

**Arizona Game and Fish Commission
2013 Five-Year-Review Report**

**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 2. MISCELLANEOUS LICENSES
AND PERMITS**

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



ARIZONA GAME AND FISH COMMISSION
 12 A.A.C. 4, ARTICLE 2. MISCELLANEOUS LICENSES AND PERMITS
 2013 FIVE-YEAR REVIEW REPORT

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REPORT - ARTICLE 2 MISCELLANEOUS LICENSES AND PERMITS FIVE-YEAR REVIEW REPORT

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every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed.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 2, Miscellaneous Licenses and Permits, are scheduled to be reviewed by December 2013.

The Arizona Game and Fish Department tasked a team of employees to review the rules contained within Article 2. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff as well as comments received from the public. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

In addition, during the First Regular Session of the 51st Arizona State Legislature, the Legislature amended A.R.S. Titles 5 and 17 to allow the Arizona Game and Fish Commission to establish license classifications and fees (Senate Bill 1223). The team evaluated rules within Article 2 while the Department was in the midst of pursuing exempt rulemaking to implement legislative amendments resulting from Laws 2013, 1st Regular Session, Ch. 197, Section 25. The amendments made by the exempt rulemaking will become effective January 1, 2014 and are also included in this report.

The Department anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by December 2014.

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 the Secretary of State's and G.R.R.C.'s rulemaking format and style requirements.

R12-4-201. Pioneer License

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-332(F), 17-333, and 17-336(A)(1)

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

The objective of the rule is to establish application requirements and hunting and fishing privileges for the pioneer license. A license may be issued to a person who is seventy years of age or older and who has been a resident of this state for twenty-five or more consecutive years immediately preceding application for the license. The pioneer license is valid for the lifetime of the licensee and does not require renewal. The complimentary general hunting and fishing license includes trout and urban fishing privileges.

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

The rule is effective in achieving the objective stated above.

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

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

As a result of a recent statutory amendment to A.R.S. § 17-336, the rule cites a subsection incorrectly. The Commission amended the rule to reference the appropriate citation through exempt rulemaking.

Laws 2013, First Regular Session, Chapter 197, Section 25 amended A.R.S. § 17-333 to authorize the Commission to establish license classifications and their associated fees in rule. The Commission amended the rule to include the same privileges as the combination hunting and fishing license (adds community, simultaneous, and Colorado River fishing privileges) through exempt rulemaking. The amended rule will become effective January 1, 2014. The rule was also amended to grant persons issued a pioneer license prior to January 1, 2014 the same privileges as the new pioneer license.

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

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

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

Overall, the rule is clear, concise, and understandable. However, the Department proposes to amend the rule to make the rule more concise, maintain consistent language and format within Article 2, and clarify the pioneer license is a complimentary lifetime license and does not expire.

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.

The Department received the following written criticisms of the rule:

Written Criticism: October 9, 2008. I think the rules 25 year residency requirement stinks. I am 75 years of age and have lived in Arizona for 15 years. The chances of my being around in 10 years are not in my favor. I purchase a license every year for \$23.50; and, as time passes, being on a fixed income makes it harder to come up with the money. The Commission needs to change the residency requirements in this rule from 25 to 15 years. More people would go fishing.

Agency Response: The requirements for the complimentary pioneer license are prescribed under A.R.S. § 17-336(A)(1), which states an eligible applicant is a person who has been a resident of this state for twenty-five or more consecutive years. A legislative amendment is required before the Department may change the residency requirement referenced in the rule.

Written Criticism: June 19, 2010. The Department should allow an Arizona native who is 62 years or older and who has continually resided in Arizona to get a free fishing license with a trout stamp.

Agency Response: The requirements for the complimentary pioneer license are prescribed under A.R.S. § 17-336(A)(1), which states an eligible applicant is a person seventy years of age or older. A legislative amendment is required before the Department may change the age requirement referenced in the rule.

Written Criticism: January 18, 2012. I recently received my pioneer License. Hunting requires walking or climbing hills. Most seniors use the pioneer license to fish as this can be done while sitting. I myself am a retired U.S. Air Force veteran, 30% disabled because of a back injury, and walking long distances is a challenge. When I approached the outdoor counter sales clerk at Wal-Mart to ask about a two pole stamp for my hard copy license, he advised me that I would have to attach the stamp to a paper license. What benefit is it to pay \$4 for the card if I still have to carry a paper license? A Customer Service Program Manager verified that the sales clerk was correct. I believe the Commission should do away with the two pole stamp and include that privilege in the pioneer license. I would also be willing to pay a few more dollars for the hard copy license if it included the two-pole stamp privilege. Be reasonable, how many more years will I have to take advantage of the pioneer license.

Agency Response: The Department is required to issue complimentary pioneer license to an eligible applicant and does so by issuing a paper license; this is consistent with all other licenses issued by the Department. The Department recently began offering certain lifetime licenses in the hard-copy form for a fee of \$4. The Commission recently amended the rule to add simultaneous fishing (two-pole) privileges to the pioneer license through exempt rulemaking. The amended rule becomes effective January 1, 2014. In addition, the Commission amended the rule to grant persons issued a pioneer license prior to January 1, 2014 the same privileges as the new pioneer license.

Written Criticism: April 7, 2013. I have lived in and fished Arizona for 56 years. Why do I have to wait until I am 70 years of age to get a pioneer license? It seems to me that I should qualify for that license at 65 years of age. In Alaska, and many other states, the age is 60. Believe me, 5 years is a long time and may be the difference between ever being able to use the license. Please consider lowering the age requirement.

Agency Response: The requirements for the complimentary pioneer license are prescribed under A.R.S. § 17-336(A)(1), which states an eligible applicant is a person seventy years of age or older. A legislative amendment is required before the Department may change the age requirement referenced in the rule.

The Department received the following written criticism that addresses multiple rules or rules within other Articles; the criticism is also included in the Article 1 Five-year Review Report:

Written Criticism: April 30, 2009. Take a new look at the guidelines for “free senior resident licenses.” For example, I am an Arizona native and am 72 year of age. I have worked out-of-state for many years to support my family. As written, I do not meet the criteria for a free license. Add some additional qualifications; there are a number of alternatives. It would enable us seniors to afford to hunt longer as we age. Elk draw permit system; the system is not right. One can apply for years and years and never be drawn; another person can hit it lucky five out of ten years. That is not right or fair and cannot be justified. The Commission should develop plans that provide equality, certainty, and absolutes. I believe out-of-state hunters garner preferential treatment due to the revenue stream they provide. That is unfair. Residents pay taxes that provide jobs and funds to the Department. Residents deserve the highest preference and the right to be granted an elk permit every few years through a system that is fair and absolute. I wish I knew for certain that the input the Commission receives is seriously considered and that asking our opinions is not just the "thing to do." The Commission should do everything it can to not become a political machine.

