



COLORADO
Department of Revenue

Specialized Business Group—
Liquor & Tobacco

Physical Address:
1697 Cole Boulevard, Suite 200
Lakewood, CO 80401

Mailing Address:
P.O. Box 17087
Denver, Colorado 80217-087
Fax: 303-866-2428

Colorado Department of Revenue
Liquor Enforcement Division
Adoption of Rule on an Emergency Basis
Colorado Liquor Rules, 1 C.C.R. 203-2

Revised Liquor Rules, 1 C.C.R. 203-2:

Regulation 47-302 – Changing, Altering, or Modifying Licensed Premises
Regulation 47-1103 – Communal Outdoor Dining Areas to Promote Social Distancing

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103, 44-3-201, and 44-3-202, C.R.S., C.R.S., I, Mark Ferrandino, Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt the aforementioned revised Colorado Liquor Rules, which are attached hereto.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue an emergency rule if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

I find: (1) the adoption of these revised rules, effective immediately, is necessary to comply with the statutory mandates of the Colorado Liquor Code sections 44-3-101 to 44-3-1002, C.R.S.; (2) the adoption of these new and revised rules is necessary to preserve the public health, safety, and welfare; and (3) compliance with the notice and public hearing requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

Statutory Authority

The statutory authority for these rules includes but is not limited to sections 44-3-103(11.5), 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(F), 44-3-202(2)(a)(I)(D), 44-3-202(2)(a)(I)(L), 44-3-202(2)(a)(I)(M), 44-3-202(2)(a)(I)(R), 44-3-601, 44-3-912, and 24-4-104(4)(a), C.R.S.

Purpose

The State Licensing Authority is amending these rules on an emergency basis to comply with statutory changes enacted during the 2021 legislative session and due to the ongoing threat to public health in the state of Colorado caused by the spread of novel coronavirus 2019 (COVID-

19). In light of the ongoing impact of COVID-19, the adoption of these revised emergency rules is imperatively necessary to ensure continued proper regulation and control over the administration and enforcement of articles 3, 4, and 5 of title 44 to meet these legislative charges and responsibilities and in order to preserve the public health, safety, and welfare of the State of Colorado.

In particular, adopting revised Regulation 47-1103, 1 CCR 203-2, on an emergency basis will ensure the preservation of the public health, safety and welfare of the State of Colorado by maintaining requirements for liquor licensees operating communal outdoor dining areas pending the adoption of permanent rules. The readoption of revised Regulation 47-1103 on an emergency basis will also align the Liquor Rules with new legislation (House Bill 21-1027). The purpose of revised Regulation 47-302, 1 CCR 203-12, is to ensure the preservation of the public health, safety, and welfare of the State of Colorado by limiting the risk of exposure to, and mitigating harm related to, COVID-19 by continuing to give licensees greater flexibility to temporarily modify their licensed premises to facilitate social distancing by employees and the public.

The State Licensing Authority anticipates filing a permanent rulemaking notice shortly, which will include these revised rules, and holding a virtual public hearing on the proposed permanent rules on November 2, 2021. In advance of the permanent rulemaking notice, the Liquor Enforcement Division held seven stakeholder working groups. That process has provided the opportunity for substantial stakeholder and public participation, which will continue through the permanent rulemaking hearing. However, because the permanent rules, including these rules, will not become effective until twenty days after publication of the rule as finally adopted, pursuant to section 24-4-103(5), C.R.S., adoption of these rule revisions on an emergency basis is necessary to preserve the public health, safety, and welfare and align the rules with statutory changes until the permanent rules becomes effective.

Adoption, Effective Date, and Expiration

The State Licensing Authority hereby adopts the forgoing revised rules on an emergency basis, effective immediately. The attached emergency rules will remain in effect until their expiration 120 days from the adoption date unless sooner terminated or replaced by permanent rules.

