnesses and exhibits;

(7) Such evidence shall include direct testimony from investigators of the commission enforcement division, if applicable;

(8) Members of the commission shall, if they have questions, ask them of the witnesses during or subsequent to direct cross-examination;

(9) The licensee shall present his/her testimony to the commission in a manner most beneficial to him or her;

(10) The licensee may present witnesses, his/her own statements or choose to provide a narrative presentation of his/her testimony;

(11) Members of the commission shall, if they have questions, ask them of the witnesses during or subsequent to direct cross-examination;

(12) Any party who intends to call witnesses to testify at an administrative hearing shall provide all other parties and the presiding officer with the following information, not less than 3 working days before the date of the hearing:

- a. The number of witnesses to be called to testify;
- b. The full name of each witness to be called;
- c. The home address of each witness to be called; and
- d. The capacity of employment of each witness to be called; and
- e. The substance of witness testimony.

(13) Upon request, the chief of enforcement shall supply the licensee or their duly appointed representative with all reports and a list of any evidence which has been obtained during an investigation and which might be introduced at any administrative hearing against the licensee;

(14) A request pursuant to (13) above shall be made to the chief of enforcement in writing with a copy to the chairman of the commission;

(15) All hearings shall be recorded by means of audio and/or video recording devices; and

(16) Recorded results shall be maintained for a period of one year from the date of the final order.

(g) All adjudicative decisions of the commission shall:

- (1) Be made on the basis of evidence of record only;
- (2) Be based on a preponderance of the evidence record taking into account that the burden of proof is on the party alleging a fact or circumstance; and
- (3) Take no account of any ex-parte communication of any kind made during the pendency of the proceeding.

(h) A written decision setting forth the finding of fact, and conclusions drawn by the presiding officer shall be prepared, and parties shall receive copies of the decisions and findings.

Source. #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-A, eff 7-1-06

PART Liq 206 PROCEDURES AND CONSIDERATIONS AFTER ADJUDICATIVE HEARINGS

Liq 206.01 Licensee Record.

(a) When a licensee receives an adverse decision as a result of an administrative hearing with regard to a violation, the presiding officer shall examine the licensee's record and note all violations.

(b) The number of recorded violations shall be used in determining what administrative action shall be taken as provided by Liq 603.02, Liq 603.04, or Liq 605.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-B, eff 7-1-06, EXPIRED: 7-1-14

New. #12207-B, eff 6-14-17

Liq 206.02 Commission Consideration.

(a) The presiding officer shall consider any testimony or evidence offered by the prosecuting investigator, the licensee, and by all witnesses.

(b) The presiding officer, when hearing testimony or evidence regarding a violation of a statute or an administrative rule, shall consider any aggravating factor or mitigating factor which is offered in any defense or prosecution, as required by RSA 179:56 III (a), in determining any administrative action or penalty.

(c) Aggravating factors shall include but not be limited to:

- (1) The failure to train employees in liquor education classes;
- (2) The failure to have adequately trained managers;
- (3) The failure to take advantage of education classes offered by the bureau of enforcement;
- (4) The failure to have any training with regard to RSA Title XIII requirements for an employee;

- (5) The failure to request identification of a person who appears younger than age 21 before sale of alcoholic beverage;
- (6) Service of more than 4 drinks in an hour, or 6 drinks total, to a person who becomes intoxicated;
- (7) The failure to detect poor quality identification documents as being false;
- (8) The reckless serving of alcohol to a person under age 16 years;
- (9) Serving a minor who is legally intoxicated;
- (10) Failure to monitor the quantity of alcohol served to a patron;
- (11) The active encouragement of intoxicated patrons to consume more alcohol;
- (12) The service of alcohol to a patron that is so continuous and excessive that it creates a risk of death by alcohol poisoning;
- (13) The active assistance of a patron into a motor vehicle when the patron is so intoxicated as to need assistance, when a person knows or should know that the intoxicated person will operate the motor vehicle;
- (14) The failure to properly manage the premises, such as allowing overcrowding, unaccompanied minors in lounges, standees to drink, lack of effort to clear aisles, or areas of ingress or egress and blocked fire exits;
- (15) The failure to take corrective action on previously cited violations;
- (16) A culpable mental state, as defined by RSA 626:2, II, General Principles, of the New Hampshire Criminal Code shall be an aggravating factor when "purposefully" or "knowingly" is proven;
- (17) A violation of RSA 179:5 when it conforms to the provisions of RSA 507-F:4, II, III, & IV or RSA 507-F:5, III;
- (18) Negligent or reckless service of alcoholic beverages pursuant to RSA 507-F:4 and RSA 507-F:5; and
- (19) Any factor which increases the hazard to public safety and which is due to the sale or consumption of alcoholic beverages.

