

Notice Number 2020-25

Rule Number Liq 402.01 and Liq 900

<p>1. Agency Name & Address: NH Liquor Commission 50 Storrs Street Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 176:14, VIII(b) and X; RSA 178:28 and RSA 179:57, I-a</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action: Adoption <u>X</u> Repeal _____ Readoption _____ Readoption w/amendment <u>X</u></p>
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5. Short Title: **Licensee Purchase, Discount, Credit, and Billing Procedures**

6. (a) Summary of what the rule says and of any proposed amendments:

The Liquor Commission is proposing to readopt with amendment Liq 402.01 on purchase of supplies of liquor or wine from the Commission. The Commission is also proposing to effectively readopt with amendment Liq 900 on licensee discount, credit, and billing procedures. This includes adopting again the purpose clause in Liq 901, which had expired in November, 2004.

The purpose of the proposed amendments is to update the processes by which the Commission may authorize on and off-premises licensees to make purchases from the Commission on credit, including the terms and conditions that apply to such purchases, and to establish discounts for liquor and wine purchases made by on and off-premises licensees. The discounts are contained in RSA 178:28 and set at the minimum percentage for many years.

6. (b) Brief description of the groups affected:

This rule affects on-premises and off-premises licensees.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

RULE	STATUTE
Liq 402.01	RSA 178:28
Liq 901	RSA 178:28
Liq 902	RSA 176:14, VIII(b) and X
Liq 903	RSA 176:14, VIII(b) and X
Liq 904	RSA 176:14, VIII(b) and X
Liq 905	RSA 176:14, VIII(b) and X
Liq 906	RSA 176:14, VIII(b) and X
Liq 907	RSA 178:28

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Janet Donnelly**
Stephen Judge

Title: **Paralegal**
Business Relations Admr.

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or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **April 12, 2021**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **April 2, 2021 – 10:00 a.m. to 12:00 p.m.**

Place: **Microsoft Teams meeting**
Join on your computer or mobile app
[Click here to join the meeting](#)
Or call in (audio only)
[+1 603-931-4944,,408646950#](#) **United States, Concord**
Phone Conference ID: 408 646 950#
[Find a local number](#) | [Reset PIN](#)

The following email address will be monitored during the meeting if there is any public access or technical problems during the meeting:
janet.donnelly@liquor.nh.gov

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 21:022, dated 2/26/2021

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules. Not applicable to Liq 902.01, Liq 902.04, and Liq 907.01 thru Liq 907.07 which are new rules. Not applicable to Liq 901.01 which expired in November 2004.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate no impact on state funds.

3. Cost and benefits of the proposed rule(s):

There is no cost or benefit attributable to the proposed rules. The proposed rules incorporate the authority to grant discounts provided by RSA 178:28. The credit and discount processes are already in place. There is no cost attributable to proposed Liq 901.01, nor were there costs attributable to the version of Liq 901.01 which expired in November 2004.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not violate Part I, Article 28-a of the N.H. Constitution. The proposed rules do not create a new program or responsibility but seek to expand or modify an existing program or responsibility. The rules do not mandate or assign responsibility to any political subdivision that would increase the costs the political subdivision may pay.

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

PART Liq 402 PURCHASING AND SUPPLYING

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

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

(1) Orders shall be submitted to the commission office using one of the following methods:

a. In writing providing the information required by Liq 402.01(b)(1);

b. Through a licensed warehouse's internet ordering system which interfaces with the commission's computer system; or, (Through the commission's internet ordering system;

(2) Orders shall be on approved credit or shall be accompanied by acceptable payment;

~~(3) All orders shall be picked up at a date and time set by the warehouse pursuant to the order placed by the licensee;;~~

~~(3) 4) All orders shall be picked up:~~

a. By a licensed carrier who will make the delivery to the licensee; or

b. By the retail licensee, their employee, or other designated individual, only with presentation of a copy of the retail license at pickup;;

~~(4) 5) Orders The licensee shall be on approved credit or shall be accompanied by acceptable payment; and~~

~~(5) All pay all transportation charges shall be paid by the licensee;;~~

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

(1) The license number;

(2) The licensee name;

(3) The brand code(s);

(4) The brand name(s);

(5) The brand size(s); and

(6) Number of cases; or number of bottles, if available.

