

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

Emergency Rule

Regulation 47-1101 – Delivery and Takeout Sales by On-Premises Licensees.

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103, 44-3-202, and 44-3-501, C.R.S., I, Heidi Humphreys, Deputy Executive Director/Chief Operating Officer of the Department of Revenue and State Licensing Authority, hereby adopt the aforementioned revised Colorado Liquor Rule, which is 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 this revised rule effective July 30, 2020 is imperatively 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 this revised rule is imperatively 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 this revised rule includes but is not limited to subsections 44-3-202(1)(b) and 44-3-501(2)-(3), C.R.S.

Purpose

The State Licensing Authority is adopting this rule on an emergency basis in order to align the Liquor Rules (1 CCR 203-2) with new legislation (SB 20-213) and to account for the ongoing threat to public health in the state of Colorado caused by the spread of novel coronavirus 2019 (COVID-19).

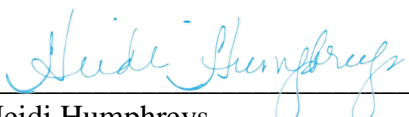
In accordance with the legislative declaration of section 44-3-102, C.R.S., the Colorado Liquor Code is deemed an exercise of the police powers of the State of Colorado for the protection of the economic and social welfare and the health, peace, and morals of the people of the State of Colorado. Regulation of the manufacture, distribution, and sale of alcohol beverages is regulated by the Colorado Liquor Code, Colorado Beer Code, and Special Event Liquor Permits Code as a

matter of statewide concern. In light of the ongoing impact of COVID-19, associated Executive Orders, and Senate Bill 20-213, which contained a safety clause and became immediately effective upon the Governor's signature, the adoption of this emergency rule 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 in order to preserve the public health, safety, and welfare of the State of Colorado. In particular, adopting this rule on an emergency basis will ensure the preservation of the public health, safety and welfare of the State of Colorado by establishing and clarifying requirements for businesses licensed under Articles 3, and 4 of Title 44 that sell alcohol beverages through delivery and takeout under the parameters established in Senate Bill 20-213. The requirements established in this emergency rule address topics including acceptable containers of alcohol beverages sold through delivery and takeout, labeling of containers, age verification procedures, and necessary record keeping.

The State Licensing Authority filed a permanent rulemaking notice in conjunction with this Statement of Emergency Justification and Adoption. A virtual public hearing on the proposed permanent rule will take place on August 31, 2020, at 10:00 A.M., and may be accessed through the following Zoom link: <https://zoom.us/j/91662743068>. That process will include the opportunity for substantial stakeholder and public participation.

Adoption

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



Heidi Humphreys
Deputy Executive Director/Chief Operating Officer
Colorado Department of Revenue
State Licensing Authority

July 30, 2020

Date

Regulation 47-1101. Delivery and Takeout Sales Authorized Under Executive Order(s) BY ON-PREMISES LICENSEES.

Basis and Purpose. The statutory authority for this regulation is located at INCLUDES, BUT IS NOT LIMITED TO, subsections 44-3-202(1)(b), 44- 3-202(2)(a)(I)(L), 44-3-202(2)(a)(I)(M), 44-3-202(2)(a)(I)(R), 44-3-601, 44-3-911 and 24-4-104(4)(a), C.R.S. In accordance with the legislative declaration of section 44-3-102, C.R.S., the Colorado Liquor Code is deemed an exercise of the police powers of the State of Colorado for the protection of the economic and social welfare and the health, peace, and morals of the people of the State of Colorado. Regulation of the manufacture, distribution, and sale of alcohol beverages is regulated by the Colorado Liquor Code as a matter of statewide concern. The purpose of this regulation is to exercise proper regulation and control over the manufacture, distribution and sale of alcohol beverages, promoting the social welfare, the health, peace and morals of the people of the State, ~~when public health orders are issued and during disaster emergencies.~~ THIS REGULATION ESTABLISHES A PERMIT FOR ON-PREMISES LICENSEES AUTHORIZED TO ENGAGE IN SUCH SALES BY SECTION 44-3-911, C.R.S., WHICH TEMPORARILY ALLOWS CERTAIN LICENSEES TO SELL ALCOHOL BEVERAGES THROUGH DELIVERY AND TAKEOUT THROUGH JULY 1, 2021, THE DATE SECTION 44-3-911, C.R.S. IS AUTOMATICALLY REPEALED, TO PROVIDE RELIEF TO LICENSEES IMPACTED BY COVID-19. This regulation also addresses age verification, CONTAINER, AND OTHER requirements and related recordkeeping for alcohol beverages sold through delivery or takeout by on premises licensees authorized to engage in such sales by SECTION 44-3-911, C.R.S. ~~Executive Order D 2020 011 — Ordering the Suspension of Certain regulatory Statutes Due to the presence of COVID-19, dated March 20, 2020 (“Executive Order D 2020 011”).~~

