

Excise Duty Memoranda Series

3.1.2 Licensed Users

October 2003

Overview	The <i>Excise Act, 2001</i> (the “Act”) requires a person to obtain a user’s licence in order to be authorized to perform certain activities that are restricted under the Act. This memorandum provides an overview of the obligations and entitlements of persons who may become licensed users.
Disclaimer	The information in this memorandum does not replace the law found in the Act and its Regulations. It is provided for your reference. As it may not completely address your situation, you may wish to refer to the Act or its Regulations, or contact any Canada Customs and Revenue Agency (CCRA) tax services office for additional information.
[Proposed amendments]	This memorandum reflects proposed amendments to the Act announced by the Minister of Finance on June 24, 2003. [Where information reflects proposed amendments, the information is enclosed in square brackets.] Any commentary in this memorandum should not be taken as a statement by the CCRA that such amendments will in fact be enacted in their current form.

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 Canada Customs and Revenue Agency Agence des douanes et du revenu du Canada

3.1.2 Licensed Users

Requirement for a user's licence

User's licence para 14(1)(C)	1. A user's licence authorizes certain persons (i.e., "licensed users") to possess and use bulk alcohol, non-duty-paid packaged alcohol or [a restricted formulation] for specific purposes.
Meaning of "alcohol" s 2	2. "Alcohol" means spirits or wine.
Meaning of "bulk alcohol" s 2	3. "Bulk alcohol" means alcohol that has not been packaged.
Meaning of "non-duty-paid" s 2	4. "Non-duty-paid", in respect of packaged alcohol, means that excise duty, other than special duty, has not been paid on the alcohol. For additional information on special duty, refer to paragraphs 55 to 58 of this memorandum.
Meaning of "packaged" s 2	5. To package alcohol means to place it in a container of not more than 100 litres in capacity that is ordinarily sold to a consumer without being further repackaged into smaller containers. Packaging alcohol also includes placing it into a marked special container.
Meaning of "mark" and "special container" s 2	6. A marked special container, in respect of spirits, is a container with a capacity of more than 100 litres but not more than 1,500 litres, which has been marked in a prescribed form and manner. A marked special container of wine is a container with a capacity of more than 100 litres that is marked in the prescribed form and manner.
Approved uses and disposal	7. A user's licence authorizes the licensee to use bulk alcohol in an approved formulation, the production of vinegar, the fortification of wine if the user is also a wine licensee, or for blending wine with spirits if the user is also a spirits licensee. A user's licence also authorizes a licensee to use non-duty-paid packaged alcohol for the preparation of an approved formulation, for the production of vinegar, or to dispose of unused alcohol in a manner approved by the CCRA.
Meaning of "approved formulation" s 2	8. An "approved formulation" is a product that is made with alcohol by a licensed user in accordance with a formula that has been approved by the CCRA. It may also be an imported product that, in the opinion of the CCRA, would be a product made in accordance with an approved formulation if it were produced in Canada by a licensed user.
	9. Other terms that relate to the use of alcohol are defined under the Act and its Regulations and will be available in Excise Duty Memorandum 1.3.1, <i>Definitions</i> .
New requirement for pharmacists	10. A provincially registered or licensed pharmacist who uses alcohol in pharmaceutical preparations is required to possess a user's licence in order to use non-duty-paid alcohol in these preparations.
Only one licence required	11. A person requiring a user's licence need only possess one licence, regardless of the class of products to be produced with alcohol.

Obtaining a user's licence

12. Instructions and requirements for obtaining a user's licence are provided in Excise Duty Memorandum 2.2.1, *Obtaining and Renewing a Licence*.

Obtaining other licence types

13. Depending upon the activities of a licensed user, the licensee may be required to possess other licence types. For example, in order to produce or package spirits or wine, a licensed user will also require a spirits or wine licence.

Nature and scope of operations
ss 130(1), s 131 and 131.1

14. The requirement to possess separate licences depends upon the nature and scope of a licensed user's business operations. A licensed user who possesses a wine licence is authorized to use bulk spirits for the fortification of wine. A licensed user who possesses a spirits licence is authorized to blend bulk wine with spirits, if the resulting product is spirits.

15. Additional information with respect to the types of licences a person may be required to possess to perform certain activities regulated under the Act is available in Excise Duty Memorandum 2.1.1, *Licence Types*. Additional information relating to the production of spirits and wine is available in Excise Duty Memoranda 3.1.1, *Producers and Packagers of Spirits*, and 4.1.1, *Producers and Packagers of Wine*.

