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TITLE 905 ALCOHOL AND TOBACCO COMMISSION

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Proposed Rule  
LSA Document #22-263

## DIGEST

Amends and adds provisions to [905 IAC 1-1-1](#) concerning definitions. Adds [905 IAC 1-5.2-18](#) concerning special event equipment. Amends [905 IAC 1-12.5-7](#) concerning alcohol server criteria. Amends [905 IAC 1-20-1](#) concerning minimum menu requirements. Amends [905 IAC 1-30-1](#) concerning retailer and dealer permits. Amends [905 IAC 1-33.1-1](#) concerning permit auctions. Amends [905 IAC 1-41-2](#) concerning separation of bar areas from family rooms or dining areas where minors are allowed. Amends [905 IAC 1-43.1-9](#) concerning gaming site permits and legal hours of alcoholic beverage sales. Amends [905 IAC 1-53-5](#) concerning retailer gaming operations. Repeals [905 IAC 1-30-3](#). Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[905 IAC 1-1-1](#); [905 IAC 1-5.2-18](#); [905 IAC 1-12.5-7](#); [905 IAC 1-20-1](#); [905 IAC 1-30-1](#); [905 IAC 1-30-3](#); [905 IAC 1-33.1-1](#); [905 IAC 1-41-2](#); [905 IAC 1-43.1-9](#); [905 IAC 1-53-5](#)

SECTION 1. [905 IAC 1-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[905 IAC 1-1-1](#) Applicability

Authority: [IC 7.1-2-3-7](#)

Affected: [IC 7.1-1-3](#); [IC 7.1-2](#); [IC 7.1-3](#)

Sec. 1. All terms used herein are hereby construed to be **The following definitions apply throughout this article and shall be interpreted** in accordance with the definitions as set forth in Chapter 226 of the Acts of the Indiana General Assembly of 1935, and all acts supplemental and amendatory thereto: [IC 7.1](#):

- (1) The Commission, whenever used in these regulations, 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.
- (3) Attorney, whenever used in these regulations, shall mean the Prosecutor for the Indiana Alcoholic Beverage Commission.
- (4) Secretary, whenever used in these regulations, shall mean the Secretary of the Indiana Alcoholic Beverage Commission.
- (5) Permittee, as defined in these regulations, 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, shall mean Chapter 226 of the Acts of the Indiana General Assembly of 1935, 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.
- (1) "Alcoholic beverage laws" refers to [IC 7.1](#) and this title.
- (2) "Applicant" has the meaning set forth in [IC 7.1-1-3-5.5](#).
- (3) "Commission" refers to the Indiana alcohol and tobacco commission established under [IC 7.1-2-1-1](#).
- (4) "Commissioner" refers to a member of the Indiana alcohol and tobacco commission appointed by the governor under [IC 7.1-2-1-3](#).
- (5) "Dealer" or "dealer permittee" refers to a beer dealer permitted under [IC 7.1-3-5](#), a liquor dealer permitted under [IC 7.1-3-10](#), or a wine dealer permitted under [IC 7.1-3-15](#).
- (6) "Enforcement officer" or "excise officer" refers to a member of the Indiana state excise police established under [IC 7.1-2-2-8](#).
- (7) "Indiana alcoholic beverage commission" refers to the Indiana alcohol and tobacco commission established under [IC 7.1-2-1-1](#).

- (8) "Licensed premises" has the meaning set forth in [IC 7.1-1-3-20](#).
- (9) "Local board" refers to the local alcoholic beverage board created in each county under [IC 7.1-2-4-1](#).
- (10) "Manufacturer" refers to a person or entity that manufactures or produces alcohol or alcoholic beverages, including an artisan distiller, brewer, distiller, farm winery, farm winery brandy distiller, or rectifier.
- (11) "Minor" has the meaning set forth in [IC 7.1-1-3-25](#).
- (12) "Permit" has the meaning set forth in [IC 7.1-1-3-29](#).
- (13) "Permittee" or "permit holder" has the meaning set forth in [IC 7.1-1-3-30](#).
- (14) "Primary source of supply" has the meaning set forth in [IC 7.1-1-3-32.5](#).
- (15) "Prosecutor" refers to the prosecutor appointed under [IC 7.1-2-2-2](#) who is responsible for prosecuting violations of all applicable laws, rules, and regulations before the commission.
- (16) "Remonstrator" means a person who appeared personally or by counsel to remonstrate against a permit application at a local board hearing, and provided their identity to the local board by stating their name and address or telephone number to the local board at the hearing.
- (17) "Restaurant" has the meaning set forth in [IC 7.1-1-3-40](#) and refers to an establishment that meets the requirements under [IC 7.1-3-20-9](#).
- (18) "Retailer" or "retail permittee" refers to a beer retailer permitted under [IC 7.1-3-4](#), a liquor retailer permitted under [IC 7.1-3-9](#), or a wine retailer permitted under [IC 7.1-3-14](#).
- (19) "Wholesaler" refers to a beer wholesaler permitted under [IC 7.1-3-3](#), a liquor wholesaler permitted under [IC 7.1-3-8](#), or a wine wholesaler permitted under [IC 7.1-3-13](#).

