

RESOLUTION 2008-110

A RESOLUTION ADOPTING AN EMERGENCY RULE

REGARDING PATRON COUNTING SYSTEMS

The Indiana Gaming Commission ("Commission") adopts the following resolution pursuant to the authority granted to it under IC 4-33 and pursuant to 68 IAC 1-2-6.

The Commission has considered the following factors:

1. Pursuant to IC 4-33-4-3 and IC 4-22-2-37.1, the Commission has the authority to adopt emergency rules. The Commission is to commence formal rulemaking procedures after the adoption of the emergency rule regarding license transfers.
2. Pursuant to IC 4-33-12, an admission tax is imposed on licensed owners and operating agents. Pursuant to IC 4-33-12-1, the admission tax is calculated at a rate of \$3 or \$4 per person, depending on whether the riverboat has implemented flexible scheduling. Tax payments must be made each day for the preceding day's admissions. That tax is collected by the Indiana Department of Revenue and deposited into the state general fund.
3. The Commission has been made aware of the existence of patron counting systems which may more accurately track ingress and egress from riverboats. To protect the State's interest in collecting admission tax, the Commission desires to establish a patron counting methodology which will result in admission tax paid on 100% of the patrons entering the riverboat as contemplated by IC 4-33.
4. The Commission has also added to the emergency rule certain definitions aimed at clarifying or updating administrative rules.
5. While the emergency rule is in effect, the Commission will proceed with the formal rulemaking procedures set forth in IC 4-22-2 so that the new rule may be formally adopted before the emergency rule expires.
6. The Commission staff will file the adopted emergency rule and submit it for publication with Legislative Services Agency. The emergency rule will become effective upon filing with the Legislative Services Agency, and will continue to be effective for ninety (90) days thereafter. If necessary, the Commission will renew the effectiveness of the emergency rule for an additional ninety (90) days pending completion of the formal promulgation process.

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

SECTION 1: SCOPE

This resolution applies to the Indiana Gaming Commission, riverboat license owners, operating agents, and supplier licensees.

SECTION 2: DEFINITIONS

The definitions set forth in IC 4-33-2 and 68 IAC apply to this resolution.

SECTION 3: ADOPTION OF THE EMERGENCY RULE

Pursuant to IC 4-22-2-37.1, the Commission adopts the attached rule as an emergency rule for the initial ninety (90) day period as well as for the optional ninety (90) day extension period. The Commission further adopts any stylistic, grammatical, typographical, or other non-substantive changes that the Commission or the Legislative Services Agency may make to this emergency rule. The Commission shall submit file the adopted rule and submit it for publication with Legislative Services Agency.

SECTION 4: EFFECTIVE DATE

The emergency rule adopted in section 3 of this resolution is to become effective upon filing with the Legislative Services Agency.

SECTION 5: EXPIRATION DATE

This resolution expires upon the final expiration of the emergency rule adopted herein.


ADOPTED, THIS THE 28th DAY OF AUGUST, 2008.

THE INDIANA GAMING COMMISSION:



William Barrett, Chair

ATTEST:



Thomas Swihart, Secretary

TITLE 68 INDIANA GAMING COMMISSION

Emergency Rule LSA Document 08-_____(E)

DIGEST

Temporarily adds the terms "casino", "casino gambling operation", "casino licensee", "gaming area", institutional investor", "key person", "progressive jackpot", and "substantial owner" to references to riverboat licensees in 68 IAC 1. Temporarily updates provisions concerning patron counting systems in 68 IAC 2 and 68 IAC 15, including the establishment of minimum accuracy standards. Temporarily adds terms regarding deviations of rule provisions concerning standards of patron counts to 68 IAC 15. Effective September 29, 2008.

SECTION 1. "Casino" means any facility under the jurisdiction of the commission pursuant to IC 4-33 or IC 4-35.

SECTION 2. "Casino gambling operation" means the conducting of gaming and all related activities, including, without limitation, the purveying of food, beverages, retail goods and services, and transportation on a casino and at its support facilities.

SECTION 3. "Casino licensee" means any:
(1) riverboat licensee;
(2) operating agent; or
(3) gambling game licensee under IC 4-35.

SECTION 4. (a) This SECTION supercedes 68 IAC 1-1-42.
(b) "Gaming area" means the room or room(s) on a casino in which gaming is conducted.

SECTION 5. (a) This SECTION supercedes 68 IAC 1-1-52.
(b) "Institutional investor" means any:
(1) retirement fund administered by a public agency for the exclusive benefit of federal, state, or local public employees;
(2) investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a);
(3) collective investment trust organized by banks under Part Nine (9) of the rules of the Comptroller of the Currency;
(4) closed end investment trust;
(5) chartered or licensed life insurance company or property and casualty insurance company;
(6) banking, chartered, or licensed lending institution;
(7) investment adviser registered under the Investment Advisors Act of 1940 (15 U.S.C. 80b); or
(8) other entity the commission determines constitutes an institutional investor;

that acquires voting or nonvoting 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.

SECTION 6. (a) This SECTION supercedes 68 IAC 1-1-57.

(b) “Key person” means any:

- (1) officer;**
- (2) director;**
- (3) executive;**
- (4) employee;**
- (5) trustee;**
- (6) substantial owner;**
- (7) independent contractor; or**
- (8) agent;**

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 or affiliates thereof.

