

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 12. NATURAL RESOURCES

#### CHAPTER 4. GAME AND FISH COMMISSION

#### PREAMBLE

**1. Sections Affected**

R12-4-601  
R12-4-602  
R12-4-603  
R12-4-604  
R12-4-605  
R12-4-606  
R12-4-607  
R12-4-609  
R12-4-610  
R12-4-611

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
New Section

**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)

Implementing statutes: A.R.S. § 41-1033 for R12-4-601; A.R.S. §§ 41-1003 and 41-1023 for R12-4-602, R12-4-603, and R12-4-604; A.R.S. § 17-340 for R12-4-605; A.R.S. §§ 17-314, 17-340 and 41-1092, *et seq.* for R12-4-606; A.R.S. §§ 41-1001(4) through 41-1003 and 41-1092.09 for R12-4-607; A.R.S. §§ 17-234, 38-431.02, and 41-1005(A)(2) for R12-4-609; A.R.S. §§ 17-304(B) and 17-452 for R12-4-610; and A.R.S. §§ 41-1092 through 41-1092.12 for R12-4-611.

**3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 2974, July 19, 2002

Notice of Public Information: 9 A.A.R. 396, February 7, 2003

Notice of Public Meeting on Open Rulemaking Docket: 9 A.A.R. 1251, April 18, 2003

Notice of Public Information: 9 A.A.R. 1565, May 23, 2003

Notice of Rulemaking Docket Opening: 9 A.A.R. 3148, July 18, 2003

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

Name: Mark E. Naugle, Rule & Risk Manager

Address: Arizona Game and Fish Department  
2221 W. Greenway Road DORR  
Phoenix, AZ 85023-4399

Telephone: (602) 789-3289

Fax: (602) 789-3677

**5. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Arizona Game and Fish Department is proposing rulemaking following the 2001 five-year rule review of Title 12, Chapter 4, Article 6, Rules of Practice Before the Commission. The review, as required by A.R.S. § 41-1056,

Notices of Proposed Rulemaking

established a course of action to amend the rules according to Council standards. Subsequent review of these recommendations evaluated their efficacy in practice and enforcement, resulting in the proposed rulemaking as it is submitted in this Notice. The Department has also revised the rule language where necessary to make it consistent with the current requirements for rulemaking language and style, as recommended by G.R.R.C. staff in their courtesy review of this Notice.

**R12-4-601. Petition for ~~rule~~ Rule or Review of a Practice or Policy**

- A new subsection (B) will be amended to establish guidelines for an individual, including any organization or agency, to request that the Commission review an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined in A.R.S. § 41-1001. The petitioner may request a review of a practice or policy under A.R.S. § 41-1033. Associated amendments to make the rule consistent with the new subsection will be made throughout this rule. The Section heading will also be amended to reflect the change in content of the rule.
- The rule will be amended to change the mailing address for the Arizona Game and Fish Department in subsection (D) from 2222 W. Greenway Rd. to 2221 W. Greenway Rd.
- Subsection (D) prescribes that a petition shall be filed 30 calendar days prior to a scheduled Commission meeting in order to be submitted to the Commission at that meeting. This time-frame has been found to be too short to allow for the Department's internal scheduling process. The Department will amend the rule to increase the time-frame to 60 days.
- Subsection (F) prescribes that petitions be submitted typewritten and double-spaced on 8 1/2" x 11" paper, or typewritten on a form provided by the Department. This subsection will be revised to allow petitioners to submit applications that are typewritten, computer or word processor printed, or legibly handwritten as well.
- Subsections (F) through (K) will be revised where appropriate to make the petition process and information requirements more customer friendly.
- To avoid confusion for the public, subsections (H)(2) and (3) will be revised to clarify that the A.A.C. number is the number of the rule.
- Subsection (K)(2) will be amended to authorize a public agency to submit a petition signed by the agency head's designee if the agency head is unavailable.
- Subsection (L) has been found to be inconsistent with the objective of the rule. R12-4-601 prescribes the petition process for requesting rule changes, while subsection (L) addresses the separate issue of road or area closures. The provisions of subsection (L) would be more logically addressed in R12-4-610, thus the Department will delete subsection (L) from R12-4-601 and move its provisions to R12-4-610.

**R12-4-602. Written ~~comment on proposed rules~~ Comment on Proposed Rules**

- The rule requires that all written comments include the address of the sender and the identification of any group or organization that he or she represents. These provisions have been found to be inconsistent with what the authorizing and implementing statutes require, and it is the view of the Department that requiring this information has the potential to limit the number of comments the Agency receives on a proposed rule change. The Department's desire is to encourage comments from the public on proposed rulemaking, and it therefore will amend the opening paragraph of the rule to make it voluntary for a person to supply address and organizational information when making written comments.

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

- The Department will amend the rule to clarify that the provisions of the rule apply to any matter or proceeding before the Commission. A new subsection (A) will be added to define "matter" or "proceeding" as "any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting."
- A new subsection (D) will be added as follows:

D. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:

1. Deliver the request to the Director no later than twenty-four (24) hours before the scheduled proceeding;
2. Demonstrate that the proceeding has not been continued more than twice; and
3. Demonstrate good cause for the continuance.

**R12-4-604. ~~Ex parte communication~~ Parte Communication**

- Subsection (A)(1) will be amended to include a personal aide to a Commissioner as a “person outside the Commission,” and to make it consistent with the rest of the rule.
- Subsection (A)(2) has been found to be unclear, confusing, and too limited in scope. In addition to simplifying and clarifying the definition for *ex parte* communication, the definition will be expanded to include any communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.
- Subsection (B) has been found to be unclear, confusing, and too limited in scope. In addition to simplifying and clarifying the provisions of subsection (B), appealable agency action, as defined in A.R.S. § 41-1092, will be added to the types of proceedings for which *ex parte* communication is restricted.
- Subsections (C), (D), and (E) have been found to be unclear and confusing, and the Department will amend the rule to clarify and simplify these provisions of the rule.
- The phrase “to the extent consistent with the interests of justice...” in subsection (D) has been found to be vague, and the Department will amend the rule to revise this phrase to read, “to the extent consistent with equity and fairness.”

