

## 312 Natural Resources Commission

### Notice of Public Comment Period for Rule Readoption

LSA Document #24-381

Readopts rules in anticipation of IC 4-22-2.6, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the fifth year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the publisher.

**STATUTORY AUTHORITY:** IC 6-1.1-6-16; IC 14-9-8-3; IC 14-10-2-3; IC 14-10-2-4; IC 14-11-2-1; IC 14-11-4-5; IC 14-11-4-9; IC 14-15-7-3; IC 14-21-1-25; IC 14-21-1-31; IC 14-22-2-3; IC 14-22-2-6; IC 14-22-6; IC 14-22-9-10; IC 14-22-11-1; IC 14-22-11-12; IC 14-22-11-20; IC 14-22-12-1.8; IC 14-22-13; IC 14-22-19; IC 14-22-20; IC 14-22-21; IC 14-22-22; IC 14-22-23; IC 14-22-24; IC 14-22-26-3; IC 14-22-26-6; IC 14-22-28-2; IC 14-25-1; IC 14-22-32-6; IC 14-22-34-15; IC 14-22-34-17; IC 14-24-3; IC 14-25-1-8; IC 14-25-1-11; IC 14-26-1-8; IC 14-28-1-5; IC 14-28-1-8; IC 14-28-3-2; IC 14-29-1-8; IC 14-29-6-9; IC 14-27-7.5-8; IC 14-34-1-3; IC 14-34-2-1; IC 14-34-4-10; IC 14-34-6-11; IC 14-34-12-2; IC 14-37-3-5; IC 14-37-3-15; IC 14-38-1-19; IC 14-38-2-7; IC 25-36.5-1-4.9; IC 25-36.5-1-9

### OVERVIEW

Rules to be readopted without changes are as follows:

#### 312 IAC 1 DEFINITIONS

312 IAC 4-1 Definitions

312 IAC 4-2 Role and Authority

312 IAC 4-3 Organization

312 IAC 4-4-1 Command and control

312 IAC 4-4-2 Office communications

312 IAC 4-4-3 Issuance and effectiveness of orders by the division director

312 IAC 4-4-4 Temporary assignments

312 IAC 4-4-5 Discipline

312 IAC 4-5-1 Nondiscrimination

312 IAC 4-5-4 Promotion of conservation officers and return to rank of division director following conclusion of service

312 IAC 4-5-5 Return of service by a former conservation officer

312 IAC 4-6 Other Standards and Practices

312 IAC 5-6-5.6 Lake Manitou; special boating zones

312 IAC 5-6-11 Simonton Lake; special boating zones

312 IAC 5-9-4 Prairie Creek Reservoir

312 IAC 6-1 Applicability

312 IAC 6-2 Definitions

312 IAC 6-3 Shipwrecks and Other Historic Sites

312 IAC 6-4 Marinas and Group Piers

312 IAC 6-5-1 Applicability

312 IAC 6-5-2 Procedures

312 IAC 6-5-3 License to extract minerals

312 IAC 6-5-5 Bonds

312 IAC 6-5-6 License duration

312 IAC 6-5-7 Conditions for the extraction of minerals

312 IAC 6-5-9 Creek rock removal from a navigable waterway; general license

312 IAC 6-5-10 Prospecting in a navigable waterway

312 IAC 6-6 General Authorization for Beach Nourishment to Lake Michigan

312 IAC 6-7 Emergency Construction Activities in Lake Michigan

312 IAC 6-8 Placement of Permanent Structures in Lake Michigan

312 IAC 7 TRAILS AND SCENIC RIVERS

312 IAC 9-1 Definitions

312 IAC 9-2-2 Prohibition against motor driven conveyances

312 IAC 9-2-4 Restrictions on placement of traps

312 IAC 9-2-6 Prohibitions applicable at fish hatcheries

312 IAC 9-2-8 Possession restrictions

312 IAC 9-2-9 Chasing; use of dogs

312 IAC 9-2-10 Violations of law or license terms; revocations

312 IAC 9-2-11 State parks and state historic sites

312 IAC 9-2-12 Hunting, fishing, and the discharge of firearms and bow and arrows within 200 feet of a property administered by the department

