

TITLE 68 INDIANA GAMING COMMISSION

Proposed Rule
LSA Document #08-430

DIGEST

Adds 68 IAC 1-1-13.7 and 68 IAC 1-1-13.8 to comply with administrative rule numbering requirements. Amends 68 IAC 1-1-42 to include gambling game facilities authorized by IC 4-35. Amends 68 IAC 1-1-52 by conforming it to the Institutional Investor Form used by commission investigators. Amends 68 IAC 1-1-57 and 68 IAC 1-1-86 by conforming them to the definitions contained in the commission's license application, which more accurately describe the people who are covered by those terms. Amends 68 IAC 1-1-73 by removing the requirement that the executive director approve a progressive jackpot before a casino utilizes a progressive jackpot. Adds 68 IAC 6-1-0.5 to define three terms commonly used in Article 6. Amends 68 IAC 6-1-1 to add the term "operating agent" to the list of responsible parties and change outdated terminology. Amends 68 IAC 6-1-2 to transfer responsibility for maintaining and distributing the exclusion list from the commission to the executive director and simplify the distribution of the exclusion list. Amends 68 IAC 6-1-3 to clarify the process for placing an individual on the exclusion list. Amends 68 IAC 6-1-4 to detail notice of exclusion, explain the excluded person's opportunity to petition for a hearing on the exclusion, and make temporary exclusions available for all patrons eligible for exclusion. Adds 68 IAC 6-1-4.5 to create penalties for excluded patrons who violate their exclusion. Amends 68 IAC 6-1-5 to provide instructions on how to petition the commission for removal from the exclusion list. Adds 68 IAC 6-1-6 to explain the procedure for review of a petition for removal from the exclusion list. Adds 68 IAC 6-1-7 to explain appearances and service in the review process. Adds 68 IAC 6-1-8 to detail discovery procedures. Adds 6-1-9 to provide information on the conduct of review proceedings. Adds 68 IAC 6-1-10 to explain evidence procedure. Adds 6-1-11 to provide information on the standard of proof necessary to prove rehabilitation and justify removal from the exclusion list. Adds 6-1-12 to explain the requirements for the record of a review proceeding and the presentation of the review officer's recommendation. Adds 68 IAC 6-1-13 to provide sanctions and penalties for abusing the review petition process. Amends 68 IAC 13-1-8 to eliminate unnecessary terminology and specify the source of discovery rules. Amends 68 IAC 13-1-18 to give the executive director the authority to negotiate settlement with the opposing party. Amends 68 IAC 13-1-21 to add a penalty for late payment of fines. Adds 68 IAC 13-2 to create forfeiture, seizure, and civil penalty process in compliance with administrative procedure to punish individuals who violate IC 4-33, IC 4-35, and 68 IAC. Amends 68 IAC 15-9-3 to eliminate surveillance requirements that contradict 68 IAC 12-1. Amends 68 IAC 15-14-3 to replace the term "training" with the term "audit" to more accurately reflect the workings of the commission. Repeals 68 IAC 1-1-31.1, 68 IAC 1-1-13.2, 68 IAC 1-1-33, 68 IAC 1-1-34, 68 IAC 13-1-47, 68 IAC 13-1-7, 68 IAC 13-1-9, 68 IAC 13-1-10, 68 IAC 13-1-11, 68 IAC 13-1-12, 68 IAC 13-1-16, 68 IAC 13-1-17, and 68 IAC 13-1-19. Makes numerous technical changes. Effective 30 days after filing with the Publisher.

68 IAC 1-1-13.1; 68 IAC 1-1-13.2; 68 IAC 1-1-13.7; 68 IAC 1-1-13.8; 68 IAC 1-1-33; 68 IAC 1-1-34; 68 IAC 1-1-42; 68 IAC 1-1-47; 68 IAC 1-1-52; 68 IAC 1-1-57; 68 IAC 1-1-73; 68 IAC 1-1-86; 68 IAC 6-1-0.5; 68 IAC 6-1-1; 68 IAC 6-1-2; ; 68 IAC 6-1-3; 68 IAC 6-1-4; 68 IAC 6-1-4.5; 68 IAC 6-1-5; 68 IAC 6-1-6; 68 IAC 6-1-7; 68 IAC 6-1-8; 68 IAC 6-1-9; 68 IAC 6-1-10; 68 IAC 6-1-11; 68 IAC 6-1-12; 68 IAC 6-1-13; 68 IAC 13-1-1; 68 IAC 13-1-3; 68 IAC 13-1-4; 68 IAC 13-1-5; 68 IAC 13-1-6; 68 IAC 13-1-7; 68 IAC 13-1-8; 68 IAC 13-1-9; 68 IAC 13-1-10; 68 IAC 13-1-11; 68 IAC 13-1-12; 68 IAC 13-1-14; 68 IAC 13-1-15; 68 IAC 13-1-16; 68 IAC 13-1-17; 68 IAC 13-1-18; 68 IAC 13-1-19; 68 IAC 13-1-20; 68 IAC 13-1-21; 68 IAC 13-1-22; 68 IAC 13-2-1; 68 IAC 13-2-2; 68 IAC 13-2-3; 68 IAC 13-2-4; 68 IAC 13-2-5; 68 IAC 13-2-6; 68 IAC 13-2-7; 68 IAC 13-2-8; 68 IAC 13-2-9; 68 IAC 13-2-10; 68 IAC 13-2-11; 68 IAC 15-9-3; 68 IAC 15-14-3

SECTION 1. 68 IAC 1-1-13.7 IS ADDED TO READ AS FOLLOWS:

68 IAC 1-1-13.7 "Central computer system" defined

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3
Affected: IC 4-33; IC 4-35

Sec. 13.1. "Central computer system" means one (1) or more computer systems that meet the following requirements:

(1) Is connected to all electronic gaming devices in the casino to record and contemporaneously monitor the activities of each electronic gaming device, including, but not limited to, the following or the equivalent:

- (A) The opening of any door of the electronic gaming device.
- (B) Hopper credits and fills.
- (C) Drop bucket collection.

(2) Is capable of contemporaneously monitoring the activities of the live gaming devices, including, but not limited to, the following or the equivalent:

- (A) Table fills.
- (B) Table credits.

(3) Is capable of tracking the activities of the live gaming devices, including, but not limited to, the following or the equivalent:

- (A) Table game inventories.
- (B) Employee gratuity deposit accounting.

(4) Is capable of contemporaneously monitoring the activities of the main bank and all cages, including, but not limited to, the following or the equivalent:

- (A) Manual payouts.
- (B) Hopper credits and hopper fills.
- (C) Table credits and fills.

(5) Is capable of tracking the activities of the main bank and all cages, including, but not limited to, the following or the equivalent:

- (A) Hard and soft count summary log.
- (B) Master gaming report.
- (C) Cashier checkout.
- (D) Main bank and cage inventory.
- (E) Deposits.
- (F) Cash transaction reports.
- (G) Patron credit.

(6) Is capable of monitoring the casino licensee's accounting package.

