



Relative to the Food Trucks and the Licensed New Hampshire Alcohol Beverage Community

Relative and Applicable Statutes and Rules:

**RSA 175:1 XXXI-aa, 175:1 LIX,
178:20, Liq. 503.04**

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 retail (retailers) and beverage manufacturing industry (manufacturers).

There have been an increasing number of questions from the alcohol licensed community on the use of food trucks to satisfy core requirements of license eligibility in New Hampshire. This circular is intended to discuss the issue and answer those questions.

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.

Licenses to sell alcohol in New Hampshire are issued under the authority provided to the commission and under such categories as described in Title XIII, Chapter 178 of the New Hampshire Revised Statutes Annotated. Certain categories of licenses require the licensee to either have food available or in some case to sell a prescribed dollar amount of food to be eligible to retain the license upon renewal (RSA 178:21, II and RSA 178:22, V, (q)).



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Beverage manufacturers (RSA 178:12), wine manufacturers (RSA 178:8) are not among the category of licensees who have a food requirement as a condition of operation and sampling of their beverages or wine. In 2018 the legislature provided these licenses with the ability to exceed the sampling limits in the previous version of the statute provided the licensee has food available to the customer. *(See Law Update 2018-02, Eff. 6/21/18)*

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://newhampshireonline.envisionconnect.com/#/pa2/search>).*

If properly licensed, the beverage manufacturer or wine manufacturer may prepare its own food and make it available to the visitor on their premise in satisfaction of the requirement. The brewer 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.

Licensees who have a food service requirement as a condition precedent to the issuance of their license may not substitute food from a third party in lieu of their eligibility requirements. By example a licensee who holds a restaurant license under RSA 178:20 may not forgo the requirements contained in RSA 175:1 XXXI-aa, 175:1 LIX, 178:20 and Liq. 503.04 and remain eligible to hold the license. Failure to maintain these core operational requirements could result in some type administrative action against the licensee up to and including a fine or the inability to renew the license.



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The General Court gave the nano brewery (RSA 178:12-a) the ability to apply for and receive a license under RSA 178:20. Nano breweries sought to have the ability to serve customers beer by the glass and not be limited by the sampling restrictions contained in the enabling statute (*See RSA 178:12-a, VI*). By applying for the expanded additional license (often referred to as a nano plus) under RSA 178:20, the nano brewery takes on the additional core requirements and must maintain these requirements to be eligible to hold the RSA 178:20 license and the ability to serve their beverages by the glass and not be limited to sampling only.

The nano plus licensee may not substitute the service of food from other “properly licensed” sources for their own food requirements when obtaining a license under RSA 178:20.

While the nano brewery may not substitute food from properly licensed third party for their own requirement to have food available, there is nothing that prohibits a nano brewer from allowing a third party food truck onto their property to sell food from the truck to the nano brewery’s customers. If the nano plus licensee wishes to allow a “properly licensed” third party to take 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 holding a nano plus license.**

4. Questions Presented to the Commission from NH Manufacturers

Q. I am a nano brewer. Do the changes in RSA 178:12 allowing service of glasses of beer apply to me?

A. No.....the changes contained in SB 418 (2018 session) only applies to beverage manufacturers (RSA 178:12) and wine manufacturers licensed under (RSA 178:8).

Q. I hold a nano brewery license and I got the additional license under RSA 178:20 (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, 175:1



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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. A nano brewer does not have food requirements so you may allow the food truck on your property if you so choose to sell food to your customers. 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 other sizes great than 4 oz.

Q. I am a wine manufacturer.....may I bring a food truck into my parking lot to sell food?

A. Yes.....a wine manufacturer that choses to exercise the newly created authority to service a second 5 oz. glass of wine (RSA 178:8 III) must have food available for the customer. As indicated above the food must come from a **"properly licensed"** source. This could be the winery itself a caterer or 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 to nano brewers and wine manufacturers.**

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.



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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.

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.