

ARTICLE 2. PROCEDURES AND DELEGATIONS

Rule 1. Conduct of the Meetings of the Commission and Other Boards

312 IAC 2-1-1 Applicability

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 1. (a) This rule governs the conduct of meetings of the commission and any other board.

(b) The rule is supplemental to 312 IAC 3. (*Natural Resources Commission; 312 IAC 2-1-1; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-1-2 Minutes of meetings

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 2. (a) Except as provided in 312 IAC 3-1, the minutes approved by a board are the official record of a meeting of the board.

(b) Notes or an electronic recording of a meeting, other than as provided in subsection (a), are not an official record of a board or the department. (*Natural Resources Commission; 312 IAC 2-1-2; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-1-3 Withdrawal of an item from a board agenda

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 3. (a) Except as provided in subsection (b), the director or a deputy director may withdraw an item from a meeting agenda at least forty-eight (48) hours before the meeting is scheduled to begin. Notification of the withdrawal shall be delivered to the following address:

Division of Hearings
Natural Resources Commission
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, Indiana 46204-2273.

(b) An administrative law judge or hearing officer for the commission may withdraw an item, placed by that person on a commission meeting agenda, at least forty-eight (48) hours before the meeting is scheduled to begin.

(c) A board may remove an item from an agenda if a withdrawal is not performed under subsection (a) or (b). (*Natural Resources Commission; 312 IAC 2-1-3; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; errata filed Jan 3, 2012, 10:47 a.m.: 20120118-IR-312120001ACA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; errata filed Aug 16, 2017, 2:55 p.m.: 20170823-IR-312170389ACA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

Rule 2. Delegations by the Natural Resources Commission

312 IAC 2-2-1 Applicability

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 1. (a) This rule governs delegation of authority by the commission.

(b) A delegation in this rule may be supplemented by a delegation in another article of this title. (*Natural Resources Commission; 312 IAC 2-2-1; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 26, 2004, 3:15 p.m.: 27 IR 3064; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-2-2 Emergency actions by commission officers

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 2. (a) The chair (or, if the chair cannot be contacted, the vice chair) and the secretary of the commission may jointly take an action for which the commission has authority where both of the following are established:

- (1) There is an emergency.
 - (2) Irreparable harm would result if action were delayed until the next meeting of the commission.
- (b) An action under subsection (a) shall be set forth in writing on a document that:
- (1) indicates who entered the order; and
 - (2) bears the signature of at least one (1) of the participants.

(*Natural Resources Commission; 312 IAC 2-2-2; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-2-3 Issuance of sanctions and emergency orders by division directors

Authority: IC 14-10-2-4

Affected: IC 4-21.5-3-6; IC 4-21.5-3-8; IC 14; IC 25

Sec. 3. A division director may do any of the following:

- (1) Issue an order and notice of the order under IC 4-21.5-3-6.
- (2) Cause a complaint to be filed with the commission under IC 4-21.5-3-8 and 312 IAC 3-1.

(*Natural Resources Commission; 312 IAC 2-2-3; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3340; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-2-4 Preliminary adoption of rules and readoption of rules

Authority: IC 14-10-2-4

Affected: IC 4-22-2-15; IC 4-22-2.5; IC 14; IC 25

Sec. 4. (a) The secretary of the commission may approve a rule for preliminary adoption.

(b) Where no amendment is proposed, the director of the commission's division of hearings may, under IC 4-22-2.5, give preliminary adoption to rules for recodification by readoption. (*Natural Resources Commission; 312 IAC 2-2-4; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3340; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 26, 2004, 3:15 p.m.: 27 IR 3064; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

Rule 3. Public Hearings Prior to the Issuance of an Agency Order (Subject to 312 IAC 3-1)

312 IAC 2-3-1 Applicability of rule; late or incomplete license application; time for giving notice

Authority: IC 14-11-4-9

Affected: IC 4-21.5; IC 14-11-4-8; IC 14-21-1-17

Sec. 1. (a) This rule governs the conduct of a public hearing held on the question of the issuance, conditioning, or denial of an original or renewal license under IC 14-11-4-8.

(b) This rule also governs the conduct of a public hearing held under IC 14-21-1-17. However, sections 3 through 5 of this rule do not apply to a public hearing under this subsection.

(c) A person who conducts a public hearing before any agency action is taken by the director, a board, or a delegate of the director or a board may apply this rule even if IC 14-11-4-8 is inapplicable. The hearing officer who applies this subsection shall announce at the beginning of the public hearing that this rule applies. A board may appoint a person, a panel of persons, or the entirety of the board to serve as the hearing officer. If this subsection is implemented, section 3 of this rule does not apply.

