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DRAFT RULE REVISIONS

Date: October 25, 2023

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

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

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

- 8
9 A. “Cigarette, tobacco product, or nicotine product” means (1) a product that contains
10 nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled
11 by or applied to the skin of an individual; or (2) Any device that can be used to deliver
12 tobacco or nicotine to the person inhaling from the device, including an electronic
13 cigarette, cigar, cigarillo, or pipe. Notwithstanding any provision of this paragraph (A) to
14 the contrary, “cigarette, tobacco product, or nicotine product” does not mean a product
15 that the food and drug administration of the United States department of health and
16 human services has approved as a tobacco use cessation product.
- 17
18 B. “Cigar-Tobacco Bar” means a bar that, in the calendar year ending December 31, 2005,
19 generated at least five percent or more of its total annual gross income or fifty thousand
20 dollars in annual sales from the on-site sale of tobacco products and the rental of on-site
21 humidors, not including any sales from vending machines. In any calendar year after
22 December 31, 2005, a bar that fails to generate at least five percent of its total annual
23 gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco
24 products and the rental of on-site humidors shall not be defined as a “cigar-tobacco bar”
25 and shall not thereafter be included in the definition regardless of sales figures.
- 26
27 C. “Compliance Check” means the Division or local authority engaging a person under
28 twenty-one years of age to enter a retail location to attempt the purchase of cigarettes,
29 tobacco products, or nicotine products for purposes of ensuring compliance with article
30 7 of title 44.
- 31
32 D. “Division” means the State of Colorado Department of Revenue’s Liquor Enforcement
33 Division, except as provided otherwise.
- 34
35 E. “Inspection” means a procedure conducted by the Division or local authority to determine
36 whether a retailer is operating in compliance with the requirements of article 7 of title 44,
37 the rules promulgated thereunder, or any other applicable laws and regulations as they
38 relate to the retailer’s sale of cigarettes, tobacco products, or nicotine products.
- 39
40 F. “Licensed Gaming Establishment” means any premises licensed pursuant to article 30

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- 1 of title 44 for the conduct of gaming.
- 2
- 3 G. "Minor" means a person under twenty-one years of age.
- 4
- 5 H. "~~Indoor Age Restricted Retailer-On-premises Retailer~~" means a retailer that sells
6 cigarettes, tobacco products, or nicotine products for consumers to use at the retail
7 location. ~~The retailer must comply with the requirements in section 25-14-204(3),~~
8 ~~C.R.S., including, but not limited to:~~
- 9
- 10 1. Prohibiting entry by any person under twenty-one years of age; and
- 11
- 12 2. Displaying signage in at least one conspicuous place and at least four
13 inches by six inches in size stating either:
- 14
- 15 a. "Smoking allowed. Persons under twenty-one years of age may not enter.";
- 16 or
- 17
- 18 b. In the case of a retailer that desires to allow the use of ESDs but
19 not other forms of smoking on the premises, "Vaping allowed.
20 Persons under twenty-one years of age may not enter."
- 21
- 22 I. "Off-premises Retailer" means a retailer that sells cigarettes, tobacco products, or
23 nicotine products for consumers to use at a location other than the retail location.
- 24
- 25 J. "Retailer" means the owner or operator of business of any kind at a specific location
26 that sells cigarettes, tobacco products, or nicotine products to a user or consumer.
- 27
- 28 K. "School" means a public, parochial, or nonpublic school that provides a basic academic
29 education in compliance with school attendance laws for students in grades one through
30 twelve. "Basic academic education" means the sequential program of instruction
31 provided by an independent or parochial school, and such program shall include, but not
32 be limited to, communication skills of reading, writing, and speaking, mathematics,
33 history, civics, literature, and science.
- 34
- 35 L. "Sell" or "sale" means any of the following: To exchange, barter, or traffic in; to solicit or
36 receive an order for; to keep or expose for sale; to deliver for value or in any way other
37 than gratuitously; to peddle or to possess with intent to sell; to traffic in for any
38 consideration promised or obtained, directly or indirectly.

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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.).	
<u>Permit Fees</u>	
Delivery Permit	\$250.00
Permit Renewal	\$250.00

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1 **Rule 7-601. Penalties.**

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3 Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections
4 44-7-103, 44-7-105, and 44-7-106, C.R.S. The purpose of this rule is to clarify the penalties
5 for violating various provisions of article 7 of title 44, as well as establishing aggravating and
6 mitigating factors which may be considered in assessing penalties for violations.
7

8 A. If a retailer is found to have violated article 7 of title 44, or any rule promulgated
9 pursuant to article 7, the Division may fine a retailer or, if the retailer holds a state
10 license, suspend or revoke the retailer's state license in accordance with section
11 44-7-106, C.R.S., and the
12 provisions of this Rule 7-601. See also Rule 7-705. License Denials, Disciplinary
13 Actions, and Hearings.
14

15 B. Underage Sales.

16
17 1. Penalties. The following penalties shall apply for sales to a person under
18 twenty-one years of age in violation of section 44-7-103(1), C.R.S.:
19

20 a. First Violation. If the retailer has had no previous underage sale
21 violations in the preceding twenty-four months, then the licensee shall
22 be subject to a fine of at least \$250.00 and not more than \$500.00.
23

24 b. Second Violation. If the retailer had one previous underage sale
25 violation in the preceding twenty-four month period, the retailer shall be
26 subject to:
27

28 i. A fine of at least \$500.00 and not more than \$750.00; and

29
30 ii. If the retailer holds a state license, a suspension of the state
31 license for at least seven days or, if the retailer does not hold a
32 state license, a prohibition against the retailer selling cigarettes,
33 tobacco products, or nicotine products at the retail location at
34 which the violation occurred for at least seven days.
35

36 c. Third Violation. If the retailer has had two previous underage sale
37 violations in the preceding twenty-four month period, the retailer shall be
38 subject to:
39

40 i. A fine of at least \$750.00 and not more than \$1000.00; and

41
42 ii. If the retailer holds a state license, a suspension of the state
43 license for at least thirty days or, if the retailer does not hold a
44 state license, a prohibition against the retailer selling cigarettes,
45 tobacco products, or nicotine products at the retail location at
46 which the violation occurred for at least thirty days.
47

48 d. Fourth or Subsequent Violation. If the retailer has had three or more
49 previous underage sale violations in the preceding twenty-four month
50 period, the retailer shall be subject to:
51

52 i. A fine of at least \$1,000.00 and not more than \$15,000.00; and

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- 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.

