



Relative to Sampling by Licensees of the NH Liquor Commission

Relative and Applicable Statutes and Rules: RSA 178:6, 179:44, Liq. 405.01-405.05

1. Purpose.

The New Hampshire Liquor Commission, Division of Enforcement and Licensing (commission) has provided this interpretation of law in response to questions from the public and New Hampshire liquor manufacturing industry (manufacturers).

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), Wine Manufacturers (RSA 178:8) and Liquor Manufacturers (178:6) have increased significantly over the past few years. With this explosive growth comes the desire to raise awareness of the manufacturer's products and gain market share in this competitive industry. One of the methods used by licensees is to sample the manufacturer's products to the public with the hope of enticing legal age purchasers to buy their products, to promote their location and the products available to consumers. This circular is intended to clarify existing laws and to advise the reader of the limitations in the use sampling to promote the sale of alcohol beverages.

2. Authority.

Administrative Rule Liq. 201¹ 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.



3. Discussion of the Issue.

The statute that governs this issue is the general rule found in RSA 179:44, I. Licensees are prohibited from giving away free drinks to customers, patrons, members or guests in any manner. Sections II-III provides the guidelines that manufacturers must follow when participating in providing samples of their products for tastings.

A further examination of the applicable statutes and rules find the words “sampling” and “tasting” used to describe the activity. RSA 175:1, LX-b defines the word sampling in the context of tobacco. *“Sampling” means distributing free tobacco products to consumers for promotional purposes.*” The word “sampling” is not defined within RSA 175:1, it is reasonable and supported by historical opinion that “sampling” means the distribution of alcoholic beverages to consumers for promotional purposes.

Title XIII also uses the word “tasting” in a variety of applicable manufacturers licenses such as Beverage Manufacturers (RSA 178:12), Wine Manufacturers (RSA 178:8) and Liquor Manufacturers (178:6) and Rectifiers (RSA 178:7). Only the Nano Brewer is restricted from giving free samples on their premise while the remaining manufacturers have all been granted the authority to provide customers and visitors to their facilities with free samples of their products or to charge a fee for the samples. *(See chart below for the limitations on manufacturer sampling.)*

RSA 179:44, IV gives the commission the authority to adopt rules to govern this topic. The rule series that governs sampling is found in Liq. 405.01 through 405.05. Liquor 405.01 (a) defines “...beverage/liquor/wine public sampling to mean a licensee giving to the public, free of charge, or selling for a fee, samples of beverage/wine/liquor for promotional purposes.”

Liquor 405.02 requires prior notice to the commission before any public sampling by an eligible licensee. Liquor 405.03 (a) requires liquor used in public samplings to be purchased from the



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commission by the licensees providing the samples under their license. *(See subsequent parts of Liq. 405.04 for limitations and requirements for the purchase and use of products).*

Beverage Manufacturer	A beverage manufacturer may either provide samples for free or for a fee which shall be limited to one 4-ounce glass per label or one 16-ounce glass per person. At such times as food is available, a beverage manufacturer may serve no more than 2 16-ounce glasses per person in any areas approved by the commission.
Nano Brewer	Sales for consumption on the premises shall be limited to one 4-ounce glass per label per person.
Wine Manufacturer	A wine manufacturer may either provide samples for free or for a fee which shall be limited to one 2-ounce sample per label or one 5-ounce glass per person. At such times as food is available, a wine manufacturer may serve no more than 2 5-ounce glasses per person in any areas approved by the commission.
Liquor Manufacturer	A liquor manufacturer may provide to visitors of legal drinking age at its facility samples of liquor manufactured on the premises for tasting. Samples may be provided either free or for a fee and shall be limited to one 1/2-ounce sample per label per person.
Rectifier	A rectifier may provide samples of liquor rectified on the premises for tasting to visitors of legal drinking age at its licensed rectifier facility. Samples may be provided either free or for a fee and shall be limited to one 1/2-ounce sample per label per person.

Liq. 405.04 describes who may conduct tastings and where. Section (a) allows on-sale and off-sale licensees to conduct or host samplings on their licensed premise. Section (b) addresses how the manufacturing tier will work with on-premise and off-premise licensees for samplings. Section (c)



describes how samplings shall take place at farmer's markets, while section (e)(3) prohibits the licensee, upon whose premise the sampling event is held, from giving free drinks other than those described in the provisions of Liq. 405.05 (a) and (b).

Liq. 405.05 (a) provide express limitations on the size of the samples served at public events to portions not to exceed ½ ounce for any liquor or fortified wine, 2 ounces of any table wine or 4 ounces for any beverage.

FOCUSED QUESTION ON SAMPLING BY LIQUOR MANUFACTURERS

With the above information in hand we turn to the question of whether rule 405.05 (a) can be reasonably interpreted to allow an eligible licensee, serving samples at a public event, to serve their sample with other ingredients, such as a juice, sparkling water, or other items commonly referred to as a mixer. This question seems relevant primarily to liquor manufacturers and rectifiers. Beverage manufacturers rarely see their products mixed. Wine manufacturers may see their products mixed to create a "spritzer" type drink but the liquor manufacturers and rectifiers are the group most likely to see their products combined with a mixer therefore most of the following information is provided with this thought in mind.

Does the language of Liq. 405.05 (a) prohibit a liquor manufacturer from serving a sample of their products to the public with a mixer or are they required so serve their sample without any mixer? The liquor manufacturer is limited on the size of the portion they serve as a sample to ½ of an ounce.

It is our opinion that the manufacturer and rectifier have the ability to serve their sample with or without a mixer so long as the sample does not exceed ½ ounce of liquor. The liquor manufacturer may choose to pre-mix a large batch of their product in advance of the sampling for the purpose of convenience or economy. This would be a business decision and potentially to the



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detriment of the manufacturer as potential buyers of their product may not want a mixed sample or may not favor the mixer chosen for the sampling.

The manufacturer may wish to sample their product in an unmixed state to emphasize the aroma, taste or finish of their product and leave it to the consumer who buys their products to choose how, if at all, to mix their product at home. Once again, this is primarily a business decision by the manufacturer.

It is our opinion that rule Liq. 405.05 (a) does not prevent the liquor manufacturer or rectifier from providing a sample of their product with a mixer nor does the language of the rule require the sample to be served with a mixer. We believe the manufacturer has the flexibility to determine how to best showcase their product to prospective consumers so long as they comply with the serving size restrictions found in the rule.

If you have questions about the interpretation of these statutes beyond what has been provided in this circular you are encouraged to contact the Division of Enforcement, Licensing and Education at 603-271-3521 to have your questions answered.

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.