

**Document:** AROC Notice, **Register Page Number:** 27 IR 4142

**Source:** September 1, 2004, Indiana Register, Volume 27, Number 12

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**TITLE 905 ALCOHOL AND TOBACCO  
COMMISSION**

LSA Document #03-280

July 27, 2004

Chairman  
c/o Sarah Burkman  
Administrative Rules Oversight Committee  
302 State House  
Indianapolis, Indiana 46204

RE: 905 IAC 1-47, LSA Document #03-280(F)

Dear Mr. Chairman:

This letter is to notify the Administrative Rules Oversight Committee of changes in progress to the above rule, which establishes rules defining a municipal riverfront development project in accordance with IC 7.1-3-20-16.1. Under Ind. Code 4-22-2-19, an agency that adopts a rule must begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule.

IC 7.1-3-20-16 was amended in 1985 to allow for a one, two or three-way off-quota permit on a historic vessel located within a municipal riverfront development district. In 1989, it was amended to include land-based restaurants as well. No rules were required to be promulgated in order to issue such a permit. Throughout the 1990s, very few of these permits were issued. However, since the turn of the century, the Commission has reviewed several applications for these permits on an individual basis and has approved them if it felt that the individual permit qualified under the statute. Despite the best efforts of the Commission, it was difficult, in the absence of clear guidelines, to determine many common factors in the various permits which had been awarded over the years. Moreover, because these permits are not subject to the quota provisions of IC 7.1-3-22, people who purchased them could gain an unfair competitive advantage against those who had to purchase their permits on the open market to operate a similar establishment. Therefore, the Commission felt the need to outline a basic criteria for qualifying for these permits, which would include some limits on the boundaries of riverfront development projects, and yet at the same time, give local communities some flexibility to fit the needs to their own individual circumstances. It was determined that the most expedient way to accomplish this was to enact a rule which would clearly state the criteria for qualifying for a permit under this section.

The Commission promulgated its notice of intent on November 1, 2003. The rule was heard on January 26, 2004. Things changed during the 2004 session of the General Assembly when it incorporated most of the rule into HEA 1207, adding IC 7.1-3-20-16.1, and specifically left to the Commission the duty to promulgate rules affecting a small aspect of the overall procedure, specifically, how to treat permit applications which are located more than 1500 feet and less than 3000 feet from a river within a municipal riverfront development district.

IC 7.1-3-20-16.1 is the first time that the General Assembly has specifically instructed the Commission to promulgate rules regarding municipal riverfront development projects. This statute was effective on July 1, 2004. Because we began the rulemaking process before that date, we question the application of IC 4-22-2-19 to these unusual facts. However, in the interest of clarification, and in the spirit of the statute, we are submitting this letter as part of the rulemaking process.

Please let me know if further information on this rule is needed. I can be reached directly at (317) 232-2472 or via email at mwebb@atc.state.in.us. Thank you very much for your kind attention in this regard.

Very truly yours,

Mark C. Webb  
Executive Secretary