

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

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

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



ARIZONA GAME AND FISH COMMISSION

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

2013 FIVE-YEAR REVIEW REPORT

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ARIZONA GAME AND FISH COMMISSION

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REPORT - ARTICLE 4 LIVE WILDLIFE 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every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed.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 4, Live Wildlife, 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 4. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff as well as comments received from the public. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

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 4 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 Commission amended the rule to reference the special license fee rule adopted through exempt rulemaking, R12-4-412 (19 A.A.R. 3225, October 18, 2013). The amended rule will become effective January 1, 2014.

The amendments made by the exempt rulemaking will become effective January 1, 2014 and are also included in this report.

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.

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

R12-4-401. Live Wildlife Definitions

- 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, 17-238, and 17-306

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

The objective of the rule is to establish definitions that assist persons in understanding the unique terms that are used throughout Article 4.

- 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 currently being enforced 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 provide further clarity to rules within Article 4 by defining additional terms.

- 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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

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 public benefits from a rule that defines terms referenced within Article 4 as they help to clarify Article 4 rules. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-401 by:

- Defining the term “adoption” because the term is used with specific intention in Article 4 and clarifying when the public is required to have a special license to adopt wildlife.
- Revising the definition of “agent” to incorporate language from the definition of "agent" provided under R12-4-423; the definition will be removed from R12-4-423. Having only one definition of "agent" for Article 4 rules will increase consistency between rules within Article 4.
- Defining the term "aversion training" because the term is not self-defining and is necessary to assist in understanding R12-4-404.
- Revising the definition of “cervid” to reference the current nationally recognized taxonomic reference that is easily accessible to the public.
- Removing the definition of “collect” as the Commission believes R12-4-418 adequately describes permissible collection activities.
- Defining the term "educational institution" because the term is not self-defining and is necessary to assist in understanding rules within Article 4.
- Revising the definition of “endangered or threatened” to reference the most recent revision of the Federal Endangered and Threatened Wildlife regulation.

- Defining the term "health certificate" because the term is not self-defining and is necessary to assist in understanding rules within Article 4.
- Defining the term "lawful possession" because the term is not self-defining and is necessary to assist in understanding rules within Article 4.
- Defining the term "noncommercial use" because the term is not self-defining and is necessary to assist in understanding rules within Article 4.
- Defining the term "non-human primate" because the term is not self-defining and is necessary to assist in understanding R12-4-406 and R12-4-426.
- Revising the definition of "live baitfish" to reference R12-4-317 as the rule establishes requirements for the lawful use of live baitfish.
- Defining the term "migratory birds" because the term is not self-defining and is necessary to assist in understanding rules within Article 4.
- Removing the definition of "native" as the commonly used definition is sufficient.
- Defining the term "pen-reared" because the term is not self-defining and is necessary to assist in understanding R12-4-413 and R12-4-414.
- Defining the term "person" to expand the regulated community. Where applicable and appropriate, all references to "individual" will be replaced with the term "person." "Individual" implies a single human being. Under A.R.S. § 1-215(28), "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. This is necessary to address circumstances where a special license holder is a corporation, company, partnership, firm, association or society.
- Removing the definition of "propagate" as the commonly used definition of the term is sufficient.
- Defining the term "species of greatest conservation need" to replace the definition for "Wildlife of special concern." All references to the term throughout Article 4 will be amended to reference the federally approved Comprehensive Wildlife Conservation Strategy, which identifies a list of species of greatest conservation need.
- Defining the term "taxa" because the term is not self-defining and is necessary to assist in understanding rules within Article 4.
- Defining the term "unique identifier" to provide examples of acceptable permanent identifiers.
- Defining the term "USFWS," which stands for the U.S, Fish and Wildlife Service.
- Defining the term "volunteer" because the term is not self-defining and is necessary to assist in understanding rules within Article 4.
- Defining the term "wildlife disease" because the term is not self-defining and is necessary to assist in understanding rules within Article 4.
- Removing the definition of "wildlife of special concern" because the term is replaced by "species of greatest conservation need." All references to the term throughout Article 4 will be amended to reference the federally approved Comprehensive Wildlife Conservation Strategy, which identifies a list of species of greatest conservation need.

- Defining the term "zoo" because the term is not self-defining and is necessary to assist in understanding rules within Article 4.
- Revising the definition of "zoonotic" to clarify the term to assist in understanding rules within Article 4.

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

R12-4-402. Live Wildlife; Unlawful Acts

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

General: A.R.S. § 17-231(A)(1)

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

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

The objective of the rule is to establish unlawful activities for persons taking and possessing live wildlife and the Department's authority to take possession of wildlife for a violation of the rule.

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 currently being enforced 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, amending the rule to establish the Department's authority to euthanize wildlife acquired or seized by the Department in response to a violation of any requirement of the rule will provide additional clarity.

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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

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 public benefits from a rule that clearly communicates unlawful activities. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-402 by:

- Establishing the Department's authority to euthanize acquired or seized wildlife when a person violates any requirement of the rule. The amendment provides the Department with a mechanism to dispose of wildlife when the wildlife cannot be released into the wild or lawfully placed into the care of a special license holder.

- Establishing that the person possessing the wildlife is responsible for all costs related to the possession and handling of the wildlife. The amendment clarifies that, although all wildlife is held in the public trust, the State and Department are not responsible for any costs incurred by the person possessing the wildlife.

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

R12-4-403. Escaped or Released Live Wildlife

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

General: A.R.S. § 17-231(A)(1)

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

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

The objective of the rule is to establish the Department’s authority to take possession of any escaped or released wildlife that poses an actual or potential threat to native wildlife, wildlife habitat, or to the safety, health, and welfare of the public.

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

Overall, the rule is effective in achieving the objective stated above. However, the Department proposes to amend the rule to expand the options the Department has, when an animal has been released, has escaped, or is likely to escape. The proposed amendment will allow the Department to seize, quarantine, and hold wildlife when necessary to protect Arizona’s wildlife resources and public property, safety, health, and welfare. These activities are authorized under A.R.S. § 17-102.

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 currently being enforced 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 Commission proposes to amend rule language to provide additional clarity.

- 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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

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 public benefits from a rule that is designed to protect native wildlife, wildlife habitat, and the safety, health, and welfare of the public. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-403 by:

- Removing the reference to A.R.S. § 17-306 as it implies the statute establishes the conditions for

release. The statute authorizes the Commission to determine those conditions.

- Clarifying that no person may release wildlife unless authorized to do so under this Article to protect Arizona's wildlife habitat and public property, safety, health, and welfare.
- Establishing that the person possessing the wildlife is responsible for all costs related to the possession and handling of the wildlife regardless of whether the wildlife is held on-site or off-site. The amendment clarifies that, although the Department has the authority to determine the disposition of the wildlife, the State and Department are not responsible for any costs incurred by the person possessing the wildlife.
- Providing additional options necessary for the evaluation of any situation where native wildlife protection and the safety, health and welfare of the public are concerned. These options include permitting the temporary possession of live wildlife under the instruction and guidance of the Department. The Department requires greater flexibility in evaluating situations where escaped or released wildlife have the potential to negatively impact native wildlife habitat, public property, safety, health, and welfare.
- Indicating that a special license holder is not exempt from the requirements of this Section to clarify who is subject to the rule.

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

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

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

General: A.R.S. § 17-231(A)(1)

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

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

The objective of the rule is to establish lawful activities for persons taking and possessing live wildlife under a valid hunting or fishing license and to regulate the take and disposition of live wildlife when live bag and possession limits are specified in a Commission Order.

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 currently being enforced 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 by revising rule language and reformatting the rule.

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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly communicates lawful activities and requirements for a person who possesses live wildlife taken under a valid hunting or fishing license. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-404 by:

- Revising rule language and reformatting the rule to provide additional clarity.
- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Replacing the term “personal use” with the term “noncommercial use” because noncommercial use is defined and "personal use" is an ambiguous term.
- Prohibiting a person from releasing offspring of propagated wildlife into the wild to prevent the transmission of wildlife diseases. The Department’s management of both game and nongame species as a public resource depends on sound science, which indicates translocated and propagated wildlife has the potential to transmit wildlife disease into healthy wildlife populations.
- Allowing the use of reptiles for aversion or avoidance training, provided the reptiles were taken under a valid Arizona hunting license and the current Commission Order authorizes a live bag and possession limit for that wildlife. This activity is currently allowed, but is not specifically addressed in rule.

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

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

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-238(B), and 17-306

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

The objective of the rule is to establish lawful activities and limitations for a person importing, purchasing, or transporting wildlife or the offspring of wildlife taken without a Department-issued license or permit to prevent harm to native wildlife of this state or to endanger public safety.

- 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 currently being enforced 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 by revising rule language and reformatting the rule.

- 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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly communicates exemptions, lawful activities, and limitations for a person importing, purchasing, or transporting wildlife or the offspring of wildlife taken without a Department-issued license or permit. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-405 by:

- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Requiring a person who is importing mammals, birds, or reptiles into this state to ensure the wildlife is accompanied by a health certificate to mirror federal and state importation requirements. The Department's management of both game and nongame species as a public resource depends on sound science, which indicates there is a potential for imported wildlife to transmit disease into healthy wildlife populations. The Commission believes it is beneficial to amend the rule to increase consistency with both federal and the Department of Agriculture's importation requirements; wherever possible and practical to do so.

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

R12-4-406. Restricted Live Wildlife

- 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. §§ 17-231(A)(2), 17-231(B)(8), 17-255, 17-255.02, and 17-306

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

The objective of the rule is to establish a list of live wildlife for which a special license is required in order to possess the wildlife and/or to engage in activities that may be prohibited under A.R.S. § 17-306 and R12-4-402.

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

Overall, the rule is effective in achieving the objective stated above. However, the Department proposes to amend the rule to increase its effectiveness by indicating that all threatened and endangered species and transgenic wildlife is live restricted wildlife, unless otherwise specified, and revising the rule to group the various types of species to reflect current taxonomy for scientific accuracy and ensure consistency between rules within Article 4 in regards to rule language and format.

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 currently being enforced 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 Commission proposes to amend rule language to provide additional clarity.

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:

Written Criticism: April 1, 2012. I live adjacent to a large green space in Prescott. I am considering ordering a couple dozen Ring-neck Pheasant eggs to hatch and release into wild at 2 months of age. Any warnings, precautions, or recommendations that Arizona Game and Fish Department may supply will be helpful. I have lots of experience with backyard urban poultry in California, but none in

Arizona or related to pheasants.