(d) Mitigating factors shall include but not be limited to:

- (1) The licensee having no record of like violations;
- (2) The licensee having no record of any violation;
- (3) The licensee admitting to problems detected and taking steps to rectify the situation;
- (4) The documented attendance of the licensee's personnel at a commission sponsored educational program;
- (5) Implementing training for managers to make them aware of the liquor laws and rules;

- (6) Maintaining an adequate number of trained employees to supervise the sale and consumption of alcoholic beverages on the premises to assure compliance with the liquor laws and rules;
 - (7) The licensee having requested a liquor education program, not yet conducted, when the problem occurred;
 - (8) A new employee with instruction from management, but not having attended a liquor education program;
 - (9) Established management policies of ensuring persons of questionable age are checked as to age before service of alcohol;
 - (10) Training for those checking IDs in the detection of false or altered documents;
 - (11) Publicizing responsible service of alcohol;
 - (12) Encouraging patrons not to drink too much;
 - (13) Encouraging patrons to consume non-alcoholic beverages or food;
 - (14) Encouraging patrons to use alternate forms of transportation;
 - (15) The display of any correct form of identification in any sale or attempted purchases of alcoholic beverages as outlined by RSA 179:7 and RSA 179:8;
 - (16) The physical appearance of any person, and the prudent application of reasonableness to an estimation of age as required by RSA 179:7 and RSA 179:8;
 - (17) Service of alcoholic beverage for a violation of RSA 179:5 shall be considered mitigating if RSA 507-F:4, V, VI, and VII apply;
 - (18) Responsible business practices pursuant to RSA 507-F:6; and
 - (19) Service of only one drink to a person who becomes intoxicated.
- (e) The presiding officer shall decide each case after the hearing is closed by a preponderance of the evidence.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-B, eff 7-1-06, EXPIRED: 7-1-14

New. #12207-B, eff 6-14-17

Liq 206.03 Penalty Administration.

(a) After hearing testimony and considering all evidence presented, including aggravating and mitigating factors, the commission shall reach a decision on administrative action to be taken with respect to any administrative hearing within 15 working days of the final hearing, or within 15 working days of a legal opinion sought in conjunction with an adjudicative proceeding conducted pursuant to Liq 205.11 and Liq 205.12.

- (b) Administrative penalties shall follow the guidelines in Liq 603 or Liq 605, as applicable.
- (c) The commission shall enforce any penalty within 10 working days after reaching a decision on administrative action except as specified in Liq 206.04 (g).
- (d) Any licensee or his or her appointed representative may waive the 15 day deadline for the commission to reach a decision.

Source. (See Revision Note at chapter heading for Liq 200) #5180, eff 7-22-91; ss by #6545, eff 7-23-97; ss by #6667, eff 1-1-98, EXPIRES: 1-01-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-B, eff 7-1-06, EXPIRED: 7-1-14

New. #12207-B, eff 6-14-17

Liq 206.04 Rehearing.

- (a) Any party to an adjudicative hearing may petition the commission for a rehearing within 30 calendar days of being notified of the commission's decision.
- (b) The commission shall grant a rehearing only in cases when the petitioner demonstrates that:
 - (1) The decision rendered was contrary to statute or rule;
 - (2) The petitioner was not allowed at the hearing to present evidence material to issues of fact or law;
 - (3) The decision was contrary to a final and binding settlement agreement; or
 - (4) Procedures for adjudicative hearings detailed in liquor rules were not followed and that this materially affected the decision to the detriment of the petitioner.
- (c) Rehearings shall be held by either the chairman, deputy commissioner, or their designee. Rehearings shall not be held by a presiding officer who rendered a decision as a result of the original hearing.
- (d) Rehearings shall be scheduled within 10 working days of the granting of a petition for rehearing.
- (e) Rehearings shall only concern those issues enumerated in the petition for rehearing.
- (f) The chairman, deputy commissioner, or their designee shall decide any action to be taken as a result of a rehearing within 15 working days of the rehearing, or within 15 working days of a legal opinion sought in conjunction with the rehearing.
- (g) The commission shall not enforce any administrative penalty prior to deciding upon any petition for rehearing, or during the rehearing process.

Source. #6667, eff 1-1-98, EXPIRES: 1-1-06; ss by #8531, INTERIM, eff 12-31-05, EXPIRED: 6-29-06

New. #8670-B, eff 7-1-06, EXPIRED: 7-1-14

New. #12207-B, eff 6-14-17

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), (c), and (d), may petition the commission for the revocation of a liquor license 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 their representative, if any;
 - b. Why the petition should be adopted;
 - c. Pertinent factual data supporting the petition; and
 - d. Views or arguments to be considered.

(c) A copy of the petition, with or without supporting documentation, shall be mailed to the licensee by certified mail or hand delivered to the licensed premise.

(d) Two copies of the petition and all supporting documentation shall be filed with the commission.

Source. #7061, eff 7-23-99; ss by #8670-B, eff 7-1-06,
EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

Liq 207.02 Commission Response.

(a) Within 10 working days after submission of the complete petition the commission shall consider it and:

- (1) Require specific written information be furnished to clarify the petition, if necessary;
- (2) Deny the petition in writing, stating the reasons therefore; or
- (3) Schedule a revocation hearing within 10 working days from the date of commission acceptance of the petition and notify the petitioner and licensee by telephone and either certified mail or electronic mail with receipt confirmation requested;

(b) The licensee notice shall include a copy of the petition and all supporting documentation.

