

**Arizona Game and Fish Commission  
2017 Five-Year-Review Report**

**TITLE 12. NATURAL RESOURCES  
CHAPTER 4. GAME AND FISH COMMISSION  
ARTICLE 6. RULES OF PRACTICE  
BEFORE THE COMMISSION**

**Prepared for the  
Governor's Regulatory Review Council**



**ARIZONA GAME AND FISH COMMISSION**  
**12 A.A.C. 4, ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION**  
**2017 FIVE-YEAR REVIEW REPORT**  
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## **REPORT: ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION**

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every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed.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 6, Rules of Practice Before the Commission, are scheduled to be reviewed by March 2017.

The Arizona Game and Fish Department (Department) tasked a team of employees to review the rules contained within Article 6. 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. 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.

For all rules within Article 6, the Department proposes to replace the term "individual" with "person," where applicable, to increase consistency between rules within 12 A.A.C. 4. Under A.R.S. § 1-215, "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person.

The Department anticipates requesting an exception to the rulemaking moratorium by March 2017; the Department anticipates submitting a Notice of Final Rulemaking to the Council by June 2018, provided the Commission is granted permission to pursue rulemaking or the current moratorium is not extended.

With this report, the Department 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.

In addition to the actions proposed in this report, the Department also proposes to amend all rules to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards, adopt a Definitions rule, and renumber the remaining rules as indicated below.

<b>Current Article 6 Structure</b>	<b>Proposed Article 6 Structure</b>
R12-4-601. Petition for Rule or Review of Practice or Policy	R12-4-601. Definitions
R12-4-602. Written Comments on Proposed Rules	R12-4-602. Petition for Rule or Review of Practice or Policy
R12-4-603. Oral Proceedings Before the Commission	R12-4-603. Written Comments on Proposed Rules
R12-4-604. Ex Parte Communication	R12-4-604. Oral Proceedings Before the Commission
R12-4-605. Standards for Revocation, Suspension, or Denial of a License	R12-4-605. Ex Parte Communication
R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages	R12-4-606. Standards for Revocation, Suspension, or Denial of a License
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R12-4-608. Expired	R12-4-608. Rehearing or Review of Commission Decisions
R12-4-609. Commission Orders	R12-4-609. Commission Orders
R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles	R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles
R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy	R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

**R12-4-601. PETITION FOR RULE OR REVIEW OF PRACTICE OR POLICY**

**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)(1), 41-1003 and 41-1033

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

The objective of the rule is to establish the method and form a person shall use to petition the Arizona Game and Fish Commission to adopt, amend, or repeal a rule or review an agency practice or policy. Under A.R.S. § 41-1033, all state agencies are required to establish the manner and form by which a person may petition the agency to request the making of a final rule or the review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The rule was adopted to meet this statutory mandate.

**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 from the public 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, Title 41, and A.A.C. Title 12, Chapter 4.

To increase consistency between Game and Fish Commission Articles, the Department also to adopt a definitions rule, transfer all definitions provided in Article 6 rules to R12-4-601, and renumber rules R12-4-601 through R12-4-607 to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards.

The Department also proposes to define the terms “business day”, “Commission Chair” and “respondent” to ensure the consistent interpretation of Commission rules within Article 6.

The Department also proposes to amend the rule to remove the statement that the petition shall be retained by the Department for a period of five-years and considered as a comment during the next five-year review process as this requirement is covered under R12-4-602.

**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 Director's Office Rules and Risk Section, in coordination with the affected program, is responsible for facilitating the petition process. Since January 2010, the Commission has received six petitions requesting the Commission amend or adopt a rule; none have been received that request a review of an existing agency practice or substantive policy statement alleged to constitute a rule. When a petition is received 30 calendar days prior to a scheduled Commission meeting, the petition is placed on the agenda for that meeting. Petitions received less than 30 calendar days prior to a scheduled Commission meeting, are placed on the agenda of the next regularly scheduled Commission meeting. The Deputy Director or his designee assigns the petition to the appropriate program. The program evaluates the comments and suggestions provided in the petition and determines whether the suggested change meets the Department's mission and objectives, does not place an undue burden on the regulated community, is not discriminatory, and is permitted under statute. After this evaluation, the program makes a recommendation to the Commission to either accept or deny the petition. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to accepting or denying a petition.

