

AT Our Government House in the Halifax Regional Municipality, this 28th day of October in the year of Our Lord two thousand and fourteen and in the sixty-third year of Our Reign.

BY COMMAND:

sgd: Lena Metlege Diab
Provincial Secretary
Minister of Justice and Attorney General

N.S. Reg. 164/2014 to 165/2014

Made: October 28, 2014

Filed: October 28, 2014

Ferment-on-Premises Regulations;
Liquor Licensing Regulations

Order in Council 2014-441 dated October 28, 2014
Regulations and amendment to regulations made by the Governor in Council
pursuant to Section 50 of the *Liquor Control Act*

The Governor in Council on the report and recommendation of the Minister of Finance and Treasury Board and the Minister of Service Nova Scotia dated September 25, 2014, and pursuant to Section 50 of Chapter 260 of the Revised Statutes of Nova Scotia, 1989, the *Liquor Control Act*, is pleased to, effective on and after October 28, 2014:

- (a) make new regulations respecting the operation of ferment-on-premises facilities in the form set forth in Schedule "A" attached to and forming part of the report and recommendation; and
- (b) amend the *Liquor Licensing Regulations*, N.S. Reg. 365/2007, made by the Governor in Council by Order in Council 2007-445 dated August 17, 2007, to clarify the application of those regulations to ferment-on-premises facilities, in the manner set forth in Schedule "B" attached to and forming part of the report and recommendation.

N.S. Reg. 164/2014

Ferment-on-Premises Regulations

Schedule "A"

**Regulations Respecting the Operation of Ferment-on-Premises Facilities
made by the Governor in Council under
Section 50 of Chapter 260 of the Acts of 1989,
the *Liquor Control Act***

Interpretation

Citation

1 These regulations may be cited as the *Ferment-on-Premises Regulations*.

Definitions

2 In these regulations,

“Act” means the *Liquor Control Act*;

“bottle” includes a can, keg, cask or other container into which wine or beer is placed after it is removed from a carboy;

“carboy” means a fermentation vessel used for aging or storing wine or beer;

“customer” means a person who pays a fee to make wine or beer at a ferment-on-premises facility;

“license certificate” means a document issued by the Executive Director under Section 7 to evidence a grant of license;

“licensee” means the holder of a valid ferment-on-premises license;

“Minister” means the Minister of Service Nova Scotia;

“permanent license” means a permanent license as defined in the *Liquor Licensing Regulations* made under the Act.

Licensing**Application for ferment-on-premises license**

3 (1) A person may apply for a ferment-on-premises license by submitting all of the following to the Executive Director:

- (a) a completed application form;
- (b) the license application fee set out in Section 10;
- (c) the license fee set out in Section 10.

(2) A completed license application must include all of the following information:

- (a) the applicant’s name, address and phone number;
- (b) the address, location and proposed operating name of the ferment-on-premises facility;
- (c) for a corporation or partnership, the name of an officer or director of the corporation or partner in the partnership who will act as the person responsible for the operation of the ferment-on-premises facility;
- (d) a copy of the applicant’s ferment-on-premises registration issued under the *Excise Act* (Canada);
- (e) any information relevant to the application that the Executive Director requires to determine whether the applicant meets the requirements set out in the Act and these regulations.

Term of ferment-on-premises license

4 A ferment-on-premises license expires 3 years from the date it is issued or renewed.

Renewing ferment-on-premises license

- 5 (1) A licensee may apply to renew their ferment-on-premises license by submitting all of the following to the Executive Director:
- (a) a completed renewal application form;
 - (b) the renewal fee set out in Section 10.
- (2) A completed renewal application must include all of the following information:
- (a) notice of any changes in the information required by subsection 3(2) since the applicant's license was granted or most recently renewed;
 - (b) any information the Executive Director requires to determine whether the applicant meets the requirements of the Act and these regulations.