Agency Response: The requirements for the complimentary pioneer license are prescribed under A.R.S. § 17-336(A)(1), which states the commission may issue a complimentary license to a pioneer seventy years of age or older who has been a resident of this state for twenty-five or more consecutive years immediately preceding application for the license. A legislative amendment is required before the Department may change the eligibility requirements referenced in rule. The Department currently uses a random selection process, generally known as “the drawing,” to equitably apportion available tags among hunters when demand exceeds supply. The current draw process is designed to provide an equal opportunity for all hunters, regardless of the number of species hunted. The drawing is intended to ensure the limited number of tags is distributed fairly. Few hunters are lucky enough to be drawn more often than others and it is understandable that those not drawn want to improve their chances. However, because the draw is based on probabilities, there is no way to eliminate this possibility without undue complication to the draw process. The Department does not receive money from the state general fund (tax dollars). The Department operates primarily on the funding generated from the sale of hunting and fishing licenses, hunt permit-tags, stamps and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. Residents are given preference; the nonresident tag allocation for all tags issued by the Department is capped at 10%. In addition, in most all cases, the revenue generated by resident license and tag sales is greater than the revenue generated by nonresident license and tag sales. However, it is important to note, nonresident hunters and anglers make a significant contribution to the state's economy, particularly in rural parts of our state and spend approximately \$24 million each year in Arizona.

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

The rule resulted in the anticipated impact stated in the final rulemaking package approved by G.R.R.C. on January 3, 2006. The Department issues an average of 2,824 complimentary pioneer licenses, annually.

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

The Department did not receive any analyses.

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

The Department did not complete the course of action indicated in the previous five-year review process. G.R.R.C. approved the report at the November 4, 2008 Council Meeting which stated the Department anticipates submitting the rules to the Council by April 2011. However, due to the rulemaking moratorium in effect from January 22, 2009 until July 1, 2011, the Department was unable to complete the course of action indicated in the previous five-year review report.

While exceptions were granted during the moratorium, the exception criteria were very specific and most of the recommendations included in the previous five-year review report did not meet the criteria. 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 authorized under Laws 2010, Second Regular Session, Chapter 287, Section 28.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. This exemption was confirmed by the Governor's office. The Department considered Commission priorities and five-year review report due dates when determining which rulemakings to pursue. Rather than review an Article during the rulemaking process, or shortly thereafter, the Department chose to complete the review process first and then proceed with rulemaking.

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 objective of the rule is to establish application requirements and hunting and fishing privileges for the pioneer License. The Department has determined 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 necessary to achieve the underlying regulatory objective. The Commission recently amended the rule to add community fishing, simultaneous fishing (two-pole), and Colorado River fishing privileges through exempt rulemaking. The amended rule will become effective January 1, 2014. The Commission also amended the rule to grant persons issued a pioneer license prior to January 1, 2014 the same privileges as the new pioneer license. The amended rule increases the value of the pioneer license and makes the rule less burdensome as the pioneer license holder will no longer be required to purchase an annual community fishing license, two-pole stamp, or Colorado River stamps in order to have those privileges.

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 applicable to the subject of the rule.

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 rule was adopted before July 29, 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 R12-4-201 by:

- Reformatting the rule to increase consistency between rules within Article 2.
- Clarifying the pioneer license is a complimentary (no-fee) license
- Clarifying the pioneer license is a lifetime license and does not require renewal.
- Clarifying pioneer license eligibility requirements.

- Requiring the applicant to affirm the information provided on the application is true and correct.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by December 2014.

Amendments effective January 1, 2014; made through exempt rulemaking (19 A.A.R. 3225, October 18, 2013):

- Clarifying the privileges granted by the pioneer license include trout, simultaneous fishing privileges (two-pole), community fishing privileges, and, pending interstate agreements, Colorado River fishing privileges.
- Clarifying the duplicate paper license is also complimentary.
- Granting persons issued a pioneer license prior to January 1, 2014 the same privileges as the new pioneer license.

R12-4-202. Disabled Veteran's License

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-332(F), 17-333, and 17-336(A)(2)

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

The objective of the rule is to establish application requirements and hunting and fishing privileges for the disabled veteran's license. The license may be issued to a veteran of the armed forces of the United States who has been a resident of this state for one-year or more immediately preceding application for the license and who is receiving compensation from the United States government for permanent service-connected disabilities rated as one hundred percent disabling. The complimentary general hunting and fishing license includes trout and urban fishing privileges.

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

The rule is effective in achieving the objective stated above.

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

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

Laws 2013, First Regular Session, Chapter 197, Section 25 amended A.R.S. § 17-333 to authorize the Commission to establish license classifications and their associated fees in rule. The Commission amended the rule to include the same privileges as the combination hunting and fishing license (adds community, simultaneous, and Colorado River fishing privileges) through exempt rulemaking. The amended rule will become effective January 1, 2014. The rule was also amended to grant persons issued a disabled veteran's license prior to January 1, 2014 the same privileges as the new disabled veteran's license.

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

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

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

Overall, the rule is clear, concise, and understandable. However, the Department proposes to amend the rule to make the rule more concise, maintain consistent language and format within Article 2, and clarify the disabled veteran's license is a complimentary lifetime license and does not expire.

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.

The Department received the following written criticisms of the rule:

Written Criticism: February 17, 2009. I am a 100% Disable Veteran, but my doctor is concerned with the way the current law is written. There are many individuals disabled, but have their legs and can walk very short distances, but the way the current rule is written, one would need to be missing a leg to truly qualify. I have heard this is what the Commission intended. This does not serve Arizona citizens or veterans well. I will qualify for the complimentary Pioneer license at age 75. I suggest the Commission consider giving a complimentary license to every disabled veteran with a status of 70% disabled or more along with fifteen lifetime big game bonus points. We make special arrangements for those that do not live here or support our conservation efforts, but want to use our state for their special hunting ground. I believe veterans have earned special consideration. Arizona does not do much for Veterans and this would be a good start. Any change in these rules should be effective immediately.

Agency Response: The requirements for the complimentary disabled veteran's license are prescribed under A.R.S. § 17-336(A)(2), which states an eligible applicant is a veteran of the armed forces of the United States who is receiving compensation from the United States government for permanent service-connected disabilities rated as 100% disabling. A legislative amendment is required before the Department may issue a complimentary license to a veteran receiving compensation for a service related disability rating less than 100%. The Department of Veteran's Administration (DVA) determines the disability percentage based on the extent of injuries or diseases incurred in or aggravated during active duty, active duty for training, or inactive duty training. A disability can apply to physical conditions, such as a chronic knee condition, as well as a mental health conditions, such as post-traumatic stress disorder. Generally, the degree of disability specified is designed to compensate for considerable loss of working time from exacerbations or illnesses. Therefore, it is possible a person who has the use of all of their arms and legs could be assigned a rating of 100% disabled by the DVA. The Commission's draw process is designed to provide equal opportunity to all classes of persons and not to provide an advantage to certain classes. As a result, the Department does not believe that any class of persons should be awarded bonus points for which others are not eligible. A nonresident hunter may not pay the same taxes an Arizona resident is required to pay, but a nonresident hunter applying for a license and/or big game tag will pay a higher nonresident license and tag fee. Nonresident hunters make a significant contribution to the state's economy, particularly in rural parts of our state and spend approximately \$24 million each year in Arizona. Typically, an agency may assess a nonresident a higher license or tag fee, the argument being a resident subsidizes wildlife conservation in many ways through various taxes, etc. that a nonresident is not subject to. However, the higher nonresident fee cannot be so high as to be unreasonably discriminatory under the Equal Protection Clause. In addition, the nonresident tag allocation is capped at 10%.

