

D-1

ARIZONA STATE RETIREMENT SYSTEM (R-16-1204)

Title 2, Chapter 8, Article 4, Practice and Procedure Before the Board

Amend: R2-8-401, R2-8-403, R2-8-405



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: D-1

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Shama Thathi, Staff Attorney

DATE: January 24, 2017

SUBJECT: ARIZONA STATE RETIREMENT SYSTEM (R-16-1204)
Title 2, Chapter 8, Article 4, Practice and Procedure Before the Board

Amend: R2-8-401, R2-8-403, R2-8-405

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

The Arizona State Retirement System (ASRS) provides for retirement planning and benefits for state employees and teachers. The ASRS is directed by the governor-appointed ASRS Board (Board). The Board consists of nine members and is responsible for supervising the administration of the ASRS, including the defined contribution plan, defined benefit plan, long-term disability income plan, and health benefit supplement plan. At the end of Fiscal Year 2014-15 there were approximately 558,136 ASRS members.

This rulemaking seeks to amend three rules in A.A.C. Title 2, Chapter 8, Article 4, which contains rules related to practice and procedure before the Board.

Article Contents, Including the Subject Matter of Each Rule Affected

Article 4 contains five rules, three of which are affected by this rulemaking. The rules address definitions; general procedures; request for a hearing of an appealable agency action; board decisions on hearings before the Office of Administrative Hearings; rehearing and review of a final decision.

Year that Each Rule was Last Amended or Newly Made

R2-8-401 was last amended by final rulemaking on December 5, 2015. R2-8-403 and R2-8-405 were made by final rulemaking on January 4, 2005.

Proposed Action

In addition to minor clarifying and technical changes, the ASRS proposes the following actions:

- R2-8-401: The ASRS is adding definitions for two terms, “Board” and “Final administrative action.”
- R2-8-403: The ASRS is amending this rule to distinguish between an appeal related to a long-term disability determination and an appeal related to a member benefits determination. Additionally, the rule will allow a person who is dissatisfied with a decision by the Director to file an appeal with the ASRS by submitting a Request for Hearing of an appealable agency action.
- R2-8-405: The ASRS is amending this rule to allow a person who is dissatisfied with the final decision of the appeal to file a motion for rehearing or review. The rule also provides a distinction between a motion for rehearing and a motion for review of a final decision.

Summary of Reasons for the Propose Action

The ASRS indicates that the amendments are necessary to better reflect the ASRS appeals process and to improve the clarity and consistency of the rules. This rulemaking provides notice to members about how the ASRS processes different types of appeals.

Exemption or Request and Approval for Exception from the Moratorium

The ASRS received an exception from the Governor’s Office on August 12, 2015.

Substantive or Procedural Concerns

None.

1. Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?

Yes. The ASRS cites to both general and specific statutory authority. Under A.R.S. § 38-714(E)(4), the Board may “[a]dopt, amend or repeal rules for the administration of the plan.”

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rules are clear, concise, and understandable.

3. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

Yes. The ASRS indicates that it received no written comments on the rulemaking.

4. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

No. In November 2016, the ASRS filed a Notice of Supplemental Proposed Rulemaking to make the following amendments:

- The ASRS added R2-8-403(H) to clarify when an appellant will receive a response to a letter of appeal at the assistant director level.
- The ASRS amended R2-8-403(D) to clarify when an appellant will receive a response letter to a letter of appeal at the Director level.
- The ASRS modified the term “his designee” to “such director’s designee” to conform to rulemaking standards,
- In R2-8-403(E), the ASRS changed “request” to “Request” in order to reflect that the rule addresses a “Request for a Hearing.”

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency’s evaluation of or justification for the rules?

No. The ASRS indicates that it did not review or rely upon any study for the rulemaking.

6. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority that allows the agency to exceed the requirements of federal law?

No. The ASRS indicates that there are no corresponding federal laws.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

No. The rules do not require a permit or license.

8. Do the rules establish a new fee or contain a fee increase?

No. The rules do not establish a new fee or contain a fee increase.

Conclusion

The ASRS requests the usual 60-day delayed effective date for the rules. This analyst recommends approval of the rules.



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: D-1

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE: January 24, 2017

SUBJECT: ARIZONA STATE RETIREMENT SYSTEM (R-16-1204)
Title 2, Chapter 8, Article 4, Practice and Procedure Before the Board

Amend: R2-8-401, R2-8-403, R2-8-405

I reviewed the economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC Economist Comments

In this rulemaking, the Arizona State Retirement System (ASRS) is proposing to amend three rules to clarify the language used to outline the appeals process. The ASRS will amend the rules to distinguish between an appeal related to a long-term disability determination and an appeal related to a member benefits determination. The amendments will clarify the rule language without substantively changing the rules' requirements. The rule amendments are necessary to distinguish between how the ASRS processes the different types of appeals.

Specifically, the ASRS proposes clarifying to whom appeal letters should be addressed. This will ensure that appeals are processed more efficiently by the proper authority. The ASRS also proposes clarifying the difference between a Motion for Rehearing before the Board and a Motion for Review of a Final Decision, which will remove confusion in the appellant-request process.

The ASRS receives approximately 10 appeals related to the Long-Term Disability Program and approximately 300 appeals total during the fiscal year. Of those appeals, approximately 30-60% are addressed to the ASRS Director instead of the Member Services Division Assistant Director. Moreover, out of the total number of appeals the ASRS receives, approximately 3-4 of those appeals result in the appellant requesting a Motion for Rehearing before the Board or a Motion for Review of a Final Decision each year

1. **Costs and Benefits for:**

a. The implementing agency:

The ASRS incurred the cost of completing this rulemaking and will incur the minimal cost of implementing it.

b. Political subdivisions:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

c. Businesses:

No businesses are directly affected by the rulemaking.

d. Small businesses:

No small businesses are directly affected by the rulemaking.

e. Consumers directly affected by the rulemaking:

Specifically, the ASRS members, beneficiaries, and employers who wish to appeal an agency determination will be affected and benefit from this rulemaking

2. **Do the probable benefits outweigh the probable costs?**

Based on the information provided, the ASRS indicates that the benefit from the proposed amendments outweigh the costs. The proposed rule will have minimal economic impact, if any, because it merely clarifies the processes for appeals without imposing any additional requirements on the public.

3. **Analysis of methods to reduce the small business impact:**

An analysis was not submitted because the ASRS estimated that there will be no economic impact to small businesses.

4. **The probable effect on state revenues:**

The proposed rulemaking will have no effect on state revenues.

5. **Analysis of any less intrusive or less costly alternative methods:**

The ASRS believes this is the least costly and least intrusive method because it will clarify the appeals process without imposing any additional requirements on the public.

6. **Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:**

No analysis was submitted that compares the rule's impact of the competitiveness of businesses in this state to the impact on businesses in other states.

7. **A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.**

The ASRS indicates that no outside data or studies were used in the development of the proposed rule amendment.

8. **Conclusion:**

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the proposed rule amendments be approved.



ARIZONA STATE RETIREMENT SYSTEM

3300 NORTH CENTRAL AVENUE • PO BOX 33910 • PHOENIX, AZ 85067-3910 • PHONE (602) 240-2000
4400 EAST BROADWAY BOULEVARD • SUITE 200 • TUCSON, AZ 85711-3554 • PHONE (520) 239-3100
TOLL FREE OUTSIDE METRO PHOENIX AND TUCSON 1 (800) 621-3778
WWW.AZASRS.GOV

Paul Matson
Director

January 24, 2017

Ms. Nicole A. Ong, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration
Chapter 8. State Retirement System Board**

Dear Ms. Ong:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on December 27, 2016 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
 - a. Cover letter signed by the Board's Assistant Director;
 - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
 - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Patrick M. Klein
Assistant Director

NOTICE OF FINAL RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R2-8-401	Amend
R2-8-403	Amend
R2-8-405	Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 41-1092 et seq.

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable.

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Docket Opening: 22 A.A.R. 2568, September 16, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 2555, September 16, 2016

Notice of Supplemental Proposed Rulemaking: 22 A.A.R. 3234, November 18, 2016

5. The agency's contact person who can answer questions about the rulemaking:

Name: Jessica A.R. Thomas, Rules Writer

Address: Arizona State Retirement System
3300 N. Central Ave., Ste. 1400

Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-Mail: JessicaT@azasrs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

R2-8-401 contains definitions that are applicable to this Article. R2-8-401 needs to be amended to reflect that for purposes of appeals, the “Board” refers to the Committee designated by the Board to hear appeals. R2-8-403 allows a person who is dissatisfied with a decision by the Director to file an appeal with the ASRS by submitting a Request for Hearing of an appealable agency action. The ASRS will amend the rule to distinguish between an appeal related to a long-term disability determination and an appeal related to a member benefits determination. R2-8-405 allows a person who is dissatisfied with the final decision of the appeal to file a motion for rehearing or review. The ASRS will amend this rule to distinguish between a motion for reconsideration and a motion for rehearing. The amended rules will better reflect the ASRS appeals process and will make the appeal rules more consistent, clear, and understandable; this rulemaking will ensure members have notice about how the ASRS processes different types of appeals.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No study was reviewed.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. A summary of the economic, small business, and consumer impact:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules

have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies the appeals process. Clarifying the appeals process will increase understandability of how a person may submit an appeal and will ensure members of the public understand how an appeal will be handled with the ASRS, which will increase the effectiveness and efficiency of the appeals process; thus, reducing the regulatory burden and the economic impact.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

In November 2016, the ASRS filed a Notice of Supplemental Proposed Rulemaking with the Secretary of State in order to make the following changes to the proposed rule language:

- In R2-8-403, the ASRS added subsection (H) to clarify when an appellant will receive a response to a letter of appeal at the assistant director level.
- The ASRS further amended R2-8-403(D) to clarify when an appellant will receive a response letter to a letter of appeal at the Director level.
- The ASRS changed “his designee” to “such director’s designee” in order to conform to rulemaking standards.
- The ASRS change “request” to “Request” in R2-8-403(E) in order to reflect that the rule addresses a “Request for a Hearing.”

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceedings on October 17, 2016 and December 27, 2016.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There are no federal laws applicable to these rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Section

- R2-8-401. Definitions
- R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action
- R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

R2-8-401. Definitions

The following definitions apply to this Article, unless otherwise specified:

1. “Appealable agency action” means the same as in A.R.S. § 41-1092(3).
2. “Board” means a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1).
3. “Final administrative action” means the same as in A.R.S. § 41-1092 and is rendered by the Board.

R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
 1. To the ASRS’s vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
 2. To the ASRS Member Services Division Assistant Director, or such director’s designee, if the appeal relates to an agency decision other than a long-term disability decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director’s designee, shall send a response letter to the person requesting the appeal notifying the person of:
 1. The decision the agency is making in response to the letter of appeal; and
 2. The person’s right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director’s designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director’s designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director’s designee shall send a response letter by certified mail to the person requesting the appeal that includes:
 1. The agency action the ASRS is taking in response to the letter of appeal; and

2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).

A.E. AFor an appealable agency action, a person who is not satisfied with a decision by the Director an agency action pursuant to subsection (D) that is an appealable agency action may file a Request for a Hearing, in writing, with the DirectorASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The request Request shall include the following:

1. The name and mailing address of the member, employer, or other person filing the request Request;
2. The name and mailing address of the attorney for the person filing the request Request, if applicable;
3. A concise statement of the reasons for the appeal.

B.F. The person requesting a hearing shall file the Request for a Hearing with the ASRS Office of the Director within 30 days after receiving a response letter decision of the Director and including a Notice of an Appealable Agency Action, pursuant to subsection (E). The date the request is filed is established by the Director's date stamp on the face of the first page of the request.

C.G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).

H. Pursuant to subsection (B):

1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.

R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action aggrieved by a final decision may file with the Board a ~~written motion~~ Motion for rehearing ~~Rehearing Before the Board, in writing, or review of the final decision~~ specifying the particular grounds for rehearing before the Board not later than 30 days after service of the decision.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.
- ~~B.C.~~ A party may amend a ~~motion~~ Motion for rehearing ~~Rehearing Before the Board~~ or a Motion for review ~~Review of a Final Decision~~ at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- ~~C.D.~~ The Board may grant a Motion for rehearing ~~Rehearing Before the Board~~ or a Motion for review ~~Review~~ of a Final decision ~~Decision~~ for any of the following causes that materially affecting ~~affects~~ the moving party's rights:
1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct of the Board, the hearing officer, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
 7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.

- ~~D.E.~~ The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- ~~E.F.~~ Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- ~~F.G.~~ When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- ~~G.H.~~ The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- ~~H.I.~~ If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. Identification of the rulemaking:

R2-8-401 contains definitions that are applicable to this Article. R2-8-401 needs to be amended to reflect that for purposes of appeals, the “Board” refers to the Committee designated by the Board to hear appeals. R2-8-403 allows a person who is dissatisfied with a decision by the Director to file an appeal with the ASRS by submitting a Request for Hearing of an appealable agency action. The ASRS will amend the rule to distinguish between an appeal related to a long-term disability determination and an appeal related to a member benefits determination. R2-8-405 allows a person who is dissatisfied with the final decision of the appeal to file a motion for rehearing or review. The ASRS will amend this rule to distinguish between a motion for reconsideration and a motion for rehearing. The amended rules will better reflect the ASRS appeals process and will make the appeal rules more consistent, clear, and understandable; this rulemaking will ensure members have notice about how the ASRS processes different types of appeals.

a. The conduct and its frequency of occurrence that the rule is designed to change:

In each fiscal year, the ASRS receives approximately 10 appeals related to the Long-Term Disability Program and approximately 300 appeals total. Of those appeals, approximately 30-60% of the appeals are addressed to the ASRS Director instead of the Member Services Division Assistant Director. Moreover, out of the total number of appeals the ASRS receives, approximately 3-4 of those appeals result in the appellant requesting a Motion for Rehearing before the Board or a Motion for Review of a Final Decision each year. The appeals rules in Article 4 need to be amended to clarify that a letter of appeal must be reviewed by the Assistant Director first and any party who is not satisfied with the Assistant Director’s decision may appeal to the ASRS director. The rules also need to be amended to distinguish the differences between a Motion for Rehearing before the Board and a Motion for Review of a Final Decision. With the changes completed in this rulemaking, the

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

appeals rules will be clearer and more effective. Ultimately, this will reduce any administrative delay in processing appeals.

- b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Currently, it is unclear that a Motion for Rehearing before the Board is a specific request distinct from a Motion for Review of Final Decision. Clarifying the difference between these two requests will ensure appellants understand which request to make and how the ASRS will handle such requests. Although the ASRS follows a tiered appeals process whereby appeals are handled at the assistant director level before being escalated to the ASRS Director, many appellants do not understand that their appeal will be reviewed at the assistant director level first.

- c. The estimated change in frequency of the targeted conduct expected from the rule change:

This rulemaking will clarify how the ASRS processes certain appeals requests, thereby increasing understandability of the appeals process and increasing the efficiency of the appeals process. Clarifying to whom appeal letters should be addressed will ensure that appeals are processed more efficiently by the proper authority. Clarifying the difference between a Motion for Rehearing before the Board and a Motion for Review of a Final Decision, will ensure the appellant requests the appropriate action. As discussed above and below, these amendments will increase the clarity and effectiveness of the rules, which should result in reducing the member's confusion, as well as any potential delay caused by the confusion.

- 2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or

licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies the appeals process. Clarifying the appeals process will increase understandability of how a person may submit an appeal and will ensure members of the public understand how an appeal will be handled with the ASRS, which will increase the effectiveness and efficiency of the appeals process; thus, reducing the regulatory burden and the economic impact.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-mail: JessicaT@azasrs.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

In general, all members, as well as their beneficiaries, and Employers of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 558,136.

Specifically, members, beneficiaries, and Employers who wish to appeal an agency determination will be affected and benefited by this rulemaking. This rule will clarify how the appeals process is administered. Such clarification will benefit members, beneficiaries, and Employers by increasing the readability of the appeals rules.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
All ASRS members, beneficiaries, and Employers are directly affected by this rulemaking because it will clarify how the appeals process is administered.
However, the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.
 - b. Costs and benefits to political subdivisions directly affected by the rulemaking:
This rulemaking does not provide any benefits or impose any costs on political subdivisions.
 - c. Costs and benefits to businesses directly affected by the rulemaking:
No businesses are directly affected by the rulemaking.
6. Impact on private and public employment:
The rulemaking will have no impact on private or public employment.
7. Impact on small businesses²:
- a. Identification of the small business subject to the rulemaking:
No businesses, regardless of size, are subject to the rulemaking.
 - b. Administrative and other costs required for compliance with the rulemaking:
Not applicable.
 - c. Description of methods that may be used to reduce the impact on small businesses:
Not applicable.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
All ASRS members, beneficiaries, and Employers are directly affected by the rulemaking.
The effect has been previously described above.

² Small business has the meaning specified in A.R.S. § 41-1001(20).

9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

The ASRS believes this is the least costly and least intrusive method because it will clarify the appeals process without imposing any additional requirements on the public.

***NOTE: These rules are for internal use and the official version of the rules can be found in the Arizona Administrative Code located at the Secretary of State's website.**

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

R2-8-401. Definitions

“Appealable agency action” has the same meaning as in A.R.S. § 41-1092.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-402. General Procedures

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-403. Request for a Hearing of an Appealable Agency Action

- A. A person who is not satisfied with a decision by the Director that is an appealable agency action may file a Request for a Hearing, in writing, with the Director. The request shall include the following:
1. The name and mailing address of the member, employer, or other person filing the request;
 2. The name and mailing address of the attorney for the person filing the request, if applicable;
 3. A concise statement of the reasons for the appeal.
- B. The person requesting a hearing shall file the Request for a Hearing with the ASRS Office of the Director within 30 days after receiving a decision of the Director and a Notice of an Appealable Agency Action. The date the request is filed is established by the Director's date stamp on the face of the first page of the request.
- C. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular monthly meeting, shall be reviewed by the Board at that monthly meeting. At the monthly meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the monthly meeting at which the Board made the final decision.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-405. Rehearing; Review of a Final Decision

- A. Except as provided in subsection (H), any party in an appealable agency action aggrieved by a final decision may file with the Board a written motion for rehearing or review of the final decision specifying the particular grounds not later than 30 days after service of the decision.
- B. A party may amend a motion for rehearing or review at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C. The Board may grant a rehearing or review of a decision for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct of the Board, the hearing officer, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
 7. That the decision is not justified by the evidence or is contrary to law.
- D. The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.

- E. Not later than 10 days after the decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- F. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- G. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- H. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.
3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.
4. "Director" means the director of the office of administrative hearings.
5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
6. "Office" means the office of administrative hearings.
7. "Self-supporting regulatory board" means any one of the following:
 - (a) The Arizona state board of accountancy.
 - (b) The state board of appraisal.
 - (c) The board of barbers.
 - (d) The board of behavioral health examiners.
 - (e) The Arizona state boxing and mixed martial arts commission.
 - (f) The state board of chiropractic examiners.
 - (g) The board of cosmetology.
 - (h) The state board of dental examiners.
 - (i) The state board of funeral directors and embalmers.
 - (j) The Arizona game and fish commission.
 - (k) The board of homeopathic and integrated medicine examiners.
 - (l) The Arizona medical board.
 - (m) The naturopathic physicians medical board.
 - (n) The state board of nursing.
 - (o) The board of examiners of nursing care institution administrators and adult care home managers.
 - (p) The board of occupational therapy examiners.
 - (q) The state board of dispensing opticians.
 - (r) The state board of optometry.
 - (s) The Arizona board of osteopathic examiners in medicine and surgery.
 - (t) The Arizona peace officer standards and training board.
 - (u) The Arizona state board of pharmacy.
 - (v) The board of physical therapy.
 - (w) The state board of podiatry examiners.
 - (x) The state board for private postsecondary education.

- (y) The state board of psychologist examiners.
- (z) The board of respiratory care examiners.
- (aa) The state board of technical registration.
- (bb) The Arizona state veterinary medical examining board.
- (cc) The acupuncture board of examiners.
- (dd) The Arizona regulatory board of physician assistants.
- (ee) The board of athletic training.
- (ff) The board of massage therapy.

41-1092.01. Office of administrative hearings; director; powers and duties; fund

- A. An office of administrative hearings is established.
- B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.
- C. The director shall:
 - 1. Serve as the chief administrative law judge of the office.
 - 2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.
 - 3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.
 - 4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.
 - 5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act.
 - 6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.
 - 7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.
 - 8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives by December 1 for the prior fiscal year:
(a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 upon the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services

directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.
5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.
7. The department of juvenile corrections.
8. The department of transportation, except as provided in title 28, chapter 30, article 2.
9. The department of economic security except as provided in section 46-458.
10. The department of revenue regarding:
 - (a) Income tax or withholding tax.
 - (b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.
11. The board of tax appeals.
12. The state board of equalization.
13. The state board of education, but only in connection with contested cases and appealable agency actions related to applications for issuance or renewal of a certificate and discipline of certificate holders pursuant to sections 15-203, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
14. The board of fingerprinting.
15. The department of child safety except as provided in sections 8-506.01 and 8-811.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.

C. Except as provided in subsection A of this section:

1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to section 42-1251.
2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process

established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.

2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:

1. Identify the statute or rule that is alleged to have been violated or on which the action is based.

2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.

3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.

4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain a concise statement of the reasons for the appeal or request for a hearing. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

C. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.

D. This section does not apply to a contested case if the agency:

1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.
2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

41-1092.05. Scheduling of hearings; prehearing conferences

A. Except as provided in subsections B and C, hearings for:

1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.
2. Contested cases shall be held within sixty days after the agency's request for a hearing.

B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:

1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.
2. If good cause is shown, the hearing may be held at a later meeting of the board.

C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular sections of the statutes and rules involved.
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited

hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.

F. Prehearing conferences may be held to:

1. Clarify or limit procedural, legal or factual issues.
2. Consider amendments to any pleadings.
3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.
5. Schedule deadlines, hearing dates and locations if not previously set.
6. Allow the parties opportunity to discuss settlement.

41-1092.06. Appeals of agency actions and contested cases; informal settlement conferences; applicability

A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.

4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be

accompanied by a concise and explicit statement of the underlying facts supporting the findings.

G. Except as otherwise provided by law:

1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.
2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.
3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.
4. At a hearing held pursuant to title 41, chapter 23 or 24, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

41-1092.08. Final administrative decisions; review

A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision. The administrative law judge shall serve a copy of the decision on the agency. Upon request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or

commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless either:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.

2. The decision of the agency head is subject to review pursuant to subsection C of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or upon review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing upon receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review.

I. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

41-1092.10. Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1092.12. Private right of action; recovery of costs and fees; definitions

A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:

1. Within ten days after the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary, capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.

2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.

3. The action is not excluded from the definition of appealable agency action as defined in section 41-1092.

B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.

C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.

D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings.

E. For the purposes of this section:

1. "Action against the party" means any of the following that results in the expenditure of costs and fees:

(a) A decision.

(b) An inspection.

(c) An investigation.

(d) The entry of private property.

2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.

3. "Costs and fees" means reasonable attorney and professional fees.

4. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.

D-2

BOARD OF BARBERS (R-17-0201)

Title 4, Chapter 5, Article 1, General Provisions

Amend: R4-5-103



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: D-2

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Marcus McGillivray, Legal Intern

DATE: January 24, 2017

SUBJECT: BOARD OF BARBERS (R-17-0201)
Title 4, Chapter 5, Article 1, General Provisions

Amend: R4-5-103

The purpose of the Board of Barbers (Board) is to "ensure that the public is protected from the incompetent practice of barbering." Laws 2014, Ch. 247, § 3. The Board accomplishes this by establishing barbering sanitation requirements, conducting barbering compliance inspections, and issuing and renewing licenses for barbers, barbering establishments, and barbering schools. There are currently 6,310 licensed barbers, 95 licensed instructors, 1,729 licensed barber shops, and 26 licensed schools in Arizona. This rulemaking affects R4-5-103, a rule which lists the accepted methods of payment that the board will accept from its licensees. The rulemaking removes the option to pay Board fees in cash, but it adds new payment methods such as money orders, credit cards, and debit cards.

The Board indicates that the overall goal of this rulemaking is to further the Governor's initiative of shifting state agencies away from cash dealings to a more ubiquitous offering of e-commerce payment options.

Proposed Action

The following is a summary of the Board's proposed actions:

- R4-5-103(A): Removes the option of paying fees in cash, and adds the options of paying by money order and credit or debit card.
- R4-5-103(B)(2): Clarifies that an electronic fee payment is timely when it is electronically submitted on or before the date due.

Exemption or Request and Approval for Exception from the Moratorium

The Board received an exception from the moratorium on July 20, 2016.

Substantive or Procedural Concerns

None.

1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

Yes. The rule is legal and consistent with legislative intent. The Board cites to general and specific statutory authority.

- A.R.S. § 32-304(A)(1) gives the Board general authority to make and adopt rules that are proper and necessary to the administration of the Board.
- A.R.S. § 32-328 requires the Board to collect fees regarding the practice of barbering and the operation of barbering institutions: including barbering licenses and examinations, instructor's licenses and examination, barbering school licenses, and barbershop licenses.

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rule is generally clear, concise, and understandable.

3. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

Yes. No comments were made about the rulemaking. No one attended the oral proceeding on December 12, 2016.

4. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

No. The final rule contains no substantial change when compared to the proposed rule. One change, however, is the addition of "money order" to R4-5-103(A) to clarify that money orders are an acceptable method of payment.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Board indicates that it did not review or rely on a study in its evaluation of, or justification for the rule.

6. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority that allows the agency to exceed the requirements of federal law?

No. No federal law applies to the manner in which the Board accepts payments of licensing fees.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

No. The rule does not require a permit or license.

8. Do the rules establish a new fee or contain a fee increase?

No. The rule does not establish a new or increased fee.

9. Conclusion

The Board requests that the rule become effective 60 days after the notice of the rulemaking is filed with the Office of the Secretary of State. This analyst recommends approval of the rule.



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: D-2

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE: January 24, 2017

SUBJECT: BOARD OF BARBERS (R-17-0201)
Title 4, Chapter 5, Article 1, General Provisions

Amend: R4-5-103

I reviewed the economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC Economist Comments

In this rulemaking, the Board is proposing to amend one rule to allow and encourage e-commerce services for applicants seeking licensure. The Board wants to be able to accept payments for licenses by credit or debit card, as well as money order, and transition applicants away from using cash.

There are currently 6,310 licensed barbers and 95 licensed instructors. Each of these individuals is required to renew the license biennially. The 1,729 licensed shops and 26 licensed schools are required to renew annually (See A.R.S. § 32-327). During the last fiscal year, the Board received initial applications from 348 barbers, 212 shops, two instructors, and two schools.

The Board's licensing activities produced \$444,318 during the last fiscal year. Thirty-six percent of the fees received were in cash (\$159,954). Approximately three times each week, the Board delivers the fees received to the ADOA Central Services Bureau, which in turn delivers the fees to the Treasurer's Office. Each delivery involves an average of \$3,129.

The Board has certified that the Joint Legislative Budget Committee has not been notified because the number of new full-time employees necessary to implement and enforce the rule is zero. Notice of new FTEs is required by A.R.S. § 41-1055(B)(3)(a).

1. **Costs and Benefits for:**

a. The implementing agency:

The Board incurred the cost of completing this rulemaking and will incur the minimal cost of implementing it. The Board will have the benefit of no longer exposing itself and the state to unnecessary risks associated with having sums of cash in an unsecured office.

b. Political subdivisions:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

c. Businesses:

No businesses are directly affected by the rulemaking.

d. Small businesses:

No small businesses are directly affected by the rulemaking.

e. Consumers directly affected by the rulemaking:

Licenses and applicants will be affected by the rulemaking. If a licensee or applicant does not have an account with a financial institution or a credit or debit card, the licensee or applicant will incur the cost of obtaining a certified instrument from a financial institution with which the licensee or applicant does not have an account or a money order

2. **Do the probable benefits outweigh the probable costs?**

Based on the information provided, the Board indicates that the benefit from the proposed amendments outweigh the costs. The proposed rule will have minimal economic impact, if any, because it is only changing the methods of payment allowed to obtain or renew a license.

3. **Analysis of methods to reduce the small business impact:**

An analysis was not submitted because the Board estimated that there will be no economic impact to small businesses.

4. **The probable effect on state revenues:**

The proposed rulemaking will have no effect on state revenues.

5. **Analysis of any less intrusive or less costly alternative methods:**

The Board believes this is the least costly and least intrusive method because it will clarify the appeals process without imposing any additional requirements on the public.

6. **Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:**

No analysis was submitted that compares the rule's impact of the competitiveness of businesses in this state to the impact on businesses in other states.

7. **A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.**

The Board indicates that no outside data or studies were used in the development of the proposed rule amendment.

8. **Conclusion:**

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the proposed rule amendments be approved.



ARIZONA STATE BOARD OF BARBERS

1400 WEST WASHINGTON • STE. 220
PHOENIX, ARIZONA 85007-
2937 (602) 542-4498
Web Site: www.AzBarberBoard.us

December 19, 2016

Ms. Nicole A. Ong, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations Chapter 5. Board
of Barbers

Dear Ms. Ong:

RECEIVED

DEC 16 2016

GRRC

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

- A. Close of record date: The rulemaking record was closed on December 12, 2016, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee Increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses that the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
 - 1. Cover letter signed by the Executive Director;
 - 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
 - 3. Economic, Small Business, and Consumer Impact Statement

Sincerely,

Sam Barcelona
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 5. BOARD OF BARBERS

PREAMBLE

- | <u>1. Articles, Parts, and Sections Affected</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R4-5-103 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: A.R.S. § 32-304(A)(1)
Implementing statute: A.R.S. § 32-328
- 3. The effective date for the rules:**
- As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.
- a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
- Not applicable
- b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
- Not applicable
- 4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
- Notice of Rulemaking Docket Opening: 22 A.A.R. 2625, September 23, 2016
Notice of Proposed Rulemaking: 22 A.A.R. 3179, November 11, 2016
- 5. The agency's contact person who can answer questions about the rulemaking:**
- Name: Sam Barcelona
Address: 1400 W Washington St. Suite 220
Phoenix, AZ 85007
Telephone: 602-542-4498
Fax: 602-542-3093

E-mail: sam.barcelona@azbarberboard.us

Web site: www.barberboard.az.us

6. An agency's justification and reason why a rule should be made, amended, repealed , or renumbered, to include an explanation about the rulemaking:

The Board is amending the rule for three reasons. First, the Board is concerned about having sums of cash in an unsecured office building, the need to make change when offered cash, and the need to move the cash from the Board office to the Department of Administration and then to the Treasurer's office. Second, both the Department of Administration and Treasurer's office have asked the Board to discontinue accepting cash payments. Third, consistent with the Governor's goal of having all state agencies provide e-commerce user friendly services, the Board wants to be able to accept payments by credit or debit card.

An exemption from EO2016-03 was provided by Christina Corieri, Policy Advisor for Health and Human Services in the Governor's office, in an e-mail dated July 20, 2016.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Board did not review or rely on a study in its evaluation of or justification for the rule in this rulemaking.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The economic impact of the rule change will be minimal. A licensee or applicant will no longer be able to pay fees in cash but will be able to use a money order or credit or debit card. This may have some impact on licensees and applicants who do not have an account with a financial institution or a credit or debit card. The Board, and by extension, the state, will no longer have the risks associated with having sums of cash in an unsecured office building.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

The phrase "money order" was added to R4-5-103(A) to clarify this is another acceptable manner in which to pay licensing fees. The clarification is needed because a money order is not a certified

instrument. This change does not make the final rule substantially different from the proposed rule under the standards at A.R.S. § 41-1025(B).

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

No comments were made about the rulemaking. No one attended the oral proceeding on December 12, 2016.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule in this rulemaking does not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law does not apply to the manner in which the Board accepts payment of licensing fees.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 5. BOARD OF BARBERS

ARTICLE 1. GENERAL PROVISIONS

Section

R4-5-103. Fee Payment

ARTICLE 1. GENERAL PROVISIONS

R4-5-103. Fee Payment

- A. A person shall pay any fee required by the Board in full, ~~in cash or~~ by certified instrument, money order, or credit or debit card.
- B. The Board shall consider a fee payment timely if:
 - 1. The Board receives the fee on or before the date due, or
 - 2. The fee is postmarked or electronically submitted on or before the date due.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 5. BOARD OF BARBERS

1. Identification of the rulemaking:

The Board is amending the rule for three reasons. First, the Board is concerned about having sums of cash in an unsecured office building, the need to make change when offered cash, and the need to move the cash from the Board office to the Department of Administration and then to the Treasurer's office. Second, both the Department of Administration and Treasurer's office have asked the Board to discontinue accepting cash payments. Third, consistent with the Governor's goal of having all state agencies provide e-commerce user friendly services, the Board wants to be able to accept payments by credit or debit card.

An exemption from EO2016-03 was provided by Christina Corieri, Policy Advisor for Health and Human Services in the Governor's office, in an e-mail dated July 20, 2016.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Until the rulemaking is completed, the Board will continue to accept cash for licensing fees, which will continue to put both the Board and state at risk and be inconsistent with the wishes of the Treasurer's office and the Department of Administration (ADOA) and with the Governor's goal to move state agencies in a more e-commerce friendly direction.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Accepting cash for licensing fees exposes the Board and state to unnecessary risks.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

The risks associated with having sums of cash in an unsecured office building will no longer exist when the rulemaking is completed and the Board stops accepting cash for licensing fees.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

The economic impact of the rule change will be minimal. A licensee or applicant will no longer be able to pay fees in cash but will be able to use a money order or credit or debit card. This may have some impact on licensees and applicants who do not have an account with a financial institution or a credit or debit card. The Board, and by extension, the state, will have no longer have the risks associated with having sums of cash in an unsecured office building.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Sam Barcelona

Address: 1400 W Washington St. Suite 220
Phoenix, AZ 85007

Telephone: 602-542-4498

Fax: 602-542-3093

E-mail: sam.barcelona@azbarberboard.us

Web site: www.barberboard.az.us

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Licensees applying to renew a license, applicants seeking an initial license and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

There are currently 6,310 licensed barbers and 95 licensed instructors. Each of these individuals is required to renew the license biennially. The 1,729 licensed shops and 26 licensed schools are required to renew annually (See A.R.S. § 32-327). During the last fiscal year, the Board received initial applications from 348 barbers, 212 shops, two instructors, and two schools.

The Board's licensing activities produced \$444,318 during the last fiscal year. Thirty-six percent of the fees received were in cash (\$159,954). Approximately three times each week, the Board delivers the fees received to the ADOA Central Services Bureau, which in turn delivers the fees to the Treasurer's office. Each delivery involves an average of \$3,129.

Licensees and applicants who wish to make payment using a certified instrument will not be affected by this rulemaking. Those who wish to make payment in cash will experience the inconvenience of no longer being able to do so. If a licensee or applicant does not have an account with a financial institution or a credit or debit card, the licensee or applicant will

incur the cost of obtaining a certified instrument from a financial institution with which the licensee or applicant does not have an account or a money order. Licensees and applicants who wish to make payment using a money order or credit or debit card will have the convenience of being able to do so.

The Board incurred the expense of amending its rule to be consistent with the wishes of ADOA, the Treasurer's office, and the Governor. It will incur the expense of accepting credit and debit cards for payment of licensing fees. It will have the benefit of no longer exposing itself and the state to unnecessary risks associated with having sums of cash in an unsecured office.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are described in item 4. The Board will require no new full-time employees to implement the amended rule.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivisions are directly affected by the rulemaking.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Barbers, instructors, shops, and schools are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses²:

- a. Identification of the small business subject to the rulemaking:

Barbers, instructors, shops, and schools are businesses subject to the rulemaking. The Board believes most of these businesses are small.

- b. Administrative and other costs required for compliance with the rulemaking:

A business that does not have an account with a financial institution or a credit or debit card may incur a cost to obtain payment for the required licensing fees.

- c. Description of methods that may be used to reduce the impact on small businesses:

² Small business has the meaning specified in A.R.S. § 41-1001(21).

Because most of the businesses subject to the rulemaking are small, it is not possible to reduce the impact on small businesses and still achieve the objective of not exposing the state to unnecessary risks associated with having sums of cash in an unsecured office.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking.

9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

The Board could continue to accept cash as payment for licensing fees. However, this would continue to expose the Board and state to unnecessary risks and would remain inconsistent with the wishes of ADOA and the Treasurer's office.

ARTICLE 1. GENERAL PROVISIONS

R4-5-103. Fee Payment

- A. A person shall pay any fee required by the Board in full, ~~in cash or~~ by certified instrument, money order, or credit or debit card.
- B. The Board shall consider a fee payment timely if:
 - 1. The Board receives the fee on or before the date due, or
 - 2. The fee is postmarked or electronically submitted on or before the date due.

32-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Barber" means a person licensed to practice barbering pursuant to this chapter.
2. "Barbering" means any one or a combination of the following practices if they are performed on a person's head, face, neck or shoulders for cosmetic purposes:
 - (a) Cutting, clipping or trimming hair.
 - (b) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.
 - (c) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, singeing, bleaching, dyeing, tinting, coloring or similarly treating hair.
 - (d) Hair attachments, extensions, hairpieces and wigs when performed by a barber.
 - (e) Shaving or trimming a beard.
 - (f) Skin care.
3. "Board" means the board of barbers.
4. "Instructor" means a person licensed to teach barbering pursuant to this chapter.
5. "School" means an establishment operated for the purpose of teaching barbering.
6. "Shop" or "salon" means an establishment operated for the purpose of engaging in the practice of barbering.

32-302. Board of barbers; appointment; qualifications; terms

- A. A board of barbers is established consisting of the following five members appointed by the governor:
 1. One barber who has been actively practicing barbering in this state for at least five years.
 2. One member who is a holder of a barber school license who is a barber or a holder of a shop or salon license who is a barber or a barber who has been actively practicing barbering in this state for at least five years. Preference will be given to a holder of a barber school license then to a holder of a barber shop or salon license and then to a barber.
 3. One holder of a barber shop or salon license who is a barber.
 4. Two public members preferably one of whom is an educator.
- B. A public member shall not be associated, directly or indirectly, with the manufacture of barber appliances or supplies or their rental, sale or distribution to licensees or represent the barbering industry in any manner.
- C. The terms of office of board members are five years beginning and ending June 30. Members shall not serve more than two consecutive terms.
- D. The governor may remove a board member for neglect of duty, malfeasance or misfeasance.

32-303. Organization; meetings; compensation

- A. The board shall annually elect a chairman and vice-chairman from its membership.
- B. The board may hold meetings at times and places it designates.
- C. A majority of the members of the board constitutes a quorum.

D. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day of actual service in the business of the board.

32-304. Powers and duties

A. The board shall:

1. Make and adopt rules which are necessary or proper for the administration of this chapter, including sanitary and safety requirements for schools and shops or salons, sanitary and safety standards for the practice of barbering and mobile unit requirements.
2. Administer and enforce the provisions of this chapter and rules adopted pursuant to this chapter.
3. Maintain a record of its acts and proceedings, including issuance, refusal, renewal, suspension and revocation of licenses, and a record of the name, address and license date of each licensee.
4. Keep the records of the board open to public inspection at all reasonable times.
5. Furnish a copy of its rules to a barber or to the owner or manager of each shop or salon on request.
6. Have a seal, the imprint of which shall be used to evidence its official acts.
7. Prescribe minimum school curriculum requirements.

B. The board may:

1. Employ an executive director who has been a licensed barber for at least five years preceding employment and other permanent or temporary personnel it deems necessary. The board shall compensate its executive director and other permanent and temporary personnel as determined pursuant to section 38-611.
2. Inspect the premises of any school, shop or salon during business hours.

32-305. Board of barbers fund

A. A board of barbers fund is established. Except as provided in subsection C of this section, before the end of each calendar month, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies from whatever source which come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the board of barbers fund.

B. Monies deposited in the board of barbers fund are subject to section 35-143.01.

C. Monies from civil penalties received pursuant to section 32-352 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-321. Nonapplicability of chapter

This chapter does not apply to the following persons while in the proper discharge of their professional duties:

1. Practices done for the treatment of physical or mental ailments or disease by medical practitioners licensed pursuant to this title.
2. Services performed without compensation in case of emergency or in domestic administration.
3. Commissioned physicians and surgeons serving in the armed forces of the United States or other federal agencies.

4. Students attending schools licensed pursuant to this chapter while they are on school premises during school hours.
5. Persons licensed pursuant to chapter 5 or 12 of this title.
6. Shampoo assistants who shampoo hair under the direction of a barber licensed pursuant to this chapter.
7. Services performed by and for persons in the custody of the state department of corrections.

32-322. Barber license; application; qualifications; reciprocity

A. An applicant for a barber license shall file the following with the board:

1. A written application on a form prescribed by the board.
2. Evidence satisfactory to the board that the applicant possesses the necessary qualifications.
3. One signed photograph.

B. Each applicant shall:

1. Be at least sixteen years of age.
2. Have completed and received appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules.
3. Pass an examination given under the direction of the board.
4. Pay the prescribed fees.
5. Be a graduate of a school licensed pursuant to this chapter or a graduate of a school or program in another state which at the time of his graduation met the barber licensing requirements of that state.

C. An applicant who holds a valid license to practice barbering issued by another state which has, in the opinion of the board, licensure requirements that are substantially equivalent to the requirements of this state and which grants similar reciprocal privileges to barbers licensed by this state and who has at least one year's experience as a licensed barber is exempt from subsection B, paragraph 3.

D. Notwithstanding subsection B, paragraph 5, an applicant for a barber license who holds a cosmetologist license issued pursuant to chapter 5 of this title shall complete a seven hundred fifty hour course of study consisting of barbering techniques in a barbering school licensed pursuant to this chapter.

32-323. Instructor license; application; qualifications

A. An applicant for an instructor license shall file the following with the board:

1. A written application on a form prescribed by the board.
2. Evidence satisfactory to the board that the applicant possesses the necessary qualifications.

B. An applicant shall:

1. Be at least nineteen years of age.
2. Hold a diploma from a high school or its equivalent as prescribed by the board in its rules.
3. Pass an examination given under the direction of the board.
4. Pay the prescribed fees.
5. Have practiced barbering for at least two years.

C. An applicant who holds a valid instructor's license to instruct barber students issued by another state which has, in the opinion of the board, licensure requirements which are substantially equivalent to the requirements of this state and which grants similar reciprocal privileges to barbers licensed by this state

and who has at least one year's experience as a licensed instructor is exempt from subsection B, paragraph 3.

32-324. Examinations

- A. Examinations shall be given at least every three months at times and places determined by the board.
- B. Examinations shall contain a written part and a practical demonstration part which may include oral questions.
- C. Barber examinations shall test the applicant's knowledge:
 - 1. Of sanitary practices and safety for all barbering procedures.
 - 2. In the use of all instruments, equipment or chemicals permitted in barbering.
- D. Instructor examinations shall be limited to the subjects taught in courses that the applicant seeks to teach.
- E. A passing grade on an examination is a score of seventy-five per cent or better on both the written and practical parts of the examination.
- F. If an applicant who is eligible to take an examination fails to do so at either of the next two scheduled examinations, the application is deemed to be cancelled and the application fee is forfeited.
- G. If an applicant fails an examination he is entitled to a reexamination.
- H. If an applicant fails either part of the examination he shall only retake the part of the examination he failed.
- I. An applicant desiring to be reexamined shall apply to the board on forms it prescribes and furnishes and pay the prescribed reexamination fee.

32-325. School license; application; qualifications

- A. An applicant for a license to operate a school shall file a written application on a form prescribed by the board. The application shall be under oath and accompanied by the prescribed fee.
- B. A course of instruction in a licensed school which teaches barbering shall consist of at least one thousand five hundred hours of instruction of not more than eight hours in any one working day. The course of instruction shall include:
 - 1. At least two hundred fifty hours devoted to the study of the fundamentals of barbering, hygiene, bacteriology, histology of the hair, skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics and diseases of the skin, hair and glands.
 - 2. At least one thousand two hundred fifty hours devoted to the practice and study of massaging and manipulating muscles of the scalp, face and neck, hair cutting, shaving and chemical work relating to permanent waves and hair straightening, coloring and bleaching.
- C. A licensed school shall:
 - 1. Be operated under the general supervision of a licensed instructor.
 - 2. Have and maintain sufficient equipment to properly train all its students in the use, function and operation of equipment which is at the time in use in barbering.
 - 3. Provide:
 - (a) Separate lecture rooms or classrooms.

- (b) Locker spaces for students.
- (c) An area appropriate in size for the placement of the training equipment.
- 4. Require that a student pass examinations in all phases of barbering before he graduates.
- 5. Pass an inspection by the board before a school license is issued.
- 6. Furnish to the board and maintain in force a bond in the sum of twenty-five thousand dollars approved by the board and executed by a corporate bonding company authorized to do business in this state. The bond shall be for the benefit of and subject to the claims of the state for failure to comply with the requirements of this chapter and conditioned that the school licensed pursuant to this chapter shall afford to its students the full course of instruction required pursuant to this chapter, in default of which the full amount of the tuition paid by the student shall be refunded.
- D. The student to instructor ratio in a school shall be not more than twenty to one.
- E. Instructors shall not apply their time to private practice with or without compensation in a school or during school hours.
- F. Students shall not teach other students.
- G. Students shall be under the constant supervision of an instructor.

32-326. Shop or salon license; application; qualifications

- A. An applicant for a license to operate a shop or salon shall file a written application on a form prescribed by the board. The application shall be under oath and accompanied by the prescribed fee.
- B. An applicant shall:
 - 1. Comply with the rules of the board concerning health, safety and sanitation.
 - 2. Comply with the applicable health and safety laws and rules of other state agencies and political subdivisions.
 - 3. Pay the prescribed fee.
- C. A shop or salon licensed pursuant to this chapter shall be under the direct supervision of a barber.

32-327. License expiration and renewal

- A. Except as provided in section 32-4301, a barber or instructor license expires every two years on the licensee's birth date, unless it is renewed within thirty days before the licensee's birth date by payment of the prescribed renewal fee and compliance with other requirements for renewal.
- B. Except as provided in section 32-4301, a school or shop or salon license expires June 30 each year, unless it is renewed within thirty days before its expiration date by payment of the prescribed renewal fee and compliance with other requirements for renewal.
- C. A barber or instructor license which is not renewed before it expires may be renewed within five years after its expiration by payment of the prescribed renewal fee and late renewal fee for each year the license is expired and compliance with other requirements for renewal.
- D. Any license paid for with an insufficient funds check is deemed null and void until such time as a certified check, money order or cash is tendered as payment for the license.

32-328. Fees; penalty

A. The board shall establish and collect fees, not to exceed the following amounts:

1. Barber examination, two hundred dollars.
2. Barber license, one hundred dollars.
3. Barber license by reciprocity, two hundred dollars.
4. Barber license renewal fee, one hundred dollars.
5. Barber late renewal fee, one hundred fifty dollars.
6. Instructor examination, two hundred dollars.
7. Instructor license, one hundred dollars.
8. Instructor license renewal fee, one hundred dollars.
9. Instructor late renewal fee, one hundred fifty dollars.
10. Application for school license and initial inspection fee, one thousand dollars.
11. School license after change of location, five hundred dollars.
12. School license after change of ownership, five hundred dollars.
13. School license renewal fee, five hundred dollars.
14. School late renewal fee, five hundred fifty dollars.
15. Application for shop or salon license and initial inspection fee, two hundred fifty dollars.
16. Shop or salon license after change of location, two hundred dollars.
17. Shop or salon license after change of ownership, one hundred fifty dollars.
18. Shop or salon license renewal fee, one hundred dollars.
19. Shop or salon late renewal fee, one hundred fifty dollars.
20. Practical reexamination, fifty dollars.
21. Written reexamination, twenty-five dollars.

B. A duplicate license shall be issued to replace a lost license if a licensee files a verified statement as to its loss and pays a twenty dollar fee. Each duplicate license issued shall have the word "duplicate" stamped across the face.

C. If the board receives an insufficient funds check, it may charge a ten dollar penalty fee.

32-351. Display of license

A. Barbers and holders of shop licenses shall display their licenses in a conspicuous place within the shop.

B. Instructors and holders of school licenses shall display their licenses in a conspicuous place within the school.

32-352. Disciplinary action

The board may take any one or a combination of the following disciplinary actions:

1. Revoke a license.
2. Suspend a license.
3. Impose a civil penalty in an amount not to exceed five hundred dollars.

4. Impose probation requirements best adapted to protect the public safety, health and welfare including requirements for restitution payments to patrons.
5. Publicly reprove a licensee.
6. Issue a letter of concern.

32-353. Grounds for refusal to issue or renew a license or disciplinary action

The board may take disciplinary action or refuse to issue or renew a license for any of the following causes:

1. Continued performance of barbering by a person knowingly having an infectious or communicable disease.
2. Malpractice or incompetency.
3. Advertising by means of known false or deceptive statements.
4. Advertising, practicing or attempting to practice under a trade name other than the one in which the license is issued.
5. Violating any provision of this chapter or any rule adopted pursuant to this chapter.
6. Making false statements to the board.

32-354. Procedure for disciplinary action; appeal

A. The board on its own motion may investigate any information which appears to show the existence of any of the causes set forth in section 32-353. The board shall investigate the report of any person which appears to show the existence of any of the causes set forth in section 32-353. A person reporting pursuant to this section who provides the information in good faith is not subject to liability for civil damages as a result.

B. If, after completing its investigation, the board finds that the evidence is not of sufficient seriousness to merit direct action against a license, it may take either of the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.
2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities which led to the information or report being made to the board may result in action against his license.

C. If, in the opinion of the board, it appears the information or report is or may be true, the board shall request an informal interview with the licensee concerned. The interview shall be requested by the board in writing, stating the reasons for the interview and setting a date not less than ten days from the date of the notice for conducting the interview.

D. If, after an informal interview, the board finds that the evidence warrants suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof or if the licensee under investigation refuses to attend the informal interview, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this subsection shall be conducted in accordance with title 41, chapter 6, article 10.

E. If, after an informal interview, the board finds that the evidence is not of sufficient seriousness to merit suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof it may take the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.
2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities which led to the information or report being made to the board may result in action against the licensee's license.
3. Impose probation requirements.

F. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-355. Unlawful acts; violation; classification

A. A person shall not:

1. Practice or attempt to practice barbering without a current barber license issued pursuant to this chapter.
2. Practice or teach in or operate a school or operate a shop or salon which does not have a current license issued pursuant to this chapter.
3. Operate a shop or salon unless it is under the direct supervision of a barber.
4. Display a sign or in any way advertise or hold oneself out as a barber or as being engaged in the practice or business of barbering without being licensed pursuant to this chapter.
5. Knowingly make a false statement on an application for a license pursuant to this chapter.
6. Permit an employee or another person under his supervision or control to practice barbering without a license issued pursuant to this chapter.
7. Practice barbering in any place other than in a shop or salon licensed pursuant to this chapter unless he is requested by a customer to go to a place other than a shop or salon licensed pursuant to this chapter and is sent to the customer from the shop or salon.
8. Obtain or attempt to obtain a license by the use of money other than the prescribed fees or any other thing of value or by fraudulent misrepresentation.
9. Violate any provision of this chapter or any rule adopted pursuant to this chapter.

B. An instructor shall not render barbering services in a school unless the services are directly incidental to the instruction of students.

C. A school shall clearly indicate to the public that all services are performed by students under the direct supervision of an instructor.

D. A person who violates this section is guilty of a class 1 misdemeanor.

32-356. Injunctions

The board, the attorney general, a county attorney or any other person may apply to the superior court in the county in which acts or practices of any person which constitute a violation of this chapter or the rules adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

D-3

GAME AND FISH COMMISSION (R-17-0202)

Title 12, Chapter 4, Article 4, Live Wildlife

Amend: R12-4-402



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: D-3

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Chris Kleminich, Staff Attorney

DATE: January 24, 2017

SUBJECT: GAME AND FISH COMMISSION (R-17-0202)
Title 12, Chapter 4, Article 4, Live Wildlife

Amend: R12-4-402

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

The purpose of the Arizona Game and Fish Commission (Commission) is "to manage wildlife and wildlife habitat in this state as provided by law." Laws 2012, Ch. 283, § 3. The Commission oversees the Game and Fish Department (Department), which is in charge of administering state laws regarding wildlife.

This rulemaking amends one rule that relates to unlawful activities with live wildlife. The rule was last amended on December 5, 2015.

Proposed Action

The Commission is amending the rule to add Section (D), which states that the performance of activities authorized under a federal license or permit does not exempt a federal agency or employee from complying with state permit requirements related to live wildlife.

Exemption or Request and Approval for Exception from the Moratorium

An exception from the moratorium was provided by the Governor's Office on August 15, 2016.¹

¹ A copy of the letter granting the exception is included with the supplemental materials for this agenda item.

Substantive or Procedural Concerns

Many public commenters argue that this rulemaking violates the federal Constitution and federal law in various ways, including that the rule would violate the Supremacy Clause and the Endangered Species Act (ESA).² Council staff finds common ground with commenters who have expressed concerns about ways in which the Commission could eventually choose to enforce this rule.

In staff's view, the relevant federal statutes and rules foster cooperation with states and empower them to manage their own wildlife, but do so without relinquishing overall federal powers. For example, 43 C.F.R. § 24.4(i)(5)(i) provides that federal agencies within the Department of the Interior must consult with Arizona and comply with Arizona permit requirements in connection with carrying out research programs involving the taking or possession of fish and wildlife, or programs involving reintroduction of fish and wildlife. At the same time, the federal rule carves out an exemption for cases in which the Secretary of the Interior determines that compliance with Arizona permit requirements would prevent the Secretary from carrying out their statutory responsibilities.

In short, staff believes that if the Commission used its rules to prohibit the federal government from carrying out any fundamental responsibilities, it could run afoul of federal law. A rule that could be interpreted in a manner that violates federal law is not necessarily in violation of federal law itself, however. As the Department notes, the holding in *Rice v. Norman Williams Co.*, 458 U.S. 658 (1982), suggests that a state regulatory scheme would not be preempted simply because, hypothetically, compliance with a state regulation might cause a violation of federal law. In this instance, the rule does not, on its face, conflict with federal law, and the Department indicates that it will apply the rule in a manner that is constitutional.

Most significantly, at least for purposes of Council review, the Council does not have the authority to return a rule solely because of concerns about the ways in which an agency may ultimately choose to enforce that rule. As such, staff believes that it is within the Commission's authority to make this rule, even though it may not always be within the Commission's authority to enforce it. Accordingly, this analyst recommends that the Council approve the rulemaking.

1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

Yes. The Commission cites to both general and specific authority for the rulemaking. Most significantly, under A.R.S. § 17-231(A)(1), the Commission must "[a]dopt rules and establish services it deems necessary to carry out the provisions and purposes of this title [Title 17, Game and Fish]." In addition, under A.R.S. § 17-231(B)(8), the Commission may "[p]rescribe rules for the sale, trade, importation, exportation or possession of wildlife."

² Some commenters also expressed concern that the Commission's rulemaking violates Arizona's Administrative Procedure Act. After review, Council staff believes that this rulemaking is fully compliant with Arizona law.

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rule is clear, concise, and understandable.

3. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

Yes. The Commission indicates that it received 1,036 written public or stakeholder comments in response to the proposed rulemaking. At the December 2016 Commission Meeting, which held the oral proceeding for this rulemaking, an additional 18 oral comments were received. In response to the comments, the Commission determined that it was beneficial to provide one comprehensive response instead of repeating similar responses to each individual comment. While Council staff would have preferred that each comment be addressed individually, staff does believe that the Commission has adequately addressed the comments.³

4. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

No. No changes were made between the proposed and final rule.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Commission indicates that it did not review or rely upon any study for this rulemaking.

6. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority that allows the agency to exceed the requirements of federal law?

No. The Commission indicates that the rule is not more stringent than corresponding federal law, as 43 C.F.R. 24.4(i)(5)(i) requires federal agencies of the Department of the Interior to consult with the States and comply with State permit requirements in connection programs involving reintroduction of fish and wildlife, except when the Secretary of the Interior determines that such compliance would prevent them from carrying out their statutory responsibilities.

³ Copies of all public comments included with the supplemental materials for this agenda item. In addition, the Commission provides a summary of the comments made about the rulemaking, as well as its response to the comments, on pages 6-63 of the Notice of Final Rulemaking.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

No. While the rule requires persons to acquire a license or permit before certain activities may be performed, for purposes of A.R.S. § 41-1037 analysis, the rule does not itself issue a permit or license.

8. Do the rules establish a new fee or contain a fee increase?

No. The rule does not establish a new fee or contain a fee increase.

9. Conclusion

Pursuant to A.R.S. § 41-1032, if approved by the Council, the rule will become effective sixty days after being filed in the office of the Secretary of State. For the reasons noted above, this analyst recommends that the Council approve the rulemaking.