Application for transfer of ferment-on-premises license

- 6 (1) A licensee may apply for a transfer of their ferment-on-premises license by submitting all of the following to the Executive Director:
- (a) a completed transfer application form;
 - (b) the transfer fee set out in Section 10.
- (2) A completed transfer application must include all of the following information:
- (a) the current licensee's name, address and phone number, including, for a corporation or partnership, the name of the person responsible for the operation of the ferment-on-premises facility;
 - (b) the address, location and operating name of the licensee's ferment-on-premises facility;
 - (c) the information required in subsection 3(2) for the person to whom the license is to be transferred;
 - (d) any information the Executive Director requires to determine whether the person to whom the license is to be transferred meets the requirements of the Act and these regulations.
- (3) The Executive Director may approve a transfer of an applicant's ferment-on-premises license if the Executive Director is satisfied that the person to whom the license will be transferred meets all of the requirements of an applicant for a new ferment-on-premises license.
- (4) A change in ownership of a licensee that is a partnership is considered to be a transfer of the ferment-on-premises license, and the transfer must be approved under this Section before the change in ownership is made.
- (5) A licensee that is a corporation in which the shares are redistributed in a manner that changes control of the corporation is considered to be a transfer of the ferment-on-premises license, and the transfer must be approved under this Section before the change in ownership is made.

Issuance of license

- 7 On granting a ferment-on-premises license, the Executive Director must issue a license certificate to the licensee, and any conditions placed on the license must be set out in an attachment to the license certificate.

Posting license on premises

8 A licensee must ensure that their ferment-on-premises license is posted in their ferment-on-premises facility in a place where it can easily be seen and read by customers.

Conditional grant of ferment-on-premises license

9 The Executive Director may grant a ferment-on-premises license to an applicant whose application is missing information because it was not available at the time of application, subject to the following conditions:

- (a) the Executive Director must not issue a license certificate until the Executive Director receives and is satisfied with all of the missing information; and
- (b) the ferment-on-premises facility must not be operated under the license until the Executive Director issues a license certificate to the licensee.

Application and license fees

10 (1) The application, license and transfer fees for ferment-on-premises facilities are as set out in the following table:

	Fee
License application fee	\$100
License fee	\$300
Renewal fee	\$300
Transfer fee	\$100

- (2) An application fee is not refundable.
- (3) A license fee or renewal fee must be refunded to an applicant if a ferment-on-premises license is not granted or renewed.
- (4) A license fee is not refundable for a ferment-on-premises license that is cancelled.

Facilities

Location of ferment-on-premises facility

11 (1) A ferment-on-premises facility must not be located in any of the following:

- (a) a residential premises;
 - (b) a premises for which a permanent license is issued under the *Liquor Licensing Regulations* made under the Act.
- (2) A ferment-on-premises facility must be clearly defined and kept separate from other premises that are used for different purposes.

Application to relocate ferment-on-premises facility

12 A licensee may change the location of their ferment-on-premises facility if they submit a relocation application to the Executive Director that includes all of the information required by subsection 3(2) for the new location and the Executive Director approves the new location.

Change in person responsible for ferment-on-premises facility

- 13** A licensee that is a corporation or a partnership must notify the Executive Director of any change in the person identified as responsible for the operation of the ferment-on-premises facility no later than 15 days of the change.

Making Wine or Beer**Payment, acknowledgment and invoice required**

- 14 (1)** Before a customer begins to make wine or beer at a ferment-on-premises facility, the licensee must ensure that the customer does all of the following:
- (a) pays the licensee
 - (i) for the cost of the ingredients to make the wine or beer if the ingredients are provided by the licensee, and
 - (ii) a fee for using the ferment-on-premises facility and for the services to be provided to the customer by the licensee;
 - (b) provides the licensee with a signed acknowledgment that the wine or beer to be made at the ferment-on-premises facility is for the customer's personal use only.
- (2)** The licensee must prepare and provide a customer with an invoice that includes all of the following information:
- (a) the licensee's name, address and phone number;
 - (b) the customer's name, address and phone number;
 - (c) the type and quantity of wine or beer to be made;
 - (d) the ingredients provided to the customer and the price charged for the ingredients;
 - (e) the services provided to the customer and the price charged for the services;
 - (f) confirmation that the licensee has transferred ownership to the customer of all ingredients being purchased to make the wine or beer;
 - (g) the date the making of wine or beer is to begin;
 - (h) the amount of the payment, and the date payment is received from the customer;
 - (i) a notice to the customer that the wine or beer must be for the customer's personal use only.