Agency Response: The Commission restricts the release, importation, and possession of some wildlife species in order to protect public health and safety, agriculture, wildlife, and habitat. Ring-Neck Pheasants are not listed as restricted live wildlife and therefore may be possessed legally without a special license. However, it is illegal to release these birds onto public lands without a special permit; the unregulated release of other nonnative species into the wild has resulted in negative impacts to native wildlife not only in Arizona, but throughout the world. The Article 4 rules are written to ensure wildlife species imported and possessed by persons do not result in negative impacts to native wildlife or their habitats.

Written Criticism: April 13, 2012. I am not located in Arizona. I actually live in Texas, but I am thinking of moving to Arizona. However, I was distressed to discover that the restrictive species list (illegal for a person to own) includes axis deer, all manner of African antelope, black bucks, camels, alpacas, and so on. In Texas, there are many people who have "Safari" style hunting ranches who stock these animals. They seem much easier to keep than traditional livestock. Allowing people to stock their land for hunting would seem to be a very good way to stimulate the economy because many big-game hunters are willing to pay well for this experience. Also, llamas and alpacas are very hardy and excellent provide good wool. If I were to move to Arizona, I would appreciate having these options available to earn a living. I know there are concerns about disease, but I am sure that there are ways to certify, and ensure, animals are healthy. I would deeply appreciate your concern in this matter, and I do hope that persons will be able to possess, breed, stock, and sell these animals in Arizona in the future. Please do bring this to the attention of the Commission. Also, please also consider removing hedgehogs and sloths from the restricted list as they are well-loved by hobbyists and not very threatening at all. I doubt many people would keep sloths (probably not me either, plus they are expensive), but I do not think it is good to ban something just for the purpose of banning it. If someone has a passion for hedgehogs, sloths, or some other uncommon but mostly harmless pet, I think they should be able to possess them.

Agency Response: Some of the species noted in the comment (llamas, alpacas, and camels) are not restricted and may be kept without a special license required under Article 4. However, all members of the family Cervidae are currently listed as restricted live wildlife because the potential risk for disease transmission between captive and wild cervids is a major threat to native cervid populations. The Department issues special licenses to possess cervids for approved facilities, such as zoos, where escape and nose-to-nose contact is highly unlikely. As Arizona has more public than private land, there is ample opportunity for sportsmen to enjoy hunting without the privatization of the wildlife model utilized in some states, such as Texas. In addition, the Commission has resisted the permitting of high-

fence hunting and landowner permits for a variety of reasons including disease issues. The Commission is currently evaluating the restricted species list and may recommend that hedgehogs be removed. Sloths will remain on the restricted list. A number of wildlife species are restricted from possession as pets in Arizona because they pose a threat to our native fish and wildlife, agriculture, or public health and safety. This is why restrictions apply to many kinds of wild and domestic animals that are legal to possess in other states, including prairie dogs, skunks, ravens, foxes, and baby monkeys. The Department does not support any changes without solid scientific evidence that there would not be any risks to our native wildlife and their habitats. The Department is authorized to issue special licenses to qualified persons or institutions for limited purposes such as research, public exhibition, or humane holding. Licenses are not issued to import or possess any wild animal for the purpose of keeping them as a pet.

Written Criticism: April 22, 2012. I want to keep crayfish in Arizona as pets. Is there any way to get a license to be able to get them? How would work, because the laws reference crayfish as bait and not as pets. I also would like to know if there is any way the Commission can allow fish stores to sell crayfish without a special license, provided the person wanting the crayfish does. This is because the only fish store close to my house cannot get them for me and I do not want to pay a minimum of \$30 to \$35 plus shipping and handling (an approximate total of \$75) for a few crayfish.

Agency Response: Crayfish are currently on the restricted live wildlife list as they are known to negatively impact a variety of native species. The Department is authorized to issue permits only to qualified persons or institutions for limited purposes such as research or public exhibition. Licenses are not issued to import or possess crayfish for pet purposes. The risk to Arizona's native wildlife and habitats are too great to take chances. Pet owners, unfortunately, sometimes become tired or frustrated with pets and release them into the wild which is detrimental to Arizona's native animals, because they compete for food, habitat, and may introduce new diseases. It is well documented that crayfish can become pests where they have been introduced into the wild in new areas. The Department has identified crayfish as a major deterrent to restoring native fish and amphibian populations throughout the state. For these reasons, the Department does not issue special licenses for the possession of crayfish.

The following comments address the current listing of hedgehogs as restricted live wildlife:

Written Criticism: April 26, 2011. Arizona is one of the five states in which owning a pet hedgehog is illegal; unless permitted and getting a permit for one is almost impossible. I am not so much angered as I am intrigued. I did a good deal of searching, but cannot find out any real reason the prohibition is in place. Why are hedgehogs discouraged in Arizona? When did they become restricted? What are the

requirements for obtaining a permit?

Written Criticism: April 26, 2011. What is required to change the rule regarding lawful possession of hedgehogs? If a person is not allowed to have them because the permit is virtually unattainable, the person will just purchase one in another state and smuggle their new pet into Arizona. Why are they contraband? Here is a petition to change the current rule, it currently has 1,403 signatures. If this is not a valid petition, let me know if I need to go out and collect signatures. (<http://www.petitiononline.com/3311786M/petition.html>).

Written Criticism: June 7, 2011. I am one of the people who signed the petition above; 1464 have signed. I believe a permit to possess a hedgehog should be easier to get. You can require a permit, just make the requirements reasonable.

Written Criticism: February 12, 2013. Possessing a hedgehog in Arizona requires a permit from the Arizona Game and Fish Department. However, this permit is almost unobtainable, making hedgehogs effectively illegal in the state. Most states allow a person to keep hedgehogs as pets and, Arizona being a common sense state, should join them. Hedgehogs are sweet, harmless, loving pets and there is no reason for them to be restricted in Arizona. This email is a plea to remove the restrictions on hedgehogs and make them legal to keep in this state. Hedgehogs already exist in Arizona as pets; a person just has to drive to Nevada to get one. Because of current restrictions, a person who no longer desires to keep the hedgehog as a pet cannot turn them over to a shelter or adopt them out to a new owner. For example, the Arizona Animal Welfare League and Arizona Society for the Prevention of Cruelty to Animals have at least two abandoned hedgehogs and are forbidden from trying to find an owner for the hedgehogs because of their restricted status and permit requirements. Please reverse the restriction on hedgehogs.

Agency Response: The Commission is currently evaluating the restricted species list. If the Department determines hedgehogs do not pose a threat to our native fish and wildlife, agriculture, or the public health and safety, the Department may recommend that hedgehogs be removed from the restricted wildlife list. A number of wildlife species are restricted from possession as pets in Arizona because they pose a threat to our native fish and wildlife, agriculture, or public health and safety. This is why restrictions apply to many kinds of wild and domestic animals that are legal to possess in other states. The Department does not support any changes without solid scientific evidence that there would not be any risks to our native wildlife and their habitats. The Department is authorized to issue special licenses to qualified persons or institutions for limited purposes such as research, public exhibition, or humane holding. Licenses are not issued to import or possess any wild animal for the purpose of keeping them as a pet.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on January 10, 2012.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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.**

When adding or removing a species from the restricted wildlife list, the Department bases its decision on the following factors: protection of human health and safety; biological impact on species and ecosystems; consistency with federal, state, and county regulatory agencies; and potential economic impact. The public benefits from a rule that clearly identifies species of live wildlife that may not be possessed without authorization from the Department. The public and the Department benefits from a rule that is understandable. 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 requires the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

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

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

The Department proposes to amend R12-4-406 by:

- Indicating that, unless otherwise specified, all threatened and endangered species and transgenic wildlife is live restricted wildlife.
- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Replacing the term “use” with “possess” to increase the potential for proper enforcement. “Use” is a generic term that is undefined for the Article, whereas “possess” has a specific meaning relative to the Article.
- Incorporating the online taxonomic authority, www.itis.gov. The Integrated Taxonomic Information System is readily available online, easier for the public to access, and is a nationally recognized authority for all taxa.
- Grouping the various types of species throughout the rule to reflect current taxonomy for scientific accuracy.
- Removing or adding species to the list of restricted live wildlife as follows:
 - Removing hedgehogs (*Erinaceus europaeus*) from the list of restricted live wildlife. The most common species of domesticated hedgehog is the African pygmy hedgehog, a hybrid of the white-bellied or four-toed hedgehog (*Atelerix albiventris*) and the Algerian hedgehog (*A. algirus*). A hedgehog is a medium-sized mammal and has a body of similar length to a large tree squirrel, but is more heavily built and can weigh as much as a rabbit. Hedgehogs hibernate in cold climates and aestivate (sleep) through heat and drought. They remain active all year in more temperate locations. These solitary animals typically couple only for mating.

The young remain with their mothers for only four to seven weeks before heading out on their own. Although traditionally classified in the order Insectivora, hedgehogs are not exclusively insectivores but are almost omnivorous. Hedgehogs feed on berries, bird eggs, carrion, frogs and toads, grass roots, insects, melons, mushrooms, snails, and snakes. When foraging, they rely upon their senses of hearing and smell because their eyesight is weak. The hedgehog's habitat is mainly hedgerows, woodlands, and meadows; they seem to prefer lush or riparian habitats. Some people consider hedgehogs to be useful pets because they prey on many common garden pests. Most of the hedgehogs in the pet industry are African pygmy hedgehogs or hybrids of same with the European hedgehog. Natural predators are canids and owls as they are nocturnal. Because Arizona has plenty of natural predators and a minimal amount of habitat suitable for reproduction, the Department has determined it is highly unlikely that a hedgehog that escapes or is released into the wild will survive.

