

# **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be in accordance with the definitions as set forth in Chapter 226 of the Acts of the Indiana General Assembly of 1935 [*Repealed; see IC 7.1-1-3*], and all acts supplemental and amendatory thereto.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used in these regulations [905 IAC 1], shall mean Chapter 226 of the Acts of the Indiana General Assembly of 1935 [*Repealed; see IC 7.1*], and all acts supplemental and amendatory thereto.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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### 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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### 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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA)*

#### **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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA)*

#### **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; readopted*

filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA)

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

## **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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

#### **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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

## **Rule 12.5. Server Permittees; Certification**

### **905 IAC 1-12.5-1 Definitions**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1.5; IC 7.1-3-18-9; IC 7.1-5-7-13

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

(b) "Certified training program" means the following:

(1) A server program.

(2) A trainer program.

(c) "In-house training provider" refers to a third party that has been approved by the commission to conduct a server program for its employees only.

(d) "Master certified trainer" refers to designated employees of the commission that are responsible for trainer certification.

(e) "Program director" means the person responsible for implementing and maintaining certified training programs on behalf of a training provider or in-house training provider.

(f) "Refresher server program" means a course designed to update server certificate holders on the:

(1) selling;

(2) serving; and

(3) consumption;  
of alcoholic beverages as mandated by IC 7.1-3-1.5-13(a)(2).

(g) "Refresher trainer program" means a course designed to update trainer certificate holders on the:

- (1) selling;
- (2) serving; and
- (3) consumption;

of alcoholic beverages as mandated by IC 7.1-3-1.5-9.

(h) "Restricted alcohol server" means a person at least nineteen (19) years of age but less than twenty-one (21) years of age who complies with the provisions of IC 7.1-5-7-13(3).

(i) "Training provider" refers to a third party described in IC 7.1-3-1.5-5.5 that has been approved by the commission to conduct:

- (1) a trainer program;
- (2) a server program; or
- (3) both a trainer program and a server program.

*(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; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

#### **905 IAC 1-12.5-2 Authority of the commission**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1.5; IC 7.1-3-18-9

Sec. 2. The commission may do the following:

- (1) Conduct certified training programs.
- (2) Designate master certified trainers.
- (3) Certify a trainer program conducted by a training provider.
- (4) Certify a server program conducted by a training provider or an in-house training provider.
- (5) Audit certified training programs to ensure compliance with IC 7.1-3-1.5 and this rule.
- (6) Provide an approved format for conducting certified training programs.
- (7) Assign an exclusive certified trainer number to all certified trainers.

*(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; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

#### **905 IAC 1-12.5-3 Training provider scope**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1.5-13; IC 7.1-3-18-9

Sec. 3. (a) A training provider may conduct trainer programs if certified under section 2(3) of this rule.

(b) A training provider may conduct server programs if certified under section 2(4) of this rule.

(c) A training provider shall do the following:

- (1) Designate a program director.
- (2) Submit to the commission for approval all training and certification materials prior to use.
- (3) Upon successful completion of a server program, issue an approved certificate that is valid for three (3) years from the date of issuance in accordance with IC 7.1-3-1.5-13(a)(2), except for retailer and dealer permittees described in IC 7.1-3-1.5-13(b)(2) who will be issued certificates that are valid for five (5) years.
- (4) Only conduct server programs at locations approved by the commission.

*(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; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16,*

2015, 2:55 p.m.: 20151216-IR-905150254RFA)

**905 IAC 1-12.5-4 In-house training provider scope**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1.5-13; IC 7.1-3-18-9

Sec. 4. (a) An in-house training provider may conduct server programs.

(b) An in-house training provider shall do the following:

(1) Designate a program director.

(2) Submit to the commission for approval all training and certification materials prior to use.

(3) Only conduct server programs at locations approved by the commission.

(4) Upon successful completion of a server program, issue an approved certificate that is valid for three (3) years from the date of issuance in accordance with IC 7.1-3-1.5-13(a)(2), except for retailer and dealer permittees described in IC 7.1-3-1.5-13(b)(2) who will be issued certificates that are valid for five (5) years.

*(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; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**905 IAC 1-12.5-5 Program director criteria**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 5. A program director shall do the following:

(1) Obtain a trainer certificate from a master certified trainer.

(2) Maintain certification by attending refresher trainer programs conducted by a master certified trainer.

(3) Supervise certified trainers.

(4) Conduct refresher trainer programs approved by the commission for certified trainers.

*(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; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**905 IAC 1-12.5-6 Certified trainer criteria**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 6. (a) Prior to acting as a certified trainer, a person shall:

(1) have prior experience in conducting educational or training classes;

(2) be employed or retained by a training provider or in-house training provider; and

(3) hold a certified trainer certificate.

(b) A certified trainer shall do the following:

(1) Conduct certified training programs as follows:

(A) In a format approved by the commission.

(B) Using materials approved by the commission.

(2) Maintain the following:

(A) Control while conducting a class.

(B) Issued materials and equipment.

(C) A professional appearance and demeanor while conducting a class.

(3) Not issue a trainer certificate to a person that has not successfully completed the trainer program.

(4) Not issue a server certificate to a person that has not successfully completed the server program.

- (5) Not provide training and testing materials to a person that is not in attendance at a class.
- (6) Not allow admission to a person, or allow continued attendance to a class if that person is as follows:
  - (A) Tardy.
  - (B) Creating a disruption during the class.
  - (C) Cheating.
  - (D) Under the influence of alcoholic beverages or drugs during the class.
  - (E) Not registered to attend or is there without permission of the:
    - (i) training provider; or
    - (ii) commission.

*(Alcohol and Tobacco Commission; 905 IAC 1-12.5-6; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**905 IAC 1-12.5-7 Alcohol server criteria**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1.5-13; IC 7.1-3-18-9

Sec. 7. (a) An alcohol server shall submit their original server certificate to the commission as part of their application for a server permit:

- (1) shall provide an unaltered, legible copy of their valid server certificate to their employer; and
- (2) must meet all the requirements of, and pay all fees due, to:
  - (A) the training provider;
  - (B) the in-house training provider;
  - (C) both the training provider and the in-house training provider; or
  - (D) the commission;

prior to being issued a server certificate.

(b) A retailer or dealer permittee as described in IC 7.1-3-1.5 shall do the following:

- (1) Complete a server program as required by IC 7.1-3-1.5-13.
- (2) Meet all requirements of and pay all fees due:
  - (A) the training provider;
  - (B) the in-house training provider;
  - (C) both the training provider and the in-house training provider; or
  - (D) the commission;

prior to being issued a server certificate.

- (3) Retain the original copy of their server certificate.
- (4) Obtain legible copies of their employees' server certificates.
- (5) Maintain records of employment dates of alcohol servers.
- (6) Provide server certificates and employment records immediately upon the request of any enforcement officer as defined by IC 7.1.

*(Alcohol and Tobacco Commission; 905 IAC 1-12.5-7; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**905 IAC 1-12.5-8 Certified trainer scope**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 8. A certified trainer may conduct a:

- (1) trainer program or a server program at a training provider; or
- (2) server program at an in-house training provider.