Mark Ferrandino
Executive Director/CEO
Colorado Department of Revenue
State Licensing Authority

Dated in Electronic Signature Above

Regulation 47-302. Changing, Altering, or Modifying Licensed Premises.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44- 3-202(2)(a)(I)(A), and 44-3-202(2)(a)(I)(D), C.R.S. The purpose of this regulation is to establish procedures for a licensee seeking to make material or substantial alterations to the licensed premises, and provide factors the licensing authority must consider when evaluating such alterations for approval or rejection.

A. After issuance of a license, the licensee shall make no physical change, alteration or modification of the licensed premises that materially or substantially alters the licensed premises or the usage of the licensed premises from the latest approved plans and specifications on file with the state and local licensing authorities without application to, and the approval of, the respective licensing authorities.

For purposes of this regulation, physical changes, alterations or modifications of the licensed premises, or in the usage of the premises requiring prior approval, shall include, but not be limited to, the following:

1. Any increase or decrease in the total size or capacity of the licensed premises.
2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes the sale or distribution of alcohol beverages within the licensed premises.
3. Any substantial or material enlargement of a bar, relocation of a bar, or addition of a separate bar. However, the temporary addition of bars or service areas to accommodate seasonal operations shall not require prior approval unless the additional service areas are accompanied by an enlargement of the licensed premises.
4. A temporary outside service area located on a sidewalk owned by a municipality, and that the licensee possesses in accordance with subsection (B)(2) of this regulation, may be approved by the state and local licensing authorities upon the annual filing of a temporary modification of premises application, due at the time of initial application or at the time of renewal, on a form approved by the State Licensing Authority, and payment of the associated fee as set forth in Regulation 47-506, provided that:
 - a. the proposed temporary outside service area located on a sidewalk is immediately adjacent to the licensed premises;
 - b. The licensed premises, as temporarily modified, will comprise a definite contiguous area; and
 - c. Plans and specifications identifying the temporary outside service area located on a sidewalk accompany the form and fee.
5. Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure detailed in the latest approved plans and specifications on file with the state and local licensing authorities. However, the following types of modifications will not require prior approval, even if a local building permit is required: painting and redecorating of premises; the installation or replacement of electric fixtures or equipment, plumbing, refrigeration, air conditioning or heating fixtures and equipment; the lowering of ceilings; the installation and replacement of floor coverings; the replacement of

furniture and equipment; and any non structural remodeling where the remodel does not expand or reduce the existing area designed for the display or sale of alcohol beverage products.

6. The destruction or demolition, and subsequent reconstruction, of a building that contained the retailer's licensed premises shall require the filing of new building plans with the local licensing authority, or in the case of manufacturers and wholesalers, with the state licensing authority. However, reconstruction shall not require an application to modify the premises unless the proposed plan for the newly-constructed premises materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications detailed in the latest approved plans and specifications on file with the state and local licensing authorities.
 7. Nothing herein shall prohibit a licensee, who is otherwise not eligible for an optional premises permit or optional premises license, from modifying its licensed premises to include in the licensed premises a public thoroughfare, if the following conditions are met:
 - a. The licensee has been granted an easement for the public thoroughfare for the purpose of transporting alcohol beverages.
 - b. The public thoroughfare is authorized solely for pedestrian and non-motorized traffic.
 - c. The inclusion of the public thoroughfare is solely for the purpose of transporting alcohol beverages between licensed areas, and no sale or consumption will occur on or within the public thoroughfare.
 - d. Any other conditions as established by the local licensing authority.
 8. The addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S.
 9. Modification of the licensed premises to include a communal outdoor dining area, subject to the requirements of section 44-3-912, C.R.S.. and Regulation 47-1103.
- B. In making its decision with respect to any proposed changes, alterations or modifications, the licensing authority must consider whether the premises, as changed, altered or modified, will meet all of the pertinent requirements of the Colorado Liquor or Beer Codes and related regulations. Factors to be taken into account by the licensing authority shall include, but not be limited to, the following:
1. The reasonable requirements of the neighborhood and the desires of the adult inhabitants.
 2. The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement.
 3. Compliance with the applicable zoning laws of the municipality, city and county or county.
 4. Compliance with the distance prohibition in regard to any public or parochial school or the principal campus of any college, university, or seminary.
 5. The legislative declaration that the Colorado Liquor and Beer Codes are an exercise of the police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.