- Adding apple snails, Chinese Mystery snails, false dark mussels, red shiners, four species of tilapia, non-human primates, and all birds listed under the Migratory Bird Treaty Act to the list of restricted live wildlife due to their potential to invade aquatic habitats quickly and harmful impact on native wildlife, habitat, and human health.
- Apple snails (genus *Pomacea*) are large aquatic snails that were introduced into Arizona through the pet trade and aquaculture; currently being sold as “mystery snails” at local pet stores and other stores in the aquarium trade. Two South American species are recognized as invasive, nuisance species in the United States (U.S.): the channeled apple snail (*Pomacea canaliculata*) and island apple snail (*P. insularum*). By 2011, island apple snail populations were already established in the Lower Salt River near Yuma for an unknown number of years. In 2012, all species of apple snails were added to the Department’s Directors Order #1. This order provides a list of all aquatic invasive species that are not native to the ecosystem under consideration and whose introduction or presence in this state may cause economic or environmental harm or harm to human health. Over the past two years, the Department has documented an abundant number of apple snails in the Salt River above Granite Reef Dam. They are slowly moving upstream. Apple snails are voracious herbivores and will eat decomposing organic matter and eggs and juveniles of other snails. Every 12 to 15 days, the female apple snail lays a bright pink clutch of eggs; one female apple snail can produce up to 15,000 offspring each year. From a human health perspective, apple snails are an intermediate host for the rat lungworm (*Angiostrongylus cantonensis*), a nematode that can cause meningitis in humans.
- Chinese mystery snails (*Bellamya chinensis*, synonym *Cipangopaludina chinensis*) are large freshwater snails. Mystery snails have been imported into the U.S. by the aquarium industry as well as for Asian food markets. Though native to East Asia, this species has

established itself in the U.S. Some releases were probably from hobbyists, and others may have been deliberate in an effort to create a local food source. They can clog water intake pipe screens and restrict water flow and are known to host parasites and diseases that can infect humans. They also compete with native snails for food and habitat resources and can serve as vectors for the transmission of parasites and diseases to our native aquatic species.

- False dark mussels *Mytilopsis leucophaeata* are a species of small bivalve mollusk in the false mussel family, Dreissenidae. It is commonly known as Conrad's false mussel or the Dark false mussel. False dark mussels have spread from their native range to other parts of the U.S. via ship ballast water; invading the Hudson River in the 1930s, the Upper Mississippi River in the 1980s, and southern New England in the 1990s. False dark mussels are found in brackish water. They attach to hard substrates, including oyster and true mussel shells, rocks, boats, pilings, and ropes. The species is highly adaptable, has broad ecological tolerances, inhabits freshwater and can also be found in coastal and estuarine habitats, riparian zones, and wetlands, even occurring in cooling water conduits of power stations. Because of its bio-fouling abilities (causing huge economic damage to industry) it is targeted by biocides and other control measures.
- Red shiners are a species of ray-finned fish in the *Cyprinidae* family. They are omnivorous and eat algae, both aquatic and terrestrial invertebrates, and are known to eat the eggs and larvae of native fish; hindering the growth of those populations. The spawning season for red shiners is generally from mid-April through September. In addition to spawning in crevices like other members of the genus *Cyprinella*, red shiners also broadcast their eggs and attach them to rocks and vegetation. Red shiners are also capable of generating viable hybrid offspring with closely related species. The red shiner is a common bait fish, and the emptying of bait buckets containing them is believed to be the main cause of introduction of this species into new areas. It has become a species of special concern in the U.S., because it has been implicated in the decline of native fish populations in the areas where it has been introduced. Red shiners are capable of hybridizing with the blacktail shiner (*Cyprinella venusta stigmatura*), a native species found in the Coosa River, which serves to dilute the gene pool of this species. R12-4-316 was recently amended to remove red shiner from the list of live bait minnows that can be lawfully possessed, transported, or imported by licensed anglers and to allow anglers to collect red shiner in the wild to possess and use them as bait only on the body of water where they are captured to aid in the conservation of native aquatic species (19 A.A.R. 826, April 26, 2013).
- Four tilapia species (*Oreochromis aureus*, *O. mossambica*; *O. niloticus*, *O. urolepis hornoru*, and *O. zillii*) and their hybrids are commonly used in backyard aquaculture

facilities. In approximately 1972, they were imported into Florida as an experiment in fish farming. Today tilapia is the third most important fish in aquaculture, surpassed only by carps and salmonids. Tilapia are generally large, fast growing, and breed rapidly; once introduced into a habitat they generally establish themselves very quickly. In doing so they compete with native fish fauna, create turbidity in the water (due to nesting behaviors) thus reducing the light available for aquatic plants, and consume a vast range of food sources causing changes in local aquatic flora. Impacts to rivers, creeks and ponds are great, particularly the dramatic decreases in native fish populations due to predation and competition for food by the fast breeding tilapia. Native fish, invertebrates, and other organisms also experience reduced access to cover through the aggressive territorial defense of breeding and feeding sites by some tilapia species. Tilapia are readily available for purchase on the internet along with instructions on how to culture your own tilapia farm. Because tilapia are not currently restricted under R12-4-406, there are no built-in safeguards that prevent backyard fish farmers from illegally releasing unwanted tilapia into Arizona waters. By adding tilapia to the list of restricted wildlife (as are all other game fish) a person would be required to obtain an Aquatic Wildlife Stocking Permit in order to legally possess and stock tilapia in their backyard pond. Thus, allowing the Department the opportunity to assess the geographic risk of issuing a permit as well as educate the public on the negative impacts of illegally stocking non-native tilapia into Arizona's waters. The addition of tilapia species to the list of restricted wildlife also increases consistency with the Department Policy I1.5 Cultural and Distribution of Non-native Fishes, which states the issuance of an Aquatic Wildlife Stocking Permit authorizing the possession, transportation, importation, and distribution of all species of tilapia and their hybrids shall be restricted according to specific guidelines established under I1.5. Specifically, the policy identifies low risk and high risk areas in the state for tilapia.

- Non-human primates require professional, well-managed care and are susceptible to both transmitting diseases to humans and contracting diseases from humans. Non-human primates include orangutans, chimpanzees, gorillas, macaques, and spider monkeys. Many people remain undaunted by the risks of adopting non-human primates in their homes. Most non-human primates are bred in captivity in the U.S. and sold for the pet trade. It is uncertain how many primates enter the trade through captive breeding each year, but the number is estimated to be in the thousands. The conditions in which privately owned non-human primates are kept raises serious animal welfare concerns. Most people cannot provide the special care, housing, diet, and maintenance that non-human primates require. Many animals who become too difficult for their owners to care for, or who have outgrown their usefulness as "pets" or profit-makers, end up languishing

in small pens in backyards, doomed to live in deplorable conditions. The influx of unwanted animals has become overwhelming for the dozens of sanctuaries in the U.S. and most primate/exotic animal sanctuaries are full, or near capacity. Sadly, most end up being sold and resold over and over again. Non-human primates cannot be effectively toilet trained and sometimes engage in distasteful activities involving their feces and urine. Poor hygiene and improper disposal of contaminated feces pose a serious problem. Environmental contamination from pet non-human primates may be a significant danger to the communities where pet non-human primates are kept. Many disease organisms can persist in the environment for long periods of time and may pose a serious threat to humans. As the non-human primate grows older, stronger and more unpredictable, they may turn aggressively on anyone, including the person to whom they are the closest. As a primate reaches sexual maturity, it will often become more aggressive and may start biting or fighting people to establish dominance. In an attempt to establish dominance, non-human primates may attack their owners or any person entering the owner's home. With larger primates, these displays can turn dangerous or even deadly. As in the case of a Connecticut woman who lost her face and hands after being mauled by a friend's 200-pound chimpanzee. Compounding the risk of physical injury to the public, non-human primates of all sizes have the potential to carry dangerous zoonotic diseases that can affect human health and safety. Eighty to 90 percent of all macaque non-human primates are infected with herpes B virus or simian B, a virus that is harmless to non-human primates but fatal to 70 percent of humans who contract it. Non-human primates shed the virus intermittently in saliva or genital secretions, which generally occur when the non-human primate is ill or under stress, or during periods of sexual receptivity. A person who is bitten, scratched, sneezed on, or spat on while the shedding occurs runs the risk of contracting the disease. The CDC asserts that the increase in macaque non-human primates in the pet trade may constitute an emerging infectious disease threat in the U.S. Disease organisms, particularly viruses, tend to live only in a small group of animal species to which they have adapted. Zoonotic diseases and viruses, to be spread successfully, must not kill their animal host. In the host, the organism often does little or no damage. However, when present in the human body, strategies that kept the organism in check do not work, causing them to multiply out of control and attack tissues and organs in ways it does not do when present in an animal host. This same, wrong-host phenomenon is why bird flu, equine encephalitis, and hanta viruses are dangerous or fatal in humans but rarely kill their animal host. Some of the zoonotic diseases that non-human primates carry and that can be transmitted to people are monkey pox, Simian Herpes B virus, simian immunodeficiency virus (SIV, the primate form of HIV), Measles, Rabies, Marburg Virus, Cercopithecine Herpes Virus I, Salmonella, Influenza Virus, Filoviruses

(Ebola), Streptococcus Pneumonia, viral hepatitis, and Tuberculosis. Most of these diseases spread through a bite or exposure to the saliva or nasal secretions of the non-human primate, while others spread through exposure to non-human primate feces. If specific precautions are not followed, non-human primates may easily transfer disease organisms they harbor to persons who are exposed to the non-human primate. As it currently stands, there is no blanket federal rule on non-human primate ownership in the U.S., although the U.S. Centers for Disease Control (CDC) banned the commercial importing of primates in 1975. As a result, responsibility for protecting people and non-human primates falls to the individual states. Currently there is a patchwork of state laws regarding "pet" non-human primates. Twenty-two states have a full ban on private ownership of non-human primates: Alaska, California, Colorado, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Utah, Vermont, and Washington. Three states have a partial ban on private ownership of some non-human primates: Connecticut, Florida, and Tennessee. Seven states require a permit or registration to possess non-human primates as pets: Delaware, Idaho, Missouri, New Mexico, North Dakota, Rhode Island, and Wyoming. Three states require a permit to possess some non-human primates as pets, while allowing others without a permit: Mississippi, Texas, and Wisconsin. Fourteen states allow non-human primates as pets: Alabama, Arkansas, Indiana, Kansas, Michigan, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Virginia, and West Virginia. The current trend across the country is to adopt regulations to prohibit specific species of dangerous non-human primates from future possession. This is important in allowing for a more uniform approach to successfully handle this issue nationwide. Forty-seven non-human primate exposure incidents have been recorded since the Department began tracking non-human primate exposure incidents in 1994. This does not include complaints of non-human primate escapes and numerous inquiries by the public and cooperating agencies regarding legality and housing requirements for non-human primates they have encountered. Because primates are known to be injurious to the public and have the potential to carry dangerous diseases that can have a significant impact on human health, further regulation of primates through this Section and R12-4-426 will improve the Department's ability to regulate the importation and personal possession of primates that regularly expose the public to potential danger.

- Under the Migratory Bird Treaty Act, no person may take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and part 13 of this chapter, or as

permitted by regulations in this part, or part 20 of this subchapter, or part 92 of subchapter G of this chapter. To further increase consistency between federal regulations and rules within Article 4, the Commission believes it is beneficial to amend the rule to add all birds listed under the Migratory Bird Treaty Act to the list of restricted live wildlife.