SECTION 7. (a) This SECTION supercedes 68 IAC 1-1-73.

(b) “Progressive jackpot” means a value determined by application of an approved formula to the income of independent, local, or electronic gaming devices or live gaming devices. This value 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.

SECTION 8. (a) This SECTION supercedes 68 IAC 1-1-86.

(b) “Substantial owner” means 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%) or more ownership interest in a business entity; or**
- (2) institutional investor holding fifteen percent (15%) or more ownership interest in a business entity.**

SECTION 9. (a) This SECTION supercedes 68 IAC 2-7-1.

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

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

- (d) 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.
 - (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.

SECTION 10. (a) This SECTION supercedes 68 IAC 15-6-2.

(b) Each riverboat licensee shall endeavor to track patron admissions into and out of the riverboat in a manner most likely to result in one hundred percent (100%) accuracy.

- (c) Admissions to the riverboat must be conducted in the following manner:
- (1) Should a riverboat licensee 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 may allow patrons to disembark during the embarkation period for the next gaming excursion or at anytime that the riverboat remains at the dock and gambling continues in accordance with IC 4-33-9-2. The riverboat licensee is responsible for ensuring it is in compliance with subdivision (10) at all times. The admissions tax must be paid by the patron or the riverboat licensee 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 be paid by the carryover patron or the riverboat licensee for each excursion that a patron remains on board.
 - (2) Should a riverboat licensee 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 chooses to observe flexible scheduling:
- (A) all patrons boarding or exiting the riverboat must pass through approved patron counting equipment; and
 - (B) the riverboat licensee is responsible for ensuring that the approved patron counting equipment keeps an accurate count of the patrons who enter and exit the riverboat. Effective December 31, 2008, for purposes of this rule, "accurate count" means no less than ninety-seven percent (97%) accuracy.
- (4) Should a riverboat licensee choose not to observe flexible scheduling, a passenger count must be completed for each gambling excursion.
- (5) Should a riverboat licensee choose to observe flexible scheduling, a passenger count must be completed for the gaming day.
- (6) Should a riverboat licensee choose to observe twenty-four (24) hour gaming, a passenger count must 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 count.
 - (C) The patron egress 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 taking of the patron counts. The onboard count shall be added to the new gaming day's ingress patron count. The recording, resetting, and onboard additions to the ingress 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 shall submit patron count procedures to the executive director at least sixty (60) days before the commencement of gambling operations. The riverboat licensee shall submit changes to patron count procedures to the executive director at least thirty (30) days before the commencement of the new procedures. The patron count procedures shall include, but not be limited to, the following:

- (A) A description of the type of equipment 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 choose not to observe flexible scheduling.
- (D) Emergency procedures that will be utilized in case the primary patron counting equipment malfunctions.
- (E) The manner in which the riverboat licensee will ensure that the total number of patrons does not exceed the capacity of the riverboat as set

forth in the certificate of inspection issued by the United States Coast Guard or certificate of compliance issued by the commission pursuant to 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 shall notify the enforcement agent immediately if the primary patron counting system malfunctions.

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

(A) Occupational licensees of the riverboat licensee.

(B) Other employees of the riverboat licensee 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 have an appropriate badge.

(11) At no time shall the riverboat licensee allow the total number of patrons to exceed the capacity of the riverboat as set forth in the certificate of inspection issued by the United States Coast Guard or certificate of compliance issued by the commission pursuant to IC 4-33-6-6.

(d) As of December 31, 2008, patron counting systems must tally the number of patrons passing through an identified point of ingress and egress at a rate of no less than ninety-seven percent (97%) accuracy, as measured by standards approved by the executive director and established by an independent lab designated by the executive director. If a riverboat licensee uses a patron counting system other than turnstiles, the riverboat licensee must use its patron counting system at an established clear point of entry beyond which underage patrons must not pass.

(e) All patron counting systems used by riverboat licensees must be approved by the executive director prior to implementation. The riverboat licensee must provide the following information to the executive director for purposes of approval:

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

- (A) Evidence that the patron counting system has been subject to a field test, conducted by an independent lab designated by the executive director, at the appropriate riverboat; and
 - (B) Evidence that the patron counting system meets minimum accuracy standards during peak and nonpeak hours.
- (2) Information regarding the riverboat licensee's patron counting system processes, including:
- (A) security measures;
 - (B) procedures for controlling ingress and egress onto the riverboat property; and
 - (C) procedures for controlling riverboat capacity.
- (3) Evidence demonstrating the riverboat licensee's ability to continually verify the accuracy of the patron counting system on an ongoing basis and documentation illustrating the testing methodology. Patron counting system testing methodology must be approved by the executive director.
- (4) Any other information deemed necessary by the commission to ensure compliance with the Act and this title.

(f) A riverboat licensee must test or cause to be tested the patron counting system at least annually. The riverboat's annual patron counting methodology must be approved by the executive director.

(g) The executive director may require a manufacturer or distributor of patron counting equipment to submit the equipment 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.

SECTION 11. 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.

SECTION 12. (a) SECTIONS 1 through 11 of this document take effect September 29, 2008.