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## DEPARTMENT OF REVENUE

### Liquor and Tobacco Enforcement Division

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

### 1 CCR 203-1

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

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#### Rule 7-200. Petitions for Statements of Position and Declaratory Orders

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a) and 24-4-105(11), C.R.S. The purpose of this rule is to establish clear and comprehensive procedures and considerations required for a statement of position and/or a declaratory order.

- A. Statements of Position. Any person may petition the Division for a statement of position concerning the applicability to the petitioner of any provision of article 7 of title 44 or the rules promulgated pursuant thereto, contained in 1 CCR 203-1. **The petition must include the information set forth in paragraph (E)(1)-(E)(6) of this regulation.**
- B. Service of Petition for Statement of Position. A letter for petition for a statement of position shall be served on the Division by mailing or emailing such petition to the Division with a copy sent on the same date to the local licensing authority in the county or municipality where the petitioner's retail location or proposed retail location is located, if applicable. Each petition for a statement of position shall contain a certification that the service requirements of this paragraph have been met.
- C. Time to Respond. The Division shall respond to a petition for a statement of position in writing setting forth its position and the reasons therefore within forty-five (45) days of receiving such petition **and set forth its position and the reasons therefore, or the grounds on which the Division declines to provide a statement of position pursuant to section 24-4-105(11), C.R.S., and/or paragraph (G) of this regulation.**
- D. Declaratory Orders. Any person who has petitioned the Division for a statement of position and who is dissatisfied with the statement of position may petition the Executive Director within forty-five (45) days of the issuance of the statement of position, or any amended statement of position, for a declaratory order pursuant to section 24-4-105(11), C.R.S. Any person who has not received a statement of position response within forty-five (45) days, may petition the Executive Director for a declaratory order pursuant to section 24-4-105(11), C.R.S. The parties to any petition for a declaratory order pursuant to this rule shall be the petitioner and the Division.
- E. Requirements ~~for~~ a Petition for a Statement of Position or a Petition for Declaratory Order. Each **petition for a statement of position** or petition for a declaratory order shall set forth the following:

1. The name and address of the petitioner; whether the petitioner is licensed pursuant to the article 7 of title 44 and, if so, the type of license or permit and address of the retail location.
  2. The statute, rule, or order to which the petition relates.
  3. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule or order to which the petition relates.
  4. A concise statement of the legal authorities if any, and such other reasons upon which petitioner relies.
  5. A concise statement of the **statement of position or** declaratory order sought by the petitioner.
  6. **The Statement of Position previously issued if the petitioner is filing a Petition for a Declaratory Order.**
- F. **Service of Petition for Declaratory Order.** A petition for a declaratory order shall be served on the Executive Director by mailing such petition to the Executive Director with a copy of the petition sent on the same date to the Division, the local authority in the county or municipality where the petitioner's retail location or proposed retail location is located, and to the Revenue & Utilities Section of the Colorado Department of Law. Each petition for a declaratory order shall contain a certification that the service requirements of this paragraph have been met.
- G. **Acceptance.** **The Division will determine whether to entertain any petition for a statement of position.** The Executive Director will determine whether to entertain any petition for declaratory order. If **either the Division or** the Executive Director decides it will not entertain a petition **for declaratory order**, it shall promptly notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:
1. **For a petition for declaratory order, t**The petitioner has failed to petition the Division for a statement of position, or if a statement of position has been issued, the petition for declaratory order was filed with the Executive Director more than forty-five (45) days after issuance of the statement of position.
  2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule, or order in question.
  3. The petition involves a subject, question or issue which is currently involved in a court action, an administrative action before the state or any local licensing authority, an ongoing investigation conducted by the Division, or a written complaint filed with the Executive Director or Division.
  4. The petition seeks a ruling on a moot or hypothetical question, having no applicability to the petitioner.
  5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo.R.Civ.P. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule, or order.
  6. **The petitioner failed to properly serve the petition pursuant to this regulation.**

7. The petitioner failed to include information required in paragraph (E) of this regulation.

H. Determination. If the Executive Director determines that it will entertain the petition for declaratory order, it shall promptly so notify all parties involved, and the following procedures shall apply:

1. The Executive Director may expedite the hearing, where the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit additional evidence and legal argument in writing. Any such request for additional information shall be served on all parties.
2. If the Executive Director determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, the Executive Director shall issue a Notice to Set to all parties and on the date so set, a hearing shall be conducted in conformance with section 24-4-105, C.R.S.
3. In ruling on a petition for declaratory order, the Executive Director may take administrative notice of general, technical, or scientific facts within its knowledge, so long as the fact is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.
4. Every declaratory order shall be promptly decided and issued in writing, specifying the basis in fact and law for the order.
5. Any other interested person may seek leave of the Executive Director to intervene in the proceeding and such leave may be granted if the Executive Director determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.
6. A declaratory order shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

I. Record Retention and Reliability. Files of all requests, statements of position, and declaratory orders will be maintained and relied upon by the Division, unless the statement of position or declaratory order is superseded by a statutory or regulatory change, amended by the Division, or amended or reversed by the Executive Director. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

#### **Rule 7-601. Penalties.**

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7103, 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:
- 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:
    - 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.
  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.
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.

**Rule 7-900. Identification.**

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsection 44-7-103(1), and 44-7-104(5), C.R.S. The purpose of this rule is to define adequate identification criteria for purposes of demonstrating age to a retailer for the purpose of purchasing cigarettes, tobacco products, or nicotine products.

- A. A retailer shall require an individual who appears to be under fifty years of age to present identification that satisfies the requirements of paragraph (B) before selling the person cigarettes, tobacco products, nicotine products.
- B. A retailer may refuse to sell cigarettes, tobacco products, or nicotine products to any person if the retailer is unable to verify the person is at least twenty-one years of age. Verification of age can be done by either:
  - 1. Presenting adequate identification of age, including any verified digital identification, that is valid and unexpired. Identification of age is adequate if it contains a picture and date of birth and is one of the following:
    - a. Any type of driver's license, or identification card issued by any state within the United States, the District of Columbia, any U.S. Territory, or any foreign country, including Canada or Mexico;
    - b. A United States military identification card or any other identification card issued by the United States government including, but not limited to, a permanent resident card, alien registration card, or consular card;
    - cb. A passport, or passport identification card; or
    - d. A valid consular identification card from any foreign country.
  - 2. Using a biometric identity verification device.
    - a. For purpose of this rule, "biometric identity verification device" means a device that:
      - 1. Instantly verifies the identity and age of a person by an electronic scan of a biometric characteristic of the person, such as a fingerprint, iris, face, or other biometric characteristic, or any combination of these characteristics;
      - 2. References the person's identity and age against any record of identification described in paragraph (B)(1) of this rule; and
      - 3. Contemporaneously provides the retailer with identity and age verification for the person utilizing the device.
    - b. Prior to using a biometric identity verification device to verify the identity and age of a person for purposes of this paragraph (B)(2), the retailer shall ensure the device provider has systems in place to:
      - 1. Verify the authenticity of any identification records by an electronic authentication process;



2. Verify the identity of, and relevant identifying information about, the person through a secondary, electronic authentication process or set of processes utilizing commercially available data, such as a public records query or a knowledge-based authentication quiz; and
3. Securely link the authenticated record to biometric characteristics contemporaneously collected from the person and store the authenticated record in a centralized, highly secured, encrypted biometric database.

C. It shall be an affirmative defense to any administrative action brought against a retailer for alleged sale to a minor, if the retailer establishes, by a preponderance of the evidence, that:

1. The minor presented fraudulent identification of the type established in paragraph (B)(1) above and the retailer inspected the identification provided, compared the identification to the person presenting the identification, and inspected an identification book issued within the past three years, which contained a sample of the specific kind of identification presented by the minor; or
2. The retailer used and relied upon a biometric identity verification device that indicated the minor was twenty-one years of age or older, in accordance with paragraph (B)(2) of this rule.
3. A retailer asserting the affirmative defense, as described in paragraph (C) of this rule, shall be responsible for obtaining, and providing to the Division, all records necessary to establish that a biometric identity verification device was used as age verification for the transaction in question.