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1 5. Fifth or Subsequent Violation. If the retailer violated section 44-3-103(4),
2 C.R.S., four or more times in the preceding twenty-four month period, the
3 retailer shall be subject to a fine of at least \$1,000.00 and not more than
4 \$15,000.00

5
6 D. Unlicensed Sales. On or after July 1, 2021, the following penalties shall apply for a
7 person who sells or offers to sell cigarettes, tobacco products, or nicotine products
8 without a valid state license issued pursuant to article 7 of title 44:

9
10 1. First Violation. If the person has not violated section 44-7-104.5(1),
11 C.R.S., in the preceding twenty-four months, the person shall be subject
12 to a fine of \$1,000.00.

13
14 2. Second Violation. If the person has one prior violation of section 44-7-104.5(1),
15 C.R.S., in the preceding twenty-four months, the person shall be subject to a fine
16 of \$2,000.00.

17
18 3. Third or Subsequent Violation. If the person has two or more prior violations of
19 section 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person
20 shall be subject to:

21 a A fine of \$3,000.00; and

22 b An order issued by the Division prohibiting the retailer from selling
23 cigarettes, tobacco products, or nicotine products and rendering the
24 retailer ineligible to apply for a state license for three years.

25 4. For purposes of determining the existence and number of prior violations for
26 purposes of this paragraph (D), each sale or offer to sell cigarettes, tobacco
27 products, or nicotine products without a valid state license is a distinct violation.

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31 E. Unlawful Advertising of Electronic Smoking Device Product. The following penalties
32 shall apply for a retailer who advertises an electronic smoking device product in a
33 manner that is visible from outside the retail location in violation of section 44-7-
34 104.7(2), C.R.S.

35
36
37 1. First Violation. If the person has not violated section 44-7-104.7(2),
38 C.R.S., in the preceding twenty-four months, the person shall be subject
39 to a fine of \$1,000.00.

40
41 2. Second Violation. If the person has one prior violation of section 44-7-104.7(2),
42 C.R.S., in the preceding twenty-four months, the person shall be subject to a fine
43 of \$2,000.00.

44
45 3. Third or Subsequent Violation. If the person has two or more prior violations of
46 section
47 44-7-104.7(2), C.R.S., in the preceding twenty-four months, the person shall be
48 subject to a fine of \$3,000.00.

49
50 F. Delivery and Shipment Violations. The following penalties shall apply for a person that
51 ships or delivers cigarettes, tobacco products, or nicotine products directly to a
52 consumer in Colorado in violations of the requirements of 44-7-104.7(3), C.R.S., and

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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.

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- 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

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1 ENFORCEMENT DIVISION, COLORADO DEPARTMENT OF
2 REVENUE FOR VIOLATION OF ARTICLE 7 OF TITLE 44 OF THE
3 COLORADO REVISED STATUTES.

4
5 b Advertising or posting signs to the effect that the premises have been
6 closed or business suspended for any reason other than by order of the
7 Division suspending its state license, shall be deemed a violation of this
8 rule.

9
10 3. Renewal. Suspension of a license or permit does not relieve the retailer of the
11 obligation to timely comply with all license or permit renewal requirements.

12
13 **K** Aggravating and Mitigating Factors.

14
15 1. When the penalty limitation for a particular violation contained in section 44-7-
16 106, C.R.S., includes an authorized range of potential penalties, the Division
17 when entering into a stipulation, agreement and order with a licensee to settle
18 an administrative action, or a hearing officer in a hearing conducted pursuant to
19 section 44-7-105, C.R.S., may take aggravating and mitigating factors into
20 consideration to determine a penalty within the range. These factors may
21 include, but are not limited to:

22
23 a Mitigating Factors:

- 24
25 i. The licensee has a substantial history of compliance with
26 tobacco laws and rules;
27
28 ii. The violation is a first violation, as defined in this Regulation 7-601;
29
30 iii. The violation was self-reported;
31
32 iv. The extent to which the licensee took prompt and effective self-
33 initiated action to correct the violation and to prevent future
34 violations of the same type from occurring;
35
36 v. The violation was negligent, or not willful;
37
38 vi. The violation is not part of a pattern or practice of violations; or
39
40 vii. The owner or management personnel was not involved in the
41 violation and/or did not direct their employees to violate the law.

42
43 b Aggravating Factors:

- 44
45 i. The licensee has a substantial history of non-compliance with
46 tobacco laws and rules;

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- 1 ii. The violation is a second or subsequent offense;
- 2
- 3 iii. The violation was discovered, and later substantiated
- 4 through investigation, as a result of a complaint, or
- 5 multiple complaints;
- 6
- 7 iv. The violation was willful, and not negligent;
- 8
- 9 v. The violation is part of a pattern or practice of violations;
- 10
- 11 vi. The implicated licensee encouraged others to participate in the
- 12 same, or similar violations; or
- 13
- 14 vii. The owner or management personnel engaged in the violation
- 15 and/or directed an employee to violate the law.

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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.