Possession and transportation of alcohol

Possession of bulk alcohol
para 70(2)(a), (b) and (c)

16. A licensed user may possess bulk spirits that were produced or imported by a spirits licensee, bulk wine that was produced or imported by a wine licensee, or bulk alcohol that was imported by the licensed user.

Transportation of bulk alcohol
ss 70(2)

17. Licensed users who possess bulk alcohol in accordance with paragraph 16 of this memorandum may also transport the alcohol. An alcohol licensee (i.e., spirits licensee or wine licensee) or an alcohol registrant may also transport bulk alcohol on behalf of a licensed user.

18. Additional information on the transportation of bulk alcohol by alcohol registrants is available in Excise Duty Memorandum 3.1.4, *Alcohol Registrants*.

Possession of packaged alcohol
para 88(2)(a) and (c)

19. A licensed user may possess, in their specified premises, non-duty-paid packaged alcohol (other than alcohol in a marked special container) that is packaged by an alcohol licensee, or that was imported by an excise warehouse licensee or the licensed user.

Meaning of "specified premises"
s 2, para 23(3)(a)

20. The "specified premises" of a licensed user are the premises specified by the CCRA as being those where the activities of the licensed user may be carried on.

Transportation of packaged alcohol
ss 88(2) and (3)
Regulations Respecting the Possession of Non-duty-paid Packaged Alcohol

21. A person prescribed by Regulations may transport non-duty-paid packaged alcohol. This includes a person who is licensed as a customs bonded carrier or any other person who has acceptable documentation showing that they are transporting alcohol on behalf of another person as prescribed in the Regulations.

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Permitted uses for alcohol

- Restrictions on use or disposals 73, 76 and 90
22. A licensed user may use or dispose of bulk alcohol or non-duty-paid packaged alcohol to:
- (a) use it in an approved formulation;
 - (b) use it in a process in which the absolute ethyl alcohol is destroyed in an approved manner;
 - (c) use it to produce vinegar;
 - (d) return it to the person who supplied it;
 - (e) export it if they imported it;
 - (f) use it for analysis in an approved manner; or
 - (g) dispose of it by destroying it in an approved manner.
- Meaning of “absolute ethyl alcohol” s 2
23. “Absolute ethyl alcohol” means the substance with a chemical composition of C_2H_5OH .
- Permitted uses s 73, 130, 131 and 131.1
24. A licensed user may use bulk alcohol to:
- (a) fortify wine, if the licensed user is also a wine licensee;
 - (b) blend wine with spirits to produce spirits, if the licensed user is also a spirits licensee; or
 - (c) [use wine to produce spirits, if the licensed user is also a spirits licensee.]

Approved formulations

- Conditions and restrictions s 143
25. The CCRA may impose conditions or restrictions that may be considered necessary with respect to the making of, importation, packaging, use or sale of, or other dealing with, an approved formulation.
- Meaning of “restricted formulation” s 2
26. [A “restricted formulation” is an approved formulation upon which the CCRA has imposed conditions or restrictions that it can only be used by a licensed user or exported.]
- Restricted formulations s 93.1 and 93.2
27. [A licensed user may not use or dispose of a restricted formulation other than in accordance with the conditions or restrictions imposed by the CCRA. Only licensed users and alcohol registrants may possess a restricted formulation.]
- Excise duty relieved s 144
28. Excise duty is relieved on bulk and non-duty-paid packaged alcohol that is used by a licensed user in an approved formulation.
- Approval required
29. All formulations in which a licensed user wishes to use alcohol relieved of excise duty must be approved by the CCRA. The Laboratory and Scientific Services Directorate of the CCRA will make recommendations respecting the formulation to the Regional Manager of Excise Duty, who is responsible for its final approval.

- Approved formulations and samples
30. A licensed user seeking approval of a formulation must submit a formula containing a full listing of the formula's ingredients and a sample of the formula to the Laboratory and Scientific Services Directorate.
31. Instructions for requesting approval of a formulation and submitting samples to the Laboratory and Scientific Services Directorate will be available in Excise Duty Memoranda 1.1.5, *Sampling Procedures*, and 1.1.6, *Formulation Approval Process*.