(Indiana Gaming Commission; 68 IAC 1-1-13.7)

SECTION 2. 68 IAC 1-1-13.8 IS ADDED TO READ AS FOLLOWS:

68 IAC 1-1-13.8 "Certificate of suitability" defined

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33; IC 4-35

Sec. 13.2. "Certificate of suitability" means a written document issued by the executive director that indicates that an applicant has been chosen for licensure if the applicant meets the requirements set forth in 68 IAC 2-1-5(e). A certificate of suitability is valid for a period of one hundred eighty (180) days unless extended by the commission. *(Indiana Gaming Commission; 68 IAC 1-1-13.8)*

SECTION 3. 68 IAC 1-1-42 IS AMENDED TO READ AS FOLLOWS:

68 IAC 1-1-42 "Gaming area" defined

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33; IC 4-35

Sec. 42. "Gaming area" means the room(s) on a ~~riverboat~~ casino in which gaming is conducted. *(Indiana Gaming Commission; 68 IAC 1-1-42; filed Nov 10, 1994, 11:00 a.m.: 18 IR 474; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)*

SECTION 4. 68 IAC 1-1-52 IS AMENDED TO READ AS FOLLOWS:

68 IAC 1-1-52 “Institutional investor” defined

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3
Affected: IC 4-33; IC 4-35

Sec. 52. “Institutional investor” means any ~~of the following~~:

- (1) ~~A~~ retirement fund administered by a public agency for the exclusive benefit of federal, state, or local public employees;
- (2) ~~An~~ investment company registered under the Investment Company Act of 1940 (~~15 U.S.C. 80~~ **15 U.S.C. 80a**);
- (3) ~~A~~ collective investment trust organized by banks under Part Nine (9) of the rules of the Comptroller of the Currency;
- (4) ~~A~~ closed end investment trust;
- (5) ~~A~~ chartered or licensed life insurance company or property and casualty insurance company;
- (6) ~~A~~ banking, chartered, or licensed lending institution;
- (7) ~~An~~ investment adviser registered under the Investment Advisors Act of 1940 (~~15 U.S.C. 80~~ **15 U.S.C. 80b**);
- (8) ~~Any~~ other entity the commission determines constitutes an institutional investor;

which acquires voting or non-voting units in the ordinary course of its investment business and holds those units for investment purposes only and not for the purpose of causing, directly or indirectly, the election of a majority of the board of directors or any change in the corporate charter, bylaws, management, policies, or operations of the business entity in which it holds those securities.

(Indiana Gaming Commission; 68 IAC 1-1-52; filed Nov 10, 1994, 11:00 a.m.: 18 IR 475; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)

SECTION 5. 68 IAC 1-1-57 IS AMENDED TO READ AS FOLLOWS:

68 IAC 1-1-57 “Key person” defined

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3
Affected: IC 4-33; IC 4-35

Sec. 57. “Key person” means ~~an~~ **any**:

- (9) officer;
- (10) director;
- (11) **executive**;
- (12) **employee**;
- (13) trustee;
- (14) **substantial owner**;
- (15) **independent contractor**; ~~partner, proprietor, or~~
- (16) ~~managing agent; of, or an individual who holds any direct, indirect, or attributed legal or beneficial interest whose combined direct, indirect, or attributed interest is five percent (5%) or more in a business entity.~~

of a business entity, having the power to exercise, either alone or in conjunction with others, management or operating authority over a business entity or affiliate(s) thereof. *(Indiana Gaming Commission; 68 IAC 1-1-57; filed Nov 10, 1994, 11:00 a.m.: 18 IR 475; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)*

SECTION 6. 68 IAC 1-1-73 IS AMENDED TO READ AS FOLLOWS:

68 IAC 1-1-73 “Progressive jackpot” defined

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3
Affected: IC 4-33; IC 4-35

Sec. 73. “Progressive jackpot” means a value determined by application of an approved formula to the income of independent, local, or ~~interlinked~~ electronic gaming devices or live gaming devices. This value ~~shall~~ **must** be clearly displayed above the interlinked electronic gaming device, above or beside the live gaming device and metered incrementally by a progressive controller. A progressive electronic gaming device must prominently display a manufacturer-supplied glass indicating either that a progressive jackpot is to be paid or the current amount of the jackpot. ~~Progressive jackpots may not be initiated without the prior consent of the executive director.~~

(Indiana Gaming Commission; 68 IAC 1-1-73; filed Nov 10, 1994, 11:00 a.m.: 18 IR 477; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)

SECTION 7. 68 IAC 1-1-86 IS AMENDED TO READ AS FOLLOWS:

68 IAC 1-1-86 “Substantial owner” defined

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33; IC 4-35

Sec. 86. “Substantial owner” means ~~the holder of at least any:~~

- (1) **person who is not an institutional investor, who holds any direct, indirect, or attributed legal or beneficial interest, and whose combined direct, indirect, or attributed interest is five percent (5%) of the total combined voting power of a corporation or at least five percent (5%) of the total value of shares of all classes of stock of a corporation; or at least a five percent (5%) interest in a partnership; or at least five percent (5%) of the value of a trust computed actuarially; or at least five percent (5%) of the legal or beneficial interest in any other business entity. For purposes of computing the percentages in this section, a holder shall be deemed to own any stock or other interest in a business entity, whether owned directly, indirectly, or attributed. or more ownership interest in a business entity; or**

- (2) **institutional investor holding fifteen percent (15%) or more ownership interest in a business entity.**

(Indiana Gaming Commission; 68 IAC 1-1-86; filed Nov 10, 1994 11:00 a.m.: 18 IR 478, readopted filed Oct 15, 2001, 4:34 p.m.:25 IR 898)

SECTION 8. 68 IAC 6-1-0.5 IS ADDED TO READ AS FOLLOWS:

Rule 1. Exclusion List

68 IAC 6-1-0.5 Definitions

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33; IC 4-35

Sec. 0.5. (a) This article applies to casino licensees, operating agents, affiliates of the foregoing, and all persons located within gaming areas.

(b) The following definitions apply throughout this article:

- (1) **“Excluded person” means any person who is the subject of an order made pursuant to 68 IAC 6-1-3, IC 4-33-4-7, or IC 4-35-4-9 and made effective pursuant to 68 IAC 6-1-4(b).**
- (2) **“Voluntarily excluded person” means a person who has successfully completed the procedures outlined in 68 IAC 6-3-2 to effectuate his or her own exclusion from the gaming areas of casinos.**
- (3) **“Effective date” means the date that an order made under section 3 of this rule is made effective under section 4(b) of this rule.**
- (4) **“Exclusion list” means the list of the names of persons excluded from casinos under this rule, IC 4-33-4-7., or IC 4-35-4-9**

(Indiana Gaming Commission; 68 IAC 6-1-0.5)

SECTION 9. 68 IAC 6-1-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 6-1-1 Exclusion

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 1. (a) ~~No~~ **An excluded person shall be is permitted entry into any portion prohibited from entering gaming areas of a riverboat gambling operation. When a person is placed on the commission exclusion list by the executive director, such person shall be prohibited from entering any riverboat gambling operation in Indiana unless and until a determination is made by the commission or a court to the contrary.**

(b) The riverboat A casino licensee or operating agent or the riverboat licensee’s agents shall must exclude or eject evict any excluded person from a riverboat its gaming area gambling operation if the riverboat casino licensee

or operating agent ~~or the riverboat licensee's agents~~ knows or reasonably should know that the person is **an excluded person on the exclusion list.**

(c) ~~The riverboat~~ **A casino licensee or operating agent** ~~or the riverboat licensee's agents~~ shall **must** immediately inform the executive director or authorized **an enforcement** agent of the commission in writing of the names of the presence of an excluded person in any portion of its gaming area persons that the riverboat licensee reasonably believes meet the criteria for placement on an exclusion list.

