

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Sections Affected

R4-23-604
R4-23-605
R4-23-613
R4-23-1106

Rulemaking Action

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 statutes: A.R.S. §§ 32-1904(A)(1) and (2), and (B)(3)

Implementing statutes: A.R.S. §§ 32-1925(I), 32-1929, 32-1930, 32-1931, and 32-1933

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 3191, August 13, 2004

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

Name: Dean Wright, Compliance Officer

Address: Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302

Telephone: (623) 463-2727, Ext. 131

Fax: (623) 934-0583

E-mail: rxcop@cox.net

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

The Board staff noticed that the drug manufacturer and drug wholesaler rules in R4-23-604 and R4-23-605 do not contain the requirement for change of ownership or relocation as the rules for pharmacies do in R4-23-606. To improve the rules consistency, clarity, and understandability, the proposed rules amend R4-23-604 and R4-23-605 to include subsections specifying the requirements for change of ownership and relocation. To improve the rules consistency, clarity, and understandability, the proposed rules amend R4-23-613, Procedure for Discontinuing a Pharmacy to change the required minimum number of days notice given to the Board before discontinuing a pharmacy from 10 days to the 14 days required by the DEA. A discontinued pharmacy's records retention requirement is changed to seven years from three. The 2004 Legislature passed H.B. 2196. H.B. 2196 amends A.R.S. § 32-1925(I) to require that the Board not renew a pharmacy technician license unless the licensee has complied with Board-approved mandatory continuing professional education requirements. The proposed rules add a new Section R4-23-1106, Continuing Education Requirements. The new Section details the Board's continuing education requirements for pharmacy technicians. The rules include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

The Board believes that approval of these rules benefits the public, pharmacists, pharmacy technicians, pharmacies, drug manufacturers, and drug wholesalers by clearly establishing the standards for pharmacy technician continuing education, discontinuing a pharmacy, and a drug manufacturer's or drug wholesaler's ownership change or relocation.

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6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

None

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 rules will impact the Board, drug manufacturers, drug wholesalers, pharmacies, pharmacists, and pharmacy technicians. The proposed rules' impact on the Board will be the usual rulemaking-related costs which are minimal. The proposed rules will have little or no economic impact on drug manufacturers, drug wholesalers, pharmacists or pharmacies. The proposed rules will not have a new economic impact on pharmacy technicians. The proposed rules require a pharmacy technician to obtain 20 contact hours of continuing education to renew their license. To become licensed by the Board, an individual must pass a Board-approved pharmacy technician licensure examination. The only examination presently approved by the Board is the Pharmacy Technician Certification Board (PTCB) examination. When an individual passes the PTCB examination, the person receives a PTCB certification. To maintain that certification, the person must complete 20 contact hours of continuing education. Because all pharmacy technicians licensed by the Board are also certified by the PTCB and already complete continuing education hours to maintain their PTCB certification, a licensed pharmacy technician incurs no additional cost to comply with the Board's continuing education requirements. Other changes to the rules simply improve the clarity, conciseness, and understandability of the rules. The proposed rules have no economic impact on the public.

The public, Board, pharmacists, pharmacy technicians, pharmacies, drug manufacturers, and drug wholesalers benefit from rules that are clear, concise, and, understandable. The proposed rules benefit the public, the Board, pharmacists, pharmacy technicians, pharmacies, drug manufacturers, and drug wholesalers by clearly establishing the standards for pharmacy technician continuing education, discontinuing a pharmacy, and a drug manufacturer's or drug wholesaler's ownership change or relocation.

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: Dean Wright, Compliance Officer
Address: Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302
Telephone: (623) 463-2727 ext. 131
Fax: (623) 934-0583
E-mail: rxcop@cox.net

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:

Comments may be written or presented orally. Written comments must be received by 5 p.m., Monday, October 12, 2004. An oral proceeding is scheduled for:

Date: October 12, 2004
Time: 10:00 a.m.
Location: 4425 W. Olive Ave., Suite 140
Glendale, AZ 85302

A person may request information about the oral proceeding by contacting the person listed above.

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:

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

- R4-23-604. Resident Drug Manufacturer
- R4-23-605. Resident Drug Wholesaler Permit
- R4-23-613. Procedure for Discontinuing a Pharmacy

ARTICLE 11. PHARMACY TECHNICIANS

Section

- R4-23-1106. Continuing Education Requirements

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-604. Resident Drug Manufacturer

