

Final Rule

LSA Document #19-496(F)

DIGEST

Amends [905 IAC 1-32.1-1](#) through [905 IAC 1-32.1-6](#), concerning group purchasing agreements, to allow group purchase agreement premises to include an area directly adjacent to the licensed premises of the designated agent for the purposes of accepting and distributing alcoholic beverages purchased by the group from a wholesaler. Effective 30 days after filing with the Publisher.

[905 IAC 1-32.1-1](#); [905 IAC 1-32.1-2](#); [905 IAC 1-32.1-3](#); [905 IAC 1-32.1-4](#); [905 IAC 1-32.1-5](#); [905 IAC 1-32.1-6](#)

SECTION 1. [905 IAC 1-32.1-1](#) IS AMENDED TO READ AS FOLLOWS:

[905 IAC 1-32.1-1](#) Definitions

Authority: [IC 7.1-2-3-7](#)

Affected: [IC 7.1-1-3-20](#); [IC 7.1-2-3-32](#)

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Commonly owned" means retailer and dealer permits owned by the same:

- (1) individual or individuals;
- (2) partnership;
- (3) corporation;
- (4) limited liability company; or
- (5) limited partnership.

(c) "Designated agent" means the permit holder that has been named in the group purchasing agreement as the designated agent that will, on behalf of the group purchasing participants, order, accept delivery, and make distributions of group purchased alcohol product.

(d) "Extended floor plan" means the floor plan area outside but immediately adjacent to the designated agent's licensed premises, including a parking lot, submitted and approved pursuant to section 4(c) of this rule.

(e) "Group purchase agreement premises" means the licensed premises and the extended floor plan.

~~(e)~~ (f) "Group purchasing agreement" means a written agreement between two (2) or more retailer and dealer permit holders authorizing the purchase of alcoholic beverages from wholesalers authorized to sell to them.

~~(d)~~ (g) "Independently owned" means retailer and dealer permits that are not commonly owned as defined in subsection (b).

(h) "Licensed premises" has the meaning set forth in [IC 7.1-1-3-20](#).

~~(e)~~ (i) "Other emergency" means:

- (1) a state of pressing necessity and urgent need; and
- (2) an unexpected and difficult situation that requires prompt action.

~~(f)~~ (j) "Service interruption" means the discontinuance of delivery service by a wholesaler or wholesalers that prevents a retailer or dealer permittee from maintaining a normal inventory of alcoholic beverages, taking into account:

- (1) the normal business of the retailer or dealer;
- (2) the normal established delivery schedules of wholesalers servicing the retailer's or dealer's account; and

(3) the normal wholesale sources of supply of such retailer or dealer.

(Alcohol and Tobacco Commission; [905 IAC 1-32.1-1](#); filed Sep 27, 1996, 12:15 p.m.: 20 IR 325; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: [20071010-IR-905070191RFA](#); readopted filed Oct 29, 2013, 3:39 p.m.: [20131127-IR-905130360RFA](#); readopted filed Oct 29, 2019, 11:50 a.m.: [20191127-IR-905190418RFA](#); filed May 15, 2020, 8:36 a.m.: [20200610-IR-905190496FRA](#))

SECTION 2. [905 IAC 1-32.1-2](#) IS AMENDED TO READ AS FOLLOWS:

[905 IAC 1-32.1-2](#) Limitations

Authority: [IC 7.1-2-3-7](#)

Affected: [IC 7.1-2-3-32](#)

Sec. 2. (a) For purposes of this rule, commonly owned retailer and dealer permits, ~~as defined in section 4 of this rule,~~ who are not otherwise a party to a group purchasing agreement shall, by virtue of the commonality of ownership, be construed to have entered into a group purchasing agreement with the following requirements:

- (1) ~~Such common~~ **The commonly owned** permit holder shall maintain a written list of all permit numbers and the expiration dates thereof on each permit premises owned or leased by the common permit holder.
- (2) ~~Such common~~ **The commonly owned** permit holder shall furnish a copy of the list required in subdivision (1) to each wholesale permittee making sales to any retailer and dealer permittee on such list.
- (3) ~~Such common~~ **The commonly owned** permit holder shall furnish to the wholesaler the name and permit premises address of the designated agent with the authority to contract for the purchase and delivery of alcoholic beverages on behalf of the commonly owned permits.
- (4) The commonly owned group purchasing agreement shall submit to the commission the group purchasing agreement on a form approved by the commission and a group purchasing agreement premises floor plan for approval under section 4(c) of this rule if the commonly owned group purchasing agreement intends to utilize an extended floor plan.**

(b) Two (2) or more independently owned or commonly owned retailer or dealer permittees may enter into a group purchasing agreement for the purpose of purchasing alcoholic beverages from wholesalers authorized to sell to them; provided, however, that the retailer and dealer permittees are not a party to any other group purchasing agreement.

