

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.

ARTICLE 1. GENERAL PROVISIONS

Rule 1. Definitions

905 IAC 1-1-1 Definitions

Authority: IC 7.1-2-3-7

Affected: IC 7.1-1-3

Sec. 1. All terms used herein are hereby construed to be in accordance with the definitions as set forth in Chapter 226 of the Acts of the Indiana General Assembly of 1935 [*Repealed; see IC 7.1-1-3*], and all acts supplemental and amendatory thereto.

(1) The Commission, whenever used in these regulations [*905 IAC 1*], means Indiana Alcoholic Beverage Commission.

(2) Deputies of the Commission shall mean any deputy or employee of the Indiana Alcoholic Beverage Commission whenever used in these regulations [*905 IAC 1*].

(3) Attorney, whenever used in these regulations [*905 IAC 1*], shall mean the Prosecutor for the Indiana Alcoholic Beverage Commission.

(4) Secretary, whenever used in these regulations [*905 IAC 1*], shall mean the Secretary of the Indiana Alcoholic Beverage Commission.

(5) Permittee, as defined in these regulations [*905 IAC 1*], shall mean any person, persons or corporation holding an alcoholic beverage permit of any kind or nature under the Indiana Alcoholic Beverage Law.

(6) Alcoholic Beverages Law or Indiana Alcoholic Beverage Law, whenever used in these regulations [*905 IAC 1*], shall mean Chapter 226 of the Acts of the Indiana General Assembly of 1935 [*Repealed; see IC 7.1*], and all acts supplemental and amendatory thereto.

(7) Wholesalers and holders of wholesale permits, and wholesale permittees shall mean liquor wholesalers, wine wholesalers, and beer wholesalers.

(8) Retailers and retail permittees and holders of retail permits shall mean liquor retailers, wine retailers, and beer retailers, and liquor dealers, and wine dealers, and beer dealers.

(9) Manufacturers and holders of manufacturers' permits shall mean holders of brewers' permits, and distillers' permits, and rectifiers' permits and winery permits.

(10) Permits shall mean permits issued by the Indiana Alcoholic Beverage Commission. (*Alcohol and Tobacco Commission; Reg 1; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 601; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 2. Hearing Procedures (Repealed)

(Repealed by Alcohol and Tobacco Commission; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1454)

Rule 3. Witness Fees (Expired)

(Expired under IC 4-22-2.5, effective January 1, 2002.)

Rule 4. Advertising (Repealed)

(Repealed by Alcohol and Tobacco Commission; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2886)

Rule 5. Gifts and Favors (Repealed)

(Repealed by Alcohol and Tobacco Commission; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2886)

Rule 5.1. Trade Practices; Prohibited Activity Between Primary Sources of Supply, Wholesalers, and Retailers

905 IAC 1-5.1-1 General

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 1. (a) Except as provided in 905 IAC 1-5.2, it is unlawful for any primary source of supply or wholesaler to induce, directly or indirectly, any retailer or dealer to purchase any alcoholic beverages from a primary source of supply or wholesaler to the exclusion, in whole or in part, of alcoholic beverages sold or offered for sale by another primary source of supply or wholesaler by doing any of the acts in this section. Except as provided in 905 IAC 1-5.2, it is also unlawful for any retailer or dealer to purchase, or offer to purchase, any alcoholic beverages from a primary source of supply or wholesaler to the exclusion, in whole or in part, of alcoholic beverages sold or offered for sale by another primary source of supply or wholesaler, if the selling primary source of supply or wholesaler has done, or is requested by the retailer or dealer to do, any of the following:

- (1) Acquiring or holding any interest in any retailer or dealer permit except as permitted by IC 7.1-3-10-12.
- (2) Acquiring any interest in real or personal property owned, occupied, or used by the retailer or dealer in the conduct of its alcoholic beverage business, except to the extent a lien or other security interest is acquired to secure payment of goods sold on credit if such credit is permissible under IC 7.1.
- (3) Furnishing, giving, renting, lending, or selling to the retailer or dealer, any equipment, fixtures, supplies, money, services, or other things of value subject to the exceptions contained in 905 IAC 1-5.2.
- (4) Paying or crediting the retailer or dealer for any advertising, display, or distribution service.
- (5) Guaranteeing any loan or the repayment of any financial obligation of the retailer or dealer.
- (6) Requiring the retailer or dealer to take and dispose of a certain quota of any alcoholic beverages.

(b) The element of exclusion set forth in this rule is required only for violations of this section and shall not be required to prove violations under sections 2 through 12 of this rule. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-1; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2879; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-2 Mortgages

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1

Sec. 2. A primary source of supply's or wholesaler's acquisition of a mortgage on any of the real or personal property a retailer or dealer uses in its alcoholic beverage business is a prohibited interest in the retailer's or dealer's property, except to the extent a lien or other security interest is acquired to secure payment of goods sold on credit if such credit is permissible under IC 7.1. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-2; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2880; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-3 Renting display or advertising space

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 3. (a) No primary source of supply, wholesaler, or salesman shall rent or offer to rent display space or rent display space as a promotion at a retailer's or dealer's premises.

(b) No retailer or dealer shall rent or offer to rent at its premises any display space or rent display space as a promotion to a primary source of supply, wholesaler, or salesman.

(c) No primary source of supply, wholesaler, or salesman shall rent or offer to rent, directly or indirectly, any advertising space within the interior or exterior of a retailer's or dealer's premises.

(d) No retailer or dealer shall rent or offer to rent, directly or indirectly, any advertising space within the interior or exterior of its premises to any primary source of supply, wholesaler, or salesman. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-3; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2880; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-4 Free warehousing

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 4. The furnishing of free warehousing by delaying delivery of alcoholic beverages beyond the time that payment for the alcoholic beverages is received, or, if a retailer or dealer is purchasing on credit, delaying final delivery of alcoholic beverages beyond the close of the period of time for which credit is lawfully extended, is the furnishing of a prohibited service or thing of value. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-4; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2880; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-5 Assistance in acquiring permit

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 5. No primary source of supply, wholesaler, or salesman shall assist or offer to assist, directly or indirectly, any retailer or dealer permittee in the preparation or processing of any alcoholic beverage permit application, tax return, legal document, or paper of any kind or character, or render any direct or indirect financial or legal assistance to a retailer or dealer permittee in the acquisition of a permit. These acts are considered the furnishing of a prohibited service or thing of value. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-5; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2880; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-6 Outside signs

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 6. The furnishing of outside signs to retailers or dealers advertising the retailer's or dealer's premises by a primary source of supply or wholesaler is the furnishing of a thing of value and is prohibited. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-6; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2880; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-7 Cooperative advertising

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 7. An arrangement in which a primary source of supply or wholesaler participates with a retailer or dealer in paying for an advertisement of the retailer or dealer constitutes paying the retailer or dealer for advertising and is prohibited. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-7; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2880; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-8 Display service

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 8. Primary source of supply or wholesaler reimbursement to retailers or dealers for setting up product or other displays constitutes a prohibited payment to the retailer or dealer for rendering a display service. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-8; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2880; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-9 Guaranteeing loans

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 9. A primary source of supply or wholesaler is prohibited from guaranteeing any loan or the repayment of any financial obligation of a retailer or dealer. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-9; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2880; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-10 Quota sales

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 10. A primary source of supply or wholesaler is prohibited from requiring a retailer or dealer to take and dispose of any quota of alcoholic beverages. Bona fide quantity discounts shall not be deemed to be quota sales. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-10; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2881; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-11 Tie-in sales

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 11. A requirement that a retailer or dealer purchase one (1) product in order to purchase another is prohibited. This includes combination sales if one (1) or more products may be purchased only in combination with other products and not individually. However, a primary source of supply or wholesaler is not prohibited from selling, at a special combination price, two (2) or more kinds or brands of products to a retailer or dealer, provided:

(1) the retailer or dealer has the option of purchasing either product at the usual price; and

(2) the retailer or dealer is not required to purchase any product it does not want.

(*Alcohol and Tobacco Commission; 905 IAC 1-5.1-11; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2881; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.1-12 Prohibition of retailers and dealers

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 12. Whenever a primary source of supply or wholesaler is prohibited from furnishing supplies, services, or things of value to a retailer or dealer under this rule, 905 IAC 1-5.2, and 905 IAC 1-5.3, the retailer or dealer is prohibited from soliciting or receiving any of the unauthorized supplies, services, or things of value from a primary source of supply or wholesaler. (*Alcohol and Tobacco Commission; 905 IAC 1-5.1-12; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2881; errata filed Sep 16, 1994, 10:35 a.m.: 18 IR 269; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 5.2. Trade Practices; Permissible Activity Between Primary Sources of Supply, Wholesalers, and Retailers**905 IAC 1-5.2-1 General**

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 1. A primary source of supply or wholesaler may only furnish to a retailer or dealer, supplies and services that are specifically prescribed by this rule. The furnishing of these supplies and services may not be conditioned on the purchase of alcoholic beverages. The furnishing of these supplies and services shall be done on a nondiscriminatory basis to retailers and dealers. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-1; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2881; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-2 Record keeping requirements

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 2. (a) A primary source of supply or wholesaler shall keep and maintain records on their premises, for a three (3) year period, of all items furnished to retailers or dealers under this rule. Commercial records or invoices may be used to satisfy this record keeping requirement if all required information is shown. These records shall show the following:

- (1) The name and address of the retailer or dealer receiving the item.
- (2) The date furnished.
- (3) The item furnished.
- (4) The primary source of supply's or wholesaler's cost of the item furnished (determined by the manufacturer's invoice price).
- (5) Charges to the retailer or dealer for any item.

(b) Items received by a wholesaler at no cost from the primary source of supply are exempt from these record keeping requirements except that the wholesaler must maintain records to document that the items have been received from the primary source of supply. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-2; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2881; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-3 Content restrictions

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 3. (a) Any product display, advertising specialty, advertisement, illuminated or nonilluminated advertising sign, poster, or label, which complies with the United States Bureau of Tobacco and Firearms (BATF) rules contained in 27 CFR, Chapter 1, shall be considered as approved by the alcohol and tobacco commission. Any complaints regarding displays, advertising specialty, advertisement, illuminated or nonilluminated advertising sign, poster, or label alleging obscenity or obscene content shall be referred to the BATF for their investigation.

(b) Any product display, advertising specialty, advertisement, illuminated or nonilluminated advertising sign, or poster shall conform to the brand name or logo on the label of the actual container of the alcoholic beverages so advertised.

(c) The label on an alcoholic beverage container is not considered to be advertising, and the label shall conform to the requirements of federal law. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-3; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2881; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1347; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-4 Product displays

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 4. (a) A primary source of supply or wholesaler may furnish, give, rent, loan, or sell product displays to a retailer or dealer, subject to the limitations prescribed in this section.

(b) As used in this section, "product display" means any rack, bin, barrel, cask, nonilluminated sign, special shelving from which alcoholic beverages are displayed and sold and which bear the brand name of the alcoholic beverage. Any other similar items not enumerated are subject to prior written approval of the Indiana alcoholic beverage commission.

(c) Product displays shall be subject to the limitations set forth in 27 CFR 6.83, as amended from time to time under 27 CFR 6.82. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-4; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2882; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-5 Advertising specialties

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 5. (a) A primary source of supply or wholesaler may furnish, give, rent, loan, or sell advertising specialties to a retailer and dealer if these items bear advertising matter and are primarily valuable to the retailer and dealer as point of sale advertising. These items include the following:

- (1) Trays.
- (2) Coasters.
- (3) Mats.
- (4) Menu cards.
- (5) Meal checks.
- (6) Mirrors.

- (7) Paper napkins.
- (8) Foam scrapers.
- (9) Back bar mats.
- (10) Thermometers.
- (11) Clocks.
- (12) Posters.
- (13) Display cards.
- (14) Calendars.
- (15) Lapel pins.
- (16) T-shirts.
- (17) Money clips.
- (18) Ice buckets.
- (19) Other similar items subject to prior written approval of the Indiana alcoholic beverage commission.

(b) A primary source of supply or wholesaler may not add the name or name and address of the retailer or dealer to the advertising specialty. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-5; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2882; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-6 Alcoholic beverage lists

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 6. A primary source of supply or wholesaler may furnish, give, rent, loan, or sell alcoholic beverage lists or alcoholic beverage menus to retailers who provide alcoholic beverages for on-premises consumption only. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-6; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2882; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-7 Consumer advertising specialties

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-5

Sec. 7. (a) A primary source of supply or wholesaler may furnish, give, rent, loan, or sell to a retailer or dealer for distribution by the retailer or dealer to the general public, consumer advertising specialties bearing a brand name or logo. These items include the following:

- (1) Ash trays.
- (2) Bottle or can openers.
- (3) Corkscrews.
- (4) Coasters.
- (5) Shopping bags.
- (6) Matches.
- (7) Printed recipes.
- (8) Pamphlets.
- (9) Cards.
- (10) Leaflets.
- (11) Blotters.
- (12) Post cards.
- (13) Pencils.
- (14) Promotional materials.
- (15) Other similar items subject to prior written approval of the Indiana alcoholic beverage commission.

(b) The retailer or dealer may not be paid or credited by the primary source of supply or wholesaler in any manner, directly or indirectly, for this distribution service. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-7; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2882; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-8 Tapping accessories

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 8. Tapping accessories, such as:

- (1) standards;
- (2) faucets;
- (3) rods;
- (4) vents;
- (5) taps;
- (6) tap standards;
- (7) gas gauges;
- (8) wine guns; and
- (9) other tapping accessories as enumerated in 27 CFR 6.89;

may be sold to a retailer or dealer and installed in the retailer's or dealer's premises if the tapping accessories are sold at a price not less than the cost to the primary source of supply or wholesaler initially purchasing them, and, if the price is collected within fifteen (15) days of the date of sale, except that a primary source of supply or wholesaler may provide, with or without charge, and with the consent of the retailer, brand-identified taps. No brand of beer or wine may be drawn through brand-identified taps except the brand of beer or wine identified on that tap. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-8; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2883; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-9 Samples (Repealed)

Sec. 9. (*Repealed by Alcohol and Tobacco Commission; filed Mar 4, 2004, 10:00 a.m.: 27 IR 2282*)

905 IAC 1-5.2-9.1 Samples; wholesale to retail

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-3-9-11; IC 7.1-3-10-13; IC 7.1-3-14-7; IC 7.1-5

Sec. 9.1. (a) A primary source of supply or wholesaler may furnish, or give a sample of, alcoholic beverages to a retailer or dealer who has not previously purchased the brand from that primary source of supply or wholesaler for a period of one (1) year. For each retail establishment, the primary source of supply or wholesaler may not give more than:

- (1) three (3) gallons of any brand of beer;
- (2) three hundred seventy-five (375) milliliters of any brand of liquor; and
- (3) three (3) liters of any brand of wine.

(b) If a particular product is not available in a size within the quantity limitations of this section, a primary source of supply or wholesaler may furnish to a retailer or dealer another single container size. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-9.1; filed Mar 4, 2004, 10:00 a.m.: 27 IR 2281; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-9.2 Samples; consumer product sampling

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-3-9-11; IC 7.1-3-10-13; IC 7.1-3-14-7; IC 7.1-5

Sec. 9.2. A liquor dealer who is the proprietor of a package liquor store, a liquor retailer, or a wine retailer may offer a product sampling authorized under IC 7.1-3-9-11, IC 7.1-3-10-13, or IC 7.1-3-14-7, in accordance with the following:

- (1) Product that is to be used for a consumer product sampling may be provided by a primary source of supply or wholesaler to an authorized liquor dealer, liquor retailer, or wine retailer, but must be offered to all authorized liquor dealers, liquor retailers, and wine retailers in a nondiscriminatory manner. Samples provided to the liquor dealer, liquor retailer, or wine retailer must be properly invoiced by the authorized wholesaler, and the invoice shall clearly show the product being used for consumer product sampling. A primary source of supply or wholesaler may only provide products to a liquor dealer who is the proprietor of a liquor store, a liquor retailer, or a wine retailer that are lawful for the liquor dealer, liquor retailer, or wine

retailer to ordinarily sell under their scope of permit.

(2) In addition to product that is provided in accordance with subdivision (1), an authorized liquor dealer, liquor retailer, or wine retailer may purchase product to be used for consumer sampling from an authorized wholesaler.

(3) A sampling described in this subsection may only be conducted by licensed employees of the liquor dealer, liquor retailer, wine retailer, wholesaler, primary source of supply, or a company engaged by a primary source of supply or wholesaler whose primary business is to conduct sampling or tasting promotions on the permit premises and during the normal business hours of the liquor dealer, liquor retailer, or wine retailer.

(4) The following limitations apply to the number of samples a customer may sample and the size of samples provided to a customer by a liquor dealer, liquor retailer, or wine retailer:

(A) A liquor retailer or a liquor dealer who is the proprietor of a package liquor store may offer a combined total not to exceed two (2) samples of liquor, liqueurs, premixed cocktails, or cordials per customer in a day. A liqueur, premixed cocktail, or cordial sample may not exceed one-half (0.5) ounce, and a sample of liquor may not exceed four-tenths (0.4) ounce.

(B) A liquor retailer, a liquor dealer, or a wine retailer may offer wine samples not to exceed one (1) ounce.

(C) Any sample provided by a liquor dealer, liquor retailer, or wine retailer to a consumer must be provided in a nondiscriminatory manner.

(5) A liquor dealer, liquor retailer, or wine retailer may not charge a fee to a consumer for a sample.

(6) If a liquor dealer, liquor retailer, or wine retailer modifies their existing floor plan to provide for the sampling, then amended floor plans must be submitted to and approved by the Indiana state excise police.

(7) For a consumer product sampling described in this section, a primary source of supply or wholesaler may not give a liquor retailer, wine retailer, or a liquor dealer who is the proprietor of a package liquor store an aggregate amount of more than nine

(9) liters of wine, of which no more than three (3) liters may be the same product, or two and twenty-five hundredths (2.25) liters of liquor, liqueurs, premixed cocktails, or cordials per sampling event.

(Alcohol and Tobacco Commission; 905 IAC 1-5.2-9.2; filed Mar 4, 2004, 10:00 a.m.: 27 IR 2281; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

905 IAC 1-5.2-10 Newspaper cuts

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 10. Newspaper cuts, mats, or other suitable advertising materials for use in retailers' or dealers' advertisements may be furnished, given, rented, loaned, or sold by a primary source of supply or wholesaler to a retailer or dealer selling the primary source of supply's or wholesaler's alcoholic beverages. *(Alcohol and Tobacco Commission; 905 IAC 1-5.2-10; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2883; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-5.2-11 Combination packaging

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 11. A primary source of supply or wholesaler may package at its permit premises and distribute alcoholic beverages in combination with other items provided the following:

(1) The items have no significant value or benefit to the retailer or dealer other than that of having the potential of attracting purchasers and thereby promoting sales.

(2) The package, alcoholic beverage plus nonalcoholic item, is designed to be and shall be delivered intact to the consumer.

(3) The combination packaging may be distributed only after receiving prior written approval from the Indiana alcoholic beverage commission.

(Alcohol and Tobacco Commission; 905 IAC 1-5.2-11; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2883; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

905 IAC 1-5.2-12 Educational seminars

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 12. A primary source of supply or wholesaler may give or sponsor educational seminars for employees of retailers or dealers either at the primary source of supply's or wholesaler's premises or at the retailer or dealer establishment. Examples of educational seminars include the following:

- (1) Seminars dealing with the use of a retailer's or dealer's equipment.
- (2) Training seminars for employees of retailers or dealers.
- (3) Tours of a primary source of supply's or wholesaler's plant or premises.
- (4) Training seminars for employees of retailers or dealers may include tasting or sampling of alcoholic beverages by the employees of retailers or dealers. The tasting or sampling of an alcoholic beverage product is limited to one (1) ounce per employee of each alcoholic beverage product offered. The alcoholic beverage to be tasted or sampled may be provided by the primary source of supply or wholesaler or may be purchased from the retailer or dealer for no more than the listed retail price. The tasting or sampling may only be conducted at a permit premises where the consumption of alcoholic beverages is permitted under IC 7.1. Any tasting or sampling provided by a primary source of supply or wholesaler must be offered or conducted on a nondiscriminatory basis.

- (5) Reasonable hospitality, such as food and alcoholic beverages, may be offered as a part of an educational seminar.

(Alcohol and Tobacco Commission; 905 IAC 1-5.2-12; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2883; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

905 IAC 1-5.2-13 Contest promotions

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 13. (a) Contest prizes, premium offers, or like items may be offered by a primary source of supply or wholesaler directly to consumers so long as these prizes or offers are not conditioned on the purchase of a product.

(b) Contest prizes, premium offers, or like items may be offered by a primary source of supply or wholesaler to employees of retailers or dealers subject to prior written approval of the Indiana alcoholic beverage commission. *(Alcohol and Tobacco Commission; 905 IAC 1-5.2-13; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2884; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-5.2-14 Dispensing service

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 14. Cleaning of alcoholic beverage dispensing equipment may be furnished, given, or sold to retailers but must be furnished, given, or sold on a nondiscriminatory basis by a primary source of supply or wholesaler. *(Alcohol and Tobacco Commission; 905 IAC 1-5.2-14; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2884; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-5.2-15 Product management

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 15. (a) A primary source of supply or wholesaler may, on a nondiscriminatory basis, at a retailer's or dealer's permit premises, manage their retailer-assigned or dealer-assigned display space. Such product management may include, on a nondiscriminatory basis, the following:

- (1) Product rotation of alcoholic beverages on retail shelves or in displays and from storage areas to retail shelves and displays.
- (2) Storage area, retail shelf, and display stocking.
- (3) Display construction for freestanding, special, and nonpermanent floor displays.

(4) Delivery and placement of product to the retailer-designated or dealer-designated storage areas.

(b) A primary source of supply or wholesaler shall submit to the Indiana alcoholic beverage commission for its approval a product management plan, in the form as prescribed by the Indiana alcoholic beverage commission, prior to providing any services for the management of product supplied by that primary source of supply or wholesaler.

