



COLORADO
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Specialized Business Group—
Liquor & Tobacco

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**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

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

Regulation 47-405. Festival Permit.

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103, 44-3-201, and 44-3-202, C.R.S., I, Mark Ferrandino, Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt emergency Regulation 47-405, 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 immediate adoption of the amendments to this regulation is necessary to comply with the statutory mandates of the Colorado Liquor Code, sections 44-3-101 to 44-3-1002, C.R.S., the Colorado Beer and Wine Code, sections 44-4-101 to 44-4-109, C.R.S.; and the Colorado Special Event Liquor Permits Code, sections 44-5-101 to 44-5-109, 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 the amendments to this regulation is set forth in the statement of basis and purpose preceding the rule, and includes, but is not limited to, sections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(R), 44-3-404(10), and 44-3-601(9), C.R.S.

Purpose

The purpose of adopting this revised rule on an emergency basis includes establishing requirements and procedures to implement and ensure compliance with Senate Bill (SB) 23-264, concerning the ability of certain alcohol beverage license holders to participate in festivals for alcohol beverage retail activity. On May 17, 2023, Governor Polis signed SB23-264 into law, which took effect at 12:01 a.m. on June 1, 2023.

SB23-264 changes certain aspects of the festival permit and festival permit application process, including increasing the application timeline for each festival permit, increasing the processing fee due with each application, and allowing an eligible licensee to participate in up to 52 festivals in a calendar year.

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 under the Colorado Liquor Code, Beer and Wine Code, and Special Event Liquor Permits Code is a matter of state-wide concern. The adoption of this revised 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 and to preserve the public health, safety, and welfare of the State of Colorado.

The State Licensing Authority has scheduled a rulemaking working group session on June 20, 2023, as part of the permanent rulemaking process. The State Licensing Authority anticipates that this emergency rule will be replaced by a permanent rule to be adopted following consideration of all information in the record of the working group and a public rulemaking hearing. The permanent rulemaking process will afford interested persons an opportunity to submit written data, views, or arguments, or present the same orally, for the State Licensing Authority to consider prior to adopting a permanent rule, in accordance with the rulemaking procedures outlined in section 24-4-103, C.R.S.

Adoption, Effective Date and Expiration

The State Licensing Authority hereby adopts the forgoing revised rule on an emergency basis, effective immediately. The attached emergency rule will remain in effect until its 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

DEPARTMENT OF REVENUE

Liquor Enforcement Division

COLORADO LIQUOR RULES

1 CCR 203-2

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Regulation 47-405. Festival Permit.

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), 44-3-202(2)(a)(I)(R), 44-3-404(10), and 44-3-601(9), C.R.S. The purpose of this regulation is to address eligibility, requirements, and restrictions for festival permits under section 44-3-404, C.R.S.

A. Festival Permits.

1. The following license types are eligible to obtain a festival permit or participate in a festival for which a permit has been obtained:
 - a. A manufacturer license under section 44-3-402, C.R.S.;
 - b. A limited winery license under section 44-3-403, C.R.S.;
 - c. A wholesaler's license under section 44-3-407, C.R.S.;
 - d. A beer and wine license under section 44-3-411, C.R.S.;
 - e. A hotel and restaurant license under section 44-3-413, C.R.S.;
 - f. A tavern license under 44-3-414, C.R.S.;
 - g. A brew pub license under 44-3-417, C.R.S.;
 - h. A vintner's restaurant license under 44-3-422, C.R.S.; and
 - i. A distillery pub license under 44-3-426, C.R.S.
2. For purposes of this regulation, the term "permittee" means a licensee under Regulation 47-405(A)(1) that has received a festival permit under this Regulation 47-405.