**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. A person is required to submit a petition that meets specific formatting requirements. In an effort to simplify and enhance the public petition process, the Department proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will streamline the process going forward, ensuring consistency with future requests.

**7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

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 appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on July 13, 2010. The rule was amended to reflect the Department's current mailing address to allow for a more efficient petition process. The Commission anticipated the rulemaking would benefit the Department by ensuring that petitions are mailed to the correct address, avoiding any unnecessary delays in delivery that may occur when a person mails material to the old Department address.

- 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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

- 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 method and form a person shall use to petition the Arizona Game and Fish Commission to adopt, amend, or repeal a rule or review an agency practice or policy. Any person may submit a petition as prescribed under this rule. The Department bears the greater burden in facilitating this public process. The public benefits from a rule that establishes the process by which they may request changes to current rule,

practice, or policy. The Department benefits from a rule that complies with statutory mandates in an efficient manner. The Department attempts to obtain the missing information by contacting the person who submitted the petition, which is time consuming for Department staff. The Department proposes to amend the rule to require a petitioner to submit a standardized form furnished by the Department to ensure a petition contains the required elements. 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.**

Not applicable, the last rulemaking for this rule occurred on July 13, 2010.

**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 R12-4-601 by:

- Adopting a rule that provides definitions for the unique terms referenced within Article 6 to ensure compliance with the Secretary of State's rulemaking format and style requirements and standards. Whenever an agency amends an Article, agencies are encouraged to transfer all definitions to the first rule within the Article.
- Defining the terms "business day", "Commission Chair," "contested case," "party," and "respondent" to ensure the consistent interpretation of Commission rules within Article 6.
- Renumbering the rule.
- Increasing consistency in grammar and format for all rules that establish petition requirements.
- Stating that the petitioner must use a form furnished by the Department. This is proposed to ensure that all petitions contain the applicable information and to reduce the amount of time, spent by Department employees, in correcting petitions that do not meet the requirements established under rule. The proposed form will streamline the process going forward, ensuring consistency with future requests.
- Replacing the term "Director" with "Department" to make the rule more concise because the petition process is delegated to Department staff.
- Removing the statement that the petition shall be retained by the Department for a period of five-years and

considered as a comment during the next five-year review process as this requirement is covered under R12-4-602.

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 April 2018.

#### **R12-4-602. WRITTEN COMMENTS ON PROPOSED RULES**

**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)(1), 41-1003, and 41-1023

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

The objective of the rule is to establish requirements for written comments submitted to the Department in response to a notice of proposed rulemaking. Under A.R.S. § 41-1029(B)(4), all state agencies are required to maintain all written petitions, requests, submissions, and comments received by the agency for each final rule filed with the Secretary of State's Office. The rule was adopted to meet this statutory mandate.

**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 from the public 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, Title 41, 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. The Director's Office Rules and Risk Section, in coordination with the affected program, is responsible for maintaining the official rule record for each rule within 12 A.A.C. 4. Department staff are advised to forward written comments regarding Department rules to the Rules and Risk Section for inclusion in the rule record. The Department encourages persons to review proposed rulemakings and provide comments to the Department by notifying the public and interested persons by postcard, email, e-newsletters, and press releases. The Department maintains a list of persons who have expressed an interest in Department rules and sends an email or postcard identifying the proposed rulemaking and providing the date of the public meeting. Comments received in regards to a proposed rule are evaluated by the rulemaking team; the comments and agency responses are included in the final rulemaking. All other comments are placed in the rule record and shared with the next rule review or rulemaking team, whichever occurs first. The Department recognizes the requirements specific to comments submitted on behalf of a group or organization are difficult to enforce. The Department believes this information is necessary to determine the origin of the comment. Often, the person submitting the comment on behalf of a group or organization does not include all of the required information. The Department attempts to obtain the required information by contacting the person who submitted the comment, which is time consuming for Department staff. The Department proposes to clarify how comments submitted on behalf of a group or organization are recorded to enhance the Department's ability to enforce the rule and reduce the impact of the rule on Department staff.

**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 clarify the rule by removing unnecessary verbiage and listing requirements specific to comments submitted on behalf of a group or organization.

**7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

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 appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to remove the requirement that a person supply address and organizational information when submitting written comments and to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. The Commission anticipated the rulemaking would benefit members of the public by removing the requirement to provide a mailing address and encourage public comments by making those individuals or groups more comfortable by not having to provide information that they may feel is too personal.

