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**ALCOHOL AND TOBACCO COMMISSION****Nonrule Policy 905-002**

- 1. NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Alcohol and Tobacco Commission's (ATC) official position concerning a specific issue.
- 2. DISCLAIMER:** This nonrule policy is being established by the ATC consistent with its authority under [IC 7.1-2-3-2](#) and [IC 7.1-2-3-31](#). It is intended solely as guidance and shall be used in conjunction with applicable rules or laws. It does not replace applicable rules and laws, and, if it conflicts with these rules or laws, the rules or laws shall control.
- 3. AUTHORIZED:** P. Thomas Snow, Chairman
- 4. SUPERSEDES:** New
- 5. SUBJECT:** The purpose of this nonrule policy is to implement a uniform procedure for the appeal of a denial of a primary source registration authorized by [IC 7.1-4-4.1-1](#).
- 6. SCOPE:** A primary source registration may be issued if the applicant qualifies as a primary source of supply as defined by [IC 7.1-1-3-32.5](#). An applicant for a primary source registration shall be entitled to appeal that denial to the ATC.
- 7. POLICY:**
- 7.1 When an applicant applies for a primary source registration, the application is reviewed by a designated employee of the ATC pursuant to [IC 7.1-2-3-2](#) and [IC 7.1-2-3-29](#).
- 7.2 If the application for primary source registration is disapproved based on the designated employee's recommendation, the ATC shall give written notice of the action to the applicant.
- 7.3 Upon receipt of notice of the ATC's action, the applicant shall have fifteen (15) days to file (i) a petition for administrative appeal; and (ii) a brief objecting to Commission's action.
- 7.4 The brief shall state any basis on which the applicant believes the application was denied in error.
- 7.5 The ATC shall provide for one automatic extension of the fifteen (15) day period at the request of the applicant if made within the original fifteen (15) days.
- 7.6 Failure of the applicant to file objections within the fifteen (15) day period shall constitute a waiver of any administrative appeal from the ATC's action.
- 7.7 Upon receipt of the objections, the designated employee shall have fifteen (15) days to file a responsive brief.
- 7.8 At the discretion of the Commission, the hearing may be conducted by the full Commission, any individual member of the Commission, or a duly authorized agent of the Commission.
- 7.9 The Commission may conduct a prehearing conference. The hearing judge for the prehearing conference shall set the time and place of the conference and give reasonable notice to the applicant and employee.
- 7.10 Oral arguments may be convened at the request of the hearing officer. At oral arguments, if either applicant or employee desires to present evidence it may do so by presenting testimony, under oath or affirmation, documentary evidence, and/or written evidence.
- 7.11 The ATC, at its discretion, may remand an application to the designated employee for further investigation.
- 7.12 If the decision by the Commission is ultimately appealed by the applicant, the hearing officer may consider any evidence presented in (i) the original investigation; and/or (ii) the remand.

- 7.13 If the appeal is based on the denial of an application or renewal of an existing permit/registration, the applicant may request an extension of the life of the permit/registration to allow him or her to continue operating pending the appeal procedure.
- 7.14 If the Commission issues the extension of a primary source registration, the applicant shall pay the required fee and shall be allowed to operate until notified by the Commission that the extension is terminated by written notice to the applicant's last known address as stated on the application.
- 7.15 Upon receipt of said notification, applicant shall have ten (10) days to continue operating and at the expiration of the ten (10) days, he or she must cease selling alcoholic beverages.
- 7.16 Following the hearing including any oral argument, presentation of all testimony and documentary and/or written evidence, the hearing officer shall issue findings of fact, conclusions of law, and an order to the Commission for its final approval.
- 7.17 Such proposed findings of fact, conclusions of law, and order shall be served on the applicant for their written objections, which are due to the Commission within fifteen (15) days of their receipt.
- 7.18 At the conclusion of the time for receipt of written objections, the Commission shall approve, deny, or modify the proposed findings or *[sic]* fact, conclusions of law, and order.
- 7.19 In the case of denial of an application/registration, the Commission shall inform the aggrieved party that its decision may be subject to judicial review.
- 7.20 Any proceeding governed by this nonrule policy may be conducted in person or telephonically at the discretion of the hearing officer.

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