

**ARIZONA GAME AND FISH  
COMMISSION  
2019 FIVE-YEAR REVIEW REPORT**

**TITLE 12. NATURAL RESOURCES  
CHAPTER 4. GAME AND FISH COMMISSION  
ARTICLE 4. LIVE WILDLIFE**



Prepared for the  
Governor's Regulatory Review Council

# ARIZONA GAME AND FISH COMMISSION

## 12 A.A.C. 4, ARTICLE 4. LIVE WILDLIFE

### 2018 FIVE-YEAR REVIEW REPORT

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#### **REPORT - ARTICLE 4. LIVE WILDLIFE**

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (G.R.R.C.).

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 4, Live Wildlife, are scheduled to be reviewed by April 2019.

The Arizona Game and Fish Department tasked a team of employees to review the rules contained within Article 4. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff as well as comments received from the public. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

The Department anticipates requesting an exception to the rulemaking moratorium by May 2019 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by May 2021, provided the Commission is granted permission to pursue rulemaking or the current moratorium is not extended.

With this report, the Department also certifies its compliance with the requirements of A.R.S. § 41-1091:

1. The Department publishes an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements;
2. The Department maintains a copy of the directory and all substantive policy statements at the Arizona Game and Fish Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ 85086;
3. The Department includes the notice specified under A.R.S. § 41-1091(B) on the first page of each substantive policy statement; and
4. The Department provides the directory, rules, substantive policy statements, and any other material incorporated by reference in the directory, rules or substantive policy statements. These documents are open to public inspection at the Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ 85086.

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#### **R12-4-401. Live Wildlife Definitions**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-238, and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout Article 4. The rule was adopted to facilitate consistent interpretation of, and prevent the regulated community from misinterpreting, the intent of Commission rules.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The rule incorporates by reference the October 10, 2013 edition of 50 17.11 (endangered and threatened wildlife) and the October 10, 2014 edition of 50 C.F.R. 10.13 (list of migratory birds). The Department proposes to amend the rule to reference the most recent edition of the federal regulation incorporated by reference.

- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

Enforcement of the rule manifests itself through proper administration. Enforcement is directed to a rule or an

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order in which a definition is used. It is not the term that is cited, but the violation. To the extent that the Department is aware, there have been no problems with enforcement. Providing definitions for the unique terms used in Article 4 assist the public, Department personnel, and members of law enforcement in understanding the contents and meaning of Article 4 rules.

#### **6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department is aware confusion exists in regards to the definition of "game farm." The current definition references terrestrial wildlife and parts of terrestrial wildlife. The game farm license stipulates the species and parts of wildlife that may be commercially farmed and sold by a game farm license holder. The Department intends to amend the rule to remove references to "terrestrial wildlife or the parts of terrestrial wildlife" from the definition of "game farm" to reflect changes made to R12-4-413 (game farm license) to make the rule more concise.

The Department is aware confusion exists as to who has the authority to complete a health certificate. The current definition of "health certificate" means a certificate of inspection by a licensed veterinarian. The Department intends to amend the rule to clarify that a health certificate may also be completed by a federal or state certified inspector to make the rule more concise.

Hybrid wildlife is defined under R12-4-401 and R12-4-422. The Department also proposes to amend the rule to exclude from the definition of "hybrid" all hybrid birds as defined under the Migratory Bird Treaty Act (MBTA) under 50 C.F.R. 21.3 (definitions), revised October 1, 2017 to make the rule more concise.

The Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

#### **7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticisms of the rule:

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**Written Comment: July 23, 2013.** The state of Arizona's current regulations regarding restricted live wildlife are significant, but in light of substantial evidence of the clear and considerable risks associated with the private possession of these animals, the state should further strengthen its regulations by adding additional species to the definition of restricted live wildlife and limiting the use of these animals. Wild animals that have the capacity to cause death, inflict serious injury and spread deadly diseases (such as big cats, bears, wolves, hyenas, non-human primates, and all species of procyonidae) should be designated as Dangerous Wild Animals and subjected to additional restrictions in Arizona's regulations regarding restricted live wildlife as set forth below.

**Agency Response:** The Department disagrees. The intent of the recommended defined term is to restrict public contact with and the breeding of "dangerous wild animals." Such restrictions are already in place within Article 4 and are implemented without the need for this definition.

**Written Comment: July 23, 2013.** Only institutions accredited by or affiliated with the Association of Zoos and Aquariums (AZA) should be able to breed dangerous wild animals. The AZA is the only domestic organization that manages endangered species through Species Survival Plan (SPP) programs, which are based on the best available science to maintain genetic integrity of captive colonies as a hedge against extinction. Unlike the AZA's SPP, commercial breeding of dangerous wild animals to produce babies to attract visitors, to use for public contact activities, or to sell in the exotic animal trade is done without regard to lineage and genetic diversity or planning for the lifetime care of long-lived animals. Irresponsible breeding practices often result in inbreeding that produces animals that suffer from serious congenital defects, as well as cross-breeding of animals to produce curiosities such as "ligers." Insert a new definition for "zoo:" "Zoo" means an institution accredited by the Association of Zoos and Aquariums (AZA), certified related facilities that coordinate with AZA Species Survival Plan (SSP) Programs for breeding of species listed as threatened or endangered pursuant to 16 U.S.C. § 1533, or facilities that are actively seeking accreditation or certification by the AZA.

**Agency Response:** The suggested definition fails to include licensing or recognition by the Arizona Game and Fish Department. Establishing a new definition of "zoo" under A.R.S. § 17-101 requires an act by the Arizona Legislature. The possession, propagation, and sale of wildlife defined as "restricted live wildlife" under R12-4-406 (restricted live wildlife) is strictly regulated under both state and federal law. "Dangerous" wildlife are restricted under R12-4-406. R12-4-406 further regulates the possession, propagation, and sale of hybrid wildlife resulting from the interbreeding of at least one parent species listed as restricted; this would include "ligers."

**Written Comment: May 15, 2018.** Under R12-4-420(B), there are four criteria to satisfy in order to meet the overall requirements for a zoo license. However, under subsection (J), there is a requirement that the facility state the days of the week and the hours when the facility is open for viewing for the general public. Many facilities that specialize in breeding for science, wildlife management, or conservation may not be open to the public as their

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focus may not be on public education or entertainment. This would still meet the criteria as defined under R12-4-401 (live wildlife definitions). However, there is a discrepancy in definitions as stated in the opening statement in R12-4-401. Under R12-4-401, "zoo" means any facility licensed by the Arizona Game and Fish Department under R12-4-420 or, for facilities located outside of Arizona, licensed or recognized by the applicable governing agency. Under A.R.S. § 17-101, "zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes. A.R.S. § 17-101 conflicts with R12-4-420(A) and subsection (B)(1), (2), and (4). A.R.S. § 17-101 uses an archaic definition of zoo from a time of traveling menageries. By using this archaic definition, it puts facilities that focus on research, wildlife management, and wildlife conservation at a disadvantage and burdens these facilities with a requirement to be open to the public. We request clarification of subsection (B)(1), "Advancement of science or commercial purpose (as defined under R12-4-401) for the maintenance of captive live wildlife (as defined under R12-4-401) management." We request removal of subsection (J)(8) or replace with "Animals will be held on a zoo license for science or commercial purpose (as defined under R12-4-401) for the maintenance of captive wildlife (as defined under R12-4-401), management, promotion of public health or welfare, public education, or wildlife conservation." We request a modernization of the A.R.S. § 17-101 definition that will bring R12-4-420 and A.R.S. § 17-101 in line with each other.

**Agency Response:** Any modernization of the definition of "zoo: under A.R.S. § 17-101 requires an act by the Arizona Legislature. The current definition requires zoo licenses to be issued only to commercial facilities open to the public where the principal business is wildlife exhibition.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to clarify, adopt, and repeal definitions for terms within Article 4 rules. Because the Commission determined definitions alone have no impact on the Department or regulated community, the Commission anticipated the amendments would have little or no impact on the Department or persons regulated by the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout Article 4. The public benefits from a rule that defines terms referenced throughout Commission rules as they help to clarify the Commission's intent and foster consistent interpretation of Commission rules. The public and Department benefit from a rule that is understandable. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

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The Department proposes to amend R12-4-401 as follows:

- Transfer the definition of "cervid" to R12-4-101 as the term "cervid" is also used in Articles 1 and 3.
- Exclude from the definition of "hybrid" all hybrid birds as defined under the Migratory Bird Treaty Act (MBTA) under 50 C.F.R. 21.3 (definitions), revised October 1, 2017 to make the rule more concise.
- Incorporate by reference the most recent editions of 50 C.F.R. 17.11 (endangered and threatened wildlife) and 50 C.F.R. 10.13 (list of migratory birds).
- Remove references to "terrestrial wildlife or the parts of terrestrial wildlife" from the definition of "game farm" to reflect changes made to R12-4-413 (game farm license) to make the rule more concise.
- Clarify the health certificate may also be completed by a federal or state certified inspector to make the rule more concise.
- Repeal the definition of "person" as the term is already defined under R12-4-101.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-402. Live Wildlife; Unlawful Acts**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240, 17-250(A), 17-250(B), and 17-306

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish unlawful activities for persons taking and possessing live wildlife and the Department's authority to take possession of wildlife for a violation of the rule. The rule was adopted to protect native wildlife in many ways: preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

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The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticism of the rule:

**Written Comment: February 27, 2017.** The data show a clear and remarkable linkage between the presence of wolves and the health of an entire streamside ecosystem, including two species of cottonwoods and the myriad of roles they play in erosion control, stream health, and nurturing diverse plant and animal life. The findings of these studies were recently published in *Ecological Applications*, a journal of the Ecological Society of America, and the journal *Forest Ecology and Management*.

**Agency Response:** This comment was received after the public comment period had ended and was submitted in response to the Notice of Proposed Rulemaking amending R12-4-402. Live Wildlife; Unlawful Acts, see 22

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A.A.C. 2558, September 16, 2016. This rule was amended on March 3, 2017 to clarify that a federal permit alone is insufficient when a federal agency or its employees perform activities with live wildlife that require a state permit. Many commenters believed the rule was amended to prevent the reintroduction of Mexican gray wolves into Arizona. The Department has issued USFWS multiple permits to release Mexican wolves into Arizona, and as recently as this year, the Department's permit authorized the Service to release or reintroduce Mexican wolves consistent with the jointly prepared and approved annual release plan.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 7, 2017. The rule was amended to clarify that federal agencies or employees are not exempt from obtaining a state permit or license when conducting any activity listed under R12-4-402(A). Through this rulemaking, the Commission codified what had been a common practice with government agencies. The Commission anticipated the rulemaking would have no measurable impact on Department operations or government partners, as the Department's administrative process for special licenses and permits has been in place for over thirty years.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

In addition, R12-4-402 was recently amended as follows:

- Notice of Rulemaking Docket Opening: 22 A.A.R. 2569, September 16, 2016.

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- Notice of Proposed Rulemaking: 22 A.A.R. 2558, September 16, 2016.
- Public Comment Period: September 16, 2016 through October 16, 2016.
- G.R.R.C. approved the Notice of Final Rulemaking at the February 7, 2017 Council Meeting.
- Notice of Final Rulemaking: 23 A.A.R. 492, March 3, 2017.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes unlawful activities for persons taking and possessing live wildlife and the Department's authority to take possession of wildlife for a violation of the rule. The rule was adopted to protect native wildlife in many ways: preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The public benefits from a rule that is clear and concise, along with continued protection from improper handling and use of wildlife. The Department benefits from a rule that allows continued regulatory oversight of activities pertaining to wildlife. The public and Department benefit from a rule that is understandable. The Department has determined the rule imposes the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action

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#### **R12-4-403. Escaped or Released Live Wildlife**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-314

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the Department's authority to take possession of any escaped or released wildlife that poses an actual or potential threat to native wildlife, wildlife habitat, or to the safety, health, and welfare of the public. The rule was adopted to enable the Department to more closely monitor the use of wildlife in Arizona and to ensure proper management and conservation of the State's resources, particularly in relation to potentially competitive or threatening species or wildlife disease.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

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#### **6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

In 2015, the rule was amended to establish the person who releases or allows wildlife to escape is responsible for all costs incurred by the Department associated with seizing or quarantining wildlife. The current rule uses the term "possessing," which has resulted in some confusion. The Department proposes to amend the rule to clarify the person who releases or allows the wildlife to escape is responsible for all costs incurred by the Department associated with seizing or quarantining wildlife to make the rule more understandable.

#### **7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

#### **8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to clarify and establish owner responsibilities and to allow the Department to seize, quarantine, or euthanize any wildlife that has escaped or is likely to escape and poses a threat to public health, safety, or welfare, wildlife populations or wildlife habitat until it is properly contained or rehomed; remove the reference to A.R.S. § 17-306; and provide additional options necessary for the evaluation of any situation where native wildlife protection and the safety, health and welfare of the public are concerned. The Commission anticipated the proposed rule would impact special license holders and owners by requiring the license holder or owner to bear the expense for the animal's care, however, the Commission believes it is a reasonable economic burden.

#### **9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the Department's authority to take possession of any escaped or released wildlife that poses an actual or potential threat to native wildlife, wildlife habitat, or to the safety, health, and welfare of the public. The public benefits from a rule that protects the public safety, health, and welfare. The Department benefits from a rule that helps ensure the proper management and conservation of the State's resources, particularly in relation to potentially competitive or threatening species or wildlife disease. The public and Department benefit from a rule that is understandable. The Department has determined the rule imposes the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

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The Department proposes to amend R12-4-403 to clarify the person who releases or allows the wildlife to escape is responsible for all costs incurred by the Department associated with seizing or quarantining wildlife to make the rule more understandable.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-332, 17-234, 17-306, and 17-331

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish lawful activities for persons taking and possessing live wildlife under a valid hunting or fishing license and to regulate the take and disposition of live wildlife when live bag and possession limits are specified in a Commission Order. The rule was adopted to provide a mechanism that allows a person to lawfully possess and dispose of live wildlife taken from the wild.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

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- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

- 6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to provide additional clarity and ensure consistency between rules within Article 4 by replacing the term "personal use" with "noncommercial purpose;" allowing the use of reptiles or amphibians for aversion or avoidance training; and specifying a special license is not required to sell photographs of wildlife taken under a valid hunting or fishing license. In addition, the rule was amended to prohibit the release of propagated wildlife into the wild to help prevent the transmission of wildlife diseases. The Commission anticipated the proposed amendments would impact persons who possess wildlife taken under an Arizona hunting or fishing license by prohibiting propagation of restricted wildlife; persons may also incur the cost of a veterinary office visit and costs to spay or neuter an animal.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the lawful activities a person taking and possessing live wildlife under a valid hunting or fishing license may conduct with that wildlife. The public benefits from a rule that provides a lawful mechanism that allows a person to possess and dispose of live wildlife taken from the wild. The Commission recognizes the role that wildlife play in fostering interest and future participation in outdoor activities; the Department benefits from a rule that enables a person to lawfully possess live wildlife taken under a valid hunting or fishing license. The public and Department benefit from a rule that is understandable. The Department has determined the rule imposes the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

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No action

#### **R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-238(A), and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish lawful activities and limitations for a person importing, purchasing, or transporting wildlife or the offspring of wildlife taken without a Department-issued license or permit to prevent harm to native wildlife of this state or to endanger public safety. The rule was adopted to allow individuals to import wildlife not listed as restricted live wildlife and at the same time provide protection for public, wildlife, and livestock health.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Subsection (E) of the rule references wildlife taken under an Arizona hunting or fishing license. This information was added in an effort to make the rule more concise, but has resulted in some confusion because the rule establishes lawful activities and limitations for wildlife possessed without a Department-issued license or permit.

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The Department proposes to repeal subsection (E) to make the rule more concise.

- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

- 6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to comply with Department of Agriculture rules governing importation of animals and to remove language pertaining to cervids. The Commission anticipated that the rule would have an effect on business importing wildlife for use as pets. The rule has had the anticipated impact.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

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The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes lawful activities and limitations for a person importing, purchasing, or transporting wildlife or the offspring of wildlife taken without a Department-issued license or permit to prevent harm to native wildlife of this state or to endanger public safety. The public and Department benefit from a rule that is understandable. The Department has determined the rule imposes the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-405 to repeal subsection (E) to make the rule more concise.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

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#### **R12-4-406. Restricted Live Wildlife**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 17-231(B)(8), 17-238(A), 17-255, 17-255.02, and 17-306

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish a list of live wildlife for which a special license is required in order to possess the wildlife and/or to engage in activities that may be prohibited under A.R.S. § 17-306 and R12-4-402 (live wildlife; unlawful acts). The rule was adopted to identify those live wildlife species that would pose a threat to Arizona's natural resources, public health as well as the health and safety if left unregulated.

When adding or removing a species from the restricted wildlife list, the Department bases its decision on the following factors:

- Protection of public health and safety;
- Biological impact on species and ecosystems;
- Consistency with federal, state, and county regulatory agencies; and
- Potential economic impact.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

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The rule incorporates by reference the October 1, 2014 edition of 50 C.F.R. 10.13 (list of migratory birds). The Department proposes to amend the rule to incorporate the most recent edition of the federal regulation incorporated by reference.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department is aware of some confusion as to whether the offspring of one restricted wildlife species and one nonrestricted species is listed as restricted under R12-4-406. The Department proposes to amend the rule to specify hybrid wildlife is considered restricted when one parent wildlife species is listed as restricted.