- A.** No change
- B.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
 - 10. No change
 - 11. No change
 - 12. No change
 - 13. No change
 - 14. No change
- C.** No change
 - 1. No change
 - 2. No change
 - 3. No change
- D.** Notification. A drug manufacturer permittee shall notify the Board of changes involving the drug list, ownership, address, telephone number, name of business, manager, or pharmacist-in-charge, including manager's or pharmacist-in-charge's telephone number. A drug manufacturer permittee shall comply with the notification of a change involving the drug list, telephone number, name of business, manager, or pharmacist-in-charge, including manager's or pharmacist-in-charge's telephone number by submitting to the Executive Director within 24 hours of the change a written notice via mail, facsimile, or e-mail.
- E.** Change of ownership. Before any change of ownership occurs, a prospective owner shall submit the application packet described under R4-23-604(B), except for changes of stock ownership of less than 30% of the voting stock of a corporation or an existing and continuing corporation that is actively traded on any securities market or over-the-counter market.
- F.** Before the relocation of an existing drug manufacturer, the drug manufacturer permittee shall submit the application packet described under R4-23-604(B), except a fee is not required. The new facility shall pass a final inspection by a Board compliance officer before operations begin.
- G.** A drug manufacturer permittee shall submit the application packet described under R4-23-604(B) for any change of officers in a corporation, except a fee and final inspection are not required.
- ~~**H.**~~ No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 2. No change

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- ~~F.L.~~ No change
- ~~G.L.~~ No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
- ~~H.K.~~ No change
- ~~I.L.~~ No change
 - 1. No change
 - 2. No change
 - 3. No change
- ~~J.M.~~ No change
- ~~K.N.~~ No change
- ~~L.O.~~ No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - b. No change
 - 6. No change
 - a. No change
 - b. No change

R4-23-605. Resident Drug Wholesaler Permit

- A. No change
- B. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
- C. Notification. A full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the type of drugs sold or distributed, ownership, address, telephone number, name of business, manager, or responsible person, including manager's or responsible person's telephone number. A full-service or nonprescription drug wholesale permittee shall comply with the notification of a change involving the type of drugs sold or distributed, telephone number, name of business, manager, or responsible person, including manager's or responsible person's telephone number by submitting to the Executive Director within 24 hours of the change a written notice via mail, facsimile, or e-mail.
- D. Change of ownership. Before any change of ownership occurs, a prospective owner shall submit the application packet described under R4-23-605(B), except for changes of stock ownership of less than 30% of the voting stock of a corporation or an existing and continuing corporation that is actively traded on any securities market or over-the-counter market.
- E. Before the relocation of an existing full-service or nonprescription drug wholesaler, the full-service or nonprescription drug wholesale permittee shall submit the application packet described under R4-23-605(B), except a fee is not required. The new facility shall pass a final inspection by a Board compliance officer before operations begin.
- F. A full-service or nonprescription drug wholesale permittee shall submit the application packet described under R4-23-

605(B) for any change of officers in a corporation, except a fee and final inspection are not required.

- ~~D.G.~~ No change
1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 2. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - c. No change
 3. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 4. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - i. No change
 - ii. No change

- ~~E.H.~~ No change
1. No change
 2. No change
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 4. No change
 5. No change
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 7. No change
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 9. No change

- ~~F.I.~~ No change
1. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - d. No change
 - e. No change
 - i. No change

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- ii. No change
- iii. No change
- 2. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - d. No change
 - e. No change
 - i. No change
 - ii. No change
 - iii. No change

R4-23-613. Procedure for Discontinuing a Pharmacy

- A. A pharmacy permittee or pharmacist-in-charge shall provide written notice to the Board and the Drug Enforcement Administration (D.E.A.) at least ~~40~~ 14 days before discontinuing operation of the pharmacy. The notice shall contain the following information:
 - 1. No change
 - 2. No change
 - 3. Name and address of the location where the discontinuing pharmacy's records of purchase and disbursement of controlled substances and prescription-only drugs will be kept and the person responsible for the records. These records shall be kept for a minimum of ~~three~~ seven years from the last transaction date.
 - 4. Name and address of the location where the discontinuing pharmacy's prescription files and patient profiles will be kept and the person responsible for the files and profiles. These records shall be kept for a minimum of ~~three~~ seven years from the date the last original or refill prescription was dispensed; and
 - 5. No change
- B. No change
- C. No change
- D. The pharmacist-in-charge of the pharmacy discontinuing business shall ensure that:
 - 1. No change
 - 2. No change
 - 3. All controlled substances are transferred as follows:
 - a. No change
 - b. No change
 - c. Keep the original of the inventory with the discontinued pharmacy's records of drug purchase and disbursement for a minimum of ~~three~~ seven years from the date the pharmacy is discontinued;
 - d. No change
 - e. No change
- E. No change
- F. During the ~~three~~ seven year record retention period, the person described in subsection (A)(3) or (4) shall provide to the Board upon its request a discontinued pharmacy's records of the purchase and disbursement of controlled substances and prescription-only drugs, prescription files, and patient profiles.

