

Further Clarification of Question #3 from May 1, 2012 CLARIFICATIONS AND AMENDMENTS:

The Evaluation Committee has had an opportunity to reflect on the answer to Question 3, May 1, 2012 Answers, and in the interest of further guidance adds the following:

Please note that the product stored in a licensed warehouse must belong to a retailer, vendor, wholesale distributor or manufacturer licensed in this state. RSA 178:11, I. A warehouse shall not sell any liquor, wine, or beverage stored on the warehouse's premises. RSA 178:11, III. A reasonable interpretation of this statute is that the warehouse cannot own or sell Product.

Question 3 raises the issue of cross ownership. The original answer accurately described the process used to apply for a license. If a Bidder is not a Vendor or already has a Warehouse license, the question is moot.

This is not, however, the answer to the entire question. The issue that remains is whether an entity that is a Vendor or is eligible to have an NHSLC license to own or to sell product can meet the criteria of RSA 178:3 and RSA 178:11. The answer to this question turns on the nature of the entity. RSA 178:3 contains very subjective requirements. Taken alone, it is probable that the NHSLC will not use its discretion to allow an entity that is licensed as a vendor or eligible to sell or own product to obtain a warehouse's license. As stated previously, an entity that is not a Vendor or eligible to be a Vendor, all other requirements being met, will probably be able to obtain a warehouse's license under the discretion of the NHSLC. These are the two ends of the spectrum. There is room between these ends for an entity to obtain a warehouse's license and to have some relationship with another entity that is or is eligible to be a Vendor. Ultimately, the NHSLC will have to decide where the line is drawn. Any Bidder that has another NHSLC license should take this into consideration in constructing its proposal. When proposals are received, the Evaluation Committee and the Commissioners will review the nature of the entity submitting the proposal. The EC and/or the Commissioners reserve the right to request that the entity be modified.

Two additional points may be considered. First, a potential Bidder may submit an application for a warehouse license before the proposal is due. This action may provide an initial view on the structure of the entity.

Second, RSA 178:17-a provides as follows:

178:17-a Combination Conditional License. –

I. At its discretion, the commission may combine license types and issue a combination conditional license to a licensee that holds or is seeking more than one license for a single establishment. In issuing a combination conditional license, the commission may suspend or modify any existing licensing requirement established under title XIII and may impose additional conditions. The commission may deny, in its discretion, any license under this section that constitutes a risk to public health, safety, or welfare of any community.

II. The commission shall issue a combination conditional license in accordance with RSA 541-A:39.

III. This section shall not be interpreted to create a license category that does not exist in statute.

This statute increases the Commission's discretion. Whether it applies to this issue is beyond the scope of this answer.