(d) This ~~article rule~~ does not preclude a riverboat **casino licensee or operating agent** from evicting ~~or barring~~ a person from its riverboat **casino** gambling operation for reasons deemed necessary by the riverboat licensee **any lawful reason.** The riverboat **casino licensee or operating agent** may seek to have a person it has evicted ~~or barred~~ from its riverboat **casino** gambling operation placed on the exclusion list. (*Indiana Gaming Commission; 68 IAC 6-1-1; filed Nov 10, 1994, 11:00 a.m.: 18 IR 506; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

SECTION 10. 68 IAC 6-1-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 6-1-2 Exclusion list

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 2. (a) The **executive director or the executive director's designee** ~~commission shall will~~ maintain a list of persons to be ejected or excluded from a riverboat gambling operation **the exclusion list. The executive director or executive director's designee must notify each casino licensee or operating agent under the jurisdiction of the commission of each addition to the list or deletion from the list in a timely manner.**

(b) The exclusion list ~~shall be~~ is a public record. ~~The list shall be distributed to each riverboat gambling operation which shall acknowledge receipt of the list in writing. The list may also be distributed to law enforcement agencies.~~

(c) The following information, to the extent known, shall be provided for each excluded person:

(1) The full name and date of birth and all aliases.

(2) A physical description.

(3) The effective date the person's name was placed on the exclusion list.

(4) A photograph, if available.

(5) The person's occupation and current home and business address.

(6) **Date that the person's exclusion expires, if any.**

(7) Such other information deemed necessary by the executive director to facilitate identification of the person placed on the exclusion list.

(*Indiana Gaming Commission; 68 IAC 6-1-2; filed Nov 10, 1994, 11:00 a.m.: 18 IR 506; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

SECTION 11. 68 IAC 6-1-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 6-1-3 Placement on ~~an~~ the exclusion list

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 3. ~~The executive director may place a person on the exclusion list pending a hearing if such person has:~~ **If there are facts and circumstances sufficient to cause a prudent person to believe that a person has:**

(1) been convicted of a felony in any jurisdiction of:

(A) any crime of moral turpitude; or

(B) a crime involving gaming;

(2) violated **or conspired to violate** either the Act or this title;

(3) ~~violated or conspired to violate the provisions of the Act relating to involvement in gaming without required licenses or willful evasion of fees or taxes;~~

(4) performed any act or had a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming; or

(4) ~~(5)~~ is included on any valid and current exclusion list ~~from~~ **of** another jurisdiction in the United States, **the executive director may order that the person be placed on the exclusion list.**

(Indiana Gaming Commission; 68 IAC 6-1-3; filed Nov 10, 1994, 11:00 a.m.: 18 IR 506; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)

SECTION 12. 68 IAC 6-1-4 IS AMENDED TO READ AS FOLLOWS:

68 IAC 6-1-4 Notice of exclusion; petition for hearing

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5; IC 4-33-4-7; IC 4-33-11-2; IC 4-35-4-9

Sec. 4. (a) Upon a determination that a person **should be excluded pursuant to** ~~comes under any of the criteria listed in section 3 of this rule, or IC 4-33 IC 4-33-4-7, or IC 4-35-4-9, such person may be deemed a subject for exclusion and the executive director or the executive director's designee shall file a must serve notice as described in IC 4-21.5-3-1, of the order of exclusion on the excluded person. Such~~ The notice ~~shall~~ **must** include the following:

(1) The ~~identity name~~ **identity name** of the ~~subject~~ **excluded person**.

(2) The nature and scope of the circumstances or reasons that such person should be placed on the exclusion list.

~~(3) Names of potential witnesses.~~

~~(4) (3) A recommendation as to whether the~~ **The duration of** exclusion, or ejection shall be permanent.

~~(4) The notice shall also inform such person~~ **A brief explanation of the available procedures and the time limit for seeking administrative review of the order** availability of a hearing by the commission under IC 4-33-4-7 and this rule.

~~(5) An explanation of the civil penalty proceedings to which the excluded person may be subject under 68 IAC 13-2 if the excluded person violates the exclusion.~~

(b) ~~An order of the executive director under section 3 of this rule is effective fifteen (15) days after the date the notice of exclusion was served and remains effective pending any hearing or judicial review.~~

(c) ~~A person subject to an order of exclusion may petition the commission for a hearing pursuant to 68 IAC 7. A request~~ **Any petition** for a hearing must be made within fifteen (15) days from the date the notice of exclusion was served. **If the excluded person does not petition for a hearing within fifteen (15) days from the date of service of the notice of exclusion, the executive director's order of exclusion is a final order.**

~~(e) When a person is excluded or ejected, such person is prohibited from further entering any riverboat gambling operation in Indiana unless and until a determination is made by the commission on the merits of a filed notice of exclusion or a requested hearing under IC 4-33-4-7. If a determination by the commission is examined under judicial review under IC 4-33-11-2 and IC 4-21.5, then the exclusion shall continue until the judicial review is completed, unless otherwise ordered by the court.~~

~~(d) If the commission or a subsequent judicial review finds in favor of the subject for exclusion or excluded person, then the subject's name shall be removed from the exclusion list and the subject's exclusion shall be terminated as of the date of the action by the commission or the court. If the finding is against the subject for exclusion or the excluded person, the subject's name shall remain on the exclusion list. If no hearing is requested, the subject's name shall remain on the exclusion list.~~

~~(e) If the notice of exclusion provides for a temporary exclusion, the executive director or the executive director's designee shall set the term of the temporary exclusion. In making this time determination, the executive director may consider the recommendation of the commission staff, but in no case shall~~ **A temporary exclusion must be less than six (6) months: at least twelve (12) months in duration. A temporary exclusion or ejection shall only apply to those persons excluded or ejected for criteria related to conduct. All other exclusions or ejections shall be permanent.**

(Indiana Gaming Commission; 68 IAC 6-1-4; filed Nov 10, 1994, 11:00 a.m.: 18 IR 507; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)

SECTION 13. 68 IAC 6-1-4.5 IS ADDED TO READ AS FOLLOWS:

68 IAC 6-1-4.5 Violation of exclusion

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 4.5. (a) An excluded person violates his or her exclusion by entering a gaming area.

(b) The commission or executive director may assess a civil penalty under 68 IAC 13-2 against any excluded person who violates his or her exclusion.

(c) Nothing in this article infringes upon the right of a casino licensee or operating agent to contact the pertinent law enforcement agency regarding criminal trespass by an excluded person. (Indiana Gaming Commission; 68 IAC 6-1-4.5)

SECTION 14. 68 IAC 6-1-5 IS AMENDED TO READ AS FOLLOWS:

68 IAC 6-1-5 Petition for removal from exclusion list

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 5 (a) ~~Any person who has been placed on any exclusion list~~ **excluded person** may petition the commission, in writing, and request that his or her name be removed from the exclusion list. ~~The procedure outlined in this rule shall govern petitions for removal from the exclusion list.~~

(b) **The petition must:**

(1) **be addressed to the executive director;**

(2) **state with specificity facts believed by the petitioner to constitute evidence for removal of his or her name from the exclusion list; and**

(3) **include the signature of the person requesting removal from the exclusion list indicating acknowledgement of the following statement: "I certify, under the penalty of perjury, that the information that I have provided is true, complete, and correct to the best of my knowledge and belief."**

(c) **The executive director or the executive director's designee may:**

(1) **deny the petition;**

(2) **reject the petition; or**

(3) **designate the petition for review.**

(d) **The executive director or the executive director's designee must deny a petition if it is submitted prior to the expiration of three (3) years from the effective date or from the conclusion of any hearing, appeal, or prior petition for removal associated with placement on the list, whichever occurs later.**

(e) **The executive director or the executive director's designee may reject a petition for removal from the exclusion list if:**

(1) **the petition fails to comply with any of the requirements of subsection (a) or (b);**

(2) **the facts contained in the petition are the same or substantially the same facts that the petitioner set forth in a petition for hearing pursuant to 68 IAC 7-1 or a prior petition for removal from the exclusion list.**

(f) **An excluded person whose petition for removal from the exclusion list has been rejected but not denied may cure the cause of the rejection, if possible, and resubmit the cured petition for removal at any time following the rejection as long as the excluded person is in compliance with all other applicable requirements under this Article.**