312 IAC 9-2-13 Administration of chemical to nondomestic animals; to animals held on a game breeder license, to animals held on a wild animal possession permit, or to animals held under a rehabilitation permit

312 IAC 9-2-14 Fishing, hunting, and trapping without a license by owners and lessees of farmland

312 IAC 9-2-16 Release of captive-bred mammals, reptiles, amphibians, and mussels

312 IAC 9-3-1 Applicability

312 IAC 9-3-8 Hunting deer on designated military reserves and national wildlife refuges with additional deer hunting licenses

312 IAC 9-3-10 Commercial processing of deer

312 IAC 9-3-11 Beavers

312 IAC 9-3-12 Foxes, coyotes, and skunks

312 IAC 9-3-13 Minks, muskrats, and long-tailed weasels

312 IAC 9-3-14 Opossums and racoons

312 IAC 9-3-14.5 Possession of furbearing mammals

312 IAC 9-3-15 Taking beavers, minks, muskrats, long-tailed weasels, red foxes, gray foxes, opossums, skunks, racoons, squirrels, or mute swans on private property

312 IAC 9-3-16 Cottontail rabbits

312 IAC 9-3-17 Squirrels

312 IAC 9-3-18 Prohibited methods of pursuit and taking wild animals; exceptions

312 IAC 9-3-18.2 River otters

312 IAC 9-3-18.3 Badgers

312 IAC 9-3-18.5 Exotic animals

312 IAC 9-3-18.6 Wild pigs

312 IAC 9-3-18.7 Bats

312 IAC 9-3-18.8 Black bears

312 IAC 9-3-19 Endangered species of mammals

312 IAC 9-3-20 Exempted mammals

312 IAC 9-4-1 Applicability

312 IAC 9-4-2 General requirements for migratory birds and waterfowl

312 IAC 9-4-2.5 Mute swans

312 IAC 9-4-7.1 American crows

312 IAC 9-4-7.2 Brown-headed cowbirds, common grackles, red-winged blackbirds, rusty blackbirds, Brewer's blackbirds, and crows

312 IAC 9-4-7.5 General requirements for nonmigratory game birds

312 IAC 9-4-8 Pheasants

312 IAC 9-4-9 Quail

312 IAC 9-4-14 Endangered species of birds

312 IAC 9-4-15 Exempted species of birds

312 IAC 9-5 Reptiles and Amphibians

312 IAC 9-6 Sport Fishing, Commercial Fishing; Definitions, Restrictions, and Standards

312 IAC 9-7 Sport Fishing

312 IAC 9-8 Commercial Fishing

312 IAC 9-9 Invertebrates

312 IAC 9-10-1 Applicability  
312 IAC 9-10-3 Aquatic vegetation control permits  
312 IAC 9-10-5 Taxidermist licenses  
312 IAC 9-10-6 Scientific purposes licenses  
312 IAC 9-10-7 Field trial permits  
312 IAC 9-10-8 Fish stocking permits  
312 IAC 9-10-9.5 Special purpose educational permit  
312 IAC 9-10-10 Hunting permit for persons with disabilities  
312 IAC 9-10-11 Nuisance wild animal control permit  
312 IAC 9-10-13.1 Falconry licenses  
312 IAC 9-10-13.5 Special purpose salvage permit  
312 IAC 9-10-14 Fish hauler's and supplier's permit  
312 IAC 9-10-15 Fish importation permit  
312 IAC 9-10-16 Dog training ground permit  
312 IAC 9-10-17 Aquaculture permit  
312 IAC 9-10-18 Limited take permits for specific state endangered species  
312 IAC 9-10-19 Fish tagging or marking permit  
312 IAC 9-10-20 Mammal, bird, reptile, amphibian, mollusk, and crustacean importation permit for release  
312 IAC 9-10-22 Shooting preserve license  
312 IAC 9-10-23 Migratory bird depredation permit  
312 IAC 9-10-24 Trapper education permit  
312 IAC 9-10-25 Deer control permit  
312 IAC 9-10-26 Endangered species propagation permit  
312 IAC 9-10-27 Indication of anatomical gift when purchasing a hunting, fishing or trapping license  
312 IAC 9-11 Wild Animal Possession Permits  
312 IAC 9-12 Hunter Education

