

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

IN THE MATTER OF:) **Administrative Cause**
) **Number: 20-WA-007**
READOPTION OF 312 IAC 10)
GOVERNING FLOOD PLAIN)
MANAGEMENT) **(LSA Document #20-345(F))**

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULES

A. INTRODUCTION

For consideration is the readoption of 312 IAC 10 in its entirety, and without amendment. This article provides standards for the delineation and regulation of flood plains to decrease existing flood damages, mitigate future flood damages, and promote the health, safety, and welfare of the people of Indiana. This article assists with the implementation of IC 14-28-1 (Flood Control Act), IC 14-28-3, and IC 14-29-1 (Navigable Waterways Act). 312 IAC 10 can be accessed through the Indiana General Assembly’s website at:

<http://iac.iga.in.gov/iac/T03120/A00100.PDF>.

If rules are readopted in their current form without amendments 312 IAC 2-2-4(b) authorizes the Director of the Division of Hearings to approve preliminary adoption. The Commission retains authority to take final action on readoptions. The Director of the Division of Hearings approved preliminary adoption on January 2, 2020. The standard practice is to readopt rules by article, and 312 IAC 10 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5

Executive Order 13-03 requires agencies to “suspend rulemaking action on any proposed rules”. The Director of the Office of Management and Budget (OMB) determined the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.¹

The OMB determined that the fiscal analyses, as specified in Financial Management Circulars 2010-4, are not required to be submitted to the OMB for State Budget Agency’s approval if those analyses have been submitted to the OMB in a previous rule adoption or amendment.²

George Bowman, Assistant Director, of the Department of Natural Resources, Division of Water, was appointed Small Business Regulatory Coordinator for this rule readoption. Bowman provided to the Hearing Officer the following analyses as required for the proposed readoption of 312 IAC 10:

Review under IC 4-22-2.5-3.1(c)

The continued need for the rule.

The rule is necessary for the continued implementation of the regulatory programs administered by the Department and authorized under the statutory authority of IC 14-28-1 and IC 14-28-3. This rule is also necessary for the state to participate in the National Flood Insurance Program.

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.

In most cases, the overall complaint regarding the rules is that more types of construction activities should be covered by a general license. Any rule that shortens the permit process is viewed favorably by the regulated community, including small businesses

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.**

Any difficulties encountered through the course of administering the rule have been addressed by amending the rule when needed. Since the rule was last readopted in 2014, there have been no issues raised that would require amending the rule.

¹ Indiana State Budget Agency email dated May 2, 2013, to heads of state agencies. OMB’s determination caused Financial Management Circular 2015-1 to be equally inapplicable to readoptions.

² OMB emails dated March 16 and March 24, 2017. OMB’s determination effectively renders Executive Order 2-89 inapplicable to readoptions.

Because the rule has been around for a number of years, small businesses have learned to incorporate the permitting process into their planning and development. Compliance with the rule requirements is generally not an issue.

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

In general the rule duplicates federal regulations contained in 44 CFR §§ 59 and 60 regarding floodplain management. This duplication is necessary for the state to participate in the National Flood Insurance Program.

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.

The entire Rule 312 IAC 10 was last adopted in 2014. There have been no amendments to the rule since it was last adopted. Prior to 2014, the rules were amended in 2009 and 2011 to address issues associated with administering general licenses for certain types of projects. Advancements in construction practices and the implementation of best management practices made these rule modifications reasonable and necessary to promote the preservation and protection of the natural resource while reducing business costs associated with obtaining a permit. Current economic conditions, advancements in technology and other factors have not changed in a way since the last amendment in 2011 to warrant any new rule modifications to date.

On June 17, 2020, the analyses required under IC 4-22-2.5-3.1, was forwarded to the Legislative Council as required by IC 4-22-2-28(i).

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

On June 17, 2020, the “Notice of Intent to Readopt” 312 IAC 10 was posted to the *Indiana Register* at 20200617-IR-312200345RNA as anticipated by IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 10 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If 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. No request was made.

The hearing officer recommends the Commission approve for readoption 312 IAC 10, without amendment, for subsequent filing with the Publisher under IC 4-22-2-35 as authorized at IC 4-22-2.5-4(c)(1).

Dated: August 4, 2020



Billie J. Davis
Hearing Officer