

## ALCOHOL AND TOBACCO COMMISSION

## Nonrule Policy ATC #23

**1. NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published with the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Alcohol and Tobacco Commission's (ATC) official position concerning a specific issue.

**2. DISCLAIMER:** This nonrule policy is being established by the ATC consistent with the authority under [IC 7.1-2-3-7](#). It is intended solely as guidance and shall be used in conjunction with applicable rules or laws. It does not replace applicable rules and laws, and, if it conflicts with these rules or laws, the rules or laws shall control.

**3. AUTHORIZED:** David E. Cook, Chairman

**4. SUPERSEDES:** New

**5. SUBJECT:** The purpose of this nonrule policy is to establish specific procedures for the submission, review, and record keeping for permits deposited pursuant to [IC 7.1-3-1-3.5](#) and [IC 7.1-3-1.1-1](#) through [IC 7.1-3-1.1-6](#).

**6. SCOPE:** A request to deposit permits in escrow or extend escrow pursuant to [IC 7.1-3-1-3.5](#) and [IC 7.1-3-1.1-1](#) through [IC 7.1-3-1.1-6](#) must be made in writing and the permittee must appear for a hearing before the commission. This nonrule policy applies to all permits currently deposited in escrow as well as permits deposited in escrow in the future.

**7. POLICY:**

7.1 For permits deposited in escrow before July 1, 2016:

7.1.1 At least sixty (60) days prior to the expiration of the current escrow term, the permittee shall submit a written request on a form adopted by the commission to extend escrow for a final escrow term.

7.1.2 The commission shall set a hearing at which the permittee shall appear and provide documentation outlined under paragraph 7.10 of this nonrule policy.

7.1.3 If documentation is presented to the commission's satisfaction at the hearing, the commission may approve an additional escrow term that will expire July 1, 2020.

7.1.4 The permittee shall make the permit active prior to July 1, 2020.

7.2 For permits deposited in escrow after June 30, 2016, and before July 1, 2018:

7.2.1 At least sixty (60) days prior to the expiration of the current escrow term, the permittee shall submit a written request on a form adopted by the commission to extend the escrow for one (1) twelve (12) month escrow term.

7.2.2 The commission shall set a hearing at which the permittee shall appear and provide documentation outlined under paragraph 7.10 of this nonrule policy.

7.2.3 If documentation is presented to the commission's satisfaction at the hearing, the commission may approve an additional twelve (12) month escrow term.

7.2.4 If the permittee wants an extension of the twelve (12) month escrow term granted under paragraph 7.2.3, the permittee shall file a new request on a form adopted by the commission sixty (60) days prior to the expiration of the escrow extension.

7.2.5 The commission shall set a hearing at which the permittee shall appear and provide documentation outlined under paragraph 7.10 of this nonrule policy.

7.2.6 If documentation is presented to the commission's satisfaction at the hearing, the commission may approve an additional escrow term.

7.2.7 No extension may be granted beyond July 1, 2021.

7.3 For permits deposited in escrow after June 30, 2018, and before July 1, 2019:

7.3.1 The commission will automatically extend all first year escrow terms to twenty-four (24) months and notify the permittee.

7.3.2 At least sixty (60) days prior to the expiration of the current escrow term, the permittee shall submit a written request on a form adopted by the commission to extend the escrow for one (1) twelve (12) month escrow term.

7.3.3 The commission shall set a hearing at which the permittee shall appear and provide documentation outlined under paragraph 7.10 of this nonrule policy.

7.3.4 If documentation is presented to the commission's satisfaction at the hearing, the commission may approve an additional twelve (12) month escrow term.