**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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

**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.**

Any person may submit written statements, arguments, data, and views on proposed rules that have been filed with the Secretary of State. The public benefits from a rule that establishes the requirements by which a person may participate in the rulemaking process. The Department benefits from a rule that complies with statutory mandates in an efficient manner. In addition, public comments aid the Department in evaluating the rules impact on persons regulated by the rule. 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

**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 R12-4-602 by:

- Renumbering the rule.
- Clarifying that a written comment submitted by a person on behalf of a group or organization that does not contain all of the required information will be placed in the rulemaking record as the view of the person submitting the comment, not the group or organization.

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 June 2018.

**R12-4-603. ORAL PROCEEDINGS BEFORE THE COMMISSION**

**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)(1), 17-231(B)(12), 41-1003, 41-1092, and 41-1033

**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 operational process for oral proceedings held before the Commission. Under A.R.S. § 41-1023(F), each agency may make rules for the conduct of oral rulemaking proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings. The rule was adopted to establish the requirements specific to an oral proceeding held by the Commission.

**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 from the public 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, Title 41, 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 Director's Office Rules and Risk Section is responsible for facilitating the oral proceeding process for rulemakings when held outside of an open Commission meeting. In an effort to reduce Department costs and streamline the rulemaking process, the Department holds oral proceedings for an open rulemaking docket during Commission meetings. The Department has not held a public meeting specifically addressing an open rulemaking docket since November 2005. In addition, the public is provided an opportunity for public input. Members of the public attending in person or viewing via video teleconference may submit a request to speak to the Commission. Unless prior approval has been granted by the Chairman, comments are limited to no more than three minutes. When members of the public provide comment for an item that is not listed on the agenda, no discussion or action will be taken by the Commission. However, at the Commission's discretion, any items requiring further discussion or action may be included on a future Commission meeting agenda.

**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 further clarify the rule by replacing references to "Chair" with "Commission Chair," listing oral proceeding authorizations and requirements, and removing "based on the amount of time available."

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

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 appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to clarify the provisions of the rule apply to any matter or proceeding before the Commission; to define "matter or proceeding" as "any contested case, appealable agency action, rule petition, rulemaking proceeding, or any public input at a commission meeting;" establish the Director's authority to allow a continuance of any hearing to another Commission meeting, if requested; and to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. The Commission anticipated the rulemaking would benefit the general public, the Department, and the Commission by clarifying rules for oral proceedings held by the Commission and establishing guidelines for continuance of any oral proceedings before the Commission.

- 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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception

criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

**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 operational process for oral proceedings held before the Commission. Under A.R.S. § 41-1023(F), each agency may make rules for the conduct of oral rulemaking proceedings. The Commission benefits from a rule that allows the Director to grant a continuance. The rule limits the Director's authority to two instances; a person may request additional continuances from the Commission after two continuances have been granted by the Director. The public benefits from a rule that establishes the process by which a person may speak to the Commission or request a continuance. The Department benefits from a rule that establishes an efficient process for conduct at any oral proceeding held by the Department. The Department bears the greater burden in facilitating this public process, much of which is mandated by A.R.S. Title 41, Chapter 6, Article 6. 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

**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 R12-4-603 by:

- Renumbering the rule.
- Transferring definitions to R12-4-601.

- Replacing references to “Chair” with “Commission Chair,” listing oral proceeding authorizations and requirements, and removing "based on the amount of time available" 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 June 2018.

#### **R12-4-604. EX PARTE COMMUNICATION**

**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)(1), 41-1001, 41-1003, 41-1092, and 41-1033

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

The objective of the rule is to establish communication prohibitions during the course of Commission decision processes. The rule was adopted to prevent one party from having an undue advantage by having independent access to the Commission.

**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 from the public 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, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 17, Title 41, and A.A.C. Title 12, Chapter 4.

Under A.R17-340(G), the Commission may use the services of the Office of Administrative Hearings to conduct hearings and to make recommendations to the Commission. The Office of Administrative Hearings adheres to the requirements of R2-19-105. Ex Parte Communications, not this rule. The Department proposes to

remove the reference to "hearing officer" as the reference to "hearing officer" as the Administrative Hearing Office is governed by R2-19-205.

