

RESOLUTION 2009-111

A RESOLUTION ADOPTING LSA DOCUMENT #09-5 AS A FINAL RULE

The Indiana Gaming Commission ("Commission") adopts the following resolution pursuant to the authority granted to it under IC 4-32.2.

The Commission has considered the following factors:

1. The Commission began promulgation of the attached LSA Rule Document #09-5 under IC 4-22. A Notice of Intent to adopt LSA Document #09-5 was posted at DIN: 20090114-IR-068090005NIA on the *Indiana Register* website on January 14, 2009. The proposed rule was then posted at DIN: 20090401-IR-068090005PRA on the *Indiana Register* website on April 1, 2009.
2. The Commission held a public hearing on this rule in compliance with IC 4-22. The public hearing was held on May 20, 2009 at 1:00 p.m. in the offices of the Indiana Gaming Commission, in Indianapolis, IN. The transcript of the hearing and all written comments that were received, including the Indiana Economic Development Commission comments, were fully considered and implemented where appropriate. The transcript of the hearing has been reviewed by Commission members.
3. If the Commission approves this Resolution adopting the attached rule document as a final rule, the rule will be forwarded to the Office of the Attorney General and the Governor for approval, and filed thereafter with the *Indiana Register*. The rule will be effective 30 days after it is filed with the *Indiana Register*.

NOW, THEREFORE, BE IT RESOLVED BY THE INDIANA GAMING COMMISSION, THAT THE FOLLOWING RESOLUTION IS ADOPTED:

SECTION 1: SCOPE

This resolution applies to all persons subject to the authority granted to the Commission by the General Assembly in Indiana Code 4-33 including, but not limited to, all persons and entities licensed by the Commission, and all persons or entities that have applied to the Commission for licensure.

SECTION 2: DEFINITIONS

The definitions set forth in IC 4-33 and 68 IAC apply to this resolution.

SECTION 3: ADOPTION OF FINAL RULES

The Commission adopts the following rules as reflected on the attached final rule document:

68 IAC 2-7-1; 68 IAC 15-6-2; 68 IAC 15-6-3; 68 IAC 15-6-5; 68 IAC 15-6-6

Pursuant to IC 4-22-2, the Commission adopts the attached final rule document. The rule will be forwarded to the Office of the Attorney General for approval as to legality under IC 4-22-2-32. Upon

approval by the Office of the Attorney General, the rule will be submitted to the Governor's Office for approval pursuant to IC 4-22-2-33. After the rule has been approved or deemed approved by the Governor, the rule will be submitted to the *Indiana Register* for filing in accordance with IC 4-22-2-35.

SECTION 4: EFFECTIVE DATE

This resolution is effective July 1, 2009.

ADOPTED THIS THE 11th DAY OF JUNE, 2009.

THE INDIANA GAMING COMMISSION:



Timothy Murphy, Chair

ATTEST:



Thomas Swihart, Secretary

TITLE 68 INDIANA GAMING COMMISSION

Final Rule
LSA Document #09-5(F)

DIGEST

Amends 68 IAC 2-7-1, 68 IAC 15-6-2, and 68 IAC 15-6-5 and adds 68 IAC 15-6-6 concerning patron counting systems, including the establishment of minimum accuracy standards, deviations of rule provisions, and standards of patron counts. Repeals 68 IAC 15-6-3. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

68 IAC 2-7-1; 68 IAC 15-6-2; 68 IAC 15-6-3; 68 IAC 15-6-5; 68 IAC 15-6-6

SECTION 1. 68 IAC 2-7-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 2-7-1 Approval of associated equipment required

Authority: IC 4-33-4

Affected: IC 4-33

Sec. 1. (a) A manufacturer or distributor of associated equipment shall not distribute associated equipment to riverboat licensees or operating agents unless it has been approved by the executive director.

(b) The commission may require the manufacturer or distributor of associated equipment to obtain a supplier's license under 68 IAC 2-2.

(c) The following definitions apply throughout this rule:

(1) "Associated equipment" means any of the following:

(A) Any equipment, mechanical, electromechanical, or electronic contrivance, component, or machine used remotely or directly in connection with gaming.