*(Alcohol and Tobacco Commission; 905 IAC 1-12.5-8; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted*

*filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**905 IAC 1-12.5-9 Trainer program scope**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 9. (a) A trainer program must incorporate curriculum approved by the commission in the format approved by the commission.

(b) A trainer program shall:

- (1) be conducted at a location agreed upon by the commission;
- (2) be in a format approved by the commission;
- (3) apply adult learning principles;
- (4) require for successful completion that the participant receive a passing grade on a written test or an oral test, or both, in a format approved by the commission; and
- (5) not be in a format that consists of primarily:
  - (A) Internet;
  - (B) online;
  - (C) videotape;
  - (D) audiotape;
  - (E) video feed; or
  - (F) mail order;

training.

*(Alcohol and Tobacco Commission; 905 IAC 1-12.5-9; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**905 IAC 1-12.5-10 Server program scope**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 10. (a) A server program must incorporate curriculum approved by the commission in the format approved by the commission.

(b) A server program shall:

- (1) be instructed by a server trainer under the supervision of a program director;
- (2) be conducted at a location agreed upon by the commission;
- (3) be in a format approved by the commission;
- (4) apply adult learning principles;
- (5) require for successful completion that the participant receive a passing grade on a written test or an oral test, or both, in a format approved by the commission;
- (6) be available for audit by the commission; and
- (7) not be in a format that consists of primarily:
  - (A) Internet;
  - (B) online;
  - (C) videotape;
  - (D) audiotape;
  - (E) video feed; or
  - (F) mail order;

training.

*(Alcohol and Tobacco Commission; 905 IAC 1-12.5-10; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**905 IAC 1-12.5-11 Trainer program criteria**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 11. A trainer program shall meet the following criteria:

- (1) The training must provide for questions from the students.
- (2) The training must include handouts that the attendees are allowed to keep.
- (3) The training must include an examination that covers all topics in the scope of a trainer program as outlined in section 9 of this rule.

*(Alcohol and Tobacco Commission; 905 IAC 1-12.5-11; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**905 IAC 1-12.5-12 Server program criteria**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 12. A server program shall meet the following criteria:

- (1) The training must provide for questions from the students.
- (2) The training must include handouts that the attendees are allowed to keep.
- (3) The training must include an examination that covers all topics in the scope of a server program as outlined in section 10 of this rule.

*(Alcohol and Tobacco Commission; 905 IAC 1-12.5-12; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**905 IAC 1-12.5-13 Certified trainer responsibilities**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-18-9

Sec. 13. The certified trainer shall:

- (1) Provide a certified training certificate indicating the following:
  - (A) The date of the program.
  - (B) The trainer's name.
  - (C) The trainer's number.
- (2) Keep records of all training conducted.
- (3) Report the training as requested by the commission.

*(Alcohol and Tobacco Commission; 905 IAC 1-12.5-13; filed Sep 29, 2009, 3:16 p.m.: 20091028-IR-905090198FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

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

Authority: IC 7.1-2-3-7

Affected: 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 [*IC 7.1-3-20-2.5 was repealed by P.L.196-2015, SECTION 13, effective July 1, 2015.*] (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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39*)

*p.m.: 20131127-IR-905130360RFA)*

**905 IAC 1-15.2-3 Loitering (Expired)**

Sec. 3. *(Expired under IC 4-22-2.5, effective January 1, 2008.)*

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA)*

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

## **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 (Expired)**

(*Expired under IC 4-22-2.5, effective January 1, 2008.*)

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA)*

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA)*

**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 (¼) 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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

**905 IAC 1-29-5 Advertising as package liquor store prohibited (Expired)**

Sec. 5. (*Expired under IC 4-22-2.5, effective January 1, 2008.*)

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA)

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)*

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

## **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.:

20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

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**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.:*

20131127-IR-905130360RFA)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

#### **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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

#### **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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

### **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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

#### **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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

#### **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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

### **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; readopted filed Aug 24, 2011, 3:03 p.m.: 20110921-IR-905110250RFA*)

**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; readopted filed Aug 24, 2011, 3:03 p.m.: 20110921-IR-905110250RFA*)

**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; readopted filed Aug 24, 2011, 3:03 p.m.: 20110921-IR-905110250RFA*)

**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; readopted filed Aug 24, 2011, 3:03 p.m.: 20110921-IR-905110250RFA*)

**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; readopted filed Aug 24, 2011, 3:03 p.m.: 20110921-IR-905110250RFA*)

**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; readopted filed Aug 24, 2011, 3:03 p.m.: 20110921-IR-905110250RFA*)

#### **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; readopted filed Aug 24, 2011, 3:03 p.m.: 20110921-IR-905110250RFA*)

#### **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; readopted filed Aug 24, 2011, 3:03 p.m.: 20110921-IR-905110250RFA*)

### **Rule 43. Excursion and Adjacent Landsite Permits (Repealed)**

(*Repealed by Alcohol and Tobacco Commission; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA*)

#### **Rule 43.1. Gaming Site Permit**

##### **905 IAC 1-43.1-1 Definitions**

Authority: IC 7.1-3-17.5-5

Affected: IC 4-31-5; IC 4-33-2-17; IC 4-33-6; IC 4-33-6.5; IC 4-35-2-5; IC 7.1-3-17.5; IC 7.1-3-20-18

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

- (1) "Bar" has the meaning set forth in 905 IAC 1-41-1.
- (2) "Gambling game" has the meaning set forth in IC 4-35-2-5.
- (3) "Gambling game licensee" means the holder of a permit authorized by IC 4-35-5.
- (4) "Gambling game operation" means a place of business that is part of or adjacent to a horse track, including without limitation, the purveying of:
  - (A) food;
  - (B) beverages;
  - (C) retail goods and services; and
  - (D) transportation;on a gambling gaming site.
- (5) "Gambling gaming site" means a facility authorized by IC 4-35.
- (6) "Gaming site permit" means a permit issued under IC 7.1-3-17.5 and this rule that permits:
  - (A) a riverboat licensee under IC 4-33-6 or an operating agent under IC 4-33-6.5 to purchase alcoholic beverages from authorized permittees and sell alcoholic beverages to authorized purchasers at a riverboat gambling operation; or
  - (B) a gambling game licensee under IC 4-35 to purchase alcoholic beverages from authorized permittees and sell alcoholic beverages to authorized purchasers at a gambling game operation.
- (7) "Horse track" means a facility authorized by IC 4-31-5.
- (8) "Hotel" has the meaning set forth in IC 7.1-3-20-18.
- (9) "Riverboat" has the meaning set forth in IC 4-33-2-17.
- (10) "Riverboat gambling operation" has the meaning set forth in 68 IAC 1-1-79.
- (11) "Riverboat licensee" has the meaning set forth in 68 IAC 1-1-80.
- (12) "Support facility" means a place of business which is part of, or operates in connection with, a riverboat gambling operation, is leased or is owned in whole or in part by a riverboat licensee or supplier licensee or any of their key persons, and is located adjacent to or in close proximity to the riverboat, including without limitation, the following:
  - (A) Riverboats.
  - (B) Offices.
  - (C) Docking facilities.
  - (D) Land-based hotels or restaurants.
  - (E) Passenger pavilion.

