



## **Relative to Label Review and Product Approval Process for Beverages**

### **Relative and Applicable Statutes and Rules:**

**RSA 179:33 and Liq. 506.09**

#### **1. Purpose.**

The New Hampshire Liquor Commission, Division of Enforcement and Licensing (Commission) has provided this guidance document in response to questions from the public and the beverage manufacturing industry (manufacturers) regarding product approvals.

New Hampshire has seen a significant increase in licensees in recent years. One of the fastest growing license categories are found in the manufacturing tier. Beverage manufacturers (RSA 178:12), Nano Brewers (RSA 178:12-a), and Brew Pubs (RSA 178:13) have increased significantly over the past few years. With this explosive growth comes the desire to raise awareness of the manufacturer's products, obtain product approvals and gain market share in this competitive industry. The Commission is committed to bring efficiency and promptness to the label/product approval process and utilizing technology, whenever possible, to achieve this goal.

This circular is intended to provide Beverage Manufacturers (RSA 178:12), Nano Brewers (RSA 178:12-a) and Brew Pubs (RSA 178:13) with guidance as the Commission seeks to streamline the label and product approval process to balance the duties of the Commission and the desire of the beverage manufacturing industry to gain product approval and distribution of their products to consumers.

#### **2. Authority.**

Administrative Rule Liq. 201<sup>1</sup> gives the Commission the authority to interpret statutes and administrative rules. This question falls within the authority of the Commission. The purpose of Title XIII is to provide an orderly and controlled environment for the manufacture, wholesale and retail sale of alcoholic beverages. To that extent the General Court has charged the Commission with the fair and reasonable interpretation of the statutes and the administrative rules established under law.



## NEW HAMPSHIRE LIQUOR COMMISSION

Division of Enforcement, Licensing and Education

**Industry Circular**

Number 2022-01

Issued February 10, 2022

### 3. Discussion of the Issue.

#### A. Current State of the Law and Rule

Among the numerous responsibilities assigned to the Liquor Commission by the General Court is the review and approval process for new beverages coming into the commercial marketplace. RSA 179:33, I requires holders of beverage vendor, brew pub, nano brewery and beverage manufacturer licenses to have their packaging or containers specifically approved by the Commission. Additionally, RSA 179:33, IV advises the Commission shall not, by rule or otherwise, require the New Hampshire licenses described above to obtain federal label approval for beverages sold exclusively in the State of New Hampshire.

Liquor Rule 506.09 requires the licensees described above to provide the following for brand and packaging approval prior to shipping into or selling beverages within the state:

- (a) Copy of the label
- (b) A copy of the federal label approval if required
- (c) A certified content analysis performed at 60 degrees Fahrenheit by volume
- (d) Package size approval requests
- (e) A copy of territorial agreement
- (f) Any other information required by federal law, rule or state statute

#### B. Industry Challenges within the Current System of Approvals

New beverages produced by manufacturers requires approval from the Commission before the product may be sold in the marketplace. The product review and approval process has been standard for a lengthy period of time. In an attempt to accommodate industry requests prior to June of 2021, breweries sent an email noting the name and style of the beer, the ABV, and the format in which the product was to be sold. Any packaging labels to be used were sent as an attachment. The Commission would then send an approval letter, at which time the beverage could be sold.

Given the dramatic increase in number of licensees submitting product approvals and the substantial increase in the number of product approvals being received, the current process is not sustainable to



## NEW HAMPSHIRE LIQUOR COMMISSION

Division of Enforcement, Licensing and Education

## Industry Circular

Number 2022-01

Issued February 10, 2022

industry members or the Commission. In cooperation with industry members, a comprehensive reform of the product approval processes has taken place in order to efficiently respond to the demand in getting products to the market while maintaining compliance with State law and administrative rules.

### C. New Rulemaking and Seeking Efficiencies

The Commission is committed to bringing efficiencies whenever and wherever possible to its operations and in working with New Hampshire's alcohol beverage manufacturers. In pursuit of this goal the Commission has added a "Notification" process (outlined below) to what was previously only an "Approval" process. The Commission has adopted the language into policy as we bring the proposed rule to the Joint Legislative Committee on Administrative Rules for review and approval.

*Liq 506.09 Product Approvals for all Licensees and Notifications for Certain In-state Licenses. Beverage vendor, brew pub, nano brewer and beverage manufacturer licensees shall provide the commission with the required information on the following forms to receive approval for the brand of beverage and package size prior to shipping into or selling any beverage within the state:*

*(a) Approvals.*

*(1) Beverage vendor, brew pub, nano brewer and beverage manufacturer licensees shall provide the commission with the required information 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 "Beverage Vendors" (revised 1/2022);*
- b. Form A-101 "Beverage Manufacturers" (revised 1/2022);*
- c. Form A-102 "Brewpub" (revised 1/2022);*
- d. Form A-103 "Nano Breweries" (revised 1/2022); and*
- e. Form A-104 "Variety Pack" (revised 1/2022).*

*(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;*



# NEW HAMPSHIRE LIQUOR COMMISSION

Division of Enforcement, Licensing and Education

## Industry Circular

Number 2022-01

Issued February 10, 2022

*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;*

*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;*

*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 could result in confusion regarding whether the product is an alcoholic beverage.*

*(3) The commission is not responsible for copyright or trademark infringement.*

*(4) The commission shall make a decision within 60 days of receipt of a complete application and provide the decision to the licensee within a reasonable time.*

*(a.) In the event of a denial, the licensee may file a petition with the commission pursuant to Liq 208.*

*(b) Notifications for in-state licensees.*

*(1) Beverage manufacturers, brewpubs, and nano-breweries shall provide the information required by the following forms to the commission prior to selling any beer, beverage, specialty beverage or specialty beer at their premises:*

*a. Form A-101;*

*b. Form A-102; and*

*c. Form A-103.*

*(2) A new product notification is allowed for in-state licensees 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.*



## NEW HAMPSHIRE LIQUOR COMMISSION

Division of Enforcement, Licensing and Education

## Industry Circular

Number 2022-01

Issued February 10, 2022

(3) *The licensee shall select the appropriate notification field on Form A-101, A-102 or A-103.*

*a. Upon receipt by the commission of the form with a selected notification field, these products shall be available for sale prior to approval by the commission.*

- 1. 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%.*
- 2. The notification field shall not be selected by brewpubs for any cider over 6% or a specialty beer over 12%*
- 3. The notification field shall not be selected by nano breweries for any specialty beer over 12%*
- 4. Prior to self-distributing or selling to a wholesale distributor a new beer, beverage, specialty beverage, or specialty beer, beverage manufacturers, brewpubs, and nano-breweries shall comply with Liq 506.09 (a).*
- 5. If the beverage manufacturers, brewpubs, and nano-breweries creates a specific label for any particular beer, they shall comply with Liq 506.09 (a).*

*(4) Beverage manufacturers, brewpubs, and nano-breweries shall not submit any additional product approval requests for the same product for at least 30-days.*

*(5) Should any licensee be found to have violated any section of statute or rule pertaining to product approvals, the licensee shall be required to immediately remove all product from the trade at their expense and be subject to administrative penalties.*

#### 4. Questions and Additional Information

Industry member who have questions about the policy changes outlined in section 3 above should contact Lieutenant Matt Culver or Examiner James Barbuti at the Division of Enforcement and Licensing at 603-271-3929.

---

i 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.