Effective February 6, 2018, Article 11 (aquatic invasive species) was renumbered to Article 9. Subsection (A) references R12-4-1102 (aquatic invasive species; prohibitions; inspections; decontamination protocols); the Department proposes to amend the rule to replace the citation to R12-4-1102 with R12-4-902 to make the rule more concise.

The Department is aware of some confusion in regards to the hedgehogs. In December 2013, the rule was amended to remove the African pygmy hedgehogs, and hybrids of same, from the list of restricted live wildlife. The African hedgehog, *Atelerix* genus, is native to Africa. Adults range between 7 and 9 inches in length and weigh between 12 to 35 ounces. Hedgehog species that are not restricted include *Atelerix albiventris*, *A. algirus*, *Hemiechinus auritus*, *H. collaris*, and any hybrids of these species. The European hedgehog, *Erinaceus europaeus* genus, is native to the British Isles and other European countries. It is the largest of all hedgehogs with adults ranging between 9 to 14 inches in length and weigh between 28 and 42 ounces. It is characteristically brown in color with a furry underside and head. The European hedgehog, *Erinaceus europaeus*, and other wild hedgehogs are still considered restricted. The Department proposes to amend the rule to clarify which hedgehogs are not restricted; and indicate those species that pose a risk to native wildlife and habitat are restricted.

The Department is aware of some confusion as to transgenic species that are created using scientific methods such as genetic engineering. The confusion results from the statement, "a transgenic animal is considered wildlife if the

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animal is the offspring of at least one wildlife species." This statement does not account for genetically engineered animals. The Department proposes to amend the rule to specify a transgenic animal is considered wildlife if the animal's genetic material predominantly originated from wildlife species to proactively address the possession of genetically engineered wildlife.

The Department is aware there are discrepancies between when the italicization of scientific names. The Department proposes to amend the rule to italicize all mentions of Genus and below, with no italics above Genus to be consistent with scientific naming standards.

The Department is no longer conducting Northern Bobwhite quail reintroduction efforts in game management unit 34A and, as a result, there is no need to restrict Northern Bobwhite quail reintroduction efforts in game management unit 34A. The Department proposes to amend the rule to remove Northern Bobwhite quail from the list of restricted species.

The Department is aware confusion exists because turkeys are on the list of restricted species, when many species are available for purchase at local pet and feed stores. The Department proposes to amend the rule to specify the species of turkey that are restricted.

The Department also proposes to amend the rule to place the listed wildlife in alphabetical order and provide additional common names for certain species to make the rule more concise. The Department recognizes it is not always possible to provide an all-inclusive list of every of the order, family, or genus. The Department proposes to amend the rule to clarify the common names are provided as examples only and are not all-inclusive of the order, family, or genus.

#### **7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticism of the rule:

**Written Comment: April 11, 2014.** It is my understanding that hedgehogs are prohibited and permits to own them are virtually impossible to obtain. I would like to request a legal process circumventing the current stipulations for licensure: restricted wildlife possession for the purpose(s) of the advancement of science, wildlife management, promotion of public health or welfare, or education. As a responsible pet owner, I would be willing to submit to inspections, etc., to ensure that I can adequately provide for the needs of a hedgehog. On that note, I would like to inquire about how many signatures are needed to legalize hedgehogs for responsible pet owners in

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Arizona. I want to bring to your attention that there is an ongoing petition to do so with 2,477 signatures as of April 11th at 2:00 pm at the url below. <http://www.petitiononline.com/3311786M/petition.html>

**Agency Response:** For many years it was illegal to possess a hedgehog in Arizona without first obtaining a special license; the Department does not issue a special license that allows a person to possess restricted wildlife as a pet. However, in December 2015, the Commission amended its rules to remove African pygmy hedgehogs, and hybrids of same, from the list of restricted live wildlife. In Arizona, it is lawful to possess a hedgehog. This recommendation was made in the Five-year Review Report approved by the Governor's Regulatory Review Council (G.R.R.C.) on December 3, 2013; and implemented through final rulemaking approved by G.R.R.C. on October 6, 2015. It is important to note, European hedgehogs, and hybrids of the same, are still considered restricted live wildlife in Arizona.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to incorporate the online taxonomic authority Integrated Taxonomic Information System (ITIS); remove hedgehogs from the restricted live wildlife list to allow their use as pets; expand "restricted primates" to include all non-human primates in an effort to protect public health and safety; improve consistency between federal and state rules by listing all Migratory Bird Treaty Act (MBTA) birds as restricted live wildlife; include the Red shiner, certain species of tilapia, paddlefish, sturgeon, Chinese mystery snail, and false dark mussel as restricted live wildlife; and include all wildlife listed under the Aquatic Invasive Species Director's Order #1 as restricted live wildlife. The Commission anticipated the proposed amendments would impact persons and businesses that sell the live wildlife that the Commission proposes to add to the list of restricted live wildlife as they will no longer be able to sell Red Shiner, five tilapia species (*Oreochromis aureus*, *O. mossambica*; *O. niloticus*, *O. urolepis hornoru*, and *T. zilli*), sturgeon, paddlefish, Chinese mystery snail, apple snail, false dark mussels, non-human primates to persons in Arizona without a lawful exemption or a special license. The Commission anticipated persons possessing wildlife under this rule might incur minor costs associated with the requirement that a person permanently mark the animal with a tattoo, microchip, or other means. Costs are minimal, the required services may be obtained from a licensed veterinarian. The Commission anticipated the proposed amendment that removed hedgehogs from the list of restricted live wildlife would benefit businesses that sell them and members of the public who would like to possess them for pets.

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- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the list of live wildlife for which a special license is required in order to possess the wildlife and/or to engage in activities that may be prohibited under A.R.S. § 17-306 and R12-4-402 (live wildlife; unlawful acts). The public and the Department benefit from a rule that protects human health and safety and Arizona's wildlife species and habitats. The Department benefits from a rule that maintains oversight of those species that pose a threat to Arizona's natural resources as well as the health and safety of the public. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

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- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-406 as follows:

- Clarify hybrid wildlife that is the progeny of a restricted wildlife species and a nonrestricted wildlife species is considered restricted wildlife.
- Italicize all mentions of Genus and below with no italics above Genus to be consistent with scientific naming standards.
- Specify a transgenic animal is considered wildlife if the animal's genetic material predominantly originated from wildlife species to proactively address the possession of genetically engineered wildlife.
- Clarify the breeds of hedgehogs that are not restricted to make the rule more concise.
- Remove Northern Bobwhite quail from the list of restricted species.
- Clarify which species of turkey are restricted.
- Incorporate by reference the most recent edition of 50 C.F.R 10.13.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-306, and 17-371(D)

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the types of scenarios when a person may lawfully possess restricted live wildlife without a special license. The rule was adopted to provide specific exemptions from special license requirements, typically situations which are temporary in nature.

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**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Under A.R.S. 17-306(A) and R12-4-402 (live wildlife; unlawful acts), a person is prohibited from releasing wildlife into the wild without written authorization from the Department. During the past several decades, a deadly bacterial infection is appearing more and more frequently among wild tortoises, likely due to the release of infected tortoises in the wild. This bacterial infection, Upper Respiratory Tract Disease, attacks the tortoise's respiratory system and can be transmitted through sharing of burrows, or through the human handling of tortoises. Because this can occur when a person handles a sick tortoise and then unwittingly transmits the disease to a healthy animal, the Department proposes to amend the rule to specify a desert tortoise cannot be released into the wild to increase consistency between Commission laws and rules.

The rule incorporates by reference the January 1, 2012 edition of 9 C.F.R. 2.30 (registration), which involves the registration of facilities with the U.S. Department of Agriculture. The Department proposes to amend the rule to incorporate the most recent edition of the federal regulation incorporated by reference.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

The Department may allow a person to export a desert tortoise to an education or research facility or a zoo when authorized in writing by the Department. To shape a more efficient process, the Department proposes to amend the rule to specify who a person may contact in order to obtain that written authorization.

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#### **6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

In 1990, the desert tortoise was listed as threatened by the U.S. Fish and Wildlife Service (USFWS) and Arizona law has prohibited the removal of desert tortoises from the wild since 1988. Lawfully obtained desert tortoises may be privately adopted, but desert tortoise adoption in Arizona is subject to specific rules. The Department is aware that confusion exists in regards to under what circumstances a person may lawfully possess or export a desert tortoise out-of-state. The Department proposes to amend the rule to clarify when a person may lawfully possess and export a desert tortoise out-of-state. The proposed rule will prohibit a person from taking a live desert tortoise out-of-state unless authorized by the Department. In the alternative, the person may gift the tortoise to an Arizona resident or donate the tortoise to the Department's Tortoise Adoption Program. Exporting the tortoise to an out-of-state an education or research institution or zoo will also require Department authorization. The Department's Desert Tortoise Application clearly states that custodians of adopted tortoises may not remove them from Arizona and must return the tortoise to an approved Arizona adoption facility if they plan to relocate to another state. These amendments are proposed due to the amount of time and resources required of the Department and USFWS when a desert tortoise is found outside of its natural range. USFWS considers all desert tortoises found outside of the combined range of Sonoran and Mojave desert tortoises to be the federally-protected Mojave desert tortoise by similarity of appearance. USFWS and the state wildlife agency collaborate to try to determine the origin of the tortoise (Arizona, California, Nevada, or Utah). If it is determined the person possesses a Mojave desert tortoise, the person is cited for possessing a federally-listed species; USFWS and the state wildlife agency then return the tortoise back to the state from which it was exported. Because there is such a high probability the tortoise will be returned to Arizona, tortoises should not be removed from Arizona in the first place. For these reasons, the Department proposes to amend the rule to clarify a person may only export a desert tortoise to an education or research institution or zoo located in another state; and require a person who possesses a desert tortoise and is moving out-of-state to gift the desert tortoise to another person who resides in Arizona or donate it to the Department's Tortoise Adoption Program.

Under Commission Order 43 (reptiles), a person may lawfully possess one desert tortoise per person and the progeny of any lawfully held desert tortoise may be held in captivity for twenty-four months from date of hatching. Before or upon reaching twenty-four months of age, such progeny must be disposed of by gift to another person or as directed by the Department. The Department is aware of confusion regarding the number of desert tortoises a person may possess; some persons believe that they can lawfully possess as many as they like. The Department proposes to amend the rule to reference the Commission Order in which the possession limit for desert tortoise is established to make the rule more concise.

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Under subsection (B)(10), a person may export, give away, import, kill, possess, propagate, purchase, trade, and transport restricted live wildlife without a special license for a medical or scientific research facility registered with the U.S. Department of Agriculture under 9 C.F.R. 2.30 (registration). Because transgenic animals are considered restricted live wildlife, under subsection (B)(10), the second subsection is redundant. The Department proposes repeal subsection (B)(13) to make the rule more concise.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to require persons who import wildlife into the state to possess a valid health certificate, as already required by the Arizona Department of Agriculture; prohibit persons from propagating lawfully possessed desert tortoises; clarify the live game fish exemption applies only to restricted live game fish; establish guidelines for the disposal of animals that die while in transport through Arizona; and clarify that medical and scientific research facilities, regardless of whether they are licensed by the U.S. Department of Agriculture, are exempt from special licensing requirements when working with transgenic animals. The Commission anticipated that the proposed amendments would impact persons and businesses that provide veterinary care or certified waste disposal facilities. The Commission anticipated a person possessing wildlife under this rule may incur minor costs associated with the requirement that a person permanently mark the animal with a tattoo, microchip, or other means. Costs to mark the animal with a tattoo or microchip and costs to spay or neuter the animal were expected to be insignificant.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the types of scenarios when a person may lawfully possess restricted live wildlife without a special license. The rule was adopted to provide exemptions from special license requirements; typically these situations are temporary in nature. The public benefits from a rule that allows native wildlife to be held under certain circumstances without the burden of having to apply for and obtain a special license. The Department benefits from a rule that allows a person to possess native wildlife without the issuance of a special license. The public and Department benefit from a rule that is understandable. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

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The Department proposes to amend R12-4-407 as follows:

- Reference the Commission Order in which the possession limit for desert tortoise is established to make the rule more concise.
- Clarify a person may only export a desert tortoise to a zoo or an education or research institution located in another state to make the rule more concise.
- Require a person who possesses a desert tortoise and is moving out of state to gift the desert tortoise to another person who resides in Arizona or donate it to the Department's Tortoise Adoption Program to make the rule more concise.
- Clarify who a person may contact to obtain the authorization to export a desert tortoise to effect a more efficient process.
- Specify a desert tortoise cannot be released into the wild to increase consistency between Commission laws and rules.
- Incorporate by reference the most recent edition of 9 C.F.R. 2.30 (registration).
- Repeal subsection (B)(13) to make the rule more concise.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-408. Holding Wildlife for the Department**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(B)(8), 17-238(A), 17-240(A), and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish requirements that allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license. The rule also allows a person authorized by the Department to possess and transport live wildlife for up to 72 hours; possess wildlife held as evidence during the pendency of the judicial proceeding; or possess a live cervid on the Department's behalf.

The rule was adopted to allow a person to continue to possess and transport the wildlife while the resulting judicial process runs its course. The Department needed to establish a method that ensures wildlife is humanely held as

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evidence for a court proceeding without having to take on the burden of caring for wildlife that was seized because it was unlawfully possessed.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

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The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license; provide the Department with greater latitude in the amount of time it may allow a person to hold or transport wildlife for the Department; and replace "designated Department employee" with "Department." The Commission anticipated the proposed amendments would impact persons who hold wildlife for the Department as they will bear the expense for the animal's care until it is placed in a permanent home. However, the Commission believes it is a reasonable economic burden because the person has already taken on that responsibility when they took possession of the wildlife

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements necessary to allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license. The rule allows a person authorized by the Department to possess and transport live wildlife for up to 72 hours; possess wildlife held as evidence during the pendency of the judicial proceeding; or possess a live cervid on the Department's behalf. The public benefits from a rule that allow a person to continue to possess and care for wildlife while waiting for the judicial process to run its course. The Department benefits from a rule that establishes a method that ensures wildlife is humanely held as

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evidence in a court proceeding without having to take on the burden of caring for wildlife that was seized because it was unlawfully possessed. The Commission believes this is a reasonable burden because the person has already taken on that responsibility of the wildlife when they took possession of it. The public and Department benefit from a rule that is understandable. The Department has determined the rule imposes the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action

#### **R12-4-409. General Provisions and Penalties for Special Licenses**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238, 17-240(A), 17-250(A), 17-250(B), 17-306, 17-332, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish general provisions and administrative compliance applicable to all special licenses, as well as punitive actions that may be taken when a special license holder is convicted offense involving

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cruelty to animals, fails to remedy a noticed condition, or fails to comply with requirements of the rule governing the applicable special license or this rule. The rule was adopted to ensure Arizona's wildlife resources are placed into the care of persons who are capable of carrying out the permitted activities and knowledgeable in the care and handling of permitted wildlife.

#### **3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

Overall, the rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

The current rule only allows the Department to place additional stipulations on a special license at the time of issuance or renewal. The Department purposes to amend the rule to allow the Department to place additional stipulations on a special license believes it is necessary to have the ability to add or remove stipulations during the licensing period to address changing conditions that may arise.

#### **4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend the rule to replace the reference to "Scientific Collecting License" with "Scientific Activity License" to reflect changes proposed to R12-4-418 (scientific collecting license).

The Department proposes to amend R12-4-412 (special license fees) to clarify the fees for an initial special license and the renewal of a special license. In most cases, the costs incurred by the Department when processing a renewal of a license are anticipated to be less than an initial license because a license renewal should take less time to review. The Department proposes to amend the rule to establish the circumstances under which an application for a special license may be considered the renewal of the special license.

Upon determining a disease or other emergency condition exists that poses an immediate threat to the public or the welfare of any wildlife, the Department may immediately order a cessation of operations under the special license

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and require the special license holder to ensure any contaminated or affected wildlife is tested for the presence of diseases or pathogens. Under R12-4-426 (possession of nonhuman primates) and R12-4-430 (Importation, handling, and possession of cervids) the special license holder is required to submit the results of any required testing to the Department. This information will guide the Department in determining future actions necessary to prevent the introduction and proliferation of wildlife diseases and protect public health or safety. The Department proposes to amend the rule to require all special license holders to submit the results of any required testing to the Department.

Each license holder is required to maintain records associated with the license and make them available to the Department for inspection upon request. The Department proposes to establish a time period of five-years for all records maintained by the special license holder that are subject to Department inspection.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

Overall, the rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

When a special license holder fails to renew their special license, they are required to dispose of the wildlife held under the license in the manner directed by the Department, which may include export from this state, transfer to another eligible special license holder, or transfer to a medical or scientific research facility. Because the Department is responsible for all wildlife held in this State, the Department must inspect the license holder's facility to ensure wildlife was disposed of as directed by the Department.

Where a special license holder elects to terminate activities authorized by their special license, the wildlife must be exported from this state, transferred to another eligible special license holder, or transferred to a medical or scientific research facility. To ensure wildlife held under the license is properly disposed of and any required administrative processes are completed, the Department must be notified when a special license holder no longer wishes to conduct activities authorized under the special license. The Department proposes to amend the rule to establish a requirement that a special license holder notify the Department at least 30 days prior to ceasing wildlife activities authorized under the special license.