B. Initial Festival Permit Application

1. Only licensees listed in Regulation 47-405(A) may file a festival permit application with the state licensing authority. The initial festival permit application must be filed with the state licensing authority, and, if applicable the local licensing authority, at least **thirty (30) ~~ten (10) business calendar~~** days before the date the first festival is to be held, and must include:
 - a. The eligible license type and license number of the festival permit applicant;

- b. A description of the licensed premises for the first festival;
 - c. The date of the first festival;
 - d. Duration of the festival, which cannot exceed seventy-two (72) hours;
 - e. ~~A The annual~~ processing fee of ~~fifty twenty-five~~ dollars (\$~~5025~~ USD);
 - f. Contact information of a primary contact for each participating licensee including name, title, phone number and email address;
 - g. Any special event permit application that has been or will be filed in connection with the festival;
 - h. Confirmation that the applicant has provided notification to the local licensing authority of the location and date of the initial festival;
 - i. A security and control plan, which must be provided to and agreed to by each participating licensee, which specifies:
 - ~~i.(i)~~ Hours of service of alcohol beverages;
 - ~~ii.(ii)~~ Entries and exits;
 - ~~iii.(iii)~~ How and where alcohol will be secured and stored when setting up for the festival, during the festival, and after conclusion of the festival;
 - ~~iv.(iv)~~ How visibly intoxicated parties will be handled; and
 - ~~v.(v)~~ How the licensee plans to prevent persons under twenty-one (21) years of age from consuming or purchasing alcohol beverages.
 - j. Active Colorado liquor license numbers not under suspension for the applicant and each participating licensee;
 - k. Identification of any violations at a festival committed by the applicant or any participating licensee during the preceding three years; and
 - l. Such other information as required on form approved by the state licensing authority.
2. The applicant must apply with the state licensing authority and, if applicable, the local licensing authority, at least ~~thirty (30) calendar ten (10) business~~ days before holding the initial festival under the festival permit. If the applicant does not provide the application to one or both of the applicable licensing authorities at least ~~thirty (30) calendar (10) business~~ days before holding the initial festival, the application will be denied by the state licensing authority.
 3. A festival permit must be approved by the state licensing authority before the first festival can be held.
- C. Local festival permit from the Local Licensing Authority.

1. If required by the local licensing authority, the festival permit applicant must also obtain a local festival permit. The licensee must file the festival permit application with the Division at the same time they file with any local licensing authority.
2. If the licensee filing the festival permit application holds a limited winery license, or a winery license, then a festival permit from the local licensing authority is not required.
3. A festival permit from a local licensing authority is not required if the festival permit applicant also applies for a special event liquor permit issued under article 5 of title 44.

~~D. Expiration of Permit.~~

~~A festival permit under this regulation is valid for twelve (12) months from the date the initial festival permit is issued.~~

DE. Subsequent Festival Permit Application(s).

1. Festival Participation Limits

- a. Each permittee may hold up to but no more than a total of nine (9) festivals in a twelve (12) month period. This Paragraph 1(a) will expire on December 31, 2023.
- b. A licensee may participate in up to fifty-two festivals each calendar year, including up to nine festivals held under a festival permit issued to the licensee under subsection 44-3-404(1)(c), C.R.S.
- c. Each permittee may hold up to but no more than a total of nine (9) festivals in a calendar year. This Paragraph 1(c) will take effect on January 1, 2024.

2. The permittee must notify the state licensing authority, and the local licensing authority if required under Section C above, at least ~~thirty (30) calendar~~ ~~ten (10) business~~ days before holding any subsequent festivals under the festival permit, by filing a subsequent festival permit application. If the applicant does not provide the application to the applicable licensing authorities at least thirty (30) ~~calendar~~ ~~ten (10) business~~ days prior to the subsequent festival, the application will be denied by the state licensing authority. ~~Each~~ ~~The~~ subsequent festival permit application must include:

- a. The festival permit number;
- b. The festival permit expiration date;
- c. The festival permittee license name;
- d. A description of the licensed premises where the festival will be held;
- e. The date of the festival;
- f. Duration of the festival, which cannot exceed seventy-two (72) hours;
- g. The dates of all prior festivals occurring under the festival permit;
- h. The number of prior festivals that have previously occurred under the festival permit;