(c) The product management plan shall be submitted to the Indiana alcoholic beverage commission thirty (30) days from the effective date of this rule for existing permits and at the time of filing an application for issuing, renewing, or transferring a primary source of supply or wholesaler permit each year thereafter.

(d) The product management plan shall set forth a description of the services to be provided to holders of dealer permits and the services to be provided to holders of retailer permits. The plan shall also contain a verification that such services will be provided on a basis that does not discriminate as defined by the type of dealer or retailer permit held by a customer, and that such services shall be provided in a timely manner not to exceed five (5) working days from the time of any request by a dealer or retailer.

(e) Certain nondiscriminatory business practices may be referenced in the product management plan based on the premise that each wholesaler's customary system for product order, delivery, and placement, as well as provision of product management services, will be based on its own company policy and current practice.

(f) As used in this section, "nondiscrimination" means that the services a primary source of supply or wholesaler offers to holders of dealer permits are made available to all similarly situated dealers without regard to the type of dealer permit held, and that the services a primary source of supply or wholesaler offers to holders of retailer permits are made available to all similarly situated retailers without regard to the type of retailer permit held.

(g) Acceptance of a plan by the Indiana alcoholic beverage commission shall not constitute approval by the Indiana alcoholic beverage commission of any conditions placed on the availability of product management services. The Indiana alcoholic beverage commission retains the authority to find, in a permit violation proceeding, that any particular condition is discriminatory.

(h) No primary source of supply or wholesaler shall move the alcoholic beverages of a competing primary source of supply or wholesaler, or reset all or part of the premises of a retailer or dealer, unless the retailer or dealer sends notice, by certified mail, to all of its alcoholic beverage vendors of the date and time of the contemplated movement of alcoholic beverages or reset, no less than two (2) weeks before the contemplated date. No such certified mail notice shall be required to be sent to an alcoholic beverage vendor having executed a waiver of notice of reset, which such waiver shall be maintained by the retailer or dealer, and which such waiver shall be revocable at any time upon written notice. A primary source of supply or wholesaler, selling to that retailer or dealer, must be given an opportunity to participate in the movement of products and reset, and the resultant movement of products and reset, must not, in fact, exclude a competing primary source of supply or wholesaler from the premises. Employees of a primary source of supply or wholesaler are not to be used as employees of, or required to provide services to, the retailer or dealer on any basis, except as permitted in this rule.

(i) All primary sources of supply and wholesalers shall be prohibited from retaliating, directly or indirectly, against any retailer or dealer which in good faith reports an incident pursuant to this rule. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-15; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2884; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-16 Participation in retailer or dealer association activities

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-5

Sec. 16. A primary source of supply or wholesaler may participate in retailer or dealer association activities. A primary source of supply or wholesaler may do the following:

(1) Display its products at a convention or trade show.

(2) Rent display booth space if the rental fee is not excessive and is the same as paid by all exhibitors.

(3) Provide its own hospitality which is independent from association sponsored activities.

(4) Purchase tickets to functions and pay registration fees if the payments or fees are not excessive and are the same as paid by all exhibitors.

(5) Make payments for advertisements in programs or brochures issued by retailer or dealer associations at a convention or trade show if the total payments made are not excessive and are the same as paid by all other advertisers.

(*Alcohol and Tobacco Commission; 905 IAC 1-5.2-16; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2885; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-5.2-17 Merchandise

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-3-10-5; IC 7.1-5

Sec. 17. (a) A primary source of supply or wholesaler, who is also engaged in business as a bona fide vendor of other merchandise, may sell that merchandise to a retailer or dealer if:

(1) the merchandise is sold at its fair market value;

(2) the merchandise is itemized separately on the primary source of supply's or wholesaler's invoices and other records; and

(3) the merchandise sold conforms to IC 7.1-3-10-5.

(b) Marketing of merchandise other than an alcoholic beverage or items specifically covered by this rule by a primary source of supply or wholesaler is not subject to, or restricted by, this rule if such marketing is not combined with the marketing of alcoholic beverages.

(c) Equipment, fixtures, signs, glassware, supplies, services, and advertising specialties specifically covered in other provisions of this rule may be furnished to retailers or dealers only as provided in those other provisions of this rule. (*Alcohol and Tobacco Commission; 905 IAC 1-5.2-17; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2885; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 5.3. Trade Practices; Primary Sources of Supply and Wholesalers

905 IAC 1-5.3-1 General (Expired)

Sec. 1. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

Rule 6. Contests (Repealed)

(*Repealed by Alcohol and Tobacco Commission; Reg 8; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 618; filed Mar 16, 1979, 9:25 am: 2 IR 582*)

Rule 7. Federal Retail Tax Stamps (Repealed)

(*Repealed by Alcohol and Tobacco Commission; filed Jan 16, 1990, 4:55 p.m.: 13 IR 1065*)

Rule 7.1. Federal Tax Stamps

905 IAC 1-7.1-1 Federal retail tax stamps

Authority: IC 7.1-2-3-7

Affected: IC 7.1-2-3-8

Sec. 1. An applicant for a retail permit must show to the satisfaction of the commission or its authorized representative that he holds, or has applied for, applicable special tax stamps issued by the Treasury Department, Bureau of Alcohol, Tobacco, and Firearms. (*Alcohol and Tobacco Commission; 905 IAC 1-7.1-1; filed Jan 16, 1990, 4:55 p.m.: 13 IR 1064; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 8. Salesman's Permit

905 IAC 1-8-1 Permit required; qualifications; application for permit; fee; violations

Authority: IC 7.1-2-3-7; IC 7.1-3-18-7

Affected: IC 7.1-3-12-5; IC 7.1-3-18-8

Sec. 1. (a) No person shall act as the agent or salesman for the sale of or taking or soliciting of orders for, the sale of alcoholic beverages, irrespective of whether such sale is to be made by a seller within Indiana, or by a seller without Indiana, for delivery to a buyer within Indiana unless such person has a salesman's permit.

(b) No salesman's or agent's permit shall be issued to any person unless he is of good moral character. To receive a salesman's

permit, an applicant:

- (1) shall be a bona fide employee of an alcohol and tobacco commission (commission) wholesale, primary source, distiller, rectifier, vintner, or brewery permit holder; or
- (2) if his employer is an Internet company and the Internet company provides the commission with the names of each permittee for whom the Internet company is a salesman in conformity with the rules adopted by the commission.

Any person may make application to the commission for a salesman's permit, which application shall be in such form and shall include such terms as the commission may, from time to time, prescribe, and shall include a provision that the holder will comply with the rules and orders of the commission. The application and the permit issued pursuant thereto shall set forth the names and addresses of the person whom said salesman represents and also the name and address of the applicant. If such salesman is acting for himself as principal, the application and the permit shall so state. Additional permits may be granted the same salesman for additional principals, and a salesman may hold more than one (1) salesman's permit at any one (1) time. However, no salesman or agent of a producer permittee shall solicit or negotiate sales in any manner whatsoever at the retail level, except sales as permitted by IC 7.1-3-12-5 and 905 IAC 1-24-1.

(c) If the application is approved by the commission, it shall issue a permit for one (1) year upon payment of an annual permit fee of five dollars (\$5) for each permit.

(d) Any permit authorized by this section shall be revocable by the commission on account of any violation of any law concerning alcoholic beverages or any rule of the commission made pursuant to law.

(e) "Salesman" means either of the following:

(1) Any person who procures or seeks to procure an order, bargain, contract, or agreement for the sale, for the delivery, or for the transportation of alcoholic beverages, or who is engaged in promoting the sale of alcoholic beverages, or in promoting the business of any person engaged in the manufacturing, selling, delivery or transportation of alcoholic beverages for sale or delivery, whether the seller resides within Indiana and sells to buyers either within or without Indiana.

(2) If the permittee's employer is an Internet company and the Internet company provides the commission with the names of each permittee for whom the Internet company is a salesman in conformity with the rules adopted by the commission.

(Alcohol and Tobacco Commission; Reg 18, Sec 1; filed Mar 5, 1946, 10:30 a.m.: Rules and Regs. 1947, p. 636; filed Nov 10, 1978, 4:15 p.m.: 1 IR 1067; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1349)

905 IAC 1-8-2 Salesman's permits; form and contents

Authority: IC 7.1-2-3-7; IC 7.1-3-18-7

Affected: IC 7.1-3-18-8

Sec. 2. Salesman's permits shall be issued with the name of the applicant, his address, his permit number and the name of his employer. *(Alcohol and Tobacco Commission; Reg 18, Sec 2; filed Mar 5, 1946, 10:30 a.m.: Rules and Regs. 1947, p. 638; filed Nov 10, 1978, 4:15 p.m.: 1 IR 1068; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1349)*

905 IAC 1-8-3 Salesman's permits available for inspection

Authority: IC 7.1-2-3-7; IC 7.1-3-18-7

Affected: IC 7.1-3-18-8

Sec. 3. Salesman of alcoholic beverages must be prepared to exhibit their permits at any time while engaged in soliciting, taking orders for, or promoting the sale of, alcoholic beverages upon demand of a duly authorized representative of the commission, or upon the request of any permittee. *(Alcohol and Tobacco Commission; Reg 18, Sec 3; filed Mar 5, 1946, 10:30 a.m.: Rules and Regs. 1947, p. 638; filed Nov 10, 1978, 4:15 p.m.: 1 IR 1068; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1349)*

905 IAC 1-8-4 Permittee's duty

Authority: IC 7.1-2-3-7; IC 7.1-3-18-7

Affected: IC 7.1-3-18-8

Sec. 4. (a) No permittee shall purchase from or give an order to, or permit the solicitation of a sale of alcoholic beverages by any person who is not the holder of a salesman's permit.

(b) This section does not apply to an employee of a permittee soliciting while on the permit premises. *(Alcohol and Tobacco*

Commission; Reg 18, Sec 4; filed Mar 5, 1946, 10:30 a.m.: Rules and Regs. 1947, p. 638; filed Nov 10, 1978, 4:15 p.m.: 1 IR 1068; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1350)

905 IAC 1-8-5 Applications for permits: contents; restriction

Authority: IC 7.1-2-3-7; IC 7.1-3-18-7

Affected: IC 7.1-3-18-7

Sec. 5. All applications for such permits must bear the signature and address of the applicant and the signature, address, and business of the employer. Said application shall also contain a statement that the applicant will comply with the rules of the commission. Separate permits shall be carried for each employer represented by a salesman. In no case shall a salesman sell, or take orders for, or solicit the sale of, or promote the sale of alcoholic beverages in behalf of any person whose name is not specified in the salesman's permit as his employer. *(Alcohol and Tobacco Commission; Reg 18, Sec 5; filed Mar 5, 1946, 10:30 a.m.: Rules and Regs. 1947, p. 639; filed Nov 10, 1978, 4:15 p.m.: 1 IR 1068; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1350)*

905 IAC 1-8-6 Change of employment; surrender of permit; notification

Authority: IC 7.1-2-3-7; IC 7.1-3-18-7

Affected: IC 7.1-3-18-8

Sec. 6. If a licensed salesman changes employment to another permittee, he shall notify the commission within fifteen (15) days. Failure to notify the commission within the specified time shall make the salesman ineligible for the issuance of any kind of alcoholic beverage permit for a definite period to be determined by the commission. *(Alcohol and Tobacco Commission; Reg 18, Sec 6; filed Mar 5, 1946, 10:30 a.m.: Rules and Regs. 1947, p. 639; filed Nov 10, 1978, 4:15 p.m.: 1 IR 1068; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1350)*

905 IAC 1-8-7 Change of address; notice

Authority: IC 7.1-2-3-7; IC 7.1-3-18-7

Affected: IC 7.1-3-18-8

Sec. 7. Change of Address—If the holder of a salesman's permit changes his address from that noted on his application, he shall notify the Commission within fifteen (15) days. Failure to notify the commission of a change of address shall make the salesman's permit subject to revocation. *(Alcohol and Tobacco Commission; Reg 18, Sec 7; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 639; filed Nov 10, 1978, 4:15 pm: 1 IR 1068; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1350; errata, 25 IR 1906)*

Rule 9. Sanitation

905 IAC 1-9-1 Compliance with state board of health rules (Expired)

Sec. 1. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

905 IAC 1-9-2 Restrooms (Expired)

Sec. 2. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

905 IAC 1-9-3 Cleaning beer coils, glasses, and utensils (Expired)

Sec. 3. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

905 IAC 1-9-4 Record of cleaning coils (Expired)

Sec. 4. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

905 IAC 1-9-5 Penalties

Authority: IC 7.1-2-3-7; IC 7.1-2-3-14
Affected: IC 7.1-2-3-14

Sec. 5. Penalties. Permittees who fail to keep their premises in accordance with the rules of the Bureau of Food and Drugs of the Indiana State Board of Health are liable to penalties that may be imposed under the public health laws, and also shall be subject to suspension or revocation of their permit. (*Alcohol and Tobacco Commission; Reg 21, Sec 5; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 643; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 10. Retail Closing Hours**905 IAC 1-10-1 Removal of containers after closing hours**

Authority: IC 7.1-2-3-7; IC 7.1-2-3-14
Affected: IC 7.1-2-4-21

Sec. 1. No retailer permittee shall have or allow any container whatsoever, of or for alcoholic beverages, anywhere on the licensed premises open to the public of said permittee (including the counter and/or bar, but not the back bar) for longer than thirty minutes after the legal hour when the sale, dispensing, giving away or otherwise disposing of alcoholic beverages shall cease as provided by the Alcoholic Beverages Law of the State of Indiana. (*Alcohol and Tobacco Commission; Reg 22, Sec 1; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 643; filed Jul 8, 1954, 10:00 am: Rules and Regs. 1955, p. 2; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-10-2 Time for consumption of alcoholic beverages after retail closing hours

Authority: IC 7.1-2-3-7; IC 7.1-2-3-14
Affected: IC 7.1-2-4-21

Sec. 2. No retailer permittee shall allow the consumption of alcoholic beverages by any person whatsoever on any part of the licensed premises of the permittee for longer than thirty (30) minutes after the legal hour when the sale, dispensing, giving away, or otherwise disposing of alcoholic beverages shall cease as provided by the alcoholic beverages law of the state of Indiana. (*Alcohol and Tobacco Commission; Reg 22, Sec 2; filed Mar 5, 1946, 10:30 a.m.: Rules and Regs. 1947, p. 644; filed Jul 8, 1954, 10:00 a.m.: Rules and Regs. 1955, p. 2; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2887; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 11. Temporary Malt Beverage Permit Fees (Repealed)

(*Repealed by Alcohol and Tobacco Commission; filed May 16, 1985, 3:51 pm: 8 IR 1308*)

Rule 11.1. Temporary Beer/Wine Permit Fees**905 IAC 1-11.1-1 Temporary beer and wine permits**

Authority: IC 7.1-2-3-7; IC 7.1-3-6-1
Affected: IC 7.1-2-3-7; IC 7.1-3-6-1

Sec. 1. The fee for a temporary beer and wine permit is fifty dollars (\$50) per day. No rain checks shall be given on any of the above events. (*Alcohol and Tobacco Commission; 905 IAC 1-11.1-1; filed May 16, 1985, 3:51 p.m.: 8 IR 1308; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1350; filed Mar 4, 2004, 10:00 a.m.: 27 IR 2282*)

905 IAC 1-11.1-2 Qualification requirements

Authority: IC 7.1-2-3-7; IC 7.1-3-6-1
Affected: IC 7.1-2-3-7; IC 7.1-3-6-1

Sec. 2. In order to qualify for a temporary permit, the following guidelines must be met:

- (1) There must be a well-defined premises, that is, a building, tent, enclosure, or fenced-in or designated area.
- (2) The applicant must submit a floor plan or diagram (eight and one-half (8½) 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, NO carry-in privileges, and NO spirituous beverages allowed.
- (4) Each applicant must designate an individual responsible for the event, and such person must sign the application.
- (5) ANY and ALL persons dispensing or 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:

(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 alcoholic beverage 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.

(Alcohol and Tobacco Commission; 905 IAC 1-11.1-2; filed May 16, 1985, 3:51 p.m.: 8 IR 1308; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; filed Mar 4, 2004, 10:00 a.m.: 27 IR 2282)

Rule 12. Managers', Bartenders', Waiters' Permits (Repealed)

(Repealed by Alcohol and Tobacco Commission; Reg 25; filed Mar 16, 1979, 9:25 am: 2 IR 703; errata, 7 IR 392)

Rule 12.1. Employee Permits

905 IAC 1-12.1-1 Required permit (Expired)

Sec. 1. *(Expired under IC 4-22-2.5, effective January 1, 2002)*

905 IAC 1-12.1-2 Examination of permit by employer; display

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18; IC 7.1-5-7-12; IC 7.1-5-7-13

Sec. 2. No retailer authorized to sell alcoholic beverages by the drink (except dining car and boat permittees) or package liquor store permittee, shall hire any person unless he has knowledge that such person is the holder of an employee's permit, except as permitted in IC 7.1-5-7-12 and 7.1-5-7-13. Permittees upon the employment of an employee shall examine the employee's permit card and record the name, address, permit number and expiration date in a permanent record. The employer shall be prepared to exhibit said record at any time upon demand of a duly authorized representative of the Commission, or other person charged with enforcement of the Alcoholic Beverage Laws. The permit shall be retained by the employee and shall be exhibited upon demand of a duly authorized representative of the Commission or other person charged with enforcement of the Alcoholic Beverage Laws. *(Alcohol and Tobacco Commission; Reg 25, Sec 2; filed Mar 16, 1979, 9:25 am: 2 IR 583; filed Mar 16, 1979, 9:25 am: 2 IR 703; errata, 2 IR 705; filed Sep 22, 1982, 2:07 pm: 5 IR 2374; errata, 7 IR 392; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-12.1-3 Compliance with state board of health rules

Authority: IC 7.1-2-3-7

Affected: IC 7.1-2-3-14

Sec. 3. All holders of employee's permits and their employers shall comply with the health requirements provided for by the State Board of Health. (*Alcohol and Tobacco Commission; Reg 25, Sec 3; filed Mar 16, 1979, 9:25 am: 2 IR 583; filed Mar 16, 1979, 9:25 am: 2 IR 703; errata, 2 IR 705; errata, 7 IR 392; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 12.5. Server Permittees; Certification

905 IAC 1-12.5-1 Definitions

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

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

(b) "Approved trainer" refers to a person who:

- (1) demonstrates thorough knowledge of the curriculum;
- (2) demonstrates the ability to instruct others; and
- (3) is approved by the Indiana alcoholic beverage commission.

(c) "Employee" refers to a person who sells, dispenses, or provides alcoholic beverages, either by the drink or for carry out.

(d) "Server training program" refers to a program given by an Indiana alcoholic beverage commission approved trainer to employees with regard to:

- (1) recognizing an intoxicated patron;
- (2) recognizing a minor;
- (3) recognizing false identification;
- (4) dealing with a belligerent person; and
- (5) providing an alternative to an alcoholic beverage.

(*Alcohol and Tobacco Commission; 905 IAC 1-12.5-1; filed Dec 18, 2000, 9:52 a.m.: 24 IR 1354; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-12.5-2 Authority of the commission

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 2. The Indiana alcoholic beverage commission may certify a server training program presented to a permittee. (*Alcohol and Tobacco Commission; 905 IAC 1-12.5-2; filed Dec 18, 2000, 9:52 a.m.: 24 IR 1354; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-12.5-3 Training included

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 3. A server training program is given to an employee and includes, but is not limited to, the following:

- (1) Recognizing false identification.
- (2) Recognizing an intoxicated person.
- (3) Criminal and civil liability.
- (4) Tobacco laws.
- (5) Selling alcoholic beverages responsibly.

(*Alcohol and Tobacco Commission; 905 IAC 1-12.5-3; filed Dec 18, 2000, 9:52 a.m.: 24 IR 1354; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-12.5-4 Training criteria

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 4. (a) To qualify as a certified server training program, the following criteria must be met:

- (1) The training must include either a video, display cards, overheads, or slides.
- (2) The training must provide for questions from the students.
- (3) The training must include handouts that the employees are allowed to keep.
- (4) The training must include an examination that covers the following topics:
 - (A) Monitoring a patron's behavior.
 - (B) Recognizing an intoxicated patron.
 - (C) Recognizing an underage patron.
 - (D) Checking identification.
 - (E) Recognizing false or altered identification.
 - (F) Providing alternatives to alcoholic beverages.
 - (G) Problem solving in dealing with intoxicated or belligerent patrons.
 - (H) Indiana law and rules pertaining to alcoholic beverages.

(5) Successful completion of an examination that covers all topic areas in section 3 of this rule and is quantifiable.

(b) An applicant must apply on a form prescribed by the Indiana alcoholic beverage commission and present his or her program to a representative of the Indiana alcoholic beverage commission.

(c) The Indiana alcoholic beverage commission must approve any changes in the certified server training program, including changes in trainers.

(d) Nothing in this rule prohibits an employee from taking a noncertified server training program.

(e) All training and certification records shall be subject to review and inspection by the Indiana alcoholic beverage commission. (*Alcohol and Tobacco Commission; 905 IAC 1-12.5-4; filed Dec 18, 2000, 9:52 a.m.: 24 IR 1354; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-12.5-5 Approved trainer responsibilities

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 5. (a) The commission shall create a seal that may be sold at cost to a certified trainer program and assign an approved trainer number accordingly.

(b) Upon successful completion of the server training program, the approved trainer shall be allowed to stamp the back of an employee's permit indicating the date of the program, the trainer's name, and the trainer's number.

(c) An approved trainer shall keep records of all training conducted on a form approved by the Indiana alcoholic beverage commission and report the training on a regular basis or as requested.