**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. Persons receiving an ex parte communication are required to place the ex parte communication on the public record and provide copies of such communication to all interested parties to the proceeding. However, during this review the Department compared this rule to rules governing rehearing or review made by other self-supporting agencies: the Arizona Medical Board, State Board of Dental Examiners, and State Board of Accountancy. As a result of this comparison, the Department proposes to amend the rule to remove language referencing the service of a memorandum and copies of each response and memorandum for each oral response to any ex parte communication received by the Commissioner as these are self-imposed burdens that serve no valid purpose.

**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. However, because only members of the Commission are truly involved in the decision-making process and all persons are subject to the rule, including Commission hearing officers, personal aides to the Commission, Department employees, and consultants, the Department proposes to remove redundant language from the rule to make the rule more concise.

**7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

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 appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to include a personal aide to a Commissioner as a “person outside the Commission;” expand the definition of *ex parte* communication to include any communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties; and adding an appealable agency action as a type of proceedings for which *ex parte* communication is restricted. The Commission anticipated the rulemaking would create a direct benefit to the Department, the Commission, persons who appear before the Commission, and the integrity of the Commission hearing process.

**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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

**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 prohibitions in place for communications during the course of Commission decision processes. The rule was adopted to prevent one party from having an undue advantage by having independent access to the Commission. This prohibition also prevents the Commission from being improperly influenced or inaccurately informed. The Department, the Commission, and persons involved in these proceedings benefit from a rule will result from a clear understanding of the prohibited conduct that comprises *ex parte* communication, resulting in a hearing process that is consistent with Title 41. 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

**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 R12-4-604 by:

- Renumbering the rule.
- Transferring definitions to R12-4-601.
- Removing language regarding the service of a memorandum and copies of each response and memorandum stating the substance of each oral response to any ex parte communication received by the Commissioner as these are self-imposed burdens that serve no valid purpose.
- Removing the reference to "hearing officer" as the Administrative Hearing Office is governed by R2-19-205 Ex Parte Communications.
- Removing redundant language 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 June 2018.

**R12-4-605. STANDARDS FOR REVOCATION, SUSPENSION, OR DENIAL OF A 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)(1), 17-231(B)(12), 17-340, and 41-1003

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

The objective of the rule is to establish standards for the revocation, suspension, or denial of a Department-issued license. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. Because the statute is permissive in regards to this authority, the rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. § 17-340.

**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 from the public 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, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 17, Title 41, and A.A.C. Title 12, Chapter 4.

Laws 2006, Second Regular Session, Chapter 238 amended A.R.S. §§ 17-309 and 17-340 to include additional violations that may result in the suspension, revocation, or denial of a Department-issued license and the length of time for suspension, revocation, and denial actions. The Department proposes to amend the rule to ensure consistency with the amended statutes.

The Department also proposes to amend the rule to replace references to "supports the following conclusion" with "indicates" to increase consistency between subsections.

**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. Currently, the Commission considers license revocation, suspension, and denial hearings at open Commission meetings held monthly, nine or ten months out of each year, depending on the schedule approved by the Commission. The Department's Law Enforcement Branch, in coordination with the Director's Office, the

Department's Attorney's General and County Attorney's Office, is responsible for is responsible for facilitating the hearing process. On an annual basis, the Commission holds approximately 75 revocation hearings. The Commission and respondents (persons whose fishing, hunting, and trapping license are being considered for revocation) are provided with copies of the original court docket and case reports prepared by the law enforcement officers and all other pertinent materials. Each of the respondents is legally noticed for the Department hearing. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to the revocation, suspension, or denial of Department-issued license.

**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 amend the rule to provide additional clarity by removing redundant language and restructuring the rule to more closely mirror A.R.S. § 17-340.

**7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

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 appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to make technical corrections and ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards; correct outdated information and improve the accuracy, clarity, and understandability of the rules. The Commission anticipated the rulemaking would benefit the public, the Department, and the Commission by increasing consistency, resulting in efficient and uniform enforcement. The rulemaking clarified powers and actions that fall within the Commission's authority. Exceeding that authority or making a mistake in the due process of a hearing could result in a reversal of a

Commission action.