- A. THE REQUIREMENTS OF THIS REGULATION 47-1101 APPLY TO PERSONS ISSUED A LICENSE UNDER SECTIONS 44-3-402 OR 44-3-407, C.R.S., THAT OPERATE AN APPROVED SALES ROOM AND PERSONS ISSUED A LICENSE UNDER SECTIONS 44-3-411, 44-3-413, 44-3-414, 44-3-417, 44-3-418, 44-3-422, 44-3-426, 44-3-428, 44-4-104 (1)(C)(I)(A), OR 44-4-104 (1)(C)(III), C.R.S.
- B. UNLESS THE GOVERNOR HAS DECLARED A DISASTER EMERGENCY UNDER PART 7 OF ARTICLE 33.5 OF TITLE 24, NO PERSONS ISSUED A LICENSE UNDER SECTIONS 44-3-411, 44-3-413, 44-3-414, 44-3-417, 44-3-418, 44-3-422, 44-3-426, 44-3-428, 44-4-104 (1)(C)(I)(A), OR 44-4-104 (1)(C)(III), C.R.S., MAY SELL ALCOHOL BEVERAGES THROUGH TAKEOUT OR DELIVERY PURSUANT TO SECTION 44-3-911, C.R.S., UNLESS THE LICENSEE HAS FIRST OBTAINED A PERMIT FROM THE STATE LICENSING AUTHORITY AND PAID THE RELEVANT FEE ESTABLISHED IN REGULATION 47-506.
 1. IF A PERSON ISSUED A LICENSE UNDER SECTIONS 44-3-411, 44-3-413, 44-3-414, 44-3-417, 44-3-418, 44-3-422, 44-3-426, 44-3-428, 44-4-104 (1)(C)(I)(A), OR 44-4-104 (1)(C)(III), C.R.S, APPLIES FOR A TAKEOUT AND DELIVERY PERMIT WHILE A DISASTER EMERGENCY DECLARED BY THE GOVERNOR UNDER PART 7 OF ARTICLE 33.5 OF TITLE 24 IS IN EFFECT, THAT PERSON MAY CONTINUE ENGAGING IN TAKEOUT AND DELIVERY SALES ONCE THE DISASTER EMERGENCY IS RESCINDED OR EXPIRED. HOWEVER, THE LICENSEE SHALL CEASE ALL TAKEOUT AND DELIVERY SALES IF THE STATE OR LOCAL LICENSING AUTHORITY DENIES THE LICENSEE’S APPLICATION FOR A TAKEOUT OR DELIVERY PERMIT.
 2. AN APPLICANT FOR A PERMIT MUST AFFIRM ON ITS TAKEOUT AND DELIVERY PERMIT APPLICATION THAT THE APPLICANT DERIVES, OR WILL DERIVE, NO MORE THAN FIFTY (50) PERCENT OF ITS GROSS ANNUAL REVENUES FROM TOTAL SALES OF FOOD AND ALCOHOL BEVERAGES FROM THE SALE OF ALCOHOL BEVERAGES THROUGH TAKEOUT ORDERS AND THAT THE LICENSEE DELIVERS.
 - A. THIS SUBPARAGRAPH (B)(2) DOES NOT APPLY IF THE GOVERNOR HAS DECLARED A DISASTER EMERGENCY UNDER PART 7 OF ARTICLE 33.5 OF TITLE 24; AND
 - B. NOTHING WITHIN THIS SUBPARAGRAPH (B)(2) SHALL LIMIT THE AUTHORITY OF THE STATE LICENSING AUTHORITY OR THE LOCAL LICENSING AUTHORITY, IF APPLICABLE, TO INSPECT BOOKS AND RECORDS PURSUANT TO REGULATION 47-700, 1 C.C.R. 203-2, TO VERIFY THE AFFIRMATION OR COMPLIANCE WITH THIS STATUTORY REQUIREMENT.