(d) This rule does not apply to a hearing that is governed by 312 IAC 2-1 or 312 IAC 3-1.

(e) The director or the delegate of the director may deny a license application that is not completed in a reasonable period of time. If an agency action to deny a license application is made because the application is incomplete, the application does not qualify for a public hearing under this rule, but that agency action is subject to administrative review under IC 4-21.5 and 312 IAC 3-1.

(f) The time period for giving notice begins upon mailing if a notice required by this rule or IC 14-11-4 is made by the United States mail. Three (3) days are added to the period required for a notice that is made by the United States mail. (*Natural Resources Commission; 312 IAC 2-3-1; filed Aug 20, 1997, 3:16 p.m.: 21 IR 26; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 26, 2004, 3:15 p.m.: 27 IR 3064; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-3-2 "Adjacent to the affected real property" defined

Authority: IC 14-11-4-9

Affected: IC 14-11-4

Sec. 2. As used in this rule and IC 14-11-4, "adjacent to the affected real property" means real property owned by a person, other than the applicant, that is both of the following:

(1) Located within one-fourth ($\frac{1}{4}$) mile of the site where the licensed activity would take place.

(2) Has a border or point in common with the exterior boundary of the property where the licensed activity would take place.

Included is property that would share a common border if not for the separation caused by a right-of-way, an easement, or a railroad.

(*Natural Resources Commission; 312 IAC 2-3-2; filed Aug 20, 1997, 3:16 p.m.: 21 IR 27; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-3-3 Notice of consideration of application for certain designated licenses; service by license applicant

Authority: IC 14-11-4-9

Affected: IC 4-21.5; IC 14-22-26-3; IC 14-26-2; IC 14-26-5; IC 14-28-1; IC 14-29-1; IC 14-29-3; IC 14-29-4

Sec. 3. (a) Notice must be given under this section before a new license or a license renewal is issued by the department under the following statutes and rules:

(1) IC 14-26-2 and 312 IAC 11-1 through 312 IAC 11-5 (lake preservation).

(2) IC 14-26-5 (lowering of lakes).

(3) IC 14-29-4 (construction of channels).

(4) IC 14-28-1 and 312 IAC 10 (flood plain management).

(5) IC 14-22-26-3(2) and 312 IAC 9-11 (possession of wild animals that may be harmful or dangerous to plants or animals).

(6) IC 14-29-3 and 312 IAC 6-5 (removal of substances from navigable waters of the state), including under IC 14-29-1 where the removal of substances from navigable waters is an element of the license.

(b) The director or the department may not issue a license until thirty (30) days after the notice required under this section has been given. Notice may be given at any time after an application for a license is filed with the department.

(c) Service of a notice must be provided by the applicant at its expense as follows:

(1) If a license application affects real property, at least one (1) of the owners of each parcel of real property reasonably known to be adjacent to the affected real property.

(2) In addition to service of the notice as required in subdivision (1), the license applicant shall cause notice to be given by publication (with proof of service made by a publisher's affidavit) in any of the following circumstances:

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- (A) The current address of a person entitled to notice under this rule is not ascertainable.
- (B) The identity or existence of a person entitled to notice is not ascertainable.
- (C) The department directs the applicant to cause notice by publication because the license application is likely to evoke general public interest.

(d) Service of a notice must be provided by the department to those persons who have requested notification of a license application that:

- (1) affects the specific real property to which the application relates; or
- (2) is of the same type as the application.

(e) Proof of service of the notifications required under subsection (c)(1) shall be provided by the applicant to the department as follows:

- (1) If service is made by certified mail with return receipt requested, by providing a mailing receipt showing successful return from the person notified.
- (2) If service is made in person or by first class mail (with a certificate of mailing), by an affidavit or affirmation on a department form including the following:
 - (A) The names and addresses of each person served.
 - (B) The date of personal service or mailing.
 - (C) If service was made by mail, that a period of at least twenty-one (21) days has passed without the mailing being returned as undelivered or undeliverable.