To obtain a permit to possess live wildlife in all but six states and for federal permits, an applicant must be at least 18 years of age. The Department proposes to amend the rule to require an applicant to be at least 18 years of age; except this restriction will not apply to the Game Bird Dog Training and Sport Falconry licenses.

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The Department has documented cases where special license holders either illegally conducted surgical operations on wildlife without a veterinary license or did not seek appropriate veterinary care as required by the humane treatment standards established under R12-4-428 (captivity standards). Because the Department is responsible for all wildlife held in this State, the Department proposes to amend the rule to allow the Department to add or remove stipulations to a special license during the license period to ensure humane care and treatment of wildlife. The proposed amendment will enable the Department to treat a violation of Article 4 that involves a public health threat or a threat to wildlife welfare to issue a written notice to the special license holder with a request to remedy the condition, instead of having to issue three notices for the same condition within a two-year period before the Department can intervene in the event of a license holder's inaction.

#### **6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

Two separate subsections address Department inspections of a special license holder's facility. The Department proposes to remove subsection (L) to make the rule more concise.

#### **7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

#### **8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to combine all game bird license rules into one overarching game bird rule; require an applicant to affirm the information provided on the application is true and correct; expand the time-frame for which the Department may deny a special license to an

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applicant convicted of illegally holding or possessing wildlife from three years to five years; clarify the license holder is responsible for all costs associated with the testing and treatment of contaminated or affected wildlife; provide the Department with greater flexibility by including an additional option for actions the Department may take should a special license holder fail to adhere to the requirements of applicable laws and rules. The Commission anticipated the proposed amendments would benefit the regulated community, members of the public, and the Department by clarifying rule language to ease enforcement, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, and allowing the Department additional oversight where necessary.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the general provisions and administrative compliance applicable to all special licenses, as well as regulatory actions that may be taken when a special license holder is convicted offense involving cruelty to animals, fails to remedy a noticed condition, or fails to comply with requirements of the rule governing the applicable special license or this rule. The public benefits from a rule that provides general provisions in one overarching rule because it ensures consistency between all special license rules. The Department benefits from a rule that allows Arizona's wildlife resources to be placed into the care of persons who are capable of carrying out the permitted activities and knowledgeable in the care and handling of permitted wildlife. The public and Department benefit from a rule that is understandable. The Department believes that once the proposed

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amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-409 as follows:

- Replace the reference to "Scientific Collecting License" with "Scientific Activity License" to reflect changes proposed to R12-4-418.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Establish the circumstances under which an application for a special license may be considered the renewal of the special license.
- Allow the Department to place add or remove stipulations to a special license during the license period to address changing conditions that may arise.
- Require all special license holders to submit the results of any required testing to the Department.
- Establish a time period of five-years for all records maintained by the special license holder that are subject to Department inspection.
- Enable the Department to treat the first violation of subsection (N) as a failure to remedy to allow the Department to take action more quickly when a special license holder commits an egregious violation.
- Repeal subsection (J) to make the rule more concise because inspections are included under subsection (L).

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

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#### **R12-4-410. Aquatic Wildlife Stocking License**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, 17-332, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish requirements that allow a person to import, possess, purchase, stock, and transport any restricted aquatic species designated on the license at the location specified on the license, including authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and wildlife habitat. The rule was adopted to protect natural aquatic ecosystems from the introduction, establishment, and/or spread of undesired aquatic wildlife, while still allowing persons to stock aquatic wildlife for personal or commercial use.

The Department issues approximately 150 aquatic stocking and holding licenses on an annual basis.

The aquatic stocking and holding license is valid for a period of 20 consecutive days.

There is no fee for the aquatic stocking and holding license.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

Overall, the rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in

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determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

As a result of changes made to R12-4-414 during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

The Department is currently working with various counties to allow them to stock, hold, and use endangered Gila Topminnow for vector control instead of nonnative mosquitofish. The Department accomplishes this transfer through the counties USFWS ESA Federal Habitat Conservation Plan, the Department's USFWS 10(a)(1)(a) permit, and an Aquatic Wildlife Stocking License issued to the county. Pima is the only county currently stocking Gila Topminnow for vector control. Because a county will need to hold and stock Gila Topminnow year-round and the license is only valid for a period of 20 consecutive days, Pima County has had to apply for and obtain 18 licenses per year. The Department proposes to amend the rule to allow the issuance of an annual Aquatic Wildlife Stocking to government agencies that stock Gila Topminnow or other approved species for vector control.

The Department has determined the anticipated benefits of requiring an applicant to provide their Federal Tax Identification Number (FTIN) and, when applicable, their wildlife supplier's FTIN has not been realized. The Department proposes to amend the rule to remove the FTIN requirement.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to replace the reference to the "On-Line Environmental Review Tool" with "Online Environmental Review Tool" to reflect current terminology.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to require an applicant to further examine the potential for adverse impacts of stocking on existing wildlife species in the proposed area; require additional information about the proposed stocking location; and possess the license when conducting stocking activities and present it to a Department employee or agent upon request. The Commission anticipated any costs that may be incurred would be administrative in nature and believed to be insignificant.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements that allow a person to import, possess, purchase, stock, and transport any restricted aquatic species designated on the license at the location specified on the license, including authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and wildlife habitat. The public benefits from a rule that allows a person to stock aquatic wildlife for

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personal or commercial use, while protecting Arizona's natural aquatic ecosystems from the introduction, establishment, and/or spread of undesired aquatic wildlife. The public and the Department benefit from a rule that protects aquatic wildlife from illegal stocking of restricted aquatic wildlife that may have a negative impact on native wildlife; or that may cause harm to recreational sport fisheries through biological interactions or parasite and pathogen transmissions. The public and Department benefit from a rule that is understandable. The Department proposes to amend the rule to establish a restocking license. In most cases, the costs incurred by the Department when processing a restocking license are anticipated to be less than an initial license because the Department believes the issuance of an aquatic stocking license should take less time to review as there would be no need for the required inspection(s) and background or reference check(s). The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Aquatic Wildlife Stocking License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-410 as follows:

- Amend the title to reference the restocking license.
- Allow the Department to issue an annual aquatic wildlife stocking license to government agencies that stock Gila Topminnow or other approved species for vector control.

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- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the FTIN requirement.
- Allow the applicant to provide a physical address or location and remove the requirement an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.
- Replace reference to "On-Line Environmental Review Tool" with "Online Environmental Review Tool" to reflect current terminology.
- Establish an aquatic wildlife restocking license to aid in facilitating a more efficient application review process.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-411. Live Bait Dealer's License**

#### **1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(B)(8), 17-332, 17-240(A), 17-250(A), 17-250(B), 17-306, 17-333, and 41-1005

#### **2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements necessary to allow a person to conduct a commercial live bait retail sales operation, to include authorized activities, permitted species, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and aquatic wildlife habitat. The rule was adopted to protect native aquatic wildlife from parasite/pathogen transmissions that may be carried by live baitfish while allowing a person to sell live baitfish commercially.

The Department issues approximately 15 live bait dealer licenses on an annual basis.

The live bait dealer license is valid until December 31st of each year.

The fee for the live bait dealer license is \$35.

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#### **3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

The Department proposes to remove mosquito fish and threadfin shad from the list of authorized aquatic live wildlife a bait dealer may lawfully sell. As a result of the Arizona Game and Fish Department's Statewide Sport Fish Stocking Consultation with the U.S. Fish and Wildlife Service, the Conservation and Mitigation Program conducted a statewide live bait use assessment to analyze the statewide use of live bait (including baitfish, crayfish, and waterdogs) and complete a risk analysis to identify recommendations for live bait management in Arizona. The Department evaluated the potential to minimize the risk and threats to native aquatic species, while continuing to maintain live bait use opportunities that have social and economic importance to the angling community. The Western Mosquitofish is native throughout the Mississippi River and its tributary waters, from the southern portions of Illinois and Indiana to the Gulf Coast and northeastern portion of Mexico. Mosquitofish were first documented in Arizona in 1925 and were first stocked by the Department in 1968. In Arizona, Mosquitofish have been directly linked to the local extirpation of at least three historical Gila Topminnow (*Poeciliopsis occidentalis occidentalis*) populations within a few years of introduction. The Mosquitofish is a voracious predator, feeding primarily on zooplankton and invertebrate larvae, it has been documented feeding on its own offspring, attacking adult fish of similar size as well as offspring of larger fish including Largemouth Bass and Goldfish. Threadfin Shad are native to watersheds of the Gulf Coast, including the Ohio, Illinois, Indiana, and Mississippi River drainages. They were recognized as a legal baitfish in Arizona in 1959 and permitted for state-wide use except for trout waters. In 1970, regulations prohibited the use of live bait in counties rather than stating "trout waters." Threadfin Shad are very sensitive to changes in temperature and dissolved oxygen, and die-offs are frequent in late summer and fall. Therefore, bait dealers usually do not hold and sell this species and anglers are able to collect these species from wild populations to use as bait. At present in Arizona, no live baitfish may be possessed while at any waterbody in Coconino, Navajo, Apache, Pima, and Cochise counties and all other counties have specific live baitfish regulations by waterbody or area. Mosquitofish and Threadfin Shad are permitted on all waters of La Paz, Maricopa, Mohave, Pinal, and Yuma counties.

The Department also proposes to amend the rule to add the following native species to the list of authorized aquatic live wildlife a bait dealer may lawfully sell: Longfin Dace, Speckled Dace (*Rhinichthys osculus*), Sonora Sucker, and Desert Sucker (*Catostomas clarkii*).

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- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

The Department has determined the anticipated benefits of requiring an applicant to provide their Federal Tax Identification Number (FTIN) and, when applicable, their wildlife supplier's FTIN has not been realized. The Department proposes to amend the rule to remove the FTIN requirement.

- 6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final

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rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to require an applicant for a Live Bait Dealer's license to remove Red Shiners from the list of authorized bait fish; include additional information regarding the common names of the live bait they propose to sell; and the physical location of the facility. The Commission anticipated the rule would have no impact on consumers because there are no registered live bait dealers that offer Red Shiners for sale as a baitfish. The Commission anticipated a person possessing wildlife under the rule would not incur additional costs as a result of the rulemaking.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements necessary to allow a person to conduct a commercial live bait retail sales operation, to include authorized activities, permitted species, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and aquatic wildlife habitat. The public and Department benefit from a rule that protects natural ecosystems, native aquatic species, and desirable non-native aquatic species from potential disease and parasitic introduction through the use of live bait fish; and harmful ecological impacts from undesirable non-native aquatic species. The public and Department benefit from a rule that is understandable. The current live bait dealer's license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years. Because the Department intends to implement an online special license application and reporting system, the Department proposes to remove the requirement that an applicant

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submit a separate application for each location where the applicant proposes to use wildlife. These changes are proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Live Bait Dealer's License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-411 as follows:

- Remove mosquito fish and threadfin shad from the list of authorized aquatic live wildlife a bait dealer may lawfully sell.
- Add Longfin Dace, Speckled Dace (*Rhinichthys osculus*), Sonora Sucker, and Desert Sucker (*Catostomas clarkii*) to the list of authorized aquatic live wildlife a bait dealer may lawfully sell.
- Increase the amount of time in which a special license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife to reduce burdens and costs to persons regulated by the rule.
- Remove the FTIN requirement.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the

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Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-412. Special License Fees**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-333 and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish fees for the special licenses issued under Article 4. Live Wildlife; special license fees were previously included under R12-4-102 (license; permit; stamp; tag fees) which establishes fees for hunting and fishing licenses, permits, stamps, and tags. The rule was adopted to provide special license fees in the same Article that governs the Department's special licenses.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend this rule to change the name of the White Amur Stocking and Holding License to White Amur Stocking License to reflect amendments made to R12-4-424 (white amur stocking and holding license); to offer a White Amur Restocking License instead of a renewal of the license to make the rule more concise; and eliminate the commercial and noncommercial licenses to increase consistency between rules within Article 4.

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The Department proposes to amend the name of the Scientific Collecting License to Scientific Activity License and replace the two types of scientific collecting licenses (commercial and noncommercial) with the three types of scientific collecting licenses to reflect amendments made to R12-4-418 (scientific collecting license): academia, consulting, and personal/government/non-governmental organization. The Department proposes to require a \$50 fee for all three types of licenses.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

When the rule was adopted it established a fee structure that would allow the Department to establish a lower fee for licenses that are renewed before they expire. Because the Aquatic Stocking and White Amur Stocking and Holding licenses are typically a “one and done” license and are only valid for 10 to 20 days, there is no renewal process for them. The Department proposes to amend the rule to clearly indicate these two licenses are not eligible for renewal.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule was adopted to simply transfer the fee information for all special licenses listed under R12-4-102 (license; permit; stamp; tag fees) to R12-4-412 (special license fees). Because the rulemaking did not make any changes to

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the special license fees, the Commission anticipated the rulemaking would have no impact on persons regulated by the rule.

The purpose of the special license program is to enable wildlife management and provide information valuable to the maintenance of wild populations, education, the advancement of science, or the promotion of public health. A special license is required when a person, typically a business or educational entity, wants to possess, process, or handle a species listed on the Commission's Restricted Live Wildlife list. On average, the Department issues approximately 2,275 special licenses on an annual basis.

The findings of an internal audit and cost analysis of the Department's special license program determined the Department incurs significant administrative costs and burdens during the review and inspection stage of the special license issuance process. In 2011, the audit estimated the annual administrative burden of the special license program was approximately \$227,991. As a result, a formal team was tasked with assessing each special license. The team evaluated the special license process from start to finish and benchmarked fees for similar licenses issued by other states. Out of eleven special licenses, one generates approximately \$100,000 in revenue annually: White Amur Stocking and Holding license. Out of the remaining ten special licenses, five generate approximately \$9,393 in revenue annually: Game Bird, Live Bait Dealer, Private Game Farm, Sport Falconry, and Zoo licenses. All of the remaining five special licenses are issued at no cost to the applicant: Aquatic Wildlife Stocking, Scientific Collecting, Wildlife Holding, Wildlife Rehabilitation, and Wildlife Service.

The Department receives no appropriations from the general fund and operates primarily with the revenue it generates from the sale of licenses, permits, stamps, tags, special licenses and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment.

The Commission directed the Department to develop fees with the intention of recovering the cost of providing a service now and into the future. Because the Department issues most all of its special licenses for no fee or at a very low fee, the Department proposes to establish or increase special license fees in attempt to recover the Department's administrative costs.

During the team's assessment of the eleven special licenses, two common discussion points were the fact that the Department does not charge an application fee for any of the special licenses despite the fact that the Department incurs significant administrative costs (i.e. application review, analysis of data provided, facility inspection(s), background or reference check(s)).

The Department proposes to amend the rule to establish an application fee of \$20 for all special licenses. The Department proposes to amend the rule to establish renewal special license fees at a reduced fee where

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appropriate. In addition, the Department proposes to amend the rule to increase the fees for special licenses where the administrative burden is greater than the fee for the license and the Department receives little or no benefit from the activities carried out under the authority of the special license.

The formal special license team's report provided recommendations intended to help offset the administrative burden associated with pre- and post-issuance administrative costs. The Department chose to implement the minimal fee increase suggested by the formal special license team.

It is important to note, while the Department is recommending either a fee increase or the establishment of a new special license fee, the Department is also extending the period for which a special license is valid from one year to three, unless the nature of the license does not support a longer time-frame: aquatic wildlife stocking (valid for 20 days nongovernment, one-year government), game bird field trial (valid for 10 days), and white amur stocking (valid for 20 days).

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable; the rule was adopted on January 1, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes fees for the special licenses issued under Article 4. Live Wildlife. The Department receives no appropriations from the general fund and operates primarily with the revenue it generates. Applying for a special license is voluntary and only a person who chooses to apply for a special license will incur those costs associated with that license and the purpose of the license. The public benefits from a rule that provides a comprehensive listing of special license fees. The public and Department benefit from a rule that is understandable. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule and allow the Department to recover some of the administrative costs from the special license program.

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- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-412 as follows:

- Identify when a renewal license fee is required.
- Establish an application fee of \$20 for all special license applications.
- Establish a fee of \$120 for an Aquatic Wildlife Stocking License.
- Clarify the Aquatic Wildlife Stocking License cannot be renewed.
- Establish an Aquatic Restocking license for an application fee only.
- Increase the initial Game Bird Field Trial and Game Bird Hobby license fees to \$15 from \$6 and 5, respectively.
- Increase the initial Game Bird Shooting Preserve license fee to \$135 from \$115 and reduce the renewal fee for this license from \$115 to \$40.
- Increase the initial Private Game Farm license fee to \$125 from \$57.50 and reduce the renewal fee for this license from \$57.50 to \$40.
- Rename of the Scientific Collecting License to Scientific Activity License to reflect amendments made to R12-4-418.
- Replace current Scientific Collecting commercial and noncommercial license types with academia, consulting, and personal/government/non-governmental organization license types to reflect amendments made to R12-4-418.
- Establish a \$50 fee for all three types of Scientific Activity licenses.
- Increase the Sport Falconry initial and renewal licenses to a fee of \$125 from \$87.50.
- Establish a White Amur Restocking License for a fee of \$100.

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- Establish a Wildlife Service License fee of \$75 and a renewal fee of \$75.
- Rename the White Amur Stocking and Holding License to White Amur Stocking License to reflect amendments made to R12-4-424 (white amur stocking and holding license).