- C. If permission to change, alter or modify the licensed premises is denied, the licensing authority shall give notice in writing and shall state grounds upon which the application was denied. The licensee shall be entitled to a hearing on the denial if a request in writing is made to the licensing authority within fifteen (15) days after the date of notice.
- D. This regulation shall be applicable to the holder of a manufacturer's license as specifically defined in Section 44-3-402, C.R.S., or a limited winery defined in section 44-3-403, C.R.S, only if the physical change, alteration, or modification involves any increase or decrease in the total size of the licensed premises, including the addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S.. Except, any change, alteration, or modification of a sales room, shall be reported in accordance with subsection (A).
- E. The state licensing authority shall NOT impose any additional fees for the processing or review of an application for a modification of premises for the holder of a manufacturer's license, except for applications to modify the premises through the addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S.
- F. Due to public health concerns raised by the presence COVID-19 in Colorado, a licensee may apply to temporarily modify its licensed premises to facilitate social distancing by employees and customers and to facilitate compliance with the requirements of applicable public health orders (*See Regulation 47-1102*).
 - 1. If permitted by the relevant local licensing authority, the temporary premises modification may include expansion of the licensed premises into outside areas that the licensee possesses in accordance with subsection (B)(2) of this regulation, provided that:
 - a. Any outside area proposed to be included in the licensed premises, as temporarily modified, is contiguous or adjacent to the licensed premises and appropriately monitored by the licensee;
 - b. The licensed premises, as temporarily modified, will comprise a definite contiguous area;
 - c. The licensee will designate the boundaries of the licensed premises, as temporarily modified, using barriers approved by the local licensing authority and state licensing authority and post warning signs in areas visible to the public, including all points of ingress and egress, regarding laws against public consumption of alcohol beverages;
 - d. The licensed premises, as temporarily modified, will not encroach upon or overlap with the licensed premises of any other licensee;
 - e. The licensed premises, as temporarily modified, complies with local building and zoning laws; and
 - f. The licensed premises, as temporarily modified, complies with all other restrictions and requirements imposed by the Colorado Liquor Code and Rules.
 - 2. A temporary modification of a licensed premises pursuant to this paragraph (F) may be approved by the state and local licensing authorities after the filing of a temporary modification of premises application on a form approved by the State Licensing Authority, including plans and specifications of the licensed premises,

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as temporarily modified, and a one-time payment of the modification of licensed premises fee set forth in Regulation 47-506.

3. Any temporary modification approved pursuant to this paragraph (F) shall expire on May 31, 2022, unless the relevant local licensing authority imposes an earlier expiration date. A licensee is not required to pay an additional modification of licensed premises fee or obtain approval to remove a temporary modification to the licensed premises upon expiration of this paragraph (F).
4. Nothing in this regulation requires a local licensing authority to allow temporary premises modifications in response to COVID-19. A local licensing authority that allows temporary premises modifications may establish an earlier expiration date for any temporary modifications issued in the relevant jurisdiction and may establish additional requirements for temporary modifications that are at least as restrictive as the requirements in this paragraph (F).
5. This subsection (F) is effective until May 31, 2022 and is repealed effective June 1, 2022.

Regulation 47-1103. Communal Outdoor Dining Areas.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103(11.5), 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(F), 44-3-202(2)(a)(I)(L), 44-3-202(2)(a)(I)(M), 44-3-202(2)(a)(I)(R), 44-3-601, 44-3-912(6), and 24-4-104(4)(a), C.R.S. The purpose of this regulation is to address requirements for the operation of communal outdoor dining areas.

