



## DEPARTMENT OF REVENUE

### Liquor and Tobacco Enforcement Division

## COLORADO CIGARETTE, TOBACCO PRODUCT, AND NICOTINE PRODUCT RETAILER RULES

### 1 CCR 203-1

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#### 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 Division 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.