Alcohol used in a process in which it is destroyed

- Excise duty relieved para 73(b), 145(1)(c) and 145(2)(c)
32. A licensed user may use bulk or non-duty-paid packaged alcohol in a process in which the absolute ethyl alcohol is destroyed to the extent approved by the CCRA. In such cases, excise duty is not payable on the alcohol.
33. If the alcohol is destroyed as a result of any process, the licensed user must obtain approval from their designated Regional Excise Duty Office before performing the process.
- Process for approval
34. A request for approval of a process in which absolute ethyl alcohol is destroyed may be made for a single process to be performed on a specific date, involving a specific quantity of spirits, or may be made for an ongoing process.
35. Additional information relating to requests for obtaining an authorization for the destruction of alcohol in a specific process will be available in Excise Duty Memorandum 3.4.2, *Spirits Taken for Analysis or Destruction*.

Alcohol used in the production of vinegar

- Excise duty relieved para 73(c) and ss 146(1)
36. Excise duty is not payable on alcohol that is used by a licensed user in the production of vinegar, provided that a minimum of 0.5 kilograms of acetic acid (i.e., pure vinegar) is produced from every litre of absolute ethyl alcohol used in the process.
- Calculation of deficiency ss 146(2)
37. If a licensed user produces less than 0.5 kilograms of acetic acid from every litre of absolute ethyl alcohol, the deficiency is calculated and the licensed user is deemed to have taken this deficiency for use.
- Payment of excise duty on deficiency ss 126, 128, 134 and 137
38. The excise duty on alcohol deemed to be taken for use is payable at the time the deficiency occurs (i.e., at the time the vinegar is produced). The excise duty is payable by the person who is responsible for the alcohol, in the case of bulk alcohol, and by the licensed user who produced the vinegar, in the case of packaged alcohol.
39. Additional information relating to the production of vinegar will be available in Excise Duty Memorandum 3.4.2, *Spirits Taken for Analysis or Destruction*.

Alcohol returned to a supplier

- Bulk alcohol para 73(e)
40. A licensed user may dispose of bulk alcohol by returning it to the alcohol licensee who was previously responsible for it, or who supplied it to the licensed user.

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Non-duty-paid packaged alcohol para 90(d)
Return of Packaged Alcohol to an Excise Warehouse Regulations s 2

41. A licensed user may also dispose of non-duty-paid packaged alcohol by returning it to the excise warehouse licensee who supplied it if, at the time of re-entry into the warehouse, the alcohol is packaged in the same container in which it was packaged when it was removed from the warehouse, and:

- (a) the package is unopened; or
- (b) the licensed user has opened the package solely for the purpose of analysis in a manner approved by the CCRA.

Exported alcohol

Exports para 73(f) and 90(e)

42. A licensed user who has imported either bulk or non-duty-paid packaged alcohol may dispose of it by exporting it.

43. Additional information relating to importing and exporting alcohol will be available in Excise Duty Memoranda 3.5.1, *Importing and Exporting Spirits*, and 4.5.1, *Importing and Exporting Wine*.

Alcohol used for analysis

Excise duty relieved para 73(g), 90(f), 145(1)(a) and (2)(a)

44. A licensed user is permitted to use bulk or non-duty-paid packaged alcohol for analysis in a manner approved by the CCRA. Excise duty is not payable on such alcohol.

Analysis

45. Alcohol is considered to be used for analysis when:

- (a) it is used in the determination of the volume and absolute ethyl alcohol content of the alcohol in accordance with the Act;
- (b) it is used for analytical and chemical testing; or
- (c) it is used for quality control purposes.

Reasonable quantity

46. In all cases, the quantity of alcohol used for analysis must be reasonable in the circumstances.

47. Additional information relating to the use of alcohol for purposes of analysis will be available in Excise Duty Memorandum 3.4.2, *Spirits Taken for Analysis or Destruction*.

Voluntary destruction of alcohol

Approved manner para 73(h), 90(g), 145(1)(b) and (2)(b)

48. A licensed user may destroy bulk or non-duty-paid packaged alcohol in a manner approved by the CCRA. Approval of the method of destruction must be obtained from the licensed user's designated Regional Excise Duty Office prior to performing the destruction.

- Excise duty relieved 49. Excise duty is not payable on bulk or non-duty-paid packaged alcohol destroyed in an approved manner.
50. Additional information on obtaining approval of a method to destroy alcohol will be available in Excise Duty Memoranda 3.4.2, *Spirits Taken for Analysis or Destruction*, and 4.4.2, *Destruction of Wine*.

