



COLORADO
Department of Revenue

Specialized Business Group—
Liquor & Tobacco

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Denver, Colorado 80217-087
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NOTICE OF RULEMAKING HEARING

Department of Revenue
Liquor and Tobacco Enforcement Division

The Executive Director of the Colorado Department of Revenue, the Liquor and Tobacco Enforcement Division (“Division”), will consider the promulgation of additions and amendments to the Colorado Cigarette, Tobacco Product, and Nicotine Product Retailer Rules, 1 C.C.R. 203-1, as authorized by Article 7 of Title 44, C.R.S. For specific information and language concerning the proposed changes and new rules, please refer to the contents of this Notice and the proposed rules that are set forth following this notice and are available on the Division’s website: <https://sbg.colorado.gov/tobacco>.

STATUTORY AUTHORITY FOR RULEMAKING

The Executive Director promulgates the additions and amendments to these rules pursuant to the authority granted in section 44-7-104, C.R.S., and section 24-4-103, C.R.S., of the Administrative Procedure Act.

SUBJECT OF RULEMAKING

The proposed rules and relevant information are posted on Division’s website, <https://sbg.colorado.gov/tobacco>. In addition, the proposed rules attached to this Notice are fully incorporated herein.

The Executive Director will consider the promulgation of the following list of new rules and/or existing rules with proposed changes. For specific information and language concerning the proposed changes, please refer to the proposed rules that are set forth with this Notice, posted on Division’s website, and posted on the Colorado Secretary of State’s website.

RULES TO BE CONSIDERED FOR AMENDMENT OR ADOPTION

The Rules to be considered for amendment or adoption are described as follows:

- Rule 7-100.** Definitions.
- Rule 7-500.** Fees.
- Rule 7-601.** Penalties.
- Rule 7-1000.** Renewals.

Any other rules necessary to implement Article 7 of Title 44 (the Tobacco Code).

RULEMAKING RECORD AND PUBLIC PARTICIPATION

1. Official Rulemaking Record. The official record for purposes of the rulemaking hearing to be held on November 1, 2023, will include any written comments or oral testimony submitted or presented.
2. Written Comments. The Executive Director encourages interested parties to submit written comments on the proposed rules, including alternate proposals, by October 27, 2023, so that the Executive Director can review comments prior to the rulemaking hearing. Written comments will also be accepted after that date. The deadline to submit written comments is 5:00 P.M. on November 2, 2023. Written comments may be emailed to: dor_ledtobacco_rulemaking@state.co.us. In addition, you may submit written comments to:

Liquor and Tobacco Enforcement Division
Attn: Tobacco Rules
P.O. Box 17087
Denver, CO 80217-0087

3. Oral Comments. At her discretion, the Executive Director may afford interested parties an opportunity to make brief oral presentations at the rulemaking hearing. If allowed, oral presentations likely will be limited to two minutes or less per person. Individuals will not be allowed to cede their time to another person (for instance, one person speaking on behalf of five people will not be given ten minutes to speak). Organized groups of individuals are urged to identify one spokesperson and to be concise.

HEARING SCHEDULE

Date: Wednesday, November 1, 2023

Time: 10:00 a.m. – 12:00 p.m.

*Please note the rulemaking hearing may conclude prior to 12:00 p.m.

Location: The hearing will be held in Room 110 at the Pierce Building location as well as virtually through Zoom.

In Person Meeting

1881 Pierce St
Room 110
Lakewood, CO 80214

Virtual Zoom Meeting

Join Zoom Meeting

<https://zoom.us/j/95929726577?pwd=bGpHQtdtQ2hoUmwra0Q0NzRMdnR3QT09>

Meeting ID: 959 2972 6577

Passcode: 535915

Access links/Meeting IDs for the rulemaking hearing will also be posted on the Division's website and the Secretary of State's website.

The hearing may be continued at such place and time as the Executive Director may announce.

The Executive Director shall deliberate upon the rulemaking record, including oral testimony and written submissions presented, as well as applicable legal provisions and any related matters properly submitted before the hearing record is closed. Pursuant to said hearing, in the above-entitled matter at the time and place aforesaid, or at any adjourned meeting, the Executive Director will adopt such rules as in its judgment are justified by the rulemaking record and applicable legal provisions.

