

## ALCOHOL AND TOBACCO COMMISSION

## Nonrule Policy ATC #29

**1. NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published with 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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 official position of the Indiana Alcohol and Tobacco Commission (Commission) concerning a specific issue.

**2. DISCLAIMER:** This nonrule policy is being established by the Commission consistent with its authority under [IC 7.1-2-3-7](#). 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:** Jessica Allen, Chair

**4. SUPERSEDES:** New

**5. SUBJECT:** The purpose of this nonrule policy is to clarify the manner in which letters of extension (i.e., permit extensions) are issued by the Commission, as well as the process the Commission will follow in determining whether to issue a letter of extension to a permittee.

**6. SCOPE:** Indiana law gives the Commission discretion to issue a letter of extension (LOE) to a permittee for good cause upon written request by the permittee and payment of the requisite fee. It also issues fee-waived extensions in instances where the delay in renewing the permit can be attributed to the Commission.

By statute, an initial permit extension may be issued by any member of the Commission, and all subsequent extensions may only be issued following an affirmative majority vote of the Commission. Additionally, there are certain instances in which determining whether to issue a LOE may require additional scrutiny. The Commission understands that even a short interruption in a permittee's ability to operate under a permit may be detrimental to business operations and will treat timely requests for a LOE with this fact in mind. However, Indiana law ultimately affords the Commission absolute discretion in determining whether to issue a LOE to a permittee. Accordingly, there may be circumstances in which the issuance of an extension is not warranted.

**7. POLICY:**

7.1. Indiana law gives the Commission the discretion to issue LOE's extending the term of a permit a maximum period of ninety (90) days for good cause shown upon the written request of the permittee and payment of the fee if required. [IC 7.1-3-1-3.1](#). A permittee requesting a LOE shall meet the requirements of [905 IAC 1-26-1](#). A request for extension may be signed by an owner of the permit holder, a manager with a valid manager's questionnaire on file with the Commission, or a person with a Limited Power of Attorney (State Form 54651) on file with the Commission.

7.2. An initial LOE, excluding extensions requested pursuant to paragraph 7.5, may be issued by any individual member of the Commission. [IC 7.1-3-1-3.1\(a\)](#). As a policy or procedural measure, the Commission has delegated its authority to issue an initial extension to relevant staff members, including facility processors. [IC 7.1-2-3-29](#). Initial permit extensions are issued under the signature of the Commission chair.

7.3. The Commission issues permit extensions (excluding extensions requested pursuant to paragraph 7.5) for permittees that have shown good cause as to why an extension of the permit is needed. Good cause includes, but is not limited to, submitting a renewal application close in time to the permit expiration date such that the permit may not be renewed prior to its expiration.

7.4. Extension requests must be submitted in writing to the appropriate facility processor, requesting a subsequent extension if needed. Upon receipt, the processor will forward the subsequent extension request to the Commission for consideration at its next regularly scheduled meeting. The decision of whether to issue a subsequent permit extension is subject to the discretion of the Commission and requires an affirmative majority vote of the Commission. [IC 7.1-3-1-3.1\(b\)](#). This request may be submitted up to thirty (30) days in advance of the original LOE's expiration.

7.5. Following a vote of the Commission to deny renewal of a permit, a permittee may request a LOE to continue operating under the permit by timely filing an objection and requesting an appeal hearing before the Commission. [905 IAC 1-36-2](#). Similarly, a permittee that receives a notice of a violation from the office of the prosecutor created under [IC 7.1-2-2-1](#) may request a LOE if the permit expires while the violation is pending before the Commission.

Such permit extensions may only be issued upon an affirmative majority vote of the Commission. The decision of whether to issue a permit extension is subject to the discretion of the Commission based upon the totality of the circumstances. Factors that the Commission may consider in determining whether to issue an extension include, but are not limited to, the following:

- A. Whether the permittee has been or is being dilatory with the Commission throughout the administrative proceeding. Examples of such include failing to comply with a Commission order (including an order to appear for a prehearing conference or hearing), requesting excessive continuances, and/or failing to meet with the ATC prosecutor or hearing judge at any stage of a proceeding (including settlement conferences).
- B. Whether the permittee is operating in a manner that is outside the scope of its permit and/or whether continued operation of the licensed premises would violate [IC 7.1](#) or [905 IAC](#).
- C. Whether the permittee has provided the Commission with a corrective action plan to address ongoing issues at the premises and, if so, whether such plan meets the satisfaction of the Commission.
- D. Whether any violations have been issued at the licensed premises following the denial of a permit renewal or initial notice of violation.

7.6. An extension request may be considered at any public meeting of the Commission, including its regular bimonthly Commission meetings and monthly escrow hearings.

7.7. Once issued, a LOE may be revoked by the Commission at any time due to a permittee's failure to comply with the Commission's orders, including failure to appear for a local board hearing upon notification by the Commission under [IC 7.1-3-19-9.5](#) and/or failure to appear at any stage of an administrative violation proceeding under [905 IAC 1-37-9](#).

7.8. If the Commission denies a LOE, written notice of the denial shall be mailed to the permittee's address on file with the Commission by United States first class mail. The permittee may file a subsequent request for a LOE after resolving matters addressed in the written denial.

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