Written Criticism: April 21, 2009. I am asking the Commission to support a change relating to the fees for a disabled veteran's license and tags. This fall I spent a week helping some of these men hunt

elk on Camp Navajo; they used wheel chairs, crutches, and walkers. Many veterans love the outdoors and use the greater outdoors to subsidize the food they buy because they live on very tight budgets. One elk can provide them with enough red meat for a year, saving them money on food costs. The current 100% disability rating requirement is higher than all of the surrounding states. Please support the bill reducing the disability rating from 100% to 60%. The Commission should also discount the fees for stamps and tags by allowing qualified disabled veterans to purchase a stamp or tag using the "Youth" fee schedule. These individuals have given so much for their country please help them use their disability money for living expenses rather than for hunting and fishing licenses. The proposed changes would provide an opportunity to increase disabled veterans involvement in hunting and fishing programs, a source of food for the disabled veteran, and increase a veteran's sense of pride by providing for themselves.

Agency Response: The requirements for the complimentary disabled veteran's license are prescribed under A.R.S. § 17-336(A)(2), which states an eligible applicant is a disabled veteran who has been a resident of this state for one year or more immediately preceding application for the license and who is receiving compensation from the United States government for permanent service connected disabilities rated as 100% disabling. A legislative amendment is required before the Department may change the requirements established under the rule. With the passage of Senate Bill 1223, the Commission was granted the authority to temporarily reduce fees. The Commission recently amended rules to establish a simpler license structure and its associated fees; the Commission intends to explore fee discounts/reductions after analyzing the fiscal impacts of the recent license structure and fee changes.

Written Criticism: May 14, 2010. I'm an 83 year of age and a World War II veteran, diagnosed with Traumatic Stress Disorder. I draw a 30% disability pension, can only walk a few steps at a time, and have to use a scooter to get around. I moved here from Louisiana because of asthma. I also had a heart attack two years ago. The only outdoor activity I can do is a little fishing. Under R12-4-202, I do not qualify for a complimentary fishing license because I am not 100% disabled. In Louisiana, I was given a complimentary hunting and fishing license with "everything." In my opinion, Arizona is overly restrictive on special licenses. I suggest the Commission reconsider the criteria for the complimentary license.

Written Criticism: August 6, 2010. The Commission should issue a complimentary license to all disabled veterans receiving benefits at 100% and then, as the Department's budget permits, extend this benefit to "50% or more" disabled veterans. I sent information in support of my request to State Representative Doris Goodale and requested A.R.S. § 17-336(2) be amended. Please see what the Commission can do at the proper time to extend this great benefit to more of the disabled veterans who

have served our country well. **Follow-up Comment: October 14, 2011.** I received the e-mail regarding tomorrow's commission meeting and want to know what the disabled veteran's item involves (Commenter is referring to the Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking, 17 A.A.R. 2346 and 2339, November 11, 2011). I submitted a request last year asking that the rule be amended to "50% or more" if possible and to include disabled veterans receiving compensation at 100% unemployability rating. It would be wonderful if this change could be implemented. I, as a disabled veteran, would greatly appreciate it.

Oral Criticism: December 8, 2010. I should be able to apply for a disabled veteran's license without having to be a resident of Arizona for one-year prior to applying.

Agency Response: The requirements for the complimentary disabled veteran's license are prescribed under A.R.S. § 17-336(A)(2), which states an eligible applicant is a disabled veteran who has been a resident of this state for one year or more immediately preceding application for the license and who is receiving compensation from the United States government for permanent service connected disabilities rated as 100% disabling. A legislative amendment is required before the Department may change the requirements established under the rule.

Written Criticism: April 21, 2011 (received five form letters in support of comment on August 19, 22, 24 (2), and 26). I am one of the thousands, if not tens of thousands, of Arizonan's who believe the Elk draw system is broken and needs serious reform. One that seems reasonable; if a person is drawn in 2011, the person is automatically excluded for the 2012 and 2013 draw. Arizona senior veterans with a lifetime hunting license are exempt and carry (into each draw) 15 permanent points on their application. Those persons who file an application with the veteran who has a lifetime hunting license are subject to the exclusion rule once drawn, two years out. Justification for my proposal: Arizona does darn little for Arizona Veteran's and not all of us hunt or fish, though many of us do. Also, requiring a person to be 70 years of age before getting a pioneer license; really? Our hunting days are diminishing rapidly with each hunt season and it seems even longer if we are not drawn year after year. I am requesting under the Freedom of Information Act for the number of persons who have been drawn more than twice, in the past six years, including 2011. How many have been drawn five or more times within the past 12 years. Please provide a list of names and city or county for recipients drawn five or more times in the past 12 years.

Agency Response: The requirements for the complimentary disabled veteran's license are prescribed under A.R.S. § 17-336(A)(2), which states an eligible applicant is a disabled veteran who has been a resident of this state for one-year or more immediately preceding application for the license and who is receiving compensation from the United States government for permanent service-connected

disabilities rated as 100% disabling. A legislative amendment is required before the Department may change the requirements established under the rule. The Commission's draw process is designed to provide equal opportunity to all classes of persons and not to provide an advantage to certain classes. As a result, the Commission does not believe that any class of persons should be awarded bonus points for which others are not eligible. The waiting period suggestions provided above would reduce opportunity for others, but would not substantially improve the draw odds for those species that currently have low draw odds. This is because the demand for highly desirable tags, such as early bull elk and pronghorn, greatly exceeds the number of available tags. Excluding the few hunters who are drawn will not significantly affect those odds. For example, the percentage of early firearms bull elk applicants receiving tags would change from the current 2.79% to 3.05%, if a three-year waiting period were adopted. For general deer (excluding all late season hunts), the draw success would change from the current 95% to not having enough applicants to fill the hunts one-year later (this assumes hunters apply equally between hunts; we recognize this is a faulty assumption). For pronghorn, the draw success would change from the current 4.2% to 6.3% if an eight-year waiting period were adopted; resulting in only a 2.1% increase in a hunter's chance of being drawn. In addition, the public through a public process rejected a waiting period system in favor of the bonus point system the Department currently uses. Forcing successful hunters to defer from applying after they have drawn tags offers little or no benefit for hunters to remain in the draw. Few hunters are lucky enough to be drawn more often than others and it is understandable that those who are not drawn want to improve their chances. However, because the draw is based on probabilities, there is no way to eliminate this possibility without undue complication to the draw process. The Department fulfilled the commenter's public record request.

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

The rule has resulted in the anticipated economic impact as stated in the final rulemaking package approved by G.R.R.C. on May 1, 2012. The Department issues an average of 432 complimentary disabled veteran's licenses, annually.

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

The Department did not receive any analyses.

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

The Department did not complete the course of action indicated in the previous five-year review process. G.R.R.C. approved the report at the November 4, 2008 Council Meeting which stated the Department anticipates submitting the rules to the Council by April 2011. However, due to the rulemaking moratorium in effect from January 22, 2009 until July 1, 2011, the Department was unable to complete the course of action indicated in the previous five-year review report.

