

NOTICE OF RULEMAKING HEARING

Department of Revenue Liquor Enforcement Division

The Executive Director of the Colorado Department of Revenue, on behalf of the Liquor 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 to the proposed rules that are set forth following this notice and are available on the Division’s website: <https://sbg.colorado.gov/liquor-tobacco/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(5), 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/liquor-tobacco/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 7-200 – Petitions for Statements of Position and Declaratory Orders.

Rule 7-300 – Large-Operators.

Rule 7-305 – Temporary State Licenses.

Rule 7-500 – Fees.

Rule 7-600 – Complaints.

Rule 7-601 – Penalties.

Rule 7-700 – Inspection of the Retail Location

Rule 7-701 – Compliance Checks.

Rule 7-705 – License Denials, Disciplinary Actions, and Hearings.

Rule 7-800 – Smuggling.

Rule 7-900 – Identification.

RULEMAKING RECORD AND PUBLIC PARTICIPATION

1. Official Rulemaking Record. The official record for purposes of the rulemaking hearing to be held on July 30, 2021, 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 July 23, 2021, 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 August 3, 2021. Written comments may be emailed to: dor_ledtobacco_rulemaking@state.co.us. In addition, you may submit written comments to:

Liquor Enforcement Division
Attn: Tobacco Rules
1707 Cole Blvd
Suite 300
Lakewood, CO 80401

3. Oral Comments. At his 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: July 30, 2021
Time: 10:00 a.m. - 12:00 p.m.
Location: Due to the ongoing nature of the COVID-19 pandemic, this hearing will be held virtually through Zoom. Access details are below:

Meeting ID
meet.google.com/qkn-jhvj-cuq

Phone Numbers
(US)+1 409-344-5183
PIN: 195 727 729#

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 Chris Manning at Chris.Manning@state.co.us no later than July 23, 2021.

Dated this ____ day of _____, 2021.

THE COLORADO DEPARTMENT OF REVENUE,
LIQUOR ENFORCEMENT DIVISION

Mark Ferrandino
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

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), 25-14-203(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. "On-premises Retailer" means a retailer that sells cigarettes, tobacco products, or nicotine products for consumers to use at the retail location.

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 7-200. Petitions for Statements of Position and Declaratory Orders

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a) and 24-4-105(11), C.R.S. The purpose of this rule is to establish clear and comprehensive procedures and considerations required for a statement of position and/or a declaratory order.

A. **Statements of Position.** Any person may petition the Division for a statement of position concerning the applicability to the petitioner of any provision of article 7 of title 44 or the rules promulgated pursuant thereto, contained in 1 CCR 203-1.

B. **Service of Petition for Statement of Position.** A letter for petition for a statement of position shall be served on the Division by mailing or emailing such petition to the Division with a copy sent on the same date to the local licensing authority in the county or municipality where the petitioner's retail location or proposed retail location is located, if applicable. Each petition for a statement of position shall contain a certification that the service requirements of this paragraph have been met.

C. **Time to Respond.** The Division shall respond to a petition for a statement of position in writing setting forth its position and the reasons therefore within forty-five (45) days of receiving such petition.

D. **Declaratory Orders.** Any person who has petitioned the Division for a statement of position and who is dissatisfied with the statement of position may petition the Executive Director within forty-five (45) days of the issuance of the statement of position, or any amended statement of position, for a declaratory order pursuant to section 24-4-105(11), C.R.S. Any person who has not received a statement of position response within forty-five (45) days, may petition the Executive Director for a declaratory order pursuant to section 24-4-105(11), C.R.S. The parties to any petition for a declaratory order pursuant to this rule shall be the petitioner and the Division.

E. **Requirements of Petition for Declaratory Order.** Each petition for a declaratory order shall set forth the following:

1. The name and address of the petitioner; whether the petitioner is licensed pursuant to the article 7 of title 44 and, if so, the type of license or permit and address of the retail location.
2. The statute, rule, or order to which the petition relates.
3. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule or order to which the petition relates.
4. A concise statement of the legal authorities if any, and such other reasons upon which petitioner relies.