(g) **A petitioner may not withdraw a request for removal from the exclusion list without leave of the executive director.** (Indiana Gaming Commission; 68 IAC 6-1-5; filed Nov 10, 1994, 11:00 a.m.: 18 IR 507; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)

SECTION 15. 68 IAC 6-1-6 IS ADDED TO READ AS FOLLOWS:

68 IAC 6-1-6 Review of a petition for removal from the exclusion list

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 6. (a) **Upon designating a petition for a review proceeding, the executive director shall assign one (1) person to serve as review officer to conduct the review. The executive director, deputy director, and staff members of the commission who are attorneys are eligible to serve as review officers.**

(b) **The review officer must schedule the review proceeding to occur no later than ninety (90) days from the receipt of the request for removal. The review officer must notify the petitioner in writing of the date, time, and place at which the review proceeding will be conducted.**

(c) **The review officer may grant continuances upon a showing of good cause.**

(Indiana Gaming Commission; 68 IAC 6-1-6)

SECTION 16. 68 IAC 6-1-7 IS ADDED TO READ AS FOLLOWS:

68 IAC 6-1-7 Appearances; service

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 7. A petitioner may represent himself or herself or be represented by an attorney or representative who is in compliance with 68 IAC 1-6. *(Indiana Gaming Commission; 68 IAC 6-1-7)*

SECTION 17. 68 IAC 6-1-8 IS ADDED TO READ AS FOLLOWS:

68 IAC 6-1-8 Discovery

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 8. The petitioner must provide the review officer with the following information at least fifteen (15) days before the date of the review:

(1) The name and address of any witness who may be called to testify on behalf of the petitioner.

(2) All documents or other evidence, whether or not in the possession and control of the petitioner, that the petitioner reasonably expects will be necessary to introduce at the review proceeding.

(Indiana Gaming Commission; 68 IAC 6-1-8)

SECTION 18. 68 IAC 6-1-9 IS ADDED TO READ AS FOLLOWS:

68 IAC 6-1-9 Review proceedings

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 9. (a) The burden of proof is at all times upon the petitioner. The petitioner has the affirmative responsibility of establishing that he or she is eligible for removal from the exclusion list.

(b) Any testimony must be given under oath or affirmation.

(c) The petitioner may present his or her case. The review officer may question witnesses called by the petitioner. The review officer may question the petitioner based on the testimony and evidence presented by the petitioner and the information gathered by the commission.

(d) At the discretion of the review officer, the petitioner may present a closing argument. The review officer may restrict the length of the closing argument. *(Indiana Gaming Commission; 68 IAC 6-1-9)*

SECTION 19. 68 IAC 6-1-10 IS ADDED TO READ AS FOLLOWS:

68 IAC 6-1-10 Evidence

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 10. (a) Any relevant evidence not in the record from any previous hearing or review proceeding may be admitted and is sufficient in itself to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules of evidence that may make improper the admission of such evidence over objection in a civil action.

(b) Hearsay may support a finding of the review officer if it is the best evidence available and has sufficient indicia of trustworthiness and reliability.

(c) The review officer may take official notice of any generally accepted information or technical or scientific matter within the field of gaming and any other fact that may be judicially noticed by the courts of Indiana. The petitioner must be informed of any information, matters, or facts so noticed and must be given reasonable opportunity to refute such evidence. *(Indiana Gaming Commission; 68 IAC 6-1-10)*

SECTION 20. 68 IAC 6-1-11 IS ADDED TO READ AS FOLLOWS:

68 IAC 6-1-11 Evidence justifying removal

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 11. (a) The commission may grant a petition for removal from the exclusion list if the petitioner demonstrates by clear and convincing evidence that the petitioner's admission to Indiana casinos would likely not threaten the honesty and integrity of gambling operations or interfere with the orderly conduct of gambling operations.

(b) In determining whether an individual has fulfilled subsection (a), the review officer and the commission may consider any or all of the following factors:

- (1)** The nature and seriousness of the offense, violation, or conduct.
- (2)** The circumstances under which the offense, violation, or conduct occurred.
- (3)** The date of the offense, violation, or conduct.
- (4)** The age of the petitioner when he or she committed the offense, violation, or conduct.
- (5)** Whether the offense, violation, or conduct was an isolated or a repeated incident.
- (6)** A social condition that may have contributed to the offense, violation, or conduct.
- (7)** The complete criminal record of the petitioner.
- (8)** Whether the petitioner's name is included on a valid and current exclusion list from another jurisdiction in the United States.
- (9)** Other evidence of rehabilitation, including but not limited to good conduct in prison or the community, counseling or psychiatric treatment received, or the recommendation of a person who has or has had the individual under the person's supervision.

(c) If the petitioner has not fulfilled subsection (a), the review officer must recommend denial of the individual's petition for removal. (*Indiana Gaming Commission; 68 IAC 6-1-11*)

SECTION 21. 68 IAC 6-1-12 IS ADDED TO READ AS FOLLOWS:

68 IAC 6-1-12 Transmittal of record and recommendation to the commission

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 12. (a) The record of the review proceeding must consist of the following, if applicable:

- (1)** The order(s) constituting placement on the exclusion list.
- (2)** The petition for removal.
- (3)** Information, including the record of evidence and testimony, used by the commission, executive director or executive director's designee in making the original determination to exclude petitioner.
- (4)** Evidence admitted by the review officer during the review proceeding.
- (5)** A statement of matters officially noticed.
- (6)** The written recommendations and findings of fact made by the review officer.
- (7)** An original transcription or audio recording of the oral proceedings.
- (8)** The record from any previous petition for removal from the exclusion list or related proceeding.

(b) Oral proceedings must be recorded, at the direction of the review officer, stenographically or by such other means as to adequately ensure the preservation of such testimony or oral proceedings and may be transcribed at the request of the petitioner or the commission. The requesting party must pay for the transcript at the prevailing rate. The original transcript, if prepared, must be filed with the commission. A party that did not order the original transcript may obtain a copy of the transcript after paying the cost of copying.

(c) At the conclusion of the review, the review officer must issue to the commission written findings of fact and recommendations. Findings of fact may be based on any evidence in the record.

(d) The commission must issue its order in one (1) of the following manners:

- (1)** The commission may issue an order by adopting or rejecting the written findings of fact and recommendations of the review officer without further review.

(2) The commission may review the record of the petition for removal and render a written order following that review. The commission may adopt the findings of fact and recommendations of the review officer as the final commission order after the review.

(3) The commission may review the petition for removal from the exclusion list de novo and render a written order following that review.

(e) A copy of the final commission order must be served on petitioner by personal delivery or certified mail.

(f) The final commission order is effective upon personal delivery to the petitioner or upon posting of certified mail. (*Indiana Gaming Commission; 68 IAC 6-1-12*)

SECTION 22. 68 IAC 6-1-13 IS ADDED TO READ AS FOLLOWS:

68 IAC 6-1-13 Penalties

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33-4-7; IC 4-35-4-9

Sec. 13. (a) If the review officer finds that the petitioner has acted in bad faith, for the purpose of delay, or has otherwise abused the review proceeding process, the review officer may recommend denial of the petition on grounds of the abuse alone.

(b) If a petitioner fails to testify on his or her own behalf with respect to any question propounded to him or her, the review officer may infer therefrom that such testimony or answer would have been adverse to the petitioner.

(c) If the petitioner fails to answer a subpoena or refuses to testify fully at the request of the commission, such failure may be deemed independent grounds to recommend denial of the petition. The review officer may also infer therefrom that such testimony would have been adverse to the petitioner.