Customer visits to ferment-on-premises facility

- 15 (1)** A licensee must ensure that a customer visits the ferment-on-premises facility at least 2 times and carries out all of the tasks required by subsections (2) and (3).
- (2)** During a customer's 1st visit to a ferment-on-premises facility, the customer must do all of the following:
- (a) make the payments required by clause 14(1)(a);

- (b) add enzymes, yeast or other ingredients necessary to start the fermentation process to make the wine or beer.
- (3) During a customer's 2nd visit to a ferment-on-premises facility, the customer must do all of the following:
- (a) if the bottles to be used for bottling the wine or beer bear the labels of wineries or breweries, remove the labels from the bottles;
 - (b) bottle the wine or beer and cork, cap or otherwise seal the bottles;
 - (c) remove the wine or beer from the facility immediately after the wine or beer has been bottled and corked, capped or otherwise sealed.
- (4) A customer may be accompanied by a person, who is not the licensee, to assist the customer in performing the tasks in subsection (1).
- (5) Despite subsection (4), if a customer is physically incapable of performing the tasks in subsection (1), the licensee may perform the tasks on the customer's behalf in their presence.

Services provided by licensee

16 A licensee may provide any of the following services for a customer:

- (a) add finings or stabilizing agents to the customer's other ingredients;
- (b) operate equipment to filter and add carbonation to the customer's ingredients;
- (c) rack the customer's wine or beer;
- (d) carry the customer's wine or beer out of the ferment-on-premises facility to a waiting vehicle;
- (e) in accordance with subsection 15(5), the tasks required by subsection 15(1).

Licensee or employee may make own wine or beer

17 A licensee or an employee of a licensee may, in accordance with Section 15, make wine or beer at the ferment-on-premises facility operated by the licensee for their own personal use.

Sampling of wine or beer

18 A licensee may allow a customer to consume no more than 2 samples of the customer's wine or beer, if all of the following conditions are met:

- (a) the samples are provided before the wine or beer is bottled;
- (b) the samples are consumed at the ferment-on-premises facility;
- (c) each sample is no more than 50 ml.

Minor employed at ferment-on-premises facility

19 A licensee may employ a person who is under 19 years old at the licensee's ferment-on-premises facility if all of the following conditions are met:

- (a) the person is under the direct and continual supervision of the licensee or another employee who is at least 19 years old;

- (b) the person does not participate in the process of making wine or beer at the facility.

Information on carboy tag

20 A licensee must ensure that each carboy being used to make wine or beer at their ferment-on-premises facility has a tag attached to it with all of the following information:

- (a) the name of the customer using the carboy;
- (b) the invoice number provided to the customer using the carboy;
- (c) the date that any enzymes or yeast were added to the ingredients to start the fermentation process to make the wine or beer.

Record keeping and reporting

- 21 (1)** A licensee must keep all records required to be produced under Section 14 and make them available to an inspector when requested.
- (2)** A licensee must provide any reports to the Executive Director that the Executive Director requires, including an annual report in a form provided by the Executive Director that sets out the amount of wine and beer made at the ferment-on-premises facility for the year.
- (3)** A licensee must retain the records referred to in this Section for at least 3 years.

Prohibitions and Offences**Licensee prohibitions**

22 A licensee must not do any of the following:

- (a) make wine or beer at their ferment-on-premises facility for sale or exchange;
- (b) sell or exchange wine or beer at their ferment-on-premises facility, or keep or offer wine or beer for sale or exchange at the facility;
- (c) give liquor to any person at the ferment-on-premises facility other than as permitted for sampling in Section 18;
- (d) permit wine or beer to be exchanged, sold or given by customers at the ferment-on-premises facility;
- (e) facilitate exchanging, selling or giving wine or beer by customers;
- (f) assist a customer with performing tasks associated with making wine or beer, except as provided in Section 16;
- (g) deliver a customer's wine or beer;
- (h) store or permit the storage of bottled wine or bottled beer at the ferment-on-premises facility;
- (i) remove or permit the removal of carboys being used to make wine or beer from the ferment-on-premises facility;
- (j) bring alcoholic products into the ferment-on-premises facility to be added as an ingredient to wine or beer being made at the facility;

- (k) permit a customer to use bottles that are already labelled with labels that represent a product sold at any store or commercially manufactured by a winery.

