

Arizona Administrative Register
Notices of Final Rulemaking

The Statement identifies that the administrative and other costs required of small business for compliance with the current rules will neither increase nor decrease as a result of the rule amendment and that the rule amendment will have no probable effect on state revenues, Board revenues or the revenues, Board revenues or the revenues or payroll expenditures of employers who are subject to the rule amendment.

The Statement identifies that the Board is not aware of any other less intrusive or less costly alternative methods of achieving the purpose of the rule amendment.

Agency Contact Person:

Name: Teri Candelaria, Executive Director
Address: State Board for Private Postsecondary Education
1400 West Washington, Room 260
Phoenix, Arizona 85007
Telephone: (602) 542-5709
Fax: (602) 542-1253

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules:**
The text of the adopted rules in the final rulemaking package has been slightly modified from the text of the proposed rules in the Notice of Proposed Rulemaking. The modifications do not in any way change the substance of the rule amendment.
10. **A summary of the principal comments and the agency response to them:**
The Board did not receive any comments regarding the rulemaking.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class or rules:**
Not applicable.
12. **Incorporations by reference and their location in the rules:**
None.
13. **Was this rule previously adopted as an emergency rule?**
No.
14. **The full text of the rules follows:**

TITLE 4. COMMERCE, PROFESSIONS AND OCCUPATIONS

CHAPTER 39. STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION

ARTICLE 1. DEFINITIONS, LICENSURE, REPORTING

Section

R4-39-102. Licensure and Licensure Procedures

ARTICLE 1. DEFINITIONS, LICENSURE, REPORTING

R4-39-102. Licensure and Licensure Procedures

- A. The Board may issue a conditional, regular, ~~or~~ and supplemental license to ~~a~~ an private institution to operate ~~a private vocational programs~~ program.
- B. The Board may issue a conditional, provisional, regular, ~~or~~ and supplemental license to ~~a~~ an private institution to operate degree programs or grant degrees.
- ~~C.~~ The Board may issue a regular license to agents for non-accredited vocational or degree-granting institutions.
- ~~CD.~~ Licenses ~~are~~ shall be effective for a 12-month period from the date issuance.
- ~~DE.~~ The Board shall issue the following licenses to private, ~~Licensing of vocational institutions or programs is as follows:~~
 1. ~~An~~ The original license ~~of issued to~~ an accredited, private, vocational institution ~~is or program shall be~~ a regular license to operate vocational programs.
 2. A license renewal of an accredited, private, vocational institution is a regular license to continue to operate vocational programs.

~~32.~~ ~~An~~ The original license ~~of issued to~~ a new, non-accredited, private, vocational institution ~~is or program shall be~~ a 1-year conditional license to operate vocational programs for one year only. The renewal license shall be a regular license.

4. A license renewal of a non-accredited, private, vocational institution is a regular license to continue to operate vocational programs.

~~E F.~~ The Board shall issue the following licenses to private, ~~Licensing of degree-granting institutions or programs is as follows:~~

1. ~~An~~ The original license ~~of issued to~~ an accredited, private, degree-granting institution ~~is or program shall be~~ a regular license to operate degree programs or grant degrees.

2. A license renewal of an accredited, private, degree-granting institution is a regular license to continue to operate degree programs or grant degrees.

~~32.~~ An original license of a new, non-accredited, private, degree-granting institution that complies shall comply with the provisions of R4-39-106 is in order to be granted a conditional license to operate degree programs or grant degrees.

~~43.~~ A license renewal of a non-accredited, private, degree-granting institution that complies shall comply with the provisions of R4-39-107 is in order to be

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granted a provisional license to continue to operate degree programs or grant degrees.