**R12-4-605. ~~Standards for revocation and denial of right to obtain license~~ Revocation, Suspension, or Denial of a License**

- The Section heading of the rule has been found to be inaccurate and the Department will amend the rule to revise it to read “Standards for Revocation ~~and Denial of right to Obtain License~~, Revocation, Suspension, or Denial of a License.”
- A.R.S. § 17-340(A)(5) allows for the revocation or suspension of hunting, fishing and trapping licenses for a violation of A.R.S. §§ 17-303 or 17-304. These statutes deal with trespassing on game refuges or other public and private areas closed to hunting, trapping, or fishing. R12-4-605 does not reference violations of these statutes as offenses for which the Commission shall hold hearings where it may revoke or suspend hunting, fishing and trapping licenses, and the rule will be amended to add these types of violations to the list of revocable offenses.
- Subsection (A)(2) prescribes that the Commission shall hold a hearing and may revoke or suspend all or any of the hunting, fishing and trapping licenses of any person, when that person has been convicted of destroying, injuring, or molesting livestock, growing crops, personal property, notices or signboards, or other improvements while hunting, fishing or trapping. The “growing crops” portion of this subsection is unclear and inconsistent with A.R.S. § 17-340(A)(3), which specifies that damaging or destroying growing crops is a revocable offense. The Department will amend the rule to make it clear that damaging or destroying growing crops is a revocable offense.
- Subsection (A) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (A) as follows:
  - A. Pursuant to Under A.R.S. §§ 17-340 and 17-362, the Commission shall hold a hearing and may revoke, ~~or suspend, or deny all or any of the hunting, fishing, or and trapping license licenses of any person when that person for an individual who~~ has been convicted of any of the following offenses:
    1. Killing or wounding a big game animal during a closed season or possessing a big game animal taken during a closed season. Conviction for possession of a road-kill animal or animals causing animal or an animal that was engaged in depredation shall not be is not considered “possessing during a closed season” ~~relevant to for the purposes of~~ this subsection.
    2. Destroying, injuring, damaging, or molesting livestock, ~~growing crops~~, personal property, notices or signboards, ~~or other improvements, or growing crops~~ while hunting, fishing, or trapping.
    3. Careless use of ~~firearms~~ a firearm while hunting, fishing, or trapping ~~which has resulted that results~~ in injury or death ~~to of~~ any person, ~~when if~~ the act of discharging the firearm was deliberate.
    4. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
    5. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
    6. Unlawfully posting of state or federal lands in violation of A.R.S. § 17-304(B).
- The term “convincing” when referring to evidence has been found to be too limited in scope in subsection (B). The Department will amend the rule to replace the term with the more apt “sufficient.”
- Subsection (B) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (B) as follows:

Notices of Proposed Rulemaking

- B. Pursuant to A.R.S. § 17-340, the Commission may hold a hearing and may revoke or suspend all or any of the hunting, fishing and trapping licenses of any person when that person has been convicted of any of the following offenses: Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:
- A portion of subsection (B)(1)(b) has been found to be unclear and redundant, and the Department will amend the rule to revise subsection (B)(1)(b) as follows: “The unlawful taking was willful and deliberate ~~and not accidental.~~”
  - Subsection (B)(3) has been found to be unclear, and the Department will amend the rule to revise subsection (B)(3) as follows:
    3. Unlawfully taking ~~other~~ wildlife species, ~~when there is convincing~~ if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for ~~the~~ state wildlife laws.
  - Subsection (B)(4) has been found to be inconsistent with A.R.S. § 17-340(A)(4), and the Department will amend the rule to revise subsection (B)(4) as follows:
    4. Littering a public hunting or fishing area while taking wildlife, ~~when there is convincing~~ if sufficient evidence that which may or may not have been introduced in the court proceeding ~~that the amount of litter was substantial, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the person individual convicted made no reasonable effort to dispose of the litter in a lawful manner.~~
  - Subsection (B)(6) has been found to be unclear, and the Department will amend the rule to revise subsection (B)(6) as follows:
    6. Any ~~other~~ violation for which a license can be revoked pursuant to under A.R.S. § 17-340, ~~when that if the person has been convicted of other a revocable offenses~~ offense within the past three years, ~~and that person’s actions show disregard for the state’s wildlife laws.~~
  - The Department will add new subsection (7) as follows:
    7. Violations of A.R.S. § 17-306 for unlawful possession of wildlife.
  - Subsection (C) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (C) as follows:
- C. ~~The~~ Under A.R.S. §§ 17-238, 17-362, 17-363, 17-364, and 17-340, if the Department has made a recommendation to the Commission for license revocation, the Commission may shall hold a hearing and may revoke ~~or suspend~~ all or any of the hunting, fishing and trapping licenses of any person fur-dealer, guide, taxidermy, or special license (as defined in R12-4-401) in any other case where license revocation is authorized by law.

**R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages**

- The authorizing statutes of this rule also refer to suspension of license. Therefore, amendments will be made throughout this Section to establish guidelines for the suspension of licenses.
- R12-4-606(A) states that the Director may commence proceedings for the Commission to revoke or deny the right to obtain a license under A.R.S § 17-340 and in R12-4-605. The Director may also commence proceedings for civil damages under A.R.S. § 17-314. Under R12-4-605, however, this authority is expressly given to the Commission and not the Director. R12-4-606 has therefore been found to be inconsistent with R12-4-605. The

rule is also too limited in scope, in that it does not refer to all statutes under which a license may be revoked or denied. The Department intends to initiate rulemaking to revise subsection (A) to correct the problem.

- Subsection (B) states in part that the respondents in a hearing concerning license revocation, or denial of right to obtain a license shall limit their testimony to any facts that show why the license should not be revoked or denied. Guilt or innocence of the violation charged shall not be an issue in the proceeding. The phrase “guilt or innocence of the violation” has been found to be vague, and the Department will amend the rule to revise this subsection to make it clear that what is intended is that the Commission does not have the authority to consider or change the court conviction.
- Subsection (B) also states in part that 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 reference to A.R.S. § 41-1061 has been found to be incorrect, and the Department will amend the rule to change the reference to A.R.S. Title 41, Chapter 6, Article 10.
- Subsection (C) states in part that the respondent waives 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 R12-4-607. For clarification purposes, the Department will amend the rule to specify that the “notice” is the Notice of Hearing required by A.R.S. § 17-340(D)
- Subsection (D) states in part that the Department shall supply the respondent with a copy of all documents used by the Commission in reaching its decision. This statement has been found to be vague and the Department will amend the rule to make the following clarifications:

The With the Notice of Hearing prescribed by A.R.S. § 17-340(D), the Department shall supply the respondent with a copy of all documents provided to the used by the Commission for use in reaching its a decision.

