

Regulatory Analysis
LSA Document #24-379**I. Description of Rule**

a. History and Background of the Rule – The current rules regarding hiring an incoming class and spot appointments for the division of law enforcement (division) for the department of natural resources (department) were last permanently updated in 2014. In 2021, 2022, and 2023, the department adopted emergency rules under [IC 4-22-2-37.1](#) to accommodate necessary changes to the rules regarding qualifications for the incoming classes of law enforcement officers, as well as to make promoted positions within the division more appealing to conservation officers by removing spot appointments. In 2021 and 2022, the division hired for the incoming class and promoted positions under the proposed rule changes using the emergency rules process under [IC 4-22-2-37.1](#), which was amended in 2023 by HEA 1623-2023 to remove the emergency rules process. The spot appointment rule has not been utilized since issues arose during 2017 and 2018 and resulted in litigation claiming a hostile work environment. The division is too small to have vacant staff positions and too small to accommodate a spot appointment system. There were fifteen (15) promotions between 2021 and 2023. Of those fifteen (15) promotions, only two (2) were at a rank that qualified under the spot appointment rule.

Additionally, the model that is currently used by the division for spot appointments is not conducive to attracting the best of the division for promotions because spot appointments are temporary in nature, and individuals who hold certain positions shortly after an election cycle may be returned to a previous rank for which a position no longer exists. The spot appointment process is much more inviting of a patronage system that does not best serve the needs of the department or the public and is seen as political in nature. The nature of spot appointments creates hesitation in those who may apply because the process is seen as political, rather than based in the qualifications of the candidates, and there is not job stability in a new administration. The proposed rule changes mitigate this issue and ensure a more qualified, diverse pool of applicants for promoted positions. The proposed rule changes require an interview process for certain promoted positions that requires a board to be involved in the final decision-making process. Consequently, the individual who is promoted is likely to be the best qualified of the applicants for the position and is rewarded with a stable working environment if the individual's work is satisfactory.

The proposed rule changes the requirements for incoming law enforcement classes to: (1) remove the requirement that an individual who applies to become a conservation officer achieve an associate's degree, at least two years toward a bachelor's degree, or at least four years of full time active duty military service with honorable discharge; and (2) adds the requirement that a person who applies to become a conservation officer achieve a high school diploma or a general education diploma (GED). The proposed rule changes also require the division director to select an individual to become a conservation officer based on indicators the individual will excel in a career in conservation law enforcement, including the individual's life experiences and interest in and commitment to natural resources.

The proposed rule changes were hugely successful for the 2021 and 2022 incoming classes. It is very costly to hire underqualified candidates for a law enforcement class. An individual who is underqualified possesses an inability to navigate the challenges of training and there is a high probability the individual will exit the training program prior to completion. The previous rule set requirements that did not necessarily determine whether a candidate possessed the ability to navigate those challenges. The historical dropout rate was at least thirty-five percent (35%) and not more than fifty percent (50%). The division saw a substantial decrease in the dropout rate to ten percent during the 2021 and 2022 conservation law enforcement classes. This decrease is attributed to looking at additional factors beyond the educational requirements to ensure that an applicant is suited to a career in conservation law enforcement.

b. Scope of the Rule – The proposed rule changes resolve the operational issue of having fewer qualified applicants applying: (1) for certain promoted positions; and (2) for incoming law enforcement classes for the division.

Significant differences exist between field and staff assignments for conservation officers. First, conservation officers are required to live in an assigned area as a condition of their employment and are considered "on the clock" when a conservation officer enters their department provided vehicle at their residence. Therefore, there is no commute time incurred and a conservation officer is compensated eight and one half (8 1/2) hours

for a shift. Staff assignments, which are promoted positions, have a duty station assignment requiring the commute time like a traditional job, particularly those in central office. To serve in a staff assignment, the conservation officer automatically increases the workday with a commute. The conservation officer is not paid for commute time and many who might apply for a promoted position feel they are not compensated to fulfill the obligations of employment. This is a major culture change from a field assignment. The change is considered "time lost" by those considering the transition from field to staff assignments. The spot appointment scheme further discourages transitions from field to staff assignments because the conservation officer is not guaranteed any length of service in the spot appointment role in exchange for satisfactory, or even exceptional, performance. The view of a spot appointment is that it is purely political in nature, does not require any type of promotion process, and is not competitive, which degrades the importance and attractiveness of the promotion. Finally, the proposed rule changes regarding spot appointments improve the security and stability of a staff assignment by eliminating spot appointments, which will be enough to encourage more applicants for the same promoted positions.