4. An institution shall be accredited as provided in A.R.S. Sec. 32-3022.D. and comply with the provisions of R4-39-103 in order to receive a regular license to grant degrees.
- F.** For the purpose of A.R.S. § 41-1073, the Board establishes the following licensing time-frames:
1. For an original conditional or original regular license application to operate vocational programs or an original regular license application to operate degree programs or grant degrees:
 - a. Administrative completeness review time-frame: 90 days;
 - b. Substantive review time-frame: 90 days;
 - c. Overall time-frame: 180 days.
 2. For a conditional or provisional license application to operate degree programs or grant degrees:
 - a. Administrative completeness review time-frame: 90 days;
 - b. Substantive review time-frame: 150 days;
 - c. Overall time-frame: 240 days.
 3. For a regular license renewal application to continue to operate vocational programs, degree programs, or grant degrees or a supplemental license application:
 - a. Administrative completeness review time-frame: 45 days;
 - b. Substantive review time-frame: 90 days;
 - c. Overall time-frame: 135 days.
- G.** Within 90 days of receiving an original conditional or original regular license application to operate vocational programs or an original regular, original conditional, or provisional license application to operate degree programs or grant degrees, or within 45 days of receiving a regular license renewal application to continue to operate vocational programs, degree programs, or grant degrees or a supplemental license application the Board shall finish an administrative completeness review.
1. If the application is complete, the Board shall notify the applicant that the application is complete and that the administrative completeness review is finished. The substantive review will begin on the date the notice is served.
 2. If the application is incomplete, the Board shall notify the applicant that the application is incomplete and specify what information is missing and what deficiencies are found in the application. The administrative completeness review time-frame is suspended from the date the notice is served until the applicant provides the Board with a revised application containing all missing information and correcting all deficiencies.
 - a. An applicant with an incomplete application shall submit a revised application within 60 days of receipt of notice.
 - b. If the applicant cannot submit a revised application within 60 days of receipt of notice, the applicant may request an extension of no more than 30 days
- by submitting a written request, documenting the reasons the applicant is unable to meet the 60-day deadline, to the Board postmarked or delivered with 60 days of receipt of notice.
- c. The Board shall grant the request for an extension of the 60-day deadline if the Board determines that the extension of the 60-day deadline will enable the applicant to submit a revised application containing all missing information and correcting all deficiencies.
 - d. Upon receipt and review of the revised application, and within the administrative completeness review time-frame, the Board shall notify that the applicant the administrative completeness review is finished. The substantive review will begin on the date the notice is served.
 - e. If the revised application containing all missing information and correcting all deficiencies is not submitted within the 60-day deadline or the time permitted by an extension, the Board shall close the application. An applicant whose application is closed and who later wishes to seek licensure, shall apply anew.
- H.** Within 90 days from the date on which the administrative completeness review of an original conditional or original regular license application to operate vocational programs, an original regular license application to operate degree programs or grant degrees, a regular license renewal application to continue to operate vocational programs, degree programs, or grant degrees or a supplemental license application is finished or within 150 days from the date on which the administrative completeness review of an original conditional or provisional license application to operate degree programs or grant degrees is finished, the Board shall complete a substantive review of the application, which may include an on-site verification, and render a decision.
1. If the Board finds that the applicant meets all requirements defined in statute and rule, the Board shall grant the license.
 2. If the Board finds that the applicant fails to meet all requirements defined in statute and rule, the Board shall deny the license.
 3. If the Board finds deficiencies during the substantive review of the application, the Board shall issue a written request, specifying the additional documentation to be submitted and deadline for submission. The time-frame for substantive review of an application is suspended from the date the written request for additional documentation is served until the date that all documentation is received.
 4. When the applicant and the Board mutually agree in writing, the Board shall grant extensions of the substantive review time-frame totalling no more than 30 days.
 5. If the requested documentation is not submitted by the deadline date, the Board shall close the application. An applicant whose application has been closed and who later wishes to seek licensure, shall apply anew.

NOTICE OF FINAL RULEMAKING

Title 12. Natural Resources

Chapter 4. Game and Fish Commission

PREAMBLE

1. **Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R12-4-308	Amend
R12-4-318	Amend
R12-4-412	New Section
R12-4-603	Amend
R12-4-606	Amend
R12-4-607	Amend
R12-4-608	Amend
R12-4-609	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 17-231 (A)(1), (A)(2) and (A)(3)

Implementing statute: A.R.S. §§ 17-231(A)(4), 17-211(D)(3) and (D)(4) for R12-4-308; 17-102 for R12-4-318, 17-306, 17-238 for R12-4-412; 41-1003, 41-1023 for R12-4-603; 17-340, 17-314, 41-1061 *et seq* for R12-4-606, 41-1003, 41-1062 for R12-4-607, 41-1003, 41-1065, and 5-311 for R12-4-608, 41-1005(A)(2); 17-234 for R12-4-609

3. **The effective date of the rules:**

R12-4-318 is designated within the rules as becoming effective January 1, 1998, to ensure coordinated implementation at the beginning of the calendar year.

4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 3 A.A.R. 869, March 29, 1997

Notice of Proposed Rulemaking: 3 A.A.R. 1632, June 13, 1997

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Susan L. Alandar, Administrative Services Manager

Address: Arizona Game and Fish Department
2221 West Greenway Road DOAS
Phoenix, Arizona 85023-4399

Telephone: (602)789-3289

Fax: (602)789-3299

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

R12-4-308. Wildlife Inspections, Check Stations and Roadblocks

This section prescribes procedures for inspections, check stations and roadblocks. The amendments eliminate portions of the rule in Subsections (A) and (C) requiring persons to "give information as requested". This language generally violates constitutional protections against self-incrimination in that a person cannot be in violation of law for failing to speak and give information.