- Replacing the term “Blue Grouse” with “Dusky Grouse” because this is the correct reference for the species.
- Increasing consistency in format within the rule by listing restricted wildlife by the scientific name, followed by the common name.

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

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

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

General: A.R.S. § 17-231(A)(1)

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

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

The objective of the rule is to establish exemptions from special license requirements for restricted live wildlife.

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 currently being enforced 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 Commission proposes to amend rule language to provide additional clarity.

- 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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

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 public benefits from a rule that clearly indicates exemptions from special licensing requirements. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-407 by:

- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to

rule language and format.

- Allowing a person to give away, possess, or transport a lawfully possessed tortoise to increase consistency between rules within Article 4.
- Replacing “designated Department employee” with “Department” to prevent the impression that only a specific designated employee may request documentation.
- Requiring a person exporting, importing, possessing, or transporting mammals, birds, or reptiles into this state to comply with Department of Agriculture rules governing health certificates for the animals being imported into the state. The Department believes there is a potential for these animals to transmit disease into healthy wildlife populations.
- Establishing requirements for the disposal of wildlife that dies while in transport through this state to address wildlife disease concerns and prevent the improper disposal of the wildlife.
- Allowing the use of wildlife for commercial photography while simultaneously protecting the public health and safety.
- Revising the sport falconry license exemption to include language provided under R12-4-422 to increase consistency between rules within Article 4.
- Incorporating a more recent version of the Animal Welfare Act.

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

R12-4-408. Holding Wildlife for the Department

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

General: A.R.S. § 17-231(A)(1)

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

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

The objective of the rule is to establish requirements that allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license and lists the circumstances and restrictions placed on that authority.

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

Overall, the rule is effective in achieving the objective stated above. However, the Department proposes to amend the rule to increase its effectiveness by allowing the Department greater latitude in the amount of time it may designate for an person to hold or transport wildlife.

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 currently being enforced 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 Commission proposes to amend rule language to provide additional clarity.

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 resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly establishes the requirements that allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license and lists the circumstances and restrictions placed on that authority. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-408 by:

- Allowing the Department greater latitude in the amount of time it may designate when a person holds or transports wildlife. This benefits both the Department and the person holding or transporting wildlife.
- Replacing “designated Department employee” with “Department” to prevent the impression that only a specific designated employee may request documentation.

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

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

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), and 17-306

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

The objective of the rule is to establish general provisions relating to administrative compliance, licensing requirements, and penalties applicable to all special licenses issued by the Department. The Commission believes providing general provisions in one over-arching rule ensures consistency between special license rules.

- 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 currently being enforced 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 the Article.

- 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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that provides the general provisions relating to administrative compliance, licensing requirements, and penalties applicable to all special licenses issued by the Department. The Commission believes providing general provisions in one over-arching rule ensures consistency between special license rules. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-409 by:

- Replacing the term "permit" with "license," wherever applicable to increase consistency between Rules within Article 4.
- Removing references to game bird field trial, game bird hobby, and game bird shooting preserve licenses and replacing game bird field training permit with "game bird license" to reflect changes made to the game bird rules, which are being combined into one overarching game bird rule.
- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Expanding the Department's ability to deny a special license to an applicant who has been convicted of illegally holding or possessing wildlife from three years to five years immediately preceding application for a special license to increase consistency between rules within 12 A.A.C. 4.
- Replacing the term "threatened" with "affected" because the term "threatened wildlife" has a specific meaning that is not consistent with the intent of the rule.
- Clarifying the license holder is responsible for all costs associated with the testing and treatment of contaminated or affected wildlife.
- Including additional options for the Department to pursue, should a special license holder fail to adhere to the requirements of all applicable laws and rules to provide the Department with greater flexibility.
- Clarifying inspection requirements authorized under A.R.S. § 41-1009.
- Expanding reporting requirements to include persons who have not conducted activities authorized under the license. The current language only requires a person to submit a report when activities are performed. Expanding the reporting requirements to include persons who have not conducted any permitted activities ensures the Department has the information necessary to complete the end of the year reporting.
- Allowing a special license holder, whose license renewal is denied, to possess any wildlife held

under the special license until either the Commission makes its final decision on the appeal or the final day on which a judicial review may be requested to allow due process.

- Removing specific report requirements as these are covered under each special license rule.

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

R12-4-410. Aquatic Wildlife Stocking 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(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), and 17-306

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

The objective of the rule is to establish requirements that allow a person to stock restricted aquatic wildlife in an open system, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife habitat and resources.

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

Overall, the rule is effective in achieving the objective stated above. However, the Commission proposes to amend the rule to require the applicant to further examine of the potential for adverse impacts on existing wildlife species in the licensed area.

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 currently being enforced 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 the Article.

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 a greater impact to the Department than stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. There is no fee for this license and the Department issues approximately 161 Aquatic Wildlife Stocking permits on an annual basis. The Department recommends exploring the option of pursuing a fee to issue this permit because administrative processing costs are high and, in addition, neighboring states charge a fee for similar permits.

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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

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 public benefits from a rule that clearly establishes the requirements that allow a person to stock restricted aquatic wildlife in an open system, to include authorized activities and the restrictions and prohibitions necessary to protect existing aquatic wildlife habitat and resources. The public and the Department benefits from a rule that is understandable. An aquatic wildlife stocking license is only required when a person intends to stock restricted wildlife. However, because the rule does not state this, a person expends resources completing and submitting an unnecessary application and the Department expends resources receiving, reviewing, and responding to these unnecessary applications. The Commission proposes to amend the rule to clarify the aquatic wildlife stocking license is only required when the applicant intends to stock restricted wildlife to reduce the regulatory burden on the regulated public and the Department. The Department has determined that the probable benefits of the amended rule within this state outweigh the probable costs of the rule and the amended rule will impose 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-410 by:

- Clarifying the aquatic wildlife stocking license is only required when the applicant intends to stock restricted wildlife to reduce the regulatory burden on the Department and regulated public. Because the rule does not state the license is specific to restricted aquatic species, the Department expends resources receiving, reviewing, and responding to unnecessary applications.
- Clarifying application requirements to ensure the applicant submits the correct information at the time of the initial application.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient manner.
- Requiring an applicant to include additional information regarding common names of aquatic wildlife, physical location, and stocking facilities to provide the Department with the information necessary to make an informed licensing decision.
- Requiring an applicant to include the Universal Transverse Mercator or Global Positioning System coordinates as these are more commonplace for location descriptors than Township, Range, or Section and are becoming the standard for identifying remote locations.
- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Establishing a protocol for disease control as this is a priority within the Department and to increase consistency between rules within Article 4.
- Requiring an applicant to further examine the potential for adverse impacts on existing wildlife species in the licensed area.
- Requiring the license holder to possess the aquatic stocking license and present the license to a Department employee or agent upon request to allow the Department employee or agent to readily identify any additional stipulations placed on the license holder and to ensure compliance with the requirements prescribed under A.R.S. § 17-331.

The Commission amended the rule to reference the special license fee rule adopted through exempt rulemaking, R12-4-412 (19 A.A.R. 3225, October 18, 2013). The amended rule will become effective January 1, 2014.

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

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

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, 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 that allow a person to conduct a commercial live bait operation, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife resources.

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, with the exception of R12-4-313. R12-4-313 was amended to remove red shiners from the list of live bait minnows that can be lawfully possessed, transported, or imported by licensed anglers to restrict the use of red shiners as bait to minimize impact on native aquatic wildlife (19 A.A.R. 826, April 26, 2013). Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Commission proposes to amend the rule to remove red shiners from the list of authorized live bait species to increase consistency between R12-4-313.

- 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 currently being enforced 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 the Article.

- 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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. The Department issues approximately 28 Live Bait Dealer's licenses on an annual basis.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

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 public benefits from a rule that clearly establishes the requirements that allow a person to exhibit for sale, export, import, kill, offer for sale, possess, purchase, sell as live bait, trade, or transport any restricted live bait designated on the license at the location specified on the license. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-411 by:

- Removing red shiner as an authorized live bait species to address emerging concerns from wildlife biologists about the interactions between red shiner and native aquatic wildlife who believe it is beneficial to restrict the use of red shiner to minimize impact on native aquatic wildlife. The amendment will also increase consistency between Commission rules. R12-4-313 was amended to remove red shiners from the list of live bait minnows that can be lawfully possessed, transported, or imported by licensed anglers to restrict the use of red shiners as bait to minimize impact on native aquatic wildlife.
- Clarifying that the Live Bait Dealer's license issued by the Department does not authorize the license holder to conduct any activities using federally-protected wildlife unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States. This is proposed to notice the applicant that additional federal authorization may be required. This is proposed to notice the applicant that additional federal authorization may be required.
- Clarifying the special license holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying the special license issued by the Department does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations.
- Clarifying application requirements to ensure the applicant submits the correct information at the time of the initial application.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient manner.
- Requiring an applicant to include additional information regarding common names of live bait and physical location to provide the Department with the information necessary to make an informed licensing decision.
- Requiring an applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Referencing "R12-4-412 Special License Fees" rule to increase consistency between rules within Article 4.

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

R12-4-413. Private Game Farm License

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 3-1205, 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-307(C), 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 that allow a person to operate a commercial game farm, to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources.

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

Overall, the rule is effective in achieving the objective stated above. However, the Commission proposes to amend the rule to clarify the private game farm license requires the commercial farming of wildlife.

- 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, A.R.S. § 3-1205, 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 currently being enforced 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 the Article.

- 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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. The Department issues approximately 13 Private Game Farm licenses on an annual basis.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly establishes the requirements that allow a person to operate a commercial game farm, to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources.. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

- 13. For a rule adopted after July 29, 2010, that requires 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 R12-4-413 by:

- Revising the rule as necessary to maintain consistency between rules within Article 4.
- Clarifying language regarding propagation as it may be misinterpreted as preventing the possession of domestic animals with captive game animals. This improves clarity without

compromising the intent of the rule.

