

# **TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION**

## **ARTICLE 1. PROCEDURAL REQUIREMENTS**

### **Rule 1. Administrative Adjudication Procedures Related to Aeronautics Programs**

#### **105 IAC 1-1-1 One form of action; initiating a proceeding**

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 1. Proceedings. (1) There shall be one form of formal proceeding (to be known as a "proceeding") under Section 8 [IC 8-21-1-8] of this Act.

(2) A proceeding may be instituted:

(a) By order to show cause or other process of the Commission.

(b) By the filing with the Commission of a formal application, complaint or petition.

*(Indiana Department of Transportation; Reg 1, Sec I; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 593; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; readopted filed Jun 14, 2007, 2:45 p.m.: 20070627-IR-105070237RFA; readopted filed Oct 2, 2013, 11:39 a.m.: 20131030-IR-105130295RFA) NOTE: Transferred from Department of Transportation (100 IAC 1-1-1) to Indiana Department of Transportation (105 IAC 1-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 1-1-2 Pleadings; informal proceedings; content of pleadings; agency action upon filing of deficient pleadings; record of proceeding**

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 2. General Requirements as to Papers in Proceedings. (1) Informal Complaints. Complaints may be made to the Commission informally by letter or other writing and matters so presented may, if their nature warrants, be taken up by correspondence or conference with the person or persons complained of. Any matter not disposed of informally may be made the subject of a formal proceeding.

(2) Conformity to Rules. Any person wishing to institute a proceeding should consult the rules, regulations, and orders of the Commission under the various sections of the Act.

(3) Requirements in Absence of Rules. In case there is no rule, regulation, or order of the Commission which prescribes the contents of the formal application, complaint, or petition in a given case, the application, complaint, or petition should contain a concise but complete statement of the facts relied upon as the bases for the relief or action sought. The names and addresses of the persons, if any, against whom relief or action is sought, should also be set forth in full.

(4) Insufficient Allegations. In any case where the Commission is of the opinion that a formal application, complaint or petition does not sufficiently set forth the material required to be set forth by any applicable rule, regulation, or order of the Commission, or is otherwise insufficient, the Commission may advise the party filing the same of the deficiency and require that any additional information be supplied by amendment.

(5) Answers. Answers to formal complaints, petitions and orders to show cause will not usually be required. In case the Commission deems an answer to be desirable, the parties will be notified.

(6) Retention of Papers by the Commission. When any formal application, complaint, or petition is denied, dismissed or permitted to be withdrawn, in whole or in part, said application, complaint or petition, and all documents filed with the Commission pertaining thereto shall be retained in the files of the Commission. When any proceeding instituted by the Commission is dismissed, terminated or rescinded, all documents filed with the Commission pertaining thereto shall be retained in the files of the Commission; Provided, that this paragraph shall not apply to documents filed with the Commission in any proceeding on the basis of a stipulation that such documents will be returned to the parties so filing when the purpose for which the documents are filed has been served. *(Indiana Department of Transportation; Reg 1, Sec II; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 593; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; readopted filed Jun 14, 2007, 2:45 p.m.: 20070627-IR-105070237RFA; readopted filed Oct 2, 2013, 11:39 a.m.: 20131030-IR-105130295RFA) NOTE: Transferred from Department of Transportation*

(100 IAC 1-1-2) to Indiana Department of Transportation (105 IAC 1-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 1-1-3 Form and filing of documents**

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 3. Form and Filing of Documents. (1) Execution, Number of Copies and Service. Unless otherwise required by applicable rule or regulation, every application, petition and formal complaint relating to any of the provisions of Section 8 [IC 8-21-1-8] of the Act, and every answer or other formal document in any such proceeding, shall be signed by, or on behalf of, the person filing the same, and shall be verified by the person signing the same, in the manner required by paragraph 2 of this section. Briefs and exceptions to reports shall be signed but need not be verified. Any general partner may sign on behalf of a partnership. Documents filed by a corporation, business trust or other similar organization must be signed by an officer who is duly authorized to take such action. An executed original copy of each such document, and seven true copies thereof, which need not be signed or verified, but which should have typed or facsimile signatures, shall be filed with the Commission. Each person filing any such document shall furnish such additional copies and shall make such service of the document on other persons as the Commission may at any time require. Such documents shall be delivered in person, through the mails, or otherwise, to the Aeronautics Commission of Indiana, in Indianapolis, Indiana, and shall be deemed to have been filed on the date on which they are actually received by the Commission.