3. A TAKEOUT AND DELIVERY PERMITTEE SHALL DISPLAY ITS TAKEOUT AND DELIVERY PERMIT AT ALL TIMES IN A PROMINENT PLACE ON ITS LICENSED PREMISES. THE TAKEOUT AND DELIVERY PERMITTEE'S EMPLOYEE MAKING A DELIVERY SHALL BE REQUIRED TO CARRY, OR HAVE IMMEDIATE ACCESS TO, A COPY OF THE TAKEOUT AND DELIVERY PERMIT IN THE DELIVERY VEHICLE. THE COPY OF THE PERMIT MAY BE ELECTRONIC.
- C. IF THE RELEVANT LOCAL LICENSING AUTHORITY CREATES A PERMIT FOR TAKEOUT AND DELIVERY PURSUANT TO SECTION 44-3-911(4)(C), C.R.S., NO PERSONS ISSUED A LICENSE UNDER SECTIONS 44-3-411, 44-3-413, 44-3-414, 44-3-417, 44-3-418, 44-3-422, 44-3-426, 44-3-428, 44-4-104 (1)(C)(I)(A), OR 44-4-104 (1)(C)(III), C.R.S., MAY ENGAGE IN SALES OF ALCOHOL BEVERAGES THROUGH TAKEOUT OR DELIVERY UNLESS THE LICENSEE HOLDS TAKEOUT AND DELIVERY PERMITS FROM BOTH THE STATE AND LOCAL LICENSING AUTHORITIES.
1. THIS SUBPARAGRAPH (C) DOES NOT APPLY IF THE GOVERNOR HAS DECLARED A DISASTER EMERGENCY UNDER PART 7 OF ARTICLE 33.5 OF TITLE 24.
- AD. Any licensee authorized to engage in sales of alcohol beverages through delivery or takeout pursuant to ~~Executive Order D 2020-011, or any subsequent executive order extending, amending, expanding, or limiting the suspension of statutory license limitations related to sales of alcohol beverages through delivery or takeout,~~ SECTION 44-3-911, C.R.S., AND THIS REGULATION shall comply with the following requirements and limitations, to the extent consistent with any such executive order(s):
1. Orders for delivery or takeout that include alcohol beverages may be accepted by only the licensee or its employees AT THE LICENSED PREMISES, which may be accepted by telephone, in person, or via internet communication. NO ORDER FOR DELIVERY MAY BE SOLICITED OR ACCEPTED BY A DELIVERY DRIVER OR FROM A DELIVERY VEHICLE. All orders for delivery shall be documented in a written order prepared by the licensee or its employees.
 2. The person placing a TAKEOUT OR delivery order must provide the licensee with their name, AND date of birth, and THE delivery address FOR A DELIVERY ORDER. WHEN RECEIVING A TAKEOUT ORDER, THE LICENSEE MUST OBTAIN AND RECORD THE NAME AND DATE OF BIRTH OF PERSON PLACING THE ORDER. WHEN RECEIVING A DELIVERY ORDER, THE LICENSEE MUST OBTAIN AND RECORD THE NAME AND DATE OF BIRTH OF THE PERSON PLACING THE ORDER AND THE DELIVERY ADDRESS FOR THE ORDER. Under no circumstances shall a person under twenty-one (21) years of age be permitted to place an order for TAKEOUT OR delivery of alcohol beverages.
 3. Delivery of orders that include alcohol beverages shall be made only to a person twenty-one (21) years of age or older at the address specified in the CUSTOMER'S DELIVERY order.
 4. DELIVERY OF ORDERS THAT INCLUDE ALCOHOL BEVERAGES SHALL NOT BE MADE TO ANY PUBLIC PLACE, INCLUDING PUBLIC PARKS, STREETS, ALLEYS, ROADS, OR HIGHWAYS.
 45. Delivery must be made by AN EMPLOYEE OF the licensee ~~or the licensee's employee~~ who is at least twenty-one (21) years of age, AND WHO HAS COMPLETED A SELLER SERVER TRAINING PROGRAM ESTABLISHED UNDER SECTION 44-3-1001, C.R.S., AND MAINTAINED RECERTIFICATION UNDER THE REQUIREMENTS OF REGULATION 47-605. Use of third-party delivery services is prohibited.
 56. The ~~licensee or the licensee's employee~~ who delivers the alcohol beverages shall note and log at the time of delivery the name and DATE OF BIRTH ~~identification number~~ of the person receiving the delivery of the alcohol beverages. Under no circumstances shall a