ARTICLE 11. PHARMACY TECHNICIANS

R4-23-1106. Continuing Education Requirements

- A. General. In accordance with A.R.S. § 32-1925(I), the Board shall not renew a pharmacy technician license unless the applicant has, during the two years preceding the application for renewal, participated in 20 contact hours (2.0 CEUs) of continuing education activity sponsored by an Approved Provider as defined in R4-23-110. of which at least two contact hours (0.2 CEUs) are approved courses in pharmacy law. A pharmacy technician licensed for less than 24 months shall obtain continuing education units in an amount determined by multiplying 1.25 hours times the number of months between the date of initial licensure and the next license renewal date.
- B. Acceptance of continuing education units (CEUs). The Board shall:
 - 1. Only accept CEUs for continuing education activities sponsored by an Approved Provider;
 - 2. Only accept CEUs accrued during the two-year period immediately before licensure renewal;
 - 3. Not allow CEUs accrued in a biennial renewal period in excess of the 2.0 CEUs required to be carried forward to the succeeding biennial renewal period;
 - 4. Allow a pharmacy technician who leads, instructs, or lectures to a group of health professionals on pharmacy-related

Notices of Proposed Rulemaking

- topics in continuing education activities sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attender of the continuing education activity; and
5. Not accept as CEUs the performance of normal teaching duties within a learning institution by a pharmacy technician whose primary responsibility is the education of health professionals.
- C.** Continuing education records and reporting CEUs. A pharmacy technician shall:
1. Maintain continuing education records that:
 - a. Verify the continuing education activities the pharmacy technician participated in during the preceding five years; and
 - b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
 2. At the time of licensure renewal, attest to the number of CEUs the pharmacy technician participated in during the renewal period on the biennial renewal form; and
 3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- D.** A pharmacy technician's failure to comply with the continuing education participation, recording, or reporting requirements of this Section is considered unprofessional conduct and is grounds for disciplinary action by the Board under A.R.S. § 32-1927.01.
- E.** A pharmacy technician who is aggrieved by any decision of the Board or its administrative staff concerning continuing education units may request a hearing before the Board.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R12-4-101 | Amend |
| R12-4-104 | Amend |
| R12-4-107 | Amend |
| R12-4-115 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 17-231 for R12-4-104 and R12-4-107; and A.R.S. § 17-314 for R12-4-101 and R12-4-115.
Implementing statutes: A.R.S. §§ 17-231(A)(3) and 17-234 for R12-4-104 and R12-4-107; and A.R.S. § 17-315.
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 3764, September 10, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|---|
| Name: | Mark Naugle, Rules and Risk Manager |
| Address: | Game and Fish Department 2221 W. Greenway Rd. DORR Phoenix, AZ 85023-4399 |
| Telephone: | (602) 789-3289 |
| Fax: | (602) 789-3677 |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Department is amending its Article 1 rules dealing with definitions and general provisions to resolve two separate issues.
In response to customer request, the Department proposed rulemaking that would allow individuals to purchase a bonus point for the fall or spring hunt permit-tag draws. The Department realized that hunters were submitting applications into the draw and receiving hunt permit-tags, but were not always able to use them. Hunters were submitting applications for tags, because, although they knew that they were unable to use the tag due to a previous commitment of their time, they did not want to stop accumulating bonus points or lose any points that they had by not applying for the draw. Under R12-4-104, an individual loses all accumulated bonus points if they do not apply for at least five years. In order to resolve this situation and to ensure that tags would go to those hunters who would be able to use

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them, the Department proposed rulemaking that would allow an individual to purchase a bonus point for the combined cost of a hunting license (if the applicant did not already have one), the application administration fee of five dollars, and the fee for the hunt permit-tag for the species for which the bonus point would apply, as prescribed in R12-4-102. For example, a licensed resident hunter could purchase a bonus point for deer for five dollars plus \$17.50 for a total of \$22.50. In another example, an unlicensed non-resident hunter could purchase a bighorn sheep bonus point for \$113.50 (the fee for a general non-resident hunting license), plus five dollars, plus \$915 (the fee for a non-resident bighorn sheep tag), for a total of \$1033.50. The Department proposed to attach the hunt permit-tag fee to the fee for a bonus point so that the bonus point system would not be overwhelmed with new participants.

However, the Department has now encountered significant customer resistance. In response to this, the Department is now proposing rulemaking to amend the fee clause in R12-4-107 so that an individual may purchase a bonus point for the cost of a hunting license (if the individual does not already have one) and the five dollar administrative fee.