(d) The Indiana alcoholic beverage commission prosecutor may take into consideration the successful completion of a certified training program when prosecuting an employer or employee for a violation of an Indiana alcoholic beverage commission law or rule. (*Alcohol and Tobacco Commission; 905 IAC 1-12.5-5; filed Dec 18, 2000, 9:52 a.m.: 24 IR 1355; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 13. Clubs

905 IAC 1-13-1 Definition of member

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-6

Sec. 1. The term "member of a club" shall be construed to mean a person who, whether as a charter member, or admitted in accordance with the articles of incorporation and/or constitution and by-laws of the corporation or association, has become a member thereof, and, who maintains said membership by the payment of dues in the manner established by the articles of incorporation and/or constitution and by-laws.

The term shall also include a visiting member of another post, branch, lodge or chapter of a national or international association or club; or a member of an affiliated organization or association auxiliary to the club permittee. (*Alcohol and Tobacco Commission; Reg 27, Sec 1; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 646; filed Feb 14, 1950, 2:37 pm: Rules and Regs. 1950, p.*

29; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

905 IAC 1-13-2 Membership lists included in club permit applications

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-1

Sec. 2. An application for a club permit shall include a membership list with the names and addresses of each member of the club and of any affiliated organization auxiliary to the club who are permitted to use the facilities licensed by the requested permit.

Said membership lists shall be amended and revised by the permittee, showing cancellations of membership and new members, every six months. (*Alcohol and Tobacco Commission; Reg 27, Sec 2; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 646; filed Feb 14, 1950, 2:37 pm: Rules and Regs. 1950, p. 29; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-13-3 Service to nonmembers

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-1

Sec. 3. (a) Club permits shall be granted for consumption of alcoholic beverages on the permit premises only. No holder of a club permit shall sell or give alcoholic beverages to any person not a member of the club and unless said person's name and address is included in the membership lists filed with the commission, as amended and revised by the last report to the commission, except said person be a new member of less than six (6) months' membership.

(b) Club permittees shall have the privilege, under this section, of inviting guests on one (1) night only of each month of the year, said night designated as guest night in the records of the club permittee pursuant to section 6 of this rule. (*Alcohol and Tobacco Commission; Reg 27, Sec 3; filed Mar 5, 1946, 10:30 a.m.: Rules and Regs. 1947, p. 647; filed Feb 14, 1950, 2:37 p.m.: Rules and Regs. 1950, p. 29; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; filed Mar 4, 2004, 10:00 a.m.: 27 IR 2283; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-13-4 Contract with managers and bartenders

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-1

Sec. 4. No club permittee shall engage or hire a manager or bartender on a commission basis. Said manager or bartender must actually be employed by a written salary agreement and a signed copy of the same kept on file with the Commission. If a new manager or bartender is employed by the permittee the salary agreement shall be on file with the Commission within eight (8) days after employment. (*Alcohol and Tobacco Commission; Reg 27, Sec 4; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 647; filed Feb 14, 1950, 2:37 pm: Rules and Regs. 1950, p. 30; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-13-5 Use of premises restricted to permittee

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-1

Sec. 5. No holder of a club permit shall lease or rent its bar facilities to an outside organization or group of persons nor permit an outside organization or group of persons, who may or may not have leased or rented the permittee's rooms and facilities, to use its bar or to furnish, sell, dispense or give away alcoholic beverages on the licensed premises. (*Alcohol and Tobacco Commission; Reg 27, Sec 5; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 647; filed Feb 14, 1950, 2:37 pm: Rules and Regs. 1950, p. 30; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-13-6 Requirement to publicly post operating dates

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-2.5; IC 7.1-3-20-8.6

Sec. 6. No holder of a club permit may operate under the provisions of IC 7.1-3-20-2.5 (Sunday sales) or IC 7.1-3-20-8.6 (guest nights) without the notification and approval in writing of the local state excise police district office prior to operating. The notification and written approval sent to and received from the state excise police district office must be publicly posted in a conspicuous place on the premises prior to operating under this section. A holder of a club permit who:

(1) operates under this section on a date other than that approved and posted; or

(2) fails to post operating dates as required under this section;

may be fined in an amount not to exceed one thousand dollars (\$1,000) for each day of operation in violation of this section or have the permit at issue suspended or revoked. (*Alcohol and Tobacco Commission; 905 IAC 1-13-6; filed Mar 4, 2004, 10:00 a.m.: 27 IR 2283; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 14. Local Board Member Removal Procedure

905 IAC 1-14-1 Statement of charges

Authority: IC 7.1-2-3-7; IC 7.1-2-4-21

Affected: IC 7.1-2-4-21

Sec. 1. To remove a member of a local board for good cause, including negligence in the performance of duties, the Prosecutor or any member of the Commission shall prepare and sign a statement of charges against the local board member whose removal is contemplated, and file same with the Commission. (*Alcohol and Tobacco Commission; Reg 29, Sec 1; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 648; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-14-2 Time and place of hearing; notice

Authority: IC 7.1-2-3-7; IC 7.1-2-4-21

Affected: IC 7.1-2-4-21

Sec. 2. The time and place for a hearing on the statement of charges shall be set by the Chairman of the Commission. Thereafter, the local board member named in the statement of charges shall be notified to appear at the time and place set and show cause why he should not be removed. Said notice to appear and a copy of the statement of charges shall be served on the local board member charged by registered mail or by personal service by any member of the Excise State Police or deputy of the Commission at least five days before the day set for said appearance. (*Alcohol and Tobacco Commission; Reg 29, Sec 2; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 648; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-14-3 Hearing procedure

Authority: IC 7.1-2-3-7; IC 7.1-2-4-21

Affected: IC 7.1-2-4-21

Sec. 3. The hearing shall be before the Commission as a whole with the Chairman presiding. Except as herein stated, Regulation No. 2 [*905 IAC 1-2 was repealed filed Feb 20, 1991, 5:05 p.m.: 14 IR 1454.*], Hearing Procedure, shall be in force at said hearing. (*Alcohol and Tobacco Commission; Reg 29, Sec 3; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 648; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-14-4 Copy of removal order to appointing authority

Authority: IC 7.1-2-3-7; IC 7.1-2-4-21

Affected: IC 7.1-2-4-21

Sec. 4. A copy of the order of the Commission to remove a local board member shall be sent to the person or body who appointed the member removed. (*Alcohol and Tobacco Commission; Reg 29, Sec 4; filed Mar 5, 1946, 10:30 am: Rules and Regs. 1947, p. 648; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 15. Minors and Servicemen (Repealed)

(Repealed by Alcohol and Tobacco Commission; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1454)

Rule 15.1. Separation of Family Room from Barroom (Repealed)

(Repealed by Alcohol and Tobacco Commission; filed Sep 5, 1996, 11:00 a.m.: 20 IR 20)

Rule 15.2. Minors

905 IAC 1-15.2-1 Retail permit premises

Authority: IC 7.1-2-3-7

Affected: IC 7.1-5-7-11; IC 7.1-5-7-13

Sec. 1. Except as provided in IC 7.1-5-7-11, IC 7.1-5-7-13, and sections 2 through 3 of this rule, minors are not allowed on retail permit premises.

(b) It is unlawful for a permittee to allow a minor on his permit premises except as provided in IC 7.1-5-7-11, IC 7.1-5-7-13, and subsections 2 and 3 of this rule [sections 2 through 3 of this rule]. *(Alcohol and Tobacco Commission; 905 IAC 1-15.2-1; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1444; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-15.2-2 Exceptions

Authority: IC 7.1-2-3-7

Affected: IC 7.1-5

Sec. 2. Minors are permitted in the following places where alcoholic beverages are sold:

- (1) A bona fide not-for-profit club, civic center, convention center, sports arena, bowling alley.
- (2) Drugstores and grocery stores.
- (3) Boats.
- (4) Dining cars, pullman cars, club cars, and passenger airplane.

(5) A bona fide dance hall that is located on a lake or in a park adjacent to a lake located in whole or in part within this state where such dance hall has police supervision and in which only alcoholic malt beverages are sold. A dance hall on a lake or in a park is adjacent to a lake if it is within a part of the immediate resort area at a lake. A park will be construed to mean a public park owned or operated by the state of Indiana or any political subdivision thereof.

(Alcohol and Tobacco Commission; 905 IAC 1-15.2-2; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1444; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

905 IAC 1-15.2-3 Loitering

Authority: IC 7.1-2-3-7

Affected: IC 7.1-5

Sec. 3. A minor in that part of a restaurant permit premises that has no bar shall be considered to be loitering unless he or she:

- (1) is accompanied by his or her parent, legal guardian, or family member who is twenty-one (21) years of age or older;
- (2) has placed an order for food and said order has not been served;
- (3) is eating; or
- (4) is viewing or listening to lawful nonparticipatory entertainment provided by the establishment; provided, however, that said entertainment may not consist solely of music, whether live or recorded.

(Alcohol and Tobacco Commission; 905 IAC 1-15.2-3; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1444; filed Jun 21, 2001, 2:30 p.m.: 24 IR 3651; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941)

Rule 15.3. Minors as Employees

905 IAC 1-15.3-1 Employees between eighteen (18) and twenty-one (21) years of age

Authority: IC 7.1-2-3-7

Affected: IC 7.1-5

Sec. 1. A minor eighteen (18) years of age or older employed at a licensed premises may ring up a sale of alcoholic beverages in the course of his employment, provided that at the time the sale is rung up, there is at least one (1) other employee on the licensed premises who is:

- (1) twenty-one (21) years of age or older; and
- (2) responsible for supervising said minor.

(Alcohol and Tobacco Commission; 905 IAC 1-15.3-1; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1444; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

Rule 16. Dancing (Repealed)

(Repealed by Alcohol and Tobacco Commission; Reg 31; filed Mar 16, 1979, 10:30 am: 2 IR 584)

Rule 16.1. Dancing

905 IAC 1-16.1-1 Dancing permitted

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-9-9

Sec. 1. It is permissible for permittees to allow dancing upon their permit premise without the necessity of first obtaining a permit or other authorization from the alcohol and tobacco commission (commission). All floor plans must be approved by the commission. *(Alcohol and Tobacco Commission; Reg 31, Sec 1; filed Mar 16, 1979, 9:25 a.m.: 2 IR 704; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1350)*

905 IAC 1-16.1-2 Restrictions on exhibition and professional dancing (Repealed)

Sec. 2. *(Repealed by Alcohol and Tobacco Commission; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1454)*

905 IAC 1-16.1-3 Nudity in exhibition or professional dancing; restrictions

Authority: IC 7.1-2-3-7

Affected: IC 7.1; IC 35

Sec. 3. (a) For the purpose of this rule, the following definitions apply:

- (1) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernible turgid state.
- (2) "Licensed premises" means a building or part of a building in which alcoholic beverages are authorized by a permit to be kept, manufactured, or sold.
- (3) "Permittee" means and includes:

- (A) a person who is the holder of a valid permit under IC 7.1; and

- (B) an agent, servant, or employee of, or other person acting on behalf of a permittee whenever a permittee is prohibited from doing a certain act under IC 7.1 or this title.

(b) It is unlawful for a permittee to knowingly allow a person to engage in sexual intercourse, deviate sexual conduct, as defined in IC 35, to appear in a state of nudity or to fondle the genitals of himself or another person while on the permittee's licensed premises. *(Alcohol and Tobacco Commission; 905 IAC 1-16.1-3; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1444; errata filed Apr 3, 1991, 4:07 p.m.: 14 IR 1627; readopted filed Nov 26, 2001, 4:27 p.m.: 25 IR 1347; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

Rule 17. Transfers

905 IAC 1-17-1 Fee (Expired)

Sec. 1. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

905 IAC 1-17-2 Applicability of quota rule

Authority: IC 7.1-2-3-7; IC 7.1-3-24-3

Affected: IC 7.1-3-22-3; IC 7.1-3-24-3

Sec. 2. Quota Rule. In all transfers of three way permits in the same city or town the quota rule (Subsection (2), Section 1 [*Repealed; see IC 7.1-3-22-3*], Chapter 30, Acts of 1939) will not apply against the transfer. The transferred permit will remain and be counted in the quota as an existing permit. (*Alcohol and Tobacco Commission; Reg 33, Sec 2; filed Jun 27, 1947, 3:00 pm: Rules and Regs. 1948, p. 56; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-17-3 Applicability of residential rule

Authority: IC 7.1-2-3-7; IC 7.1-3-24-3

Affected: IC 7.1-1-3-38; IC 7.1-3-19-13; IC 7.1-3-24-2

Sec. 3. Residential Rule. The residential area rule (Sec. 4 Chapter 148, Acts of 1947 [*Repealed; IC 7.1-3-19-13–7.1-3-19-16*]), is applicable to all transfers from place to place of retail permits to sell alcoholic beverages by the drink or for package stores but not applicable in person to person transfers. (*Alcohol and Tobacco Commission; Reg 33, Sec 3; filed Jun 27, 1947, 3:00 pm: Rules and Regs. 1948, p. 56; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-17-4 Approval; restrictions

Authority: IC 7.1-2-3-7; IC 7.1-3-24-1

Affected: IC 7.1-3-24-1

Sec. 4. Clearance. (a) All transfers must be cleared through the office of the Chief of Excise Police and of the Prosecutor for the Commission before being granted.

(b) Transfers will not be granted where the permittee is or has been cited for hearing for violation of the law, rules or regulations, until the citation is finally disposed of by the Commission.

(c) A permittee under order of suspension or revocation will not be allowed to transfer the permit except by special order of the Commission. (*Alcohol and Tobacco Commission; Reg 33, Sec 4; filed Jun 27, 1947, 3:00 pm: Rules and Regs. 1948, p. 56; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 18. New Permits in a Residential District**905 IAC 1-18-1 Determination of residential district**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-1-3-38; IC 7.1-3-19-13

Sec. 1. Whereas, I.C. 7.1-1-3-38, defining a "residential district" designates "an area composed of all territory within a radius of five hundred (500) feet of the premises described in the application", but does not provide the method of measuring the area; the Commission adopts the following rules for such measurements to be applied as provided in the aforesaid statute, to-wit: A point directly in the center of the part of the building, room, or premises proposed to be licensed, shall be the "center", and a full circle within a radius of five hundred (500) feet shall be measured therefrom. The areas therein shall compose the territory considered in determining whether same is a "residential district" or not. (*Alcohol and Tobacco Commission; Reg 34, Sec 1; filed Jun 27, 1947, 3:00 pm: Rules and Regs. 1948, p. 56; filed Nov 10, 1978, 4:15 pm: 1 IR 1069; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-18-2 Determination of character of area

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-19-13

Sec. 2. In the consideration of all new applications, except renewals of existing permits, for retail permits to sell by the drink and liquor dealer permits, except drug stores, local boards will determine and designate in their report (Form 219) on the application whether the premises being considered is in either a residential, business and commercial, or doubtful areas.

To assist in this determination, the local board or the Commission may require the applicant to submit a plat of the area drawn to scale showing the use by the occupants and certified to by a person competent and qualified to prepare the same. (*Alcohol and Tobacco Commission; Reg 34, Sec 2; filed Jun 27, 1947, 3:00 pm: Rules and Regs. 1948, p. 57; filed Nov 10, 1978, 4:15 pm: 1 IR 1069; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-18-3 Classification of land uses

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-19-13

Sec. 3. In determining the use of the land within the area under consideration, vacant areas not in use shall not be counted as either residential or commercial, a boarding house, tourist court or hotel will be considered a commercial use, area which has as its primary use the production of revenue by farming, but not that part occupied by a farm residence in use, will be counted as business, area adjacent to businesses used as a parking area will be counted as business, area occupied and used as a residence or apartment house and also partially used for business, commercial or manufacturing purposes shall be counted and figured on a percentage basis in accordance with the use of the entire building or premises. (*Alcohol and Tobacco Commission; Reg 34, Sec 3; filed Jun 27, 1947, 3:00 pm: Rules and Regs. 1948, p. 57; filed Nov 10, 1978, 4:15 pm: 1 IR 1069; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-18-4 Lots partially within measured circle

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-19-13

Sec. 4. Where the measured circle includes a portion of a lot, the part in the area being vacant of any building thereon and not in use as heretofore provided, such area will not be counted either way, even though there is a residence or business located on the remainder of the lot outside of the circle. (*Alcohol and Tobacco Commission; Reg 34, Sec 4; filed Jun 27, 1947, 3:00 pm: Rules and Regs. 1948, p. 57; filed Nov 10, 1978, 4:15 pm: 1 IR 1069; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 19. Minors in Barroom; Enforcement (Repealed)

(*Repealed by Alcohol and Tobacco Commission; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1454*)

Rule 20. Food Requirements**905 IAC 1-20-1 Minimum menu requirements**

Authority: IC 7.1-2-3-7; IC 7.1-3-24-1

Affected: IC 7.1-3-20-9

Sec. 1. Under the qualification requiring that a retail permittee to sell alcoholic beverages by the drink for consumption on the premises must be the proprietor of a restaurant located, and being operated, on the premises described in the application of the permittee; and under the definition of a "restaurant" as "any establishment provided with special space and accommodations where, in consideration of payment, food without lodging is habitually furnished to travelers,"—and "wherein at least twenty-five (25) persons may be served at one time;" the Commission will, hereafter, require that the retail permittee be prepared to serve a food menu to consist of not less than the following:

Hot soups.

Hot sandwiches.
Coffee and milk.
Soft drinks.

Hereafter, retail permittees will be equipped and prepared to serve the foregoing foods or more in a sanitary manner as required by law. (*Alcohol and Tobacco Commission; Reg 36; filed Jun 27, 1947, 3:00 pm; Rules and Regs. 1948, p. 58; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 21. Credit Sales by Spirituous and Vinous Wholesale Permittees

905 IAC 1-21-1 Restrictions on credit sales and sales to delinquent debtor

Authority: IC 7.1-2-3-7

Affected: IC 7.1-5-10-12

Sec. 1. Every wholesale permittee selling alcoholic spirituous and vinous beverages at wholesale may extend credit on such beverages sold to licensees or permittees authorized to purchase the same for a period of fifteen (15) days at date of invoice, date of invoice included, and further that when such fifteen (15) day period without payment in full has passed then no wholesaler shall sell to any such permittee except for Cash on Delivery, provided further that such permittee be given an extended fifteen (15) day grace period, Cash on Delivery, in which to fully liquidate any indebtedness. After the expiration of the extended fifteen (15) days grace period, Cash on Delivery, if any indebtedness has not been fully liquidated then no wholesaler shall sell to such permittee for cash, or Cash on Delivery until all delinquent items have been paid. (*Alcohol and Tobacco Commission; Reg 37; filed Oct 22, 1953, 2:05 pm; Rules and Regs. 1954, p. 2; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 22. Permit Qualification (Repealed)

(*Repealed by Alcohol and Tobacco Commission; filed Jul 1, 1985, 3:52 pm: 8 IR 1433*)

Rule 23. Registration of Brands, Labels and Trademarks

905 IAC 1-23-1 Registration of brands, labels, and trademarks

Authority: IC 7.1-2-3-7

Affected: IC 7.1-2-3-17

Sec. 1. All producers (brewers, distillers, rectifiers, vintners and small wineries) and importers, before shipping or causing to be shipped alcoholic beverages in Indiana, shall make available to the alcohol and tobacco commission (commission) upon request all brands, labels, and trademarks used or proposed to be used by said producer or importer in selling or advertising for sale alcoholic beverage in Indiana. Labels will be approved by the commission if they have been approved by the federal Bureau of Alcohol, Tobacco, and Firearms. (*Alcohol and Tobacco Commission; Reg 42; filed Oct 18, 1976, 9:20 a.m.: Rules and Regs. 1977, p. 106; filed Mar 16, 1979, 9:25 a.m.: 2 IR 582; filed Mar 16, 1979, 9:25 a.m.: 2 IR 702; errata, 2 IR 705; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1351*)

Rule 24. Sale of Alcoholic Beverage by Indiana Brewers Directly to Beer Dealers and Beer Retailers (Repealed)

(*Repealed by Alcohol and Tobacco Commission; filed Jul 25, 1994, 9:30 a.m.: 17 IR 2891*)

Rule 25. Sale and Handling of Alcoholic Beverages Within Bowling Alleys

905 IAC 1-25-1 Restriction on ownership of permit

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-9; IC 7.1-5-7-11

Sec. 1. Ownership of the alcoholic beverage permit must be in the name of either the owner of the building in which the restaurant and bowling alley are located or the proprietor of the bowling establishment. (*Alcohol and Tobacco Commission; Reg*

32,Sec 1; filed Nov 10, 1978, 4:15 pm: 1 IR 1068; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941)

905 IAC 1-25-2 Location of bowling alley on premises

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-9; IC 7.1-5-7-11

Sec. 2. All bowling alleys, in order to be considered part of the permit premises, must be immediately adjacent and contiguous to the restaurant owned or operated by the permittee as provided by the Alcoholic Beverage Act [IC 7.1]. If said restaurant and bowling alley are in the same building, they must be separated by a simple wall. (*Alcohol and Tobacco Commission; Reg 32,Sec 2; filed Nov 10, 1978, 4:15 pm: 1 IR 1069; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941*)

905 IAC 1-25-3 Approval of floor plan

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-9; IC 7.1-5-7-11

Sec. 3. The concourse area (i.e. bowling lanes) of the bowling establishment wherein alcoholic beverages may be served must be included in the floor plans of the restaurant and sent to the Alcoholic Beverage Commission for its approval. (*Alcohol and Tobacco Commission; Reg 32,Sec 3; filed Nov 10, 1978, 4:15 pm: 1 IR 1069; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941*)

905 IAC 1-25-4 Dispensing area

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-9; IC 7.1-5-7-11

Sec. 4. Dispensing of alcoholic beverages will take place only in the lounge or barroom area of the restaurant. (*Alcohol and Tobacco Commission; Reg 32,Sec 4; filed Nov 10, 1978, 4:15 pm: 1 IR 1069; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941*)

905 IAC 1-25-5 Dispensing from service window

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-9; IC 7.1-5-7-11

Sec. 5. EXCEPTION: There may be constructed one (1) service window no larger than thirty (30) inches in height and sixty (60) inches in width. The bottom of said window shall not be less than forty-eight (48) inches from the floor. Said window shall only function during legal hours of operation and be maintained solely by authorized personnel.