While exceptions were granted during the moratorium, the exception criteria were very specific and most of the recommendations included in the previous five-year review report did not meet the criteria. The Department reviewed the recommended actions included in the previous report for this rule and determined that only one recommendation met the exception criteria authorized under Laws 2010, Second Regular Session, Chapter 287, Section 28 (B)(7), which allows an agency to eliminate or replace archaic or illegal rules. The Department was granted permission to pursue rulemaking to amend R12-4-202 to remove the requirement that the certification, issued by the Department of Veterans' Services (DVS), include the applicant's date of birth. DVS certification does not consistently provide the date of birth information on the certification, resulting in additional work for the applicant and Department employees. The rulemaking action was completed as follows:

- Notice of Rulemaking Docket Opening: 17 A.A.R. 2346, November 18, 2011.
- Notice of Proposed Rulemaking: 17 A.A.R. 2339, November 18, 2011.
- Public Comment Period: November 18, 2011 through February 10, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the May 1, 2012 Council Meeting.
- Notice of Final Rulemaking: 18 A.A.R. 1199, May 25, 2012.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. This exemption was confirmed by the Governor's office. The Department considered Commission priorities and five-year review report due dates when determining which rulemakings to pursue. Rather than review an Article during the rulemaking process, or shortly thereafter, the Department chose to complete the review process first and then proceed with rulemaking.

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 objective of the rule is to establish application requirements and hunting and fishing privileges for the pioneer License. The Department has determined 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 necessary to achieve the underlying regulatory objective. The Commission recently amended the rule to add community fishing, simultaneous fishing (two-pole), and Colorado River fishing privileges through exempt rulemaking. The amended rule will become effective January 1, 2014. The Commission also amended the rule to grant persons issued a disabled veteran's license prior to January 1, 2014 the same privileges as the new pioneer license. The amended rule increases the value of the disabled veteran's license and makes the rule less burdensome as the disabled veteran's license holder will no longer be required to purchase an annual community fishing license, two-pole stamp, or Colorado River stamps in order to have those privileges.

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 applicable to the subject of the rule.

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

The rule complies with A.R.S. § 41-1037.

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 R12-4-202 by:

- Reformatting the rule to increase consistency between rules within Article 2.
- Clarifying the disabled veteran's license is a complimentary (no-fee) license.
- Clarifying disabled veteran's license eligibility requirements.
- Requiring the applicant to affirm the information provided on the application is true and correct.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by December 2014.

Amendments effective January 1, 2014; made through exempt rulemaking (19 A.A.R. 3225, October 18, 2013):

- Clarifying the privileges granted by the disabled veteran's license include trout, simultaneous fishing privileges (two-pole), community fishing privileges, and, pending interstate agreements, Colorado River fishing privileges.
- Clarifying the duplicate paper license is also complimentary.
- Granting persons issued a disabled veteran's license prior to January 1, 2014 the same privileges as the new disabled veteran's license.

**R12-4-203. National Harvest Information Program (HIP);
State Waterfowl and Migratory Bird Stamp**

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(B)(7), 17-235, and 17-333

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

The objective of the rule is to establish requirements for the application and use of both the waterfowl and state migratory bird stamps, which enable the Department to obtain hunter participation and harvest data for migratory game birds in compliance with the requirements of the federally mandated National Harvest Information Program; which is administered by the United States Fish and Wildlife Service (USFWS).

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

The rule is effective in achieving the objective stated above.

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 50 C.F.R. Part 20, A.R.S. Title 17, and A.A.C. Title 12, Chapter 4.

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

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

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

Overall, the rule is clear, concise, and understandable. However, the Department proposes to amend the rule to provide additional clarity and to maintain consistent language and format within Article 2.

In addition, Laws 2013, First Regular Session, Chapter 197, Section 25 amended A.R.S. § 17-333 to authorize the Commission to establish license classifications and their associated fees in rule. The Commission recently amended the rule to combine the privileges of the State Waterfowl and Migratory Bird stamps into one stamp to simplify the Department's license structure and to comply with recent legislative amendments. The amended rule will become effective January 1, 2014. The new stamp will be valid for the take of migratory game birds, ducks, geese, swans, all coots, all gallinules, snipe, wild doves, and band-tailed pigeons. The rule was also amended to include the State Waterfowl and Migratory Bird stamp privileges in the youth combination hunting and fishing license. This does not negate the federal stamp requirement when the youth hunter is 16 years of age or older and is taking ducks, geese, swans, coots, gallinules or the permit-tag requirement when the youth hunter is taking sandhill crane.

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.

The Department has not received any written criticisms of the rule.

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 resulted in the anticipated impact stated in the final rulemaking package approved by G.R.R.C. on February 6, 2007. The Department issues an average of 6,155 State Waterfowl Stamps and 47,711 Migratory Bird Stamps, annually.

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

The Department did not receive any analyses.

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

The Department did not complete the course of action indicated in the previous five-year review process. G.R.R.C. approved the report at the November 4, 2008 Council Meeting which stated the Department anticipates submitting the rules to the Council by April 2011. However, due to the rulemaking moratorium in effect from January 22, 2009 until July 1, 2011, the Department was unable to complete the course of action indicated in the previous five-year review report.

While exceptions were granted during the moratorium, the exception criteria were very specific and most of the recommendations included in the previous five-year review report did not meet the criteria. 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 authorized under Laws 2010, Second Regular Session, Chapter 287, Section 28.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. This exemption was confirmed by the Governor's office. The Department considered Commission priorities and five-year review report due dates when determining which rulemakings to pursue. Rather than review an Article during the rulemaking process, or shortly thereafter, the Department chose to complete the review process first and then proceed with rulemaking.

- 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 objective of the rule is to establish requirements for the application and use of both the waterfowl and state migratory bird stamps, which enable the Department to obtain hunter participation and harvest data for migratory game birds in compliance with the requirements of the federally mandated National Harvest Information Program. The Department has determined 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 necessary to achieve the underlying regulatory objective.

The Department is exploring options that would allow the Department to collect the participation and harvest data either by telephone or online. The Department proposes to expand the language regarding proof of compliance and reporting to allow for collection of data by other mechanisms. The Department believes the proposed amendment will further reduce the burden and costs placed on the regulated community.

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

Federal law, 50 C.F.R. Part 20, is applicable to the subject of the rule. The Department has determined the rule is not more stringent than federal 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 rule was adopted before July 29, 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.

No action.

Amendments effective January 1, 2014; made through exempt rulemaking (19 A.A.R. 3225, October 18, 2013):

- Reformatting the rule to increase consistency between rules within Article 2.

- Combining the State Waterfowl and Migratory Bird stamp privileges and requirements.
- Specifying the youth combination hunting and fishing license includes State Waterfowl and Migratory Bird stamp privileges. This does not negate the federal stamp requirement when the youth hunter is 16 years of age or older and is taking ducks, geese, swans, coots, gallinules.
- Removing license classifications no longer offered by the Department.
- Clarifying when state waterfowl and migratory bird stamp is required.
- Clarifying additional license requirements for a person taking waterfowl or migratory game birds.