Under this Notice, the Department is also proposing amendments to R12-4-101 and R12-4-115 to reduce big game animal populations in habitats where their presence and population density is above management objectives. The most prominent example of this situation is in Game Management Unit 12A, in the North Kaibab National Forest. The region has historically been a prominent habitat for deer and other less competitive wildlife species, such as buffalo. However, populations of elk have migrated into the region and established themselves as a competitive species for resources. The Department's management objective is to maintain elk populations at a level that will not impact habitat suitability or carrying capacity for deer. Unfortunately, elk populations are so scattered that the Department does not find it feasible to authorize hunt permit-tags to take the elk, because they are too difficult to locate, and it will create a poor wildlife opportunity for its customers. In order to achieve its wildlife objectives, the Department is proposing rulemaking to authorize a supplemental hunt to take place at the same time and location as a regular hunt. In order to be eligible to participate in this supplemental hunt, an individual must possess a hunt permit-tag to hunt at the time and area as the regular hunt. The Department's intention is to allow hunters that are already present in the area to take other wildlife species if they locate them. Eligible hunters may also purchase these restricted nonpermit-tags at a potentially reduced fee. These restricted nonpermit-tags will be available only at a Department office in order to more effectively issue the nonpermit-tags to eligible hunters. By prescribing additional methods to authorize hunters to take impacting big game, the Department is able to achieve its wildlife objectives, be more reactive to these wildlife situations when they occur statewide, and provide more wildlife opportunities for its customers.

The Department is also amending R12-4-115 to delete subsection (M) to comply with the recent court ruling in *Montoya v. Shroufe*, which has determined that the provision is unconstitutional.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable

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 preliminary summary of the economic, small business, and consumer impact:

The proposed rulemaking will impact the Department and its customers. The Department may receive more revenue in hunting license sales as the fee for bonus points decreases, and from the purchase of restricted nonpermit-tags by those hunters who choose to take advantage of the supplemental hunts. The Department will likely experience increased operation costs as labor is expended to determine who is eligible to participate in the supplemental hunts. The Department's customers will receive the greatest benefit manifested in reduced fees for bonus points, potential reduced fees for supplemental hunt nonpermit-tags, and increased wildlife resource opportunities. The proposed rulemaking will not affect political subdivisions, businesses or revenues, public or private employment, or the state general fund. The Department has determined, though, that the benefits of the rulemaking outweigh whatever costs are associated with it.

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: Mark Naugle, Rules and Risk Manager

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

Telephone: (602) 789-3289

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

Written comments will be accepted at the above address until October 10, 2004. Public hearings to discuss this proposal will be held as follows at the Department's Headquarters and Regional Offices:

Notices of Proposed Rulemaking

Date: October 11, 2004
Time: 6:00 p.m.
Location: Game and Fish Department
2221 W. Greenway Rd.
Phoenix, AZ 85023

Date: October 12, 2004
Time: 6:00 p.m.
Location: Game and Fish Department
7200 E. University
Mesa, AZ 85207

Date: October 13, 2004
Time: 6:00 p.m.
Location: Game and Fish Department
555 N. Greasewood Rd.
Tucson, AZ 85745

Date: October 14, 2004
Time: 6:00 p.m.
Location: Game and Fish Department
3500 Lake Mary Rd.
Flagstaff, AZ 86001

Date: October 19, 2004
Time: 6:00 p.m.
Location: Game and Fish Department
9140 E. 28th St.
Yuma, AZ 85365

Date: October 21, 2004
Time: 6:00 p.m.
Location: Game and Fish Department
2828 E. White Mountain Blvd.
Pinetop, AZ 85935

Date: October 25, 2004
Time: 6:00 p.m.
Location: Game and Fish Department
5325 N. Stockton Hill Rd.
Kingman, AZ 86401

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 rulemaking 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 Naugle, Rules and Risk Manager, at (602) 789-3289 (Voice); 1-800-367-8939 (TDD); 2221 W. Greenway Road, Phoenix, Arizona 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:

Not applicable.

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

Not applicable.

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Sections

- R12-4-101. Definitions
- R12-4-104. Application Procedures for Issuance of Hunt Permit-Tags by Drawing
- R12-4-107. Bonus Point System
- R12-4-115. Supplemental Hunts and Hunter Pool

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-101. Definitions

A. In addition to the definitions provided in A.R.S. § 17-101, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless the context otherwise requires:

1. "Artificial lures and flies" means man-made devices intended as visual attractants for fish and does not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, artificial salmon eggs, artificial corn, or artificial marshmallows.
2. "Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.
3. "Commission order" means a document adopted by the Commission that does any or all of the following: open, close, or alter seasons and open areas for taking wildlife; specify wildlife that may or may not be taken; set bag or possession limits for wildlife; or set the number of permits available for limited hunts.
4. "Crayfish net" means a net not exceeding 24 inches on a side or in diameter that is retrieved by means of a hand-held line.
5. "Hunt area" means a game management unit, portion of unit, or group of units opened to hunting by a particular hunt number.
6. "Hunt number" means the number assigned by Commission order to any hunt area where a limited number of hunt permits is available.
7. "Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission order.
8. "Hunt permit-tag" means a tag for a hunt for which a Commission order has assigned a hunt number.
9. "Identification number" means a number assigned to each applicant or licensee by the Department, as described in R12-4-111.
10. "License dealer" means a business authorized to sell hunting, fishing, and other licenses pursuant to R12-4-105.
11. "Live baitfish" means any species of live freshwater fish designated by Commission order as lawful for use in taking aquatic wildlife pursuant to R12-4-313.
12. "Management unit" means an area established by the Commission for management purposes.
13. "Minnow trap" means a trap with dimensions not exceeding 12 inches in depth, 12 inches in width and 24 inches in length.
14. "Muzzle-loading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, having a single barrel and single chamber, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.
15. "Muzzle-loading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel and single chamber, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.
16. "Nonpermit-tag" means a tag for a hunt for which a Commission order has not assigned a hunt number and the number of tags is not limited.
17. "Restricted nonpermit-tag" means a tag issued to a hunter pool applicant for a supplemental hunt under R12-4-115.
18. "Simultaneous fishing" means the taking of fish by two lines and not more than two hooks or two artificial lures or flies per line.
19. "Sink box" means a low floating device having a depression affording the hunter a means of concealment beneath the surface of the water.
20. "Tag" means the authorization that an individual is required to obtain from the Department under A.R.S. Title 17 and 12 A.A.C. 4 before taking certain wildlife.
21. "Waterdog" means the larval or metamorphosing stage of salamanders.
22. "Wildlife area" means an area established pursuant to 12 A.A.C. 4, Article 8.

B. If the following terms are used in a Commission order, the following definitions apply:

1. "Antlered" means having an antler fully erupted through the skin and capable of being shed.
2. "Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.
3. "Buck antelope" means a male pronghorn antelope with a horn longer than its ear.
4. "Bull elk" means an antlered elk.
5. "Ram" means any male bighorn sheep, excluding male lambs.

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing

- A. For the purposes of this Section, "group" means all applications contained in a single envelope or submitted electronically over the internet as part of the same application. No more than four individuals may apply as a group except that no more than two individuals may apply as a group for bighorn sheep. Nonresidents, see subsection R12-4-114(D).
- B. An applicant applying for a hunt permit-tag or a bonus point shall apply using a Hunt Permit-tag Application Form, available at Department offices, the Department's internet web site, and license dealers. An applicant using the Hunt Permit-tag Application Form to apply for a hunt permit-tag or a bonus point shall also apply at times and locations established by the hunt permit-tag application schedule that is published annually by the Department and available at Department offices, the Department's internet web site, and license dealers.
- C. An applicant shall sign the Hunt Permit-tag Application Form, or provide permission to another person to sign the application form for them. If applying electronically over the internet, an applicant shall attest to, or provide permission to another person to attest to, the information electronically provided.
- D. Each applicant shall provide the following information on the Hunt Permit-tag Application Form:
 1. Name, address, residency status, and date of birth;
 2. The applicant's social security number, as required under A.R.S. §§ 25-320(K) and 25-502(K), and the applicant's Department identification number, if different from the social security number on the Hunt Permit-tag Application Form;
 3. If licensed to take wildlife in this state, the number of the applicant's license for the year that corresponds with the applicable hunt number;
 4. If not licensed for the year that corresponds with the applicable hunt number, complete the License Application portion of the Hunt Permit-tag Application Form, providing the applicant's name, Department identification number, address, class of license for which application is made, residency status, length of Arizona residency (if applicable), date of birth, sex, weight, height, and color of hair and eyes; and
 5. Each applicant under the age of 14 applying for a hunt other than big game and not required to have a license under A.R.S. § 17-335(B) shall indicate "juvenile" in the space provided for the license number on the Hunt Permit-tag Application Form.
- E. Each applicant shall enclose as part of the hunt permit-tag application, fees as set in R12-4-102 for the following:
 1. The fee for the applicable hunt permit-tag, unless application is submitted electronically over the internet or telephone;
 2. A permit application fee; and
 3. If a license is requested, a fee for the license.
- F. Each applicant shall enclose payment as part of the hunt permit-tag application, made payable, in U.S. currency, to the Arizona Game and Fish Department by certified check, cashier's check, money order, or personal check. If applying electronically over the internet or telephone, an applicant shall include as a part of the hunt permit-tag application, payment by valid credit card.
- G. Each applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the drawing, the Department shall deem the application unsuccessful, unless the application is for a bonus point.
- H. Each applicant shall make all hunt choices for the same genus within one application.
- I. An applicant shall not include applications for different genera of wildlife in the same envelope.
- J. All members of a group shall apply for the same hunt numbers and in the same order of preference. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.
- K. Each applicant shall submit only one valid application per genus of wildlife for any calendar year, except:
 1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule published annually by the Department.
 2. For genera that have multiple hunts within a single calendar year, hunters that successfully draw a hunt permit-tag during an earlier season may apply for a later season for the same genus if they have not taken the bag limit for that genus during a preceding hunt in the same calendar year.
 3. If the bag limit is more than one per calendar year, any person may apply as specified in the hunt permit-tag application schedule published annually by the Department for remaining hunt permit-tags in unfilled hunt areas.
- L. A person shall not apply for a bighorn sheep or buffalo hunt permit-tag when that person has taken the bag limit for that species.
- M. To participate in the bonus point system, an applicant shall comply with R12-4-107.