(B) Any game that would not otherwise be classified as a gaming device, including, but not limited to, links that connect to progressive electronic gaming devices.

(C) Computerized systems that monitor electronic gaming devices.

(D) Equipment that affects the proper reporting of gross revenue.

(E) Devices for weighing and counting money.

(F) Patron counting systems.

~~(F)~~ (G) Any other equipment that the commission determines requires approval as associated equipment to ensure compliance with the Act and this title.

(2) "Riverboat license applicant" means an applicant for a riverboat owner's license that has been issued a certificate of suitability under 68 IAC 2-1-5.

(Indiana Gaming Commission; 68 IAC 2-7-1; filed Jun 23, 1995, 2:30 p.m.: 18 IR 2654; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898; readopted filed Sep 14, 2007, 1:40 p.m.: 20071003-IR-068070354RFA)

SECTION 2. 68 IAC 15-6-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-6-2 Admissions

Authority: IC 4-33-4

Affected: IC 4-33-6-6; IC 4-33-9-2

Sec. 2. (a) Admissions to the riverboat ~~must~~ shall be conducted in the following manner:

(1) Should a riverboat licensee or operating agent choose not to observe flexible scheduling, the requirements are as follows:

- (A) The embarkation period for each gaming excursion may not exceed a period of thirty (30) minutes.
 - (B) The disembarkation period for each gaming excursion may not exceed a period of thirty (30) minutes. During the disembarkation period, no new patrons shall be allowed to board the riverboat.
 - (C) The riverboat licensee or operating agent may allow patrons to disembark during the embarkation period for the next gaming excursion or at any time that the riverboat remains at the dock and gambling continues in accordance with IC 4-33-9-2. The riverboat licensee or operating agent is responsible for ensuring it is in compliance with subdivision (10) at all times. The admissions tax must shall be paid by the patron, or the riverboat licensee, or the operating agent for any patron who disembarks:
 - (i) during the embarkation period for the next gaming excursion; or
 - (ii) at any time during a gaming excursion after the conclusion of the thirty (30) minute disembarkation period.
 - (D) The admissions tax must shall be paid by the carryover patron, or the riverboat licensee, or the operating agent for each excursion that a patron remains on board.
- (2) Should a riverboat licensee or operating agent choose to observe flexible scheduling, the:
- (A) embarkation and disembarkation are not limited to any period; and
 - (B) patrons shall be allowed to board or exit at will.
- (3) Whether or not a riverboat licensee or operating agent chooses to observe flexible scheduling:
- (A) all patrons boarding or exiting the riverboat must shall pass through a turnstile or other an approved patron counting equipment; system; and
 - (B) the riverboat licensee or operating agent is responsible for ensuring that the turnstile or equivalent approved patron counting system keeps an accurate count of the patrons who board enter and exit the riverboat. and
 - (C) if a patron exits the riverboat and passes through a turnstile or the equivalent, the patron may not reenter the riverboat until the patron:
 - (i) pays whatever boarding fee is required of a patron boarding for the first time; or
 - (ii) is issued a complimentary pass by the riverboat licensee.

For purposes of this rule, "accurate count" means not less than an average of ninety-seven percent (97%) accuracy.

- (4) Should a riverboat licensee or operating agent choose not to observe flexible scheduling, a passenger patron count must shall be completed for each gambling excursion.
- (5) Should a riverboat licensee or operating agent choose to observe flexible scheduling, a passenger patron count must shall be completed for the gaming day.
- (6) Should a riverboat licensee or operating agent choose to observe twenty-four (24) hour gaming, a passenger patron count must shall be computed at the end of each gaming day and shall include those patrons remaining on board the riverboat at the time of each new gaming day. The following four (4) counts will be recorded at the close of the gaming day:
 - (A) If applicable, the actual admissions ticket count.
 - (B) The patron ingress turnstile count.
 - (C) The patron egress turnstile count.
 - (D) If applicable, the total onboard count.