R12-4-204. Sikes Act Habitat Management Stamp

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), and 17-231(B)(7)

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

The objective of the rule is to establish a mechanism to provide the funding necessary to promote the coordination, development, maintenance, and planning for fish and wildlife conservation, habitat management, wildlife check stations, or other activities through cooperative agreements with the U.S. Forest Service.

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

The rule is effective in achieving the objective stated above.

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 16 U.S.C. Sections 670a through 670o, A.R.S. Title 17, and A.A.C. Title 12, Chapter 4.

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

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

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

The rule is clear, concise, and understandable. However, in an effort to simplify the license structure, the Commission recently repealed the rule. Currently, a person is required to purchase the Sikes Act Habitat Management (Unit 12A) stamp when successfully drawn for a 12A deer permit-tag. The unit 12A stamp generates approximately \$25,000 each year and provides funding for the planning, maintenance, development, and coordination for fish and wildlife conservation, habitat management, wildlife check stations, or other activities through cooperative agreements with the U.S. Forest Service. The Commission believes all hunters should contribute equally to habitat conservation and access projects and proposes that \$3 of each resident application fee and \$5 of each nonresident application fee shall be deposited into the Game and Fish Fund for the purpose of funding access, habitat conservation, and hunter/angler recruitment/retention projects. The Commission anticipates the funds generated by the application fee change will allow the Department to conduct projects state-wide, for all wildlife. It is also important to note, repealing this rule does not prevent the Commission from partnering with the U.S. Forest Service now or in the future as A.R.S. § 17-231(B)(7) authorizes the Commission to enter into cooperative agreements.

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.

The Department has not received any written criticisms of the rule.

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 resulted in the anticipated impact stated in the final rulemaking package approved by G.R.R.C. on January 3, 2006. The Department issues an average of 1,650 Sikes Act Habitat Management Stamps, annually.

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

The Department did not receive any analyses.

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

Not applicable, the Department did not indicate a course of action for the rule in the previous five-year review report.

- 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 objective of the rule is to establish a mechanism to provide the funding necessary to promote the coordination, development, maintenance, and planning for fish and wildlife conservation, habitat management, wildlife check stations, or other activities through cooperative agreements with the U.S. Forest Service. The Department has determined 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 necessary to achieve the underlying regulatory objective.

- 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.**

16 U.S.C. Sections 670a through 670o, is applicable to the subject of the rule. The Department has determined the rule is not more stringent than federal 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 rule was adopted before July 29, 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.**

No action.

The Commission repealed the rule through the Notice of Exempt Rulemaking (19 A.A.R. 3225, October 18, 2013). Repealing the rule does not prevent the Commission from partnering with the U.S. Forest Service now or in the future as A.R.S. § 17-231(B)(7) authorizes the Commission to enter into cooperative agreements with the federal government, with other states or political subdivisions of the state, and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife.

R12-4-205. Honorary Scout; Reduced Fee; Youth Class F License

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-333 and 17-336(B)

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

The objective of the rule is to establish application requirements for the reduced-fee honorary scout license. The combination hunting and fishing license is offered to a resident of this state who is a member of the Boy Scouts of America who has attained the rank of Eagle Scout or a member of the Girl Scouts of the U.S.A. who has received the Gold Award.

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

The rule is effective in achieving the objective stated above.

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

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

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

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

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

Overall, the rule is clear, concise, and understandable. However, the Department proposes to amend the rule to increase consistency between rules within Article 2. The Commission recently amended the rule's heading to clearly address the subject of the rule as the term "honorary" often means a title or place that is given without the recipient rendering a service or receiving an award.

In addition, Laws 2013, First Regular Session, Chapter 197, Section 25 amended A.R.S. § 17-333 to authorize the Commission to establish license classifications and their associated fees in rule. The Commission amended the rule to clarify age requirements, privileges granted by the high achievement scout license and to allow an applicant to choose the start date for the license, provided the date selected is no more than 60 calendar days from and after the date of purchase and the person is applying for the license at a Department office.

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.

The Department has not received any written criticisms of the rule.

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

The rule has not resulted in the anticipated impact stated in the final rulemaking package approved by G.R.R.C. on July 12, 2011. The Department issued 8 reduced-fee honorary scout licenses in 2012. The Commission anticipated the Department would issue an average of 20 honorary scout licenses each year; the actual number of licenses issued by the Department is less than half of that anticipated. However, the Department believes the number of licenses issued each year will increase as time goes by.

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

The Department did not receive any analyses.

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

Not applicable, the rule was adopted July 12, 2011 and did not exist when the Department completed the previous five-year review report, approved by G.R.R.C. at the November 4, 2008 Council Meeting.

- 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 objective of the rule is to establish application requirements for the reduced-fee honorary scout license. The Department has determined 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 necessary to achieve the underlying regulatory objective.

- 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 applicable to the subject of the rule.

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

The rule complies with A.R.S. § 41-1037.

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 R12-4-205 by:

- Reformatting the rule to increase consistency between rules within Article 2.
- Requiring the applicant to affirm the information provided on the application is true and correct.
- Requiring the applicant to present identification to increase consistency between rules within Article 2.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by December 2014.

Amendments effective January 1, 2014; made through exempt rulemaking (19 A.A.R. 3225, October 18, 2013):

- Changing the title to clearly address the subject of the rule as the term "honorary" means a title or place is given without the recipient rendering a service or receiving an award.
- Clarifying the privileges granted by the high achievement scout license.
- Clarifying age requirements.
- Stating the license is valid for one-year from the date of purchase.
- Allowing an applicant to choose the start date for the license, provided the date selected is no more than 60 calendar days from and after the date of purchase when the applicant is applying either online or at a Department office.
- Clarifying a person is eligible for the high achievement scout license through to their 21st birth year to maintain the intent of the implementing legislation. This is also consistent with the Boy Scouts of America programs, which allows a person to participate in the Boy Scout program, as a scout, until their 21st birthday.

R12-4-208. Guide License

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-101(11), 17-245, 17-333, 17-340, and 17-362

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

The objective of the rule is to establish the minimum qualifications and application requirements for the guide license. The rule also establishes the necessary conditions and restrictions placed on the guide license holder.

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

The rule is effective in achieving the objective stated above.

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

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

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

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

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

Overall, the rule is clear, concise, and understandable. However, the Department proposes to amend the rule to provide additional clarity and to maintain consistent language and format within Article 2.

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.**

The Department received the following written criticisms of the rule:

Written Criticism: April 30, 2011: I am concerned about over hunting caused by guide services advertising to help paying hunters pursue Mearns' quail. I am a native, but have lived in Colorado for the last 27 years. I still come to Arizona for a few weeks of quail hunting in the winter. I have seen the results of the pressure placed on the Mearns' quail increase tenfold, mostly due to all the guided hunts. It is time for the Commission to limit guides to providing their services for one or two days a week instead of every day of the season. The Mearns' quail population has been very low in the last couple years and something must be done to limit the pressure on them. If a quota is placed on guides offering Mearns' hunts, the quail will not be so vulnerable to over hunting and may stand a better chance to stay at stable levels.

Agency Response: The Department disagrees. Harvest data indicates the average seasonal harvest of Mearns' quail by a hunter is 1.8 per day, this includes guided hunters too. The Department believes there is no scientific basis for placing a quota on guides offering Mearns' hunts.