312 IAC 10.5 REGULATION OF DAMS

312 IAC 11.8 SURFACE WATER DISPUTES MEDIATION

312 IAC 14 TIMBER BUYERS, THEIR AGENTS, AND TIMBER GROWERS

312 IAC 15 FOREST AND RESOURCE MANAGEMENT

312 IAC 17 OTHER PETROLEUM REGULATION

312 IAC 18-1 Definitions  
312 IAC 18-2 Infested Areas and Quarantines  
312 IAC 18-3 Control of Pests or Pathogens  
312 IAC 18-4 Nurseries, Nursery Stock, Nurserymen, Dealers, and Agents  
312 IAC 18-5-1 Collection of fees for special services; application  
312 IAC 18-5-5 Voluntary certification of herbaceous perennials; mandated certification of herbaceous perennials serving as harborage or as hosts of pests or pathogens  
312 IAC 18-6 Trade Secrets

312 IAC 20 HISTORIC PRESERVATION REVIEW BOARD

312 IAC 21 ARCHAEOLOGICAL REVIEW AND RECOVERY

312 IAC 22 HUMAN REMAINS, BURIAL OBJECTS, AND ARTIFACTS

312 IAC 25 COAL MINING AND RECLAMATION OPERATIONS

Rules to be repealed are as follows:

312 IAC 6-5-4 License fees

312 IAC 6-5-8 Compensation for extracted minerals

312 IAC 9-4-5 Geese

312 IAC 18-5-2 Florist or greenhouse stock; voluntary certification

312 IAC 18-5-3 Laboratory fees and replacement certificates

312 IAC 18-5-4 Phytosanitary document fees and related fees

312 IAC 28 STATE LAND OFFICE

#### **SUMMARY OF FINDINGS UNDER IC 4-22-2.6-4**

All the proposed readopted rules remain necessary and meet the standards under IC 4-22-2-19.5. No less costly or less intrusive alternative methods of achieving the purposes of the rules have been identified. The rules avoid duplicating standards found in state or federal law, are written for ease of comprehension for the entities subject to them and have practicable enforcement. There have been no significant changes to the cost benefit, fiscal impact, or regulatory burden statements prepared for the initial adoption of the proposed readopted rules.

**Minimizing expenses:** The Department of Natural Resources (department) works to ensure the proposed readopted rules minimize expenses to regulated entities that are required to comply with the rules, persons who pay taxes or pay fees for government services affected by the rule, and consumers of products and services of regulated entities affected by the rules. The rules achieve the regulatory goals set by the Indiana General Assembly in the least restrictive manner, avoid duplicating standards in state or federal law, are written for ease of comprehension, and have practicable enforcement.

**Analysis of fees, fines, and civil penalties under IC 4-22-2-19.6:** There are no fees, fines, civil penalties, or other payment amounts on regulated persons under the proposed readopted rules, except for rules that are being repealed by this document and as follows:

312 IAC 17 OTHER PETROLEUM REGULATIONS

Under 312 IAC 17-2, a person is required to obtain a one thousand dollar (\$1,000) surety bond for a single test hole or a five thousand dollar (\$5,000) blanket bond for multiple test holes. The bond is to ensure all test holes are properly plugged and abandoned and all regulations are followed while drilling and abandoning test holes. Improperly plugged wells without a bond may result in risk to the environment and cost to the state to mitigate and plug the hole. Bonding amounts are lower than industry standards and insufficient to cover the risk to the state, so there is no undue burden on the operator.

**Complaints and comments:** There have been no complaints or comments regarding the proposed readopted rules, except as follows:

312 IAC 6 NAVIGABLE WATERS

Complaints or comments regarding 312 IAC 6 received by the department are in response to the ordinary high-water mark (OHWM) along the Lake Michigan shoreline. In 2023, the department revised the definition of ordinary high-water mark (OHWM) under 312 IAC 1-1-26 to align with the Indiana Supreme Court ruling in 2018 under *Gunderson v. State*, 90 N.E.3d 1171. The department received complaints from property owners and businesses adjacent to a navigable waterway who have a different interpretation of the revised definition.