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-413. Private Game Farm License**

#### **1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 3-1205, 17-231(B)(8), 17-238, 17-240(A), 17-306, 17-307(C), 17-332, 17-333, and 41-1005

#### **2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements necessary to allow a person to conduct the commercial farming, use, and sale of game species, to include authorized activities, permitted wildlife, administrative compliance, and the restrictions and prohibitions necessary to protect native wildlife and wildlife habitat. The rule was adopted to protect native wildlife from parasite and pathogen transmissions that may be carried by game species while allowing a person to farm, use, and sell game species and game species parts as a trade or business and for the conservation of the State's wildlife.

The Department issues approximately 10 private game farm licenses on an annual basis.

The private game farm license is valid until December 31st of each year.

The fee for the private game farm license is \$115.

#### **3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

Overall, the rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of

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concern, etc. Responses indicate the rule is not effective. While the rule is intended to authorize the issuance of a game farm license for the purpose of raising and propagating game species (principally game birds and, formerly, deer) it also authorizes the possession, sale, and use of mammals listed as restricted live wildlife under R12-4-406 (restricted live wildlife), including anteaters, armadillos, moose, primates (apes, baboons, chimpanzees, gibbons, gorillas, lorises, macaques, orangutans, spider monkeys, and tamarins), shrews, sloths, weasels, wild cats (including jaguars, leopards, lions, lynx, ocelots, servals, and tigers), and woodchucks. Allowing a person to possess these mammals for game farm purposes was not the intent of this rule.

The Department has received private game farm license applications for armadillos, lemurs, and servals. These are not native game species and pose a public health and safety risk and a risk to native wildlife and wildlife habitat if illegally released or allowed to escape. In addition, many of these species require complex dietary, territorial, social, physical, and psychological needs that the general public is incapable or providing; often these animals are kept in deprived and inappropriate environments. It is not uncommon for the public to surrender unwanted restricted species to the Department, which then must provide veterinary treatment and find a willing wildlife sanctuary to accept the animal.

The Department proposes to amend the rule to align it with its original intent to allow a license holder farm, use, and sell captive pen-reared game birds. The proposed change will not impact the three currently licensed private game farms authorized to possess other species of wildlife as they will be able to renew their license for the wildlife currently held under the license under subsection (E) of this rule.

#### **4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

Overall, the rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department is no longer conducting Northern Bobwhite quail reintroduction efforts in game management unit 34A and, as a result, there is no need to restrict Northern Bobwhite quail reintroduction efforts in game management unit 34A. The Department proposes to amend the rule to allow Northern Bobwhite quail to be held under a private game farm license in game management unit 34A.

As a result of changes made to R12-4-414 (game bird license) during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

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Under A.R.S. §17-250, a person who is in possession of wildlife or who maintains wildlife under a license issued by the Department is required to submit the wildlife or parts of the wildlife for disease testing. The Department proposes to amend the rule to require a person to immediately report to the Department any mortality event that results in the loss of ten percent or more of the wildlife held on the facility and allow the Department to collect samples from the affected wildlife for disease testing purposes; these standards were chosen because they are the common standard for the livestock and pet trade industries; and signify an event outside of normal parameters and is indicative of a potential disease outbreak.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

In 2002, as a result of concerns over the spread of Chronic Wasting Disease (CWD), the Commission amended the rule to prohibit the possession of cervids under a private game farm license. Subsection (E) was adopted to provide a mechanism to allow a person who was previously authorized to possess cervids under the rule to renew the license, provided certain criteria are met. The Department proposes to amend the rule to allow a person who currently possesses mammals under this rule to continue to renew the private game farm license, provided the license holder is in compliance with all applicable requirements under R12-4-409 (general provisions and penalties for special licenses), R12-4-428 (captivity standards), R12-4-430 (importation, handling, and possession of cervids), and this rule.

The Department proposes to amend the rule to clearly state that the location information required under subsection (I)(4) is the location physical address or general location where the applicant proposes to conduct activities. This change is proposed as a result of customer comments received by the Department.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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The Department received the following written criticisms of the rule:

**Written Comment: February 20, 2018.** Recently it was brought to my attention that I cannot breed and sell Mallard ducks. I can hold and train with them, but it is not legal to raise and sell them? The USFWS allows the raising and selling of mallard ducks. I think this rule should be changed to allow the breeding, raising, and selling of domestically raised Mallard ducks, provided the license holder is in compliance with the requirements of 50 C.F.R. 21.13 (permit exceptions for captive-reared mallard ducks), as amended October 1, 2017.

**Agency Response:** The Department proposes to amend the rule to authorize the possession of Mallard ducks to expand opportunities for private game farm license holders.

**Written Comment: May 8, 2017.** Add *Oreortyx pictus* (Mountain Quail) to the list of birds that may be held. Create a permanent license number or identification number for all special licenses to provide for better tracking and better consistency in reporting. Require an applicant to provide the U.S. Department of Agriculture (USDA) Premise Identification Number (PIN) instead of the Federal Employee Identification Number (FEIN). Some game farms are a limited liability company with no employees and would not have an FEIN. The USDA PIN provides the state with better record keeping, better controls on the health of the birds being imported, and ensures pathogens of concern are not introduced into Arizona through released game birds. The state can access this information through the USDA's National Poultry Improvement Program (NPIP). Remove the requirement that the applicant provide the information for each location where the wildlife will be held; the game farm owner cannot be responsible for this information. Consider requiring the applicant to provide zoning approval for conducting game farm activities to ensure the Department does not authorize something that is illegal based on another state or county law or ordinance. Add "if applicable" to subsection (I)(7). Add a requirement for the NPIP number from the vendor and the USDA form VS9-3 for game birds. There is a higher level of authority already regulating this via the USDA and the NPIP. Adding these requirements will ensure continuity with federal regulations and provide better tracking information for the state on birds entering and being released. The Department can use this information to eliminate the need for the health certificate currently required under the rule. These forms indicate USDA veterinarian has inspected the animal and provide better quality control than the currently required health certificate through blood testing which ensures disease is not introduced into existing wildlife. Ensure each facility is inspected annually (and as needed) by the attending veterinarian or USDA veterinarian. Also include the minimum criteria for the inspection. As a note, the current USDA and NPIP compliant inspections include the following: records checks (importing, breeding, disease blood testing, biosecurity), NPIP certification, blood testing for pullorum thyroid and/or avian flu. For the reporting requirement, add USDA PIN and flock number to improve tracking and data for the Department. Under subsection (M)(4)(e), add the address, city, state, and telephone number of the person who received the wildlife. Under subsection (N)(5), add "or by other federal governing body" to reference the USDA office in Phoenix.

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**Agency Response:** The Department proposes to amend the rule to allow the possession of Mountain Quail to expand opportunities for private game farm license holders. Currently, a license holder is required to provide their Department ID; this number is sufficient for tracking and reporting purposes and will not result in added costs and burdens to persons regulated by the rule or the Department. The USDA implemented the PIN program to control and eradicate animal diseases through the identification of livestock (cattle, goats, sheep, and swine) being moved interstate. Game farms are not required to obtain a USDA PIN because wildlife are not considered livestock. NPIP is a voluntary state-federal cooperative testing and certification program for poultry breeding flocks, baby chicks, poults, hatching eggs, hatcheries, and dealers. NPIP was initiated to eliminate Pullorum Disease caused by *Salmonella pullorum* which was rampant in poultry and could cause upwards of 80% mortality in baby poultry. Game farms are not currently required to enroll in NPIP. Implementing this suggestion would apply another level of regulation, which would result in increased costs and burdens to persons regulated by the rule. In addition, implementing this suggestion would not result in better tracking and reporting for the Department. Under subsection (I), a private game farm license applicant is required to provide information applicable to the location where the private game farm license holder proposes to possess wildlife. This subsection applies to the applicant, not the game farm customer; and the applicant should know the minimum information required for the location where they propose to conduct activities authorized under the license. However, the Department proposes to amend the rule to clarify the requirement for the location where the applicant proposes to conduct activities. The Department believes it is the applicant's responsibility to ensure they are in compliance with all regulations applicable to the type of business they propose to conduct. Requiring an applicant to provide zoning approval implies the Department will track and monitor compliance with the applicable zoning laws, which is not the Department's responsibility. Under R12-4-409 (general provisions and penalties for special licenses) subsections (C)(2) and subsection (G)(1), of this rule an applicant is already required to comply with applicable municipal, county, state or federal code, ordinance, statute, regulation, or rule applicable to the license. The Department does not believe it is necessary to append "Any other information required by the Department" with "if applicable." The Veterinary Services form 93 Report of Sales of Hatching Eggs, Chicks, and Poults is a certificate of inspection and is signed by any one of three state officials who are authorized to complete the health inspection and form. The form is comparable to the health certificate; the Department proposes to amend the rule to allow a person to submit a health certificate or other similar form that indicates the wildlife identified on the form appears to be healthy and free of infectious, contagious, and communicable diseases. Under subsection (K)(5), a private game farm license holder is required to ensure each licensed facility is inspected by the attending veterinarian at least once every year. The criteria for an inspection are provided under R12-4-428 (captivity standards). The Department may, at its discretion, inspect the license holder's records at any time during the licensing period. Because address and contact information is subject to change on a frequent basis for some persons, the Department believes requiring the name of the person who received wildlife is sufficient for Department purposes. Under A.R.S. § 17-102, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private

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ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. The Department cannot relinquish its authority to manage wildlife held under a license issued by the Department.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule was amended to clarify language regarding propagation; replace the term "Blue Grouse" with "Dusky Grouse;" clarify the locations where the Department will not issue a private game farm license to raise Northern Bobwhite quails; require an applicant to provide additional information on the application to enable the Department to more adequately evaluate the application for the requested activities; better regulate the use of "hybrid wildlife;" address sport harvest of wildlife held under this license; clearly state that, if breeding takes place, a private game farm license is issued to authorize only the breeding of wildlife species to the same species; clarify the Department will not issue a private game farm license if the escape of the proposed species could create a threat to native species and or habitat; and require the game farm license holder to ensure their facility is inspected by a licensed, practicing veterinarian. The Commission anticipated the benefits of the proposed amendments, specifically taking a stronger stance in the regulation of live wildlife for the principal purpose of protecting native wildlife species, outweighed any costs. The Commission anticipated a person possessing wildlife under this rule may incur minor burdens associated with the requirement to submit an annual report even when authorized activities did not occur during the license year.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.

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- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements necessary to allow a person to conduct the commercial farming, use, and sale of game species, to include authorized activities, permitted wildlife, administrative compliance, and the restrictions and prohibitions necessary to protect native wildlife and wildlife habitat. The intent of the rule is to protect native wildlife from diseases and parasites that may be carried by game species while allowing a person to farm, use, and sell game species and game species parts as a trade or business and for the conservation of the State's wildlife. The public benefits from a rule that allows a person to legally farm, use, and sell or purchase game species. The public and the Department benefit from a rule that is understandable, protects native wildlife and wildlife habitat, and promotes the conservation of the State's wildlife. The current game farm license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid to three years. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. Because the Department intends to implement an online special license application and reporting system, the Department proposes to remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. These changes are proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law.

Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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Federal law, 50 C.F.R. 21.13 (Permit exceptions for captive reared mallard duck), establishes the conditions, restrictions, and requirements that allow captive-reared and properly marked mallard ducks to be possessed without a federal permit.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Private Game Farm License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-413 as follows:

- Limit the issuance of a private game farm license to the sole purpose of farming, using, and selling captive pen-reared game birds.
- Increase the amount of time in which a special license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule, excepting the field trial license which remains valid for not more than ten days.
- Authorize the possession of Mallard ducks to expand opportunities for private game farm license holders.
- Authorize the possession of Mountain Quail to expand opportunities for private game farm license holders.
- Incorporate by reference 50 C.F.R. 21.13 which establishes the conditions, restrictions, and requirements that allow captive-reared and properly marked mallard ducks to be possessed without a federal permit.
- Remove all mammals from the list of authorized wildlife to align the rule with its original intent.
- Allow a license holder who currently possesses mammals to renew the private game farm license, provided the license holder is in compliance with R12-4-409, R12-4-428, R12-4-430, and this rule.
- Clarify the location information required under subsection (I)(4) requirement is for the location where the applicant proposes to conduct activities. This change is proposed as a result of customer comments received by the Department.
- Allow a person to submit a health certificate or other similar form that indicates the wildlife identified on the form appears to be healthy and free of infectious, contagious, and communicable diseases to reduce burdens and costs to persons regulated by the rule. This change is proposed as a result of customer comments received by the Department.
- Require a person to immediately report to the Department any mortality event that results in the loss of ten

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percent or more within a seven-day period of the wildlife held on the facility and allow the Department to collect samples from the affected wildlife for disease testing purposes.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-414. Game Bird License**

#### **1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-307(C), 17-332, 17-333, and 41-1005

#### **2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements that allow a person to possess, release, and take pen-reared game birds, to include authorized activities, permitted game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. Under A.R.S. § 17-102, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the Commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. The rule was adopted to allow a person to lawfully conduct activities using captive pen-reared game birds listed as restricted live wildlife, while provide protection for public health, and wildlife health and habitat.

The Department issues approximately:

- Forty game bird field trial licenses on an annual basis.
- Eighty game bird field trial training licenses on an annual basis.
- Fifty game bird hobby licenses on an annual basis.
- Six game bird shooting preserve licenses on an annual basis.

The fee for the:

- Game bird field trial license is \$6.
- Game bird hobby license is \$5.

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- Game bird shooting preserve license is \$115.

There is no fee for the game bird field trial training license.

#### **3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has received written comments in support of the rule. The Department believes this data indicates the rule is effective.

#### **4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department is no longer conducting Northern Bobwhite quail reintroduction efforts in game management unit 34A and, as a result, there is no need to restrict Northern Bobwhite quail reintroduction efforts in game management unit 34A. The Department proposes to amend the rule to allow Northern Bobwhite quail to be held under a game bird license in game management unit 34A.

Under A.R.S. §17-250, a person who is in possession of wildlife or who maintains wildlife under a license issued by the Department is required to submit the wildlife or parts of the wildlife for disease testing. The Department proposes to amend the rule to require a person who possesses a game bird shooting preserve or hobby license to immediately report to the Department any mortality event that results in the loss of ten percent or more of the wildlife held on the facility and allow the Department to collect samples from the affected wildlife for disease testing purposes. The "ten percent" standard is chosen because it is the common standard for the livestock and pet trade industries; an event resulting in a loss of ten percent or more of the total number of animals is outside of normal parameters and is indicative of a potential outbreak of disease. This requirement will not apply to persons who hold game bird field trial events or conduct game bird field training because these license holders possess game birds on a temporary basis.

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- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

- 6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticisms of the rule:

**Written Comment: March 9, 2017.** The new application form is not well thought out in some instances and ridiculous in some instances. A permit life of no more than 10 days, for each region where a person trains their game bird dog, means I will submit a new application every ten days; I would have to constantly reapply in order to train year round, in each region I might want to train in. Department staff takes several days to process the application, which is reasonable, but would I need to reapply every week in order to train every weekend or every other weekend? In addition, a proposed of \$6 fee for each training permit means a prohibitive cost when added up as an annual fee, especially when multiple permits for differing regions are required; this would mean a cost of \$156 if training every other weekend throughout the year in one region. This rule was amended from a reasonable situation where I obtained a free annual permit each year for each region to an expensive, cumbersome process. Not to mention the burden it places on Department staff. I view this current process as a bloated, bureaucratic process that just costs money and time and people will ignore it instead of participating. The three page long application forms is very frustrating to those of us who use the program. I ask the Department to take a step back and look at how simple the forms and process was before these new changes. The information you gather from me is still the same, it's just far more difficult for me to accomplish and much more of a workload on Department staff.

**Agency Response:** This comment was submitted in response to rule amendments made effective December 5, 2015. On April 7, 2017, as a result of a rulemaking petition, the Commission directed the Department to work with identified stakeholders to develop rule amendments that would result in an improved process and more customer-

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friendly approach for administering game bird licenses. The rule was amended as indicated under item #8. The amended rule became effective September 6, 2017.

**Written Comment: May 16, 2017.** I would like the rule amended to automatically disqualify anyone from getting a game bird license (hobby license) for the purpose of keeping game birds for pets. I do not think the public should keep native game birds as pets and the hobby license allows that. It is okay for a person to raise them for meat or to train a dog or falcon, but I do not believe the Department should be aiding in the pet trade of native game bird species. A person who is in the field taking game birds should be required to have a hunting license, even if the birds are captive pen-reared game birds. I realize it is a small group of people, but if a wildlife manager contacts a hunter in the field with dead mallards and they display a \$6 training license, the hunter is probably going to have to answer some questions, which will be a waste of time for the wildlife manager and the hunter.