Written Criticism: November 29, 2012. Has there been any research into the number of guides now operating in Arizona versus 10 years ago? I do not know the numbers, but it seems to me that every hunter I talk to these days has a friend, a cousin, or knows somebody who is a licensed guide; and all of them boast high success rates for their clients. It seems to me that if licensed outfitters employing multiple guides can serve a dozen or so clients each year with success rates of 80-90%, they are going to take a much heavier toll on Arizona's deer herds than individuals playing with feeders or piles of salt. I hope the Commission will not overlook the harm being done by the growing guiding industry and try not to penalize individuals who hunt on their own to offset that harm. I realize the Commission cannot control how a person chooses to earn a living, but I believe it is within the realm of the Commission's power to issue two different types of tags (guided and unguided), and then ration the number of guided tags. This would prevent too many guides from selling too many of our wild animals. After all, the wildlife belongs to the public, not the guides. As a member of the public, I should be very displeased if my hunting opportunities are limited so that others can make money off

public property.

Agency Response: The Department has not seen a noticeable increase in the number of licensed guides in Arizona, nor has there been a dramatic increase or decline in hunter success rates. The Department's hunt questionnaire does not ask hunters if they used a paid guide while in the field. Therefore, the Department does not possess the statistical data sufficient to address your concern that hunters using guides experience higher success. Information obtained from talking to hunters at check stations seems to support the Department's belief that there has not been an increase in hunters using guides. However, the Department is aware that more hunters are bringing their friends into the field to join them on the hunt and assist them in locating animals.

- 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 resulted in the anticipated impact stated in the final rulemaking package approved by G.R.R.C. on January 3, 2006. The Department issues an average of 882 guide licenses, annually.

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

The Department did not receive any analyses.

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

The Department did not complete the course of action indicated in the previous five-year review process. G.R.R.C. approved the report at the November 4, 2008 Council Meeting which stated the Department anticipates submitting the rules to the Council by April 2011. However, due to the rulemaking moratorium in effect from January 22, 2009 until July 1, 2011, the Department was unable to complete the course of action indicated in the previous five-year review report.

While exceptions were granted during the moratorium, the exception criteria were very specific and most of the recommendations included in the previous five-year review report did not meet the criteria.

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 authorized under Laws 2010, Second Regular Session, Chapter 287, Section 28.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. This exemption was confirmed by the Governor's office. The Department considered Commission priorities and five-year review report due dates when determining which rulemakings to pursue. Rather than review an Article during the rulemaking process, or shortly thereafter, the Department chose to complete the review process first and then proceed with rulemaking.

- 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 objective of the rule is to establish the minimum qualifications and application requirements for the guide license. The Department has determined 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 necessary to achieve the underlying regulatory objective.

- 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 applicable to the subject of the rule.

- 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 rule was adopted before July 29, 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 R12-4-208 by:

- Reformatting the rule to increase consistency between rules within Article 2.
- Citing the statutory definition of aquatic wildlife to increase consistency between A.R.S. Title 17 and rules within Article 2.
- Removing the effective date of the rule as this is no longer necessary.
- Clarifying the guide license holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying the guide license does not exempt the license holder from any other applicable method of take or licensing requirement.
- Allowing the Department to include questions regarding off-highway vehicle laws and rules in the guide license examination.
- Requiring the person to provide acceptable proof of identity prior to taking the examination.
- Allowing an applicant who failed the examination to retake the examination on the same day or as otherwise agreed upon by the applicant and the examination administrator.
- Requiring an applicant who failed an examination twice on the same day to wait at least seven calendar days before retaking the examination.
- Requiring the applicant to affirm the information provided on the application is true and correct.
- Allowing other forms of acceptable identification.
- Clarifying the prohibition on providing false information extends to required annual reports to enable the Department to deny a guide license to an applicant who provides false information within the previous three years.
- Clarifying how the Department determines the date of receipt for guide license applications and guide reports.
- Requiring the guide license holder to possess the original guide license instead of a copy in keeping with other Department issued licenses.
- Correcting a statutory reference.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by December 2014.

R12-4-216. Crossbow Permit

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), and 17-301(D)(2)

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

The objective of the rule is to establish eligibility requirements, conditions, and restrictions for the crossbow permit. The permit allows a person, who cannot draw and hold a bow, to use a crossbow during an archery-only hunt.

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

The rule is effective in achieving the objective stated above.

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

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

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

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

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

Overall, the rule is clear, concise, and understandable. However, the Department proposes to amend the rule to provide additional clarity and to maintain consistent language and format within Article 2.

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.

The Department received the following written criticisms of the rule:

Written Criticism: April 14, 2013. How do I get a rule changed? I want to try and change the regulation concerning the issuance of a crossbow permit from being based on a medical disability. I should not be denied the ability to use a crossbow as my choice of method of taking wildlife. A crossbow is just another way of harvesting prey.

Agency Response: To petition the Commission for a rule change, please follow the requirements established under R12-4-601 and return the completed Petition packet to the Arizona Game and Fish Department, Director's Office. The Department provided the commenter with a copy of R12-4-601 and a rule petition packet. However, it is important to note, a person may use a crossbow to take any big game species during a "general" hunting season or a "HAM" hunt provided the crossbow is listed as a lawful method of take for the target animal under R12-4-304.

Written Criticism: December 29, 2008. I recently met a person who is confined to a wheelchair, but does not qualify for a Crossbow Permit because he has the full use of his arms. Common sense dictates that if he cannot stalk an animal; he will need additional range when bow hunting. I believe the current rule is in violation of Title 2 of the Americans with Disabilities Act (<http://www.ada.gov/cguide.htm>) regarding recreation. Since my first inquiry, I have lost more use of my own arm, but I must speak to my doctor about signing the form. Being a CHAMP holder and a 100% disabled veteran, I feel somewhat degraded by the current requirements; being allowed to shoot a weapon from my vehicle while hunting, but not being allowed to use a crossbow. It just does not make sense to me.

Agency Response: The Commission believes the rule is not in violation of Title 2 of the Americans with Disabilities Act regarding recreation. The Act requires agencies to make reasonable modification, but a modification that results in a fundamental change in the nature of the activity is considered unreasonable. Discrimination does not occur when the person is required to meet "essential eligibility" requirements that are required of all applicants. Furthermore, the Commission believes the permit carries out the intent of the Act by providing an accommodation that enables a person with a disability to participate in an archery-only hunt.

The following comments address crossbow permit eligibility requirements:

Written Criticism: June 22, 2008. I am a 100% disabled veteran. I thank the Department for issuing my lifetime license, but I have another concern. I am physically challenged, but have not lost 90% use of one or both arms. As such, I do not qualify for a crossbow permit. I do not walk or breathe well and have lost 10% use of my arms. I use a cane or crutches and certainly cannot stalk close enough to utilize a standard bow. Therefore, I find a contradiction of intent. Is there a way for the Commission to issue a crossbow permit to the holder of a CHAMP without the 90% requirement? I understand the

need to limit crossbows in Arizona versus some Eastern States due to the quantity of game, but many veterans have full use of their arms combined with varying degrees of lower extremity disabilities that severely hinder standard archery hunting. The permit application is very clear about eligibility requirements and my doctor will not sign it based on the requirements.