312 IAC 9 FISH AND WILDLIFE

The department received comments regarding various rules, both negative and positive. Landowners are allowed to take additional species of wild animals without a permit under 312 IAC 9-3-15, but other species may only be taken with a permit. Some landowners complained about the need for a permit, but the permits under 312 IAC 9-10-11, 9-10-23, and 9-10-25 are free of charge and required to protect wildlife resources for social and biological purposes for all residents. Without a permit, some animals would be taken in unlimited numbers causing the decline of the

species. The department received complaints about the species and parts of wild animals that are allowed to be sold and added some parts of wild animals to the list when appropriate, but the department must ensure the sale would not create an incentive to take certain species from the wild that have populations in decline or of concern.

The department received complaints from deer hunters about the deer hunting rules but changed the deer hunting rules under 312 IAC 9-3 to help provide clarification and make the rules easier to understand for hunters and law enforcement under LSA Document #24-49. The department received complaints about the difficulty of understanding the bonus antlerless deer and license requirements under 312 IAC 9-3, which is one (1) reason the changes were proposed under LSA Document #24-49. Complaints have been received from a manufacturer of a muzzleloader that shoots a bullet from the breech end, both powder and bullet, about not allowing them to be used in the muzzleloader season. The department proposed this rule change, but most of the public comments were opposed to allowing the use of this type of muzzleloader during the muzzleloader season. Therefore, the commission did not approve the use during the muzzleloader season. The muzzleloader will, however, be allowed in the deer firearm season under 312 IAC 9-3-3 under changes to administrative rules moving through the rulemaking process.

The department opened river otter trapping to all counties statewide to respond to public comments regarding river otter populations and help landowners deal with river otters causing damage in counties that have not been open in the past. The department received complaints about the types of traps allowed, but the department also has the necessary restrictions in place to minimize the pain and suffering of a wild animal that is captured under 312 IAC 9-3-14.5. The types of traps permitted need to be proven efficient and effective for trapping river otters.

The department received complaints about not being permitted to sell native species of reptiles and amphibians. However, due to habitat loss, environmental impacts such as chemicals and pollution, predation, and disease threats to populations, the department does not believe these species can be properly conserved or managed without limitations under IC 14-22-2-3. The department received complaints about not being able to sell venomous snakes under 312 IC 9-5-8, but the department believes that public safety would be at an increased risk and the department must provide for the protection of the public under IC 14-22-2-6. Endangered species of snakes like the timber rattlesnake and massasauga would also likely be taken from the wild if their sale were permitted due to the financial incentive.

The department received complaints about not being able to sell native species of reptiles captured in the wild, such as snapping turtles and bullfrogs. However, due to the habitat loss, environmental impacts like chemicals and pollution, predation, and disease threats to populations, the department does not believe that these species can be properly conserved or managed without these limitations as required under IC 14-22-2-3. Changes have been made to the nuisance wild animal control permit rule under 312 IAC 9-10-11 to allow body-gripping traps to be set on land and only half-covered by water as well as to provide additional options for the animals that are captured. Language was incorporated to ensure that landowners must give permission for animals to be released on their property. The department received complaints about requirements for permits for certain animals, requirements to obtain animals legally to obtain a permit, experience requirements for rehabilitation permits under 312 IAC 9-10-9 or for possessing game birds like quail solely used for personal possession. The department must ensure the proper care and welfare of the animals as required under IC 14-22-2-6 for rules.

### 312 IAC 18 ENTOMOLOGY AND PLANT PATHOLOGY

The department received complaints and comments regarding 312 IAC 18-2 and understanding the requirements of a quarantine. Under 312 IAC 18-3, complaints and comments received were regarding understanding the requirements or restrictions applied under the rules regarding the restrictions placed on small businesses moving regulated materials from quarantined areas to non-quarantined areas. Positive comments were received regarding education and outreach regarding the rules and why these measures are enacted and the outcomes associated with reducing the spread of invasive species in Indiana. Comments were received from nurseries and greenhouses stating their appreciation for the services provided by the division of entomology and plant pathology for the department under 312 IAC 18-4. Without routine inspections, many small businesses would not be allowed to sell their products in other states. Other states have rules that require plants to be pest and pathogen free if sold or brought into their state. The inspections bring potential pest and pathogen problems that might have been previously overlooked to the attention of the nursery owner. Occasionally, some small business owners are not appreciative of the services provided under the rules because they are against government oversight of any private operations and look at these inspections as a burden. Overall, businesses in Indiana appreciate having the ability to