(c) If a service interruption or other emergency is caused by events beyond the control of a retailer or dealer permittee, and if such interruption of service or other emergency left unremedied would cause a shortage in the permittee's inventory of alcoholic beverages likely to result in a substantial loss of business to the permittee, such permittee may purchase and transport alcoholic beverages from any wholesaler's licensed premises from whom such permittee is legally authorized to purchase alcoholic beverages to such permittee's licensed premises if all the following conditions are met:

- (1) The wholesaler's invoice records show:
 - (A) the retailer's or dealer's permit number and expiration date; and
 - (B) that ~~that~~ *[sic]* the sale was made during the term of the permit.
- (2) The wholesaler's invoice records show the purchase price paid was identical to the price that would have been charged for the same quantity of the same alcoholic beverages if the wholesaler had delivered such beverages.
- (3) The alcoholic beverages, accompanied by a copy of the wholesaler's invoice and a copy of the retailer's or dealer's permit, are transported directly from the wholesaler's licensed premises to the retailer's or dealer's licensed premises.

(d) The quantity of alcoholic beverages that may be purchased and transported by any retailer or dealer on any one (1) day under this rule may not exceed:

- (1) seventy-five (75) cases of alcoholic malt beverages;
- (2) five (5) cases of alcoholic spirituous beverages containing more than fifteen percent (15%) absolute alcohol reckoned by volume; and
- (3) ten (10) cases of alcoholic vinous or spirituous beverages containing fifteen percent (15%) or less of absolute alcohol reckoned by volume.

(Alcohol and Tobacco Commission; [905 IAC 1-32.1-2](#); filed Sep 27, 1996, 12:15 p.m.: 20 IR 325; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: [20071010-IR-905070191RFA](#);

SECTION 3. [905 IAC 1-32.1-3](#) IS AMENDED TO READ AS FOLLOWS:

[905 IAC 1-32.1-3](#) Procedures

Authority: [IC 7.1-2-3-7](#)

Affected: [IC 7.1-2-3-32](#)

Sec. 3. (a) A group purchasing agreement shall:

- (1) be in writing;
- (2) be on a form approved by the commission;
- (3) be signed and dated by each retailer or dealer permittee that is a party to the agreement;
- (4) designate one (1) of the parties to the agreement as **designated** agent with authority to contract for the purchase and delivery of alcoholic beverages on behalf of all parties to the agreement;
- (5) set forth the current permit number and the expiration date of each party to the agreement; and
- (6) provide for the joint and several liability of each party to the agreement in the event the total amount due on a master invoice (less credits, returns, and allowances) described in section 4(a) and 4(b) of this rule is not paid in full.

(b) A copy of an executed agreement, including any amendments, deletions, or additions, shall be kept on the permit premises of each party to the agreement, and on the permit premises of each wholesaler making sales to the parties under the agreement.

(c) No sale pursuant to such agreement shall be made by a wholesaler until such time as the wholesaler has received an executed copy of such agreement.

(d) No **designated** agent ~~designated~~ **named** in the agreement shall be compensated, directly or indirectly, by any other retailer or dealer, whether or not a party to the agreement, nor by any wholesaler, brewer, or primary source of supply. The **designated** agent may be reimbursed for all out-of-pocket costs directly attributable to the function and performance of a designated agent's duties incurred on behalf of the group.

(e) Any party to this agreement may terminate its interest for any reason by written notice given to all parties to the agreement, and to all wholesalers making sales under the agreement.

- (f) The interest of any party in a group purchasing agreement shall automatically terminate:
- (1) should the party's permit be suspended, revoked, sold, transferred, or not renewed; or
 - (2) by the death of the party.

(g) A purchasing group may increase the number of retailer and dealer permittees that may be a party to the original purchasing agreement, provided all items under this section are complied with, and so long as there is unanimous consent by the current members of the purchasing group.

(Alcohol and Tobacco Commission; [905 IAC 1-32.1-3](#); filed Sep 27, 1996, 12:15 p.m.: 20 IR 326; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: [20071010-IR-905070191RFA](#); readopted filed Oct 29, 2013, 3:39 p.m.: [20131127-IR-905130360RFA](#); readopted filed Oct 29, 2019, 11:50 a.m.: [20191127-IR-905190418RFA](#); filed May 15, 2020, 8:36 a.m.: [20200610-IR-905190496FRA](#))

SECTION 4. [905 IAC 1-32.1-4](#) IS AMENDED TO READ AS FOLLOWS:

[905 IAC 1-32.1-4](#) Delivery, acceptance, and vesting of title of the alcoholic beverages purchased under group purchasing agreement