- Replacing the term “Blue Grouse” with “Dusky Grouse” as this is the correct reference for the species.
- Clarifying the allowable locations for a Northern Bobwhite Private Game Farm License as this nonnative quail poses a threat to an endangered native bird if it escapes or is released.
- Clarifying the Private Game Farm license issued by the Department does not allow the license holder to conduct any activities using federally-protected wildlife unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States. This is proposed to notice the applicant that additional federal authorization may be required. This is proposed to notice the applicant that additional federal authorization may be required.
- Clarifying the special license holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying the special license issued by the Department does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations.
- Requiring additional information on the application to enable the Department to more adequately evaluate the application for the requested activities and to allow for location identification that is consistent with current technology. This expands public options for identifying game farm locations.
- Requiring the license holder to comply with any additional stipulations the Department placed on the license.
- Specifying the documents to be held by the special license holder to improve compliance.
- Expanding reporting requirements to include persons who have not conducted activities authorized under the license. The current language only requires a person to submit a report when activities are performed. Expanding the reporting requirements to include persons who have not conducted any permitted activities ensures the Department has the information necessary to complete the end of the year reporting.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient manner.
- Requiring an applicant to include the Universal Transverse Mercator or Global Positioning System coordinates as these are more commonplace for location descriptors than Township, Range, or Section and are becoming the standard for identifying remote locations.
- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Referencing "R12-4-412 Special License Fees" rule to increase consistency between rules within

Article 4.

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

R12-4-414. Game Bird Shooting Preserve 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. §§ 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-307(C), 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 that allow a person to possess, release, and take pen-reared game birds, to include authorized activities, game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources.

- 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 currently being enforced 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, currently four rules exist that govern activities related to game birds: R12-4-414 through R12-4-416, and R12-4-419. The Department recommends combining these separate rules into one overarching game bird rule under R12-4-414 and repealing, R12-4-415, R12-4-416, and R12-4-419. The proposed amendments will increase clarity and maintain consistency between rules within Article 4.

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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. The Department issues approximately 7 Game Bird Shooting Preserve licenses on an annual basis.

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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

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 public benefits from a rule that clearly establishes the requirements that allow a person to possess, release, and take pen-reared game birds, to include authorized activities, game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-414 by:

- Combining the requirements of R12-4-414, R12-4-415, R12-4-416, and R12-4-419 into one rule overarching rule under R12-4-414. Currently, these four rules govern activities related to game birds. Under the authority of these four rules, four different licenses or permits are issued for each type of game bird activity. Revising the rule as necessary to include the relevant language from R12-4-415, R12-4-416, and R12-4-419 provides one point of reference for all requirements related to the handling of pen-reared game birds.
- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Replacing the term “wildlife” with “game birds” as the term may imply that the license authorizes the use of other types of animals.
- Setting a maximum possession limit for the personal possession of game birds to address concerns that a game bird hobby license holder who possesses unreasonably large numbers of game birds is using them for other purposes covered under the game bird license.
- Clarifying the Game Bird license issued by the Department does not allow the license holder to conduct any activities using federally-protected wildlife unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States. This is proposed to notice the applicant that additional federal authorization may be required. This is proposed to notice the applicant that additional federal authorization may be required.
- Clarifying the game bird license holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying the game bird license issued by the Department does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations.
- Expanding reporting requirements to include persons who have not conducted activities authorized under the license. The current language only requires a person to submit a report when activities are performed. Expanding the reporting requirements to include persons who have not conducted any permitted activities ensures the Department has the information necessary to complete the end of the year reporting.
- Clarifying application requirements to ensure the applicant submits the correct information at the time of the initial application.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient manner.

- Requiring an applicant to include additional information regarding common names of game birds, physical location, and the license holder's facilities to provide the Department with the information necessary to make an informed licensing decision.
- Requiring an applicant to include the Universal Transverse Mercator or Global Positioning System coordinates as these are more commonplace for location descriptors than Township, Range, or Section and are becoming the standard for identifying remote locations.
- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Referencing "R12-4-412 Special License Fees" rule to increase consistency between rules within Article 4.
- Requiring the license holder to possess the game bird license and present the license to a Department employee or agent upon request to allow the Department employee or agent to readily identify any additional stipulations placed on the license holder and to ensure compliance with the requirements prescribed under A.R.S. § 17-331.

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

R12-4-415. Game Bird Field Trial 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. §§ 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-307(C), 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 that allow a person to possess, release, and take pen-reared game birds for the purpose of testing the performance of hunting, to include authorized activities, game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources.

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 currently being enforced 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, currently four rules exist that govern activities related to game birds: R12-4-414 through R12-4-416, and R12-4-419. The Department recommends combining these separate rules into one overarching game bird rule under R12-4-414 and repealing, R12-4-415, R12-4-416, and R12-4-419. The proposed amendments will increase clarity and maintain consistency between rules within Article 4.

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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. The Department issues approximately 42 Game Bird Field Trial licenses on an annual basis.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly establishes the requirements that allow a person to possess, release, and take pen-reared game birds for the purpose of testing the performance of hunting, to include authorized activities, game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-415 by repealing this rule and including the requirements of this rule into one overarching game bird rule under R12-4-414.

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

R12-4-416. Game Bird Field Trial Training 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), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-307(C), 17-333, 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 that allow a person to possess, release, and take pen-reared game birds for the purpose of training a dog or raptor, to include authorized activities, game bird species that may be held under the license, administrative compliance, and the restrictions and

prohibitions necessary to protect existing habitat and wildlife resources.

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 currently being enforced 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, currently four rules exist that govern activities related to game birds: R12-4-414 through R12-4-416, and R12-4-419. The Department recommends combining these separate rules into one overarching game bird rule under R12-4-414 and repealing, R12-4-415, R12-4-416, and R12-4-419. The proposed amendments will increase clarity and maintain consistency between rules within Article 4.

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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. There is no fee for this license and the Department issues approximately 128 Game Bird Field Trial Training permits on an annual basis.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly establishes the requirements that allow a person to possess, release, and take pen-reared game birds for the purpose of training a dog or raptor, to include authorized activities, game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-416 by repealing this rule and including the requirements of this rule into one overarching game bird rule under R12-4-414.

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

R12-4-417. Wildlife Holding 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. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), and 17-306

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

The objective of the rule is to establish requirements that allow a person to possess and care for restricted and nonrestricted live wildlife lawfully taken under a valid hunting or fishing license, scientific collecting permit, or wildlife rehabilitation license to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources.

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 currently being enforced 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 the Article.

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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. There is no fee for this license and the Department issues approximately 151 Wildlife Service licenses on an annual basis.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly establishes the requirements that allow a person to possess and care for restricted and nonrestricted live wildlife lawfully taken under a valid hunting or fishing license, scientific collecting permit, or wildlife rehabilitation license to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The public and the

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

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-417 by:

- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Clarifying activities authorized under this rule.
- Allowing the Department to issue a wildlife holding license for the sole purpose of photography. This broadens the scope of the current rule, which only allows photography when a license holder is already authorized to possess wildlife for a different purpose.
- Clarifying the rule applies to both the transportation and shipment of live wildlife.
- Clarifying the wildlife holding license holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying the wildlife holding license issued by the Department does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules,

laws, and regulations.

- Expanding reporting requirements to include persons who have not conducted activities authorized under the license. The current language only requires a person to submit a report when activities are performed. Expanding the reporting requirements to include persons who have not conducted any permitted activities ensures the Department has the information necessary to complete the end of the year reporting.
- Clarifying application requirements to ensure the applicant submits the correct information at the time of the initial application.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient manner.
- Requiring an applicant to include the Universal Transverse Mercator or Global Positioning System coordinates as these are more commonplace for location descriptors than Township, Range, or Section and are becoming the standard for identifying remote locations.
- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Requiring the wildlife holding license holder to possess the wildlife holding license and present the license to a Department employee or agent upon request to allow the Department employee or agent to readily identify any additional stipulations placed on the license holder and to ensure compliance with the requirements prescribed under A.R.S. § 17-331.
- Clarifying the educational component of the wildlife holding license.
- Allowing an applicant to submit a certification issued by an institutional animal care and use or similar committee, stating that their captivity standards meet those described under R12-4-428, as applicable.
- Allowing an agent to assist the license holder in performing activities authorized under this license to increase consistency between rules within Article 4.

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

R12-4-418. Scientific Collecting 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. §§ 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(B), 17-240(A), and 17-306

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

The objective of the rule is to establish the requirements that allow a person to collect wildlife for educational purposes, to include authorized activities, wildlife species that may be held under the license, and restrictions and prohibitions necessary to protect existing habitat and wildlife resources.

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

Overall, the rule is effective in achieving the objective stated above. However, the Department proposes to amend the rule to increase its effectiveness and provide better clarity, as described below.

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 currently being enforced 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 the Article.

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 resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. There is no fee for this license and the Department issues approximately 312 Scientific Collecting permits on an annual basis.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly establishes the requirements that allow a person to collect wildlife for educational purposes, to include authorized activities, wildlife species that may be held

under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-418 by:

- Replacing the term “permit” with “license” to maintain consistency between rules within Article 4.
- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Clarifying the Scientific Collecting license issued by the Department does not allow the license holder to conduct any activities using federally-protected wildlife unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States. This is proposed to notice the applicant that additional federal authorization may be required.
- Clarifying the scientific collecting license holder is responsible for compliance with all applicable regulatory requirements.

- Clarifying the scientific collecting license issued by the Department does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations.
- Clarifying application requirements to ensure the applicant submits the correct information at the time of the initial application.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient manner.
- Requiring an applicant to include the Universal Transverse Mercator or Global Positioning System coordinates as these are more commonplace for location descriptors than Township, Range, or Section and are becoming the standard for identifying remote locations.
- Allowing an applicant to submit a certification issued by an institutional animal care and use or similar committee, stating that their captivity standards meet those described under R12-4-428, as applicable.
- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Allowing the Department to determine where authorized activities may take place.
- Clarifying methods of take to be used by the scientific collecting license holder.
- Expanding the requirement that the scientific collecting license holder dispose of wildlife as directed by the Department to include wildlife parts and offspring of wildlife held under the license.
- Expanding reporting requirements to include persons who have not conducted activities authorized under the license. The current language only requires a person to submit a report when activities are performed. Expanding the reporting requirements to include persons who have not conducted any permitted activities ensures the Department has the information necessary to complete the end of the year reporting.
- Requiring the license holder to possess the scientific collecting license and present the license to a Department employee or agent upon request to allow the Department employee or agent to readily identify any additional stipulations placed on the license holder and to ensure compliance with the requirements prescribed under A.R.S. § 17-331.

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

R12-4-419. Game Bird Hobby 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. §§ 17-231(B)(8), 17-234, 17-238(A), 17-306, 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 that allow a person to possess and release pen-reared game birds for the purpose of testing the performance of hunting dogs, to include authorized activities, game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources.

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 currently being enforced 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, currently four rules exist that govern activities related to game birds: R12-4-414 through R12-4-416, and R12-4-419. The Department recommends combining these separate rules into one overarching game bird rule under R12-4-414 and repealing, R12-4-415, R12-4-416, and R12-4-419. The proposed amendments will increase clarity and maintain consistency between rules within Article 4.