- i. A processing fee of fifty dollars (\$50 USD);
 - ji. Contact information of a primary contact for each participating licensee including name, title, phone number and email address;
 - kj. Any special event permit application that has been or will be filed in connection with the festival;
 - lk. Confirmation that the applicant has provided notification to the local licensing authority of the location and dates of each festival;
 - mł. A security and control plan, which must be provided to and agreed to by each participating licensee, which specifies:
 - i.(ł) Hours of service of alcohol beverages;
 - ii.(łł) Entries and exits;
 - iii.(łłł) How and where alcohol will be secured and stored when setting up for the festival, during the festival, and after conclusion of the festival;
 - iv.(łłłł) How visibly intoxicated parties will be handled; and
 - v.(łłłłł) How the licensee plans to prevent persons under twenty-one (21) years of age from consuming or purchasing alcohol beverages.
 - nmł. Active Colorado liquor license numbers not under suspension for the applicant and each participating licensee;
 - ołł. Identification of any violations at a festival committed by the applicant or any participating licensee during the preceding three years; and
 - peł. Such other information as required on form approved by the state licensing authority.
3. If the subsequent festival permit application is being filed in a different jurisdiction than the initial festival permit application, the permittee must ensure that an original festival permit application is filed with the subsequent festival jurisdiction's local licensing authority, if applicable.
 4. A subsequent festival permit application is deemed approved if held in the same jurisdiction as the initial festival unless the state and, if applicable, the local licensing authority provides the permittee with a notice of denial at least seventy-two hours prior to the date of the subsequent festival.
 5. The permittee must file the subsequent festival permit application, but other eligible licensees may jointly participate under the festival permit issued to the permittee, unless timely denied by the state or local licensing authority.

EF. Festival Tastings and Sales.

1. For purposes of this regulation 47-405, "festival tastings" is defined as consumption on the premises of a festival permit.

2. The permittee and licensees participating in the festival may conduct festival tastings and sales of their respective alcohol beverages during the festival which the permittee or licensee could conduct at their respective licensed premises.
 - a. Manufacturers of vinous and spirituous liquors may conduct festival tastings and sales of their products at a festival pursuant to the abilities granted to them under 44-3-402(2)(a) and/or 44-3-402(7)(a), C.R.S.
 - b. Manufacturers of malt liquors may conduct festival tastings and sales of their products at a festival as long as they possess a valid sales room license pursuant to 44-~~34~~-407(1)(b)(II)(A), C.R.S.
3. Regulation 47-313 on tastings applies to Retail Liquor Store, ~~licensees and~~ Liquor Licensed Drugstore, ~~and fermented malt beverage and wine retailer~~ licensees and does not apply to festival tastings.

FG. Denials.

1. The state licensing authority may deny a festival permit or subsequent festival permit application if:
 - a. A documented history of violations under article 3 of title 44 of these regulations by the permittee or any participating licensee;
 - b. The permittee or any participating licensee is ineligible for a festival permit;
 - c. An application is incomplete or late; or
 - d. There is a finding that the application, if granted, would result in violations of article 3 of title 44, these regulations, or ordinances or regulations of a local licensing authority.

GH. Violations.

1. Violating Licensee Identified
 - a. If a violation occurs during a festival permitted under this regulation and the permittee or the jointly participating licensee(s) responsible for the violation can be identified, the state and local licensing authorities may impose appropriate penalties pursuant to section 44-3-601, C.R.S., Regulation 47-602, and Regulation 47-603 on the identified permittee or the jointly participating licensee(s) per violation.
 - b. Pursuant to section 44-3-601(9), C.R.S., when a permittee or participating licensee violates provisions of the Liquor Code that prohibit the service of an alcohol beverage to a minor or a visibly intoxicated person, the state and local licensing authorities shall consider it a mitigating factor if the permittee or the jointly participating licensee(s) responsible for a violation is a responsible alcohol beverage vendor as defined in section 44-3-1002, C.R.S., and pursuant to the requirements of Regulation 47-605.
2. Violating Licensee Cannot be Identified
 - a. If a violation occurs during a festival permitted under this regulation and the permittee or the jointly participating licensee(s) responsible for the violation

cannot be identified, the state licensing authority may send a written notice to every licensee identified on the festival permit application or subsequent permit application, respectively, and may fine each the same dollar amount, which cannot exceed twenty-five (25) dollars per licensee or two hundred dollars in the aggregate per violation.

- b. A joint fine levied pursuant to this subsection does not apply to the revocation or suspension of the licensee's license under section 44-3-601, C.R.S., or Regulation 47-603.
 - c. A joint fine levied pursuant to this section need not be reported as a substantive violation on the underlying liquor license renewal application for any permittee or jointly participating licensee assessed such a fine.
3. If a violation occurs during a special event festival as defined in Regulation 47-1014(B), a single penalty shall be imposed for a violation under this regulation and Regulation 47-1014(B) to avoid a double penalty for the same conduct.