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: D-3

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE: January 24, 2017

SUBJECT: GAME AND FISH COMMISSION (R-17-0202)

Title 12, Chapter 4, Article 4, Live Wildlife

Amend: R12-4-402

I have reviewed the economic, small business, and consumer impact statement (EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC Economist comments:

The Commission is Arizona's agency charged with making rules and regulations for managing, conserving, and protecting wildlife. The Arizona Game and Fish Department is the agency that administers and enforces the Commission's rules. The proposed amendment clarifies that federal agencies are not exempt from permitting requirements when engaging in prohibited activities that involve live wildlife.

The Department currently issues approximately 48 licenses to federal agencies for activities that involve wildlife. Since 1998, the Department has not denied an application for a Scientific Collecting License from a federal agency. The Commission notes that not all federal agencies seek a state permit before engaging in activities that involve wildlife. For example, the US Bureau of Reclamation has stocked over one hundred thousand Razorback Suckers in the Colorado River without coordinating with the Department through the permitting process.

1. **Costs and Benefits for:**

a. The implementing agency:

The Commission anticipates that the rulemaking will only have minimal impact on the Department.

b. Political subdivisions:

The Commission anticipates that the rulemaking will not significantly impact political subdivisions. This rulemaking primarily impacts federal agencies by codifying a current practice.

c. Businesses:

The proposed rule will not have any direct impacts on businesses.

d. Small businesses:

The proposed rule will not have any direct impacts on small businesses.

e. Consumers directly affected by the rulemaking:

Consumers are not directly affected by the rulemaking.

2. Do the probable benefits outweigh the probable costs?

The costs of this rulemaking are predominantly imposed on federal agencies; however, these agencies are already applying for state permits prior to engaging in prohibited wildlife activities. The benefits of this rulemaking include codifying a current practice as well as ensuring that prohibited wildlife activities are coordinated through the Department. The benefits outweigh the minimal costs.

3. Analysis of methods to reduce the small business impact:

The proposed rule will not have any direct impacts on small businesses.

4. The probable effect on state revenues:

The rulemaking will not impact state revenues in a significant manner.

5. Analysis of any less intrusive or less costly alternative methods:

The Commission determines that there are no alternative methods of achieving the regulatory objective.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis was submitted that compares the rule's impact of the competitiveness of businesses in this state to the impact on businesses in other states.

7. **A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.**

No empirical or quantitative data were submitted for use in the EIS.

8. **Conclusion:**

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the rulemaking be approved.



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

5000 W. CAREFREE HIGHWAY
PHOENIX, AZ 85086-5000
(602) 942-3000 • WWW.AZGFD.GOV

GOVERNOR
DOUGLAS A. DUCEY

COMMISSIONERS
CHAIRMAN, EDWARD "PAT" MADDEN, FLAGSTAFF
JAMES R. AMMONS, YUMA
JAMES S. ZIELER, ST. JOHNS
ERIC S. SPARKS, TUCSON
KURT R. DAVIS, PHOENIX

DIRECTOR
LARRY D. VOYLES

DEPUTY DIRECTOR
TY E. GRAY



December 15, 2016

Nicole Ong, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

Re: A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission Article 4. Live Wildlife, R12-4-402. Live Wildlife; Unlawful Acts

Dear Ms Ong:

The Arizona Game and Fish Commission respectfully submit the accompanying final rule package for inclusion on the Council agenda.

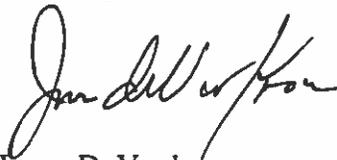
In compliance with R1-6-201(A)(1), the Department provides you with the following information:

- a. The rulemaking record closed on December 2, 2016.
- b. This rulemaking activity is not related to a five-year-review report.
- c. This rulemaking does not establish a new fee.
- d. This rulemaking does not contain a fee increase.
- e. An immediate effective date is not requested.
- f. The preamble discloses a reference to all studies relevant to the rule that the agency reviewed and either did or did not rely on in its evaluation of, or justification for, the rule.

Page 2

- g. The preparer of the Economic, Small Business, and Consumer Impact Statement did not notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule as the Commission determined that the implementation of the rule does not require any new full-time employees.
- h. Items included in the rulemaking package are as follows:
- Signed cover letter
 - Notice of Final Rulemaking
 - Economic Impact Statement
 - Written comments
 - Authorizing statute: A.R.S. § 17-231
 - Implementing statute: A.R.S. §§ 17-102, 17-231, 17-238, 17-240, 17-250, 17-250, and 17-306
 - Definitions of terms contained in statute or other rules and used in the rulemaking
 - Existing rule text

Sincerely,



Larry D. Voyles
Director, Game and Fish Department

6. An agency's justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated August 15, 2016.

The Game and Fish Commission (Commission) proposes to amend its rule governing live wildlife, unlawful acts. The rule is amended to clarify that federal agencies or employees are not exempt from obtaining a state permit or license when conducting any activity listed under R12-4-402(A) and to ensure the Commission maintains jurisdiction and effective conservation over Arizona's wildlife and wildlife habitat.

There are many valid reasons to require a person or agency to apply for and obtain a state-issued license. The application process allows the Department to ensure duplicate projects are not occurring, and that proposed activities will benefit wildlife. The license process requires federal agencies to coordinate their activities with the Department, which ensures the best management outcome possible for Arizona's wildlife. The importance of requiring all entities, including federal agencies, to apply for and be provided a permit in Arizona is to protect the State's resources and assets (including water quality, quantity, and environmental health) from being compromised by unknown importation of aquatic and terrestrial wildlife, parasites, and diseases. The best way to reduce the risk of non-target importation is to screen importation through permits required in R12-4-402.

A primary objective of the proposed rulemaking is to protect aquatic and terrestrial wildlife populations in Arizona from harm that can occur as a result of an unauthorized release of native or nonnative wildlife by persons or agencies. The issue of greatest concern is the introduction of diseases to native and economically important recreational wildlife populations; this can be especially significant in the management of endangered species where disease status and susceptibility may not be fully understood. Introduced diseases have caused severe population declines in Chiricahua leopard frogs in Arizona and other frog species worldwide; and in little brown bats in the eastern U.S. Disease management is also critical for game species. Recent research on bighorn sheep pneumonia has determined that populations with the disease are susceptible to infection when exposed to a new strain of the causative bacteria. The introduction of chronic wasting disease in deer, elk, and moose by the translocation of these species is also a serious concern for state wildlife management agencies.

On the aquatic side, importations of fish have introduced parasites such as *Loma salmonae* and bacterial pathogens such as *Renibacterium salmoninarum*, the causative agent of Bacterial Kidney Disease. Although it has not been documented, Koi Herpes virus most likely was imported into Arizona with baitfish. The most recent examples of non-target importation from federal hatcheries include the following: 1) Bacterial Kidney Disease was found in multiple federal hatcheries in the last year; this resulted in the transfer of disease and a subsequent restriction on fish raised at the Tonto Creek, Silver Creek, and Canyon Creek State Hatcheries. These restrictions prevented the Department from stocking fish in multiple waterbodies in Arizona; resulting in a negative economic impact on several rural communities and the Department; 2) gizzard shad were first introduced accidentally into the Salt River System through the stocking of Channel Catfish from Inks Dam National Fish Hatchery located on the San Carlos Indian Reservation. They spawn in large numbers and can reach densities high enough to ensure large populations survive past the first year, and because adults are too

large to be prey for largemouth bass, they are essentially invulnerable to predation. The presence of gizzard shad has caused a major change in environmental interactions, negatively impacting the largemouth bass population in Roosevelt Lake. Roosevelt Lake is estimated to experience over 98,000 angler use days per year contributing over \$48 million dollars annually to Arizona's economy and is one of the top bass fishing lakes in western North America, holding multiple bass fishing tournaments every week for most of the year. The Department will spend millions of dollars over the next 10 years trying to reduce the impact of gizzard shad at Roosevelt Lake.

Federal agencies share the concern for introducing diseases to wildlife. Since the early 1900s the U.S. Department of Agriculture Animal Plant and Health Inspection Service (USDA-APHIS) has instituted requirements for the importation and interstate movement of livestock, crops, and more recently companion animals and some wildlife species. Each state, including Arizona, has regulations requiring animals coming into the state to have a certificate of veterinary inspection and to be free of certain regulated diseases; see A.A.C. R3-2-602 through R3-2-607. Included in these rules are "exotic mammals not regulated as restricted live wildlife by the Arizona Game and Fish Department." The Department recently revised live wildlife rules R12-4-405, R12-4-407, R12-4-410, R12-4-411, R12-4-413, R12-4-414, R12-4-422, and R12-4-430 to include a requirement for a certificate of veterinary inspection consistent with USDA-APHIS regulations and Arizona Department of Agriculture rules.

The authority to regulate release of wildlife in Arizona is held both by the U.S. Fish and Wildlife Service (USFWS) and the Department. While holding statutory authority for the management of all wildlife within the State, the Department is mandated by various federal laws to apply for and obtain federal permits from USFWS prior to conducting conservation activities within Arizona. The Endangered Species Act (ESA) requires a Threatened and Endangered Species Take Permit, Section 10 (a)(1)(A), for any activity that may intentionally "take" endangered species; under the ESA, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

The Department is authorized for all "take" of threatened species through Section 6 of the Endangered Species Act which requires the states to have a certified conservation program in place through a Cooperative Agreement with USFWS, and through the development and submission of an annual work plan to USFWS. The Department also applies for and obtains several additional federal permits in order to maintain compliance with applicable federal rules and regulations.

The requirement that our federal partners obtain authorization from the Department to conduct research and management activities in Arizona is a decades old practice. The Department routinely issues annual Scientific Collecting Licenses (SCL), formerly referred to as a Scientific Collecting Permit (SCP), to federal agencies for management and research activities involving all wildlife species (amphibians, birds, crustaceans, mammals, mollusks, and reptiles). For example, the Department has issued SCPs to the USFWS Arizona Ecological Services Field Office (AESO) since at least 1986; and to the Bureau of Land Management since at least 1988. It is standard practice for the Department to issue permits to AESO for California Condor and Sonoran Pronghorn management and release, and the Department has issued annual SCPs to the USFWS for the purpose of

conducting Mexican Wolf recovery activities since 2010. In the last two years, the Department issued SCLs to at least 35 persons representing offices in nine federal agencies, including USFWS, U.S. Bureau of Land Management, USDA-APHIS, U.S. Forest Service, National Park Service, U.S. Department of Defense, Department of Energy, and U.S. Geological Survey. These licenses generally provide broad authorities for our partner federal agencies and ensure a safe and collaborative approach to wildlife management in Arizona. Since 1998, the Department has not denied an application for a SCL to a federal agency (the Department's license application records only go back to 1998).

Although we have issued SCL's to numerous federal entities, some federal interests have disregarded our requests to apply for and obtain a Department-issued permit. Over the past 10 years the U.S. Bureau of Reclamation (USBR) has stocked over a hundred thousand Razorback Suckers in the Colorado River without a valid SCL. Because there was no communication or coordination between the Department and USBR, which would have occurred if USBR had applied for a Department-issued permit, the Department has no information regarding what screening and health certifications were conducted prior to those stockings, thus potentially putting Arizona's wildlife at risk.

To reiterate the Commission's justification for amending the rule, the Commission expects persons and federal agencies to comply with State rules requiring permits for the importation of wildlife and further, that release of live wildlife without first obtaining the permission of the Commission is a violation of State statute. This requirement is for the protection of wildlife populations from disease and other negative events and is mandated by A.R.S. Title 17.

7. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not rely on any study in its evaluation of or justification for the rule.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The Commission's rule protects native wildlife in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

The Commission's intent in proposing the amendments indicated in this rulemaking is to strengthen its rule to avoid any unintended outcome that a federal agency can circumvent state permitting requirements before conducting any wildlife-related activities. The Department has always operated under the premise that our federal partners need state authorization for any wildlife activities, and, as a result of the internal review, the Department discovered that this requirement was not already codified in rule. Through this rulemaking, the Commission is codifying what the Department has already practiced; thereby, protecting the Department and our partners (federal or otherwise) from unforeseen legal issues.

The requirement that a federal agency must apply for and obtain a state license or permit in order to conduct wildlife-related activities is not a new requirement. Under A.R.S. § 17-238, the Commission, at its discretion and under such regulations as it deems necessary, may issue a permit to take wildlife for scientific purposes to any person or duly accredited representative of public educational or scientific institutions, or governmental departments of the U.S. engaged in the scientific study of wildlife. This is necessary because A.R.S. §17-102 states, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the Commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission.

On an annual basis, the Department issues approximately 48 scientific collecting licenses to federal agencies for a variety of activities involving wildlife; licenses and permits are issued for the purpose of establishing, monitoring, studying, surveying, and translocating wildlife. Since 1998, the Department has not denied a scientific collecting license applied for by a federal agency (the Department's license application records only go back to 1998). Federal agencies that have held or currently hold a Department-issued scientific collecting license include, but are not limited to, the Department of Defense, Department of Energy, Department of Interior, National Forest Service, National Parks Service, National Wildlife Refuge, U.S. Army Engineer Research and Development Center, U.S. Department of Agriculture: Animal and Plant Health Inspection Service, USFWS, U.S. Army, and U.S. Geological Survey.

There are many valid reasons to require any agency to apply for and obtain a state-issued license or permit. The application process allows the Department to ensure duplicate projects are not occurring, and that proposed activities will benefit wildlife. The license/permit process requires federal agencies to coordinate their activities with the Department, which ensures the best management outcome possible for Arizona's wildlife.

The Commission anticipates the proposed amendments will have little or no impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission anticipates the implementation of the rulemaking will have no measurable impact on Department operations, as the Department has been fully engaged in addressing live wildlife concerns and has an administrative process in place for special licenses and permits issued by the Department.

The Commission anticipates the Department will benefit from a rule that ensures the Department maintains jurisdiction over Arizona's wildlife and wildlife habitat.

The Commission believes the proposed rulemaking will enhance the Department's ability to protect the public health, safety, and welfare and native wildlife and wildlife habitat. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the cost of rulemaking, there are no costs associated with the rulemaking.

Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Not applicable

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The public comment period began on September 16, 2016 and ended on October 16, 2016. The Department received 1036 written public or stakeholder comments in response to the proposed rulemaking: 856 were form letters generated by a "Take Action" post from the Sierra Club's website and a "Take Action" e-newsletter (in partnership with KnowWho Services), 173 of the 856 were submitted after the comment period ended; and 180 were unique comments. Ten of the unique comments were KnowWho form letters that were revised by the commenter and a large portion of the remaining comments simply reiterate text from messages posted on the Lobos of the Southwest's, Grand Canyon Wolf Recovery's, and the Sierra Club's websites, and two of the 180 were submitted after the comment period ended. At the December 2016 Commission Meeting, which held the oral proceeding for this rulemaking, an additional 6 oral comments were received at the Friday meeting and 12 were received at the Saturday meeting. A summary of those oral comments is provided below. For the agency response, because a majority of the comments received during the comment period expressed similar concerns, the Commission is providing one comprehensive response instead of repeating similar responses to each individual comment. Most of the public comments to the Notice of Proposed Rulemaking mistakenly believe the rule amendment imposes a new requirement on federal agencies and the objective of the amendment is ultimately to deny a permit to release of Mexican gray wolves in Arizona. Both of these positions are incorrect. The rule amendment responds to the Commission's concern that its rules do not adequately require federal agencies to comply with state permit requirements. The rule amendment corrects an ambiguity but it does not create a new requirement as most federal agencies have routinely obtained state permits for activities involving live wildlife. As a result, the Department provided further explanation regarding the scope of the rule; addressing all wildlife impacted by R12-4-402 and the existing federal permitting process that has been in place for some time. For these reasons, the preamble has been revised to better communicate the justification for the proposed amendment. The public or stakeholder comments and the agency's responses are provided below.

The agency received the following comments in support of the rulemaking:

Written Comment: October 5, 2016. It is our land, not the feds. Keep on fighting.

Written Comment: October 5, 2016. Power resides with the states as it should.

Written Comment: October 6, 2016. It is our land, not the feds.

Written Comment: October 6, 2016. Do it.

Written Comment: October 16, 2016. I write in favor of amending R12-04-402 to require permission to release wild animals based on: 1. Health: The requirement of the agency to "prevent interactions between humans and wildlife that may threaten public health and safety" because of the threat of wolf rabies, and 2. Autonomous judgement: The requirement of the agency to independently assess the justification for any planned release. 3. Challenging the subspecies assignment: The need for a judicial review of subspecies assignment. Qualification: I write as a retired Professor of Pathology from the University of AZ who has lived in Blue AZ since 1989. I have closely followed the wolf introduction program since before its inception having given invited testimony to then Governor Symington. Among my 110 expert referred journal publications are many National Institute of Health funded papers (usually with me as the Principle investigator) dealing with quantitative analysis which makes me expert in scientific data collection and analysis. This and my medical background are relevant to the following discussion. Discussion: 1. Health: One of the main issues in human/wildlife interaction is the potential for rabies transmission, and the State maintains a program to monitor wildlife rabies reflecting this universally acknowledged serious issue. Human rabies from wolf attack has been known throughout history and, in some Third World nations, remains a significant health issue today. Wolves are notably effective vectors of rabies because of their size and viciousness, particularly in packs. Indeed few, if any, wildlife threats to humans are more deserving of fear than is a rapid wolf pack. MX has had repeated epizootic of rabies in its feral dogs and these have resulted in epidemics in humans as close as Hermosillo in Sonora. Feral dog rabies has been transmitted to TX coyotes which resulted in an epizoonosis in its southern counties necessitating dog quarantine. While MX has taken steps to reduce this hazard, much of the border zone with the US is not under effective government control. Now that wolves are allowed to range to the border it can be expected that some will migrate back and forth across the border, contact feral rabid dogs thus bring rabies back into AZ. USFWS procedures for monitoring wolves is solely via aerial search for wolves with functioning collars with aerial counting followed by helicopter landing, tranquilizing, and immunizing (including for rabies). These procedures are not allowed in vast parts of the wolves ranges such as in the Indian Reservations and in the Blue Primitive Area and other areas managed as wilderness where helicopter landing is prohibited. Accordingly, wolves in those areas are unimmunized and uncounted (see #2 below). It is impossible for USFWS to know elsewhere if there are individual or packs of wolves lacking functioning collars, particularly now that their area has expanded so massively. In the Indian Reservations, dog rabies immunization is encouraged but not required, and many dogs are not immunized thus providing an intermediate vector, that is from the unimmunized wolf to the dogs of the Reservations. 2. Autonomous judgement: Judgement regarding expansion of the areas of the state available for wolf introduction, and of the need for release of additional wolves or ultimately control of the population, is based on tenuous application of population studies of other wolf breeds in other states to those released in AZ. Wildlife biology is by its nature among the least precise areas of "science" and extrapolations are made from studies of other wolf breeds in other parts of the country as to how many are required to obtain a sustainable population. Of many possible objections to such extrapolations

is the fact the wolf's environment in AZ is far different from its close relatives living in the Upper Midwest or Rocky mountain states. However, USFWS through easily contested reasoning has proclaimed minimal population numbers as essential to fulfilling the requirement of the Endangered (ESA). It then does its annual count, and based on that determines how many more wolves need to be released. The method used to count wolves is extremely vulnerable to errors both subjective and objective. All of science is subject to intentional and unintentional error due to observer bias. Everyone involved in counting wolves and analyzing the data is aware that undercounting secures their jobs and over counting threatens them. Further there are no controls over the counts, that is the counts are rarely repeated any single year (although limited recounts in 2011 demonstrated errors of over 50%), and no independent entity restudies the results to determine their accuracy. All this strongly supports the Department's insisting on or performing an independent audit of the counting procedures. 3. Subspecies assignment: The determination that the Mexican gray wolf (MGW) represents a distinct population deserving of protection under the ESA was an administrative decision and it needs to be judicially challenged. Data concerning the prior population is scanty and controversial; specifically what phenotypic features justify such a designation. Canis lupus include the most phenotypic variable and fluctuating phenotypes among mammals. Consider the variances between the Pekinese and the Great Dane, yet those breeds are not designated subspecies but only breeds. The MGW, according to some records, were somewhat smaller and had a more pale coloration than their northern relatives. Considering the variance, wishing the species those distinctions do not justify a subspecies designation rather than one of breeds, and should not deserve ESA protection.

Agency Response: The Department appreciates your support.

The agency received the following written comments stating their opposition to the rulemaking:

Written Comment: October 7, 2016. I oppose the proposed rule change requiring U.S. Fish and Wildlife Service (USFWS) to get a state permit before releasing any additional Mexican gray wolves into the wild. I am frustrated and displeased that the Department is trying to undermine Mexican wolf recovery. Federal supremacy is a long established doctrine in American law. If you cannot follow the law, you should resign. Mexican wolves are a federally designated endangered species and I support their recovery.

Written Comment: October 7, 2016. I am writing to request that you not amend R12-4-402. The amendment would change the rule to require the UFSWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover Mexican gray wolves. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. Mexican gray wolves need science-based recovery, not political meddling.

Written Comment: October 7, 2016. I understand R12-4-402 would require a state permit before allowing the release of Mexican gray wolves to the wild. It is already hard enough for USFWS to do their job regarding protecting and building up the population of Mexican gray wolves under the ESA. This rule change is a bad idea as the state seems determined to exterminate these wolves.

Written Comment: October 7, 2016. Please do not make this rule change. Instead please eliminate the restriction on Mexican gray wolves being allowed above I-40.

Written Comment: October 7, 2016. I am writing to say I believe that the Commission's proposed rule should not be enacted.

Written Comment: October 7, 2016. It is already difficult for gray wolfs to recover in a growing human world. Allowing this rule to go through would make the gray wolf's battle even harder. Please make the right choice to help the gray wolves.

Written Comment: October 7, 2016. Please do not enact additional regulations on gray wolf release.

Written Comment: October 8, 2016. The proposed rule requiring a permit to release wolves is absurd and another barrier to prevent establishing a sustainable population. Stop obstructing the people's will, who overwhelmingly support wildlife and wolves.

Written Comment: October 8, 2016. Please do not apply the new rule which makes it more difficult to release additional Mexican gray wolves into the wild in AZ. To exist in a sustainable manner, more of these animals are needed in the wild; the additional numbers and the consequential improvement to their gene pool are critical. Although I live in the UK, I have visited AZ many times. I go for the unique wilderness and the wildlife that exists in AZ. I am sure these attractions contribute greatly to the tourism economy in the state, not everyone goes for golf and the Grand Canyon. Mexican grays have been persecuted for many years and now deserve our help to exist. Humans do not have the exclusive right to populate this planet to the detriment of all other species as we spread and sprawl across the globe. Please show some far-sightedness, economic awareness, and sheer compassion and help the population of Mexican gray wolves take their rightful place in the ecosystem as they have existed in AZ for hundreds of years.

Written Comment: October 8, 2016. Our federal government should protect wolves on our land for all citizens. State governments should not have the final say on wolf release programs.

Written Comment: October 8, 2016. It has been known for many years the importance of all animal species to our ecosystem and human survival. The protection and reestablishment of endangered species is of utmost

importance to all. Once gone it cannot be brought back. Rule changes that put these species at risk, should not be made or even considered. We are the care takers of a fragile planet and we will be judged by future generations by how we leave it for them.

Written Comment: October 8, 2016. Mexican gray wolves are critically endangered and fall under the federal ESA. Your proposed ruling to require USFWS to get a state permit to release Mexican gray wolves into your state areas is only meant to stop their potential recovery and survival. Instead you should be trying to help protect the Mexican gray wolf from going extinct in AZ. With less than 50 wolves presently in AZ, you should be protecting them as much as you protect deer and elk. Instead you are all about roadblocks to allowing them to live in their native habitat. Do the right thing for the environment, the wolves, and the majority of your voters. Protect them and help them survive.

Written Comment: October 8, 2016. I disapprove of the proposed rule that would effectively inhibit USFWS from fulfilling their commitment to restoring the critically endangered Mexican gray wolf. Wolf recovery is very important to me for many reasons, and the more I study the wolf's place in the ecosystem, the more curious I become as to why there are not more wolf advocates in the world. There are many reasons that I believe it is crucial to restore wolf populations, especially ones such as the Mexican gray that is on the brink of extinction. As ethics sadly seem to be readily overlooked by government organizations, I have concluded that the strongest argument I can make for the wolves is based in science. Recently, biologists have discovered that the presence of wolves offers many benefits to other organisms, including humans. In every landscape they inhabit, wolves stifle the irruption of herbivores which allows for a greater diversity of flora and translates into many benefits for the entire environment. I wish I did not have to, but I feel it is necessary to remind your organization that as a government agency, it is your purpose to ensure the best quality of life for the public. This entails many factors, but the most overlooked of all is environmental stability. Restoring endangered wolves is an act that is proven to have great benefits to our world and the more we give to our world, the more we give to our people. I urge you to quit being short-sited and really take a look at how loss of biodiversity through causing the extinction of a species with red tape is going to affect the grandchildren and great grandchildren of the people of AZ Good science is the only basis on which decisions concerning ecosystems should be made. Science strongly advocates for biodiversity and so should you.

Written Comment: October 8, 2016. The Commission proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. Please do not do this. Protect the wolves, do not kill them.

Written Comment: October 8, 2016. I am writing about the rule change that will threaten protection of

Mexican gray wolves. You must not allow this. These animals must be protected Do the right thing and do not change ruling.

Written Comment: October 8, 2016. It is imperative that you not slow the controlled release of gray wolves back into the wild. Nature requires balance and the proposed rule change will disrupt this balance and threaten the existence of gray wolves. Do not approve this rule change.

Written Comment: October 8, 2016 (received same form letter from 8 persons). The U.S. Fish and Wildlife Service is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Game and Fish Commission that what the lobos need is science-based recovery, not political meddling.

Written Comment: October 8, 2016. Within this proposal are stipulations which undermine the recovery plan for the Mexican gray wolf and further jeopardize the species and threaten their survival. Additionally, the proposal to include USFWS to gain state permission to release more wolves into wild as part of the recovery program adds further to the negative implications of the proposal should be rejected. To further convince you, USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releasing wolves into wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to wolf recovery is using politics to drive wolves to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted wolf recovery pending a court challenge to their legality. I hope you take my comments into consideration and that the Commission votes against the rule change proposal.

Written Comment: October 9, 2016. Please oppose this rule change regarding release into the wild and work toward preserving and saving wolves instead of helping drive them to extinction. AZ would be a far better place where there more wolves and fewer politicians. Save AZ's glorious wild.

Written Comment: October 9, 2016. You guys do a great job. You do even a better job of serving the interest of a very small group of citizens while alienating the vast majority of AZ citizens that support the recovery of the wolf. In the case of the Department, it is the "tail that wags the dog." Do the right thing and support all indigenous wildlife.

Written Comment: October 9, 2016. Efforts by the Department to interfere with USFWS legal, science-based responsibility to the American people to allow wolves to return and thrive in the Southwest is disturbing. The Department's proposed actions to require the federal agency to get a state permit reinforces AZ's reputation as a

backward state stuck in the past. As demonstrated by your name, AZ views animals as "game;" targets or resources to be hunted. Policy is dictated by ranching and hunting interests, which abhors any competition, to the disservice of the majority of people who support wildlife conservation, including wolves. Lots of people want their wolf heritage restored. They want a return of balanced ecosystems where top predators are allowed to do their job with cascading benefits. To continue to throw up road blocks to keep a keystone species from returning to its rightful place is to ignore the will of the people, the law, the science, and the damage this does to your reputation. Drop your proposal to impede the federal agency and use your resources instead to fulfill your mission of conserving all wildlife.

Written Comment: October 9, 2016. We need USFWS to continue to be allowed to release and recover Mexican gray wolves into the wild without being impeded. Please do not support this change and further the extinction of these animals.

Written Comment: October 9, 2016. It is clear to me that the federal government has the legal right under the ESA to regulate and release endangered animals on federal land, state land, and private land to ensure the viability of said animals. States, including AZ and NM, do not have the right to interfere with that process. Further, from my observations, AZ and NM have been obstructing the recovery of the Mexican gray wolf for many years (this does not extend to the individual biologists involved). Therefore, I ask you to scrap the rule changes in R12-4-402.

Written Comment: October 9, 2016. As a citizen of the U.S. residing in AZ, I want it to be known that I do not support the proposed rule change to require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild. I want more Mexican gray wolves to be released into the wild in the state of AZ. I do not want the AZ Game and Fish Commission to participate in activities leading to the extinction of this and any other species. I want the AZ Game and Fish Commission to honor the ESA. Please follow the will of the citizens of the state of AZ and honor the law protecting endangered species and do not amend this rule.

Written Comment: October 10, 2016. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Commission that what the lobos need is science-based recovery, not political meddling.

Written Comment: October 9, 2016. I cannot comprehend how humanity does not care about species. I do not agree with the changes of the rules about the Mexican gray wolf. This will put them into extinction. These incredible animals deserve to be defended. The planet needs us. It is true. I will never agree with this. I love

wolves, animals, plants. The earth needs us. Please change this decision. We need them alive. Please help them.

Written Comment: October 10, 2016. Do not input the proposed rule change about wolves, states should not rule how endangered animals are treated, especially ones that roam to other states (and countries; i.e. MX). If anything, more limitations should be placed on cattle. You are making me dislike the taste of beef.

Written Comment: October 10, 2016. Please do not change the rules regarding lobos recovery. This law change will make it more difficult for the recovery of gray wolves.

Written Comment: October 10, 2016. As a frequent visitor to AZ and a resident of the Southwest, I am writing to request that you keep the current rules in AZ regarding Mexican gray wolf release and decide against the proposed rule change that would create yet another hurdle to releasing Mexican gray wolves in AZ. Mexican gray wolves play an important part in the ecosystem and are critically endangered. The existing rules already include strict requirements. The proposed rule change has no ecological basis, and is designed to protect a very small number of people who are prejudiced against wolves.

Written Comment: October 10, 2016. I oppose a bill that requires more bureaucratic red tape by requiring the state to review releasing additional Mexican wolves into the population would delay any effort. Seems like this effort toward success for the reintroduction of the Mexican wolf is constantly hampered by bureaucracy and not enough attention paid to the biology (genetics, historical habitats, etc.).

Written Comment: October 10, 2016. Please do not support the rule change. Releasing gray wolves need your support not rules to hinder their recovery. This change would make it even harder for the federal government to do its job and recover lobos.

Written Comment: October 10, 2016. Please do not require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild. This will damage their survival even more.

Written Comment: October 10, 2016. We attended a hearing in Flagstaff earlier this year concerning the Mexican gray wolf. We were incredulous hearing the testimony against this species. One woman claimed that a single wolf killed 200 sheep in one single night "just for the sheer pleasure of it." If you have the ability to think at all, you must conclude that this was simply not possible. And now we hear that you want to change the rules to make recovery near impossible. A healthy eco-system requires, no demands, the presence of predators. You know this to be true. Just look at what happened in Yellowstone Park after the reintroduction of wolves. We are asking that you not impede the progress of AZ's Mexican gray wolf recovery by not changing the rules

Written Comment: October 10, 2016. This proposed rule to require a permit for wolf reintroduction is

unconstitutional and will only lead to loss of dollars for the state in endless court actions. It only is driven by a tiny minority who does not even understand the science behind the role of the lobo in the ecosystem. People do not like this, the people of AZ do not like this. It is unscientific and without any rationality to require a state permit for wolf reintroduction. I am embarrassed by your actions and deeply concerned as a scientist and retired land manager and property owner. My years of experience on the land have taught that planning, cooperation, and shared benefits are the real road to reaching the goals to benefit the public and wildlife.

Written Comment: October 10, 2016. Mexican wolves are vital for a healthy ecosystem in the Southern U.S. The ESA is clear, wolves must be reintroduced to their natural habitats. Please stop listening to special interests and look at the science. We need wolves, and they need us. Do the right thing and do not pass any rules to prevent the release of wolves or their ultimate survival in AZ. I will not visit a state that does not protect wildlife, including reintroducing wolves, and will keep my tourist dollars elsewhere. Please do the right thing for our wolves and their survival.

Written Comment: October 10, 2016. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Commission that what the lobos need is science-based recovery, not political meddling. The wolves are a natural resident of this land and a large positive factor in the balance of the environment of AZ and the Southwest. Cattle are not. Cattle are not worthy of protection, they are detrimental to the land, they carry diseases which can transfer to both native animal populations and in some cases human populations. Cattle are an invasive species to the American Continents and should not be afforded any protection based on political backslapping nor financial profits for the cattle industry. Stop interfering now in the law mandated recovery under the ESA.

Written Comment: October 10, 2016. Releases of wolves to the wild is a critical component of recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. Abandon the rule that is slowing down the release of wolves and listen to scientists, not ranchers, hunters and fearful citizens. Wolves are beneficial to every environment and they have the right to live, free and unharassed.

Written Comment: October 10, 2016. Here are my comments regarding the proposed change to Rule R12-4-402(D), which states "Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements." I disagree with the proposed rule change. USFWS needs ultimate authority over live wildlife for these reasons at a minimum: Preservation

and handling of wildlife affects habitats and populations that cross state boundaries. Preservation and handling of wildlife requires continual ongoing implementation of federal plans. The attitude of individual states on any given issue can change radically after any given election. Preservation and handling of wildlife should not be subject to disproportional influence by the self-interest of any industries, as is evidenced by how Mexican gray wolves are dealt with in NM. Preservation and handling of wildlife should not be subject to any individual state's biases. While it is honorable and appropriate that individual states should be consulted, federal oversight by definition results in the best decisions being made for said wildlife overall. Please vote against this proposed rule change.

Written Comment: October 10, 2016. I do not agree with the rule change that would require USFWS to get a permit before releasing any more Mexican gray wolves into the wild. This change will make it harder for the federal government to do its job of Mexican gray wolf recovery and could throw the wolf into extinction. At last count there were only 97 found in the wild. They are one of the most endangered wolves in the world and their population had declined 12% since last count. USFWS has a legal and moral obligation to follow best available science and to do whatever is needed for Mexican wolf recovery. Captive breeding programs have worked to maximize genetic diversity so captive wolves were to be released to increase population and genetic diversity. Wolves are essential for restoring a healthy balance to the ecosystem. Wolves generate economic growth. Public polls show overwhelming support for wolf recovery in NM and AZ. I am a mother who cares about our wildlife and the health of our wildlands so my children and all others can enjoy the beauty of this country.

Written Comment: October 10, 2016. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. It seems that AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. What the lobos need is science-based recovery, not political meddling. And, I am certain you do not want to be entangled in a court challenge similar to that which your neighbor NM is now involved. Do not let politics slow wolf releases, please abandon this rule change.

Written Comment: October 11, 2016. I am writing in opposition to the proposed legislation to require the federal government to have to have a state permit prior to reintroducing the Mexican gray wolf to AZ forests. I am a strong advocate of keeping a healthy and thriving population of wolves in our forests and passing this legislation would severely hamper those efforts. Please reject this ruling.

Written Comment: October 11, 2016. This new change would make it even harder for the federal government to do its job and recover lobos.

Written Comment: October 11, 2016. U.S. Fish and Wildlife Service should not need a state permit before

releasing any additional Mexican gray wolves into the wild. These are wonderful animals and should be repopulated before it is too late. Please oppose R12-4-402.

Written Comment: October 11, 2016. The Commission has proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the State's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. What the lobos need is science-based recovery, not political meddling. Please do not let politics slow wolf releases; we urge you, the Commission, to abandon this rule change.

Written Comment: October 11, 2016. I strongly oppose requiring USFWS to get a permit before releasing wolves. Wolves are a vital and necessary part of the ecosystem, as evidenced by what occurred in Yellowstone, where the environment is healthier than ever. Wolves also attract tourist dollars. Please let them do their work without more paperwork from you.

Written Comment: October 11, 2016. I oppose R12-4-402. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change would give too much authority to a state that has already demonstrated its hostility to wolf recovery. Such a rule would not be in the wolf's best interest.

Written Comment: October 11, 2016. I live in NM am writing in favor of the continuation of the wolf recovery program and against the proposed requirement of USFWS to obtain state permits to release more wolves. Our State benefits from tourism and the support of a healthy ecosystem that includes larger carnivores like wolves.

Written Comment: October 12, 2016. The rule to notify will severely undermine efforts for a wolf recovery for the fact that many times these releases are subject to a variety of unknown changes that can call them off or press them forward to involve such a complicated procedure will hinder efforts for a sustained recovery.

Written Comment: October 12, 2016. Wolves are a very important apex predator and a necessity in the health of our ecosystem. The reintroduction of the Mexican wolves is a success story in saving a highly endangered species, but the wolves are not out of the woods yet. We, as humans, have an obligation to help this species succeed. This rule is a step in the completely wrong direction. Please do not throw any roadblocks in the efforts

to save these majestic animals.

Written Comment: October 12, 2016. As a person who has worked very hard to see the Mexican wolf recover, I ask that the following things be done: 1) First and foremost, follow the ruling of a Federal judge saying a comprehensive recovery plan be written and followed by 2017. The last plan was written in 1982. 2) Follow the plan which should expand Mexican wolf territory into the Grand Canyon and Southern UT establishing population groups in this area plus AZ, NM and MX. 3) We have over 250 wolves in 34 Species Survival programs in the U.S. and MX; these animals are owned by USFWS and I have been working with them for 7 years at Wolf haven International. Our pre-release facility has 14 Mexican wolves, many born in 2015. Wolf Haven sent a family of 5 to Ladder Ranch this spring; that family is now a family of 11 (6 new pups born this year) and scheduled for release in NW MX where there is a small population of 20 wolves. It is shameful that MX is more supportive than AZ and NM in terms of releasing wolves into the wild. It took several law suits to get the 1982 plan written and to finally release these animals into the wild in 1998. Law suits are expensive for us to execute and you to defend. 5) Much of the land where cattle graze is owned by taxpayers. Voting data shows that over 80% of residents in both AZ and NM support wolves in the wild. 6) A robust population of animals is good for both the land and the herds that wolves hunt. 7) Ecotourism is a way for your states to make money. In the greater Yellowstone area, wolf viewing brings 35 million dollars per year to the local economy. In summary, we live in a democracy so let's follow the rule of the majority. We know that farmers and ranchers and wolves can live in harmony. There are zero depredations in the Frank Church Wilderness area in ID. This is due to Defenders of Wildlife teaching good animal husbandry techniques to ranchers and farmers and state programs that reimburse for depredation. Non-lethal techniques have been used in the heart of wolf and sheep country with success. People who donate to Defenders have paid for these programs and for depredation for many years. Why does AZ continue to obstruct progress? Do what is right and release wolves. Your ecosystem and the majority of citizens will thank you.

Written Comment: October 12, 2016. I am opposed to the proposed rule change that would require USFWS to get a state permit before releasing more Mexican gray wolves into the wild. This would make it harder for the federal government to do its job of recovering lobos. I live in the Mexican gray wolf recovery area of the White Mountains of AZ and appreciate seeing lobos when I go into the wild.

Written Comment: October 12, 2016. I wonder how it is you can proclaim on your website to "manage, protect and conserve wildlife resources" while at the same time work to obstruct the recovery of Mexican gray wolves. Science is our best guide to a healthy recovery and yet you have discarded the facts to push your own personal agenda. Arbitrary boundaries, lack of genetic diversity, and a poor history of decision making on the state level has led to a less than acceptable recovery plan and management. I oppose the proposed rule change (R12-4-402) and hope that you take a long look at what this would mean when it comes to protecting and conserving the Mexican gray wolves.

Written Comment: October 12, 2016. I am very disappointed in how the Department is catering to a minority of individuals and not listening to the statewide and nationwide polls that strongly support Mexican wolf recovery. These animals are an important public trust resource for all citizens, not just folks that live in AZ. Do not sabotage and obstruct the recovery of this important animal. I am amazed at how anti-predator all state wildlife agencies are; even in urbanized Massachusetts. Please have your wildlife leaders work for wildlife, including predators, and not against them. Allowing AZ to blackball the Feds by denying permits is a low blow and should not be a part of the wildlife professionals' jobs to recover an international important animal, the Mexican Wolf.

Written Comment: October 12, 2016. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected AZ Game and Fish Commission that what the lobos need is science-based recovery, not political meddling.

Written Comment: October 12, 2016. I have followed the recovery of the Mexican wolf and it is clear that more need to be released into the wild. The genetic make-up of the Mexican wolf is already compromised, but many normal wolves have been born in captivity. If they are not released, there will be major problems given the reduction of the wild population. I urge you not to succumb to pressure from the State regarding the release of the wolves. This will lead to further degradation of the gene pool and the ultimate extermination of this wonderful animal, which can ultimately result in an improved ecosystem, as have the gray wolves in Yellowstone.

Written Comment: October 12, 2016. The proposed rule change is another attempt to drive the Mexican gray wolf to extinction. The rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the State's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. Do not let politics slow wolf releases, please urge the Commission to abandon this rule change. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Commission that what the lobos need is science-based recovery, not political meddling.

Written Comment: October 13, 2016. This ruling needs to change, they need to release more Mexican wolves

to keep the species going and have more diversity. These wolves are very essential to the environment. Without these predators there will be destruction to trees, rivers, etc. The deer, elk, and others will keep the trees at a certain level and they will not grow. Please see what happened in Yellowstone without the wolves and also see how reintroducing them Yellowstone is thriving. Since the Mexican wolf, *Canis lupus baileyi*, is the second-most endangered canid species in the US, genetic considerations must supersede any single state controlling or slowing recovery of this naturally, thinly dispersed species. Genetic science shows clearly that recovery from small populations must be assisted as quickly as humanly possible, due to issues of small populations trending toward homozygosity, continually diminishing in allelic diversity for so long as any subpopulation and, in this case, the entire population remains below numbers and genetic variation that allow for increase. See (Allee effect/Positive density dependence and easily-accessed peer-reviewed research on Minimum Viable wolf and mammalian Populations, which numbers tend to be above 500 to as much as 5,000 or more) for a more complete understanding by the Commission of the catastrophic effect of holding populations to small numbers and isolation through inhibiting continuing releases of new individuals. Because slight but important mutations occur, as well as due to the fact that offspring only contain one half of the alleles of any single parent, with some randomness occurring in what is passed on to offspring, there are different genes still available only in the captives that have been bred for just this purpose. In simple words, only continuing releases will save this desert country adapted species, through which the ecological health of the entire North American southwest depends. AZ shares borders with: 1. MX, although there are no wolves within hundreds of miles, the nearest first and very recent release and attempted recovery of less than ten so far in Sierra Madre Oriental, around the state of Nuevo Leon, several hundred miles; a tiny recently released population almost certain not to develop dispersers to AZ. 2. NM, a state actively attempting to resist actions of under ESA, although sharing the remnant tiny restored *Canis lupus baileyi* population. 3. CO, which has ruled in probable violation of Constitution, against active release and recovery; there are no known individuals of *baileyi* in the suitable habitat of southern CO. 4. UT, another state which suffered the eradication of wolves genetically highly similar to *C. l. baileyi*. 5. While there is 20th century evidence of extremely closely genetically related *baileyi* in southeastern CA, its presence there may be viable, but has never been assured. Evidence from Indian languages point to the probability, beyond the specimen taken in the 1920s. Thus, AZ exceeds its authority in attempting to prevent interstate recovery of an originally widely distributed US species whose habitat includes but is not limited to AZ. This is the legal essence upon which to cease attempt to control reintroduction and recovery. The original misguided eradication of this adapted subspecies from AZ and all states, and the succeeding eradication from mid-MX, all the way to related and necessary gene pool of the genetically different wolves of the Northern US, has led to an ongoing extinction crisis. The original 7 *C. l. baileyi* forebears captured for captive breeding and release constituted a severe bottleneck of relatively homozygous DNA, which is exacerbated literally dangerously increased through the limited reproduction now existing, through continuing to refuse release of offspring. This crisis' existence is supported by genetic science and actual DNA testing. Additional variation through differing expression of genes occurs, and this important consideration requires that high variation be maintained without the restrictions which have hampered it right now only attained through continuing releases of captive variants,

as the extremely tiny variation in the present wild population diminishes through losses and the low reproduction illustrated by the diminution which has begun to occur in that wild population. Eastern and Northern AZ especially is critical habitat and connectivity, although previous decisions preventing designation have been steered by corrupt politics rather than genetic and habitat realities. On the dangerous ecological mistake of limiting wolf presence: The Kaibab Plateau suffered a severe irruption of ungulates following eradication of baileyi conspecifics, and that irruption was followed by population overshoot, habitat degradation by that ecologically-released herbivore, and consequent mass starvation. Only the keystone apex predator, C I baileyi, can diminish such extreme fluctuations within the natural ecosystems it formerly balanced. As an illustration, please notice the presence of increased levels of communicable diseases in deer populations in the central and eastern US where human social resistance and lack of safe habitat for wolf presence (wolves are not dangerous to humans; humans are extremely dangerous to wolves) from TX. The genetic variability mentioned above is also a vital factor in adding disease resistance to the wolf population, another reason for assisting, not hampering new releases. As the Commission well knows, the NM judicial/political situation is only extant due to preliminary injunction in a lower court, and not through any accepted law. It is not proper to rule until that case is resolved fully, as the genetic loss is presently so critical that AZ is vital to the urgent need of the species and indeed, the entirety of the ecosystems in which it flourished and was the key faunal and floral diversifier. By attempting to add bureaucratic difficulties seems clearly to send this particular species into extinction. This is neither morally nor biologically or scientifically a correct action. The refusal to justify in your rulemaking Section 6 of any study, scientific, or public, is obviously unjustifiable in itself. The public good of both AZ's citizens, environment, and wildlife, as well as the US public and Federal Government's mandated interests, are or should be the major considerations. The Commission may be operating under fallacious and unscientific premises in any possible ruling concerning wolf effects on prey species, as predators are entirely dependent upon prey numbers, and not the reverse. Additionally, the entire US public, past, present, and future, have a primary stake in the recovery of wolves and the restoration of intact ecosystems, especially on federal and all state public lands. This consideration supersedes any single state or group of states' legislation, regulation, or rulings. AZ will, should this rulemaking be effected, set the state up for an unending series of costly judicial proceedings. This is due to the clear preference of the majority of the public for restoration of native species and healthy intact ecosystems on public lands and in any and all habitat critical for survival and genetic connectivity of a species. To pursue this unseemly rule will both guarantee extreme genetic jeopardy of this vital wolf, and will expose the inherent unethical intent of all who pursue this anti-wildlife, anti-environmental rule. The rulemaking contains language intended to obfuscate the nativity and historical existence of this species; it also appears to intentionally introduce vague falsehood, as predators tend to decrease communicable illness in ungulate herbivore species, and not increase its likelihood. While very few parasites use multiple host transmission, most and the most dangerous, result from overabundance of the herding species and the domestic introduction by livestock interests. Wildlife commissions in some states intentionally effectively "farm" species. In states like ID, such efforts fail due precisely to ecological succession in natural areas. The wolves of ID play no part in elk reduction, proven by scientific study. Science has shown that no predator can endanger prey (the

woodland caribou problem in BC is entirely a result of habitat loss, fragmentation by heavy road construction cutting forest up into easily entered segments by machine transportation of too many hunters and poachers, and insufficient previous consideration and protection against human take of those ungulates. The sole responsibility for such endangerment of prey species has historically been human hunting and exclusion by grazing interests. A minimum of around half a million wolves is scientifically estimated to have lived in balance with millions upon millions of ungulates in North America before the 1800s advent of heavy human presence and hunting pressures. Any other assertion is intentional or ignorant falsehood. MT and WY seek actively to continue to persecute and eradicate wolves, as was proven by their policies in effect as soon as federal protection was so corruptly lifted. Those Northern Rocky states attempt to farm ungulate species, preventing recovery of native *Ursus arctos* as well as *Canis lupus*. Science coming out of the isolated federally protected Yellowstone is showing that wolves are vital to prevention of erosion, maintenance of water quality, through their promotion of plant and animal diversity. Wolves keep wild ungulates moving, instead of sedentary, and thus the attempts to farm wild ungulates through preventing natural numbers of predators is counterproductive. The diversity increase occurring through unrestricted wolf presence includes migratory bird diversity, so important in every state, both to consumptive users, the far greater number of non-consumptive wildlife users, and to ecosystems from Arctic to tropics. This issue of interstate mobility, again, supersedes any "right" any single state has to prevent, slow, or even manage the recovery of any species. If necessary, this issue will be fought in costly judicial proceeding until that ecological and social reality prevails over special interest controls over any state wildlife agency. As a student of wildlife and ecology, and as a lifetime avid non-consumptive user of the US' remaining public lands, as well as MX for both purposes, I take grave exception to the intent of this specific rulemaking, due to its obvious intent to prevent the recovery across a six-state area (ecologically identical wolves to *baileyi* also existed in TX and OK, making it de facto a seven-state area). The situation is desperate for this important species and AZ wildlife interests should rather make rules inviting swiftest possible active reintroduction and recovery.

Written Comment: October 13, 2016. I am writing to encourage no rule changes that would hinder the release of Mexican gray wolves in AZ.

Written Comment: October 13, 2016. Mexican gray wolves are already struggling to survive in this world, so why make it harder? The new rule that has been put out there makes it harder and takes longer for the wolves to be released. Being released into their natural habitat is a critical component for the recovery of a Mexican gray wolf, so making it wait longer to be permitted to enter its natural habitat can be damaging. This new rule is just another way to drive Mexican gray wolves to extinction. This new rule makes it harder for USFWS to do its job and would also cost the state time and money, which is something we do not have an infinite amount of. Also, some scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the wolf population. Overall, this new rule will only hurt the Mexican gray wolves, not help them.

Written Comment: October 13, 2016. I am writing to encourage you to abandon the new proposal that is in the works to hurry the extinction of our Mexican gray wolves. Do you want to be responsible for the extinction of these wolves after all the work done to bring them back? The politics have to end, predators help keep our prey animals strong and end the life of those that are diseased or dying. Hunters do nothing to keep the herd strong, they take out the biggest and the best. I feel USFWS should focus their attention on nonnative species and turn the rest of their budget over to helping ranchers coexist with our predators. Why do not you put that in a proposal to them, our prey animals are a couple hundred miles away from becoming infected with CWD, why would you risk that over politics? Your job is to help wildlife, not just the ones ranchers and hunters like because they can be killed and eaten and do not get in their way. The boundary rule is another ridiculous part of the proposal, how can you try to limit where a wild animal goes? Mother Nature directs animals according to food, water, and wildness. The Grand Canyon area is perfect and just think how many bison calves the wolves would take; which would take care of another one of your problems naturally. Please, get the politics out and let science regulate our wildlife and quit making it impossible for these Lobos to survive.

Written Comment: October 13, 14, 15, and 16 and December 1, 2016 (received 856 form letters from Sierra Club/KnowWho Services as follows: 496 on 10/13/16; 136 on 10/14/16; 42 on 10/15/16; 9 on 10/16/16; and 173 on 12/01/16) I urge the AZ Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please reject this proposed rule.

Written Comment: October 13, 2016. The proposed new rule change is another attempt to drive the Mexican gray wolf to extinction. The rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. Keep our environmental alive, keep wolves alive, work to keep us all health.

Written Comment: October 13, 2016. The proposed new rule change is another attempt to drive the Mexican gray wolf to extinction. The rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the

wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. What the lobos need is science-based recovery, not political meddling. Please try to remember that the recovery of the Mexican gray wolf will, in the long run, have a positive effect on the local environment.

Written Comment: October 13, 2016. Wolf reintroduction has helped echo systems thrive. Yellowstone is a prime example with the Yellowstone River being restored after wolves began keeping elk on the move and from browsing and killing young trees. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the USFWS to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Written Comment: October 13, 2016. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. The Department should work with USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. In AZ, we seem to have bureaucrats, led by our great governor and legislators, who do not understand the basic rule of common sense. Say after me, local bureaucrats are entitled to your own opinions, but not your own facts. Because I believe and act by science, I am pretty sure that there is little need for grazing land for cattle, sheep, etc. and we would all be well served by the return of wolves into our environment and eliminate animals of danger to the environment (livestock). These animals are to the soil what coal burning is to the air, out of date and doomed to fail.

Written Comment: October 13, 2016. My husband and I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and

important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please do not impede endangered species recovery.

Written Comment: October 13, 2016. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. I would like to know why this interference is occurring. The job of USFWS is to manage just that. Adding an extra layer costs more time and money and causes a still further lack of things occurring in a timely fashion. Where will the money come from? The political layer has been taking on more and more of things that should be handled by the department that was designed to do it. As well educated people, often with experience in business you know what happens in business that is large and complicated and yet the boss tries to keep his fingers in all the pies. Don't. Be sensible and reasonable and trust and allow your people - the state employees - to do their jobs.

Written Comment: October 13, 2016. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. The state has already erected a number of barriers to wolf recovery; this would be yet another hurdle for the species and the federal government. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Written Comment: October 13, 2016. The forest service tried to bring the wolf to Yellowstone in 1998. Really did work out. The cattle farms were upset because the wolf hunt the cattle for food, so they killed most of them. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Please reject this proposed rule.

Written Comment: October 14, 2016. I oppose the rule change requiring USFWS to obtain a state permit prior to releasing Mexican gray wolves, the rule change has the potential to limit the number of wolves released into the wild, thereby limiting genetic diversity. Wolves, as do all predators, play a vital part in ecosystem health, and anything which stands in the way of restoring natural balance is detrimental to the health of the

grasslands and forests of this state. I urge the Commission to abandon the potential rule change.

