



COLORADO

Department of Revenue

Enforcement Division - Liquor & Tobacco

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BULLETIN 18-13

REFERENCE: EMERGENCY RULES - REGULATIONS 47-009 and 47-010

DATE: December 5, 2018

Colorado Liquor Enforcement Division

On December 5, 2018 the Colorado State Licensing Authority through the Liquor Enforcement Division (Division) adopted emergency rules (regulations 47-009 and 47-010), which are effective immediately. This will affect the liquor industry and local licensing authorities in the processing of fermented malt beverage (off-premises) licenses. The purpose of this bulletin is to familiarize you with these rules and answer any questions you may have regarding their effect. The Division encourages you to contact us on any points of clarification you may require.

Regulation 47-009

Pursuant to Senate Bill 18-243, section 44-3-301(12)(a.5)(II) C.R.S. sets forth an exception to the 500 ft. distance requirement detailed earlier in the statute's previous subsection (12)(a.5)(I). The law states that after June 4, 2018, no license for fermented malt beverage (FMB) off-premises retailers shall be issued if the proposed FMB off-premises retailer is to be located within 500 ft. of a retail liquor store. The exception in the law is that the 500 ft. distance prohibition does not apply if the FMB off-premises retailer who is applying for a license has applied for, or received, either a building permit or a certificate of occupancy for their proposed licensed premises as of January 1, 2019.

The purpose regulation 47-009 is to clarify what is meant by the above exception. Regulation 47-009 states that any FMB off-premises retailer, who is availing themselves of the exception to the 500 ft. requirement, also had the *intent* that the structure for which they applied for or received a building permit or certificate of occupancy would be used as an FMB off-premises retail store. For example, if a building permit or certificate of occupancy reflects that the structure for which an FMB off-premises retailer is now seeking a license was intended for use as, say, a flower shop – they cannot *now* choose to avail themselves of the exception and open an FMB off-premises retail store instead.

Since regulation 47-009 is not effective until December 5, 2018, FMB off-premises licenses issued by both the local and state licensing authorities between June 4, 2018 and December 5, 2018 are not subject to regulation 47-009.

The Division is providing a flowchart to aid in the understanding of **new** FMB off-premises applications (**Chart 1**) that have not been processed, or approved by both the local and state licensing authorities. The

flow chart shows the process and will help you understand the laws and regulations as they are currently set forth.

Regulation 47-010

Pursuant to Senate Bill 18-243, section 44-4-107(3), C.R.S., requires that FMB off-premises licensees, upon either initial application **or** renewal application, demonstrate that they derive at least 20% of their gross annual revenues from the sale of food items for consumption off the premises.

The law is that no license for an FMB off-premises license issued after June 4, 2018, should be issued, **or** renewed, if the FMB off-premises licensee does not, or will not, derive at least 20% of their gross annual revenue from the sale of food items for consumption off the premises. The exception in the law is the 20% food requirement does not apply if the FMB off-premises licensee who is applying for a license or renewal has applied for, or received, either a building permit or a certificate of occupancy for their proposed licensed premises as of January 1, 2019. As detailed above in the explanation for emergency regulation 47-009, the exception to the 20% food requirement only applies if the intent for the structure which they applied for or received a building permit of certificate of occupancy would be used as an FMB off-premises retail store.

The purpose of the Division's emergency regulation 47-010 effective December 5, 2018 is to clarify how applicants can comply with the requirements set forth in section 44-3-107(3), C.R.S., in much the same way as was detailed above in the section regarding regulation 47-009.

The Division is providing a flowchart to aid in the understanding of both new **and** renewal FMB off-premises applications (**Chart 2**) that have not been processed, approved by both the local and state licensing authorities. The flow chart shows the process and will help you understand the laws and regulations as they are currently set forth.

If you have any questions about this bulletin, email the Division at dor_led@state.co.us