Authority: [IC 7.1-2-3-7](#)

Affected: [IC 7.1-2-3-32](#); [IC 7.1-5-10-2](#); [IC 7.1-5-10-12](#)

Sec. 4. (a) The following are requirements concerning sales to independently owned retailer and dealer permittees:

- (1) A wholesaler making sales to independently owned retailer and dealer permittees, pursuant to a group purchasing agreement under this rule, shall issue a master invoice to the agent designated in the agreement:
 - (A) describing the alcoholic beverages sold, providing all other information required by [905 IAC 1-31-3](#); and
 - (B) indicating the permit numbers and expiration dates of all retailer and dealer permittees who are parties to the agreement and who are to share the alcoholic beverages that are the subject of the sale.
- (2) The wholesaler shall also issue subinvoices containing all the information required by [905 IAC 1-31-3](#) reflecting each party's fractional share of the total order. A copy of all subinvoices of the master invoice shall be furnished to the designated agent, and at least one (1) copy of each party's individual subinvoice shall be furnished to that party.
- (3) All of the alcoholic beverages that are described on the master invoice shall be delivered by the wholesaler to ~~one (1) the designated agent's~~ **the designated agent's** licensed premises, ~~which~~ **unless the designated agent has on file with the commission an approved group purchase agreement premises. The licensed premises** must be the licensed premises of a party to the agreement. Title vests in the alcoholic beverages so delivered at the time of delivery, according to the fractional share reflected on each subinvoice.

(b) The following are requirements concerning sales to commonly owned retailer and dealer permittees:

- (1) A wholesaler making sales to commonly owned retailer and dealer permittees shall issue a master invoice:
 - (A) describing the alcoholic beverage sold, providing all other information required by [905 IAC 1-31-3](#); and
 - (B) indicating the permit number and expiration date thereof the permit premises to which the alcoholic beverages are to be delivered.
- (2) All of the alcoholic beverages that are described on the master invoice shall be delivered by the wholesaler to the premises of the designated agent. Title vests in the alcoholic beverages so delivered at the time of delivery.

(c) A designated agent with an approved group purchasing agreement on file with the commission may accept and distribute group purchased product from an approved extended floor plan area that complies with the following requirements:

- (1) The designated agent shall submit the group purchase agreement premises floor plan to the Indiana state excise police district in which the designated agent's business is located.**
- (2) The extended floor plan shall include the following:**
 - (A) The exact location or locations where the group purchased product will be delivered, accepted, and distributed to the group purchasing participants.**
 - (B) The exact day or days the group purchased products will be accepted and distributed.**
 - (C) The exact hours in which the group purchased products will be accepted and distributed.**
 - (D) The names and permit numbers of the wholesaler or wholesalers delivering the group purchased product.**
- (3) The group purchase agreement premises must be approved by the Indiana state excise police officer after conducting the site inspection.**
- (4) The original group purchase agreement premises floor plan and one (1) copy will be retained by the inspecting Indiana state excise police officer. One (1) copy of the group purchasing agreement premises floor plan shall be retained by the designated agent and made available to Indiana state excise police officers upon request.**
- (5) The extended floor plan for the purposes of accepting, delivering, and distributing group purchased product shall apply only on those days and times approved by the commission.**

(d) The designated agent after having filed with the commission an approved group purchasing agreement extended floor plan may, as it relates to the delivery, acceptance and distribution of group purchased alcohol product, and subject to the rules and limitations set out in this subsection, do the following:

- (1) Accept delivery of and make truck to truck distributions of group purchased alcohol product from the extended floor plan area or areas.**
- (2) The wholesaler truck or trucks may deliver and distribute group purchased product in the extended floor plan only on the days and times set out in the extended floor plan.**
- (3) Individual group purchasing agreement participants may take delivery of their fractional division of the group purchase directly from the wholesaler's truck only during the days and times set out in the group purchase agreement premises floor plan.**
- (4) Any cooperative purchased product that is not distributed during the specified time for distribution**

must either be returned to the wholesaler's storage facility that same day or stored inside the designated agent's licensed premises.

(5) The designated agent's extended floor plan for group purchasing agreement products can begin as early as 6:00 a.m. but may not extend past 6:00 p.m. of the same business day.

(6) Areas designated on the extended floor plan can only be used for the acceptance of and distribution of group purchased alcohol product on the dates and times filed with the commission.

(7) The specifications and restrictions in subdivisions (1) through (6) on the extended floor plan area or areas to be used for the acceptance and distribution of group purchased alcohol products apply only during the specified dates and times set out in the group purchase agreement premises floor plan.

(8) Any changes to the group purchase agreement premises, including location, dates, or times, must be approved by the commission.