If you are an individual with a disability who needs a reasonable accommodation in order to participate in this rulemaking hearing, please contact dor_led@state.co.us no later than October 27, 2023.

Dated as set forth in the electronic signature.

THE COLORADO DEPARTMENT OF REVENUE,
LIQUOR ENFORCEMENT DIVISION

Heidi Humphreys
Executive Director/Chief Executive Officer
Colorado Department of Revenue

DEPARTMENT OF REVENUE

Liquor and Tobacco Enforcement Division

COLORADO CIGARETTE, TOBACCO PRODUCT, AND NICOTINE PRODUCT RETAILER RULES

1 CCR 203-1

Rule 7-100. Definitions.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, sections 44-7-104(5), 18-13-121(5), 22-33-104(2)(b), **25-14-204(3)**, 25-14-203(4), 44-3-103(50), and 44-30-103(18), C.R.S. The purpose of this rule is to ensure consistent application and interpretation of common terms within article 7 of title 44 and these rules.

- A. "Cigarette, tobacco product, or nicotine product" means (1) a product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or (2) Any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an electronic cigarette, cigar, cigarillo, or pipe. Notwithstanding any provision of this paragraph (A) to the contrary, "cigarette, tobacco product, or nicotine product" does not mean a product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product.
- B. "Cigar-Tobacco Bar" means a bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a "cigar-tobacco bar" and shall not thereafter be included in the definition regardless of sales figures.
- C. "Compliance Check" means the Division or local authority engaging a person under twenty-one years of age to enter a retail location to attempt the purchase of cigarettes, tobacco products, or nicotine products for purposes of ensuring compliance with article 7 of title 44.
- D. "Division" means the State of Colorado Department of Revenue's Liquor Enforcement Division, except as provided otherwise.
- E. "Inspection" means a procedure conducted by the Division or local authority to determine whether a retailer is operating in compliance with the requirements of article 7 of title 44, the rules promulgated thereunder, or any other applicable laws and regulations as they relate to the retailer's sale of cigarettes, tobacco products, or nicotine products.
- F. "Licensed Gaming Establishment" means any premises licensed pursuant to article 30 of title 44 for the conduct of gaming.
- G. "Minor" means a person under twenty-one years of age.

- H. “~~Indoor Age Restricted Retailer On-premises Retailer~~” means a retailer that sells cigarettes, tobacco products, or nicotine products for consumers to use at the retail location. **The retailer must comply with the requirements in section 25-14-204(3), C.R.S., including, but not limited to:**
1. Prohibiting entry by any person under twenty-one years of age; and
 2. Displaying signage in at least one conspicuous place and at least four inches by six inches in size stating either:
 - a. “Smoking allowed. Persons under twenty-one years of age may not enter.”; or
 - b. In the case of a retailer that desires to allow the use of ESDs but not other forms of smoking on the premises, “Vaping allowed. Persons under twenty-one years of age may not enter.”
- I. “Off-premises Retailer” means a retailer that sells cigarettes, tobacco products, or nicotine products for consumers to use at a location other than the retail location.
- J. “Retailer” means the owner or operator of business of any kind at a specific location that sells cigarettes, tobacco products, or nicotine products to a user or consumer.
- K. “School” means a public, parochial, or nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one through twelve. “Basic academic education” means the sequential program of instruction provided by an independent or parochial school, and such program shall include, but not be limited to, communication skills of reading, writing, and speaking, mathematics, history, civics, literature, and science.
- L. “Sell” or “sale” means any of the following: To exchange, barter, or traffic in; to solicit or receive an order for; to keep or expose for sale; to deliver for value or in any way other than gratuitously; to peddle or to possess with intent to sell; to traffic in for any consideration promised or obtained, directly or indirectly.

Rule 7-500. Fees.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5), 44-7-104.5(1), and 44-7-104.7(3)(b), C.R.S. The purpose of this rule is to establish fees for certain licenses and permits that may be issued by the Division.