(a) The service window must be located at the end of the bar where it can be operated by a regular bartender or in a food service area in the kitchen portion of the restaurant.

(b) The service window may be accessible to both customers and waitresses or waiters.

(*Alcohol and Tobacco Commission; Reg 32,Sec 5; filed Nov 10, 1978, 4:15 pm: 1 IR 1069; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941*)

905 IAC 1-25-6 Passage between alleys and bar

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-9; IC 7.1-5-7-11

Sec. 6. There may be an entrance door directly into the bowling concourse from the barroom or lodge from which service can be obtained by either customers going into the bar or by waitresses or waiters providing service to the concourse area. (*Alcohol and Tobacco Commission; Reg 32,Sec 6; filed Nov 10, 1978, 4:15 pm: 1 IR 1069; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941*)

Rule 26. Permit Renewal; Letter of Extension

905 IAC 1-26-1 Permittee; requirements necessary to file letter of extension

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-3.1

Sec. 1. In order for an applicant to be eligible for a letter of extension, pursuant to IC 7.1-3-1-3.1, the applicant must:

(1) complete and submit the letter of extension application form and any necessary fee;

(2) have filed a valid renewal or transfer application along with the appropriate fee;

(3) pay outstanding taxes due the state of Indiana.

(Alcohol and Tobacco Commission; 905 IAC 1-26-1; filed Aug 9, 1983, 3:32 pm: 6 IR 1748; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

905 IAC 1-26-2 Need for letter of extension

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-3.1; IC 7.1-4-1-43

Sec. 2. For purposes of IC 7.1-4-1-43, it shall be presumed that the need for a letter of extension is occasioned by an act or omission of the permittee when a permittee files an application for renewal of a permit with insufficient time for the commission to process the application prior to the expiration of the permit. *(Alcohol and Tobacco Commission; 905 IAC 1-26-2; filed Aug 9, 1983, 3:32 p.m.: 6 IR 1748; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2887; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

Rule 27. Permittee Qualifications and Public Nuisance

905 IAC 1-27-1 Determination of reputation and character

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-19-8; IC 7.1-3-19-10; IC 35-41-1-1

Sec. 1. In determining an applicant's or permittee's eligibility to hold, renew or continue to hold a permit, particularly whether the applicant is of good moral character and of good repute, the Commission shall consider whether acts or conduct of the applicant, permittee or his employees or agents, would constitute action or conduct prohibited by the Indiana Penal Code (I.C. 35-41-1-1 et seq.), or a criminal offense under the laws of the United States. The Commission may also consider the esteem in which the person is held by members of his community, and such assessment of his character as may reasonably be inferred from police reports, evidence admitted in court and commission proceedings, information contained in public records and other sources of information as permitted by I.C. 7.1-3-19-8 and I.C. 7.1-3-19-10. *(Alcohol and Tobacco Commission; Reg 43, Sec 1; filed Mar 16, 1979, 9:25 am: 2 IR 584; filed Mar 16, 1979, 9:25 am: 2 IR 703; errata, 2 IR 705; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-27-2 Public nuisance

Authority: IC 7.1-2-3-7

Affected: IC 7.1-2-6; IC 35-41-1-1

Sec. 2. If a licensed premises becomes a public nuisance, or the licensed premises becomes the scene of acts or conduct which are prohibited by the Indiana Penal Code (IC 35-41-1-1 et seq.), or by the criminal laws of the United States, the premises shall be subject to the sanctions specified in IC 7.1-2-6-1 through IC 7.1-2-6-14. *(Alcohol and Tobacco Commission; Reg 43, Sec 2; filed Mar 16, 1979, 9:25 a.m.: 2 IR 584; filed Mar 16, 1979, 9:25 a.m.: 2 IR 703; errata, 2 IR 705; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1351; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-27-3 Violations; burden of proof; sanctions

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-19-1; IC 35-41-1-1

Sec. 3. In its consideration, the commission is not required to determine beyond a reasonable doubt that the act or conduct in issue would constitute an act or conduct prohibited by the Indiana Penal Code (I.C. 35-41-1-1, et seq.) or a criminal offense under the laws of the United States.

The Commission may refuse to grant or renew a permit, may revoke or suspend a permit, or may fine a permittee for a violation of this regulation. (*Alcohol and Tobacco Commission; Reg 43, Sec 3; filed Mar 16, 1979, 9:25 am: 2 IR 584; filed Mar 16, 1979, 9:25 am: 2 IR 704; errata, 2 IR 705; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-27-4 Consideration of location

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-19

Sec. 4. Location—The commission upon application for a new or upon application for a transfer of location of an existing permit, shall also investigate the desirability of the permit in regard to the potential geographical location of said permit. In making this determination, the commission may consider, but is not limited to the following factors:

- (a) The need for such services at the location of the permit.
- (b) The desire of the neighborhood or the community to receive such services.
- (c) Impact of such services on other business in the neighborhood or community.
- (d) Impact of such services on the neighborhood or community.

(*Alcohol and Tobacco Commission; Reg 43, Sec 4; filed Mar 16, 1979, 9:25 am: 2 IR 584; filed Mar 16, 1979, 9:25 am: 2 IR 704; errata, 2 IR 705; filed Apr 2, 1986, 10:45 am: 9 IR 2062; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-27-5 Evaluation standards

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-19-16

Sec. 5. In its consideration of any renewal applications the commission shall only evaluate said renewal applications on the basis of the standards set forth in Sections 1, 2, and 3 of this Rule [905 IAC 1-27-1, 905 IAC 1-27-2, and 905 IAC 1-27-3]. (*Alcohol and Tobacco Commission; 905 IAC 1-27-5; filed Apr 2, 1986, 10:45 am: 9 IR 2062; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 28. Trade Practices

905 IAC 1-28-1 Prohibited marketing practices (Expired)

Sec. 1. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

Rule 29. Selling of Package Alcoholic Beverages by Retail Permittee

905 IAC 1-29-1 Package alcoholic beverages; sale restrictions

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-19; IC 7.1-3-23-12

Sec. 1. No retailer permittee shall sell or otherwise dispose of alcoholic spirituous, vinous, and/or malt beverages to persons for consumption off the licensed premises (hereinafter referred to as "package alcoholic beverages"), except in accordance with the provisions of all applicable Indiana alcoholic beverage laws and rules of the alcohol and tobacco commission, including sections 2 through 8 of this rule. (*Alcohol and Tobacco Commission; 905 IAC 1-29-1; filed Aug 9, 1983, 3:32 p.m.: 6 IR 1748; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1351*)

905 IAC 1-29-2 Package alcoholic beverages; sold in bar, storage, or dispensing area only

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-19; IC 7.1-3-23-12

Sec. 2. Package alcoholic beverages shall be sold by a retail permittee only in the same room as is located the bar or in the room where alcoholic beverages are stored, prepared, or dispensed for consumption on the licensed premises, and at no other location. This room shall not be partitioned so as to create a "section" solely or primarily for the sale of package alcoholic beverages. There may not be a separate cash register for package sales. There shall be no self-service. (*Alcohol and Tobacco Commission; 905 IAC 1-29-2; filed Aug 9, 1983, 3:32 p.m.: 6 IR 1748; errata, 6 IR 1751; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1351*)

905 IAC 1-29-3 Package alcoholic beverages; restrictions on floor space used for sale

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-19; IC 7.1-3-23-12

Sec. 3. The total floor space area for the sale and display of package alcoholic beverages shall not exceed one-fourth ($\frac{1}{4}$) of the total floor space area of the licensed premises or three hundred (300) square feet, whichever is the lesser area. (*Alcohol and Tobacco Commission; 905 IAC 1-29-3; filed Aug 9, 1983, 3:32 p.m.: 6 IR 1748; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1351*)

905 IAC 1-29-4 Package alcoholic beverages; floor plan of sale area to be approved by commission

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-19; IC 7.1-3-23-12

Sec. 4. The floor plans of the licensed premises of each retail permittee must be approved by the alcohol and tobacco commission prior to the granting of the retailer's permit. Such floor plans must clearly designate the dimensions and location of any area to be used for the sale of package alcoholic beverages. (*Alcohol and Tobacco Commission; 905 IAC 1-29-4; filed Aug 9, 1983, 3:32 p.m.: 6 IR 1748; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1352*)

905 IAC 1-29-5 Advertising as package liquor store prohibited

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-19; IC 7.1-3-23-12

Sec. 5. A retailer permittee shall not in any form, including both exterior and interior portions of the premises advertise the licensed premises as a package liquor store. (*Alcohol and Tobacco Commission; 905 IAC 1-29-5; filed Aug 9, 1983, 3:32 pm: 6 IR 1748; readopted filed Nov 26, 2001, 4:27 p.m.: 25 IR 1347*)

905 IAC 1-29-6 Violation of floor area requirement for retailers

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-19; IC 7.1-3-23-12

Sec. 6. Sections 2 through 3 of this rule shall not apply to a permittee in any case where the floor plans of licensed premises, with respect to an area now used for the sale of package liquor, have been approved by the alcohol and tobacco commission (commission) as of the effective date of this rule. In the event that on the date of the adoption of this rule, the licensed premises of a retailer's permit violates the provisions hereof, and the floor plans of such premises have not been approved by the commission, such permittee shall have one hundred twenty (120) days after the effective date of this rule in which to comply fully herewith and to submit to the commission floor plans showing such compliance. (*Alcohol and Tobacco Commission; 905 IAC 1-29-6; filed Aug 9, 1983, 3:32 p.m.: 6 IR 1748; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1352*)

905 IAC 1-29-7 Package alcoholic beverages; change of approved floor plan a violation

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-19; IC 7.1-3-23-12

Sec. 7. Any change in the floor plans of the licensed premises of any retail permittee made after the date of the adoption of this rule shall require the prior approval of the alcohol and tobacco commission, and failure to obtain such prior approval shall constitute a violation of this rule. (*Alcohol and Tobacco Commission; 905 IAC 1-29-7; filed Aug 9, 1983, 3:32 p.m.: 6 IR 1748; readopted filed Dec 2, 2001, 12:23 p.m.: 25 IR 1352*)

905 IAC 1-29-8 Package alcoholic beverages; sold only during retailer business hours

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-19; IC 7.1-3-23-12

Sec. 8. Package alcoholic beverages may be sold only during the hours that the retail permittee is open for business as a retail permittee. (*Alcohol and Tobacco Commission; 905 IAC 1-29-8; filed Aug 9, 1983, 3:32 pm: 6 IR 1748; readopted filed Nov 26, 2001, 4:27 p.m.: 25 IR 1347; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 30. Deposit of Retailer or Dealer Permit in Commission Escrow

905 IAC 1-30-1 Request to deposit retailer, dealer permit to commission

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-3.5

Sec. 1. Pursuant to IC 7.1-3-1-3.5, a permittee may deposit his permit with the commission for a period of up to one (1) year from the date of issuance or its most recent expiration date. The request for such action shall be in writing and shall state the reasons why the permittee is unable to immediately operate the business to which the permit applies. The permittee shall also include a proposed timetable and plan for putting the permit into use. (*Alcohol and Tobacco Commission; 905 IAC 1-30-1; filed Aug 9, 1983, 3:32 pm: 6 IR 1748; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-30-2 Release of permit; premises must pass inspection

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-3.5

Sec. 2. A permittee may request and receive said permit from the commission at any time at which the term of the permit remains unexpired. Prior to release of the permit, the premises must pass an inspection by the excise police. (*Alcohol and Tobacco Commission; 905 IAC 1-30-2; filed Aug 9, 1983, 3:32 pm: 6 IR 1749; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-30-3 Written progress report to commission

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-3.5

Sec. 3. A permittee shall submit a written progress report to the commission on a date six (6) months after the commission began holding the permit. The progress report shall detail all efforts made to conform to the plan described in 905 IAC 1-30-1 and include any amendments to the timetable or plan. No report shall be required if the permit has been released or has expired prior to the due date of the report. (*Alcohol and Tobacco Commission; 905 IAC 1-30-3; filed Aug 9, 1983, 3:32 pm: 6 IR 1750; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-30-4 Unused permit not transferable; exception

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-3.5; IC 7.1-3-22

Sec. 4. If the deposited permit has never been used by the permittee and is subject to the quota provisions of IC 7.1-3-22, the commission shall accept no application for a transfer of ownership except upon a showing of exceptional and unusual circumstances

and a showing that the permittee had no intent to speculate in the sale of said permit. (*Alcohol and Tobacco Commission; 905 IAC 1-30-4; filed Aug 9, 1983, 3:32 pm: 6 IR 1750; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 31. Wholesale Pricing Practices

905 IAC 1-31-1 Price dissemination to customers

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-3-5; IC 7.1-3-8-3; IC 7.1-3-13-3; IC 7.1-5-5-7

Sec. 1. All prices, discounts, or allowances offered by liquor, wine, or beer wholesalers shall be disseminated by the wholesaler to his customers in such a manner and for such a period of time as is calculated to insure that such customers are afforded as [sic.] reasonable opportunity to secure the advantage of the price, discount, or allowance being offered. For dissemination purposes the customer will be anyone the wholesaler had sold alcoholic beverages to within the last thirty (30) days. (*Alcohol and Tobacco Commission; 905 IAC 1-31-1; filed Apr 2, 1986, 10:30 am: 9 IR 2061; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-31-2 Wholesale price terms

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-3-5; IC 7.1-3-8-3; IC 7.1-3-13-3; IC 7.1-5-5-7

Sec. 2. Wholesale prices and terms shall be in writing: All price, discount or allowance schedules shall be in writing, shall state the beginning and ending dates of the offer and shall set forth any other conditions or limitations. Wholesalers shall be prepared at all times during the regular business hours to furnish a copy of such schedules then in effect, or in effect at any time during the preceding two (2) years to any authorized representative of the commission and/or an auditor representing the alcoholic beverage commission. For the purposes of this rule [905 IAC 1-31] a reasonable opportunity to secure the advantage of the price, discount, and allowance offered shall be presumed [sic.] providing the offer is extended for not less than seven (7) days after dissemination of the price list to all customers. (*Alcohol and Tobacco Commission; 905 IAC 1-31-2; filed Apr 2, 1986, 10:30 am: 9 IR 2061; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-31-3 Invoices

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-3-5; IC 7.1-3-8-3; IC 7.1-3-13-3; IC 7.1-5-5-7

Sec. 3. All invoices must reflect:

(1) Name, address, and permit number of the seller.

(2) Name, address, and permit number of the purchaser.

(3) Date invoiced.

(4) Total price of the alcoholic beverages delivered, either by the bottle, can, keg, package, container, originally fully packed case, mixed case, or any combination thereof.

(5) Discounts or allowances of any kind with reference to previously disseminated written offer.

(*Alcohol and Tobacco Commission; 905 IAC 1-31-3; filed Apr 2, 1986, 10:30 am: 9 IR 2062; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-31-4 Evidence of sale

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-3-5; IC 7.1-3-8-3; IC 7.1-3-13-3; IC 7.1-5-5-7

Sec. 4. Said invoices shall constitute prima-facie evidence of the sales price charged for the purpose of enforcement of Indiana alcoholic beverage laws and regulations. (*Alcohol and Tobacco Commission; 905 IAC 1-31-4; filed Apr 2, 1986, 10:30 am: 9 IR 2062; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 32. Group Purchasing Agreement (Repealed)

(Repealed by Alcohol and Tobacco Commission; filed Sep 27, 1996, 12:15 p.m.: 20 IR 328)

Rule 32.1. Group Purchasing Agreements

905 IAC 1-32.1-1 Definitions

Authority: IC 7.1-2-3-7

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

(e) "Other emergency" means:

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

(f) "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)

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 1 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 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 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 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.

(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 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)

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 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 agent designated 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 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)*

905 IAC 1-32.1-4 Vesting of title to the alcoholic beverages purchased under group purchasing agreement

Authority: IC 7.1-2-3-7
 Affected: IC 7.1-2-3-32; IC 7.1-5-10-12

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) licensed premises, which 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) 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 and 905 IAC 1-21-1.

(d) 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*)

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 premises described in section 4(a)(3) of this rule to that party's permit 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*)

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, 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*)

Rule 33. Permit Auction (Repealed)

(*Repealed by Alcohol and Tobacco Commission; filed Jan 16, 1990, 4:55 p.m.: 13 IR 1065*)

Rule 33.1. Permit Auction

905 IAC 1-33.1-1 Permit auction

Authority: IC 7.1-2-3-7; IC 7.1-3-22-9

Affected: IC 1-1-4-1; IC 5-3-1-2; IC 5-3-1-6; IC 7.1-3-1-3.5; IC 7.1-3-22

Sec. 1. (a) The commission shall conduct auctions under IC 7.1-3-22-9 as often as necessary. However, an auction shall be held at least annually.

(b) A permit is available for purposes of this section in one (1) of the following circumstances:

(1) Where a permit becomes inactive for whatever reason, revocation, failure to renew, denial of renewal, surrender, or abandonment, thereby creating a vacancy when none existed before in the quota provisions of IC 7.1-3-22.

(2) Where a change in the population, as defined in IC 1-1-4-1(13), results in an increase in the quota.

(c) Permits that have become available under subsection (b) shall be advertised in the same manner as required in IC 5-3-1-2(e) and IC 5-3-1-6. The advertisement shall include the following:

(1) The type of permit available.

(2) The city, town, or unincorporated area where the permit may be placed in use.

(3) The date, time, and location of the auction.

(4) Instructions on obtaining the required prequalification application.

(d) Any person who wishes to bid at the auction must submit completed auction prequalification application for each permit desired no fewer than fifteen (15) days prior to the advertised date of the auction. Each prequalification application must be accompanied by bid security in the form of a cashier's check or certified check payable to the Indiana alcoholic beverage commission in the amount of the basic first year permit fee. Bid security will be returned following the auction to all unsuccessful bidders and to the successful bidder if the application is denied. The commission shall notify each person who submits a prequalification application of their acceptance or rejection as a bidder. Only accepted bidders may bid at the auction.

(e) All bidders will be required to sign a noncollusion affidavit immediately prior to the auction.

(f) The minimum starting bid for each permit shall be in an amount equal to the minimum annual fee for the permit type. The commission shall not be obligated to accept any bid lower than the minimum starting bid.

(g) All amounts bid at the auction are in addition to the first year permit fee. The successful bidder's bid security will be retained as the basic first year permit fee. The successful bidder must sign a purchase agreement in the amount of the successful bid immediately after the permit auction and shall within thirty (30) days submit a completed application and a cashier's check or certified check in the amount of the successful bid. The permit shall be held in escrow under IC 7.1-3-1-3.5 and 905 IAC 1-30-1 pending the completion of the application process.

(h) In the event the successful bidder fails to complete the application process for whatever reason, the commission shall accept the second highest bid under the following conditions:

(1) The commission finds that the second highest bid is reasonable.

(2) The commission finds that a second auction would be unlikely to result in a higher bid.

(i) Any permit not sold at auction shall become available for application on the first business day sixty (60) days after the

auction. (*Alcohol and Tobacco Commission; 905 IAC 1-33.1-1; filed Jan 16, 1990, 4:55 p.m.: 13 IR 1064; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1445; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 34. Temporary Bartender's Permit

905 IAC 1-34-1 Work location

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3

Sec. 1. The commission, pursuant to IC 7.1-3-18-11, may issue a temporary bartender's permit to a person for the purpose of being a bartender at an activity or event for which a temporary permit is issued pursuant to IC 7.1-3-6 or IC 7.1-3-16. The temporary bartender's permit may be issued for no more than the time period covered by the temporary permit. The temporary bartender's permit allows the holder to work only at the location covered by the temporary permit. (*Alcohol and Tobacco Commission; 905 IAC 1-34-1; filed Nov 3, 1988, 9:16 a.m.: 12 IR 596; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-34-2 Requirements

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-11

Sec. 2. The applicant for the temporary bartender's permit shall meet the same requirements and have the same qualifications as an applicant for a regular employee's permit. (*Alcohol and Tobacco Commission; 905 IAC 1-34-2; filed Nov 3, 1988, 9:16 a.m.: 12 IR 596; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-34-3 Forms (Expired)

Sec. 3. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

Rule 35. Sports Arenas

905 IAC 1-35-1 Definitions

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-14; IC 7.1-3-1-25; IC 7.1-5-7-10; IC 7.1-5-7-11

Sec. 1. The following definitions apply throughout this rule:

- (1) "Organized sporting competition" means a sporting event sanctioned by a recognized governing or regulating body.
- (2) "Sports arena" means an indoor or outdoor facility with the main purpose and function being organized sporting competition, but does not include:
 - (A) a facility to which IC 7.1-3-1-25(a) applies;
 - (B) a tract that contains a premises that is described in IC 7.1-3-1-14(e)(2); or
 - (C) a facility primarily used for professional competition.

(*Alcohol and Tobacco Commission; 905 IAC 1-35-1; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2888; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-35-2 Basic qualifications

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-4-2

Sec. 2. In order to qualify as a sports arena, a premises shall meet the following requirements:

- (1) Meet all of the requirements of the underlying 1-way, 2-way, or 3-way alcoholic beverage permit.

(2) Be totally enclosed by some type of finite boundary which prohibits free ingress and egress except for entrances and exits which must be so designated that they are easily controlled by the permittee.

(3) Be regularly used (at least seasonally) for organized sporting competition.

(Alcohol and Tobacco Commission; 905 IAC 1-35-2; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2888; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

905 IAC 1-35-3 Ownership of the permit

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-4-2

Sec. 3. The holder of the alcoholic beverage permit must be either the owner or the lessee of the land and of the buildings on which the sports arena is located. *(Alcohol and Tobacco Commission; 905 IAC 1-35-3; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2888; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-35-4 Restaurant required

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-4-2; IC 7.1-3-20-9

Sec. 4. (a) The sports arena must maintain a restaurant which meets the minimum food requirements of IC 7.1 and this title. The restaurant must be open and the service of food available at all times when alcoholic beverages are being dispensed anywhere upon the licensed premises.