*(Alcohol and Tobacco Commission; 905 IAC 1-43.1-1; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

#### **905 IAC 1-43.1-2 Fees**

Authority: IC 7.1-3-17.5-5  
Affected: IC 7.1-3

Sec. 2. (a) All permit fees must be paid at the time the application for a permit is submitted to the commission.

(b) The initial license fee and renewal fee for the holder of a gaming site permit is twenty-five thousand dollars (\$25,000).

*(Alcohol and Tobacco Commission; 905 IAC 1-43.1-2; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

#### **905 IAC 1-43.1-3 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. 3. (a) The holder of a gaming site permit is entitled to purchase alcoholic beverages only from a permittee entitled to sell to a retailer under the following:

- (1) IC 4-33-7-4.
- (2) IC 7.1-3-4.

(3) IC 7.1-3-9-9.

(4) IC 7.1-3-14-4.

(b) The holder of a gaming site permit may sell only to a person authorized to purchase alcoholic beverages at retail.

(c) The holder of a gaming site permit is entitled to possess and sell alcoholic beverages only for on-premises consumption in either of the following areas of the permit premises so long as the alcoholic beverages are not carried off the permit premises by a patron at any time:

(1) The riverboat and support facility.

(2) The gambling gaming site.

(d) Upon written request by the permittee, the support facility may be extended to an area that is located adjacent to or in close proximity to the riverboat subject to the written approval by the commission.

(e) No alcoholic beverages may be removed or carried by a patron between the riverboat and riverboat support facility after 3:00 a.m.

(f) No alcoholic beverages may be removed or carried by a patron between the horse track and gambling gaming site after 3:00 a.m.

(g) The holder of a gaming site permit shall not be entitled to sell alcoholic beverages at a place other than the licensed premises. (*Alcohol and Tobacco Commission; 905 IAC 1-43.1-3; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

#### **905 IAC 1-43.1-4 Permit qualifications**

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33-6; IC 4-33-6.5; IC 4-35-5; IC 7.1-3-4-2; IC 7.1-3-18-9; IC 7.1-5-7-13

Sec. 4. (a) The commission shall not issue a gaming site 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 gaming site permit to a person who does not hold either:

(1) a riverboat owner's license under IC 4-33-6;

(2) an operating agent under IC 4-33-6.5; or

(2) a gambling game license under IC 4-35-5.

(c) Service of alcoholic beverages on either the riverboat gambling operation or the gambling game operation shall only be by employees of the riverboat licensee or the gambling game licensee who hold a valid employee permit issued by the commission.

(d) A person who is:

(1) at least nineteen (19) years of age; and

(2) an employee of the riverboat licensee or the gambling game licensee;

may be present in the area where gambling is conducted if an employee meets requirements set forth in IC 7.1-5-7-13; however, an employee who is less than twenty-one (21) years of age may not perform any function involving gambling by the patrons.

(e) The holder of a gaming site permit shall file with the commission a manager's questionnaire for each and every manager who holds an employee permit under IC 7.1-3-18-9 and will manage any part of the permit premises. (*Alcohol and Tobacco Commission; 905 IAC 1-43.1-4; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

#### **905 IAC 1-43.1-5 Permit term, issuance, renewal, and extension**

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33; IC 4-35-5; IC 7.1-3

Sec. 5. (a) The gaming site 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 gaming site permit shall not be considered if the:

(1) riverboat license issued under IC 4-33 and 68 IAC 2-1; or

(2) gambling game license issued under IC 4-35-5;

is not renewed.

(c) An extension of the gaming site permit may be granted at the discretion of the commission if an application for renewal of a gaming site permit has been filed but has not been granted as of the date of expiration of the gaming site permit. (*Alcohol and Tobacco Commission; 905 IAC 1-43.1-5; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**905 IAC 1-43.1-6 Processing of applications; investigation of applicants**

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33; IC 7.1

Sec. 6. The issuance and renewal of the gaming site 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 1-43.1-6; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**905 IAC 1-43.1-7 Floor plans**

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33-6; IC 4-33-6.5; IC 7.1

Sec. 7. (a) The floor plans must be submitted to and approved by the commission before a gaming site permit is issued by the commission. The approval process shall include an initial inspection and final inspection of the floor plans and the actual permit premises by the commission's enforcement officers. The floor plans 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 plans approved by the commission.

(b) The holder of a gaming site permit, who is also a riverboat licensee under IC 4-33-6 or an operating agent under IC 4-33-6.5, shall clearly designate in the floor plans, the areas constituting riverboat support facility. (*Alcohol and Tobacco Commission; 905 IAC 1-43.1-7; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**905 IAC 1-43.1-8 Sale, assignment, and transfer of permit**

Authority: IC 7.1-3-17.5-5

Affected: IC 4-31; IC 4-33; IC 4-35; IC 7.1-3-24

Sec. 8. The holder of a gaming site permit may sell, assign, or transfer that permit to another holder or to another location subject to the following:

(1) The provisions of IC 4-33 and 68 IAC 5 with the written approval of the Indiana gaming commission.

(2) The provisions of IC 4-35, IC 4-31, and 71 IAC 11-1-13 with the written approval of the Indiana gaming commission and the Indiana horse racing commission.

(3) The provisions of IC 7.1-3-24 and 905 IAC 1-17 with the written approval of the commission.

(*Alcohol and Tobacco Commission; 905 IAC 1-43.1-8; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**905 IAC 1-43.1-9 Nature of business; times when sales are legal**

Authority: IC 7.1-3-17.5-5

Affected: IC 4-31; IC 4-33-2-10; IC 4-35; IC 7.1

Sec. 9. (a) The nature of the business conducted by the person who holds a gaming site permit issued by the commission must be the business of an authorized gambling operation under IC 4-33-2-10 or IC 4-35 in order for alcoholic beverages to be dispensed within the defined permit premises.

(b) 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.

(c) In order for the permittee to sell and serve alcoholic beverages at a location other than a bar clearly designated on the floor plans on file with the commission, prior written approval must be obtained at least fifteen (15) days prior to the event.

(d) 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:
  - (A) law enforcement department that has jurisdiction over the venue of the permit premises;
  - (B) board of county commissioners;
  - (C) county council; or
  - (D) town executive;

for the activity.

(5) Whether the Indiana gaming commission or the Indiana horse racing commission has placed any limitations on the use of the permit premises for the activity.

(6) Other related reasons that may be enumerated by the following:

- (A) IC 4-33 and 68 IAC.
- (B) IC 4-31, IC 4-35, and 71 IAC.

(7) Any other factor that may be considered under IC 7.1 or this rule.

(e) The holder of a gaming site 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.

(f) It is lawful for the holder of a gaming site 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 10 a.m. prevailing local time to 12:30 a.m. prevailing local time the following day. (*Alcohol and Tobacco Commission; 905 IAC 1-43.1-9; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

#### **905 IAC 1-43.1-10 Suspension or revocation of permit; procedures**

Authority: IC 7.1-3-17.5-5

Affected: IC 4-33-3; IC 4-35; IC 7.1

Sec. 10. (a) If the Indiana gaming commission suspends or revokes either the:

- (1) riverboat owner's license issued under IC 4-33 and 68 IAC; or
- (2) gambling game license issued under IC 4-35;

the gaming site permit is also suspended or revoked at the same time.

