
TITLE 905 ALCOHOL AND TOBACCO COMMISSION

Notice of Public Comment Period For Interim Rule
LSA Document #23-572

Governor's Approval posted at: [20230802-IR-905230572GAA](#)

PURPOSE OF NOTICE

The Indiana Alcohol and Tobacco Commission (commission) is soliciting public comment on adding rules concerning designated outdoor refreshment areas; amendments to [905 IAC 1-11.1-2](#) and [905 IAC 1-41-4](#) in order to accommodate the existence of designated outdoor refreshment areas and outdoor bars under existing rules; and amendments to [905 IAC 1-53-5](#) concerning the maximum price of a type II gaming ticket. The commission seeks comment on the affected citations listed and any other provisions of Title 905 that may be affected by this rulemaking.

CITATIONS AFFECTED: [905 IAC 1-11.1-2](#); [905 IAC 1-41-4](#); [905 IAC 1-53-5](#)

AUTHORITY: [IC 4-22-2-37.2](#); [IC 4-36-3-3](#); [IC 7.1-2-3-6](#); [IC 7.1-2-3-7](#)

OVERVIEW

Basic Purpose and Background

Effective July 1, 2023, [IC 7.1-3-31](#) authorizes a municipality to create a designated outdoor refreshment area (DORA). Essentially, a DORA allows patrons who are at least twenty-one (21) years of age to purchase alcoholic beverages from approved vendors and retail establishments and carry them outside to be consumed within the DORA boundaries. The purpose of this interim rule is to outline the application process for DORAs that must be approved by the commission and to make other updates to existing rules due to legislative changes.

Statement Justifying Requirement or Cost

Because DORAs may be established only by municipalities, it is crucial to give local jurisdictions adequate control over who may operate within the boundaries of an outdoor refreshment area. For this reason, all designated retail permittees, temporary vendors, supplemental caterers, and craft manufacturers wishing to operate within a DORA must obtain approval from the municipality in which a DORA is located prior to submitting an application to the commission for approval.

REQUEST FOR PUBLIC COMMENTS

At this time, the commission is soliciting public comments for this rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #23-572
Indiana Alcohol and Tobacco Commission
Attn: Ashley Merritt, General Counsel
302 West Washington Street, Room E114
Indianapolis, IN 46204

- (2) By electronic mail to amerrit@atc.in.gov

To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than September 1, 2023.

Data, studies, or analyses referenced in the statement justifying any requirement or cost, the rule, and materials incorporated by reference (if applicable) are on file at the Indiana Alcohol and Tobacco Commission, 302 West Washington Street, Room E114, Indianapolis, Indiana and are available for public inspection. Copies of the rule and the data, studies, or analyses referenced in the statement justifying any requirement or cost are available at the office of the Indiana Alcohol and Tobacco Commission.

PROPOSED INTERIM RULE

SECTION 1. (a) This SECTION supersedes [905 IAC 1-11.1-2](#).

(b) In order to qualify for a temporary permit, the following guidelines must be met:

- (1) There must be a well defined premises, such as a building, a tent, an enclosure, or a fenced in or designated area, or be located in a designated refreshment area as defined in [IC 7.1-3-31-4](#).
- (2) The applicant must submit a floor plan or diagram (eight and one-half (8 1/2) by eleven (11)) showing either a beer garden/barroom (for adults only) or beer garden/barroom and family area (for families to consume food). All alcoholic beverages must be dispensed from the beer garden/barroom. Minors will be allowed in the family area with a parent or guardian, or to consume food, but may not loiter.
- (3) There shall be no carry-out privileges, carry-in privileges, or spirituous beverages allowed.
- (4) Each applicant must designate an individual responsible for the event, and the individual must sign the application.
- (5) All persons dispensing, selling, or accepting payment for alcoholic beverages must possess a valid alcoholic beverage commission employee's permit.
- (6) The event must meet applicable board of health requirements, particularly with regard to restroom facilities.
- (7) Legal hours for dispensing alcoholic beverages:

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|-------------------------|---|
| (Prevailing time) | |
| Monday through Saturday | 7 a.m. to 3 a.m. the following day |
| Sunday | 12 noon to 12:30 a.m. the following day |
- (8) The applicant must file this application with the commission at least fifteen (15) days prior to the event. Failure to comply is grounds for denial.
- (9) The temporary permit must be posted in the most conspicuous place at the location of the event. An excise officer, or commissioner for good cause, has the authority to revoke a temporary permit at any time before or during the event.

SECTION 2. (a) This SECTION supersedes [905 IAC 1-41-4](#).