certify their plant materials as pest and pathogen free under 312 IAC 18-5. This allows them to broaden their customer base to an international market if they meet the requirements of the country or state to which they are shipping. Small businesses have sought clarification regarding 312 IAC 18-6 and the ability to protect confidential business information provided in permit and certification applications.

#### 312 IAC 20 HISTORIC PRESERVATION REVIEW BOARD

Each year the division of historic preservation and archeology for the department receives complaints from one (1) or two (2) property owners objecting to having their property listed in the National Register of Historic Places and, by extension, in the Indiana Register of Indiana Register of Historic Sites and Structures. The objection is tangential to 312 IAC 20, and based on a misunderstanding that listing the property will affect what alterations they may make to their property. No change to 312 IAC 20 is needed.

#### 312 IAC 21 ARCHAEOLOGICAL REVIEW AND RECOVERY

Each year, the division of historic preservation and archaeology for the department receives a complaint from one (1) or two (2) individuals regarding the standards for personnel qualifications. The complaints are most often caused by the unfamiliarity with state regulations by out-of-state consultants hired by federal agencies. 312 IAC 21 provides uniform guidance for all archaeological professionals.

#### 312 IAC 22 HUMAN REMAINS, BURIAL OBJECTS, AND ARTIFACTS

The division of historic preservation and archaeology for the department receives between four (4) and five (5) comments each year from members of the public regarding cemetery development plans. Typically, there are questions from homeowners who have some type of new construction that will be not more than one hundred (100) feet from a cemetery. They need clarity on the materials that need to be submitted for the division of historic preservation and archeology to review. The comments are neutral in this regard.

**Difficulties encountered:** There have been no difficulties encountered regarding the proposed readopted rules, except as follows:

#### 312 IAC 18 ENTOMOLOGY AND PLANT PATHOLOGY

Information and education programs help overcome any comments or complaints regarding the complexity of the rules, and placing businesses under compliance agreements helps businesses understand quarantine and what measures they are required to perform. Administering and complying with 312 IAC 18 may be difficult for small businesses, the public, and the division of entomology and plant pathology for the department. The largest problem the public has in complying with the rule stems from the lack of knowledge that the rule and its stipulations exist. There are many small nursery dealers in Indiana that are operating without a nursery dealer's license because they do not realize that this rule exists. Once notified of the rule and the requirements of that rule they usually comply and continue to renew the license each subsequent year. Other parts of this rule, namely the proper maintenance of a nursery and the correct labeling of nursery stock are not complied with because businesses are unaware of these requirements. The division of entomology and plant pathology continues to educate these vendors as time and resources allow. The average person is not aware that a phytosanitary certificate is needed to transport plant materials outside of Indiana, especially plant materials that may harbor plant pests and pathogens that are not already native to the destination state or country. The division of entomology and plant pathology continues to conduct public awareness activities through outreach activities and educational campaigns.

#### 312 IAC 20 HISTORIC PRESERVATION REVIEW BOARD

Each year, two (2) or three (3) entities seeking a certificate of approval have encountered difficulties following the requirements of the article and will submit an incomplete application. Staff for the division of historic preservation and archeology work with these entities to obtain the missing information and the applications are completed as a result.

**Changes in technology, economic conditions, or other factors:** The proposed readopted rules are not affected by any changes to technology, economic conditions, or other factors, except as follows:

#### 312 IAC 9 FISH AND WILDLIFE

The definition of “air gun” was added under 312 IAC 9-1-1.2 and 312 IC 9-3-3 for use while deer hunting. Additional muzzleloaders of .40 caliber or larger were added under 312 IAC 9-3-3. The use of infrared sensors, which are now used on drones, are allowed to recover or locate dead deer under 312 IAC 9-3-3. The definitions of relaxing snare lock and snare lock were added under 312 IAC 9-1 to clarify requirements for trapping under 312 IAC 9-3-18 and 312 IAC 9-10-11 and for easier enforcement of those provisions. Finally, changes were made to the rules regarding traps that can be set on land were under 312 IAC 9-3-18 and 312 IAC 9-10-11 to allow for fifty percent (50%) of the traps set to be covered by water.