- 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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

- 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 standards for revocation, suspension, and denial of a license. The Department bears the greater burden in facilitating this public process. The Hunter Education requirement is imposed as a remedial measure to increase knowledge and prevent future violations. The public benefits from a concise and comprehensible Commission hearing process that effectively revokes, suspends, and denies a person's privilege to obtain a license when the person has demonstrated their inability to comply with, or disregard for, state wildlife rules. The public, the Department, and the Commission benefit from a rule that provides for an efficient process and uniform enforcement. Both the Department and the Commission benefit from a comprehensive and understandable hearing procedure. 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

**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 R12-4-605 by:

- Renumbering the rule.
- Including additional offenses for which the Commission may revoke, suspend, or deny a license to reflect statutory amendments made to A.R.S. § 17-309(A)(1).
- Replacing references to "supports the following conclusion" with "indicates" to increase consistency between subsections.

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 June 2018.

**R12-4-606. PROCEEDINGS FOR LICENSE REVOCATION, SUSPENSION, OR DENIAL OF RIGHT TO OBTAIN A LICENSE, AND CIVIL DAMAGES**

**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)(1), 17-231(B)(12), 17-314, 17-340, 41-1003, and 41-1023

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

The objective of the rule is to establish the proceedings for license revocation, suspension, or denial of Department issued licenses and the assessment of civil damages. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. This includes hunting and fishing licenses, special licenses issued under Article 4, and taxidermy, fur dealer, and license dealer licenses. Under A.R.S. § 17-314, the commission may bring a civil action in the name of the state against any person unlawfully taking, wounding or killing, or unlawfully in possession of certain wildlife. The rule was adopted to establish standards

designed to ensure consistent interpretation of A.R.S. §§ 17-314 and 17-340.

**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 from the public 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, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 17, Title 41, and A.A.C. Title 12, Chapter 4.

Laws 2006, Second Regular Session, Chapter 238 amended A.R.S. § 17-340 to include additional time-frames for such suspension, revocation, or denial actions resulting from subsequent violations. As a result, a person's license may be revoked for five years, ten years, or permanently, depending on the number of convictions. The Department proposes to amend the rule to ensure consistency with statute.

**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. Currently, the Commission considers license revocation, suspension, and denial hearings and civil proceedings at open Commission meetings held monthly, nine or ten months out of each year, depending on the schedule approved by the Commission. The Department's Law Enforcement Branch, in coordination with the Director's Office, the Department's Attorney's General and County Attorney's Office, is responsible for facilitating the proceeding process. The Commission and respondents (persons whose fishing, hunting, and trapping license are being considered for revocation) are provided with copies of the original court docket and case reports prepared by the law enforcement officers and all other pertinent materials. Each of the respondents is legally noticed for the Department hearing. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to the revocation, suspension, or denial of Department-issued license.

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

Overall, the rule is clear, concise, and understandable. The rule is generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to provide additional clarity by removing redundant language and reflecting amendments made to A.R.S. § 17-340.

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

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 appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to reflect statutory amendments made to A.R.S. §§ 17-309(A)(1) and 17-340. The Commission anticipated the rulemaking would benefit the general public, the Department, and the Arizona Game and Fish Commission by providing a comprehensive and understandable revocation hearing procedure.

- 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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for

this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

**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 proceedings for license revocation, suspension, or denial of Department issued licenses and the assessment of civil damages. The civil assessment process is not intended to be punitive, but allows the Commission to recover financial damages to compensate the State for the loss of any wildlife. The Hunter Education requirement is imposed as a remedial measure to increase knowledge and prevent future violations. The public benefits from a concise and comprehensible Commission hearing process that effectively revokes, suspends, and denies a person's privilege to obtain a license when the person has demonstrated their inability to comply with, or disregard for, state wildlife rules. The public, the Department, and the Commission benefit from a rule that provides for an efficient process and uniform enforcement. Both the Department and the Commission benefit from a comprehensive and understandable hearing and civil assessment procedure. 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

**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 R12-4-606 by:

- Renumbering the rule.
- Updating statutory references to reflect amendments made to A.R.S. §§ 17-309(A)(1) and 17-340.

- Removing redundant language 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 June 2018.

#### **R12-4-607. REHEARING OR REVIEW OF COMMISSION DECISIONS**

- 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)(1), 17-231(B)(12), 41-1001, 41-1003, and 41-1092

- 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 rehearing or review of a Commission decision. Under A.R.S. § 41-1092.09, a party may file a motion for rehearing or review within thirty days after service of the final administrative decision. A rehearing follows a Commission decision to revoke or suspend a person's license. A review is a Commission hearing on the Department's decision to deny a license to a person. The rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. § 41-1092.09.