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- N. Any Hunt Permit-tag Application Form not prepared or submitted in accordance with this Section, or not prepared in a legible manner, is not valid and shall be rejected and all fees refunded. If the Department rejects an application from any member of a group, the Department shall reject all applications from the group.
- O. Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.
- P. The Department shall mail hunt permit-tags to successful applicants. The Department shall return to an applicant designated "A" on the Hunt Permit-tag Application Form overpayments and hunt permit-tag and license fees received with an unsuccessful application. Permit application fees received with valid applications shall not be refunded. ~~Hunt permit-tag fees and license~~ License fees submitted with an application for a bonus point shall not be refunded.
- Q. If the Director determines that Department error resulted in the rejection of an application, the Director may authorize additional hunt permit-tags or the awarding of a bonus point in order to correct the error, provided the issuance of additional permits will have no significant impact on the wildlife population to be hunted and the application for a hunt permit-tag would have otherwise been successful based on its random number. An applicant who is denied a hunt permit-tag or a bonus point under this procedure may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

R12-4-107. Bonus Point System

- A. For the purpose of this Section, "bonus point hunt number" means the hunt number assigned by the Commission in a Commission Order for use by an applicant applying only for a bonus point for a genus identified in this Section.
- B. The bonus point system grants each ~~person~~ individual one entry in each drawing for ~~elk, buffalo, bighorn sheep, antelope, or deer~~ antelope, bighorn sheep, buffalo, deer, or elk for each bonus point which that ~~person~~ individual has accumulated under this Section. Each bonus point entry is in addition to the entry normally granted by R12-4-104. When processing "group" applications as defined in R12-4-104, the Department shall use the average number of bonus points accumulated by the ~~persons~~ individuals in the group, rounded to the nearest whole number. If the average is .5, the total will be rounded up to the next highest number.
- C. The Department shall award one bonus point to each applicant who submits a valid Hunt Permit-tag Application Form if all of the following apply:
 - 1. The application is unsuccessful in the drawing, or the application is for a bonus point only;
 - 2. The application is not for hunt permit-tags left over after the drawing which are available on a first-come, first-served basis as prescribed in R12-4-114; and
 - 3. The applicant, before the drawing, has purchased a hunting license valid for the year that corresponds with the applicable hunt number. The applicant shall either provide the hunting license number on the application, or submit an application and fees for the license with the Hunt Permit-tag Application Form, indicating that the applicant is to be issued the license even if not drawn for a hunt permit-tag.
- D. Each applicant ~~that purchases~~ for a bonus point only shall:
 - 1. Submit a valid Hunt Permit-tag Application Form, as prescribed in R12-4-104, with the Commission-assigned bonus point hunt number for the particular genus as the first choice hunt number on the application. Placing the bonus point only hunt number as a choice other than the first choice or including any other hunt number on the application invalidates the application;
 - 2. Include with the application, payment for ~~the applicable hunt permit-tag fee for the particular genus~~, the permit application fee; and if a license is requested, a fee for the a hunting license if the applicant does not already possess a license valid for the year for which the draw is conducted; and
 - 3. Submit only one Hunt Permit-tag Application Form for the same genus for each season that bonus points are issued for that season.
- E. Each bonus point accumulated is valid only for the genus designated on the Hunt Permit-tag Application Form.
- F. Except for permanent bonus points awarded for hunter education, all of ~~a person's~~ an individual's accumulated bonus points for a genus are forfeited if:
 - 1. The ~~person~~ individual is issued a hunt permit-tag for that genus in a computer drawing; or
 - 2. The ~~person~~ individual fails to submit a Hunt Permit-tag Application Form for that genus for five consecutive years.
- G. An applicant issued a first-come hunt permit-tag under R12-4-114(C)(2)(d) after the computer drawing does not lose bonus points for that tag, and a valid but unsuccessful applicant for a first-come hunt permit-tag remaining after the computer drawing does not gain a bonus point.
- H. The Department shall award one permanent bonus point for each genus upon ~~a person's~~ an individual's first graduation from the Department's Arizona Hunter Education Course or for serving as a Department hunter education instructor.
 - 1. The Department shall credit ~~a person~~ an individual who graduated after January 1, 1980, but before January 1, 1991, or ~~a person~~ an individual certified by the Department as an active hunter education instructor after January 1, 1980, with one permanent bonus point for each genus if the ~~person~~ individual provides the following information on a form available from the Department: Department identification number; name; address; residency status and length of Arizona residency, if applicable; date of birth; sex; weight; height; color of hair and eyes; and, for ~~a person~~ an individual other than an instructor, the month and year of graduation from the Department's Arizona Hunter Education Course.
 - 2. An instructor or ~~a person~~ an individual who has graduated shall submit the required form 30 days before a drawing's

application date deadline, specified in the hunt permit-tag application schedule, in order for the bonus point to be counted by the Department in that drawing.

