

**Readopt with amendment Liq 1101, eff. 6/9/11 (Doc. #9441-A), cited and to read as follows:**

CHAPTER Liq 1100 RULES RELATING TO DIRECT SHIPMENT

PART Liq 1101 DEFINITIONS

Liq 1101.01 Definition of Terms. The following terms shall be construed for the purposes of this chapter as set forth below:

- (a) "Addressee" means the person named on a direct delivery invoice;
- (b) "Adult" means any individual 21 years of age or older;
- (c) "Commission" means the New Hampshire liquor commission;
- (d) "Direct shipper" means a holder of a direct shipper permit issued by the commission;
- (e) "Direct shipper permit" means a permit issued by the commission to an individual, corporation, partnership, or limited liability company that holds a valid liquor license in another state, to ship beverages, wine, or liquor directly to New Hampshire consumers or licensees via a New Hampshire licensed common carrier;
- (f) "Fulfillment house" means a licensed warehouse located outside of New Hampshire that ships products on behalf of direct shippers into the State of New Hampshire;
- (g) "Importer" means an entity that engages in the sale of beverages, wine, or liquor that are sourced or produced outside of the United States;
- (h) "Licensed common carrier" means the holder of a carrier license issued by the commission;
- (i) "Retail price" means the price the consumer paid to the direct shipper for beverage, wine, or liquor shipped by direct shippers into New Hampshire. The term includes all charges except the actual amount paid by the direct shipper to a licensed common carrier for delivery;
- (j) "Signature" means an original manual signature or mark; and
- (k) "Wine manufacturer" means the holder of a "Tax and Trade Bureau Producer and/or Blender" (TTB) permit who sells at retail only those wines produced under that permit. For the purposes of RSA 178:27, such a wine manufacturer shall not sell to a New Hampshire consumer any wines produced for other entities under contract bottling agreements, custom crush, packaging or branding contracts.

**Adopt Liq 1102.01 and Liq 1102.02, cited and to read as follows:**

PART Liq 1102 OVERLYING CONDITIONS FOR PERMITS

Liq 1102.01 Permits For Licensees In Their State Of Domicile. Persons currently licensed in their state of domicile as a wine manufacturer, beverage manufacturer, importer, wholesaler, or retailer, or equivalents thereof may apply for a direct shipper permit from the commission pursuant to these rules.

Liq 1102.02 Permitees Shipping Through Licensed Carriers. Direct shippers shall ship their products through licensed carriers to customers in the State of New Hampshire consistent with these laws and rules.

**Readopt with amendment and renumber Liq 1102.01-Liq 1102.03, eff. 6/9/11 (Doc. #9441-A), as Liq 1102.03 and Liq 1102.04, to read as follows:**

Liq 1102.03 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. Nothing in this section shall be construed so as to prohibit internet or other electronic filing of forms when the commission has the capability of authorizing and processing such forms;
- (d) All license applications shall be made in the name of the proposed licensee and shall be signed and sworn to by the proposed licensee; and
- (e) In the case of a partnership, limited liability company or partnership, or corporate applicant, the application shall be signed and sworn to by an agent of the business with a valid power of attorney, or by all partners or by an officer of the proposed licensee, or in the case of a limited liability company or partnership by each member if a natural person, or by a duly appointed representative of the membership if any other person, or by the manager of the limited liability company.

Liq 1102.04 Fees, Form of Payment.

- (a) Payment shall be made in the form of United States currency, a check, money order, other negotiable instrument payable upon demand, for the total amount due for each permit sought.
- (b) Such instrument described in paragraph (a) above shall be made payable to the "State of New Hampshire-Liquor Commission". A suitable alternative term, including but not limited to, "State of New Hampshire", "State Liquor Commission", or "Liquor Commission", shall not be cause for refusal to accept such instrument, providing it does not lend itself to endorsement of the instrument by any other party other than the state of New Hampshire, nor for any private individual or purpose.
- (c) Any payment made to the commission by check that is returned as unpayable for any reason including any penalty assessment pursuant to RSA 6:11-a shall be replaced by cash, money order, or certified check within 5 business days after notification of the licensee or one of their employees, or proceedings for suspension or revocation of the permit shall be initiated.
- (d) Direct shipper permit holders who ship less than 5 shipments into New Hampshire during a 12-month permit period may, after the permit period has ended, request a refund in writing from the commission. The commission shall refund 20% of the permit fee paid multiplied by the difference between 5 minus the number of shipments made during the permit period.
- (e) In the event an applicant submits an incomplete form or fails to comply with an application rule or statute, such applicant's application shall not be processed and the application form and any licensing fee pursuant to RSA 178 shall be returned to the applicant with the reasons for the application not being processed. Notification shall be made in writing within 30 days.

