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## **Eligibility to Obtain and Requirements to Maintain Beverage Manufacturer and Nano Brewery Licenses**

**Relative and Applicable Statutes and Rules:**

**RSA 178:12, 178:12-a,  
175:1 XIV, 175:1 XXXIII,  
Liq.404.05**

### **1. Purpose.**

The New Hampshire Liquor Commission, Division of Enforcement and Licensing (Commission) has provided this interpretation of law in response to questions received from the New Hampshire Brewers Association (NHBA). The questions posed to the Commission relate to the eligibility to obtain and requirements to maintain Beverage Manufacturer and Nano Brewery licenses.

### **2. Authority.**

Administrative Rule Liq. 201<sup>1</sup> gives the Commission the authority to interpret statutes and administrative rules. These questions fall 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.

### **3. Discussion of the Issues.**

#### **A. Beverage Manufacturers**

Applicants for a beverage manufacturer's license apply for a license as described in RSA 178:12. As a condition precedent to applying for a manufacturer's license the applicant must obtain a brewers notice (*See CFR Title 27, part 25*) from the Alcohol and Tobacco Tax Trade Bureau of the U.S. Department of the Treasury. The NHLC applicant must also meet the definition of a brewery (*See RSA 175:1, XIV*) and once licensed may produce beverages and specialty beverages within the states borders. Beverage manufacturers may sell their products to NH Wholesale Distributors or self-distribute, employees and a limited quantity to members of the general public who visit their brewery (*See RSA 178:12, IV*).



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Beverage manufacturers are also allowed to sell or provide free samples of the products manufactured on the licensed premise to visitors. (*See RSA 178:12, II-a*). The following outlines the sampling limits for beverage manufacturers:

One 4 oz. glass per label (often referred to as a flight)

**OR**

One 16 oz. glass per person

**AND**

If the beverage manufacturer has food available then the beverage manufacturer may serve the visitor a second 16 oz. glass of the beverage manufactured at their brewery.

If a beverage manufacturer would like to expand their business model and engage in service by the glass or other suitable container they are authorized by statute to apply for one on-premises license for the manufacturer's premise. (*See RSA 178:12, II*). RSA 178:12, II does not limit the beverage manufacturer to the type of retail license they may apply for. Therefore the beverage manufacturer should consult with a representative of the Division of Enforcement and Licensing to ensure they understand the requirements of any additional on-premises license and whether the license will complement their business plan.

For example, a beverage manufacturer that wants to serve beer, wine and liquor would likely apply for a license under *RSA 178:21, On-premise Beverage and Liquor License*. Among other requirements this license comes with an obligation for food sales (*See RSA 178:21 II (a) (1)*) and a number of other statutory and rule requirements addressing operations.

Rather than apply for a license under *RSA 178:21*, the same beverage manufacturer might chose to apply for an *On-Premise Beverage and Wine License* (*See RSA 178:20*). The NHLC may issue a license under *RSA 178:20* to "restaurants" and other qualifying types of businesses (*See RSA 178:20, II*). While this type of license does not have the detailed requirements addressing areas such as the hours of food sales or the percent food sales found under *RSA 178:21*, or *RSA 178:22*, the beverage manufacturer has nonetheless acquired a restaurant license and needs to maintain the requirements of a restaurant as described in the statute and administrative rule. To simplify even further if a beverage manufacturer choses to apply for the second license as authorized in *RSA 178:12*, they take on all the obligations of that license as well.



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The General Court provided this “second license” authorization to enable a beverage manufacturer to provide visitors with a sit down experience where they may enjoy both food and the beverages produced the licensee beyond the limits of sampling described above. If a beverage manufacturer chooses not to acquire a second license then the service of alcohol is confined to sampling limits as described above.

**A. Nano Brewery**

In 2011 the General Court created a new category of license called a Nano Brewer license (*See RSA 178:12-a*). The intent was to give home brewers, whose interest in brewing had grown beyond a hobby, a path to establish a business and bring their beverages into the NH marketplace. Nano Brewery licensees (Nano) may manufacture both beer and specialty beer. The enabling statute allows the Nano to sell to the visiting public or to retail licensees without any limitation on quantity.