Source. #7061, eff 7-23-99; ss by #8670-B, eff 7-1-06,
EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

Liq 207.03 Denial of Petitions.

(a) The petition shall be denied for any of the following:

- (1) Lack of factual information documenting the charges in the petition;
 - (2) Failure of the petitioner to notify the licensee of the alleged practices leading to the petition and allow the licensee opportunity to correct said practices; or
 - (3) The facts or practices alleged in the petition not being sufficient to allow revocation.
- (b) The petition shall not be denied for:
- (1) The licensee not receiving notice sent as required in Liq 207.01(c);
 - (2) The alleged problems being caused by a manager with or without the knowledge of the licensee; or
 - (3) The alleged problems being caused by patrons on the premises.

Source. #7061, eff 7-23-99; ss by #8670-B, eff 7-1-06,
EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

Liq 207.04 Revocation Hearings. The chairman or his or her designee shall hold revocation hearings initiated under this part subject to the provisions of Liq 205, with the exception that:

- (a) Liq 205.03, Liq 205.04, and Liq 205.05 shall not apply; and
- (b) Liq 205.12(f)(6) and (7) shall not apply.

Source. #7061, eff 7-23-99; ss by #8670-B, eff 7-1-06,
EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

Liq 207.05 Grounds for Holding Revocation Hearings. Revocation hearings shall be held when the petitioner alleges that:

(a) There is continual or longstanding disregard of state 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 being 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 business on neighboring businesses, other than competitive;
- (2) Reduction of neighborhood property values attributable to the 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 business is not being 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);

(e) The person or persons actually managing the business do not meet the requirements of RSA 178:3, VII (e); or

(f) The license holders do not meet the requirements of RSA 178:3, VII (b).

Source. #7061, eff 7-23-99; ss by #8670-B, eff 7-1-06,
EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

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

(a) The record of violations of the licensee taken as a whole for the past 5 years; and

(b) The truthfulness of the licensee in his original application and any amendments filed to it.

Source. #7061, eff 7-23-99; ss by #8670-B, eff 7-1-06,
EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

Liq 207.07 Evidence.

(a) The presiding officer shall consider as evidence:

(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 presiding officer shall not consider:

- (1) Undocumented complaints, whether from officials or the public; or
- (2) Complaints which the licensee was given no chance to correct.

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

Source. #7061, eff 7-23-99; ss by #8670-B, eff 7-1-06,
EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

Liq 207.08 Revocation. The chairman, deputy commissioner, or their designee shall revoke the license as required by the petitioners upon finding that:

(a) A preponderance of the evidence presented indicates that the facts alleged in the petition for revocation are substantially correct; and

(b) The facts alleged in the petition demonstrate at least one of the following:

- (1) The business is not in compliance with the requirements of RSA 178:3, or other licensing requirements for the business;
- (2) The demonstrated character or ability of the person or persons actually managing the business on a day to day basis is not sufficient to ensure that the business is operated in compliance with the laws and statutes of the state, commission, or locality; or
- (3) Continual or long standing disregard of the business for state laws or administrative rules.

Source. #7061, eff 7-23-99; ss by #8670-B, eff 7-1-06,
EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

PART Liq 208 LICENSING HEARINGS

Liq 208.01 Purpose. The purpose of this part is to set forth the manner in which the commission shall hold hearings prior to issuing licenses, the manner in which the commission shall communicate to license applicant's denials of licenses, and how the commission shall hold appeal hearings on such denials.

Source. #8670-B, eff 7-1-06, EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

Liq 208.02 Informational Licensing Hearings. Prior to issuing a new license, the chairman or his or her designee shall hold a public informational hearing if requested by the local governing authority or the public, or if the commission requires additional information to determine whether the license applicant meets the criteria of RSA178:3 VII. The hearing shall be conducted as follows:

(a) The prospective licensee and the local governing body shall be notified at least 10 calendar days prior to any informational hearing;

(b) Public notice of the hearing and the public's right to testify shall be published in a local paper of record at least 10 calendar days prior to the hearing;

(c) The presiding officer shall take testimony in the following order:

(1) The prospective licensee;

(2) The local governing authority;

(3) The public, in the order in which they sign up to speak;

(d) The commission shall question speakers if necessary to clarify their positions;

(e) There shall be no cross examination or rebuttal testimony; and

(f) Written testimony shall be accepted only if signed and received prior to the close of the hearing.

Source. #8670-B, eff 7-1-06, EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

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

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

(b) Notify the applicant of their right to a hearing before the commission;

(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) For 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 assumption that any licensee accumulating 12 or more points in a license year does not meet the criteria of RSA178:3 VII (b) and (e).

Source. #8670-B, eff 7-1-06, EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

Liq 208.04 License Denial Appeal Hearings. License denial appeals hearings shall be conducted under the provisions of Liq 205.

Source. #8670-B, eff 7-1-06, EXPIRED: 7-1-14

New. #12207-A, eff 6-14-17

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.

[Source.](#) #12208, eff 6-14-17

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.

[Source.](#) #12208, eff 6-14-17