(d) The unexcused failure of the petitioner to appear at a review constitutes an admission of all matters and facts contained in the notice of placement on the exclusion list. In such case, the review officer may recommend action based upon such admission or upon any other evidence, including affidavits, without any further notice to the petitioner. (*Indiana Gaming Commission; 68 IAC 6-1-13*)

SECTION 23. 68 IAC 13-1-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-1 Coverage of rule

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3-9; IC 4-33; IC 4-35

Sec. 1. (a) All commission licensees have a continuing duty to maintain suitability for licensure. A commission license does not create a property right, but is a ~~revocable~~ privilege contingent upon continuing **compliance and** suitability for licensure.

(b) The commission may initiate an investigation or a disciplinary action, or both, against a licensee ~~about whom~~ **if** the commission has reason to believe at least one (1) of the following:

(1) The licensee is not maintaining suitability for licensure.

(2) The licensee is not complying with licensure conditions.

(3) The licensee is not complying with the Act or this title.

(c) The commission may initiate an investigation or a disciplinary action, or both, against a licensee that the commission has reason to believe has engaged in a fraudulent act.

(d) As used in this ~~rule~~ **article**, "respondent" means the person against whom a disciplinary or seizure and forfeiture action has been initiated.

(e) ~~The commission shall appoint an administrative law judge in accordance with IC 4-21.5-3-9 and IC 4-33-3-23 to conduct a hearing after a complaint has been filed under section 3 of this rule.~~

(f) ~~The respondent shall submit an original and two (2) copies of any pleading or other written document submitted to the commission or the administrative law judge, or both.~~

(g) ~~The respondent and the commission must attach a certificate of service to each pleading. The certificate of service shall indicate~~ **indicates** that the pleading has been served on each attorney or party of record.

(h) ~~(f)~~ A disciplinary action under this rule must ~~also~~ comply with IC 4-21.5-3. (*Indiana Gaming Commission; 68 IAC 13-1-1; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1036; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 24. 68 IAC 13-1-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-3 Complaints

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5; IC 4-33; IC 4-35

Sec. 3. (a) If the commission ~~becomes aware of~~ **knows** facts sufficient to support a seizure and forfeiture of a gaming device under the Act, **IC 4-35**, and 68 IAC 2-6 or a disciplinary action against an applicant or a licensee under the Act, **IC 4-35**, or this title, the commission may, after investigation, order the seizure and forfeiture of the gaming device or may initiate a disciplinary action against a licensee.

(b) ~~The seizure and forfeiture of a gaming device or a disciplinary action will be initiated by the filing of a complaint with the commission~~ **The commission initiates a seizure and forfeiture of a gaming device or a disciplinary action by filing a complaint under this rule.**

(c) The complaint ~~shall~~ **must** meet the following requirements:

(1) Be in writing.

(2) State the name of the respondent.

(3) State the address and telephone number of the respondent that are on file with the commission.

~~(3)~~ (4) Identify the gaming device that is the subject matter of the seizure and forfeiture action.

~~(4)~~ (5) State in detail the reasons why and the facts upon which the commission will rely to show that the respondent should be disciplined or that the gaming device should be seized and forfeited.

~~(5)~~ (6) Have a title and case number assigned to the matter.

~~(6)~~ (7) ~~All complaints shall~~ Be signed and dated by the executive director or the executive director's designee.

~~(7)~~ (8) Be accompanied by a certificate of service indicating the date of service in accordance with IC 4-21.5.

(Indiana Gaming Commission; 68 IAC 13-1-3; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)

SECTION 25. 68 IAC 13-1-4 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-4 Answer

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 4. (a) The respondent ~~shall~~ **must** file an answer within twenty (20) days of service of the complaint.

(b) The respondent may submit an answer in accordance with IC 4-21.5-3-1.

(c) An answer ~~shall~~ **must** meet the following requirements:

(1) Be in writing.

(2) Contain an admission or denial of each factual allegation contained in the complaint.

(3) Set forth any affirmative defense that the respondent wishes to plead.

(4) All answers ~~shall~~ **must** be signed, verified, and dated by the respondent. ~~Such~~ **This** verification ~~shall~~ **must** be notarized and ~~shall~~ **must** include a certification stating, "Under the penalty of perjury, the undersigned has examined the answer and to the best of my knowledge and belief, it is true, complete, and correct."

(d) Default judgment or dismissal may result at any stage of the proceeding in accordance with IC 4-21.5-3-24.

If a party fails to take action for which it is responsible for a period of sixty (60) days, default judgment ~~shall~~ **must** be entered against the party or the case ~~shall~~ **must** be dismissed. *(Indiana Gaming Commission; 68 IAC 13-1-4; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)*

SECTION 26. 68 IAC 13-1-5 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-5 Appearances; service

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 5. A respondent may:

(1) represent himself or herself; or

(2) ~~may~~ be represented by an attorney or **duly authorized** representative ~~who is in compliance with 68 IAC 1-6~~
under IC 4-21.5-3-15.

Service **of appearances shall must** be made in accordance with ~~68 IAC 1-6-4(e)~~ **IC 4-21.5-3-1.** (*Indiana Gaming Commission; 68 IAC 13-1-5; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 27. 68 IAC 13-1-6 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-6 Hearings

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 6. (a) A hearing conducted under this rule is open to the public. Witnesses may, ~~however,~~ be excluded or sequestered.

(b) Hearings ~~shall must~~ be held in Indianapolis, Indiana, unless for good cause stated in an open meeting, the commission designates another place for the hearing.

(c) Unless precluded by law or objected to by a party, the commission may allow informal disposition of a proceeding without a hearing, including, but not limited to, the following:

- (1) Disposition by stipulation.
- (2) Agreed settlement.
- (3) Consent order.

(*Indiana Gaming Commission; 68 IAC 13-1-6; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 28. 68 IAC 13-1-8 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-8 Discovery

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 8. (a) ~~Upon written request served on a party, the requesting party shall be entitled to the following:~~

(1) ~~The name and address of any witness who may be called to testify on behalf of a party. The parties shall be under a continuing duty to update this list.~~

(2) ~~All documents or other materials in the possession or control of a party that the party reasonably expects will be necessary to introduce into evidence. The respondent's burden of production includes those documents the respondent reasonably expects to introduce into evidence in the respondent's case in chief.~~

(b) ~~Discovery may be obtained in accordance with rule Pursuant to Trial Rule 28(F) of the Indiana Rules of Trial Procedure, the discovery provisions of Trial Rules 26 through 37 apply to all proceedings subject to this rule.~~

~~Witnesses and documents responsive to a proper request for production that were not produced shall be excluded from the hearing and additional sanctions or penalties may be imposed.~~

(c) ~~The parties shall make every effort to resolve disputes regarding discovery. Disputes that are unresolved may be brought to the administrative law judge for resolution via:~~

- (1) ~~a motion to compel;~~
- (2) ~~a motion for protective order; or~~
- (3) ~~other appropriate motion;~~

~~under the Indiana Rules of Trial Procedure. The disputed discovery is stayed on the disputed matter during the pendency of such motion unless the administrative law judge orders discovery to continue. Discovery shall be stayed for a period of not more than ten (10) days. The administrative law judge may extend the time during which discovery is stayed upon a showing of good cause. The filing of such a motion shall not extend the time to complete discovery, nor provide cause for a continuance of the hearing on the merits, unless the administrative law judge orders an extension or continuance.~~ (*Indiana Gaming Commission; 68 IAC 13-1-8; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1038; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 29. 68 IAC 13-1-14 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-14 Proceedings

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3
Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 14. (a) The burden of proof is at all times on the commission. The commission ~~shall have~~ **has** the affirmative responsibility of establishing by a preponderance of the evidence that the respondent should be disciplined or the gaming device or gaming devices should be seized and forfeited.

