

## NOTICE OF RULEMAKING HEARING

### Department of Revenue Liquor Enforcement Division

The Executive Director of the Colorado Department of Revenue, on behalf of the Liquor Enforcement Division (“Division”), will consider the promulgation of amendments to the Colorado Cigarette, Tobacco Product, and Nicotine Product Retailer Rules, 1 C.C.R. 203-1, as authorized by Article 7 of Title 44, C.R.S. For specific information and language concerning the proposed changes and new rules, please refer to the contents of this Notice and to the proposed rules that are set forth following this notice and are available on the Division’s website: <https://sbg.colorado.gov/liquor-tobacco/tobacco>.

### STATUTORY AUTHORITY FOR RULEMAKING

The Executive Director promulgates the amendments to these rules pursuant to the authority granted in section 44-7-104(5), C.R.S., and section 24-4-103, C.R.S., of the Administrative Procedure Act.

### SUBJECT OF RULEMAKING

The proposed amended rules and relevant information are posted on the Division's website, <https://sbg.colorado.gov/liquor-tobacco/tobacco>. In addition, the proposed rules attached to this Notice are fully incorporated herein.

The Executive Director will consider the promulgation of the following list of existing rules with proposed changes. For specific information and language concerning the proposed changes, please refer to the proposed rules that are set forth with this Notice, posted on Division’s website, and posted on the Colorado Secretary of State’s website.

### RULES TO BE CONSIDERED FOR AMENDMENT OR ADOPTION

The Rules to be considered for amendment are described as follows:

**Rule 7-300** – Large-Operators.

**Rule 7-500** – Fees.

**Rule 7-601** – Penalties.

### RULEMAKING RECORD AND PUBLIC PARTICIPATION

1. Official Rulemaking Record. The official record for purposes of the rulemaking hearing to be held on December 16, 2021, will include any written comments or oral testimony submitted or presented.
2. Written Comments. The Executive Director encourages interested parties to submit written comments on the proposed rules, including alternate proposals, by December 14, 2021, so that the

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Executive Director can review comments prior to the rulemaking hearing. Written comments will also be accepted after that date. The deadline to submit written comments is 5:00 P.M. on December 20, 2021. Written comments may be emailed to: dor\_ledtobacco\_rulemaking@state.co.us. In addition, you may submit written comments to:

Liquor Enforcement Division  
Attn: Tobacco Rules  
1707 Cole Blvd  
Suite 300  
Lakewood, CO 80401

3. Oral Comments. At his discretion, the Executive Director may afford interested parties an opportunity to make brief oral presentations at the rulemaking hearing. If allowed, oral presentations likely will be limited to two minutes or less per person. Individuals will not be allowed to cede their time to another person (for instance, one person speaking on behalf of five people will not be given ten minutes to speak). Organized groups of individuals are urged to identify one spokesperson and to be concise.

### **HEARING SCHEDULE**

Date: December 16, 2021  
Time: 10:00 a.m. - 12:00 p.m.  
Location: Due to the ongoing nature of the COVID-19 pandemic, this hearing will be held virtually through Zoom. Access details are below:

Video call link: <https://meet.google.com/ycu-zocv-zbc>  
Or dial: (US) +1 316-536-0908 PIN: 198 466 909#

Access links/Meeting IDs for the rulemaking hearing will also be posted on the Division's website and the Secretary of State's website.

The hearing may be continued at such place and time as the Executive Director may announce.

The Executive Director shall deliberate upon the rulemaking record, including oral testimony and written submissions presented, as well as applicable legal provisions and any related matters properly submitted before the hearing record is closed. Pursuant to said hearing, in the above-entitled matter at the time and place aforesaid, or at any adjourned meeting, the Executive Director will adopt such rules as in its judgment are justified by the rulemaking record and applicable legal provisions.

If you are an individual with a disability who needs a reasonable accommodation in order to participate in this rulemaking hearing, please contact Chris Manning at Chris.Manning@state.co.us no later than December 9, 2021.

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Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.

THE COLORADO DEPARTMENT OF REVENUE,  
LIQUOR ENFORCEMENT DIVISION

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Mark Ferrandino  
Executive Director/Chief Executive Officer  
Colorado Department of Revenue

**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 7-300. Large-Operators.**

**Basis and Purpose.** The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a)(I), and 44-7-104(5)(a)(II), C.R.S. The purpose of this rule is to establish large-operator application requirements and associated license fees for retail locations under the same corporate or business entity.