(b) Minors shall not loiter in the restaurant as defined in IC 7.1 and this title. *(Alcohol and Tobacco Commission; 905 IAC 1-35-4; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2888; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-35-5 Floor plan approval

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3

Sec. 5. The floor plan and any changes therein of the restaurant or the surrounding sports arena must be approved by the Indiana alcoholic beverage commission. *(Alcohol and Tobacco Commission; 905 IAC 1-35-5; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2888; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-35-6 Areas where alcoholic beverages may be dispensed

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-4-6; IC 7.1-3-20-9

Sec. 6. (a) Alcoholic beverages, for on-premises consumption only, may be dispensed only from the restaurant, service window, and snack stands within the approved boundaries of the sports arena.

(b) The snack stands must be a semipermanent structure and meet the minimum food requirements of IC 7.1 and this title, except for hot soup. A tent is not acceptable. *(Alcohol and Tobacco Commission; 905 IAC 1-35-6; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2888; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-35-7 Service window allowed

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-4-6; IC 7.1-3-20-9

Sec. 7. (a) There may be constructed one (1) service window to the outside area from the main restaurant which is no larger than thirty (30) inches high and one hundred twenty (120) inches wide. The bottom of the service window shall not be less than forty-eight (48) inches from the floor. Alcoholic beverages shall be dispensed from the service window only during allowed hours of operation of approved snack stands and must be maintained solely by licensed personnel.

(b) The service window shall only be accessible to customers from the outside. The minimum food requirements of IC 7.1 and this title must also be maintained, except for hot soup. (*Alcohol and Tobacco Commission; 905 IAC 1-35-7; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2889; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-35-8 Sales of alcoholic beverages

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-4-6

Sec. 8. (a) Alcoholic beverages may be dispensed from the snack stand beginning one (1) hour prior to the start of an organized sporting competition and must cease within one (1) hour after the end of the competition providing the hours are within the statutory limits of IC 7.1.

(b) Only snack stands within the immediate proximity of the organized sporting competition may sell alcoholic beverages during the event.

(c) The qualifying restaurant may sell alcoholic beverages during legal hours under IC 7.1.

(d) There shall be no carry out sales allowed from any location at any time.

(e) No alcoholic beverages may be carried into or upon the sports arena whether or not alcoholic beverages are being dispensed by the permit holder. (*Alcohol and Tobacco Commission; 905 IAC 1-35-8; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2889; errata filed Sep 16, 1994, 10:35 a.m.: 18 IR 269; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-35-9 Adherence to sporting rules

Authority: IC 7.1-2-3-7

Affected: IC 7.1-2

Sec. 9. The sports arena shall comply with all applicable rules and regulations of the recognized sanctioning body of a given sporting event regarding the service of alcoholic beverages. (*Alcohol and Tobacco Commission; 905 IAC 1-35-9; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2889; errata filed Sep 16, 1994, 10:35 a.m.: 18 IR 269; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-35-10 Toilets

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3

Sec. 10. Adequate and separate toilet facilities must be provided throughout the approved area in near proximity to where alcoholic beverages are being dispensed. These toilets are in addition to those required in the qualifying restaurant. (*Alcohol and Tobacco Commission; 905 IAC 1-35-10; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2889; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-35-11 Filing of sanctioning organizations

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3

Sec. 11. In addition to all other required paperwork for new permits, transfers of ownership or location, or the renewal of any existing permit, the applicant or permit holder seeking approval to be classified as a sports arena shall file with the commission a list of all sanctioning organizations that will or may be reasonably expected to sanction sporting competition at the sports arena. The Indiana alcoholic beverage commission reserves the right to approve or deny any sanctioning organization and will give notice to the permittee of any details. (*Alcohol and Tobacco Commission; 905 IAC 1-35-11; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2889; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 35.1. Auto Race Tracks

905 IAC 1-35.1-1 Definitions

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-25; IC 7.1-3-6-16; IC 7.1-3-14-6; IC 7.1-5-7-11

Sec. 1. The following definitions apply throughout this rule:

(1) "Auto race track" means an outdoor facility with the main purpose and function being organized sporting competition, but does not include the following:

(A) A facility to which IC 7.1-3-1-25(a) applies.

(B) A tract located in a county containing a consolidated city that contains a premises used in connection with the operation of a paved track more than two (2) miles in length that is used primarily in the sport of auto racing.

(2) "Organized sporting competition" means a sporting event sanctioned by a nationally chartered and recognized governing or regulating body for automobile, motorcycle, or truck racing, including, without limitation, any practices, qualifications, or similar race-related activities open to the public for such events.

(Alcohol and Tobacco Commission; 905 IAC 1-35.1-1; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2497)

905 IAC 1-35.1-2 Basic qualifications

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-6-16; IC 7.1-3-14-6

Sec. 2. In order to qualify as an auto race track, a premises shall meet the following requirements:

(1) Meet all of the requirements of the underlying one-way or two-way alcoholic beverage permit.

(2) Be totally enclosed by some type of finite boundary that prohibits free ingress and egress except for entrances and exits, which must be so designated that they are easily controlled by the permittee.

(3) Be regularly used (at least seasonally) for organized sporting competition.

(Alcohol and Tobacco Commission; 905 IAC 1-35.1-2; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2497)

905 IAC 1-35.1-3 Ownership of the permit

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-4-2

Sec. 3. The holder of the alcoholic beverage permit must be either the owner or the lessee of the land and of the buildings on which the auto race track is located. *(Alcohol and Tobacco Commission; 905 IAC 1-35.1-3; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2497)*

905 IAC 1-35.1-4 Minimum food services required

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-6-16; IC 7.1-3-14-6

Sec. 4. The auto race track must maintain the minimum food requirements of 905 IAC 1-20, except for hot soup. Such food service must be available at all times when alcoholic beverages are being dispensed anywhere upon the licensed premises. *(Alcohol and Tobacco Commission; 905 IAC 1-35.1-4; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498)*

905 IAC 1-35.1-5 Floor plan approval

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3

Sec. 5. The floor plan and any changes therein of the auto race track must be approved by the commission. *(Alcohol and Tobacco Commission; 905 IAC 1-35.1-5; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498)*

905 IAC 1-35.1-6 Dispensing alcoholic beverages and food

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-6-16; IC 7.1-3-14-6

Sec. 6. (a) Alcoholic beverages, for on-premises consumption only, may be dispensed within the approved boundaries of the auto race track.

(b) The facility shall contain at least one (1) snack stand, which must be a permanent or semipermanent structure or portable food cart and meet the minimum food requirements of 905 IAC 1-20, except for hot soup. (*Alcohol and Tobacco Commission; 905 IAC 1-35.1-6; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498*)

905 IAC 1-35.1-7 Sales of alcoholic beverages

Authority: IC 7.1-2-3-7; IC 7.1-3-1-14; IC 7.1-5-8-6; IC 7.1-5-10-1

Affected: IC 7.1-3-4-6

Sec. 7. (a) Alcoholic beverages may be served at any time providing the hours are within the statutory limits of IC 7.1-3-1-14 and IC 7.1-5-10-1.

(b) There shall be no carryout sales allowed from any location at any time. (*Alcohol and Tobacco Commission; 905 IAC 1-35.1-7; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498*)

905 IAC 1-35.1-8 Adherence to sporting rules

Authority: IC 7.1-2-3-7

Affected: IC 7.1-2

Sec. 8. The auto race track shall comply with all applicable rules and regulations of the recognized sanctioning body of a given sporting event regarding the service of alcoholic beverages. (*Alcohol and Tobacco Commission; 905 IAC 1-35.1-8; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498*)

905 IAC 1-35.1-9 Filing of sanctioning organizations

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-6-16; IC 7.1-3-14-6

Sec. 9. In addition to all other required paperwork for new permits or the renewal of any existing permit, the applicant or permit holder seeking approval to be classified as an auto race track shall file with the commission a list of all sanctioning organizations that will or may be reasonably expected to sanction sporting competition at the auto race track. (*Alcohol and Tobacco Commission; 905 IAC 1-35.1-9; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498*)

Rule 36. Procedure after Local Board Investigation and Recommendation

905 IAC 1-36-1 Advertising of local board hearing

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-19-3; IC 7.1-3-19-7

Sec. 1. (a) Upon receipt of a completed application accompanied by the statutory fee, the application shall be advertised for investigation before the local board pursuant to IC 7.1-3-19-3 through IC 7.1-3-19-7, unless prior commission approval is required under subsection (b). The commission shall notify the applicant of the date, time, and location of the hearing at least fifteen (15) days prior to the hearing date.

(b) The following permits shall not be advertised, but shall be referred to the commission for processing approval:

(1) Permits in escrow under IC 7.1-3-1-35 [*sic.*].

(2) Permits not meeting food sales requirements, if any.

(3) Permits over thirty (30) days expired.

(c) A permit excluded from advertising under subsection (a) may be advertised for local board investigation only upon commission approval. (*Alcohol and Tobacco Commission; 905 IAC 1-36-1; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1445; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-36-2 Review of local alcoholic beverage board's approval or denial of an application for an alcoholic beverage permit

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6

Sec. 2. (a) After a local board recommends approval or denial of an application for a new permit, including a transfer application or renewal of an existing permit, the commission shall act promptly upon the local board's recommendation. If there was no remonstrance before the local board and if the commission approves the application, the commission shall issue the permit to the applicant. If either there was a remonstrance against the application before the local board, or the commission disapproves the application, the commission shall give personal notice of its action or written notice of its action by certified mail to the applicant and to any remonstrator. For purposes of this rule, "remonstrator" means a person who appeared, personally or by counsel, as a remonstrator against the application at the local board hearing and identified himself to the local board, stating his name and address or telephone number to the board at the hearing.

(b) Upon receipt of notice of the commission's action under section 1(a) of this rule, an applicant or a remonstrator shall have fifteen (15) days to file any objection to the commission's action and to request an appeal hearing before the commission. The objections of any remonstrator shall also be accompanied by a petition for intervention stating facts which demonstrate that the petitioner will be aggrieved or adversely affected by the commission's action. A copy of the remonstrator's objections and petition for intervention shall be served by the remonstrator on the applicant by certified mail unless the remonstrator is not represented by counsel. In such case, the commission will serve the remonstrator's pleading(s) on the applicant. Failure of the applicant to file objections or failure of a remonstrator to file objections and a petition for intervention within the fifteen (15) day period shall constitute a waiver of any appeal hearing from the commission's action. Absent exigent circumstances, the commission shall deny the petition for intervention of any person who did not appear personally or by counsel at the local board hearing. Upon receipt of an applicant's objections, the commission shall set the applicant's objections for hearing.

(c) If the objection is based on the denial of an application or renewal of an existing permit, the applicant may request an extension of the life of the permit to allow him to continue operating, pending the appeal procedure. If the commission issues the extension, the applicant shall pay the required fee and shall be allowed to operate until notified by the commission that the extension is terminated by either personal notice or written notice by certified mail to the applicant's last known address as stated on his application for said permit. Upon receipt of said notification, applicant shall have ten (10) days to continue operating and at the expiration of the ten (10) days, he must cease selling alcoholic beverages. The commission, at its discretion, may allow the applicant to place the denied permit into escrow and allow a reasonable time for the applicant to sell said permit to a bona fide purchaser for value in an arms length transaction subject to the approval of the commission.

(d) Upon receipt of a remonstrator's objections and petition for intervention under subsection (b), the commission shall review the petition and determine whether the remonstrator should be permitted to intervene in the matter. In making its determination, the commission shall consider whether the remonstrator has proven that he or she will be personally aggrieved or adversely affected if the application for permit is granted. If the commission finds that the remonstrator would be aggrieved or adversely affected, he shall be allowed to intervene, and notice of such shall be sent to the applicant, and the remonstrator and the intervening remonstrator's objections shall be set for hearing. If the commission finds that the remonstrator should not be permitted to intervene, it may deny the remonstrator's request for hearing. As used hereafter in this rule, "intervening remonstrator" means a remonstrator that has been granted permission to intervene by the commission.

(e) An applicant, a remonstrator, or an intervening remonstrator who has filed objections to the commission's determination may request and pay a deposit in the amount of fifty dollars (\$50) for the preparation of the local board transcript and, as soon as it is prepared, he shall pay any final amounts due.

(f) The commission shall give the applicant and any remonstrators or intervening remonstrators notice of the appeal hearing by certified mail at least ten (10) days prior to the hearing. The notice shall state the time and place of the hearing. 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. (*Alcohol and Tobacco Commission; 905 IAC 1-36-2; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1446; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-36-2.5 Remand of application to local boards

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6; IC 7.1-3-23-11

Sec. 2.5. The Indiana alcoholic beverage commission, at its discretion, may remand an application to a local board for further investigation. Upon such a remand by the Indiana alcoholic beverage commission, the application must be readvertised as prescribed under IC 7.1. If the decision by the Indiana alcoholic beverage commission on an application is ultimately appealed by the applicant or a remonstrator, the hearing officer may consider any evidence presented at the original local board investigation as well as any evidence presented at the investigation on remand, if a remand occurred. (*Alcohol and Tobacco Commission; 905 IAC 1-36-2.5; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2889; errata filed Jul 25, 1994, 9:30 a.m.: 17 IR 2891; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-36-3 Prehearing conference

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6

Sec. 3. (a) The commission may conduct a prehearing conference.

(b) The hearing judge for the prehearing conference shall set the time and place of the conference and give reasonable written notice to the applicant or permittee, as the case may be, and to any remonstrator or intervening remonstrator.

(c) The notice must include the following:

(1) The name and mailing address of the applicant or permittee, as the case may be, and to any remonstrator or intervening remonstrator.

(2) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.

(3) A statement of the time, place, and nature of the prehearing conference.

(4) The name, official title, and mailing address of the hearing judge for the prehearing conference and a telephone number through which information concerning hearing schedules and procedures may be obtained.

(d) The notice may include any other matters that the hearing judge considers desirable to expedite the proceedings. (*Alcohol and Tobacco Commission; 905 IAC 1-36-3; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1447; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-36-4 Conduct of prehearing conferences

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6

Sec. 4. (a) The hearing judge may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

(b) The hearing judge shall conduct the prehearing conference, as may be appropriate, to deal with such matters as follows:

(1) Resolution of the issues in the proceeding.

(2) Exploration of settlement possibilities.

(3) Preparation of issues.

(4) Clarification of stipulations.

(5) Rulings on identity and limitation of the number of witnesses.

(6) Objections to proffers of evidence.

(7) A determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form.

(8) The order of presentation of evidence and cross-examination.

(9) Rulings regarding issuance of subpoenas, discovery orders, and protective orders.

(10) Such other matters as will promote the orderly and prompt conduct of the hearing.

(c) The hearing judge shall issue a prehearing order incorporating the matters determined at the prehearing conference. (*Alcohol and Tobacco Commission; 905 IAC 1-36-4; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1447; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-36-5 Subpoenas, discovery orders, and protective orders

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6

Sec. 5. (a) The hearing judge, at the request of any party or the commission, shall, and upon the hearing judge's own motion may, issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the rules of procedure governing discovery, depositions, and subpoenas in civil actions in the courts.

(b) The party seeking the order shall serve the order in accordance with these rules of procedure. Service shall be rendered in accordance with the rules of civil procedure. (*Alcohol and Tobacco Commission; 905 IAC 1-36-5; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1447; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-36-6 Appearance

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6

Sec. 6. Any applicant, remonstrator, or intervening remonstrator may participate in a proceeding in person or by an authorized representative. Whether or not participating in person, any applicant, remonstrator, or intervening remonstrator may be advised and represented at his own expense by counsel or, unless prohibited by law, by another representative. A representative or an attorney shall serve an appearance on the commission at or before the hearing. (*Alcohol and Tobacco Commission; 905 IAC 1-36-6; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1447; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-36-7 Conduct of hearings

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6; IC 7.1-3-19

Sec. 7. (a) The transcript or the tape recording of the local board hearing shall be submitted into evidence at the hearing, along with the commission's file which shall include any documents presented at the local board hearing. The commission shall hear additional evidence from the applicant and the remonstrators or intervening remonstrators, if any. The commission shall conduct the appeal hearing as a de novo hearing.

(b) The hearing judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts.

(c) To the extent necessary for full disclosure of all relevant facts and issues, the hearing judge shall afford to the applicant, remonstrator, or intervening remonstrator the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limitation under subsection (d) or by the prehearing order.

(d) The hearing judge may, after a prehearing order is issued, impose conditions upon the applicant, remonstrator, or intervening remonstrator necessary to avoid unreasonably burdensome or repetitious presentations, such as the following:

- (1) Limiting participation to designated issues in which the person has a particular interest.
- (2) Limiting the use of discovery, cross-examination, and other procedures so as to promote the orderly, prompt, and just conduct of the proceeding.
- (3) Requiring two (2) or more persons to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(e) The hearing judge may administer oaths and affirmations and rule on any offer of proof or other motion.

(f) The hearing judge shall have the hearing recorded at the commission's expense. The commission is not required, at its expense, to prepare a transcript. Any applicant, remonstrator, or intervening remonstrator, at his own expense, may cause a reporter approved by the commission to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recordings does not cause distraction or disruption. The hearing judge may charge a person

who requests that the commission provide a transcript, the reasonable costs of preparing the transcript and may require that the person make a reasonable deposit before the transcript is prepared. (*Alcohol and Tobacco Commission; 905 IAC 1-36-7; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1448; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-36-8 Evidence

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6; IC 4-21.5-3-29

Sec. 8. (a) Upon proper objection, the hearing judge may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts. In the absence of proper objection, the hearing judge may exclude objectionable evidence. The hearing judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.

(b) All testimony of the applicant, remonstrator, intervening remonstrator, or witnesses must be made under oath or affirmation.

(c) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of the applicant or intervening remonstrator.

(d) Documentary evidence may be received in the form of a copy or excerpt. Upon request, the applicant, remonstrator, or intervening remonstrator, as the case may be, shall be given an opportunity to compare the copy with the original if available.

(e) Official notice may be taken of the following:

(1) Any fact that could be judicially noticed in the courts.

(2) The records of the commission.

(3) Technical or scientific matters within the commission's specialized knowledge.

(4) Codes or standards that have been adopted by an agency of the United States or this state.

(f) The applicant or intervening remonstrator must be:

(1) notified before or during the hearing, or in the proposed findings of fact and conclusions of law, of the specific facts or material noticed, and the source of the facts or material noticed, including any staff memoranda and data; and

(2) if there are objections to the commission's reliance on judicially noticed facts, specific objections and their bases with supportive evidence must be put in writing as required by IC 4-21.5-3-29.

(*Alcohol and Tobacco Commission; 905 IAC 1-36-8; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1448; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-36-9 Proposed findings of fact; conclusions of law; final order

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6; IC 7.1-3-19-11; IC 7.1-3-23-9

Sec. 9. (a) Following the hearing, the commission shall issue findings of fact, conclusions of law, and an order setting forth its final determination. If the appeal hearing was held by an individual member of the commission or a duly authorized agent of the commission, the person conducting the hearing shall submit proposed findings of fact, conclusions of law, and an order to the commission for its final approval. Such proposed findings of fact, conclusions of law, and order shall be served on the applicant or intervening remonstrator, as the case may be, for their written objections which are due to the commission within fifteen (15) days of their receipt. The commission shall mail a copy of its findings of fact, conclusions of law, and order to the applicant and to any remonstrators or intervening remonstrators by certified or registered mail. In the case of denial of an application or renewal of an existing permit, the commission shall inform the aggrieved party that its decision may be subject to judicial review.

(b) Notwithstanding anything to the contrary, if the commission's initial action under section 2 of this rule is to approve the application, the commission shall issue the permit to the applicant and the applicant shall be permitted to operate under the permit unless and until the commission's action approving the permit is rescinded by commission order. (*Alcohol and Tobacco Commission; 905 IAC 1-36-9; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1449; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 37. Permit Violation Procedures

905 IAC 1-37-1 Initiation of permit violation proceedings

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6; IC 7.1-3-23; IC 7.1-5

Sec. 1. A permit violation proceeding is initiated by the service of a notice of violation. The notice of violation shall describe, in reasonable detail, the nature of the alleged violation and shall identify by name, address, and permit number the permittee against whom the permit violation proceeding is being initiated. (*Alcohol and Tobacco Commission; 905 IAC 1-37-1; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1449; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-37-2 Service of papers

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 2. (a) This section applies to any of the following:

- (1) Giving of any notice of violation.
- (2) Service of any motion, ruling, order, or other filed item.
- (3) Filing of any document with the commission.

(b) Except as otherwise provided by law, a person shall serve papers by United States mail or personal service. If the commission mails or personally serves a paper, all such paper shall reflect the date and circumstances of service.

(c) Service shall be made on a permittee or on the permittee's counsel or other authorized representative of record in the proceeding. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. Service on the commission must be made on the commission's prosecutor.

(d) If the current address of a permittee is not ascertainable, service shall be mailed to the last known address where the person resides or has a principal place of business as shown by the commission's records.

(e) The filing of a document with the commission is complete on the earliest of the following dates that apply to the filing:

- (1) The date on which the document is delivered to the commission.
- (2) The date of the postmark on the envelope containing the document, if the document is mailed to the commission by certified United States mail.
- (3) The date on which the document is delivered by a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the commission.

(*Alcohol and Tobacco Commission; 905 IAC 1-37-2; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1449; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-37-3 Appearance

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 3. (a) Any party may participate in a proceeding in person or by an authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by law, by another representative.

(c) A representative or any attorney shall serve an appearance on the commission at or before the prehearing conference.

(*Alcohol and Tobacco Commission; 905 IAC 1-37-3; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1450; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-37-4 Filings

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 4. (a) The hearing judge shall give all parties full opportunity to file pleadings, motions, and objections and submit offers

of settlement by the date of the prehearing conference.

(b) The hearing judge, at appropriate stages of a proceeding, may give all parties full opportunity to file briefs, proposed findings of fact, and proposed orders.

(c) A party shall serve copies of any filed item on all parties.