**Agency Response:** The game bird hobby license allows a person to purchase, import, propagate, give away, kill, transport, or export captive pen-reared game birds for personal, non-commercial purposes. The Department does not issue a special license for the purpose of possessing wildlife as a pet or for amusement or companionship purposes. Often, captive pen-reared game birds held under the license are used for the eggs they lay or the meat they provide. Because all manners of hunting involve the take wildlife, the Arizona Legislature defined "take" as it relates to live wildlife; under A.R.S. § 17-101(19), "take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife. Because releasing captive pen-reared game birds for the purpose of dog training does not involve the actual take of wildlife, the Department has determined a hunting license is not required. Wildlife managers are familiar with game bird license activities and the applicable licensing requirements.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on September 7, 2017. The rule was amended to speak more clearly to the different species of game bird and different activities allowed under each type of license; clarify the Game Bird License only authorizes the license holder to use captive pen-reared game birds for any of the activities authorized under the license; establish a person conducting activities under a Game Bird Field Training license is not required to possess a hunting license; offer a Game Bird Field Training license that is valid until December 31 of the year in which it was issued; remove the requirement that an applicant submit a separate application when applying for a

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license when the applicant proposes to use more than one location to conduct activities authorized under the license; remove the requirement that an applicant provide the game bird supplier's Federal Tax Identification Number and the applicant's Federal Tax Identification Number on the application when the applicant will use the captive pen-reared game birds for a commercial purpose; clarify that only a person applying for a Game Bird Hobby or Game Bird Shooting Preserve License is required to provide a detailed description or diagram of the facilities where the applicant will hold game birds and a description of how the facilities comply with the requirements established under R12-4-428; remove the requirement that a Game Bird License holder have their facility inspected by a veterinarian at least once every year; remove the requirement that a Game Bird License holder retain records of copies of all federal, state, and local licenses, permits, and authorizations required for the lawful operation of the game bird activity; clarify that any activities authorized under the license may occur only at the locations and dates specified on the license; and require a license holder who wishes to conduct activities authorized under the license at a new location or a different date to submit an application to the Department. The Commission anticipated the rulemaking would benefit the Department by increasing efficiency in administering game bird licenses and provide an overall benefit to persons regulated by the rule by reducing the burdens and costs associated with the rule and providing better customer-service to persons seeking to conduct activities with captive pen-reared game birds in Arizona.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

In addition, R12-4-414 was recently amended as follows:

- Notice of Rulemaking Docket Opening: 23 A.A.R. 1489, June 2, 2017.
- Notice of Proposed Rulemaking: 23 A.A.R. 2293, 1472, June 2, 2017.
- Public Comment Period: August 23, 2014 through September 29, 2014.

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- G.R.R.C. approved the Notice of Final Rulemaking at the September 6, 2017 Council Meeting.
- Notice of Final Rulemaking: 23 A.A.R. 2557, September 22, 2017.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements that allow a person to possess, release, and take captive pen-reared game birds, to include authorized activities, permitted game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The public benefits from a rule that allows them to conduct a variety of lawful activities using captive pen-reared game birds. The Department benefits from a rule that protects the public health, and wildlife health and habitat. The public and Department benefit from a rule that is understandable. The current live game bird license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years, except for the field trial license. This change is proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. Field trials are connected to the sport of hunting; they support the maintaining of hunting breeds of dogs which add not only to the sport of hunting, but also the conservation of our wildlife resources by facilitating more efficient game harvest. Field trials specifically involve dogs, horses, and game birds in an organized and judged event. They are outdoor competitions designed to mimic an actual hunt in the wild, with a focus on honing hunting instincts in domestic dogs. These events judge dogs on their field performance during particular events, thus an annual license is not warranted. The Game Bird Field Trial license applicant will also continue to submit a separate application for each date and location where a competition will occur. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Game Bird License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-414 as follows:

- Increase the amount of time in which the game bird license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule, excepting the field trial license which remains valid for ten consecutive days.
- Authorize the possession of Mallard ducks, for all game bird licenses except the game bird hobby license, to increase consistency between federal regulations and Commission rules.
- Incorporate by reference 50 C.F.R. 21.13 which establishes the conditions, restrictions, and requirements that allow captive-reared and properly marked mallard ducks to be possessed without a federal permit.
- Require a person who possesses a game bird shooting preserve or game bird hobby license to immediately report to the Department any mortality event that results in the loss of ten percent or more of the wildlife held on the facility and allow the Department to collect samples from the affected wildlife for disease testing purposes.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-417. Wildlife Holding License**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-332, and 41-1005

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#### **2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements that allow a person to possess and care for restricted live wildlife lawfully taken under a valid hunting or fishing license, scientific collecting license, or wildlife rehabilitation license to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions necessary to protect wildlife and wildlife habitat. The rule was adopted to allow for holding wildlife for approved activities for the benefit of wildlife, educating the public, and other activities that are consistent with the mission of the Department.

The Department issues approximately:

- One hundred twenty wildlife holding licenses for educational purposes on an annual basis.
- Five wildlife holding licenses for exhibition purposes on an annual basis.
- Fifteen wildlife holding licenses for humane purposes on an annual basis.
- Five wildlife holding licenses for scientific purposes on an annual basis.
- Five wildlife holding licenses for wildlife management purposes on an annual basis.

There is no fee for the wildlife holding license.

#### **3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

#### **4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend the rule to replace the reference to “Scientific Collecting License” with “Scientific Activity License” to reflect changes proposed to R12-4-418 (scientific collecting license).

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The Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

The Department has determined the anticipated benefits of requiring an applicant to provide their Federal Tax Identification Number (FTIN) and, when applicable, their wildlife supplier's FTIN has not been realized. The Department proposes to amend the rule to remove the FTIN requirement.

**6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

Throughout the rule, the terms "restricted," "nonrestricted," and "restricted and nonrestricted" are used somewhat indiscriminately. The Department proposes to amend the rule to increase consistency between when and where these terms should apply.

Under subsection (C)(2)(a), a wildlife holding license holder may permanently hold wildlife that is unable to meet its own needs in the wild; however, the rule does not establish who is qualified to make this determination. The Department proposes to amend the rule to specify that only a licensed veterinarian may determine whether or not an animal is suitable for release.

The Department allows an agent to assist, or act on behalf of, the license holder. The Department proposes to amend the rule to clarify the agent's role and responsibilities to make the rule more concise.

The Department proposes to amend the rule to make minor grammatical changes to make the rule more concise.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to allow the license holder to use an agent to assist the license holder in carrying out activities authorized under the license; allow an applicant to submit photographs instead of a diagram and detailed description of the facility where an applicant proposes to hold wildlife; and allow an applicant to submit a certification issued by an institutional animal care and use committee or similar committee instead of a description of how the facility complies with requirements established under R12-4-428. The Commission anticipated the rulemaking would benefit persons regulated by the rule due to the reduction in burdens and costs associated with the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements that allow a person to possess and care for restricted live wildlife lawfully

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taken under a valid hunting or fishing license, scientific collecting license, or wildlife rehabilitation license to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions necessary to protect wildlife and wildlife habitat. The public benefits from a rule that allows a person to continue to lawfully possess wildlife held under another license once the primary purpose for which the license was issued no longer exists. The Department benefits from a rule that allows a person to continue to possess and care for wildlife held under another license rather than bear the unplanned burden of either euthanizing the wildlife or providing veterinary treatment and finding a sanctuary willing to accept the animal. The public and Department benefit from a rule that is understandable. The current wildlife holding license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years. This change is proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Wildlife Holding License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-417 as follows:

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- Clarify when the terms "restricted," "nonrestricted," and "restricted and nonrestricted" to increase consistency between when and where these terms should apply.
- Replace the reference to "Scientific Collecting License" with "Scientific Activity License" to reflect changes proposed to R12-4-418.
- Specify that only a licensed veterinarian may determine whether or not an animal is suitable for release.
- Increase the amount of time in which a special license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule.
- Replace references to "educational organization" with "educational institution" to increase consistency between rules within Article 4.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the FTIN requirement.
- Clarify the agent's role and responsibilities to make the rule more concise.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-418. Scientific Collecting License**

#### **1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(3), 17-231(B)(8), 17-234, 17-238, 17-240(A), 17-306, 17-332, and 41-1005

#### **2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements that allow a person to use live wildlife for purposes related to the advancement of conservation, education, science, and wildlife management, to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The rule was adopted to permit a person to collect, capture, mark, or salvage wildlife for scientific purposes.

The Department issues approximately 305 scientific collecting licenses on an annual basis.

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There is no fee for the scientific collecting license.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

The Department offers three types of scientific collecting licenses: personal, consultant, and government. The Department proposes to amend the rule to further refine the license types replace current Scientific Collecting commercial and noncommercial license types with personal/government/non-governmental organization, consulting, and academia license types for statistical purposes.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

As a result of changes made to R12-4-414 during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

Under R12-4-309 (authorization for use of drugs on wildlife), a person who proposes to use drugs on wildlife must obtain permission from the Department before using drugs on wildlife; there have been instances where an applicant assumed they could obtain this authorization through the scientific collecting license. The Department proposes to amend the rule to specify that a person shall not administer any drug to wildlife without advance approval from the Department to increase consistency between Commission rules.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

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The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

#### **6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to amend the name of the Scientific Collecting License to Scientific Activity License to reflect amendments made to R12-4-418 (scientific collecting license). This change is proposed as a result of customer comments received by the Department.

The Department proposes to amend the rule to make minor grammatical changes to make the rule more concise.

The Department allows an agent to assist, or act on behalf of, the license holder. The Department proposes to amend the rule to clarify the agent's role and responsibilities to make the rule more concise.

#### **7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticism of the rule:

**Written Comment: November 15, 2017.** What we have encountered, repeatedly, at both the federal and state levels is that biologists use the word "collecting" to mean the permanent removal of an individual from the wild, either by lethal means (for museum collections and other forms of scientific research that require a specimen) or live capture for study in captivity. The agencies, however, use the term to mean "all forms of research" and in most states, that includes bird banding. As a result, many scientists mistakenly believe that they don't need a permit (except federal bird banding/marketing). We spend a lot of time and energy educating them about it: <https://birdnet.org/info-for-ornithologists/permits/states/> But that assumes that they find/use these resources in the first place. Some don't - it is very common to simply ask a faculty advisor or someone else who themselves may not have good, solid knowledge (that's a nice way of saying "mistaken").

**Agency Response:** The Department agrees and proposes to amend the rule to replace the term "collecting" with "activity" to make the rule more concise.

#### **8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no**

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**economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to allow an applicant to submit a certification issued by an institutional animal care and use committee or similar committee instead of a description of how the facility complies with requirements established under R12-4-428; specify the license holder may only conduct activities authorized under the scientific collecting license at the locations and time periods specified on the scientific collecting license; and expand the requirement that the scientific collecting license holder dispose of wildlife as directed by the Department, including wildlife parts and the offspring of wildlife held under the license. The Commission anticipated the rulemaking would not result in any additional costs or burdens to persons regulated by the rulemaking.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements that allows a person to use live wildlife for purposes related to the advancement of conservation, education, science, and wildlife management, to include authorized activities, permitted wildlife species, that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The public

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benefits from a rule that allows the public to collect, capture, mark, or salvage wildlife for scientific purposes. The Department benefits from a rule that aids in the furtherance of wildlife management and conservation. The public and Department benefit from a rule that is understandable. Currently, an applicant for a scientific collecting license is required to submit a separate written proposal providing information about the applicant's proposed activities and abilities. The Department proposes to amend the rule to incorporate the information required in the proposal into the application to reduce burdens and costs to persons regulated by the rule. Because the Department intends to implement an online special license application and reporting system, the Department proposes to remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. These changes are proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Scientific Collecting License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-418 as follows:

- Rename the scientific collecting license to scientific activity license to better reflect the purpose of the license. This change is proposed as a result of customer comments received by the Department.

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- Replace current Scientific Collecting commercial and noncommercial license types with academia, consulting, and personal/government/non-governmental organization license types for statistical purposes.
- Clarify the agent's role and responsibilities to make the rule more concise.
- Make minor grammatical changes to make the rule more concise.
- Remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. This change is proposed as a result of customer comments received by the Department.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the FTIN requirement. This change is proposed as a result of customer comments received by the Department.
- Allow the applicant to provide a physical address or location and remove the requirement an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.
- Incorporate the information required in the proposal into the application to reduce burdens and costs to persons regulated by the rule.
- Specify that a person shall not administer any drug to wildlife without advance approval from the Department to increase consistency between Commission rules.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-420. Zoo License**

#### **1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238, 17-240(A), 17-250(A), 17-250(B), 17-306, 17-332, and 17-333

#### **2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements that allow a person to use captive live wildlife in a commercial facility where the principal business is exhibiting wildlife to the public and for purposes related to the advancement of science, conservation, education, or wildlife management, to include authorized activities,

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permitted wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The rule was adopted to promote the conservation of wildlife species through education, exhibition, and wildlife management.

The Department issues approximately 20 zoo licenses on an annual basis.

The zoo license is valid until December 31st of each year.

The fee for the zoo license is \$115.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

Overall, the rule appears to be effective in achieving the objective stated above.

However, public comment indicates the rule as written does not make it clear that a zoo license is issued only to commercial facility for the purpose of public exhibition of wildlife. The Department proposes to amend the rule to clarify that a zoo license may only be issued to a facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

Overall, the rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The rule as currently written appears to be in conflict with the Legislature's definition of "zoo" as defined under A.R.S. § 17-101(A)(26) because the rule does not make it clear that a zoo license is issued only to commercial facility for the purpose of public exhibition of wildlife. The Department proposes to amend the rule to increase consistency between the rule and statute by specifying that a zoo license may only be issued to a facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

In addition, the Department proposed to replace the reference to "scientific collecting license" with "scientific activity license" to reflect changes proposed to R12-4-418 (scientific collecting license).

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

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The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

#### 6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

#### 7. **Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticism of the rule:

**Written Comment: May 15, 2018.** Under R12-4-420(B), there are four criteria to satisfy in order to meet the overall requirements for a zoo license. However, under subsection (J), there is a requirement that the facility state the days of the week and the hours when the facility is open for viewing for the general public. Many facilities that specialize in breeding for science, wildlife management, or conservation may not be open to the public as their focus may not be on public education or entertainment. This would still meet the criteria as defined under R12-4-401 (live wildlife definitions). However, there is a discrepancy in definitions as stated in the opening statement in R12-4-401. Under R12-4-401, "zoo" means any facility licensed by the Arizona Game and Fish Department under R12-4-420 or, for facilities located outside of Arizona, licensed or recognized by the applicable governing agency. Under A.R.S. § 17-101, "zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes. A.R.S. § 17-101 conflicts with R12-4-420(A) and subsection (B)(1), (2), and (4). A.R.S. § 17-101 uses an archaic definition of zoo from a time of traveling menageries. By using this archaic definition, it puts facilities that focus on research, wildlife management, and wildlife conservation at a disadvantage and burdens these facilities with a requirement to be open to the public. We request clarification of subsection (B)(1), "Advancement of science or commercial purpose (as defined under R12-4-401) for the maintenance of captive live wildlife (as defined under R12-4-401) management." We request removal of subsection (J)(8) or replace with "Animals will be held on a zoo license for science or commercial purpose (as defined under R12-4-401) for the maintenance of captive wildlife (as defined under R12-4-401), management, promotion of public health or welfare, public education, or wildlife conservation." We request a modernization of the A.R.S. § 17-101 definition that will bring R12-4-420 and A.R.S. § 17-101 in line with each other.

**Agency Response:** The rule as written is confusing. The Department proposes to amend the rule to conform with the definition of "zoo" as defined under A.R.S. § 17-101(A)(26). Any revision to the A.R.S. § 17-101(A)(26)

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definition of "zoo" requires an act by the Arizona Legislature.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to restrict the transfer of live wildlife listed under R12-4-406 from zoos to another zoo license holder, an appropriately licensed or permitted special license holder or facility in another state or country, or a medical or scientific research facility exempt from special license and allow the applicant to submit a photograph of the facility if they are not affiliated with a national accreditation association.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements that allow a commercial facility to exhibit live wildlife to the public for purposes related to the advancement of science, conservation, education, or wildlife management, to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and

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the restrictions and prohibitions necessary to protect public health and safety. The public benefits from a rule that clearly outlines the requirements in which a private entity may utilize live wildlife for public exhibition and education, while maintaining the standards necessary to ensure the health and safety of the public, wildlife, and wildlife habitat. The Department benefits from a rule that contributes to the advancement of science, conservation, education, and wildlife management. The public and Department benefit from a rule that is understandable. The current zoo license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. Because the Department intends to implement an online special license application and reporting system, the Department proposes to remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. These changes are proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Zoo License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

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The Department proposes to amend R12-4-420 as follows:

- Increase the amount of time in which a special license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule.
- Replace the reference to “scientific collecting license” with “scientific activity license” to reflect changes proposed to R12-4-418.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the FTIN requirement. This change is proposed as a result of customer comments received by the Department.
- Allow the applicant to provide a physical address or location and remove the requirement an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.
- Incorporate the information required in the proposal into the application to reduce burdens and costs to persons regulated by the rule.
- Establish a time period of five-years for all records maintained by the special license holder that are subject to Department inspection.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-421. Wildlife Service License**

#### **1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-239(D), 17-240(A), 17-306, 17-332, and 41-1005

#### **2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements that allow a person to facilitate the removal of wildlife that causes property damage, poses a threat to public health or safety, or when the health or well-being of the wildlife is threatened by its immediate environment to include authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and

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existing wildlife habitat and resources. Under A.R.S. § 17-102, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. The rule was adopted to ensure a person working in the wildlife service industry handles wildlife in a practical, humane, and environmentally acceptable manner.

The Department issues approximately 130 wildlife service licenses on an annual basis.

The wildlife service license is valid until December 31st of each year.

There is no fee for the wildlife service licenses.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

Overall, the rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Subsection (B) of the rule references an incorrect statutory citation. The Department proposes to amend the rule to correct the statutory reference.