~~(e)~~ (e) In the event the total purchase price shown on the master invoice is not paid to the wholesaler within the time limits prescribed by [IC 7.1-5-10-12](#) and [905 IAC 1-21-1](#), then all wholesalers shall be required to restrict or terminate their sales to all retailer and dealer permittees who received any fractional share of the alcoholic beverages described on such master invoice in accordance with the provisions of [IC 7.1-5-10-12](#) [IC 7.1-5-10-2](#) and [905 IAC 1-21-1](#).

~~(d)~~ (f) Nothing in this rule shall be construed to prohibit the payment of the master invoice by the agent and the subsequent repayment of fractional portions by parties to the agent. Such repayment shall not be considered retail to retail sales.

(Alcohol and Tobacco Commission; [905 IAC 1-32.1-4](#); filed Sep 27, 1996, 12:15 p.m.: 20 IR 326; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: [20071010-IR-905070191RFA](#); readopted filed Oct 29, 2013, 3:39 p.m.: [20131127-IR-905130360RFA](#); readopted filed Oct 29, 2019, 11:50 a.m.: [20191127-IR-905190418RFA](#); filed May 15, 2020, 8:36 a.m.: [20200610-IR-905190496FRA](#))

SECTION 5. [905 IAC 1-32.1-5](#) IS AMENDED TO READ AS FOLLOWS:

[905 IAC 1-32.1-5](#) Transportation by retailers and dealers of alcoholic beverages purchased under group purchasing agreement

Authority: [IC 7.1-2-3-7](#)

Affected: [IC 7.1-2-3-32](#); [IC 7.1-5-10-12](#)

Sec. 5. (a) Alcoholic beverages purchased under a group purchasing agreement of independently and commonly owned retailer and dealer permittees may be transported by any party to the agreement from the **licensed** premises described in section 4(a)(3) of this rule **of the designated agent or the group purchasing agreement premises** to that party's ~~permit~~ **licensed** premises, provided that the alcoholic beverages being transported are accompanied by a copy of the following:

- (1) The party's current retailer or dealer permit.
- (2) The group purchasing agreement under which the alcoholic beverages were purchased.
- (3) The subinvoice describing the alcoholic beverages being transported.

(b) Alcoholic beverages purchased by commonly owned retailer and dealer permittees may be transported by the permittee designated in section 4(b)(2) of this rule to the licensed permit premises of other commonly owned retailer and dealer permittees owned by the same owner so long as proper records of disposition to each permittee are maintained.

(c) No alcoholic beverages may be transported to the licensed premises of any permittee who is unable to lawfully operate as a retailer or dealer permittee by reason of suspension, revocation, sale, transfer, or failure to renew the necessary permit.

(d) No alcoholic beverages may be transported to the licensed premises of any permittee whose ability to purchase and receive alcoholic beverages from any wholesaler has been restricted or terminated by any wholesaler's compliance with [IC 7.1-5-10-12](#) and [905 IAC 1-21-1](#).

(e) The party transporting the alcoholic beverage must have in its possession a copy of the party's current retailer or dealer permit.

(Alcohol and Tobacco Commission; [905 IAC 1-32.1-5](#); filed Sep 27, 1996, 12:15 p.m.: 20 IR 327; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: [20071010-IR-905070191RFA](#); readopted filed Oct 29, 2013, 3:39 p.m.: [20131127-IR-905130360RFA](#); readopted filed Oct 29, 2019, 11:50 a.m.: [20191127-IR-905190418RFA](#); filed May 15, 2020, 8:36 a.m.: [20200610-IR-905190496FRA](#))

SECTION 6. [905 IAC 1-32.1-6](#) IS AMENDED TO READ AS FOLLOWS:

[905 IAC 1-32.1-6](#) Filing requirements of group purchasing agreement; amendments, additions, or deletions

Authority: [IC 7.1-2-3-7](#)

Affected: [IC 7.1-2-3-32](#)

Sec. 6. Group purchasing agreements **and group purchasing agreement premises floor plans**, including any amendments, deletions, or additions thereto, shall be filed with the commission. Copies of all group purchasing agreements must be kept by all parties to such agreement, as well as wholesalers making sales under such agreements, so long as such agreements are in force. Group purchasing agreements located in the office of the commission shall be available for public inspection during the commission's regular business hours.

(Alcohol and Tobacco Commission; [905 IAC 1-32.1-6](#); filed Sep 27, 1996, 12:15 p.m.: 20 IR 327; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: [20071010-IR-905070191RFA](#); readopted filed Oct 29, 2013, 3:39 p.m.: [20131127-IR-905130360RFA](#); readopted filed Oct 29, 2019, 11:50 a.m.: [20191127-IR-905190418RFA](#); filed May 15, 2020, 8:36 a.m.: [20200610-IR-905190496FRA](#))

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