(b) A gaming site permit shall be subject to IC 7.1 and this rule, 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 1-43.1-10; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

#### **905 IAC 1-43.1-11 Prohibition of minors; minimum food service**

Authority: IC 7.1-3-17.5-5

Affected: IC 7.1-1-3-25; IC 7.1-3-18-9; IC 7.1-5-7-12; IC 7.1-5-7-13

Sec. 11. (a) In the permit premises of a gaming site permit, the separation of the bar area from the dining area, where minors may be seated, may be a structure or barrier that reasonably deters free access and egress without the requirement for doors or gates, or such other means, including signage that 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.

(b) The holder of a gaming site permit shall be responsible for assuring that any individual who is a minor under twenty-one (21) years of age is not allowed in:

(1) an area of the permit premises where gambling is conducted; or

(2) the bar areas of the permit premises unless otherwise provided in IC 7.1-5-7-12 and IC 7.1-5-7-13.

(c) 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 on the riverboat gambling operation or the gambling game operation.

(d) If a hotel is a part of the permit premises of a gaming site permit, the following limitations shall apply to in-room vending units. "In-room vending unit" means a closed container that is located in a guest room of a hotel and is used for the storage and dispensing of food or beverage (alcoholic or nonalcoholic).

(1) The holder of a gaming site permit may dispense alcoholic beverages in individual portions to registered hotel guests through in-room vending units.

(2) Access to the interior of an in-room vending unit must be:

(A) restricted by a locking device, the opening of which requires the use of a:

(i) key;

(ii) magnetic card; or

(iii) similar device; or

(B) controlled at all times by the holder of a gaming site permit.

(3) Alcoholic beverages may be dispensed through in-room vending units only:

(A) on days and at times when the sale of alcoholic beverages is permitted under this title; and

(B) to persons who are permitted to purchase alcoholic beverages under this title.

(4) A permittee to whom this section applies may provide a key, magnetic card, or similar device required to gain access to the interior of an in-room vending unit only to a person who is:

(A) a registered hotel guest; and

(B) twenty-one (21) years of age or older.

(5) In order to prevent the illegal furnishing of an alcoholic beverage to a minor, a permittee to whom this section applies shall determine that the registered hotel guest is not a minor (as defined in IC 7.1-1-3-25) prior to providing a key, magnetic card, or similar device required to gain access to the interior of an in-room vending unit to that registered hotel guest.

(6) Each employee of a permittee to whom this section applies who handles alcoholic beverages for dispensing through an in-room vending unit must:

(A) be twenty-one (21) years of age or older; and

(B) hold an employee's permit issued by the commission under IC 7.1-3-18-9.

*(Alcohol and Tobacco Commission; 905 IAC 1-43.1-11; filed Dec 2, 2008, 3:59 p.m.: 20081231-IR-905080196FRA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

## **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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*



## **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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

### **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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

### **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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA)*

20151216-IR-905150254RFA)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Sep 9, 2009, 10:20 a.m.: 20091007-IR-905090609RFA; readopted filed Nov 16, 2015, 2:55 p.m.: 20151216-IR-905150254RFA*)

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**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) *[Voided by P.L.196-2015, SECTION 24, effective May 5, 2015.]*

*(Alcohol and Tobacco Commission; 905 IAC 1-47-2; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

**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; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

**Rule 48. Regulations Relating to Manufacture, Distribution, and Sale of E-liquids**

**905 IAC 1-48-1 Purpose and application**

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

Affected: IC 7.1-7

Sec. 1. (a) The purpose of this rule is, in the absence of federal regulations, to protect public health and safety by:

- (1) ensuring the safety and security of e-liquid manufactured for sale in Indiana;
- (2) ensuring that e-liquid manufactured or sold in Indiana conforms to appropriate standards of identity, strength, quality, and purity; and
- (3) ensuring that e-liquid is not contaminated or adulterated by the inclusion of ingredients or other substances that might pose unreasonable threats to public health and safety.

(b) This rule applies to the commercial manufacturing, bottling, selling, bartering, or importing of e-liquid products in Indiana and the sale, possession, and use of e-liquid products in Indiana. (*Alcohol and Tobacco Commission; 905 IAC 1-48-1; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA*)

**905 IAC 1-48-2 Sale to minors prohibited**

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

Affected: IC 7.1-7

Sec. 2. Any e-liquid or nicotine product, including nonrefillable sealed cartridge electronic cigarettes, sold for use in Indiana may not be sold to anyone less than eighteen (18) years of age. (*Alcohol and Tobacco Commission; 905 IAC 1-48-2; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA*)

**905 IAC 1-48-3 Definitions**

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

Affected: IC 7.1-7

Sec. 3. (a) The definitions in IC 7.1-7-2 and this section apply throughout this rule.

(b) "Commission" or "ATC" means the Alcohol and Tobacco Commission.

(c) "Packaging" means the process by which e-liquid is bottled in a tamper evident package with a child resistant cap and labeled in compliance with IC 7.1-7. The term does not include the process of preparing to ship or distribute already manufactured and packaged e-liquid. (*Alcohol and Tobacco Commission; 905 IAC 1-48-3; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA*)

**905 IAC 1-48-4 Manufacturer application**

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

Affected: IC 7.1-7

Sec. 4. (a) The application must include the following:

(1) The initial application requirements listed in IC 7.1-7-4-1(d).

(2) Full legal name, address, date of birth, Social Security number, and primary telephone contact number for each owner.

(3) Full legal name, telephone number, date of birth, Social Security number, title, and address of the facility managers responsible for the manufacturing facility.

(4) Floor plans, marked as confidential under IC 7.1-7-3-2, of the manufacturing facility that show the layout of the entire manufacturing facility including the following:

(A) The clean room.

(B) The storage room where sample bottles are stored as required by IC 7.1-7-4-6.

(C) All entrances, exits, and interior doors.

(D) All areas open to the public, including areas used for sales or distribution of e-liquids.

(5) An executed security agreement showing compliance with the requirements of IC 7.1-7-4-1(d)(3) and IC 7.1-7-4-6(b)(10) through IC 7.1-7-4-6(b)(15). A security agreement will be treated as confidential and only be released pursuant to a court order.

(6) A verified statement from the security firm that includes the following:

(A) Name of at least one (1) employee of the security firm who is accredited or certified by the Door and Hardware Institute as an architectural hardware consultant.

(B) Name of at least one (1) employee of the security firm who is accredited or certified as a certified rolling steel fire door technician by the International Door Association or the Institute of Door Dealer Education and Accreditation.

(C) Name of the employee of the security firm who is a locksmith.

(7) Statement that no individuals, corporations, limited liability companies, limited liability partnerships, partnerships or stock owners, members, or partners of such entities with an interest, either directly or indirectly, in the security company have any interest, either directly or indirectly, in any e-liquid manufacturer, distributor, or retailer.