At the close of the gaming day, boarding and exiting will be momentarily suspended to allow for the recording of the meters and the taking of the turnstile patron counts. The onboard count shall be added to the new gaming day's ingress turnstile patron count. The recording, resetting, and onboard additions to the ingress turnstile patron count shall be completed in the presence of and observed by an enforcement agent. For admission tax reporting for twenty-four (24) hour gaming, the count shall be adjusted to account for and include the onboard count.

- (7) The riverboat licensee or operating agent shall submit passenger a patron count procedures plan to the executive director at least sixty (60) days before the commencement of gambling operations. The riverboat licensee or operating agent shall submit changes to its patron count plan to the executive director at least thirty (30) days before any change goes into effect. The passenger patron count procedures plan shall include, but not be limited to, the following:
 - (A) A description of the type of equipment primary system that will be utilized to complete a patron count.
 - (B) The form that will be utilized to report the patron count.
 - (C) The procedure that will be utilized to ensure patron boarding occurs only during the appropriate

embarkation period should a riverboat licensee or operating agent choose not to observe flexible scheduling.
(D) ~~Emergency procedures~~ A description of the secondary system referenced in subsection (c) that will be utilized to complete a patron count in case the primary patron counting equipment system malfunctions or fails.

(E) The manner in which the riverboat licensee or operating agent will ensure that the total number of ~~passengers~~ patrons does not exceed the capacity of the riverboat as set forth in the:

- (i) certificate of inspection issued by the United States Coast Guard; or
- (ii) certificate of compliance issued by the commission under IC 4-33-6-6.

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

(8) The riverboat licensee or operating agent shall notify the enforcement agent immediately if the primary patron counting system malfunctions or fails.

(9) The following individuals are entitled to a tax-free pass and do not have to pass through the patron counting equipment system when boarding the riverboat:

(A) Occupational licensees. ~~of the riverboat licensee.~~

(B) Other employees of the riverboat licensee or operating agent who are boarding the riverboat in the performance of official duties.

(C) Commission:

- (i) members;
- (ii) staff; and
- (iii) agents.

(D) Official guests approved by commission:

- (i) members;
- (ii) staff; and
- (iii) agents.

(E) Vendors who have completed the appropriate vendor log in accordance with section 4 of this rule.

(F) Any other person authorized by the executive director or the commission to ensure compliance with the Act and this title.

(10) All persons boarding the riverboat on a tax-free pass ~~must~~ shall have an appropriate badge.

(11) At no time shall the riverboat licensee or operating agent allow the total number of passengers to exceed the capacity of the riverboat as set forth in the:

- (A) certificate of inspection issued by the United States Coast Guard; or
- (B) certificate of compliance issued by the commission under IC 4-33-6-6.

(b) Patron counting systems shall tally the number of patrons passing through an identified point of ingress and egress at a rate of not less than an average of ninety-seven percent (97%) accuracy, as measured by standards established by an independent lab designated by the executive director. If a riverboat licensee or operating agent uses a patron counting system other than turnstiles, the riverboat licensee or operating agent shall use its patron counting system at an established clear point of entry beyond which underage patrons shall not pass.

(c) Each riverboat licensee or operating agent shall maintain a secondary system that is:

- (i) subject to approval by the executive director; and
- (ii) in the event of a malfunction or failure of the primary system, promptly deployed to track patron ingress and egress in a manner consistent with the requirements established in IC 4-33.

The secondary system need not be the same system as the primary system and need not be mechanical or electronic.

(d) All mechanical or electronic patron counting systems used by a riverboat licensee or an operating agent shall be approved by the executive director prior to implementation. The riverboat licensee or operating agent shall provide the following information to the executive director for purposes of approval:

(1) Documentation illustrating the riverboat licensee's or operating agent's due diligence in establishing that the patron counting system meets or exceeds a minimum average of ninety-seven percent (97%) accuracy. This information shall include, but not be limited to, evidence that the patron counting system:

- (A) has been subject to a field test, conducted by an independent lab designated by the executive

director, at the appropriate riverboat; and

(B) meets minimum accuracy standards during peak and nonpeak hours.

(2) Information regarding the riverboat licensee's or operating agent's patron counting system plan, including the following:

(A) Security measures.