(f) A notice under this section shall do the following:

- (1) Provide the name and address of the applicant.
- (2) Identify the statute and rule under which a permit is sought.
- (3) Identify the specific real property to which the application relates (unless the license is not related to specific real property).
- (4) Set forth any other information required by statute or rule relative to the particular type of permit sought.
- (5) Include an explanation of the options available to the persons served. These options shall be as follows:
 - (A) File a petition with the director requesting an informal hearing that is signed by at least twenty-five (25) individuals who are at least eighteen (18) years of age and who:
 - (i) reside in the county where the licensed activity would take place; or
 - (ii) own real property within one (1) mile of the site of the proposed or existing licensed activity.
 - (B) Request the department to notify the person in writing when an initial determination is made to issue or deny the permit. Following the receipt of notice under this clause, the person may request administrative review by the commission, under IC 4-21.5 and 312 IAC 3-1, of the initial determination by the director.

(Natural Resources Commission; 312 IAC 2-3-3; filed Aug 20, 1997, 3:16 p.m.: 21 IR 27; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1542; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA)

312 IAC 2-3-4 Petition for a public hearing by local individuals

Authority: IC 14-11-4-9

Affected: IC 14-11-4-8

Sec. 4. (a) This section establishes the requirements for a petition to request a public hearing under IC 14-11-4-8(a)(2).

(b) The petition shall include the signatures of at least twenty-five (25) individuals who are at least eighteen (18) years of age and who reside in the county where the licensed activity would take place or who own real property within one (1) mile of the site of the proposed or existing licensed activity.

- (c) The complete mailing addresses of the petitioners shall be typed or printed legibly on the petition.
- (d) Each individual who signs the petition shall affirm that the individual qualifies under subsection (b).

(e) The petition shall identify the application for which a public hearing is sought, either by division docket number or by the name of the applicant and the location of the permit. *(Natural Resources Commission; 312 IAC 2-3-4; filed Aug 20, 1997, 3:16 p.m.: 21 IR 28; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA)*

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312 IAC 2-3-5 Notice of public hearing under this rule

Authority: IC 14-11-4-9

Affected: IC 14

Sec. 5. (a) The hearing officer shall set the time and place of the public hearing and give reasonable written notice to the following persons:

- (1) Each of the petitioners.
- (2) The applicant.
- (3) At least one (1) of the owners of each parcel of real property reasonably known to be adjacent to the affected real property.
- (4) Any other person who requests in writing to be notified.

(b) Unless a shorter period is stipulated by the petitioners and the applicant or as specified by statute, the hearing officer shall give at least fifteen (15) days' notice of the hearing. If notice is served through the United States mail, three (3) days must be added to the period required for the notice.

(c) If requested in the petition, the location of the public hearing under subsection (b) shall be in the county where the licensed activity would take place. (*Natural Resources Commission; 312 IAC 2-3-5; filed Aug 20, 1997, 3:16 p.m.: 21 IR 28; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-3-6 Conduct of a public hearing by a hearing officer; informal recommendations to the director or director's designee for an agency action

Authority: IC 14-11-4-9

Affected: IC 4-21.5-3-5; IC 5-14-3-2; IC 14-11-3-1

Sec. 6. (a) A public hearing under this section shall be conducted by a hearing officer appointed by the director or appointed by the director's designee under IC 14-11-3-1(c). The hearing officer shall be the director, the deputy director for the bureau in which the statute is administered, or an employee of the division that is primarily responsible for the administration of the statute.

(b) The hearing officer shall announce at the opening and closing of the public hearing that a person is entitled to notification of an agency action on the license application (or other action at issue) if the person provides a written request for notification that does the following:

- (1) Describes the subject of the order with reasonable particularity.
- (2) Is delivered to the address of the department at least seven (7) days before the day that notice is given under IC 4-21.5-3-5. The address specified by the hearing officer under this subdivision shall be the address of either of the following:
 - (A) The director.
 - (B) The person who has been delegated authority by the director to act upon the license or other agency action.

(c) The hearing officer shall conduct the public hearing under this section in a manner that is best suited to the solicitation of comments from the hearing participants. The public hearing is a nonevidentiary hearing, and neither the rules of evidence nor IC 4-21.5 apply.

(d) A hearing officer shall maintain a record of any portion of the public hearing to assist in providing written recommendations to the director or the director's delegate. Any other person may cause an audio or video recording to be made of the public hearing. The contents of any recording may be offered into evidence at a subsequent proceeding under IC 4-21.5 and this article, subject to objections that may apply to electronic recordings generally. The contents of a recording do not, however, limit the scope of administrative review under IC 4-21.5 and this article.

(e) Following the public hearing, the hearing officer shall make written recommendations to the director (or the director's designee) for an agency action. The director (or the director's designee) shall consider these recommendations. In taking an agency action, the director (or the director's designee) is not limited to facts and information received by the hearing officer under this rule.