(8) A verified statement that all products manufactured for distribution in Indiana contain only the ingredients listed in IC 7.1-7-5-1(a).

(9) An addendum, marked as confidential, that provides a product listing that complies with section 8 of this rule.

(10) A verified statement that the facility will comply with manufacturing processes required by IC 7.1-7 and this rule.

(11) A verified statement that equipment used is easily cleanable as defined in 410 IAC 7-24-27(a).

(12) Written consent to allow a law enforcement officer to conduct a state or national criminal history background check on any person listed on the application.

(13) Written consent allowing the commission, or its duly appointed agents, after a permit is issued to the applicant, to enter during normal business hours the premises where the e-liquid is manufactured to conduct physical inspections, sample the product to ensure the e-liquid meets the requirements for e-liquid set forth in this article, and perform an audit.

(14) Any other information as deemed appropriate by the commission to complete review of the application.

(b) Failure to make a timely and accurate notification required by IC 7.1-7-4-5 may result in the denial or revocation of the application. (*Alcohol and Tobacco Commission; 905 IAC 1-48-4; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA*)

#### **905 IAC 1-48-5 Time allotted for review and action by the commission**

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

Affected: IC 7.1-7

Sec. 5. (a) The commission shall complete its review and take final action upon the application within sixty (60) days after receiving all information and documentation required by IC 7.1-7 and this rule, including, but not limited to, the following:

(1) The completed application form.

(2) The certification by the security firm that the manufacturing facility is in compliance with the requirements of IC 7.1-7-4-1(d)(3) and IC 7.1-7-4-6(b)(10) through IC 7.1-7-4-6(b)(15).

(3) A fully compliant service security agreement is executed with the final copy submitted to the commission.

(4) Product listing that complies with section 8 of this rule.

(5) Payment of the application fee.

(6) Floor plan.

(7) Any other outstanding matters required by the commission are satisfied.

(b) For an out-of-state or out-of-country manufacturing facility that the commission is unable to physically inspect, arrangements may be made for an independent provider approved by the commission to perform such inspection. The out-of-state approved inspection provider will be required to submit the results of the inspection directly to the commission via first class mail. (*Alcohol and Tobacco Commission; 905 IAC 1-48-5; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA*)

#### **905 IAC 1-48-6 Renewals**

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

Affected: IC 7.1-7

Sec. 6. (a) Applications for renewals of existing permits must be submitted to the commission on an application form prescribed by the commission at least sixty (60) days before the expiration date of the existing permit and must include the following:

(1) The renewal application requirements listed in IC 7.1-7-4-2(b).

(2) The full legal name, address, and primary telephone contact number for each owner.

(3) The full legal name, address, and primary telephone contact number for each facility manager responsible for the manufacturing facility.

(4) Evidence that the security firm complies with the requirements of IC 7.1-7 by either:

(A) a verified statement by the security company that the information provided in the initial application or most recent renewal applicant continues to be correct; or

(B) a verified statement as required by sections [section] 4(a)(6) and 4(a)(7) of this rule that includes any changes to the security company.

(5) A verified statement that all products manufactured for distribution in Indiana contain only the ingredients listed in IC 7.1-7-5-1(a).

(6) A verified statement that the manufacturing process used by the applicant complies with the requirements of IC 7.1 and

this rule.

(7) Written consent allowing law enforcement to conduct a state or national criminal history background check on any person listed on the application.

(8) Any other information as deemed appropriate by the commission that is relevant to the renewal application.

(b) Failure to make a timely and accurate notification required by IC 7.1-7-4-5 may result in the denial of the application.

*(Alcohol and Tobacco Commission; 905 IAC 1-48-6; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA)*

#### **905 IAC 1-48-7 Transfer of permits**

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

Affected: IC 7.1-7

Sec. 7. (a) As used in this section, "sample" means the three (3) ten (10) milliliter sample bottles from each production batch of more than two (2) liters required to be stored or maintained by IC 7.1-7-4-6(b)(15).

(b) An e-liquid manufacturer transferring the location of the permit shall maintain the samples in a secure, limited access area during the transfer of location by complying with the following:

(1) The e-liquid manufacturer must notify the commission of the anticipated date the samples will be removed from the original location and the anticipated date the samples will be moved into the new location.

(2) Samples may only be removed from the secure, limited access area with recorded video surveillance at the original location by designated employees of the e-liquid manufacturer.

(3) Samples removed from the secure, limited access area with recorded video surveillance at the original location must be placed immediately in a secure, limited access container or vehicle for transporting to the new permit location.

(4) Video surveillance may not be removed or disconnected from the secure, limited access area until all samples are removed to the secure, limited access container or vehicle.

(5) The secure, limited access area for the storage of samples at the new location must have operational video surveillance before samples may be placed in the area.

(6) The e-liquid manufacturer must notify the commission of the completion of the transfer within five (5) days after the completion of the relocation of the samples and equipment.

(7) The e-liquid manufacturer must maintain a list of employees who had access to the samples during the transfer for a period of three (3) years.

*(Alcohol and Tobacco Commission; 905 IAC 1-48-7; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA)*

#### **905 IAC 1-48-8 Product listing**

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

Affected: IC 7.1-7

Sec. 8. (a) The manufacturer shall provide a product listing to the commission at the time of the initial application for all e-liquid products manufactured in production batches of more than two (2) liters.

(b) The product listing shall include:

(1) the product name;

(2) for each product, the percentage of nicotine; and

(3) the original date of manufacture of each product.

(c) The manufacturer shall notify the commission within thirty (30) days of the following:

(1) The manufacture of a new e-liquid product manufactured in production batches of more than two (2) liters and the original date of manufacture.

(2) The manufacture of an existing e-liquid product under a new or amended product name and the original date of manufacture under the new or amended product name.

(3) The discontinuation and final manufacture date of an e-liquid product.

(4) The final date of manufacture of a discontinued product.

(d) The manufacturer shall maintain a record of each ingredient used in a production batch for three (3) years that includes

the following information for each ingredient:

- (1) The ingredient, as listed in IC 7.1-7-5-1.
- (2) The manufacturer of each ingredient.
- (3) The batch from the manufacturer of each ingredient, if applicable.

The manufacturer shall provide the ingredient information for a production batch to the commission upon request. (*Alcohol and Tobacco Commission; 905 IAC 1-48-8; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA*)

**905 IAC 1-48-9 E-liquid manufacturing**

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

Sec. 9. In order to comply with IC 7.1 relating to e-liquid manufacturing, the manufacturing facility must demonstrate compliance with the following:

- (1) The manufacturing requirements listed in IC 7.1-7-4-6.
- (2) E-liquid containers must be labeled.
- (3) Labels on e-liquid containers must identify all active ingredients, including percentage of nicotine.
- (4) Labels on e-liquid containers must include a means for the commission to obtain the manufacturing date either through a scannable code or printed on the label.
- (5) The video recordings required by IC 7.1-7-4-6(b)(13) must be retained for at least thirty (30) days and are subject to commission audit for quality, purity, and compliance reviews.
- (6) An e-liquid container label or tamper resistant packaging may include a "best if used by" date.
- (7) A production log must be maintained listing the following:
  - (A) Date and time the e-liquid was produced.
  - (B) The name of the product manufactured.
  - (C) The amount of the product produced in liters.
  - (D) The code and batch number.
  - (E) Any person responsible for the mixing and bottling.