Written Comment: October 14, 2016. WildEarth Guardians is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. We operate an office in Tucson, AZ, have one category of members, and have 201 members and over 4,000 supporters in the state. We also have over 168,000 members and supporters nationwide, many who visit AZ. WildEarth Guardians has an organizational interest in the proper and lawful management of wildlife in AZ and across the American West. Our members, staff, and board members have significant aesthetic, recreational, scientific, inspirational, educational, and other interests in the conservation, recovery, and restoration of wildlife in AZ. Wildlands Network is a non-profit organization dedicated to ensuring a healthy future for nature and people in North America by scientifically and strategically supporting networks of people protecting networks of connected wildlands. Wildlands Network has staff in Tucson, Portal, and Flagstaff, AZ and the organization, staff, members, and board all have significant aesthetic, recreational, scientific, inspirational, educational, and other interests in the management, conservation, recovery and restoration of wildlife in AZ. Wildlands Network has over 14,064 members, with 284 members that reside in AZ, all of which are general members, which is the only category of individual membership for Wildlands Network. We appreciate your consideration of the following comments on the proposed rule, submitted on behalf of WildEarth Guardians and Wildlands Network. The views expressed are the official position of WildEarth Guardians. Likewise, the views expressed are the official position of Wildlands Network. The Commission's proposal seeks to amend AZ's existing wildlife importation permitting law and is being proposed under the auspices of ensuring the Department's continuing control over management of the state's wildlife resources. However, the proposed rule may have potentially devastating impacts upon recovery efforts for many of the State's most critically imperiled species of wildlife, including, for example, the recovery and reintroduction of federally protected Mexican wolves in AZ. With this rulemaking, the Commission is considering adding the following provision to the existing language: "D. Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements." The proposed rule thereby seeks to codify in state law a requirement that federal agencies, such as USFWS, and their employees, must obtain Commission approval via the wildlife permitting requirements of the Arizona Administrative Code and Revised Statutes before carrying out their duties under federal laws, such as the ESA, 16 U.S.C. § 1531 et seq. The proposed rule's approach is legally deficient. First, the proposed rule violates the doctrine of preemption. Second, the Commission's reliance on NM's analogous approach to requiring federal agencies to obtain state wildlife permits is in error. Finally, we note that the Commission has violated the Administrative Procedure Act (APA) with regards to the promulgation of the proposed rule, and that the Commission's actions therefore cannot serve as the foundation for the promulgation of a valid rule. Accordingly, we request the Commission withdraw the proposed rule. The proposed rule would interfere with USFWS's ability to carry out its statutory responsibilities under the ESA. As a result, the proposed rule violates our nation's foundational legal doctrine of preemption. The doctrine of preemption is a longstanding legal concept rooted in the Supremacy Clause of the

US Constitution, which states that “[t]his Constitution, and the laws of the United States . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” The Supreme Court has interpreted this provision to mean that “the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.” A federal law may preempt state law in three ways. First, Congress may expressly preempt state law by enacting a federal law that “explicitly define[s] the extent to which it intends to preempt state law.” Second, “Congress may indicate an intent to occupy an entire field of regulation, in which the States must leave all regulatory activity in that area to the Federal Government.” Third, “if Congress has not displaced state regulation entirely, it may nonetheless preempt state law to the extent that the state law actually conflicts with federal law.” Such a conflict may arise “when compliance with both state and federal law is impossible,” or “when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” Of primary relevance to the Proposed Rule at issue here are the first and third methods of preemption. Although wildlife management has traditionally been a subject of great state importance, the U.S. Court of Appeals for the Fourth Circuit has noted that “[s]tate control over wildlife . . . is circumscribed by federal regulatory power.” Thus, a state law that is either (1) expressly preempted by a federal statute, (2) in direct conflict with a federal statute, or (3) prohibitive of the accomplishment of a federally mandated objective, must fall to the “supreme law of the land,” as implemented by the federal government. While the ESA does not prohibit state regulation in the importation of wildlife outright, the ESA does directly preempt state laws and regulations addressing importation or exportation of ESA- listed species that conflict with the ESA. Section 1535(f) states, “Any state law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this chapter or by any regulation which implements this chapter, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter.” The U.S. Court of Appeals for the Ninth Circuit has interpreted this provision as not entirely forbidding state wildlife statutes, “[r]ather, it allows full implementation of [state law] so long as the [state] statute does not prohibit what the federal statute or its implementing regulations permit.” The Commission must recognize that ESA section 1535(f) prohibits, on preemption grounds, what the proposed rule attempts to achieve. First, the ESA’s express preemption provision preempts the proposed rule as written. Second, the provision preempts potential Commission permit denials against federal agencies, such as USFWS, under the proposed rule as applied. The ESA preempts, and voids, any state law or regulation concerning the importation of endangered species that prohibits that which is authorized under the Act. 20 Section 1539(j) authorizes the “release (and related transportation) of any population . . . of an endangered species . . . if the Secretary [of the Department of the Interior] determines that such release will further the conservation of the species.” The Secretary determined that the release of the endangered Mexican wolf under the experimental population provision of the ESA will further the conservation and recovery of the species. Thus, if a state law or regulation prohibits the importation of endangered Mexican wolves into a state, and thus interferes with the

release of experimental Mexican wolf populations, the ESA will supersede that state regulation. The proposed rule adds a provision to the existing Administrative Code section R12-4-402 clarifying that “[p]erforming activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.” This revision is in direct conflict with section 1535(f) of the ESA. The proposed rule, as applied in the context of Mexican wolves, regards the importation of an endangered species and could prohibit or hamper the Mexican wolf reintroduction program authorized by section 1539(j) and the Mexican wolf experimental population rule. “It is well settled that ‘when Congress legislated within the scope of its constitutionally granted powers, that legislation may displace state law.’” “The plain meaning of [the ESA’s] preemption provision is that the ESA . . . displaces those state laws regulating ‘the importation or exportation of, or interstate or foreign commerce in’ endangered species.” The Ninth Circuit Court of Appeals has held the ESA preempts a state law where it would prohibit a federally authorized activity being carried out in accordance with the ESA. Congress made its preemptive authority clear in the ESA, and a state may not impose regulations to supersede a federal program concerning endangered species. Thus, the Proposed Rule is preempted at the outset considering the plain language of ESA section 1535(f). In addition to the added language of the proposed rule being preempted by the ESA in its own right, the proposed rule is preempted by the ESA as applied as well. For example, if the Commission were to use the proposed rule as justification to prohibit the importation of endangered species authorized under the ESA’s experimental population rule, the State would effectively be directly impeding an authorized federal program. In the context of Mexican wolves, for example, this would result in the direct inhibition of a federally approved reintroduction program. A state law must fall where it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” As such, any future Commission permit denials under the proposed rule would be expressly preempted by section 1535(f) because they would effectively (1) prohibit that which is authorized under the Act, and (2) serve to impede a federally mandated program. The Department of the Interior’s (“Interior”) “Fish and Wildlife Policy,” which describes Interior’s approach to state-federal relationships with respect to all wildlife laws (including the ESA) for all Interior agencies (including USFWS), is not to the contrary. 43 C.F.R. Part 24. This policy recognizes that “Congress has charged the Secretary of the Interior with responsibilities for the management of certain fish and wildlife resources, e.g., endangered and threatened species.” Id. § 24.3(c). However, “Federal authority exists for specified purposes while State authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law.” Id. § 24.1(a). Importantly, though the policy states that, in carrying out “programs involving reintroduction of fish and wildlife,” USFWS “shall” “[c]onsult with the States and comply with State permit requirements in connection with [reintroduction programs],” the policy explicitly provides that the Secretary of the Interior need not comply with state permit requirements “in instances where [she] determines that such compliance would prevent [her] from carrying out [her] statutory responsibilities.” Id. § 24.4(i)(5)(i). As a result, though this policy shows a preference for complying with state permits, that preference is inapplicable where it conflicts with the federal law at issue. Because the Id. § 24.4(i)(5)(i) as written would conflict with the ESA, there is no preference, and certainly no requirement, that USFWS comply with state

permitting requirements. Accordingly, the Commission should withdraw the Proposed Rule on preemption grounds. The Commission states that the impetus for the proposed rule is the ongoing litigation concerning analogous wildlife importation permitting regulations applied to USFWS's Mexican wolf reintroduction and recovery program in the State of NM. However, the Commission's reliance on NM's intermediary success in obtaining a preliminary injunction in that case is in error. Notably, the decision is on appeal to the U.S. Court of Appeals for the Tenth Circuit. Additionally, USFWS and intervenors in the case (including WildEarth Guardians) have compelling arguments for why the preliminary injunction was rendered in error. We caution the Commission to avoid following in NM's footsteps in this regard, as NM is unlikely to prevail on the merits. First, as discussed above, the Commission cannot ignore that Interior's policy providing a preference for compliance with state permitting requirements contains an important exception for instances where compliance would "prevent" the Interior agencies from "carrying out" their "statutory responsibilities." The ESA requires USFWS to recover Mexican wolves. However, if the Commission denies USFWS state wildlife permits under the proposed rule, the State would effectively be preventing USFWS from carrying out the very actions it has determined are essential to recover the Mexican wolf. Among other things, wolf releases in AZ are necessary in order to improve the dwindling genetic diversity in the wild population. Without additional successful releases, the effects of inbreeding will increase and the population may not be able to survive. Second, and as also discussed above, the Commission cannot ignore the plain language of the ESA in an attempt to circumscribe federal prerogatives here. In carrying out its duties under the ESA, USFWS is charged with cooperating with the states to the "maximum extent practicable." The ESA does not allow states to exercise veto authority over USFWS's implementation of the Act. Interior's "Fish and Wildlife Policy" is not to the contrary, and, even if it ostensibly were, C.F.R. §24.4(i)(5)(i) must be read consistently with the provisions of the ESA and its implementing regulations, which make this lack of a state veto clear. As such, the Proposed Rule is an inappropriate attempt to exercise power over a federal agency that the State simply does not have. In short, the Commission's reliance on NM's recent attempts to obstruct the federal government from releasing critically imperiled Mexican wolves into that state in order to justify the proposed rule is in error and is highly vulnerable to a legal challenge. As discussed above, the Proposed Rule is in excess of the State's authority to act as a matter of federal law. However, it is also in violation of the APA. The APA "distinguishes between claims that a rule lacks conformity with an agency's statutory authority and claims that an agency failed to follow required procedures when promulgating a rule." *Samaritan Health Sys. v. Ariz. Health Care Cost Containment Sys. Admin.*, 11 P.3d 1072, 1076 (Ariz. Ct. App. 2000). While APA section 41- 1034 provides for the right to seek declaratory judgments regarding the substantive legal validity of rules, APA section 41-1030(A) provides that a rule is invalid unless it is promulgated in substantial compliance with the procedures required by the APA. See *id.*; see also, e.g., ARIZ. REV. STAT. § 41- 1034; ARIZ. REV. STAT. § 41-1030(A); *Ariz. State Univ. ex rel. Ariz. Bd. of Regents v. Ariz. State Ret. Sys.*, 349 P.3d 220, 227-28 (Ariz. Ct. App. 2015). The proposed rule represents both types of violations because it is in excess of the Commission's authority and because it is not being promulgated in compliance with the procedures required by the APA. First, for the same reasons that the proposed rule is in violation of the federal prohibition against preemption, it is also in excess of the

Commission's authority to promulgate this rule. This indicates that the proposed rule is also in violation of the substantive provisions of the APA barring agencies from engaging in rulemaking outside the legislature's grant of authority. See ARIZ. REV. STAT. § 41-1030(C) (forbidding agencies from promulgating rules "under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule."); ARIZ. REV. STAT. § 41-1001.01(A)(8) (stating in the "Regulatory bill of rights" section of the APA that a person "[i]s entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute."). The legislature could not, and in fact did not, provide the Commission with a grant of authority that would allow it to preempt the relevant provisions of the ESA. Therefore, in promulgating a rule that does just that, the Commission is acting in excess of its authority. As a result, even if the Commission does finalize the proposed rule, the Governor's Regulatory Review Council will have to strike the proposed rule down because it violates the Supremacy Clause. See ARIZ. REV. STAT. § 41-1052(D)(9) ("The council shall not approve the rule unless: ... The rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law."). With regard to the procedural violations, the Commission did not adequately provide published notice of "[t]he time during which written submissions may be made" in the Notice of Rulemaking Docket Opening. See ARIZ. REV. STAT. § 41-1021(b)(5); see also ARIZ. ADMIN. CODE § R1-1-205(B)(7) (requiring that the notice of rulemaking docket opening provide "[t]he time-frame the agency will accept written comments."). The Notice of Rulemaking Docket Opening only provides that comments will be accepted "Monday through Friday from 8:00 a.m. until 5:00 p.m." Ariz. Admin. Reg. 2569 (Sept. 16, 2016). This does not provide the date by which comments must be received, a crucial piece of information if individuals wish to have their comments considered by the Commission. This failure is a serious violation of the terms of the APA that could not be cured by the proposed rule, but we also point out that this information was not included in the proposed rule either. Therefore, the Commission left interested parties entirely unaware of the period during which they could provide comments on the proposed rule in violation of both the text and the purpose of the APA. See ARIZ. REV. STAT. § 41-1001.01 (outlining the APA's "regulatory bill of rights" that provides any person with the right to provide "written comments or testimony on proposed rules to an agency [and have] the agency adequately address those comments."); Ariz. Dep't of Revenue v. Care Computer Sys., Inc., 4 P.3d 469, 475-76 (N.M. Ct. App. 2000) (discussing public involvement purpose of the APA); Carondelet Health Servs., Inc. v. Ariz. Health Care Cost Containment Sys. Admin., 895 P.2d 133, 138, 141 (N.M. Ct. App. 1994) (same). The minimum time period for comments from the APA cannot cure this deficiency as it only provides a minimum time, "at least thirty days," and not an automatic, or even a presumptive, time limit. ARIZ. REV. STAT. § 41-1023(B); ARIZ. REV. STAT. § 41-1022(D). Furthermore, reading the "at least thirty days" language as obviating the need to provide a specific time period in the Notice of Rulemaking Docket Opening would read the express requirement that the time period be included in the Notice of Rulemaking Docket Opening out of both AZ Revised Statutes section 41-1021(b)(5) and AZ Administrative Code section R1-1-205(B)(7). Therefore, the failure to include a time by which all comments must be received is a serious violation of the APA. As a result of these shortcomings, both the procedure used in the promulgation of the

proposed rule and its substance are in violation of the APA, and the proposed rule is illegal for these reasons as well. In sum, we respectfully urge the Commission to withdraw the proposed rule and allow essential wildlife recovery programs to proceed in the State.

Written Comment: October 14, 2016. The USFWS appreciates the continued partnership of the AZ Game and Fish Department in the conservation and recovery of a number of our trust resources. For example, our agencies have a long history of working together on migratory birds, fisheries, National Wildlife Refuges, NRDA, and Mexican wolf recovery, and we expect to continue this collaborative relationship into the future. We are fortunate in our association with the AZ Game and Fish Department in that when we have had differences of opinion regarding resource management issues, we have collaborated to find amiable solutions to our differences. The proposed rule, R12-4-402, that is being considered by the AZ Game and Fish Commission would amend the current regulation which authorizes a federal agency to release wildlife in the State of AZ without a state permit, provided the release is accompanied by a federal permit. We would find it difficult to support the proposed rule change specifically because the proposed change could lead to limitations on the timing and number of releases that may be necessary for the management and ultimate recovery of the Mexican wolf. USFWS has the statutory responsibility to recover the Mexican wolf pursuant to the ESA and the regulations for the Nonessential Experimental Population of the Mexican wolf (80 Federal Register 2512, Jan. 16, 2015). We believe USFWS and the Department's work regarding recovery of Mexican wolves, as well as other species, has been exemplary without the proposed changes contemplated in R12-4-402. We fully intend to continue our praiseworthy State/Federal collaboration on natural resource management issues. However, we feel that we cannot support the proposed rule as drafted to the extent that it may limit our Federal statutory responsibilities. We appreciate the opportunity to comment and look forward to continuing our collaborative working relationship with you. **Subsequent Comment: December 1, 2016.** On behalf of the USFWS, this office offers this supplement to the USFWS's October 14, 2016 comments on proposed rule R 12-4-402. R 12-4-402 would amend the current regulation which authorizes a federal agency to release wildlife in AZ without a state permit provided the release is accompanied by a federal permit. The amendment would "clearly state that a permit or license issued by the Department or the Department of Agriculture is required when conducting any activity listed under R1 2-4-402(A) with live wildlife to ensure the Department maintains sovereignty over AZ's wildlife and wildlife habitat." We wish to clarify that USFWS has authority, pursuant to federal statutes and regulations, to engage in all activities regarding the reintroduction of the Mexican wolf in AZ. Pursuant to this authority, the Service may import, export, hold, and transfer Mexican wolves in the State of AZ; and release Mexican wolves on federal lands in AZ without a State permit. These actions are intended to fulfill the USFWS's statutory responsibility to recover the Mexican wolf pursuant to the ESA and the regulations for the Nonessential Experimental Population of the Mexican Wolf (80 Federal Register 2512, Jan. 16., 2015). The Interior's policy on state-federal relations (43 C.F.R. 24.4(i)(5)(i)) contemplates that the USFWS will comply with State permit requirements when "carrying out research programs involving the taking or possession of fish and wildlife or programs involving reintroduction of fish and wildlife," "except in instances where the Secretary

of the Interior determines that such compliance would prevent him from carrying out his statutory responsibilities." This policy strikes a balance, recognizing a State's broad trustee and police powers over wildlife within its borders while at the same time reflecting the fundamental principle that the federal government retains ultimate responsibility for management of wildlife on public lands. Further, the ESA confers on the federal government wildlife management responsibilities for listed species that preempt contrary state regulation. Of course, once a species is delisted, management responsibilities return to the States except where federal law provides federal agencies responsibility for management on public lands. USFWS will not be able to carry out its responsibilities under the ESA if it is precluded from taking actions to promote the conservation of Mexican wolves because AZ has not issued a permit. Based on the best available scientific information, USFWS needs to improve the genetic diversity and reduce the kinship of the Mexican wolves in the wild to achieve recovery. USFWS is unable to address these genetic concerns without the ability to release wolves from captivity in the Mexican Wolf -Experimental Area in both NM and AZ. If R12-4-402 is passed, and USFWS is denied a permit from Arizona pursuant to R I 2-4-402, we believe USFWS could continue to move forward with wolf recovery efforts.

Written Comment: October 14, 2016. I worked for years to help bring about the reintroduction of the Mexican wolf. I both encouraged officials of the AZ Game and Fish and USFWS to release wolves in the appropriate area and launched an education program to educate the public to support efforts to bring back the lobo. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Written Comment: October 14, 2016. Meddling in the wolf recovery program is typical of bureaucracy. The Commission's proposed requirement to USFWS would be an inferior disservice to the AZ public, especially supporters of the Department. We urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please reject this bureaucratic proposed rule.

Written Comment: October 14, 2016. I rarely send these sorts of messages, but I believe strongly in the preservation of endangered species. We have an obligation as humans to prevent the extinction of our fellow creatures on this planet; we must be stewards and not short-sighted, careless squanderers of our biodiversity. So I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please reject this proposed rule.

Written Comment: October 14, 2016. This proposed rule appears to be nothing more than a bureaucratic obstacle to a federal agency with a duty to recover the Mexican gray wolf. The rule is unneeded because the Department already has the ability to work cooperatively with, and provide input to, USFWS if it so chooses. Even worse, the rule is a waste of resources at both the state and federal level. Please reject this proposed rule.

Written Comment: October 14, 2016. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. It is time for science to be respected without unnecessary hobbles. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem that are vital to maintain a balance not just in the animal kingdom but with the plants and land. AZ needs to work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please reject this proposed rule.

Written Comment: October 14, 2016 (original comment amended by commenter and resubmitted October 20, 2016). On behalf of the Grand Canyon Chapter of the Sierra Club, Center for Biological Diversity, Western Watersheds Project, the Southwest Environmental Center, Western Wildlife Conservancy, The Wolf Conservation Center, and the Grand Canyon Wolf Recovery Project, and pursuant to § 41-1023.B of the Arizona Administrative Procedure Act (APA), I submit the following amended comments in response to the Arizona Game and Fish Commission's (Commission) proposal to amend R 12-4-402. Our amended comments withdraw our point that the notice of proposed rulemaking did not include the full text of the rule and they add the Rio Grande Chapter of the Sierra Club to the comments, per an email sent to you on October 16, 2016 by Sandy Bahr of the Grand Canyon Chapter of the Sierra Club; otherwise, the substance of these comments are

the same as those we submitted on October 14, 2017. A description of the proposed rule was published in the Arizona Administrative Register on September 16, 2016. 22 A.A.R. 2559-2560. If promulgated, the rule would require federal agencies to obtain state permits before releasing wildlife. *Id.* at 2559. The Commission has apparently proposed the rule to thwart the release of additional Mexican gray wolves into the wild by attempting to impose an ill-considered administrative barrier to such releases. While we use the Mexican gray wolf to highlight the shortcomings of the proposed rule, the comments offered here apply to any situation in which the proposed rule were utilized to interfere with federal agencies that deemed wildlife releases necessary to fulfill their federal conservation mandate under the Endangered Species Act or other federal laws. We highlight the circumstances surrounding the Mexican gray wolf and its perilous plight to explain why both the process and the substance of the rule are fatally flawed, and why the Commission should either remand the rule for further proceedings in compliance with the Arizona Administrative Procedure Act or simply decline to adopt it. In compliance with the Rules of the Arizona Game and Fish Commission, R12-4-602, we provide the following information concerning the signatories to these comments: The Grand Canyon Chapter of the Sierra Club is headquartered in Phoenix, AZ and has more than 11,000 paid members and an additional 34,000 supporters who receive information from the Chapter and take action in support of the Chapter's conservation goals. All 11,000 of the paid members and the 34,000 supporters are located in AZ. These comments represent the official position of the Grand Canyon Chapter. The Center for Biological Diversity is headquartered in Tucson, AZ and has approximately 48,575 members, 2,267 of which are located in AZ. These comments represent the official position of the Center for Biological Diversity. Western Watersheds Project is based in Hailey, Idaho and has an office in Tucson, AZ; it has approximately 50 members located in AZ. These comments represent the official position of Western Watersheds Project. The Southwest Environmental Center is headquartered in Las Cruces, NM and has approximately 2,000 paid members and an additional 7,000 supporters who receive information from SWEC and take action in support of SWEC's conservation goals. Although the majority of the Center's supporters live in NM, many are located in AZ. All of the Center's supporters are concerned about the continued survival of the Mexican gray wolf in AZ. These comments represent the official position of the Southwest Environmental Center. Western Wildlife Conservancy is a non-profit wildlife conservation organization located in Salt Lake City. It was founded in 1996. WWC is not membership-based, but has numerous supporters in the West. These comments represent the official position of the Western Wildlife Conservancy. The Wolf Conservation Center (WCC) is a 501(c)(3) not-for-profit environmental education organization headquartered in New York. The WCC participates in the federal Species Survival Plans for the Mexican gray wolf and has played a critical role in preserving and protecting Mexican gray wolves through carefully managed breeding, research, and reintroduction since 2003. The WCC is not membership-based, but has thousands of supporters from the southwest and over 3 million supporters on social media. These comments represent the official position of the WCC. The Grand Canyon Wolf Recovery Project is a non-profit organization based in Flagstaff, representing over 2,000 AZ wolf supporters. The Grand Canyon Wolf Recovery Project is dedicated to bringing back wolves to help restore ecological health in the Grand Canyon region. These comments represent the official position of the Grand Canyon Wolf Recovery Project.

The Rio Grande Chapter of the Sierra Club is headquartered in Albuquerque, NM , with an additional staff office in Santa Fe, NM . The chapter has approximately 7,500 members located throughout NM and in the El Paso, Texas area. The Sierra Club was founded in 1892 and is the oldest and largest conservation organization in the country, with over 2.4 million members and supporters nationally. These comments represent the official position of the Rio Grande Chapter of the Sierra Club. With only 97 individuals in the wild, the Mexican gray wolf is one of the most, if not the most, endangered mammal in North America, and it requires immediate and effective intervention, including additional releases into the wild, to ensure its survival. We highlight the serious plight of the wolf, the urgency of recovery measures, and the USFWS mandatory duty to recover the wolf in the wild to provide context for the proposed rule and for our position that the rule and the assumptions on which it is based are fundamentally flawed. In short, the proposed rule unnecessarily risks putting the Department on a collision course with USFWS as USFWS discharges its mandatory recovery duties under the ESA. Accordingly, we strongly recommend that the Department decline to finalize the rule and continue to cooperate with the USFWS regarding the management of threatened and endangered species. Mexican gray wolves average 50 to 90 pounds and typically stand 25 to 32 inches tall. See Endangered and Threatened Wildlife and Plants; Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, 80 Fed. Reg. 2512, 2514 (Jan. 16, 2015) (10(j) Rule). Mexican gray wolves are generally believed to have historically inhabited the southwestern United States and Mexico. *Id.* At the northern limits of their historic range, Mexican wolves ranged north into the southern Rocky Mountains and Grand Canyon regions of present-day northern AZ and NM and southern UT and CO. *Id.* at 2538. Once numbering in the thousands, the Mexican wolf population declined rapidly in the early and mid-1900s due to a federal, state, and private campaign that employed poisons and unlimited hunting and trapping to kill wolves and other predators. Ex. 1, Ch. 1 at 13 (excerpts from the Final Environmental Impact Statement for the Proposed Revision to the Regulation for the Nonessential Experimental Population of the Mexican Wolf (2014) (EIS)). These efforts eradicated the species from the United States by the early 1970s, leaving only a small population in Mexico. *Id.* USFWS listed the Mexican wolf as endangered under the ESA in 1976, triggering mandatory obligations ultimately to recover the wolves in the wild. By 1980 Mexican gray wolves were extirpated in Mexico as well. However, between 1977 and 1980, the United States and Mexico initiated a program to capture the last known wild Mexican gray wolves in Mexico, supplement that population with Mexican gray wolves held in captivity in both countries, and establish a captive-breeding program to prevent the subspecies' extinction and to provide Mexican gray wolves for reintroduction into the wild. 80 Fed. Reg. at 2515. Just seven wolves held in that captive-breeding program constitute the founding genetic stock for every Mexican wolf alive today. *Id.* Thus, efforts to enhance the captive population for purposes of release and recovery of the subspecies in the wild, have been going for well over three decades. FWS in 1982 issued a document styled as a "recovery plan" for the Mexican gray wolf that USFWS admitted was incomplete and failed to establish any benchmark for full subspecies recovery. Instead, it set forth a stopgap objective of re-establishing a viable, self-sustaining population of at least 100 Mexican wolves in the wild within the subspecies' historic range. To implement that stopgap measure, USFWS in 1998 released 11 captive Mexican gray wolves into the wild in a designated Blue Range Wolf Recovery Area

straddling the AZ/NM border pursuant to ESA section 10(j)'s experimental population provision, which authorizes modification of the Act's otherwise applicable prohibitions to facilitate such reintroductions. 16 U.S.C. § 1539(j). Contemporaneous with initiation of this reintroduction program, USFWS promulgated a rule in 1998 under section 10(j) to guide management of the reintroduced population. Over the ensuing years, USFWS released additional Mexican wolves into the Recovery Area. See 80 Fed. Reg. at 2516. USFWS expected the reintroduced population to reach the initial 100-wolf objective by 2006, but the population numbered only 83 wolves as of 2013. Ex. 1, Ch. 1 at 18. Further, as USFWS itself has stated, "even at the 1982 Recovery Plan objective of 'at least 100 wolves,'" "the experimental population is considered small, genetically impoverished, and significantly below estimates of viability appearing in the scientific literature." Id. at 22. As this suggests, the population is neither "viable nor self-sustaining." 80 Fed. Reg. at 2551. Numerous factors have contributed to the precarious plight of the Mexican gray wolf including insufficient releases of captive wolves into the wild to improve the wild population's numbers and genetic diversity. First, the small number of individual wolves that founded the captive and reintroduced populations, along with subsequent failure to capitalize on the full genetic potential represented by those founders, has led to inbreeding and loss of genetic diversity. The Mexican wolf captive-breeding program "was not managed to retain genetic variation until several years into the effort." As a result, USFWS estimates that the captive population retains only three founder genome equivalents—i.e., more than half of the genetic diversity of the seven original founders has been lost from the population. See Ex. 1, Ch. 1 at 20; see also Ex. 2 at 11, 60 (2010 Mexican Wolf Conservation Assessment, excerpts). The reintroduced wild population is in even worse shape, with 33 % less representation of the genetic diversity of the seven founders than the captive population. Ex. 1, Ch. 1 at 21. On average, the wolves in the reintroduced population "are as related to one another as outbred full siblings are related to each other." Id. As a result, the sole Mexican wolves existing in the wild suffer from inbreeding depression, including reduced litter sizes, "and without management action to improve [their] genetic composition, inbreeding will accumulate and [genetic diversity] will be lost much faster than in the captive population." Id. Addressing the Mexican wolf's genetic imperilment requires an active program of releasing more genetically diverse wolves into the wild to capitalize on the remaining genetic potential available in the captive population before it is further depleted as captive wolves grow old and die. Thus, to satisfy its duty to recover the wolf, USFWS must release more wolves into the wild and it must do so despite the proposed imposition of a state permit. These genetic threats are compounded by excessive levels of Mexican gray wolf removals and mortalities. Since the inception of the reintroduction program, illegal killing has been the largest overall source of mortality. Additionally, USFWS has supplemented that unlawful mortality with its own removal of 160 wolves from the reintroduced population since 1998 through killing or capture. Ex. 1, Ch. 1 at 14-15, 18. As USFWS's 2010 assessment of the reintroduction program observed, although some such non-lethal removals were theoretically temporary, they "have the same practical effect on the wolf population as mortality if the wolf is permanently removed (as opposed to translocated)—that is, the population has one less wolf." Id. Accordingly, the agency concluded, "[c]ombined sources of mortality and removal are consistently resulting in failure rates at levels too high for unassisted population growth." Ex. 2 at 11. FWS and recognized experts in

wolf biology recognize that “[t]he recovery and long- term conservation of the Mexican wolf in the southwestern United States and northern Mexico is likely to depend on establishment of a metapopulation or several semi-disjunct populations spanning a significant portion of its historic range in the region.” 80 Fed. Reg. at 2551. Such a metapopulation—a group of distinct, spatially separated populations that are connected by dispersal, is important to species survival because it facilitates “the maintenance of genetic diversity” and “because it allows for populations to exist under different abiotic and biotic conditions, thereby providing a margin of safety that random perturbation (or, variation) affects only one, or a few, but not all, populations.” Ex. 2 at 12. Peer-reviewed, published scientific information also provides a roadmap for establishing such a Mexican wolf metapopulation. A key study extensively relied upon by USFWS, Carroll, et al. (2014), stated that the southwestern United States has three areas with long-term capacity to support populations of several hundred wolves each. Ex. 3 at 78 (Carroll 2014). These three areas, each of which contains a core area of public lands subject to conservation mandates, are in eastern AZ and western NM (i.e., Blue Range, the location of the current wild population), northern AZ and southern UT (Grand Canyon), and northern NM and southern CO (Southern Rockies). Id.; see generally Ex. 4 (Carroll 2006). USFWS’s own selected science team echoed this conclusion in 2012 during the agency’s most recent Mexican wolf recovery planning effort. That blue-ribbon science team produced a draft recovery plan in 2012 based on rigorous population modeling that echoed the peer-reviewed scientific literature’s call for a metapopulation of 750 wolves comprising three core populations of 200 to 300 each. Scientific studies on which the draft plan was based identified suitable habitat for such a metapopulation in the Blue Range, Grand Canyon and Southern Rockies regions. Ex. 5 (2012 Draft Recovery Plan, excerpt). The USFWS updated its 1998 10(j) rule in 2015. The record for the USFWS’s new 10(j) rule demonstrates that USFWS closely coordinated with the Commission during the rulemaking process and adopted the Commission’s demands in the final 10(j) it published in 2015, even where those demands were at odds with the recommendations of recognized wolf experts and peer-reviewed studies. For example, USFWS decided to limit Mexican gray wolf to a single population capped at 300 to 325 individuals, all located south of Interstate 40, and further stated that removal and “translocation to other Mexican wolf populations” would be the preferred method of enforcing the population cap, but “all management options,” apparently including killing, may be exercised. USFWS’s decision to limit the area in which Mexican wolves may range to lands in AZ and NM south of Interstate 40, precluded Mexican wolf access to needed recovery habitat in the Grand Canyon and Southern Rockies regions. See 80 Fed. Reg. at 2540. In support of this limitation, USFWS on May 6, 2015, issued itself a permit under ESA section 10(a)(1)(A), which authorizes otherwise prohibited “takings” of listed species, allowing for the capture of any Mexican wolf that establishes a territory north of Interstate 40. 16 U.S.C. § 1532(19) (defining “take” under ESA). The 10(j) rule that USFWS promulgated in 2015 further adopted a number of new authorizations for the “taking” of Mexican wolves even in the designated experimental population area south of Interstate 40, including the new provision requested by AZ for taking Mexican wolves determined to have an “unacceptable impact” on a wild game herd—a condition to be determined by a state game agency based upon “ungulate management goals, or a 15 % decline in an ungulate herd as documented by a State game and fish agency.” 80 Fed. Reg. at 2558. Finally, USFWS adopted AZ’s

requested phased approach for the release of Mexican wolves in AZ west of Highway 87, which delays the initial release and dispersal of wolves into an area encompassing half of the suitable wolf habitat identified by USFWS on non-tribal land in AZ south of Interstate 40. *Id.* at 2563. The 10(j) rulemaking for the Mexican gray wolf is just one example of a long history of communication and coordination between the Department and USFWS concerning threatened and endangered species in AZ. This documented history raises legitimate questions about the need for the proposed rule, questions that are particularly appropriate given that the notice of rulemaking provides no more than a vague, unsubstantiated concern that USFWS may not cooperate in the future. This free-floating concern, untethered to documented facts, does not amount to rational decision making and would violate the APA. As explained below, the proposed rule suffers from a number of fatal flaws, including the fact that its use as an impediment to necessary future Mexican gray wolf releases (or necessary releases of any other species listed under the ESA) would conflict with the Supremacy Clause of the U.S. Constitution; that the absence of facts or studies substantiating the need for the proposed rule renders it arbitrary and capricious; and that the notice of proposed rulemaking did not include all of the required information. Finally, the proposed rule invites unnecessary administrative complication, uncertainty and even litigation risk, all of which increase costs and burdens to AZ taxpayers. It is simply bad public policy and should be rejected. The purpose for the proposed rule is not clearly stated, but its impetus appears to be the Commission's desire to impede further releases of Mexican gray wolves in the state. However, as noted above, the wolf is listed as "endangered" under the ESA, which triggers USFWS's mandatory duty to conserve, i.e., recover, the wolf in the wild. As explained above, the 10(j) rule that governs USFWS's management and recovery of the wolf, as well as the peer-reviewed studies of recognized wolf experts, specifically recognize the critical need for additional wolf releases to address the genetic poverty of the existing wild population and, accordingly, provides for additional releases. See 80 Fed. Reg. at 2512. AZ's attempt to impede these necessary releases by erecting unnecessary administrative barriers would violate the Supremacy Clause. The Supreme Court has long held that in matters related to wildlife management, state law must bow to the requirements of federal law under the Supremacy Clause of the U.S. Constitution. For example, in *Kleppe v. New Mexico*, 426 U.S. 529, 543–46 (1976), the court rejected the state's challenge to the constitutionality of the federal Wild-free Roaming Horses and Burros Act, which allowed BLM to prohibit the state from enforcing state law and removing wild horses from federal lands. The Court explained: Unquestionably the States have broad trustee and police powers over wild animals within their jurisdictions. But . . . those powers exist only in so far as (their) exercise may be not incompatible with, or restrained by, the rights conveyed to the federal government by the constitution. No doubt it is true that as between a State and its inhabitants the State may regulate the killing and sale of (wildlife), but it does not follow that its authority is exclusive of paramount powers. Thus, the Privileges and Immunities Clause, precludes a State from imposing prohibitory licensing fees on nonresidents shrimping in its waters, the Treaty Clause, permits Congress to enter into and enforce a treaty to protect migratory birds despite state objections, and the Property Clause gives Congress the power to thin overpopulated herds of deer on federal lands contrary to state law. We hold today that the Property Clause also gives Congress the power to protect wildlife on the public lands, state law notwithstanding. *Kleppe*, 426 U.S. at 543–46. *Accord* *Hancock v. Train*, 426 U.S. 167,

167 (1976) (holding that Kentucky could not forbid a federal facility from operating without a state air quality permit because “prohibiting operation of the air contaminant sources for which the State seeks to require permits . . . is tantamount to prohibiting operation of the federal installations on which they are located) (citations and quotations omitted). A long line of federal circuit court opinions recognizes the supremacy of federal laws over state laws in the context of federal enforcement of the ESA. See, e.g. *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 851–52 (9th Cir. 2002), opinion amended on denial of reh'g, 312 F.3d 416 (holding that “to the extent [a state law banning certain methods of trapping wildlife that prey on endangered species] prevents federal agencies from protecting ESA-listed species, it is preempted by the ESA[.]” because “[t]he Supremacy Clause of the Constitution, Art. VI, cl. 2, invalidates state laws that ‘interfere with, or are contrary to,’ federal law”). In *Gibbs v. Babbitt*, 214 F.3d 483, 499 (4th Cir. 2000), the court rejected a challenge to a USFWS regulation forbidding the “take” of red wolves and explained the constitutional source of federal authority over wildlife: We are cognizant that states play a most important role in regulating wildlife many comprehensive state hunting and fishing laws attest to it. State control over wildlife, however, is circumscribed by federal regulatory power. In *Minnesota v. Mille Lacs Band of Chippewa Indians*, the Supreme Court recently reiterated that “[a]lthough States have important interests in regulating wildlife and natural resources within their borders, this authority is shared with the Federal Government when the Federal Government exercises one of its enumerated constitutional powers.” 526 U.S. 172, 204 (1999). In *Mille Lacs*, the Court upheld Chippewa Indian rights under an 1837 treaty that allowed the Chippewa to hunt, fish, and gather free of territorial, and later state, regulation. *Id.* These Indian treaty rights were found to be ‘reconcilable with state sovereignty over natural resources.’ *Id.* at 205. In light of *Mille Lacs* and *Hughes*, the activity regulated by § 17.84(c)—the taking of red wolves on private property—is not an area in which the states may assert an exclusive and traditional prerogative in derogation of an enumerated federal power. *Gibbs*, 214 F.3d at 499–500; see also *Wyoming v. Livingston*, 443 F.3d 1211, 1227 (10th Cir. 2006) (overturning state trespass prosecution of federal wildlife officers engaged in wolf monitoring under the doctrine of Supremacy Clause immunity, and noting that “Supremacy Clause immunity does not require that federal law explicitly authorize a violation of state law.”); *Strahan v. Coxe*, 127 F.3d 155, 168 (1st Cir. 1997) (“By including the states in the group of actors subject to the Act’s prohibitions, Congress implicitly intended to preempt any action of a state inconsistent with and in violation of the ESA.”); *United States v. Brown*, 552 F.2d 817, 823 (8th Cir. 1977) (upholding defendant’s conviction for unlawful hunting in Voyageurs National Park, despite defendant’s valid state hunting license, because “[u]nder the Supremacy Clause the federal law overrides the conflicting state law allowing hunting within the park.”). AZ state courts also recognize that there is no dispute about the federal preemption of state law. *Defs. of Wildlife v. Hull*, 18 P.3d 722, 737 (Ariz. Ct. App. 2001) (“[f]ederal preemption is found where the state law is an obstacle to the accomplishment and execution of the full objectives of Congress”) (citations and quotations omitted)). This long line of authority contradicts the Commission’s working assumption that it can impose a permit system on the USFWS to impede further releases of Mexican gray wolves, or any other listed species, where such releases into the wild are necessary to ensure the species’ recovery. Using the proposed rule in this way would be a futile effort to extend the Commission’s authority beyond its reach and intrude on

federal sovereignty in violation of the Supremacy Clause. The Commission should reject the rule and instead continue to work with USFWS cooperatively, within the lawful scope of its authority. The Arizona Administrative Procedure Act constrains the boundaries of state agencies' regulatory action. As the Arizona Court of Appeals explained in *Samaritan Health Sys. v. AZ Health Care Cost Containment Sys. Admin.*, No. 1 CA-CV 12-0031, 2013 WL 326012, at *4 (Ariz. Ct. App. Jan. 29, 2013) (unpublished): An agency acts arbitrarily and capriciously when it does not examine 'the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.' *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted). In the context of a federal agency regulation, a rule is arbitrary and capricious if 'the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.' *Id.* Under the APA, "[t]he court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion." Ariz. Rev. Stat. § 12-910(E). See also *Ariz. State Univ. ex rel. Ariz. Bd. of Regents v. Ariz. State Ret. Sys.*, 349 P.3d 220, 227–28 (Ariz. Ct. App. 2015) (noting that "[a] rule is invalid unless it is made and approved in substantial compliance with the [APA's procedures], unless otherwise provided by law.") Of course, an agency may not engage in rulemaking in area over which it has not authority to act, for example, where it intrudes on areas within the authority of federal agencies. A.R.S. § 41-1030.C.1; see also discussion in Point II, above, regarding the Supremacy Clause. As initial matter, the Commission has failed to provide a purpose for the proposed rule, leaving the rule's goal or anticipated result unclear. Not only does this omission leave questions about the fundamental need for the proposed rule, but it undermines efforts to determine whether even the limited conclusory statements in support of the proposed rule meet the rule's purpose. This lack of clarity makes it impossible to discern a "rational connection" between the facts found and the choice made (initiation of a new permit system) exists, a flaw which renders the proposed rule arbitrary and capricious. To the extent the purpose of the proposed rule can be inferred from other text in the notice, the Commission may have intended that the proposed rule would encourage enhanced cooperation between the Commission or the Department and USFWS. See 22 A.A.R. at 2559 ("Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposed to strengthen its rules . . ."). If this is the intent, a better approach that avoids the constitutional violation would be to propose reasonable rules that directly facilitate such cooperation, or pursue nonregulatory measures to address any perceived shortcomings in the Commission's relationship with USFWS, neither of which the Commission apparently examined. Instead, the proposed rule overshoots the purported problem with excessive regulation and unnecessarily raises a host of costs, complications and risk of litigation. At any rate, if the purpose of the rule is to encourage consultation between the USFWS and the Department, it is a solution in search of a problem. USFWS has long consulted with the Department about management of threatened and endangered species. In the case of the Mexican gray wolf, USFWS even

incorporated the Department's management recommendations, including recommendations it had earlier rejected as detrimental to the wolf's recovery, in the 2015 10(j) rule. More specifically, after issuance of the proposed 10(j) rule and draft environmental impact statement—and during the public comment period—FWS entered into extended discussions with AZ state officials about the terms of its final rule. Ex. 6 (collecting correspondence between the Department and USFWS, including USFWS-AZ Aug. 26, 2014 email correspondence; AZ Proposed EIS Alternative (Apr. 2014); Sept. 24, 2014 public meeting transcript where USFWS admits to being in “negotiations with AZ Game and Fish” over rule; AZ letter of Sept. 30, 2014 stating that it “has continued to negotiate changes to the proposed rule that best protect state interests.”; March 2014 email from Ben Tuggle, USFWS Regional Director, to Dan Ashe, USFWS Director, noting that USFWS will ensure “absolute state concurrence” before proposing alternative to expand boundary north of Interstate 40.) The discussions between the Department and USFWS ultimately led to USFWS's inclusion in the 10(j) rule of a population cap of 300 wolves; a provision allowing the state to take Mexican gray wolves that, in AZGFD's view, negatively impact game such as deer and elk; and also a phased approach to limit dispersal of wolves in AZ to areas west of Highway 87 based on similar concerns about impacts on elk hunting. Thus, the Commission's apparent concern about USFWS's failure to consult with the Department regarding management of threatened and endangered species is belied by this recent example of USFWS's repeated consultation with the Department and adoption of the Department recommendations, even where evidence indicated that such measures were harmful to the wolf. The Commission cites no factual basis for any concern that “federal agencies may become more resistant to cooperating with the states,” 22 A.A.R. at 2559, and given this example, it is hard to see how it could lodge such a complaint. The proposed rule does not meet the APA's “substantial evidence” test. A.R.S. § 12- 910(E). In fact, the notice of proposed rulemaking appears to be entirely free of evidence. It admits that the Commission “did not rely on any study in its evaluation of or justification for the rules.” Additionally, the “preliminary summary” of the economic and other impacts contains only conclusory statements that not only fail to cite support but are contrary to the facts – in some cases they even contradict prior statements by ADWR itself. See 22 A.A.R. at 2559. First, the notice asserts that the proposed rule “protects native wildlife in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.” 22 A.A.R. at 2559. Yet the Commission has provided no evidence for public review that wildlife released by federal agencies has caused any of these alleged harms. Indeed, with respect to the 18-year-old Mexican gray wolf reintroduction program, the Department has concluded that the wolves have had little impact on “management of ungulate herds for a harvestable surplus by members of the public,” that available evidence identifies “no discernible impact” from Mexican wolf predation on elk, the wolves' principal prey, in the Blue Range since reintroduction, and that hunter visitation and success rates in the reintroduction area are stable or increasing. See Ex. 1, Ch. 4 at 49-52. Likewise, the Commission provided no evidence that wildlife released by federal agencies may threaten public health or safety. With respect to the Mexican gray wolf, the Commission provided no evidence that the wolves had harmed members of the public or posed a health or safety threat. Indeed, there have been no documented cases of wolves killing people in North America

in the twentieth century. As one researcher has concluded, the risk of wolf attacks in North America is “very low, as recent cases are rare, despite increasing numbers of wolves.” Ex. 7 (Linnell study). Further, “[w]hen the frequency of wolf attacks on people is compared to that from other large carnivores or wildlife in general it is obvious that wolves are among the least dangerous species for the size and predatory potential.” Id. Additionally, the environmental impact statement for the 10(j) rule concluded that “[n]o human injuries from a wolf . . . and no incidents of predatory behavior or prey testing directed at humans have been reported or documented in the Mexican wolf experimental population.” Ex. 1, Ch. 4 at 66-69 (concluding also that the risk of wolves transmitting disease is low). Second, the notice also asserts that the proposed rule “will benefit the Department by ensuring the Commission maintains sovereignty over Arizona’s wildlife.” 22 A.A.R. at 2559. However, as explained above, the extent of Arizona’s sovereignty over wildlife within its borders, and the supremacy of federal law in some circumstances, is a matter of longstanding and well-established law. The proposed rulemaking neither changes that law nor contributes to its application or interpretation, much less “ensure” the state’s sovereignty. Third, the Commission “determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking” and that “there are no costs associated with the rulemaking.” Id. The Commission, however, fails to support this conclusion with the requisite explanation or evidence, and it is contrary to fact. If, as may be the case, the purpose of the rule is to encourage better coordination with USFWS, the Commission should have proposed rules that directly facilitated such cooperation, an option that would not impermissibly intrude on USFWS’s sovereignty to manage threatened and endangered wildlife. Alternatively, as noted above, it could have sought nonregulatory means to address whatever concerns the Commission has. Finally, the Commission’s conclusion that the establishment and administration of an entirely new permit system for wildlife releases would be cost free strains credibility and smacks of irrational decision making. Indeed, the Commission has offered no evidence that it has even examined the cost of permit administration or presented the facts on which it based its determination. At least two additional flaws undermine the proposed rule. First, while the proposed rule would create, and require the Department to administer, a new permit system for wildlife releases, it fails to specify any standards for granting or denying a permit. The absence of such standards virtually guarantees the arbitrary and capricious implementation of the proposed rule, should it be finalized. Similarly, the proposed rule provides no administrative mechanism or process for administering the new permit system. The Commission must provide further detail about the standards and processes by which the Department would administer the proposed rule, which, among other things, would be a basic factor in a full assessment of the costs associated with implementation of the proposed rule. The Notice of Proposed Rulemaking demonstrates that the proposed rulemaking relies on inaccurate information and conclusions. These inaccuracies undermine both the public’s ability to understand the proposed rule and its impacts, and to provide informed comment, the fundamental prerequisites to rulemaking. Accordingly, the administrative process for the proposed rule is fatally flawed and the Commission must reinstate the rulemaking process with the required information pursuant to A.R.S. § 41-1022.E (noting that substantial changes to proposed rule require supplemental notice and additional public comment period); see also A.R.S. § 41-1030.A (“[a] rule is invalid unless it is made and approved in substantial

compliance with,” among other provisions, A.R.S. § 41-1022.A). The notice of rulemaking includes a question about “[w]hether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law.” In response, the Commission erroneously claims that “[f]ederal law is not directly applicable to the subject of the rule.” 22 A.A.R. at 2560. In fact, the proposed rule focuses entirely on Arizona’s authority to manage wildlife in the face of federal agencies’ discharge of their mandatory duties under federal law, in particular, the ESA. The rule also purports to impose administrative hurdles that would place more stringent requirements on wildlife releases than required by federal law, i.e., the necessity of obtaining a permit from the Department, and it directly implicates the Supremacy Clause of the U.S. Constitution, under which federal law preempts conflicting state laws. The Commission’s failure to respond to this question accurately and to disclose the intertwined relationship and inevitable conflict with federal law is misleading and undermines the public’s ability to fully understand and comment on the proposed rule. Further, the notice’s preliminary summary of the economic, small business and consumer impact of the rule falls so far short of the requirements of the Governor’s Regulatory Review Commission that it should be supplemented as part of a reinitiation of the rulemaking process instead of proceeding to what may ultimately be rejection by the Council. See A.R.S. § 41- (stating that the Council “shall not approve the rule” unless it complies with the detailed requirements of government the economic, small business and consumer impact statement). The APA provides specific requirements for the impact analysis. Pursuant to A.R.S. § 41-1055.A, the impact statement summary must include the following information, none of which appears in the notice of rulemaking: the conduct and its frequency of occurrence that the rule is designed to change. The harm resulting from the conduct that the rule is designed to change and the likelihood it will continue to occur if the rule is not changed. The estimated change in frequency of the targeted conduct expected from the rule change. A.R.S. § 41-1055.B.1-7 requires even more detailed information in the statement itself, yet none of this information is presented in the notice for public review and comment. This omission is more than a technical error. If the Commission had accurately provided the required information, it would have exposed the rule’s inevitable conflict with federal law and the lack of need for the rule, among other things, and facilitated the public assessment of the Commission’s conclusions. Absence of data is no excuse for failure to complete the required assessment; instead the agency must explain “the limitations of the data and the methods that were employed in the attempt to obtain the data” and a characterization of “the probably impacts in qualitative terms. A.R.S. § 41-1055.C. The Commission has failed to provide this information as well. Finally, A.R.S. § 41-1052.D1-10 includes ten requirements that must be met before the Council can approve the rule. The final rule must include, among other things, a comprehensive and accurate impact statement; a demonstration that the probable benefits of the rule outweigh its probable costs, and that the agency has selected the alternative that imposes the least burden and costs; that the rule is written in a manner that is “clear, concise and understandable to the general public;” and that the rule is not more stringent than a corresponding federal law. The Commission has yet to address the ten requirements of the rule, and to the extent it did so in response to a specific query in the notice about the applicability of federal law to the rule, its statement is erroneous. See discussion above. The notice of proposed rulemaking fails to document any

studies or facts that support the necessity for this rule. Instead, it appears that the proposed rule is a symbolic attempt to increase political pressure on USFWS and to influence the way that USFWS carries out its mandatory duties under the ESA. Rulemaking toward this end, however, is excessive, arbitrary and ultimately futile given the supremacy of the ESA recovery mandate. In the end, it will likely lead to further conflict, negatively impact the existing and future working relationship between USFWS and the Commission and Department, and increase the risk of costly litigation. In fact, a similar permit provision promulgated by the state of NM has sparked litigation in both the federal District of NM and the Tenth Circuit Court of Appeals. *NM Dep't of Game and Fish v. U.S. Dep't of Interior*, Case No. CV 16-00462 WJ/KBM. One of the issues in that case is whether the state wildlife agency has the authority to block the USFWS's release Mexican gray wolves pursuant to the state permit requirement. We suggest that, at a minimum, the Commission await the outcome of the NM litigation before promulgating a rule that may well mire it in the same kind of costly litigation in which NM is now embroiled. Finally, the rule is also contrary to the mission of the agency: "To conserve Arizona's diverse wildlife resources. . . ." The Commission has not demonstrated that the proposed rule will result in its conservation or facilitate the maintenance of diverse wildlife resources; indeed, it has not even addressed the issue. **Written Comment: October 16, 2016.** Rio Grande Chapter of Sierra Club should also be included as a signatory to the attached comments, which were originally filed on Friday. Here is the information. The Rio Grande Chapter of Sierra Club is headquartered in Albuquerque, New Mexico, with an additional staff office in Santa Fe. Members number approximately 7,500 and are located throughout New Mexico and El Paso, Texas. Sierra Club was founded in 1892 and is the oldest and largest conservation organization in the country with over 2.4 million members and supporters nationally. These comments represent the official position of the Rio Grande Chapter. **Written Comment: October 16, 2016.** These comments are submitted by the Animal Defense League of AZ and its members and supporters throughout the state. I strongly urge the Commission to reject this proposed rulemaking as it is substantively and procedurally flawed. I hereby incorporate the comments of the Grand Canyon Chapter of the Sierra Club by this reference, and reserve the opportunity to submit oral comments at the Commission meeting in December.

Written Comment: October 14, 2016. Please accept these comments in response to the Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking regarding a proposed amendment to A.A.C. R12-4-402. See 22 A.A.R. 2569 (September 16, 2016), 22 A.A.R. 2558 (September 16, 2016). These comments are submitted on behalf of Defenders of Wildlife ("Defenders") and represent Defenders' official position. Defenders is a national, non-profit, science-based conservation organization dedicated to the protection of all native animals and plants in their natural communities. Defenders has approximately 375,000 members nationwide and more than 8,000 members in AZ. Defenders also has an office in Tucson, AZ. The Commission seeks to amend R12-4-402 governing "Live Wildlife: Unlawful Acts." The amendment would require federal agencies to obtain state permits prior to engaging in any activity listed under R12-4-402(A). The Commission proposes adding a new subsection D that states: "Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements." The

activities listed in R12-4-402(A) include the importation, transportation, and release of wildlife within the state pursuant to a federal license or permit. According to the Commission's stated justification for the proposed amendment, the Commission is concerned that the current rule "could be construed as authorizing a federal agency to release or reintroduce threatened or endangered species in AZ without first obtaining a state permit." The Commission's intention is "to ensure the Department maintains sovereignty over AZ's wildlife and wildlife habitat." We urge the Commission to abandon the proposed amendment. As an initial matter, the Commission cannot prohibit federal activities absent state consent. The federal government is only subject to state regulation where there is a "clear congressional mandate" or "specific congressional action" specifying that the federal government has submitted to state regulation. *Hancock v. Train*, 426 U.S. 167, 179 (1976) ("[W]here Congress does not affirmatively declare its instrumentalities or property subject to regulation, the federal function must be left free of regulation."). Specific to the Commission's concern regarding the release or reintroduction of species protected by the federal Endangered Species Act ("ESA"), the ESA does not subject the statute's implementation to state approval. In fact, the statute only requires "cooperation" with states "to the maximum extent practicable." 16 U.S.C. § 1535(a). Thus, USFWS, which maintains paramount authority over management of listed species, cannot be required to obtain a state permit to carry out its responsibilities under the ESA. Further, any state permitting requirement imposed pursuant to proposed R12-4-402(D) that conflicts with USFWS's implementation of the ESA would be preempted. See *Hillsborough County, Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712 (1985) (Supremacy Clause of the Constitution invalidates state laws that "interfere with, or are contrary to," federal law). With respect to importation of wildlife, the ESA expressly preempts any state permitting requirement that would prohibit importation of listed species if there is a federal regulation or permit allowing those same imports. See 16 U.S.C. § 1535(f). Similarly, any state permitting requirement that purports to prohibit USFWS from transporting or releasing federally-protected species would be preempted under fundamental conflict preemption principles. See *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1595 (2015) (state law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" is preempted) (citation omitted). As a result, a blanket rule that USFWS comply with all state permitting requirements, regardless of whether they are consistent with the ESA, is contrary to controlling law. The Commission appears to rely on the Department of the Interior's ("Interior") "Fish and Wildlife Policy," promulgated in 1983, which describes Interior's approach to state-federal relationships with respect to wildlife laws, including the ESA. See 22 A.A.R. at 2559 (citing 43 C.F.R. Part 24). This policy generally states that USFWS will comply with state permitting requirements with respect to reintroductions of listed species. 43 C.F.R. § 24.4(i)(5)(i). However, the policy contains a critical exception. USFWS need not comply with state permitting requirements where "such compliance would prevent [it] from carrying out [its] statutory responsibilities." In other words, where compliance with state permitting requirements would prevent USFWS from meeting its obligation to recover species or prevent the agency from exercising the full scope of its statutory authority, USFWS need not comply with state requirements. Thus, this policy does not grant states veto authority over USFWS's implementation of the ESA. If USFWS allowed a state to exercise such veto authority, it would likely constitute an unlawful subdelegation of federal authority.

See U.S. Telecom Ass'n v. FCC, 359 F.3d 554, 565 (D.C. Cir. 2004). The Commission also relies on a recent lawsuit in which NM has challenged USFWS's release of endangered Mexican gray wolves over NM's objections and without NM permits. See 22 A.A.R. at 2259. The U.S. District Court for the District of NM granted a preliminary injunction against USFWS's releases in a decision that is currently on appeal to the United States Court of Appeals for the Tenth Circuit. For all of the reasons detailed in the briefs filed by USFWS and Defenders et al. in that appeal, any application of proposed R12-4-402(D) that would prevent USFWS from importing and releasing federally-protected species pursuant to a duly promulgated regulation or permit would also be unlawful. The survival and recovery of the nation's most imperiled wildlife depends upon the successful implementation of the ESA. For some federally-protected species, such as the Mexican gray wolf, California condor, and the black-footed ferret, recovery depends upon USFWS's implementation of successful reintroduction programs. We urge the Commission to abandon the proposed amendment to R12-4-402 and instead support USFWS's implementation of the ESA for the benefit of all federally-protected fish and wildlife.

Written Comment: October 14, 2016. I am writing to oppose the proposed rule that will require USFWS to obtain a state permit before releasing wildlife into the state. This is a thinly veiled attempt to impede the recovery of the Mexican gray wolf in our state and interferes with the mandate of a federal agency to recover an endangered species. The Mexican gray wolf is already highly endangered, inbred, and in need of immediate new releases and this proposed rule will place unnecessary impediments in the way of preventing the extinction of the species in the wild. In addition, since federal law takes precedence over state law, this rule, if implemented, will result in lawsuits that will cost AZ citizens and waste the time of state agency personnel. Proposed rule change R12-4-402 should be abandoned.

Written Comment: October 14, 2016. I oppose R12-4-402 and strongly urge the Department to avoid the political disgrace that has become the NM Game and Fish Department. Wildlife conservation should be about endangered as well game species. I feel AZ is the last hope for Mexican wolf recovery. The Department should focus its resources on management and cooperation, not legal interference.

Written Comment: October 15, 2016. It has come to my attention that the Department is proposing a rule that would require its approval before USFWS could release anymore Mexican gray wolves. I urge you discontinue this proposed rule change. The federal government is are under court order to come up with a viable plan for the recovery of the Lobo. Even your own wolf biologists have said more Wolves need to be introduced to achieve genetic diversity and an increase in pack numbers. Please allow the federal government to develop their plan before introducing more rules. This rule change looks like a back door means of halting the recovery of the Mexican gray wolf.

Written Comment: October 15, 2016. I urge the Commission to reject the proposed rule R12-4-402, and incarcerate the bill creators, and to incarcerate the members of the Department for allowing the factory farm industry to destroy wildlife. Please bring to justice the entire office for crimes against Mother Nature, please punish them for making people petition them to stop murdering wildlife, so down with the murdering rich meat <expletive> which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please reject this proposed rule.

Written Comment: October 15, 2016. Please abandon the effort to change the rule for introducing Mexican gray wolves into the wild. The rule change requiring a state permit would make it much more difficult for USFWS to get the wolves onto the wild. AZ already opposes having the wolves released but cannot presently circumvent the federal law.