It must be understood, however, that Game and Fish personnel may continue to ask questions at check stations and while briefly detaining vehicles at a roadblock. With the rule change, it can no longer be misconstrued as a requirement of law that a person provide whatever information an officer requests.

Language in Subsection (C) requiring individuals to provide information about specific hunting activities does remain unchanged. The concise explanatory statement issued at the time the rule was adopted suggests that for the hunts under Subsection (C), the purpose for requiring the information was for biological reasons, and not so much for law enforcement. Also, for the hunts under Subsection (C), the Department relies upon hunters coming forward with information about an animal, whereas individuals stopped at a check point or road block are more likely to feel pressure to provide information. For these reasons, the requirements in Subsection (C) remains unchanged.

No other changes to this rule were made, as it has previously been revised and approved by GRRC as meeting current rule writing standards.

R12-4-318. Seasons

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This section prescribes special restrictions or requirements for various hunt structures to achieve management plans and goals for wildlife harvest while providing maximum wildlife oriented benefits to the public.

The "Juniors-only" hunt was developed to give youngsters the opportunity to hunt in their own structured hunt setting. Encouraging youngsters to hunt is essential to the future of wildlife management. These hunts have been very well-received by the public. However, the 5-year rules review report for this rule did find that this provision could be more effective and there is also some confusion related to enforcement. Many internal memoranda contained in the rules review file request that the rule be changed or clarified concerning age requirements. Junior hunters are applying for these hunts when they are 14, but they have turned 15 by the time the hunt begins, or they may even turn 15 during the hunt. The Department's evaluation resulted in the decision to allow youth to participate in "Juniors-only" hunts up to and throughout the calendar year of their 15th birthday. This will help the rule meet its objective (by expanding participation at no disadvantage to the agency or the resource) and should remove the confusion surrounding "birthday dates."

R12-4-412. Tuberculosis Procedures for Cervidae Possessed by Special License

The Arizona Game and Fish Commission and its administrative agent, the Arizona Game and Fish Department is charged with management of all wildlife resources in the State of Arizona. One of the methods by which this is accomplished is by issuance of special licenses to hold wildlife in captivity. General provisions common to issuance of all of these special licenses is guided by Commission rule R12-4-409. Examples of the types of licenses that can be issued by pursuant to this rule are: R12-4-410 that allows stocking of aquatic wildlife into Arizona's waters and R12-4-413 governing game farms, which permits production of certain wildlife species in captivity. Another supportive rule to the Commission is R12-4-406, that lists animal species that are restricted from possession in the state without a special license issued by the Department. The purpose of this related body of rules (the Game and Fish Commission's Article 4, "Live Wildlife Rules" is to allow possession of live wildlife (which would otherwise be prohibited by A.R.S. § 17-306) while ensuring that Arizona's wildlife and livestock populations are protected from exposure to disease from imported wildlife, that they are protected from competition or predation from escaped animals possessed under these rules; and that human health and welfare are protected from these same issues.

The new section incorporates the United States Department of Agriculture's *Uniform Rules for Elimination of Tuberculosis in Cervidae* into Article 4. It supplements R12-4-409, subsections G and H. Incorporation of the USDA rule on elimination of tuberculosis will provide guidance to Department personnel who are charged with enforcement of the existing rule. This will protect the Department and any game farm licensee from capricious decisions on dealing with actions taken to identify or eliminate the presence of tuberculosis. This rulemaking action was initiated based upon a petition to do so by the Arizona Department of Agriculture. They advise that several other states have already adopted this rule. The rule language duplicates and is sister to R3-2-501(C), which became effective March 5, 1997.

Article 6. Rules of Practice Before the Commission

The amendments to these rules resulted from the 5-year rule review conducted by the agency, which found that "housekeeping" changes need to be done to make the rules clear, consistent and correct.

R12-4-603. Oral Proceedings Before the Commission

Amendments remove paragraph numbers from references to A.R.S. § 41-1023 because the legislature has renumbered the paragraphs in A.R.S. § 41-1023. Other changes are intended to bring the rule up to current rule writing standards.

R12-4-606. License Revocation, Denial of Right to Obtain License and Civil Assessment Proceedings

This section provides for the conduct of Commission proceedings to revoke or suspend current game and fish licenses, deny the right to obtain future licenses, and order civil damages for the unlawful take or possession of wildlife. The title of the rule is changed from "civil assessment proceedings" to "civil damages" to more accurately reflect the terminology used in statute. The Game and Fish Commission is authorized under A.R.S. § 17-314 to order recovery of civil damages for the loss of unlawfully taken wildlife. The statute does not use the term "assessment" and so that term is eliminated from the rule.