#### 312 IAC 10.5 REGULATION OF DAMS

Changes to technology, such as improvements in aerial photography and engineering software, have provided additional tools for the department to more efficiently implement the article. The effective implementation of Indiana’s dam safety program under IC 14-17-7.5 and this associated article, becomes increasingly critical to the public safety of residents, as the regulated dams continue to age.

#### 312 IAC 18 ENTOMOLOGY AND PLANT PATHOLOGY

Economic conditions and other factors have impacted the rule because of international trade. These changes include the artificial movement of pests and pathogens through the globalization of trade which has increased in number and occurrences. Currently Indiana is faced with multiple exotic pests that may require the use of this rule via quarantine if they are introduced and detected in Indiana. The division of entomology and plant pathology is reviewing current industry standards to determine what steps can be taken in future to safeguard this industry more effectively.

#### 312 IAC 20 HISTORIC PRESERVATION REVIEW BOARD

Technology has changed and has facilitated communication but has not directly affected the implementation of 312 IAC 20 or the areas affected by 312 IAC 20. Electronic applications and digital submissions of materials are now commonplace. Innovations in historic preservation materials have occurred but the article is open and flexible regarding the use of new technology. The economy has fluctuated since the article was last readopted, which has caused fluctuations in the number of nominations for the Indiana Register of Historic Sites and Structures and the number of applications received for certificates of approval. However, economic conditions do not alter the implementation of the article.

#### 312 IAC 21 ARCHAEOLOGICAL REVIEW AND RECOVERY

Technology has changed and has facilitated communication but has not directly affected the implementation of 312 IAC 21 or the areas affected by 312 IAC 21. Electronic applications and digital submissions of materials are now commonplace, and the rules are open and flexible regarding the use of new technology. The economy has fluctuated since the article was last readopted, which has caused fluctuations in the number of projects reviewed. However, economic conditions do not alter the implementation of the article.

#### 312 IAC 22 HUMAN REMAINS, BURIAL OBJECTS, AND ARTIFACTS

Technology has changed and has facilitated communication but has not directly affected the implementation of 312 IAC 22 or the areas affected by 312 IAC 22. Electronic applications and digital submissions of materials are now commonplace. Advances in technology, such as remote sensing techniques including gradiometry, ground penetrating radar, electrical resistivity, and LiDAR, assist in minimizing excavations and costs. The article is open and flexible regarding the use of new technology. The economy has fluctuated since the article was last readopted, which has caused fluctuations in the number of plans reviewed. However, economic conditions do not alter the implementation of the article.

**Revised regulatory analysis:** The Department of Natural Resources reviewed any known cost benefit, economic impact, fiscal impact, and regulatory burden statement from prior rulemaking and previous readoptions and found no statements in need of revision due to change of circumstances.

#### REQUEST FOR PUBLIC COMMENT

The Natural Resources Commission (commission) is soliciting public comment on rules expiring under IC 4-22-2.6. Comments may be submitted in one of the following ways:

- (1) By the commission’s rulemaking docket at <https://www.in.gov/nrc/rules/rulemaking-docket/>.

(2) By mail or common carrier to the following address:

LSA Document #24-381  
Elizabeth Gamboa, Hearing Officer  
Natural Resources Commission, Hearings Division  
100 N. Senate Avenue, Room N103  
Indianapolis, IN 46204

(3) By email to [egamboal@nrc.in.gov](mailto:egamboal@nrc.in.gov). To confirm timely deliver of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Any person may request specific rules be reviewed through the regular rulemaking process under IC 4-22-2-23 through IC 4-22-2-36.

#### **COMMENT PERIOD DEADLINE**

All comments must be postmarked or time stamped not later than *[date to be entered by publisher after confirmation]*.