- Subsection (E) allows for any party in a case before the Commission to apply to the Commission for the issuance of subpoenas, and the rule states in part that the Commission chair may issue the subpoenas. This statement has been found to be vague and the Department will amend the rule to make the following clarification:
- 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 that provides 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 has the authority to issue the subpoenas.
- Subsection (E)(1) states in part that a party shall serve a subpoena as in the Arizona Rules of Civil Procedure, Rules 4 and 5. In addition to the inconsistency issue addressed in Part 4 of this report, this statement has been found to be vague, and the Department will amend the rule to make the following clarification:

A party shall serve have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, Rules 4 and 5 Rule 45.

- Subsection (E)(1) cross-references the Arizona Rules of Civil Procedure, Rules 4 and 5. This cross-reference has been found to be incorrect, and the Department will amend the rule to change the reference to the Arizona Rules of Civil Procedure, Rule 45.

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

- The Department has determined that subsection (A), which provides reference definitions for “contested case” and “party,” is too narrow in scope. The Department will amend the rule to add a reference definition for “appealable agency action,” as defined in A.R.S. § 41-1092(3).
- Subsection (C) states in part that the Commission may require the filing of written briefs on any issue raised in a motion or response, and may provide for oral argument. The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:

Notices of Proposed Rulemaking

- 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 ~~40~~ 15 calendar days after service to respond to the motion or the amended motion. The Commission ~~may~~ has the authority to require the filing of written briefs on any issue raised in a motion or response, and ~~may provide~~ allow for oral argument.
- Subsection (D) states in part that “The Commission may grant rehearing or review for any of the following causes materially affecting the moving party’s rights.” The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:
- D. The Commission ~~may~~ has the authority to grant rehearing or review for any of the following causes materially affecting the moving party’s rights:
- Subsection (F) states in part that not later than 10 calendar days after a decision is rendered, the Commission may order a rehearing or review for any reason for which it might have granted relief on motion of a party. The provision for 10 calendar days is inconsistent with the 15 day requirement in A.R.S. § 41-1092.09, and the Department will amend the rule to change the time-frame to 15 calendar days, as prescribed by A.R.S. § 41-1092.09.
  - Subsection (G) states in part that the Commission may permit reply affidavits. The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:
- G. When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may within 10 calendar days after ~~such~~ service, serve opposing affidavits. 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~~ has the authority to permit reply affidavits.

**R12-4-609. Commission Orders**

- The provisions of subsection (A)(1) have been found to be unclear and too limited in scope, and the Department intends to initiate rulemaking to amend subsection (A)(1) as follows:
  1. At least 20 calendar days ~~prior to~~ before a meeting where the Commission will consider a Commission ~~order~~ Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public announcement notice of the proposed recommended Commission order Order to print and electronics electronic media in accordance with A.R.S. § 38-431.02 at least 20 calendar days before the meeting.
- The provisions of subsection (A)(2) have been found to be unclear and the Department intends to initiate rulemaking to amend subsection (A)(2) as follows:
  2. The ~~Department announcement~~ shall ensure that the public meeting notice and agenda contains contain the date, time, and location of the Commission meeting where ~~these recommendations~~ the Commission Order will be considered and a statement that the public may attend and present written comments at or before the hearing meeting.
- The provisions of subsection (A)(3) have been found to be unclear, and the Department intends to initiate rulemaking to amend subsection (A)(3) as follows:
  3. The ~~Department announcement~~ shall ~~also state~~ also ensure that the public meeting notice and agenda states that copies a copy of the proposed Commission Order is orders will be available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days prior to before the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.

Notices of Proposed Rulemaking

- The Department has concluded that the provisions of subsection (B)(3), which address Commission Orders for emergency seasons, would be better placed in either a separate rule or as part of existing rule R12-4-115. Depredation Hunts. The Department is currently reviewing this issue as a part of its ongoing Elk Harvest Management Strategy Study and intends to initiate rulemaking to amend R12-4-609 accordingly.

**R12-4-610. ~~Petition for Requesting Closure of Hunting, Fishing, or Trapping Privileges on State or Federal Lands~~ Petitions for the Closure of State or Federal Lands to Hunting, Fishing, or Trapping, or to the Operation of Motor Vehicles**

- The Section heading of the rule has been found to be too narrow in scope. To fully address the provisions of the rule, the Department will amend the Section heading as follows: "Petitions for Requesting the Closure of State or Federal Lands to Hunting, Fishing, or Trapping Privileges on State or Federal Lands or to the Operation of Motor Vehicles."
- Subsections (E) and (E)(1) have been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to revise subsections (E) and (E)(1) as follows:
  - E. Within 15 working days of a petition's filing, the Department shall determine whether the petition meets the requirements prescribed in this rule and R12-4-110.
    - 1. If the petition meets the requirements prescribed in this rule and R12-4-110, and alternate solutions cannot be found which are acceptable to the petitioner, the Department shall place the petition on the agenda of an open meeting of the Arizona Game and Fish Commission according to the schedule designated in subsection (D) of this rule. The petitioner shall have the right to present oral testimony in support of the petition at that meeting, according to the provisions of R12-4-603.
  - E. Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with this Section, R12-4-110, and A.R.S. § 17-452. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.
    - 1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions of R12-4-603.
- Subsection (E)(2) has been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to revise subsection (E)(2) as follows:
  - 2. If the petition does not meet the requirements prescribed in this rule and R12-4-110, the Department shall return one copy of the petition as filed to the petitioner with reasons why it does not meet the requirements. The Department shall not place the petition on an agenda of an open meeting with the Commission.
  - 2. If a petition does not meet the requirements prescribed in this Section, R12-4-110, and A.R.S. § 17-452, the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.
  - 3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.
- Subsections (F) through (J) have been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to combine existing subsections (F) through (J) into new subsection (F) with the following revised rule language:
  - F. The petitioner shall submit a petition that:
    - 1. Is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8 1/2" x 11" paper;

Notices of Proposed Rulemaking

2. Has a concise map that shows the specific location of the proposed closure;
3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the page;
4. Is in four parts, with headings designating each part as prescribed in this subsection;
5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:
  - a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;
  - b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations the petitioner represents; or
  - c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.
6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:
  - a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;
  - b. A complete legal description of the area to be closed;
  - c. The name or identifying number of any road and the portion of the road affected by the closure;
  - d. The dates proposed for the closure:
    - i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to five years), and whether or not the closure is seasonal; or
    - ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.
7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:
  - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
  - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition.
  - c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
  - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and
  - e. A proposed alternate access route, under R12-4-110.
8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:
  - a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (F)(5)(b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee.
  - b. The month, day, and year that the person signed the petition.