The rule changes also distinguish the procedural requirements for a license revocation from an order for civil damages. The structure of the rule had suggested that the proceedings for license revocation and civil assessments require the same administrative due process. The Commission's authority to revoke or suspend licenses is a final agency decision affecting a persons's rights or privileges. Under A.R.S. §§ 41-1061 *et. seq* and 17-340, the Commission must provide notice and an opportunity for hearing before proceedings to revoke or suspend a license. The same requirement is not necessary for the civil damages order. The order for recovery of civil damages is not a final agency action because the Commission may not enforce its civil damages order, but must proceed with a civil action for recovery. While the Commission may afford a person an opportunity to testify concerning civil damages, the administrative process is separate for license revocations, and the rule now reflects this distinction.

The rule is revised to correct any misconception that a respondent who is subject to civil assessment only is entitled to the same procedural rights provided for license revocation. Other changes are made to bring the rule up to current rule writing standards.

R12-4-607. Rehearing or Review of Commission Decisions

This section prescribes criteria and procedures for rehearing or review of Commission decisions. The amendment changes the time to petition for rehearing from 10 days to 30 days. The change is required by recent amendments to Title 41 which require

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that appellants must have 30 days to petition for rehearing. Other changes are made to bring the rule up to current rule writing standards.

R12-4-608. Appeal from Department Action

This section prescribes procedures for appealing the denial of licenses or permits or the establishment or removal of controlled-use markers. The amendment removes an incorrect cross-reference to R12-4-517, which prescribes watercraft and boat engine restrictions on specific bodies of water. Since these restrictions are prescribed by rule, a person wishing to change those restrictions would not follow the procedures in R12-4-608, but rather the procedures in R12-4-601, containing procedures to petition the Commission for a rule change. Other changes are made to bring the rule up to current rule writing standards.

R12-4-609. Adoption of Commission Orders

This section sets forth the procedures for adoption of Commission orders to ensure adequate public notice. It also contains the criteria for exceptions to the normal 20-day notice requirement. These exceptions are for specific circumstances only: for depredation hunts (established under a separate rule, R12-4-115); special seasons, which are open only to persons holding special license tags under A.R.S. § 17-346 and R12-4-120; and emergency seasons. The criteria for emergency seasons are contained within this rule, as well as certain provisions directly related to emergency seasons; the rule is therefore retitled to reflect this.

The 1996 review of this rule (pursuant to A.R.S. § 41-1056) noted that the criteria for emergency seasons may not be broad enough to suit the public need. The agency has considered this carefully and decided to leave the criteria unchanged; it has proven workable and responsive as prescribed, and is based upon the criteria for emergency rulemaking. Since the Commission's orders to open, close or alter seasons or establish bag or possession limits for wildlife is exempted from the rulemaking process by A.R.S. § 41-1005(A)(2), it is correct and logical to parallel the emergency criteria for rulemaking as much as possible.

A statement is added to Subsection (C) to clarify that the provisions of R12-4-104, R12-4-107, and R12-4-114 do not apply to emergency hunts. R12-4-104 and R12-4-114 establish applicant and Department procedures for the drawings for hunt permit-tags. R12-4-107 is the "bonus point rule" which grants applicants for tags for certain big game species to accumulate a "bonus point" for each unsuccessful entry in the big game drawing. Each bonus point grants the applicant an additional entry in subsequent big game drawings. There has never been an emergency hunt for a big game species, but, by their nature, emergency hunts would require a quick response to unusual circumstances unlikely to allow normal drawing processing. This is why the rule has always allowed selection of hunters from a special stand-by list established under R12-4-115. It has never been the intent or procedure to apply R12-4-104, R12-4-107 or R12-4-114 to this sort of emergency situation and the existing language about hunter selection supports this, but the agency is taking this opportunity to clarify this point. Administering emergency hunts in accordance with R12-4-104, R12-4-114 and R12-4-107 would greatly hamper the Department in its ability to respond to an emergency in a timely and effective manner.

The only other notable change to R12-4-609 relates to the dissemination of Commission orders to the public. The rule had contained narrow language about how this is to be done. This is broadened to simply require that the content of Commission orders be published and made available to the public without charge. Since doing so is to the agency's benefit as well as the public's, the methods for public dissemination are constantly being streamlined and improved. The more general language will not hinder this improvement effort.

The rule is restructured for clarity and otherwise revised to bring it to current rule writing standards.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The summary of the economic, small business, and consumer impact:**

R12-4-308. Wildlife Inspections, Check Stations and Roadblocks

The public is generally cooperative with Game and Fish personnel at roadblocks and check stations, and rarely does an enforcement issue arise for failure to give information as requested. Therefore, the proposed rule change is not expected to have any impact.