(f) The written recommendations under subsection (e) do not constitute an agency action under IC 4-21.5. A person who disagrees with those recommendations is not required to file objections in order to obtain administrative review of any resulting agency action.

(g) The hearing officer shall not conduct a proceeding under IC 4-21.5 and 312 IAC 3-1 to provide administrative review of an agency action that results from a public hearing under this rule.

(h) The documentation received under this section, and any recording of the public hearing made by the department, is a public record under IC 5-14-3-2. (*Natural Resources Commission; 312 IAC 2-3-6; filed Aug 20, 1997, 3:16 p.m.: 21 IR 28; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-3-7 Notice of determination by the department or historic preservation review board after public hearing; administrative review to natural resources commission

Authority: IC 14-11-4-9

Affected: IC 4-21.5; IC 14-21-1-17

Sec. 7. (a) Notice of an order to issue, condition, or deny an original license, made following a public hearing under section 1(a) of this rule, shall be provided to the following persons:

(1) Each of the persons who signed a petition as provided under section 4 of this rule.

(2) The applicant.

(3) At least one (1) of the owners of each parcel of real property reasonably known to be adjacent to the affected real property.

(4) Any other person who requests in writing to be notified.

(b) Notice of a recommendation by a member or delegate of the historic preservation review board, made following a public hearing under section 1(b) of this rule, (and notice of the resulting determination by the historic preservation review board) shall be provided to the following persons:

(1) Any person who nominated the site or structure for addition or removal to or from the register of Indiana historic sites and historic structures.

(2) Any person who filed an objection to the nomination.

(3) Any affected person required to be notified under IC 14-21-1-17.

(4) Any other person who requests in writing to be notified.

(c) Notice of a determination, made following a public hearing under section 1(c) of this rule, shall be provided to any person required to be notified under IC 4-21.5.

(d) A notice of a determination under this section is the notice required to initiate administrative review under IC 4-21.5 and 312 IAC 3-1. (*Natural Resources Commission; 312 IAC 2-3-7; filed Aug 20, 1997, 3:16 p.m.: 21 IR 28; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

Rule 4. Organized Activities and Tournaments on Designated Public Waters; Administration

312 IAC 2-4-1 Applicability (*Repealed*)

Sec. 1. (*Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA*)

312 IAC 2-4-2 Definitions (*Repealed*)

Sec. 2. (*Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA*)

312 IAC 2-4-3 Petition to regulate the conduct of fishing tournaments or other organized activities on designated public waters (*Repealed*)

Sec. 3. (*Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA*)

312 IAC 2-4-4 Notice of and response to petition (*Repealed*)

Sec. 4. *(Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA)*

312 IAC 2-4-5 Designation of regulated public water by rule *(Repealed)*

Sec. 5. *(Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA)*

312 IAC 2-4-6 License application *(Repealed)*

(Repealed by Natural Resources Commission; filed Nov 1, 2010, 11:30 a.m.: 20101201-IR-312090986FRA, eff Jan 1, 2011)

312 IAC 2-4-7 Advance date approval *(Repealed)*

Sec. 7. *(Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA)*

312 IAC 2-4-7.5 License application *(Repealed)*

Sec. 7.5. *(Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA)*

312 IAC 2-4-8 Bond; list of officials; user fee *(Repealed)*

Sec. 8. *(Repealed by Natural Resources Commission; filed May 27, 2003, 12:35 p.m.: 26 IR 3323, eff Oct 1, 2003)*

312 IAC 2-4-9 General duties of license holder *(Repealed)*

Sec. 9. *(Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA)*

312 IAC 2-4-9.5 Reporting *(Repealed)*

Sec. 9.5. *(Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA)*

312 IAC 2-4-10 Limitation on usage of facilities *(Repealed)*

Sec. 10. *(Repealed by Natural Resources Commission; filed May 27, 2003, 12:35 p.m.: 26 IR 3323, eff Oct 1, 2003)*

312 IAC 2-4-11 Sanctions and emergency relief *(Repealed)*

Sec. 11. *(Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA)*

312 IAC 2-4-12 Limitations on fishing tournaments at lakes administered by the division of state parks and reservoirs *(Repealed)*

Sec. 12. *(Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA)*

312 IAC 2-4-13 Limitations on organized boating activities at Lake Wawasee and Syracuse Lake, Kosciusko County *(Repealed)*

Sec. 13. *(Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA)*

312 IAC 2-4-14 Limitations on organized boating activities at Sylvan Lake, Noble County *(Repealed)*

Sec. 14. *(Repealed by Natural Resources Commission; filed Aug 27, 2015, 10:40 a.m.: 20150923-IR-312140515FRA)*

Rule 5. Review of Determinations for Testing and Programs for Continuing Education

312 IAC 2-5-1 Applicability

Authority: IC 14-10-2-4; IC 25-39-4-9

Affected: IC 14; IC 25-39

Sec. 1. (a) This rule applies to a department determination that:

(1) a person has failed a test; or

(2) the sponsor of a continuing education program or license applicant has not satisfied minimum requirements for the department to sanction credit for the program;

if successful completion of the test or continuing education is required, by a statute or rule, for conduct of an activity licensed by the department.