(d) The hearing judge shall serve copies of all notices, orders, and other papers generated by the hearing judge on all parties. (*Alcohol and Tobacco Commission; 905 IAC 1-37-4; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1450; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-37-5 Prehearing conference

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 5. (a) The hearing judge may conduct a prehearing conference.

(b) The hearing judge for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties.

(c) The notice must include the following:

(1) The names and mailing addresses of all known parties.

(2) The name, official title, and mailing address of the commission's prosecutor and a telephone number through which the commission's prosecutor can be reached.

(3) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.

(4) A statement of the time, place, and nature of the prehearing conference.

(5) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held.

(6) The name, official title, and mailing address of the hearing judge for the prehearing conference and a telephone number through which information concerning hearing schedules and procedures may be obtained.

(7) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default.

(d) The notice may include any other matters that the hearing judge considers desirable to expedite the proceedings. (*Alcohol and Tobacco Commission; 905 IAC 1-37-5; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1450; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-37-6 Conduct of prehearing conferences

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 6. (a) The prehearing conference shall be held in person at the commission's hearing room, but the hearing judge, at his or her discretion, may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, and to hear the entire proceeding while it is taking place.

(b) The hearing judge shall conduct the prehearing conference, as may be appropriate, to deal with such matters as the following:

(1) Resolution of the issues in the proceeding.

(2) Exploration of settlement possibilities.

(3) Preparation of issues.

(4) Clarification of stipulations.

(5) Rulings on identity and limitation of the number of witnesses.

(6) Objections to proffers of evidence.

(7) A determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form.

(8) The order of presentation of evidence and cross-examination.

(9) Rulings regarding issuance of subpoenas, discovery orders, and protective orders.

(10) Such other matters as will promote the orderly and prompt conduct of the hearing.

(c) The hearing judge shall issue a prehearing order incorporating the matters determined at the prehearing conference. (*Alcohol*

and Tobacco Commission; 905 IAC 1-37-6; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1450; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

905 IAC 1-37-7 Time and place of violation hearings

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 7. (a) The hearing judge shall set the time and place of the violation hearing and give reasonable written notice to all parties. The hearing judge shall give at least five (5) days notice of the hearing.

(b) To the extent not included in a prior notice, the notice of the hearing must include the following:

(1) The names and mailing addresses of all parties.

(2) The name, official title, and mailing address of the commission's prosecutor and a telephone number through which the commission's prosecutor can be reached.

(3) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.

(4) A statement of the time, place, and nature of the hearing.

(5) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(6) The name, official title, and mailing address of the hearing judge and a telephone number through which information concerning hearing schedules and procedures may be obtained.

(7) A statement of the issues involved and, to the extent known to the hearing judge, of the matters asserted by the parties.

(8) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be defaulted.

(c) The notice may include any other matters the hearing judge considers desirable to expedite the proceedings.

(d) The hearing judge may grant a continuance of the hearing upon a written motion showing good cause for a continuance.

(Alcohol and Tobacco Commission; 905 IAC 1-37-7; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1451; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

905 IAC 1-37-8 Subpoenas; discovery orders; protective orders

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 8. (a) The hearing judge at the request of any party or the commission shall, and upon the hearing judge's own motion may, issue:

(1) subpoenas;

(2) discovery orders; and

(3) protective orders;

in accordance with the rules of procedure governing discovery, depositions, and subpoenas in civil actions in the courts.

(b) The party seeking the order shall serve the order in accordance with these rules of procedure. If ordered by the hearing judge, an excise officer shall serve the subpoena, discovery order, or protective order. *(Alcohol and Tobacco Commission; 905 IAC 1-37-8; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1451; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-37-9 Failure to appear

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 9. (a) At any stage of a proceeding, if a permittee fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding, the hearing judge may issue an order to show cause why the permit should not be revoked and set a hearing on said order within thirty (30) days. The order shall include the date, time, and place of the hearing and the reason for the order. Said order shall be sent by certified mail to the permittee.

(b) At the hearing on the order to show cause, evidence will be taken on the issue of the permittee's failure to appear and sanctions may be imposed including a fine, suspension, or revocation.

(c) After the hearing and any subsequent order, the hearing judge shall conduct any further proceedings necessary to complete the disposition of the violation. (*Alcohol and Tobacco Commission; 905 IAC 1-37-9; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1451; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-37-10 Conduct of hearings

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 10. (a) The hearing judge shall regulate the course of the proceedings in conformity with any prehearing order and in a manner without recourse to the technical, common law rules of evidence applicable to civil actions in the course.

(b) To the extent necessary for full disclosure of all relevant facts and issues, the hearing judge shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limitation under subsection (d) or by the prehearing order.

(c) The hearing judge may, after a prehearing order is issued, impose conditions upon a party necessary to avoid unreasonably burdensome or repetitious presentations by the party, such as the following:

(1) Limiting the party's participation to designated issues in which the party has a particular interest.

(2) Limiting the party's use of discovery, cross-examination, and other procedures so as to promote the orderly, prompt, and just conduct of the proceeding.

(3) Requiring two (2) or more parties to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(d) The hearing judge may administer oaths and affirmations and rule on any offer of proof or other motion.

(e) The hearing judge shall have the hearing recorded at the commission's expense. The commission is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the commission to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recordings does not cause distraction or disruption. The hearing judge may charge a person who requests that the commission provide a transcript, the reasonable costs of preparing the transcript and may require that the person make a reasonable deposit before the transcript is prepared. (*Alcohol and Tobacco Commission; 905 IAC 1-37-10; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1451; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-37-11 Evidence

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-3-29; IC 7.1-3-23; IC 7.1-5

Sec. 11. (a) Upon proper objection, the hearing judge may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts. In the absence of proper objection, the hearing judge may exclude objectionable evidence. The hearing judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.

(b) All testimony of parties and witnesses must be made under oath or affirmation.

(c) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(d) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(e) Official notice may be taken of the following:

(1) Any fact that could be judicially noticed in the courts.

(2) The records of the commission.

(3) Technical or scientific matters within the commission's specialized knowledge.

(4) Codes or standards that have been adopted by an agency of the United States or this state.

(f) Parties must be:

(1) notified before or during the hearing, or in the proposed findings of fact and conclusions of law, of the specific facts or material noticed, and the source of the facts or material noticed, including any staff memoranda and data; and

(2) if parties object to the commission's reliance on judicially noticed facts, specific objections and their bases with supportive evidence must be put in writing as required by IC 4-21.5-3-29.

(Alcohol and Tobacco Commission; 905 IAC 1-37-11; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1452; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)

905 IAC 1-37-12 Proposed orders

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 12. (a) The hearing judge's proposed order disposing of the proceeding becomes a final order when affirmed by the commission.

(b) The hearing judge's proposed order must include, separately stated, findings of fact for all aspects of the order, including the remedy prescribed. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings.

(c) Findings must be based exclusively upon the evidence of record in the proceeding and on matters officially noticed in that proceeding or otherwise. Findings must be based upon the kind of evidence that is substantial and reliable. The hearing judge's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(d) A substitute hearing judge may issue the proposed order required under this section upon the record that was generated by a previous hearing judge.

(e) The hearing judge may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(f) An order under this section shall be issued in writing within forty-five (45) days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (e), unless this period is waived or extended with the written consent of all parties or for good cause shown, as determined by the hearing judge.

(g) The hearing judge shall have copies of the proposed order under this section delivered to each party and to the commission's members. *(Alcohol and Tobacco Commission; 905 IAC 1-37-12; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1452; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-37-13 Issuance of final orders by the commission

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 13. (a) After the hearing judge issues a proposed order, the commission shall issue a final order:

- (1) accepting;
- (2) accepting and modifying; or
- (3) rejecting;

the hearing judge's proposed order. The commission may remand the matter, with or without instructions, to the hearing judge for further proceedings.

(b) In the absence of an objection or notice under subsection (c) or (d), the commission may accept the proposed order as its final order.

(c) To preserve for judicial review, an objection to a proposed order of the hearing judge, a permittee must not be in default and must object to the proposed order in a writing that:

- (1) identifies the basis of the objection with reasonable particularity; and
- (2) is filed with the commission within fifteen (15) days after the proposed order is served on the permittee unless this period is extended with the written consent of the prosecutor or for good cause shown, as determined by the hearing judge.

(d) A final order disposing of a proceeding or an order remanding a proposed order to the hearing judge for further proceedings shall be issued within seventy (70) days after the latter of the date that the order was issued unless the period is waived or extended with the written consent of all parties or for good cause shown, as determined by the commission.

(e) After remand of an order under this section to the hearing judge, the hearing judge's later proposed order is also subject to review. *(Alcohol and Tobacco Commission; 905 IAC 1-37-13; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1453; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA)*

905 IAC 1-37-14 Modification of final orders and stays

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 14. (a) The commission may modify a final order before the earlier of:

- (1) thirty (30) days after the commission has served the final order; or
- (2) a court assumes jurisdiction over the final order.

(b) A permittee may petition the commission for a stay of effectiveness of a final order. The commission may, before or after the order becomes effective, stay the final order in whole or in part.

(c) A permittee may petition the commission for a rehearing of a final order. The commission may grant a petition for rehearing only if the permittee demonstrates that:

- (1) the permittee is not in default;
- (2) newly discovered material evidence exists; and
- (3) the evidence could not, by due diligence, have been discovered and produced at the hearing in the proceeding.

The rehearing may be limited to the issues directly affected by the newly discovered evidence.

(d) Clerical mistakes and other errors resulting from oversight or omission in a final order or other part of the record of a proceeding may be corrected by the commission on the motion of any party, the hearing judge, or the commission.

(e) An action of a permittee or the commission under this section does not toll the period in which a party may petition for judicial review. However, if a rehearing is granted under subsection (c), these periods are tolled and a new period begins on the date that a new final order is served. (*Alcohol and Tobacco Commission; 905 IAC 1-37-14; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1453; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-37-15 Penalties

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-23; IC 7.1-5

Sec. 15. The permittee charged may receive any penalty provided in IC 7.1 or any rules of the Indiana alcoholic beverage commission. If the commission shall desire, punishment can be withheld for the introduction of more evidence. The commission may also defer judgment on good behavior of the offending permittee, and if the permittee charged violates IC 7.1 or any rule of the commission at any time during the existence of the permit, the deferred judgment may again be reconsidered and a penalty fixed. (*Alcohol and Tobacco Commission; 905 IAC 1-37-15; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1454; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 38. Prohibited Advertising

905 IAC 1-38-1 Exterior wholesale advertising signs; display

Authority: IC 7.1-2-3-7; IC 7.1-2-3-16

Affected: IC 7.1-5-2

Sec. 1. (a) No primary source of supply, wholesaler, or salesman of alcoholic beverages, or the agent or representative thereof, shall, directly or indirectly, place, display, or maintain, or cause to be displayed or maintained, any sign advertising alcoholic beverages by brand name within two hundred (200) feet of premises covered by a retailer's or dealer's permit to sell alcoholic beverages. The distance shall be computed by measuring between the nearest point of the premises covered by a retailer's or dealer's permit to sell alcoholic beverages and the nearest point of the sign.

(b) Such sign shall not designate by arrows, hands, or other similar devices any particular premises covered by a retailer's or dealer's permit to sell alcoholic beverages.

(c) A primary source of supply, wholesaler, or salesman of alcoholic beverages, or the agent or representative thereof, may place, display, or maintain, or cause to be placed, displayed, or maintained, temporary banners or pennants advertising alcoholic beverages by brand name on or within two hundred (200) feet of a retailer's or dealer's premises if such banners or pennants commemorate a nationally recognized sporting event occurring within the state of Indiana. The temporary banners or pennants shall be displayed for a period beginning twenty-one (21) days prior to the nationally recognized sporting event and ending five (5) days

after the event. (*Alcohol and Tobacco Commission; 905 IAC 1-38-1; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2886; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-38-2 Advertising signs near church or school prohibited

Authority: IC 7.1-2-3-7; IC 7.1-2-3-16

Affected: IC 7.1-5-2

Sec. 2. No primary source of supply, wholesaler, or salesman of alcoholic beverages or the holder of a retailer's or dealer's permit to sell alcoholic beverages, or the agent or representative thereof, shall erect, or cause to be erected or maintained, any sign advertising alcoholic beverages which is located within two hundred (200) feet of a church or school. (*Alcohol and Tobacco Commission; 905 IAC 1-38-2; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2886; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-38-3 Exterior brand name signs; illumination of exterior signs restricted

Authority: IC 7.1-2-3-7; IC 7.1-2-3-16

Affected: IC 7.1-5-2

Sec. 3. Any sign advertising alcoholic beverages such as the words "beer", "liquor", or "wine" on the exterior of any premises covered by a permit to wholesale alcoholic beverages shall not be illuminated during the days or hours when it is illegal to sell alcoholic beverages. (*Alcohol and Tobacco Commission; 905 IAC 1-38-3; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2886; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-38-4 Media advertising; restricted terms and claims

Authority: IC 7.1-2-3-7; IC 7.1-2-3-16; IC 7.1-5-2-3

Affected: IC 7.1-5-2

Sec. 4. (a) Primary sources of supply, wholesalers, or salesmen of alcoholic beverages, or the agents or representatives thereof, may advertise in such media as provided by law alcoholic beverages by brand name.

(b) Retailers and dealers of alcoholic beverages, or the agents or representatives thereof, may advertise in such media as provided by law alcoholic beverages by price and brand name and the place where they may be obtained.

(c) No such advertising shall contain offers of financial awards as inducements to purchase alcoholic beverages.

(d) All advertising shall conform to the brand name or logo on the label upon the actual container of the alcoholic beverages so advertised. (*Alcohol and Tobacco Commission; 905 IAC 1-38-4; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2886; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

905 IAC 1-38-5 Cease and desist order

Authority: IC 7.1-2-3-7; IC 7.1-2-3-16

Affected: IC 7.1-5-2

Sec. 5. The Indiana alcoholic beverage commission may at any time order a primary source of supply, wholesaler, retailer, dealer, or salesman, or agents or representatives thereof, attempting to advertise or advertising alcoholic beverages on his permit premises, to discontinue immediately if in the judgment of the Indiana alcoholic beverage commission such advertising is in conflict with this rule or other provisions of the law. Any violation of this section shall be subject to the violation provisions of the Indiana alcoholic beverage commission. (*Alcohol and Tobacco Commission; 905 IAC 1-38-5; filed Jul 12, 1994, 3:30 p.m.: 17 IR 2886; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA*)

Rule 39. Horse Track and Satellite Facility Permits

905 IAC 1-39-1 Horse track and satellite facility permit fees

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 7.1-3-17.7

Sec. 1. (a) The annual license fee for the holder of a horse track permit is four thousand dollars (\$4,000).

(b) The annual license fee for the holder of a satellite facility permit is two thousand dollars (\$2,000). (*Alcohol and Tobacco Commission; 905 IAC 1-39-1; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1368; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-2 Rules governing

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 7.1

Sec. 2. (a) A horse track permit shall be governed by IC 7.1 and this title applicable to a retailer's permit, except to the extent that IC 7.1 or this title specifically conflicts with a statute or rule governing a horse track permit.

(b) A satellite facility permit shall be governed by IC 7.1 and this title applicable to a retailer's permit, except to the extent that IC 7.1 or this title specifically conflicts with a statute or rule governing a satellite facility permit. (*Alcohol and Tobacco Commission; 905 IAC 1-39-2; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1368; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-3 Floor plans

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 7.1-3-17.7

Sec. 3. The floor plans of the permit premises must be submitted to and approved by the commission before a horse track or satellite permit is issued by the commission. This approval process shall include an initial inspection and final inspection of the floor plans and permit premises by the commission's enforcement division. The floor plan shall reflect all semipermanent and permanent areas where alcoholic beverages will be stored or dispensed. Service of alcoholic beverages will only be from those areas designated on the floor plan approved by the commission, and service shall only be by employees who hold an employee permit issued by the commission. With respect to a horse track permit, alcoholic beverages may be carried from the race track structure only to areas designated on the premises' floor plan. (*Alcohol and Tobacco Commission; 905 IAC 1-39-3; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1368; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-4 Permit qualifications

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 4-31-5; IC 4-31-5.5; IC 7.1-3-4-2; IC 7.1-3-17.7

Sec. 4. (a) The commission shall not issue a horse track permit to an individual who is disqualified under the special disqualifications of IC 7.1-3-4-2.

(b) The commission shall not issue a satellite facility permit to an individual who is disqualified under the special disqualifications of IC 7.1-3-4-2.

(c) The commission shall not issue a horse track permit to a person who does not hold unrevoked a recognized meeting permit held under IC 4-31-5.

(d) The commission shall not issue a satellite facility permit to a person who does not hold unrevoked a satellite facility license issued under IC 4-31-5.5. (*Alcohol and Tobacco Commission; 905 IAC 1-39-4; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1369; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-5 Sale, assignment, and transfer of permit

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 7.1-3-17.7; IC 7.1-3-24

Sec. 5. (a) The holder of a horse track permit may sell, assign, or transfer that permit to another holder or to another location subject to IC 7.1-3-24 with the prior written approval of the commission.

(b) The holder of a satellite facility permit may sell, assign, or transfer that permit to another holder or to another location subject to the provisions of IC 7.1-3-24 with the prior written approval of the commission. (*Alcohol and Tobacco Commission; 905 IAC 1-39-5; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1369; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-6 Scope of permit

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 4-33-7-4; IC 7.1-3-4-6; IC 7.1-3-9-9; IC 7.1-3-14-4; IC 7.1-3-17.7

Sec. 6. (a) The holder of a horse track permit is entitled to purchase alcoholic beverages only from a permittee entitled to sell to a retailer under IC 7.1-3-4-6, IC 7.1-3-9-9, IC 7.1-3-14-4, and IC 4-33-7-4. The holder of a horse track permit may sell only to a person authorized to purchase alcoholic beverages at retail. The holder of a horse track permit is entitled to possess and sell alcoholic beverages only for on-premise consumption. The holder of a horse track permit shall not be entitled to sell alcoholic beverages at a place other than the licensed premises.

(b) The holder of a satellite facility permit is entitled to purchase alcoholic beverages only from a permittee entitled to sell to a retailer under IC 7.1-3-4-6, IC 7.1-3-9-9, IC 7.1-3-14-4, and IC 4-33-7-4. The holder of a satellite facility permit may sell only to a person authorized to purchase alcoholic beverages at retail. The holder of a satellite facility permit is entitled to possess and sell alcoholic beverages only for on-premise consumption. The holder of a satellite facility permit shall not be entitled to sell alcoholic beverages at a place other than the licensed premises. (*Alcohol and Tobacco Commission; 905 IAC 1-39-6; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1369; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-7 Expiration of permit; issuance and renewal

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 7.1

Sec. 7. (a) The term of a horse track permit will be for a period of one (1) year only, including the day upon which it is granted. An application for renewal or extension of the horse track permit may not be considered if the recognized meeting permit is not renewed.

(b) An extension of a horse track permit may be granted at the discretion of the commission if:

(1) an application for renewal of the horse track permit has been filed but has not been granted as of the date of expiration of the horse track permit; and

(2) an annual review has been conducted and live racing dates have been filed with the Indiana horse racing commission for the next season.

(c) The term of a satellite facility permit will be for a period of one (1) year only, including the day upon which it is granted. An application for renewal or extension of the satellite facility permit may not be considered if the recognized meeting permit is not renewed.

(d) An extension of the satellite facility permit may be granted at the discretion of the commission if:

(1) an application for renewal of the satellite facility permit has been filed but has not been granted as of the date of expiration of the satellite facility permit; and

(2) an annual review has been conducted and live racing dates have been filed with the Indiana horse racing commission for the next season.

(e) The issuance and renewal of the horse track permit and satellite facility permit shall follow the procedures set forth in IC 7.1 and this title for retailers in the filing, processing, and investigation of the propriety of the applicant and the licensed premises for the alcoholic beverage permit. (*Alcohol and Tobacco Commission; 905 IAC 1-39-7; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1369; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-8 Nature of business

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 4-31; IC 7.1

Sec. 8. (a) The nature of the business conducted by the person who holds a horse track permit issued by the commission must be the business of horse racing and race related activity in order for alcoholic beverages to be dispensed within the defined permit premises. In order for the permittee to sell and serve alcoholic beverages at the permit premises during an event not related to horse racing or a racing related activity, prior written approval must be obtained from the commission. This approval must be obtained at least fifteen (15) days prior to the nonracing event or activity.

(b) When evaluating a request to sell and serve alcoholic beverages for activities other than horse racing or a racing related

activity, the commission shall consider the following:

- (1) The nature of the activity to be conducted on the premises and whether such activity is incompatible with the sale of alcoholic beverages.
- (2) The times during which the permittee seeks to make alcoholic beverages available.
- (3) Whether the permittee has adequate security for the activity.
- (4) Whether the permittee has been granted any required approval by the local law enforcement department which has jurisdiction over the venue of the permit premises, board of county commissioners, county council, or town executive for the activity.
- (5) Whether the Indiana horse racing commission has placed any limitations on the use of the permit premises for the activity.
- (6) Other related reasons which may be enumerated by IC 4-31.
- (7) Any other factor which may be considered under IC 7.1 or this title.

(c) The holder of a horse track permit may sell and serve alcoholic beverages on any day of the year (except Christmas Day and primary, general, and special election days until the voting polls are closed) for up to one (1) hour prior to the first race of the day, broadcast or live, during and between races, and up to one (1) hour after the finish of the last race of the day, broadcast or live. The commission may extend the time for the sale and service of alcoholic beverages as provided in this subsection but in no event may the extended time be earlier than 7 a.m. or later than 3 a.m. the following day, prevailing local time.

(d) Subject to the conditions set forth in subsection (b), it is lawful for the holder of a horse track permit to sell and serve alcoholic beverages from 7 a.m., prevailing local time, to 3 a.m., prevailing local time, the following day, Monday through Saturday. On Sunday, it is lawful to sell and serve alcoholic beverages from 11 a.m., prevailing local time, to 12:30 a.m., prevailing local time, the following day.