(b) The respondent has the burden of proof to prove the allegations contained in any affirmative defense contained in the answer. The respondent ~~shall have~~ **has** the affirmative responsibility of establishing the elements of an affirmative defense by a preponderance of the evidence.

(c) Any testimony ~~shall~~ **must** be given under oath or affirmation. The administrative law judge ~~or~~ **and** recorder ~~shall be~~ **are** authorized to administer oaths.

(d) Both parties may present an opening statement on the merits. The commission proceeds first, followed by the respondent. The respondent may not reserve opening statement for a later time. The administrative law judge may determine the length ~~of time each party is permitted for the presentation of an opening statement~~ **statements**.

(e) The commission ~~shall~~ **must** then present the commission's case-in-chief.

(f) Upon conclusion of the commission's case-in-chief, the respondent may move for a directed finding. The administrative law judge may:

(1) hear arguments on the motion; or

(2) ~~may~~ grant, deny, or reserve any decision thereon, with or without argument.

(g) If:

(1) no motion for directed finding is made; or

(2) ~~if~~ such motion is denied or decision reserved thereon;

the respondent may present its case.

(h) Each party may conduct cross-examination of adverse witnesses.

(i) Upon conclusion of the respondent's case, the commission may present evidence in rebuttal.

(j) The administrative law judge may:

(1) ask questions of the witnesses; and

(2) ~~may~~ request or allow additional evidence at any time, including additional rebuttal evidence.

(k) Both parties may present closing argument. The commission proceeds first, then the respondent, and, thereafter, the commission may present rebuttal argument. The administrative law judge may determine the length ~~of time each party is permitted for the presentation of closing argument~~ **arguments**.

(l) The administrative law judge may require or allow the parties to submit posthearing briefs, ~~and~~ **proposed** findings of fact and conclusions of law, ~~or both~~ **both** within:

(1) ten (10) days of the conclusion of the hearing; or

(2) ~~within~~ such other time period the administrative law judge might order. (*Indiana Gaming Commission; 68 IAC 13-1-14; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1039; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 30. 68 IAC 13-1-15 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-15 Behavior

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 15. (a) Each party, witness, attorney, or other representative ~~shall~~ **must** behave in all commission hearings and proceedings with dignity, courtesy, and respect for the commission, the administrative law judge, and all participants to the proceeding.

(b) An individual who violates this section may be excluded from the hearing or proceeding by the commission member or administrative law judge. (*Indiana Gaming Commission; 68 IAC 13-1-15; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1039; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 31. 68 IAC 13-1-18 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-18 Settlement offers

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 18. (a) The parties may propose settlement offers to the administrative law judge, ~~or the commission, or the executive director~~ at any stage of the proceedings where time, the nature of the proceeding, and public interest permit. ~~Such Settlement~~ offers may be made at any time prior to the ~~final disposition of the action~~ **entry of a final order**, including prior to the initiation of the proceedings. ~~The commission or the administrative law judge, the commission, or the executive director~~ may require that any of the parties to the offer make an oral or written presentation to the administrative law judge, ~~or the commission, or the executive director~~ regarding the settlement offer.

(b) Settlement agreements ~~shall~~ **must** meet the following requirements:

- (1) Be in writing.
- (2) Be signed by the parties to the settlement offer.
- (3) Be consistent with the provisions and objectives of the law.
- (4) Accurately reflect all the terms of the settlement.
- (5) Be served on the commission at the commission's office in Indianapolis, Indiana, by hand delivery, certified mail, or overnight mail.
- (6) Be accompanied by a proposed order.

(c) If the commission ~~or the executive director votes to reject~~ **rejects** a settlement offer, the commission ~~or the executive director shall direct the executive director to~~ **must** notify the parties in writing, by certified mail or personal delivery, that the settlement offer was rejected. The offer and any documents relating to the offer ~~shall not constitute~~ **are not** a part of the record. (*Indiana Gaming Commission; 68 IAC 13-1-18; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1040; errata filed Apr 9, 1996, 12:15 p.m.: 19 IR 2044; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 32. 68 IAC 13-1-20 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-20 Penalties

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 20. (a) The administrative law judge may impose ~~sanctions and penalties if the administrative law judge finds that a party has acted in bad faith, for the purpose of delay, or has otherwise abused the hearing process. Such sanctions and penalties include, but are not limited to:~~

- ~~(1) default judgment or directed finding on one (1) or more issues; or~~
- ~~(2) a fine as outlined in Indiana Rules of Trial Procedure 26 through 37 and IC 4-21.5-3.~~

(b) If a respondent fails to testify on the respondent's own behalf with respect to any question propounded to that person, the administrative law judge may infer therefrom that such testimony or answer would have been adverse to the case of the party refusing to testify.

(c) If the respondent or ~~it's~~ **the respondent's** agent fails to answer a subpoena or refuses to testify fully at the request of the commission, such failure may be deemed independent grounds for a finding that the gaming device should have been seized and forfeited or the respondent should be disciplined. The administrative law judge may also infer therefrom that such testimony would have been adverse to the respondent.

(d) The unexcused failure of the respondent to appear at a hearing ~~shall constitute~~ **constitutes** an admission of all matters and facts contained in the notice of a seizure and forfeiture action, a disciplinary action, or both. In such case, the administrative law judge may take action based upon such admission or upon any other evidence, including affidavits, without any further notice to the respondent. (*Indiana Gaming Commission; 68 IAC 13-1-20; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1041; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 33. 68 IAC 13-1-21 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-21 Actions available to the administrative law judge and the commission

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 21. (a) The commission may take any of the following actions in ~~an action~~ **a proceeding** to seize and forfeit a gaming device:

- (1) Seize and forfeit any gaming device that does not comply with the Act, **IC 4-35**, or this title.

(2) Require the destruction or other appropriate disposal of any gaming device that does not comply with the Act, **IC 4-35**, or this title.

Prior to the disposal of any gaming device, the commission ~~shall~~ **must**:

- (A) take a photograph that demonstrates the nature of the gaming device; and
- (B) record an adequate description of the gaming device.

(3) Impose any appropriate action set forth in subsection (b) on a person who possesses any gaming device that does not comply with the Act, **IC 4-35**, or this title.

(b) The commission may take any of the following actions in a disciplinary action against a licensee:

- (1) Suspend, revoke, restrict, or place conditions on the license of a licensee.
- (2) Require the removal of a licensee or the employee of a licensee.
- (3) Impose a civil penalty of not more than the greater ~~than~~ **of**:

- (A) ten thousand dollars (\$10,000), or
- (B) an amount equal to the ~~riverboat~~ **casino** licensee's daily gross receipts for the day of the violation, **against a casino licensee.**

(4) Impose a civil penalty of not more than five thousand dollars (\$5,000) against a supplier licensee for each violation of the Act, **IC 4-35**, or this title.

(5) Impose a civil penalty of not more than five thousand dollars (\$5,000) against an occupational licensee for each violation of the Act, **IC 4-35**, or this title.

(6) **Impose an additional penalty of not more than one hundred dollars (\$100) for each day the original penalty goes unpaid.**

(7) Any other action deemed necessary by the commission to ensure compliance with the Act, **IC 4-35**, or this title.

(Indiana Gaming Commission; 68 IAC 13-1-21; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1041; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)

SECTION 34. 68 IAC 13-1-22 IS AMENDED TO READ AS FOLLOWS:

68 IAC 13-1-22 Special proceedings

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 22. (a) The commission may suspend a license issued to a ~~riverboat~~ **casino** licensee without notice or hearing if the commission determines that the safety or health of patrons or employees would be threatened by the continued operation of the ~~riverboat~~ **casino**.