**Readopt with amendment and renumber Liq 1102.04, eff. 6/9/11 (Doc. #9441-B), as Liq 1102.05 to read as follows:**

Liq 1102.05 Applicant Information Required.

(a) For all new direct shipper applicants, the following information and documentation shall be required:

(1) A photocopy of the applicant's home state license to sell or manufacture alcoholic beverages shall be attached to the permit application. The attached license shall entitle the applicant to engage in its business in its domiciliary state;

(2) A copy of the applicant's registration from his or her state or other governing authority of domicile to conduct business shall be attached to the permit application;

(3) If the applicant is requesting the \$100 wine manufacturer direct shipper permit, the applicant shall also provide:

a. A copy of the applicant's TTB Producer/Blender permit; and

b. A certification on the New Hampshire permit application that the applicant only sells wine manufactured under that TTB permit, and

(4) The applicant shall provide on form D-001 "Direct Shipper Permit Application", amended 10-31-2019:

a. Business legal name in New Hampshire;

b. Trade name and business physical address under which the business shall operate in New Hampshire;

c. Whether the business is a single proprietorship, partnership, corporation, or limited liability company;

d. Business phone number;

e. Business mailing address;

f. Business website;

g. The names and addresses of the business owners if a single proprietorship or partnership, or the names and addresses of the corporate officers or members in the case of a corporation or limited liability company; and

h. A certification that the applicant agrees to operate in New Hampshire under the requirements of RSA 178:27, Liq 1100, and all other applicable New Hampshire laws and liquor rules.

(b) The applicant shall certify that all information provided is true and correct, and that the applicant agrees to meet the New Hampshire operating conditions. Applications shall be signed by the business owner, a partner, corporate officer, member of a limited liability corporation, or an agent of the business with a valid power of attorney.

**Readopt with amendment and renumber Liq 1102.05, eff. 6/9/11 (Doc. #9441-A), as Liq 1102.06 to read as follows:**

Liq 1102.06 Permit Renewals. Renewal of permits shall be the responsibility of the permittee. Failure of the commission to notify the permittee shall not extend the existing permit or excuse shipment into New Hampshire without a permit.

**Readopt with amendment and renumber Liq 1102.06, eff. 12/10/14 (Doc. #10742), as Liq 1102.07 to read as follows:**

Liq 1102.07 Alcohol Consultant Employment By A Direct Shipper.

- (a) Direct shippers may hire alcohol consultants to perform educational events and solicit orders on behalf of the direct shipper permittee in New Hampshire.
- (b) Direct shippers shall provide the alcohol consultant a letter of employment as an agent.
- (c) Alcohol consultants shall register with the New Hampshire secretary of state.
- (d) Alcohol consultants employed by a direct shipper may use the registered trade name of the direct shipper.
- (e) Direct shippers shall notify the commission immediately when alcohol consultants cease employment as an agent.
- (f) Direct shippers shall report and pay direct shipper fees to the commission on all shipments into New Hampshire that alcohol consultants solicited on behalf of the direct shipper.
- (g) Direct shippers shall report and pay direct shipping fees to the commission on all products shipped to alcohol consultants.

**Readopt with amendment Liq 1103.01, eff. 6/9/11 (Doc. #9441-A), cited and to read as follows:**

PART Liq 1103 SHIPMENT AND FEE REPORTING

Liq 1103.01 Direct Shipping Reports and Fees Due. Each direct delivery shipper permittee shall file the following with the commission offices no later than the fifteenth calendar day of the month following each month for which there are shipments into New Hampshire:

- (a) A completed "Direct Shipping Worksheet" form D-006, amended 10-31-2019;
- (b) Required direct shipment fee payments covering all deliveries into New Hampshire for the preceding month; and
- (c) Copies of all invoices delivered to New Hampshire or a report of the invoices consistent with Liq 1103.02 (c).