Below are the fees established by the Executive Director:

License Fees

Cigarette, Tobacco Product, or Nicotine Product Retailer License*	\$400.00
(* - classifications include: Indoor Age Restricted On-Premises Retailer; Off-Premises Retailer; and Cigar-Tobacco Bar).	
Temporary License	\$35.00
Cigarette, Tobacco Product, or Nicotine Product Retailer License Renewal.....	\$400.00
Large-Operator License(s)	\$400.00*
(* - retailers who have more than 10 retail locations under the same corporate or business entity may apply, simultaneously and on one form, for licenses for all retail locations that sell cigarettes, tobacco products, and nicotine products. The large-operator license fee, which is to be paid in one transaction regardless of number of licensed retail locations applied for, is to be calculated on a per-retail location basis in order to cover the direct and indirect costs of administration and enforcement of Article 7, Title 44, C.R.S.).	
Permit Fees	
Delivery Permit	\$250.00
Permit Renewal	\$250.00

Rule 7-601. Penalties.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-103, 44-7-105, and 44-7-106, C.R.S. The purpose of this rule is to clarify the penalties for violating various provisions of article 7 of title 44, as well as establishing aggravating and mitigating factors which may be considered in assessing penalties for violations.

- A. If a retailer is found to have violated article 7 of title 44, or any rule promulgated pursuant to article 7, the Division may fine a retailer or, if the retailer holds a state license, suspend or revoke the retailer's state license in accordance with section 44-7-106, C.R.S., and the provisions of this Rule 7-601. See also Rule 7-705. License Denials, Disciplinary Actions, and Hearings.
- B. **Underage Sales.**
1. **Penalties.** The following penalties shall apply for sales to a person under twenty-one years of age in violation of section 44-7-103(1), C.R.S.:
- a. **First Violation.** If the retailer has had no previous underage sale violations in the preceding twenty-four months, then the licensee shall be subject to a fine of at least \$250.00 and not more than \$500.00.
- b. **Second Violation.** If the retailer had one previous underage sale violation in the preceding twenty-four month period, the retailer shall be subject to:
- i. A fine of at least \$500.00 and not more than \$750.00; and
- ii. If the retailer holds a state license, a suspension of the state license for at least seven days or, if the retailer does not hold a state license, a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred for at least seven days.
- c. **Third Violation.** If the retailer has had two previous underage sale violations in the preceding twenty-four month period, the retailer shall be subject to:
- i. A fine of at least \$750.00 and not more than \$1000.00; and
- ii. If the retailer holds a state license, a suspension of the state license for at least thirty days or, if the retailer does not hold a state license, a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred for at least thirty days.
- d. **Fourth or Subsequent Violation.** If the retailer has had three or more previous underage sale violations in the preceding twenty-four month period, the retailer shall be subject to:
- i. A fine of at least \$1,000.00 and not more than \$15,000.00; and
- ii. If the retailer holds a state license, a suspension or revocation of the retailer's state license or, if the retailer does not hold a state license, a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred for up to three years.

2. Affirmative Defenses. Notwithstanding the provisions of paragraph B(1), a fine for a violation of section 44-7-103(1), C.R.S. shall not be imposed upon a retailer that can establish an affirmative defense to the satisfaction of the division or the hearing officer that, prior to the date of the violation, it:
 - a. Had adopted and enforced a written policy against selling cigarettes, tobacco products, or nicotine products to persons under twenty-one years of age;
 - b. Had informed its employees of the applicable laws regarding the sale of cigarettes, tobacco products, or nicotine products to persons under twenty-one years of age;
 - c. Required employees to verify the age of cigarette, tobacco product, or nicotine product customers by way of photographic identification; and
 - d. Had established and imposed disciplinary sanctions for noncompliance.
 3. Except as provided in section 44-7-106(5), C.R.S., the affirmative defense established in paragraph B(2) may be used by a retailer only once at each location within any twenty-four-month period.
 - a. Pursuant to section 44-7-106(5), C.R.S., a licensed gaming establishment that has a cigar-tobacco bar on July 14, 2020, shall be afforded two affirmative defenses within a twenty-four-month period.
- C. Sales of Loose Cigarettes. The following penalties shall apply for sales, or offers to sell, in violation of section 44-3-103(4), C.R.S.:
1. First Violation. If the retailer has not violated section 44-3-103(4), C.R.S., in the preceding twenty-four months, the retailer shall receive a written warning.
 2. Second Violation. If the retailer violated section 44-3-103(4), C.R.S., once in the preceding twenty-four month period, the retailer shall be subject to a fine of \$250.00.
 3. Third Violation. If the retailer violated section 44-3-103(4), C.R.S., twice in the preceding twenty-four month period, the retailer shall be subject to a fine of \$500.00.
 4. Fourth Violation. If the retailer violated section 44-3-103(4), C.R.S., three times in the preceding twenty-four month period, the retailer shall be subject to a fine of \$1,000.00.
 5. Fifth or Subsequent Violation. If the retailer violated section 44-3-103(4), C.R.S., four or more times in the preceding twenty-four month period, the retailer shall be subject to a fine of at least \$1,000.00 and not more than \$15,000.00
- D. Unlicensed Sales. On or after July 1, 2021, the following penalties shall apply for a person who sells or offers to sell cigarettes, tobacco products, or nicotine products without a valid state license issued pursuant to article 7 of title 44:
1. First Violation. If the person has not violated section 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of \$1,000.00.
 2. Second Violation. If the person has one prior violation of section 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of \$2,000.00.