Written Criticism: May 8, 2009. Due to surgery on both of my hands and forearms, I am unable to shoot a traditional bow, recurve or compound. The state of Utah allows me to use a crossbow after obtaining medical certification. I think this would be a change that would benefit persons with certain limitations.

Written Criticism: January 28, 2011. I hunt with a neighbor who is paralyzed from the waist down. He is an avid hunter/angler and has been since he was a child. He used to bow hunt, but since his accident, he cannot balance or turn his chair fast enough to bow hunt. I would like the Commission to add paraplegia as a qualifying medical condition so that he can hunt during archery-only seasons.

Written Criticism: May 31, 2011. I read the requirements for the crossbow permit. I can no longer draw a bow with a draw weight of 45 lbs., do push-ups, or close the tailgate when using my left hand due to severe pain. I am 66 years of age, I am being treated for Osteoporosis, and I have arthritis. I do not know what 90% disability in my arm would be; would I qualify for a crossbow permit?

Written Criticism: October 2, 2012. I am 70 years of age and can still draw a regular bow, but I cannot hold it for more than a minute. Both of my arms are better than the 90% limitation as specified in the rule. So, I cannot use a crossbow during an archery-only season. I suggest the crossbow rule be modified so that persons such as me can use a crossbow regardless of the condition of either or both arms. Other states have done this, Michigan, for example.

Written Criticism: October 15, 2012. I have written the Department letters regarding amendments to R12-4-216 and was advised the Commission reviews rules every 5 years. I have read this five-year review report, but no considerations are being offered on R12-4-216. (Commenter is actually referring to the Notice of Proposed Rulemaking, 18 A.A.R. 2408 October 5, 2012) I see an intentional discrimination against those of us who cannot draw a compound bow, but still have the use of our arms. There is a meeting scheduled at Pinetop-Lakeside and I want to know if this issue can be raised at this meeting? The Commission should review the current rule now as it makes no reasonable sense. If a person has 90% loss of function in one arm, how could they possibly use any weapon without special equipment? I recently tried to draw a compound bow, but could not draw the bow back far enough to engage the pulley. I know the Commission is heavily lobbied by archery groups who want to prevent the crossbow from ever being used, but the fact is a crossbow is still a bow and there should

not be any restrictions on its use during the archery season. There are many professionals who will attest to this fact; a crossbow is still a bow. I hope the Commission will consider this important change for 2013, without any further delays or excuses. I believe many of us disabled individuals are being discriminated against, which is in direct violation of the Commission's own policy. My doctor will provide a written statement that I am 100 % disabled due to lumbar stenosis and knee replacements. In addition, I am 72 years of age.

Written Criticism: March 22, 2013. I have hunted all my life. I am going on 64 and will have shoulder replacement surgery in the future. I can no longer hold my bow to shoot. When I shoot my 20-gauge, I have to shoot one-handed because I cannot use my left arm to hold the shotgun up. I want to buy an over-the-counter archery deer tag, but the way the rule is written, I have to be 90% disabled. Well, I can use my good arm as long as I am not raising it above my shoulder; I might as well be one-handed at this point. I feel as though I am at a disadvantage from other hunters because I cannot hunt with a bow. Is there any way to change the rule to let people in my situation hunt during an archery-only season with a crossbow?

Written Criticism: July 22, 2013. The rule states that the individual must have a loss of at least 90% impairment of function of one arm. This seems rather limiting as there are other conditions that can make a person incapable of using their compound bow. In our case, my wife has a lower back condition and one neck and two wrist and hand surgeries. Due to these conditions, it is extremely difficult for her to use her compound bow. She has not been able to use her compound bow for the last two years. If the requirement for the crossbow permit is taken literally, she is eliminated from the opportunity to continue archery hunting. I feel this requirement is too limiting to those that have various other restrictive injuries. **Follow-up Comment: July 26, 2013.** My wife does not meet the 90% loss of arm requirement. There are other conditions that limit or prohibit a hunter's ability to use a conventional bow; re-curve or compound. We feel this 90% requirement is completely out of line and unreasonable. The stipulation should be based entirely upon a Doctor's report stating the limitation. It could range from major discomfort, complete inability to pull a bow, or other physical damage furthering their condition. Whatever the case, a person should be eligible for the permit. The 90% loss of function requirement is taking away the passion of bow hunting. We feel we have the right to a fair opportunity to continue to pursue our passion as we have a legitimate reason beyond this 90% determination.

Agency Response: The Commission agrees and proposes to amend the rule to expand the criteria for eligible applicants to include other medical conditions.

- 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 resulted in the anticipated impact stated in the final rulemaking package approved by G.R.R.C. on January 3, 2006. The Department issues an average of 90 complimentary crossbow permits, annually.

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

The Department did not receive any analyses.

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

The Department did not complete the course of action indicated in the previous five-year review process. G.R.R.C. approved the report at the November 4, 2008 Council Meeting which stated the Department anticipates submitting the rules to the Council by April 2011. However, due to the rulemaking moratorium in effect from January 22, 2009 until July 1, 2011, the Department was unable to complete the course of action indicated in the previous five-year review report.

While exceptions were granted during the moratorium, the exception criteria were very specific and most of the recommendations included in the previous five-year review report did not meet the criteria. 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 authorized under Laws 2010, Second Regular Session, Chapter 287, Section 28.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. This exemption was confirmed by the Governor's office. The Department considered Commission priorities and five-year review report due dates when determining which rulemakings to pursue. Rather than review an Article during the rulemaking process, or shortly thereafter, the Department chose to complete the review process first and then proceed with rulemaking.

- 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 objective of the rule is to establish eligibility requirements, conditions, and restrictions for the crossbow permit. The Department has determined 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 necessary to achieve the underlying regulatory objective.

- 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 applicable to the subject of the rule.

- 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 rule was adopted before July 29, 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 R12-4-216 by:

- Reformatting the rule to increase consistency between rules within Article 2.
- Removing duplicative and redundant language to make the rule more concise.
- Defining "healthcare provider" to include a Medical Doctor, Doctor of Chiropractic, Nurse Practitioner, and Physician Assistant to reduce the regulatory burden on the applicant and to clarify who may complete the Physician's Certification portion of the crossbow permit application. These changes are in response to customer comments received by the Department.
- Clarifying the crossbow permit does not exempt the permit holder from any other applicable method of take or licensing requirement.
- Authorizing the issuance of a temporary crossbow permit to an applicant who is temporarily disabled to reduce the regulatory burden on the applicant. These changes are in response to customer comments received by the Department.

- Expanding eligibility requirements to include other medical conditions: an amputation involving body extremities required for stable function to use conventional archery equipment, a spinal cord injury resulting in permanent physical limitation to the lower extremities, leaving the applicant permanently nonambulatory, a permanent wheelchair restriction, a neuromuscular condition that prevents the applicant from drawing and holding a bow or a person who has failed a functional draw test that equals 30 pounds of resistance and involves holding it for four seconds, a manual muscle test involving the grading of shoulder and elbow flexion and extension, an impaired range-of-motion test involving the shoulder or elbow, or a combination of comparable physical disabilities resulting in the applicant's inability to draw and hold a bow. These changes are in response to customer comments received by the Department.
- Requiring the applicant to affirm the information provided on the application is true and correct.
- Clarifying the applicant is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by December 2014.