**Readopt with amendment Liq 1103.02, eff. 6/9/11 (Doc. #9441-A & B), to read as follows:**

Liq 1103.02 Direct Shipping Worksheet.

- (a) The commission shall provide to each direct delivery permittee at or prior to initial permit issuance, a "Direct Shipping Worksheet" form D-006.
- (b) The permittee shall include the following on the "Direct Shipping Worksheet":
  - (1) The direct shipper name;
  - (2) The direct shipper address;
  - (3) The direct shipper permit number;
  - (4) The month covered by the form;

- (5) The number of invoices shipped into New Hampshire during the month;
  - (6) The dollar total of the above invoices, including shipping, and with shipping subtracted;
  - (7) The number of products shipped;
  - (8) The total direct shipment fee owed;
  - (9) Fulfillment house used, if applicable; and
  - (10) A signature attesting to the accuracy of the "Direct Shipping Worksheet" under the provisions of RSA 641:3.
- (c) The permittee shall attach to the "Direct Shipping Worksheet":
- (1) The names and addresses of the individuals to whom the alcoholic beverages were shipped;
  - (2) Product information as follows:
    - a. For domestic, fortified, and table wine, the vintage, brand, specific variety, and quantity of each product shipped;
    - b. For liquor, the manufacturer, brand, specific types, and quantity of each product shipped; and
    - c. For beverage or beer, the manufacturer, brand, specific style, and quantity of each product shipped;
  - (3) The prices charged for each product;
  - (4) The licensed common carrier used to deliver the alcoholic beverages; and
  - (5) The licensed common carrier tracking number used to identify each shipment.

**Adopt Liq 1103.03 to read as follows:**

Liq 1103.03 Fulfillment House Requirements. Direct shippers may contract with a fulfillment house subject to the following requirements:

- (a) The direct shipper shall notify the commission that it intends to employ a fulfillment house and provide the name and contact information of the fulfillment house;
- (b) The fulfillment house shall provide, by the 10<sup>th</sup> of each month, "Fulfillment House Reports" to the commission that provide the following information:
  - (1) The name and physical address of the direct shippers it has served;
  - (2) The direct shipper permit number and expiration date for each of the direct shippers it has served;
  - (3) The name and physical address of the New Hampshire consumer; and
  - (4) The carrier tracking number for the alcohol shipped, and

(c) Fulfillment houses that fail to report in accordance with Liq 1103.03 (b) shall be treated as unauthorized shippers.

**Readopt with amendment Liq 1104-Liq 1106, eff. 6/9/11 (Doc. #9441-A), to read as follows:**

**PART Liq 1104 LICENSED COMMON CARRIER REQUIREMENTS FOR DIRECT SHIPMENTS**

Liq 1104.01 Record Keeping Requirements.

(a) Licensed common carriers delivering alcohol from direct shippers or their fulfillment warehouses shall maintain copies of adult signatures for each delivery of alcoholic beverages for a period of not less than 6 months from the date of delivery and make such signatures available to the commission upon request.

(b) Licensed common carriers delivering alcohol from direct shippers or fulfillment warehouses shall:

(1) Require an adult signature on a signature form or other format approved by the commission; and

(2) Refuse delivery when:

a. An adult refuses to personally accept and sign for the alcohol; or

b. The addressee or the adult receiving the shipment:

1. Is under age 21;

2. Appears legally intoxicated;

3. Appears under the influence of drugs; or

4. Meets any criteria of Title XIII that makes such delivery of alcohol illegal by a New Hampshire licensee.

(c) Licensed common carriers shall report delivery of packages of alcoholic beverages from direct shippers to the commission monthly so as to arrive by the 10<sup>th</sup> day of the month following delivery. The licensed common carrier shall retain adult signature records for at least 6 months from the date of delivery.