(b) If the commission determines that an emergency exists, the commission may suspend a ~~riverboat~~ **casino** owner's license, a supplier's license, or an occupational license by one (1) of the following procedures:

- (1) Without notice or an evidentiary proceeding, by any authorized individual or panel of individuals.
- (2) After a hearing conducted by an administrative law judge.

The resulting order must include a brief statement of the facts and the law that justifies the commission's decision to take the specific action under IC 4-21.5-4.

(c) A special proceeding under this section must comply with IC 4-21.5-4.

(d) The suspension of the ~~riverboat~~ **casino** owner's license may continue until the commission determines that the cause for the suspension of the license has been abated.

(e) The commission may revoke the ~~riverboat~~ **casino** owner's license if the commission determines that the riverboat licensee has not made satisfactory progress toward abating the hazard to the safety or health of patrons or employees within a reasonable period of time. *(Indiana Gaming Commission; 68 IAC 13-1-22; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1042; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)*

SECTION 35. 68 IAC 13-2 IS ADDED TO READ AS FOLLOWS:

Rule 2. Action Against an Individual

68 IAC 13-2-1 Complaints

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 1. (a) If there are facts and circumstances sufficient to cause a prudent person to believe that a person has committed a non-criminal violation of IC 4-33, IC 4-35, or 68 IAC, the commission may initiate an action for civil penalty against an individual for the violation.

(b) The civil penalty that the commission may seek for the violation of IC 4-33 or 68 IAC must not exceed the greater of:

(1) the following amounts:

(A) one thousand dollars (\$1000) for the first violation;

(B) two thousand dollars (\$2000) for the second violation;

(C) four thousand dollars (\$4000), for the third and any subsequent violations;

or

(2) the amount of any jackpot or thing of value won contemporaneous to or because of the violation of IC 4-33, IC 4-35, or 68 IAC.

(c) The commission may order an additional penalty of not more than one hundred dollars (\$100) for each day the original penalty goes unpaid.

(d) The commission may take any other action deemed necessary by the commission to ensure compliance with IC 4-33, IC 4-35, or 68 IAC.

(e) The commission must initiate the action by filing a complaint.

(f) The complaint must meet the following requirements:

(1) Be in writing.

(2) State the name of the respondent.

(3) State the address and telephone number of the respondent that are on file with the commission.

(4) Identify the dollar amount of the requested civil penalty.

(5) State in detail the reasons why and the facts upon which the commission will rely to show that the respondent should be penalized.

(6) Have a title and case number assigned to the matter,

(7) Be accompanied by a certificate of service indicating the date of service in accordance with IC 4-21.5.

(Indiana Gaming Commission; 68 IAC 13-2-1)

68 IAC 13-2-2 Rights of Respondents

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 2. In a hearing under this rule, the respondent is entitled to the following:

(1) Proper notice of all allegations contained in the complaint.

(2) The ability to confront the evidence presented against the respondent, including, but not limited to, the right to the following:

(A) Counsel at respondent's expense.

(B) Present a defense and participate fully in the proceeding.

(C) Call witnesses.

(D) Request the issuance of subpoenas under section 9 of this rule.

(E) Cross-examine witnesses testifying against the respondent.

(F) Submit legal arguments.

(G) Participate fully in the proceeding.

(Indiana Gaming Commission; 68 IAC 13-2-2)

68 IAC 13-2-3 Answer

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 3. (a) The respondent must file an answer within twenty (20) days of service of the complaint.

(b) The respondent may submit an answer in accordance with IC 4-21.5-3-1.

(c) An answer must meet the following requirements:

(1) Be in writing.

(2) Contain an admission or denial of each factual allegation contained in the complaint.

(3) Set forth any affirmative defense that the respondent wishes to plead.

(4) All answers must be signed, verified, and dated by the respondent. This verification must be notarized and must include a certification stating, "Under the penalty of perjury, the undersigned has examined the answer and to the best of my knowledge and belief, it is true, complete, and correct."

(d) Default judgment or dismissal may result at any stage of the proceeding in accordance with IC 4-21.5-3-24. If a party fails to take action for which it is responsible for a period of sixty (60) days, default judgment must be entered against the party or the case must be dismissed. (*Indiana Gaming Commission; 68 IAC 13-2-3*)

68 IAC 13-2-4 Appearances; service

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 4. A respondent may:

(1) represent himself or herself; or

(2) be represented by an attorney or duly authorized representative under IC 4-21.5-3-15.

Service of appearances must be made in accordance with IC 4-21.5-3-1. (*Indiana Gaming Commission; 68 IAC 13-2-4*)

68 IAC 13-2-5 Hearings

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33; IC 4-35

Sec. 5. (a) A hearing conducted under this rule is open to the public. Witnesses may be excluded or sequestered.

(b) Hearings must be held in Indianapolis, Indiana, unless for good cause stated in an open meeting, the commission designates another place for the hearing.

(c) Unless precluded by law or objected to by a party, the commission may allow informal disposition of a proceeding without a hearing, including, but not limited to, the following:

(1) Disposition by stipulation.

(2) Agreed settlement.

(3) Consent order.

(*Indiana Gaming Commission; 68 IAC 13-2-5*)

68 IAC 13-2-6 Discovery

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33; IC 4-35

Sec. 6. Pursuant to Trial Rule 28(F) of the Indiana Rules of Trial Procedure, the discovery provisions of Trial Rules 26 through 37 apply to all proceedings subject to this rule. (*Indiana Gaming Commission; 68 IAC 13-2-6*)

68 IAC 13-2-7 Continuances

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33; IC 4-35

Sec. 7. (a) A motion to continue a hearing or deposition must be made at least ten (10) days before the hearing or deposition date unless the requesting party can show good cause.

(b) Continuances granted by the administrative law judge upon a showing of good cause.

(c) The administrative law judge may order a continuance of a hearing on the administrative law judge's own initiative. (*Indiana Gaming Commission; 68 IAC 13-2-7*)

68 IAC 13-2-8 Behavior

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33; IC 4-35

Sec. 8. (a) Each party, witness, attorney, or other representative must behave in all commission hearings and proceedings with dignity, courtesy, and respect for the commission, the administrative law judge, and all participants to the proceeding.

(b) An individual who violates this section may be excluded from the hearing or proceeding by the commission member or administrative law judge. (*Indiana Gaming Commission; 68 IAC 13-2-8*)

68 IAC 13-2-9 Settlement offers

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33; IC 4-35

Sec. 9. (a) The parties may propose settlement offers to the administrative law judge, the commission, or the executive director at any stage of the proceedings where time, the nature of the proceeding, and public interest permit. Settlement offers may be made at any time prior to the entry of a final order, including prior to the initiation of the proceedings. The administrative law judge, the commission, or the executive director may require that any of the parties to the offer make an oral or written presentation to the administrative law judge, the commission, or the executive director regarding the settlement offer.

(b) Settlement agreements must meet the following requirements:

(1) Be in writing.

(2) Be signed by the parties to the settlement offer.

(3) Be consistent with the provisions and objectives of the law.

(4) Accurately reflect all the terms of the settlement.

(5) Be served on the commission at the commission's office in Indianapolis, Indiana, by hand delivery, certified mail, or overnight mail.

(6) Be accompanied by a proposed order.

(c) If the commission or the executive director rejects a settlement offer, the commission or the executive director must notify the parties in writing, by certified mail or personal delivery, that the settlement offer was rejected. The offer and any documents relating to the offer are not a part of the record. (*Indiana Gaming Commission; 68 IAC 13-2-9*)

68 IAC 13-2-10 Penalties

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 10. (a) The administrative law judge may impose penalties as outlined in Indiana Rules of Trial Procedure 26 through 37 and IC 4-21.5-3.