5. A concise statement of the declaratory order sought by the petitioner.

F. **Service.** A petition for a declaratory order shall be served on the Executive Director by mailing such petition to the Executive Director with a copy of the petition sent on the same date to the Division, the local authority in the county or municipality where the petitioner's retail location or proposed retail location is located, and to the Revenue & Utilities Section of the Colorado Department of Law. Each petition for a declaratory order shall contain a certification that the service requirements of this paragraph have been met.

G. **Acceptance.** The Executive Director will determine whether to entertain any petition for declaratory order. If the Executive Director decides it will not entertain a petition for declaratory order, it shall promptly notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:

1. The petitioner has failed to petition the Division for a statement of position, or if a statement of position has been issued, the petition for declaratory order was filed with the Executive Director more than forty-five (45) days after issuance of the statement of position.
2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule, or order in question.
3. The petition involves a subject, question or issue which is currently involved in a court action, an administrative action before the state or any local licensing authority, an ongoing investigation conducted by the Division, or a written complaint filed with the Executive Director or Division.
4. The petition seeks a ruling on a moot or hypothetical question, having no applicability to the petitioner.
5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo.R.Civ.P. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule, or order.

- H. Determination. If the Executive Director determines that it will entertain the petition for declaratory order, it shall promptly so notify all parties involved, and the following procedures shall apply:
1. The Executive Director may expedite the hearing, where the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit additional evidence and legal argument in writing. Any such request for additional information shall be served on all parties.
 2. If the Executive Director determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, the Executive Director shall issue a Notice to Set to all parties and on the date so set, a hearing shall be conducted in conformance with section 24-4-105, C.R.S.
 3. In ruling on a petition for declaratory order, the Executive Director may take administrative notice of general, technical, or scientific facts within its knowledge, so long as the fact is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.
 4. Every declaratory order shall be promptly decided and issued in writing, specifying the basis in fact and law for the order.
 5. Any other interested person may seek leave of the Executive Director to intervene in the proceeding and such leave may be granted if the Executive Director determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.
 6. A declaratory order shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.
- I. Record Retention and Reliability. Files of all requests, statements of position, and declaratory orders will be maintained and relied upon by the Division. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

Rule 7-300. Large-Operators.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a)(I), and 44-7-104(5)(a)(II), C.R.S. The purpose of this rule is to establish large-operator application requirements and associated license fees for retail locations under the same corporate or business entity.

- A. A retailer that operates ten or more retail locations under the same corporate or business entity, including franchises, may, subject to the requirements of this Rule 7-300, apply as a large-operator and use one application to obtain licenses for each retail location.
- B. A large-operator application shall be made upon forms prescribed by the Division. The Division will not consider an application that is not complete in every material detail, or which is not accompanied by the remittance in full of the whole amount of the large-operator license fee established in Rule 7-500. Every large-operator application shall identify each retail location operated by the large-operator and shall include the business address, owner/manager information, phone number, and email address for each retail location.
- C. The large-operator applicant must provide approved local licenses for any and all retail locations subject to local licensing with the application.
- D. The large-operator license fee shall be considered a single fee, and it shall be paid in one transaction. In order to cover the direct and indirect costs of administration and enforcement of article 7, of title 44, C.R.S, the large-operator license fee shall be calculated based on the number of retail locations operated by the large-operator.
- E. Notwithstanding the use of a large-operator application and the payment of the relevant large-operator application fee, each retail location operated by the large-operator shall be issued a separate license from the Division. The use of a large-operator application and payment of a large-operator fee shall not preclude the Division from conducting compliance checks and investigations for each separate retail location and pursuing administrative penalties on each separate license possessed and operated by the large-operator.

Rule 7-305. Temporary State Licenses.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsection 44-7-104(5), C.R.S. The purpose of this rule is to authorize persons to apply for a temporary state license, pursuant to which a retailer may sell cigarettes, tobacco products, and nicotine products, for a period not to exceed thirty (30) days, following the purchase of a retail location previously licensed to another person.