3. Third or Subsequent Violation. If the person has two or more prior violations of section 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person shall be subject to:
 - a. A fine of \$3,000.00; and
 - b. An order issued by the Division prohibiting the retailer from selling cigarettes, tobacco products, or nicotine products and rendering the retailer ineligible to apply for a state license for three years.
 4. For purposes of determining the existence and number of prior violations for purposes of this paragraph (D), each sale or offer to sell cigarettes, tobacco products, or nicotine products without a valid state license is a distinct violation.
- E. Unlawful Advertising of Electronic Smoking Device Product. The following penalties shall apply for a retailer who advertises an electronic smoking device product in a manner that is visible from outside the retail location in violation of section 44-7-104.7(2), C.R.S.
1. First Violation. If the person has not violated section 44-7-104.7(2), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of \$1,000.00.
 2. Second Violation. If the person has one prior violation of section 44-7-104.7(2), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of \$2,000.00.
 3. Third or Subsequent Violation. If the person has two or more prior violations of section 44-7-104.7(2), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of \$3,000.00.
- F. Delivery and Shipment Violations. The following penalties shall apply for a person that ships or delivers cigarettes, tobacco products, or nicotine products directly to a consumer in Colorado in violations of the requirements of 44-7-104.7(3), C.R.S., and any rules promulgated pursuant to article 7 of title 44:
1. First Violation. If the person has not violated section 44-7-104.7(3), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of \$1,000.00.
 2. Second Violation. If the person has one prior violation of section 44-7-104.7(3), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of \$2,000.00.
 3. Third or Subsequent Violation. If the person has two or more prior violations of section 44-7-104.7(3), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of \$3,000.00.
- G. Vending Machine Sales. The following penalties shall apply for a retailer that sells or offers to sell any cigarettes, tobacco products, or nicotine products by use of a vending machine or other coin-operated machine in violation of section 44-7-103(2), C.R.S.:
1. First Violation. If the retailer has not violated section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$25.00.
 2. Second Violation. If the retailer has one prior violation of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$50.00.

3. Third Violation. If the retailer has two prior violations of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$100.00.
 4. Fourth Violation. If the retailer has three prior violations of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$250.00.
 5. Fifth or Subsequent Violation. If the retailer has four or more prior violations of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of at least \$250.00 but not more than \$1,000.00.
- H. Warning Sign Violations. The following penalties shall apply for a retailer that sells or offers to sell cigarettes, tobacco products, or nicotine products without displaying a warning sign in conformance with the requirements of section 44-7-103(3), C.R.S.:
1. First Violation. If the retailer has not violated section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a written warning.
 2. Second Violation. If the retailer has one prior violation of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$50.00.
 3. Third Violation. If the retailer has two prior violations of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$100.00.
 4. Fourth Violation. If the retailer has three prior violations of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$250.00.
 5. Fifth or Subsequent Violation. If the retailer has four prior violations of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of at least \$250.00 but not more than \$1,000.
- I. Sales By Persons Under Eighteen Years of Age. The following penalties shall apply for a retailer that permits a person under eighteen years of age to sell or participate in the sale of cigarettes, tobacco products, or nicotine products in violation of section 44-7-103(4.5), C.R.S.:
1. First Violation. If the retailer has not violated section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$25.00.
 2. Second Violation. If the retailer has one prior violation of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$50.00.
 3. Third Violation. If the retailer has two prior violations of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$100.00.
 4. Fourth Violation. If the retailer has three prior violations of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of \$250.00.
 5. Fifth or Subsequent Violation. If the retailer has four or more prior violations of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of at least \$250.00 but not more than \$1,000.00.
- J. Suspension.
1. Prohibited Activity During Active Suspension. During any period of license suspension, the retailer shall not sell or permit the selling of cigarettes, tobacco products, or nicotine products.