(B) Procedures for controlling ingress and egress onto the riverboat property.

(C) Procedures for controlling riverboat capacity.

(D) A description of the secondary system required by subsection (c).

(3) Evidence demonstrating the riverboat licensee's or operating agent's ability to continually verify the accuracy of the patron counting system on an ongoing basis and documentation illustrating the testing methodology is consistent with the standards established by an independent lab as required by subsection (b).

(4) Any other information deemed necessary by the commission to ensure compliance with the Act and this title.

(e) A riverboat licensee or operating agent shall test or cause to be tested the patron counting system at any time deemed necessary by the executive director to ensure proper functionality or accuracy, but at least annually. The riverboat's patron counting system testing methodology shall be consistent with standards established by an independent lab as required by subsection (b).

(f) The executive director may require a manufacturer or distributor of patron counting systems to submit the system to an independent lab designated by the executive director, as outlined in 68 IAC 2-7-2. Unless otherwise provided, all patron counting systems shall meet the requirements and provisions outlined in 68 IAC 2-7. (*Indiana Gaming Commission; 68 IAC 15-6-2; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3045; filed Aug 20, 1997, 7:11 a.m.: 21 IR 19; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Feb 14, 2005, 10:10 a.m.: 28 IR 2015; filed Dec 6, 2006, 2:52 p.m.: 20070103-IR-068060191FRA*)

SECTION 3. 68 IAC 15-6-5 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-6-5 Computation of tax

Authority: IC 4-33-4

Affected: IC 4-33

Sec. 5. (a) The riverboat licensee or operating agent shall complete an RG-1 for each gaming day and indicate the total number of admissions for each day. Only the:

(1) general manager;

(2) assistant general manager;

(3) finance officer; or

(4) others as approved by the commission;

may sign as an officer on the RG-1.

(b) The admissions tax shall be computed utilizing the patron count that results in the highest count from one (1) of the following methods of patron counting patrons: system approved under section 2 of this rule.

(1) A turnstile or the equivalent.

(2) A manual count.

(3) A ticket stub count.

(4) Any other method of counting patrons that has been approved by the executive director as accurately tracking patron ingress and egress to ensure the accurate payment of the admission tax in accordance with the Act and this title.

(c) In the event the executive director determines that the primary and secondary systems referenced in section 2 of this rule failed to tabulate an acceptably accurate patron admission count for any gaming day, the executive director may require the admission tax paid for that day be equal to the highest amount paid based for a recent comparable gaming day at the same riverboat. The recent comparable gaming day shall be approved by the executive director prior to being used for purposes of paying admission tax.

(e) (d) If the riverboat licensee or operating agent chooses not to observe flexible scheduling, the tax on carryover

patrons shall be computed utilizing Schedule A of the RG-1.

(d) (e) If the riverboat licensee or operating agent chooses to observe flexible scheduling, the tax on the ~~highest of the counts count~~ in subsection (b) shall be computed utilizing Schedule A of the RG-1 with only one (1) figure filed for all admissions during the gaming day. (*Indiana Gaming Commission; 68 IAC 15-6-5; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3046; filed May 29, 1998, 5:05 p.m.: 21 IR 3701; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Feb 14, 2005, 10:10 a.m.: 28 IR 2016*)

SECTION 4. 68 IAC 15-6-6 IS ADDED TO READ AS FOLLOWS:

68 IAC 15-6-6 Deviations from provisions

Authority: IC 4-33-4

Affected: IC 4-33; IC 4-35

Sec. 6. The executive director or the commission may approve deviations from the provisions of this article upon written request if the executive director or the commission determines that the:

- (1) requirement or procedure is impractical or burdensome; and**
- (2) alternative means of satisfying the requirement or procedure:**
 - (A) fulfills the purpose of the article;**
 - (B) is in the best interest of the public and gaming in Indiana; and**
 - (C) does not violate IC 4-33 or IC 4-35.**

(Indiana Gaming Commission; 68 IAC 15-6-6)

SECTION 5. 68 IAC 15-6-3 IS REPEALED.

Notice of Public Hearing