A. A person that wishes to sell cigarettes, tobacco products, or nicotine products at a specific retail location acquired through the sale or transfer of a licensee's business to that person, and that has not yet applied for an annual state license pursuant to section 44-7-104.5, C.R.S., may apply for a temporary state license for that retail location.

B. A temporary state license application shall be made upon forms prescribed by the Division. The Division will not consider an application that is not complete in every material detail, or which is not accompanied by the remittance in full of the whole amount of the temporary state license fee established in Rule 7-500. Every temporary state license application shall include the business address, owner/manager information, phone number, and email address for the retail location.

C. A temporary state license is not renewable, and shall remain in effect until the earlier of:

1. Thirty (30) days from the date a temporary state license application is approved for a specific retail location; or

2. The date the Division approves or denies an application for a state license under section 44-7-104.5, C.R.S., for the same specific retail location.

D. An application for a temporary state license may be denied for good cause. The Division shall deny any application for a temporary state license submitted by a retailer that is subject to an order issued by the Division pursuant to subsection 44-7-106(1)(c)(III), C.R.S., prohibiting a retailer from selling cigarettes, tobacco products, or nicotine products, which order renders the retailer ineligible to apply for a state license for three years following the date of the order.

E. The Division shall approve or deny a temporary state license application within five (5) business days after receiving the application.

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: 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 10 or more 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 7-600. Complaints.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a)(IV), C.R.S. The purpose of this rule is to establish general processes and procedures regarding the receipt and investigation of complaints against licensees for violations of any law, rule of the Executive Director, or local jurisdiction.

A. Whenever the Division receives a complaint, the Division will investigate the complaint, as deemed appropriate, and will notify any applicable local licensing authority of the content of such complaint and outcome of the investigation by emailing the applicable local licensing authority.

B. Whenever a local licensing authority receives a complaint, the local licensing authority will investigate the allegations as deemed appropriate and will notify the Division of the content of such complaint, as well as the outcome of any investigation, or action taken on the licensee as a result of the complaint by any of the following methods:

1. Emailing the information and follow-up to: dor_ledtobacco@state.co.us;
2. Utilizing the online “Enforcing Underage Drinking Laws” platform (EUDL) for jurisdictions who are equipped to do so; or
3. Contacting the applicable LED field office at the phone number provided on the Division’s website.

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, 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.

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 \$1,500.00; 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.

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.

Rule 7-700. Inspection of the Retail Location.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a), C.R.S. The purpose of this rule is to provide clarity to licensees, their agents, and employees, regarding the time, place, scope, and items subject to inspection. This rule also serves the purpose of identifying the books and records required to be maintained by the licensee and the period of time such records must be maintained and provided upon request.

A. The retail location, including any places where cigarettes, tobacco products, and/or nicotine products are stored or dispensed, shall be subject to inspections by the Division or Local Licensing Authorities and their duly authorized representatives (which include investigators or peace officers) during all business hours and all other time of apparent activity, for the purpose of determining compliance with the provisions of Article 7 of title 44, 18-13-121, 25-14-204, 25-14-208.5, 25-14-301, and 30-15-401(1.5), C.R.S., and rules promulgated thereunder.

B. Each licensee shall retain all books and records necessary to show fully the business transactions and operations of such licensee related to cigarettes, tobacco products and nicotine products for a period of the current tax year and the three prior tax years. "Books" and "records" include documents or information in printed or paper form, as well as documents or information maintained in a readable electronic or digital format, and any audio and video surveillance recordings. Licensees shall provide copies of books and records requested by the Division and Local Licensing Authorities and their duly authorized representatives without unreasonable delay.

1. Audio and video surveillance recordings referenced in paragraph (B) above must be maintained for thirty (30) days.

Rule 7-701. Compliance Checks.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(3), and 44-7-104(5)(a)(III), C.R.S. The purpose of this rule is to provide clarity to licensees, their agents, and employees, regarding compliance check operations.