In an attempt to increase the profile of a small brewing business the General Court authorized Nano Brewers for a fee and notification to the Commission, to transport their products to a wine manufacturers facility and allow visitors to sample their products and sell products in their original containers under the conditions laid out in RSA 178:12-a, VIII.

Nano’s are authorized in their enabling statute to provide samples of the products they produce to visitors at their manufacturing facility. Unlike the Beverage Manufacturer, the General Court limited the quantity of product the Nano can serve at their facility to 4 oz. samples per label and per person.

In response to the growth of Nano breweries in New Hampshire and because many of the licensees wanted to grow their business with a sit down feature where visitors may consume beer in quantities larger than 4 oz. The General Court gave the Nano brewery the ability to apply for and receive a separate and additional license as permitted for Beverage Manufacturers.

Unlike the Beverage Manufacturer that can apply for any on-premises license type the authorization for a second license for the Nano is limited to an *On-Premise Beverage and Wine License* (*See RSA 178:20*). The law change enabled the Nano brewer to apply for this license type thereby enabling them to serve samples **AND** glasses of beer without size limitation to customers who visited their facility.

By applying for the expanded additional license (often referred to as a Nano plus because the Nano brewer holds their brewing license **PLUS** a beer and wine restaurant license under RSA 178:20) the Nano brewery takes on the additional core requirements of a restaurant license and



must maintain these requirements to be eligible to hold the RSA 178:20 license **and** have the ability to serve their beverages by the glass and not be limited to sampling only.

**(1) Nano Brewery and Food**

As described above the Nano that chooses to acquire the additional On-Premise Beverage and Wine License takes on the separate and distinct requirements of the license. RSA 178:20, II identifies the types of businesses that are eligible to apply for this license. The NHLC may issue this license type to *“bed and breakfasts with suitable cooking and dining areas, dining cars, vessels serving food, restaurants (the presumption is that a restaurant is in the business of serving food by virtue of what it purports to be) and outlets of the New Hampshire Fair Association who are members in good standing.”* Additionally the service of alcohol is conditioned to times *“when food is available.”* Therefore when a Nano makes an application to the NHLC for an additional license they must meet the standards of a restaurant, as required by RSA 178:20, II, and they may serve beverages to visitors in full size containers rather than just 4 oz. samples and food must be available to the customer.

There are additional statutory provisions the Nano must acknowledge when applying for the additional license. Some of these include:

- RSA 175:1, LIX defines a restaurant as “a space, in a suitable or permanent building, kept, used and maintained, advertised and held out to the public to be a place where meals are regularly served. It shall be provided with an adequate and sanitary kitchen and seating for 20 patrons.”
- Liquor Rule 503.04 (c), Service and Preparation of Food, provides that “in no case shall the food concession be leased or rented out to any other person.”
- The NHLC has adopted administrative rule 706.30 that outlines the application requirements for businesses holding the RSA 178:20 restaurant license.
- Liq. 706.30 (a) (1) requires the applicant to “acknowledge that the applicant prepares, cooks and serves food for the restaurant.”

Therefore the Nano that wishes to expand their business model to accommodate visitors with food and drink has a path by acquiring the On-Premise Beverage and Wine License and in doing so adds a restaurant to their brewing operation.

**(2) Food from Other Sources as a Substitute** *(See Circular 2018-03, August 23, 2018)*

By acquiring an additional license as described above, the Nano has the ability to provide a full service experience to their visitors. The approach is consistent with that offered to the Beverage Manufacturers who wish to move beyond sampling to a “sit down” type of experience for their



visitors. This same opportunity and requirement is extended to Beverage Manufacturers that acquire an additional on-premises license.