The hiring prerequisite changes broaden the applicant pool to a more diverse group of applicants. The existing rule was suspended to allow applicants with more diverse backgrounds in the previous law enforcement classes with great success. The proposed rule changes help to ensure a more diverse, better qualified incoming class of conservation officers, as well as candidates for promoted positions.

c. Statement of Need –

It is the duty of the division to ensure the best qualified individuals become conservation officers and fill promoted positions. The best way to ensure the best individuals are hired and promoted is to have a more diverse group of applicants with varying qualifications, skill sets, and knowledge bases. The pool of applicants for promoted positions is more diverse when the competition for the promoted position is tougher and when there is stability for the applicant's career moving forward, which is a genuine issue with the current rule regarding spot appointments.

The best qualified applicants do not always possess the same qualifications. The current requirement in the rules is a two (2) year degree or military experience. The requirement greatly restricts who is considered a qualified candidate and eliminated interested individuals that were very well suited to a career as a conservation officer. The requirement was not specifically for a major regarding natural resources or criminal justice, it was simply an arbitrary requirement of a two (2) year degree based on a decision made in the 1980s. The prerequisite qualification of military service was added in 2014, but again did not necessarily bring candidates interested in conservation law enforcement. Relevant previous experience that was not considered, including experienced law enforcement with a cultural and personal interest in natural resources, current department employees in other divisions of the department, or trade related experience in areas of responsibility including watercraft operation, all-terrain vehicle use, wildness outfitters, hunting guides, and licensed timber harvesters. Rather than create a laundry list of possible qualifying experience that may need changed regularly, eliminating the college and military prerequisites was the best means by which to accomplish the desired end. The rule change allows the division to increase the diversity of conservation officers.

The proposed rule changes are needed to ensure: (1) the best qualified applicants for promotions; and (2) a greater variety of qualified applicants for incoming law enforcement classes for the division.

Additionally, there is a serious timing component at issue. The emergency rule was readopted in 2023, but the division did not have an incoming class for 2023. To ensure the best qualified applicants for the incoming 2024 law enforcement class, these changes are necessary. Due to the changes made to the Indiana Code by HEA 1623-2023, the timeframe to obtain initial approvals to move forward with the permanent rulemaking process is taking an extensive amount of time. As a result, it will not be possible for the department and the natural resources commission (commission) to enact a permanent rule by the necessary deadlines for the incoming law enforcement class. Because the proposed rule changes were used for the two (2) previous law enforcement classes, great benefit was seen in a decrease in the dropout rate for the class to ten percent (10%). Without the changes the division is at risk for an incoming law enforcement class with less diversity, which is not in the best interest of the department or the state. Therefore, an interim rule is needed to have the proposed rule changes in place for the incoming law enforcement class.

d. Statutory Authority for the Proposed Rule – The commission has the authority to adopt rules under [IC 14-10-2-4](#).

e. Fees, Fines, and Civil Penalties – The proposed permanent rule changes do not add or increase a fee, a

fine, or a civil penalty.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule – The anticipated effective date is thirty (30) days after the proposed permanent rule is accepted for filing by the publisher.

b. Estimated Fiscal Impact on State and Local Government – The rule change does not have an effect on expenditures of state or local government or other state agencies. Because the proposed rule changes were made by emergency rules for the 2021 and 2022 incoming law enforcement classes, there is not expected to be an increase in administrative work to review applications, perform interview, and complete new hire requirements for the division. The number of expenditures on the division are likely to be relatively the same as in the previous two (2) incoming law enforcement classes and any additional expenses would come out of the normal operating budget for the division.

c. Sources of Expenditures or Revenues Affected by the Rule – Not applicable to the proposed permanent rule changes. Because the proposed rule changes are the same as what was used in 2021 and 2022, there are no additional expenditures or revenues affected by the proposed rule changes.

III. Impacted Parties

This rule is internal to the division and does not affect outside individuals or agencies.

IV. Changes in Proposed Rule

Administrative Rule Citation	Change
312 IAC 4-4-6	(1) Removes provision allowing the return of a conservation officer who receives a spot appointment to the conservation officer's permanent grade before the spot appointment. (2) Remove the definition of a "spot appointment". (3) Makes technical and conforming changes.
312 IAC 4-5-2	(1) Provides for the documentation required to prove an individual's United States citizenship. (2) Changes the possession of strength and agility needed to complete physical conditioning requirement to demonstration of the strength and agility to match current practices. (3) Removes the requirement that an individual who applies to become a conservation officer achieve an associate's degree, at least two years toward a bachelor's degree, or at least four years of full time active duty military service with honorable discharge. (4) Adds the requirement that a person who applies to become a conservation officer achieve a high school diploma or a general education diploma (GED). (5) Removes subdivision (8) because it is duplicative. (6) Moves subdivision (9) to 312 IAC 4-5-3 as an additional requirement, rather than a prerequisite. This matches current practice. (7) Makes technical and conforming changes.
312 IAC 4-5-3	(1) Removes the word "written" from subsection (a). The additional standards are not all written standards, so the removal of that word is accurate to the changes made to the rule. (2) Adds that the division may request an applicant submit to and satisfy standard psychological testing or a polygraph.