person under twenty-one (21) years of age be permitted to receive a delivery of alcohol beverages.

67. Licensees who deliver alcohol beverages shall maintain all records relating to delivery, including delivery orders, receipt logs and journals, as part of their records required pursuant to section 44-3-701, C.R.S. These records shall be maintained by the licensee for the current and three prior calendar years. Failure to maintain accurate or complete records is a violation of this regulation.
78. Licensees engaged in delivery shall comply with section 42-4-1305, C.R.S., AND ANY LOCAL LAWS, ORDINANCES OR REGULATIONS, addressing prohibitions on open containers of alcohol beverages in motor vehicles.
89. Any alcohol beverage sold to a consumer through delivery or takeout UNDER THIS REGULATION, WHICH MAY INCLUDE COCKTAILS OR MIXED DRINKS, SHALL BE IN A SEALED CONTAINER. FOR PURPOSES OF THIS REGULATION, "SEALED CONTAINER" MEANS:
- A. ~~Shall be in a sealed container, as defined in section 44-3-103(51), C.R.S.; or~~
- BA. ~~Shall be in a~~ THROUGH AND INCLUDING OCTOBER 31, 2020, A "SEALED CONTAINER" AS DEFINED IN SUBSECTION 44-3-102(51), C.R.S., EXCEPT THAT A cup or other container closed securely with a lid taped securely to the cup or other container SHALL ALSO BE CONSIDERED A "SEALED CONTAINER" FOR PURPOSES OF THIS REGULATION. A plastic lid complies with this regulation so long as any holes in the lid are sealed securely with tape, no straw is inserted through the lid, and the contents of the cup are not partially removed. ~~Such a cup or other container shall be affixed with a label containing a warning statement, with a minimum fourteen (14) font size, stating as follows: "WARNING: DO NOT OPEN OR REMOVE SEAL WHILE IN TRANSIT. Purchasers are subject to state and local laws prohibiting drinking or possessing open containers of alcoholic beverages in motor vehicles, including section 42-4-1305, C.R.S."~~
- B. BEGINNING ON NOVEMBER 1, 2020, "SEALED CONTAINER" MEANS A "SEALED CONTAINER" AS DEFINED IN SUBSECTION 44-3-103(51), C.R.S., AND SHALL ALSO INCLUDE A RIGID CONTAINER THAT CONTAINS A COCKTAIL OR MIXED DRINK, OR OTHER ALCOHOL BEVERAGE Poured INTO THE CONTAINER BY A LICENSEE, IS NEW, HAS NEVER BEEN USED, HAS A SECURE LID OR CAP DESIGNED TO PREVENT CONSUMPTION WITHOUT REMOVAL OF THE LID OR CAP, AND IS TAMPER EVIDENT. "SEALED CONTAINER" DOES NOT INCLUDE A CONTAINER WITH A LID WITH SIPPING HOLES OR OPENINGS FOR STRAWS OR A CONTAINER MADE OF PAPER OR POLYSTYRENE FOAM. "TAMPER EVIDENT" MEANS A LID OR CAP THAT HAS BEEN SEALED WITH TAMPER-EVIDENT MATERIAL, INCLUDING, BUT NOT LIMITED TO, WAX DIP, HEAT SHRINK WRAP, OR ADHESIVE TAPE OR OTHER MATERIAL, DESIGNED TO REVEAL THE REMOVAL OR OPENING OF THE LID, CAP, OR SEAL.
10. ANY SEALED CONTAINER CONTAINING AN ALCOHOL BEVERAGE THAT IS SOLD FOR TAKEOUT OR DELIVERY UNDER THIS REGULATION, OTHER THAN AN ALCOHOL BEVERAGE SEALED BY ITS MANUFACTURER, SHALL BE AFFIXED WITH AN ADHESIVE STICKER IDENTIFYING THE LICENSEE THAT SOLD THE BEVERAGE AND CONTAINING A WARNING STATEMENT, WITH A MINIMUM FOURTEEN (14) FONT SIZE, STATING AS FOLLOWS: "WARNING: DO NOT OPEN OR REMOVE SEAL WHILE IN TRANSIT. PURCHASERS ARE SUBJECT TO STATE AND LOCAL LAWS AND REGULATIONS PROHIBITING DRINKING OR POSSESSING OPEN CONTAINERS OF ALCOHOLIC BEVERAGES IN MOTOR VEHICLES, INCLUDING SECTION 42-4-1305, C.R.S."
911. Licensees who sell alcohol beverages through delivery or takeout pursuant to this regulation ~~shall remain~~ ARE responsible for compliance with all laws and regulations