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

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

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

(1) ~~Store management shall have the right to limit quantities to licensees so that at least half the product shall remain available to the public;~~

~~(2)~~ ~~_~~Orders shall be on approved credit or paid at the register by an acceptable form of payment; and

~~(3)~~ ~~2~~ ~~_~~Licensees picking directly from the ~~state~~-store shelf shall pay retail price, which for the purposes of this rule means:

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

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

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

(1) ~~_~~A quote may be obtained by submitting a “Customer Order Inquiry” containing Form (Revised 2-21) with the following required information to a state commission liquor store or the commission office;

a. ~~_~~Customer name;

b. ~~_~~Customer address;

c. ~~_~~Customer phone number;

d. ~~_~~Liquor store for order pick up;

e. ~~_~~Brand name;

f. ~~_~~Manufacturer's name;

g. ~~_~~Country of origin;

h. ~~_~~Number of cases desired; and

i. ~~_~~Bottle size;

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

- (3) ~~An~~The customer may place an order ~~may be placed for the product referenced in the quote~~
before the expiration date of the quote ~~by the citizen~~;
- (4) The order shall be submitted to a store or the commission office; and
- (5) All orders shall be picked up and paid for at the store designated;
- (g) Nothing in these rules shall be construed as to prohibit on-premises and off-premises licensees or citizens~~customers~~ from purchasing, at their own risk, through permitted direct shippers;
- (h) Errors in ordering, shipping, billing, or receiving shall be reported, processed and the supplies returned within 30 days of their receipt;
- (i) Errors in an order from the warehouse shall be resolved by contacting the commission office;
- (j) Errors in an order from a ~~state~~commission liquor store shall be resolved at the store where the sale was made; and
- (k) Incomplete orders, orders submitted without payment or not in compliance with Liq 900 shall not be processed and shall be returned stating the reasons therefore.

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

CHAPTER Liq 900 LICENSEE DISCOUNT, CREDIT AND BILLING PROCEDURES

~~Statutory Authority: RSA 176:14, 178:26 I~~

PART Liq 901 -SYSTEM ESTABLISHED

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

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

PART Liq 902 -APPLICATION PROCEDURE

Liq 902.01 Credit Privilege.

- (a) A licensee's approval from the commission to make credit-based purchases is a privilege.
- (b) No substantive or procedural guarantees attach to this privilege beyond those set forth in these rules.

~~_____ Liq 902.01~~Liq 902.02 Application Form.

(a) ~~_Any licensee that who has not established a credit basis with the commission, and that seeks who wishes to make~~utilize a credit-based purchases from the commission order system shall provide, on a Form "Licensee Credit Application" form (effective 2/2021), the required information. form to be provided by the commission, the following:

- (1) ~~_Name, billing, and mailing address of applicant;~~
- (2) ~~_Trade name and physical address of business;~~
- (3) ~~_Amount of credit requested for all licensed business locations;~~
- (4) ~~_Name and address of landlord, if licensed business location is rented or leased;~~
- (5) ~~_Indication as to whether business is a sole proprietorship, partnership, limited liability company or corporation;~~
- (6) ~~_Indication as to whether applicant has ever declared bankruptcy, either individually or as principal of a business; and~~
- (7) ~~_Signature of the president, or authorized officer of the corporation, the designated signatory for other business entities or owner of the establishment.~~

(b) ~~All requests~~Any request for credit ~~are~~is subject to a credit check.

(c) ~~In the event a licensee submits an incomplete form, such form shall not be processed, and the commission shall notify the licensee that its~~. ~~The submitting party shall be notified of how the application is incomplete.~~

(d) ~~Licensees with multiple business locations shall submit a distribution list that sets forth the amount of credit requested for each of the licensees' business location. A revised distribution list shall be provided as additional locations are added.~~

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

Liq 902.0302 Credit Approval.

~~(a) Licensees shall be granted credit if the commission determines that:~~

~~(1) The licensee has an acceptable credit history with other vendors in an amount equal to or exceeding the requested limit; or~~

~~(2) The licensee posts a bond or an irrevocable letter of credit from a state or federally recognized financial institution in an amount which covers the requested credit.~~

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

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

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

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

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

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

(d) A licensee who is granted credit and maintains an acceptable credit history with the commission may, at any time, request additional credit. ~~equal to the amount secured in Liq 902.02(a)(1) or Liq 902.02(a)(2).~~ Licensees with multiple licensed business locations shall provide a distribution list of credit ~~per business location.~~

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

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

- (a) Forms shall be filled out completely and truthfully;
- (b) Forms shall be completed in a legible manner;
- (c) Forms shall be completed in non-fading, non-erasable graphic such as ink or typewritten; and
- (d) Nothing in this section shall be construed to prohibit completion or filing of forms via the internet or other electronic completion, or filing of forms when the division has the capability of authorizing and processing such forms.

PART Liq 903 BILLING AND PRICING OF ORDERS

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

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

Liq 903.03 Payment Deadlines for Credit Purchases. Licensees shall paySales. Credit for merchandise purchased through credit within 18 shall be extended to qualified licensees for 15 calendar days, computed as follows:

(a) For merchandise delivered from a warehouse, the 18-day timeline warehouses, 15 days shall begin on the day the transportation agent signs for the merchandise; and

(b) For merchandise ordered from a commissionthe New Hampshire state liquor store, the 18-day timeline stores, 15 days shall begin on the day the licensee or agent of the licensee takes the merchandise from the store; and

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

PART Liq 904 LATE/NON PAYMENT

Liq 904.01 Operating Conditions Governing Licensees.

(a) For purposes of this section a depletion allowance (depletion) is the amount the retail shelf price of a licensee’s product at the commission liquor stores is reduced, and a special purchase allowance (SPA) is an agreement to reduce the price the commission pays for product in a purchase order.