Advertising for ferment-on-premises facility

23 A licensee must not advertise in a manner that does any of the following:

- (a) promotes immoderate consumption of liquor;
- (b) indicates that wine or beer is available for sale or exchange at a ferment-on-premises facility;
- (c) advertises the price of wine or beer on a per bottle basis.

Definition for offence under subsection 89(5) of Act

24 For the purpose of the offence relating to persons under the age of 19 years old in subsection 89(5) of the Act, “use the facility for the making of beer and wine” includes the licensee providing services for the purpose of making wine or beer at a ferment-on-premises facility.

Disciplinary Action and Expiry, Suspension or Cancellation of Licenses

Application of *Liquor Licensing Regulations* for disciplinary action and referrals to Review Board

25 Sections 81A to 83 of the *Liquor Licensing Regulations* apply to these regulations with the following changes:

- (a) “permanent licensee” must be read as “licensee”;
- (b) “permanent license” must be read as “ferment-on-premises license”.

Suspension of license on bankruptcy or receivership of licensee

26 The ferment-on-premises license of a licensee who goes into bankruptcy or receivership is suspended as of the date of any applicable receiving order, receivership appointment or receivership order.

Suspension of license on foreclosure of ferment-on-premises facility

27 The ferment-on-premises license of a licensee whose ferment-on-premises facility is subject to foreclosure is suspended as of the date of the order for foreclosure and sale.

Unfinished wine or beer at ferment-on-premises facility

- 28** (1) If a licensee’s ferment-on-premises license expires or is suspended or cancelled, the licensee may allow any unfinished wine or beer at the facility to remain there until the wine or beer is ready to be bottled by the customer and removed from the facility.
- (2) A person whose ferment-on-premises license expires or is suspended or cancelled must not conduct any new business respecting making wine or beer in the ferment-on-premises facility.

Inspections

Powers of inspectors

29 (1) To ensure compliance with the Act and these regulations, an inspector may enter and inspect any of the following places:

- (a) a ferment-on-premises facility;
- (b) a place that is the subject of an application for a ferment-on-premises license;

- (c) a ferment-on-premises facility whose ferment-on-premises license expires or is suspended or cancelled while unfinished wine or beer remains on the premises as permitted under Section 28.
- (2) In carrying out an inspection, an inspector may do any or all of the following:
- (a) inspect, audit, examine and make copies of any records, documents, books of account or receipts relating to a licensee or ferment-on-premises facility;
 - (b) temporarily remove any of the items listed in clause (a) for those purposes;
 - (c) interview a licensee or any agents of a licensee about any of their records, documents, books of account or receipts;
 - (d) interview and request identification from any person who appears to be a minor and is found in a ferment-on-premises facility.
- (3) An inspector must carry identification in the form determined by the Executive Director and present it on request to
- (a) the licensee of the ferment-on-premises facility being inspected; or
 - (b) any person being interviewed.

Obstructing inspector

30 A licensee must not obstruct an inspector while the inspector is performing their duties or exercising their power.

Duty to assist inspector

31 A licensee must do any of the following when requested by an inspector:

- (a) assist the inspector in carrying out an inspection;
- (b) provide the inspector with records, documents, books of account and receipts, and provide a place where they may be examined, audited or copied.

N.S. Reg. 165/2014

Liquor Licensing Regulations

Schedule "B"

**Amendment to the *Liquor Licensing Regulations*
made by the Governor in Council under Section 50
of Chapter 260 of the Revised Statutes of Nova Scotia, 1989,
the *Liquor Control Act***

The *Liquor Licensing Regulations*, N.S. Reg. 365/2007, made by the Governor in Council by Order in Council 2007-445 dated August 17, 2007, are amended by adding the following Section immediately after Section 2A:

Application of regulations to ferment-on-premises facilities

2B Except as provided in the *Ferment-on-Premises Regulations* made under the Act, these regulations do not apply to ferment-on-premises facilities.