R12-4-318. Seasons

This proposal should result in no added cost to the public or the agency, but may expand recreational opportunity for youth by a small degree, and will alleviate confusion regarding ability to participate in a juniors-only hunt when a birthday occurs just before or during the hunt.

R12-4-412. Tuberculosis Procedures for Cervidae Possessed by Special License

This section would provide step by step guidance in the event there is evidence of disease in an animal possessed by a special licensee. The only special licenses currently authorizing possession of Cervidae are for private game farms. There is no anticipated cost to the game farms as a result of this rule. Benefits include continuance of current disease-free status within the agriculture industry, including game farms.

R12-4-603. Oral Proceedings Before the Commission

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No impact is expected from this housekeeping change.

R12-4-606. License Revocation, Denial of Right to Obtain License and Civil Assessment Proceedings

The Commission's interpretation of the existing rule is that the hearing refers only to the license revocation, and that the Commission has discretion to permit testimony concerning civil damages. The rule will not impact the procedure for license revocations and civil damage orders. While the public has not argued that the rule creates procedural rights not required by statute, the rule change should eliminate any suggestion that a person is entitled to an administrative hearing on civil damages.

R12-4-607. Rehearing or Review of Commission Decisions

The proposed amendment will have very minor impact. Five days is not a significant increase in time, and the Commission receives very few petitions for rehearing.

R12-4-608. Appeal from Department Action

The proposed amendment will have very minor impact other than removing an incorrect cross-reference which has the potential for misleading the public.

R12-4-609. Adoption of Commission Orders

Proposed amendments will have little impact except to clarify the rule and give latitude to better serve the public.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

In the title for Article 4, the word "rules" has been deleted. It was inadvertently added in the Notice of Proposed Rulemaking. No changes were made from the text of the proposed rules to rules R12-4-308, R12-4-318, R12-4-603, R12-4-607, or R12-4-608.

Change to R12-4-412. The phrase "U.S.D.A., A.P.H.I.S. 91-45-005," was added after "*Tuberculosis Eradication in Cervidae - Uniform Methods and Rules,*" at the suggestion of GRRRC staff counsel for the purpose of clarifying the rule.

Changes to R12-4-606. Subsection (A) was changed from: "The Director may commence proceedings for the Commission to revoke a license or deny a license take action on license revocation and denial of right to obtain license, in any matter meeting the requirements set forth in..." to: "The Director may commence proceedings for the Commission to revoke or deny the right to obtain a license under take action on license revocation and denial of right to obtain license, in any matter meeting the requirements set forth in A.R.S. § 17-340..."

Subsection (B) was changed from: "The Commission shall conduct hearings concerning license revocations or license denial in accordance with the ..." to: "The Commission shall conduct hearings concerning license revocations or denial of the right to obtain a license in accordance with ..."

Subsection (E)(1) was changed from: "A party shall serve a subpoena as in civil matters..." to: "A party shall serve a subpoena as in the Arizona Rules of Civil Procedure, Rules 4 and 5."

Subsection (E)(2) was changed from: "Any party may request amendment to a subpoena at any given time prior to the time provided in this section for filing an application" to: "Any party may request amendment to a subpoena at any given time prior to the time provided in this section for filing an application for a subpoena."

Subsection (F) was changed from: "A license denial is effective for the period determined by the Commission, beginning on the date of the hearing." to: "A denial of the right to obtain a license is effective for the period determined by the Commission, beginning on the date of the hearing."

These changes were made at the suggestion of GRRRC staff counsel for the purpose of clarity.

Changes to R12-4-609. Subsection (A)(1) was changed from: "At least 20 calendar days prior to a meeting where the Commission will consider a Commission order, the Department shall issue a public announcement of the proposed Commission order to print and electronics media as designated in a list filed with the Secretary of State under pursuant to A.R.S. § 38-431.02." to: "At least 20 calendar days prior to a meeting where the Commission will consider a Commission order, the Department shall issue a public announcement of the proposed Commission order to print and electronics media in accordance with -as designated in a list filed with the Secretary of State pursuant to A.R.S. § 38-431.02."

This change was made at the suggestion of GRRRC counsel for the purpose of clarity.

10. A summary of the principal comments and the agency response to them:

No comments were received.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

R12-4-412 incorporates by reference the USDA publication "*Tuberculosis Eradication in Cervidae -- Uniform Methods and Rules,*" USDA, APHIS 91-45-005, effective May 15, 1994, including 1995 amendments.

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13. Was this rule previously adopted as an emergency rule?
No.

14. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

- R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks
R12-4-318. Seasons

ARTICLE 4. LIVE WILDLIFE

- R12-4-412. Tuberculosis Procedures for Cervidae Possessed by Special License

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

- R12-4-603. Oral Proceedings Before the Commission ~~Oral proceedings before the Commission~~
R12-4-606. Proceedings for License Revocation, Denial of Right to Obtain License, and Civil Damages ~~License revocation, denial of right to obtain license, and civil assessment proceedings~~
R12-4-607. Rehearing or Review of Commission Decisions ~~Rehearing or review of Commission decisions~~
R12-4-608. Appeal from Department Action
R12-4-609. Adoption of Commission Orders; Emergency Seasons

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

- R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks

- A. No change.
1. No change.
 2. No change.
 3. No change.
 4. Hunters shall personally check out after hunting in a season with a published check-out requirement, and shall present for inspection any wildlife taken, and display any license, tag or permit required for taking or transporting wildlife, ~~and give information requested concerning hunting activities.~~
 5. No change.
- B. The Director or Director's designee may establish vehicle roadblocks at specific locations when necessary. Vehicle roadblocks are not the same as wildlife check stations. Officers at vehicle roadblocks shall direct all vehicles at a roadblock to slow or stop. Any occupant of a vehicle at a roadblock shall present for inspection upon request all wildlife in possession, and display any license, tag, stamp, or permit required for taking or transporting wildlife ~~and give information as requested concerning hunting, fishing or trapping activities.~~ The Department shall ensure that:
1. No change.
 2. No change.
 3. No change.
 4. No change.
 5. No change.
 6. No change.
- C. No change.
1. No change.
 2. No change.

3. No change.
- D. No change.

R12-4-318. Seasons

- A. No change.
- B. No change.
- C. No change.
1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
- a. No change.
- b. No change.
- c. No change.
- d. No change.
6. No change.
7. No change.
8. No change.
9. No change.
10. No change.
11. No change.

12. An individual may participate ~~participating~~ in a "juniors-only hunt" up to and throughout the calendar year of their 15th birthday, provided they shall be 14 years of age or under, and meet the requirements of A.R.S. § 17-335.

13. No change.
- D. This rule is effective January 1, ~~1998~~ 1997.

ARTICLE 4. LIVE WILDLIFE

R12-4-412. Tuberculosis Procedures for Cervidae Possessed by Special License

Procedures for tuberculosis control and eradication for cervidae listed as restricted live wildlife in R12-4-406 shall be as prescribed in the USDA publication "Tuberculosis Eradication in Cervidae - Uniform Methods and Rules," U.S.D.A., A.P.H.I.S 91-45-005, effective May 15, 1994, including 1995 amendments. This material is incorporated by reference, does not include any later amendments or editions of incorporated matter, and is on file with the Secretary of State. In addition, a copy may be ordered from the U.S.D.A. A.P.H.I.S. Veterinary Services, Cattle Diseases and Surveillance Staff, P. O. Box 96464, Washington, D.C. 20090-6464.

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-603. Oral Proceedings Before the Commission ~~Oral proceedings before the Commission~~

- A. The Commission may, at its discretion or as required by the provisions of A.R.S. § 41-1023.B., allow oral proceedings on any matter. At oral proceedings:
1. No change.
 2. No change.
 3. No change.
 4. The Chair may ~~limit~~ limited the number of presentations or the time for testimony upon a particular issue, and may prohibit irrelevant, immaterial or repetitive testi-

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mony. Irrelevant, immaterial or repetitive testimony shall not be allowed.

5. Technical rules of evidence do shall not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates shall invalidate any order, decision or rule made, approved or confirmed by the Commission.

- B. The Commission authorizes When necessary, pursuant to A.R.S. § 41-1023.D., the Commission may assign the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. The hearing officer has shall have the same authority as the Chair in conducting oral proceedings, as provided in this Section rule.

R12-4-606. Proceedings for License Revocation, Denial of Right to Obtain License, and Civil Damages License revocation, denial of right to obtain license, and civil assessment proceedings

- A. The Director may commence proceedings for the Commission to revoke or deny the right to obtain a license under take action on license revocation and denial of right to obtain license, in any matter meeting the requirements set forth in A.R.S. § 17-340 and in A.A.C. R12-4-605. The Director may also commence proceedings for civil damages assessment under pursuant to A.R.S. § 17-314. Hearings shall be conducted in accordance with the Administrative Procedure Act, A.R.S. § 41-1061 *et seq.*

- B. The Commission shall conduct hearings concerning license revocations or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. § 41-1061 et seq. The respondents shall limit their testimony respondent's testimony shall be limited to any facts that show why the license should not be revoked or denied or a civil assessment imposed. Guilt or innocence of the violation charged shall not be an issue in the proceeding. The Commission may also permit a respondent to offer testimony or evidence relevant to the Commission's decision to order the recovery of civil damages or wildlife parts.