(2) Verification. Every verification shall set forth that the person verifying the document has read and is familiar with the contents thereof and the attached exhibits, if any; that he intends and desires that in taking the action or granting or denying the relief requested, the Commission shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief, every statement contained in the instrument is true and no such statement is misleading.

(3) Formal Specifications of Papers. All papers filed in proceedings should be on strong, durable paper not larger than 8½" by 11" in size except that tables, charts, and other documents may be larger folded to approximately that size. The left margin should be at least 1½" wide and, if the document is bound, it should be bound on the left side.

(4) Reproduction of Papers. Papers may be reproduced by printing or by any other process, provided the copies are clear and legible. Appropriate notes or other indications should be used, so that the existence of deficits and any other matters normally shown in color will be accurately indicated on photostatic copies.

(5) Waiver of Strict Compliance with Rule. The Commission may, in its discretion, waive strict compliance with any requirement of this section. (*Indiana Department of Transportation; Reg 1, Sec III; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 594; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; readopted filed Jun 14, 2007, 2:45 p.m.: 20070627-IR-105070237RFA; readopted filed Oct 2, 2013, 11:39 a.m.: 20131030-IR-105130295RFA*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-3) to Indiana Department of Transportation (105 IAC 1-1-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 1-1-4 Appearances by third persons and formal interventions**

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 4. Appearances by Third Persons and Formal Interventions. (1) Petition for appearance of Third Persons. Any person, other than the original parties to the proceeding, who shall desire to appear and participate in any proceeding before the Commission, may petition for leave to intervene in the proceeding prior to or at the time it is called for hearing, but not thereafter, except for good cause shown. The petition must be in writing and state clearly the name and address of the party intervening, name and address of his attorney, if any, and his position in regard to the matter in controversy. If the petition discloses a substantial interest in the subject matter of the hearing, the Commission may grant the same. Thereafter such petitioner shall become a party to the proceedings and shall be known as an "intervener", with the same right to produce witnesses and of cross-examination as other parties to the proceeding.

(2) Denial of Petition for Intervention. Whenever it appears that any person petitioning for intervention has no substantial interest in the proceeding, the Commission may deny the petition or dismiss him from the proceeding. (*Indiana Department of*

*Transportation; Reg 1, Sec IV; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 596; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; readopted filed Jun 14, 2007, 2:45 p.m.: 20070627-IR-105070237RFA; readopted filed Oct 2, 2013, 11:39 a.m.: 20131030-IR-105130295RFA) NOTE: Transferred from Department of Transportation (100 IAC 1-1-4) to Indiana Department of Transportation (105 IAC 1-1-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 1-1-5 Request for oral argument; request for briefs; continuance**

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 5. Oral Argument and Briefs. (1) Oral Argument. Upon request of any party, the Commission may permit oral argument at the close of the hearing.

(2) Briefs. If a case presents unusually difficult questions of fact or law, the Commission may permit or require the submission of proposed findings of fact or conclusions, or of written briefs, to aid in the preparation of its report.

(3) Submission of Briefs. After a date has been set for the submission of proposed findings of fact or conclusions, or written briefs to the Commission, or the filing of exceptions to Commission's report or briefs thereon, such date may be postponed upon proper cause shown, but any such postponement shall not be granted by the Commission less than three days prior to the date originally set for the filing thereof except in cases involving unusual circumstances imposing substantial hardship upon the requesting party or parties. *(Indiana Department of Transportation; Reg 1, Sec V; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 596; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; readopted filed Jun 14, 2007, 2:45 p.m.: 20070627-IR-105070237RFA; readopted filed Oct 2, 2013, 11:39 a.m.: 20131030-IR-105130295RFA) NOTE: Transferred from Department of Transportation (100 IAC 1-1-5) to Indiana Department of Transportation (105 IAC 1-1-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 1-1-6 Exhibits**

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 6. Exhibits. (1) Submission of Exhibits. Wherever practicable, seven copies of each exhibit (in addition to the original offered in evidence at the hearing) should be furnished for the use of the Commission. One copy should also be furnished to each party at the hearing, and the Commission may, in its discretion, direct that any other person deemed by it to have a sufficient interest shall receive copies of designated exhibits.

