

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

Emergency Rule

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

Regulation 47-436. Retail Establishment Permit, Including but not Limited to Art Galleries.

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103, 44-3-201, and 44-3-202, C.R.S., I, Heidi Humphreys, Interim Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt emergency Regulation 47-436, 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 this new 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 new 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 new 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), 44-3-424, and 44-3-501(1)(t), C.R.S.

Purpose

The purpose of adopting this new rule on an emergency basis includes establishing requirements and procedures to implement and ensure compliance with House Bill (HB) 23-1061, concerning permitting a retail establishment to serve complimentary alcohol beverages at a place of business. On June 2, 2023, Governor Polis signed HB23-1061 into law, which will take effect at 12:01 a.m. on August 6, 2023, unless a referendum petition is filed as set forth in the bill. HB23-1061 expands and renames the art gallery permit to the retail establishment permit and allows eligible permittees to serve complimentary alcohol beverages to patrons 24 days per year for a four-hour period each day. The bill establishes additional restrictions on which licensees qualify as a retail establishment and additional prohibitions regarding alcohol service, including serving sizes, hours of service, and age of servers.

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, Beer and Wine Code, and Special Event Liquor Permits Code as a matter of state-wide concern. The adoption of this new 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 August 10, 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 rules on an emergency basis, effective immediately. The attached emergency rules will remain in effect until their expiration 120 days from the adoption date unless sooner terminated or replaced by permanent rules.

Heidi Humphreys
Interim Executive Director/CEO
Colorado Department of Revenue
State Licensing Authority

Dated in Electronic Signature Above

Regulation 47-436. Retail Establishment Permit, Including but not Limited to Art Galleries.

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), 44-3-424, and 44-3-501(1)(t), C.R.S. The purpose of this regulation is to address eligibility, requirements, restrictions, and fees for retail establishments, which includes art galleries, that wish to obtain a permit under 44-3-424, C.R.S.

A. Application

1. Eligible retail establishments may obtain a retail establishment permit by submitting an application and the required fees. The application must include:
 - a. The name of the applicant;
 - b. The physical address of the applicant where the service will occur;
 - c. The state sales tax number of the applicant;
 - d. A copy of a deed or lease in the exact name of the applicant reflecting possession of the premises for at least one year after the date of the application;
 - e. A diagram of the premises that reflects the area within the premises where alcohol beverages will be stored, served, possessed and consumed;
 - f. Each date and the start and end times that the applicant will provide complimentary beverages to its customers under the permit, if granted;
 - g. The license number and license type of any liquor license(s) held by the applicant, if any;
 - h. A state fee of \$72 to be paid pursuant to Regulation 47-505;
 - i. Notice or approval from the local licensing authority; and
 - j. Affirmations that the applicant:
 - i. Qualifies as a retail establishment;
 - ii. Does not have more than 25 employees;
 - iii. Does not have retail sales that exceed five million dollars per year;
 - iv. Does not sell firearms, motor vehicles, marijuana, gasoline, or diesel fuel;
 - v. Does not educate students from kindergarten to twelfth grade;
 - vi. Does not provide child care;
 - vii. Is not a convenience store;
 - viii. Does not sell alcohol beverages by the drink;
 - ix. Will not serve alcohol beverages for more than four hours in any twenty-four hour period, and no more than 24 days per year;

- x. Will not intentionally allow more than 250 people to be on its premises at one time when alcohol beverages are being served;
 - xi. Will not serve or distribute alcohol beverages between 2 a.m. and 7 a.m.
 - xii. Will not allow alcohol beverages to be removed from the retail establishment by a customer.
2. Once an applicant receives a retail establishment permit, it may only change the dates and times that the permittee will provide complimentary beverages to its customers set forth in subpart (2)(a)(vi) of this regulation by providing 15 calendar days written notice to the state and local licensing authority, as calculated pursuant to section 2-4-108, C.R.S.

C. Serving

1. The age of servers under this regulation is set forth in Regulation 47-913(H).
2. Serving sizes
 - a. The serving size of complimentary malt liquor may not exceed twelve ounces.
 - b. The serving size of a complimentary vinous liquor cannot exceed five ounces. The vinous liquor can be mixed with a non-alcoholic beverage to make a larger serving size.
 - c. The serving size of a complimentary spirituous liquor cannot exceed one and one-half ounces. The spirituous liquor can be mixed with a non-alcoholic beverage to make a larger serving size.
 - d. The serving size of a pre-mixed alcohol beverage drink cannot exceed twelve ounces.

D. Expiration

1. A permit issued under this regulation is valid for one year from the date the permit is issued.

E. Renewal

1. A permittee may renew an application for a retail establishment permit by submitting a renewal application containing all of the information contained in subsection (A)(1) of this regulation and payment of a state fee of \$72, paid pursuant to Regulation 47-505.
2. Once an applicant receives a retail establishment permit, it may only change the dates that the permittee will provide complimentary beverages to its customers set forth in subpart (A)(1)(vi) of this regulation by providing 15 calendar days written notice to the state and local licensing authority, as calculated pursuant to section 2-4-108, C.R.S.

F. Denials

1. The state or local licensing authority may reject a retail establishment permit application if the applicant fails to establish that it is able to offer complimentary alcohol beverages

without violating section 44-3-424, C.R.S., or creating a public safety risk to the neighborhood of the applicant's retail establishment.

2. Neither the state nor the local licensing authority can deny an applicant based solely on the retail establishment's proximity to any public or private school, or principal campus of a college, university or seminary.

G. Alcohol

1. Alcohol beverages served under this permit must be purchased from a retail liquor store, liquor licensed drug store, fermented malt beverages and wine retailer, or a fermented malt beverage on/off premises retailer.
2. A retail establishment cannot serve malt beverages past the expiration date.
3. A retail establishment shall not permit customers to remove complimentary alcohol beverages from the premises of the retail establishment.

H. Violations

1. An applicant violates this regulation if it:
 - a. Violates any portion of article 3 of title 44;
 - b. Violates any requirement set forth in this regulation;
 - c. Fails to truthfully provide the information set forth in subpart (A)(1) of this regulation on its initial or renewal applications; or
 - d. Charges an entrance fee or cover charge in exchange for offering complimentary alcohol beverages.

I. Penalties

1. 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 for violations of article 3 of title 44 and this regulation.