As a result of changes made to R12-4-414 during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

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**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

The Department has determined the anticipated benefits of requiring an applicant to provide their Federal Tax Identification Number (FTIN) and, when applicable, their wildlife supplier's FTIN has not been realized. The Department proposes to amend the rule to remove the FTIN requirement.

Subsection (B) identifies what species of animal do not require a wildlife service license and may be removed under a Pest Management license issued by the Arizona Department of Agriculture. Because most doves are considered to be migratory birds, there is some confusion as to whether Rock pigeons are protected under the Migratory Bird Treaty Act (MBTA). The Department proposes to add Rock pigeons, also known as Rock Doves, to this list. This change is proposed as a result of customer comments received by the Department.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The rule references "peach-faced love birds." The Department proposes to amend the rule to replace the term "peach-faced love birds" with "rose-colored lovebirds" to reflect current scientific terminology.

The Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no**

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**economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to prohibit the possession of wildlife carcasses or parts as this practice is not consistent with the intent of the rule; and identify what species of animal do not require a wildlife service license and may be removed under a Pest Control license issued by the Department of Agriculture. The improper disposal of wildlife carcasses or parts after an animal is removed and/or euthanized often poses a threat to the public health, safety, and welfare; and native wildlife and wildlife habitat. The Commission anticipated the public and the Department would benefit from a rulemaking that protects native wildlife species and wildlife habitat. The Commission anticipated businesses that provide wildlife removal services would benefit from the amendment that clarifies which species may be removed without having to possess a Wildlife Service License. The Commission anticipated the rulemaking would not result in additional burdens or costs to persons regulated by the rule.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements that allow a person to facilitate the removal of wildlife that causes property damage, poses a threat to public health or safety, or if the health or well-being of the wildlife is affected by its

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immediate environment to include authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. Because the Commission holds and manages all aquatic and terrestrial wildlife for the benefit of the public, the rule is necessary to ensure wildlife is handled in a practical, humane, and environmentally acceptable manner. The public and the Department benefit from a rule that protects public health and safety, personal property, native wildlife species and wildlife habitat. The Department, the public, and businesses that provide wildlife removal services benefit from a rule that is understandable. The current wildlife service license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. This change is proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Wildlife Service License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-421 as follows:

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- Correct the statutory reference provide in subsection (B).
- Replace the term "peach-faced love birds" with "rose-colored lovebirds" to reflect current scientific terminology.
- Increase the amount of time in which a special license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the FTIN requirement. This change is proposed as a result of customer comments received by the Department.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-422. Sport Falconry License**

#### **1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-235, 17-236(B), 17-238(A), 17-306, 17-307, 17-331, 17-332, 17-333, 17-371(D), 25-320(P), and 41-1005

#### **2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements that allow a person to take and use raptors listed in the Migratory Bird Treaty Act (MBTA) for the sport of falconry, to include authorized activities, permitted raptor species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. The rule was initially adopted to supplement the federal migratory bird hunting regulations to ensure the Department maintained oversight of, and the ability to manage, Arizona's wildlife resources.

In 2008, 50 C.F.R. 21.29 (falconry standards and falconry permitting) was amended to eliminate the dual permitting system and transfer falconry permitting administration to the individual states, provided the state's laws, rules, processes, and forms met the minimum standards under 50 C.F.R. 21.29. If a state failed to meet the standards for certification, any persons possessing a Migratory Bird Treaty Act species (MBTA) raptor for falconry in that state would be required to permanently release into the wild, euthanize, or transfer their raptor to a

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licensed falconer in a certified state or jurisdiction, a captive propagation program, or the Department. In order to continue permitting sport falconry using MBTA raptors in Arizona, the rule must remain in place and continue to meet USFWS standards for certification. The Department's rules, processes, and forms were certified as meeting the standards under 50 C.F.R. 21.29; see 77 FR 66406 - 66408, November 5, 2012.

The Department issues approximately 55 sport falconry licenses on an annual basis.

The sport falconry license is valid until the last day of the third December from the date of issuance.

The fee for the sport falconry license is \$87.50.

### **3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

Overall, the rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

Under 50 C.F.R. 21.29 (falconry standards and falconry permitting), a falconer who houses their raptors in an indoor facility must ensure the facility has an area large enough to allow the raptor to fly when untethered or to fully extend its wings or attempt to fly when tethered without damaging its feathers or contacting other raptors. There have been instances where licensed falconers were unaware of the federal requirement. While the Department provides a packet of information that includes information on where to find the federal regulations, the packet does not include a copy of the actual regulations due to the volume of paper required and the fact that many people lose interest in obtaining a license once they understand that it is an expensive and time-consuming hobby. The Department proposes to amend the rule to require a falconer to ensure the facility has an area large enough to allow the raptor to fly when untethered or to fully extend its wings or attempt to fly when tethered without damaging its feathers or contacting other raptors to protect Arizona's wildlife resources.

Under 50 C.F.R. 21.29 (falconry standards and falconry permitting), USFWS is required to maintain an electronic reporting system that allows persons conducting lawful activities with MBTA raptors to enter information regarding the acquisition and disposal (death, loss, purchase, sale, theft, transfer, etc.) of raptors they possess. Because the states were supposed to have access to the online reporting system for administrative purposes, the rule was previously amended to no longer require the person to provide a copy of the federal 3-186A form to the

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Department. Due to issues with the electronic reporting system, the Department currently requires falconry license holders to provide a copy of the 3-186A form to the Department whenever a reportable activity occurs. Requiring a paper copy of the 3-186A form is authorized under 50 C.F.R. 21.29, regardless of whether the electronic reporting system is fully functional or not. However, full compliance has not been achieved. Furthermore, under 50 C.F.R. 21.27 (special purpose permits) and 21.30 (raptor propagation permits) respectively, unless the state requires an abatement or propagation permit, a person need only possess a federal permit to conduct abatement activities with, or propagate, MBTA raptors. Both federal permits have liberal possession limits and raptors held under the federal permits do not count towards the falconers possession limit established in rule. Because the federal regulations allow a person to use any lawfully possessed falconry raptor for abatement activities or for propagation, a licensed falconer can transfer their falconry raptor to their federal permit for abatement or propagation purposes at any time, as applicable. Under 50 C.F.R. 21.17 and 21.30, a person is only required to notify the governing state agency of this transfer when that state requires notification. Again - because the Department believed it would be made aware of these transfers through the electronic reporting system, the Department did not require persons to notify the Department when a raptor was transferred to the federal permit. For these reasons, the Department proposes to amend the rule to require a person to submit a paper copy of the 3-186A form and the annual federal propagation report at the same time the person submits these forms (reports) to USFWS. In addition, the Department proposes to amend the rule to replace the definition of "abatement services" with "abatement" to make the rule more concise.

Falconry requires long hours of unceasing dedication, expertise, and skill. A falconer must train a raptor to fly to hunt and then willingly return to being captive. An apprentice (beginner) must learn about the various raptors, their stages of life, characteristics, prey, care, feeding, and suitability for the falconer and the hunting environment. A falconer must know the rules and regulations that govern sport falconry and the raptors they possess, be able to provide proper housing (captivity standards) for the raptors they possess, know what equipment is required and how to use it, and recognize and treat health problems. While there are many things a person can easily learn long distance; how to properly care for and fly a raptor is not considered to be one of them. The Department proposes to amend the rule to require a sponsor or licensed general or master falconer to be physically present when the apprentice falconer is capturing a raptor.

Wildlife rehabilitators provide treatment and care to sick, injured, or orphaned wildlife with the goal of releasing the wildlife back to their natural habitats in the wild once they are capable of functioning in their natural habitats as normal members of their species. A licensed falconer may assist a wildlife rehabilitator in conditioning a raptor in preparation for releasing it back into the wild. Effective conditioning meets the unique physical and psychological needs of each species. Because the rule does not restrict the falconer to the type of raptor they are authorized to possess, a falconer who has no experience with a particular raptor species may inadvertently harm the raptor or delay its release into the wild. In addition, because conditioning requires effective conditioning, the

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Department does not believe the average apprentice falconer has the necessary skills to provide effective and appropriate conditioning. For these reasons, the Department proposes to amend the rule to limit the ability to assist a wildlife rehabilitator in conditioning a raptor to general and master falconers and restrict those general and master falconers to raptors they are authorized to possess to protect Arizona's wildlife resources.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The rule incorporates by reference the October 1, 2013 edition of 50 C.F.R. 21.3 (definitions) and the October 1, 2013 edition of 50 C.F.R 17.11 (endangered and threatened wildlife). The Department also proposes to amend the rule to reference the most recent editions of the federal regulations incorporated by reference.

Under 50 C.F.R. 21.27 (special purpose permits) and 21.30 (raptor propagation permits) respectively, unless the state requires an abatement or propagation permit, a person need only possess a federal permit to conduct abatement activities with, or propagate, MBTA raptors. Both federal permits have liberal possession limits and raptors held under the federal permits do not count towards the falconers possession limit established in rule. Because the federal regulations allow a person to use any lawfully possessed falconry raptor for abatement activities or for propagation, a licensed falconer can transfer their falconry raptor to their federal permit for abatement or propagation purposes at any time, as applicable. Under 50 C.F.R. 21.27 and 21.30, a person is only required to notify the governing state agency of this transfer when that state requires notification. The Department proposes to amend the rule to require a person to submit a paper copy of the annual federal propagation report at the same time the person submits the report to USFWS.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

Overall, the rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

Under 50 C.F.R. 20.21(what hunting methods are illegal) and R12-4-422, a master falconer may conduct abatement activities with any raptor they possess for falconry, provided the falconer meets certain criteria. There is some concern about potential enforcement difficulties for State and federal law enforcement officers because the federal regulations do not allow falconry raptors held under a sport falconry license to be used for abatement and

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propagation activities and the potential exploitation of the liberal possession limits for master falconers under the falconry regulations. The Department proposes to amend the rule to require a person to submit a properly completed 3-186A form to the Department when transferring a falconry raptor to the person's federal abatement or propagation permit. In addition, the Department proposes to amend the rule to require a person to submit a paper copy of the annual federal propagation report at the same time the person submits the report to USFWS.

A captive-bred raptor is not supposed to be released into the wild; under subsection (M), a licensed falconer is allowed to capture the raptor for the purpose of removing it from the wild and returning the raptor to its owner. The Department proposes to amend the rule to make it more understandable by clarifying references to the falconer who captured the raptor.

#### **6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

Under subsection (M), a person is not required to tether an unflighted eyas. The Department proposes to amend the rule to replace the term "unflighted eyas" with "nestling" as it is a common term and, thus, more easily understood.

The rule defines "abatement services" to clarify subsection (W). The Department proposes to amend the rule to repeal the definition of "abatement services" and define "abatement" to make the rule more concise.

Under subsection (H), an apprentice falconer is prohibited from possessing a raptor that has imprinted on a human. The Department proposes to amend the rule to define "imprint" by incorporating the definition under 50 C.F.R. 21.3 (definitions) to make the rule more concise.

The Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

In most cases where an examination is required, a person must submit an application before taking the examination. For the sport falconry license, the application is the last step in the process. The person must first pass the examination, then undergo a facilities inspection, and finally submit an application. Because this is not the typical process and there is some confusion, the Department proposes to amend the rule to clarify the licensing process.

A person is required to report information regarding the capture of any raptor displaying a federal Bird Banding

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Laboratory (BBL) aluminum research band or tag to BBL by calling a telephone number. Since the rule was last amended, BBL has implemented an online reporting system. The Department proposes to amend the rule to replace the reference to the telephone number with a reference to the BBL website to make the rule more concise.

A licensed falconer may charge a fee for presenting a conservation education program that provides information about the biology, ecological roles, and conservation needs of raptors and other migratory birds. The intent behind the fee is not for the falconer to make a profit from the use of the raptor in the education program or to cover any or all costs related to the treatment, care, and housing of the raptor. The intent behind the fee is to reimburse the falconer for costs related travel to and from the program site, any related educational documents such as brochures or pamphlets, any fees charged by the venue, etc. The Department proposes to amend the rule to clarify the intent of the rule to make the rule more concise.

The National Eagle Repository (Repository) is managed and operated the USFWS; its purpose is to provide a central location for the receipt, storage, and distribution of bald and golden eagle carcasses and parts of carcasses throughout the U.S. The eagle carcasses and their parts are shipped to Native Americans and Alaskan Natives enrolled in federally recognized tribes for use in Indian religious ceremonies. The collection efforts of USFWS provides a legal means for Native Americans to acquire eagle feathers for religious purposes, which in turn, reduces the pressure to take birds from the wild and thereby protecting eagle populations. The distribution of bald and golden eagles and their parts to Native Americans is authorized by the Bald and Golden Eagle Protection Act and Regulations found in 50 CFR 22. The numbers of requests for eagle carcasses and parts of carcasses far exceeds the number of available eagle carcasses and parts of carcasses. For this reason, federal and state conservation agencies, zoological parks, federal rehabilitators, and others who may legally possess and transport carcasses and parts of carcasses are encouraged to send them to the Repository where they will be distributed to Native Americans. The Repository will not accept the carcass and parts of carcass of a raptor that is suspected or confirmed with West Nile Virus or poisoning, except for lead poisoning, and requires the person possessing such raptor to disposed of the carcass by incineration. The Department proposes to clarify the actions required to dispose of a deceased eagle or other raptor.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no**

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**economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

Overall, the rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to incorporate the October 1, 2014 version of 50 C.F.R. 17.11 (endangered and threatened wildlife); reference the definition of "resident" under A.R.S. § 17-101; require the license holder to remove "any other falconry equipment" prior to releasing a raptor; prohibit a falconer from transferring permit tag and quota regulated raptor species to out-of-state falconers within one-year of the date of capture; and require a person to report the theft of a raptor to the State and USFWS Regional Law Enforcement office within 10 days of the theft of the bird. The Commission anticipated the rulemaking would improve the administrative aspects of the license and result in a more efficient process that benefited both the Department and persons regulated by the rule. The Commission did not anticipate a person possessing a falconry license under the rule would incur any additional costs or undue regulation. The Commission anticipated the rulemaking would have a positive impact sport falconry license holders, specifically improving the administrative aspects of the license.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

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The rule establishes the requirements necessary to allow a person to take and use MBTA raptors for the sport of falconry, to include authorized activities, permitted raptor species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. The rule ensures the continued permitting sport falconry using MBTA raptors in Arizona. The Department and public benefits from a rule that allows regulation and oversight of the legal take of raptors for use in sport falconry. Persons regulated by the rule benefit from a rule that allows them to practice falconry, the hunting of wild animals in their natural state and habitat by means of a trained bird of prey. The public and Department benefit from a rule that is understandable. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law, 50 C.F.R. 10.13 (list of migratory birds), is applicable to the subject of the rule. The Department has determined the rule is not more stringent than the federal law.

Federal law, 50 C.F.R. 21(migratory bird permits) and 22 (eagle permits), are applicable to the subject of the rule. The Department has determined the rule is more restrictive than the federal law in requiring a re-inspection when a licensed falconer changes address and the Department cannot verify the facility at the new location is similar to the one approved during a prior inspection. A re-inspection is also proposed when a falconer acquires additional raptors and the previous inspection does not indicate the facilities can accommodate a new species or additional raptors. 50 C.F.R. 21.29(b)(1)(iii) (falconry standards and falconry permitting) states, "State, tribal, or territorial laws may be more restrictive than these Federal standards but may not be less restrictive." In addition, A.R.S. § 17-231(A)(1) authorizes the Commission to "[a]dopt rules and establish services it deems necessary to carry out the provisions and purposes of this title" and A.R.S. § 17-235 states, the Commission "may shorten or modify seasons, bag and possession limits and other regulations on migratory birds as it deems necessary."

It is important to note, under 50 C.F.R. 21.29 (falconry standards and falconry permitting) a state is required to submit their laws, rules, processes, and forms to USFWS for compliance review and certification whenever any one of the four items listed above are substantially amended. The Department's rules, processes, and forms were certified as meeting the standards under 50 C.F.R. 21.29; see 77 FR 66406 - 66408, November 5, 2012.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Sport Falconry License described in the rule falls within the

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definition of "general permit" as defined under A.R.S. § 41-1001(11).

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-422 as follows:

- Replace the definition of "abatement services" with "abatement" to make the rule more concise.
- Define "abatement" to make the rule more concise.
- Define "imprint" by incorporating the definition under 50 C.F.R. 21.3 (definitions) to make the rule more concise.
- Require a person to submit a paper copy of the 3-186A form at the same time the person submits these forms to USFWS.
- Require a person to submit the annual federal propagation report at the same time the person submits the report to USFWS.
- Incorporate by reference the most recent editions of 50 C.F.R. 10.13 (list of migratory birds), 50 C.F.R. 17.11 (endangered and threatened wildlife), and 50 C.F.R. 21.3 (definitions).
- Require a licensed general or master falconer to be physically present when the apprentice falconer is capturing a raptor.
- Clarify the licensing process for the sport falconry license.
- Require a falconer to ensure the facility has an area large enough to allow the raptor to fly when untethered or to fully extend its wings or attempt to fly when tethered without damaging its feathers or contacting other raptors to protect Arizona's wildlife resources.
- Replace the term "unflighted eyas" with "nestling" as it is a common term and, thus, more easily understood.
- Clarifying references to the falconer who captured the raptor displaying a seamless band.
- Limit a person to only being able to capture a raptor when authorized by Commission Order, regardless of whether the raptor is displaying a seamless band or a transmitter to protect Arizona's wildlife resources.
- Replace the reference to the BBL telephone number with a reference to the BBL website to make the rule more concise.
- Limit the ability to assist a wildlife rehabilitator in conditioning a raptor to general and master falconers.
- Restrict the ability to assist a wildlife rehabilitator in conditioning a raptor solely to raptors the falconer is authorized to possess to protect Arizona's wildlife resources.
- Clarify a falconer may only be reimbursed for the actual costs of providing each individual conservation education event to make the rule more concise.
- Clarify the actions required to dispose of a deceased eagle or other raptor.

