

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

**IN THE MATTER OF:** ) **Administrative Cause**  
 ) **Number: 21-OR-002**  
**READOPTION OF 312 IAC 7** )  
**GOVERNING TRAILS** )  
**AND SCENIC RIVERS** ) **(LSA Document #21-228(F))**

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

**A. INTRODUCTION**

For consideration is the readoption of 312 IAC 7 in its entirety, and without amendment. This article provides standards for Trails and Scenic Rivers. 312 IAC 7 can be accessed through the Indiana General Assembly’s website at: <http://iac.iga.in.gov/iac/T03120/A00070.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 5, 2021. The standard practice is to readopt rules by article, and 312 IAC 7 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>

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<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.

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>

Dale Brier (*Brier*), Director with the Department of Natural Resources, Division of Outdoor Recreation, was appointed Small Business Regulatory Coordinator for this rule readoption. Brier provided the following analyses as required for the proposed readoption of 312 IAC 7:

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

**The continued need for the rule.**

312 IAC 7-1 governs Snowmobile use on state trails and enhances IC 14-16-1. It is needed to specifically set up procedures for when the snowmobile trail is eligible to be open, define the snowmobile season, and to prohibit the use of wheeled vehicles. This allows the Department of Natural Resources to prosecute those that trespass when the trail is closed or that misuse the trail.

312 IAC 7-2 defines and describes the rivers included in the Natural, Scenic, and Recreational River System. IC 14-29-6 is the governing statute but does not contain a list of the rivers and streams in the Natural, Scenic, and Recreational River System. The list of natural, scenic, and recreational rivers and streams is codified at 312 IAC 7-2-2, 312 IAC 7-2-3, and 312 IAC 7-2-4.

**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 Division of Outdoor Recreation has not received any complaints from the public, including small businesses, concerning these rules or the Department’s implementation of these rules.

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

**(A) the agency in administering the rule; or**

312 IAC 7-1 sets the snowmobile season, the process, and specifies that the Department will designate personnel to open and close any snowmobile trail according to specific criteria listed in 312 IAC 7-1-2. 312 IAC 7-1-3 prohibits wheeled vehicles from operating on the snowmobile trails. Department of Natural Resources, Law Enforcement conservation officers routinely write citations to persons in violation of this rule.

IC 14-29-6-8 provides the process for selection of rivers for inclusion into the Natural, Scenic, and Recreational River System. The Department director may study and periodically submit to the Commission proposals for the inclusion of a section of a river into the system. 312 IAC 7-2 simply lists the sections or waterways included in the Natural, Scenic, and Recreational River System.

**(B) small businesses in complying with the rule.**

312 IAC 7 should have no effect on small business.

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

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

312 IAC 7-1 works in cooperation with IC 14-16-1.

312 IAC 7-2 defines the rivers that are affected by IC 14-29-6. There are no known federal rule conflicts or overlaps.

**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 readopted in 2015, and no changes are required. The DNR has received no applications for new rivers to be included in the scenic river program.

On June 16, 2021, 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 16, 2021, the “Notice of Intent to Readopt” 312 IAC 7 was posted to the *Indiana Register* at 20210616-IR-312210228RNA as anticipated by IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 7 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 7, 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: September 21, 2021

  
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Billie J. Franklin  
Hearing Officer