2. Suspension Notice. Every retailer whose state license has been suspended by the Division, whether summarily or after an administrative hearing, shall, if ordered to, post two notices in conspicuous places, one on the exterior and one on the interior of the retail location, for the duration of the suspension.
 - a. The notices shall be two feet in length and fourteen inches in width containing lettering not less than ½ inch in height, and shall be in the following form:

NOTICE OF SUSPENSION. THE CIGARETTE, TOBACCO PRODUCTS, AND NICOTINE RETAILER LICENSE ISSUED FOR THE RETAIL LOCATION HAS BEEN SUSPENDED BY ORDER OF THE LIQUOR ENFORCEMENT DIVISION, COLORADO DEPARTMENT OF REVENUE FOR VIOLATION OF ARTICLE 7 OF TITLE 44 OF THE COLORADO REVISED STATUTES.
 - b. Advertising or posting signs to the effect that the premises have been closed or business suspended for any reason other than by order of the Division suspending its state license, shall be deemed a violation of this rule.
3. Renewal. Suspension of a license or permit does not relieve the retailer of the obligation to timely comply with all license or permit renewal requirements.

K. Aggravating and Mitigating Factors.

1. When the penalty limitation for a particular violation contained in section 44-7-106, C.R.S., includes an authorized range of potential penalties, the Division when entering into a stipulation, agreement and order with a licensee to settle an administrative action, or a hearing officer in a hearing conducted pursuant to section 44-7-105, C.R.S., may take aggravating and mitigating factors into consideration to determine a penalty within the range. These factors may include, but are not limited to:
 - a. Mitigating Factors:
 - i. The licensee has a substantial history of compliance with tobacco laws and rules;
 - ii. The violation is a first violation, as defined in this Regulation 7-601;
 - iii. The violation was self-reported;
 - iv. The extent to which the licensee took prompt and effective self-initiated action to correct the violation and to prevent future violations of the same type from occurring;
 - v. The violation was negligent, or not willful;
 - vi. The violation is not part of a pattern or practice of violations; or
 - vii. The owner or management personnel was not involved in the violation and/or did not direct their employees to violate the law.
 - b. Aggravating Factors:
 - i. The licensee has a substantial history of non-compliance with tobacco laws and rules;

- ii. The violation is a second or subsequent offense;
- iii. The violation was discovered, and later substantiated through investigation, as a result of a complaint, or multiple complaints;
- iv. The violation was willful, and not negligent;
- v. The violation is part of a pattern or practice of violations;
- vi. The implicated licensee encouraged others to participate in the same, or similar violations; or
- vii. The owner or management personnel engaged in the violation and/or directed an employee to violate the law.

Rule 7-1000. Renewals.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-103, 44-7-104.5(1)(a)(II), 44-7-105, and 44-7-106, C.R.S. The purpose of this regulation is to clarify and establish procedures and deadlines for a licensee that is applying to renew its license in accordance with section 44-7-104.5, C.R.S.

A. License Period.

1. Retail tobacco licenses are valid for one year from the date of issuance.

B. Division Notification Prior to Expiration.

1. The Division will send a notice of license renewal at least 90 days prior to the expiration of an existing retail tobacco license by first class mail or electronic mail to the Licensee's mailing address on file.
2. Failure to receive the Division notification does not relieve the Licensee of the obligation to timely renew the license.

C. Renewal Deadline.

1. A licensee must apply for the renewal of an existing licensee prior to the licensee's expiration date.
2. A renewal application submitted to the Division prior to the license's expiration date shall be deemed timely and the Licensee may continue to operate until Final Agency Order on the renewal application.

D. If License Not Renewed Before Expiration. A license is immediately invalid upon expiration if the Licensee has not filed a renewal application and remitted all of the required license fees prior to the license expiration date.