*(Alcohol and Tobacco Commission; Reg 1; filed Mar 5, 1946, 10:30 a.m.: 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](#); readopted filed Oct 29, 2019, 11:50 a.m.: [20191127-IR-905190418RFA](#))*

SECTION 2. [905 IAC 1-5.2-18](#) IS ADDED TO READ AS FOLLOWS:

**[905 IAC 1-5.2-18](#) Special event equipment**

Authority: [IC 7.1-2-3-7](#)

Affected: [IC 7.1-5](#)

**Sec. 18. A primary source of supply, manufacturer, or wholesaler may supply equipment on a temporary and nondiscriminatory basis to the holder of a retailer permit or a temporary permit for the purpose of holding, storing, and dispensing product to consumers for a special event for the duration of the special event. Ownership of the equipment shall remain with the primary source of supply, manufacturer, or wholesaler.**

*(Alcohol and Tobacco Commission; [905 IAC 1-5.2-18](#))*

SECTION 3. [905 IAC 1-12.5-7](#) IS AMENDED TO READ AS FOLLOWS:

**[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, or an electronic copy thereof, 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 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.
- (3) Retain ~~the~~ **an** original **or electronic** 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~~ **an** 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-905090198RFA](#); readopted filed Nov 16, 2015, 2:55 p.m.: [20151216-IR-905150254RFA](#); readopted filed Aug 25, 2021, 9:24 a.m.: [20210922-IR-905210227RFA](#))

SECTION 4. [905 IAC 1-20-1](#) IS AMENDED TO READ AS FOLLOWS:

#### **[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.~~

**Retail permittees that satisfy the general requirements of a restaurant as set forth in [IC 7.1-3-20-9](#) are required to provide minimum food service, and must offer a food menu consisting of not less than the following items:**

- (1) Hot sandwiches and hot soups.**
- (2) Coffee, milk, and soft drinks.**

~~Hereafter, Retail permittees will be equipped and prepared to~~ **subject to the minimum food requirements under this rule shall prepare and** 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 p.m.: 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](#); readopted filed Oct 29, 2019, 11:50 a.m.: [20191127-IR-905190418RFA](#))

SECTION 5. [905 IAC 1-30-1](#) IS AMENDED TO READ AS FOLLOWS:

#### **[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](#); [IC 7.1-3-1.1](#)

Sec. 1. Pursuant to ~~[IC 7.1-3-1-3.5](#)~~ [IC 7.1-3-1.1](#), a permittee may deposit ~~his~~ **their** 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~~ **the** 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 p.m.: 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](#); readopted filed Oct 29, 2019, 11:50 a.m.: [20191127-IR-905190418RFA](#))

SECTION 6. [905 IAC 1-33.1-1](#) IS AMENDED TO READ AS FOLLOWS:

**[905 IAC 1-33.1-1](#) Permit auction**

**Authority:** [IC 7.1-2-3-7](#); [IC 7.1-3-22-9](#)

**Affected:** [IC 1-1-3.5-3](#); [IC 1-1-4-1](#); [IC 5-3-1-2](#); [IC 5-3-1-6](#); [IC 7.1-3](#)

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) [IC 1-1-3.5-3](#), 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~~ **A** person who wishes to bid at the auction must submit **a** completed auction prequalification application for each permit desired ~~no~~ **not** 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~~ **a** 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~~ **a** 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](#)~~ [IC 7.1-3-1.1](#) 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~~ **A** 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](#); readopted filed Oct 7, 2020, 3:51 p.m.: [20201104-IR-905200447RFA](#))

SECTION 7. [905 IAC 1-41-2](#) IS AMENDED TO READ AS FOLLOWS:

**[905 IAC 1-41-2](#) Separation of rooms**

**Authority:** [IC 7.1-2-3-7](#)

**Affected:** [IC 7.1-5-7-11](#)

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) **Except as provided by [IC 7.1-5-7-11](#)**, in all other permit premises covered by a retail permit, **except a food hall**, a room containing a bar must be separated from ~~any~~ a 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~~ **not** 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~~ **the** 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](#); readopted filed Aug 25, 2021, 9:24 a.m.: [20210922-IR-905210227RFA](#))

SECTION 8. [905 IAC 1-43.1-9](#) IS AMENDED TO READ AS FOLLOWS:

**[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~~ **the** 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~~ **factors** 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](#); readopted filed Aug 25, 2021, 9:24 a.m.: [20210922-IR-905210227RFA](#))*

SECTION 9. [905 IAC 1-53-5](#) IS AMENDED TO READ AS FOLLOWS:

#### **[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~~ a 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)~~ **(b)** All licensed supplies shall originally be obtained from an entity that is licensed by the commission as a manufacturer or distributor.

~~(d)~~ **(c)** 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)~~ **(d)** 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)~~ **(e)** A retailer must thoroughly mix pull tabs prior to offering them for sale to the public.



~~(g)~~ **(f)** 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)~~ **(g)** A retailer may not sell type II gambling games from the original packing box or container.

~~(i)~~ **(h)** Multiple games may not be commingled within a single dispensing device.

~~(j)~~ **(i)** 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)~~ **(j)** 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)~~ **(k)** 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)~~ **(l)** A retailer shall not sell a type II gambling game for more than one dollar (\$1).

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

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

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

~~(q)~~ **(p)** 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](#); readopted filed Aug 18, 2022, 9:08 a.m.: [20220914-IR-905220224RFA](#))*

SECTION 10. [905 IAC 1-30-3](#) IS REPEALED.

[Notice of Public Hearing](#)

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