BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA

IN THE MATTER OF:

	)	**Administrative Cause**
RECODIFICAITON OF 312 IAC 3,	)	**Number: 08-002A**
ADJUDICATORY PROCEEDINGS	)	
	)	**(LSA Document #08-52(F))**

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULES

A. INTRODUCTION

For consideration is the final adoption of the recodification of adjudicatory proceedings rule article (312 IAC 3) The article includes:

312 IAC 3 Rule 1. Procedural Rules
312 IAC 3-1-1 (Administration); 312 IAC 3-1-2 (Ultimate authority); 312 IAC 3-1-2.5 (Applicable provisions of the code of judicial conduct to administrative law judges); 312 IAC 3-1-3 (Initiation of a proceeding for administrative review); 312 IAC 3-1-4 (Answers and affirmative defenses); 312 IAC 3-1-5 (Pleadings for and disposing of a show cause order issued under the Indiana Surface Mining Control and Reclamation Act); 312 IAC 3-1-6 (Amendment of pleadings); 312 IAC 3-1-7 (Filing and service of pleadings and documents); 312 IAC 3-1-8 (Administrative law judge, automatic change); 312 IAC 3-1-9 (Defaults, dismissals, and agreed orders); 312 IAC 3-1-10 (Applicability of rules of trial procedure and rules of evidence); 312 IAC 3-1-11 (Conduct of hearing, separation of witnesses); 312 IAC 3-1-12 (Relief under IC 4-21.5-3-28 through IC 4-21.5-3-31, including disposition of objections to nonfinal orders of administrative law judge; commission objections committee); 312 IAC 3-1-13 (Awards of litigation expenses for specified proceedings); 312 IAC 3-1-14 (Court reporter; transcripts); 312 IAC 3-1-15 (Quasi-declaratory judgments); 312 IAC 3-1-16 (Continuances); 312 IAC 3-1-17 (Record of proceedings; adjudicative hearings generally; record of the director for surface coal mining Permits); 312 IAC 3-1-17 (Record of proceedings; adjudicative hearings generally; record of the director for surface coal mining permits); 312 IAC 3-1-19 (Modification of final agency order); 312 IAC 3-1-20 (Remand following judicial review or appeal)

The text of 312 IAC 2 can be accessed through the Legislative Services Agency website at http://www.in.gov/legislative/iac/T03120/A00030.PDF.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to recodifications. Where no amendments are proposed, and rules would be readopted in their current form, the Director of the Division of Hearings may approve preliminary action. The standard practice would be to readopt by article. The Commission retained authority to take final action on recodifications.

No amendments were proposed to the rule article 312 IAC 3 and would be readopted in its current form. The Director of the Division of Hearings approved preliminary action. 312 IAC 3 is submitted for consideration as to final action.

B. RECODIFICATION ANALYSES UNDER IC 4-22-2-3.1

On May 19, 2008, Jennifer Kane, Small Business Regulatory Coordinator for LSA Document #08-52(F), provided analyses for the proposed readoption of 312 IAC 3 to consider potential impacts to small business. Her analysis provided:

> **The continued need for the rule.**
>
> 312 IAC 3 controls proceedings governed by IC 4-21.5 (the "Administrative Orders and Procedures Act") for which the Commission, or the Commission's law judges, is the ultimate authority. The rules set forth procedures and requirements regarding requests for administrative review and the conduct of those reviews. There is a continued need for these rules.
>
> **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.**
>
> The Commission has not received any complaints or comments from the public, including small businesses, concerning these rules or the Commission's implementation of these rules.
>
> **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.**
>
> The Commission and the Department have refined administration of its rules and works with small businesses, private individuals, and professionals in complying with its rules. 312 IAC 3 does not conflict with other federal, state or local laws and is an appropriate implementation of state statute. These rules are procedural in nature.
>
> **The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.**

There has been no demonstration that these rules significantly overlap with or duplicate other federal, state or local laws.

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.

Except for 312 IAC 3-1-3, 312 IAC 3-1-7, 312 IAC 3-1-12, and 312 IAC 3-1-18**,** these rules have not been amended since readoption in 2002, and review under this section was not required.

312 IAC 3-1-2.5 was added in January 2007 (20070214-IR-312060107FRA). The amendments incorporated the 2005 amendments to Ind. Code § 14-10-2-2 (P.L. 99-2005) to require the two administrative law judges for the Commission to comply with "applicable provisions of the code of judicial conduct." The rule amendment did not expand the statutory directive to govern other than the Commission's two administrative law judges. A small business impact analysis was conducted in 2006. The economic impact statement indicated that there was no impact to small business.

312 IAC 3-1-3 and 312 IAC 18 were amended in March 2007 (20080402-IR-312070486FRA) to reflect a change of address of the Commission's Division of Hearings. As reflected in the economic impact statement, the amendment was "entirely of a housekeeping nature" and that "there will be no administrative costs to small businesses as a result of compliance with this rule."

312 IAC 3-1-7, which governs the filing and service of pleadings and other documents with the Commission under Ind. Code § 4-21.5 was amended in May 2005 (28 IR 2660). The amendments made technical changes and provided conformity with Ind. Code § 4-21.5 with respect to private carriers, service by U.S. Priority, or Express Mail and by publication. At the time of the promulgation of the amendments a small business analysis review was not required.

The Commission's AOPA Committee was established by amendments to 312 IAC 3-1-12. The amendments authorized the AOPA Committee to grant final agency relief for matters controlled by IC 4-21.5 within IC 4-21.5-3-28 through IC 4-21.5-3-31. The AOPA Committee reviews and acts upon objections filed by a party to findings of fact, conclusions of law, and a nonfinal order of an administrative law judge. These amendments provided guidance to the Division of Hearings to support the effective and appropriate implementation of IC 4-21.5 and 312 IAC 3-1. The AOPA Committee provides a forum that is fully supportive of the legal responsibilities set forth in the Administrative Orders and Procedures Act. A review as to impact to small business was not required at time of the promulgation of these amendments.

In the process of conducting its business, the Commission is continually reviewing its effectiveness in providing standards and guidance to small businesses, private individuals, and professionals in complying with its rules. Technology, economic conditions, and other factors have not changed in a way that would warrant modification to 312 IAC 3.

REVIEW: MOST RECENT SMALL BUSINESS IMPACT ANALYSIS

The factors analyzed in the economic impact statements regarding amendments to 312 IAC 3-1-2.5 (LSA Document #07-107(F)), 312 IAC 3-1-3 and 312 IAC 3-1-18 (LSA Document #07-486(F)) have not changed since the statements were prepared.

(1) Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)

For both economic statements prepared in association with LSA Document #07-107(F) and LSA Document #07-486(F), no alternative regulatory methods were proposed.

(2) Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements

There are no regulatory alternatives to be considered for implementation of these rules.

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

A "Notice of Intent to Readopt" was published in the Indiana REGISTER on January 23, 2008 as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 3 without changes. The notice provided that a person had 30 days to submit a written request to the Natural Resources Commission seeking to have a particular section of the rules be readopted separately from the general recodification. If such a request is made, the Commission would be required to complete the full rule adoption process for the section. No written request has been received. Where no request is received, the Commission may either submit the rules for filing with the publisher under IC 4-22-2-35 or elect the procedure for recodification under IC 4-22-2. For the purposes of the recodification, retention of the current language is found to be appropriate.

The recommendation is for the Commission to approve submittal of the rule for filing with the Publisher.

Dated: May 23, 2008

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Jennifer M. Kane
Hearing Officer