- (b) Service of alcoholic beverages is permitted on porches, verandas, lobbies, and other areas that do not constitute an area with a bar on the following conditions:
- (1) Service is done by licensed employees of the retail permit holder.
 - (2) The area to be serviced is part of the permit premises and delineated in some manner by rail, wall, or hedge.

SECTION 3. (a) This SECTION supersedes [905 IAC 1-53-5](#).

- (b) No retailer or its employees shall provide information or engage in conduct that alters or is intended to alter the outcome of a type II gambling game.
- (c) All licensed supplies shall originally be obtained from an entity that is licensed by the commission as a manufacturer or distributor.
- (d) Retailers shall post a flare for each deal in the vicinity of the deal and in view of the players while the deal is in play.
- (e) If more than one (1) flare is posted, retailers must mark each flare and the container from which the corresponding deal is sold to clearly indicate which flare corresponds with each deal.
- (f) A retailer must thoroughly mix pull tabs prior to offering them for sale to the public.
- (g) A retailer may not purchase, and a distributor may not sell, a box of type II gambling games if the manufacturer's:
- (1) shrink-wrap is removed; or
 - (2) seal is broken.
- (h) A retailer may not sell type II gambling games from the original packing box or container.
- (i) Multiple games may not be commingled within a single dispensing device.
- (j) If multiple dispensing devices are used, retailers must mark each device so that players can identify the flare that corresponds to the game being sold from the device.

(k) A retailer may remove a type II gambling game from play at the retailer's discretion, provided that the game meets the minimum payout percentages set forth in [IC 4-36-5-6](#). Once a type II gambling game is removed from play, the type II gambling game is deemed dead and the retailer shall never commence play on that game again.

(l) A person who owns, manages, or is employed by a retailer shall not play or participate in any manner in a type II gambling game at the retailer's tavern.

(m) A retailer shall not sell a type II gambling game for more than five dollars (\$5).

(n) A retailer shall not permit a person less than twenty-one (21) years of age to play a type II game.

(o) A retailer shall not permit type II gaming in the presence of minors.

(p) A retailer may not conduct type II gaming on or through the Internet.

(q) A retailer may:

- (1) accept only United States currency when conducting type II gaming; and
- (2) not extend credit to a player.

SECTION 4. (a) The following definitions apply throughout this document:

- (1) "DORA" means a designated outdoor refreshment area established in accordance with [IC 7.1-3-31](#).
- (2) "Designation form" means the form created by the commission to be used by applicants when seeking to obtain a designated permittee or temporary vendor designation.

(b) A retailer permittee located within a DORA may apply to participate in the DORA by submitting a completed designation form to the municipality for approval.

(c) A municipality shall include the approved designation forms when submitting an application to the commission for approval of a DORA.

(d) After a DORA has been established by a municipality and approved by the commission, a retailer permittee may submit a completed designation form to the commission as part of its permit application, or at any time thereafter, to be approved as a designated permittee within a DORA.

(e) A designated permittee shall display its DORA designation with its permit on a licensed premises.

(f) A designated permittee shall display signage at each exit of a licensed premises that contains the following:

- (1) A map of the DORA, including its boundaries.
- (2) An advisement that an open container of alcohol purchased within the DORA must remain within the DORA.
- (3) An advisement that possession of an open container of an alcoholic beverage in a motor vehicle may constitute a class C infraction under [IC 9-30-15](#).
- (4) An advisement of dates in which the DORA is effective, if the DORA's effectiveness is limited to certain dates.
- (5) An advisement of the hours of operation for the DORA, if the municipality limits the hours beyond those stated in [IC 7.1-3-1-14](#).

(g) If a DORA is not effective for more than seven (7) days per calendar year, a designated permittee shall place a fence or other barrier along the perimeter of an outdoor patio on its floor plan in accordance with [905 IAC 1-41](#).

SECTION 5. (a) A person or an entity seeking to serve alcoholic beverages under the authority of a temporary beer and wine permit, supplemental catering permit, or craft manufacturer trade show or exposition day must obtain approval from the municipality using the designation form. The designation form must be signed by an authorized representative of the municipality and submitted with the requisite permit application form to the appropriate Indiana state excise police district office.

(b) A person or an entity seeking to serve alcoholic beverages under the authority of a temporary beer and wine permit, supplemental catering permit, or craft manufacturer trade show or exposition day

must submit a floor plan indicating where it will be operating within the DORA. If located within a public area, the floor plan submitted may be an approved map of the DORA on file with the commission. The serving area must be sufficiently identified on the map in a designated space or area previously approved by the municipality in its ordinance (or other notation in writing if the area is specifically approved by the municipality for specific dates).

SECTION 6. This rule expires 425 days after filing with the Publisher.

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Approved by Governor: 7/3/2023

Posted: 08/02/2023 by Legislative Services Agency

An [html](#) version of this document.