



---

**DRAFT RULE REVISIONS**

Date: August 9, 2022

Colorado Cigarette, Tobacco Product, and Nicotine Product Retailer Rules  
1-CCR-203-1

---

1 **Rule 7-100. Definitions.**

2 **Basis and Purpose.** The statutory authority for this rule includes, but is not limited to, sections 44-7-  
3 104(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  
4 purpose of this rule is to ensure consistent application and interpretation of common terms within article 7  
5 of title 44 and these rules.

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

## DRAFT RULE REVISIONS

Date: August 9, 2022

Colorado Cigarette, Tobacco Product, and Nicotine Product Retailer Rules

1-CCR-203-1

- 1 H. "On-premises Retailer" means a retailer that sells cigarettes, tobacco products, or nicotine  
2 products for consumers to use at the retail location.
- 3 I. "Off-premises Retailer" means a retailer that sells cigarettes, tobacco products, or nicotine  
4 products for consumers to use at a location other than the retail location.
- 5 J. "Retailer" means the owner or operator of business of any kind at a specific location that sells  
6 cigarettes, tobacco products, or nicotine products to a user or consumer.
- 7 K. "School" means a public, parochial, or nonpublic school that provides a basic academic education  
8 in compliance with school attendance laws for students in grades one through twelve. "Basic  
9 academic education" means the sequential program of instruction provided by an independent or  
10 parochial school, and such program shall include, but not be limited to, communication skills of  
11 reading, writing, and speaking, mathematics, history, civics, literature, and science.
- 12 L. "Sell" or "sale" means any of the following: To exchange, barter, or traffic in; to solicit or receive  
13 an order for; to keep or expose for sale; to deliver for value or in any way other than gratuitously;  
14 to peddle or to possess with intent to sell; to traffic in for any consideration promised or obtained,  
15 directly or indirectly.

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

17 Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-  
18 104(5)(a) and 24-4-105(11), C.R.S. The purpose of this rule is to establish clear and comprehensive  
19 procedures and considerations required for a statement of position and/or a declaratory order.

- 20 A. Statements of Position. Any person may petition the Division for a statement of position  
21 concerning the applicability to the petitioner of any provision of article 7 of title 44 or the rules  
22 promulgated pursuant thereto, contained in 1 CCR 203-1. **The petition must include the**  
23 **information set forth in paragraph (E)(1)-(E)(6) of this regulation.**
- 24 B. Service of Petition for Statement of Position. A letter for petition for a statement of position shall  
25 be served on the Division by mailing or emailing such petition to the Division with a copy sent on  
26 the same date to the local licensing authority in the county or municipality where the petitioner's  
27 retail location or proposed retail location is located, if applicable. Each petition for a statement of  
28 position shall contain a certification that the service requirements of this paragraph have been  
29 met.
- 30 C. Time to Respond. The Division shall respond to a petition for a statement of position in writing  
31 setting forth its position and the reasons therefore within forty-five (45) days of receiving such  
32 petition **and set forth its position and the reasons therefore, or the grounds on which the Division**  
33 **declines to provide a statement of position pursuant to section 24-4-105(11), C.R.S., and/or**  
34 **paragraph (G) of this regulation.**
- 35 D. Declaratory Orders. Any person who has petitioned the Division for a statement of position and  
36 who is dissatisfied with the statement of position may petition the Executive Director within forty-  
37 five (45) days of the issuance of the statement of position, or any amended statement of position,  
38 for a declaratory order pursuant to section 24-4-105(11), C.R.S. Any person who has not received  
39 a statement of position response within forty-five (45) days, may petition the Executive Director  
40 for a declaratory order pursuant to section 24-4-105(11), C.R.S. The parties to any petition for a  
41 declaratory order pursuant to this rule shall be the petitioner and the Division.

