

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

**READOPTION OF 312 IAC 24,) Administrative Cause
WHICH GOVERNS) Number: 09-002M
STATE MUSEUMS AND)
HISTORIC SITES) (LSA Document #09-156(F))**

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For Commission consideration is the re-adoption of 312 IAC 24, which governs Indiana state museums and historic sites. This article includes 312 IAC 24-1 (Definitions), 312 IAC 24-2 (Merit evaluation of proposals to sell, exchange, or accept gifts of artifacts), 312 IAC 24-3 (Merit evaluation procedures to sell, exchange, or accept gifts of historic properties), and 312 IAC 24-4 (Museum code of ethics, supplemental to 40 IAC 2). The text of 312 IAC 24 can be accessed through the Legislative Services Agency Web site at <http://www.in.gov/legislative/iac/T03120/A00240.PDF>.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to readoptions. Where the rules are being readopted in their current form without amendments the Director of the Division of Hearings may approve preliminary action. However, the Commission retains authority to take final action on recodifications.

The rules codified under 312 IAC 24 are proposed for re-adoption without amendment. The Director of the Division of Hearings approved preliminary action on January 5, 2009. It is the standard practice to re-adopt rules by article, and 312 IAC 24 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IND. CODE § 4-22-2.5-3.1

On January 5, 2009, Barry Dressel, President and CEO of the Indiana State Museums, appointed Arlene Phillips as the Small Business Regulatory Coordinator for this rule readoption. Phillips provided the following analysis of potential impacts to small business for the proposed readoption of 312 IAC 24:

READOPTON OF RULES: SMALL BUSINESS IMPACT ANALYSIS
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The continued need for the rule.

Rule 1. Definitions

This rule provides definitions that apply to IC 14-20-1 and 312 IAC 24. This rule does not impose any requirements or costs on small business under IC 4-22-2.5-3.1(a)(2). There is a continued need for this rule.

Rule 2. Artifacts: Evaluation of Proposals to Sell, Exchange, or Accept Gifts or Otherwise Acquire

This rule establishes the procedures for evaluating the merits of proposals to sell, exchange, or accept gifts of artifacts under IC 14-20-1-23(d). By implementing the procedures set forth under this rule, the division of state museums and historic sites strives to collect, preserve, and interpret artifacts and materials reflecting the cultural and natural history of Indiana.

This rule also states the priorities for artifact accession, the considerations affecting these priorities, the duties and powers of the division director, board of trustees, the commission, and grantors or donors as regards the accession of artifacts

This rule sets forth the general criteria to be used to determine what artifacts are to be deaccessioned and requires that artifacts to be considered for deaccession must meet at least one (1) of these criteria. In addition, the rule provides for the following:

1. the procedure for deaccessioning artifacts;
2. that the division shall make a good faith effort to comply with precatory restrictions and notify individuals from whom artifacts are accessioned, or their heirs or assigns, if the individuals are deceased;
3. prohibition on the transfer of artifacts to departmental staff, boards, and families; and
4. that collecting strategies providing for areas of coverage and standards of documentation are established for each curatorial office and published in the trustees' "Collection Management Policy".

This rule does not impose any requirements or costs on small businesses under IC 4-22-2.5-3.1(a)(2). There is a continued need for this rule.

Rule 3. Historic Properties; Evaluation of Proposals to Sell, Exchange, Accept Gifts, or Otherwise Acquire

This rule establishes a procedure for evaluating the merits of proposals to sell, exchange, or accept gifts of historic properties under IC 14-20-1-23(d). By implementing this procedure, the division strives to also establish standards and criteria for acquiring historic properties under IC 14-20-1-23(a). This rule excludes a historic property that is an artifact as such property is governed by 312 IAC 24-2.

This rule does not impose any requirements or costs on small businesses under IC 4-22-2.5-3.1(a)(2). There is a continued need for this rule.

Rule 4. Ethics

This rule requires that the trustees shall adopt a museum code of ethics, supplemental to 40 IAC 2, that is applicable to the trustees and the employees of the division.

This rule also prohibits employees of the division from providing any financial appraisal of an artifact unless the appraisal is for the exclusive use of the department.

This rule does not impose any requirements or costs on small businesses under IC 4-22-2.5-3.1(a)(2). There is a continued need for this rule.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

There is no indication of any complaints or comments from the public, including small businesses, concerning the above rules or their implementation by the division.

The complexity of the rule, including any difficulties encountered by:

- (A) the agency in administering the rule; or**
- (B) small businesses in complying with the rule.**

These rules clearly provide the standards and procedures regarding the acquisition and deaccessioning of artifacts and historic property by the division, the trustees, commission, and donors or grantors.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

There is no indication that these rules overlap, duplicate, or conflict with other federal, state, or local laws, rules, regulations, or ordinances.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

These rules were last recodified in 2003. While economic conditions are different, they have not changed in a way as to necessitate changes to the rules.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On March 4, 2009, a “Notice of Intent to Readopt” 312 IAC 24 was posted to the Indiana *Register* at 20090304-IR-312090156RNA as anticipated by Ind. Code § 4-22-2.5-2 and Ind. Code § 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 24 without changes. The notice also provided that a person had 30 days to submit a written request to the Natural Resources Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under Ind. Code § 4-22-2-35 or elect the procedure for readoption under Ind. Code § 4-22-2. It is recommended that the Commission approve for readoption 312 IAC 24, without amendment, for subsequent filing with the Publisher.

Dated: April 6, 2009

Jennifer M. Kane
Hearing Officer