R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), and 17-301(B)

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

The objective of the rule is to establish eligibility requirements, conditions, and restrictions for the Challenged Hunter Access/Mobility Permit (CHAMP). The permit allows a disabled person to perform activities while hunting normally prohibited under A.R.S. § 17-301.

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

The rule is effective in achieving the objective stated above.

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

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

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

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

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

Overall, the rule is clear, concise, and understandable. However, the Department proposes to amend the rule to provide additional clarity and to maintain consistent language and format within Article 2.

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.

The Department received the following written criticisms of the rule:

Written Criticism: November 22, 2008. I appreciate the CHAMP program. I would really like to see Commission change the tag to "Any Elk" on the elk hunt. My reasoning is that many of the CHAMP hunters have a very hard time getting around. As for myself, I am an Army veteran who is paralyzed from the chest down. I use a wheelchair to get around and trying to stalk an animal in a wheelchair is like trying to sneak up on an antelope in a semi diesel truck; very noisy and time consuming. I thought with only 10 allotted permits per year, an "Any Elk" tag would be great and would not have a negative impact on the elk population.

Agency Response: CHAMP hunts are governed by Commission Order or Hunt Guidelines; not through rule. CHAMP hunts are based on biology, access, and management objectives. The

Commission tries to provide a variety of opportunities for CHAMP hunters and has offered CHAMP hunters "any elk" and, sometimes, "antlerless" permit-tags in the past and will continue to do so in the future, based on management objectives.

Written Criticism: February 11, 2009. The Department needs to revise the requirements for the CHAMP license. We need a lot more hunters and anglers out there to help fund Department programs. I believe the Commission is overlooking thousands of available prospects by making it almost impossible to meet CHAMP requirements. I suggest the Commission consider the thousands of men and women who, because of various health reasons, cannot walk far or go hunting by themselves. They would love to buy a license and go hunting, but the CHAMP license requirements are too restrictive. Give these people a chance to hunt as long as they have a valid doctor's certificate of health that provides the reasons that keep the person from hunting. With current CHAMP license requirements, a person has to be half dead to qualify and very few people can meet those conditions. I would especially like to see this offered to anyone over 60 years of age with various aches and pains that keep them from hunting and fishing; with the doctor's certificate - of course.

Written Criticism: September 27, 2010. I am 77 years of age and have a bad left hip, bad knee joints, and carpal tunnel in my right wrist. In the field, I can only walk about 50 yards before I have to get back to my vehicle. I have a pioneer license and want to continue to hunt for as long as I am able to. My only income is from social security and I cannot afford the test expenses and I already know I will not meet the requirements for the CHAMP license as they are now. I welcome a Wildlife Manager to come and check me out if that is possible.

Written Criticism: November 21, 2010. The limitations on the CHAMP Rule R12-4-217, effectively exclude my son, who has Multiple Sclerosis (MS), from obtaining the permit. Although technically he does not have 90% loss of the use of one of his legs, he has a significant loss of balance and the inability to lift his feet (drop foot in MS language). The result is that he must use a cane to walk and he cannot walk over rough terrain or walk more than short distances. Since he cannot maintain his balance without the aid of cane or walker, in order to shoot a rifle or shotgun, which requires two hands, he must be sitting. I recognize that Commission wants to keep this permit restricted to those who really need it and I have struggled to come up with some language which could be used to modify the rule without opening the permit up to everyone who does not want to walk 20 feet. Because MS affects people differently, I did as suggested and tried to focus on my son's condition. I understand that this language may not be sufficient to accomplish the goal of including people like my son while excluding those who do not really need the permit, but I would be happy to assist further and will discuss this with my son's neurologist if the Commission needs more restrictive language. My proposed language is: "Has a neurological impairment such as loss of balance, inability to move the legs and coordination

problems that prevent the person from walking or standing without the use of canes or other walking aids, and prevents them from being able to traverse rough ground or safely discharge their weapon from a standing position.” **Follow-up received January 16, 2012:** Would you mind providing an update as to the status of this rule change? Is there anything my son or I can do to help? I know the rulemaking takes a while, but I thought there would be some movement. It is so frustrating when I hear about people who have received this permit with far more ability to walk than my son. I just want to make sure this does not fall by the wayside.

Oral Criticism: April 6, 2011. I would like the Commission to consider including other qualifying medical conditions for a CHAMP. I do not qualify for the permit because my disability is related to breathing difficulties, not leg or vision impairment.

Agency Response: The Commission established this permit with very strict qualifications because it allows a permit holder to discharge a firearm or other legal hunting device under conditions generally unlawful for the average hunter. To qualify for the permit, the level of impairment should be substantial so that the Commission does not enable those who would take advantage of the system to unethically take wildlife. However, the Commission proposes to amend the rule to expand the criteria for eligible applicants to include other severe permanent disabilities that may result in substantial functional limitations.

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 resulted in the anticipated impact stated in the final rulemaking package approved by G.R.R.C. on January 3, 2006. The Department issues an average of 130 complimentary Challenged Hunter Access/Mobility Permits (CHAMP), annually.

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

The Department did not receive any analyses.

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

The Department did not complete the course of action indicated in the previous five-year review process. G.R.R.C. approved the report at the November 4, 2008 Council Meeting which stated the Department anticipates submitting the rules to the Council by April 2011. However, due to the rulemaking moratorium in effect from January 22, 2009 until July 1, 2011, the Department was unable to complete the course of action indicated in the previous five-year review report.

While exceptions were granted during the moratorium, the exception criteria were very specific and most of the recommendations included in the previous five-year review report did not meet the criteria. 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 authorized under Laws 2010, Second Regular Session, Chapter 287, Section 28.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. This exemption was confirmed by the Governor's office. The Department considered Commission priorities and five-year review report due dates when determining which rulemakings to pursue. Rather than review an Article during the rulemaking process, or shortly thereafter, the Department chose to complete the review process first and then proceed with rulemaking.

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 objective of the rule is to establish eligibility requirements, conditions, and restrictions for the CHAMP. The Department has determined 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 necessary to achieve the underlying regulatory objective.

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 applicable to the subject of the rule.

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 rule was adopted before July 29, 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 R12-4-217 by:

- Reformatting the rule to increase consistency between rules within Article 2.
- Defining "healthcare provider" to include a Medical Doctor, Doctor of Chiropractic, Nurse Practitioner, and Physician Assistant to reduce the regulatory burden on the applicant and to clarify who may complete the Physician's Certification portion of the CHAMP application. These changes are in response to customer comments received by the Department.
- Defining "severe permanent disability." The Commission proposes to expand eligibility CHAMP requirements to include one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, intellectual disability, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, and end stage renal disease or a combination of permanent disabilities resulting in comparable substantial functional limitations. These changes are in response to customer comments received by the Department.
- Clarifying the CHAMP holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying the CHAMP does not exempt the permit holder from any other applicable method of take or licensing requirement.
- Requiring the applicant to affirm the information provided on the application is true and correct.
- Clarifying the applicant is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information or a second medical opinion.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by December 2014.