- C. The respondent waives shall waive the right to be heard if the respondent is not present at the hearing on the date, time and location noticed, and no further opportunity to be heard will be provided except under pursuant to A.A.C. R12-4-607, rehearing or review of Commission decisions. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to written testimony may be submitted, which must be received by the Department before the hearing date designated in the Notice of Hearing. The Commission shall ensure that written testimony received at the time of the hearing is Written testimony shall be read into the record at the hearing.

- D. The Commission shall base its decision on decision of the Commission shall be based upon the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. The Department shall supply the respondent Respondent shall be supplied with a copy of all documents used by the Commission in reaching its decision.

- E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any hearing or deposition. Not later than 10 calendar days before the hearing or deposition, the party shall file a written application setting forth the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time and place of the hearing or deposition. The Commission chair may issue the subpoenas.

1. A party shall serve a subpoena as in the Arizona Rules of Civil Procedure, Rules 4 and 5. An employee of the Department may serve a subpoena at the request of the Commission chair.

2. Any party may request amendment to a subpoena at any given time prior to the time provided in this section for filing an application for a subpoena. The amended subpoena shall be served as provided in subsection (E)(1).

- E. Any party desiring the issuance of a subpoena to compel the appearance of a witness or the production of documents at any hearing, or for a deposition of a witness who cannot be subpoenaed, shall file a written ex parte application setting forth the name and address of the witness, the matters concerning which it is expected to question the witness, the documents sought to be produced, and the time and place of the hearing. Such application shall be filed with the Department not less than ten days in advance of the hearing. The Commission Chairman may issue the subpoena.

1. Subpoenas shall be served as in civil actions. Subpoenas issued at the request of the Chairman may be served by an employee of the Department.

2. Subpoenas may be amended at any time prior to the date designated in subsection E and the amended subpoena shall be served as provided in subsection E.1.

- F. A license revoked by the Commission is suspended as of the date of the hearing, and revoked upon issuance of the findings of fact, conclusions of law, and order. If a person appeals the Commission's order revoking a license, the license is revoked after all appeals have been completed. A denial of the right to obtain a license is effective for the period determined by the Commission, beginning on the date of the hearing. Any license determined for revocation by the Commission is suspended as of the date of the hearing, and revoked upon issuance of findings of fact, conclusions of law and order, or after all appeals have been completed. The right to secure license shall be denied for the period determined by the Commission, beginning on the issuance of findings of fact, conclusions of law and order, or after all appeals have been completed.

R12-4-607. Rehearing or Review of Commission Decisions Rehearing or review of Commission decisions

- A. For purposes of this Section the terms "contested case" and "party" are defined as provided in A.R.S. § 41-1001.

- B.A. Except as provided in subsection (G), any party in a contested case before the Commission may file a motion for rehearing or review within 30 calendar days after service of the decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business. The party shall attach a supporting memorandum specifying the grounds for the motion. Except as provided in Subsection G, any party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file a motion for rehearing with the Commission, not later than ten (10) days after service of the decision specifying the particular grounds therefore. For purposes of this Subsection a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.

- C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. An opposing party has 10 calendar days after service to respond to the motion or the amended motion. The Commission may require the filing of written briefs on any issue raised in a motion or response, and may provide for oral argument.

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~~B.~~ A motion for rehearing under this Rule may be amended at any time before it is ruled upon by the Commission. A response may be filed within ten (10) days after service of such motion or amended motion by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

~~D.~~ C. The Commission may grant a rehearing or review of the Commission decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the Commission, its staff, agency or its hearing officer or of the prevailing party, or any order or abuse of discretion which deprived whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Commission, its staff, or its hearing officer, or the prevailing party;
3. Accident or surprise which could would not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could would not, with reasonable diligence, have been discovered and produced at the original hearing;
5. No change.
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceeding;
7. That the findings of fact or decision is not justified by the evidence or is contrary to law.

~~E.D.~~ The Commission may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (D) (C). The Commission's An order modifying a decision or granting a rehearing shall specify with particularity the ground or grounds for the order, on which the rehearing is granted, and the rehearing or review shall cover only those specified matters so specified.

~~F.E.~~ Not later than 10 calendar days after a decision is rendered, the Commission may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted relief a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case the order modifying the decision or granting such a rehearing shall specify the grounds for the order therefor.

~~G.F.~~ When a motion for rehearing is based upon affidavits, the party shall serve the affidavits they shall be served with the motion. An opposing party may within 10 calendar days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Commission. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission may permit reply affidavits. Reply affidavits may be permitted.