Written Comment: October 15, 2016. I oppose the proposed new rule requiring USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild lands of AZ. I believe this proposal is politically (\$\$) motivated instead of science based. Times are changing, and the value of having an apex predator like the wolf, which has always been healthy for the Trophic Cascade of flora and fauna that the wolf is at the head of, is now becoming economically of great value. In a recent study, the average spending of visitors in the 17 counties around Yellowstone National Park, across the four seasons, about \$22.5 million are directly attributable to the presence of Wolves in the park. Based on the amount of money spent in the entire three-state area around Yellowstone, visitors who specifically want to see or hear Wolves generate approximately \$35.5 million annually. From my studies, the livestock industry is one of the primary opponents of wolf re-introduction. Not all ranchers are opposed to Wolves as some can see the future economic benefit of living with Wolves. Oregon State University recent published a finding that the Rocky Mountain States produce on average between 3% and 5% of total beef production in the U.S. The public awareness of using public lands for grazing at a loss to taxpayers, and therefore the obvious subsidizing of the livestock industry is attracting more and more negative public attention. So when the potential economic benefits of ecotourism, wolves being a big part of that, is recognized vs. a dwindling to insignificant livestock industry in the Rocky Mountains, and a growing demand for recreational uses of public lands in the Rocky Mountains, opposing wolf re-introduction is a very backward, and economically short-sighted view.

Written Comment: October 15, 2016. Please do not make this real change which affects the wolves negatively. We need wolves they to sustain the ecosystem. They are very important. If you drive them to

extinction like they have done to the bees we will have no chance on this planet. Please do not hurt the wolves.

Written Comment: October 15, 2016. I am a fourth generation AZ native. My great-grandfather was a rancher and I still have cousins who ranch. My family actually designed the state flag we use today. I am also a lover of wolves. I ask you to make it easier to release wolves; do not require a state permit for the Federal government to release wolves. Wolves need territory dedicated to them to survive and thrive. Please work to protect them and help in their recovery. As a peak predator they will help improve the health of the entire ecosystem they are released into. I understand the inherent conflict between wolves and ranchers. Frankly, we need to review grazing rights throughout the state as these permits come up. Perhaps it is time to put some territory back into the domain of wolves. With a proper balance of territory wolves can roam and not come into conflict with ranchers. It is only when they do not have enough territory that these conflicts occur. A healthy, wild population of wolves at our border would be a spectacular site. And something my great-grandfather would be proud of.

Written Comment: October 15, 2016. I want to go on record as being in opposition to the Commission's proposed new rule requiring USFWS to get an AZ state permit before releasing any additional Mexican gray wolves into the wild lands of AZ. I believe this proposal is politically motivated instead of science based. Times are changing, and the value of having an apex predator like the wolf, which has always been healthy for the Trophic Cascade of flora and fauna that the wolf is at the head of, is now becoming economically of great value. In a recent study, the average spending of visitors in the 17 counties around Yellowstone National Park, across the four seasons, about \$22.5 million are directly attributable to the presence of Wolves in the park. Based on the amount of money spent in the entire three-state area around Yellowstone, visitors who specifically want to see or hear Wolves generate approximately \$35.5 million annually. From my studies, the livestock industry is one of the primary opponents of wolf re-introduction. Not all ranchers are opposed to Wolves as some can see the future economic benefit of living with wolves. Oregon State University recent published a finding that the Rocky Mountain states produce on average between 3% and 5% of total beef production in the US. The public awareness of using public lands for grazing at a loss to taxpayers, and therefore the obvious subsidizing of the livestock industry is attracting more and more negative public attention. So when the potential economic benefits of ecotourism, wolves being a big part of that, is recognized versus a dwindling to insignificant livestock industry in the Rocky Mountains, and a growing demand for recreational uses of public lands in the Rocky Mountains, opposing wolf reintroduction is a very backward and economically short-sighted view.

Written Comment: October 15, 2016. Mexican gray wolves are important to me and the majority of voters, and their recovery can help restore ecological health to our wildlands. But there is no up-to-date, valid recovery plan for Mexican gray wolves, and new management rules for the wolves contradict the recovery recommendations of leading wolf experts. Very few wolves have been released into the wild and this year, the wild population declined for the first time in six years, from 110 wolves last year to only 97. Instead of allowing political interference by the states of AZ, CO, NM, and UT, USFWS must expedite the release of adults and

families of wolves from captivity and must move forward with the draft recovery plan based on the work of the science planning subgroup. Obstruction by anti-wolf special interests and politics has kept this small population of unique and critically endangered wolves at the brink of extinction for too long and can no longer be allowed to do so. Development of a new recovery plan and expedited releases that will together address decreased genetic health and ensure long-term resiliency in Mexican wolf populations must move forward without delay or political interference. A concerted effort needs to be made to Mexican gray wolf recovery.

Written Comment: October 15, 2016. I am against R12-4-402 and any legislation which would make it harder to release wolves into the wild. We need wolves.

Written Comment: October 15, 2016. Please do not let politics prevent USFWS from enforcing the ESA mandate for wild wolf recovery. These animals are necessary to nature's health.

Written Comment: October 15, 2016. Please reject the proposed rule R12-4-402. The release of captive wolves is likely to be the only way to get a viable, sustainable, population of the Mexican gray wolf. Blocking these wolf releases is not within the authority of the State, it is a federal matter and AZ should let USFWS do its job.

Written Comment: October 16, 2016. I am opposed to the state of AZ instituting any regulation or passing any law, such as R12-4-402, that would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild. This is yet another obvious attempt, by the state of AZ, to obstruct the recovery of the critically endangered Mexican wolf, which is part of our American heritage of wildlife, not just our AZ heritage of wildlife. It is so clear that AZ is, in fact, trying to prevent the reintroduction of the Mexican wolf into the wild, entirely, which I believe AZ has no right to do; AZ needs to act like a state that is part of a larger union of states, and stop trying to run its state government and wildlife programs like it is a country unto itself, which it is not.

Written Comment: October 16, 2016. The rule change: in which the State of AZ feels federal agencies must be granted permission from a state agency to do their federal agency assigned job is wrong. AZ does not have the authority to make any federal agency apply for a permit for actions taken by any federal agency on federal lands. As a unit of the United States of America, a federal agency's decisions and subsequent actions are solely the business of that agency on federal lands. AZ is doing just that; going on a fishing expedition to see if they can find a court that will falsely give the Commission power it does not currently enjoy. This proposed rule change is a total waste of taxpayer time and money attempting to shackle science based ESA mandated species recoveries to local, retrograde, non-science based expression of opinion. The opinions of the Commissioners has no scientific validity. Each of the Commissioners is a retired executive with no scientific training in genetics, wildlife management, or endangered species recovery. They enjoy no power over federal agencies nor

do they represent any segment of the scientific community. While not stupid, none of them is competent to take any action in public policy but only to render an opinion; not determine policy for third party behaviors. If the Commission wishes to pursue this fool hardy course of rulemaking, the subsequent legal fees and case costs should be deducted from the Department's operation monies where the actual responsibility for this proposed <expletive> contest lies. As a taxpayer, I have no interest in, and do not support, this sad rehashing of authority issues.

Written Comment: October 16, 2016. I oppose R12-4-402 and ask that it be negated/annulled. What the lobos need is science-based recovery, not political meddling. You, the AZ Game and Fish Commission, have proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. Your rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Release of wolves to the wild is a critical component of that recovery. Your proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. You have been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. However, this temporary halt will not stand. Your proposed rule change is not right, is not legal, and certainly is not moral. Your Creator has given you the ability to protect His creation, the Lobo, and if you do not listen and protect what He created, He will hold you accountable. Please, protect the Lobo. Do not accept R12-4-402.

Written Comment: October 16, 2016. I am writing to comment on the proposed rule change to rule 12-4-402. I strongly urge the Commission to abandon its proposed change. As a resident of NM, a strong supporter of Mexican gray wolf recovery, and a biologist, I am deeply dismayed with the Commission's attempt to turn from science-based recovery of imperiled species and infuse the process with politics. Citizens rely on our state game and fish departments, of which I've been proud to be employed with as a fisheries field technician in OR, to protect our shared wildlife through a rigorous scientific process. When agencies allow politics to drive their decision making, they lose all credibility with citizens. This at a time when the electorate is deeply skeptical of our political process and politicians. The Mexican gray wolf is suffering a severe genetic crisis, which can only be remedied by more releases of wolves into the wild. The Commission's attempts to thwart their recovery will only serve to bring this imperiled species closer to the brink of extinction, a species in which we have already invested a great deal of taxpayer's money to save over the last two decades, and tarnish the Commission's reputation in the eyes of the citizens of AZ and NM.

Written Comment: October 16, 2016. I oppose amending Live Wildlife; Unlawful Acts to state that USFWS would have to obtain a state permit before releasing any additional Mexican gray wolves into the wild. USFWS is required under the ESA to recover the Mexican gray wolf. Release of wolves into the wild is a critical

component of that recovery and needed now to promote genetic diversity in the population. AZ should work with USFWS toward full recovery of the Mexican gray wolf, not continue to hinder the reintroduction program. I urge the Commission to reject this proposed rule change. The Mexican gray wolf needs science based recovery, not state political meddling.

Written Comment: October 16, 2016. I am writing to express my strong opposition to the proposed amendments to R12-4-402, which would require the Department of Interior to seek state permits from the Commission prior to releasing any additional Mexican grey wolves into AZ. I fully and heartily support the federal government (and others') wolf recovery efforts and believe the proposed amendments to the rule to be unnecessary and poses an unwarranted obstacle to the recovery effort. I therefore ask that my opinion be counted as consideration of the amendment moves forward.

Written Comment: October 16, 2016. These comments are submitted on behalf of the Great Old Broads for Wilderness, a national, non-profit organization. Established in 1989, we are advocates, stewards, and educators for wild lands. Ours is a lifetime outlook on the benefits of protecting our wild, public lands. Broads, through Broadbands across the country, work with agencies in stewardship and monitoring of public lands. The Mexican gray wolf is essential to the biodiversity of wild lands. Lobos need to be restored to their essential natural role. Broads does not support the proposed rule change. Please do not interfere in the role of USFWS releasing wolves to the wild to promote genetic diversity in the wolf population. The Mexican gray wolf needs science-based recovery, not State interference with the intent of driving the Mexican wolf to extinction. Let the federal government do its job and recover the Mexican gray wolf.

Summary of Oral Comments from December Commission Meeting: Establishing a new permit for the release of Mexican gray wolves creates a new roadblock for the Mexican gray wolf recovery program. Seventy percent of AZ citizens support the wolf recovery program. Arizona needs more wolves on the landscape and one impediment is more regulation. The current population is dangerously inbred and vulnerable; requiring USFWS to obtain a permit for their release makes no sense. If there must be a permit; the process should be quick and easy. It is not clear what the amendment applies to; the rule amendment appears to be antagonistic towards the Mexican gray wolf recovery and lacks transparency. Requiring USFWS to obtain a permit does not appear to be collaborative or cooperative.

Agency Response: The Commission's intent in proposing the amendments indicated in this rulemaking is to strengthen its rule to avoid any unintended interpretation that a federal agency is exempt from state permitting requirements when conducting any wildlife-related activities. The Commission has always operated under the premise that our federal partners need state authorization for any wildlife activities, and, as a result of an internal review of its rules, the Commission concluded that this requirement was not clearly codified in rule. Through this rulemaking, the Commission is codifying what has been a common practice with federal agencies.

The change will avoid any legal ambiguity and should avoid any disagreement over the applicability of the Commission's rules.

The purpose of the current rule is to protect native wildlife in many ways: preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The rule prohibits a variety of wildlife-related activities, unless permitted by the Department. Eligibility, application, and licensing requirements are provided under specific rule for each type of license. Typically, the Department issues the USFWS licenses based on the type of activity and species of wildlife. These special license rules are found in Article 4.

While the immediate issue that prompted the internal review of the Commission's rules involved big river fish and the Mexican wolf, the broader concern with federal agencies obtaining state licenses and permits relates to a variety of activities involving many species of native terrestrial and aquatic wildlife.

As stated in the preamble of the Notice of Proposed Rulemaking, the requirement that a federal agency apply for and obtain a state license or permit in order to conduct wildlife-related activities is *not* a new requirement. Under A.R.S. § 17-238, the Commission, at its discretion and under such regulations as it deems necessary, may issue a permit to take wildlife for scientific purposes to any person or duly accredited representative of public educational or scientific institutions, or governmental departments of the U.S. engaged in the scientific study of wildlife. The Department and many federal agencies have always understood that federal agencies need to obtain state permits to remove or release wildlife. On an annual basis, the Department issues approximately 48 scientific collecting licenses to federal agencies for a variety of activities that involve wildlife. Licenses and permits are issued for the purpose of establishing, monitoring, studying, surveying, and translocating wildlife. Since 1998, the Department has not denied a scientific collecting license applied for by a federal agency (the Department's license application records only go back to 1998). Federal agencies that have held or currently hold a Department-issued scientific collecting license include, but are not limited to, the Department of Defense, Department of Energy, Department of Interior, National Forest Service, National Parks Service, National Wildlife Refuge, U.S. Army Engineer Research and Development Center, U.S. Department of Agriculture: Animal and Plant Health Inspection Service, USFWS, U.S. Army, and U.S. Geological Survey.

There are many valid reasons to require any agency to apply for and obtain a state-issued license or permit. The application process allows the Department to ensure duplicate projects are not occurring, and that proposed activities will benefit wildlife. The license/permit process requires federal agencies to coordinate their activities with the Department, which ensures the best management outcome possible for Arizona's wildlife.

The Commission holds that this rulemaking is compliant with the APA. The rulemaking was undertaken after the review of Game and Fish laws and rules, conducted by the Department's Assistant Attorneys General, determined that, while Commission rules as a whole indicate a federal agency is required to obtain a state license or permit to conduct wildlife-related activities in AZ, the rules were not sufficiently clear on this requirement. This review was requested by the Commission after USFWS failed to comply with licensing requirements in NM and the incident involving gizzard shad released by the National Fish Hatchery; not as a result of an untethered concern. Under A.R.S. § 41-1021, an agency is required to indicate the time during

which written submissions may be made, the Department and many other agencies consider this to mean the day and time in which a comment may be submitted in person to the agency. Under A.R.S. § 41-1023(B), the public comment period runs for 30 days from the date the Notice of Proposed Rulemaking is published in the Arizona Administrative Register. The Department believes the statutory time-frame is sufficient. This is supported by Register publications from other state agencies, where in the last 30 Notice of Docket Openings, 22 contained the same language as the notice associated with this rulemaking, six stated comments would be accepted for 30 days from publication of the proposed rulemaking (all six were from one agency), and two stated comments would be accepted until the close of record published in the proposed rulemaking.

The absence of a study does not affect the validity of the rulemaking; a study is a supporting document that supports conclusions included in rule. In this case, the rulemaking is the result of events where federal agencies have not complied with state permit requirements. There is no need to establish an administrative process as a process already exists and federal agencies have previously applied for and obtained special licenses.

In compliance with A.R.S. § 41-1055, the Department includes an Economic, Small Business and Consumer Impact Statement (EIS) with every final rule it submits to the Governor's Regulatory Review Council (GRRC). Although the EIS is not required until a final rule is submitted to GRRC; the Department makes the EIS available to members of the public at every Commission meeting where a proposed and final rule is being considered, unless the rulemaking is exempt from A.R.S. § 41-1055. This rule amendment is not exempt and an EIS is available to the public. Under A.R.S. § 41-1001, in the case of a proposed rule, an agency is only required to provide a preliminary summary of the economic impact analysis in the preamble for the rulemaking. The rule addresses a myriad of prohibited wildlife-related activities; there is no corresponding federal law that lists prohibited activities, thus the rule is based on state law.

The proposed rule amendment clarifies that a federal permit alone is insufficient when a federal agency or its employees perform activities with live wildlife that require a state permit. These activities may include, but are not limited to, the import or export of live wildlife, the possession, transportation, release or reintroduction of wildlife, and the killing of captive live wildlife. A.A.C. § R12-4-402(A). Clarifying that a federal agency or its employees are not exempt from state permit requirements should not be construed that the Department will deny a permit to perform activities with live wildlife. Nothing in the clarification is inconsistent with the past practice of federal agencies applying for and the Department issuing permits. Neither should the proposed rule amendment be interpreted as directed exclusively at federal administration of the Endangered Species Act ("ESA"). It applies more broadly to all federal agencies and employees undertaking activities with live wildlife.

The proposed rule amendment does not conflict with the Constitution's Supremacy Clause because federal law does not explicitly preempt a rule that extends state permit requirements to the federal government, nor does the proposed rule amendment on its face conflict with a federal objective. State and federal authority to manage and conserve wildlife overlaps in many respects with each having concurrent jurisdiction. Federal law recognizes that "[s]tate authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific overriding federal law." 43 C.F.R. § 24.1(a). Federal law further recognizes that "effective stewardship of fish and wildlife requires cooperation of the several States and the Federal

Government.” *Id.* The federal obligation to cooperate with state wildlife agencies in wildlife management reflects “the manifest Congressional policy of Federal-State cooperation that pervades statutory enactments in the area of fish and wildlife conservation.” *Id.* at § 24.2.

With this backdrop of cooperation, federal agencies of the Department of the Interior are required to comply with state permit requirements for federal activities involving the removal or reintroduction of wildlife, provided compliance with state permit requirements does not prevent the federal agency from carrying out its statutory responsibilities. *Id.* at § 24.4.

Federal agencies have long recognized this obligation and have routinely worked with the Department to obtain state permits for activities requiring a state permit. In 2015, the Department issued 48 permits to multiple federal agencies authorizing take, possess, transport or release of wildlife. In some cases, the state permit added stipulations that were necessary to (1) conserve wildlife populations; (2) prevent the introduction and proliferation of wildlife diseases; (3) prevent wildlife from escaping or (4) protect public health or safety. A.A.C. § R12-4-409(H). To date, no federal agency has objected to permit stipulations or claimed that a state permit prevented the agency from carrying out its statutory responsibilities.

As for the assertion ESA explicitly preempts the proposed rule amendment, the preemption provision in ESA applies only to state laws that prohibit what is authorized or permit what is prohibited with respect to the import or export of threatened and endangered species. 16 U.S.C. § 1535(f). Nothing in the proposed rule amendment, for instance, prohibits the U.S. Fish and Wildlife Service (“Service”) from importing threatened or endangered wildlife. The proposed rule amendment simply provides that a federal agency, including the Service, is not exempt from state permit requirements. Requiring the Service to obtain a state permit is consistent with the obligation in ESA that federal agencies “cooperate to the maximum extent practicable with the States.” *Id.* at § 1535(a).

The Department has issued the Service multiple permits to release Mexican wolves into Arizona, and as recently as this year, the Department’s permit authorized the Service to release or reintroduce Mexican wolves consistent with the jointly prepared and approved annual release plan. Provided state permits do not prevent the Service from carrying out its statutory responsibilities, ESA does not preempt state law requiring a state a permit authorizing a federal agency to take, possess or release threatened or endangered species.

The proposed rule amendment clarifying that a federal agency or its employees is not exempt from state permit requirements is not expressly preempted by federal law, nor does the proposed rule amendment conflict with federal law because it does not operate on its face as an obstacle to the accomplishment and execution of a federal objective. The Department routinely issues permits to federal agencies in a manner that does not conflict with federal purposes, and no federal agency has alleged the Department’s permit requirement has prevented it from accomplishing any statutory responsibility.

The agency received the following written comments stating their opinion. Because the written comments do not pose a question or specifically relate to the rulemaking, the agency does not believe a response is required:

Written Comment: October 5, 2016. Once again you are proving you are becoming more and more political. And like I've called you out before, you are anti-fed. Anyone with half a brain can see right through this. This is in regards to the Mexican gray wolf.

Written Comment: October 7, 2016. I am a decorated combat veteran, hunter, philanthropist, and a proud citizen of AZ. I respectfully ask you put no restrictions on increasing the Mexican Gray population. Let's do the right thing and protect God's creatures. It is our charge and duty.

Written Comment: October 8, 2016. Do not destroy this keystone species.

Written Comment: October 8, 2016. Save our Mexican gray wolves and provide wild protected habitats for them. They are essential to our ecosystems.

Written Comment: October 8, 2016. States should not have the right to say they do not want wolves. Mexican gray wolf recovery is important to people living in AZ, as well as tourists.

Written Comment: October 8, 2016. I do not live in AZ, but I know wolf recovery is critical to the health of the environment for all creatures (not just humans). It has been shown that a healthy wolf population helps other non-carnivore animals lead healthier lives plus the native plants thrive when the ecosystem is in balance. If the goal of the Commission is to maintain a good level of game and fish in the state of AZ, wolves must be part of the plan.

Written Comment: October 8, 2016. Please start protecting the gray wolves instead of driving them to extinction to protect profits of private parties.

Written Comment: October 8, 2016. Your job is to protect our wild life. Wolves are critical, important, and deserve better than what they have received.

Written Comment: October 8, 2016. Please reconsider steps to completely eradicate the wolf from the State. Give them a chance to live and propagate in numbers that will ensure they remain an integral part of Mother Nature's "plan" to keep all things in balance.

Written Comment: October 8, 2016. The gray wolf is facing extinction and you should protect them with your rules and regulations. Your new regulation is a clear and present danger to the gray wolf. Please reconsider and protect the gray wolves.

Written Comment: October 8, 2016. Save the wolves and large predators. They are a vital part of the animal food chain. They deserve to live in forests and national parks unmolested by poachers and hunters.

Written Comment: October 8, 2016. Please release Mexican wolves into the wild again; they are suffering a lot in captivity. Do not play God, let them free please.

Written Comment: October 8, 2016. We are called to be faithful stewards of this precious planet that God has provided us and that includes all of the wildlife and their habitats. Please protect the wolves.

Written Comment: October 8, 2016. I do not see how in good conscience you can act to wipe out a key member of your own ecosystem. This is wrong; the Mexican gray wolf is an important piece of the natural world that should be protected, not eradicated. Please act in a way that preserves the balance of nature, place protections for this species, now.

Written Comment: October 8, 2016. Allow wolves to run free in this state and all states. Extinction is not option

Written Comment: October 8, 2016. Please allow these wolves to live in peace.

Written Comment: October 8, 2016. Please do not make it harder to release Mexican wolves back into the wild. They are a native species that have been scientifically proven to enhance their environment by improving the health of prey animal populations. They are a highly intelligent species that deserves a chance to live free.

Written Comment: October 8, 2016. Wolves.

Written Comment: October 8, 2016. Please abandon this rule change regarding the gray wolves.

Written Comment: October 8, 2016. Please let all wild animals to live in the wild where they belong, no animal should live in captivity and be miserable and mistreated, they deserve to be happy and healthy and have a long life.

Written Comment: October 8, 2016. Please allow releasing additional Mexican gray wolves into the wild.

Written Comment: October 9, 2016. Please stand up for these wolves and their survival. They are essential to the health and survival of so much of the ecology you are charged with protecting.

Written Comment: October 9, 2016. Your opposition to wolf recovery is ridiculous. There can be a mutual

respect for the wolves and the opposition. Take note. You are the dying breed. Eventually the younger generation will take a stand as they become more aware and vote you out. It is just a matter of time.

Written Comment: October 9, 2016. Please preserve and protect the integrity of our lands ecosystem. Nurture, not destroy.

Written Comment: October 9, 2016. I understand that your state receives a lot of money from ranching. It is important. However, the science simply does not back the claims regarding how much livestock wolves will take. Cattle are not at risk of going extinct. The Mexican wolf is. Be on the right side of history and allow this species to live.

Written Comment: October 9, 2016. Please allow the Mexican wolf to be released into the wild. Wolves are part of our ecosystem. They are vital to a healthy balance.

Written Comment: October 9, 2016. Please consider how important it is to save these wolves. Please help to save them.

Written Comment: October 9, 2016. It is totally ridiculous that you lawmakers just want to kill all wildlife; no wonder why we live in a world of killing they all follow after you. You are no better. Save the wolves they have better respect for life than you all will ever have.

Written Comment: October 9, 2016. Please let these magnificent creatures live.

Written Comment: October 9, 2016. Please do not delay on wolf releases.

Written Comment: October 9, 2016. Driving wolves to extinction serves no one. It is morally despicable and ecologically disastrous. Scientists have proven that wolves are essential to a healthy ecosystem while humans and cattle do nothing but destroy. Save the wolves, save their habitat, and stop interfering in wildlife preservation. I am sickened by this attack on nature. There is no excuse for obstructing their survival.

Written Comment: October 9, 2016. Please base wolf management decisions on science, not politics.

Written Comment: October 9, 2016. Get your head in the game. It is time to start saving our planet.

Written Comment: October 10, 2016. Please leave the animal world at last. The animals were in front of the world in this world. Please do their best, for this important matter.

Written Comment: October 10, 2016. Please you must do whatever to make certain the Mexican wolf does not suffer. We need the wolves in the wild. Please, do the right thing.

Written Comment: October 10, 2016. Wolves are vital for our environment and are already endangered. Do not make it harder to protect them from extinction. Make your own the wolves' qualities of loyalty, family, love, togetherness, and protect them. Do you really want to tell your children and grandchildren that man has hunted the wolves to extinction and have to show them a picture? Protect the wolves against greed, big money, ranchers, and trophy hunters. Remove cattle from public lands so that the wolves can roam free in their ancestral habitat.

Written Comment: October 10, 2016. My grandparents came to NM in 1910 and were cattle ranchers their whole lives. I am intimately familiar with the ups and downs of that life. While wolves do threaten some cattle and sheep, they are also an important part of our world and specially the wilds in which I have hiked and camped. I also know that due to hardness of a ranching life style many ranchers would be happy to sell their grazing rights especially when it is difficult to access country for a sufficient amount of remuneration, which is now possible through at least one environmental organization. Please allow the reintroduction of wolves to continue without interference.

Written Comment: October 10, 2016. No state permit before releasing Mexican gray wolves into the wild.

Written Comment: October 10, 2016. What the lobos need is science-based recovery, not political meddling.

Written Comment: October 10, 2016. The only reason for keeping Mexican wolves from being released would be corruption, listening to special interests instead of morality and science. Do that, turn your back on these animals out of selfishness and corruption and I beg and pray with all my heart and soul that a curse falls upon all of you. Do the right thing. You know full well what that is. Protect the Mexican gray wolf now.

Written Comment: October 10, 2016. You really should leave my wolves alone.

Written Comment: October 10, 2016. Please do not set these wolves up to fail. We need them alive and free. Do not pass things so they will be slaughtered.

Written Comment: October 10, 2016. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery.

Written Comment: October 10, 2016. Please do not make it more difficult for Lobos to be released into the wild. Many people would like to see the lobos flourish.

Written Comment: October 10, 2016. Please do not be as awful as my state, NM. These animals belong in their ancestral home.

Written Comment: October 10, 2016. Wolves. Save. Them.

Written Comment: October 10, 2016. The greatness of a nation can be judged by the way its animals are treated. Please do not destroy these beautiful wolves, they have just as much right to inhabit this earth as we all do. Please do not deny future generations the opportunity to see and learn about these beautiful wolves in their natural habitat. Let the wolves run free.

Written Comment: October 10, 2016. Citizens of the world, we request rejection of this new regulation in the release of wolves. Objections to the protection of wolves and meetings between persons and other causes do not justify this new regulation. We want our wolves free.

Written Comment: October 10, 2016. As a person who grew up in AZ, it pains me that the state I once called home and graduated high school from would undermine the important work of protecting and saving the Mexican wolf. These wolves are so endangered that in my lifetime they might go extinct. This is unconscionable.

Written Comment: October 10, 2016. Save the Mexican gray wolves. We have too many humans, so save the endangered species and neuter women who have abortions after the first abortion. Yes, I mean this.

Written Comment: October 10, 2016. Do all you can to release wolves back into nature. They are a big part of nature and were here long before cattle and ranchers. Please do what is right and release wolves to where they belong.

Written Comment: October 11, 2016. All lives are connected in this earth, our environment and animals are very important to remain and be protected for the betterment of this planet. Wolves are extremely intelligent animals and highly dependent by the ecosystems. A man assumes he is invincible, but if he stops breathing for 10 to 15 minutes, he will die for sure. Life is too fragile to be blinded by greed and ego. Each and every species has a reason to be the way they are. So, protection of our earthly animals is very necessary and highly important. Therefore, I oppose the killing of our wolves.

Written Comment: October 11, 2016. Stop hurting and killing these beautiful, majestic, beautiful, and spiritual animals. Why is the wolf being blamed for everything? These animals are very necessary to the ecosystem and the future generation should be experience to see these animals in the wild. It is such as shame

that hunters, politicians and farmers do not understand the beauty of these animals. They are Gods creations and should be able to "Be free and run free forever. **Subsequent comment: October 13, 2016.** We will always stand with the wolves. We need to be a voice for them. They have always been my favorite (since I was 5 years old). They are very beautiful, majestic, and amazing animals. They need to let the wolves run free and be free forever.

Written Comment: October 11, 2016. What is going on here? Before you know it, we will have no wolves to protect, thereby causing your job to become extinct. Do your job and prevent the wolves from decimation of the earth.

Written Comment: October 11, 2016. Please stop R12-4-402 from happening. Give the wolf program a fighting chance.

Written Comment: October 11, 2016. Do not make it harder to reintroduce an endangered species. Work with ranchers and wolf specialists to make it fair for both.

Written Comment: October 11, 2016. Why are you making it so <expletive> difficult for this beautiful animal to make a comeback? Are you in the rancher's pockets? Cattle are not endangered. They are desecrating the planet and yet you allow them to roam freely on public lands while confining/limiting the wolves. Your values are a skewed.

Written Comment: October 11, 2016. (submitted by the same person three times) Please save these wolves.

Written Comment: October 11, 2016. Please allow for the survival of the Mexican Gray Wolf. They benefit our environment in numerous ways as I am sure you are aware- rivers, trees, diversity and balance of flora and fauna. They are an essential part of our natural ecosystem. Please do not let them go extinct. We need for more wolves to be released so they can expand their genetic diversity. And we need more land to be available for them to live in.

Written Comment: October 12, 2016. Save wolf.

Written Comment: October 12, 2016. I am asking you to leave the federal rules in place in the recovery of the Mexican wolves in AZ. Do not attempt to bypass the ESA laws as they are now. Please do not cave in to the pressure by the ranching industry to do away with a balanced ecosystem. We need large predators in the wild to keep balance.

Written Comment: October 12, 2016. The Commission is hereby requested to enforce the federal polices for

the preservation of our Mexican wolves.

Written Comment: October 12, 2016. How many studies does it take to show that not having top predators around negatively impacts the wildlife hunters want to shoot? Or the negative impact of a lack of predators on the general environment? What do you want? Several hundred such studies? The majority of the public wants wolves in the environment. Historically ranchers who use federal grazing lands have done nothing to protect their assets, their livestock, and do not want to have to start. Enlightened ranchers elsewhere actually look down on such individuals because they believe their livestock is their responsibility and not that of the general public. Where there are wolves there is tremendous tourist activity, and that spells money in the pockets of tour guides, hotel/motel owners, restaurant owners, and gas station owners. Currently there's about \$4 from tourism to every dollar from hunters. Ranchers contribute nothing. The American public wants their wildlife protected and secure. Many areas in AZ, running up to the Grand Canyon would be prime habitat for the Mexican gray wolf and I fully support the free expansion of their current territory. Protecting a few ranchers versus the wishes of the American public is not democracy, and I daresay in the not too distant future, those who are anti-wolf may not hold government positions and the ranchers aren't going to provide make-up paychecks.

Written Comment: October 12, 2016. No new rule changes for these endangered animals. No more permits required. These new proposed rules will help drive the wolves right into extinction.

Written Comment: October 12, 2016. Stop trying to wipe out a keystone predator like the Mexican gray wolf. When will it be enough? When they are all gone? How many species do you push into extinction before our ecosystems totally collapse? How long before it leads to our own extinction?

Written Comment: October 12, 2016. Stop interfering with Mexican wolf recovery program. They are a million years been part of the ecosystem for Life. As opposed to your killing methods.

Written Comment: October 12, 2016. I find it hard to believe that after all the work and money spent on saving the gray wolf from extinction, that it will now be turned over to the states to destroy these efforts. Amazing the stupidity. Please do not tell me that politics trumps solid science. As a scientist I am appalled.

Written Comment: October 12, 2016. The Mexican gray wolf is essential to your balance of nature and survival of all of us. Why kill the few remaining members of the Mexican gray wolf packs? They are native to AZ and you need to keep the natural balance of nature. Who is paying you to wipe them out of existence? Trophy hunters, farmers, and politicians? Why is putting fences up to protect their animals, stock, and wildlife. Not a new solution and one that works better than killing innocent wolves and wildlife.

Written Comment: October 13, 2016. Please do not make it harder to release gray wolves into the wild. It

seems to me that the Department want to completely wipe out all the wolves and make it to where they will only have a few left in enclosures and zoos. Wolves are an important part of our ecosystem and must be saved and protected. It also seems the law is against the wolves. Just remember #vetoextinction. Once a species is gone, it is gone forever. Please do not do this to the wolves.

Written Comment: October 13, 2016. This ignorance needs to stop. Why not put the blame where it belongs. On those useless selfish so called people who have the nerve to call themselves humans.

Written Comment: October 13, 2016. Why propose a bill that will help drive yet another species into extinction? It is bad enough, that we took the land from the Indians and are taking precious land from animals. Everyone complains that the deer, wolves, coyotes, bears, etc. are moving into populated areas, but who speaks for the wildlife, who gives the wildlife a voice when population moves into nature? And now you want to persecute the Mexican grey wolf, all you are is a Hitler to animals. That is the only MX immigrant that should stay or be freely deported.

Written Comment: October 13, 2016. Every consideration should be made to allow wolves in their intact packs to be allowed to roam free in their wild habitat. Period.

Written Comment: October 14, 2016. I am writing to stress the importance of the survival of the Mexican gray wolf in the wild. It is time to stop using them as a scapegoat and start seeing them as the missing link to a healthy ecological system. Science has proven time and again that they keep ungulate herds healthy, help trees grow (by keeping ungulates mobile) and keep rodent numbers at bay (to name a few). Since they are so afraid of people, they can easily be deterred from predation. AZ and NM are so lucky to have these beautiful animals in a tiny portion of their forests. I wish people would become more educated about all the good that they do for our ecology. And, I wish that the stupid wolf stories that we have all heard would disappear so big grown men would stop killing them. There are “certified predator friendly” ranches in the US and CD but, in CD where not only wolves exist but, grizzly bears and large cats as well. These people make it work by using deterrents that cost nothing to the rancher. Quite possibly the biggest issue in making this work is public grazing. If you do not keep your livestock within boundaries, anything can happen. Many years ago, John Muir proved how horrible grazing is on our public lands; that is why it is illegal in the high Sierra and all national parks. Please listen to science and teach the ranchers how to co-exist with the wolf. The Mexican gray wolf belongs on our lands.

Written Comment: October 14, 2016. Please help these animals who cannot speak for themselves. If we kill animals because people seem to think they are in the way, we will just have pictures. Our future generations will not know what a live wolf looks like when it is alive and living. People have got stop taking over every inch of property. Stop the killing.

Written Comment: October 14, 2016. I am a person who does not want to see any animal become extinct, too many have gone that way. We humans are responsible for most of these losses and I hope you will not help to have the Mexican wolf become extinct. USFWS has a responsibility to save endangered species, which the Mexican wolf is, as you well know. If we keep throwing unbalance into nature, we will be destroying ourselves. These wolves are needed to help keep the earth in balance, especially here in AZ. I keep hearing about how the elk and deer population is out of control on the north rim of the Grand Canyon. If the wolves were released there that problem would soon be alleviated and the environment would become much healthier as was proved at Yellowstone National Park. Please think like human beings and listen to the science and stop letting politics control you.

Written Comment: October 15, 2016. Please save our Mexican wolves.

Written Comment: October 15, 2016. Protect the Mexican wolves. It is crucial and want most want, not just those with the power to change the rules that threaten them.

Written Comment: October 15, 2016. Please protect the wolf. They are almost extinct.

Written Comment: October 15, 2016. Please start helping the wolves, instead of always stacking the deck against them. They deserve to be reintroduced to the wilderness. We as people of this world, have no business deciding if a sentient creature can be free. They were doing fine, before you made them scarce.

Written Comment: October 16, 2016. I am a concerned citizen that our Mexican wolves are not being reintroduced to wild has the law provides to prevent extinction of these endangered species. Please do what is needed to recovery these animals.

Written Comment: October 16, 2016. Please save the Mexican wolves. We have so few left. Why is this even an issue?

Written Comment: October 16, 2016. You need to stop the rules and regulations regarding these beautiful and much needed animals. Leave them be. Let them be in the wild where they belong. The ecosystem needs them and believe it or not, humans need them also. Maybe people from other states ought to be allowed to come and hunt the people of your state? That is essentially what you are doing to these beautiful mammals that have been there long before any of you.

Written Comment: October 16, 2016. I strongly oppose rule change that would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do

its job and recover lobos.

Written Comment: October 16, 2016. The proposal to amend R12-4-402 to require USFWS to get a permit from the state before releasing Mexican wolves is an unnecessary restriction on that agency's attempt to recover the species as required by the ESA. I favor the recovery of the wolves and see the proposed amendment as the State's attempt to thwart the process for political reasons. Increasing wolves in the wild is essential to their survival. Please let USFWS conduct the necessary operations unhindered.

Written Comment: October 16, 2016. I strongly request that this rule change be denied. It is an impediment to the goal of Lobo Grey Wolf Recovery. The program is already facing many handicaps. More wolves are needed for healthy stock. We need to minimize inbreeding and additional releases are necessary. The sooner the better.

The agency received the following comment that relates to Article 3 rules (taking and handling wildlife).

Written Comment: October 5, 2016. As a hunter I am more concerned with ethics and fair chase when it comes to the early elk rut hunts. More hunters are talking about this subject. The Commission is on notice.

Agency Response: Thank you for taking the time to submit your comment. Because the topic is outside of the scope of this rulemaking, your comment was placed in the rule record for consideration by the next Article 3 team.

12. All agency's shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:

The rule does not require a general permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

The subject matters covered in the rulemaking are governed by state law rather than any corresponding federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

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

Section

R12-4-402. Live Wildlife; Unlawful Acts

ARTICLE 4. LIVE WILDLIFE

R12-4-402. Live Wildlife: Unlawful Acts

- A.** A person shall not perform any of the following activities with live wildlife unless authorized by a federal license or permit, this Chapter, or A.R.S. Title 3, Chapter 16:
1. Import any live wildlife into the state;
 2. Export any live wildlife from the state;
 3. Conduct any of the following activities with live wildlife within the state:
 - a. Display,
 - b. Exhibit,
 - c. Give away,
 - d. Lease,
 - e. Offer for sale,
 - f. Possess,
 - g. Propagate,
 - h. Purchase,
 - i. Release,
 - j. Rent,
 - k. Sell,
 - l. Sell as live bait,
 - m. Stock,
 - n. Trade,
 - o. Transport; or
 4. Kill any captive live wildlife.
- B.** The Department may seize, quarantine, hold, or euthanize any lawfully possessed wildlife held in a manner that poses an actual or potential threat to the wildlife, other wildlife, or the safety, health, or welfare of the public. The Department shall make reasonable efforts to find suitable placement for any animal prior to euthanizing it.
- C.** A person who does not lawfully possess wildlife in accordance with this Article shall be responsible for all costs associated with the care and keeping of the wildlife.
- D.** Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.

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

R12-4-402

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rule making.

The Game and Fish Commission (Commission) proposes to amend its rule governing live wildlife, unlawful acts. The rule is amended to clarify that federal agencies or employees are not exempt from obtaining a state permit or license when conducting any activity listed under R12-4-402(A) and to ensure the Commission maintains jurisdiction and effective conservation over Arizona's wildlife and wildlife habitat.

There are many valid reasons to require a person or agency to apply for and obtain a state-issued license. The application process allows the Department to ensure duplicate projects are not occurring, and that proposed activities will benefit wildlife. The license process requires federal agencies to coordinate their activities with the Department, which ensures the best management outcome possible for Arizona's wildlife. The importance of requiring all entities, including federal agencies, to apply for and be provided a permit in Arizona is to protect the State's resources and assets (including water quality, quantity, and environmental health) from being compromised by unknown importation of aquatic and terrestrial wildlife, parasites, and diseases. The best way to reduce the risk of non-target importation is to screen importation through permits required in R12-4-402.

A primary objective of the proposed rulemaking is to protect aquatic and terrestrial wildlife populations in Arizona from harm that can occur as a result of an unauthorized release of native or nonnative wildlife by persons or agencies. The issue of greatest concern is the introduction of diseases to native and economically important recreational wildlife populations; this can be especially significant in the management of endangered species where disease status and susceptibility may not be fully understood. Introduced diseases have caused severe population declines in Chiricahua leopard frogs in Arizona and other frog species worldwide; and in little brown bats in the eastern U.S. Disease management is also critical for game species. Recent research on bighorn sheep pneumonia has determined that populations with the disease are susceptible to infection when exposed to a new strain of the causative bacteria. The introduction of chronic wasting disease in deer, elk, and moose by the translocation of these species is also a serious concern for state wildlife management agencies.

On the aquatic side, importations of fish have introduced parasites such as *Loma salmonae* and bacterial pathogens such as *Renibacterium salmoninarum*, the causative agent of Bacterial Kidney Disease. Although it has not been documented, Koi Herpes virus most likely was imported into Arizona with

baitfish. The most recent examples of non-target importation from federal hatcheries include the following: 1) Bacterial Kidney Disease was found in multiple federal hatcheries in the last year; this resulted in the transfer of disease and a subsequent restriction on fish raised at the Tonto Creek, Silver Creek, and Canyon Creek State Hatcheries. These restrictions prevented the Department from stocking fish in multiple waterbodies in Arizona; resulting in a negative economic impact on several rural communities and the Department; 2) gizzard shad were first introduced accidentally into the Salt River System through the stocking of Channel Catfish from Inks Dam National Fish Hatchery located on the San Carlos Indian Reservation. They spawn in large numbers and can reach densities high enough to ensure large populations survive past the first year, and because adults are too large to be prey for largemouth bass, they are essentially invulnerable to predation. The presence of gizzard shad has caused a major change in environmental interactions, negatively impacting the largemouth bass population in Roosevelt Lake. Roosevelt Lake is estimated to experience over 98,000 angler use days per year contributing over \$48 million dollars annually to Arizona's economy and is one of the top bass fishing lakes in western North America, holding multiple bass fishing tournaments every week for most of the year. The Department will spend millions of dollars over the next 10 years trying to reduce the impact of gizzard shad at Roosevelt Lake.

Federal agencies share the concern for introducing diseases to wildlife. Since the early 1900s the U.S. Department of Agriculture Animal Plant and Health Inspection Service (USDA-APHIS) has instituted requirements for the importation and interstate movement of livestock, crops, and more recently companion animals and some wildlife species. Each state, including Arizona, has regulations requiring animals coming into the state to have a certificate of veterinary inspection and to be free of certain regulated diseases; see A.A.C. R3-2-602 through R3-2-607. Included in these rules are "exotic mammals not regulated as restricted live wildlife by the Arizona Game and Fish Department." The Department recently revised live wildlife rules R12-4-405, R12-4-407, R12-4-410, R12-4-411, R12-4-413, R12-4-414, R12-4-422, and R12-4-430 to include a requirement for a certificate of veterinary inspection consistent with USDA-APHIS regulations and Arizona Department of Agriculture rules.

The authority to regulate release of wildlife in Arizona is held both by the U.S. Fish and Wildlife Service (USFWS) and the Department. While holding statutory authority for the management of all wildlife within the State, the Department is mandated by various federal laws to apply for and obtain federal permits from USFWS prior to conducting conservation activities within Arizona. The Endangered Species Act (ESA) requires a Threatened and Endangered Species Take Permit, Section 10 (a)(1)(A), for any activity that may intentionally "take" endangered species; under the ESA, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

The Department is authorized for all "take" of threatened species through Section 6 of the Endangered Species Act which requires the states to have a certified conservation program in place

through a Cooperative Agreement with USFWS, and through the development and submission of an annual work plan to USFWS. The Department also applies for and obtains several additional federal permits in order to maintain compliance with applicable federal rules and regulations.

The requirement that our federal partners obtain authorization from the Department to conduct research and management activities in Arizona is a decades old practice. The Department routinely issues annual Scientific Collecting Licenses (SCL), formerly referred to as a Scientific Collecting Permit (SCP), to federal agencies for management and research activities involving all wildlife species (amphibians, birds, crustaceans, mammals, mollusks, and reptiles). For example, the Department has issued SCPs to the USFWS Arizona Ecological Services Field Office (AESO) since at least 1986; and to the Bureau of Land Management since at least 1988. It is standard practice for the Department to issue permits to AESO for California Condor and Sonoran Pronghorn management and release, and the Department has issued annual SCPs to the USFWS for the purpose of conducting Mexican Wolf recovery activities since 2010. In the last two years, the Department issued SCLs to at least 35 persons representing offices in nine federal agencies, including USFWS, U.S. Bureau of Land Management, USDA-APHIS, U.S. Forest Service, National Park Service, U.S. Department of Defense, Department of Energy, and U.S. Geological Survey. These licenses generally provide broad authorities for our partner federal agencies and ensure a safe and collaborative approach to wildlife management in Arizona. Since 1998, the Department has not denied an application for a SCL to a federal agency (the Department's license application records only go back to 1998).

Although we have issued SCL's to numerous federal entities, some federal interests have disregarded our requests to apply for and obtain a Department-issued permit. Over the past 10 years the U.S. Bureau of Reclamation (USBR) has stocked over a hundred thousand Razorback Suckers in the Colorado River without a valid SCL. Because there was no communication or coordination between the Department and USBR, which would have occurred if USBR had applied for a Department-issued permit, the Department has no information regarding what screening and health certifications were conducted prior to those stockings, thus potentially putting Arizona's wildlife at risk.

To reiterate the Commission's justification for amending the rule, the Commission expects persons and federal agencies to comply with State rules requiring permits for the importation of wildlife and further, that release of live wildlife without first obtaining the permission of the Commission is a violation of State statute. This requirement is for the protection of wildlife populations from disease and other negative events and is mandated by A.R.S. Title 17.

(a) The conduct and its frequency of occurrence that the rule is designed to change.

In light of recent events and due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposes to proactively strengthen its rules to avoid any unintended outcome that a federal agency can avoid state permits before releasing or removing wildlife.

(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

While the issue that initiated the review of Game and Fish laws and rules involved big river fish and wolves, these licenses and permits are issued for a variety of activities involving many species of native wildlife, such as but not limited to, birds, black-footed ferrets, frogs, mice, pronghorn antelope, reptiles, snails, and wolves - to name a few. The situation in Salt River System and New Mexico may indicate a shift in the federal position on state permits. In addition, the Department has also found agencies other than the Service refusing to cooperate with the State prior to the reintroducing or removing wildlife.

(c) The estimated change in frequency of the targeted conduct expected from the rule change.

The Commission expects federal agencies to obtain state permits to release wildlife, and wants to eliminate any ambiguity in its regulations that a federal agency may bypass state permit requirements if federal law authorizes release of wildlife. Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposes to strengthen its rules to avoid any unintended outcome that a federal agency can avoid state permits before releasing or removing wildlife.

2. Brief summary of the information included in the economic, small business and consumer impact statement.

The Commission's rule protects native wildlife in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

The Commission's intent in proposing the amendments indicated in this rulemaking is to strengthen its rule to avoid any unintended outcome that a federal agency can circumvent state permitting requirements before conducting any wildlife-related activities. The Department has always operated under the premise that our federal partners need state authorization for any wildlife activities, and, as a result of the internal review, the Department discovered that this requirement was not already codified in rule. Through this rulemaking, the Commission is codifying what the Department has already practiced; thereby, protecting the Department and our partners (federal or otherwise) from unforeseen legal issues.

The requirement that a federal agency must apply for and obtain a state license or permit in order to conduct wildlife-related activities is not a new requirement. Under A.R.S. § 17-238, the Commission, at its discretion and under such regulations as it deems necessary, may issue a permit to take wildlife for scientific purposes to any person or duly accredited representative of public educational or scientific institutions, or governmental departments of the U.S. engaged in the scientific study of wildlife. This is necessary because A.R.S. §17-102 states, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the Commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission.

On an annual basis, the Department issues approximately 48 scientific collecting licenses to federal agencies for a variety of activities involving wildlife; licenses and permits are issued for the purpose of establishing, monitoring, studying, surveying, and translocating wildlife. Since 1998, the Department has

not denied a scientific collecting license applied for by a federal agency (the Department's license application records only go back to 1998). Federal agencies that have held or currently hold a Department-issued scientific collecting license include, but are not limited to, the Department of Defense, Department of Energy, Department of Interior, National Forest Service, National Parks Service, National Wildlife Refuge, U.S. Army Engineer Research and Development Center, U.S. Department of Agriculture: Animal and Plant Health Inspection Service, USFWS, U.S. Army, and U.S. Geological Survey.

There are many valid reasons to require any agency to apply for and obtain a state-issued license or permit. The application process allows the Department to ensure duplicate projects are not occurring, and that proposed activities will benefit wildlife. The license/permit process requires federal agencies to coordinate their activities with the Department, which ensures the best management outcome possible for Arizona's wildlife.

The Commission anticipates the proposed amendments will have little or no impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission anticipates the implementation of the rulemaking will have no measurable impact on Department operations, as the Department has been fully engaged in addressing live wildlife concerns and has an administrative process in place for special licenses and permits issued by the Department.

The Commission anticipates the Department will benefit from a rule that ensures the Department maintains jurisdiction over Arizona's wildlife and wildlife habitat.

The Commission believes the proposed rulemaking will enhance the Department's ability to protect the public health, safety, and welfare and native wildlife and wildlife habitat. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the cost of rulemaking, there are no costs associated with the rulemaking. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

3. The name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

Name: Celeste Cook, Rules and Policy Manager

Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

Telephone: (623) 236-7390

Fax: (623) 236-7110

E-mail: CCook@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rule making.

See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.

The Commission anticipates this rulemaking will have little or no impact on persons regulated by the rule. Currently federal agencies are complying with special license requirements; on an annual basis, the Department issues approximately 48 special licenses to federal agencies for many activities involving wildlife, including the release of wildlife into Arizona. The Commission's intent in proposing the amendments indicated in this rulemaking is to strengthen its rules to avoid any unintended outcome that a federal agency can avoid state permits before releasing or removing wildlife.

3. Cost benefit analysis:

(a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.

The Commission anticipates the proposed amendments will have little or no impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission anticipates the implementation of the rulemaking will have no measurable impact on Department operations, as the Department has been fully engaged in addressing live wildlife concerns and has an administrative process in place for special licenses and permits issued by the Department. The Commission believes the proposed rulemaking will enhance the Department's ability to protect the public health, safety, and welfare and native wildlife and wildlife habitat. The Commission anticipates the Department will benefit from a rule that ensures the Department maintains jurisdiction over Arizona's wildlife and wildlife habitat. The Commission has determined the rulemaking will not require any new full-time employees. The Commission believes the benefits of the rulemaking outweigh any costs.

(b) Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

The Commission anticipates the proposed amendments will have little or no impact on political subdivisions of this state directly affected by the implementation and enforcement of the proposed rulemaking.

(c) Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The Commission's intent in the proposed rulemaking is to promote public health, safety, and welfare, and allow the Department the management authority necessary to protect and manage wildlife and wildlife habitat. Many of the amendments will not affect businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant. The Commission believes the benefits of the rulemaking outweigh any costs.

4. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

The Commission anticipates the proposed amendments will have minimal or no substantive impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

(a) Identification of the small businesses subject to the proposed rulemaking.

The Commission's intent in proposing these amendments is to protect native wildlife and their habitats by reducing the risk of released animals competing with native wildlife. The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule, members of the public, and the Department by ensuring the Department maintains jurisdiction over Arizona's wildlife and wildlife habitat. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

(b) Administrative and other costs required for compliance with the proposed rulemaking.

The Commission believes the amendments proposed in this rulemaking will have no significant impact on persons regulated by the rule.

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rules do not place any compliance or reporting requirements on businesses.

(d) Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The Commission believes private persons and consumers will benefit from the proposed rulemaking through clarification of rule language governing the lawful possession of live wildlife.

6. Statement of the probable effect on state revenues.

The Commission anticipates the proposed amendments will have little or no impact on state revenues. However, failure to clarify that a federal agency is required to apply for and obtain a state permit may result in the inadvertent releases of unwanted or diseased species in Arizona, which would have a significant negative impact on the Department due to high costs associated with mitigation and recovery of native

species or wildlife habitat. While actual costs are not readily quantifiable, the Commission anticipates these costs will be significant. For example, the Department will spend millions of dollars over the next 10 years trying to reduce the impact of gizzard shad at Roosevelt Lake.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking including the monetizing of the costs and benefits for each option and providing rationale for not using the nonselected alternatives.

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Commission directed the Department's Attorney's General to conduct a review of Game and Fish laws and rules to ensure the Department has regulations in place that would prevent a federal agency from bypassing the Department's special license requirements. As a result of this review, the Commission determined it is necessary to amend Commission rules to strengthen its rules to avoid any unintended outcome that a federal agency can avoid state permits before releasing or removing wildlife. In its review, the Department's Attorney's General considered available case law, all comments from agency staff that administer and enforce Article 4 rules, historical data, current processes and environment, and the Department's overall mission. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

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

R12-4-402. Live Wildlife: Unlawful Acts

- A.** A person shall not perform any of the following activities with live wildlife unless authorized by a federal license or permit, this Chapter, or A.R.S. Title 3, Chapter 16:
1. Import any live wildlife into the state;
 2. Export any live wildlife from the state;
 3. Conduct any of the following activities with live wildlife within the state:
 - a. Display,
 - b. Exhibit,
 - c. Give away,
 - d. Lease,
 - e. Offer for sale,
 - f. Possess,
 - g. Propagate,
 - h. Purchase,
 - i. Release,
 - j. Rent,
 - k. Sell,
 - l. Sell as live bait,
 - m. Stock,
 - n. Trade,
 - o. Transport; or
 4. Kill any captive live wildlife.
- B.** The Department may seize, quarantine, hold, or euthanize any lawfully possessed wildlife held in a manner that poses an actual or potential threat to the wildlife, other wildlife, or the safety, health, or welfare of the public. The Department shall make reasonable efforts to find suitable placement for any animal prior to euthanizing it.
- C.** A person who does not lawfully possess wildlife in accordance with this Article shall be responsible for all costs associated with the care and keeping of the wildlife.

R12-4-402 Definitions

17-101. Definitions

A. In this title, unless the context otherwise requires:

1. "Angling" means the taking of fish by one line and not to exceed two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not to exceed two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that may lawfully be taken by any one person during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who does any of the following:
 - (a) Advertises for guiding services.
 - (b) Holds himself out to the public for hire as a guide.
 - (c) Is employed by a commercial enterprise as a guide.
 - (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
 - (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.
16. "Possession limit" means the maximum limit, in number or amount of wildlife, that may be possessed at one time by any one person.

R12-4-402 Definitions

17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
 - (a) A member of the armed forces of the United States on active duty and who is stationed in:
 - (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
 - (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
 - (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
 18. "Road" means any maintained right-of-way for public conveyance.
 19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
 20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife.
 21. "Taxidermist" means any person who engages for hire in the mounting, refurbishing, maintaining, restoring or preserving of any display specimen.
 22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
 23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
 24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
 25. "Youth" means a person who is under eighteen years of age.
 26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.
- B. The following definitions of wildlife shall apply:
1. Aquatic wildlife are all fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
 2. Game mammals are deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
 3. Big game are wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
 4. "Trophy" means:
 - (a) A mule deer buck with at least four points on one antler, not including the eye-guard point.
 - (b) A whitetail deer buck with at least three points on one antler, not including the eye-guard point.
 - (c) A bull elk with at least six points on one antler, including the eye-guard point and the brow tine point.
 - (d) A pronghorn (antelope) buck with at least one horn exceeding or equal to fourteen inches in total length.
 - (e) Any bighorn sheep.
 - (f) Any bison (buffalo).

R12-4-402 Definitions

5. Small game are cottontail rabbits, tree squirrels, upland game birds and migratory game birds.
6. Fur-bearing animals are muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
7. Predatory animals are foxes, skunks, coyotes and bobcats.
8. Nongame animals are all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
9. Upland game birds are quail, partridge, grouse and pheasants.
10. Migratory game birds are wild waterfowl, including ducks, geese and swans; sandhill cranes; all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
11. Nongame birds are all birds except upland game birds and migratory game birds.
12. Raptors are birds that are members of the order of falconiformes or strigiformes and include falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
13. Game fish are trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
14. Nongame fish are all the species of fish except game fish.
15. Trout means all species of the family salmonidae, including grayling.

R12-4-101. Definitions

A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

“Bobcat seal” means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

“Bonus point” means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

“Certificate of insurance” means an official document issued by the sponsor's and sponsor's vendors or subcontractors insurance carrier providing insurance against claims for injury to persons or damage to property which may arise from or in connection with the solicitation or event as determined by the Department.