(*Alcohol and Tobacco Commission; 905 IAC 1-48-9; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA*)

**905 IAC 1-48-10 Random samples**

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

Sec. 10. (a) The commission may require an e-liquid manufacturer to have up to three (3) different products tested annually by one (1) of three (3) independent laboratories approved by the commission for safety, quality, and purity purposes.

(b) The commission will select up to three (3) products to be tested pursuant to subsection (a) from the product listing provided to the commission under section 8 of this rule.

(c) Failure by the e-liquid manufacturer to submit or pay the costs of a product testing required by subsection (a) will result in disciplinary action by the commission that may include fines, suspension, and revocation of the permit.

(d) The commission may require the laboratory to test for any of the following:

- (1) Nicotine.
- (2) Ingredients listed on the label.
- (3) Contaminants.
- (4) Illegal drugs.

(e) At the discretion of the commission, products that test positive for ingredients other than those listed on the label or on the ingredient list maintained by the e-liquid manufacturer under section 8 of this rule may be subject to retesting at the cost of the e-liquid manufacturer. (*Alcohol and Tobacco Commission; 905 IAC 1-48-10; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA*)



**905 IAC 1-48-11 Permit violations**

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

Affected: IC 7.1-7

Sec. 11. Permit violations proceedings for e-liquid manufacturing permits shall be conducted pursuant to 905 IAC 1-37-1. (*Alcohol and Tobacco Commission; 905 IAC 1-48-11; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA*)

**905 IAC 1-48-12 Procedure on denial**

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

Affected: IC 7.1-7

Sec. 12. (a) If an initial or renewal application for an e-liquid manufacturing permit is denied by the commission, the commission shall give written notice of the action to the applicant.

(b) Upon receipt of notice of the commission's action, the applicant shall have fifteen (15) days to file:

(1) a petition for administrative appeal; and

(2) a brief objecting to the commission's action.

(c) The brief shall state any basis on which the applicant believes the application was denied in error.

(d) The commission shall provide for one (1) automatic extension of the fifteen (15) day period at the request of the applicant if made within the original fifteen (15) days.

(e) Failure of the applicant to file objections within the fifteen (15) day period shall constitute a waiver of any administrative appeal from the commission's action.

(f) At the discretion of the commission, a hearing may be conducted by the full commission, any individual member of the commission, or a duly authorized agent of the commission.

(g) The commission may conduct a prehearing conference. The hearing judge for the prehearing conference shall set the time and place of the conference and give reasonable notice to the applicant.

(h) The hearing officer shall set the time and place of the hearing on the denial and give reasonable notice to the applicant. At the hearing, the applicant may present evidence by presenting testimony, under oath or affirmation, documentary evidence, or written evidence.

(i) If the decision by the commission is ultimately appealed by the applicant, the hearing officer may consider any evidence presented in the original investigation, the commission hearing, or at the appeal hearing.

(j) If the appeal is based on the denial of an application for renewal of an existing license, the applicant may request an extension of the life of the license to allow him or her to continue operating pending the appeal procedure.

(k) Following the hearing, the hearing officer shall issue proposed findings of fact, conclusions of law, and order to the commission for its final approval.

(l) Such proposed findings of fact, conclusions of law, and final order shall be served on the applicant for the applicant's written objection, which is due to the commission within fifteen (15) days of the receipt of the proposed findings of fact, conclusions of law, and final order by the applicant.

(m) At the conclusion of the time for receipt of written objections, the commission shall approve, deny, or modify the proposed findings of fact, conclusions of law, and final order.

(n) In the case of denial of an application, the commission shall inform the applicant that its decision may be subject to judicial review. (*Alcohol and Tobacco Commission; 905 IAC 1-48-12; filed Dec 29, 2016, 3:49 p.m.: 20170125-IR-905160326FRA*)

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

**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; readopted filed Nov 13, 2008, 1:29 p.m.: 20081203-IR-905080739RFA; readopted filed Aug 19, 2014, 11:46 a.m.: 20140917-IR-905140200RFA*)

**Rule 53. Type II Gaming**

**905 IAC 1-53-1 Definitions**

Authority: IC 4-36-3-3

Affected: IC 4-36-2

Sec. 1. (a) The definitions in IC 4-36-2 and the following definitions apply throughout this article.

(b) Unless otherwise provided, the definitions in 68 IAC 21-1 apply throughout this article.

(c) "Cash equivalent" means checks, credit cards, or other negotiable instruments.

(d) "Gaming manager" means a person responsible for operating and controlling the type II gambling operation with the authority to make decisions regarding the type II gaming activities.

(e) "House rule" means requirements established by the retailer for the purposes of conducting a type II gambling operation.

(f) "Licensed supply" means any supplies, devices, or equipment:

(1) critical to the conduct of the type II gambling operation; and

(2) approved by the commission.

(g) "Type II endorsement" means a license to conduct a type II gambling operation at the retailer's tavern.

(h) Copies of the document incorporated by reference are available by contacting the commission as follows:

Alcohol and Tobacco Commission

302 West Washington Street, Room E114

Indianapolis, Indiana 46204

(*Alcohol and Tobacco Commission; 905 IAC 1-53-1; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

**905 IAC 1-53-2 Application by a manufacturer or distributor**

Authority: IC 4-36-3-3

Affected: IC 4-32.2-3-4; IC 4-36

Sec. 2. (a) A manufacturer or distributor shall submit a written application on a form prescribed by the commission.

(b) A manufacturer or distributor shall submit a written application for renewal on a form prescribed by the commission not later than seventy-five (75) days before expiration.

(c) A distributor shall purchase all licensed supplies to be distributed to a retailer from a manufacturer or another distributor.

(d) An entity that is both a manufacturer and distributor must possess a:

(1) manufacturer's license; and

(2) distributor's license.

*(Alcohol and Tobacco Commission; 905 IAC 1-53-2; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**905 IAC 1-53-3 Type II game construction standards**

Authority: IC 4-36-3-3

Affected: IC 4-32.2; IC 4-36

Sec. 3. All pull tabs manufactured or distributed for sale in Indiana must meet the "Standards on Pull Tabs" adopted by the North American Gaming Regulators Association, October 12, 1991, as amended October 20, 1998, and amended December 12, 2005, which is incorporated by reference. Copies are available from the North American Gaming Regulators Association, 26 East Exchange Street, Suite 500, St. Paul, MN 55101 or at <http://www.nagra.org> *(Alcohol and Tobacco Commission; 905 IAC 1-53-3; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**905 IAC 1-53-4 Scope of type II endorsement**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 4. (a) A retailer shall submit a written application for renewal on a form prescribed by the commission not later than seventy-five (75) days before expiration.

(b) Type II gambling games shall only be sold on the premises of the retailer's tavern in areas where minors may not be present.

(c) The type II endorsement must be displayed prominently in the retailer's tavern.

(d) The retailer shall submit a written application on a form prescribed by the commission.