(d) Common carrier reports required by (c) above shall contain the following information:

(1) Name of shipper and address;

(2) Number of packages shipped;

(3) Name and clarification that an adult received the package;

(4) Weight of package;

(5) Recipient name and address;

(6) Business name and address, if applicable; and

- (7) Package tracking number.

Liq 1104.02 Warehouse Requirements for Direct Delivery Shipments.

(a) A warehouse license shall not be required for direct-shipped alcohol by a licensed common carrier provided that alcohol is not stored any longer than required for transfer from a delivery vehicle to the next scheduled local delivery vehicle.

(b) When an adult is not available to sign for the initial delivery attempt, a licensed common carrier may hold the product for delivery not more than 7 calendar days without the commission's approval.

(c) Alcohol that is refused or undeliverable shall, within 7 calendar days of receipt in New Hampshire:

(1) Be returned to the direct delivery shipper; or

(2) The commission shall be notified and the alcohol held for commission pick up and disposal.

Liq 1104.03 Commission Notification.

(a) The commission shall provide licensed common carriers with lists of active direct shipper permittees upon request.

(b) The commission shall once a month provide licensed common carriers a list of unauthorized direct shippers from whom delivery is prohibited.

(c) The commission shall notify licensed common carriers, in writing, when a company is removed from the list of unauthorized shippers subject to RSA 178:14.

(d) The list of active direct shippers and unauthorized direct shippers shall also be made available on the commission's website.

Liq 1104.04 Illegal Products. Licensed common carriers shall deliver direct shipments of alcohol in New Hampshire pursuant to this chapter and Title XIII. Any other deliveries shall be deemed violations of RSA 178:1, I, and shall be investigated and prosecuted by the commission.

Liq 1104.05 Illegal Delivery. The commission shall investigate and prosecute both the individual and the company involved in any delivery violating the provisions of RSA 179:1 or RSA 179:5, I.

PART Liq 1105 IDENTIFICATION REQUIREMENTS

Liq 1105.01 Direct shipper Package Mark. Each shipment of alcohol into New Hampshire from a direct shipper shall be clearly marked as "Alcoholic Beverages Adult Signature Required."

PART Liq 1106 LICENSEE PURCHASES FROM DIRECT SHIPPERS

Liq 1106.01 Request to Purchase. New Hampshire licensees who wish to obtain products from direct shippers shall request permission from the commission by sending a written request to the direct shipping unit of the commission, including:

(a) Product information as follows:

(1) For domestic, fortified, and table wine, the vintage, brand, specific variety, and quantity of the product or products which the licensee wishes to purchase;

(2) For liquor, the manufacturer, brand, specific types, and quantity of the product or products which the licensee wishes to purchase; and

(3) For beverage or beer, the manufacturer, brand, specific style, and quantity of each product shipped;

(b) The name of the direct shipper from whom the licensee wishes to purchase the product; and

(c) Whether the licensee wants permission for a single order or to purchase from this source on an ongoing basis.

Liq 1106.02 Commission Determination. The commission shall, in a public meeting, determine, pursuant to RSA 176:3, whether to approve the licensee request for purchase from a direct shipper based on the following:

(a) Financial impact on commission and state revenue;

(b) Impact on business relationships with New Hampshire state suppliers; and

(c) If the commission would profit by listing and selling the products to the licensee.

Liq 1106.03 Licensee Notification. The direct shipping unit shall notify the licensee in writing whether or not the request for purchase was approved, and of any conditions that the commission attaches to the approval issued. A copy of the notice shall be sent to the direct shipper(s) named in the request.

**APPENDIX**

| <b>RULE</b>       | <b>STATUTE</b>              |
|-------------------|-----------------------------|
| Liq 1100          | RSA 178:27                  |
| Liq 1102          | RSA 178:27, RSA 178:29      |
| Liq 1102.07       | RSA 176:14, 178:27-a        |
| Liq 1103          | RSA 178:27, RSA 179:33, III |
| Liq 1104 and 1105 | RSA 178:27, RSA 179:5, I    |
| Liq 1106          | RSA 178:27, RSA 179:33, III |