(e) The nature of the business conducted by the person who holds a satellite facility permit issued by the commission must be the business of horse race wagering. In order for the permittee to sell and serve alcoholic beverages at the permit premises during an event not related to horse race wagering, prior written approval must be obtained at least fifteen (15) days prior to the non-horse race wagering event. When evaluating a request to sell and serve alcoholic beverages for activities other than horse race wagering, the commission shall consider the factors enumerated in subsection (b).

(f) The holder of a satellite facility permit may sell and serve alcoholic beverages on any day of the year (except Christmas Day and primary, general, and special election days until the voting polls are closed) for up to one (1) hour prior to the first race of the day, broadcast or live, during and between races, and up to one (1) hour after the finish of the last race of the day, broadcast or live. The commission may extend the time for the sale and service of alcoholic beverages as provided in this subsection but in no event may the extended time be earlier than 7 a.m. or later than 3 a.m. the following day, prevailing local time.

(g) Subject to the conditions set forth in subsection (e), it is lawful for the holder of a satellite facility permit to sell and serve alcoholic beverages from 7 a.m., prevailing local time, to 3 a.m., prevailing local time, the following day, Monday through Saturday. On Sunday, it is lawful to sell and serve alcoholic beverages from 11 a.m., prevailing local time, to 12:30 a.m., prevailing local time, the following day. (*Alcohol and Tobacco Commission; 905 IAC 1-39-8; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1369; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-9 Suspension, revocation, and fines

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 7.1

Sec. 9. (a) If the Indiana horse racing commission suspends or revokes the recognized meeting permit issued under its authority, the horse track permit is also suspended or revoked for the same time.

(b) If the Indiana horse racing commission suspends or revokes the satellite facility permit issued under its authority, the satellite facility permit is also suspended or revoked for the same time.

(c) A horse track permit or a satellite facility permit shall be subject to all statutes (IC 7.1) and this title governing the sale of alcoholic beverages, and the permit may be fined, suspended, or revoked for a violation of these statutes or rules unless otherwise provided in IC 7.1. Procedures for fines, suspension, or revocation for violation of the alcoholic beverage statutes or rules shall be the same procedures as are followed for those persons who are issued retailer's permits. (*Alcohol and Tobacco Commission; 905 IAC 1-39-9; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1370; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-10 Limited separation

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 7.1-3-17.7; IC 7.1-5-7-12; IC 7.1-5-7-13

Sec. 10. (a) In the permit premises of a horse track permit or satellite facility permit, the separation of the bar area from the dining area (where minors may be seated) may be a structure or a barrier that reasonably deters free access and egress without the requirement for doors or gates, or such other means, including signage which will clearly designate that minors are restricted from being in the designated bar areas. Minors under twenty-one (21) years of age are prohibited from being in the designated bar areas of the permit premises unless otherwise provided in IC 7.1-5-7-12 and IC 7.1-5-7-13. The holder of a horse track permit or satellite facility permit shall be responsible for seeing that any individual who is a minor under twenty-one (21) years of age is not allowed in the bar areas of the permit premises.

(b) Alcoholic beverages may not be carried onto the grounds of a horse track facility or onto the premises of a satellite facility. Minimum food service as defined in 905 IAC 1-20-1, except hot soups, must be available on the premises during any time that alcoholic beverages are available for sale at the horse track facility or the satellite facility. (*Alcohol and Tobacco Commission; 905 IAC 1-39-10; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1371; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-11 Prohibited interests

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 7.1-3-17.7

Sec. 11. It is unlawful for the holder of a horse track permit or satellite facility permit to own, control, or participate in any type of Indiana retailer, Indiana dealer, wholesaler, or primary source of supply permit, or to participate in its business or in its establishment. (*Alcohol and Tobacco Commission; 905 IAC 1-39-11; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1371; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-12 Temporary letters of authority

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 6-1.1; IC 7.1-3-17.7

Sec. 12. In order to promote efficient administration of IC 7.1-3-17.7, the commission shall be granted specific authority to issue a temporary letter of authority allowing an applicant for a horse track permit or a satellite facility permit to sell and serve alcoholic beverages prior to local board investigation and action if the following criteria are met by the applicant for a horse track permit or a satellite facility permit:

- (1) Unanimous written approval by the county local alcoholic beverage board having jurisdiction over the applicant is submitted.
- (2) The Indiana horse racing commission has granted live or broadcast horse racing at the facility requesting such letter.
- (3) Proper applications on forms prescribed by the commission have been filed and the proper fees have been paid.
- (4) The applicant has paid all property taxes under IC 6-1.1 that are currently due.
- (5) The applicant has paid all tax liabilities currently due the state.
- (6) Final inspection has been approved by the commission's enforcement division.

(*Alcohol and Tobacco Commission; 905 IAC 1-39-12; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1371; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-39-13 Advertising

Authority: IC 7.1-2-3-7; IC 7.1-3-17.7-5

Affected: IC 7.1-2-3-16; IC 7.1-2-3-16.5; IC 7.1-3-17.7; IC 7.1-5-5-10; IC 7.1-5-5-11

Sec. 13. (a) As used in this rule, a "facility" includes the following:

- (1) Those facilities and tracts described in IC 7.1-2-3-16.5.
- (2) A facility which holds a horse track permit as described in this rule.
- (3) A facility which holds a satellite facility permit as described in this rule.

(b) A facility may advertise alcoholic beverages:

- (1) in the facility's interiors; or
- (2) on the facility's exterior.

(c) The commission may not exercise the prohibition power contained in IC 7.1-2-3-16(a) on advertising by a brewer, distiller, rectifier, or vintner, in or on a facility.

(d) Notwithstanding IC 7.1-5-5-10 and IC 7.1-5-5-11, a facility may provide advertising to a permittee that is a brewer, distiller, rectifier, or vintner in exchange for compensation from that permittee. (*Alcohol and Tobacco Commission; 905 IAC 1-39-13; filed Jan 29, 1996, 5:00 p.m.: 19 IR 1371; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

Rule 40. Catering Halls and Supplemental Caterers' Permits

905 IAC 1-40-1 Requirements for catering hall designation

Authority: IC 7.1-2-3-7; IC 7.1-3-20-24

Affected: IC 7.1-3-9.5-2

Sec. 1. In order to be designated as a catering hall, the permittee shall meet the following requirements:

- (1) Hold a valid 1-way, 2-way, or 3-way restaurant permit.
- (2) Submit a letter to the commission requesting to be designated a catering hall.
- (3) Obtain commission approval of request.

(*Alcohol and Tobacco Commission; 905 IAC 1-40-1; filed Sep 5, 1996, 11:00 a.m.: 20 IR 18; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-40-2 Duration of designation

Authority: IC 7.1-2-3-7; IC 7.1-3-20-24

Affected: IC 7.1-3-9.5-2

Sec. 2. Once a permit premises is designated a catering hall, it will continue its operation as a catering hall for the term of its permit. (*Alcohol and Tobacco Commission; 905 IAC 1-40-2; filed Sep 5, 1996, 11:00 a.m.: 20 IR 19; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-40-3 Change of designation

Authority: IC 7.1-2-3-7; IC 7.1-3-20-24

Affected: IC 7.1-3-9.5-2

Sec. 3. A permittee may request to permanently change its designation from a catering hall to a restaurant only at the time of renewal. (*Alcohol and Tobacco Commission; 905 IAC 1-40-3; filed Sep 5, 1996, 11:00 a.m.: 20 IR 19; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-40-4 Open to the public requirements

Authority: IC 7.1-2-3-7; IC 7.1-3-20-24

Affected: IC 7.1-3-9.5-2

Sec. 4. In order for an event at a catering hall to be open to the public, the permittee must meet the following requirements:

- (1) Comply with the notice requirements of IC 7.1-3-9.5-2.
- (2) Notify the local law enforcement agency responsible for the permit premises of the catering halls.
- (3) Submit a floor plan for the permit premises if minors are to be allowed at the event.

(*Alcohol and Tobacco Commission; 905 IAC 1-40-4; filed Sep 5, 1996, 11:00 a.m.: 20 IR 19; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-40-5 Supplemental caterers' permit

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-9.5-2

Sec. 5. In order for a supplemental caterers' permit holder to sell, on a temporary basis only, alcoholic beverages for on-premises consumption at locations other than its licensed premises for an event or events to be open to the public, the supplemental caterer must:

(1) Comply with the notice requirements of IC 7.1-3-9.5-2.

(2) Notify the local law enforcement agency responsible for the area in which the catered function will be held.

(Alcohol and Tobacco Commission; 905 IAC 1-40-5; filed Sep 5, 1996, 11:00 a.m.: 20 IR 19; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735)

Rule 41. Separation of Family Room from Barroom**905 IAC 1-41-1 "Bar" defined**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-5

Sec. 1. As used in this rule, "bar" means a counter over which alcoholic beverages are sold or dispensed by the drink to consumers. *(Alcohol and Tobacco Commission; 905 IAC 1-41-1; filed Sep 5, 1996, 11:00 a.m.: 20 IR 19; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735)*

905 IAC 1-41-2 Separation of rooms

Authority: IC 7.1-2-3-7

Affected: IC 7.1-5

Sec. 2. (a) In a permit premises meeting the criteria in this section, the separation of the bar area from the dining area, where minors may be served, may be a structure or barrier that reasonably deters free access and egress without requirement for doors or gates. In order to qualify for the bar area separation permitted in this section, a permittee or applicant must have a minimum gross food sales or minimum projected food sales of two hundred thousand dollars (\$200,000) per permit year or sixty percent (60%) of the gross food and alcoholic beverage sales or projected sales, not including carry out or catering food sales, must be in the sale of food.

(b) In all other permit premises covered by a retail permit, a room containing a bar must be separated from any family room where minors are to be permitted. The family room shall be separated from the barroom by a nontransparent wall at least seventy-two (72) inches high. The barroom may be accessed by one (1) or more doorways. An open archway of no more than five (5) feet in width is sufficient.

(c) In a permit premises covered by a retail permit, in a room that contains no bar, the area from which the alcoholic beverages are dispensed must not be located in the eating area and must not be accessible to the consuming public.

(d) In a permit premises described in subsection (a) or (b), alcoholic beverage service may be provided by a cart; however, only brandy, fortified wines, and cordials may be served from such cart.

(e) An approved floor plan must be on file with the Indiana alcoholic beverage commission. *(Alcohol and Tobacco Commission; 905 IAC 1-41-2; filed Sep 5, 1996, 11:00 a.m.: 20 IR 19; errata filed Oct 28, 1996, 10:30 a.m.: 20 IR 760; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735)*

905 IAC 1-41-3 Outside bars in waterfront restaurants, resort hotels, and hotel-type premises

Authority: IC 7.1-2-3-7

Affected: IC 7.1-5

Sec. 3. In a waterfront restaurant or resort hotel and hotel-type premises, the bar area may be located in or on an outside deck, porch, or patio contiguous to the main structure of a permit premises provided such an area is part of the licensed premises. *(Alcohol and Tobacco Commission; 905 IAC 1-41-3; filed Sep 5, 1996, 11:00 a.m.: 20 IR 19; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735)*

1735)

905 IAC 1-41-4 Porches, verandas, lobbies, beer gardens, and other areas that do not constitute a bar area

Authority: IC 7.1-2-3-7

Affected: IC 7.1-1-3-42; IC 7.1-3-20-17; IC 7.1-5

Sec. 4. (a) 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.

(b) Service of alcoholic beverages is permitted in beer gardens provided the beer garden is enclosed on all sides either by the outside walls of the permit premises or a nontransparent, seventy-two (72) inch wall and must be accessible only through the permit premises.

(c) A beer garden may have a service bar provided that bar meets the qualifications of IC 7.1-1-3-42 and IC 7.1-3-20-17. (*Alcohol and Tobacco Commission; 905 IAC 1-41-4; filed Sep 5, 1996, 11:00 a.m.: 20 IR 20; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-41-5 Fraternal clubs with picnic grounds

Authority: IC 7.1-2-3-7

Affected: IC 7.1-5

Sec. 5. Service of alcoholic beverages is permitted on picnic grounds of a fraternal club if the following criteria are met:

(1) The picnic area is:

(A) located on the grounds that are encompassed by the permit premises; and

(B) within reasonable proximity to the permit premises.

(2) The area where alcoholic beverages are dispensed must be a permanent, semipermanent, or portable structure.

(3) An approved floor plan must be on file and approved by the Indiana alcoholic beverage commission.

(*Alcohol and Tobacco Commission; 905 IAC 1-41-5; filed Sep 5, 1996, 11:00 a.m.: 20 IR 20; errata filed Oct 28, 1996, 10:30 a.m.: 20 IR 760; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

905 IAC 1-41-6 Swimming pools

Authority: IC 7.1-2-3-7

Affected: IC 7.1-5

Sec. 6. If minors are to be permitted in the swimming pool area, there can be no bar. Service of alcoholic beverages to this area may be by a licensed employee or customer carrying them from the bar or other approved service area. (*Alcohol and Tobacco Commission; 905 IAC 1-41-6; filed Sep 5, 1996, 11:00 a.m.: 20 IR 20; readopted filed Jan 7, 2003, 4:31 p.m.: 26 IR 1735*)

Rule 42. Nonprobationary Enforcement Officer; Discharge, Demotion, or Suspension

905 IAC 1-42-1 Definitions

Authority: IC 7.1-2-2-12; IC 7.1-2-3-7

Affected: IC 7.1-2-2-12

Sec. 1. (a) "Department" refers to the Indiana alcoholic beverage commission, also known as the Indiana state excise police department.

(b) "Nonprobationary officer" means an enforcement officer of the department who has successfully completed the probationary period.

(c) "Probationary officer" means a newly employed enforcement officer of the department who has not successfully completed the probationary period.

(d) "Superintendent" refers to the person designated by the commission as the commander, administrator, and supervisor of

the Indiana alcoholic beverage commission enforcement officers.

(e) "Commanding officer" refers to an enforcement officer in a supervisory position. (*Alcohol and Tobacco Commission; 905 IAC 1-42-1; filed Apr 14, 1999, 5:27 p.m.: 22 IR 2881; readopted filed Nov 28, 2005, 3:15 p.m.: 29 IR 1382*)

905 IAC 1-42-2 Superintendent's authority

Authority: IC 7.1-2-2-12; IC 7.1-2-3-7

Affected: IC 7.1-2-2-12

Sec. 2. All enforcement officers employed by the department shall be subject to the supervision of the superintendent as set forth in this rule and the statutes of the state of Indiana. (*Alcohol and Tobacco Commission; 905 IAC 1-42-2; filed Apr 14, 1999, 5:27 p.m.: 22 IR 2881; readopted filed Nov 28, 2005, 3:15 p.m.: 29 IR 1382*)

905 IAC 1-42-3 Commanding officer's authority and responsibility

Authority: IC 7.1-2-2-12; IC 7.1-2-3-7

Affected: IC 7.1-2-2-12

Sec. 3. (a) All commanding officers of the department shall exercise supervisory authority over subordinate employees. Any commanding officer may initiate recommendations for the dismissal, demotion, or suspension of enforcement officers of the department; however, such disciplinary action shall be carried out only by the superintendent or the superintendent's designee.

(b) When a commanding officer becomes aware that just cause for dismissal, demotion, or suspension may exist, the commanding officer shall endeavor to determine the validity of the allegation of misconduct and recommend appropriate action through the chain of command. (*Alcohol and Tobacco Commission; 905 IAC 1-42-3; filed Apr 14, 1999, 5:27 p.m.: 22 IR 2881; readopted filed Nov 28, 2005, 3:15 p.m.: 29 IR 1382*)

905 IAC 1-42-4 Probationary and working test periods

Authority: IC 7.1-2-2-12; IC 7.1-2-3-7

Affected: IC 7.1-2-2-12

Sec. 4. (a) All newly employed enforcement officers shall be subject to a one (1) year probationary period, from the date of appointment, which may be extended for up to one (1) additional year.

(b) All nonprobationary enforcement officers who are promoted shall be subject to a one (1) year working test period, from the date of promotion, which may be extended for up to one (1) additional year. (*Alcohol and Tobacco Commission; 905 IAC 1-42-4; filed Apr 14, 1999, 5:27 p.m.: 22 IR 2881; readopted filed Nov 28, 2005, 3:15 p.m.: 29 IR 1382*)

905 IAC 1-42-5 Written charges and predisciplinary meeting

Authority: IC 7.1-2-2-12; IC 7.1-2-3-7

Affected: IC 7.1-2-2-12

Sec. 5. Whenever it is determined that the dismissal, demotion, or suspension of a nonprobationary officer may be appropriate, the officer shall be entitled to a written statement of the charges and a predisciplinary meeting with the superintendent or the superintendent's designee. The officer may bring a representative to the predisciplinary meeting. (*Alcohol and Tobacco Commission; 905 IAC 1-42-5; filed Apr 14, 1999, 5:27 p.m.: 22 IR 2881; readopted filed Nov 28, 2005, 3:15 p.m.: 29 IR 1382*)

905 IAC 1-42-6 Discharge, demotion, or suspension

Authority: IC 7.1-2-2-12; IC 7.1-2-3-7

Affected: IC 7.1-2-2-12

Sec. 6. (a) The superintendent of the excise police, or the superintendent's designee, may discharge, demote, or suspend a nonprobationary officer, for just cause, after preferring charges in writing and after the employee has been afforded the opportunity to participate in a predisciplinary meeting. The superintendent will normally impose discipline in a progressive manner; however, the superintendent shall retain the right to impose discipline which is appropriate to the seriousness of an individual incident or

situation.

(b) A probationary officer may be dismissed at the will of the superintendent. The dismissal of a probationary officer does not require the preferring of charges, does not require a predisciplinary meeting, and is not subject to review under section 8 of this rule.

(c) A nonprobationary officer who has been promoted is required to successfully complete a promotional working test period in order to achieve permanent status in the new rank. A nonprobationary officer on a promotional working test period may be returned to the officer's permanent rank at the will of the superintendent. The return of a nonprobationary officer, who is serving a promotional working test period, to the officer's permanent rank does not constitute a demotion, does not require the preferring of charges, does not require a predisciplinary meeting, and is not subject to review under section 8 of this rule.

(d) A nonprobationary officer serving on a spot appointment may be returned to the officer's permanent rank at the will of the superintendent. The return to permanent rank of an officer, who has been serving on a spot appointment, does not constitute a demotion, does not require the preferring of charges, does not require a predisciplinary meeting, and is not subject to review under section 8 of this rule. (*Alcohol and Tobacco Commission; 905 IAC 1-42-6; filed Apr 14, 1999, 5:27 p.m.: 22 IR 2881; readopted filed Nov 28, 2005, 3:15 p.m.: 29 IR 1382*)

905 IAC 1-42-7 Written notice of decision

Authority: IC 7.1-2-2-12; IC 7.1-2-3-7

Affected: IC 7.1-2-2-12

Sec. 7. (a) The superintendent, or the superintendent's designee, shall give an enforcement officer written notice of any dismissal, demotion, or suspension.

(b) A written notice of dismissal, demotion, or suspension that is issued to a nonprobationary officer shall include a statement of the cause for the discipline imposed. (*Alcohol and Tobacco Commission; 905 IAC 1-42-7; filed Apr 14, 1999, 5:27 p.m.: 22 IR 2882; readopted filed Nov 28, 2005, 3:15 p.m.: 29 IR 1382*)

905 IAC 1-42-8 Adjudication of dismissals, demotions, and suspensions

Authority: IC 7.1-2-2-12; IC 7.1-2-3-7

Affected: IC 4-21.5

Sec. 8. (a) A nonprobationary officer who has been notified of a dismissal, demotion, or suspension may, within fifteen (15) days of receipt of the written notification, petition the commission for a hearing.

(b) Commission hearings shall be conducted pursuant to the Administrative Orders and Procedures Act, IC 4-21.5. A nonprobationary officer may be represented at the hearing by legal counsel or by a lay representative.

(c) An adverse decision of the commission is subject to judicial review under the Administrative Orders and Procedures Act, IC 4-21.5. (*Alcohol and Tobacco Commission; 905 IAC 1-42-8; filed Apr 14, 1999, 5:27 p.m.: 22 IR 2882; readopted filed Nov 28, 2005, 3:15 p.m.: 29 IR 1382*)

Rule 43. Excursion and Adjacent Landsite Permits

905 IAC 1-43-1 Fees

Authority: IC 7.1-3-17.5-5

Affected: IC 7.1-3

Sec. 1. (a) The annual license fee for the holder of an excursion permit is twenty thousand dollars (\$20,000).

(b) The annual license fee for the holder of an adjacent landsite permit is two thousand dollars (\$2,000). (*Alcohol and Tobacco Commission; 905 IAC 1-43-1; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1343; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

905 IAC 1-43-2 Definitions

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33-2-17; IC 7.1-3-17.5

Sec. 2. (a) For purposes of this rule, the following definitions apply:

(1) "Adjacent landsite permit" means a permit issued under IC 7.1-3 and this title that permits a riverboat licensee to purchase alcoholic beverages from authorized permittees and sell alcoholic beverages to authorized purchasers at a riverboat support facility.

(2) "Excursion permit" means a permit issued under IC 7.1-3 and this title that permits a riverboat licensee to purchase alcoholic beverages from authorized permittees and to sell alcoholic beverages to authorized purchasers on a riverboat licensed by the Indiana gaming commission under IC 4-33 and 68 IAC.

(3) "Riverboat" has the meaning set forth in IC 4-33-2-17.

(4) "Riverboat license" has the meaning set forth in 68 IAC 1-1-80.

(5) "Support facility" has the meaning set forth in 68 IAC 1-1-88.

(b) An excursion permit and an adjacent landsite permit shall be governed by the provisions of IC 7.1 and this title which are applicable to a retailer's permit, except to the extent that a provision of IC 7.1 or this title specifically conflicts with IC 7.1-3-17.5 or this rule. (*Alcohol and Tobacco Commission; 905 IAC 1-43-2; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1343; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

905 IAC 1-43-3 Floor plans

Authority: IC 7.1-3-17.5-5

Affected: IC 7.1-3

Sec. 3. (a) Service of alcoholic beverages on either the riverboat or the support facilities shall only be by employees of the riverboat licensee who hold an employee permit issued by the commission.

