

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

IN THE MATTER OF:

ADMINISTRATIVE RULES GOVERNING Clear Lake Boating Zones))))	Administrative Cause Number 22-WA-009 LSA Document #22-349(F)
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**REPORT ON RULE PROCESSING, PUBLIC HEARING, AND HEARING
OFFICER ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ACTION**

I. Rule Processing:

For consideration on final action are proposed amendments to 312 IAC 5-6-3.5 to add special boating zones and standards for temporary structures authorized under the general license requirements. The proposed amendments allow a temporary pier or boat lift in the specified area of Clear Lake of greater than 150 feet from the shoreline to be authorized by a general license under IC 14-26-2 if the structure conforms with other requirements in the rule. Further, the amendments impose an idle-speed zone on Clear Lake within 300 feet of the water line in this area to accommodate the longer piers. The proposed rule is attached to this report as **Exhibit A**.

David Bausman, General Counsel for the Department of Natural Resources (Department), submitted a request for exemption from the moratorium on rulemaking action to the Office of Management and Budget (OMB) on August 4, 2022, as required by Executive Order 13-03. On August 9, 2022, Justin McAdams, OMB Deputy Director and Chief Legal Counsel, replied: “Based on DNR’s submission, the request qualifies for an exception under paragraphs 6(b) and 6(g) of Executive Order 13-03. DNR may proceed with the rule proposed in its submission.” Preliminary adoption of this rule was granted by the Commission at a Commission meeting on November 15, 2022.

A Notice of Intent to adopt the rule amendments was published in the INDIANA REGISTER at DIN: 20221123-IR-31220349NIA on November 23, 2022. Lieutenant Erick Bolt was identified in the Notice as the Small Business Regulatory Coordinator for this rule for purposes of Ind. Code § 4-22-2-28.1.

The Commission posted the information required by IC § 4-22-2-22.5 on the rulemaking docket maintained on the Commission website at <https://www.in.gov/nrc/rules/rulemaking-docket/>. The information on the docket was updated as needed throughout the rulemaking process.

As directed in Executive Order 2-89 and Financial Management Circulars 2010-5 and 2015-1, fiscal analyses of the rule proposal and the rule standard analysis required by IC § 4-22-2-19.5 were submitted to the OMB and the Legislative Council on November 29, 2022, with a copy of the proposed rule language and a copy of the published Notice of Intent. On December 8, 2022, the Commission received approval from Zachary Q. Jackson, Director of the State Budget Agency.

On November 29, 2022, the Division of Hearings submitted the proposed rule to the Legislative Services Agency (LSA) with the Statement Concerning Rules Affecting Small Business, also known as the Economic Impact Statement (EIS). The Notice of Public Hearing with the Justification Statement were also submitted to LSA on November 29, 2022, as required by IC §4-22-2-24(d)(3). The Commission received Authorization to Proceed on January 4, 2023. On January 11, 2023, the proposed rule, the notice of public hearing, and the EIS were posted to the INDIANA REGISTER. A Notice of Public Hearing was published in the Herald Republican, a newspaper of general circulation in Steuben County, Indiana, on January 18, 2023, and in the Indianapolis Star, a newspaper of general circulation in Marion County, on January 18, 2023. In addition, the notice of the public hearing was posted on the Commission's online rulemaking docket as required by IC § 4-22-2-22.5.

The EIS required by IC 4-22-2.1-5 provides:

SMALL BUSINESS IMPACT STATEMENT

LSA Document # 22-349

(Administrative Cause No. 22-WA-009)

IC 4-22-2.1-5 Statement Concerning Rules Affecting “Small Businesses”

Estimated Number of Small Businesses Subject to this Rule:

No small businesses will be affected by this rule.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

NA

Estimated Total Annual Economic Impact on Small Businesses to Comply:

None

Justification Statement of Requirement or Cost

NA

Regulatory Flexibility Analysis of Alternative Methods

There are no market-oriented approaches needed or available since there are no requirements for small businesses.

II. Public Hearing and Comment

A public hearing was conducted as scheduled on February 16, 2023, at the Potawatomi Inn, in Steuben County, Indiana. Lieutenant Erick Bolt attended the meeting on behalf of the Department’s Division of Law Enforcement. Seven members of the public attended and provided comments. All expressed support for the proposed rule changes, particularly the creation of an idle zone within 300 feet of the shoreline in the area of the lake impacted by the rule. There are piers in this area that extent greater than 150 feet from the shoreline. An extension of the idle zone to 300 feet in this area provides a safety buffer between piers/swimmers and high-speed boat traffic.

The public comment period closed on February 22, 2023 and the close of the public comment period was posted on the Commission's rulemaking docket at <https://www.in.gov/nrc/rules/rulemaking-docket/>.

III. Hearing Officer Recommendation and Analysis:

The proposed amendments take into consideration the characteristics of Clear Lake and would allow piers or boat lifts to be extended into Clear Lake to sufficient depth in a limited section of Clear Lake to address the concerns of the shallow conditions of the lake. Further, extending the idle zone in that limited area of the lake to 300 feet addresses the potential safety concerns of boat traffic coming too close to the ends of piers or swimmers while balancing the recreational use of the lake. The idle zones will be marked by buoys.

The proposed amendments to 312 IAC 5-6 are appropriate and recommended for final adoption.

March 1, 2023



Elizabeth Gamboa
Hearing Officer

EXHIBIT A

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document
#22-349

DIGEST

Adds 312 IAC 5-6-3.5 to set standards for temporary structures and special boating zones on Clear Lake. Effective 30 days after filing with the Publisher.

Rule 5. BOATING ON PUBLIC WATERS OF INDIANA

312 IAC 5-6-3.5 Clear Lake; special boating zones and temporary structure standards Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-3
Affected: IC 14-

Sec. 3.6 (a) Notwithstanding 312 IAC 11-3-1(b)(5), a temporary pier or boat lift is authorized on Clear Lake in Steuben County by a general license under IC 14-26-2 if the structure conforms with both of the following:

- 1. Satisfies 312 IAC 11-3-1(b)(1) through 312 IAC 11-3-1(b)(4) and 312 IAC 11-3-1(b)(7) through 312 IAC 11-3-1(b)(9).**
- 2. Extends not more than either of the following:**
 - A. One hundred fifty (150) feet from the shoreline or water line and satisfied 312 IAC 11-3-1(b)(6).**
 - B. two hundred fifty (250) feet from the shoreline or water line and does not extend over water that is continuously more than three (3) feet deep from a point at the shoreline or water line 16 T 0680132 (UTM 46220900) clockwise to a point at the shoreline or water line at 16T 0680436 (UTM 4622968).**
- b. A person must not operate a boat in excess of idle speed within three hundred (300) feet of the Shoreline or water line for the area identified in subsection (a)(2)(B).**
- c. As used in this section, “shoreline or water line means the line formed under IC 14-26-2-4(1) at one thousand thirty-seven and thirty-eight hundredths (1037.38) feet, National Geodetic Vertical Datum of 1929 (NGVD-29)**