**R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy**

The Department intends to add a new Section to the Article 6 rules to prescribe a process for petitions for Commission Hearings:

- A. If no administrative remedy exists in statute, rule or policy, an aggrieved person may request a hearing before the Commission by following the provisions of this Section.

Notices of Proposed Rulemaking

- B. Any person who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.
- C. A petitioner shall file the original and one copy of the petition with the Arizona Game and Fish Department, Director's Office, 2221 W. Greenway Rd., Phoenix, Arizona 85023.
- D. The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8 1/2" x 11" paper, or legible if handwritten. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.
- E. The petitioner shall ensure that the title of Part 1 is, as applicable, "Identification of Petitioner" and that Part 1 includes the following information:
1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
  2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members may be given; or
  3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.
- F. The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.
- G. The petitioner shall ensure that the title of Part 3 of the petition "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.
- H. The petitioner shall ensure that the title of Part 4 is "Date and Signatures." Part 4 shall contain:
1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
  2. The month, day, and year that the petition is signed.
- I. If a petition does not comply with this Section, the Director shall return the petition and indicate why the petition is deficient.
- J. After the Director receives a petition that complies with this Section, the Director shall place the petition on the agenda of a regularly-scheduled Commission meeting.
- K. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
- L. This Section does not apply to the following:
1. A matter related to a license revocation or civil assessment; or
  2. An unsuccessful hunt permit-tag draw application, where there was no error on the part of the Department.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
Not applicable
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**  
The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 Five-year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. Therefore, the proposed rulemaking will not create a significant monetary economic, small business, or consumer impact.

Notices of Proposed Rulemaking

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Dana Yost  
Address: 2221 W. Greenway Rd.  
Phoenix, AZ 85023  
Telephone: (602) 798-3281  
Fax: (602) 789-3677

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

Written comments will be accepted at the address listed in item #9 30 days after this Notice is published in the *Arizona Administrative Register*. The Game and Fish Commission will hold an additional public hearing and may take action to amend the rule on:

Date: March 12-13, 2003  
Time: TBA  
Location: Best Western Inn Suites  
6201 N. Oracle Rd.  
Tucson, AZ 85704  
Nature: Arizona Game and Fish Commission meeting

The Arizona Game and Fish Commission follows Title II of the Americans with Disabilities Act. The Commission does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rule-making or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the public comment process, or who require this information in an alternate form, may contact Mark E. Naugle at (602) 789-3289 (Voice); 1-800-367-8939 (TDD); 2221 W. Greenway Road, Phoenix, AZ 85023-4399. Requests should be made as soon as possible so that the Arizona Game and Fish Department will have sufficient time to respond.

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

None

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

None

**13. The full text of the rules follows:**

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

Section

- R12-4-601. ~~Petition for rule~~ Rule
- R12-4-602. ~~Written comment on proposed rules~~ Comment on Proposed Rules
- R12-4-603. Oral Proceedings Before the Commission
- R12-4-604. ~~Ex parte communication~~ Parte Communication
- R12-4-605. Standards for ~~revocation and denial of right to obtain license~~ Revocation, Suspension, or Denial of a License
- R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages
- R12-4-607. Rehearing or Review of Commission Decisions
- R12-4-609. Commission Orders
- R12-4-610. ~~Petition for Requesting Closure of Hunting, Fishing, or Trapping Privileges on State or Federal Lands~~ Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles
- R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

**R12-4-601. Petition for ~~rule~~ Rule**

**A.** Any ~~person~~ individual, including any organization or agency, requesting that the Commission ~~adopt~~ make, amend, or repeal a rule, shall submit a petition as prescribed in this ~~rule~~ Section ~~before such request may be considered by the Commission.~~

**B.** Any individual, including any organization or agency, requesting that the Commission review an existing Department practice or substantive policy that the petitioner alleges to constitute a rule (as defined in A.R.S. § 41-1001) under A.R.S. § 41-1033, shall submit a petition as prescribed in this Section.

~~B.C.~~ A ~~petition may~~ petitioner shall not address more than one rule, practice, or substantive policy in the petition.

~~C.D.~~ ~~Once~~ If the Commission has considered and denied a petition, and a petitioner submits a petition submitted within the next year ~~which that~~ addresses the same substantive issue, the petitioner shall be accompanied by provide a written statement ~~containing that contains~~ any reason not previously considered which the petitioner believes should cause the Commission to reconsider its by the Commission in making a decision.

~~D.E.~~ ~~The~~ A petitioner shall file an original and one copy of a petition shall be filed with the Arizona Game and Fish Department, Director's Office, ~~2222~~ 2221 West Greenway Rd., Phoenix, Arizona 85023. A petition shall be filed ~~30~~ 60 calendar days ~~prior to before~~ a scheduled Commission meeting ~~in order to be submitted to the Commission at to be placed on the agenda for that meeting.~~ Petitions If a petition is received after that time, it shall be submitted to the Commission at the following regularly-scheduled open meeting. The For the purposes of this Article, the date that the Commission considers the petition is considered by the Commission in at an open meeting shall be considered the date of is the submission date of a the petition.

~~E.F.~~ Within five working days of a ~~petition's filing after a petition is filed~~, the Director shall determine whether the petition ~~meets the requirements prescribed in~~ complies with this rule Section.

1. If the petition ~~meets the requirements prescribed in~~ complies with this rule, the Director shall place the petition on ~~the a Commission open meeting agenda of an open meeting of the Commission~~ according to the schedule designated in subsection (D) of this rule. The petitioner shall ~~have the right to may~~ present oral testimony ~~in support of the petition~~ at that meeting, ~~according to the provisions of by complying with R12-4-603, Oral proceedings before the Commission.~~

2. If ~~the a~~ petition does not ~~meet the requirements prescribed in~~ comply with subsections (F) through (K) of this rule Section, the Director shall return ~~the a~~ copy of the petition as filed to the petitioner ~~with reasons and indicate in writing why it the petition does not meet the requirements of this rule comply with this Section.~~ The Director ~~will~~ shall not place the ~~petitions~~ petition on ~~an a Commission agenda for open meeting of the Commission.~~ The Department shall maintain the original petition shall remain on file with the Department for five years to be considered in the course of the normal rules review and consider the petition as a comment during the five-year review process.

~~F.G.~~ ~~Petitions shall be submitted typewritten~~ Petitions shall be typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2" x 11" paper; or typewritten, computer or word processor printed, or legibly handwritten on a form provided by the Department. The title shall appear at the top of the first page and shall be: "Petition for Rule to Arizona Game and Fish Commission" be centered at the top of the first page and appear as "Petition to the Arizona Game and Fish Commission." The petition shall be in five parts, with headings designating each part as prescribed in subsections (G) through (K) of this rule The petition shall include the items listed in subsections (G) through (K). The items in the petition shall be presented in the order in which they are listed in this Section.