- A. No licensee shall sell or serve alcohol beverages in a communal outdoor dining area unless
 - 1. The licensee obtains a permit from the state licensing authority and pays the permitting fee established in regulation 47-506; and
 - 2. The state and local licensing authorities have approved both attaching the license to the communal outdoor dining area and a modification of licensed premises pursuant to Regulation 47-302 that includes the communal outdoor dining area.
 - 3. A retail food establishment that does not have a liquor license may also serve food in a communal outdoor dining area approved under this regulation 47-1103.
- B. A communal outdoor dining area must be within 1000 feet of the permanent licensed premises of each of the licensees associated with the communal outdoor dining area. This distance shall be computed by direct measurement from the nearest property line of the land used for the communal outdoor dining area to the nearest portion of the building in which the permanent licensed premises is located, using a route of direct pedestrian access.
- C. If allowed by the local licensing authority, all licensees who wish to be associated with a communal outdoor dining area may submit a joint application to modify their licensed premises to include the communal outdoor dining area. Each licensee is responsible for paying the modification of the licensed premises fee set forth in Regulation 47-506.
- D. All licensees associated with a communal outdoor dining area pursuant to this Regulation 47-1103 must adopt and agree to a security and control plan for the communal outdoor dining area that is approved by the state and local licensing authorities. The security and control plan shall ensure:
 - 1. Any retail food establishments associated with the communal outdoor dining area that does not hold a liquor license acknowledges and agrees that alcohol beverages will be sold in the communal outdoor dining area only by, and under the control of, the licensees associated with the communal outdoor dining area;
 - 2. One or more licensees will supervise or provide security within the communal outdoor dining area during all hours of operation to ensure compliance with this Regulation 47-1103 and all relevant requirements of article 3 of title 44 and the Colorado liquor rules;
 - 3. All licensees associated with the communal outdoor dining area agree they are jointly responsible for complying with this Regulation 47-1103 and all relevant requirements of article 3 of title 44 and the Colorado liquor rules; and
 - 4. All licensees have obtained and will maintain a properly endorsed general liability and liquor liability insurance policy that includes the communal outdoor dining area and is reasonable acceptable to the state and local licensing authorities.
- E. A licensee associated with a communal outdoor dining area shall not:

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1. Permit customers to leave the communal outdoor dining area with any alcohol beverage except as permitted under Regulation 47-918;
 2. Permit customers to bring food into the communal outdoor dining area that was purchased outside of the communal outdoor dining area;
 3. Permit takeout or delivery orders to be ordered from or delivered to the communal outdoor dining area;
 4. Sell, serve, or permit consumption of alcohol beverages in the communal outdoor dining area during hours the licensed premises cannot sell alcohol under article 3 of title 44 or the limitations imposed by the local licensing authority;
 5. Sell, serve, dispose of, exchange, or deliver, or permit the sale, serving, giving, or procuring of an alcohol beverage to a visibly intoxicated person or to a known drunkard;
 6. Sell, serve, dispose of, exchange, or deliver, or permit the sale, serving, or giving of an alcohol beverage to a person under twenty-one years of age;
 7. Permit a visibly intoxicated person to remain within the communal outdoor dining area without an acceptable purpose; or
 8. Permit a person to consume an alcohol beverage within the communal outdoor dining area unless it was purchased within the communal outdoor dining area from a licensee associated with the communal outdoor dining area.
- F. Licensees associated with a communal outdoor dining area shall promptly remove all alcohol beverages from the communal outdoor dining area at the end of the hours of operation.
- G. This Regulation 47-1103 does not apply to a special event permit issued under article 5 of title 44 unless the permit holder desires to use an existing communal outdoor dining area and agrees in writing to the requirements of article 3 of title 44 and the local licensing authority concerning the communal outdoor dining area.
- H. A violation of section 44-3-912, C.R.S., or this regulation by a licensee, or by any of the agents, servants, or employees of a licensee, may result in disciplinary action, up to and including license revocation, pursuant to section 44-3-601(1), C.R.S., and may result in summary suspension of a license pursuant to section 44-3-601(2) and Regulation 47-602.
1. If the licensee responsible for the violation cannot be identified, each attached licensee is deemed jointly responsible and subject to discipline for the violation.