A. To the degree it is achievable within the amount of fees collected, the Division will perform, or cause to be performed in cooperation with local licensing authorities, two compliance checks per retail location, per year.

B. When a compliance check is completed by the Division, the Division will notify any applicable local licensing authority of the outcome, and any action taken on the licensee as a result of such compliance check through the preferred communication channels established by each local jurisdiction.

C. When a compliance check is completed by a local licensing authority or on behalf of such local licensing authority, the local licensing authority will notify the Division of any outcome, or action taken on the licensee as a result of the compliance check by any of the following methods:

1. Emailing the information and follow-up to: dor_ledtobacco@state.co.us;
2. Utilizing the online “Enforcing Underage Drinking Laws” platform (EUDL) for jurisdictions who are equipped to do so; or
3. Contacting the applicable LED field office at the phone number provided on the Division’s website.

D. If a compliance check on a retail license reveals a violation, the Division or local authority will complete another compliance check on the same location within six months of the initial violation.

Rule 7-705. License Denials, Disciplinary Actions, and Hearings.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5), 44-7-105, 24-4-104, and 24-4-105, C.R.S. The purpose of this rule is to establish the procedures governing administrative hearings and other general hearings issues.

A. **Hearings - General Procedures.**

1. **Hearing Location.** Hearings will be conducted by the Department of Revenue's Hearings Division. Hearings will be held virtually, unless otherwise ordered by the hearing officer for good cause. If the hearing officer orders an in person hearing, the hearing will be conducted at a location in the greater Denver metropolitan area to be determined by the hearing officer.

a. **Good cause for in-person hearings.** Good cause shall include unusual circumstances where justice, judicial economy and convenience of the parties would be served by holding a hearing in person.

2. **Scope of Hearing Rules.** This rule shall be construed to promote the just and efficient determination of all matters presented.

3. **Right to Legal Counsel.** Any denied applicant or respondent has a right to legal counsel throughout all processes described in rules associated with the denial of an application and disciplinary action. Such counsel shall be provided solely at the denied applicant's or respondent's expense. Unless a retailer that is an entity satisfies the exception in section 13-1-127(2), C.R.S., the retailer must be represented by an attorney admitted to practice law in the state of Colorado.

4. **Liquor Enforcement Division Representation.** The Division shall be represented by the Colorado Department of Law.

5. **No Ex Parte Communication.** Ex parte communication with the Hearings Division shall not be allowed at any point following the formal initiation of the hearing process. A party or counsel for a party shall not initiate any communication with a hearing officer pertaining to any pending matter unless all other parties are included in the communication or unless prior consent of all other parties (and any pro se parties) has been obtained. Parties shall provide all other parties with copies of any pleading or other document or communication submitted to the hearing officer in connection with a hearing.

B. **Notices of Denial and Requests for a Hearing.**

1. **Applicant Bears the Burden of Proving it Meets Licensure Requirements.** A license or permit is a revocable privilege. At all times during the application process, an applicant must be capable of establishing it is qualified to hold a license. The Division shall approve or deny a state license application within sixty (60) days after receiving the application.

2. **Applicants Must Provide Information to the Division in a Full, Faithful, Truthful, and Fair Manner.** An application may be denied where the applicant made misstatements, omissions, misrepresentations, or untruths in the application. Providing misstatements, misrepresentations, omissions, or untruths to the Division also may be the basis for administrative action.

3. **Good Cause for Denial.** The Division may deny an application, including an initial or renewal application, only for good cause. Good cause shall include the following:

a. During any period in which an applicant is ineligible to apply, or prohibited from applying, for a license pursuant to a penalty imposed under section 44-7-106, C.R.S., and Rule 7-601;

b. When an applicant failed to provide all required information or documents, provided inaccurate, incomplete, or untruthful information or documents, or failed to cooperate with the Division.

c. The applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of article 7 of title 44 or any rules promulgated thereunder.