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Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-423. Wildlife Rehabilitation License**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-238, 17-240(A), 17-306, 17-332, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements that allow a person to rehabilitate and release live wildlife, to include authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. Wildlife Rehabilitation is defined as the treatment and temporary care of injured, diseased, and displaced native wildlife, and the subsequent release of healthy individuals to appropriate habitats in the wild. The rule was adopted to allow persons to provide treatment and care to live injured, disabled, orphaned, or otherwise debilitated wildlife to assist the Department in protecting Arizona's wildlife resources.

The Department issues approximately 10 wildlife rehabilitation licenses on an annual basis.

The wildlife rehabilitation license is valid until the last day of the third December from the date of issuance.

There is no fee for the wildlife rehabilitation license.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

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Under subsection (L)(3), an applicant for a wildlife rehabilitation license must also submit an affidavit affirming either the applicant is a licensed veterinarian or that a licensed veterinarian is reasonably available to provide veterinary services as necessary to facilitate the rehabilitation of wildlife they may possess under the license. The intent behind this requirement is that any wildlife the applicant may possess will receive appropriate medical care from a licensed veterinarian whenever necessary. The Department recently became aware of a situation where a license holder with no formal veterinary medical education performed medical procedures, including surgery, on wildlife held by the licensee. The Department proposes to amend the rule to clarify the wildlife rehabilitation license does not authorize the license holder to conduct any activities defined as the practice of veterinary medicine under A.R.S. § 32-2231 whether or not a fee, compensation, or reward is offered, received, or accepted by the licensed rehabilitator.

#### **4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The rule incorporates by reference the October 10, 2013 edition of 50 C.F.R. 17.11 (endangered and threatened wildlife). The Department proposes to amend the rule to reference the most recent edition of the federal regulation incorporated by reference.

As a result of changes made to R12-4-414 during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

Under subsection (L), an applicant for a wildlife rehabilitation license must provide proof of at least six months months experience performing wildlife rehabilitative work with an average of at least eight hours each week. This requirement ensures the license holder has the minimum amount of experience required to satisfactorily provide rehabilitative care to wildlife in their possession. Under subsection (O), an agent may conduct rehabilitative activities on the wildlife license holder's behalf. Because an agent is authorized to conduct rehabilitative activities without direct supervision, the Department believes an agent should be held to the same standards under subsection (L)(1)(b). The Department proposes to amend the rule to establish an agent for a wildlife rehabilitation license holder shall provide proof of at least six months experience performing wildlife rehabilitative work to protect Arizona's wildlife resources.

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Under R12-4-422 (sport falconry license), a licensed falconer is required to conduct specific activities when possessing the carcass or parts of a deceased MBTA raptor. Because a wildlife license holder also handles deceased MBTA raptors, the Department proposes to amend the rule to specify the actions required to dispose of a deceased eagle or other raptor.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to clarify a wildlife rehabilitation license holder may lawfully possess, treat, and care for wildlife received from the public.

Under subsection (J), an applicant must successfully complete an examination conducted by the Department before a wildlife rehabilitation license may be issued to the person. The Department proposes to clarify the rule by establishing the applicant must correctly answer at least 80% of the questions on the Department administered examination to make the rule more concise.

Under subsection (Y), a wildlife rehabilitation license holder may permanently hold wildlife determined to be unsuitable for release into the wild; however, the rule does not establish who is qualified to make this determination. The Department proposes to amend the rule to specify that only a licensed veterinarian may determine whether or not an animal is suitable for release.

Under subsection (Z), a wildlife rehabilitation license holder is required to submit an annual report containing specific information to the Department by January 31 of each year. The license holder is required to provide the permit or license number of any federal permits or licenses that relate to any rehabilitative function performed by the license holder. A license holder may submit copy of the rehabilitator's federal permit report of activities related to federally-protected wildlife in lieu of the federal permit or license numbers. The way the information is presented has contributed to some confusion because some license holders believe the copy of the federal permit report satisfies the reporting requirement. The Department proposes to clarify the federal permit report may only

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be submitted to satisfy the report's permit or license number requirement.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to incorporate the October 1, 2014 version of 50 C.F.R. 17.11 (endangered and threatened wildlife); reduce the amount of time in which the results of the required license examination remain valid from five years to three years; require an applicant to disclose how they intend to euthanize wildlife; eliminate the Department's responsibility to provide continuing education courses for license holders and expand options for continuing education courses applicable to their license renewal; require the wildlife rehabilitation license holder to ensure their facility is inspected by a licensed, practicing veterinarian; require an applicant to submit an affidavit affirming the applicant is either a licensed, practicing veterinarian or the applicant has access to a licensed, practicing veterinarian who is reasonably available to give veterinary services as necessary to facilitate rehabilitation of wildlife; and clarify that the wildlife rehabilitation license holder is responsible for all expenses incurred as a result of activities authorized under the license, including veterinary expenses. The Commission anticipated the rulemaking would not increase costs and burdens to most licensees; that those license holders who were not practicing acceptable euthanasia techniques could incur costs of \$150 or higher, depending on the method they chose for euthanasia. The few license holders who participated in the continuing education courses offered by the Department could incur costs for local or online seminars that ranged from approximately \$50-\$100, or costs of \$1,000 or more to attend an out-of-state conference. However, there are no-cost alternatives as well, such as shadowing a veterinarian or more experienced rehabilitation license holder.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements that allow a person to rehabilitate and release live wildlife, to include authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. The public benefits from a rule that protects and conserves Arizona's wildlife resources in a manner that allows the wildlife to be returned to their natural environment. The Department benefits from a rule that allows a person to provide rehabilitative care and treatment to Arizona's wildlife without impacting the Department's resources. The public and Department benefit from a rule that is understandable. Because the Department intends to implement an online special license application and reporting system, the Department proposes to remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. This change is proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Wildlife Rehabilitation License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-423 as follows:

- Clarify a wildlife rehabilitation license holder may lawfully possess, treat, and care for wildlife received from the public.
- Incorporate by reference the most recent editions of 50 C.F.R. 17.11 (endangered and threatened wildlife).
- Clarify the wildlife rehabilitation license does not authorize the license holder to conduct any activities that could be construed as the practice of veterinary medicine as prescribed under A.R.S. 32-2231 to protect Arizona's wildlife resources.
- Establish the applicant must correctly answer at least 80% of the questions on the Department administered examination to make the rule more concise.
- Remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. This change is proposed as a result of customer comments received by the Department.
- Allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.
- Establish an agent working on behalf of a wildlife rehabilitation license holder to provide proof of at least six months experience performing wildlife rehabilitative work to protect Arizona's wildlife resources.
- Specify that only a licensed veterinarian may determine whether or not an animal is suitable for release.
- Specify the actions required to dispose of a deceased eagle or other raptor.
- Clarify the federal permit report may only be submitted to satisfy the report's permit or license number requirement.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021 .

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#### **R12-4-424. White Amur Stocking and Holding License**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-238(A), 17-240(A), 17-306, 17-317, 17-332, 17-333, and 41-1005

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements that allow a person to possess and transport white amur, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic habitat and resources. Triploid white amur are virtually sterile and are an effective biological control tool and can consume its body weight in plant material every day. The rule was adopted to allow for the use of triploid white amur in vegetation control in closed aquatic systems while protecting the natural aquatic ecosystem from the adverse effects of the unwanted expansion and establishment of white amur.

The Department issues approximately 240 commercial white amur licenses and 160 noncommercial white amur licenses on an annual basis.

The fee for the commercial white amur license is \$115; there is no fee for the noncommercial white amur license.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

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As a result of changes made to R12-4-414 during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

An overabundance of freshwater vegetation can result in dense mats of vegetation that interfere with navigation and recreational activities, clogged power generation and irrigation equipment, stagnant water (which provides a good breeding ground for mosquitoes), and degraded water quality due to rising pH levels, decreased oxygen, and increased temperature. White amur are used as a natural alternative to remove unwanted freshwater vegetation. They are stocked in a private or public pond until the desired effect has been achieved and then they are transported to another location where they can be of service. White amur are capable of fast growth and can live for 10 to 15 years; when they reach maturity, their rate of weed consumption declines, and restocking of additional white amur is required every 5 to 6 years. Therefore, the Department proposes to amend the rule to remove references to "holding."

The white amur stocking and holding license is valid for a period of 20 consecutive days. In most cases, due to the life expectancy of white amur, persons will not need another for years, if at all. The Department proposes to amend the rule to remove references pertaining to license renewal to make the rule more concise.

Scientific terminology is the part of the language that is used by scientists in the context of their professional activities. While studying nature, scientists often encounter or create new material or immaterial objects and concepts and are compelled to rename or redefine them. As a result, scientific terms and definitions continue to evolve over time. The Department proposes to amend the definition of "triploid" to reflect language used by modern fishery biologists.

The Department is aware of some confusion regarding the use of the terms "commercial" and "noncommercial"

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activity and how those terms apply to the white amur license. Under R12-4-401 (live wildlife definitions), “commercial purpose” means the bartering, buying, leasing, loaning, offering to sell, selling, trading, exporting or importing of wildlife or their parts for monetary gain. When viewed through this definition, the use of white amur by an applicant for vegetation control purposes cannot be viewed as a commercial purpose. In addition, an entity maintaining white amur for a commercial purpose as defined under R12-4-401 would be operating under an aquaculture (fish farm) license issued by the Department of Agriculture. Therefore, differentiating between "commercial" and "noncommercial" is not necessary and the Department proposes to amend the rule to remove language pertaining to "commercial" and "noncommercial" purpose.

The Department proposes to replace reference to “On-Line Environmental Review Tool” with “Online Environmental Review Tool” to reflect current terminology.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to revise the definition of "triploid" to reflect language used by modern fishery biologists; clarify the activities authorized under the license include stocking, holding, and restocking; require an applicant to conduct an assessment of the impacts to sensitive species using the Department’s On-Line Environmental Review Tool; establish a protocol for disease control; to increase consistency between rules within Article 4; and establish the Department’s ability to perform inspections of the stocking location. The Commission anticipated the rulemaking would have no significant impact on persons regulated by the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements that allow a person to possess and transport white amur, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic habitat and resources. The public benefits from a rule that allows persons to use of triploid white amur in vegetation control in closed aquatic systems in private and public waters. The public and the Department benefit from a rule that is understandable and protects the natural aquatic ecosystem from the adverse effects of the unwanted expansion and establishment of white amur. The Department proposes to amend the rule to establish a restocking license. In most cases, the costs incurred by the Department when processing a restocking license are anticipated to be less than an initial license because the Department believes the issuance of a white amur stocking license should take less time to review as there would be no need for the required inspection(s) and background or reference check(s). The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The White Amur Stocking and Holding License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

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- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-424 as follows:

- Remove references to "holding" to make the rule more concise.
- Revise the definition of "triploid" to reflect language used by modern fishery biologists.
- Remove language pertaining to "commercial" and "noncommercial" purpose.
- Allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.
- Replace reference to "On-Line Environmental Review Tool" with "Online Environmental Review Tool" to reflect current terminology.
- Remove references pertaining to license renewal to make the rule more concise.
- Establish a white amur restocking license to aid in facilitating a more efficient application review process.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit**

##### **Before the Effective Date of this Article**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish administrative compliance requirements for the continued possession and use of wildlife lawfully possessed before becoming classified as restricted live wildlife list under R12-4-406 (restricted live wildlife) without having to apply for and obtain a special license. The rule requires a person who

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lawfully possessed wildlife prior to being classified as restricted live wildlife to notify the Department of the possession and use of the wildlife. The Commission restricts certain wildlife species from possession because they pose a threat to human health and safety, have a negative biological impact on species and ecosystems, have a negative economic impact, and to be consistent with federal, state, and county regulatory agencies. Notification is required so the Department can track and monitor these species. The rule was adopted to provide a mechanism that allows a person continue to possess and use wildlife that was lawfully possessed prior to becoming classified as restricted live wildlife without the person having to apply for and obtain a special license.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to require a person to specifically identify wildlife possessed under the rule in the written notification; require a person to permanently mark wildlife possessed under the rule; restrict the propagation of live wildlife lawfully possessed under the rule; require a person who possesses any offspring prior to the effective date of this amendment to report any currently held offspring; and replace "designated Department employee" with "Department" to prevent the impression that only a specific designated employee may request documentation. The Commission believed the benefits of the rulemaking, specifically taking a stronger stance in the regulation of live wildlife for the principal purpose of protecting native wildlife species, outweighed any costs. The Commission anticipated a person could incur minor costs associated with the requirement to permanently mark the animal with a tattoo, microchip, or other means. Costs were expected to be insignificant. The Commission anticipated a veterinarian who provides spay and neuter, microchip or tattooing services would benefit from the requirements that a person permanently mark the animal. Veterinarians charge up to \$50 to permanently mark an animal and the office visit can cost up to \$100. Costs to spay or neuter an animal are difficult to quantify as the cost varies greatly depending on the species and required after-care. However, compliance may also be achieved at no cost by keeping males and females separated or by possessing only male or female animals.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.

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- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the administrative compliance requirements for the continued possession and use of wildlife lawfully possessed prior to becoming classified as restricted live wildlife list under R12-4-406 (restricted live wildlife). The rule requires a person who lawfully possessed wildlife prior to being classified as restricted live wildlife to notify the Department of the possession and use of the wildlife. This notification is required so the Department is aware of the location of restricted wildlife for tracking and monitoring purposes. The public benefits from a rule that allows a person continue to possess and use wildlife that was lawfully possessed prior to becoming classified as restricted live wildlife without the person having to apply for and obtain a special license. The Department benefits from a rule that enables it to track and monitor restricted live wildlife lawfully possessed prior to being classified as restricted live wildlife. The public and Department benefit from a rule that is understandable. The Department has determined the rule imposes the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

#### **R12-4-426. Possession of Nonhuman Primates**

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**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish requirements for the possession of nonhuman primates, to include containment, transportation, incident reporting and laboratory testing should a bite, scratch, or other incident occur, and the restrictions necessary to protect public health and safety. The rule was adopted as a result of a petition from the Arizona Department of Health Services (ADHS) which compiled data documenting primate exposures to humans (35 documented exposure incidents from 1994 to 1997). The risks posed by primates include zoonotic diseases, pathogenic organisms, and physical injury.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

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The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to restrict the possession of primates to zoo license holders, research facilities, and persons exempt under R12-4-425; include additional zoonotic diseases subject to testing requirements; require a person to transport a primate in a secure cage, crate, or carrier; replace the terms "Director" and "Director's designee" with "Department;" require a zoo license holder or person using primates at a research facility that bit, scratched, or otherwise exposed a human to pathogenic organisms to use procedures recommended by the American Association of Zoo Veterinarians (AAZV) or Centers for Disease Control (CDC); and require a person lawfully possessing a primate under R12-4-425 to comply with the applicable captivity standards established under R12-4-428. The Commission believed the benefits of the rulemaking, specifically taking a stronger stance in the regulation of live wildlife for the principle purpose of protecting human health, outweighed any costs. The Commission anticipated a person possessing wildlife could incur minor costs associated with the requirement to permanently mark the animal with a tattoo, microchip, or other means. Costs were expected to be insignificant. The Commission anticipated a veterinarian who provides spay and neuter, microchip or tattooing services would benefit from the requirements that a person permanently mark the animal and the prohibition on propagation. Veterinarians charge up to \$50 to permanently mark an animal and the office visit can cost up to \$100. Costs to spay or neuter an animal are difficult to quantify as the cost varies greatly depending on the species and required after-care. However, compliance may also be achieved at no cost by keeping males and females separated or by possessing only male or female animals.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

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The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the necessary requirements for the possession of nonhuman primates, to include containment, transportation, incident reporting and laboratory testing should a bite, scratch, or other incident occur, and the restrictions necessary to protect public health, safety, and welfare. The public benefits from a rule that protects the public from risks posed by nonhuman primates because primates held as pets expose the public to potential pathogenic organisms and physical injury. The Department benefits from a rule that clearly protects the public and Arizona's wildlife resources. The public and Department benefit from a rule that is understandable. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency**

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**authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

#### **R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish criteria that allow a person to possess and care for specific live wildlife species without having to apply for and obtain a wildlife rehabilitation license, to include authorized activities, wildlife species that may be held without a wildlife rehabilitation license, and the restrictions and prohibitions necessary to protect wildlife habitat and resources. The rule was adopted to provide a mechanism that allows a private person to provide care for displaced, injured, or orphaned wildlife with minimal risk of causing injury to other wildlife or posing a threat to the public health and safety.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of**

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#### **the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

#### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

#### **6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

#### **7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

#### **8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to replace "Wildlife of Special Concern" with "Species of Greatest Conservation Need" to ensure consistency in language within Article 4. Because the amendments made to the rule were not substantive, the Commission anticipated the rulemaking would have no impact on the regulated community.