~~G.H.~~ ~~The title of Part 1 shall be headed "Identification of Petitioner." The title shall be centered at the top of the first page of this part. Part 1 shall contain:~~

1. ~~When~~ If the petitioner is a private ~~person~~ individual, ~~Part 1 shall contain the name, mailing address, and phone telephone number of the petitioner;~~

2. If the petitioner is a private group or organization, ~~Part 1 shall contain the name and address of the group or organization, and the name, mailing address and phone telephone number of one person an individual who is designated as the representative and or official contact relative to the petition; for the petitioner; Part 1 shall also state how many members are represented and how many of these members are the total number of individuals, and the number of Arizona residents represented by the petitioner; or If petitioner prefers, the names and addresses of all members may be given; individuals represented by the petitioner; and~~

3. If the petitioner is a public agency, ~~Part 1 shall contain the name and address of the agency and the name, title, and telephone number of the agency's representative relative to the petition.~~

~~H.I.~~ ~~The title of Part 2 shall be headed "Request for Rule" or "Request for Review," as applicable. The title shall be centered at the top of the first page of this part. Part 2 shall contain; one of the following:~~

1. If the ~~request~~ petition is for ~~adoption of a new rule, a statement of that fact to this effect, followed by the title heading and specific language of the proposed rule;~~

2. If the request is for amendment of a current rule, a statement ~~of that fact to this effect, followed by the Arizona Administrative Code (A.A.C.) number of the current rule proposed for amendment, the heading and title of the rule~~

Notices of Proposed Rulemaking

being proposed for amendment. This shall be followed by the specific, clearly readable language of the current rule; any indicating language to be deleted shall be struck out but clearly readable with strikeouts, and any language to be added by the proposed amendment shall be underlined with underlining.

3. If the request is for repeal for of a current rule, a statement of to this fact effect, followed by the *Arizona Administrative Code* (A.A.C.) number of the rule proposed for repeal and title the heading of the rule being proposed for repeal;
4. If the request is for review of an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule (as defined in A.R.S. § 41-1001), a statement to this effect, followed by the practice or policy number, if any, the practice or policy heading, if any, or a brief description of the practice or policy subject matter.

~~I.~~ **J.** The title of Part 3 shall be headed "Reason for Rule the Petition." The title shall be centered at the top of the first page of this part. Part 3 shall contain:

1. The reason why the petitioner believes the rule should be considered rulemaking or review of a practice or policy is necessary;
2. Any statistical data or other justification supporting the reasons for the rule rulemaking or review of the practice or policy, with clear reference to any exhibits which that may be are attached to or included with the petition;
3. An identification of what the persons any individuals or segment of the public special interest groups the petitioner believes would be impacted by the rule or a review of the practice or policy, and how they would be impacted; and
4. If the petitioner is a public agency, Part 3 shall also contain a summary of issues raised in any public meeting or hearing relative to regarding the petition, or any written comments offered by the public.

~~J.~~ **K.** The title of Part 4 shall be headed "Statutory Authority." The title shall be centered at the top of the first page of this part. In Part 4, the petitioner shall contain an identification of identify any statute which that the petitioner believes gives authorizes the Commission the authority to adopt make the rule, if known or cite to A.R.S. § 41-1033 if the petition relates to review of an existing practice or substantive policy statement.

~~K.~~ **L.** The title of Part 5 shall be headed "Date and Signature." The title shall be centered at the top of the first page of this part. Part 5 shall contain:

1. The An original signature of private party the representative or the official contact, if the petitioner is a private group or organization or private individual named pursuant to under subsection subsections (G)(1) or (G)(2); or
2. If the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
3. The month, day, and year that person signed the petition is signed.

~~L.~~ When a petition is made by a land management agency for restrictions on motor vehicle use as pursuant to A.R.S. § 17-451 through A.R.S. § 17-548, the petition shall include:

1. Within the specific language of the proposed rule, a legal description of the area to be closed;
2. Within the specific language of the proposed rule, the name or identifying number of any road and the portion thereof to be specifically closed;
3. Within the "Reason for Rule," the inclusive dates proposed for such closure, and whether the agency intends to re-petition for renowned closure at closure's expiration;
4. Within the "Reason for Rule," a general identification of any valid licensees and permittees, pursuant to A.R.S. § 17-455(A)(2), or explanation of method for identification of such valid licensees and permittees within the closed area.

**R12-4-602. Written comment on proposed rules Comment on Proposed Rules**

Any person individual may submit written statements, arguments, data, and views on proposed rules which that have been filed with the Secretary of State pursuant to under A.R.S. § 41-1022. An individual who submits written comments to the Commission may voluntarily provide their name and or mailing address. In order to To be placed into the rulemaking record and considered by the Commission in its for a final decision, such the individual submitting the written comment comments shall ensure that they:

1. Contain the name and address of the sender;
2. Be Are received prior to before or on the closing date for written comments, as published by the Secretary of State in the *Arizona Administrative Register*;
3. Indicate, if representing expressed on behalf of a group or organization, whether the views expressed are the official position of such the group or organization, how many members the number of individuals represented are represented, types of membership available, and number of Arizona residents in each membership category;
4. Be Are submitted to the person employee designated by the Department as the agency contact person to receive written comments, as published in the *Arizona Administrative Register*.

**R12-4-603. Oral Proceedings Before the Commission**

**A.** For the purposes of this Section, "matter" or "proceeding" means any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting.

**A.B.** The Commission may, at its discretion or as required by the provisions of A.R.S. § 41-1023, allow an oral proceedings proceeding on any matter. At an oral proceedings proceeding:

Notices of Proposed Rulemaking

1. The Chair is responsible for ~~the conduct of~~ conducting the proceeding, ~~and anyone wishing~~. If an individual wants to speak, ~~the individual~~ shall first request and be granted permission by the Chair.
2. ~~When necessary or appropriate~~ Depending on the nature of the proceeding, the Chair may administer an oath to a witness before receiving testimony.
3. The Chair may ~~cause~~ order the removal of any persons individual who ~~conduct themselves in a disruptive or disrespectful manner~~ is disrupting the proceeding.
4. ~~The~~ Based on the amount of time available, the Chair may limit the number of presentations or the time for testimony ~~upon~~ regarding a particular issue; and ~~may shall~~ prohibit irrelevant, ~~or~~ immaterial, ~~or~~ repetitive testimony.
5. Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made, ~~approved or confirmed~~ by the Commission.