C. Notice of Denial. If the Division denies an application, the Division shall inform the applicant in writing of the reasons for the denial in a notice of denial, personally delivered to the retailer at the actual retail location or mailed to the retailer at the last-known address as shown by the records of the Division. A notice of denial shall be deemed to have been received on the date of delivery, if personally delivered, or three days after the date of mailing, if sent by mail.

1. Request for Hearing. A denied applicant that has been served with a notice of denial may request a hearing within fourteen (14) days after receiving the notice of denial by making a written request for a hearing to the Division. The request for a hearing must be submitted by United States mail by hand delivery, or by email at: dor_led_legal@state.co.us. The request must be sent to the mailing address of the Division's headquarters, as listed on the Division's website. Include "Attn: Hearing Request" in the mailing address. The written request for a hearing must be received by the Division within the time stated in the notice of denial. An untimely request for hearing will not be considered.

a. A denied applicant that timely requests a hearing following issuance of a notice of denial shall be served with a notice of grounds for denial, and shall be entitled to a hearing regarding the matters addressed therein.

b. A respondent that has been served with an order to show cause shall be entitled to a hearing regarding the matters addressed therein.

D. Voluntary Withdrawal of Application.

1. The Division and applicant may mutually agree to allow the voluntary withdrawal of an application in lieu of a denial proceeding.

2. Applicants must first submit a form to the Division requesting the voluntary withdrawal of the application. Applicants will submit the form with the understanding that they were not obligated to request the voluntary withdrawal and that any right to a hearing in the matter is waived once the voluntary withdrawal is approved.

3. The Division will consider the request along with any circumstances at issue with the application in making a decision to accept the voluntary withdrawal. The Division may at its discretion grant or deny the request.

4. The Division will notify the applicant of its acceptance of the voluntary withdrawal and the terms thereof.

E. When a Responsive Pleading is Required.

1. A denied applicant shall file a written answer with the Hearings Division and the Division within thirty (30) days after the date of mailing of any notice of grounds for denial. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a denied applicant fails to file a required answer, the hearing officer, upon motion, may enter a default against the denied applicant pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this rule, shown, the hearing officer may set aside the entry of default within ten (10) days after the date of such entry.

2. A respondent shall file a written answer with the Hearings Division and the Division within thirty (30) days after the date of mailing of any order to show cause. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a respondent fails to file a required answer, the hearing officer, upon motion, may enter a default against the respondent pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this rule, shown, the hearing officer may set aside

the entry of default within ten (10) days after the date of such entry.

F. Hearing Notices.

1. Notice to Set. After issuance of a notice of grounds for denial or an order to show cause, the Division shall promptly file a notice to set with the Hearings Division, and shall send a copy of the notice to set a hearing to the denied applicant or respondent in writing by first-class mail to the last mailing address of record.

2. Notice of Hearing. The Hearings Division shall notify the Division and denied applicant or respondent of the date, place, time, and nature of the hearing regarding denial of the license application or whether discipline should be imposed against the respondent's license at least thirty (30) days prior to the date of such hearing, unless otherwise agreed to by both parties. This notice shall be sent to the denied applicant or respondent in writing by first-class mail to the last mailing address of record. Hearings shall be scheduled and held as soon as is practicable.

a. If an order of summary suspension has been issued by the Division, the hearing on the order to show cause will be scheduled and held promptly.

3. Continuances. Continuances may be granted for good cause shown. A motion for a continuance must be timely.

a. Good cause for continuances. Good cause for a continuance may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case. Good cause normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness' testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

G. Prehearing Matters Generally.

1. Prehearing Conferences Once a Hearing is Set. Prehearing conferences may be held at the discretion of the hearing officer upon request of any party, or upon the hearing officer's own motion. If a prehearing conference is held and a prehearing order is issued by the hearing officer, the prehearing order will control the course of the proceedings. Such prehearing conferences may occur by telephone or video conference.