(b) A licensee may offer an SPA to reduce the cost of product on a purchase order for a specific cost amount and a certain number of product and the commission may accept, reject or counter the offer.

(c) Upon written request by a licensee, the commission may allow a depletion from the shelf price of the licensee's product for a specific amount and period of time.

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

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

(f) The commission may request a depletion from a licensee regarding a specific product or products; the licensee shall respond within 7 business days.

(ag) Any vendor or vendor's licensee or licensee's agent who has not paid the price reduction shall that fails to pay the depletion in violation of the agreed schedule may be assessed a fee equal to 18% per annum of the amount overdue.

(h) ~~(b)~~ Any invoice for merchandise not paid in full under the terms of Liq 903.03 or the return of any payment submitted by a licensee by a bank or other collection agent, may shall result in the commission taking any application of the following actions:

(1) Suspend all credit. All sales of liquor and wine to the licensee shall be suspended by the commission until the account is paid;

(2) Suspend credit privileges for up to 6 months for a licensee who is late with payment more than once in the prior 12 consecutive months;

a. A licensee seeking to re-establish credit may reapply after the period of suspension subject to the rules and conditions of this chapter;

(3) Require cash, certified check, debit card, or credit card payments from any licensee who has 2 or more checks returned within the prior 12 consecutive months due to insufficient funds for a period of up to 12 consecutive months after receiving payment;

(4) Refer all accounts that are 60 or more days in arrears to the commission's legal unit or the department of justice for collection, unless a payment plan under 904.02 in in effect with the commission; and

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

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

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

Liq 904.02 Payment Plan.

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

(1) ~~(2)~~The commission shall notify in writing ~~Any~~ licensee whose account is 30 days in arrears ~~of its delinquency and the commission shall make contact~~develop a payment plan with the ~~licensee~~commission;

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

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

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

a. The sale of a business;

b. Removal of a pending lien; or and

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

~~(5) A licensee who is late with payment by 3 days or more or late 4 times in the prior 12 consecutive months shall have credit privileges suspended. A licensee wishing to re-establish credit may reapply after a period of 6 calendar months from the loss of credit privileges, subject to the rules and conditions of this chapter;~~

~~(6) Cash, certified check, debit card, or credit card shall be required from any licensee who has 2 or more checks returned within the prior 12 consecutive months due to insufficient funds, and this requirement shall continue for 12 consecutive months after receiving payment;~~

~~(7) All accounts which are 60 or more days in arrears shall be referred to the commission's legal counsel or the department of justice for collection, unless a payment plan is in effect with the commission; and~~

~~8) Checks, drafts, or money orders returned for insufficient funds shall be subject to a fee pursuant to RSA 6:11 unless the drawer provides the liquor commission with a written statement from the drawee that the negotiable instrument was returned due to an error on the part of the drawee. The drawer shall, in any event, be responsible for the payment of all protest and bank fees, in addition to the face value of the check.~~

~~(c) Telecommunication and internet orders awaiting payment will be deleted if payment is not received within 14 days of order placement.~~

PART Liq 905 BANKRUPTCY

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

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

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

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

PART Liq 906 ERRORS, RETURNS, DISCONTINUED BUSINESS~~DISPUTED CHARGES~~

-Liq 906.01 Payment.

(a) Licensees shall pay their account in full within the 18-15-day timeline.;

(b) In limit, and bring any disputes with regard to billing to the event there is an alleged error, it attention of the commission. Late payments shall be resolved pursuant to subject to the penalties set forth in Liq 402904.01 (h).;

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

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

(b) The commission shall have the authority to accept or reject any return requests at its discretion;

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

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

(3) If a commission liquor store accepts a return, the store shall bring the product ~~will be brought into its~~ store's inventory.

(c) The commission shall have the authority to assess shipping costs at its discretion.;

(1) The licensee shall bear all shipping costs unless the merchandise was received in defective condition, the merchandise was shipped by commission error, or the licensee demonstrates that it is experiencing financial hardship. ~~Once merchandise has been accepted back into the commission's inventory, the commission will issue a credit memo to the licensee's account.~~

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

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

PART Liq 907 DISCOUNT ON SALES TO LICENSEES

Liq 907.01 On-premises Licensees Discounts.

(a) The commission may allow discounts for sale of liquor and wine to on-premises licensees;

(b) If allowed, the discount shall be a percentage from the regular retail price F.O.B. the warehouse;

(1) The discount shall be on case lot orders or bottles; and

(2) The discount shall be no less than 10%.

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

Liq 907.03 Credit Cards.

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

(b) The process for credit card purchases is set out in Liq 402.01.

Liq 907.04 Off-premises Licensees Schedule.

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

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

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

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

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

(c) If allowed, the discount shall be a percentage from the regular retail price at the warehouse or commission liquor stores;

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

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

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

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

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

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

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

Liq 907.07 Discount Adjustments for Off-premises Licensees.

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

APPENDIX

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