#### **9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the criteria that allow a person to possess and care for specific live wildlife species without a wildlife rehabilitation license, to include authorized activities, wildlife species that may be held and the restrictions and prohibitions necessary to protect wildlife habitat and resources. With thousands of interactions between the public and baby birds and rabbits each year, the Department believes it is appropriate for persons to pick up birds fallen from nests or small mammals displaced or trapped in urban environments in an attempt to help these species. Without this exemption someone who picks up a baby bird or rabbit and brings it home to temporarily care for it would be in violation of Game and Fish Commission laws and rules. The Department believes the rule works well for its intended purpose. This rule is specifically for Good Samaritans who wish to help the injured wildlife found in their yards and does not prohibit or prevent persons from taking injured wildlife directly to a licensed wildlife rehabilitator or veterinarian. The public benefits from a rule that protects and conserves Arizona's wildlife resources in a manner that allows the wildlife to be returned to their natural environment. The Department benefits from a rule that allows a person to provide rehabilitative care and treatment to Arizona's wildlife without impacting the Department's resources. The public and Department benefit from a rule that is understandable. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency**

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**authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action

#### **R12-4-428. Captivity Standards**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A) , and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the minimum standards for living spaces, furnishings, equipment, dietary needs, veterinary care, and social groupings to ensure the humane treatment of wildlife possessed under a lawful exemption or special license issued by the Department. Wildlife requires specialized care to survive; without species appropriate feeding, facilities, handling, and veterinary care, wildlife may suffer or die. The rule was adopted to ensure humane handling, care, and treatment of wildlife in captivity.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of**

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**the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend R12-4-409 (general provisions and penalties for special licenses) to allow the Department to place additional stipulations on a special license believes it is necessary to have the ability to add or remove stipulations during the licensing period to address changing conditions that may arise. The Department proposes to amend the rule to reflect changes made to R12-4-409 to increase consistency between rules within Article 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

However, the Department proposes to make nonsubstantial grammatical amendments to make the rule more concise.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

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The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule mirrors the federal requirements applicable to dealers, research facilities, and exhibitors under 9 C.F.R. 2 (animal welfare). The environment must contain sufficient useable space, complexity, and enrichment and promote a species-appropriate repertoire of behaviors. The cost of ensuring the captive environment is minimally enriching are difficult to quantify as the cost varies greatly depending on the species and existing conditions. Modifications could range from simple changes in daily procedures, to changes in the enclosures costing hundreds to thousands of dollars. The Commission believed the benefits of the rulemaking, specifically ensuring license holders consider the psychological well-being of their animals, outweighs any costs. It is important to note that possessing live wildlife is a voluntary activity and only those persons who choose to possess live wildlife will incur costs.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the minimum standards for living spaces, furnishings, equipment, dietary needs, veterinary care, and social groupings to ensure the humane treatment of animals possessed under a lawful exemption or special license issued by the Department. Wildlife requires specialized care to survive; without species appropriate feeding, facilities, handling, and veterinary care, wildlife may suffer or die. The Department and public benefits from a rule that ensures humane handling, care, and treatment of wildlife possessed in captivity. The public and

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Department benefit from a rule that is understandable. The Department has determined the rule imposes the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-428 as follows:

- Make grammatical amendments to make the rule more concise.
- Reflect amendments made to R12-4-409 (general provisions and penalties for special licenses) to increase consistency between rules within Article 4.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

#### **R12-4-430. Importation, Handling, and Possession of Cervids**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

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Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, 17-318

#### **2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements for the importation, handling, and possession of captive cervids necessary to prevent disease transmission from captive cervids to wildlife and domestic animals, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule was adopted to impose regulations on cervids, including a ban on their importation into Arizona to prevent the introduction of chronic wasting disease (CWD) to free-ranging or captive wildlife in the state.

The intent behind the rule is to protect native wildlife and their habitats from the introduction of disease carried by captive cervids and prevent the introduction of nonnative cervids in Arizona ecosystems. The economic costs associated with wildlife disease outbreaks and control can be severe. Costs of disease outbreaks are generally recurring and additive due to annual costs of monitoring and eradicating diseased animals. Outbreaks can lead to significant decreases in license revenue sales due to decreased hunter participation. If wildlife diseases are introduced into Arizona and spread to native wildlife, the Department will have to divert resources to disease prevention and mitigation instead of wildlife management and habitat enhancement. Rural economies would also be adversely impacted. The U.S. Department of Agriculture disperses \$17 to \$19 million annually to help states monitor CWD.

At this time, the detection of CWD in new areas is expanding; at the time of the last rulemaking, eight additional states and a Canadian province became CWD positive. According to the most recent maps, 24 states and two Canadian provinces are now CWD positive.

To date, the Department has collected and tested 1,332 cervid samples (elk, mule deer, and white-tailed deer) and none have tested positive for CWD.

#### **3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

Overall, the rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is

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effective.

CWD has the potential to negatively impact deer herds wherever the disease occurs; it is always fatal and could have serious negative impacts on the state's deer population if it becomes established in Arizona (Almberg et al. 2011). CWD infection decreases deer survival odds and lowers total life expectancy (Miller et al. 2008). If a large percentage of the population were to become infected there could be negative impacts for the population, including: A decline in doe survival, which results in an overall reduced population (Gross and Miller 2001); Fewer older bucks, as male animals may be more likely to be infected due to specific male social and behavioral tendencies (Miller et al. 2008, Jennelle et al. 2014); and An overall decline in population (Gross and Miller 2001, Almberg et al. 2011), as exhibited in Colorado and Wyoming. In an area of Colorado with high CWD prevalence, mule deer numbers have plummeted by 45%, in spite of good habitat and protection from human hunting. In Wyoming a monitored infected population experienced a 10.4% annual decline, with CWD-positive animals having a higher mortality rate than non-infected deer (Edmunds et al 2016). Taking action to prevent the spread of CWD to new areas helps to slow the transmission of the disease between individuals. The Department proposes to amend the rule to implement the following requirements necessary to the Department's monitoring and detecting diseases in cervids: require the holder of a private game farm license to mark each cervid they possess with an ear tag that identifies the farm of origin in a manner clearly visible from 100 feet; require a person possessing a cervid to report the death of any cervid to the Department within seven calendar days; include the results of chronic wasting disease testing for all cervids one year of age and older that dies during the current reporting period in the annual report; notify the Department within 72 hours of receiving a suspect or positive disease testing result; and require a person who possesses a cervid to maintain related records for a period of at least five years and make the records available for inspection to the Department upon request.

#### **4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Under R12-4-425 (restricted live wildlife lawfully possessed without license or permit before the effective date of article 4 or any subsequent amendments) a person who lawfully possessed wildlife prior to being classified as restricted live wildlife to notify the Department of the possession and use of the wildlife. This notification is required so the Department is made aware of the location of the restricted wildlife for tracking and monitoring purposes. Cervids are listed as restricted live wildlife under R12-4-406 (restricted live wildlife), which means a person must have a lawful exemption or possess a special license in order to lawfully possess them in Arizona. Even though cervids have been listed as restricted live wildlife since 2002, the Department still encounters persons

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possessing cervids lawfully obtained prior to 2002 but who have not yet met the requirements of R12-4-425. The Department proposes to amend the rule to reference R12-4-425 to increase consistency between rules.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticism of the rule:

**Written Comment: August 7, 2014.** I realize the Arizona Department of Agriculture (DoA)"controls" swine, goats, and sheep. These animals are held in captivity across the state with seemingly little concern by the DoA about the diseases they might spread to natural game in Arizona should they "escape." Feral hogs are spreading almost uncontrollably in parts of Arizona, yet there is so little oversight on the fencing of domestic hogs. Swine, goats, and sheep carry many more communicable diseases than fallow deer. Fallow deer are probably the hardest and most disease-free animals of any grazing animal. There is not a single known case of CWD in any fallow deer in any state. Bottom line, I do not know why the Commission would want to vote "no" to letting Arizonans fence fallow deer. I would ask each Commissioner to imagine one scenario with two outcomes before they vote to support the committee recommendation of not allowing fencing of fallow deer: Probably greater than 75% of people in Arizona that want to graze fallow deer will be forced to either move away from Arizona or graze hogs, sheep, and/or goats and pose greater risk to all of Arizona's natural wildlife. There is nothing particularly scientific about my 75% statistic; I talked to nearly 100 people about this exact scenario and more than 75 persons said they would either move to another state to graze fallow deer or graze one of the other three animals listed above. I dare say that neither outcome is desirable. Perhaps the Commissioners should consider doing their own survey before making their final decision on the fencing of fallow deer? I recommend with great conviction and passion that the Commission allow for the fencing of fallow deer. I also recommend that if the Commissioners have any concern about the spread of fallow deer with existing wildlife, they amend the rule to require the fence to be inspected by

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an independent inspector at the cost of the fallow deer owner prior to the owner being allow to graze the fallow deer on the fenced property.

**Agency Response:** The Department appreciates the viewpoints expressed. As the commenter states, the Commission does not have statutory authority over domestic species and will not comment on the potential for the introduction of diseases by such animals. Regarding the potential for damage by these species, owners of livestock must have either a grazing allotment or other conditional use permit in order to lawfully graze livestock on public lands. Public land management agencies are responsible for enforcing lawful grazing practices. Regarding the Department's decision to include fallow deer (*Dama dama*), while CWD has not been documented in the species by the oral route, it has been induced through intracerebral inoculation. They are also susceptible to other disease of concern for wildlife, human, and livestock health such as exotic lice, bovine tuberculosis, pasteurellosis, liver flukes, meningeal worms, babesiosis, and hepatitis E virus. In addition, the Department receives regular reports of fallow deer at large that have escaped from enclosures (some are legally held under R12-4-425 which allows individuals to continue to hold live wildlife placed on the restricted list if legally held before the rule change). For these reasons, fallow deer will remain on the restricted live wildlife list and may only be held by licensed zoos and researchers as authorized under R12-4-420 (zoo license) and R12-4-418 (scientific collecting permit).

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to submit tissues from any cervid over one-year of age that die or are killed or slaughtered for testing for CWD. This requirement is comparable to the requirements for herd certification programs for farmed cervids in other states. The sample must be collected by a licensed veterinarian or the Department and then submitted to a USDA APHIS certified laboratory. There are 28 approved diagnostic laboratories nationwide. The license holder may pay the cost of sample collection, shipping, and testing. The Department does not charge a fee to remove a sample. The Commission anticipated the rulemaking would not have a significant impact on the one game farm regulated by the rule because they were already required to test all cervids that die while in their possession. Reports submitted by the private game farm indicate approximately 22 animals die or are killed or slaughtered on an annual basis. If all of these animals were over one-year of age, the Commission estimated costs for testing would range from \$550 to \$770. However, the Department does not charge a fee to remove a sample. Shipping costs vary greatly depending on the shipping company and delivery date, but typical shipping costs are under \$20. The Commission

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anticipated the Department would realize a reduction in costs due to the license holder being responsible for shipping and testing the samples, an approximate savings of \$600 annually.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements for the importation, handling, and possession of captive cervids necessary to prevent disease transmission from captive cervids to wildlife and domestic animals, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule was adopted to impose regulations on cervids, including a ban on their importation into Arizona to prevent the introduction of chronic wasting disease to free-ranging or captive wildlife in the state. The public benefits from a rule that protects native wildlife and their habitats from the introduction of disease carried by captive cervids and prevent the introduction of nonnative cervids in Arizona ecosystems. The costs associated with wildlife disease outbreaks and control can be severe, are generally recurring, and additive due to annual costs of monitoring and eradicating diseased animals. The Department benefits from a rule that prevents a significant decrease in hunting license revenue due to increased hunter/public caution and decreased hunter participation. Such loss of hunting-related revenue to rural economies can be disastrous to the state's economic stability and may decrease the Department's operating budget, thus causing a greater negative impact on wildlife resources. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

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- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-430 as follows to improve the Department's CWD monitoring program:

- Reference R12-4-425 to increase consistency between rules.
- Require the holder of a private game farm license to mark each cervid they possess with an ear tag that identifies the farm of origin in a manner that is clearly visible from 100 feet.
- Report the death of any cervid to the Department within seven calendar days.
- Notify the Department within 72 hours of receiving a suspect or positive disease testing result.
- Include the results of chronic wasting disease testing for all cervids one year of age and older that dies during the current reporting period in the annual report.
- Require a person who possesses a cervid to maintain related records for a period of at least five years and make the records available for inspection.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

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*The Department received the following written criticism that either addressed multiple rules or did not apply to current Article 4 rules:*

**Written Comment: July 23, 2013.** The Humane Society of the United States (HSUS) appreciates that the Department is reviewing Article 4, Live Wildlife, and we request the following changes. We have attached detailed comments and suggested regulatory language for your consideration. *Designate All Non-Human Primates as Restricted Live Wildlife:* Currently, great apes (chimpanzees, gorillas, orangutans, and bonobos) are the only primates designated as restricted live wildlife (R12-4-406 G.4), yet monkeys and prosimians are the species most likely to be kept in private hands and are readily available from breeders and dealers, at auctions, and on the internet. The private possession of primates is inhumane, poses unacceptable physical and zoonotic disease risks to the community and emergency responders, and is detrimental to true wildlife conservation efforts. We recommend designating all non-human primates as restricted wildlife under R12-4-406. *Define Dangerous Wild Animals:* Wild animals retain their basic instincts, even if they are born in captivity and hand-raised. When kept in private hands, many wild animal species can cause death, inflict serious injury and spread deadly diseases. Potentially dangerous wild animals should be kept only in qualified facilities that employ knowledgeable and experienced staff. We recommend designating big cats, bears, wolves, hyenas, non-human primates, and all species of procyonidae as Dangerous Wild Animals. *Prohibit Public Contact with Dangerous Wild Animals:* Baby tigers, lions, and bears, as well as primates of all ages, are frequently used by unaccredited facilities for public handling and other unsafe close encounters such as photo-ops or petting-and play-sessions. These animals are typically used until they are just a few months old, at which point they are discarded. Although the exhibition of warm blooded animals is regulated by the U.S. Department of Agriculture (USDA), public handling of these animals is largely unmonitored and USDA enforcement policies currently allow the harmful practice of handling these animals to flourish. A cycle of breeding and then discarding animals after a few months fuels the exotic pet trade, puts animals at risk, endangers the public, undermines conservation efforts, and creates a burden for law enforcement, sanctuaries, and taxpayers. We recommend banning all public contact with Dangerous Wild Animals, defined as big cats, bears, wolves, hyenas, non-human primates, and all species of procyonidae. *Restrict the Breeding of Dangerous Wild Animals:* Commercial breeding of dangerous wild animals to produce babies to attract visitors for use in public contact activities, or to sell in the exotic animal trade, is rampant. Such breeding is done without regard to lineage and genetic diversity or planning for the lifetime care of the animals, many of whom are long-lived. The captive breeding of dangerous wild animals should be prohibited for all entities other than institutions accredited by the Association of Zoos and Aquariums (AZA), certified related facilities that coordinate with AZA Species Survival Plan (SSP) Programs for breeding of species listed as threatened or endangered pursuant to 16 U.S.C. § 1533, or facilities that are actively seeking accreditation or certification by the AZA. We recommend prohibiting the breeding of Dangerous Wild Animals, defined as big cats, bears, wolves, hyenas, non-human primates, and all species of procyonidae. Please see the attached supporting documents that provide additional information justifying the recommended changes. We urge the Department to include our proposed changes in its recommendations to the Commission at its scheduled meeting on August 2-3. Thank you for allowing us to participate in this process. Attachments: Map of state dangerous animal

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laws, HSUS Review of Arizona Game and Fish Article 4, Restricted Live Wildlife, Dangerous incidents involving captive primates, Incidents involving the use of big cats, bears, and primates for close encounters with the public.

*The following comment was sent in response to the Notice of Proposed Rulemaking (see Notice of Proposed Rulemaking: 22 A.A.R. 2558, September 16, 2016), but was received after the public comment period had ended. The Commission amended R12-4-402. Live Wildlife; Unlawful Acts to clarify that federal agencies or employees are not exempt from obtaining a state permit or license when conducting any activity listed under R12-4-402(A) and to ensure the Commission maintains jurisdiction and effective conservation over Arizona's wildlife and wildlife habitat.*

**Written Comment: February 27, 2017.** The data show a clear and remarkable linkage between the presence of wolves and the health of an entire streamside ecosystem, including two species of cottonwoods and the myriad of roles they play in erosion control, stream health, and nurturing diverse plant and animal life. The findings of these studies were recently published in Ecological Applications, a journal of the Ecological Society of America, and the journal Forest Ecology and Management.

**Agency Response:** While the immediate issue that prompted the internal review of the Commission's rules involved big river fish and the Mexican wolf, the broader concern with federal agencies obtaining state licenses and permits relates to a variety of activities involving many species of native terrestrial and aquatic wildlife. The Commission's intent in proposing the amendments indicated in this rulemaking is to strengthen its rule to avoid any unintended interpretation that a federal agency is exempt from state permitting requirements when conducting any wildlife-related activities. The Commission has always operated under the premise that federal agencies need state authorization for any wildlife activities, and, as a result of an internal review of its rules, the Commission concluded that this requirement was not clearly codified in rule. Through this rulemaking, the Commission is codifying what has been a common practice with federal agencies. The change will avoid any legal ambiguity and should avoid any disagreement over the applicability of the Commission's rules.