- 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 from the public 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, Title 41, 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's Law Enforcement Branch, in coordination with the Director's Office, the Department's Attorney's General and County Attorney's Office, is responsible for facilitating the rehearing process. The Commission and respondents (persons whose fishing, hunting, and trapping license are being considered for revocation) are provided with copies of the original court docket and case reports prepared by the law enforcement officers and all other pertinent materials. Each of the respondents is legally noticed for the Department hearing. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to the revocation, suspension, or denial of Department-issued license. A person who fails to file a motion for rehearing or review cannot seek a judicial review by filing an appeal with the Maricopa County Superior Court. On occasion, a person fully intends to file an appeal, but unknowingly eliminates that option by failing to file a motion for rehearing or review with the Department. The Department proposes to amend the rule to indicate a person who fails to file a timely motion for rehearing or review is prohibited from seeking a judicial review of the Commission's decision.

**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. However, during this review the Department compared this rule to rules governing rehearing or review made by other self-supporting agencies: the Arizona Medical Board, State Board of Dental Examiners, and State Board of Accountancy. As a result of this comparison, the Department proposes to amend the rule to clarify filing time-frames, extend the time in which the Commission may initiate a rehearing or review as this is a self-imposed limitation that serves no valid purpose, and specify the time-frame in which the Commission shall hold the rehearing or review.

**7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

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 appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to correct outdated material and improve the accuracy, clarity, and understandability of the rules, and increase the Game and Fish Commission's discretion in certain matters. The Commission anticipated the rulemaking would directly benefit the Department and the Commission by giving the Commission greater discretion during rehearing or review of Commission Decisions.

**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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

**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 a person involved in a contested case or appealable agency action and the Commission must follow for a rehearing or review of a Commission decision. The civil assessment process is not intended to be punitive, but allows the Commission to recover financial damages to compensate the State for the loss of any wildlife. The Hunter Education requirement is imposed as a remedial measure to increase knowledge and prevent future violations. The public benefits from a concise and comprehensible Commission rehearing or review process. The public, the Department, and the Commission benefit from a rule that provides for an efficient process and uniform enforcement, and a comprehensive and understandable rehearing and review procedure. 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

- 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 R12-4-607 by:

- Renumbering the rule.
- Transferring definitions to R12-4-601.
- Indicating a person who fails to file a timely motion for rehearing or review is prohibited from seeking a judicial review of the Commission's decision to increase clarity.
- Clarifying filing time-frames to make the rule more concise.
- Extending the time in which the Commission may initiate a rehearing or review as this is a self-imposed limitation that serves no valid purpose.
- Specifying the time-frame in which the Commission shall hold the rehearing or review to increase clarity.

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 June 2018.

#### **R12-4-609. COMMISSION ORDERS**

- 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)(1) 17, 234, and 41-1003

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

The objective of the rule is to establish the public process for the consideration of a Commission Order. Under A.R.S. § 17-234, the Commission shall by order open, close or alter seasons and establish bag and possession limits for wildlife, but a Commission Order to open a season shall be issued not less than ten days prior to the opening date. The rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. § 17-234.

**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. However, an incident involving Tempe Town Lake gave light to the fact that the Commission does not have the authority to issue an Order establishing a special season to allow the take of fish by additional methods on waters where a fish die-off is imminent due to the 20-day notice requirement for a public meeting. To ensure the Commission is able to respond more quickly should a similar situation arises, the Department proposes to amend R12-4-609 to allow the Commission to hold a meeting to review an order establishing a special season, allowing fish to be taken by additional methods on waters where a fish die-off is imminent, as soon as possible.

**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, Title 41, 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. Commission Orders establish bag limits, hunt areas, season dates, and lawful methods for the take of wildlife. In general, orders are reviewed and revised every two years, but may be revised sooner when it is determined necessary, such as in response to changes in population or wildlife health, or a natural disaster such as a wildfire. The Department's Wildlife Management Division, in coordination with the Director's Office, Law Enforcement Branch, and the Department's Attorney's General, is responsible for the Commission Order process. The Department receives comments from stakeholders, constituents, and the general public. The Department considers those comments, along with biological data gathered by Department biologists, and drafts Commission Orders. These draft orders are posted to the Department's website and presented to stakeholders, constituents, and the general public at a number of meetings held by the Department throughout the state. The Department encourages persons to review the draft orders and provide comments to the Department. After the meetings are held and the public comment period ends, The Department considers the comments and

suggestions presented by stakeholders, constituents, and the general public and amends the draft orders accordingly, as appropriate. The draft orders are then presented to the Commission for review and approval.

