



Law Changes Relative to New Hampshire Nano Brewers Licensed Under RSA 178:12-a

Relative and Applicable Statutes and Rules:

RSA 178:12-a, Liq.503.04

1. Purpose.

The New Hampshire Liquor Commission, Division of Enforcement and Licensing (Commission) has provided this interpretation of laws passed in the 2021 legislative session. The purpose of this document is to provide licensees with clarity on the meaning of the provisions signed into law and provide guidance on how these provisions will be interpreted and applied by the Commission

2. Authority.

Administrative Rule Liq. 201ⁱ 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 and Changes to Statutes.

SB 125 provided a change to the operational statutes under which a Nano Brewer operates as it relates to the sampling of beer and specialty beers manufactured by the Nano Brewer. 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 new sampling limits for Nano Brewers:

RSA 178:12-a, II (e) was amended and increased the sampling sizes a Nano Brewer may offer. The amended statute now reads:

RSA 178:12-a, II (e) - "A nano brewery may either provide samples for free or for a fee which shall be limited to one, 4 oz. glass per label or one 16 oz. glass per person. At such times as food is available, a nano brewery may serve no more than 2, 16 oz. glasses per person in any areas approved by the commission. For the purpose of this section, food and non-alcoholic beverages



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may be provided by properly licensed third-party food vendors, prepared on or off the premises.”

The change now allows the Nano Brewer to serve a 16 oz. sample rather than being limited to 4 oz. sample sizes. The ability to serve a second sample is contingent upon the availability of food to the consumer.

A condition precedent to the extended sampling and service privilege is a requirement that the source of the food made available to the customer comes from a “**properly licensed**” source. The phrase “**properly licensed**” has been interpreted as a food manufacturer that holds a license from the Food Protection Section, Bureau of Public Health Protection, New Hampshire Division of Public Health Services, Department of Health and Human Services or from one of the 15 self-inspecting communities that issues food protection licenses. (See the list of self-inspecting communities at this link. <https://www.dhhs.nh.gov/dphs/fp/documents/selfinspect.pdf>)

If properly licensed, the Nano may prepare its own food and make it available to the visitor on their premises in satisfaction of the requirement. The Nano may also use the services of caterers, food trucks or other restaurants **licensed by the NH Department of Public Health Protection** or by one of the self-inspecting communities. This requirement eliminates an unlicensed person or entity from providing food in an attempt to satisfy the requirement. Failure to maintain these core operational requirements could result in some type of administrative action against the licensee up to and including a fine.

If a Nano Brewery would like to expand their business model and engage in service by the glass or other suitable container beyond the increase in sampling sizes made in SB 125 they are authorized by statute to apply to upgrade their license for their facility.

Unlike the Beverage Manufacturer that can apply for any on-premises license type, a Nano meeting the requirements for an *On-Premise Beverage and Wine License* (See RSA 178:12-a VI and 178:20) may upgrade their license. The 2011 law change enabled the Nano brewer to apply to upgrade their license type thereby enabling them to serve more than samples to customers who visited their facility.

By applying to upgrade your license (often referred to as a Nano plus because the Nano brewer holds their brewing license **PLUS** meeting the requirements of 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 serve their beer and specialty beers and not be limited to sampling only.



(1) Nano Brewery and Food

As described above the Nano that meets the requirements of On-Premises Beverage and Wine License takes on the separate and distinct requirements of the license. RSA 178:12-a, VI adds Nano to the types of businesses that are eligible to apply for this license. The service of alcohol under the additional license is conditioned “*at such times as food is available.*” Therefore, when a Nano makes an application to the NHLC to upgrade their license they must meet the standards of a restaurant, as required by RSA 178:20, II, when approved, they may serve beverages to visitors other than just samples and food must be available to the customer.

There are additional statutory provisions the Nano must acknowledge when applying for the updated 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 upgrading their license by meeting the requirements of an On-Premises 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 upgrading their 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 a Nano that acquires 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 from them 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. SB 125 changed the law to enable the Nano Brewer the ability to serve 4 oz. samples or a single 16 oz. sample for free or for a fee. The customer may receive a second 16 oz. sample if food is available. (Please see discussion above for more detail).

Q. I hold a Nano brewery license and I upgraded my license by meeting the requirements of 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 upgraded Nano license meeting the requirements of 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 on your brewery premise.

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. No, A Nano brewer that does not meet the requirements of RSA 178:20, does not have food requirements **unless** the licensee desires to serve a second pint to a consumer as described in SB 125. You may allow a food truck on your property, if you so choose, to make food available to your customers. The availability of food to consumers from a food truck will satisfy the requirement for the availability of food should you choose to serve a second 16 oz. sample. You may charge a fee or give away your samples.



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Q. What do I need to do to serve more than just two pints as samples?

A. If you are a Nano Brewery then you are no longer limited to serving your guests 4 oz. samples of your products. If you want to extend your business to customers and serve more than just samples you need to upgrade your license from the NHLC. By statute you must meet the requirements of 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 for 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 and Licensing at 603-271-3521 to have your questions answered

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.