

TITLE 312 NATURAL RESOURCES COMMISSION**Final Rule**

LSA Document #17-553(F)

DIGEST

Amends [312 IAC 3-1-7](#) to establish a time deadline applicable to filings determined by date of delivery or receipt, to eliminate filing by facsimile, and make other technical amendments. Amends [312 IAC 3-1-9](#) to clarify the authority of the secretary of the natural resources commission to affirm a nonfinal order issued by an administrative law judge approving an agreed order entered by the parties when the administrative law judge is not the ultimate authority. Repeals [312 IAC 1-1-7](#), [312 IAC 1-1-8](#), [312 IAC 1-1-9](#), [312 IAC 1-1-10](#), [312 IAC 1-1-11](#), [312 IAC 1-1-12](#), [312 IAC 1-1-19.5](#), and [312 IAC 3-1-16](#). Effective 30 days after filing with the Publisher.

[312 IAC 1-1-7](#); [312 IAC 1-1-8](#); [312 IAC 1-1-9](#); [312 IAC 1-1-10](#); [312 IAC 1-1-11](#); [312 IAC 1-1-12](#); [312 IAC 1-1-19.5](#); [312 IAC 3-1-7](#); [312 IAC 3-1-9](#); [312 IAC 3-1-16](#)

SECTION 1. [312 IAC 3-1-7](#) IS AMENDED TO READ AS FOLLOWS:

[312 IAC 3-1-7](#) Filing and service of pleadings and documents

Authority: [IC 14-10-2-4](#)

Affected: [IC 1-1-9-1](#); [IC 4-21.5-3-1](#); [IC 4-21.5-3-29](#); [IC 4-21.5-5](#); [IC 14](#); [IC 23-1-20-15](#); [IC 25](#)

Sec. 7. (a) Pleadings and documents must be filed with the administrative law judge **commission** and served on all other parties.

(b) The filing of a pleading or document ~~with the administrative law judge~~ may be performed by any of the following:

- (1) Personal delivery.
- (2) United States mail under any of the following categories:
 - (A) First class.
 - (B) Certified.
 - (C) Express.
 - (D) Priority.
- (3) Private carrier.
- (4) ~~Interoffice~~ **State interdepartmental** mail.
- (5) ~~Facsimile~~ mail.
- (6) **(5)** Except as required by [IC 4-21.5-3-1](#)(c), electronic mail **delivered to nrcaopa@nrc.in.gov**.

(c) If an attorney or another authorized representative represents a party, service of a pleading or document must be made upon the attorney or other authorized representative. If an individual appears without separate representation, service must be made upon the individual.

(d) Filing ~~or service~~ **with the commission** is complete on the earliest of the following dates:

- (1) The date on which the pleading or document is delivered **by personal delivery or state interdepartmental delivery under subsection (b)(1) and (b)(4)**.
- (2) For pleadings and documents sent by electronic mail under subsection (b)(5), upon transmission. Except, filing occurring:**

- (A) on a Saturday or Sunday;**
- (B) on a legal holiday identified at [IC 1-1-9-1](#);**
- (C) on a day the commission is closed; or**
- (D) after 4:30 p.m. local time of the commission;**

shall be deemed complete the next day the commission is open.

- ~~(2)~~ **(3)** The date of the postmark on the envelope containing the pleading or document if the pleading or document is sent by a category of United States mail described in subsection (b)(2) and is properly addressed.
- ~~(3)~~ **(4) For a document or pleading sent by a private carrier as described in subsection (b)(3)**, the date on which the pleading or document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the pleading or document is sent by a private carrier and is properly addressed.
- ~~(4)~~ **(5)** The date of receipt of the pleading or document **sent under subdivision (2) or (3)**, if the date of

deposit or postmark cannot be determined.

(e) Where the date of filing is determined by the date of receipt, a document or pleading delivered after 4:30 p.m. local time of the commission will be deemed to have been received on the next day the commission is open.

(e) **(f)** This section does not modify the time in which a party may file objections under [IC 4-21.5-3-29](#) or a petition for judicial review under [IC 4-21.5-5](#).