- I. The Department shall make an applicant's total number of accumulated bonus points available on the Department's web site or IVR telephone system. If the applicant disagrees with the total, the applicant shall provide previous notices or proof of compliance with this Section to prove Department error. In the event of an error, the Department shall correct the applicant's record.
- J. The Department shall record bonus points under an applicant's Department identification number and the genus on the application. The Department shall not transfer bonus points between persons or genera.
- K. The Department shall reinstate any bonus points forfeited for a successful hunt permit-tag application for military personnel, military reserve personnel, national guard personnel, or public agency employees who are unable to use a hunt permit-tag due to mobilization, activation, or required duty in response to a declared national or state emergency, or required duty in response to an action by the President, Congress, or a governor of the United States or its territories. Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this Section. To request that forfeited bonus points be reinstated under these circumstances, an applicant shall submit the following to the Arizona Game and Fish Department, Draw Section, ~~2222~~ 2221 W. Greenway Rd., Phoenix, AZ 85023:
 - 1. A letter from the applicant requesting reinstatement of bonus points;
 - 2. The hunt number for which the tag is valid;
 - 3. Evidence of mobilization or duty status, such as a letter from the public agency or official orders;
 - 4. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable;
 - 5. The valid, unused tag, which must be received before the beginning date of the hunt for which the tag is valid, or evidence of mobilization or activation that precluded the applicant from submitting the tag before the beginning date of the hunt.

R12-4-115. Supplemental Hunts and Hunter Pool

- A. For the purposes of this Section, the following definitions apply:
 - 1. "Management objectives" means goals, recommendations, or guidelines contained in Commission-approved wildlife management plans, which include hunt guidelines, operational plans, or hunt recommendations;
 - 2. "Hunter pool" means a file of applications for supplemental hunts; and
 - 3. "Supplemental hunt" means a season established by the Commission for the following purposes:
 - a. Take of depredate wildlife under A.R.S. § 17-239;
 - b. Take of wildlife under an Emergency Season if the Commission adopts, amends, or repeals a Commission order for reasons constituting an immediate threat to the health, safety, or management of wildlife or its habitat or to public health or safety; or
 - c. Take of wildlife under a population management hunt if the Commission has prescribed restricted nonpermit-tags by Commission order for the purpose of meeting management objectives because regular seasons are not, have not been, or will not be sufficient or effective to achieve management objectives.
- B. For the purposes of authorizing a population management hunt, the Commission through Commission order shall open a season or seasons and prescribe a maximum number of restricted nonpermit-tags that the Director may issue under this Section.
- C. The Director shall implement a population management hunt under the open season or seasons prescribed in subsection (B) if the Director finds that:
 - 1. Regular seasons have not met or will not meet management objectives;
 - 2. Take of wildlife is necessary to meet management objectives; and
 - 3. Issuance of a specific number of restricted nonpermit-tags is likely to meet management objectives.
- D. To implement a population management hunt under subsection (B), the Director shall do the following:
 - 1. Select season dates, within the range of dates prescribed by the Commission through Commission order;
 - 2. Select specific hunt areas, within the range of hunt areas prescribed by the Commission through Commission order;
 - 3. Select the legal animal that may be taken from the list of legal animals prescribed by the Commission through Commission order;
 - 4. Determine the number of restricted nonpermit-tags that will be issued from the maximum number of tags prescribed by the Commission through Commission order; and
 - 5. Reduce restricted nonpermit-tag fees up to 75% for population management hunts if the normal fee structure will not generate adequate participation, either from applicants in the hunter pool, or from hunt permit-tag holders under subsection (G).
- E. The Director shall not issue more restricted nonpermit-tags than the maximum number prescribed by the Commission through Commission order.
- F. To participate in a supplemental hunt, a person shall obtain a restricted non-permit tag as prescribed by this Section. A

restricted non-permit tag is valid only for the supplemental hunt for which it is issued.