(b) If a respondent fails to testify on the respondent's own behalf with respect to any question propounded to that person, the administrative law judge may infer therefrom that such testimony or answer would have been adverse to the case of the party refusing to testify.

(c) If the respondent or the respondent's agent fails to answer a subpoena or refuses to testify fully at the request of the commission, such failure may be deemed independent grounds for a finding that the respondent should be penalized. The administrative law judge may also infer therefrom that such testimony would have been adverse to the respondent.

(d) The unexcused failure of the respondent to appear at a hearing constitutes an admission of all matters and facts contained in the complaint. In such case, the administrative law judge may take action based upon such admission or upon any other evidence, including affidavits, without any further notice to the respondent. (*Indiana Gaming Commission; 68 IAC 13-2-10*)

68 IAC 13-2-11 Proceedings

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 11. (a) The burden of proof is at all times on the commission. The commission has the affirmative responsibility of establishing by a preponderance of the evidence that the respondent has committed a non-criminal violation of IC 4-33, IC 4-35, or 68 IAC and that the proposed penalty is appropriate.

(b) The respondent has the burden of proof to prove the allegations contained in any affirmative defense contained in the answer. The respondent has the affirmative responsibility of establishing the elements of an affirmative defense by a preponderance of the evidence.

(c) Any testimony must be given under oath or affirmation. The administrative law judge and recorder are authorized to administer oaths.

(d) Both parties may present an opening statement on the merits. The commission proceeds first, followed by the respondent. The respondent may not reserve opening statement for a later time. The administrative law judge may determine the length of opening statements.

(e) The commission must then present the commission's case-in-chief.

(f) Upon conclusion of the commission's case-in-chief, the respondent may move for a directed finding.

The administrative law judge may:

(1) hear arguments on the motion; or

(2) grant, deny, or reserve any decision thereon, with or without argument.

(g) If:

(1) no motion for directed finding is made; or

(2) such motion is denied or decision reserved thereon;

the respondent may present its case.

(h) Each party may conduct cross-examination of adverse witnesses.

(i) Upon conclusion of the respondent's case, the commission may present evidence in rebuttal.

(j) The administrative law judge may:

(1) ask questions of the witnesses; and

(2) request or allow additional evidence at any time, including additional rebuttal evidence.

(k) Both parties may present closing argument. The commission proceeds first, then the respondent, and, thereafter, the commission may present rebuttal argument. The administrative law judge may determine the length of closing arguments.

(l) The administrative law judge may require or allow the parties to submit posthearing briefs, and proposed findings of fact and conclusions of law, or both within:

(1) ten (10) days of the conclusion of the hearing; or

(2) such other time period the administrative law judge might order.

(Indiana Gaming Commission; 68 IAC 13-2-11)

SECTION 36. 68 IAC 15-9-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-9-3 Removal, collection, and counting of tip boxes

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-33; IC 4-35

Sec. 3. (a) The ~~riverboat~~ **casino licensee or operating agent shall must** establish policies and procedures in connection with the removal, collection, and counting of the tip box contents for subsequent distribution to gaming occupational licensees. These policies and procedures ~~shall must~~ include, at a minimum, the following:

(1) Tip boxes ~~will must~~ be dropped and counted at the end of each day. Surveillance ~~will must~~ be notified before the emptying of any tip boxes.

~~(2) Surveillance will be required to tape and monitor the drop and count. The tape:~~

~~(A) will be maintained for a minimum of five (5) days; and~~

~~(B) shall be made available to the commission staff or enforcement agent upon request.~~

~~(3)-(2) The drop and count will be performed once a day by the tip count team~~ **must perform the drop and count once per day** in the presence of a security officer.

~~(4)-(3) The results of the tip count shall must be:~~

~~(A) documented on at least a two-part tip and gratuity form; and~~

~~(B) signed by the tip count team before transportation to the casino cage.~~

~~(5)-(4) The tips and the original and duplicate copy of the tip and gratuity form shall be transported to a casino cage by the tip count team~~ **must transport tips and the original and duplicate copy of the tip and gratuity form to a casino cage.** The casino cashier, in the presence of the tip count team, ~~shall must~~ do the following:

~~(A) Verify the drop.~~

~~(B) Sign the original and duplicate of the tip and gratuity form.~~

~~(C) Maintain the duplicate for accountability.~~

(D) Return the original to the tip count team.

~~(6)-(5) The duplicate copy shall be forwarded by the cage to accounting~~ **cage must forward the duplicate copy to accounting.**

~~(7)-(6) Tips shall~~ **must** be deposited into a bank for pro rata distribution among the employees.

~~(8)-(7) Distribution of tips and gratuities shall~~ **must** be:

(A) made following the ~~riverboat casino~~ **casino licensee's or operating agent's** payroll accounting practices; and

(B) subject to all applicable state and federal withholding taxes.

~~(9)-(8) Any other policies and procedures deemed necessary by the executive director or the commission to ensure compliance with the Act and this title.~~

(b) The ~~riverboat casino~~ **casino licensee or operating agent shall** **must** establish procedures for the emptying of full tip box containers during the day. The procedures ~~shall~~ **must** include, at a minimum, the following:

(1) The contents are to be placed in a locked, secured container within the pit area.

(2) At least two (2) occupational licensees to perform the drop.

(3) Surveillance ~~shall~~ **must** be notified before the drop.

(4) Procedures for the checking out of the key for access to the tip box. These procedures ~~shall~~ **must** be in accordance with 68 IAC 11-7.

(5) Any other procedures deemed necessary by the executive director or the commission to ensure compliance with the Act and this title.

(Indiana Gaming Commission; 68 IAC 15-9-3; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3335; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 6, 2006, 2:52 p.m.: 20070103-IR-068060191FRA)

SECTION 37. 68 IAC 15-14-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-14-3 Conditions of engagements

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33; IC 4-35

Sec. 3. An independent certified public accountant or independent certified public accounting firm selected to perform a financial statement audit ~~shall~~ **must** agree to abide by the following conditions of engagement, which ~~shall~~ **must** be stated in a written agreement with the riverboat licensee to perform the audit:

(1) Inform the commission with respect to material errors and irregularities, or illegal acts that come to their attention during the course of an audit.

(2) Inform the commission in writing of matters that come to their attention that represent significant deficiencies in the design or operation of the internal control structure.

(3) Provide each member of the professional ~~training~~ **audit** staff assigned to the engagement a minimum of sixteen (16) hours of training in the gaming industry.

(4) Retain and make available to the commission personnel or their authorized representatives all reports, working papers (current and permanent files), audit programs, tax returns, and other information relating to engagements for a period of five (5) years after completion of the engagement.

(5) Respond timely to all reasonable requests of successor auditors.

(6) Submit peer review reports to the commission.

(7) Have all engagement letters approved by the commission prior to undertaking assignments.

(8) Send copies of all reports and management letters directly to the commission in compliance with this rule.

(9) At the conclusion of the engagement, provide management and the commission, in a mutually agreeable format, recommendations designed to help the entity make improvements in its internal control structure and operation, and other matters that are discovered during the audit.

(Indiana Gaming Commission; 68 IAC 15-14-3; filed Dec 2, 2001, 12:35 p.m.: 25 IR 1073; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)

SECTION 38. THE FOLLOWING ARE REPEALED: 68 IAC 1-1-13.1; 68 IAC 1-1-13.2; 68 IAC 1-1-33; 68 IAC 1-1-34; 68 IAC 1-1-47; 68 IAC 13-1-7; 68 IAC 13-1-9; 68 IAC 13-1-10; 68 IAC 13-1-11; 68 IAC 13-1-12; 68 IAC 13-1-16; 68 IAC 13-1-17; 68 IAC 13-1-19.