“Commission Order” means a document adopted by the Commission that does one or more of the following:

- Open, close, or alter seasons,
- Open areas for taking wildlife,
- Set bag or possession limits for wildlife,
- Set the number of permits available for limited hunts, or
- Specify wildlife that may or may not be taken.

“Day-long” means the 24-hour period from one midnight to the following midnight.

“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

“Hunt area” means a management unit, portion of a management unit, or group of management units, or any

R12-4-402 Definitions

portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.

“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.

“Identification number” means the number assigned to each applicant or license holder by the Department, as established under R12-4-111.

“License dealer” means a business authorized to sell hunting, fishing, and other licenses as established under ~~to~~ R12-4-105.

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

“Management unit” means an area established by the Commission for management purposes.

“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

“Person” has the meaning as provided under A.R.S. § 1-215.

“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

“Restricted nonpermit-tag” means a tag issued for a supplemental hunt as established under R12-4-115.

“Solicitation” means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

“Solicitation material” means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

“Sponsor” means the person or persons conducting a solicitation or event.

“Stamp” means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

“Tag” means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

“Waterdog” means the larval or metamorphosing stage of a salamander.

“Wildlife area” means an area established under 12 A.A.C. 4, Article 8.

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

“Antlered” means having an antler fully erupted through the skin and capable of being shed.

“Antlerless” means not having an antler, antlers, or any part of an antler erupted through the skin.

“Bearded turkey” means a turkey with a beard that extends beyond the contour feathers of the breast.

“Buck antelope” means a male pronghorn antelope.

“Adult bull buffalo” means a male buffalo any age or any buffalo designated by a Department employee during an adult bull buffalo hunt.

“Adult cow buffalo” means a female buffalo any age or any buffalo designated by a Department employee during

R12-4-402 Definitions

an adult cow buffalo hunt.

“Bull elk” means an antlered elk.

“Designated” means the gender, age, or species of an animal or the specifically identified animal the Department authorizes to be taken and possessed with a valid tag.

“Ram” means any male bighorn sheep.

“Rooster” means a male pheasant.

“Yearling buffalo” means any buffalo less than three years of age or any buffalo designated by a Department employee during a yearling buffalo hunt.

R12-4-401. Live Wildlife Definitions

In addition to definitions provided under A.R.S. § 17-101, and for the purposes of this Article, the following definitions apply:

"Adoption" means the transfer of custody of live wildlife to a member of the public, initiated by either the Department or its authorized agent, when no special license is required.

"Agent" means the person identified on a special license and who assists a special license holder in performing activities authorized by the special license to achieve the objectives for which the license was issued. "Agent" has the same meaning as "sublicensee" and "subpermittee" as these terms are used for the purpose of federal permits.

"Aquarium trade" means the commercial industry and its customers who lawfully trade in aquatic live wildlife.

"Aversion training" means behavioral training in which an aversive stimulus is paired with an undesirable behavior in order to reduce or eliminate that behavior.

"Captive live wildlife" means live wildlife held in captivity, physically restrained, confined, impaired, or deterred to prevent it from escaping to the wild or moving freely in the wild.

"Captive-reared" means wildlife born, bred, raised, or held in captivity.

"Cervid" means a mammal classified as a Cervidae or member of the deer family found anywhere in the world, as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at www.itis.gov.

"Circus" means a scheduled event where a variety of entertainment is the principal business, primary purpose, and attraction. "Circus" does not include animal displays or exhibits held as an attraction for a secondary commercial endeavor.

"Commercial purpose" means the bartering, buying, leasing, loaning, offering to sell, selling, trading, exporting or importing of wildlife or their parts for monetary gain.

"Domestic" means an animal species that does not exist in the wild, and includes animal species that have only become feral after they were released by humans who held them in captivity or individuals or populations that escaped from human captivity.

"Educational display" means a display of captive live wildlife to increase public understanding of wildlife biology, conservation, and management without requiring or soliciting payment from an audience or an event sponsor. For the purposes of this Article, "to display for educational purposes" refers to display as part of an educational display.

"Educational institution" means any entity that provides instructional services or education-related services to

R12-4-402 Definitions

persons.

"Endangered or threatened wildlife" means wildlife listed under 50 C.F.R. 17.11, revised October 1, 2013, which is incorporated by reference. A copy of the list is available at any Department office, online at www.gpoaccess.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.

"Evidence of lawful possession" means any license or permit authorizing possession of a specific live wildlife species or individual, or other documentation establishing lawful possession. Other forms of documentation may include, but are not limited to, a statement issued by the country or state of origin verifying a license or permit for that specific live wildlife species or individual is not required.

"Exhibit" means to display captive live wildlife in public or to allow photography of captive live wildlife for any commercial purpose.

"Exotic" means wildlife or offspring of wildlife not native to North America.

"Fish farm" means a commercial operation designed and operated for propagating, rearing, or selling aquatic wildlife for any purpose.

"Game farm" means a commercial operation designed and operated for the purpose of propagating, rearing, or selling terrestrial wildlife or the parts of terrestrial wildlife for any purpose stated under R12-4-413.

"Health certificate" means a certificate of an inspection completed by a licensed veterinarian verifying the animal examined appears to be healthy and free of infectious, contagious, and communicable diseases.

"Hybrid wildlife" means an offspring from two different wildlife species or genera. Offspring from a wildlife species and a domestic animal species are not considered wildlife.

"Live baitfish" means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-313 and R12-4-317.

"Live bait" means aquatic live wildlife used or intended for use in taking aquatic wildlife.

"Migratory birds" mean all species listed under 50 C.F.R. 10.13 revised October 1, 2014, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.

"Noncommercial purpose" means the use of products or services developed using wildlife for which no compensation or monetary value is received.

"Nonhuman primate" means any nonhuman member of the order Primate of mammals including prosimians, monkeys, and apes.

"Nonnative" means wildlife or its offspring that did not occur naturally within the present boundaries of Arizona before European settlement.

"Person" has the same meaning as defined under A.R.S. § 1-215.

"Photography" means any process that creates durable images of wildlife or parts of wildlife by recording light or other electromagnetic radiation, either chemically by means of a light-sensitive material or electronically by means of an image sensor.

"Rehabilitated wildlife" means live wildlife that is injured, orphaned, sick, or otherwise debilitated and is provided care to restore it to a healthy condition suitable for release to the wild or for lawful captive use.

R12-4-402 Definitions

"Research facility" means any association, institution, organization, school, except an elementary or secondary school, or society that uses or intends to use live animals in research.

"Restricted live wildlife" means wildlife that cannot be imported, exported, or possessed without a special license or lawful exemption.

"Shooting preserve" means any operation where live wildlife is released for the purpose of hunting.

"Special license" means any license issued under this Article, including any additional stipulations placed on the license authorizing specific activities normally prohibited under A.R.S. § 17-306 and R12-4-402.

"Species of greatest conservation need" means any species listed in the Department's Arizona's State Wildlife Action Plan list Tier 1a and 1b published by the Arizona Game and Fish Department. The material is available for inspection at any Department office and online at www.azgfd.gov.

"Stock" and "stocking" means to release live aquatic wildlife into public or private waters other than the waters where taken.

Taxa" means groups of animals within specific classes of wildlife occurring in the state with common characteristics that establish relatively similar requirements for habitat, food, and other ecological, genetic, or behavioral factors.

"Unique identifier" means a permanent marking made of alphanumeric characters that identifies an individual animal, which may include, but is not limited to, a tattoo or microchip.

"USFWS" means the United States Fish and Wildlife Service.

"Volunteer" means a person who:

- Assists a special license holder in conducting activities authorized under the special license,
- Is under the direct supervision of the license holder at the premises described on the license,
- Is not designated as an agent, and
- Receives no compensation.

"Wildlife disease" means any disease that poses a health risk to wildlife in Arizona.

"Zoo" means any facility licensed by the Arizona Game and Fish Department under R12-4-420 or, for facilities located outside of Arizona, licensed or recognized by the applicable governing agency.

"Zoonotic" means a disease that can be transmitted from animals to humans or, more specifically, a disease that normally exists in animals but that can infect humans.

17-102. Wildlife as state property; exceptions

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.

R12-4-402 Statutory Authority

7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
 8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
 9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
 10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
 11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
 12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
 13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.
 14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.
- C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.
- D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-238. Special licenses for field trials, for shooting preserves and for collecting or holding wildlife in captivity

- A. The commission may adopt rules and regulations and issue licenses for the conduct of field trials, shooting preserves, private wildlife farms and zoos, or for the personal use and possession of wildlife so as to safeguard the interests of the wildlife and people of the state.
- B. The commission, at its discretion and under such regulations as it deems necessary, may issue a permit to take wildlife for scientific purposes to any person or duly accredited representative of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of wildlife.
- C. A person holding a permit issued pursuant to this section may, upon advance approval by the commission, buy, sell and transport wildlife legally possessed. Each person receiving a permit under this section shall file with the department within fifteen days after requested by the department a report of his activities under the permit. The commission may revoke such licenses or permits for noncompliance with regulations.

17-240. Disposition of wildlife; devices; unlawful devices; notice of intention to destroy; waiting period; destruction; jurisdiction of recovery actions; disposition of unclaimed property

- A. Wildlife seized under this title may be disposed of in such manner as the commission or the court may prescribe, except that the edible portions shall be given to public institutions or charitable organizations. In consultation with the department of health services and the chief veterinary meat inspector, the commission shall adopt rules for the handling, transportation, processing and storing of game meat given to public institutions and charitable organizations.
- B. Devices, excepting firearms, which cannot be used lawfully for the taking of wildlife and being so used at the time seized may be destroyed. Notice of intention to destroy such devices as prescribed in this section must be sent by registered mail to the last known address of the person from whom seized if known and posted in three conspicuous places within the county wherein seized, two of said notices being posted in the customary place for posting public notices about the county courthouse of said county. Such device shall be held by the department for thirty days after such posting and mailing, and if no action is commenced to recover possession of such device within such time, the same shall be summarily destroyed by the department, or if such devices shall be held by the court in any such action to have been used for the taking of wildlife, then such device shall be summarily destroyed by the department immediately after the decision of the court has become final. The justice court shall have jurisdiction of any such actions or proceedings commenced to recover the possession of such devices.
- C. Devices other than those referred to in subsection B, including firearms seized under this title shall, after final disposition of the case, be returned to the person from whom the device was seized. If the person from whom the device was seized cannot be located or ascertained, the device seized shall be retained by the department at least ninety days after final disposition of the case, and all devices so held by the department may be:
 - 1. Sold annually.
 - 2. Destroyed only if considered a prohibited or defaced weapon, as defined in section 13-3101, except that any seized firearm registered in the national firearms registry and transfer records of the United States treasury department or has been classified as a curio or relic by the United States treasury department shall not be destroyed.

- D. If no complaint is filed pursuant to this title, the device shall be returned to the person from whom seized within thirty days from the date seized.
- E. A complete report of all wildlife and devices seized by the department showing a description of the items, the person from whom it was seized, if known, and a record of the disposition shall be kept by the department. The money derived from the sale of any devices shall be deposited in the game and fish fund.

17-250. Wildlife diseases; order of director; violation; classification; rule making exemption

- A. If a wildlife disease is suspected or documented in freeranging or captive wildlife, the director may issue orders that are necessary to minimize or eliminate the threat from the disease. The director may also order or direct an employee of the department to:
 1. After notification of and in coordination with the state veterinarian, establish quarantines and the boundary of the quarantine.
 2. Destroy wildlife as necessary to prevent the spread of any infectious, contagious or communicable disease.
 3. Control the movement of wildlife, wildlife carcasses or wildlife parts that may be directly related to spreading or disseminating diseases that pose a health threat to animals or humans.
 4. Require any individual who has taken wildlife, who is in possession of wildlife or who maintains wildlife under a license issued by the department to submit the wildlife or parts for disease testing.
- B. On finding there is reason to believe an infectious, contagious or communicable disease is present, the director may require an employee of the department to enter any place where wildlife may be located and take custody of the wildlife for purposes of disease testing. If search warrants are required by law, the director shall apply for and obtain warrants for entry to carry out the requirements of this subsection.
- C. A person who violates any lawful order issued under this section is guilty of a class 2 misdemeanor. An order issued under this section is exempt from title 41, chapter 6, article 3, except that the director shall promptly file a copy of the order with the secretary of state for publication in the Arizona administrative register pursuant to section 41-1013.

17-306. Importation, transportation, release or possession of live wildlife; violations; classification

- A. No person shall import or transport into this state or sell, trade or release within this state or have in the person's possession any live wildlife except as authorized by the commission or as defined in title 3, chapter 16.
- B. It is unlawful for a person to knowingly and without lawful authority under state or federal law import and transport into this state and release within this state a species of wildlife that is listed as a threatened, endangered or candidate species under the endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 through 1544).
- C. A person who violates subsection B of this section is guilty of a class 6 felony.
- D. A person who violates subsection B of this section with the intent to disrupt or interfere with the development or use of public natural resources to establish the presence of the species in an area not currently known to be occupied by that species is guilty of a class 4 felony.

From: [Ty Gray](#)
To: [Jennifer Stewart](#); [Celeste Cook](#); [Jim Odenkirk](#); [Jim deVos](#); [Kent Komadina](#)
Subject: Fwd: Game & Fish Rulemaking Request for A.A.C. § R12-4-402(A)
Date: Monday, August 15, 2016 1:16:34 PM
Attachments: [9D27CB9A-9C43-4C17-886D-173586A09F6C\[150\].png](#)
[9D27CB9A-9C43-4C17-886D-173586A09F6C\[150\].png](#)

FYI

Sent from my iPhone

Begin forwarded message:

From: Hunter Moore <hmoore@az.gov>
Date: August 15, 2016 at 12:38:31 PM MST
To: Larry Voyles <lvoyles@azgfd.gov>
Cc: Ty Gray <tgray@azgfd.gov>, Henry Darwin <hdarwin@az.gov>, Danny Seiden <dseiden@az.gov>, Victor Riches <vriches@az.gov>, Daniel Ruiz <druiz@az.gov>, Daniel Scarpinato <dscarpinato@az.gov>, Annie Dockendorff <ADockendorff@az.gov>
Subject: Game & Fish Rulemaking Request for A.A.C. § R12-4-402(A)

Director Voyles,

I am sending this message after having reviewed the request by the Arizona Game & Fish Department (Department), to initiate rule making for A.A.C. § R12-4-402(A) rules addressing the release of wildlife in Arizona without a state permit. I understand that the Department, and the Arizona Game & Fish Commission (Commission) have conferred with their legal council, and there is a concern that the current rules could be construed as authorizing a federal agency to release or reintroduce threatened or endangered species in Arizona without obtaining a state permit. I understand that the Commission intends to clarify this rule to make it inapplicable to federal agencies. I also understand that you have reviewed the work of your staff, and you are submitting your request to this office pursuant to Executive Order 2016-03 (Executive Order).

I am aware that Federal regulations require agencies within the Department of the Interior to comply with state permit requirements in connection with the release or reintroduction of wildlife, except when the Secretary of Interior determines compliance will prevent an agency from carrying out its statutory responsibilities (43 C.F.R. Part 24). I understand that the Commission and Department expect federal agencies to obtain state permits to release wildlife, and that you wish to eliminate any ambiguity state regulations that a federal agency may bypass state permit requirements if federal law authorizes the

release of wildlife.

I also understand that it is the position of the Commission that federal regulation requiring state permits recognizes that the effective conservation of wildlife resources requires cooperation among the states and the federal government, and that states have broad trustee responsibilities for fish and wildlife with primary authority for wildlife management on federal lands. These same concepts are reflected in the letter to the Secretary of Interior dated November 13, 2015, in which the Governors from Arizona, New Mexico, Utah and Colorado stated that wolf recovery depends on the support and participation of the affected states. The letter mentioned above raised concerns that the affected states had not been provided sufficient opportunities to shape the recovery planning process, and the Fish and Wildlife Service (“Service”) was making decisions without consulting the states.

I believe that this request by the Department meets the criteria for an exception under subsections 2(i) of the Executive Order, which allows an agency to pursue rule making to address matters pertaining to the control, mitigation, or eradication of wasteful, fraudulent, or abusive activities perpetrated against an agency.

Based on authority provided from Henry Darwin, I am hereby approving the rulemaking exemption so the Department can proceed.

I am available for any questions you may have.

Hunter Moore
Natural Resource Policy Advisor
Office of the Arizona Governor
1700 W Washington St.
Phoenix, AZ 85007-2888
C: 602.769.7566
E: hmoore@az.gov



AZCFD Facebook page

4 shares



Write a comment



Mandy Carrell Supremacy clause. Once again you're proving you're becoming more & more political. And like I've called you out before, you're anti-fed. Anyone with half a brain can see right through this. This is in regards to the Mexican grey wolf.

Like · Reply · 2 · October 5 at 9:26pm

↳ View previous replies



Arizona Game and Fish Department Mandy: Even if you live in New Mexico, you are encouraged to make comments directly to the Arizona Game and Fish Commission using the address above.

Like · Reply · October 6 at 10:07am

↳ View more replies



Chris Desch Power resides with the states as it should.

Like · Reply · 2 · October 5 at 9:45pm



Patrick Mullican its our land not the feds.

Like · Reply · 1 · October 6 at 5:49am



James Baxter It's our land not the feds. Keep on fighting.

Like · Reply · 1 · October 5 at 9:55pm



Curt Lindner As a hunter I am more concerned with Ethics and Fair Chase when it comes to the early elk rut hunts. More hunters are talking about this subject. The Commission is on notice.

Like · Reply · 2 · October 6 at 10:24am



Andrew Honer Do it.

Like · Reply · October 6 at 12:20am

Write a comment...

Celeste Cook

From: DIANNE CHALMERS <dichalmers@icloud.com>
Sent: Friday, October 07, 2016 1:38 PM
To: Rulemaking
Subject: Mexican wolves

Ladies & Gents: I'm a decorated combat vet, hunter, philanthropist & a proud citizen of AZ. I respectfully ask you put no restrictions on increasing the Mexican Gray population. Let's do the right thing & protect God's creatures. It's our charge & duty. Sincerely, William Arnold

Sent from my iPad

Celeste Cook

From: Bob <bbrister@q.com>
Sent: Friday, October 07, 2016 2:20 PM
To: Rulemaking
Subject: no on rule change

Dear Commissioners,

I am writing to oppose the proposed rule change requiring U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild. I am frustrated and displeased that AGFD is trying to undermine Mexican wolf recovery. Federal supremacy is a long established doctrine in American law. If you can't follow the law, you should resign.

Mexican wolves are a federally designated endangered species and I support their recovery.

Sincerely,

Bob Brister

220 S Elizabeth St #12

Salt Lake City, UT 84102

Celeste Cook

From: Bryan Bird <brybird@gmail.com>
Sent: Friday, October 07, 2016 2:59 PM
To: Rulemaking
Subject: Comment: TITLE 12. CHAPTER 4. GAME AND FISH COMMISSION

Dear Commissioners,

I am writing to request that you not amend R12-4-402. The amendment would change the rule to require the U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover Mexican gray wolves.

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. Mexican gray wolves need science-based recovery, not political meddling!

Please abandon this rule change.

Bryan Bird
Santa Fe, NM
(505) 501-4488

Celeste Cook

From: Beth Ballmann <beth.ballmann@gmail.com>
Sent: Friday, October 07, 2016 3:58 PM
To: Rulemaking
Subject: R12-4-402

Dear Sir/Madam,

I understand that **R12-4-402** would require a state permit before allowing the release of Mexican gray wolves to the wild. It is already hard enough for the Fish and Wildlife service to do their job regarding protecting and building up the population of Mexican Gray Wolves under the Endangered Species Act. This rule change is a bad idea as the state seems determined to exterminate these wolves.

Please do not make this rule change. Instead please eliminate the restriction on Mexican Gray wolves being allowed above I-40.

Thank you,

Beth Ballmann
PO Box 1693
Cave Creek, AZ 85327
Beth.Ballmann@gmail.com
Sent from my iPhone

Celeste Cook

From: Don Marovich <dmarovi@gmail.com>
Sent: Friday, October 07, 2016 4:04 PM
To: Rulemaking
Subject: R12-4-402

I am writing to say I believe that the Arizona Game and Fish Commission's new proposed rule **SHOULD NOT** be enacted.

It is already difficult for grey wolfs to recover in a growing human world. Allowing this rule to go through would make the grey wolf's battle even harder. Please make the right choice to help the Grey Wolfs.

-Donald Marovich
480-452-2060

Celeste Cook

From: Jess Schula <schulajess@gmail.com>
Sent: Friday, October 07, 2016 7:57 PM
To: Rulemaking
Subject: Mexican grey wolf recovery

Please do not enact additional regulations on grey wolf release!

Celeste Cook

From: Chloe Smith <sudan85251@icloud.com>
Sent: Saturday, October 08, 2016 10:22 AM
To: Rulemaking
Subject: Save the Wolves

Do not destroy this keystone species.

God Bless You

Celeste Cook

From: Shari Johnson <cher@ntcnet.com>
Sent: Saturday, October 08, 2016 10:32 AM
To: Rulemaking
Subject: Please..

Save our Mexican Gray Wolves and provide wild protected habitats for them! They are essential to our Eco systems! Thank you! Sincerely, Wildlife advocate S.L. Johnson Adirondacks New York

Celeste Cook

From: Vickey Lasley <vlasley54@yahoo.com>
Sent: Saturday, October 08, 2016 10:33 AM
To: Rulemaking
Subject: mexican gray wolves

States should not have the right to say they don't want wolves.
Mexican gray wolf recovery is important to people living in Arizona as well as tourists

Sent from Yahoo Mail on Android

Celeste Cook

From: Karen Chaikin <kschaikin@yahoo.com>
Sent: Saturday, October 08, 2016 10:37 AM
To: Rulemaking
Subject: R12-4-402 Mexican Grey Wolf recovery

To whom it may concern at the Arizona Game and Fish Commission:

I do not live in Arizona but I know that wolf recovery is critical to the health of the environment for all creatures (not just humans). It has been shown that a healthy wolf population helps other non-carnivore animals lead healthier lives plus the native plants thrive when the ecosystem is in balance. If the goal of the commission is to maintain a good level of 'game' and fish in the state of Arizona, wolves must be part of the plan.

Thank you,
Karen S Chaikin

Celeste Cook

From: Tpc333 <Tammycarreno@yahoo.com>
Sent: Saturday, October 08, 2016 10:38 AM
To: Rulemaking
Subject: Grey Wolves

Hello,

Please start protective the Gray Wolves instead of driving them to extinction to protect profits of private parties.

Your job is to protect our wild life. Wolves are critical an important and deserve better than what they have received.

Regards,

Tammy Carreno
Sent from my iPhone

Celeste Cook

From: Basil SMITH <basilusn@gmail.com>
Sent: Saturday, October 08, 2016 10:43 AM
To: Rulemaking
Subject: Mexican Wolf Conservation

Please reconsider steps to completely eradicate the wolf from the state. Give them a chance to live and propagate in numbers that will insure they remain an integral part of Mother Nature's "plan" to keep all things in balance.

Sincerely,
Basil Smith

Celeste Cook

From: Jeannine Zarazowski <mendrola@yahoo.com>
Sent: Saturday, October 08, 2016 10:51 AM
To: Rulemaking
Subject: Fwd: Wolf permits

>
> The proposed rule requiring a permit to release wolves is absurd and another barrier to prevent establishing a sustainable population. Stop obstructing the people's will who overwhelmingly support wildlife and wolves!

>
> Sincerely,
> Jeannine Mendrola
>
> Sent from my iPhone

>
>

Celeste Cook

From: snealley@gmail.com
Sent: Saturday, October 08, 2016 10:53 AM
To: Rulemaking
Subject: Grey Wolf

The Grey Wolf is facing extinction and you should protect them with your rules and regulations. Your new regulations is a clear and present danger to the Grey Wolf. Please reconsider and protect the Grey Wolves.

Stephen Nealley, MIS
University of Phoenix
Aurora, Colorado

Sent from my iPhone

Celeste Cook

From: Mick Wells <mick-wells@hotmail.co.uk>
Sent: Saturday, October 08, 2016 11:11 AM
To: Rulemaking
Subject: Do not apply a rule which makes it harder for the wolf

Please do not apply the new rule which makes it more difficult to release additional Mexican Grey wolves into the wild in Arizona.

To exist in a sustainable manner, more of these animals are needed in the wild - the additional numbers and the consequential improvement to their gene pool is critical.

Although I live in the UK, I have visited Arizona many times , and I go for the unique wilderness and the wildlife that exists in this state. I am sure that these attractions contribute greatly to the tourism economy in the state - not everyone goes for golf and the Grand Canyon....

Mexican Greys have been persecuted for many years and now deserve our help to exist . Humans do not have the exclusive right to populate this planet, to the detriment of all other species, as we spread and sprawl across the globe.

Please show some far-sightedness, economic awareness and sheer compassion and help the population of Mexican Grey wolves to take their rightful place in the ecosystem - as they have existed in Arizona for hundreds of years.

Thank you

Gayle Wells (Mrs)

Sent from Windows Mail

Celeste Cook

From: tracy evans <evans.tracy73@yahoo.com>
Sent: Saturday, October 08, 2016 11:12 AM
To: Rulemaking
Subject: SAVE MEXICAN GREY WOLVES

Save the wolves and large predators. They are a vital part of the animal food chain. They deserve to live in forests and national parks unmolested by poachers and hunters. Thank you please protect the wolves. Tracy Evans. 

Sent from Yahoo Mail on Android

Celeste Cook

From: Patricia Martin <pdenismartin@icloud.com>
Sent: Saturday, October 08, 2016 11:14 AM
To: Rulemaking
Subject: Mexican wolves

Our federal government should protect wolves on our land for all citizens. State governments **SHOULD NOT** have the final say on wolf release programs!

Dr. Patricia D Martin

Sent from my iPhone

Celeste Cook

From: Marta Rico <kaklekakle23@hotmail.com>
Sent: Saturday, October 08, 2016 11:14 AM
To: Rulemaking
Subject: MEXICAN WOLFS

Please release Mexican Wolves into the wild again, they're suffering a lot in captivity.

Don't play God, LET THEM FREE PLEASE!!!

Marta Rico

Celeste Cook

From: Barbara Lockwood <socdem@outlook.com>
Sent: Saturday, October 08, 2016 11:17 AM
To: Rulemaking
Subject: Wolves

We are called to be faithful stewards of this precious planet that God has provided us and that includes all of the wildlife and their habitats.

Please protect the wolves.

Thank you.

By. Lockwood

Sent from my Galaxy Tab® S2

Celeste Cook

From: schnarfy <schnarfy@aol.com>
Sent: Saturday, October 08, 2016 11:18 AM
To: Rulemaking
Subject: Mexican grey wolf preservation

Dear Sir or Madam,

I do not see how in good conscience you can act to wipe out a key member of your own ecosystem. This is wrong, the Mexican Grey Wolf is an important piece of the natural world that should be protected, not eradicated.

Please act in a way that preserves the balance of nature, place protections for this species, now.

Sincerely,

Lorri A. Cook
4036 Spring Port Rd.
Sardis, MS 38666

Sent via the Samsung Galaxy Note5, an AT&T 4G LTE smartphone

Celeste Cook

From: Geist <kdgeist@q.com>
Sent: Saturday, October 08, 2016 12:01 PM
To: Rulemaking
Subject: R12-4-402

To the Arizona Game and Fish Commission:

Mexican Gray wolves are critically endangered and fall under the federal Endangered Species Act. Your proposed ruling to require USFWS to get a state permit to release Mexican Gray wolves into your designated state areas is only meant to stop their potential recovery and survival. Instead you should be trying to help protect the Mexican Gray wolf from going extinct in your state. With less than 50 wolves presently in AZ, you should be protecting them as much as you protect deer and elk. Instead you are all about roadblocks to allowing them to live in their native habitat.

Do the right thing for the environment, the wolves, and the majority of your voters. Protect them and help them survive.

Katie Geist
719-687-9742

Celeste Cook

From: Michael Tomasino <m.tomasino@outlook.com>
Sent: Saturday, October 08, 2016 12:54 PM
To: Rulemaking
Subject: Mexican Grey Wolf

To all Concerned:

It has been known for many years the importance of all animal specie to our ecosystem, and human survival. The protection and re-establishment of endangered species is of utmost importance to all. Once gone it cannot be brought back. Rule changes that put these species at risk, should not be made or even considered. We are the care takers of a fragile planet and we will be judged by future generations by how we leave it for them.

Thank You

Michael A. Tomasino

Sent from my iPhone

Celeste Cook

From: Dylan Kettlestrings <dylankettlestrings@icloud.com>
Sent: Saturday, October 08, 2016 1:04 PM
To: Rulemaking
Subject: Mexican Gray Wolf Management

Arizona fish and game department:

I am writing to express my deepest disapproval of the proposed rule that would effectively inhibit US Fish and Wildlife from fulfilling their commitment to restoring the critically endangered Mexican Gray Wolf.

Wolf recovery is very important to me for many reasons, and the more I study the wolf's place in the ecosystem, the more curious I become as to why there are not more Wolf advocates in the world.

There are many reasons that I believe it is crucial to restore wolf populations, especially ones such as the Mexican Gray that is on the brink of extinction. As ethics sadly seem to be readily overlooked by government organizations, I have concluded that the strongest argument I can make for the wolves is based in science.

Recently, biologists have discovered that the presence of wolves offers many benefits to other organisms, including humans. In every landscape they inhabit, wolves stifle the irruption of herbivores, which allows for a greater diversity of flora, which translates into many benefits for the entire environment.

I wish I didn't have to, but I feel it is necessary to remind your organization that as a government agency, it is your purpose to ensure the best quality of life for the public. This entails many factors, but the most overlooked of all is environmental stability.

Restoring endangered wolves is an act that is proven to have great benefits to our world, and the more we give to our world, the more we give to our people. I urge you to quit being short-sited and really take a look at how loss of biodiversity through causing the extinction of a species with red tape is going to affect the grandchildren and great grandchildren of the people of your state.

Good science is the only basis on which decisions concerning ecosystems should be made. Science strongly advocates for biodiversity, and so should you.

Sincerely,

Dylan J. Kettlestrings

Celeste Cook

From: Andree Patti <aepatti@icloud.com>
Sent: Saturday, October 08, 2016 1:42 PM
To: Rulemaking
Subject: Wolves

Allow wolves to run free in this state & all states. Extinction is not option Sent from my iPhone

Celeste Cook

From: Katrina Yurenka <kyurenka@gmail.com>
Sent: Saturday, October 08, 2016 1:53 PM
To: Rulemaking
Subject: Mexican gray wolf

The Arizona Game and Fish Commission has proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require the U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos.

Please do NOT do this. Protect the wolves, don't kill them.

Katrina Yurenka
Jaffrey, NH

Celeste Cook

From: Scott Clayton <sjclayton1124@yahoo.com>
Sent: Saturday, October 08, 2016 2:05 PM
To: Rulemaking
Subject: Mexican grey wolf

Please allow these wolves to live in peace.

Sent from my iPhone

Celeste Cook

From: Karen White <hipikare@gmail.com>
Sent: Saturday, October 08, 2016 2:21 PM
To: Rulemaking
Subject: Protection of wolves

I am writing about the rule change that will threaten protection of Mexican grey wolves. You must not allow this. These animals must be protected Do the right thing and do not change ruling. Karen White

Celeste Cook

From: Cobalt Blue <texasblush6@yahoo.com>
Sent: Saturday, October 08, 2016 5:03 PM
To: Rulemaking
Subject: Gray wolf release

It is imperative that you NOT slow the controlled release of Gray wolves back into the wild. Nature requires balance & This proposed rule change will disrupt this balance & threaten the existence of Gray wolves. Do not approve this rule change.

Regards,

Malinda Mahan

Sent from my iPhone

Celeste Cook

From: Ann Edelman <bluedesertlotus@gmail.com>
Sent: Saturday, October 08, 2016 5:31 PM
To: Rulemaking
Subject: Concerning wolves

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Arizona Game and Fish Commission that what the lobos need is science-based recovery, not political meddling!

Sincerely,

Ann Edelman

Celeste Cook

From: Carolyn Primak <c.primak2@gmail.com>
Sent: Saturday, October 08, 2016 6:09 PM
To: Rulemaking
Subject: Wolves

Sent from my iPhone

Celeste Cook

From: philcoleman38@gmail.com
Sent: Saturday, October 08, 2016 8:45 PM
To: Rulemaking
Subject: Mexican gray wolves

To whom it may concern,

Please don't make it harder to release Mexican Wolves back into the wild. They're a native species that have been scientifically proven to enhance their environment by improving the health of prey animal populations. They are a highly intelligent species that deserves a chance to live free!

Thank you!
Phil Coleman

Sent from my iPhone

Celeste Cook

From: Kristin Harder <69k.harder@gmail.com>
Sent: Saturday, October 08, 2016 9:00 PM
To: Rulemaking
Subject: Abandon this rule change

To whom it may concern:

Please abandon this rule change regarding the grey wolves.

Thank you-

Kristin Harder
Sent from my iPhone

Celeste Cook

From: Brittney Sliger <gryffindor0989@gmail.com>
Sent: Saturday, October 08, 2016 10:02 PM
To: Rulemaking

Please let all wild animals to live in the wild where they belong, no animal should live in captivity and be miserable and mistreated, they deserve to be happy and healthy and have a long life

Celeste Cook

From: Barrett Goldflies <barrett.goldflies333@gmail.com>
Sent: Saturday, October 08, 2016 10:30 PM
To: Rulemaking
Subject: Mexican Wolf Recovery

Dear Mr. Mailto,

I am writing to you to express my concern regarding the proposal to ratify the Arizona Game and Fish Commission's regulations. Within the proposal are stipulations which undermine the recovery plan for the Mexican Grey Wolf and further jeopardize the species and threaten their survival. Additionally, the proposal to include the U.S. Fish & Wildlife Service to gain state permission to release more wolves into wild--as part of the recovery program--adds further to the negative implications of the proposal should be rejected. To further convince you, the U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releasing wolves into wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to wolf recovery is using politics to drive wolves to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted wolf recovery pending a court challenge to their legality.

I hope you take my comments into consideration and that the Arizona Game & Fish Commission votes against the rule change proposal.

Sincerely,

Barrett Goldflies

Celeste Cook

From: Alexander Cruz <acruzcontreraswebdeveloper@gmail.com>
Sent: Saturday, October 08, 2016 11:28 PM
To: Rulemaking
Subject: Please allow releasing additional Mexican gray wolves into the wild

Please allow releasing additional Mexican gray wolves into the wild.

--
ALEXANDER CRUZ.
WEB DEVELOPER & PARACORD SURVIVAL ARTICLES DESIGNER.

WHATSAPP: +57-303928088.

WEBSITES:

<http://www.naturalweb.rocks>

<http://productosenparacord.com>

Celeste Cook

From: Beverly Metevia <beverly.metevia9@yahoo.com>
Sent: Sunday, October 09, 2016 12:04 AM
To: Rulemaking
Subject: R12-4-492 - Wolves

Please, please oppose this rule change regarding release into the wild and work toward preserving and saving wolves instead of helping drive them to extinction. Arizona would be a far better place we're there more wolves and fewer politicians!!! Save Arizona's glorious wild.

Beverly Metevia
Ahwatukee

Sent from my iPhone

Celeste Cook

From: Carole Kramer <cajkram@earthlink.net>
Sent: Sunday, October 09, 2016 12:07 AM
To: Rulemaking
Subject: Ave the wolves

Please stand up for these wolves and their survival. They are essential to the health and survival of so much of the ecology you are charged with protecting.!!!

Sent from my iPad

Celeste Cook

From: Cheryl Landi <cher6@san.rr.com>
Sent: Sunday, October 09, 2016 12:29 AM
To: Rulemaking
Subject: Lobo

Your opposition to wolf recovery is ridiculous. There can be a mutual respect for the wolves and the opposition. Take note. You are the dying breed. Eventually the younger generation will take a stand as they become more aware and vote you out. It's just a matter of time.

Sent from my iPhone

Celeste Cook

From: T Scruggs <tenas7@gmail.com>
Sent: Sunday, October 09, 2016 1:08 AM
To: Rulemaking
Subject: Your proposal to require USFWS to get permit to do its job

Efforts by the AGFD to interfere with the USFWS legal, science-based responsibility to the American people to allow wolves to return and thrive in the Southwest is disturbing.

AGFD's proposed actions to require the Feds to get State permits reinforces Arizona's reputation as a backward state stuck in the past. As demonstrated by your name, Arizona views animals as "game"--targets or resources to be hunted. Policy is dictated by ranching and hunting interests, which abhors any competition, to the disservice of the majority of people who support wildlife conservation--including wolves.

Lots of people want their wolf heritage restored. They want a return of balanced ecosystems where top predators are allowed to do their job with cascading benefits. To continue to throw up road blocks to keep a keystone species from returning to its rightful place is to ignore the will of the people, the law, the science, and the damage this does to your reputation.

Drop your proposal to impede the Feds and use your resources instead to fulfill your mission of conserving ALL wildlife.

Sincerely,
Tena Scruggs

Celeste Cook

From: Michael Connors <mconnors@me.com>
Sent: Sunday, October 09, 2016 3:45 AM
To: Rulemaking
Subject: Mexican Gray Eolves

Please preserve and protect the integrity of our lands ecosystem. Nurture, not destroy.
Thank you,
Michael Connors

Sent from my iPhone 7 Plus

Celeste Cook

From: Matthew Hahn <tmhahn@hotmail.com>
Sent: Sunday, October 09, 2016 3:50 AM
To: Rulemaking
Subject: Wolves

Hi.

I understand that your state receives a lot of money from ranching. It's important. However the science simply doesn't back the claims regarding how much livestock wolves will take.

Cattle are not at risk of going extinct. The Mexican wolf is.

Be on the right side of history and allow this species to live.

Sent from my iPhone

Celeste Cook

From: David Goldman <diffdrmr@msn.com>
Sent: Sunday, October 09, 2016 5:58 AM
To: Rulemaking
Subject: R-12-4-402

**Please allow the Mexican wolf to be released into the wild!
Wolves are part of our ecosystem. They are vital to a healthy balance!!**

Sent from my iPod

Celeste Cook

From: kelly.kilventon <kelly.kilventon@gmail.com>
Sent: Sunday, October 09, 2016 6:53 AM
To: Rulemaking
Subject: Grey wolfe

Please consider how important it is to save these wolves.
Please help to save them.
Thank you

Sent from my Verizon, Samsung Galaxy smartphone

Celeste Cook

From: Donna Weeden <dlweeden@icloud.com>
Sent: Sunday, October 09, 2016 7:00 AM
To: Rulemaking
Subject: Wolves

It's totally ridiculous that you lawmakers just want to kill all wildlife no wonder why we live in a world of killing they all follow after you!!! You are no better save the wolves they have better respect for life than you all will ever have

Sent from my iPhone

Celeste Cook

From: David Lash <davidglash@gmail.com>
Sent: Sunday, October 09, 2016 7:56 AM
To: Rulemaking
Subject: R12-4-402

You guys do a great job.

You do even a better job of serving the interest of a very small group of citizens while alienating the vast majority of Arizona citizens that support the recovery of the Wolf.

In the case of the AZ. Game and Fish, it is the "tail that wags the dog".

Do the right thing and support all indigenous wildlife.

Sincerely,
David Lash

Celeste Cook

From: F. Driscoll-Sbar <flds@comcast.net>
Sent: Sunday, October 09, 2016 8:42 AM
To: Rulemaking
Subject: Save the Mexican Grey Wolf

We need the U.S. Fish and Wildlife Service to continue to be allowed to release and recover Mexican gray wolves into the wild without being impeded. Please don't support this change and further the extinction of these animals.

Sent from XFINITY Connect Mobile App

Celeste Cook

From: AKELA MO SALINAS <akela.mo@gmail.com>
Sent: Sunday, October 09, 2016 9:36 AM
To: Rulemaking
Subject: Mexican Wolves

I can't realize how humanity doesn't care about species. I don't agree with the changes of the rules about the Mexican gray wolf. This will put them into extinction. These incredible animals deserve we to defend them. The planet needs us. It's true. I 'LL NEVER AGREE WITH THIS. I LOVE WOLVES, ANIMALS, PLANTS. THE EARTH NEEDS US.

PLEASE CHANGE THIS DECISION.
WE NEED LIVE
PLEASE HELP THEM

Mónica Salinas Martínez
Kan Ha A.C.

Celeste Cook

From: Jeri Elliott <jerielliott50@gmail.com>
Sent: Sunday, October 09, 2016 11:30 AM
To: Rulemaking

Please let these magnificent creatures live.

Celeste Cook

From: Adrienne Neff <adrienne.neff@gmail.com>
Sent: Sunday, October 09, 2016 12:54 PM
To: Rulemaking
Subject: Save the wolves

Please do not delay on wolf releases. Thank you.

All best,
Adrienne Neff

Sent from my iPhone

Celeste Cook

From: nicole vann <nicolevann@me.com>
Sent: Sunday, October 09, 2016 12:59 PM
To: Rulemaking
Subject: Mexican Gray Wolves

To Whom It May Concern,

Driving wolves to extinction serves no one. It is morally despicable and ecologically disastrous. Scientists have proven that wolves are essential to a healthy eco system while humans and cattle do nothing but destroy. Save the wolves, save their habitat and stop interfering in wildlife preservation. I am sickened by this attack on nature. There is no excuse for obstructing their survival.

Sincerely,

Nicole Vann

Celeste Cook

From: Dara Marquardt <djl5840@gmail.com>
Sent: Sunday, October 09, 2016 1:25 PM
To: Rulemaking
Subject: R12-4-402

Hello,

Please base wolf management decisions on science, not politics.

Thank you,

Dara Marquardt

Sent from my iPhone

Celeste Cook

From: Malcolm MacPherson, Ph.D. <nr1mrm@cnsr.net>
Sent: Sunday, October 09, 2016 2:58 PM
To: Rulemaking
Subject: R12-4-402

Ladies & Gentlemen,

It is clear to me that the federal government has the legal right under the ESA to regulate and release endangered animals on federal land, state land, and private land to ensure the viability of said animals. States, including Arizona and New Mexico, do not have the right to interfere with that process.

Further, from my observations, the Game commissions and the Game and Fish Departments of Arizona and New Mexico have been obstructing the recovery of the Mexican gray wolf for many years (this does not extend to the individual biologists involved).

Therefore, I ask you to scrap the rule changes in R12-4-402

Thanks you for considering my request.

Malcolm R. MacPherson, PhD
Retired scientist
Santa Fe, New Mexico

Celeste Cook

From: De Los Santos, Erick O <eod3@txstate.edu>
Sent: Sunday, October 09, 2016 3:44 PM
To: Rulemaking
Subject: Gray wolves

To whom it may concern,

Get your head in the game! It's time to start saving our planet!

Erick

Sent from my iPhone

Celeste Cook

From: phxsunshine@cox.net
Sent: Sunday, October 09, 2016 8:10 PM
To: Rulemaking
Subject: R12-4-402 Proposed Rule Change

This is to comment on R12-4-402 rule change.

As a citizen of the United States residing in Arizona, I want it to be known that I do not support the proposed rule change to require the U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild.

I want more Mexican gray wolves to be released into the wild in the state of Arizona. I do not want the Arizona Game and Fish Commission to participate in activities leading to the extinction of this and any other species. I want the Arizona Game and Fish Commission to honor the Endangered Species Act.

Please follow the will of the citizens of the state of Arizona and honor the law protecting endangered species and do not amend this rule.

Sincerely,
Monica Karels
Mesa, AZ

Celeste Cook

From: Süheyla Zeybekoglu <minou79.sue@googlemail.com>
Sent: Monday, October 10, 2016 2:00 AM
To: Rulemaking

Bitte...bitte, lassen sie die Tierwelt endlich in Ruhe....! Die Tiere waren vor d.Menscheit auf dieser Welt...Bitte tun sie ihre Bestens, für diese wichtige Angelegenheit.... Vielen Dank... Mit freundlichen Grüße. Mirel Leroy(Sue Zeybekoglu)

Celeste Cook

From: Annika Björnsdotter <annikamartita@icloud.com>
Sent: Monday, October 10, 2016 3:03 AM
To: Rulemaking
Subject: Mexican Wolves

Dear Sir, Dear Madam,

Please you must do whatever to make certain the Mexican Wolf does not suffer. We need the Wolves in the wild.

Please, do the right thing.

Thank You!

Best Wishes,

Annika Björnsdotter

Sent from my iPad

Celeste Cook

From: Dominique Englebert <dominique.engebert2@telenet.be>
Sent: Monday, October 10, 2016 4:14 AM
To: Rulemaking
Subject: Mexican Grey Wolves

Dear Sirs,

Wolves are vital for our environment and are already endangered. Do not make it harder to protect them from extinction.

Make your own the wolves' qualities of loyalty, family love, togetherness and PROTECT THEM.

Do you really want to tell your children and grandchildren that man has hunted the wolves to extinction and have to show them a picture?

PROTECT THE WOLVES against greed, big money, ranchers and trophy hunters. Remove cattle from public lands so that the wolves can roam free in their ancestral habitat.

Best regards,

Dominique Englebert
Freelance Translator
dominique.engebert2@telenet.be
0498/43 26 00

Celeste Cook

From: Marilyn Waltasti <mwaltasti@msn.com>
Sent: Monday, October 10, 2016 7:55 AM
To: Rulemaking
Subject: R12-4-402

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Arizona Game and Fish Commission that what the lobos need is science-based recovery, not political meddling!

Thank you,

Marilyn Waltasti

20117 N. Geyser Drive

Maricopa, AZ 85138

mwaltasti@msn.com

Sent from [Mail](#) for Windows 10

Celeste Cook

From: Lane Leckman <alleckman@earthlink.net>
Sent: Monday, October 10, 2016 8:00 AM
To: Rulemaking
Subject: Wolves

To whom it may concern:

My grandparents came to New Mexico in 1910 and were cattle ranchers their whole lives.

I am intimately familiar with the ups and downs of that life.

While wolves do threaten some cattle and sheep they are also an important part of our world and specially the wilds in which I have hiked and camped in New Mexico AND ARIZONA.

I also know that due to hardness of a ranching life style many ranchers would be happy to sell their grazing rights especially is difficult to access country for a sufficient amount of remuneration which is now possible through at least one environmental organization.

PLEASE ALLOW THE REINTRODUCTION OF WOLVES TO CONTINUE WITHOUT INTERFERENCE.

Thanks,

Lane Leckman

Celeste Cook

From: JC Corcoran <livegan@yahoo.com>
Sent: Monday, October 10, 2016 8:03 AM
To: Rulemaking
Subject: Mexican Gray Wolves

NO state permit before releasing Mexican gray wolves into the wild!

Jim Corcoran
PlantPeaceDaily.Org

Everyone has the power to choose compassion! Please visit these websites to align your core values with life affirming choices: <http://veganvideo.org> & <http://tryveg.com>

"Any great change must expect opposition because it shakes the very foundation of privilege."

~ Lucretia Coffin Mott, 1793-1880, minister, women's rights leader, abolitionist, peace activist, humanitarian ~

Celeste Cook

From: hinhankola@gmail.com
Sent: Monday, October 10, 2016 8:54 AM
To: Rulemaking
Subject: Wolf Recovery

Arizona Game and Fish Commission that what the lobos need is science-based recovery, not political meddling!

Sincerely, Lory Slade Rio Rancho, NM 505-205-2291

Sent from my iPhone

Celeste Cook

From: Family Peterson <cajoro1506@hotmail.com>
Sent: Monday, October 10, 2016 9:04 AM
To: Rulemaking
Subject: Wolves First!

Sirs,
Do not input the proposed rule change about wolves, states should not rule how endangered animals are treated, especially ones that roam to other states (and countries i.e. Mexico). If anything more limitations should be placed on cattle. You are making me dislike the taste of beef!

Thanks for considering my input,
Rodney Peterson
Fagstaff

Celeste Cook

From: Catherine Sikes <c.sikes54@att.net>
Sent: Monday, October 10, 2016 9:09 AM
To: Rulemaking
Subject: Mexican Grey Wolf

Please do not change the rules regarding lobos recovery! This law change will make it more difficult for the recovery of grey wolves!

Thank you!
Cathy Sikes

Sent from my iPhone

Celeste Cook

From: Carolyn Brown <carolynyoga@yahoo.com>
Sent: Monday, October 10, 2016 9:37 AM
To: Rulemaking
Subject: R12-4-402: Mexican gray wolves deserve to live in AZ

To Arizona Fish and Game:

As a frequent visitor to Arizona and a resident of the Southwest, I am writing to request that you keep the current rules in Arizona regarding Mexican gray wolf release -- and decide against the proposed rule change that would create yet another hurdle to releasing Mexican gray wolves in Arizona.

Mexican gray wolves play an important part in the ecosystem and are critically endangered. The existing rules already include strict requirements. The proposed rule change has no ecological basis, and is designed to protect a very small number of people who are prejudiced against wolves.

Thank you for noting my request. Please add me to your email list and let me know of your decision on this matter.

Carolyn

Celeste Cook

From: rory <sopoci18@gmail.com>
Sent: Monday, October 10, 2016 9:46 AM
To: Rulemaking
Subject: DON'T YOU DARE BE RESPONSIBLE FOR DRIVING THE MEXICAN WOLF TO EXTINCTION

The only reason for keeping Mexican Wolves from being released would be corruption, listening to special interests instead of morality and science. PERIOD. Do that, turn your back on these animals out of selfishness and corruption and I beg and pray with all my heart and soul that a curse falls upon all of you. Do the right thing. You know FULL well what that is.

PROTECT THE MEXICAN WOLF NOW!!!!!!!!!!

Celeste Cook

From: disonba35@aol.com
Sent: Monday, October 10, 2016 9:52 AM
To: Rulemaking
Subject: (no subject)

you really should leave my wol,ves alone!

Celeste Cook

From: 2173047660@sms.myboostmobile.com
Sent: Monday, October 10, 2016 10:06 AM
To: Rulemaking

Please dont set these wolves to fail. We need them alive and free!! Dont pass things so they will be slaughtered..

Celeste Cook

From: arizonadeserttom@aol.com
Sent: Monday, October 10, 2016 11:21 AM
To: Rulemaking
Subject: comments to r12-4-402

howdy Arizona game & fish, I would like to comment on the above noted bill. (r12-4-402). I oppose a bill that requires more bureaucratic redtape. by requiring the state of Arizona to review releasing additional Mexican wolves into the population would delay any effort. seems like this effort toward success for the reintroduction of the Mexican wolf is constantly hampered by bureaucracy and not enough attention paid to the biology. (genetics, historical habitats, etc). I appreciate the opportunity to offer comments. thank you

tom taylor
p o box 555
young, Arizona 85554

Celeste Cook

From: Sandra Zelasko <slzphoto@sbcglobal.net>
Sent: Monday, October 10, 2016 12:21 PM
To: Rulemaking
Subject: STOP THE RULE CHANGE! Save the Mexican gray wolf!

Please don't support the rule change! Releasing gray wolves need your support not rules to hinder their recovery. This change would make it even harder for the federal government to do its job and recover lobos.

Thank you for consideration,
Sandy Zelasko
Valley Center, CA 92082



Happy Halloween!

Celeste Cook

From: renee vance <renee Vance@me.com>
Sent: Monday, October 10, 2016 12:33 PM
To: Rulemaking
Subject: R12-4-402

Mr./Ms.,

PLEASE do not require US Fish and Wildlife Service to get a state permit before releasing any additional Mexican Gray Wolves into the wild.

This will damage their survival even more!

Thank you.
Sincerely,
Renée Vance

Celeste Cook

From: mc@assapp.com
Sent: Monday, October 10, 2016 12:55 PM
To: Rulemaking
Subject: R12-4-402

To The Arizona Game and Fish Commission:

Sirs,

We attended a hearing in Flagstaff earlier this year concerning the Mexican gray wolf. We were incredulous hearing the testimony against this species. One woman claimed that a single wolf killed 200 sheep in one single night....."just for the sheer pleasure of it". If you have the ability to think at all, you must conclude that this was simply not possible. And now we hear that you want to change the rules to make recovery near impossible.

A healthy, eco-system requires, no.....demands, the presence of predators. You know this to be true. Just look at what happened in Yellowstone Park after the reintroduction of wolves. We are asking that you not impede the progress of Arizona's Mexican gray wolf recovery by not changing the rules

Respectfully,
Marilynn & John Cencioso
Flagstaff, AZ

Celeste Cook

From: aslanlyon@aol.com
Sent: Monday, October 10, 2016 12:56 PM
To: Rulemaking
Subject: Stop opposing wolf rehabilitation

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery.

Celeste Cook

From: Stumpff, Linda <StumpffL@evergreen.edu>
Sent: Monday, October 10, 2016 1:26 PM
To: Rulemaking
Subject: wolf rule

This proposed rule to require a permit for wolf reintroduction is unconstitutional and will only lead to loss of dollars for the state in endless court actions. It only is driven by a tiny minority who does not even understand the science behind the role of the lobo in the ecosystem. People do not like this, the people of Arizona do not like this. It is unscientific and without any rationality to require a state permit for wolf reintroduction. I am embarrassed by your actions and deeply concerned as a scientist and retired land manager and property owner. My years of experience on the land have taught that planning , cooperation and shared benefits are the real road to reaching the goals to benefit the public and wildlife.

Yours,
Linda Moon Stumpff, PhD
10016 E Eric Alan Place
Tucson Az 85748

Celeste Cook

From: Doris Vician <wwdmvician@msn.com>
Sent: Monday, October 10, 2016 1:49 PM
To: Rulemaking
Subject: Releasing lobos

Please do not make it more difficult for Lobos to be released into the wild. Many people would like to see the lobos flourish. Doris Vician Albuquerque, NM

Celeste Cook

From: Cynthia Robinson <cynviolet@gmail.com>
Sent: Monday, October 10, 2016 3:42 PM
To: Rulemaking
Subject: Make the right choice for wolves

Good afternoon,

Mexican wolves are vital for a healthy ecosystem in the Southern United States. The Endangered Species Act is clear - wolves must be reintroduced to their natural habitats. Please stop listening to special interests and look at the science! We need wolves, and they need us.

Do the right thing and don't pass any rules to prevent the release of wolves or their ultimate survival in Arizona. I will not visit a state that doesn't protect wildlife, including reintroducing wolves and will keep my tourist dollars elsewhere.

Please do the right thing for our wolves and their survival.

Thank you for listening.
Cynthia Robinson

Celeste Cook

From: Anne Lewis Strobell <sumac2@cybermesa.com>
Sent: Monday, October 10, 2016 3:43 PM
To: Rulemaking
Subject: Our native wolves

Please don't be as awful as my state, NM. These animals belong in their ancestral home.
Sent from my iPad

Celeste Cook

From: gabriela vargas <vargasgabriela@hotmail.com>
Sent: Monday, October 10, 2016 3:45 PM
To: Rulemaking
Subject: EL BIENESTAR DE LOS LOBOS.

COMO CIUDADANOS DEL MUNDO PEDIMOS DE LA FORMA MÁS ATENTA RECHAZAR ESTA NUEVA REGULACIÓN EN LA LIBERACIÓN DE LOS LOBOS. LOS OBJETIVOS DE PROTECCIÓN A LOS ENCUENTROS ENTRE LOS LOBOS Y SERES HUMANOS Y OTRAS CAUSAS, NO JUSTIFICAN ESTA NUEVA REGULACIÓN. QUEREMOS QUE LOS LOBOS SEAN LIBRES!!!!

Celeste Cook

From: Bernadtte Przybyl <bernsdette13@icloud.com>
Sent: Monday, October 10, 2016 4:26 PM
To: Rulemaking
Subject: Wolves. Save. Them. Not. Do the. Again.

Sent from my iPhone

Celeste Cook

From: Michael Bailey <mbaileyart@gmail.com>
Sent: Monday, October 10, 2016 5:28 PM
To: Rulemaking
Subject: Mexican Wolf Recovery

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Arizona Game and Fish Commission that what the lobos need is science-based recovery, not political meddling!

The wolves are a natural resident of this land and a large positive factor in the balance of the environment of Arizona and the Southwest. Cattle are not. Cattle are not worthy of protection, they are detrimental to the land, they carry diseases which can transfer to both native animal populations and in some cases human populations. Cattle are an invasive species to the American Continents and should not be afforded any protection based on political backslapping nor financial profits for the cattle industry.

Stop interfering now in the law mandated recovery under the Endangered Species Act.
Michael Bailey - Cottonwood

Celeste Cook

From: Karin Lease <wyldflowr@comcast.net>
Sent: Monday, October 10, 2016 6:04 PM
To: Rulemaking
Subject: Release Mexican Wolves

Dear Commissioners,

Releases of wolves to the wild is a critical component of recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality.

Abandon the rule that is slowing down the release of wolves and listen to scientists, not ranchers, hunters and fearful citizens.

Wolves are beneficial to every environment and they have the right to live, free and unharassed.