(e) The retailer shall submit a written application for renewal on a form prescribed by the commission not later than seventy-five (75) days before expiration.

(f) The retailer shall notify the commission in writing if any information filed with the application changes in any way within thirty (30) days of the change. *(Alcohol and Tobacco Commission; 905 IAC 1-53-4; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**905 IAC 1-53-5 Retailer gaming operations**

Authority: IC 4-36-3-3

Affected: IC 4-36-2-7; IC 4-36-5-6

Sec. 5. (a) No retailer or its employees shall provide any information or engage in any conduct that alters or is intended to alter the outcome of any type II gambling game.

(b) No retailer shall conduct any type II gambling game or winner take all drawing in which the winner of a prize is determined, in whole or in part, on a sporting event.

(c) All licensed supplies shall originally be obtained from an entity that is licensed by the commission as a manufacturer or

distributor.

- (d) Retailers shall post a flare for each deal in the vicinity of the deal and in view of the players while the deal is in play.
- (e) If more than one (1) flare is posted, retailers must mark each flare and the container from which the corresponding deal is sold to clearly indicate which flare corresponds with each deal.
- (f) A retailer must thoroughly mix pull tabs prior to offering them for sale to the public.
- (g) A retailer may not purchase and a distributor may not sell a box of type II gambling games if the manufacturer's:
  - (1) shrink-wrap is removed; or
  - (2) seal is broken.
- (h) A retailer may not sell type II gambling games from the original packing box or container.
- (i) Multiple games may not be commingled within a single dispensing device.
- (j) If multiple dispensing devices are used, retailers must mark each device so that players can identify the flare that corresponds to the game being sold from the device.
- (k) A retailer may remove a type II gambling game from play at the retailer's discretion, provided that the game meets the minimum payout percentages set forth in IC 4-36-5-6. Once a type II gambling game is removed from play, the type II gambling game is deemed dead and the retailer shall never commence play on that game again.
- (l) A person who owns, manages, or is employed by a retailer shall not play or participate in any manner in a type II gambling game at the retailer's tavern.
- (m) A retailer shall not sell a type II gambling game for more than one dollar (\$1).
- (n) A retailer shall not permit a person less than twenty-one (21) years of age to play a type II game.
- (o) A retailer shall not permit type II gaming in the presence of minors.
- (p) A retailer may not conduct type II gaming on or through the Internet.
- (q) A retailer may:
  - (1) accept only United States currency and coin or cash equivalent from players when conducting type II gaming; and
  - (2) not extend credit to any player.

*(Alcohol and Tobacco Commission; 905 IAC 1-53-5; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

#### **905 IAC 1-53-6 House rules**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 6. (a) The retailer must establish its house rules governing its type II gambling operation. At a minimum, the house rules shall contain all of the following information:

- (1) The retailer's name.
- (2) The Indiana alcoholic beverage permit number.
- (3) The time limit for the redemption of the type II gambling game, which shall be not less than seven (7) days, but not more than fourteen (14) days from the date the deal is closed.
- (4) The effective date of the house rules.
- (b) The retailer shall post the house rules in a prominent place of the retailer's tavern.
- (c) The house rules shall not conflict with Indiana alcoholic beverage laws and rules. *(Alcohol and Tobacco Commission; 905 IAC 1-53-6; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

#### **905 IAC 1-53-7 Redemption of winning ticket**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 7. (a) A type II gambling game shall be redeemed only by the retailer that sold the winning game.

- (b) A type II gambling game must be redeemed:

(1) not more than fourteen (14) days from the date the last ticket of the deal is sold; or

(2) within the time limit posted for redeeming winning tickets in accordance with the retailer's house rules.

(c) A retailer shall permanently deface each winning type II gambling game immediately after the ticket is presented for payment.

(d) When a player wins a prize with a value of two hundred fifty dollars (\$250) or more, the gaming manager must make a record by:

(1) having the winner print his or her name and date of birth, in ink, on the side of the winning punch or tab opposite the winning symbol;

(2) verifying the winner's identity and recording the current date and initialing the winning punch or tab; or

(3) recording the required information on a sheet of paper at least three (3) inches by five (5) inches and stapling the winning tab or punch to the paper if the pull tab or punch is constructed or printed so that recording the information required in a legible manner is not possible.

(e) When a player wins a prize with a value of two hundred fifty dollars (\$250) or more, a type II gambling game winner must provide his or her name and date of birth and proof of identification to redeem a prize.

(f) At the time a game is closed, a retailer shall conspicuously post the date by which all winning tickets shall be redeemed. *(Alcohol and Tobacco Commission; 905 IAC 1-53-7; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

#### **905 IAC 1-53-8 Winner take all drawings; display of information**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 8. A retailer must conspicuously display the following information concerning each winner take all drawing:

(1) The price of a ticket.

(2) The number of tickets for sale.

(3) The time of the drawing.

(4) The description and value of the prizes awarded in the drawing.

(5) The manner in which a prize may be claimed.

*(Alcohol and Tobacco Commission; 905 IAC 1-53-8; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

#### **905 IAC 1-53-9 Advertisement of type II games**

Authority: IC 4-36-3-3

Affected: IC 4-36; IC 7.1-5-7-11

Sec. 9. (a) A retailer may place, display, or maintain, or cause to be placed, displayed, or maintained:

(1) a sign;

(2) banners; or

(3) pennants;

advertising a type II game or related activities only inside the retailer's tavern.

(b) A retailer may not directly or indirectly place, display, or maintain, or cause to be placed, displayed, or maintained, a sign, banners, or pennants advertising a type II game or related activities in the following places:

(1) The public places of the licensed premises in which a minor may be present.

(2) The exterior parts of the permit premises, including, but not limited to, the wall or the roof of a building and parking facility.

*(Alcohol and Tobacco Commission; 905 IAC 1-53-9; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**905 IAC 1-53-10 Destruction and loss of type II gambling games**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 10. (a) The licensee may dispose of unused type II gambling games and other licensed supplies specified by the commission by shredding, burning, or otherwise destroying them. The licensee must notify the commission that the items are to be destroyed thirty (30) days in advance of the destruction and must provide the following information:

- (1) The date the items were destroyed.
- (2) The manner of destruction.
- (3) A description of the items destroyed.
- (4) The quantity of items destroyed.
- (5) The serial numbers of the items destroyed.
- (6) The trade name of the items.
- (7) The reason for destruction.

Destruction of any unused licensed supplies must be certified by the licensee.

(b) If an *[sic]* licensee has lost any licensed supplies through theft, fire, flood, or other disaster, the licensee must notify the commission in writing of the loss and provide the following information within ten (10) days of discovering the loss:

- (1) The date the items were lost.
- (2) The manner of loss and a description of the items lost.
- (3) The serial numbers of the items lost.
- (4) The trade name of the items.
- (5) Copies of all insurance forms submitted for the loss.
- (6) Any police department or fire department reports created in connection with the loss.
- (7) Any other information required by the commission.