- G.** If the season dates and open areas of the supplemental hunt as prescribed by the Commission through Commission Order exactly match the season dates and open areas of another big game animal for which a hunt number is assigned and hunt permit-tags are issued through the draw, the Department shall make the restricted nonpermit-tags available only to the holders of the hunt permit-tags, and not the hunter pool.
- H.** To obtain a restricted nonpermit-tag under subsection (G), an applicant shall provide to a Department office the applicant's name, address, Department identification number, and hunt permit-tag number on a form prescribed by the Department.
- a. An applicant shall provide verification that he or she legally obtained a hunt permit-tag for the hunt described under subsection (G) by presenting the hunt permit-tag to a Department office for verification.
- b. An applicant shall not apply for or obtain a restricted nonpermit-tag to take wildlife in excess of the bag limit prescribed by the Commission.
- I.** The Department or its authorized agent shall also maintain a hunter pool for supplemental hunts and shall randomly select applicants from the current hunter pool file for participation in a supplemental hunt provided that the season dates and open areas of the supplemental hunt do not exactly match the season dates and open areas of another big game animal for which a hunt number is assigned and hunt permit-tags are issued through the draw.
- J.** When issuing restricted nonpermit-tags from the hunter pool, the Department or its authorized agent shall randomly select applicants from the current hunter pool file. The Department or its authorized agent shall attempt to contact each randomly-selected applicant by telephone at least three times during a 24-hour period. If an applicant cannot be contacted or cannot participate in the hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application. The Department or its authorized agent shall draw no more applications after the number of restricted nonpermit-tags prescribed in subsection (D)(4), or remaining under subsection (F) have been issued.
- K.** The hunter pool shall be purged and renewed annually.
- ~~**G.** The Department or its authorized agent shall maintain a hunter pool for supplemental hunts. The hunter pool shall be purged and renewed annually. If the Commission establishes a supplemental hunt, and the number of hunters in the supplemental hunt must be limited, the Department or its authorized agent shall randomly select applicants from the current hunter pool file. The Department or its authorized agent shall attempt to contact each randomly selected applicant by telephone at least three times during a 24-hour period. If an applicant cannot be contacted or cannot participate in the hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application. The Department or its authorized agent shall draw no more applications after the number of restricted nonpermit tags prescribed in subsection (D)(4) have been issued.~~
- H.** An applicant for a supplemental hunt shall submit the permit application fee prescribed in R12-4-102 along with the following information on a form available from the Department or its authorized agent:
1. Name, address, whether a resident or nonresident, and date of birth;
 2. Daytime and evening telephone numbers; and
 3. The species that the applicant would like to hunt if drawn.
- I.** Neither a current hunting license number nor a fee or application for a hunting license is required with the supplemental hunt application form. The Department shall not accept group applications, as described in R12-4-104, for supplemental hunts.
- J.** A hunter pool applicant who is drawn and who wishes to participate in a supplemental hunt shall submit the following to the Department to obtain a restricted nonpermit-tag:
1. The fee for the tag as prescribed by R12-4-102, or as prescribed by subsection (D)(5) if the fee has been reduced, and
 2. The number of the applicant's hunting license, valid for the year of the supplemental hunt.
- K.** The Department reserves a restricted nonpermit-tag for an applicant only for the period of time specified by the Department when contact is made with the applicant. A restricted nonpermit-tag not purchased within the specified period of time shall be issued to another applicant drawn from the current hunter pool as prescribed by this Section. The Department or its authorized agent shall remove from the current hunter pool the application of any successful applicant who does not purchase a tag after being contacted and agreeing to purchase the tag.
- L.** The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to supplemental hunts. A supplemental hunt application submitted in accordance with this Section does not invalidate any application for a hunt permit-tag. The issuance of a restricted nonpermit-tag does not authorize an individual to exceed the bag limit established by the Commission for that calendar year.
- M.** The Department shall ensure that no more than 10% of the total available restricted nonpermit-tags issued for population management hunts are issued to nonresidents for the following hunts, except that if population management hunts have 10 or fewer available restricted nonpermit tags, no more than one restricted nonpermit tag shall be issued to a nonresident:
1. All hunts for bull elk, and
 2. All hunts for antlered deer north of the Colorado River.

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the Office of Administrative Hearings. However, repealing a rule that is soon to be obsolete will not change the procedural requirements of the Department.

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: Dan Jensen, Tax Analyst
Address: Tax Policy and Research Division
Department of Revenue
1600 W. Monroe, Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6377
Fax: (602) 716-7995
E-mail: JensenD@revenue.state.az.us

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

No oral proceeding is scheduled. Under A.R.S. § 41-1023(C), an oral proceeding will be scheduled if a written request is submitted to the person identified in item 4 within 30 days after publication of this notice.

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 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE
GENERAL ADMINISTRATION

ARTICLE 1. HEARING PROCEDURES

Section

R15-10-118. ~~Burden of Proof~~ Repealed

ARTICLE 1. HEARING PROCEDURES

R15-10-118. Burden of Proof Repealed

~~**A.** Subsequent to the issuance of a notice by the Department and in answer to the findings in that notice, the burden of proof is on the petitioner as to all issues of fact.~~

~~**B.** In any proceeding involving the issue of fraud with intent to evade the tax, the burden of establishing fraud is on the Department.~~