	<p>(3) Requires the division director to select an individual to become a conservation officer based on indicators the individual will excel in a career in conservation law enforcement, including the individual's life experiences and interest in and commitment to natural resources.</p> <p>(4) Makes technical and conforming changes.</p>
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V. Benefit Analysis

Eliminating the spot appointment provision is beneficial because it does not fit into an organization with so few promoted positions available. Although the spot employment practice is embraced by large law enforcement agencies, such as the Indiana State Police or Indianapolis Metropolitan Police Department, it does not meet the needs of the division in practice or culture. Many of the best and most productive conservation officers employed by the division are reluctant to leave field responsibilities to serve in a promoted position. Adding the uncertainty a spot appointment brings exacerbates the challenge of the division to bring the best officers up the ranks. Only the 2023 emergency rule addressed promotions. The spot appointment provision was an option that was not exercised in the promotion process since 2018. Prior to 2018, attempts to utilize spot appointments resulted in litigation or situations where staff was "removed" from a rank but paid as if they were still in the rank. This had a negative effect on both the division's budget and morale. By no longer utilizing the spot appointment rule, these issues are resolved. The proposed permanent rule removing spot appointments places the rule in line with the promotion process since 2019.

By opening the hiring criteria, the division can offer employment opportunities to a much wider array of individuals and expects to have the opportunity to employ a more diverse group of officers. The division does not see this as a drop in standard for potential employees, but rather an increase in the relevant experience that would qualify an individual for a career as a conservation officer. In a competitive environment, an individual is evaluated based upon the lifelong merits of the individual without the restriction of having attended a university program or a military enlistment. The merits of a college education or service in the military are not eliminated, but rather evaluated as part of the total package of potential conservation officers. The division believes that previous employment, as a police officer, or other life experiences that should qualify an individual for consideration as a conservation officer should be considered when hiring conservation officers. The positive impact was experienced with the consideration of more diverse incoming classes for the division during 2021 and 2022. There was a more diverse pool of applicants that resulted in two (2) separate incoming classes that reduced the dropout rate to ten percent (10%) and resulted in qualified applicants who were suited to careers in conservation law enforcement.

a. Estimate of Primary and Direct Benefits of the Rule – The direct benefit of the proposed rule changes is that there will be a more qualified, diverse pool of applicants for promoted positions and incoming law enforcement classes. This benefit was already seen in the 2021 and 2022 incoming law enforcement classes, and in applicants for promoted positions in 2021, 2022, and 2023. Any increase to the costs and workload of the division to review applications, perform interviews, and complete hiring requirements are expected to be minimal and would be paid out of the normal operating budget for the division. The increased costs and workload of the division are not expected to be more than in 2021, 2022, and 2023.

b. Estimate of Secondary or Indirect Benefits of the Rule – There is not expected to be a secondary or indirect benefit of the rule.

c. Estimate of Any Cost Savings to Regulated Industries – Not applicable to the proposed permanent rule changes.

VI. Cost Analysis

The proposed permanent rule changes are only to internal processes, which are considered part of the normal administrative costs for the division. There are no additional costs for compliance fees, administrative expenses, or civil fines or penalties as a result of the proposed permanent rule changes.

a. Estimate of Compliance Costs for Regulated Entities – There are no costs to regulated entities because the proposed rule changes are regarding hiring and promotions within the division.

b. Estimate of Administrative Expenses Imposed by the Rules – Not applicable to the proposed permanent rule changes.

c. The fees, fines, and civil penalties analysis required by [IC 4-22-2-19.6](#) – Not applicable to the proposed permanent rule changes.

VII. Sources of Information

a. Independent Verifications or Studies - Not applicable to the proposed permanent rule changes.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – Not applicable to the proposed permanent rule changes.

VIII. Regulatory Analysis

There are no new costs for regulated entities or businesses because of these rules changes.

Notice of First Public Comment Period with Proposed Rule: [20241009-IR-312240379FNA](#)

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An [html](#) version of this document.