(b) The requirements of this rule are in addition to any requirements for licensure or continuing education set forth by statute or another rule for a program that is governed by subsection (a). (*Natural Resources Commission; 312 IAC 2-5-1; filed Jan 2, 2013, 3:40 p.m.: 20130130-IR-312120273FRA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-5-2 Informal review of test failure by administering division

Authority: IC 14-10-2-4; IC 25-39-4-9

Affected: IC 14; IC 25-39

Sec. 2. (a) A license applicant that is notified of a fail score on a written or practical examination may seek informal review from the director of the division, or the division director's designate, of the examination results.

(b) An applicant must submit the request for informal review with the director of the division, or the division director's designate, within the earlier of:

(1) fifteen (15) days if notification of a fail score included the address of the person to whom the request must be directed and a statement the request must be made within fifteen (15) days of the notice; or

(2) ninety (90) days if the notification of a fail score did not include the information described in subdivision (1).

(c) The division shall conduct the review in an informal manner. If requested by the applicant, the division shall confer with the applicant at the division's office before deciding the informal review.

(d) The division director or the division director's designate may take any appropriate action, including retesting or the issuance of a license, if determining the fail score was the likely result of any of the following:

(1) A significant procedural error by the division.

(2) Adverse environmental conditions immediately preceding or during the test administration.

(3) Both of the following:

(A) The applicant was within ten percent (10%) of a passing score.

(B) A test question or questions is demonstrated to exhibit fundamental ambiguity that could be reasonably expected to cause an applicant to select an answer other than the answer identified by the division as correct.

(*Natural Resources Commission; 312 IAC 2-5-2; filed Jan 2, 2013, 3:40 p.m.: 20130130-IR-312120273FRA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA*)

312 IAC 2-5-3 Informal review of administering division's determination not to credit a continuing education program

Authority: IC 14-10-2-4; IC 25-39-4-9

Affected: IC 14; IC 25-39

Sec. 3. (a) The sponsor of a continuing education program or a license applicant who attends a continuing education program may seek informal review from the director of the division, or the division director's designate, of a decision by the division not to authorize credit or to authorize fewer credits than the sponsor or license applicant believes are appropriate.

(b) A sponsor or an applicant must submit the request for informal review with the division director or the division director's designate. To qualify for administrative review under section 4 of this rule, a request for informal review under this subsection must

be made before the program is presented.

(c) The division shall conduct the review in an informal manner. If requested by the sponsor or applicant, the division shall confer with the sponsor or applicant at the division's office before deciding the informal review.

(d) The division director or the division director's designate may take any appropriate action, including approving credit or additional credits, if the division is provided with sufficient written documentation to determine a continuing education program:

(1) includes information significant to the governing statute or rule that was not previously known to the division; or

(2) provides innovative or specialized instruction to a limited constituency, with extraordinary educational needs, and that is likely to enhance the interests protected or promoted by the governing statute or rule.

(Natural Resources Commission; 312 IAC 2-5-3; filed Jan 2, 2013, 3:40 p.m.: 20130130-IR-312120273FRA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA)

312 IAC 2-5-4 Administrative review

Authority: IC 14-10-2-4; IC 25-39-4-9

Affected: IC 4-21.5; IC 14; IC 25-39

Sec. 4. (a) A division director or the division director's delegate shall notify a person in writing who seeks review under section 2 or 3 of this rule, within thirty (30) days after completion of the review, of the division's decision.

(b) The notification provided under subsection (a) shall advise the recipient of the opportunity to seek administrative review of the division's decision, under IC 4-21.5 and 312 IAC 3-1, within eighteen (18) days of issuance of the notice. *(Natural Resources Commission; 312 IAC 2-5-4; filed Jan 2, 2013, 3:40 p.m.: 20130130-IR-312120273FRA; readopted filed May 20, 2014, 9:48 a.m.: 20140618-IR-312140027RFA; readopted filed May 20, 2020, 9:55 a.m.: 20200617-IR-312200178RFA)*

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