

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

IN THE MATTER OF:) **Administrative Cause**
) **Number: 20-LE-003**
READOPTION OF 312 IAC 5)
GOVERNING BOATING ON)
PUBLIC WATERS OF INDIANA) **(LSA Document #20-355(F))**

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULES

A. INTRODUCTION

For consideration is the readoption of 312 IAC 5 in its entirety, and without amendment. This article provides standards for the use of a boat on public waters of Indiana. 312 IAC 5 can be accessed through the Indiana General Assembly’s website at:

<http://iac.iga.in.gov/iac/T03120/A00050.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 5 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

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.

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

Lt. Kenton Turner, Conservation Officer with the Department of Natural Resources, Division of Law Enforcement, was appointed Small Business Regulatory Coordinator for this rule readoption. Turner provided to the Hearing Officer the following analyses as required for the proposed readoption of 312 IAC 5:

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

The continued need for the rule.

312 IAC 5 provides the standards for operation of boats on Indiana's public waters. These standards are necessary to provide the safety of all those persons who recreate on Indiana's waterways. This article also provides for the protection of Indiana's natural resources. 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 Department has not received any complaints from the public, including small businesses, concerning 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 Law Enforcement Division has not encountered any difficulties administering this rule and the rule will not create expense to small business.

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

This rule does not overlap, duplicate, or conflict with other federal, state, or local laws, rules, regulations, or ordinances.

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.

This rule was readopted in 2014 under LSA Document 14-67. Technology, economic conditions or other factors are not believed to have changed in the area affected by the rule since that time.

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

LSA Document #14-515(F), Adds 312 IAC 5-2-12.5 to define "fishing tournament". Adds 312 IAC 5-2-18.5 to define "major organized boating activity". Amends 312 IAC 5-3-2 governing boat races, water ski events, and major organized boating activities. Adds 312 IAC 5-3.5 to govern organized activities and tournaments on designated public waters. The Economic Impact Statement prepared for this rule amendment package found one minor impact on small businesses of \$75 per year to publish public notice with required proof of publication for recreational events held on public waters.

LSA Document #18-515(F), which amended 312 IAC 5-8-2, revised the no-boating zone near Whiting, adjacent to the Whihala Beach County Park at site known as the East Swimming Beach from 200 feet lakeward to 300 feet lakeward and perpendicular. The Economic Impact Statement prepared for this rule amendment package found this rule will have no impact on small businesses as it does not regulate an activity of small business.

LSA Document #19-379(F), which amended 312 IAC 5-9-2, by adding the embayment known as Juice Box Cove to the list of locations in Geist Reservoir where a person must not operate a boat at greater than idle speed. The Economic Impact Statement prepared for this rule amendment found that there would be no impact on small businesses to comply since the main purpose of this rule was to improve safety for the general public.

In the process of conducting business, the DNR 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 5.

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 5 in its entirety and without amendment. 312 IAC 5 pertains to the use of any boat on a public water of Indiana.

Since the 2014 readoption of this article, there have been three amendments under the following: (1) LSA Document #14-515(F), (2) LSA Document #18-515, and (3) LSA Document #19-379.

The following are the previous economic impact statements prepared for the above referenced rule packages amending 312 IAC 5.

LSA Document #14-515(F)
Economic Impact Statement
LSA Document #14-515

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

Estimated Number of Small Businesses Subject to this Rule:

There are fourteen (six race organizers, three fireworks companies, two marinas, two restaurants, and one recreational park).

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

\$15.00 per year, for an estimated labor expenditure of one hour.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

\$75.00 per year to publish public notice with required proof of publication for recreational events held on public waters.

Justification Statement of Requirement or Cost:

This permit is required to ensure equitable and safe use of state waters by all user groups. When a group requires exclusive use of all or part of a public waterway, already existing rules require that an application be submitted, evaluated, and either be approved or denied on its merits by the Department. The public notice requirement ensures the general public an opportunity to weigh-in either in favor of or in opposition to a given permit application. The application and, upon approval, the final permit are issued at no cost to the applicant. Public notice via public newspaper is an accepted, legal, economical, and lone alternative for making notice at this time. The proposed rule does not create any new costs or requirements on the applicants as those requirements currently exist and the proposed rule is an effort to streamline existing regulations.

Regulatory Flexibility Analysis of Alternative Methods:

Other alternatives are not available at this time.

LSA Document #18-515(F)
Economic Impact Statement
 LSA Document #18-515

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

Estimated Number of Small Businesses Subject to this Rule: This rules does not affect small businesses.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small

Businesses Will Incur for Compliance: Small businesses will not incur any costs for annual reporting, record keeping or other administrative costs to comply with the rule.

Estimated Total Annual Economic Impact on Small Businesses to Comply: The rule will have no impact on small businesses as it does not regulate an activity of small business.

Justification Statement of Requirement or Cost:

No requirement or cost is placed in small business as a result of this rule.

Regulatory Flexibility Analysis of Alternative Methods: The purpose of the rule is to achieve a safe distance between motorized boats and participants on the WhoaZone. The proposed rule does not impose reporting or compliance requirements small businesses. No deadlines are imposed on small business by the proposed rule.

LSA Document #19-379(F)
Economic Impact Statement
 LSA Document #19-379

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

Estimated Number of Small Businesses Subject to this Rule:

Small businesses will not be subject to the proposed rule since its main purpose is to improve safety for those who use Juice Box Cove on Geist Reservoir for recreation by reducing boat speed to idle.

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

Small businesses will not incur any annual reporting, record keeping, or other administrative costs since the main purpose of the proposed rule is to improve safety for those who use Juice Box Cove on Geist Reservoir for recreation by reducing boat speed to idle.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

There will be no annual economic impact of small businesses to comply since the main purpose of the proposed rule is to improve safety for the general public.

Justification Statement of Requirement or Cost:

No requirement or cost will be imposed on small businesses due to the public safety purpose of the proposed rule.

Regulatory Flexibility Analysis of Alternative Methods:

Not applicable due to there being no cost impact on small businesses as discussed above.

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

There were no regulatory alternatives presented in the previous analyses.

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

Today's conditions have not changed since the above referenced Economic Impact Analyses were prepared. 312 IAC 5 should be readopted in its entirety without change. There is no alternative regulatory method that can be seen to exist that could minimize the economic impact of the rule on small businesses while still achieving the purpose of the rule, which is public safety and the protection of Indiana's resources.

On July 1, 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 July 1, 2020, the "Notice of Intent to Readopt" 312 IAC 5 was posted to the *Indiana Register* at 20200701-IR-312200355RNA as anticipated by IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 5 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 5, 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 5, 2020



Billie J. Davis
Hearing Officer