- 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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. The Department issues approximately 65 Game Bird Hobby licenses on an annual basis.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly establishes the requirements that allow a person to possess and release pen-reared game birds for the purpose of testing the performance of hunting dogs, to include authorized activities, game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-419 by repealing this rule and including the requirements of this rule into one overarching game bird rule under R12-4-414.

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

R12-4-420. Zoo 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. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, 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 that allow a person to use live wildlife for purposes related to the advancement of science, conservation, education, or wildlife management, to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources.

- 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, except that the rule references a statutory definition that is not defined under the statute referenced. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Commission proposes to amend the rule to remove the statutory reference and define "evidence of lawful possession" under R12-4-401.

- 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 currently being enforced 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 the Article.

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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. The Department issues approximately 19 Zoo licenses on an annual basis.

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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly establishes the requirements that allow a person to use live wildlife for purposes related to the advancement of science, conservation, education, or wildlife management, to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

- 13. For a rule adopted after July 29, 2010, that requires 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 R12-4-420 by:

- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Removing specific language regarding cervids, as R12-4-430 governs the use of cervids.
- Clarifying activities authorized under the zoo license.
- Restricting the disposition of restricted live wildlife from zoos to a private game farm in an effort to protect wildlife resources and prevent unregulated commercial breeding of wildlife.
- Clarifying the Zoo license issued by the Department does not allow the license holder to conduct any activities using federally-protected wildlife unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States. This is proposed to notice the applicant that additional federal authorization may be required.
- Clarifying the zoo license holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying the zoo license issued by the Department does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations.
- Clarifying application requirements to ensure the applicant submits the correct information at the time of the initial application.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient manner.
- Requiring an applicant to include additional information regarding and current scientific name of the wildlife species, the zoos physical location, and the license holder's facilities to provide the Department with the information necessary to make an informed licensing decision.
- Requiring an applicant to include the Universal Transverse Mercator or Global Positioning System coordinates as these are more commonplace for location descriptors than Township, Range, or Section and are becoming the standard for identifying remote locations.
- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Referencing "R12-4-412 Special License Fees" rule to incorporate amendments made by the Notice of ease consistency between rules within Article 4.
- Requiring an applicant to submit photographs of a facility when it is not accredited by the Association of Zoos and Aquariums or Zoological Association of America. The Commission does not view this as discriminatory, as the Association of Zoos and Aquariums or Zoological Association of America provide an accreditation program for zoos and aquaria an accredited zoo must meet peer-review requirements that are more stringent than the rule.

- Clarifying the transport and holding of wildlife requirements.
- Requiring the zoo license holder to institute protocols designed to reduce the introduction of diseases to wildlife and maintain records of implementation of the protocols for public safety and to increase consistency between the Commission's and the Arizona Department of Agriculture's rules regarding disease transmission.
- Requiring the license holder to possess the zoo license and present the license to a Department employee or agent upon request to allow the Department employee or agent to readily identify any additional stipulations placed on the license holder and to ensure compliance with the requirements prescribed under A.R.S. § 17-331.
- Expanding reporting requirements to include persons who have not conducted activities authorized under the license. The current language only requires a person to submit a report when activities are performed. Expanding the reporting requirements to include persons who have not conducted any permitted activities ensures the Department has the information necessary to complete the end of the year reporting.
- Allowing the transfer of wildlife held under a zoo license to appropriately licensed facilities or persons in other states are potential sources to transfer animals to provide the Department with greater flexibility.
- Clarifying Department authorization is required prior to acquisition when the zoo license holder is adding a new species of restricted wildlife to their collection that was not previously held in the collection and noted on the prior year's license report.
- Requiring zoo license holders to comply with R12-4-426, which regulates the possession of primates.

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

R12-4-421. Wildlife Service 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. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-239(D), 17-240(A), and 17-306

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

The objective of the rule is to establish requirements that allow a person to facilitate the removal of nuisance wildlife, to include authorized activities, wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources.

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 currently being enforced 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 the Article.

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 resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. There is no fee for this license and the Department issues approximately 118 Wildlife Service licenses on an annual basis.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly establishes the requirements that allow a person to facilitate the removal of nuisance wildlife, to include authorized activities, wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-421 by:

- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Clarifying the Wildlife Service license issued by the Department does not allow the license holder to conduct any activities using federally-protected wildlife unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States. This is proposed to notice the applicant that additional federal authorization may be required.
- Clarifying the wildlife service license holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying that the wildlife service license issued by the Department does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations.
- Clarifying application requirements to ensure the applicant submits the correct information at the time of the initial application.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient manner.

- Requiring an applicant to include additional information regarding wildlife services to be provided, physical location, and the license holder's facilities to provide the Department with the information necessary to make an informed licensing decision.
- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Requiring the license holder to possess the wildlife service license and present the license to a Department employee or agent upon request to allow the Department employee or agent to readily identify any additional stipulations placed on the license holder and to ensure compliance with requirements prescribed under A.R.S. § 17-331.
- Expanding reporting requirements to include persons who have not conducted activities authorized under the license. The current language only requires a person to submit a report when activities are performed. Expanding the reporting requirements to include persons who have not conducted any permitted activities ensures the Department has the information necessary to complete the end of the year reporting.
- Prohibiting the possession of wildlife carcasses or parts as this practice is not consistent with the intent of the rule.

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

R12-4-422. Sport Falconry 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. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-235, 17-236(B), 17-238(A), 17-306, 17-307, 17-331, 17-333, 17-371(D), and 25-320(P)

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

The objective of the rule is to establish requirements that allow a person to take and use raptors not listed in the Migratory Bird Treaty Act (MBTA) for the sport of falconry, to include authorized activities, raptor species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources.

- 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 currently being enforced 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.

- 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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 3, 2012. The Department issues approximately 31 Sport Falconry licenses on an annual basis.

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.

In the previous report, the Commission proposed to amend the rule to incorporate legislative amendments resulting from Laws 2008, Ch. 217. The statutory amendments established that only raptors covered under the Migratory Bird Treaty Act shall be possessed under a sport falconry license. In addition, the previous report proposed to amend the rule to implement amendments made to 50 CFR 21 and 22, which eliminated the dual permitting system and transferred the responsibility for falconry permitting administration to the individual states. The Council approved the report at the May 29, 2009 Meeting. The report stated the Department anticipated submitting the final rules to the Council by June 2011. The Department was on track to make that goal; however, due to the rulemaking moratorium in effect from January 22, 2009 until July 1, 2011, the Department ceased all rulemaking activity until it was determined that an exception to the moratorium was necessary. The Governor's office granted the Department permission to pursue rulemaking on July 8, 2010. The Department completed the previous five-year review process as follows:

- Notice of Rulemaking Docket Opening: 17 A.A.R. 1772, September 2, 2011
- Notice of Proposed Rulemaking: 17 A.A.R. 1742, September 2, 2011
- Public Comment Period: September 2, 2011 through December 2, 2011
- G.R.R.C. approved the Notice of Final Rulemaking at the April 3, 2012 Council Meeting.
- Notice of Final Rulemaking: 18 A.A.R. 958, April 27, 2012

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 public benefits from a rule that establishes requirements that allow a person to take and use raptors not listed in the Migratory Bird Treaty Act (MBTA) for the sport of falconry, to include authorized activities, raptor species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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

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

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-422 by:

- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Transferring definitions for the terms “Health Certificate” and “USFWS” to R12-4-401 to comply with the Arizona Administrative Procedures Act and the Secretary of State’s and G.R.R.C.’s rulemaking format and style requirements.
- Clarifying license requirements when a person is taking quarry with a raptor to comply with recent legislative amendments.
- Clarifying the Sport Falconry license issued by the Department does not allow the license holder to conduct any activities using federally-protected wildlife unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States. This is proposed to notice the applicant that additional federal authorization may be required.
- Clarifying the sport falconry license holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying that the sport falconry license issued by the Department does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations.
- Expanding the restriction placed on Apprentice falconers regarding the possession of Federally-listed or endangered species to include subspecies.
- Clarifying the rule by referencing subsections within the rule.
- Clarifying the rule by referencing the definition of “resident” under A.R.S. § 17-101 to increase consistency between Title 17 and Commission rules.
- Requiring the license holder to remove “any other falconry equipment” prior to releasing a raptor.
- Clarifying that a license holder shall only transfer a raptor to a person who possesses an appropriate license.
- Prohibiting the transfer of permit tag and quota regulated raptor species to out-of-state falconers within one-year of the date of capture.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient manner.
- Requiring an applicant to provide the sponsor's e-mail addresses and telephone number to enable the Department to communicate in a more efficient manner when necessary.

- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.

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

The Commission amended the rule to reference the special license fee rule adopted through exempt rulemaking, R12-4-412 (19 A.A.R. 3225, October 18, 2013). The amended rule will become effective January 1, 2014.

R12-4-423. Wildlife Rehabilitation 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. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-238(A), 17-240(A), and 17-306

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

The objective of the rule is to establish requirements that allow a person to rehabilitate and release live wildlife, to include authorized activities, wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources.

- 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, except that an amendment to 50 C.F.R. 20.27 require an applicant to be 18 years of age or older. Statutes and rules used in determining consistency include 50 C.F.R. 20.27, A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Commission proposes to amend the rule to remove requirements specific to applicants under the age of 18 in compliance with 50 C.F.R. 20.27.

- 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 currently being enforced 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 the Article.

- 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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. There is no fee for this license and the Department issues approximately 11 Wildlife Rehabilitation licenses on an annual basis.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

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 public benefits from a rule that clearly establishes the requirements that allow a person to rehabilitate and release live wildlife, to include authorized activities, wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-423 by:

- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Transferring definitions for the terms “agent”, “migratory birds”, and “taxa” to R12-4-401 to comply with Arizona Administrative Procedures Act and the Secretary of State’s and G.R.R.C.’s rulemaking format and style requirements.
- Defining the term “volunteer” which is more descriptive, clarifying a volunteer receives no compensation.
- Clarifying the rule by clearly defining the purpose of the wildlife rehabilitation license.
- Adding “turkey” and “small game mammals” to the list of wildlife.
- Updating the C.F.R. reference to include the most recent USFWS list of endangered and threatened animals.
- Clarifying the Wildlife Rehabilitation license issued by the Department does not allow the license holder to conduct any activities using federally-protected wildlife unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States. This is proposed to notice the applicant that additional federal authorization may be required.
- Clarifying the wildlife rehabilitation license holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying that the wildlife rehabilitation license issued by the Department does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations.
- Clarifying examination requirements for a wildlife rehabilitation license.
- Reducing the length of time in which the examination remains valid from five to three years to coincide with the licensing period.
- Clarifying application requirements to ensure the applicant submits the correct information at the time of the initial application.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient manner.
- Requiring an applicant to include the Universal Transverse Mercator or Global Positioning System

coordinates as these are more commonplace for location descriptors than Township, Range, or Section and are becoming the standard for identifying remote locations.

- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Requiring an applicant to disclose how they intend to humanely euthanize wildlife.
- Removing the requirement that the applicant list individual species on the application to reduce the regulatory burden.
- Removing requirements specific to applicants under the age of 18 as the United States Fish and Wildlife Service does not allow a person under the age of 18 to hold a wildlife rehabilitation license.
- Requiring the wildlife rehabilitation license holder to submit proof of continuing wildlife education through courses or classes provided by a university, college, National Wildlife Rehabilitation Association, International Wildlife Rehabilitation Council, or as approved in advance by the Department to increase the options available to the license holders. This is also proposed to reduce the regulatory burden on the Department. Few license holders choose to participate in the Department's education sessions and instead utilize other sources to obtain mandatory continuing education. The Department expends resources to prepare and provide education sessions to license holders. With each passing year and as other classes become increasingly available, attendance at the Department's education sessions has dwindled to the point that it does not benefit the Department or public to continue providing these education sessions.
- Removing the requirement that an applicant submit a health treatment provider statement from the Department's Wildlife Center Coordinator as all medical care should be provided by a licensed veterinarian.
- Requiring the license holder to possess the wildlife rehabilitation license and present the license to a Department employee or agent upon request to allow the Department employee or agent to readily identify any additional stipulations placed on the license holder and to ensure compliance with the requirements prescribed under A.R.S. § 17-331.
- Clarifying that all expenses incurred under the license are the responsibility of the rehabilitation license holder.
- Stating that wildlife rehabilitation license holders may only practice rehabilitation activities at the location specified on the license.
- Removing the retesting requirement for an applicant who has not conducted rehabilitation activities in the past year to reduce the regulatory burden.
- Providing current mailing addresses for the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council.
- Allowing a license holder to use other applicable educational opportunities provided they are

approved in advance by the Department's special license administrator to reduce the regulatory burden.

- Removing language referencing donations as it may be taken to imply the Department is the regulatory body for monetary collections and is outside of the Department's scope of authority.
- Requiring a wildlife rehabilitation license holder to contact the Department's applicable Special License Administrator, not the Wildlife Center Coordinator, if they receive an eagle or an animal listed under 50 C.F.R. 17.11 or the Department's Tier 1 Species of Greatest Conservation Need.
- Stating that a license holder who causes an animal to imprint on humans may not be issued a subsequent wildlife rehabilitation license. Imprinting refers to a critical period of time early in an animal's life when it forms attachments and develops a concept of its own identity. Birds and mammals are born with a pre-programmed drive to form an immediate strong social bond; to "imprint" onto their mother. Conservationists and naturalists have become sensitive to the damage imprinting can cause in young animals who attach to people or objects instead of a parent. Birds that imprint on human 'parents' prefer their company to that of their own species. They are unlikely to ever return to the wild or socialize appropriately with their own kind. Also, because young animals can inappropriately identify pets or people as their parents, they may lose their natural fear and become more vulnerable to predation or injury as they mature. These animals are referred to as "human imprints," a condition which is often irreversible, and may doom the animal in question to life in captivity or euthanasia.
- The intent of the license is to rehabilitate and return wildlife to the wild; an animal that has imprinted on a human will never be suitable for release.
- Clarifying allowable methods for the release or disposal of wildlife.
- Expanding reporting requirements to include persons who have not conducted activities authorized under the license. The current language only requires a report if activities are performed. In reality, a person will obtain a license and then fail to perform the permitted activities. This information is necessary for the Department to complete the end of the year reporting.

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

R12-4-424. White Amur Stocking and Holding License

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-238(A), 17-240(A), 17-306, 28-317, 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 that allow a person to possess and transport white amur, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife habitat and resources.

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 currently being enforced 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 the Article.

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 resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006. There is no fee for this license and the Department issues approximately 413 White Amur Stocking and Holding licenses on an annual basis.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that clearly establishes the requirements that allow a person to possess and transport white amur, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife habitat and resources. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-424 by:

- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Replacing the terms “ingress” and “egress” with "entering" and "exiting" to clarify the rule.
- Revising the definition of “triploid” to reflect language used by modern fishery biologists.
- Clarifying activities authorized under the license include stocking, holding, and restocking.
- Clarifying the white amur stocking license issued by the Department does not allow the license holder to conduct any activities using federally-protected wildlife unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States. This is proposed to notice the applicant that additional federal authorization may be required.
- Clarifying the white amur stocking license holder is responsible for compliance with all applicable regulatory requirements.
- Clarifying that the white amur stocking license issued by the Department does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations.
- Clarifying application requirements to ensure the applicant submits the correct information at the time of the initial application.
- Requiring an applicant to provide e-mail addresses at the time of application to reflect current technology and enable the Department and license holder to communicate in a more efficient

manner.

- Requiring an applicant to include additional information regarding physical locations and the license holder's facilities to provide the Department with the information necessary to make an informed licensing decision.
- Requiring an applicant to include the Universal Transverse Mercator or Global Positioning System coordinates as these are more commonplace for location descriptors than Township, Range, or Section and are becoming the standard for identifying remote locations.
- Requiring the applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically.
- Replacing references to "R12-4-102", License, Permit, Stamp, and Tag Fees, with "R12-4-412", Special License Fees, as the Department proposes to separate special license fees from hunting and fishing licenses and tag fees.
- Requiring the applicant to conduct an assessment of the impacts to sensitive species using the Department's Environmental Review On-Line Tool to further assess the impacts any authorized activity will have on existing wildlife species.
- Establishing a protocol for disease control as this is a priority within the Department and to increase consistency between rules within Article 4.
- Establishing the Department's ability to perform inspections of the stocking location.
- Requiring the license holder to possess the white amur stocking license and present the license to a Department employee or agent upon request to allow the Department employee or agent to readily identify any additional stipulations placed on the license holder and to ensure compliance with the requirements prescribed under A.R.S. § 17-331.

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

**R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit
Before the Effective Date of this Article**

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), and 17-306

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

The objective of this rule is to establish administrative compliance requirements for the continued possession and use of wildlife lawfully possessed prior to being classified as restricted live wildlife under R12-4-406.

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 currently being enforced 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 clarify the status of offspring and lawful disposition of “grandfathered” animals.

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 resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that establishes minimum administrative compliance requirements for the continued possession and use of wildlife lawfully possessed prior to being classified as restricted live wildlife under R12-4-406. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-425 by:

- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Requiring a person to include the specific wildlife to be possessed on the notification to the Department.
- Requiring a person to provide specific information about the wildlife the person is holding to improve the Department's enforcement capabilities by making it more difficult for a person to substitute animals under the exemption.
- Restricting propagation of live wildlife lawfully possessed under this rule.
- Replacing "designated Department employee" with "Department" to prevent the impression that only a specific designated employee may request documentation.
- Specifying the transfer of wildlife to a special license holder will nullify the exemption.
- Removing language that implies offspring are exempt since propagation is no longer allowed under this Section.
- Requiring a person to report any previous offspring in order to exempt offspring from the requirements of this Article.
- Requiring the person to permanently mark wildlife possessed under this rule.

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

R12-4-426. Possession of Primates

- 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. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306

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

The objective of this rule is to establish requirements for the possession of a non-human primate, to include containment, transportation, reporting, and laboratory testing requirements should a bite or other incident occur; and restrictions and prohibitions necessary to protect public health, safety and welfare.

- 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. However, the Commission believes the current rule is too lenient and, despite amendments made in 2006, primates held as pets continue to expose the public to potential pathogenic organisms and physical injury. In addition to amendments designed to protect the public from risks posed by primates, the Department proposes to amend R12-4-406 to list all non-human primates as restricted live wildlife and this rule to address human health and public safety concerns.

- 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 currently being enforced 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 Commission proposes to amend rule language to provide further clarity and broaden the rule's objective to address human health and public safety concerns.

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:

Written Criticism: October 28, 2011. I work for the Arizona State University's (ASU) department responsible for obtaining research animals for investigators at ASU. I have always followed the importation guidance provided at <http://www.azda.gov/ASD/monkey.aspx>. An investigator's told me that the restriction under R12-4-426(B) does not apply to macaques imported into Arizona for research. I have asked the investigator for her source, but have not heard from her yet. Do you know of any such exemption to this rule?

Agency Response: Because macaques are not currently listed under R12-4-406 as restricted wildlife, and ASU is licensed by the United States Department of Agriculture (USDA) as a research institution, immature animals may be imported by an investigator provided the investigator possesses all of the necessary permits and complies with the housing and transportation requirements prescribed under Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that establishes requirements for the possession of a non-human primate, to include containment, transportation, reporting, and laboratory testing requirements should a bite or other incident occur. These requirements are intended to protect the public health, safety, and welfare. The public and the Department benefits from a rule that is understandable. 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.

Bites to humans from non-human primates continue to be a problem for the Department and place the general public at risk of contracting a zoonotic disease infection or physical injury. The Department proposes to amend R12-4-406 to list all non-human primates as restricted live wildlife and this rule to address human health and public safety concerns. The proposed amendments will create additional costs and burdens for persons who possess non-human primates; however, the Commission believes these provisions are necessary to protect public health, safety, and welfare.

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

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-426 by:

- Transferring definitions to R12-4-401 in compliance with the Arizona Administrative Procedures Act and the Secretary of State's and G.R.R.C.'s rulemaking format and style requirements.
- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Restricting the possession of primates to zoo license holders, research facilities, and persons exempt under R12-4-425.
- Adding other zoonotic diseases to communicate the various testing requirements.
- Requiring a person to transport a primate in a secure cage, crate, or carrier to reduce the threat to public health, safety, and welfare.
- Replacing the terms "Director" and "Director's designee" with "Department" to prevent the impression that only the Director or a specific designated employee may request documentation.
- Allowing a zoo license holder or person using primates at a research facility possessing a primate that bit, scratched, or otherwise exposed a human to pathogenic organisms to use procedures recommended by the American Association of Zoo Veterinarians and Centers for Disease Control as the recommended procedures are more stringent than the rule.
- Requiring persons lawfully possessing a primate under R12-4-425 to comply with captivity standards established under R12-4-428, as applicable, to ensure the animal's health and social needs are met.