While the Nano may not substitute food from a properly licensed third party for their own obligation to have food available, there is nothing that prohibits a Nano from allowing a third party (for this example we will use a food truck operator) onto their property to sell food prepared by food truck to the Nano brewery's customers. If a "Nano plus" licensee wishes to allow a "properly licensed" third party to complement the licensee's food business then they can make this choice **but the food sold by the third party may not be substituted for or satisfy the requirements established in the law when a Nano brewer holds the second on-premises beverage and wine license.**

#### 4. Frequently Asked Questions

**Q. I am a Nano brewer. Am I currently allowed to provide customers with 16 oz. samples or am I limited to providing 4 oz. samples?**

A. No.....in 2018 SB 418 made changes to the size of samples that beverage manufacturers (RSA 178:12) and wine manufacturers licensed under (RSA 178:8) can provide. The sampling changes were not extended to Nano brewers. The NHLC supports a change in RSA 178:12-a, that would extend the sampling sizes extended to beverage manufacturers to Nano brewers.

**Q. I hold a Nano brewery license and I got the additional license under RSA 178:20 (often referred to as the Nano plus). Can I use a food truck as a substitute for my food requirement?**

A. No.....when you applied for and received your second license under RSA 178:20 you became obligated to adhere to the requirements laid out in RSA 175:1 XXXI-aa, LIX, 178:20 and Liq. 503.04. You may allow the food truck on your property and they may sell their food but it does not relieve you of your responsibility to operate a restaurant at your brewery.

**Q. I am a Nano brewer. I don't hold a Nano plus license. May I use the food truck to satisfy my food requirements?**

A. A Nano brewer, that does not hold an additional license under RSA 178:20, does not have food requirements so you may allow the food truck on your property if you so choose to make food available to your customers. Please remember you are limited to serving one 4 oz. per glass per label per person. You may charge or give away your samples but you may not serve pints or



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other sizes great than 4 oz. The NHLC supports a change in RSA 178:12-a that would extend the sampling sizes extended to beverage manufacturers to Nano brewers

**Q. I am a Beverage Manufacturer (RSA 178:12) .....may I bring a food truck onto my parking lot to sell food?**

A. Yes.....remember that a beverage manufacturer may provide 4 oz. samples or a 16 oz. sample to visitors. The service of a second 16 oz. sample is conditioned on the availability of food at the beverage manufacturer's facility. As indicated above the food must come from a **"properly licensed"** source. This could be the beverage manufacturer itself another licensed food producer including a food truck operator.

**Q. I am a beverage manufacturer. I would like to buy a food truck and take it on the road to sell food paired with my labels. That means I want to sell samples from my food truck too. Is that OK?**

A. No.....beverage manufacturers have limited authority to transport their beverages to farmer's markets (RSA 178:12, IV-a) and sell their products at retail in their **original container**. There is no provision in law that would allow for a beverage manufacturer to transport beverages in a food truck and serve or sample their products with food from the truck. **This prohibition also extends all alcohol manufacturers in New Hampshire.**

**Q. Does the same answer apply to Nano brewers?**

A. Yes.....RSA 178:12-a, IV limits the Nano brewer to transporting their products to farmer's markets and sell in the original container. If you would like to buy a food truck and get into that business you should determine your obligations to serve food lawfully by checking with the Food Protection Section, New Hampshire Division of Public Health Services.

**Q. What do I need to do to serve pints?**

A. The answer to this question depends on the type of license you have. Under current law a Beverage Manufacturer (RSA 178:12) may serve their guests 4 oz. samples per label and per person or replace the 4 oz. samples with a single 16 oz. beer. RSA 178:12, II-a, allows the manufacturer to serve a second 16 oz. beer to the guest if food is available. (*See discussion above for more detail*). If the manufacturer wants to serve beyond these limits they need to acquire a second on-premises retail license that will allow service under the terms and conditions of that retail license.

If you are a Nano Brewery then you are currently limited to serving your guests 4 oz. samples of your products. If you want to serve pints or other sizes to guests who will be seated at your



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facility you need to acquire an additional license from the NHLC. By statute you have the ability to apply for an on-premises beverage and wine license under RSA 178:20 and then you will be able to serve your guests full glasses of beer as allowed by any restaurant license. Keep in mind the 178:20 license has food service requirements and businesses need to adhere to the operational requirements to continue to enjoy this service model.

### **Q. Who should I contact if I have more questions?**

A. Please contact the Division of Enforcement, Licensing and Education at 603-271-3521 to have your questions answered

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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.