Alcohol used for fortifying wine or producing spirits

- Fortifying wine para 73(d) and s 130 51. A licensed user who is also a wine licensee may use bulk spirits to fortify wine to a maximum strength of 22.9% of absolute ethyl alcohol by volume. The excise duty imposed under the Act or levied under section 21.1 of the *Customs Tariff* on the spirits used to fortify the wine is relieved.
- Blending wine with spirits para 73(d), s 131 and 131.2 52. A licensed user who is also a spirits licensee may blend bulk wine with spirits if the resulting product is spirits (i.e., greater than 22.9% of absolute ethyl alcohol). The resulting spirits are deemed to be produced at the time of blending and the excise duty imposed under the Act or levied under section 21.1 of the *Customs Tariff* on the spirits that were blended with the wine is relieved.
- Using wine to produce spirits s 131.1 53. [A licensed user who is also a spirits licensee may use bulk wine to produce spirits.]

Imported alcohol

- Bulk spirits and bulk wine ss 75(1) and (2) 54. The Act permits a licensed user to import bulk spirits and bulk wine.
- Special duty ss 133(1) and Schedule 5 55. A special duty of \$0.12 per litre of absolute ethyl alcohol is imposed on imported spirits delivered to or imported by a licensed user. This special duty is in addition to the Customs duty levied under section 21.1 or 21.2 of the *Customs Tariff*.
- Liability – spirits licensee ss 133(2) 56. Where imported bulk spirits are delivered to a licensed user by a spirits licensee, the special duty is payable at the time the spirits are delivered by:
 - the spirits licensee responsible for them at that time;
 - the spirits licensee who was last responsible for them if the licensed user is responsible for them at the time of their delivery; or
 - the spirits licensee who delivered them if the licensed user is responsible for them at that time, and no spirits licensee was previously responsible for them.
- Liability – excise warehouse licensee or licensed user ss 133(3) 57. If packaged spirits are removed from an excise warehouse for delivery to a licensed user, the special duty is payable at the time of their removal from the warehouse and is payable by the excise warehouse licensee.

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- Liability – licensed user ss 133(4) 58. If a licensed user imports either bulk or packaged spirits, the special duty is payable by the licensed user in accordance with the *Customs Act*.
59. Additional information on rates of excise duty will be available in Excise Duty Memorandum 1.5.1, *Rates of Excise Duty*.

Maintaining records and filing returns

- Keeping records ss 206(1) 60. Every person who possesses a licence under the Act is required to maintain all records that are necessary to determine whether they are in compliance with the Act.
61. Additional information on the requirement to maintain books and records is available in Excise Duty Memorandum 9.1.1, *General Requirements for Books and Records*.
- Filing returns ss 160(1) 62. Every licensed user is required to file form B263, *Excise Duty Return – Licensed User*, in respect of a fiscal month, and to calculate and remit any excise duty payable on that return. A licensed user who possesses more than one licence will be required to file a separate return for each licence. For example, a licensed user who also possesses a wine licence and a spirits licence will be required to file forms B265, *Excise Duty Return – Wine Licensee*, and B266, *Excise Duty Return – Spirits Licensee*.
- Fiscal month ss 159(1) 63. Where a licensed user has determined a fiscal month for GST/HST purposes, the same fiscal month applies for purposes of excise duty. Where such a fiscal month has not yet been determined, a person may choose a fiscal month using the established GST/HST rules, or use a calendar month.
- Branches or divisions filing separate returns ss 164(1) 64. Where a licensed user has branches or divisions with distinct operations under a user's licence, the licensed user may apply to the Minister for authority to file separate returns for each branch or division.
65. Additional information with respect to the filing of monthly returns, remitting excise duty, and paying the correct amounts of excise duty is available in Excise Duty Memorandum 10.1.1, *Returns and Payments*. Information relating to the amounts to be included on an excise duty return is provided in Excise Duty Memorandum 10.1.4, *Completing an Excise Duty Return – Licensed User*.

Debts and the collections process

- Debts ss 284(1) 66. Excise duty and other amounts payable under the Act are debts due to the Crown and may be recovered through the court process or in any other manner provided under the Act.
- Reminder notice 67. A licensed user who owes excise duty or is late filing returns may receive a notice or a telephone call from a CCRA official as a reminder of their obligation to pay past due excise duty or file outstanding returns.

68. Additional information on the collections process will be available in Excise Duty Memorandum 12.2.1, *Collection Activities*.

Offences and penalties

Enforcement
Part 6

69. Additional information on offences and penalties will be provided in Excise Duty Memoranda 3.9.1, *Spirits-Related Offences and Penalties*, 4.9.1, *Wine-Related Offences and Penalties*, and 12.9.1, *Administrative Offences and Penalties*.

All of the memoranda in the Excise Duty Memoranda Series will be available on the CCRA Web site at <http://www.ccra-adrc.gc.ca/tax/technical/act2001-e.html>