*(Alcohol and Tobacco Commission; 905 IAC 1-53-10; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**905 IAC 1-53-11 Records of retailer**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 11. (a) A retailer must maintain adequate records of all financial aspects of type II gaming for the commission to conduct oversight as authorized by IC 4-36 and to report the information to the commission on forms prescribed by the commission.

(b) A retailer must set up a separate and segregated bank account to account for all proceeds and expenditures of the type II gambling operation.

(c) A retailer shall retain the following records for a minimum of four (4) years from the date each game is removed from play or each document is generated, as applicable:

- (1) All type II gambling games removed from play, including the following:
  - (A) Prize flares.
  - (B) Unplayed tabs.
  - (C) Winning punches or tabs.
  - (D) Winning and unplayed winner take all game tickets.

- (2) All documents associated with type II gaming.

- (3) All other documents kept in the regular course of a type II gambling operation.

(d) Retailers shall make their type II gambling operation records available on the licensed premises for the commission to inspect. The commission shall be granted unrestricted access to all records related to a type II gambling operation. If stored off premises, a retailer must produce the type II gambling operation record for inspection at the licensed premises on demand within forty-eight (48) hours.

- (e) The retailer shall submit financial reports to the commission on forms prescribed by the commission.

(f) A retailer must prepare a detailed quarterly income summary for type II gambling games and winner take all games removed from play in the format required by the commission. The quarterly income statement must be:

- (1) completed not later than January 15, April 15, July 15, and October 15; and
- (2) available within three (3) days of a request by:
  - (A) the commission;
  - (B) law enforcement; or
  - (C) the department.

*(Alcohol and Tobacco Commission; 905 IAC 1-53-11; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**905 IAC 1-53-12 Records of manufacturer or distributor**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 12. (a) A manufacturer or a distributor must keep records adequate for the commission to conduct oversight as authorized by IC 4-36 and to report the information to the commission on forms prescribed by the commission. The records required must include, but are not limited to, the following:

- (1) A general sales invoice that:
  - (A) is:
    - (i) numbered consecutively; and
    - (ii) prepared in at least two (2) parts, one (1) being issued to the customer and the other retained in an invoice file; and
  - (B) sets out:
    - (i) the date of the sale;
    - (ii) the customer name and business address;
    - (iii) a full description of each licensed supply sold, including the serial numbers of the licensed supply sold;
    - (iv) the quantity and sales price of each licensed supply;
    - (v) the manufacturer's or distributor's license number;
    - (vi) the customer's license number; and
    - (vii) the gaming card excise tax due on the sale.
- (2) Credit memoranda prepared in the same manner as sales invoices.
- (3) A sales journal containing at least the following, by calendar month:
  - (A) The date of the sale.
  - (B) The invoice number of the sale.
  - (C) The customer name or account number.
  - (D) The total amount of the invoice.
  - (E) The total amount of the gaming card excise tax due on the sale.
- (4) A complete list of the persons representing the buyer and seller of licensed supplies.
- (5) Purchase records documenting that all:
  - (A) type II gambling games; and
  - (B) licensed supplies;were purchased from a licensed manufacturer or distributor.
- (6) Invoices may not display "Cash Sale". Invoices shall display the customer's name and address on all sales invoices.
- (b) The serial number printed on licensed supply sold must be identifiable with the sales invoice reflecting the sale of the specific licensed supply.
- (c) Records are required to be maintained until the later of the following:
  - (1) Six (6) years after the year in which they are created.
  - (2) The end of the audit if the records are under audit.
- (d) Marketing sheets that show the expected gross income, payout, net income, and number of deals in the pull tab game that

have been sold to the qualified licensee. "Payout" does not include the cost of the game itself.

(e) If a licensed manufacturer or distributor destroys, discontinues, or otherwise renders unusable licensed supplies sold in Indiana, then the manufacturer or distributor must provide the commission with a written list of the licensed supplies destroyed, including the following:

- (1) The quantity.
- (2) A description of the items.
- (3) The serial numbers.
- (4) The date on which the items were destroyed.
- (f) A licensed manufacturer or distributor must keep the commission informed of the following:

- (1) Its location.
- (2) The location of all facilities where licensed supplies are manufactured or distributed.
- (3) Where the records will be stored if the manufacturer or distributor ceases business.

(g) The records referenced in subsections (a) through (f) must be produced upon request by the commission. (*Alcohol and Tobacco Commission; 905 IAC 1-53-12; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

#### **905 IAC 1-53-13 Administrative proceedings**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 13. The adjudication proceeding concerning violations of IC 4-36 and this rule shall be governed by 905 IAC 1-37. (*Alcohol and Tobacco Commission; 905 IAC 1-53-13; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

#### **905 IAC 1-53-14 Deviation from provisions**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 14. The commission may approve deviations from the provisions of this article upon written request if the commission determines that:

- (1) the requirement or procedure is impractical or burdensome; and
- (2) the alternative means of satisfying the requirement or procedure:
  - (A) fulfills the purpose of the article;
  - (B) is in the best interest of the public and type II gaming in Indiana; and
  - (C) does not violate IC 4-36.

(*Alcohol and Tobacco Commission; 905 IAC 1-53-14; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA*)

#### **905 IAC 1-53-15 Restrictions**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 15. (a) A manufacturer, distributor or their officers, employees, or agents shall not affiliate with the gaming operation of a retailer in any manner other than the sale or lease of licensed supplies.

(b) Manufacturers, distributors, and manufacturer and distributor representatives may sell or distribute type II gambling games or licensed supplies only to other licensed distributors, distributor representatives, or retailers unless:

- (1) the sale of type II gambling games or licensed supplies are not for the purpose of conducting a type II gambling operation; and
- (2) the manufacturer, distributor, and manufacturer or distributor representatives have notified the commission in writing.



*(Alcohol and Tobacco Commission; 905 IAC 1-53-15; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

**905 IAC 1-53-16 Petition for review**

Authority: IC 4-36-3-3

Affected: IC 4-36

Sec. 16. (a) An applicant whose application for a license has been denied or has not been renewed under this article may petition for review.

(b) As used in this rule, "petitioner" refers to the person whose:

(1) application has been denied by the commission; or

(2) license has not been renewed.

(c) A petition for review shall meet the following requirements:

(1) Be in writing.

(2) State the name, current address, and current telephone number of the petitioner.

(3) Shall state in detail the reasons why and the facts upon which the petitioner will rely to show:

(A) petitioner's application for a license should not have been denied; or

(B) license should have been renewed;

including specific responses to any facts enumerated in the commission's notice of denial or notice of nonrenewal.

(4) Shall be submitted within the time frame set by 905 IAC 1-36-2(b).

(d) The applicant shall submit an original and one (1) copy of any request, pleading, or other written document submitted to the commission.

(e) Once an applicant has filed a petition for review, a certificate of service must be attached to each pleading filed. The certificate of service shall indicate that the pleading has been served on each attorney or party of record.

(f) An action involving a denial or nonrenewal must also comply with 905 IAC 1-36. *(Alcohol and Tobacco Commission; 905 IAC 1-53-16; filed Jun 1, 2010, 3:04 p.m.: 20100630-IR-905090472FRA; readopted filed Jul 29, 2016, 1:57 p.m.: 20160824-IR-905160153RFA)*

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