

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

**IN THE MATTER OF:** ) **Administrative Cause**  
 ) **Number: 20-AD-002**  
**READOPTION OF 312 IAC 3** )  
**GOVERNING ADJUDICATORY** )  
**PROCEEDINGS** ) **(LSA Document #20-206 (F))**

**RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULES**

**A. INTRODUCTION**

For consideration is the readoption of 312 IAC 3 in its entirety, and without amendment. This article assists with the implementation of proceedings governed by IC 4-21.5 (commonly known as the “Administrative Order and Procedures Act” or “AOPA”). The rules set forth procedures and requirements regarding requests for administrative review and the conduct of those reviews. 312 IAC 3 can be accessed through the Indiana General Assembly’s website at:

<http://iac.iga.in.gov/iac/T03120/A00030.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 3 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.<sup>1</sup>

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.<sup>2</sup>

Billie J. Davis, Paralegal with the Natural Resources Commission’s, Division of Hearings, was appointed Small Business Regulatory Coordinator for this rule readoption. Analyses required for the proposed readoption of 312 IAC 3, included:

Review under IC 4-22-2.5-3.1(c)**The continued need for the rule.**

312 IAC 3 assists with implementing proceedings governed by IC 4-21.5 (the “Administrative Orders and Procedures Act” or “AOPA”) for which the Natural Resources Commission (the “Commission”) or a Commission administrative law judge is the ultimate authority. The rules set forth procedures regarding requests for administrative review and the conduct of those reviews. There is a continued need for the 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.**

AOPA and 312 IAC 3 provide elements for due process and dispute resolution. Rulings by the Commission and its administrative law judges are likely to be viewed with disappointment by at least one litigant. Outside of the ordinary application of an adjudicatory process, the Commission has not received any complaints or comments from the public, including small businesses, concerning these rules or the 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 has 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

---

<sup>1</sup> 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.

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

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.**

These rules do not overlap with or duplicate other federal, state, and 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.**

312 IAC 3 has been amended twice since its readoption effective 2014.

In 2018, LSA Document #17-553(F) amended 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. It also amended 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. Other changes included the repeal of rules that duplicated state law.

In 2019, LSA Document #18-272(F) added 312 IAC 3-1-3.5 governing a party's participation and representation in a proceeding controlled by the Administrative Orders and Procedures Act, IC 4-21.5-3, to provide procedures for participation by a party through a party's representative.

The amendments under LSA Document #17-553(F) did not impose a requirement or cost on small businesses. The amendments under LSA #18-272(F) imposed minimal administrative requirements resulting in only *de minimis* monetary costs upon a very limited number of small businesses.

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 under IC 4-22-2.5-3.1(d)

**The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared**

Proposed is the readoption of 312 IAC 3 under IC 4-22-2.5 in its entirety and without amendment. 312 IAC 3 was previously readopted in 2014 under LSA #14-27 and was recently amended under LSA Document #17-553(F) and 18-272(F).

LSA Document #17-553(F), effective October 6, 2018, amended 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. It also amended 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. LSA Document # 17-553(F) also 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, and 312 IAC 3-1-16 to remove duplication with the contemporaneous statutes.

LSA Document #18-272(F), effective April 17, 2019, added 312 IAC 3-1-3.5 governing a party's participation and representation in a proceeding controlled by the Administrative Orders and Procedures Act, IC 4-21.5-3

The amendments under LSA Document #17-553(F) did not impose a requirement or cost on small businesses and amendments under LSA #18-272(F) imposed minimal administrative requirements resulting in no or only *de minimis* monetary costs upon a very limited number of small businesses.

There has been no change in the factors analyzed in the previous economic impact statements since those statements were prepared.

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

The amendments in 2018 and 2019 were found to impose none to minimal costs or requirements on small businesses. There were no regulatory alternatives included in the Economic Impact Statements associated with LSA Document #17-533(F) or LSA Document #18-272(F).

**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**

312 IAC 3 assists with implementing proceedings governed by IC 4-21.5 (sometimes referred to as the "Administrative Orders and Procedures Act"). The rules set forth procedures and requirements regarding requests for administrative review and the conduct of those reviews. There are no alternatives to be considered for implementation of these rules.

On April 15, 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 April 15, 2020, the "Notice of Intent to Readopt" 312 IAC 3 was posted to the *Indiana Register* at 20200415-IR-312200206RNA as anticipated by IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 3 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 3, 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: June 12, 2020



---

Billie J. Davis  
Hearing Officer