2. Depositions. Depositions are generally not allowed; however, a hearing officer has discretion to allow a deposition if a party files a written motion and can show why such deposition is necessary to prove its case. When a hearing officer grants a motion for a deposition, C.R.C.P. 30 controls. Hearings will not be continued because a deposition is allowed unless (a) both parties stipulate to a continuance and the hearing officer grants the continuance, or (b) the hearing officer grants a continuance over the objection of any party in accordance with subsections (D)(2)(b) and (c) of this Rule.

3. Prehearing Statements Once a Hearing is Set. Prehearing Statements are required and unless otherwise ordered by the hearing officer, each party shall file with the hearing officer and serve on each party a prehearing statement no later than ten (10) calendar days prior to the hearing. Parties shall also exchange exhibits at that time. Parties shall not file exhibits with the hearing officer. Parties shall exchange exhibits by the date on which prehearing statements are to be filed. Prehearing statements

shall include the following information:

- a. Witnesses. The name, mailing address, and telephone number of any witness whom the party may call at hearing, together with a detailed statement of the expected testimony.
- b. Experts. The name, mailing address, and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.
- c. Exhibits. A description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: Division using numbers and denied applicant or respondent using letters.
- d. Stipulations. A list of all stipulations of fact or law reached, as well as a list of any additional stipulations requested or offered to facilitate disposition of the case.

4. Prehearing Statements Binding. The information provided in a party's prehearing statement shall be binding on that party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if: (1) the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement; (2) it would not prejudice other parties; and (3) it would not necessitate a delay of the hearing.

5. Consequence of Not Filing a Prehearing Statement Once a Hearing is Set. If a party does not timely file a prehearing statement, the hearing officer may impose appropriate sanctions including, but not limited to, striking proposed witnesses and exhibits.

H. Conduct of Hearings.

1. The hearing officer shall cause all hearings to be electronically recorded.

2. The hearing officer may allow a hearing, or any portion of the hearing, to be conducted in real time by telephone or other electronic means. If a party is appearing by telephone, the party must provide copies of the exhibits to be offered into evidence at the hearing to the hearing officer when the prehearing statement is filed. Electronic filings will be accepted at: dor_regulatoryhearings@state.co.us.

3. The hearing officer shall administer oaths to all witnesses at hearing. The hearing officer may question any witness.

4. The hearing, including testimony and exhibits, shall be open to the public unless otherwise ordered by the hearing officer in accordance with a specific provision of law. Any party may move the hearing officer to seal an exhibit or order other appropriate relief if necessary to safeguard the confidentiality of evidence.

5. Court Rules.

a. To the extent practicable, the Colorado Rules of Evidence apply. Unless the context requires otherwise, whenever the word "court," "judge," or "jury" appears in the Colorado Rules of Evidence, such word shall be construed to mean a hearing officer. A hearing officer has discretion to consider evidence not admissible under such rules, including but not limited to hearsay evidence, pursuant to section 24-4-105(7), C.R.S.

b. To the extent practicable, the Colorado Rules of Civil Procedure apply. However, Colorado Rules of Civil Procedure 16 and 26-37 do not apply, although parties are encouraged to voluntarily work together to resolve the case, simplify issues, and exchange information relevant to the case prior to a hearing. Unless

the context otherwise requires, whenever the word "court" appears in a rule of civil procedure, that word shall be construed to mean a hearing officer.

6. Exhibits.

a. All documentary exhibits must be paginated by the party offering the exhibit into evidence.

b. The Division shall use numbers to mark its exhibits.

c. The denied applicant or respondent shall use letters to mark its exhibits.

7. The hearing officer may proceed with the hearing or enter default judgment if any party fails to appear at hearing after proper notice.

I. Final Agency Action. After considering all the evidence, the hearing officer shall determine in a written decision whether the proponent of the order has proven its case by a preponderance of the evidence, and shall make written findings of evidentiary fact, ultimate conclusions of fact, and conclusions of law. The hearing officer's decision shall constitute a final agency action pursuant to section 44-7-105(5), C.R.S.