~~H.G.~~ If in a particular decision the Commission makes specific findings that an immediate effective date for a the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the Commission may issue decision may be issued as a final decision without an opportunity for rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, the party applying for judicial review shall do so any application

for judicial review of the decision shall be made within the time limits prescribed in the Judicial Review of Administrative Decisions Act, A.R.S. § 12-901 et seq. permitted for applications for judicial review of the Commission's final decisions.

~~H.~~ For purposes of this Section the terms "contested case" and "party" shall be defined as provided in A.R.S. Section 41-1001.

~~I.~~ If any part of this Section conflicts with ~~To the extent that the provisions of this Rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Commission the such statutory provisions shall control govern.~~

R12-4-608. Appeal from Department Action

~~A.~~ An applicant for a license or permit which has been denied by the Department Upon denial of any license or permit by the Department, the applicant may appeal to the Commission. The applicant shall file the written appeal Such an appeal must be filed in writing in the office of the Director within 30 calendar days after the denial is mailed or delivered to the applicant.

1. The appellant shall prepare and sign the appeal form provided by the Department, describing The appeal shall be signed by the person making the request and shall set forth specifically the type of license or permit applied for and the reason for believing the license or permit should be issued.
2. No change.

~~B.~~ Any person, including any organization or agency, requesting that the Commission overturn a Department decision on the establishment or removal of controlled-use markers under pursuant to R12-4-522 or watercraft and boat engine restrictions pursuant to R12-4-517, shall, submit a petition as follows before such request may be considered by the Commission:

1. File a petition The petition shall be filed with the Arizona Game and Fish Department, Director's Office, 2221 West Greenway, Phoenix, Arizona, 85023. The petition shall be filed 30 calendar days prior to a scheduled Commission meeting in order to be submitted to the Commission at that meeting. Petitions received after that time will shall be submitted by the Director to the Commission at the following regularly scheduled Commission meeting.
2. Submit petition A petition shall be submitted typewritten or computer-printed, double-spaced, on 8½" x 11" paper. The petitioner shall place the title shall appear at the top of the first page, and shall be: "Petition for Watercraft Restriction Amendment to the Arizona Game and Fish Commission" at the top of the 1st page, and provide the following information: The petition shall contain:
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.

R12-4-609. Adoption of Commission Orders; Emergency Seasons

~~A.~~ Except as provided in subsection (B):

1. At least 20 calendar days prior to a meeting where the Commission will consider a Commission order, the Department shall issue a public announcement of the proposed Commission order to print and electronics media in accordance with as designated in a list filed

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with the Secretary of State pursuant to A.R.S. § 38-431.02.

2. No change.
3. The announcement shall also state that copies of proposed Commission orders will be available for public inspection at the Department offices in Phoenix, Pine-top, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 ten calendar days prior to the meeting.

B. The requirements of subsection (A) do not apply to Commission orders establishing:

1. Depredation hunts as prescribed in R12-4-115.
2. Special seasons for persons possessing special license tags issued under A.R.S. §17-346 and R12-4-120.
3. Emergency seasons when the Commission adopts, amends or repeals a Commission order for emergency reasons constituting an immediate threat to the health, safety or management of wildlife or its habitat or public health or safety.
 - a. When the number of hunters to participate in an emergency big game season must be limited, hunters may be randomly selected from the list of applicants established pursuant to R12-4-115; the Department may advertise for and accept new applications as needed.
 - b. The restrictions in R12-4-309 do not apply to an emergency season.

c. The provisions of R12-4-104, R12-4-107, and R12-4-114 do not apply to an emergency season.

- ~~B.~~ When the Department finds that it is necessary to recommend the adoption, amendment, or repeal of a Commission order for emergency reasons constituting an immediate threat to the health, safety or management of wildlife or its habitat or public health or safety, it may do so at any duly noticed open meeting. Any big game season established for emergency reasons shall not be subject to the provisions of R12-4-309. When the number of hunters to participate in an emergency big game season must be limited, hunters may be randomly selected from the list of applicants established pursuant to R12-4-115; the Department may advertise for and accept new applications as needed. Hunt permits for emergency big game seasons are valid only for the emergency big game season for which issued.
- ~~C.~~ The Department shall publish the content of all Commission orders and make them available to the public without charge.
- ~~C.~~ The Department shall publish the content of Commission orders, except those orders adopted pursuant to Subsection C, at least once each year. The publications shall be available from all Department offices and provided to all license dealers for distribution to the public without charge.
- ~~D.~~ The provisions of this rule shall not apply to depredation hunts established pursuant to R12-4-115 or special seasons established pursuant to R12-4-120.
- ~~E.~~ This rule is effective January 1, 1993.