prohibiting the sale of alcohol beverages to an underage person or to a visibly intoxicated person.

- ~~B. All alcohol beverages sold by a retailer through delivery or takeout pursuant to this regulation and any authorizing executive order(s) shall be sold with food, such as meals and/or sandwiches and light snacks. Both food and alcohol beverages sold for take-out or delivery must be reflected on the same receipt or transaction.~~
- E. UNLESS THE GOVERNOR HAS DECLARED A DISASTER EMERGENCY UNDER PART 7 OF ARTICLE 33.5 OF TITLE 24, NO PERSONS ISSUED A LICENSE UNDER SECTIONS 44-3-411, 44-3-413, 44-3-414, 44-3-418, 44-3-428, 44-4-104(1)(C)(I)(A), OR 44-4-104(1)(C)(III), C.R.S., SHALL SELL MORE THAN THE FOLLOWING AMOUNTS OF ALCOHOL BEVERAGE TO A CONSUMER AS PART OF A TAKEOUT OR DELIVERY ORDER:
1. 750 MILLILITERS, OR APPROXIMATELY 26.4 FLUID OUNCES, OF SPIRITUOUS AND VINOUS LIQUORS; AND
 2. 72 FLUID OUNCES, OR APPROXIMATELY 2046 MILLILITERS, OF MALT LIQUOR, FERMENTED MALT BEVERAGES, AND HARD CIDER.
- GF. A violation of 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.
- G. THIS REGULATION IS REPEALED, EFFECTIVE JULY 1, 2021, AND ANY TAKEOUT AND DELIVERY PERMIT THEN IN EFFECT SHALL BE DEEMED TO HAVE EXPIRED, WITHOUT FURTHER ACTION BY THE STATE OR LOCAL LICENSING AUTHORITIES.