## DRAFT RULE REVISIONS

Date: August 9, 2022

Colorado Cigarette, Tobacco Product, and Nicotine Product Retailer Rules

1-CCR-203-1

- 1 E. Requirements ~~for-of~~ a Petition Statement of Position or a Petition for Declaratory Order. Each  
2 petition for a statement of position or petition for a declaratory order shall set forth the following:
- 3 1. The name and address of the petitioner; whether the petitioner is licensed pursuant to the  
4 article 7 of title 44 and, if so, the type of license or permit and address of the retail  
5 location.
- 6 2. The statute, rule, or order to which the petition relates.
- 7 3. A concise statement of all of the facts necessary to show the nature of the controversy or  
8 the uncertainty as to the applicability to the petitioner of the statute, rule or order to which  
9 the petition relates.
- 10 4. A concise statement of the legal authorities if any, and such other reasons upon which  
11 petitioner relies.
- 12 5. A concise statement of the statement of position or declaratory order sought by the  
13 petitioner.
- 14 6. The Statement of Position previously issued if the petitioner is filing a Petition for a  
15 Declaratory Order.
- 16 F. Service of Petition for Declaratory Order. A petition for a declaratory order shall be served on the  
17 Executive Director by mailing such petition to the Executive Director with a copy of the petition  
18 sent on the same date to the Division, the local authority in the county or municipality where the  
19 petitioner's retail location or proposed retail location is located, and to the Revenue & Utilities  
20 Section of the Colorado Department of Law. Each petition for a declaratory order shall contain a  
21 certification that the service requirements of this paragraph have been met.
- 22 G. Acceptance. The Division will determine whether to entertain any petition for a statement of  
23 position. The Executive Director will determine whether to entertain any petition for declaratory  
24 order. If either the Division or the Executive Director decides it will not entertain a petition ~~for~~  
25 ~~declaratory order~~, it shall promptly notify the petitioner in writing of its decision and the reasons  
26 for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a  
27 petition:
- 28 1. For a petition for declaratory order, the petitioner has failed to petition the Division for a  
29 statement of position, or if a statement of position has been issued, the petition for  
30 declaratory order was filed with the Executive Director more than forty-five (45) days after  
31 issuance of the statement of position.
- 32 2. A ruling on the petition will not terminate the controversy nor remove uncertainties  
33 concerning the applicability to petitioner of the statute, rule, or order in question.
- 34 3. The petition involves a subject, question or issue which is currently involved in a court  
35 action, an administrative action before the state or any local licensing authority, an  
36 ongoing investigation conducted by the Division, or a written complaint filed with the  
37 Executive Director or Division.
- 38 4. The petition seeks a ruling on a moot or hypothetical question, having no applicability to  
39 the petitioner.

**DRAFT RULE REVISIONS**

Date: August 9, 2022

Colorado Cigarette, Tobacco Product, and Nicotine Product Retailer Rules  
1-CCR-203-1

- 1 5. Petitioner has some other adequate legal remedy, other than an action for declaratory  
2 relief pursuant to Colo.R.Civ.P. 57, which will terminate the controversy or remove any  
3 uncertainty concerning applicability of the statute, rule, or order.
- 4 6. The petitioner failed to properly serve the petition pursuant to this regulation.
- 5 7. The petitioner failed to include information required in paragraph (E) of this regulation.
- 6 H. Determination. If the Executive Director determines that it will entertain the petition for declaratory  
7 order, it shall promptly so notify all parties involved, and the following procedures shall apply:
- 8 1. The Executive Director may expedite the hearing, where the interests of the petitioner will  
9 not be substantially prejudiced thereby, by ruling on the basis of the facts and legal  
10 authority presented in the petition, or by requesting the petitioner or the Division to submit  
11 additional evidence and legal argument in writing. Any such request for additional  
12 information shall be served on all parties.
- 13 2. If the Executive Director determines that an evidentiary hearing or legal argument is  
14 necessary to a ruling on the petition, the Executive Director shall issue a Notice to Set to  
15 all parties and on the date so set, a hearing shall be conducted in conformance with  
16 section 24-4-105, C.R.S.
- 17 3. In ruling on a petition for declaratory order, the Executive Director may take  
18 administrative notice of general, technical, or scientific facts within its knowledge, so long  
19 as the fact is specified in the record or is brought to the attention of the parties before  
20 final decision and every party is afforded an opportunity to controvert the fact so noticed.
- 21 4. Every declaratory order shall be promptly decided and issued in writing, specifying the  
22 basis in fact and law for the order.
- 23 5. Any other interested person may seek leave of the Executive Director to intervene in the  
24 proceeding and such leave may be granted if the Executive Director determines that such  
25 intervention will make unnecessary a separate petition for declaratory order by the  
26 interested person.
- 27 6. A declaratory order shall constitute final agency action subject to judicial review pursuant  
28 to section 24-4-106, C.R.S.
- 29 I. Record Retention and Reliability. Files of all requests, statements of position, and declaratory  
30 orders will be maintained and relied upon by the Division, unless the statement of position or  
31 declaratory order is superseded by a statutory or regulatory change, amended by the Division, or  
32 amended or reversed by the state licensing authority. Except with respect to any material  
33 required by law to be kept confidential, such files shall be available for public inspection.