**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 the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

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 appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to increase clarity and make the rule more concise. The Commission anticipated the rulemaking would benefit the general public by providing more information regarding Commission orders, such as when they are going to be discussed in an open meeting, and the Department by demonstrating its accessibility to the public. The Commission also anticipated the rulemaking would result in additional costs to the Department due to the resources used to distribute information regarding public meetings at which Commission orders will be discussed, but determined the benefits of the rulemaking outweighed the cost 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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

- 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 public process for the consideration of a Commission Order. Commission Orders establish bag limits, hunt areas, season dates, and lawful methods for the take of wildlife; orders are reviewed and revised every two years, but may be revised sooner when it is determined necessary. The Department encourages persons to review the orders and provide comments to the Department. The public benefits from a rule that provides information regarding Commission orders. The Department benefits from a rule that demonstrates its accessibility to 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

- 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 R12-4-609 to allow the Commission to hold a meeting to review an order establishing a special season, allowing fish to be taken by additional methods on waters where a fish die-off is imminent, as soon as possible.

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 June 2018.

**R12-4-610. PETITIONS FOR THE CLOSURE OF STATE OR FEDERAL LANDS TO  
HUNTING, FISHING, TRAPPING, OR OPERATION OF MOTOR VEHICLES**

**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)(1), 17-304, 17-452, 41-1003, and 41-1033

**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 submitting a petition for the closure of state or federal lands to hunting, fishing, trapping, or operation of motor vehicles. Under A.R.S. § 17-452, the Commission may, with the concurrence of the land management agency involved and after a public hearing, order such area closed to motor vehicles for not more than five years from the date of such closure, provided that all roads in such area shall remain open unless specifically closed. The rule was adopted to meet this statutory mandate.

**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 from the public 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, Title 41, 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 receives approximately five state and federal land closure petitions on an annual basis. The Department's Development Branch, in coordination with the Director's office, the Department's Attorney's General, and the applicable land management agency, is responsible for scheduling oral proceedings for state or federal land closure petitions. Within five days of receiving a petition, the petition is reviewed to ensure it meets the requirements established under R12-4-610. When a petition is received 60 calendar days prior to a scheduled Commission meeting, the petition is placed on the agenda for that meeting. Petitions received less than 60 calendar days prior to a scheduled Commission meeting, are placed on the agenda of the next regularly scheduled Commission meeting. The Department evaluates the land closure petition and considers the impact the state or federal land closure would have on the hunting and fishing community. The evaluation process includes working with the petitioner, consulting with regional staff and the land management agency's staff, conducting site inspections, and discussing possible alternatives with the petitioner. If an agreement cannot be reached, the Department makes a recommendation to the Commission to either accept or deny the petition. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to state and federal land closures.

**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, in an effort to simplify and enhance the public petition process, the Department proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will streamline the process going forward, ensuring consistency with future requests.

**7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

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 appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to reflect the Department's current mailing address to allow for a more efficient petition process. The Commission anticipated the rulemaking would benefit the Department by ensuring that petitions are mailed to the correct address, avoiding any unnecessary delays in delivery that may occur when a person mails material to the old Department address.

- 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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

- 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.**

Any person may submit a petition as prescribed under this rule. The Department bears the greater burden in facilitating this public process. Although the Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective, in an effort to reduce the burden imposed on persons regulated by the rule, the Department is amending the rule to require a petitioner to submit a

standardized form furnished by 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.**

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.**

Not applicable, the last rulemaking for this rule occurred on July 13, 2010.

**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 R12-4-610 by:

- Stating that the petitioner must use a form furnished by the Department. This is proposed to ensure that all petitions contain the applicable information and to reduce the amount of time, spent by Department employees, in correcting petitions that do not meet the requirements established under rule. The proposed form will streamline the process going forward, ensuring consistency with future requests.
- Ensuring consistency in language for all rules establishing petition requirements.