- 7.3.5 If the permittee wants an extension of the twelve (12) month escrow term granted under paragraph 7.3.4, the permittee shall file a request on a form adopted by the commission sixty (60) days prior to the expiration of the escrow extension.
- 7.3.6 The commission shall set a hearing at which the permittee shall appear and provide documentation outlined under paragraph 7.10 of this nonrule policy.
- 7.3.7 If documentation is presented to the commission's satisfaction at the hearing, the commission may approve an additional escrow term.
- 7.3.8 No extension may be granted beyond July 1, 2022.
- 7.4 For permits requesting deposit in escrow or an extension of deposit in escrow after July 1, 2019:
  - 7.4.1 Permittee shall submit a written form adopted by the commission requesting to deposit the permit in escrow for an initial escrow deposit term of twenty-four (24) months.
  - 7.4.2 The commission shall set a hearing at which the permittee shall appear and provide documentation outlined under paragraph 7.10 of this nonrule policy.
  - 7.4.3 If documentation is presented to the commission's satisfaction at the hearing, the commission may approve an initial escrow term of twenty-four (24) months.
  - 7.4.4 The permittee may request three (3) additional twelve (12) month escrow terms by submitting a written request on a form adopted by the commission at least sixty (60) days prior to the expiration of the current.
  - 7.4.5 The commission shall set a hearing at which the permittee shall appear and provide documentation outlined under paragraph 7.10 of this nonrule policy.
  - 7.4.6 If documentation is presented to the commission's satisfaction at the hearing, the commission may approve an additional escrow term.
  - 7.4.7 No extension may be granted beyond the first twenty-four (24) month term and the three (3) twelve (12) month extensions.
- 7.5 For applicants requesting escrow at the time of renewal, transfer, or initial application:
  - 7.5.1 Application should be set for local board review prior to setting the escrow hearing.
  - 7.5.2 If the local board approves the application, an approval by the commission shall be conditioned on the permittee either:
    - 7.5.2.1 being ready to be active the day of the commission vote, including having all tax clearances and final inspection; or
    - 7.5.2.2 being set for escrow hearing and approved for escrow hearing.
  - 7.5.3 If an applicant obtains floorplan approval prior to the escrow hearing, the permit will be issued to an active status and the escrow hearing will be canceled.
  - 7.5.4 If escrow is denied by the commission, the application will be set for further review by the commission.
  - 7.5.5 If applications for renewal and transfer are submitted at the same time, both applications can be considered by local board and the commission simultaneously.
- 7.6 For applications for renewal of the permit term filed with initial escrow request or an extension of the escrow:
  - 7.6.1 Escrow request shall be set for commission review prior to setting the local board hearing and commission review.
  - 7.6.2 Upon approval of initial escrow or extended escrow, the permit renewal shall be set for local board or commission review, if the permit is in an automatic renewal year.
- 7.7 A request for initial escrow or extension of escrow filed by a permit holder at a time outside the permit renewal period shall be set for the next available escrow hearing.
- 7.8 The commission will conduct escrow hearings the second Tuesday of each month.
- 7.9 Upon receipt of a completed escrow request form, the commission shall send a hearing notice to the permittee by mail or email.
- 7.10 The permittee or the permittee's representative with a valid power of attorney on file shall appear at the hearing and provide to the commission's satisfaction an explanation of the following:
  - 7.10.1 The specific reasons why the business for which the permit was issued is not immediately operational;
  - 7.10.2 A timetable for making the business operational and the permit active;
  - 7.10.3 A detailed statement of the permit holder's efforts to make the business operational and the permit active; and
  - 7.10.4 Any other documentation of the permit holder's efforts, including:
    - 7.10.4.1 Contracts for construction or renovation of the permit premises;
    - 7.10.4.2 Zoning applications and approvals; and
    - 7.10.4.3 Building permits and any other necessary government approvals.
- 7.11 If a representative of the permittee with a valid power of attorney on file appears at the hearing, the representative shall be prepared to present the required information and answer the questions of the

commission. If the information cannot be provided by the representative appearing on behalf of the permittee, the commission may continue the hearing and require the permittee to be present.

7.12 Information the applicant or permittee believes to be exempt from disclosure pursuant to [IC 5-14-3-4](#) shall be submitted to the commission on green paper. If the commission has questions or requires discussion of the confidential information, the questions and discussion may occur in an executive session of the commission.

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