Karin Lease
Stanford university
Biology Dept

Celeste Cook

From: Mary W <teddiebcollector@gmail.com>
Sent: Monday, October 10, 2016 6:38 PM
To: Rulemaking

The greatness of a nation can be judged by the way it's animal's are treated
Please do not destroy these beautiful wolves they have just as much right to inhabit this earth as we all do.
Please do not deny future generations the opportunity to see and learn about these beautiful wolves in their natural habitat. Let the wolves run free. Thank You
Sincerely,
Mary Strieter

Celeste Cook

From: David Forjan <davidforjan@earthlink.net>
Sent: Monday, October 10, 2016 6:55 PM
To: Rulemaking
Subject: Comment on Proposed Rule Change for Rule R12-4-402, D

Dear Sir or Madam,

Here are my comments regarding the proposed change to Rule R12-4-402, D:
"Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements."

Comments:

I DISAGREE WITH THIS PROPOSED RULE CHANGE. The USFWS needs ultimate authority over Live Wildlife for these reasons at a minimum:

- Preservation and handling of wildlife affects habitats and populations that cross state boundaries
- Preservation and handling of wildlife requires continual ongoing implementation of Federal plans. The attitude of individual states on any given issue can change radically after any given election.
- Preservation and handling of wildlife should not be subject to disproportional influence by the self-interest of any industries, as is evidenced by how Mexican Gray Wolves are dealt with in New Mexico.
- Preservation and handling of wildlife should not be subject to any individual state's biases.
- While it's honorable and appropriate that individual states should be consulted, Federal oversight, by definition, results in the best decisions being made for said wildlife overall.

Thank you for considering this rationale. Please vote against this proposed rule change.

Be well.
david

David Forjan
1 Duran Lane
Tularosa, NM 88352
Cell: 607-427-9131

P.S. I no longer receive emails on my phone, so it might take a little longer to respond. If it's urgent, call me at the cell number above (my only number).

Celeste Cook

From: Conni <puggygirl13@yahoo.com>
Sent: Monday, October 10, 2016 7:55 PM
To: Rulemaking
Cc: puggygirl13@yahoo.com
Subject: Mexican gray wolf recovery

The Mexican Gray Wolf deserves recovery. I do not agree with the rule change that would require USFWS to get a permit before releasing any more Mexican gray wolves into the wild this change will make it harder for the federal government to do its job of Mexican gray wolf recovery and could throw the Wolf into extinction. At last count there were only 97 found in the wild. They are one of the most Endangered Wolves in the world and their population had declined 12 percent since last count. The U.S. Fish Wildlife has a legal and moral obligation to follow best available science and to do whatever is needed for Mexican Wolf recovery. Captive breeding program in U.S. And New Mexico have worked to maximize genetic diversity so captive wolves were to be released to increase population and genetic diversity. Wolves are essential for restoring a healthy balance to the ecosystem . Wolves generate economic growth. Public polls show overwhelming support for wolf recovery in New Mexico and Arizona. Thank you. I am. Mother who cares about our wildlife and the health of our wildlands so my children and all others can enjoy the beauty of this country. Ms Connie Burris. 2125 Catalina Lane. Springfield, Illinois. 62702. 217/414-0211

Celeste Cook

From: S. Patton <outpost_patton@yahoo.com>
Sent: Monday, October 10, 2016 8:35 PM
To: Rulemaking
Subject: Save Mexican Wolves

As a person who had grown up in Arizona, it pains me that the state I once called home and graduated high school from would undermine the important work of protecting and saving the Mexican Wolf. These wolves are so endangered that in my lifetime they might go extinct. This is unconscionable.

Please protect these magnificent animals.

Sent from Yahoo Mail on Android

Celeste Cook

From: Nancy <bandnentx2@comcast.net>
Sent: Monday, October 10, 2016 9:51 PM
To: Rulemaking
Subject: Rule Change R12-4-402

To Whom It May Concern:

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state (Arizona in this instance) that is hostile to lobo recovery is using politics to drive the lobo to extinction. It seems that Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality.

Arizona Game and Fish Commission, what the lobos need is science-based recovery, not political meddling! And, I'm certain you do not want to be entangled in a court challenge similar to that which your neighbor, New Mexico, is now involved.

Don't let politics slow wolf releases, please abandon this rule change.

Sincerely,
Nancy Meute
Panama City, FL

Celeste Cook

From: Jacque OConnor <happypagan@yahoo.com>
Sent: Monday, October 10, 2016 9:53 PM
To: Rulemaking

Save the Mexican Gray Wolves! We have too many humans so save the endangered species and neuter women who have abortions after the first abortion. And YES I mean this!

Jacqueline O'Connor 
POB 2552
Sierra Vista, AZ 85636
(520) 335-2499

The greatest menace to freedom is inert people. (Louis Brandeis, 1927)

No one loves armed missionaries. (Maximilien Robespierre)

If the good people don't go into politics, the scoundrels surely will.

(Judge Levi S. Udall).

Patriotism is often the cry extolled when morally questionable acts are advocated by those in power. (Bradley Manning, 8/21/13)

Celeste Cook

From: Bobbie Fisher <manualoha2002@yahoo.com>
Sent: Monday, October 10, 2016 10:05 PM
To: Rulemaking
Subject: Please -

Do all you can to release wolves back into Nature. They are a big part of Nature and were here long before cattle and ranchers.

Please, please do what is right and release wolves to where they belong.

Ms. Bobbie Fisher

Celeste Cook

From: Tenzin Kalsang <tznklsng@yahoo.com>
Sent: Tuesday, October 11, 2016 1:48 AM
To: Rulemaking

sir ,

all lifes are connected in this earth , our environment and animals are very important to remain and protected for the betterment of this planet. wolfs are extremely intelligent animals and highly dependent by the eco systems. a man assumes invincible but if stops breathing for 10 15 minutes , will die for sure. life is too fragile but blinded the greed and ego. each and every species have a reason to be the way they are . so protection of our earthling animals are very necessary and highly important. there fore i immensely oppose the killing of our wolves .

thank you !

Celeste Cook

From: Volle, John, P (Patrick) <JPVolle@azdes.gov>
Sent: Tuesday, October 11, 2016 8:26 AM
To: Rulemaking
Subject: Wolves

I am writing in opposition to the proposed legislation to require the federal government to have to have a state permit prior to reintroducing the Mexican grey wolf to Arizona forests. I am a strong advocate of keeping a healthy and thriving population of wolves in our forests and passing this legislation would severely hamper those efforts. Please reject this ruling!

Sincerely,

Patrick Volle

NOTICE: This e-mail (and any attachments) may contain PRIVILEGED OR CONFIDENTIAL information and is intended only for the use of the specific individual(s) to whom it is addressed. It may contain information that is privileged and confidential under state and federal law. This information may be used or disclosed only in accordance with law, and you may be subject to penalties under law for improper use or further disclosure of the information in this e-mail and its attachments. If you have received this e-mail in error, please immediately notify the person named above by reply e-mail, and then delete the original e-mail. Thank you.

Celeste Cook

From: Cliff Wilkinson <cliff_jason_wilkinson@yahoo.com>
Sent: Tuesday, October 11, 2016 8:45 AM
To: Rulemaking
Subject: R12-4-402

This new change would make it even harder for the federal government to do its job and recover lobos.

Celeste Cook

From: Beronski, Barb <Barb.Beronski@cityofchicago.org>
Sent: Thursday, October 13, 2016 11:27 AM
To: Rulemaking
Subject: Re: Let the Wolves "Be Free and Run Free FOREVER!!!!!"

Good Afternoon,

We will always stand with the Wolves. We need to be a voice for the m. They have always been my favorite (since I was 5 years old). They are very beautiful, majestic and amazing animals. They need to let the wolves "Run free and be free FOREVER!!!!!" . ("") ("")

*Barb Beronski
30th ward Service Office
3559 N. Milwaukee Ave
Chicago, IL 60641
O.773.794.3095
f.773.794.8576*

From: Rulemaking <Rulemaking@azgfd.gov>
Sent: Thursday, October 13, 2016 12:32:33 PM
To: Beronski, Barb
Subject: RE: Let the Wolves "Be Free and Run Free FOREVER!!!!!"

Hello,

Thank you for taking the time to submit your comment in regard to the proposed rulemaking.

Your comment will be shared with the Game and Fish Commission.

Best regards,

Celeste Cook

From: Beronski, Barb [<mailto:Barb.Beronski@cityofchicago.org>]
Sent: Tuesday, October 11, 2016 9:43 AM
To: Rulemaking
Subject: Let the Wolves "Be Free and Run Free FOREVER!!!!!"

Good Morning,

My name is Barb Beronski and my message is them to STOP hurting and killing these beautiful, majestic, beautiful and spiritual animals. Why is the wolves being blamed for everything? These animals are very necessary to the eco system and the future generation should be experience to see these animals in the wild.

It is such a shame that hunters, politicians and farmers don't understand the beauty of these animals. They are God's creations and should be able to "Be FREE and run FREE FOREVER!!!!!! (""") (""")

Barb Beronski
30th ward Service Office
3559 N. Milwaukee Ave
Chicago, IL 60641
O.773.794.3095
f.773.794.8576

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail (or the person responsible for delivering this document to the intended recipient), you are hereby notified that any dissemination, distribution, printing or copying of this e-mail, and any attachment thereto, is strictly prohibited. If you have received this e-mail in error, please respond to the individual sending the message, and permanently delete the original and any copy of any e-mail and printout thereof.

Celeste Cook

From: Jen Wolfe <loupgarou82@gmail.com>
Sent: Tuesday, October 11, 2016 3:37 PM
To: Rulemaking
Subject: comment on R12-4-402

U.S. Fish and Wildlife Service SHOULD NOT NEED a state permit before releasing any additional Mexican gray wolves into the wild. These are wonderful animals and should be repopulated before it is too late. Please oppose R12-4-402.

--

Jen Wolfe
Owner, Wolfe Creative
Graphic Design, Creative Writing, Web Design
602-441-5621
Hours 9 a.m. - 5 p.m. M-F
www.JenWolfeCreative.com
www.seethesouthwest.com

Celeste Cook

From: Margarite Olmos <margariteolmos@gmail.com>
Sent: Tuesday, October 11, 2016 3:48 PM
To: Rulemaking
Subject: comment on R12-4-402

The Arizona Game and Fish Commission has proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require the U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos.

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality.

What the lobos need is science-based recovery, not political meddling! Please don't let politics slow wolf releases; we urge you, the Commission, to abandon this rule change.

Sincerely,

Margarite Olmos
7960 Soll Ct.
Sebastopol, CA 95472
707-861-9662

Celeste Cook

From: m4lucky@aol.com
Sent: Tuesday, October 11, 2016 3:58 PM
To: Rulemaking
Subject: comment on R12-4-402

what's going on here? before you know it, we will have no wolves to protect, thereby causing your job to become extinct! do your job and prevent the wolves from decimation of the earth! joan silaco m4lucky@aol.com

Celeste Cook

From: michael colbert <mrcolbert2003@yahoo.com>
Sent: Tuesday, October 11, 2016 4:01 PM
To: Rulemaking
Subject: comment on R12-4-402

please stop r12-4-402 from happening. give the wolf program a fighting chance.....thx, mike r. Colbert
8725 n. coral ridge loop
Tucson, az.
85704

Celeste Cook

From: Steve Livingston <drliving@comcast.net>
Sent: Tuesday, October 11, 2016 4:51 PM
To: Rulemaking
Subject: Wolves are needed

Don't make it harder to reintroduce an endangered species. Work with ranchers and wolf specialists to make it fair for both.

Celeste Cook

From: Holly Jaleski <hjaleski@gmail.com>
Sent: Tuesday, October 11, 2016 5:16 PM
To: Rulemaking
Subject: comment on R12-4-402

Dear Arizona Game and Fish-

I strongly oppose requiring the US Fish and Wildlife service having to get a permit before releasing wolves.

Wolves are a vital and necessary part of the ecosystem, as evidenced by what occurred in Yellowstone, where the environment is healthier than ever.

Wolves also attract tourist dollars.

Please let them do their work without more paperwork from you.

Thank you,
Holly Jaleski
Flagstaff, AZ

Celeste Cook

From: Caroline Bissell <cvbissie@yahoo.com>
Sent: Tuesday, October 11, 2016 5:21 PM
To: Rulemaking
Cc: Gcwoolfrecovery Info
Subject: comment on R12-4-402

why are you making it so damn difficult for this beautiful animal to make a come back? are you in the ranchers pockets? cattle are not endangered. they are desecrating the planet and yet you allow them to roam freely on public lands while confining/limiting the wolves. your values are a skewed.

please revise this new plan.
caroline bissell
scottsdale, az.

Celeste Cook

From: ep4meforever@msn.com
Sent: Tuesday, October 11, 2016 5:31 PM
To: Rulemaking
Subject: comment on R12-4-402

Please save these wolves.
Debbie Armbrecht

Sent from my iPad

Celeste Cook

From: Pearish Smith <pearish@me.com>
Sent: Tuesday, October 11, 2016 7:08 PM
To: Rulemaking
Subject: Mexican Gray Wolf

Please allow for the survival of the Mexican Gray Wolf.

They benefit our environment in numerous ways as I am sure you are aware- rivers, trees, diversity and balance of flora and fauna. They are an essential part of our natural ecosystem.

Please do not let them go extinct.

We need for more wolves to be released so they can expand their genetic diversity.

And we need more land to be available for them to live in.

Please help!

Sincerely,
Pearish Smith MD

Celeste Cook

From: Katherine Belzowski <fast4agirl@yahoo.com>
Sent: Tuesday, October 11, 2016 9:22 PM
To: Rulemaking
Subject: comment on R12-4-402

I oppose R12-4-402. The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change would give too much authority to a state that has already demonstrated its hostility to wolf recovery. Such a rule would not be in the wolf's best interest.

Sent from my iPad

Celeste Cook

From: Rose Hurst, LPCC,RPT <hurstcounseling@yahoo.com>
Sent: Tuesday, October 11, 2016 9:46 PM
To: Rulemaking
Subject: support wolf recovery

I live in NM am writing in favor of the continuation of the wolf recovery program and against the proposed requirement of US Fish and Wildlife to obtain state permits to release more wolves. Our state benefits from tourism and the support of a healthy ecosystem that includes larger carnivores like wolves.

Thank-you, Rose H. Hurst , Portales, NM

Celeste Cook

From: rick meier <r_meier_2000@yahoo.com>
Sent: Wednesday, October 12, 2016 1:28 AM
To: Rulemaking
Subject: comment on R12-4-402

Dear Sirs, The rule to notify will severely undermine efforts for a wolf recovery for the fact that many times these releases are subject to a variety of unknown changes that can call them off or press them forward to involve such a complicated procedure will hinder efforts for a sustained recovery. Thank you RR

Celeste Cook

From: Beth Campbell <beth60497@aol.com>
Sent: Wednesday, October 12, 2016 6:16 AM
To: Rulemaking
Subject: Mexican Wolves R12-4-402

Please reconsider this rule change. Wolves are a very important apex predator and a necessity in the health of our ecosystem. The reintroduction of the Mexican Wolves is a success story in saving a highly endangered species, but the wolves are not out of the woods yet. We, as humans, have an obligation to help this species succeed.

This rule is a step in the completely wrong direction. Please do not throw any roadblocks in the efforts to save these majestic animals.

Beth Campbell
beth60497@aol.com

Celeste Cook

From: MaryAnn Murphy <murphy_mary-ann@hotmail.com>
Sent: Wednesday, October 12, 2016 7:59 AM
To: Rulemaking
Subject: comment on R12-4-402

As a person who has worked VERY hard to see the Mexican wolf recover, I ask that the following things be done: 1) First and foremost, follow the ruling of a Federal judge saying a comprehensive recovery plan be WRITTEN and followed by 2017. The last plan was written in 1982. 2) Follow the plan which should expand Mexican wolf territory into the Grand Canyon and Southern Utah establishing population groups in this area plus Arizona, New Mexico and Mexico. 3) We have over 250 wolves in 34 Species Survival programs in the U.S. and Mexico - these animals are owned by USFWL and I have been working with them for 7 years at Wolf Haven Int. Our pre-release facility has 14 Mexican wolves, many born in 2015. Wolf Haven sent a family of 5 to Ladder Ranch this spring-that family is now a family of 11 (6 new pups born this year) and scheduled for release in NW Mexico where there are a small population of 20 wolves. It is SHAMEFUL that Mexico is MORE supportive than Arizona and New Mexico. in terms of releasing wolves into the wild. It took several law suits to get the 1982 plan written and to finally release these animals into the wild in 1998. Law suits are expensive for us to execute and you to defend. 5) Much of the land where cattle graze is owned by taxpayers. Voting data shows that over 80% of residents in both Arizona and New Mexico support wolves in the wild. 6) A robust population of animals is good for both the land and the herds that wolves hunt. 7) Ecotourism is a way for your states to make money. In the greater Yellowstone area, wolf viewing brings 35 MILLION dollars per year to the local economy.

In summary, we live in a democracy so lets follow the rule of the majority. We know that farmers and ranchers and wolves can live in harmony. There is zero depredation in the Frank Church Wilderness area in Idaho. This is due to Defenders of Wildlife teaching good animal husbandry techniques to ranchers and farmers and state programs that reimburse for depredation.. Non-lethal techniques have been used in the heart of wolf and sheep country with success. People who donate to Defenders have paid for these programs and for depredation for MANY years. Why does Arizona Fish and game continue to obstruct progress? Do what is right and release wolves. Your ecosystem and the majority of citizens will thank you.

Sincerely,

MaryAnn Murphy

Celeste Cook

From: Jody Inman <grandmajodyinman@yahoo.com>
Sent: Wednesday, October 12, 2016 9:45 AM
To: Rulemaking
Subject: RS12-4-402

I am opposed to Arizona Game and Fish Commission's proposed rule change that would require the United States Fish and Wildlife Service to get a state permit before releasing more Mexican gray wolves into the wild. This would make it harder for the federal government to do its job of recovering lobos. I live in the Mexican gray wolf recovery area of the White Mountains of Arizona and appreciate seeing lobos when I go into the wild.

Sincerely,

Dorothy Inman, Pinetop, Arizona

Sent from my iPhone

Celeste Cook

From: roger young <ryoung642@qwestoffice.net>
Sent: Wednesday, October 12, 2016 10:35 AM
To: Rulemaking
Subject: comment on R12-4-402

Commissioners

I wonder how it is you can proclaim on your website to "manage, protect and conserve wildlife resources" while at the same time work to obstruct the recovery of Mexican Grey Wolves.

Science is our best guide to a healthy recovery and yet you have discarded the facts to push your own personal agenda. Arbitrary boundaries, lack of genetic diversity and a poor history of decision making on the state level have led to a less than acceptable recovery plan and management.

I oppose the proposed rule change (R12-4-402) and hope that you take a long look at what this would mean when it comes to protecting and conserving the Mexican Grey Wolves.

Sincerely
Roger Young

Celeste Cook

From: Jon Way <easterncoyotereseach@yahoo.com>
Sent: Wednesday, October 12, 2016 11:25 AM
To: Rulemaking
Subject: R12-4-402

Dear Arizona,

I am very disappointed about how your state wildlife dept is catering to a minority of individuals and not listening to the statewide and nationwide polls that strongly support Mexican Wolf recovery. These animals are an important public trust resource for all citizens, not just folks that live in Arizona... Do not sabotage and obstruct the recovery of this important animal. I am amazed at how anti-predator all state wildlife agencies are - even in urbanized Massachusetts:

<http://www.easterncoyotereseach.com/press-release-eastern-coyotecoywolf-research-founder-publishes-research-obstruction-testimonial-called-blackballed/>

Please have your wildlife leaders work for wildlife - including predators - and not against them. Allowing AZ to blackball the Feds by denying permits is a low blow and should not be a part of the wildlife professionals' jobs to recover an international important animal, the Mexican Wolf.

Jonathan Way, Ph.D.
89 Ebenezer Road
Osterville MA 02655

Please visit my websites: (1) Eastern Coyote/Coywolf Research (<http://www.easterncoyotereseach.com/>) where you can purchase my books *Suburban Howls* and *My Yellowstone Experience*, read peer-reviewed Publications, and support creating a wildlife watching refuge in the town of Barnstable; (2) My Yellowstone Experience which details my experiences viewing the spectacular hydrothermal features, scenery, and wildlife within Yellowstone National Park; and (3) Coywolf which focuses on describing the hybrid origin of eastern coyotes/coywolves.

Celeste Cook

From: Greg Griffin <gs_griffin@yahoo.com>
Sent: Wednesday, October 12, 2016 11:34 AM
To: Rulemaking
Subject: Don't Drive the Mexican Gray Wolf to Extinction

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Arizona Game and Fish Commission that what the lobos need is science-based recovery, not political meddling!

Sincerely,
Greg Griffin

Sent from Yahoo Mail on Android

Celeste Cook

From: Federica Bracciotti <federica.balenotterazzurra@hotmail.it>
Sent: Wednesday, October 12, 2016 12:54 PM
To: Rulemaking
Subject: request

SAVE WOLF
Federica Bracciotti

Celeste Cook

From: Bill Lundeen <bildeen@hotmail.com>
Sent: Wednesday, October 12, 2016 1:37 PM
To: Rulemaking
Subject: Don't Change the Rules!

I am asking you to leave the Federal Rules in place in the recovery of the Mexican wolves in Arizona. Do not attempt to bypass the ESA laws as they are now. Please don't cave in to the pressure by the ranching industry to do away with a balanced ecosystem! We need large predators in the wild to keep balance!

Thank you

William Lundeen
P.O. Box 1292
Sedona AZ 86339

Celeste Cook

From: ROGER C ROMERO <romero966@msn.com>
Sent: Wednesday, October 12, 2016 3:14 PM
To: Rulemaking
Subject: Mexican Wolves

The AGFC is hereby requested to enforce the federal polices for the preservation of out Mexican wolves. Thank you. Roger C Romero

Celeste Cook

From: Connie Ball <conniervb@kanab.net>
Sent: Wednesday, October 12, 2016 3:16 PM
To: Rulemaking
Subject: comment on R12-4-402

How many studies does it take to show that NOT having top predators around negatively impacts the wildlife hunters want to shoot? Or the negative impact of a lack of predators on the general environment? What do you want — several hundred such studies?

The majority of the public wants wolves in the environment. Historically ranchers who use federal grazing lands have done nothing to protect their assets, their livestock, and don't want to have to start. Enlightened ranchers elsewhere actually look down on such individuals because they believe their livestock is their responsibility and not that of the general public.

Where there are wolves there is tremendous tourist activity, and that spells money in the pockets of tour guides, of hotel/motel owners, of restaurant owners, of gas station owners. Currently there's about \$4 from tourism to every dollar from hunters. Ranchers contribute nothing.

The American public wants their wildlife protected and secure. Many areas in Arizona, running up to the Grand Canyon would be prime habitat for the Mexican grey wolf and I fully support the free expansion of their current territory.

Protecting a few ranchers versus the wishes of the American public is not democracy, and I daresay in the not too distant future, those who are anti-wolf may not hold government positions — while the ranchers aren't going to provide make-up paychecks.

Connie Ball
Kanab, Utah
435-644-2829

Celeste Cook

From: mary shabbott <mshabbott@sbcglobal.net>
Sent: Wednesday, October 12, 2016 3:36 PM
To: Rulemaking
Subject: Mexican gray wolves

PLEASE, no new rule changes for these endangered animals. No more permits required. These new proposed rules will help drive the wolves right into EXTINCTION.

Mary Shabbott

Celeste Cook

From: Jan Ellen Burton <Janellenb@msn.com>
Sent: Wednesday, October 12, 2016 4:11 PM
To: Rulemaking
Subject: Wolf Recovery

I have followed the recovery of the Mexican Wolf and it is clear more need to be released into the wild. The genetic make-up of the Mexican Wolf is already compromised, but many normal wolves have been born in captivity. If they are not released, there will be major problems given the reduction of the wild population.

I urge you not to succumb to pressure from the state regarding the release of the wolves. This will lead to further degradation of the gene pool and the ultimate extermination of this wonderful animal, which can ultimately result in an improved ecosystem, as have the Grey Wolves in Yellowstone.

Thank you so much for this opportunity to speak.

Jan Ellen Burton

Salt Lake City, Utah

Celeste Cook

From: snowstorm65 <snowstorm65@yahoo.com>
Sent: Wednesday, October 12, 2016 4:51 PM
To: Rulemaking
Subject: Wolves

Stop trying to wipe out a Keystone predator like the Mexican Gray Wolf, when will it be enough, when they are all gone? How many species do you push into extinction before our ecosystems totally collapse? How long before it leads to our own extinction?

Sent from my Sprint Samsung Galaxy S7.

Celeste Cook

From: Valerie Bear <valbear.vb69@gmail.com>
Sent: Wednesday, October 12, 2016 4:57 PM
To: Rulemaking
Subject: Stop Arizona's Game and Fish Commission

Arizona Game and Fish Commission has proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require the U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos.

Don't let politics slow wolf releases, please urge the Commission to abandon this rule change.

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Arizona Game and Fish Commission that what the lobos need is science-based recovery, not political meddling!

Celeste Cook

From: Edward Medina <edwardmedina2521@gmail.com>
Sent: Wednesday, October 12, 2016 7:47 PM
To: Rulemaking
Subject: Mexican Wolf

Stop interfering with Mexican Wolf recovery program. They are a Million years + been part of the Ecosystem for Life. As opposed to your Killing methods.

Celeste Cook

From: Lillerl@aol.com
Sent: Wednesday, October 12, 2016 7:47 PM
To: Rulemaking
Subject: Gray wolves

I find it hard to believe that after all the work and the money spent on saving the gray wolf from extinction, that it will now be turned over to the states to destroy these efforts. Amazing the stupidity!

Please don't tell me that politics trumps solid science. As a scientist I am appalled.

Linda Liller
lillerl@aol.com

Celeste Cook

From: Catherine von der Nuell <cathyvdn@me.com>
Sent: Wednesday, October 12, 2016 9:20 PM
To: Rulemaking
Subject: Arizona Wildlife Protection Agencies.

The Mexican Grey Wolf is essential to your balance of nature and survival of all of us. Why kill the few remaining members of the Mexican Grey Wolf packs? They are native to Arizona and you need to keep the natural balance of nature. Who is paying you to wipe them out of existence? Trophy hunters, farmers and politicians? Wyoming is putting fences up to protect their animals, stock and wildlife. Not a new solution and one that works better than killing innocent wolves and wildlife.

Catherine von der Nuell

Celeste Cook

From: Lynn Phipps <lynnhenny@gmail.com>
Sent: Thursday, October 13, 2016 4:00 AM
To: Rulemaking

Please do not make it harder to release Gray wolves into the wild. It seems to me that the Fish and Game want to completely wipe out all the wolves and make it so where they will only have a few left in enclosures and zoos. Wolves are an important part of our ecosystem and must be saved and protected. It also seems the law is against the wolves. Just remember #vetoextinction. Once a species is gone it is gone forever. Please do not do this to the wolves!

Celeste Cook

From: Wendy Doll <wendoll1949@gmail.com>
Sent: Thursday, October 13, 2016 6:40 AM
To: Rulemaking
Subject: Mexican Wolves

This ruling needs to change, they need to release more mexican wolves to keep the species going and have more diversity. These wolves are very essential to the environment. Without these predators there will be destruction to trees, rivers, etc. The deer, elk and others will keep the trees at a certain level and they will not grow. Please see what happened in Yellowstone without the wolves and also see how reintroducing them Yellowstone is thriving. Thank you for your time regarding this important issue.

Sincerely,
Wendy Doll

Celeste Cook

From: Michael McLaughlin <briseboy@msn.com>
Sent: Thursday, October 13, 2016 9:54 AM
To: Rulemaking
Subject: Public comment: NOTICE OF PROPOSED RULEMAKING TITLE 12. NATURAL RESOURCES CHAPTER 4. GAME AND FISH COMMISSION R12-4-402

Remarks on NOTICE OF PROPOSED RULEMAKING TITLE 12. NATURAL RESOURCES CHAPTER 4. GAME AND FISH COMMISSION R12-4-402

To AZ Game and Fish Commission:

Since the Mexican Wolf, *Canis lupus baileyi*, is the second-most endangered canid species in the USA, genetic considerations must supersede any single state controlling or slowing recovery of this naturally thinly dispersed species. Genetic science shows clearly that recovery from small populations must be assisted as quickly as humanly possible, due to issues of small populations trending toward homozygosity, continually diminishing in allelic diversity for so long as any subpopulation – and in this case, the ENTIRE population – remains below numbers and genetic variation that allow for increase. See (Allee effect / Positive density dependence and easily-accessed peer-reviewed research on Minimum Viable wolf and mammalian Populations, which numbers tend to be above 500 to as much as 5,000 or more) for a more complete understanding by the Commission of the catastrophic effect of holding populations to small numbers and isolation through inhibiting continuing releases of new individuals.

Because slight but important mutations occur, as well as due to the fact that offspring only contain ½ of the alleles of any single parent, with some randomness occurring in what is passed on to offspring, there are different genes still available only in the captives that have been bred for just this purpose.

In simple words, only continuing releases will save this desert-country-adapted species, through which the ecological health of the entire US/North American southwest depends.

Arizona shares borders with:

1. Mexico, although there are no wolves within hundreds of miles, the nearest first and very recent release and attempted recovery of less than ten so far in northeast Mexico's Sierra Madre Oriental, around the state of Nuevo Leon, several hundred miles; a tiny recently released population almost certain not to develop dispersers to AZ.

2. New Mexico a state actively attempting to resist actions of under Federal ESA, although sharing the remnant tiny restored *Canis lupus baileyi* population.

3. Colorado, which has ruled in probable violation of Constitution, against active release and recovery; there are no known individuals of *baileyi* in the suitable habitat of southern CO.

4. Utah, another state which suffered the eradication of wolves genetically highly similar to *C. l. baileyi*.

5. While there is 20th century evidence of extremely closely genetically related *baileyi* in southeastern California, its presence there may be viable, but has never been assured. Evidence from Indian languages point to the probability, beyond the specimen taken in the 1920s.

Thus, AZ exceeds its authority in attempting to prevent Interstate Recovery of an originally widely distributed US species whose habitat includes but is not limited to AZ. This is the legal essence upon which to cease attempt to control reintroduction and recovery.

The original misguided eradication of this adapted subspecies from AZ and all states, and the succeeding eradication from mid-Mexico, all the way to related and necessary gene pool of the genetically different wolves of the Northern US, has led to an ongoing extinction crisis.

The original 7 *C. l. baileyi* forebears captured for captive breeding and release constituted a severe bottleneck of relatively homozygous DNA, which is exacerbated - literally dangerously increased - through the limited reproduction now existing, through continuing to refuse release of offspring.

This crisis' existence is supported by genetic science and actual DNA testing.

Additional variation through differing expression of genes occurs, and this important consideration requires that high variation be maintained without the restrictions which have hampered it – right now only attained through continuing releases of captive variants, as the extremely tiny variation in the present wild population diminishes through losses and the low reproduction illustrated by the diminution which has begun to occur in that wild population.

Eastern and Northern AZ especially is critical habitat and connectivity, although previous decisions preventing designation have been steered by corrupt politics rather than genetic and habitat realities.

On the dangerous ecological mistake of limiting wolf presence:

The Kaibab Plateau suffered a severe irruption of ungulates following eradication of *baileyi* conspecifics, and that irruption was followed by population overshoot, habitat degradation by that ecologically-released herbivore, and consequent mass starvation.

Only the keystone apex predator, *C l baileyi*, can diminish such extreme fluctuations within the natural ecosystems it formerly balanced.

As an illustration, please notice the presence of increased levels of communicable diseases in deer populations in the central and eastern US where human social resistance and lack of safe habitat for wolf presence (safe to the wolf. Wolves are not dangerous to humans; humans are extremely dangerous to wolves) from TX North and East.

The genetic variability mentioned above is also a vital factor in adding disease resistance to the wolf population, another reason for assisting, NOT hampering new releases.

As the commission well knows, the New Mexico judicial/political situation is only extant due to preliminary injunction in a lower court, and NOT through any so-far accepted law. It is not proper to rule until that case is resolved fully, as the genetic loss is presently so critical that Arizona is vital to the urgent need of the species and indeed, the entirety of the ecosystems in which it flourished and was the key faunal and floral diversifier. By attempting to add bureaucratic difficulties seems clearly to send this particular species into extinction. This is neither morally nor biologically /scientifically a correct action.

The refusal to justify in your rulemaking Section 6 of any study, scientific, or public, is obviously unjustifiable in itself.

The public good of both Arizona's citizens, environment, and wildlife, as well as the US public's, and Federal Government's mandated interests, are or should be the major considerations.

The Commission may be operating under fallacious and unscientific premises in any possible ruling concerning wolf effects on prey species, as predators are entirely dependent upon prey numbers, and not the reverse.

Additionally, the entire US public, past, present and future, have a primary stake in the recovery of wolves and the restoration of intact ecosystems, especially on federal and all state public lands. This consideration supersedes any single state or group of states' legislation, regulation, or rulings.

Arizona will, should this rulemaking be effected, set the state up for an unending series of costly judicial proceedings.

This is due to the clear preference of the majority of the public for restoration of native species and healthy intact ecosystems on public lands and in any and all habitat critical for survival and genetic connectivity of a species. To pursue this unseemly rule will both guarantee extreme genetic jeopardy of this vital wolf, and will expose the inherent unethical intent of all who pursue this antiwildlife, antienvironmental rule.

The rulemaking contains language intended to obfuscate the nativity and historical existence of this species; it also appears to intentionally introduce vague falsehood, as predators tend to decrease communicable illness in ungulate herbivore species, and NOT increase its likelihood. While a very few parasites use multiple host transmission, most and the most dangerous, result from overabundance of the herding species and the domestic introduction by livestock interests.

Wildlife commissions in some states intentionally effectively "farm" species. In states like Idaho, such efforts both fail, due precisely to ecological succession in natural areas. The wolves of Idaho play no part in elk reduction, proven by scientific study.

Science has shown that NO predator can endanger prey (the woodland caribou problem in BC is ENTIRELY a result of habitat loss, fragmentation by heavy road construction cutting forest up into too-easily entered segments by machine transportation of too many hunters and poachers, and insufficient previous consideration and protection against human take of those ungulates. The sole responsibility for such endangerment of prey species has historically been human hunting and exclusion by grazing interests. A minimum of around half a million wolves is scientifically estimated to have lived in balance with millions upon millions of ungulates in North America before the 1800s advent of heavy human presence and hunting pressures.

Any other assertion is intentional or ignorant falsehood.

Montana and Wyoming seek actively to continue to persecute and eradicate wolves, as was proven by their policies in effect as soon as federal protection was so corruptly lifted.

Those Northern Rocky states attempt to farm ungulate species, preventing recovery of native *Ursus arctos* as well as *Canis lupus*. Science coming out of the isolated federally protected Yellowstone is showing that wolves are vital to prevention of erosion, maintenance of water quality, through their promotion of plant and animal diversity. Wolves keep wild ungulates moving, instead of sedentary, and thus the attempts to farm wild ungulates through preventing natural numbers of predators is counterproductive.

The diversity increase occurring through unrestricted wolf presence includes migratory bird diversity, so important in every state, both to consumptive users, the far greater number of nonconsumptive wildlife users, and to ecosystems from Arctic to tropics.

This issue of interstate mobility, again, supersedes any "right" any single state has to prevent, slow, or even manage the recovery of any species.

If necessary, this issue will be fought in costly judicial proceeding until that ecological and social reality prevails over special interest controls over any state wildlife agency.

As a student of wildlife and ecology, and as a lifetime avid nonconsumptive user of the US' remaining public lands, as well as Mexico for both purposes, I take grave exception to the intent of this specific rulemaking, due to its obvious intent to prevent the recovery across a six-state area (ecologically identical wolves to baileyi also existed in Texas and Oklahoma, making it de facto a seven-state area).

The situation is desperate for this important species, and Arizona wildlife interests should rather make rules inviting swiftest possible active reintroduction and recovery.

Thank you,
Michael McLaughlin

Celeste Cook

From: patti jordan <pejordan145@hotmail.com>
Sent: Thursday, October 13, 2016 10:24 AM
To: Rulemaking
Subject: Saving our wolves..

This ignorance needs to stop...why not put the blame on where it belongs...on those useless selfish so called people who have the nerve to call themselves...HUMANS!!
Sent from my Sprint Phone.

Celeste Cook

From: Paul Bird <pkbird@msn.com>
Sent: Thursday, October 13, 2016 10:26 AM
To: Rulemaking
Subject: Rule Change

I am writing to encourage no rule changes that would hinder the release of Mexican gray wolves in Arizona.

Regards,

Paul Bird
Tucson, AZ

Celeste Cook

From: Joshua Knight <knight.joshua@gmail.com>
Sent: Thursday, October 13, 2016 12:33 PM
To: Rulemaking; Celeste Cook
Subject: R12-4-402
Attachments: Endangered Mexican Gray Wolf.docx

Endangered Mexican Gray Wolf

Wolves need the wild; the wild needs wolves

Celeste Cook, Rules and Policy Manager

Arizona Game and Fish Department

5000 West Carefree Highway

Phoenix, AZ 85086

Mexican Gray Wolves are already struggling to survive in this world, so why make it harder? The new rule that has been put out there makes it harder and takes longer for the wolves to be released. Being released into their natural habitat is a critical component for the recovery of a Mexican Gray Wolf, so making it wait longer to be permitted to enter its natural habitat can be damaging. This new rule is just another way to drive Mexican Gray Wolves to extinction. This new rule makes it harder for the U.S. Fish and Wildlife Service to do its job and would also cost the state time and money, which something we don't have an infinite amount of. Also, some scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the wolf population. Overall, this new rule will only hurt the Mexican Gray Wolves, not help them.

Celeste Cook

From: 07downhilld07 . <downhilld@gmail.com>
Sent: Thursday, October 13, 2016 3:32 PM
To: Rulemaking
Subject: comment on R12-4-402

The Arizona Game and Fish Commission has proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require the U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos.

Keep our environmental alive, keep wolves alive, work to keep us all health.

Thank you,
Derek Dresler

Celeste Cook

From: Kathy Cheatham <lkmb1234@icloud.com>
Sent: Thursday, October 13, 2016 4:09 PM
To: Rulemaking
Cc: Rulemaking
Subject: Mexican Wolf proposal

I'm writing to encourage you to abandon the new proposal that is in the works to hurry the extinction of our Mexican Gray Wolves. Do you want to be the game commission responsible for the extinction of these wolves after all the work done to bring them back? The politics have to end, predators help keep our prey animals strong and end the life of those that are diseased or dying. Hunters do nothing to keep the herd strong, they take out the biggest and the best. I feel USFWS should focus their attention on NON native species and turn the rest of their budget over to helping ranchers co exist with our predators. Why don't you put that in a proposal to them, our prey animals are a couple hundred miles away from becoming infected with CWD, why would you risk that over politics? Your job is to help wildlife, not just the ones ranchers and hunters like because they can be killed and eaten and don't get in their way. The boundary rule is another ridiculous part of the proposal, how can you try to limit where a wild animal goes, Mother Nature directs animals according to food, water and wildness. The Grand Canyon area is perfect and just think how many bison calves the wolves would take which would take care of another one of your problems.....Naturally. Please, get the politics out and let science regulate our wildlife and quit making it impossible for these Lobos to survive.

Respectfully

Kathleen Cheatham
4580 W Quail Run
Prescott, Az 86305

Sent from my iPad
Kathy Cheatham

Celeste Cook

From: KnowWho Services <noreply@knowwho.services>
Sent: Thursday, October 13, 2016 4:24 PM
To: Rulemaking
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Dear Celeste Cook,

THE FOREST SERVICE TRYED TO BRING THE WOLF TO YELLOWSTONE 1998 REALLY DID WORK OUT THE CATTEL FARMS UPSET THE WOLF HUNT DOWN THE CATTEL FOR FOOD SO THE KILLED MOST OF THEM THANK YOU JEFFERY MILLS

What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Please reject this proposed rule. Thank you.

Sincerely,

Jeffery Mills
2244 E Earll Dr
Phoenix, AZ 85016
takeoneproductions2000@yahoo.com
6022368222

Celeste Cook

From: KnowWho Services <noreply@knowwho.services>
Sent: Thursday, October 13, 2016 4:50 PM
To: Rulemaking
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Dear Celeste Cook,

I urge the Arizona Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. The state has already erected a number of barriers to wolf recovery; this would be yet another hurdle for the species and the federal government.

What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Please reject this proposed rule. Thank you.

Sincerely,

Sheila Cowden
11076 E Becker Ln
Scottsdale, AZ 85259
sheilacowden@yahoo.com
4803140392

Celeste Cook

From: TANYA C KROEBER <tanyack@bellsouth.net>
Sent: Thursday, October 13, 2016 7:57 PM
To: Rulemaking
Subject: Arizona Game and Fish Commission Proposed Rule Change

The Arizona Game and Fish Commission proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require the U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos.

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. What the lobos need is science-based recovery, not political meddling!

Please try to remember that the recovery of the Mexican gray wolf will, in the long run, have a positive effect on the local environment.

Tanya Kroeber

Celeste Cook

From: KnowWho Services <noreply@knowwho.services>
Sent: Thursday, October 13, 2016 8:06 PM
To: Rulemaking
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Dear Celeste Cook,

I urge the Arizona Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population.

What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

In this state of Arizona, we seem to have bureaucrats, led by our great(facetious) governor and worse legislators, who do not understand the basic rule of common sense. Say after me, you local bureaucrats are are entitled to your own opinions but NOT your own facts. And I guess, because I believe and act by science I am pretty sure that there is little need for grazing land for cattle, sheep etc and that we would all be well served by the return of wolves into our environment and eliminate animals of danger to the environment(livestock). These animals are to the soil what coal burning is to the air- out of date and doomed to fail.

Please reject this proposed rule. Thank you.

Sincerely,

Barry And Madeline Friedman
850 N Barbara Worth
Tucson, AZ 85710
bafgerm@aol.com
5204443223

Celeste Cook

From: Ray Vosch <rvosch30@gmail.com>
Sent: Thursday, October 13, 2016 8:09 PM
To: Rulemaking
Subject: Protection of the grey wolf

Why propose a bill that will help drive yet another species into extinction! It is bad enough, that we took the land from the indians! And taking precious land from animals. Everyone complains that the deer, wolves, coyotes, bears, ect. Are moving into populated areas, but who speaks for the wildlife, who gives the wildlife a voice when population moves into nature? And now you want to persicute the Mexican grey wolf, all you are is a Hitler to animals! That is the only Mexican imigrant that should stay, or freely deported

Celeste Cook

From: KnowWho Services <noreply@knowwho.services>
Sent: Thursday, October 13, 2016 8:48 PM
To: Rulemaking
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Dear Celeste Cook,

Wolf reintroduction has helped echo systems thrive. Yellowstone is a prime example with the Yellowstone River being restored after wolves began keeping elk on the move and from browsing and killing young trees. I urge the Arizona Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population.

What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Please reject this proposed rule. Thank you.

Sincerely,

Mark Mulligan
2115 E Woodman Dr
Tempe, AZ 85283
markrobertmulligan@yahoo.com
4805981635

Celeste Cook

From: lynn andrews <lynmisha@me.com>
Sent: Thursday, October 13, 2016 9:50 PM
To: Rulemaking
Subject: Wolves

Public Paid Servant,

Every consideration should be made to allow wolves in their intact packs to be allowed to roam free in their wild habitat.
Period.

Thank you

Lynn Andrews
Conscientious Human

Sent from my iPhone

Celeste Cook

From: KnowWho Services <noreply@knowwho.services>
Sent: Friday, October 14, 2016 12:38 AM
To: Rulemaking
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Dear Celeste Cook,

This proposed rule appears to be nothing more than an bureaucratic obstacle to a federal agency with a duty to recover the Mexican gray wolf. The rule is unneeded because the Game and Fish Department already has the ability to work cooperatively with, and provide input to, the FandWS if it so chooses. Even worse, the rule is a waste of resources at both the state and federal level.

Please reject this proposed rule. Thank you.

Sincerely,

Tim Flood
503 E Medlock Dr
Phoenix, AZ 85012
tjflood@att.net
9999999999

Celeste Cook

From: Karin Yehling <karinyehling@me.com>
Sent: Friday, October 14, 2016 7:40 AM
To: Rulemaking
Subject: Mexican Gray Wolf

I am writing to stress the importance of the survival of the Mexican Gray Wolf in the wild. It's time to stop using them as a scapegoat and time to start seeing them as the missing link to a healthy ecological system. Science has proven time and again that they keep ungulate herds healthy, help trees grow (by keeping ungulates mobile) and keep rodent numbers at bay (to name a few). Since they are so afraid of people, they can easily be deterred from predation. Arizona and New Mexico are so lucky to have these beautiful animals in a tiny portion of their forests. I wish people would become more educated about all the good that they do for our ecology. And, I wish that the stupid wolf stories that we've all heard would disappear so big grown men would stop killing them!

There are "certified predator friendly" ranches in the U.S. and Canada but, in Canada where not only wolves exist but, Grizzly bears and large cats as well. These people make it work by using deterrents that cost nothing to the rancher. Quite possibly the biggest issue in making this work is public grazing. If you don't keep your livestock within boundaries, anything can happen. Many years ago, John Muir proved how horrible grazing is on our public lands; that is why it's illegal in the high Sierra and all national parks.

Please listen to science and teach the ranchers how to co-exist with the wolf. The Mexican Gray Wolf BELONGS on our lands!!

Sincerely,

Karin Yehling

Celeste Cook

From: KnowWho Services <noreply@knowwho.services>
Sent: Friday, October 14, 2016 7:52 AM
To: Rulemaking
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Dear Celeste Cook,

MEDDLING IN THE WOLF RECOVERY PROGRAM IS TYPICAL OF BUREAUCRACY! THE COMMISSION'S PROPOSED REQUIREMENT TO THE USFWS WOULD BE AN INFERIOR DISSERVICE TO THE ARIZONA PUBLIC, ESPECIALLY SUPPORTERS OF AGandFI!

We urge the Arizona Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population.

What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Please reject this bureaucratic proposed rule. Thank you!!

Donald Begalke, Phoenix

Sincerely,

Donald Begalke
PO Box 39128
Phoenix, AZ 85069
b-njyabl-thruout-lyf.71@outlook.com
6020000000

Celeste Cook

From: KnowWho Services <noreply@knowwho.services>
Sent: Friday, October 14, 2016 8:25 AM
To: Rulemaking
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Dear Celeste Cook,

I urge the Arizona Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. It is time for science to be respected without unnecessary hobbles. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population.

What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem that are vital to maintain a balance not just in the animal kingdom but with the plants and land. Arizona needs to work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Please reject this proposed rule. Thank you for your time and consideration.

Sincerely,

Ms Moonshadow
PO Box 2283
Tempe, AZ 85280
funami@cox.net
4809290616

Celeste Cook

From: KnowWho Services <noreply@knowwho.services>
Sent: Friday, October 14, 2016 9:00 AM
To: Rulemaking
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Dear Celeste Cook,

I rarely send these sorts of messages but I believe strongly in the preservation of endangered species. We have an obligation as humans to prevent the extinction of our fellow creatures on this planet - we must be stewards and not short-sighted, careless squanderers of our biodiversity.

So I urge the Arizona Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population.

What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Please reject this proposed rule. Thank you.

Sincerely,

Louise Courtney
205 E River Rd
Tucson, AZ 85704
lcourtney@gmail.com
5202937911

Celeste Cook

From: KnowWho Services <noreply@knowwho.services>
Sent: Friday, October 14, 2016 10:28 AM
To: Rulemaking
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Dear Celeste Cook,

I worked for years to help bring about the reintroduction of the Mexican wolf. I both encouraged officials of the AZ Game and Fish and US Fish and Wildlife to release wolves in the appropriate area and launched an education program to educate the public to support efforts to bring back the lobo. I urge the Arizona Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population.

What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Please reject this proposed rule. Thank you.

Sincerely,

Bobbie Holaday
1413 E Dobbins Rd
Phoenix, AZ 85042
azwolflady1@cox.net
6022681089

Celeste Cook

From: Marguerite <mmswift@hotmail.com>
Sent: Friday, October 14, 2016 11:30 AM
To: Rulemaking
Subject: Re: Submit comments to AZGFD by October 16!

I oppose the Arizona Game and Fish Commission's possible rule change requiring the U.S. Fish and Wildlife Service to obtain a state permit prior to releasing Mexican gray wolves, the rule change has the potential to limit the number of wolves released into the wild, thereby limiting genetic diversity.

Wolves, as do all predators, play a vital part in ecosystem health, and anything which stands in the way of restoring natural balance is detrimental to the health of the grasslands and forests of this state. I urge the Commission to abandon the potential rule change.

Marguerite Swift

From: GC Wolf Recovery <info=gcwolfrecovery.org@mail193.atl61.mcsv.net> on behalf of GC Wolf Recovery <info@gcwolfrecovery.org>
Sent: Tuesday, October 11, 2016 3:34 PM
To: mmswift@hotmail.com
Subject: Submit comments to AZGFD by October 16!

Please submit your comments to AZGFD on state permit rule change by October 16!

Is this email not displaying correctly?
[View it in your browser.](#)



Please submit comments to the Arizona Game and Fish Commission by October 16th!



The Arizona Game and Fish Commission has proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require the U.S. Fish and Wildlife Service to get a state permit

before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos.

Act Now!

Send a written comment on R12-4-402 before 11:59 p.m. CDT, October 16, 2016 by email:

rulemaking@azgfd.gov

(You do not need to be a resident of Arizona to submit comments)

Plan to give oral testimony at the Commission meeting in Phoenix on December 2, 2016

8 a.m. to 5 p.m., 5000 W. Carefree Highway, Phoenix, AZ

You may also provide oral testimony via live video teleconference from one of the AZ Game and Fish Department regional offices on the day of the meeting.

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to

drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Arizona Game and Fish Commission that what the lobos need is science-based recovery, not political meddling!

Don't let politics slow wolf releases, please urge the Commission to abandon this rule change.

*Thank you for your support of the
Grand Canyon Wolf Recovery Project*

www.gcwolfrecovery.org



Your contributions are greatly appreciated in order to help bring back wolves to the Grand Canyon region.



[follow on Twitter](#) |



[like us on Facebook](#) | [forward to a](#)

[friend](#)

Copyright © 2016 Grand Canyon Wolf Recovery Project, All rights reserved.



You are receiving this email because you opted in to our email alert list on our website or by signing up at an event.

Our mailing address is:

Grand Canyon Wolf Recovery Project

PO Box 233

Flagstaff, AZ 86002

[Add us to your address book](#)

[unsubscribe from this list](#) | [update subscription preferences](#)

Celeste Cook

From: Patricia GLamb <itza725@yahoo.com>
Sent: Friday, October 14, 2016 11:59 AM
To: Rulemaking
Subject: comment on R12-4-402

Gentlemen.

I believe we have had enough opposition from different levels of government to the growth and protection of the Mexican Wolf, let us not have one more Rule. The lobo is most endangered and protected by the Federal government under the Endangered Species Act. I urge you to **please abandon this rule change.**

Thank you.

Patricia González Lamb

Celeste Cook

From: stuart.wilcox5@gmail.com on behalf of Stuart Wilcox
<swilcox@wildearthguardians.org>
Sent: Friday, October 14, 2016 1:50 PM
To: Celeste Cook; Rulemaking
Cc: Kelly Nokes
Subject: Comments on Arizona Game and Fish Commission's Proposed Rule to Amend R12-4-402
Attachments: 2016.10.14_AZR124402_PublicComments_FINAL.pdf

Dear Ms. Cook,

Please accept the following comments for consideration by the Arizona Game and Fish Commission ("Commission") and inclusion in the formal record regarding the Commission's Notice of Proposed Rulemaking Title 12. Natural Resources, Chapter 4. Game and Fish Commission, R12-4-402. Live Wildlife; Unlawful Acts. I provide these comments on behalf of WildEarth Guardians and Wildlands Network. I also sent a hard copy of these comments to you today via USPS certified mail, return receipt requested.

Thank you for your attention to these comments, and please feel free to contact me if you have any questions.

Sincerely,
Stuart Wilcox





October 14, 2016

Celeste Cook, Rules and Policy Manager
Arizona Game & Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

Submitted via email to ccook@azgfd.gov and rulemaking@azgfd.gov and via certified mail to Celeste Cook, Rules and Policy Manager for the Arizona Game & fish Department, at the address above.

RE: Public Comment on Notice of Proposed Rulemaking Title 12. Natural Resources, Chapter 4. Game and Fish Commission, R12-4-402. Live Wildlife; Unlawful Acts

Dear Ms. Cook,

Please accept the following comments for consideration by the Arizona Game and Fish Commission ("Commission") and inclusion in the formal record regarding the Commission's Notice of Proposed Rulemaking Title 12. Natural Resources, Chapter 4. Game and Fish Commission, R12-4-402. Live Wildlife; Unlawful Acts ("Proposed Rule").¹

WildEarth Guardians is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. We operate an office in Tucson, Arizona, have one category of members, and have 201 members and over 4,000 supporters in the state. We also have over 168,000 members and supporters nationwide, many who visit Arizona. WildEarth Guardians has an organizational interest in the proper and lawful management of wildlife in Arizona and across the American West. Our members, staff, and board members have significant aesthetic, recreational, scientific, inspirational, educational, and other interests in the conservation, recovery and restoration of wildlife in Arizona.

Wildlands Network is a non-profit organization dedicated to ensuring a healthy future for nature and people in North America by scientifically and strategically supporting networks of people protecting networks of connected wildlands. Wildlands Network has staff in Tucson, Portal, and Flagstaff, Arizona, and the organization, staff, members, and board all have significant aesthetic, recreational, scientific, inspirational, educational, and other interests in the management, conservation, recovery and restoration of wildlife in Arizona. Wildlands Network has over 14,064

¹ Notice of Proposed Rulemaking Title 12. Natural Resources, Chapter 4. Game and Fish Commission, R12-4-402. Live Wildlife; Unlawful Acts, 22 Ariz. Admin. Reg. 2558 (Sept. 16, 2016)[hereinafter "Proposed Rule"] *available at* http://apps.azsos.gov/public_services/register/2016/38/comments.pdf; *also available at* <https://portal.azgfd.stagingaz.gov/Portal/images/files/rules/R12-4-402%20NPRM.pdf>.

members, with 284 members that reside in Arizona, all of which are general members, which is the only category of individual membership for Wildlands Network.

We appreciate your consideration of the following comments on the Proposed Rule, submitted on behalf of WildEarth Guardians and Wildlands Network. The views expressed are the official position of WildEarth Guardians. Likewise, the views expressed are the official position of Wildlands Network.

INTRODUCTION

The Commission's proposal seeks to amend Arizona's existing wildlife importation permitting law and is being proposed under the auspices of ensuring the Department's continuing control over management of the state's wildlife resources.² However, the Proposed Rule may have potentially devastating impacts upon recovery efforts for many of the state's most critically imperiled species of wildlife, including, for example, the recovery and reintroduction of federally protected Mexican wolves³ in Arizona.

Arizona's existing rule states, in pertinent part:

- A. An individual shall not perform any of the following activities with live wildlife⁴ unless authorized by this Chapter⁵ or A.R.S. Title 3, Chapter 16:
1. Import any live wildlife into the state;
 2. Export any live wildlife from the state;
 3. Conduct any of the following activities with live wildlife within the state:
 - a. Display,
 - b. Exhibit,

² "The Game and Fish Commission (Commission) proposes to amend its rules that authorize the release of wildlife in Arizona without a state permit, provided the release is accompanied by a federal permit. The Commission is concerned the current rule language could be construed as authorizing a federal agency to release or reintroduce threatened or endangered species in Arizona without first obtaining a state permit. The Commission intends to clarify this rule to make it inapplicable to federal agencies.... The Commission expects federal agencies to obtain state permits to release wildlife, and wants to eliminate any ambiguity in its regulations that a federal agency may bypass state permit requirements if federal law authorizes release of wildlife. Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposes to strengthen its rules to avoid any unintended outcome that a federal agency can avoid state permits before releasing or removing wildlife." Proposed Rule at 2559.

³ See Endangered Status for the Mexican Wolf, Dep't of the Interior, Fish & Wildlife Serv., 80 Fed. Reg. 2488 (Jan. 16, 2015) (listing the Mexican wolf as 'endangered' under the Endangered Species Act), *available at* http://www.fws.gov/southwest/es/mexicanwolf/pdf/Ms_wolf_listing_final_rule_to_OFR.pdf; Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, Dep't of the Interior, Fish & Wildlife Serv., 80 Fed. Reg. 2512 (Jan. 16, 2015) (promulgating rule to allow experimental Mexican wolf population to be reintroduced into Arizona and New Mexico), *available at* http://www.fws.gov/southwest/es/mexicanwolf/pdf/Ms_wolf_10i_final_rule_to_OFR.pdf.

⁴ ARIZ. REV. STAT. § 17-101(A)(24) ("'Wildlife' means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn," which includes Mexican wolves).