J. Appeal. Any appeal of the hearing officer's decision shall be filed with a district court of competent jurisdiction pursuant to sections 44-7-105(5) and 24-4-106, C.R.S. Pursuant to section 24-4-106(4), C.R.S., venue for purposes of an appeal of a decision by a hearing officer is proper in the District Court for the City and County of Denver.

Rule 7-800. Smuggling.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a), (c) and (d), C.R.S. The purpose of this rule is to address the Division's role in investigations relating to smuggling of cigarettes, tobacco products, or nicotine products.

A. For purposes of this rule, "smuggling" means the production, import, export, transportation, purchase, sale, or possession of cigarettes, tobacco products, or nicotine products with the intent to evade Colorado tax laws and obligations.

B. The Division shall consult with the Taxation Division of the Department of Revenue, and other state law enforcement agencies, as needed, to determine what types of documents or information would assist them in their work to prevent smuggling and enforce laws against smuggling.

C. To the extent the Division, while doing its work to enforce article 7 of title 44, discovers documents or information that may be relevant to enforcement of laws regarding smuggling, the Division may make such documents or information available to the Tax Division of the Department of Revenue, and to other state law enforcement agencies investigating smuggling.

Rule 7-900. Identification.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsection 44-7-103(1), and 44-7-104(5), C.R.S. The purpose of this rule is to define adequate identification criteria for purposes of demonstrating age to a retailer for the purpose of purchasing cigarettes, tobacco products, or nicotine products.

A. A retailer shall require an individual who appears to be under fifty years of age to present identification that satisfies the requirements of paragraph (B) before selling the person cigarettes, tobacco products, nicotine products.

B. A retailer may refuse to sell cigarettes, tobacco products, or nicotine products to any person if the retailer is unable to verify the person is at least twenty-one years of age. Verification of age can be done by either:

1. Presenting adequate identification of age, including any verified digital identification, that is valid and unexpired. Identification of age is adequate if it contains a picture and date of birth and is one of the following:

a. Any type of driver's license, or identification card issued by any state within the United States, the District of Columbia, any U.S. Territory, or any foreign country, including Canada or Mexico;

b. A United States military identification card or any other identification card issued by the United States government including, but not limited to, a permanent resident card, alien registration card, or consular card;

b. A passport, or passport identification card; or

d. A valid consular identification card from any foreign country.

2. Using a biometric identity verification device.

a. For purpose of this rule, "biometric identity verification device" means a device that:

1. Instantly verifies the identity and age of a person by an electronic scan of a biometric characteristic of the person, such as a fingerprint, iris, face, or other biometric characteristic, or any combination of these characteristics;

2. References the person's identity and age against any record of identification described in paragraph (B)(1) of this rule; and

3. Contemporaneously provides the retailer with identity and age verification for the person utilizing the device.

b. Prior to using a biometric identity verification device to verify the identity and age of a person for purposes of this paragraph (B)(2), the retailer shall ensure the device provider has systems in place to:

1. Verify the authenticity of any identification records by an electronic authentication process;

2. Verify the identity of, and relevant identifying information about, the person through a secondary, electronic authentication process or set of processes utilizing commercially available data, such as a public records query or a knowledge-based authentication quiz; and

3. Securely link the authenticated record to biometric characteristics contemporaneously collected from the person and store the authenticated record in a centralized, highly secured, encrypted biometric database.

C. It shall be an affirmative defense to any administrative action brought against a retailer for alleged sale to a minor, if the retailer establishes, by a preponderance of the evidence, that:

1. The minor presented fraudulent identification of the type established in paragraph (B)(1) above and the retailer inspected the identification provided, compared the identification to the person presenting the identification, and inspected an identification book issued within the past three years, which contained a sample of the specific kind of identification presented by the minor; or

2. The retailer used and relied upon a biometric identity verification device that indicated the minor was twenty-one years of age or older, in accordance with paragraph (B)(2) of this rule.

3. A retailer asserting the affirmative defense, as described in paragraph (C) of this rule, shall be responsible for obtaining, and providing to the Division, all records necessary to establish that a biometric identity verification device was used as age verification for the transaction in question.