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

R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306

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

The objective of the rule is to establish criteria allowing a person to possess and care for specific live wildlife species without having to apply for and obtain a wildlife rehabilitation license, to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect wildlife habitat and resources.

- 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 currently being enforced 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 Commission proposes to amend rule language to provide additional clarity.

- 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 resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that establishes criteria allowing a person to possess and care for specific live wildlife species without having to apply for and obtain a wildlife rehabilitation license, to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect wildlife habitat and resources. The public and the Department benefits from a rule that is understandable. 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 requires 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 R12-4-427 by:

- Revising the rule as necessary to ensure consistency between rules within Article 4 in regards to rule language and format.
- Clarifying the wildlife species that may be held under the exemption from special licensing for rehabilitation purposes.
- Clarifying the rule does not allow the person to conduct any activities using federally-protected wildlife unless the person possesses a valid license, permit, or other form of documentation issued by the United States.

- Clarifying the person is responsible for compliance with all applicable regulatory requirements.
- Clarifying the rule does not exempt the person from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations.
- Replacing “Wildlife of Special Concern” with “Species of Greatest Conservation Need” to ensure consistency in language within Article 4.

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

R12-4-428. Captivity Standards

- 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(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306

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

The objective of the rule is to establish the minimum standards for living spaces, furnishings, dietary needs, veterinary care, and social groupings to ensure the humane treatment of animals possessed under a lawful exemption or special license issued by the Department.

- 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 currently being enforced 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 Commission proposes to amend rule language to provide additional clarity.

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 has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

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 public benefits from a rule that establishes the minimum standards for living spaces, furnishings, dietary needs, veterinary care, and social groupings to ensure the humane treatment of animals possessed under a lawful exemption or special license issued by the Department. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-428 by:

- Removing duplicative and extraneous language and reformatting the rule to improve clarity and consistency within Article 4.
- Clarifying the type of animals referenced as wildlife and domestic.
- Clarifying the accessibility and monitoring of fresh water provided to captive animals.
- Clarifying the accessibility and monitoring of food provided to captive animals.
- Clarifying the methods that must be in place to prevent the spread of disease and minimize stress.
- Requiring the person to provide an enclosure that promotes the psychological well-being of captive animals.
- Requiring the person to provide veterinary care even when the animal will be kept for less than one year.

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

R12-4-430. Importation, Handling, and Possession of Cervids

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

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-318

- 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 importation, handling and possession of captive cervids necessary to prevent the transmission of disease from captive cervids to wildlife and domestic animals, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources.

- 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 currently being enforced 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 Commission proposes to amend rule language to provide additional clarity and reflect recent research conclusions regarding disease transmission between captive and wild cervids or livestock.

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 criticism:

Written Criticism: July 10, 2009. We are required to take the heads of deer that died to the University of Arizona (U of A) Diagnostic Laboratory in Tucson for chronic wasting disease (CWD) monitoring. This requires me to drive approximately 370 miles with an average of seven hours each trip. I drove to the University of Arizona 17 times in 2008, resulting in approximately 6,290 total miles. While I recognize the importance of the CWD Monitoring Program, the requirement of taking the deer heads to Tucson is burdensome and expensive. I would like to be able to take the deer heads to a local veterinarian for sample removal. The local veterinarian could forward the sample to California

State University (CSU) for testing (the U of A laboratory does not perform the actual testing, but forwards the sample to CSU). This should be done under emergency rulemaking procedures; not under the regular procedure. This same request was submitted approximately two years ago when Lisa Shender was the Department's veterinarian when the quarantine on our game farm was lifted (I'd like to mention this quarantine was put into effect due to an inconclusive test result, not a positive test result).

Agency Response: The Commission proposes to amend the rule to allow a licensed veterinarian or Department employee to collect samples, which can be tested by any USDA Animal Plant Health Inspection Service (APHIS) certified laboratory.

Written Criticism: February 19, 2011. We recently learned that no native deer rescue is allowed in Arizona because of CWD in other states. CWD is not even in Arizona. I recently visited the Tucson Wildlife Center and learned that they cannot rescue these beautiful injured or orphaned animals, yet other non-CWD states are allowed to rescue them. Please revisit this restriction. Arizona could rescue deer in need without the threat of spreading the disease. Perhaps someone from the Department could visit the Tucson Wildlife Center and see the care they take to rehabilitate and release healthy animals and provide housing for those animals that cannot take care of themselves. Listen to their plea to be allowed to rescue deer and then make a decision.

Agency Response: Transmission of CWD, and other wildlife disease, is facilitated through unnatural concentrations of wildlife. While these diseases are not evident in Arizona today, CWD has been detected in Utah, Colorado, and New Mexico, and if it continues its westward trend, it could eventually be detected in Arizona. Because many of these diseases may pose an economic risk to Arizona, this regulation is deemed critical to managing wildlife and hunting in Arizona. This is consistent with regulations in many other states and tribal lands. The Commission has a history of taking proactive measures to prevent, detect, and reduce the likelihood of the transmission of wildlife disease that already include: regulating the importation of carcasses and parts of cervids into the state; regulating game farms in Arizona on the importation of carcasses and parts of cervids; and prohibiting the use of lures and scents containing cervid urine, monitoring and testing cervid harvest annually since 1998; prohibiting the transportation, importation, and translocation of cervids; and establishing an emergency response plan of action, in the event CWD or other detrimental wildlife disease is detected. While a person may be tempted to pick up a young wild animal that appears to be on its own, Department biologists warn this is not a good idea and can cause more harm than good. If a person finds a fawn, or any young animal on its own, the person should not assume it is orphaned and in need of help. Usually, the parents are not far away. They may be out gathering food, taking a short break from their young, or may have been scared away. If a person removes the animal from the wild, its odds for survival

diminish. Moving deer and antelope fawns and elk calves is not only bad for the animal, it is also illegal. Regulations prohibit possessing and moving native deer and elk due to concerns over the potential transmission of CWD to Arizona's deer and elk populations. CWD, a wildlife disease fatal to deer and elk, has not yet been found in Arizona but is in several neighboring states. In addition, removing a baby wild animal from its natural environment may prevent it from being able to survive in the wild in the future. On those rare occasions where a baby animal is obviously injured, a person should call a wildlife rehabilitator who can assess the animal and decide whether to move it. If an injured animal is a large game animal or potential danger to handlers, such as a deer, javelina or coyote, call the closest Department office or Radio Dispatch at (623) 236-7201.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 7, 2006.

- 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 report. G.R.R.C. approved the report at the May 29, 2009 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 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 process.

- 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 public benefits from a rule that establishes requirements for the importation, handling and possession of captive cervids necessary to prevent disease transmission of disease from captive cervids to wildlife and domestic animals, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. Currently, CWD testing is only required for those animals that die in captivity and provides an exception for animals that are either killed or slaughtered. The license holder is required to submit the head of the cervid to the Arizona Veterinary Diagnostic Laboratory (AZVDL) in Tucson within 72 hours of death. The Department pays the costs of collecting the sample and testing it for the presence of CWD by a laboratory certified by the National Veterinary Services Laboratory and USDA APHIS. When this rule was put in place, USDA APHIS was providing financial support to the Department for CWD testing in captive cervids. The Department has received comments regarding the impact of the current rule on a business because of the distance from the person's business location, approximately 200 miles away. A single round trip is estimated to cost the person \$80 in fuel and a full day of time. If the head is shipped by a commercial carrier, then overnight shipping would be approximately \$250. In the past three years, this business has tested on average four animals annually at an estimated cost of \$320 in travel expenses and \$640 in wages for personnel; a total cost of \$960.

The Department proposes to require special license holders lawfully possessing cervids to submit for CWD testing tissues from any cervid over one-year of age that dies, is killed, or slaughtered while in their possession in addition to the following changes: Collection of the specific tissue for testing can be done by either a licensed veterinarian or by a Department employee; collected samples can be tested by any USDA APHIS certified laboratory; the owner shall pay the cost of sample collection, shipping, and testing; and, when the owner submits the sample for testing, the owner shall indicate on the submission form that the results should also be reported directly to the Department. This will bring the rule into alignment with the Department's Chronic Wasting Disease Response Plan and Chronic Wasting Disease Alliance strategies designed to effectively control/minimize the impact of CWD on wild, free-ranging cervids.

The proposed changes will have a negligible to positive impact to zoo and wildlife holding licensees because it would not result in an increase in testing requirements. For a game farm license holder who possesses cervids these changes may increase costs. There are 21 approved diagnostic laboratories nationwide. In addition to the cost for testing, each laboratory charges a submission fee of \$7 to \$10. The average fee for the immunohistochemistry (IHC) is \$35 and for enzyme-linked immunosorbent assay (ELISA) is \$25. The Department has one licensed game farm for cervids. From 2006 until 2009;

an average of 22 animals were removed each year. If all of these animals were over one-year of age, the annual testing would cost the owner \$800 and shipping would cost \$330; a total cost of \$1130. This represents an estimated increase in costs of \$170. For the Department it represents a decrease in expenses of \$180 for testing and \$400 for sample collection and shipping.

While the Commission is amending the rule to place additional requirements upon businesses that use cervids, the Commission believes the benefits of conserving the state's wildlife, impeding the potential for wildlife crisis concerns, and promoting public safety outweigh any burden and costs that may be incurred by the regulated community. In addition, the Commission proposes to amend the rule to allow a person to submit the head of a deer that dies in captivity to the Department for sample removal. This amendment will reduce the burden and costs for the regulated community. The public and the Department benefits from a rule that is understandable. 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, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), is applicable to the subject of the rule. The Department has determined that the rule is not more stringent than corresponding federal law. However, AWA requirements are only applicable to mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. The rule applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that requires 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 R12-4-430 by:

- Transferring the definition of "cervid" to R12-4-401 to comply with the Arizona Administrative Procedures Act and the Secretary of State's and G.R.R.C.'s rulemaking format and style requirements.
- Clarifying the cervid species covered by the rule.
- Referencing R12-4-305, which establishes requirements for transporting cervid carcasses or its parts from a private game farm.
- Clarifying disease testing requirements.
- Expanding disease testing options to reduce the Department's and regulated community's burden and costs incurred in transporting the retropharyngeal lymph nodes or obex from the head of a native cervid for sampling. Under the current rule, a person must submit the nodes or obex from the head of a native cervid of any age to the University of Arizona Veterinary Diagnostic Laboratory. The proposed rule will only require the submission of the nodes or obex from the head of a native cervid over one year of age and allows the person to submit the nodes or obex to any licensed veterinarian or the Department.
- Clarifying recordkeeping requirements.

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