⁵ See e.g. ARIZ. REV. STAT. § 17-306(A) ("No person shall import or transport into this state or sell, trade or release within this state or have in the person's possession any live wildlife except as authorized by the commission or as defined in title 3, chapter 16."); ARIZ. REV. STAT. § 17-306(B) ("It is unlawful for a person to knowingly and without lawful authority under state or federal law import and transport into this state and release within this state a species of wildlife that is listed as a threatened, endangered or candidate species under the endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 through 1544).").

- c. Give away,
 - d. Lease,
 - e. Offer for sale,
 - f. Possess,
 - g. Propagate,
 - h. Purchase,
 - i. Release,
 - j. Rent,
 - k. Sell,
 - l. Sell as live bait,
 - m. Stock,
 - n. Trade,
 - o. Transport; or
4. Kill any captive live wildlife.⁶

With this rulemaking, the Commission is considering adding the following provision to the existing language: “D. Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.”⁷

The Proposed Rule thereby seeks to codify in state law a requirement that federal agencies, such as the U.S. Fish and Wildlife Service (“Service”), and their employees, must obtain Commission approval via the wildlife permitting requirements of the Arizona Administrative Code and Arizona Revised Statutes before carrying out their duties under federal laws, such as the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.* The Proposed Rule’s approach is legally deficient. First, the Proposed Rule violates the doctrine of preemption. Second, the Commission’s reliance on New Mexico’s analogous approach to requiring federal agencies to obtain state wildlife permits is in error. Finally, we note that the Commission has violated the Arizona Administrative Procedure Act (“APA”) with regards to the promulgation of the Proposed Rule, and that the Commission’s actions therefore cannot serve as the foundation for the promulgation of a valid rule. Accordingly, we request the Commission withdraw the Proposed Rule.

I. Preemption

The Proposed Rule would interfere with the Service’s ability to carry out its statutory responsibilities under the ESA. As a result, the Proposed Rule violates our nation’s foundational legal doctrine of preemption.

A. Overview of Federal Preemptive Authority

The doctrine of preemption⁸ is a longstanding legal concept rooted in the Supremacy Clause of the U.S. Constitution, which states that “[t]his Constitution, and the laws of the United States . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything

⁶ ARIZ. ADMIN. CODE § R12-4-402 (Dec. 31, 2014).

⁷ Proposed Rule ARIZ. ADMIN. CODE § 12-4-402 available at <https://portal.azgfd.staging.az.gov/PortalImages/files/rules/R12-4-402%20NPRM.pdf>.

⁸ Preemption is defined as “[t]he principle (derived from the Supremacy Clause) that a federal law can supersede or supplant any inconsistent state law or regulation.” Black’s Law Dictionary (9th ed. 2013).

in the Constitution or laws of any State to the contrary notwithstanding.”⁹ The Supreme Court has interpreted this provision to mean that “the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.”¹⁰

A federal law may preempt state law in three ways.¹¹ First, Congress may expressly preempt state law by enacting a federal law that “explicitly define[s] the extent to which it intends to preempt state law.”¹² Second, “Congress may indicate an intent to occupy an entire field of regulation, in which the States must leave all regulatory activity in that area to the Federal Government.”¹³ Third, “if Congress has not displaced state regulation entirely, it may nonetheless preempt state law to the extent that the state law actually conflicts with federal law.”¹⁴ Such a conflict may arise “when compliance with both state and federal law is impossible,” or “when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”¹⁵

Of primary relevance to the Proposed Rule at issue here are the first and third methods of preemption. Although wildlife management has traditionally been a subject of great state importance, the U.S. Court of Appeals for the Fourth Circuit has noted that “[s]tate control over wildlife . . . is circumscribed by federal regulatory power.”¹⁶ Thus, a state law that is either (1) expressly preempted by a federal statute, (2) in direct conflict with a federal statute, or (3) prohibitive of the accomplishment of a federally mandated objective, must fall to the “supreme law of the land,” as implemented by the federal government.

B. The ESA’s Express Preemption Provision

While the ESA does not prohibit state regulation in the importation of wildlife outright, the ESA does directly preempt state laws and regulations addressing importation or exportation of ESA-listed species that conflict with the ESA.¹⁷ Section 1535(f) states:

*Any state law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this chapter or by any regulation which implements this chapter, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter.*¹⁸

⁹ U.S. Const. Art. VI, Cl. 2.

¹⁰ *McCulloch v. Maryland*, 17 U.S. 316, 436 (1819).

¹¹ See e.g. *Michigan Canners & Freezers Ass’n, Inc. v. Ag. Mktg. & Bargaining Bd.*, 467 U.S. 461, 469 (1984).

¹² *Id.* (citing e.g., *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95–96 (1983)).

¹³ *Id.* (citing e.g., *Fidelity Fed. Savings & Loan Ass’n v. De la Cuesta*, 458 U.S. 141, 153 (1982)).

¹⁴ *Id.*

¹⁵ *Id.* (internal citations and quotations omitted).

¹⁶ *Gibbs v. Babbitt*, 214 F.3d 483, 499 (4th Cir. 2000) (“[T]he Supreme Court recently reiterated that ‘although States have important interests in regulating wildlife and natural resources within their borders, this authority is shared with the Federal Government when the Federal Government exercises one of its enumerated constitutional powers.’” (quoting *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 204 (1999))).

¹⁷ *Man Hing Ivory and Imports, Inc. v. Denkmajian*, 702 F.2d 760, 763 (9th Cir. 1983).

¹⁸ Endangered Species Act, 16 U.S.C. § 1535(f) (2012) (emphasis added).

The U.S. Court of Appeals for the Ninth Circuit has interpreted this provision as not entirely forbidding state wildlife statutes, “[r]ather, it allows full implementation of [state law] so long as the [state] statute does not prohibit what the federal statute or its implementing regulations permit.”¹⁹

C. ESA § 1535(f) as Applied to Potential Commission Permit Denials and the Application of the Proposed Rule’s Amendment Adding Section (D)

The Commission must recognize that ESA section 1535(f) prohibits, on preemption grounds, what the Proposed Rule attempts to achieve. First, the ESA’s express preemption provision preempts the Proposed Rule as written. Second, the provision preempts potential Commission permit denials against federal agencies, such as the Service, under the Proposed Rule as applied.

1. The ESA Preempts the Proposed Rule’s Addition of Section (D)

The ESA preempts, and voids, any state law or regulation concerning the importation of endangered species that prohibits that which is authorized under the Act.²⁰ Section 1539(j) authorizes the “release (and related transportation) of any population . . . of an endangered species . . . if the Secretary [of the Department of the Interior] determines that such release will further the conservation of the species.”²¹ The Secretary determined that the release of the endangered Mexican wolf²² under the experimental population provision of the ESA will further the conservation and recovery of the species.²³ Thus, if a state law or regulation prohibits the importation of endangered Mexican wolves into a state, and thus interferes with the release of experimental Mexican wolf populations, the ESA will supersede that state regulation.

The Proposed Rule adds a provision to the existing Arizona Administrative Code section R12-4-402 clarifying that “[p]erforming activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.”²⁴ This revision is in direct conflict with section 1535(f) of the ESA. The Proposed Rule, as applied in the context of Mexican wolves, regards the importation of an endangered species and could prohibit or hamper the Mexican wolf reintroduction program authorized by section 1539(j) and the Mexican wolf experimental population rule. “It is well settled that ‘when Congress legislated within the scope of its constitutionally granted powers, that legislation may displace state law.’”²⁵ “The plain meaning of [the ESA’s] preemption provision is that the ESA . . . displaces those state laws regulating ‘the importation or exportation of, or interstate or foreign commerce in’ endangered species.”²⁶ The Ninth Circuit Court of Appeals has held the ESA preempts a state law where it would prohibit a

¹⁹ *Man Hing Ivory and Imports, Inc.*, 702 F.2d at 763.

²⁰ 16 U.S.C. § 1535(f).

²¹ 16 U.S.C. § 1539(j).

²² 80 Fed. Reg. 2488 (listing the Mexican wolf as endangered under the ESA).

²³ 80 Fed. Reg. 2512 (promulgating rule to allow experimental Mexican wolf population to be reintroduced into Arizona and New Mexico).

²⁴ Proposed Rule AAC R12-4-402(D).

²⁵ *Pinto v. Connecticut Dep’t of Envtl. Prot.*, 1988 WL 47899, *8 (D. Conn. 1988) (quoting *Wardair Canada, Inc. v. Florida Dep’t of Revenue*, 477 U.S. 1, 6 (1986)).

²⁶ *Id.* at *10.

federally authorized activity being carried out in accordance with the ESA.²⁷ Congress made its preemptive authority clear in the ESA, and a state may not impose regulations to supersede a federal program concerning endangered species.²⁸

Thus, the Proposed Rule is preempted at the outset considering the plain language of ESA section 1535(f).

2. *The ESA Preempts Potential Commission Permit Denials Rendered in Accordance with the Proposed Rule*

In addition to the added language of the Proposed Rule being preempted by the ESA in its own right, the Proposed Rule is preempted by the ESA as applied as well. For example, if the Commission were to use the Proposed Rule as justification to prohibit the importation of endangered species authorized under the ESA's experimental population rule, the State would effectively be directly impeding an authorized federal program. In the context of Mexican wolves, for example, this would result in the direct inhibition of a federally approved reintroduction program. A state law must fall where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."²⁹ As such, any future Commission permit denials under the Proposed Rule would be expressly preempted by section 1535(f) because they would effectively (1) prohibit that which is authorized under the Act,³⁰ and (2) serve to impede a federally mandated program.³¹

The Department of the Interior's ("Interior") "Fish and Wildlife Policy," which describes Interior's approach to state-federal relationships with respect to all wildlife laws (including the ESA) for all Interior agencies (including the Service), is not to the contrary. 43 C.F.R. Part 24. This policy recognizes that "Congress has charged the Secretary of the Interior with responsibilities for the management of certain fish and wildlife resources, e.g., endangered and threatened species." *Id.* § 24.3(c). However, "Federal authority exists for specified purposes while State authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law." *Id.* § 24.1(a). Importantly, though the policy states that, in carrying out "programs involving reintroduction of fish and wildlife," the Service "shall" "[c]onsult with the States and comply with State permit requirements in connection with [reintroduction programs]," the policy explicitly provides that the Secretary of the Interior need not comply with state permit requirements "in instances where [she] determines that such compliance would prevent [her] from carrying out [her] statutory responsibilities." *Id.* § 24.4(i)(5)(i). As a result, though this policy shows a preference for complying with state permits, that preference is inapplicable where it

²⁷ *Man Hing Ivory and Imports, Inc.*, 702 F.2d at 764 ("The pertinent language of 6(f) states, '[a]ny state law . . . is void to the extent that it may effectively . . . (2) prohibit what is authorized pursuant to an exemption or permit provided for . . . in any regulation which implements this chapter.' 16 U.S.C. § 1535(f)(1976). This language, together with the provisions of 50 C.F.R. 17.40(e), preclude California's enforcement of [the C.A law at issue] where it would prohibit federally authorized trade in African elephant products. *Pacific Legal Found. v. State Energy Res. Council*, 659 F.2d 903, 919 (9th Cir. 1981)(state statute invalid where it actually conflicts with or impedes full implementation of a Congressional enactment))).

²⁸ *Man Hing Ivory and Imports, Inc.*, 702 F.2d at 765 ("To read the condition more broadly . . . would open the way for states to impose regulation to supersede federal regulation of trade in endangered species or their export or interstate commerce, a form of state preemption clearly contrary to the intent of Congress in passing the [ESA].").

²⁹ *Pacific Legal Found.*, 659 F.2d at 919 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (internal quotations omitted)).

³⁰ 16 U.S.C. § 1535(f).

³¹ *Man Hing Ivory and Imports, Inc.*, 702 F.2d at 764; *Pacific Legal Found.*, 659 F.2d at 919.

conflicts with the federal law at issue. Because the Proposed Rule as written would conflict with the ESA, there is no preference, and certainly no requirement, that the Service comply with state permitting requirements.

Accordingly, the Commission should withdraw the Proposed Rule on preemption grounds.

II. Error to Follow in New Mexico's Misguided Footsteps

The Commission states that the impetus for the Proposed Rule is the ongoing litigation concerning analogous wildlife importation permitting regulations applied to the Service's Mexican wolf reintroduction and recovery program in the State of New Mexico.³² However, the Commission's reliance on New Mexico's intermediary success in obtaining a preliminary injunction in that case is in error.³³ Notably, the decision is on appeal to the U.S. Court of Appeals for the Tenth Circuit. Additionally, the Service and intervenors in the case (including WildEarth Guardians) have compelling arguments for why the preliminary injunction was rendered in error. We caution the Commission to avoid following in New Mexico's footsteps in this regard, as New Mexico is unlikely to prevail on the merits.

First, as discussed above, the Commission cannot ignore that Interior's policy providing a preference for compliance with state permitting requirements contains an important exception for instances where compliance would "prevent" the Interior agencies from "carrying out" their "statutory responsibilities."³⁴ The ESA requires the Service to recover Mexican wolves. However, if the Commission denies the Service state wildlife permits under the Proposed Rule, the State would effectively be preventing the Service from carrying out the very actions the Service has determined are essential to recover the Mexican wolf.³⁵ Among other things, wolf releases in Arizona are necessary in order to improve the dwindling genetic diversity in the wild population. Without

³² Proposed Rule at 2559 ("The issue of state permits has become more significant in response to a recent lawsuit in New Mexico where the New Mexico Game and Fish Department obtained a preliminary injunction prohibiting the Service from releasing Mexican wolves in New Mexico without first obtaining state permits. Previously, the Service obtained permits in New Mexico and Arizona to release wolves. The situation in New Mexico, however, many indicate a shift in the federal position on state permit, and Arizona Game and Fish has also found agencies other than the Service refusing to cooperate with the State prior to the reintroducing or removing wildlife. The Commission expects federal agencies to obtain state permits to release wildlife, and wants to eliminate any ambiguity in its regulations that a federal agency may bypass state permit requirements if federal law authorizes release of wildlife. Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposes to strengthen its rules to avoid any unintended outcome that a federal agency can avoid state permits before releasing or removing wildlife. The rule is amended to clearly state that a permit or license issued by the Department or the Department of Agriculture is required when conducting any activity listed under R12-4-402(A) with live wildlife to ensure the Department maintains sovereignty over Arizona's wildlife and wildlife habitat.").

³³ See *New Mexico Dep't of Game & Fish v. U.S. Dep't of the Interior*, No. CV 16-00462 WJ/KBM, Mem. Op. and Order Granting Petr's Mot. for Prelim. Inj. and Order for Proposed Order of Inj. (D.N.M. June 6, 2016) (granting New Mexico preliminary injunction obstructing the Service from releasing Mexican wolves absent compliance with state permitting requirements).

³⁴ 43 C.F.R. § 24.4(i)(5)(i).

³⁵ See 80 Fed. Reg. at 2515 (noting that successful recovery of the Mexican wolf depends entirely on the implementation of a successful reintroduction program and that the Service has "focused our recovery efforts on the establishment of Mexican wolves as an experimental population . . . in Arizona and New Mexico.").

additional successful releases, the effects of inbreeding will increase and the population may not be able to survive.³⁶

Second, and as also discussed above, the Commission cannot ignore the plain language of the ESA in an attempt to circumscribe federal prerogatives here. In carrying out its duties under the ESA, the Service is charged with cooperating with the states to the “maximum extent practicable.”³⁷ The ESA does not allow states to exercise veto authority over the Service’s implementation of the Act. Interior’s “Fish and Wildlife Policy” is not to the contrary, and, even if it ostensibly were, 43 C.F.R. §24.4(i)(5)(i) must be read consistently with the provisions of the ESA and its implementing regulations, which make this lack of a state veto clear.³⁸ As such, the Proposed Rule is an inappropriate attempt to exercise power over a federal agency that the State simply does not have.

In short, the Commission’s reliance on New Mexico’s recent attempts to obstruct the federal government from releasing critically imperiled Mexican wolves into that state in order to justify the Proposed Rule is in error and is highly vulnerable to a legal challenge.

III. Violations of the APA

As discussed above, the Proposed Rule is in excess of the State’s authority to act as a matter of federal law. However, it is also in violation of the APA. The APA “distinguishes between claims that a rule lacks conformity with an agency’s statutory authority and claims that an agency failed to follow required procedures when promulgating a rule.” *Samaritan Health Sys. v. Ariz. Health Care Cost Containment Sys. Admin.*, 11 P.3d 1072, 1076 (Ariz. Ct. App. 2000). While APA section 41–1034 provides for the right to seek declaratory judgments regarding the substantive legal validity of rules, APA section 41–1030(A) provides that a rule is invalid unless it is promulgated in substantial compliance with the procedures required by the APA. *See id.*; *see also, e.g.*, ARIZ. REV. STAT. § 41-1034; ARIZ. REV. STAT. § 41-1030(A); *Ariz. State Univ. ex rel. Ariz. Bd. of Regents v. Ariz. State Ret. Sys.*, 349 P.3d 220, 227–28 (Ariz. Ct. App. 2015). The Proposed Rule represents both types of violations because it is in excess of the Commission’s authority and because it is not being promulgated in compliance with the procedures required by the APA.

First, for the same reasons that the Proposed Rule is in violation of the federal prohibition against preemption, it is also in excess of the Commission’s authority to promulgate this rule. This indicates that the Proposed Rule is also in violation of the substantive provisions of the APA barring agencies from engaging in rulemaking outside the legislature’s grant of authority. *See* ARIZ. REV. STAT. § 41-1030(C) (forbidding agencies from promulgating rules “under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute authorizing the rule.”); ARIZ. REV. STAT. § 41-1001.01(A)(8) (stating in the “Regulatory bill of rights” section of the APA that a person “[i]s entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute.”). The legislature could not, and in fact did not, provide the Commission with a grant of authority that

³⁶ *See* 80 Fed. Reg. at 2506 (concluding that if the Service does not take additional management actions, such as releasing more wolves into the wild, the “inbreeding will accumulate” and genetic diversity will continue to decline more quickly than in the captive population).

³⁷ 15 U.S.C. § 1535(a).

³⁸ *See Hamm v. Ameriquest Mortgage Co.*, 506 F. 3d 525, 530 (7th Cir. 2007) (“[a] statute and its implementing regulations should be read as a whole, and, where possible, afforded a harmonious interpretation.” (citation omitted)).

would allow it to preempt the relevant provisions of the ESA. Therefore, in promulgating a rule that does just that, the Commission is acting in excess of its authority. As a result, even if the Commission does finalize the Proposed Rule, the Governor's Regulatory Review Council will have to strike the Proposed Rule down because it violates the Supremacy Clause. *See* ARIZ. REV. STAT. § 41-1052(D)(9) ("The council shall not approve the rule unless: ... The rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.").

With regard to the procedural violations, the Commission did not adequately provide published notice of "[t]he time during which written submissions may be made" in the Notice of Rulemaking Docket Opening. *See* ARIZ. REV. STAT. § 41-1021(b)(5); *see also* ARIZ. ADMIN. CODE § R1-1-205(B)(7) (requiring that the notice of rulemaking docket opening provide "[t]he time-frame the agency will accept written comments."). The Notice of Rulemaking Docket Opening only provides that comments will be accepted "Monday through Friday from 8:00 a.m. until 5:00 p.m." 22 Ariz. Admin. Reg. 2569 (Sept. 16, 2016). This does not provide the date by which comments must be received, a crucial piece of information if individuals wish to have their comments considered by the Commission. This failure is a serious violation of the terms of the APA that could not be cured by the Proposed Rule, but we also point out that this information was not included in the Proposed Rule either. Therefore, the Commission left interested parties entirely unaware of the period during which they could provide comments on the Proposed Rule in violation of both the text and the purpose of the APA. *See* ARIZ. REV. STAT. § 41-1001.01 (outlining the APA's "regulatory bill of rights" that provides any person with the right to provide "written comments or testimony on proposed rules to an agency [and have] the agency adequately address those comments."); *Ariz. Dep't of Revenue v. Care Computer Sys., Inc.*, 4 P.3d 469, 475-76 (N.M. Ct. App. 2000) (discussing public involvement purpose of the APA); *Carondelet Health Servs., Inc. v. Ariz. Health Care Cost Containment Sys. Admin.*, 895 P.2d 133, 138, 141 (N.M. Ct. App. 1994) (same). The minimum time period for comments from the APA cannot cure this deficiency as it only provides a minimum time, "at least thirty days," and not an automatic, or even a presumptive, time limit. ARIZ. REV. STAT. § 41-1023(B); ARIZ. REV. STAT. § 41-1022(D). Furthermore, reading the "at least thirty days" language as obviating the need to provide a specific time period in the Notice of Rulemaking Docket Opening would read the express requirement that the time period be included in the Notice of Rulemaking Docket Opening out of both Arizona Revised Statutes section 41-1021(b)(5) and Arizona Administrative Code section R1-1-205(B)(7). Therefore, the failure to include a time by which all comments must be received is a serious violation of the APA.

As a result of these shortcomings, both the procedure used in the promulgation of the Proposed Rule and its substance are in violation of the APA, and the Proposed Rule is illegal for these reasons as well.

CONCLUSION

In sum, we respectfully urge the Commission to withdraw the Proposed Rule and allow essential wildlife recovery programs to proceed in the State.

Sincerely,

Kelly E. Nokes

Kelly Nokes, JD
Carnivore Campaign Lead
WildEarth Guardians
knokes@wildearthguardians.org
(406) 209-9545

/s/ Stuart Wilcox
Staff Attorney
WildEarth Guardians
swilcox@wildearthguardians.org
(720) 331-0385

/s/ Katie Davis
Public Lands Advocate
Wildlands Network
k.davis@wildlandsnetwork.org
(801) 560-2414

Celeste Cook

From: Toni Prothero <toniprothero@icloud.com>
Sent: Friday, October 14, 2016 2:10 PM
To: Rulemaking
Subject: R12-4-402

To whom it may concern:

I am writing to oppose the proposed rule that will require the U.S. Fish and Wildlife Service to obtain a state permit before releasing wildlife into the state. This is a thinly veiled attempt to impede the recovery of the Mexican gray wolf in our state and interferes with the mandate of a federal agency to recover an endangered species. The Mexican gray wolf is already highly endangered, inbred and in need of immediate new releases and this proposed rule will place unnecessary impediments in the way of preventing the extinction of the species in the wild. In addition, since federal law takes precedence over state law, this rule, if implemented, will result in lawsuits that will cost Arizona citizens and waste the time of state agency personnel. Proposed rule change R12-4-402 should be abandoned.

Thank you for your attention.

Toni Prothero
Flagstaff, AZ

Celeste Cook

From: terry morris <gcubio@yahoo.com>
Sent: Friday, October 14, 2016 6:21 PM
To: Rulemaking
Subject: R12-4-402 Arizona intervention in Federally mandated Mexican wolf recovery process

I oppose R12-4-402 and strongly urge the Department to avoid the political disgrace that has become the New Mexico Game & Fish department. Wildlife conservation should be about Endangered as well game species. I feel Arizona is the last hope for Mexican wolf recovery. The AZGFD should focus it's resources on management and cooperation not legal interference.

Sincerely,
Terry Morris

Celeste Cook

From: Linda Waite <linda6.waite@gmail.com>
Sent: Friday, October 14, 2016 7:40 PM
To: Rulemaking

Please help these animals who can't speak for themselves. If we killing animals because people seem to think they are in the way. We will just have pictures. Our future generations won't know what a live wolf looks like alive and living. People have got stop taking over every inch of property. Stop the killing

Celeste Cook

From: Debby DeWolfe <debron27@hotmail.com>
Sent: Friday, October 14, 2016 9:22 PM
To: Rulemaking
Subject: comment on R12-4-402

I am a person who does not want to see any animal become extinct-too many have gone that way. We humans are responsible for most of these losses and I hope you won't help to have the Mexican wolf become extinct. The U.S. Fish and Wildlife Service have a responsibility to save endangered species, which the Mexican wolf is, as you well know. If we keep throwing unbalance into nature we will be destroying ourselves. These wolves are needed to help keep the earth in balance, especially here in AZ. I keep hearing about how the elk and deer population is out of control on the north rim of the Grand Canyon. If the wolves were released there that problem would soon be alleviated and the environment would become much more healthy as was proved at Yellowstone National Park.

Please think like human beings and listen to the science and stop letting politics control you.

Thank you, Deborah DeWolfe

Celeste Cook

From: KnowWho Services <noreply@knowwho.services>
Sent: Saturday, October 15, 2016 5:25 AM
To: Rulemaking
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Dear Celeste Cook,

I urge the Arizona Game and Fish Commission to reject the proposed rule R12-4-402, and incarcerate the bill creators, and to incarcerate the members of the Arizona Game and fish for allowing the factory farm industry to destroy wildlife. Please bring to justice the entire office for crimes against mother nature, please punish them for making people to petition them to stop murdering wildlife, so down with the murdering rich meat assholes which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population.

What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Please reject this proposed rule. Thank you.

Sincerely,

Greg Pearl
1820 se 12th
Portland, OR 97214
greenworldsun@gmail.com
5032453289

Celeste Cook

From: Carol Soine <csoine@cox.net>
Sent: Saturday, October 15, 2016 8:54 AM
To: Rulemaking
Subject: comment on R12-4-402

Dear Arizona Game and Fish,

It has come to my attention that you are proposing a rule that would require your approval before the U.S Game and Fish could release anymore Mexican Gray Wolves. I urge you discontinue this proposed rule change. The Feds are under court order to come up with a viable plan for the recovery of the Lobo. Even your own wolf biologists have said more Wolves need to be introduced to achieve genetic diversity and an increase in pack numbers. Please allow the Feds to develop their plan before introducing more rules. This rule change looks like a back door means of halting the recovery of the Mexican Gray Wolf.

Sincerely,

John T. Soine
16031 W. Indigo Ln.
Surprise, AZ. 85374

Celeste Cook

From: alex rodriguez <a_train72@icloud.com>
Sent: Saturday, October 15, 2016 9:57 AM
To: Rulemaking
Subject: Wolves

Please save our Mexican wolves.

Sent from my iPhone

Celeste Cook

From: Kay Deely <azbookworm41@gmail.com>
Sent: Saturday, October 15, 2016 11:14 AM
To: Rulemaking
Subject: Mexican Gray Wolves

Please abandon the effort to change the rule for introducing Mexican gray wolves into the wild. The rule change requiring a state permit would make it much more difficult for the U.S. Forest Service to get the wolves onto the wild. Arizona already opposes having the wolves released but can't presently circumvent the federal law.

Thank you for your consideration.

Kay Deely

Celeste Cook

From: Robert Kuhnert <rkuhnert55@gmail.com>
Sent: Saturday, October 15, 2016 11:16 AM
To: Rulemaking
Subject: comment on R12-4-402

I want to go on record as being in opposition to the Arizona Game and Fish Commission's proposed new rule requiring the U.S. Fish and Wildlife Service to get a Arizona state permit before releasing any additional Mexican Gray Wolves into the wild lands of Arizona.

I believe this proposal is politically (\$\$) motivated instead of science based.

Times are changing, and the value of having an apex predator like the wolf, which has always been healthy for the Trophic Cascade of flora and fauna that the wolf is at the head of, is now becoming economically of great value.

In a recent study, the average spending of visitors in the 17 counties around Yellowstone National Park, across the four seasons, about \$22.5 million are directly attributable to the presence of Wolves in the park. Based on the amount of money spent in the entire three-state area around Yellowstone, visitors who specifically want to see or hear Wolves generate approximately \$35.5 million annually. (www.westernwolves.org)

From my studies, the livestock industry is one of the primary opponents of wolf re-introduction. Not all ranchers are opposed to Wolves as some can see the future economic benefit of living with Wolves.

Oregon State University recent published a finding that the Rocky Mountain states produce on average between 3% and 5% of total beef production in the US.

The public awareness of using public lands for grazing at a loss to taxpayers, and therefore the obvious subsidizing of the livestock industry is attracting more and more negative public attention.

So when the potential economic benefits of ecotourism, wolves being a big part of that, is recognized vs. a dwindling to insignificant livestock industry in the Rocky Mountains, and a growing demand for recreational uses of public lands in the Rocky Mountains, opposing wolf re-introduction is a very backward, and economically short-sighted view.

Celeste Cook

From: GAIL CARROLL <gail6190@msn.com>
Sent: Saturday, October 15, 2016 11:26 AM
To: Rulemaking
Subject: Protect the Mexican wolves. It is crucial and want most want, not just those with the power to change the rules that threaten them!

Sent from my Galaxy Tab® A

Celeste Cook

From: Harry Ruffner <harry_ruffner@yahoo.com>
Sent: Saturday, October 15, 2016 11:37 AM
To: Rulemaking
Subject: Please protect the wolf

They are almost extinct.

Thank you,

Harry & Ivana Ruffner
16203 Kinrush. Ct.
Houston, Texas 77095
832 427 6608 Home:

Sent from my iPhone

Celeste Cook

From: Anilise Blackwell <anilise422@gmail.com>
Sent: Saturday, October 15, 2016 12:00 PM
To: Rulemaking
Subject: R12-4-402

Atten: DORR

Arizona game and fish

Mexican gray wolves are important to me and the majority of voters, and their recovery can help restore ecological health to our wildlands. But there is no up-to-date, valid recovery plan for Mexican gray wolves, and new management rules for the wolves contradict the recovery recommendations of leading wolf experts.

Very few wolves have been released into the wild and this year, the wild population declined for the first time in six years, from 110 wolves last year to only 97.

Instead of allowing political interference by the states of Arizona, Colorado, New Mexico, and Utah, the US Fish and Wildlife Service must expedite the release of adults and families of wolves from captivity and must move forward with the draft recovery plan based on the work of the science planning subgroup.

Obstruction by anti-wolf special interests and politics has kept this small population of unique and critically endangered wolves at the brink of extinction for too long and can no longer be allowed to do so. Development of a new recovery plan and expedited releases that will together address decreased genetic health and ensure long-term resiliency in Mexican wolf populations must move forward without delay or political interference.

A concerted effort needs to be made to Mexican gray wolf recovery.

sincerely
Anilise Blackwell

Celeste Cook

From: Jane Finley <janefinley@yahoo.com>
Sent: Saturday, October 15, 2016 12:35 PM
To: Rulemaking
Subject: comment on R12-4-402

I am against R12-4-402 and any legislation which would make it harder to release wolves into the wild! WE NEED WOLVES!

jane finley

Celeste Cook

From: Elisa Renert <eblasucci@icloud.com>
Sent: Saturday, October 15, 2016 12:59 PM
To: Rulemaking
Subject: Mexican Wolves

Please start helping the wolves, instead of always stacking the deck against them. They deserve to be reintroduced to the wilderness. We as people of this world, have no business deciding if a sentient creature can be free. They were doing fine, before you made them scarce.

E.Blasucci

Sent from my iPhone

... A tiger doesn't lose sleep, over the opinion of sheep.

Celeste Cook

From: Nicole Kistler <nk@nicolekistler.com>
Sent: Saturday, October 15, 2016 2:36 PM
To: Rulemaking
Subject: R12-4-402

Dear Arizona Game and Fish,

I am a fourth generation Arizonan. My great-grandfather was a rancher and I still have cousins who ranch. My family actually designed the state flag we use today.

I am also a lover of wolves. I ask you to make it easier to release wolves, do not require a state permit for the Federal government to release wolves. Wolves need territory dedicated to them to survive and thrive. Please work to protect them and help in their recovery. As a peak predator they will help improve the health of the entire ecosystem they are released into.

I understand the inherent conflict between wolves and ranchers. Frankly, we need to review grazing rights throughout the state as these permits come up. Perhaps its time to put some territory back into the domain of wolves. With a proper balance of territory wolves can roam and not come into conflict with ranchers. It's only when they do not have enough territory that these conflicts occur.

A healthy, wild population of wolves at our border would be a spectacular site. And something my great-grandfather would be proud of.

Thank You and Best Regards,
Nicole Kistler

Celeste Cook

From: Janis Green <janis.green@verizon.net>
Sent: Saturday, October 15, 2016 3:09 PM
To: Rulemaking
Subject: R12-4-402

Please don't let politics prevent the Fish and Wildlife Department from enforcing the ESA mandate for wild wolf recovery.

These animals are necessary to nature's health.

Thanks,
Janis Green
179 Campbell Dr.
Lewisville TX. 75057

Celeste Cook

From: Jeff Goswick <jeff.goswick@ieee.org>
Sent: Saturday, October 15, 2016 3:56 PM
To: Rulemaking
Subject: Please reject the amendment in Proposed Rule R12-4-402

Dear AZ Game and Fish,

Please reject the proposed rule R12-4-402. The release of captive wolves is likely to be the only way to get a viable, sustainable, population of the Mexican Gray Wolf.

Blocking these wolf releases is not within the authority of the State, it is a Federal matter and Arizona should let US Fish and Wildlife Service do its job.

Best Regards,
Jeff Goswick
Phoenix, AZ

Celeste Cook

From: Sharon Kite <stckite@bellsouth.net>
Sent: Sunday, October 16, 2016 10:00 AM
To: Rulemaking
Subject: Regarding R12-4-402

Importance: High

Arizona Game and Fish Commission:

I am completely and absolutely **OPPOSED** to the state of Arizona instituting any regulation or passing any law, such as R12-4-405, that would require the USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild. This is yet another obvious attempt, by the state of Arizona, to obstruct the recovery of the critically endangered Mexican wolf, which is part of our **AMERICAN** heritage of wildlife, **NOT** just our **ARIZONA** heritage of wildlife. It is so clear that Arizona is, in fact, trying to **PREVENT** the reintroduction of the Mexican wolf into the wild, entirely, which I **BELIEVE ARIZONA HAS NO RIGHT TO DO**; as long as Arizona is a state that is part of the United States of America, it needs to **ACT** like a state that is part of a larger union of states, and stop trying to run its state government and wildlife programs like it is a country unto itself, which it is **NOT**...

Sharon L. Kite
Charlotte, North Carolina
stckite@bellsouth.net
704.780.0410



This email has been checked for viruses by Avast antivirus software.
www.avast.com

Celeste Cook

From: April Smith <ASMITH4610@msn.com>
Sent: Sunday, October 16, 2016 2:30 PM
To: Rulemaking
Subject: comment on R12-4-402

The rule change: in which the State of AZ feels federal agencies must be granted permission from a state agency to do their federal agency assigned job is WRONG. State of AZ does not have the authority to make ANY federal agency apply for a permit for actions taken by ANY federal agency on federal lands. As a unit of the United States of America federal agencies' decisions and subsequent actions are solely the business of that agency on federal lands. The State of AZ Game and Fish is doing just that-going on a fishing expedition to see if they can find a court that will falsely give G&F power it does not currently enjoy. This proposed rule change is: A total waste of taxpayer time and money attempting to shackle science based ESPA mandated species recoverys to local retrograde non science based expression of opinion.

The opinions of G&F commissioners has NO scientific validity. Each of the commissioners is a retired executive with NO scientific training in genetics, wildlife management or endangered species recovery. They enjoy NO power over federal agencies nor do they represent any segment of the scientific community. While not stupid none of them is competent to take any action in public policy but only to render an opinion; not determine policy for third party behaviors.

If AZ G&F wishes to pursue this fool hardy course of rule making the subsequent legal fees and case costs should be deducted from G&F operation monies where the actual responsibility for this proposed pissing contest lies. As a taxpayer I have no interest in, and do not support, this sad rehashing of authority issues.

April Smith
Flagstaff

Arizona resident for 45 years

Celeste Cook

From: Yolanda Garcia <otherstuff@swcp.com>
Sent: Sunday, October 16, 2016 2:47 PM
To: Rulemaking
Subject: Comments to the Arizona Game and Fish Commission regarding R12-4-402, proposed rule making, Title 12. Natural Resources Chapter 4. Game & Fish Commission.

Please accept my comments for submission regarding R12-4-402.

I OPPOSE R12-4-402 and ask that it be negated/annulled! What the lobos need is science-based recovery, not political meddling!

You, the Arizona Game and Fish Commission, have proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. Your rule change would require the U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos.

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Release of wolves to the wild is a critical component of that recovery.

Your proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. You have been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality. However, this temporary halt will not stand!

Your proposed rule change IS NOT RIGHT, IS NOT LEGAL, AND CERTAINLY NOT MORAL! Your Creator has given you the ability to protect His creation, the Lobo, and if you do not listen and protect what He created, He will hold you accountable. Please, protect the Lobo.

Do not accept R12-4-402.

Yolanda Garcia
PO Box 1442
Peralta, NM 87042



This email has been checked for viruses by Avast antivirus software.
www.avast.com

Celeste Cook

From: Maya Rommwatt <rommwatt@gmail.com>
Sent: Sunday, October 16, 2016 3:58 PM
To: Rulemaking
Subject: Comments on proposed rule change R12-4-402

Celeste Cook, Rules and Policy Manager
Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, AZ 85086

I am writing to comment on the Arizona Game and Fish Commission's proposed rule change to rule 12-4-402. I strongly urge the Commission to abandon its proposed change. As a resident of New Mexico, a strong supporter of Mexican gray wolf recovery, and a biologist, I am deeply dismayed with the Commission's attempt to turn from science-based recovery of imperiled species and infuse the process with politics.

Citizens rely on our state game and fish departments, of which I've been proud to be employed with as a fisheries field technician in Oregon, to protect our shared wildlife through a rigorous scientific process. When agencies allow politics to drive their decision making, they lose all credibility with citizens. This at a time when the electorate is deeply skeptical of our political process and politicians. The Mexican gray wolf is suffering a severe genetic crisis, which can only be remedied by more releases of wolves into the wild. The Arizona Game and Fish Commission's attempts to thwart their recovery will only serve to bring this imperiled species closer to the brink of extinction, a species which we have already invested a great deal of taxpayer's money to save over the last two decades, and tarnish the Commission's reputation in the eyes of the citizens of Arizona and New Mexico.

Sincerely,
Maya Rommwatt

--

Maya Rommwatt
rommwatt@gmail.com
maya@mexicanwolves.org
503.467.9471

Celeste Cook

From: Lorna Schaefer <lschae4779@aol.com>
Sent: Sunday, October 16, 2016 4:29 PM
To: Rulemaking
Cc: Lorna Schaefer
Subject: Wolf Recovey

Dear Sirs, I'm a concerned citizen that our Mexican wolves are not being reintroduced to wild has the law provides to prevent extinction of these endangered species.Please do what is needed to recovery these animals. Thank you Lorna L Schaefer

Celeste Cook

From: Roz Switzer <switzerroz@gmail.com>
Sent: Sunday, October 16, 2016 7:12 PM
To: Rulemaking
Subject: Comment on R12-4-402

I oppose amending Live Wildlife; Unlawful Acts to state that the U.S. Fish and Wildlife Service (USFWS) would have to obtain a state permit before releasing any additional Mexican gray wolves into the wild.

The USFWS is required under the Federal Endangered Species Act to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery and needed now to promote genetic diversity in the population. Arizona should work with the USFWS toward full recovery of the Mexican Gray Wolf, not continue to hinder the reintroduction program.

I urge the Arizona Game and Fish Commission to reject this proposed rule change. The Mexican Gray Wolf needs science based recovery, not state political meddling.

Sincerely,

Rosalind Switzer
12454 N. Lang Road
Florence, AZ 85132

Celeste Cook

From: Peter Johnson <pcjohnson1@mac.com>
Sent: Sunday, October 16, 2016 7:32 PM
To: Rulemaking
Subject: Re: Amendment to R12-04-402

To: Rulemaking@azgfd.gov
Subject: Amendment to R12-04-402

I write in favor of amending R12-04-402 to require AZGFD permission to release wild animals based on:

1. Health

The requirement of the agency to "prevent interactions between humans and wildlife that may threaten public health and safety" because of the threat of Wolf Rabies, and

2. Autonomous judgement

The requirement of the agency to independently assess the justification for any planned release.

3. Challenging the subspecies assignment

The need for a judicial review of subspecies assignment.

Qualification:

I write as a retired Professor of Pathology from the University of Arizona who has lived in Blue Az since 1989 and who has closely followed the wolf introduction program since before its inception having given invited testimony to then Governor Symington. Among my 110 expert referred journal publications are many NIH funded papers (usually with me as Principle investigator) dealing with quantitative analysis which makes me expert in scientific data collection and analysis. This and my medical background are relevant to the following discussion.

Discussion:

1. Health

One of the main issues in human/wildlife interaction is the potential for rabies transmission, and the State maintains a program to monitor wildlife rabies reflecting this universally acknowledged serious issue. Human rabies from wolf attack has been known throughout history, and in some Third World nations remains a significant health issue today. Wolves are notably effective vectors of rabies because of their size and viciousness, particularly in packs. Indeed few if any wildlife threats to humans are more deserving of fear than is a rapid wolf pack. Mexico has had repeated epizootic of rabies in its feral dogs, and these have resulted in epidemics in humans as close as Hermosillo in Sonora. Feral dog rabies has been transmitted to Texas coyotes which resulted in an epizoonosis in its southern counties necessitating dog quarantine. While Mexico has taken steps to reduce this hazard much of the border zone with the US is not under effective government control. Now that wolves are allowed to range to the border it can be expected that some will migrate back and forth across the border, contact feral rabid dogs thus bring rabies back into Az. Fish and Wildlife Service (FWS) procedures for monitoring wolves is solely via arial search for wolves with functioning collars with arial counting followed by helicopter landing, tranquilizing, and immunizing, including

for rabies. These procedures are not allowed in vast parts of the wolves ranges such as in the Indian Reservations and in the Blue Primitive Area and other areas managed as wilderness where helicopter landing is prohibited. Accordingly wolves in those areas are unimmunized and uncounted (see #2 below). It is impossible for the FWS to know elsewhere if there are individual or packs of wolves lacking functioning collars, particularly now that their area has expanded so massively. In the Indian Reservations dog rabies immunization is encouraged but not required, and many dogs are not immunized thus providing an intermediate vector, that is from the unimmunized wolf to the dogs of the Reservations.

2. Autonomous judgement

Judgement regarding expansion of the areas of the state available for wolf introduction, and of the need for release of additional wolves or ultimately control of the population is based on tenuous application of population studies of other wolf breeds in other states to those released in Az. Wildlife biology is by its nature among the least precise areas of "science" and extrapolations are made from studies of other wolf breeds in other parts of the country as to how many are required to obtain a sustainable population. Of many possible objections to such extrapolations is the fact the the wolf's environment in Az is far different from its close relatives living in the Upper Midwest or Rocky mountain states. However, the FWS through easily contested reasoning has proclaimed minimal population numbers as essential to fulfilling the requirement of the Endangered Species Act. It then does its annual count, and based on that determines how many more wolves need to be released. The method used to count wolves is extremely vulnerable to errors both subjective and objective. All of science is subject to intentional and unintentional error due to observer bias. Everyone involved in counting wolves and analyzing the data is aware that undercounting secures their jobs and over counting threatens them. Further there are no control over the counts, that is the counts are rarely repeated any single year (although limited recounts in 2011 demonstrated errors of over 50%), and no independent entity restudies the results to determine their accuracy. All this strongly supports AZGFD insisting on or performing and independent audit of the counting procedures.

3. Subspecies assignment

The determination that the Mexican Gray Wolf (MGW) represents a distinct population deserving of protection under the Endangered Species Act was an administrative decision and it needs to be judicially challenged. Data concerning the prior population is scanty and controversial, specifically what phenotypic features justify such a designation. *Canis lupus* include the most phenotypic variable and fluctuating phenotypes among mammals. Consider the variances between the Pekinese and the Great Dane, yet those breeds are not designated subspecies but only breeds. The MGW according to some records were somewhat smaller and had a more pale coloration than their northern relatives. Considering the variance wishing the species those distinctions do not justify a subspecies designation rather than one of breeds, and should not deserve ESA protection.

Celeste Cook

From: Byrnes, Erin <EByrnes@udalllaw.com>
Sent: Sunday, October 16, 2016 8:09 PM
To: Rulemaking
Cc: Leslie Byrnes
Subject: Opposition to Proposed Changes to R12-4-402

Dear Sir or Madam -

I am writing to express my strong opposition to the proposed amendments to R12-4-402, which would require the DOI to seek state permits from the Game and Fish Commission prior to releasing any additional Mexican grey wolves into Arizona. I fully and heartily support the federal government (and others') wolf recovery efforts and believe the proposed amendments to the Arizona Administrative Code to be unnecessary and to pose an unwarranted obstacle to the recovery effort. I therefore ask that my opinion be counted as consideration of the amendment moves forward.

Thank you.

Erin
Erin E. Byrnes | Partner
Udall Law Firm, LLP
2198 E. Camelback Rd., Suite 375
Phoenix, AZ 85116

Celeste Cook

From: JENNY COBB <COBBSRUN@msn.com>
Sent: Sunday, October 16, 2016 8:36 PM
To: Rulemaking
Subject: R12-4-402

October 16, 2016

Arizona Game and Fish Commission

Re: R12-4-402

These comments are submitted on behalf of the Great Old Broads for Wilderness, a national, non-profit organization. Established in 1989, we are advocates, stewards and educators for wild lands. Ours is a lifetime outlook on the benefits of protecting our wild, public lands.

Broads, through Broadbands across the country, work with agencies in stewardship and monitoring of public lands.

The Mexican Gray wolf is essential to the biodiversity of wild lands. Lobos need to be restored to their essential natural role.

Broads does not support the proposed rule change. Please do not interfere in the role of the USFWS releasing wolves to the wild to promote genetic diversity in the wolf population. The Mexican Gray Wolf needs science-based recovery not State interference with the intent of driving the Mexican Wolf to extinction. Let the federal government do its job and recover the Mexican Gray Wolf.

For the wild,

A handwritten signature in cursive script that reads "Jenny Cobb". The signature is written in black ink and is positioned above a horizontal line of small, repeating decorative marks.

Jenny Cobb

Co-Leader Yavapai-Prescott Broadband

Celeste Cook

From: ljwilloughby <ljwilloughby@harewaves.net>
Sent: Sunday, October 16, 2016 8:50 PM
To: Rulemaking
Subject: Mexican wolves

Please save the Mexican wolves.....we have so few left. Why is this even an issue?

Leeanne Willoughby

Sent from my Bell Samsung device over Canada's largest network.

[Spam](#)

[Not spam](#)

[Forget previous vote](#)

Celeste Cook

From: Rochelle Alexander <duchss01@gmail.com>
Sent: Sunday, October 16, 2016 8:52 PM
To: Rulemaking
Subject: Mexican Gray Wolf

You need to stop the rules and regulations regarding these beautiful and much needed animals. Leave them be. Let them be in the wild where they belong. The ecosystem needs them and believe it or not, humans need them also. Maybe people from other states ought to be allowed to come and hunt the people of your state? That is essentially what you are doing to these beautiful mammals who have been there long before any of you!

Celeste Cook

From: Lynn Griffith <lynngriffith3@gmail.com>
Sent: Sunday, October 16, 2016 9:04 PM
To: Rulemaking
Subject: R12-4-402

I strongly oppose rule change A new rule would require U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos.

Thank you

Celeste Cook

From: Laura Welp <laurawelp@hotmail.com>
Sent: Sunday, October 16, 2016 9:51 PM
To: Rulemaking
Subject: R12-4-402

Dear Arizona Game and Fish Commission,

The proposal to amend the Arizona Administrative Code Section R12-4-402 to require the U.S. Fish and Wildlife Service to get a permit from the state before releasing Mexican wolves is an unnecessary restriction on that agency's attempt to recover the species as required by the Endangered Species Act. I favor the recovery of the wolves and see the proposed amendment as the state's attempt to thwart the process for political reasons. Increasing wolves in the wild is essential to their survival. Please let the USFWS conduct the necessary operations unhindered.

Sincerely,

Laura Fertig
6629 S 43rd St
Phoenix AZ 85042

Celeste Cook

From: Ellen Pierce <ellenp000@gmail.com>
Sent: Sunday, October 16, 2016 10:47 PM
To: Rulemaking
Subject: R12-4-402

I strongly request that this rule change be denied. It is an impediment to the goal of Lobo Grey Wolf Recovery. The program is already facing many handicaps. More wolfs are needed for healthy stock. We need to minimize in breeding and additional releases are necessary. The sooner the better.

Thank you,
Ellen Pierce

Sent from my iPhone



Rockies and Plains Office
535 16th Street, Suite 310 | Denver, Colorado 80202 | tel 303.825.0918
www.defenders.org

October 14, 2016

Celeste Cook
Rules and Policy Manager
Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

RE: Proposed Amendment to A.A.C. R12-4-402

Submitted via email to ccook@azgfd.gov and rulemaking@azgfd.gov

Dear Ms. Cook:

Please accept these comments in response to the Game and Fish Commission's ("Commission") Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking regarding a proposed amendment to A.A.C. R12-4-402. *See* 22 A.A.R. 2569 (September 16, 2016), 22 A.A.R. 2558 (September 16, 2016). These comments are submitted on behalf of Defenders of Wildlife ("Defenders") and represent Defenders' official position. Defenders is a national, non-profit, science-based conservation organization dedicated to the protection of all native animals and plants in their natural communities. Defenders has approximately 375,000 members nationwide and more than 8,000 members in Arizona. Defenders also has an office in Tucson, Arizona.¹

The Commission seeks to amend A.A.C. R12-4-402 governing "Live Wildlife: Unlawful Acts." The amendment would require federal agencies to obtain state permits prior to engaging in any activity listed under R12-4-402(A). The Commission proposes adding a new subsection D that states: "Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements." 22 A.A.R. at 2560; Proposed R12-4-402(D). The activities listed in A.A.C. R12-4-402(A) include the importation, transportation, and release of wildlife within the state pursuant to a federal license or permit. According to the Commission's stated justification for the proposed amendment, the Commission is concerned that the current rule "could be construed as authorizing a federal agency to release or reintroduce threatened or endangered species in Arizona without first obtaining a state permit." 22 A.A.R. at 2559. The Commission's intention is "to

¹ Neither the Notice of Rulemaking Docket Opening nor the Notice of Proposed Rulemaking includes a deadline for public comments, in violation of Ariz. Rev. Stat. § 41-1021(b)(5), which requires every rulemaking docket to indicate "[t]he time during which written submissions [on the proposed rule] may be made." However, the Commission is required by law to provide a time period of "at least thirty days after publication of the notice of proposed rule making" for written comments. *Id.* § 41-1023. Accordingly, in an abundance of caution, Defenders submits these comments prior to the expiration of the minimum 30-day timeline for public comments for all proposed rules.

ensure the [Game and Fish] Department maintains sovereignty over Arizona's wildlife and wildlife habitat." *Id.*

We urge the Commission to abandon the proposed amendment. As an initial matter, the Commission cannot prohibit federal activities absent state consent. The federal government is only subject to state regulation where there is a "clear congressional mandate" or "specific congressional action" specifying that the federal government has submitted to state regulation. *Hancock v. Train*, 426 U.S. 167, 179 (1976) ("[W]here Congress does not affirmatively declare its instrumentalities or property subject to regulation, the federal function must be left free of regulation."). Specific to the Commission's concern regarding the release or reintroduction of species protected by the federal Endangered Species Act ("ESA"), the ESA does not subject the statute's implementation to state approval. In fact, the statute only requires "cooperation" with states "to the maximum extent practicable." 16 U.S.C. § 1535(a). Thus, the U.S. Fish and Wildlife Service ("FWS"), which maintains paramount authority over management of listed species, cannot be required to obtain a state permit to carry out its responsibilities under the ESA.

Further, any state permitting requirement imposed pursuant to Proposed R12-4-402(D) that conflicts with FWS's implementation of the ESA would be preempted. *See Hillsborough County, Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712 (1985) (Supremacy Clause of the Constitution invalidates state laws that "interfere with, or are contrary to," federal law). With respect to importation of wildlife, the ESA expressly preempts any state permitting requirement that would prohibit importation of listed species if there is a federal regulation or permit allowing those same imports. *See* 16 U.S.C. § 1535(f). Similarly, any state permitting requirement that purports to prohibit FWS from transporting or releasing federally-protected species would be preempted under fundamental conflict preemption principles. *See Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1595 (2015) (state law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" is preempted) (citation omitted). As a result, a blanket rule that FWS comply with all state permitting requirements, regardless of whether they are consistent with the ESA, is contrary to controlling law.

The Commission appears to rely on the Department of the Interior's ("Interior") "Fish and Wildlife Policy," promulgated in 1983, which describes Interior's approach to state-federal relationships with respect to wildlife laws, including the ESA. *See* 22 A.A.R. at 2559 (citing 43 C.F.R. Part 24).² This policy generally states that FWS will comply with state permitting requirements with respect to reintroductions of listed species. 43 C.F.R. § 24.4(i)(5)(i). However, the policy contains a critical exception. FWS need not comply with state permitting requirements where "such compliance would prevent [it] from carrying out [its] statutory responsibilities." *Id.* In other words, where compliance with state permitting requirements would prevent FWS from meeting its obligation to recover species or prevent the agency from exercising the full scope of its statutory authority, FWS need not comply with state requirements. Thus, this policy does not grant states veto authority over FWS's implementation of the ESA. If FWS allowed a state to exercise such veto authority, it would likely constitute an unlawful subdelegation of federal authority. *See U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565 (D.C. Cir. 2004).

² The Notice of Proposed Rulemaking mistakenly states that 43 C.F.R. § 24.4(i)(5)(i) "recognizes" that "states have broad trustee responsibilities for fish and wildlife with primary authority for wildlife management on federal lands." 22 A.A.R. at 2259. It is well settled that the federal government has primary authority over wildlife on federal lands. *See, e.g., Kleppe v. New Mexico*, 426 U.S. 529 (1976); *Wyoming v. United States*, 279 F.3d 1214, 1226-27 (10th Cir. 2002).

The Commission also relies on a recent lawsuit in which New Mexico has challenged FWS's release of endangered Mexican gray wolves over New Mexico's objections and without New Mexico permits. *See* 22 A.A.R. at 2259. The U.S. District Court for the District of New Mexico granted New Mexico a preliminary injunction against FWS's releases in a decision that is currently on appeal to the United States Court of Appeals for the Tenth Circuit. For all of the reasons detailed in the briefs filed by FWS and Defenders *et al.* in that appeal, any application of Proposed R12-4-402(D) that would prevent FWS from importing and releasing federally-protected species pursuant to a duly promulgated regulation or permit would also be unlawful.

The survival and recovery of the nation's most imperiled wildlife depends upon the successful implementation of the ESA. For some federally-protected species, such as the Mexican gray wolf, California condor, and the black-footed ferret, recovery depends upon FWS's implementation of successful reintroduction programs. We urge the Commission to abandon the proposed amendment to A.A.C. R12-4-402 and instead support FWS's implementation of the ESA for the benefit of all federally-protected fish and wildlife.

Thank you for your consideration.

Sincerely,



McCrystie Adams
Senior Staff Attorney
Defenders of Wildlife
madams@defenders.org
(720) 943-0459



October 14, 2016

Celeste Cook, Rules and Policy Manager
Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, AZ 85086

Via Email to ccook@azgfd.gov and Rulemaking@azgfd.gov

Re: Comments of Sierra Club et al. on Proposed Rulemaking Amending R 12-4-402

Dear Ms. Cook,

On behalf of the Grand Canyon Chapter of the Sierra Club, Center for Biological Diversity, Western Watersheds Project, the Southwest Environmental Center, Western Wildlife Conservancy, The Wolf Conservation Center, and the Grand Canyon Wolf Recovery Project, and pursuant to § 41-1023.B of the Arizona Administrative Procedure Act (APA), I submit the following comments in response to the Arizona Game and Fish Commission's (AGFC) proposal to amend R 12-4-402. A description of the proposed rule, without the full text, was published in the Arizona Administrative Register on September 16, 2016. 22 A.A.R. 2559-2560. It appears that, if promulgated, the rule would require federal agencies to obtain state permits before releasing wildlife. *Id.* at 2559.

The AGFC has apparently proposed the rule to thwart the release of additional Mexican gray wolves into the wild by attempting to impose an ill-considered administrative barrier to such releases.¹ We highlight the circumstances surrounding the Mexican gray wolf and its perilous plight to explain why both the process and the substance of the rule are fatally flawed, and why AGFC should either remand the rule for further proceedings in compliance with the Arizona Administrative Procedure Act or simply decline to adopt it.

In compliance with the Rules of the Arizona Game and Fish Commission, R12-4-602, we provide the following information concerning the signatories to these comments:

¹ While we use the Mexican gray wolf to highlight the shortcomings of the proposed rule, the comments offered here apply to any situation in which the proposed rule were utilized to interfere with federal agencies that deemed wildlife releases necessary to fulfill their federal conservation mandate under the Endangered Species Act or other federal laws.

The Grand Canyon Chapter of the Sierra Club is headquartered in Phoenix, Arizona and has more than 11,000 paid members and an additional 34,000 supporters who receive information from the Chapter and take action in support of the Chapter's conservation goals. All 11,000 of the paid members and the 34,000 supporters are located in Arizona. These comments represent the official position of the Grand Canyon Chapter.