~~B.C.~~ The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. The hearing officer has the same authority as the Chair in conducting oral proceedings, as provided in this Section.

D. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:

1. Deliver the request to the Director no later than twenty-four (24) hours before the scheduled proceeding;
2. Demonstrate that the proceeding has not been continued more than twice; and
3. Demonstrate good cause for the continuance.

**R12-4-604. Ex parte communication ~~Parte Communication~~**

A. For purposes of this Section:

1. "Person outside the Commission" means any ~~person~~ individual other than a Commissioner, personal aide to a Commissioner, Department employee, ~~or~~ consultant of the Commission, or an attorney representing the Commission.
2. "Ex parte communication" means ~~an~~ any oral or written communication with the Commission that is not on part of the public record with respect to and for which no reasonable prior written notice has been given to all interested parties, is not given.

B. In any contested case ~~or proceeding~~ (as defined in A.R.S. § 41-1001) or proceeding or appealable agency action (as defined in A.R.S. § 41-1092) before the Commission, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure, the following prohibitions apply to ex parte communication:

1. ~~No~~ An interested ~~person individual~~ outside the Commission shall not make or knowingly cause to be made to any Commissioner, Commission hearing officer, personal aide to a Commissioner, ~~or other~~ Department employee, or consultant who is or may reasonably be expected to be involved in the ~~decisional~~ decision-making process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
2. ~~No~~ A Commissioner, Commission hearing officer, personal aide to a Commissioner, ~~or other~~ Department employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall not make or knowingly cause to be made to any interested person outside the Commission an ex parte communication relevant to the merits of the proceeding.

C. A Commissioner, Commission hearing officer, personal aide to a Commissioner, ~~or other~~ Department employee, or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a communication prohibited ~~by this rule~~ in subsections (B)(1) or (B)(2) of this Section, shall place on the public record of the proceeding and serve on all interested parties to the proceeding with:

1. ~~All such written communications~~ A copy of each written communication;
2. ~~Memoranda stating the substance of all such oral communications~~ A memorandum stating the substance of each oral communication; and
3. ~~All written responses, and memoranda stating the substance of all oral responses, to the communications described in (C)(1) and (2)~~ A copy of each response and memorandum stating the substance of each oral response to any communication governed by subsections (C)(1) and (C)(2).

D. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Commission or its hearing officer, to the extent consistent with ~~the interests of justice and the policy of the underlying statutes and rules, equity and fairness,~~ may require the party to show cause why the claim or interest in proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected ~~on account~~ because of such the violation.

E. The provisions of this Section shall apply ~~beginning at the time in which the~~ from the date that a notice of hearing for a contested case proceeding is noticed for hearing is served, or at the time a notice of opportunity for hearing is issued appealable agency action is served, or a request for hearing is filed, whichever comes first, unless the person responsible for the communication has knowledge that it a proceeding will be noticed, in which case the prohibitions shall apply beginning at the time of the acquisition of such from the date that the individual acquired the knowledge.

**R12-4-605. Standards for ~~revocation and denial of right to obtain license~~ Revocation, Suspension, or Denial of a License**

- A. Pursuant to ~~Under~~ A.R.S. §§ 17-340 and ~~17-362~~, the Commission shall hold a hearing and may revoke, ~~or~~ suspend, ~~or deny all or any of the~~ hunting, fishing, ~~or and~~ trapping ~~license licenses~~ of any person ~~when that person~~ for an individual who has been convicted of any of the following offenses:
1. Killing or wounding a big game animal during a closed season or possessing a big game animal taken during a closed season. Conviction for possession of a road-kill ~~animals or animals causing animal or an animal that was engaged in~~ depredation ~~shall not be~~ is not considered "possessing during a closed season" ~~relevant to~~ for the purposes of this subsection.
  2. Destroying, injuring, damaging, or molesting livestock, ~~growing crops~~, personal property, notices or signboards, ~~or~~ other improvements, or growing crops while hunting, fishing, or trapping.
  3. Careless use of ~~firearms~~ a firearm while hunting, fishing, or trapping ~~which has resulted that results in the~~ injury or death ~~to of~~ any person, ~~when if~~ the act of discharging the firearm was deliberate.
  4. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
  5. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
  6. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).
- B. Pursuant to A.R.S. § 17-340, ~~the Commission may hold a hearing and may revoke or suspend all or any of the hunting, fishing and trapping licenses of any person when that person has been convicted of any of the following offenses: Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:~~
1. Unlawfully taking or possessing big game, ~~when there is convincing if sufficient evidence,~~ which may or may not have been introduced in the court proceeding, ~~to support~~ supports any of the following conclusions:
    - a. The big game was taken without a valid license or permit.
    - b. The unlawful taking was willful and deliberate ~~and not accidental.~~
    - c. The person in unlawful possession aided the unlawful taking or was, or should have been, aware that the taking was unlawful.
  2. Unlawfully taking or possessing small game or fish, ~~when there is convincing if sufficient evidence,~~ which may or may not have been introduced in the court proceeding, ~~to support~~ supports any of the following conclusions:
    - a. The taking was willful and deliberate.
    - b. The possession was in excess of the lawful possession limit plus the daily bag limit.
  3. Unlawfully taking ~~other~~ wildlife species, ~~when there is convincing if sufficient evidence,~~ which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for ~~the~~ state wildlife laws.
  4. Littering a public hunting or fishing area while taking wildlife, ~~when there is convincing if sufficient evidence,~~ which may or may not have been introduced in the court proceeding ~~that the amount of litter was substantial, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the person individual convicted made no reasonable effort to dispose of the litter in a lawful manner.~~
  5. Careless use of ~~firearms~~ a firearm while hunting, fishing, or trapping ~~which that~~ resulted in injury or death to any person, ~~when if~~ the act of discharging the firearm was not deliberate, but ~~when there is convincing sufficient evidence,~~ which may or may not have been introduced in the court proceeding, indicates that the careless use demonstrated wanton disregard for the safety of human life or property.
  6. Any ~~other~~ violation for which a license can be revoked pursuant to under A.R.S. § 17-340, ~~when that if the person has been convicted of other a revocable offenses offense within the past three years, and that person's actions show disregard for the state's wildlife laws.~~
  7. Violation of A.R.S. § 17-306 for unlawful possession of wildlife.
- C. ~~The~~ Under A.R.S. §§ 17-238, 17-362, 17-363, 17-364, and 17-340, if the Department has made a recommendation to the Commission for license revocation, ~~the Commission may shall~~ hold a hearing and may revoke ~~or suspend all or any of the~~ hunting, fishing and trapping licenses of any person ~~fur~~ dealer, guide, taxidermy, or special license (as defined in R12-4-401) in any ~~other~~ case where license revocation is authorized by law.