(b) The floor plans of the riverboat and adjacent landsite permit premises must be submitted to and approved by the commission before an adjacent landsite permit is issued by the commission. The approval process shall include an initial inspection and final inspection of the floor plans and permit premises by the commission's enforcement officers. The floor plan shall reflect all semipermanent and permanent areas where alcoholic beverages will be stored or dispensed. Service of alcoholic beverages shall only be from those areas designated on the floor plan approved by the commission. (*Alcohol and Tobacco Commission; 905 IAC 1-43-3; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1343; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

905 IAC 1-43-4 General permit qualifications

Authority: IC 7.1-3-17.5-5

Affected: IC 7.1-3-4-2

Sec. 4. (a) The commission shall not issue an excursion permit to an individual who is disqualified under the special disqualifications of IC 7.1-3-4-2.

(b) The commission shall not issue an adjacent landsite permit to an individual who is disqualified under the special disqualifications of IC 7.1-3-4-2. (*Alcohol and Tobacco Commission; 905 IAC 1-43-4; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1344; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

905 IAC 1-43-5 Special permit qualifications

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33-6; IC 7.1-3

Sec. 5. (a) The commission shall not issue an excursion permit to a person who does not hold a riverboat owner's license issued by the Indiana gaming commission under IC 4-33-6.

(b) The commission shall not issue an adjacent landsite permit to a person who does not hold a riverboat owner's license issued by the Indiana gaming commission under IC 4-33-6.

(c) A person that holds an adjacent landsite permit must hold an excursion permit. (*Alcohol and Tobacco Commission; 905 IAC 1-43-5; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1344; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

905 IAC 1-43-6 Transferability of permit

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33; IC 7.1-3-4-6; IC 7.1-3-9-9; IC 7.1-3-14-4; IC 7.1-3-24

Sec. 6. The holder of an excursion permit or adjacent landsite permit may sell, assign, or transfer that permit to another riverboat licensee or to another location subject to the following:

(1) The provisions of IC 4-33, 68 IAC 5 with the written approval of the Indiana gaming commission.

(2) The provisions of IC 7.1-3-24 with the prior written approval of the commission.

(Alcohol and Tobacco Commission; 905 IAC 1-43-6; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1344; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316)

905 IAC 1-43-7 Scope of permit

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33-7-4; IC 7.1-3-4-6; IC 7.1-3-9-9; IC 7.1-3-14-4

Sec. 7. (a) The holder of an excursion permit is entitled to purchase alcoholic beverages only from a permittee entitled to sell to a retailer under IC 7.1-3-4-6, IC 7.1-3-9-9, and IC 7.1-3-14-4.

(b) The holder of an excursion permit may sell only to a person authorized to purchase alcoholic beverages at retail. The holder of an excursion permit is entitled to possess and sell alcoholic beverages only for consumption on the riverboat, the support facilities, or both, so long as the alcoholic beverages are not carried off the premises of the riverboat gambling operation by a patron at any time. However, no alcoholic beverages may be removed or carried by a patron from the riverboat to the support facility after 3:30 a.m. The holder of an excursion permit shall not be entitled to sell alcoholic beverages at a place other than the licensed premises.

(c) The holder of an adjacent landsite permit is entitled to purchase alcoholic beverages only from a permittee entitled to sell to a retailer under IC 7.1-3-4-6, IC 7.1-3-9-9, and IC 7.1-3-14-4. The holder of an adjacent landsite permit may sell only to a person authorized to purchase alcoholic beverages at retail. The holder of an adjacent landsite permit is entitled to possess and sell alcoholic beverages only for consumption on the premises, on the riverboat, or both, so long as the alcoholic beverages are not carried off the premises of the riverboat gambling operation by a patron at any time. The holder of an adjacent landsite permit shall not be entitled to sell alcoholic beverages at a place other than the licensed premises. *(Alcohol and Tobacco Commission; 905 IAC 1-43-7; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1344; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316)*

905 IAC 1-43-8 Expiration of permit, issuance, renewal, and extension

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33; IC 7.1-3

Sec. 8. (a) The excursion permit shall be in force for one (1) calendar year only, including the day upon which it is granted. At the end of the one (1) year period, the permit shall be fully expired and null and void.

(b) An application for renewal or extension of the excursion permit shall not be considered if the riverboat owner's license issued by the Indiana gaming commission under IC 4-33 and 68 IAC 2-1 is not renewed.

(c) The term of an adjacent landsite permit shall be in force for one (1) calendar year only, including the day upon which it is granted. At the end of the one (1) year period, the permit shall be fully expired and null and void.

(d) An application for renewal or extension of the adjacent landsite permit shall not be considered if the riverboat owner's license issued by the Indiana gaming commission under IC 4-33 and 68 IAC 2-1 is not renewed.

(e) An extension of the excursion or the adjacent landsite permit may be granted at the discretion of the commission if an application for renewal of an excursion or an adjacent landsite permit has been filed but has not been granted as of the date of expiration of both permits. *(Alcohol and Tobacco Commission; 905 IAC 1-43-8; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1344; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316)*

905 IAC 1-43-9 Processing of applications; investigation of applicants

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33; IC 7.1

Sec. 9. The issuance and renewal of the excursion permit or adjacent landsite permit shall follow the procedures set forth in IC 7.1 and this title for retailers in the filing, processing, and investigation of the propriety of the applicant and the licensed premises for the alcoholic beverage permit. *(Alcohol and Tobacco Commission; 905 IAC 1-43-9; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1345; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316)*

905 IAC 1-43-10 Nature of business; times when sales are legal

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33-2-10; IC 7.1

Sec. 10. (a) The nature of the business conducted by the person who holds an excursion permit issued by the commission must be the business of an authorized gambling operation, under IC 4-33-2-10, in order for alcoholic beverages to be dispensed within the defined permit premises. In order for the permittee to sell and serve alcoholic beverages at the permit premises during an event not related to an authorized gambling operation, prior written approval must be obtained from the commission. This approval must be obtained at least fifteen (15) days prior to the nonauthorized gambling operation event or activity.

(b) When evaluating a request to sell and serve alcoholic beverages for activities other than authorized gambling activity, the commission shall consider the following:

(1) The nature of the activity to be conducted on the premises and whether such activity is incompatible with the sale of alcoholic beverages.

(2) The times during which the permittee seeks to make alcoholic beverages available.

(3) Whether the permittee has adequate security for the activity.

(4) Whether the permittee has been granted any required approval by the law enforcement department which has jurisdiction over the venue of the permit premises, the board of county commissioners, the county council, or the town executive for the activity.

(5) Whether the Indiana gaming commission has placed any limitations on the use of the permit premises for the activity.

(6) Other related reasons which may be enumerated by IC 4-33, 68 IAC, or both.

(7) Any other factor which may be considered under IC 7.1 or this title.

(c) The holder of an excursion permit or an adjacent landsite permit may sell and serve alcoholic beverages on any day of the year except Christmas Day and primary, general, and special election days until the voting polls are closed.

(d) It is lawful for the holder of an excursion permit or an adjacent landsite permit to sell and serve alcoholic beverages from 7 a.m., prevailing local time, to 3 a.m., prevailing local time, the following day, Monday through Saturday. On Sunday, it is lawful to sell and serve alcoholic beverages from 11 a.m., prevailing local time, to 12:30 a.m., prevailing local time, the following day. (*Alcohol and Tobacco Commission; 905 IAC 1-43-10; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1345; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

905 IAC 1-43-11 Suspension or revocation of permit

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33-3

Sec. 11. If the Indiana gaming commission, established under IC 4-33-3, suspends or revokes the recognized riverboat owner's license issued under its authority, IC 4-33 and 68 IAC, the excursion and adjacent landsite permit is also suspended or revoked for the same time. (*Alcohol and Tobacco Commission; 905 IAC 1-43-11; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1345; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

905 IAC 1-43-12 Fine, suspension, or revocation; procedures

Authority: IC 7.1-3-17.5-5

Affected: IC 7.1

Sec. 12. An excursion permit or an adjacent landsite permit shall be subject to IC 7.1 and this title, which govern the sale of alcoholic beverages. The permittee may be fined, suspended, or revoked for a violation of these statutes or rules unless otherwise provided in IC 7.1. Procedures for fines, suspension, or revocation for violation of the alcoholic beverage statutes or rules shall be the same procedures as are followed for those persons who are issued retailer's permits. (*Alcohol and Tobacco Commission; 905 IAC 1-43-12; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1345; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

905 IAC 1-43-13 Prohibition of minors; minimum food service

Authority: IC 7.1-3-17.5-5

Affected: IC 7.1-5-7-12; IC 7.1-5-7-13

Sec. 13. (a) In the permit premises of an adjacent landsite permit, the separation of the bar area from the dining area, where minors may be seated, may be a structure or a barrier that reasonably deters free access and egress without the requirement for doors or gates. Minors under the age of twenty-one (21) years are prohibited from being in the designated bar areas of the permit premises unless otherwise provided in IC 7.1-5-7-12 and IC 7.1-5-7-13. The holder of an excursion permit or an adjacent landsite permit shall be responsible for assuring that any individual who is a minor under twenty-one (21) years of age is not allowed on the riverboat or in the bar areas of the permit premises.

(b) Alcoholic beverages may not be carried onto the riverboat facility or onto the premises of an adjacent landsite facility except as provided in section 7 of this rule.

(c) Minimum food service, as defined in 905 IAC 1-20-1, except hot soups, must be available on premises during any time that alcoholic beverages are available for sale on the riverboat or the adjacent landsite facility. (*Alcohol and Tobacco Commission; 905 IAC 1-43-13; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1346; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

905 IAC 1-43-14 Prohibited interests

Authority: IC 7.1-3-17.5-5

Affected: IC 7.1-3

Sec. 14. It is unlawful for the holder of an excursion permit or adjacent landsite permit to own, control, or participate in any type of Indiana retailer, dealer, wholesaler, primary source of supply, or manufacturer of alcoholic beverages permit, or to participate in its business or in its establishment. (*Alcohol and Tobacco Commission; 905 IAC 1-43-14; filed Nov 13, 1997, 12:07 p.m.: 21 IR 1346; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

Rule 44. Revocation of Denied Permit

905 IAC 1-44-1 Revocation of denied permit

Authority: IC 7.1-2-3-6; IC 7.1-2-3-7

Affected: IC 4-21.5-2-6; IC 4-21.5-5-9; IC 7.1-3-19-11; IC 7.1-3-23-9

Sec. 1. In the case of denial, as referred to in 905 IAC 1-36-9(a), the commission's order shall include an immediate revocation of a permittee's permit if the denial is for the renewal of an existing permit. (*Alcohol and Tobacco Commission; 905 IAC 1-44-1; filed Jun 17, 1998, 9:10 a.m.: 21 IR 4214; readopted filed Nov 22, 2004, 3:30 p.m.: 28 IR 1316*)

Rule 45. Tracking Beer Kegs

905 IAC 1-45-1 Definitions

Authority: IC 7.1-2-3-7; IC 7.1-3-6.5

Affected: IC 7.1-1-3-30; IC 7.1-2-1-1; IC 7.1-2-3-9

Sec. 1. The following definitions apply throughout this rule:

(1) "Commission" means the alcohol and tobacco commission, created pursuant to IC 7.1-2-1-1.

(2) "Keg" means a brewery sealed individual container of beer:

(A) destined for retail sale; and

(B) having the liquid capacity of at least seven and three-fourths (7¾) gallons.

(3) "Permittee" means a person who holds a permit issued by the commission pursuant to IC 7.1-2-3-9.

(4) "Person" means a person who is not a permittee as defined in IC 7.1-1-3-30.

(*Alcohol and Tobacco Commission; 905 IAC 1-45-1; filed Aug 29, 2003, 11:15 a.m.: 27 IR 189*)

905 IAC 1-45-2 Identification markers

Authority: IC 7.1-2-3-7; IC 7.1-3-6.5

Affected: IC 7.1-3-6.5

Sec. 2. The commission shall prescribe the form of the identification marker required by IC 7.1-3-6.5. The marker must:

- (1) enable the identification and tracking of the seller of the keg;
- (2) be removable or reusable only when the keg is returned to the wholesaler or brewer for refilling;
- (3) contain:
 - (A) the name, address, and commission permit number of the commission wholesale, retail, or dealer permittee who sold the keg;
 - (B) the name of the clerk making the sale;
 - (C) the name, address, and date of birth of the purchaser;
 - (D) the type of identification card and identification number used to verify the data required by clause (C); and
 - (E) the dated signature of the purchaser;
- (4) be attached to the keg by a material that once removed by a person cannot be reattached to the keg in a manner that could conceal the prior removal; and
- (5) be in a form approved by and purchased from the commission at the amount of the commission's cost for producing it.

(Alcohol and Tobacco Commission; 905 IAC 1-45-2; filed Aug 29, 2003, 11:15 a.m.: 27 IR 189; filed Dec 30, 2004, 4:17 p.m.: 28 IR 1484)

905 IAC 1-45-3 Receipt for the keg

Authority: IC 7.1-2-3-7; IC 7.1-3-6.5

Affected: IC 7.1-3-6.5

Sec. 3. A permittee shall require that a person who purchases a keg for consumption at a place other than a commission-licensed premises sign a receipt for the keg. The commission shall prescribe a form for the receipt. The receipt must contain the following information:

- (1) The date of the sale of the keg.
- (2) The name, current residential address, and date of birth of the purchaser.
- (3) A description of the form of identification presented by the purchaser.

(Alcohol and Tobacco Commission; 905 IAC 1-45-3; filed Aug 29, 2003, 11:15 a.m.: 27 IR 189; filed Dec 30, 2004, 4:17 p.m.: 28 IR 1484)

905 IAC 1-45-4 Keeping registration

Authority: IC 7.1-2-3-7; IC 7.1-3-6.5

Affected: IC 7.1-3-6.5

Sec. 4. A permittee shall retain a copy of the keg registration for a period of at least two (2) years from the date of purchase of the keg. *(Alcohol and Tobacco Commission; 905 IAC 1-45-4; filed Aug 29, 2003, 11:15 a.m.: 27 IR 189)*

905 IAC 1-45-5 Removal of identification marker prohibited

Authority: IC 7.1-2-3-7; IC 7.1-3-6.5

Affected: IC 7.1-3-6.5

Sec. 5. A permittee, other than a wholesaler or brewer, shall not remove an identification marker placed on a keg pursuant to this rule. *(Alcohol and Tobacco Commission; 905 IAC 1-45-5; filed Aug 29, 2003, 11:15 a.m.: 27 IR 189)*

905 IAC 1-45-6 Penalties

Authority: IC 7.1-2-3-7; IC 7.1-3-6.5

Affected: IC 7.1-3-6.5

Sec. 6. (a) A permittee who, at the time of sale of a keg, fails to:

- (1) place an identification marker on the keg; and
- (2) obtain a signed receipt from the purchaser;

may be fined in an amount of not more than one thousand dollars (\$1,000) for each violation and have their permit suspended, in addition to any other penalty provided by law.

(b) A permittee, other than a wholesaler or brewer, who removes an identification marker in violation of this rule, may be fined in an amount of not more than one thousand dollars (\$1,000) for each violation and have their permit suspended, in addition to any other penalty provided by law. (*Alcohol and Tobacco Commission; 905 IAC 1-45-6; filed Aug 29, 2003, 11:15 a.m.: 27 IR 189*)

Rule 46. Tobacco Retail Sales Certificates

905 IAC 1-46-1 Display of sales certificate

Authority: IC 7.1-2-3-7; IC 7.1-3-18.5-4

Affected: IC 7.1-3-18.5

Sec. 1. A tobacco retail sales certificate issued pursuant to IC 7.1-3-18.5 must be conspicuously displayed in a manner as follows:

(1) In the same location as an alcoholic beverage permit issued under IC 7.1, if the retailer has such a permit; or

(2) In a conspicuous location visible to the public if the retailer does not have an alcoholic beverage permit issued under IC 7.1.

(*Alcohol and Tobacco Commission; 905 IAC 1-46-1; filed Oct 18, 2004, 1:25 p.m.: 28 IR 969*)

Rule 47. Municipal Riverfront Development Projects

905 IAC 1-47-1 Application

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-16

Sec. 1. Application. This rule applies to an application for a permit located in a municipal riverfront development project pursuant to IC 7.1-3-20-16 where the proposed premises is located more than one thousand five hundred (1,500) feet but not more than three thousand (3,000) feet or more than three (3) blocks but not more than six (6) blocks from the river, whichever is greater. (*Alcohol and Tobacco Commission; 905 IAC 1-47-1; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021*)

905 IAC 1-47-2 Eligibility for permit

Authority: IC 7.1-2-3-7

Affected: IC 4-23-2; IC 7.1-3-20-16; IC 36-7

Sec. 2. The commission may issue a permit pursuant to IC 7.1-3-20-16 for a premises, which is located within the area described in section 1 of this rule, if the following conditions are met:

(1) The proposed permit premises must be located within the original boundaries of the municipal riverfront development project as set forth in IC 7.1-3-20-16.1(c)(1)(A).

(2) The area within the original boundaries of the municipal riverfront development project is:

(A) blighted under IC 36-7-14 or IC 36-7-15.1;

(B) a redevelopment area under IC 36-7-14.5;

(C) an economic development area under IC 36-7-15.2 or IC 36-7-26; or

(D) a historic district established under IC 36-7-11, IC 36-7-11.1, IC 36-7-11.3, or IC 14-3-3.2 (before its repeal); and

(3) The proposed permit premises is located in a building or structure which is designated historical pursuant to subdivision 2(D) of this rule and used primarily in connection with a community-based activity or event that is artistic or cultural in nature, including, but not limited to, music, including folk, contemporary, classical, or jazz; theatre, including media arts; dance, including contemporary or ballet; painting; sculpture; and architecture; and which may be eligible for funding from the Indiana arts commission pursuant to IC 4-23-2.

(*Alcohol and Tobacco Commission; 905 IAC 1-47-2; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021*)

905 IAC 1-47-3 Proof of compliance criteria

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-16

Sec. 3. Proof of compliance with this rule must consist of the following documentation, which is required at the time the permit application is filed with the commission:

- (1) A detailed map showing:
 - (A) definite boundaries of the entire municipal riverfront development project; and
 - (B) the location of the proposed permit within the project.
- (2) A copy of the local ordinance or resolution of the local governing body authorizing the municipal riverfront development project.
- (3) Detailed information concerning the expenditures of state and city funds on the municipal riverfront development project.
- (4) A listing of the types of events being held at the proposed permit premises pursuant to section 2(3) of this rule; and
- (5) Information concerning historical characteristics of the permit premises, including, but not limited to, the age and significance within the municipality.

(Alcohol and Tobacco Commission; 905 IAC 1-47-3; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021)

905 IAC 1-47-4 Nude dancing excluded

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-16

Sec. 4. For purposes of this rule, subsection (2)(c) *[sic.]* does not include activities described in 905 IAC 1-16.1-3. *(Alcohol and Tobacco Commission; 905 IAC 1-47-4; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021)*

905 IAC 1-47-5 Area incapable of development; alternative measurements

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-16

Sec. 5. If the area adjacent to the river is incapable of being developed because the area is in a floodplain, or for any other reason that prevents the area from being developed, the distances described in section 1 of this rule are measured from the city blocks located nearest to the river that are capable of being developed. *(Alcohol and Tobacco Commission; 905 IAC 1-47-5; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021)*

905 IAC 1-47-6 "Original boundaries" defined

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-16

Sec. 6. For purposes of this rule, the term "original boundaries" means the initial geographic parameters or boundaries of the municipal riverfront development project as determined by the governing body. *(Alcohol and Tobacco Commission; 905 IAC 1-47-6; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021)*

905 IAC 1-47-7 For-profit status; not disqualifying

Authority: IC 7.1-2-3-7

Affected: IC 4-23-2; IC 7.1-3-20-16

Sec. 7. For purposes of this rule, the for-profit status of an entity applying for a permit shall not disqualify it for further consideration by the commission if it otherwise meets the criteria for eligibility of funding by the Indiana arts commission pursuant to IC 4-23-2. *(Alcohol and Tobacco Commission; 905 IAC 1-47-7; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4022)*

Rule 48. (Reserved)

Rule 49. (Reserved)

Rule 50. (Reserved)

Rule 51. (Reserved)

Rule 52. Posting Signs Authorized by IC 7.1-3-1-28

905 IAC 1-52-1 Definitions

Authority: IC 7.1-2-3-7; IC 7.1-3-1-28

Affected: IC 7.1-2-1-1; IC 7.1-2-4-1

Sec. 1. (a) "Commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.

(b) "Local board" refers to the division of the commission created by IC 7.1-2-4-1. (*Alcohol and Tobacco Commission; 905 IAC 1-52-1; filed Jul 26, 2002, 10:11 a.m.: 25 IR 4112*)

905 IAC 1-52-2 Posting signs authorized by IC 7.1-3-1-28

Authority: IC 7.1-2-3-7; IC 7.1-3-1-28

Affected: IC 7.1-3-1-28

Sec. 2. (a) Signs required by IC 7.1-3-1-28 shall be posted in a manner that they are visible from the nearest and largest public thoroughfare in the vicinity of the applicant's premises or proposed premises. If no building or structure is present on the proposed premises, said sign may be posted in a manner sufficient to secure it.

(b) Said sign shall be posted for the ten (10) days prior to the applicant or permittee's scheduled local board hearing and until said local board votes on applications described in IC 7.1-3-1-28.

(c) Signs required by this rule shall be either prepared by the commission or be preapproved by the commission. The commission shall charge two dollars (\$2) per sign. (*Alcohol and Tobacco Commission; 905 IAC 1-52-2; filed Jul 26, 2002, 10:11 a.m.: 25 IR 4112*)

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