- A. A retailer that operates more than ten ~~or more~~ retail locations under the same corporate or business entity, including franchises, may, subject to the requirements of this Rule 7-300, apply as a large-operator and use one application to obtain licenses for each retail location.
- B. A large-operator application shall be made upon forms prescribed by the Division. The Division will not consider an application that is not complete in every material detail, or which is not accompanied by the remittance in full of the whole amount of the large-operator license fee established in Rule 7-500. Every large-operator application shall identify each retail location operated by the large-operator and shall include the business address, owner/manager information, phone number, and email address for each retail location.
- C. The large-operator applicant must provide approved local licenses for any and all retail locations subject to local licensing with the application.
- D. The large-operator license fee shall be considered a single fee, and it shall be paid in one transaction. In order to cover the direct and indirect costs of administration and enforcement of article 7, of title 44, C.R.S, the large-operator license fee shall be calculated based on the number of retail locations operated by the large-operator.
- E. Notwithstanding the use of a large-operator application and the payment of the relevant large-operator application fee, each retail location operated by the large-operator shall be issued a separate license from the Division. The use of a large-operator application and payment of a large-operator fee shall not preclude the Division from conducting compliance checks and investigations for each separate retail location and pursuing administrative penalties on each separate license possessed and operated by the large-operator.

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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
<b>(* - classifications include: On-Premises Retailer; Off-Premises Retailer; and Cigar-Tobacco Bar).</b>	
Temporary License .....	\$35.00
Cigarette, Tobacco Product, or Nicotine Product Retailer License Renewal.....	\$400.00
Large-Operator License(s) .....	\$400.00 *
<b>(* - retailers who have <u>more than 10</u> <del>or more</del> 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.).</b>	
<b>Permit Fees</b>	
Delivery Permit .....	\$250.00
Permit Renewal .....	\$250.00

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**Rule 7-601. Penalties.**

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-103, 44-7-105, 44-7-106, C.R.S. The purpose of this rule is to clarify the penalties for violating various provisions of article 7 of title 44.

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

B. Underage Sales.

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

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

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

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

ii. If the retailer holds a state license, a suspension of the state license for at least seven days 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 at least seven days.

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

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

ii. If the retailer holds a state license, a suspension of the state license for at least thirty days 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 at least thirty days.

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

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

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:

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- 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.
  5. Fifth or Subsequent Violation. If the retailer violated section 44-3-103(4), C.R.S., four or more times in the preceding twenty-four month period, the retailer shall be subject to a fine of at least \$1,000.00 and not more than \$15,000.00
- D. Unlicensed Sales. On or after July 1, 2021, the following penalties shall apply for a person who sells or offers to sell cigarettes, tobacco products, or nicotine products without a valid state license issued pursuant to article 7 of title 44:
1. First Violation. If the person has not violated section 44-7-104.5(1), 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 44-7-104.5(1), 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 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person shall be subject to:

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- a. A fine of \$3,000.00; and
  - b. An order issued by the Division prohibiting the retailer from selling cigarettes, tobacco products, or nicotine products and rendering the retailer ineligible to apply for a state license for three years.
4. For purposes of determining the existence and number of prior violations for purposes of this paragraph (D), each sale or offer to sell cigarettes, tobacco products, or nicotine products without a valid state license is a distinct violation.
- E. Unlawful Advertising of Electronic Smoking Device Product. The following penalties shall apply for a retailer who advertises an electronic smoking device product in a manner that is visible from outside the retail location in violation of section 44-7-104.7(2), C.R.S.
1. First Violation. If the person has not violated section 44-7-104.7(2), 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(2), 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(2), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of \$3,000.00.
- F. Delivery and Shipment Violations. The following penalties shall apply for a person that ships or delivers cigarettes, tobacco products, or nicotine products directly to a consumer in Colorado in violations of the requirements of 44-7-104.7(3), C.R.S., and 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.



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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.

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 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.

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

- b. Advertising or posting signs to the effect that the premises have been closed or business suspended for any reason other than by order of the Division suspending its state license, shall be deemed a violation of this rule.
3. Renewal. Suspension of a license or permit does not relieve the retailer of the obligation to timely comply with all license or permit renewal requirements.