**R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages**

- A. The Director may commence ~~proceedings~~ a proceeding for the Commission to revoke, suspend or deny ~~the right to obtain~~ a license under A.R.S. §§ ~~17-238, 17-340, 17-362, 17-363, 17-364, 17-340 and~~ R12-4-105 and R12-4-605. The Director may also commence ~~proceedings~~ a proceeding for civil damages under A.R.S. § 17-314.

Notices of Proposed Rulemaking

- B. The Commission shall conduct ~~hearings~~ a hearing concerning ~~license revocations~~ revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. § ~~41-1061 et seq~~ Title 41, Chapter 6, Article 10. ~~The respondents~~ A respondent shall limit their testimony to any facts that show why the license should not be revoked or denied. ~~Guilt or innocence of the violation charged~~ Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this ~~shall not be an~~ issue in the proceeding. The Commission ~~may also~~ shall 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 the right to be heard if the~~ If a respondent is not present at the ~~does not appear~~ for a hearing on the date ~~scheduled, at the~~ time; and location noticed, and no further opportunity to be heard ~~will be~~ is provided ~~except, unless rehearing or review is granted~~ under R12-4-607. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing ~~required by A.R.S. § 17-340(D)~~. The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.
- D. The Commission shall base its decision on 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~~ With the notice of hearing required by A.R.S. § 17-340(D), the Department shall supply the respondent with a copy of ~~all documents used by the~~ each document provided to the Commission for use in reaching its a 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 that provides~~ 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~~ has the authority to issue the subpoenas.
1. A party shall ~~serve~~ have a subpoena ~~served~~ as ~~prescribed~~ in the Arizona Rules of Civil Procedure, ~~Rules 4 and 5~~ Rule 45. An employee of the Department may serve a subpoena at the request of the Commission chair.
  2. ~~Any~~ A party may request ~~amendment to a subpoena that a subpoena be amended~~ at any ~~given time prior to~~ before the ~~time deadline~~ provided in this Section for filing ~~an~~ the application for a subpoena. The party shall have the amended subpoena ~~shall be~~ served as provided in subsection (E)(1).
- F. A license revoked by the Commission is suspended ~~as of~~ on the date of the hearing, and revoked upon issuance of the findings of fact, conclusions of law, and order. If a ~~person~~ respondent 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~~ a period ~~not to exceed five years, as~~ determined by the Commission, beginning on the date of the hearing.
- G. ~~A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order suspending a license, the license is suspended after all appeals have been completed. Under A.R.S. § 17-340(A), a suspension of a license is effective for a period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.~~

**R12-4-607. 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.
- A.** For purposes of this Section the following terms apply:
1. "Contested case" and "party" are defined as provided in A.R.S. § 41-1001;
  2. "Appealable agency action" is defined as provided in A.R.S. § 41-1092(3).
- B. Except as provided in subsection (G), any party in a contested case ~~or~~ appealable agency action before the Commission may file a motion for rehearing or review within 30 calendar days after service of the ~~final~~ administrative 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.
- 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 ~~40~~ 15 calendar days after service to respond to the motion or the amended motion. The Commission ~~may~~ has the authority to require ~~the filing of that the parties file~~ written briefs on any issue raised in a motion or response, and ~~may provide~~ allow for oral argument.
- D. The Commission ~~may~~ has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the proceedings of the Commission, ~~its staff, its hearing officer, or the prevailing party~~, or any order or abuse of discretion ~~which that~~ deprived the moving party of a fair hearing;
  2. Misconduct of the Commission, its staff, ~~its hearing officer~~ an administrative law judge, or the prevailing party;
  3. Accident or surprise ~~which that~~ could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence ~~which that~~ could not, with reasonable diligence, have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;

Notices of Proposed Rulemaking

6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
  7. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Commission may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). The Commission's order modifying a decision or granting a rehearing shall specify the grounds for the order, and ~~the any~~ rehearing ~~or review~~ shall cover only those specified matters.
- F. Not later than ~~40~~ 15 calendar days, after a decision is rendered, the Commission may ~~order grant~~ grant a rehearing or review on its own initiative for any reason for which it might have granted relief 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 a rehearing shall specify the grounds for the order.~~
- G. When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may within 10 calendar days after ~~such~~ service, serve opposing affidavits. 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~~ has the authority to permit reply affidavits.

**R12-4-609. Commission Orders**

- A. Except as provided in subsection (B):
1. At least 20 calendar days ~~prior to before~~ a meeting where the Commission will consider a Commission ~~order~~ Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public ~~announcement notice~~ announcement of the ~~proposed recommended~~ Commission ~~order~~ Order to print and ~~electronics~~ electronic media ~~in accordance with A.R.S. § 38-431.02~~ at least 20 calendar days before the meeting.
  2. The ~~Department announcement~~ shall ensure that the public meeting notice and agenda contains ~~contain~~ the date, time, and location of the Commission meeting where ~~these recommendations~~ the Commission Order will be considered and a statement that the public may attend and present written comments at or before the ~~hearing~~ meeting.
  3. The ~~Department announcement~~ shall ~~also state~~ also ensure that the public meeting notice and agenda states that ~~copies a copy of the proposed Commission Order is~~ orders will be available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days ~~prior to before~~ the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.
- B. The requirements of subsection (A) do not apply to Commission orders establishing:
1. Supplemental hunts as prescribed in R12-4-115, and
  2. Special seasons for ~~persons possessing~~ individuals that possess special license tags issued under A.R.S. § 17-346 and R12-4-120.
- C. The Department shall publish the content of all Commission orders and make them available to the public without charge.