34 **Rule 7-800. Smuggling.**

35 Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-  
36 104(5)(a), (c) and (d), C.R.S. The purpose of this rule is to address the Division's role in investigations  
37 relating to smuggling of cigarettes, tobacco products, or nicotine products.

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

## DRAFT RULE REVISIONS

Date: August 9, 2022

Colorado Cigarette, Tobacco Product, and Nicotine Product Retailer Rules

1-CCR-203-1

- 1 B. The Division shall consult with the Taxation Division of the Department of Revenue, and other  
2 state law enforcement agencies, as needed, to determine what types of documents or information  
3 would assist them in their work to prevent smuggling and enforce laws against smuggling.
- 4 C. To the extent the Division, while doing its work to enforce article 7 of title 44, discovers  
5 documents or information that may be relevant to enforcement of laws regarding smuggling, the  
6 Division may make such documents or information available to the Tax Division of the  
7 Department of Revenue, and to other state law enforcement agencies investigating smuggling.

### 8 **Rule 7-900. Identification.**

9 Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsection 44-7-  
10 103(1), and 44-7-104(5), C.R.S. The purpose of this rule is to define adequate identification criteria for  
11 purposes of demonstrating age to a retailer for the purpose of purchasing cigarettes, tobacco products, or  
12 nicotine products.

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

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

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

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

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

28 **cb.** A passport, or passport identification card; or

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

30 2. Using a biometric identity verification device.

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

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

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

**DRAFT RULE REVISIONS**

Date: August 9, 2022

Colorado Cigarette, Tobacco Product, and Nicotine Product Retailer Rules

1-CCR-203-1

- 1 3. Contemporaneously provides the retailer with identity and age  
2 verification for the person utilizing the device.
  
- 3 b. Prior to using a biometric identity verification device to verify the identity and age  
4 of a person for purposes of this paragraph (B)(2), the retailer shall ensure the  
5 device provider has systems in place to:
  - 6 1. Verify the authenticity of any identification records by an electronic  
7 authentication process;
  - 8 2. Verify the identity of, and relevant identifying information about, the  
9 person through a secondary, electronic authentication process or set of  
10 processes utilizing commercially available data, such as a public records  
11 query or a knowledge-based authentication quiz; and
  - 12 3. Securely link the authenticated record to biometric characteristics  
13 contemporaneously collected from the person and store the  
14 authenticated record in a centralized, highly secured, encrypted  
15 biometric database.
  
- 16 C. It shall be an affirmative defense to any administrative action brought against a retailer for alleged  
17 sale to a minor, if the retailer establishes, by a preponderance of the evidence, that:
  - 18 1. The minor presented fraudulent identification of the type established in paragraph (B)(1)  
19 above and the retailer inspected the identification provided, compared the identification to  
20 the person presenting the identification, and inspected an identification book issued  
21 within the past three years, which contained a sample of the specific kind of identification  
22 presented by the minor; or
  - 23 2. The retailer used and relied upon a biometric identity verification device that indicated the  
24 minor was twenty-one years of age or older, in accordance with paragraph (B)(2) of this  
25 rule.
  - 26 3. A retailer asserting the affirmative defense, as described in paragraph (C) of this rule,  
27 shall be responsible for obtaining, and providing to the Division, all records necessary to  
28 establish that a biometric identity verification device was used as age verification for the  
29 transaction in question.