(f) **(g)** [IC 4-21.5-3-1\(d\)](#) and [IC 4-21.5-3-1\(e\)](#) govern service by publication.

(g) **(h)** As used in this section, "private carrier" means a person, other than the United States Postal Service, that delivers mail as defined in [IC 23-1-20-15](#).

(Natural Resources Commission; [312 IAC 3-1-7](#); filed Feb 5, 1996, 4:00 p.m.: 19 IR 1319; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 4, 2005, 1:15 p.m.: 28 IR 2660; readopted filed Jul 21, 2008, 12:16 p.m.: [20080813-IR-312080052RFA](#); errata filed Jun 20, 2011, 12:23 p.m.: [20110629-IR-312110377ACA](#); readopted filed May 20, 2014, 9:48 a.m.: [20140618-IR-312140027RFA](#); filed Sep 6, 2018, 11:30 a.m.: [20181003-IR-312170553FRA](#))

SECTION 2. [312 IAC 3-1-9](#) IS AMENDED TO READ AS FOLLOWS:

[312 IAC 3-1-9](#) Defaults, dismissals, and agreed orders

Authority: [IC 14-10-2-4](#)

Affected: [IC 4-21.5-3](#); [IC 4-21.5-5](#); [IC 14](#); [IC 25](#)

Sec. 9. (a) An administrative law judge may enter a final order of dismissal if the party who initiated administrative review requests the proceeding be dismissed.

(b) An administrative law judge may, on the motion of the administrative law judge or the motion of a party, enter a proposed order of default or proposed order of dismissal under [IC 4-21.5-3-24](#), if at least one (1) of the following applies:

- (1) A party fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding.
- (2) The party responsible for taking action does not take action on a matter for a period of at least sixty (60) days.
- (3) The person seeking administrative review does not qualify for review under [IC 4-21.5-3-7](#).
- (4) A default or dismissal could be entered in a civil action.

(c) Within seven (7) days after service of a proposed order of default or dismissal, or within a longer period prescribed by the proposed order, a party may file a written motion requesting the order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceeding.

(d) If the party fails to file a written motion under subsection (c), the administrative law judge shall issue an order of default or dismissal. If the party has filed a written motion under subsection (c), the administrative law judge may either enter or refuse to enter an order of default or dismissal.

(e) After issuing an order of default, but before issuing a final order or disposition, the administrative law judge shall conduct any action necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings under [IC 4-21.5-3-23](#) to resolve any issue of fact.

(f) An administrative law judge shall approve an agreed order entered by the parties if it is:

- (1) clear and concise; and

(2) lawful.

(g) **If the administrative law judge is not the ultimate authority**, the secretary of the commission, as its designee under [IC 4-21.5-3-28](#)(b), may affirm the entry of an agreed order approved by the administrative law judge under subsection (f).

(h) A final order entered under this section is made with prejudice unless otherwise specified in the order. A person may seek judicial review of the order as provided in [IC 4-21.5-5](#).

(Natural Resources Commission; [312 IAC 3-1-9](#); filed Feb 5, 1996, 4:00 p.m.: 19 IR 1320; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: [20080813-IR-312080052RFA](#); readopted filed May 20, 2014, 9:48 a.m.: [20140618-IR-312140027RFA](#); filed Sep 6, 2018, 11:30 a.m.: [20181003-IR-312170553FRA](#))

SECTION 3. THE FOLLOWING ARE REPEALED: [312 IAC 1-1-7](#); [312 IAC 1-1-8](#); [312 IAC 1-1-9](#); [312 IAC 1-1-10](#); [312 IAC 1-1-11](#); [312 IAC 1-1-12](#); [312 IAC 1-1-19.5](#); [312 IAC 3-1-16](#).

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Notice of Intent: [20171122-IR-312170553NIA](#)

Proposed Rule: [20180418-IR-312170553PRA](#)

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Small Business Regulatory Coordinator: Dawn Wilson, Hearing Officer/Administrative Law Judge, Division of Hearings, Natural Resources Commission, Indiana Government Center North, 100 North Senate Avenue, Room N103, Indianapolis, IN 46204, (317) 234-9516, dwilson@nrc.in.gov

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