(a) Excerpts from lengthy documents or of portions of the record in other proceedings before the Commission should be offered in the form of exhibits and copies furnished as above provided. Such exhibits may be received in evidence, subject to objection and rebuttal by other counsel, after opportunity to examine the exhibit in question and the source from which the same was taken.

*(Indiana Department of Transportation; Reg 1, Sec VI; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 597; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; readopted filed Jun 14, 2007, 2:45 p.m.: 20070627-IR-105070237RFA; readopted filed Oct 2, 2013, 11:39 a.m.: 20131030-IR-105130295RFA) NOTE: Transferred from Department of Transportation (100 IAC 1-1-6) to Indiana Department of Transportation (105 IAC 1-1-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 1-1-7 Petition for rehearing, reargument, or reconsideration**

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 7. Petition for Rehearing, Reargument, or Reconsideration. (1) Petition for Rehearing. Any party may petition for rehearing, reargument, or reconsideration of any final order by the Commission in a proceeding, or for further hearing before decision by the Commission.

(2) Form of Petition. The matters of record claimed to have been erroneously decided must be specified, and the alleged errors and the grounds relied upon must be briefly and specifically stated in the petition.

(a) If a final order of the Commission is sought to be vacated or modified by reason of matters which have arisen since the hearing, or of a consequence which would result from a compliance therewith, or both, the new matter, the resulting consequence, or both, which are relied upon by the petitioner must each be set forth in the petition. Where the petition is based wholly or in part upon new matter, the petition must contain a statement that the petitioner, with due diligence, could not have known or discovered the new matter prior to the time of the hearing.

(b) The petition must set forth a brief statement of the relief sought by the petitioner.

(c) Such petition for rehearing, reargument, or reconsideration, must be filed within thirty days after service of the order sought to be vacated or modified. After the expiration of said thirty days, such a petition may be filed only by leave of the Commission granted pursuant to formal application upon a showing of reasonable grounds for failure to file the petition within the prescribed thirty-day period. Any such petition or application shall be served by the petitioner or applicant upon all parties to the proceeding or their attorneys of record.

(3) Effective Date of Final Order. No petition for rehearing, reargument, or reconsideration filed in accordance with this section, or the granting thereof, shall operate as a stay of the effective date of the final order sought to be modified or vacated by such petition, unless specifically so ordered by the Commission.

(4) Rehearing by Order of the Commission. Within 30 days after service of any final order the Commission may, upon its own motion, order a rehearing or reargument for the purpose of taking additional evidence or clarification of the question of law involved in any proceeding. (*Indiana Department of Transportation; Reg 1, Sec VII; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 597; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; readopted filed Jun 14, 2007, 2:45 p.m.: 20070627-IR-105070237RFA; readopted filed Oct 2, 2013, 11:39 a.m.: 20131030-IR-105130295RFA*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-7) to Indiana Department of Transportation (105 IAC 1-1-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 1-1-8 Hearing officer; selection**

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 8. Hearings. (1) Hearings may be conducted by the Commission, by any member of the Commission, by the Director of the Commission, or by any Examiner authorized by the Commission. (*Indiana Department of Transportation; Reg 1, Sec VIII; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 598; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; readopted filed Jun 14, 2007, 2:45 p.m.: 20070627-IR-105070237RFA; readopted filed Oct 2, 2013, 11:39 a.m.: 20131030-IR-105130295RFA*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-8) to Indiana Department of Transportation (105 IAC 1-1-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 1-1-9 Findings and orders to be based on the hearing record**

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 9. Findings, Conclusions and Decisions. (1) All findings, conclusions and decisions, and orders issued therewith, shall be based only upon evidence and facts properly introduced and included in the official record of formal proceedings and the Commission will not consider any matters not so presented. Any new matter, not a part of the record, shall be presented to the Commission as provided in Section 7 [of this rule]. (*Indiana Department of Transportation; Reg 1, Sec IX; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 598; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; readopted filed Jun 14, 2007, 2:45 p.m.: 20070627-IR-105070237RFA; readopted filed Oct 2, 2013, 11:39 a.m.: 20131030-IR-105130295RFA*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-9) to Indiana Department of Transportation (105 IAC 1-1-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.

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