**R12-4-610. ~~Petition for Requesting Closure of Hunting, Fishing, or Trapping Privileges on State or Federal Lands~~ Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles**

- A. Any ~~person~~ individual or agency requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping ~~pursuant to under~~ R12-4-110 or A.R.S. § 17-304(B), ~~or closing roads or trails on state lands pursuant to under~~ R12-4-110, shall submit a petition as prescribed in this ~~rule~~ Section before ~~such a~~ the Commission will consider the request ~~may be considered by the Commission.~~
- B. A petition shall not address more than one contiguous closure request.
- C. Once the Commission has considered and denied a petition, ~~a petition submitted an individual who~~ subsequently ~~which~~ submits a petition that addresses the same contiguous closure request shall ~~be accompanied by provide~~ provide a written statement ~~containing that contains~~ any reason not previously considered ~~which the petitioner believes should cause by~~ the Commission to ~~reconsider its in making~~ in making a decision.
- D. The petitioner shall file an original and one copy of a the petition shall be filed with the Director of the Arizona Game and Fish Department, 2221 West Greenway, Phoenix, Arizona 85023. ~~A petition shall be filed,~~ not less than 60 calendar days ~~prior to before~~ a scheduled Commission meeting ~~in order to be considered by the Commission at~~ placed on the agenda for that meeting. ~~Petitions received~~ If the Commission receives a petition after that time shall be submitted to the Commission ~~at the following it will be considered at the next~~ regularly-scheduled open meeting. ~~The~~ At any time, the petitioner may at any time withdraw the petition or request delay to a later regularly-scheduled open meeting.
- E. Within 15 working days of a petition's filing, the Department shall determine whether the petition meets the requirements prescribed in this rule and R12-4-110.
1. If the petition meets the requirements prescribed in this rule and R12-4-110, and alternate solutions cannot be found ~~which are acceptable to the petitioner,~~ the Department shall place the petition on the agenda of an open meeting of the Arizona Game and Fish Commission according to the schedule designated in subsection (D) of this rule. The peti-

tioner shall have the right to present oral testimony in support of the petition at that meeting, according to the provisions of R12-4-603.

- E.** Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with this Section, R12-4-110, and A.R.S. § 17-452. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.
1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions of R12-4-603.
  2. If the petition does not meet the requirements prescribed in this rule and R12-4-110, the Department shall return one copy of the petition as filed to the petitioner with reasons why it does not meet the requirements. The Department shall not place the petition on an agenda of an open meeting with the Commission.
  2. If a petition does not meet the requirements prescribed in this Section, R12-4-110, and A.R.S. § 17-452, the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.
  3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.
- F.** Petitions shall be submitted typewritten, double spaced, on 8 1/2 x 11" paper. A concise map with legal descriptions, showing the specific location of the proposed closure, shall accompany the typewritten petition. The title shall appear at the top of the first page and shall be "Petition for Closure to Hunting, Fishing or Trapping on State or Federal Land." The petition shall be in four parts, with headings designating each part as prescribed in subsections (G) through (J) of this rule.
- G.** Part 1 shall be headed "Identification of Petitioner."
1. When the petitioner is the leaseholder of the area being proposed for closure, Part 1 shall contain the name, lease number, mailing address, and home telephone number of the petitioner.
  2. If the petitioner is anyone other than the leaseholder, Part 1 shall contain the name, mailing address, and telephone number of the leaseholder in addition to the name, mailing address and telephone number of the petitioner and shall list any private groups or organizations the petitioner may represent.
  3. If the petitioner is a public agency, Part 1 shall contain the name and address of the agency and the name, title, and telephone number of the agency's representative relative to the petition.
- H.** Part 2 shall be headed "Request for Closure." Part 2 shall contain the following:
1. Designation of the type of closure requested: hunting, fishing, trapping, road closure, or locking or obliterating a gate.
  2. A complete legal description of the area to be closed.
  3. The name or identifying number of any road and the portion thereof affected by the closure to hunting, fishing, or trapping. If the request is for closure of a road or trail when no closure to hunting, fishing, or trapping is to be made, the petition shall designate the proposed alternate access route.
  4. The inclusive dates proposed for the closure or whether the request is for a permanent closure.
  5. A general identification of any other valid licensees or permittees that will or may be affected by the closure.
- I.** Part 3 shall be headed "Reason for Closure." Part 3 shall contain the following:
1. The reason why the petitioner believes the closure should be considered, pursuant to R12-4-110.
  2. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits which may be attached to the petition.
  3. An identification of what persons or segment of the public the petitioner believes would be impacted by the closure, and how they would be impacted, including both positive and negative implications.
  4. If the petitioner is a public agency, Part 3 shall also contain a summary of issues raised in any public hearing relative to the petition and any written comments received by the petitioning agency.
- J.** Part 4 shall be headed "Dates and Signatures" and shall contain the following:
1. The original signature of the private party or the official contact named pursuant to subsection (G)(1) or (2) of this rule, or
  2. If the petitioner is a public agency, the signature of the agency head.
  3. The month, day, and year that person signed the petition.
- F.** The petitioner shall submit a petition that:
1. Is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2" x 11" paper;
  2. Has a concise map that shows the specific location of the proposed closure;
  3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the page;
  4. Is in four parts, with headings designating each part as prescribed in this subsection;
  5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:
    - a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;

Notices of Proposed Rulemaking

- b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations the petitioner represents; or
- c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.
6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:
  - a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;
  - b. A complete legal description of the area to be closed;
  - c. The name or identifying number of any road and the portion of the road affected by the closure;
  - d. The dates proposed for the closure:
    - i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to five years), and whether or not the closure is seasonal; or
    - ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.
7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:
  - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
  - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition.
  - c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
  - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and
  - e. A proposed alternate access route, under R12-4-110.
8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:
  - a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (F)(5)(b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or designee; and
  - b. The month, day, and year when the petitions was signed.

**R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy**

- A.** If no administrative remedy exists in statute, rule or policy, an aggrieved person may request a hearing before the Commission by following the provisions of this Section.
- B.** Any person who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.
- C.** A petitioner shall file the original and one copy of the petition with the Arizona Game and Fish Department, Director's Office, 2221 W. Greenway Rd., Phoenix, Arizona 85023.
- D.** The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8 1/2" x 11" paper, or legible if handwritten. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.
- E.** The petitioner shall ensure that the title of Part 1 is, as applicable, "Identification of Petitioner" and that Part 1 includes the following information:
  1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
  2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members may be given; or
  3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.
- F.** The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.
- G.** The petitioner shall ensure that the title of Part 3 of the petition "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.

- H.** The petitioner shall ensure that the title of Part 4 is “Date and Signatures.” Part 4 shall contain:
1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head’s designee; and
  2. The month, day, and year that the petition is signed.
- I.** If a petition does not comply with this Section, the Director shall return the petition and indicate why the petition is deficient.
- J.** After the Director receives a petition that complies with this Section, the Director shall place the petition on the agenda of a regularly-scheduled Commission meeting.
- K.** If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
- L.** This Section does not apply to the following:
1. A matter related to a license revocation or civil assessment; or
  2. An unsuccessful hunt permit-tag draw application, where there was no error on the part of the Department.