

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-K

COVER SHEET FOR EMERGENCY RULE

Document Number 14198 Rule Number Liq 506.09

1. Agency Name & Address: NH Liquor Commission 50 Storrs Street Concord NH 03301	2. RSA Authority: <u>RSA 179:31 VII</u> 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Amendment <u>X</u> Repeal _____
5. Date of Filing: <u>2-20-25</u>	

6. Short Title: **Rules relating to Particular Licensees**

7. Contact person for copies and questions:

Name: **Stephen Judge** Title: **Business Relations Admr.**

Address: **50 Storrs Street** Phone #: **603-230-7098**
Concord, NH 03301


****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

- 8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.
- 9. A summary of the effect if the rule were not adopted.
- 10. A description of those affected.

***PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET** and all attachments along with 2 copies of the emergency rule to the Office of Legislative Services, Administrative Rules.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* hereby certify that the attached is an accurate statement explaining why an emergency rule is necessary.

Date: 2-20-25 Signature: 

Name: Joseph W. Mollica

Title: Chairman

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

Liq 506.09 Item 8 An explanation of the nature of the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

One of the primary duties of the liquor commission is to “Optimize profitability.” RSA 176:3 I.

There are currently 439 New Hampshire licensed beverage¹ manufacturers, brewpubs and beverage vendors licensed through the liquor commission, as well as 7 wholesale distributors. These licensees are required to obtain commission approval on all product labels prior to distribution to retailers and/ or consumers, pursuant to RSA 179:33 and Liq 506.09 (a) (2) e.

Of these 3 license types, 14 licensees have submitted 24 separate products that were or will be denied by the commission due to the current language in administrative rule Liq. 506.09. A spreadsheet of these products is included.

Liq 506.09 Product Approvals for all Licensees and Notifications for Certain In-state Licenses.

(a) The following licensees shall seek approval under the standards below:

...

(2) The commission shall approve the label and packaging unless:

...

e. The packaging or labeling features illustrations, subject matter, or other attributes that are consistent with products marketed toward children and youths;

The fiscal harm to the licensees is substantial, because the 14 licensees are unable to sell their products for distribution within the State of New Hampshire. Notably, a licensee recently testified in a hearing that their company had projected a loss of \$200,000.00 in revenue for a single product that could not be distributed within the State.

Furthermore, there are 1469 off-premises licensees and 2171 on-premises licensees who will lose an undetermined amount of revenue by not being able to sell the products at their retail establishments.

¹ Beverage includes beer. RSA 175:1 VIII.

Liq 506.09 Item 8 An explanation of the nature of the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

In addition to the loss of revenue for the licensee, the commission has lost \$0.30/ gallon on all products that can not be approved. It is impossible to estimate the loss of revenue to the State because there is no way to determine how many gallons of product would have been distributed if the products were approved.

The liquor commission has experienced a substantial increase in product labels on beverages that resemble the flavor of ice cream and, reasonably, the labels contain pictures of ice cream. As the industry adjusts to the demands of the market, the commission must be able to make accommodations for the industry members. The proposed language in Liq. 506.09 would authorize the commission to approve the affected product labels, thereby allowing all these products to enter the New Hampshire market.

14198 (eff 2-20-25)
EMERGENCY RULE
EXPIRES: 8-19-25

CHAPTER Liq 500 RULES RELATING TO PARTICULAR LICENSEES

Readopt with amendments Liq 506.09 (a) (2) e., effective#13461, eff 10-13-22, to read as follows:

Liq 506.09 Product Approvals for all Licensees and Notifications for Certain In-state Licenses.

(a) The following licensees shall seek approval under the standards below:

(1) Beverage vendor, brew pub, nano brewer, and beverage manufacturer licensees shall provide the commission with the required information, including any fees, on the following forms to receive approval for the brand of beverage, label content, and package size prior to shipping into or selling any beverage within the state:

- a. Form A-100 “Product Approval - Beverage Vendor” (revised 09/2022);
- b. Form A-101 “Product Approval - Beverage Manufacturer” (revised 09/2022);
- c. Form A-102 “Product Approval – Brew Pub” (revised 09/2022);
- d. Form A-103 “Product Approval - Nano Brewery” (revised 09/2022);
- e. Form A-104 “Product Approval - Variety Pack” (revised 09/2022); and
- f. Form A-105 “Temporary Registration of Beer and Specialty Beverage for Festival” (revised 09/2022);

(2) The commission shall approve the label and packaging unless:

- a. Statements on the label or packaging are false or misleading;
- b. Any written statements on the label or packaging are illegible;
- c. The packaging or labeling contains subliminal or similarly deceptive advertising techniques;
- d. The packaging or labeling features a depiction of athletes that is deceptive and misleading in that it implies that consuming alcohol is conducive to athletic skill or physical prowess, or that consuming alcohol does not hinder the athlete’s performance;
- e. The packaging or labeling features illustrations, subject matter, or other attributes that are consistent with products marketed toward children and youths;

1. Notwithstanding the provisions of paragraph e, it shall not be the sole basis for denial by the commission that packaging or labeling features illustrations of a dessert(s).

- f. The packaging or labeling features a depiction of consumption of an alcoholic beverage while seated in, about to enter, operating, or about to operate an automobile or other machinery;

14198 (eff 2-20-25)
EMERGENCY RULE
EXPIRES: 8-19-25

- g. An aspect of the packaging or labeling normalizes or encourages excessive drinking;
 - h. The packaging or labeling does not indicate in manner that is sufficiently clear that the product contains alcohol; or
 - i. The packaging or labeling used might result in confusion regarding whether the product is an alcoholic beverage;
- (b) The commission shall not be responsible for copyright or trademark infringement;
- (c) The commission shall make a decision within 60 days of receipt of a complete application and provide the decision to the licensee. The commission shall extend the time period for the decision upon written agreement of the applicant.
- (d) The following licensees shall provide notifications for in-state licensees for products to be available for sale prior to approval by the commission as follows:
 - (1) Beverage manufacturers, brew pubs, and nano-breweries shall provide the information required by forms in Liq 506.09 (a)(1) b.-d. prior to selling any beer, beverage, specialty beverage or specialty beer at their premises:
 - a. Form A-101 “Product Approval - Beverage Manufacturer”;
 - b. Form A-102 “Product Approval – Brew Pub; and
 - c. Form A-103 “Product Approval – Nano Brewery”;
 - (2) In-state licensees may select the new product notification field on the forms in Liq 506.09(a). They shall only make the product available for sale upon new product notification, when a new product is:
 - a. Authorized under their license type; and
 - b. Brewed on-site for on-premises and off-premises sales in pre-approved generic containers and labels;
 - (3) The following in-state licensees shall not select the new product notification field on forms in Liq 506.09 (a)(1) b.-d. under the following conditions:
 - a. The notification field shall not be selected by beverage manufacturers for cider, mead, or fermented beverages or similar fermented products over 6%, specialty beers over 12% or specialty beverages over 6%;
 - b. The notification field shall not be selected by brew pubs for any cider over 6% or a specialty beer over 12%; and
 - c. The notification field shall not be selected by nano breweries for any specialty beer over 12%; and
 - (4) Beverage manufacturers, brew pubs, and nano-breweries shall not submit any additional product approval requests for the same product for at least 30-days.

14198 (eff 2-20-25)
EMERGENCY RULE
EXPIRES: 8-19-25

(e) Should any licensee be found to have violated any section of statute or Liq 509 pertaining to product approvals with regard to product that has not received final approval, after notice and an opportunity for hearing, the licensee shall immediately remove all such product from the trade at their expense, and be subject to administrative penalties.