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 June 2018.

**R12-4-611. PETITION FOR HEARING BEFORE THE COMMISSION WHEN  
NO REMEDY IS PROVIDED IN STATUTE, RULE, OR POLICY**

**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)(1) and Title 41, Chapter 6, Article 10

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

The objective of the rule is to establish the method and form a person shall use to petition the Arizona Game and Fish Commission when no remedy is provided in statute, rule, or policy. The rule was adopted to provide a method in which a person could petition the Commission for a resolution.

**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 from the public 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, Title 41, 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 Director's Office, in coordination with Law Enforcement Branch and the Department's Attorney's General, is responsible for scheduling oral proceedings for these petitions. It is not possible to quantify the number of persons who applied for a wrong hunt or were unable to use the hunt permit-tag as many persons take no formal action; however, approximately four persons per year petition the Department for the reinstatement of bonus points. Often, because statute, rule, or policy does not address or is silent in regards to the person's issue, the Commission was unable to provide the remedy the person was seeking. The following are the most common scenarios encountered:

- A person applies for a tag online and is subsequently drawn, but their credit card is declined when the Department attempted to charge the card for the tag. Since the customer did not "pay" the tag fee, the Department could not issue the tag. The person would petition the Commission for a similar tag in a future hunt or the reinstatement of expended bonus points.
- A person draws a tag, but is unable to use the tag. The person would petition the Commission for a similar tag in a future hunt or the reinstatement of expended bonus points.
- A person finds an animal carcass or parts of a carcass and wants to keep it for personal or educational use. 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. Because the wildlife was not lawfully taken by the person, the Department may seize it. The person would petition the Commission for the return of the animal carcass or parts of the carcass.

The Commission directed the Department to establish a remedy for the scenarios listed above. The Department successfully completed rulemakings designed to provide a remedy for these scenarios:

- R12-4-104 (Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points) was amended to allow the Department to award a bonus point for the appropriate species to an applicant when the payment submitted is less than the required fees, but is sufficient to cover the application fee and, when applicable, license fee.
- R12-4-118 (Hunt Permit-tag Surrender) was adopted to establish a membership program, which included the limitations and requirements for surrendering a tag and restoring the bonus points expended for the surrendered tag.
- R12-4-322 (Pickup and Possession of Wildlife Carcasses or Parts) was adopted to allow a person to pick up and possess naturally shed antlers, horns or other wildlife parts. In addition, the rule allows a person to pick up and possess a fresh wildlife carcass or its parts if, upon finding the carcass or its parts, the individual voluntarily notifies the Department of the find, a Department officer is able to observe the carcass or its parts at the site where the animal was found, and the officer can determine the animal died of natural causes.

#### **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. A person is required to submit a petition that meets specific formatting requirements. In an effort to simplify and enhance the public petition process, the Department proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will streamline the process going forward, ensuring consistency with future requests.

#### **7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

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 amended to prohibit a person from petitioning the Commission for reinstatement of any expended bonus points. The rulemaking became effective on January 3, 2016; the rule amendments are too recent to allow the Department to sufficiently analyze the actual economic impact. The Commission anticipated the Department would benefit due to a reduced administrative burden resulting from administering the petition process.

- 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.**

On June 1, 2015, the Commission was given permission to pursue rulemaking to implement changes proposed in the previous five-year review report. While the Commission amended the rule in January 2016, The Department was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

- 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.**

Any person may submit a petition when no remedy is provided in statute, rule, or policy. The Department bears the greater burden in facilitating this public process. Although the Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective, in an effort to reduce the burden imposed on persons regulated by the rule, the Department is amending the rule to require a

petitioner to submit a standardized form furnished by the Department. The Department anticipates the form will ensure all required elements are supplied by the petitioner, thus making the process more efficient. 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.**

The Department proposes to amend R12-4-611 by:

- Stating that the petitioner must use a form furnished by the Department. This is proposed to ensure that all petitions contain the applicable information and to reduce the amount of time, spent by Department employees, in correcting petitions that do not meet the requirements established under rule. The proposed form will streamline the process going forward, ensuring consistency with future requests.
- Ensuring consistency in language for all rules establishing petition requirements.
- Specifying this Section does not apply to matters relating to a license suspension or denial as R12-4-607 provides a remedy.

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 June 2018.