

ALCOHOL AND TOBACCO COMMISSION

Nonrule Policy #030

1. **NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in 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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 this document is intended to provide the general public with information about the official position of the Indiana Alcohol and Tobacco Commission (“Commission”) concerning a specific issue.
2. **DISCLAIMER:** This nonrule policy is established by the Commission consistent with its authority under IC 7.1-2-3-2 and 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 or laws and if it conflicts with such rules or laws, the rules or laws shall control.
3. **AUTHORIZED:** Jessica Allen, Chair.
4. **SUPERSEDES:** New.
5. **SUBJECT:** The purpose of this nonrule policy is to implement a uniform procedure concerning applications for transfer of ownership for permits that have never been made active or put into operation and are subject to the permit quota provisions under IC 7.1-3-22.
6. **SCOPE:** A permit that is deposited in escrow with the Commission, has never been made active or put into operation, and is subject to the permit quota provisions may not be transferred to a new owner unless the current permit holder demonstrates that the requirements under IC 7.1-3-1.1-6 have been met, including demonstrating that exceptional and unusual circumstances exist which necessitate a transfer of ownership of the permit.
7. **POLICY:**
 - 7.1. This nonrule policy applies to permits deposited in escrow with the Commission that have never been made active or put into operation and are subject to the quota provisions under IC 7.1-3-22.
 - 7.2. Under IC 7.1-3-1.1-6, the Commission may not approve an application to transfer ownership of a permit unless the current permit holder demonstrates to the satisfaction of the Commission that:
 - 7.2.1. Exceptional and unusual circumstances necessitate a transfer of ownership of the permit, including bankruptcy or death of the permit holder; and
 - 7.2.2. The permit holder does not intend to speculatively sell the permit, evidence of which may be shown by submitting documentation showing that the proposed sale price for the permit does not exceed the amount that the permit holder paid the Commission or the previous permit holder for the permit.
 - 7.3. The Commission interprets “exceptional and unusual circumstances” to include:
 - 7.3.1. An unusual hardship or difficulty;

- 7.3.2. a situation outside of and/or beyond the reasonable control of a party; and/or
 - 7.3.3. an unavoidable circumstance that could not have been reasonably foreseen and for which there is insufficient time to take necessary action to resolve.
- 7.4. Prior to receiving an application for the transfer of ownership of a permit that is currently deposited in escrow with the Commission and has never been made active or operational, the current permit holder shall submit a written request to the Commission for its consideration to determine whether the requirements set forth in IC 7.1-3-1.1-6 have been satisfied.
- 7.4.1. If the Commission determines that the requirements under IC 7.1-3-1.1-6 have been met, the current permit holder shall be permitted to transfer ownership of the permit.
 - 7.4.2. If the Commission determines that the requirements under IC 7.1-3-1.1-6 have not been met, the current permit holder shall not be permitted to transfer ownership of the permit.
- 7.5. In determining whether the requirements of IC 7.1-3-1.1-6 have been met, the Commission shall give weight to the amount of time that has elapsed since the circumstances detailed in the permit holder's transfer request occurred and when the request to allow the transfer was submitted. The Commission may also take into consideration the contents of the permit holder's escrow request forms and whether or not sufficient detail was previously provided to the Commission regarding the circumstances that led to the transfer request. Unless good cause is shown, the Commission may consider a request to be untimely if the amount of time between the transfer request and the circumstances detailed in the transfer request is too lengthy and/or the permit is near its escrow drop dead when the written request is received.
- 7.6. The Commission's acceptance of the filing of an application subject to IC 7.1-3-1.1-6 shall have no effect on its determination as to whether the requirements of IC 7.1-3-1.1-6 have been met and shall not be used to infer that the Commission approves any transfer of ownership of a permit subject to IC 7.1-3-1.1-6.