The Center for Biological Diversity is headquartered in Tucson, Arizona and has approximately 48,575 members, 2,267 of which are located in Arizona. These comments represent the official position of the Center for Biological Diversity.

Western Watersheds Project is based in Hailey, Idaho and has an office in Tucson, Arizona; it has approximately 50 members located in Arizona. These comments represent the official position of Western Watersheds Project.

The Southwest Environmental Center is headquartered in Las Cruces, NM and has approximately 2,000 paid members and an additional 7,000 supporters who receive information from SWEC and take action in support of SWEC's conservation goals. Although the majority of the Center's supporters live in New Mexico, many are located in Arizona. All of the Center's supporters are concerned about the continued survival of the Mexican gray wolf in Arizona. These comments represent the official position of the Southwest Environmental Center.

Western Wildlife Conservancy is a non-profit wildlife conservation organization located in Salt Lake City. It was founded in 1996. WWC is not membership-based, but has numerous supporters in the West. These comments represent the official position of the Western Wildlife Conservancy.

The Wolf Conservation Center is a 501(c)(3) not-for-profit environmental education organization headquartered in New York. The WCC participates in the federal Species Survival Plans for the Mexican gray wolf and has played a critical role in preserving and protecting Mexican gray wolves through carefully managed breeding, research, and reintroduction since 2003. The WCC is not membership-based, but has thousands of supporters from the southwest and over 3 million supporters on social media.

The Grand Canyon Wolf Recovery Project is a non-profit organization based in Flagstaff, representing over 2,000 Arizona wolf supporters. The Grand Canyon Wolf Recovery Project is dedicated to bringing back wolves to help restore ecological health in the Grand Canyon region. These comments represent the official position of the Grand Canyon Wolf Recovery Project.

I. BACKGROUND

With only 97 individuals in the wild, the Mexican gray wolf is one of the most—if not the most—endangered mammal in North America, and it requires immediate and effective intervention, including additional releases into the wild, to ensure its survival. We highlight the serious plight of the wolf, the urgency of recovery measures, and the U.S. Fish and Wildlife Service's (FWS) mandatory duty to recover the wolf in the wild to provide context for the proposed rule and our position that the rule and the assumptions on which it is based are

fundamentally flawed. In short, the proposed rule unnecessarily risks putting AGFD on a collision course with FWS as FWS discharges its mandatory recovery duties under the ESA. Accordingly, we strongly recommend that AGFD decline to finalize the rule and continue to cooperate with the FWS regarding the management of threatened and endangered species.

Mexican gray wolves average 50 to 90 pounds and typically stand 25 to 32 inches tall. See Endangered and Threatened Wildlife and Plants; Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, 80 Fed. Reg. 2512, 2514 (Jan. 16, 2015) (10(j) Rule). Mexican gray wolves are generally believed to have historically inhabited the southwestern United States and Mexico. Id. At the northern limits of their historic range, Mexican wolves ranged north into the southern Rocky Mountains and Grand Canyon regions of present-day northern Arizona and New Mexico and southern Utah and Colorado. Id. at 2538.

Once numbering in the thousands, the Mexican wolf population declined rapidly in the early and mid-1900s due to a federal, state, and private campaign that employed poisons and unlimited hunting and trapping to kill wolves and other predators. Ex. 1, Ch. 1 at 13 (excerpts from the Final Environmental Impact Statement for the Proposed Revision to the Regulation for the Nonessential Experimental Population of the Mexican Wolf (2014) (EIS)).² These efforts eradicated the species from the United States by the early 1970s, leaving only a small population in Mexico. Id. FWS listed the Mexican wolf as endangered under the Endangered Species Act (ESA) in 1976, triggering mandatory obligations ultimately to recover the wolves in the wild.

By 1980 Mexican gray wolves were extirpated in Mexico as well. However, between 1977 and 1980, the United States and Mexico initiated a program to capture the last known wild Mexican gray wolves in Mexico, supplement that population with Mexican gray wolves held in captivity in both countries, and establish a captive-breeding program to prevent the subspecies' extinction and to provide Mexican gray wolves for reintroduction into the wild. 80 Fed. Reg. at 2515. Just seven wolves held in that captive-breeding program constitute the founding genetic stock for every Mexican wolf alive today. Id. Thus, efforts to enhance the captive population for purposes of release and recovery of the subspecies in the wild, have been going for well over three decades.³

² Exhibits to this comment letter as denoted with "Ex.," followed by the exhibit number and the cited page. Citations to the EIS excerpts are to both chapter and page.

³ The FWS's recovery efforts, including its releases of Mexican gray wolves into the wild, are more fully described in the Final Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*) (Nov. 2014), available at https://www.fws.gov/southwest/es/mexicanwolf/pdf/EIS_for_the_Proposed_Revision_to_the_Regulations_for_the_Nonessential_Experimental_Population_of_the_Mexican_Wolf.pdf.

A. The Mexican Gray Wolf Recovery Program

FWS in 1982 issued a document styled as a “recovery plan” for the Mexican gray wolf that FWS admitted was incomplete and failed to establish any benchmark for full subspecies recovery. Instead, it set forth a stopgap objective of re-establishing a viable, self-sustaining population of at least 100 Mexican wolves in the wild within the subspecies’ historic range.

To implement that stopgap measure, FWS in 1998 released 11 captive Mexican gray wolves into the wild in a designated Blue Range Wolf Recovery Area straddling the Arizona-New Mexico border pursuant to ESA section 10(j)’s experimental population provision, which authorizes modification of the Act’s otherwise applicable prohibitions to facilitate such reintroductions. 16 U.S.C. § 1539(j). Contemporaneous with initiation of this reintroduction program, FWS promulgated a rule in 1998 under section 10(j) to guide management of the reintroduced population. Over the ensuing years, FWS released additional Mexican wolves into the Recovery Area. See 80 Fed. Reg. at 2516.

FWS expected the reintroduced population to reach the initial 100-wolf objective by 2006, but the population numbered only 83 wolves as of 2013. Ex. 1, Ch. 1 at 18. Further, as FWS itself has stated, “even at the 1982 Recovery Plan objective of ‘at least 100 wolves,’” “the experimental population is considered small, genetically impoverished, and significantly below estimates of viability appearing in the scientific literature.” Id. at 22. As this suggests, the population is neither “viable nor self-sustaining.” 80 Fed. Reg. at 2551

B. Longstanding Obstacles to Mexican Gray Wolf Recovery

Numerous factors have contributed to the precarious plight of the Mexican gray wolf including insufficient releases of captive wolves into the wild to improve the wild population’s numbers and genetic diversity.

1. Genetic Imperilment

First, the small number of individual wolves that founded the captive and reintroduced populations, along with subsequent failure to capitalize on the full genetic potential represented by those founders, has led to inbreeding and loss of genetic diversity. The Mexican wolf captive-breeding program “was not managed to retain genetic variation until several years into the effort.” As a result, FWS estimates that the captive population retains only three founder genome equivalents—i.e., more than half of the genetic diversity of the seven original founders has been lost from the population. See Ex. 1, Ch. 1 at 20; see also Ex. 2 at 11, 60 (2010 Mexican Wolf Conservation Assessment, excerpts).

The reintroduced wild population is in even worse shape, with 33 percent less representation of the genetic diversity of the seven founders than the captive population. Ex. 1, Ch. 1 at 21. On average, the wolves in the reintroduced population “are as related to one another as outbred full siblings are related to each other.” Id. As a result, the sole Mexican wolves

existing in the wild suffer from inbreeding depression, including reduced litter sizes, “and without management action to improve [their] genetic composition, inbreeding will accumulate and [genetic diversity] will be lost much faster than in the captive population.” Id.

Addressing the Mexican wolf’s genetic imperilment requires an active program of releasing more genetically diverse wolves into the wild to capitalize on the remaining genetic potential available in the captive population before it is further depleted as captive wolves grow old and die. Thus, to satisfy its duty to recovery the wolf, FWS must release more wolves into the wild and it must do so despite the proposed imposition of a state permit.

2. Excessive Removals and Mortality

These genetic threats are compounded by excessive levels of Mexican gray wolf removals and mortalities. Since the inception of the reintroduction program, illegal killing has been the largest overall source of mortality. Additionally, FWS has supplemented that unlawful mortality with its own removal of 160 wolves from the reintroduced population since 1998 through killing or capture. Ex. 1, Ch. 1 at 14-15, 18. As FWS’s 2010 assessment of the reintroduction program observed, although some such non-lethal removals were theoretically temporary, they “have the same practical effect on the wolf population as mortality if the wolf is permanently removed (as opposed to translocated)—that is, the population has one less wolf.” Id. Accordingly, the agency concluded, “[c]ombined sources of mortality and removal are consistently resulting in failure rates at levels too high for unassisted population growth.” Ex. 2 at 11.

3. Insufficient Room to Roam

FWS and recognized experts in wolf biology recognize that “[t]he recovery and long-term conservation of the Mexican wolf in the southwestern United States and northern Mexico is likely to depend on establishment of a metapopulation or several semi-disjunct populations spanning a significant portion of its historic range in the region.” 80 Fed. Reg. at 2551. Such a metapopulation—a group of distinct, spatially separated populations that are connected by dispersal—is important to species survival because it facilitates “the maintenance of genetic diversity” and “because it allows for populations to exist under different abiotic and biotic conditions, thereby providing a margin of safety that random perturbation (or, variation) affects only one, or a few, but not all, populations.” Ex. 2 at 12.

Peer-reviewed, published scientific information also provides a roadmap for establishing such a Mexican wolf metapopulation. A key study extensively relied upon by FWS, Carroll, et al. (2014), stated that the southwestern United States has three areas with long-term capacity to support populations of several hundred wolves each. Ex. 3 at 78 (Carroll 2014). These three areas, each of which contains a core area of public lands subject to conservation mandates, are in eastern Arizona and western New Mexico (i.e., Blue Range, the location of the current wild population), northern Arizona and southern Utah (Grand Canyon), and northern New Mexico and southern Colorado (Southern Rockies). Id.; see generally Ex. 4 (Carroll 2006). FWS’s own selected science team echoed this conclusion in 2012 during the agency’s most recent Mexican

wolf recovery planning effort. That blue-ribbon science team produced a draft recovery plan in 2012 based on rigorous population modeling that echoed the peer-reviewed scientific literature's call for a metapopulation of 750 wolves comprising three core populations of 200 to 300 each. Scientific studies on which the draft plan was based identified suitable habitat for such a metapopulation in the Blue Range, Grand Canyon and Southern Rockies regions. Ex. 5 (2012 Draft Recovery Plan, excerpt).

C. The U.S. Fish and Wildlife Service's 2015 10(j) Rule:

The FWS updated its 1998 10(j) rule in 2015. The record for the FWS's new 10(j) rule demonstrates that FWS closely coordinated with AGFC during the rulemaking process and adopted AGFC demands in the final 10(j) it published in 2015, even where those demands were at odds with the recommendations of recognized wolf experts and peer-reviewed studies. For example, FWS decided to limit Mexican gray wolf to a single population capped at 300 to 325 individuals, all located south of I-40, and further stated that removal and "translocation to other Mexican wolf populations" would be the preferred method of enforcing the population cap, but "all management options"—apparently including killing—may be exercised.

FWS also limited the area in which Mexican wolves may range to lands in Arizona and New Mexico south of Interstate 40, thereby precluding Mexican wolf access to needed recovery habitat in the Grand Canyon and Southern Rockies regions. See 80 Fed. Reg. at 2540. In support of this limitation, FWS on May 6, 2015, issued itself a permit under ESA section 10(a)(1)(A), which authorizes otherwise prohibited "takings" of listed species, allowing for the capture of any Mexican wolf that establishes a territory north of Interstate 40. 16 U.S.C. § 1532(19) (defining "take" under ESA).

The 10(j) rule that FWS promulgated in 2015 further adopted a number of new authorizations for the "taking" of Mexican wolves even in the designated experimental population area south of Interstate 40, including the new provision requested by Arizona for taking Mexican wolves determined to have an "unacceptable impact" on a wild game herd—a condition to be determined by a state game agency based upon "ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency." 80 Fed. Reg. at 2558.

Finally, FWS adopted Arizona's requested phased approach for the release of Mexican wolves in Arizona west of Highway 87, which delays the initial release and dispersal of wolves into an area encompassing half of the suitable wolf habitat identified by FWS on non-tribal land in Arizona south of Interstate 40. Id. at 2563

The 10(j) rulemaking for the Mexican gray wolf is just one example of a long history of communication and coordination between AGFD and FWS concerning threatened and endangered species in Arizona. This documented history raises legitimate questions about the need for the proposed rule, questions that are particularly appropriate given that the notice of rulemaking provides no more than a vague, unsubstantiated concern that FWS may not cooperate

in the future. This free-floating concern, untethered to documented facts, does not amount to rational decision making and would violate the APA.

II. THE PROPOSED RULE AMENDMENT IS BOTH PROCEDURALLY AND SUBSTANTIVELY FLAWED AND MUST BE REMANDED OR REJECTED

As explained below, the proposed rule suffers from a number of fatal flaws, including the fact that its use as an impediment to necessary future Mexican gray wolf releases (or necessary releases of any other species listed under the ESA) would conflict with the Supremacy Clause of the U.S. Constitution; that the absence of facts or studies substantiating the need for the proposed rule renders it arbitrary and capricious; and that the notice of proposed rulemaking did not include all of the required information, such as the full text of the proposed rule. Finally, the proposed rule invites unnecessary administrative complication, uncertainty and even litigation risk, all of which increase costs and burdens to Arizona taxpayers. It is simply bad public policy and should be rejected.

A. Interfering with the FWS's Mandatory Duty to Recover the Wolf Violates the Supremacy Clause of the U.S. Constitution

The purpose for the proposed rule is not clearly stated, but its impetus appears to be AGFC's desire to impede further releases of Mexican gray wolves in the state. However, as noted above, the wolf is listed as "endangered" under the ESA, which triggers FWS's mandatory duty to conserve, i.e., recover, the wolf in the wild. As explained above, the 10(j) rule that governs FWS's management and recovery of the wolf, as well as the peer-reviewed studies of recognized wolf experts, specifically recognize the critical need for additional wolf releases to address the genetic poverty of the existing wild population and, accordingly, provides for additional releases. See 80 Fed. Reg. at 2512. Arizona's attempt to impede these necessary releases by erecting unnecessary administrative barriers would violate the Supremacy Clause.⁴

The Supreme Court has long held that in matters related to wildlife management, state law must bow to the requirements of federal law under the Supremacy Clause of the U.S. Constitution. In Kleppe v. New Mexico, 426 U.S. 529, 543-46 (1976), the court rejected the state's challenge to the constitutionality of the federal Wild-free Roaming Horses and Burros Act, which allowed BLM to prohibit the state from enforcing state law and removing wild horses from federal lands. The Court explained:

Unquestionably the States have broad trustee and police powers over wild animals within their jurisdictions. But . . . those powers exist only in so far as (their)

⁴ Moreover, the proposed rule serves no real purpose. While federal regulations require federal agencies, including FWS, to consult with the states and observe state permitting requirements, FWS need not obtain a state permit if "the Secretary of the Interior determines that such compliance would prevent him from carrying out his statutory responsibilities." 43 C.F.R. § 24.4(i)(5)(i). FWS can exercise this exemption, and indeed must exercise it as necessary to fulfill its ESA duties, leaving AGFD in the same situation it is now – devoid of the legal authority to preclude the release of wolves or other ESA-listed species.

exercise may be not incompatible with, or restrained by, the rights conveyed to the federal government by the constitution. No doubt it is true that as between a State and its inhabitants the State may regulate the killing and sale of (wildlife), but it does not follow that its authority is exclusive of paramount powers. Thus, the Privileges and Immunities Clause, precludes a State from imposing prohibitory licensing fees on nonresidents shrimping in its waters, the Treaty Clause, permits Congress to enter into and enforce a treaty to protect migratory birds despite state objections, and the Property Clause gives Congress the power to thin overpopulated herds of deer on federal lands contrary to state law. We hold today that the Property Clause also gives Congress the power to protect wildlife on the public lands, state law notwithstanding.

Kleppe, 426 U.S. at 543–46. See also Hancock v. Train, 426 U.S. 167, 167 (1976) (holding that Kentucky could not forbid a federal facility from operating without a state air quality permit because “prohibiting operation of the air contaminant sources for which the State seeks to require permits . . . is tantamount to prohibiting operation of the federal installations on which they are located) (citations and quotations omitted).

A long line of federal circuit court opinions recognizes the supremacy of federal laws over state laws in the context of the federal enforcement of the ESA. See, e.g. Nat'l Audubon Soc'y, Inc. v. Davis, 307 F.3d 835, 851–52 (9th Cir. 2002), opinion amended on denial of reh'g, 312 F.3d 416 (holding that “to the extent [a state law banning certain methods of trapping wildlife that prey on endangered species] prevents federal agencies from protecting ESA-listed species, it is preempted by the ESA[,]” because “[t]he Supremacy Clause of the Constitution, Art. VI, cl. 2, invalidates state laws that ‘interfere with, or are contrary to,’ federal law”).

In Gibbs v. Babbitt, 214 F.3d 483, 499 (4th Cir. 2000), the court rejected a challenge to a FWS regulation forbidding the “take” of red wolves and explained the constitutional source of federal authority over wildlife:

We are cognizant that states play a most important role in regulating wildlife—many comprehensive state hunting and fishing laws attest to it. State control over wildlife, however, is circumscribed by federal regulatory power. In Minnesota v. Mille Lacs Band of Chippewa Indians, the Supreme Court recently reiterated that “[a]lthough States have important interests in regulating wildlife and natural resources within their borders, this authority is shared with the Federal Government when the Federal Government exercises one of its enumerated constitutional powers.” 526 U.S. 172, 204 (1999). In Mille Lacs, the Court upheld Chippewa Indian rights under an 1837 treaty that allowed the Chippewa to hunt, fish, and gather free of territorial, and later state, regulation. Id. These Indian treaty rights were found to be “reconcilable with state sovereignty over natural resources.” Id. at 205.

In light of Mille Lacs and Hughes, the activity regulated by § 17.84(c)-the taking of red wolves on private property-is not an area in which the states may assert an exclusive and traditional prerogative in derogation of an enumerated federal power.

Gibbs, 214 F.3d at 499–500; see also Wyoming v. Livingston, 443 F.3d 1211, 1227 (10th Cir. 2006) (overturning state trespass prosecution of federal wildlife officers engaged in wolf monitoring under the doctrine of Supremacy Clause immunity, and noting that “Supremacy Clause immunity does not require that federal law explicitly authorize a violation of state law.”); Strahan v. Coxe, 127 F.3d 155, 168 (1st Cir. 1997) (“By including the states in the group of actors subject to the Act’s prohibitions, Congress implicitly intended to preempt any action of a state inconsistent with and in violation of the ESA.”); United States v. Brown, 552 F.2d 817, 823 (8th Cir. 1977) (upholding defendant’s conviction for unlawful hunting in Voyageurs National Park, despite defendant’s valid state hunting license, because “[u]nder the Supremacy Clause the federal law overrides the conflicting state law allowing hunting within the park.”). Arizona state courts also recognize that there is no dispute about the federal preemption of state law. Def. of Wildlife v. Hull, 18 P.3d 722, 737 (Ariz. Ct. App. 2001) (“[f]ederal preemption is found where the state law is an obstacle to the accomplishment and execution of the full objectives of Congress”) (citations and quotations omitted)).

This long line of authority contradicts the Commission’s working assumption that it can impose a permit system on the FWS to impede further releases of Mexican gray wolves – or any other listed species – where such releases into the wild are necessary to ensure the species’ recovery. Using the proposed rule in this way would be a futile effort to extend AGFC’s authority beyond its reach and intrude on federal sovereignty in violation of the Supremacy Clause. The Commission should reject the rule and instead continue to work with FWS cooperatively, within the lawful scope of its authority.

III. THE PROPOSED RULE VIOLATES THE ARIZONA ADMINISTRATIVE PROCEDURE ACT

The Arizona Administrative Procedure Act constrains the boundaries of state agencies’ regulatory action. As the Arizona Court of Appeals explained in Samaritan Health Sys. v. Arizona Health Care Cost Containment Sys. Admin., No. 1 CA-CV 12-0031, 2013 WL 326012, at *4 (Ariz. Ct. App. Jan. 29, 2013) (unpublished):

An agency acts arbitrarily and capriciously when it does not examine “the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (quotation omitted). In the context of a federal agency regulation, a rule is arbitrary and capricious if “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence

before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” Id.

Under the APA, “[t]he court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.” Ariz. Rev. Stat. § 12-910(E). See also Ariz. State Univ. ex rel. Ariz. Bd. of Regents v. Ariz. State Ret. Sys., 349 P.3d 220, 227–28 (Ariz. Ct. App. 2015) (noting that “[a] rule is invalid unless it is made and approved in substantial compliance with the [APA’s procedures], unless otherwise provided by law.”) Of course, an agency may not engage in rulemaking in area over which it has not authority to act, for example, where it intrudes on areas within the authority of federal agencies. A.R.S. § 41-1030.C.1; see also discussion in Point II, above, regarding the Supremacy Clause.

A. The Commission Failed to Demonstrate the Requisite Rational Connection Between the Facts and the Rule

As initial matter, the Commission has failed to provide a purpose for the proposed rule, leaving the rule’s goal or anticipated result unclear. (In fact, as discussed below, the notice of rulemaking does not even include the text of the rule itself. 22 A.A.R. at 2560 (item 13 left blank)). Not only does this omission leave questions about the fundamental need for the proposed rule, but it undermines efforts to determine whether even the limited conclusory statements in support of the proposed rule meet the rule’s purpose. Thus, there is no way to discern whether a “rational connection” between the facts found and the choice made (initiation of a new permit system) exists, a flaw which renders the proposed rule arbitrary and capricious.

To the extent the purpose of the proposed rule can be inferred from other text in the notice, the Commission may have intended that the proposed rule encourage enhanced cooperation between AGFC or the Arizona Game and Fish Department (AGFD) and FWS. See 22 A.A.R. at 2559 (“Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposed to strengthen its rules . . .”). If this is the intent, a better approach that avoids the constitutional violation would be to propose reasonable rules that directly facilitated such cooperation, or pursue nonregulatory measures to address any perceived shortcomings in AGFC’s relationship with FWS, neither of which AGFC apparently examined. Instead, the proposed rule overshoots the purported problem with excessive regulation and unnecessarily raises a host of costs, complications and risk of litigation.

At any rate, if the purpose of the rule is to encourage consultation between the FWS and AGFD, it is a solution in search of a problem. FWS has long consulted with AGFD about management of threatened and endangered species. In the case of the Mexican gray wolf, FWS even incorporated AGFD’s management recommendations, including recommendations it had earlier rejected as detrimental to the wolf’s recovery, in the 2015 10(j) rule.

More specifically, after issuance of the proposed 10(j) rule and draft environmental impact statement—and during the public comment period—FWS entered into extended discussions with Arizona state officials about the terms of its final rule. Ex.

6 (collecting correspondence between AGFD and FWS, including FWS-Arizona Aug. 26, 2014 email correspondence; Arizona Proposed EIS Alternative (Apr. 2014); Sept. 24, 2014 public meeting transcript where FWS admits to being in “negotiations with Arizona Game and Fish” over rule; Arizona letter of Sept. 30, 2014 stating that it “has continued to negotiate changes to the proposed rule that best protect state interests.”; March 2014 email from Ben Tuggle, FWS Regional Director, to Dan Ashe, FWS Director, noting that FWS will ensure “absolute state concurrence” before proposing alternative to expand boundary north of Interstate 40.)

The discussions between AGFD and FWS ultimately led to FWS’s inclusion in the 10(j) rule of a population cap of 300 wolves; a provision allowing the state to take Mexican gray wolves that, in AZGFD’s view, negatively impact game such as deer and elk; and also a phased approach to limit dispersal of wolves in Arizona to areas west of Highway 87 based on similar concerns about impacts on elk hunting

Thus, the Commission’s apparent concern about FWS’s failure to consult with AGFD regarding management of threatened and endangered species is belied by this recent example of FWS’s repeated consultation with AGFD and adoption of AGFD recommendations, even where evidence indicated that such measures were harmful to the wolf. The Commission cites no factual basis for any concern that “federal agencies may become more resistant to cooperating with the states,” 22 A.A.R. at 2559, and given this example, it is hard to see how it could lodge such a complaint.

B. The Proposed Rule Fails the “Substantial Evidence” Test

The proposed rule does not meet the APA’s “substantial evidence” test. A.R.S. § 12-910(E). In fact, the notice of proposed rulemaking appears to be entirely free of evidence. It admits that the Commission “did not rely on any study in its evaluation of or justification for the rules.” Additionally, the “preliminary summary” of the economic and other impacts contains only conclusory statements that not only fail to cite support but are contrary to the facts – in some cases they even contradict prior statements by ADWR itself. See 22 A.A.R. at 2559.

First, the notice asserts that the proposed rule “protects native wildlife in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.” 22 A.A.R. at 2559. Yet the Commission has provided no evidence for public review that wildlife released by federal agencies has caused any of these alleged harms. Indeed, with respect to the 18-year-old Mexican gray wolf reintroduction program, AGFD has concluded that the wolves have had little impact on “management of ungulate herds for a harvestable surplus by members of the public,” that available evidence identifies “no discernible impact” from Mexican wolf predation on elk, the wolves’ principal prey, in the Blue Range since reintroduction, and that hunter visitation and success rates in the reintroduction area are stable or increasing. See Ex. 1, Ch. 4 at 49-52.

Likewise, the Commission provided no evidence that wildlife released by federal agencies may threaten public health or safety. With respect to the Mexican gray wolf, the Commission provided no evidence that the wolves had harmed members of the public or posed a

health or safety threat. Indeed, there have been no documented cases of wolves killing people in North America in the twentieth century. As one researcher has concluded, the risk of wolf attacks in North America is “very low, as recent cases are rare, despite increasing numbers of wolves.” Ex. 7 (Linnell study). Further, “[w]hen the frequency of wolf attacks on people is compared to that from other large carnivores or wildlife in general it is obvious that wolves are among the least dangerous species for the size and predatory potential.” *Id.* Additionally, the environmental impact statement for the 10(j) rule concluded that “[n]o human injuries from a wolf . . . and no incidents of predatory behavior or prey testing directed at humans have been reported or documented in the Mexican wolf experimental population.” Ex. 1, Ch. 4 at 66-69 (concluding also that the risk of wolves transmitting disease is low).

Second, the notice also asserts that the proposed rule “will benefit the Department by ensuring the Commission maintains sovereignty over Arizona’s wildlife.” 22 A.A.R. at 2559. However, as explained above, the extent of Arizona’s sovereignty over wildlife within its borders, and the supremacy of federal law in some circumstances, is a matter of longstanding and well-established law. The proposed rulemaking neither changes that law nor contributes to its application or interpretation, much less “ensure” the state’s sovereignty.

Third, AGFC “determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking” and that “there are no costs associated with the rulemaking.” *Id.* The Commission, however, fails to support this conclusion with the requisite explanation or evidence, and it is contrary to fact. If, as may be the case, the purpose of the rule is to encourage better coordination with FWS, AGFC should have proposed rules that directly facilitated such cooperation – an option that would not intrude on FWS’s sovereignty to manage threatened and endangered wildlife. Alternatively, as noted above, it could have sought nonregulatory means to address whatever concerns the Commission has. Finally, AGFC’s conclusion that the establishment and administration of an entirely new permit system for wildlife releases would be cost free strains credibility and smacks of irrational decision making. Indeed, AGFC has offered no evidence that it has even examined the cost of permit administration or presented the facts on which based its determination.

C. Additional Substantive Flaws Taint the Proposed Rule

At least two additional flaws undermine the proposed rule. First, while the proposed rule would create, and require AGFD to administer, a new permit system for wildlife releases, fails to specify any standards for granting or denying a permit. The absence of such standards virtually guarantees the arbitrary and capricious implementation of the proposed rule, should it be finalized. Similarly, the proposed rule provides no administrative mechanism or process for administering the new permit system. AGFC must provide further detail about the standards and processes by which AGFD would administer the proposed rule, which, among other things, would be a basic factor in a full assessment of the costs associated with implementation of the proposed rule.

IV. THE PROPOSED RULE IS PROCEDURALLY FLAWED

The Notice of Proposed Rulemaking demonstrates that AGFC failed entirely to provide required information about the proposed rule, and that in other respects it provided erroneous information concerning the rule. These omissions and failures undermine both the public's ability to understand the proposed rule and its impacts, and to provide informed comment – the fundamental prerequisites to rulemaking. Accordingly, the administrative process for the proposed rule is fatally flawed and AGFC must reinitiate the rulemaking process with the required information pursuant to A.R.S. § 41-1022.E (noting that substantial changes to proposed rule require supplemental notice and additional public comment period); see also A.R.S. § 41-1030.A (“[a] rule is invalid unless it is made and approved in substantial compliance with,” among other provisions, A.R.S. § 41-1022.A).

First, the Arizona Administrative Procedure Act requires the agency submitting a notice of proposed rulemaking to include in the notice “the exact wording of the rule.” A.R.S. § 41-1022.A; R1-1-502.B.17-18. Yet the notice for AGFC's proposed rule fails to include the full text of the proposed rule – the space for providing the text of the rule is simply blank. This omission violates the APA and undermines the very purpose of the notice: to obtain informed public comment.

Second, the notice of rulemaking includes a question about “[w]hether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law.” In response, AGFC erroneously claims that “[f]ederal law is not directly applicable to the subject of the rule.” 22 A.A.R. at 2560. In fact, the proposed rule focuses entirely on Arizona's authority to manage wildlife in the face of federal agencies' discharge of their mandatory duties under federal law, in particular, the ESA. The rule also purports to impose administrative hurdles that would place more stringent requirements on wildlife releases than required by federal law, i.e., the necessity of obtaining a permit from AGFD, and it directly implicates the Supremacy Clause of the U.S. Constitution, under which federal law preempts conflicting state laws. The Commission's failure to respond to this question accurately and to disclose the intertwined relationship and inevitable conflict with federal law is misleading and undermines the public's ability to fully understand and comment on the proposed rule.

Third, the notice's preliminary summary of the economic, small business and consumer impact of the rule falls so far short of the requirements of the Governor's Regulatory Review Commission that it should be supplemented as part of a reinitiation of the rulemaking process instead of proceeding to what may ultimately be rejection by the Council. See A.R.S. § 41-1052.D (stating that the Council “shall not approve the rule” unless it complies with the detailed requirements of government the economic, small business and consumer impact statement).

The APA provides specific requirements for the impact analysis. Pursuant to A.R.S. § 41-1055.A, the impact statement *summary* must include the following information, none of which appears in the notice of rulemaking:

- (a) the conduct and its frequency of occurrence that the rule is designed to change.

- (b) The harm resulting from the conduct that the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.
- (c) The estimated change in frequency of the targeted conduct expected from the rule change.

A.R.S. § 41-1055.B.1-7 requires even more detailed information in the statement itself, yet none of this information is presented in the notice for public review and comment. This omission is more than a technical error. If AGFC had accurately provided the required information, it would have exposed the rule's inevitable conflict with federal law and the lack of need for the rule, among other things – and facilitated the public assessment of AGFC's conclusions. Absence of data is no excuse for failure to complete the required assessment; instead the agency must explain “the limitations of the data and the methods that were employed in the attempt to obtain the data” and a characterization of “the probably impacts in qualitative terms. A.R.S. § 41-1055.C. AGFC has failed to provide this information as well.

Finally, A.R.S. § 41-1052.D1-10 includes ten requirements that must be met before the Council can approve the rule. The final rule must include, among other things, a comprehensive and accurate impact statement; a demonstration that the probable benefits of the rule outweigh its probable costs, and that the agency has selected the alternative that imposes the least burden and costs; that the rule is written in a manner that is “clear, concise and understandable to the general public” (in this case, it has yet to be disclosed at all); and that the rule is not more stringent than a corresponding federal law. AGFC has yet to address the ten requirements of the rule, and to the extent it did so in response to a specific query in the notice about the applicability of federal law to the rule, its statement is erroneous. See discussion above.

V. THE PROPOSED RULE REPERESENTS ILL-CONSIDERED PUBLIC POLICY AND UNNECESSARILY INCREASES THE RISK OF COSTLY LITIGATION

The notice of proposed rulemaking fails to document any studies or facts that support the necessity for this rule. Instead, it appears that the proposed rule is a symbolic attempt to increase political pressure on FWS and to influence the way that FWS carries out its mandatory duties under the ESA. Rulemaking toward this end, however, is excessive, arbitrary and ultimately futile given the supremacy of the ESA recovery mandate. In the end, it will likely lead to further conflict, negatively impact the existing and future working relationship between FWS and AGFD (and AGFC), and increase the risk of costly litigation.

In fact, a similar permit provision promulgated by the state of New Mexico has sparked litigation in both the federal District of New Mexico and the Tenth Circuit Court of Appeals. New Mexico Dep't of Game and Fish v. U.S. Dep't of Interior, Case No. CV 16-00462 WJ/KBM. One of the issues in that case is whether the state wildlife agency has the authority to block the FWS's release Mexican gray wolves pursuant to the state permit requirement. We suggest that, at a minimum, AGFC await the outcome of the New Mexico litigation before promulgating a rule that may well mire it in the same kind of costly litigation in which New Mexico is now embroiled.

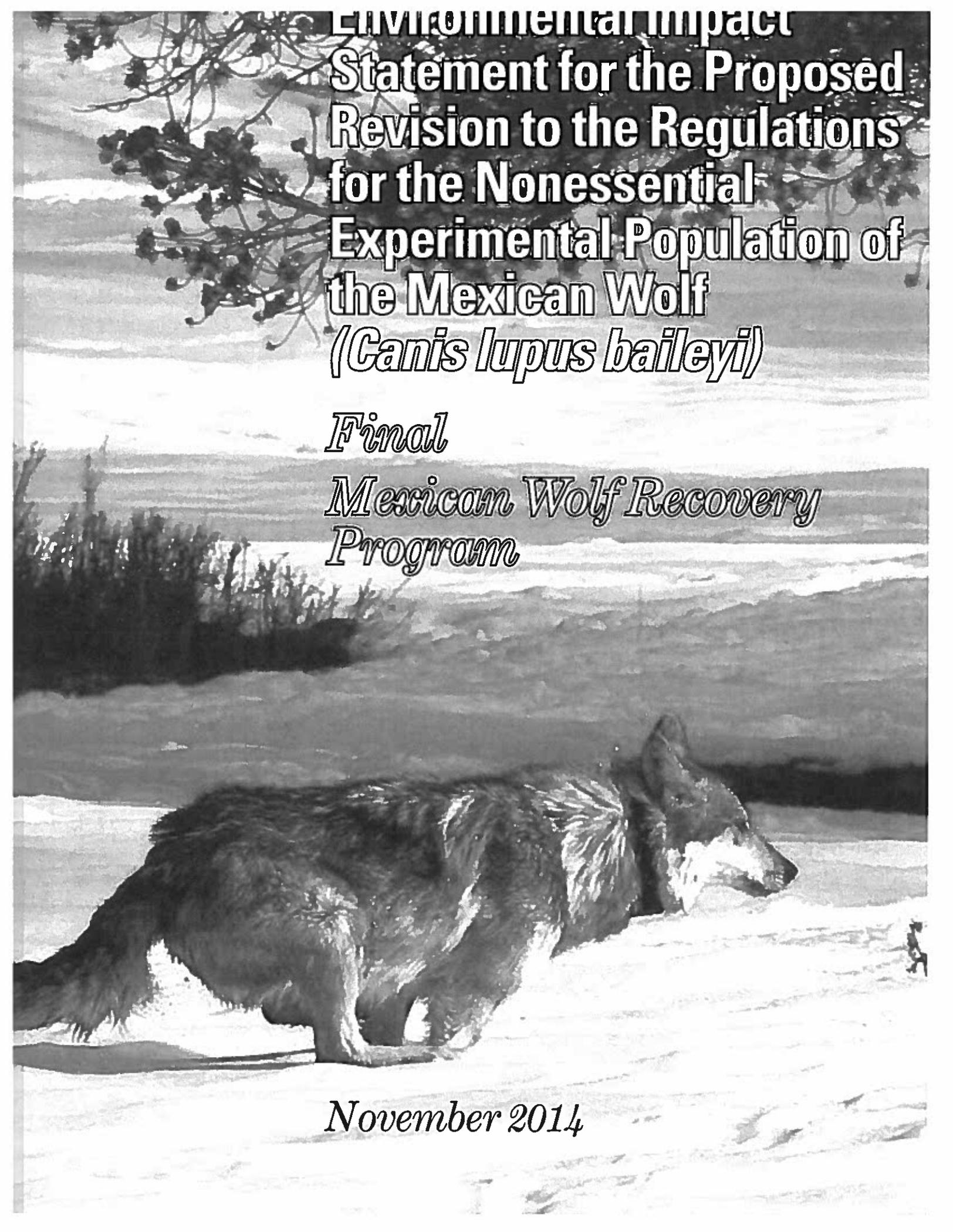
Finally, the rule is also contrary to the mission of the agency: “*To conserve Arizona’s diverse wildlife resources. . .*” AGFC has not demonstrated that the proposed rule will result in its conservation or facilitate the maintenance of diverse wildlife resources; indeed, it has not even addressed the issue.

Thank you for the opportunity to comment on the proposed rule, and we looking forward to engaging in the process moving forward.

Sincerely,

/s/
Heidi McIntosh
Managing Attorney

EXHIBIT 1



**Environmental Impact
Statement for the Proposed
Revision to the Regulations
for the Nonessential
Experimental Population of
the Mexican Wolf
(*Canis lupus baileyi*)**

*Final
Mexican Wolf Recovery
Program*

November 2014

addressed, exclude from consideration issues already decided, and to focus on the issues ripe for decision in this environmental review (CEQ, Sec. 1502.20 and Sec. 1508.28).

1.1.3 Description of the Mexican Wolf

The Mexican wolf is the rarest, southern-most occurring, and most genetically distinct subspecies of all the North American gray wolves (Parsons 1996, Wayne and Vilá 2003, Leonard et al. 2005). The distinctiveness of the Mexican wolf and its recognition as a subspecies is supported by both morphometric (physical measurements) and genetic evidence (78 FR 35664, June 13, 2013). Mexican wolves tend to be patchy black, brown to cinnamon, and cream in color and are somewhat smaller than other gray wolves (Figure 1-1). Adults are about five feet (1.5 meters) in length and generally weigh between 50-90 pounds (23-41 kilograms) with a height at the shoulder of approximately 2-2.5 feet (0.6-0.8 meters) (78 FR 35664, June 13, 2013).



(Credit Jacquelyn M. Fallon)

Figure 1-1. Mexican wolves

Mexican wolves historically inhabited montane woodlands and adjacent grasslands in northern Mexico, New Mexico, Arizona, and the Trans-Pecos region of western Texas (Brown 1988) at elevations of 4000-5000 ft. where ungulate prey were numerous (Bailey 1931). The subspecies may have also ranged north into southern Utah and southern Colorado within zones of intergradation where interbreeding with other gray wolf subspecies may have occurred (Parsons 1996, Leonard et al. 2005).

Numbering in the thousands before European settlement, Mexican wolf populations declined rapidly in the 20th century primarily due to concerted Federal, state, and private predator control and eradication efforts (Mech and Boitani 2003). By the early 1970s, the Mexican wolf was considered extirpated from its historical range in the southwestern United States (USFWS 1982). No Mexican wolves were known to exist in the wild in the United States or Mexico from 1980 until the beginning of our Reintroduction Project in 1998 (USFWS 2010).

1.1.4 Description of the Mexican Wolf Recovery Program

The Service has been engaged in efforts to conserve and ensure the survival of the Mexican wolf for over three decades. The first Mexican Wolf Recovery Team was formed in 1979, and the United States and

Mexico signed the Mexican Wolf Recovery Plan in September 1982. The 1982 Mexican Wolf Recovery Plan did not provide recovery/delisting criteria, but did provide a prime objective:

*“To conserve and ensure the survival of *Canis lupus baileyi* by maintaining a captive breeding program and re-establishing a viable, self-sustaining population of at least 100 Mexican wolves in the middle to high elevations of a 5,000 square mile area within the Mexican wolf’s historic range” (USFWS 1982).*

This prime objective has since guided the reintroduction effort for the Mexican wolf in the United States under the auspices of the Mexican Wolf Recovery Program.

The current management structure of the Mexican wolf recovery effort distinguishes between the Service’s Mexican Wolf Recovery Program (Recovery Program) and the interagency Mexican Wolf Blue Range Reintroduction Project (Reintroduction Project). The Recovery Program encompasses captive breeding, reintroduction, and all related conservation activities for the Mexican wolf (USFWS 2010). The primary statute governing the Mexican Wolf Recovery Program is the Endangered Species Act. Section 4(f)(1) of the ESA states that the Secretary of the Interior shall develop and implement recovery plans for the conservation and survival of endangered species. Guidance for the specific activities conducted under the Mexican Wolf Recovery Program is provided within several documents including: (1) the 1982 Mexican Wolf Recovery Plan (USFWS 1982); (2) the 1996 Final Environmental Impact Statement (FEIS) (USFWS 1996) (3) the 1998 Final Rule; (4) the 1998 Mexican Wolf Interagency Management Plan (USFWS 1998); and (5) Federal Fish and Wildlife Permit number TE091551-8, dated 04 April 2013, issued under 50 CFR 17.32. The programmatic permit covers management activities for nonessential experimental wolves in Arizona and New Mexico (USFWS 2013a). The Reintroduction Project encompasses the management activities associated with the experimental population.

A comprehensive description of the Recovery Program and the Reintroduction Project is provided in the 2010 Mexican Wolf Conservation Assessment (USFWS 2010) and in annual reports available online at <http://www.fws.gov/southwest/es/mexicanwolf/>.

1.1.4.1 Captive Breeding Program

A binational captive-breeding program between the United States and Mexico was initiated in the late 1970s with the capture of the last remaining Mexican wolves in the wild. Referred to as the Mexican Wolf Species Survival Plan (SSP) the captive breeding program’s ultimate objective is to provide healthy offspring for release into the wild (Figure 1-2), while conserving the Mexican wolf subspecies genome (Lindsey and Siminski 2007). The establishment and success of the captive breeding program temporarily prevented immediate absolute extinction of the Mexican wolf and, by producing surplus animals, has enabled us to undertake the reestablishment of the Mexican wolf in the wild (USFWS 2010, 78 FR 35664, June 13, 2013). The wolves in the captive population are the only source of animals for release into the wild. All Mexican wolves alive today originated from three lineages (Ghost Ranch, Aragon and McBride) consisting of a total of seven wolves. From the breeding of these original seven “founding” Mexican wolves and generations of their offspring, the captive population has expanded to its current (July 2014) size of 248 wolves in 55 facilities (Figure 1-3) in the United States and Mexico (Siminski and Spevak 2013). The small number of founders upon which the existing Mexican wolf population was established has resulted in pronounced genetic challenges, including inbreeding (mating of related individuals), loss of heterozygosity (a decrease in the proportion of individuals in a population that have two different alleles for a specific gene), and loss of adaptive potential (the ability of populations to maintain their viability when confronted with environmental variations) (Fredrickson et. al 2007, 78 FR 35664, June 13, 2013).

approximately 16 percent of the entire BRWRA (Figure 1-4). It is situated entirely within the southern portion of the Apache National Forest in Arizona. The Secondary Recovery Zone (SRZ) encompasses all of the Gila National Forest in New Mexico and the northern part of the Apache National Forest in Arizona. It is the remainder of the BRWRA not included in the PRZ. Wolves released in the PRZ of the BRWRA or on the FAIR are allowed to naturally disperse into the SRZ.



(Credit: U.S. Fish and Wildlife Service)

Figure 1-18. Release of a collared Mexican wolf

We may translocate or temporarily place in captivity wild wolves for authorized management purposes such as: depredation behaviors that do not warrant removal from the BRWRA; nuisance behaviors that do not warrant removal from the BRWRA; boundary violations (e.g., wolves establishing territories wholly outside of the BRWRA or FAIR); necessary veterinary care; and facilitation of pair bonding. Wolves that we temporarily place in captivity may be translocated into the PRZ and SRZ of the BRWRA as well as the FAIR (contingent on WMAT concurrence); however, additional management considerations may prevent re-release of such animals (i.e. genetics, behavior). The Mexican Wolf Recovery Coordinator may authorize removals by lethal or non-lethal (capture and removal from the BRWRA) methods due to severe depredation or nuisance behavior. For the period 1998-2013, we permanently removed 36 wolves. This total includes 12 animals removed by lethal control. In summary, from 1998 to 2013 we released 93 wolves from captivity, permanently removed 36 wolves and conducted 124 temporary removals and 107 translocations (Table 1-1).

Table 1-1. Mexican Wolf Experimental Population Releases, Removals and Translocations (Blue Range Wolf Recovery Area and Fort Apache Indian Reservation) from 1998 to 2012

Year	Wolves Released	Number of Permanent Removals	Number of Temporary Removals	Number of Translocations
1998	13	2	4	3
1999	21	0	12	2
2000	16	4	19	18
2001	15	1	9	6
2002	9	3	4	7
2003	8	1	14	15

2004	5	1	6	9
2005	0	5	16	16
2006	4	8	10	6
2007	0	9	14	5
2008	1	0	2	6
2009	0	0	7	6
2010	0	0	0	1
2011	0	1	1	4
2012	0	1	0	0
2013	1	0	6	3
Total	93	36 ¹	124 ²	107 ²

¹ Permanent removals include 12 animals removed by lethal control.

² Temporary removals in excess of translocations equal net loss to population of 17 animals.

The IFT conducts an end- of -year count each January in order to establish the minimum number of wolves in the experimental population (Figure 1-19). The Mexican wolf minimum population count was 83 wolves in 2013 (Table 1-2).



(Credit: Mexican Wolf Interagency Field Team)

Figure 1-19. Mexican wolves in the Blue Range Wolf Recovery Area observed from aircraft during January end of year count

1.1.5 Mexican Wolf Recovery in Mexico

Responsibility for the reintroduction of the Mexican wolf in Mexico is shared by two Federal agencies, Comisión Nacional de Areas Naturales Protegidas (CONANP) and Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT's) Dirección General de Vida Silvestre. In October 2011, Mexico initiated the reestablishment of Mexican wolves to the wild with the release of five captive-bred Mexican wolves into the San Luis Mountains just south of the U.S.–Mexico border. Mexico has continued to release animals into the wild during the past few years. Through August 2014, Mexico released a total of 14 adult Mexican wolves, of which 11 died or are believed dead, and 1 was removed

population count at year one divided by the population at year one) experienced by the population. From 2003 through 2007, we conducted a moderate number of initial releases and translocations ($n = 68$) and a high number of temporary and permanent removals ($n = 84$), resulting in a net gain of 10 wolves in the overall population and an average population growth rate that was relatively flat (0.069). Between 2008 and 2013, which was characterized by a low number of releases and translocations ($n = 21$) but also a low number of temporary and permanent removals ($n = 17$), we observed a net gain of 31 wolves and a higher average population growth rate (0.095) than the previous phase (Tables 1-2 and 1-3).

Table 1-2. Mexican Wolf Experimental Population Growth from 1998 to 2013

Year	Releases and Translocations	Number of Mortalities ¹	Removals (Both permanent and temporary) ^{2,3}	Minimum Population Count (Observed)
1998	16	5	6	4
1999	23	3	12	15
2000	34	5	23	22
2001	21	9	10	26
2002	16	3	7	42
2003	23	12	15	55
2004	14	3	7	46
2005	16	4	21	42
2006	10	6	18	59
2007	5	4	23	52
2008	7	13	2	52
2009	6	8	7	42
2010	1	6	0	50
2011	4	8	2	67
2012	0	4	1	80
2013	4	7	6	83
Total	200	100	160	N/A

¹Mortalities include 55 due to illegal mortality (55%), 14 due to vehicle collision (14%), 18 due to natural causes (18%), 8 due to unknown causes (8%), 0 awaiting necropsy results, and 5 due to other causes (5%).

²Permanent removals include 12 animals removed by lethal control.

³Temporary removals in excess of translocations equal net loss to population of 17 animals.

range-wide recovery setting a population objective for the experimental population, based on the best available information, can help us achieve “the first step toward recovery” as envisaged in the 1982 Mexican Wolf Recovery Plan. There are several studies in the scientific literature that help inform our establishment of a population objective for the MWEPA. The recommendations of Wayne and Hedrick (2010) are based on the genetic aspects (effective population size) of the Mexican wolf relative to that of the Northern Rockies gray wolf. Because of the degree of inbreeding, higher level of human-caused mortality, and lower likelihood of persistence of Mexican wolves they suggest that the recovery goals for the Northern Rocky Mountains should serve as a starting point for Mexican wolf recovery goals. They conclude that for the successful recovery of the Mexican wolf a metapopulation with at least three connected subpopulations of 250 wolves would likely be necessary to achieve recovery. They also suggest that if natural gene flow (i.e., through natural dispersal and breeding) does not occur between these subpopulations then artificial movement (i.e., management actions such as translocations and initial releases) may be necessary (Wayne and Hedrick 2010).

Carroll et al. (2014) performed analyses of potential recovery scenarios for the Mexican wolf using a population viability model, pedigree analyses of Mexican wolves currently in the BRWRA or captivity, and habitat models related to connectivity. Carroll et al. (2014) analyzed the variation of mortality and dispersal metrics relative to extinction and quasi-extinction (i.e., the probability of being relisted as threatened from a delisted status) probabilities in a metapopulation structure consisting of three populations that were connected via dispersal. The metapopulation extinction threshold was established as a 5 percent population extinction risk, as is commonly used in recovery plans (Carroll et al. 2014). The risk of extinction varied by both population size and the number of effective migrants per generation (an effective migrant is an animal that comes from outside a population and successfully reproduces within the population). The risk of extinction for population sizes below 200 was affected by the number of migrants exchanging genetic information with the population. A population of 100 had a greater than 5 percent extinction risk, even with 3 effective migrants per generation, while a population of 125 was more secure with 2.5 to 3.0 effective migrants per generation, and a population of 150 was secure with greater than 0.5 effective migrants per generation (Carroll et al. 2014). This effect occurred because the migrants provided genetic exchange between the populations. Genetic exchange between populations leads to increased genetic variation within the population which improves the probability of persistence for each population and reduces the extinction and quasi-extinction risk. Carroll et al. (2014) also examined a quasi-extinction threshold. In this analysis, they demonstrated that at certain population sizes with higher levels of effective migration the probability of quasi-extinction was reduced (Carroll et al. 2014). A population comprised of between 175 and 200 wolves had a less than 50 percent probability of quasi-extinction depending on whether the population had 0.5 to 1.0 effective migrants per generation. Population sizes of 300 to 325 achieved closer to a 10 percent probability of quasi-extinction regardless of the number of effective migrants per generation. This analysis suggests that for larger population sizes (above 300) with adequate genetic variation, migration between populations becomes a less important factor affecting the probability of persistence (Carroll et al. 2014). Based on this best available information, we consider a population objective of 300 to 325 Mexican wolves within the MWEPA throughout both Arizona and New Mexico to be adequate as a “first step” that could contribute to recovery.

The genetic status of the Mexican wolf population in captivity and the wild is an important factor in our conservation efforts. Higher levels of genetic variation within the experimental population are critically important to minimize the risk of inbreeding and support individual fitness and ecological and evolutionary processes. The Mexican wolf captive breeding effort was initiated with seven founders from three Mexican wolf lineages. It was not managed to retain genetic variation until several years into the effort (Siminski and Spevak 2013). This captive population is the only source of Mexican wolves for initial release into the experimental population. The experimental population of Mexican wolves now

currently occupying the BRWRA has poor representation of the genetic variation remaining in the captive population. The wolves in the experimental population have Founder Genome Equivalents (FGE) that are 33 percent lower than found in the captive population and the estimated relatedness (population mean kinship) of these animals suggest that on average they are as related to one another as outbred full siblings are related to each other (Siminski and Spevak 2012). When gene diversity falls below 90% of that in the founding population, reproduction may be increasingly compromised by, among other factors, lower birth weights, smaller litter sizes, and greater neonatal mortality (Fredrickson et al. 2007, Siminski and Spevak 2012). As of July 2014, the experimental population of wolves in the BRWRA has a retained gene diversity of 74.52%, and when compared to 2010 has shown a slight decline in both retained gene diversity and FGE (Siminski and Spevak 2014). Currently, the animals in the experimental population (mean kinship = 0.2548) are 50% more closely related to one another than those in the captive population (mean kinship = 0.166) due to inadequate representation of two of the three Mexican wolf lineages in the wild population (Siminski and Spevak 2014). There is evidence of inbreeding depression in the experimental population (Fredrickson et al. 2007) and without management action to improve its genetic composition, inbreeding will accumulate and heterozygosity and alleles will be lost much faster than in the captive population (78 FR 35664, June 13, 2013).

Table 1-4. Population Projections Compared to Mexican Wolf End of Year Minimum Population Counts in New Mexico and Arizona from 1998 to 2013

Year	Minimum Population Count (Observed)	Population Projected in 1996 Final Environmental Impact Statement (FEIS) ¹
1998	4	7
1999	15	14
2000	22	23
2001	26	35
2002	42	45
2003	55	55
2004	46	68
2005	42	83
2006	59	102
2007	52	-
2008	52	-
2009	42	-
2010	50	-
2011	67	-
2012	80	-
2013	83	-

¹FEIS projections were made only through 2006 (USFWS 1996)

Our management regime, especially related to initial releases, has had significant effect on the maintenance and improvement of the genetic variation of the population. We are able to influence the maintenance or improvement of the genetic variation in the experimental population by the selection for

initial release of genetically appropriate wolves from the captive population. Over the course of the Reintroduction Project we have not been able to conduct the number of initial releases that would give us the level of effective migrants per generation sufficient to establish or maintain adequate genetic variation in the experimental population. An effective migrant is an animal that comes from outside a population and successfully reproduces within the population. For wolves, a generation is every four years.

With its current level of genetic variation and at its current size of a minimum of 83 wolves the experimental population is considered small (Shaffer 1987, Boyce 1992, Mills 2007, USFWS 2010), genetically impoverished, and significantly below estimates of viability appearing in the scientific literature (Carroll et al. 2014, Wayne and Hedrick 2010). This would be true even at the 1982 Recovery Plan objective of “at least 100 wolves”. Due to wolves’ social structure and based on documented Mexican wolf pack size in the experimental population a census population of approximately 100 Mexican wolves would have an effective population (i.e. the number of breeding animals) of approximately 28 animals (Packard 2003 http://www.fws.gov/southwest/es/mexicanwolf/pdf/MW_popcount_web.pdf). An effective population size of 28 wolves is inadequate to ensure short or long-term genetic fitness for the experimental population of Mexican wolves in the BRWRA (USFWS 2010).

Current literature suggests that the single experimental population of Mexican wolves would have a higher likelihood of persistence if it is able to increase in size and have an adequate number of effective migrants to contribute to enhancing the population’s genetic variation (Carroll et al. 2014, Wayne and Hedrick 2010). The most commonly proposed rule of thumb for connectivity between populations states that one genetically effective migrant per generation into a population is sufficient to minimize the loss of polymorphism and heterozygosity within populations (Allendorf 1983 as cited in Carroll et al. 2014). However, a Vortex (population viability) model used by Carroll et al. (2014), which incorporated genetic data to evaluate the relationship between connectivity and persistence for a restored Mexican wolf metapopulation of three subpopulations of equal size, demonstrates that higher levels of effective migration are necessary to ensure persistence of the Mexican wolf, particularly until the population reaches a size of at least 250.

In the context of a metapopulation, effective migration is achieved through dispersal from one population to another. In the context of our current single experimental population we intend to apply the information from these studies (Carroll et al. 2014, Wayne and Hedrick 2010) by using initial releases from the captive population as a source of effective migrants to the experimental population. To do so we need to modify our regulations to increase the flexibility of the Reintroduction Project to conduct initial releases. If the genetic variation within the experimental population can be substantially improved by releasing more wolves from captivity with appropriate genetic background and the population is allowed to grow and disperse, natural reproduction and integration of those offspring into the population (i.e., recruitment) will serve to maintain genetic variation and lessen our need over time to conduct initial releases. Based on the best available information in current literature (Carroll et al. 2014, Wayne and Hedrick 2010), we need to integrate two effective migrants into the population each generation while the population is around 100-250 animals. This number could decrease to one effective migrant per generation at population sizes greater than 250 (see Appendix D). Under its current regulations the Reintroduction Project has not achieved this level of “effective migration” via initial releases in the last 8 years (Table 1-5).

that elk is their preferred prey species and constitutes the majority of their diet (Paquet et al. 2001, AMOC and IFT 2005, Reed et al. 2006, Merkle et al. 2009).

Current and predicted wolf impacts to ungulates

The 1996 FEIS concluded that, “while uncertainty exists, (reintroduced) wolves likely will not severely impact prey populations” in the BRWRA (USFWS 1996).

The Biological Assessment and Evaluation (BAE) completed by the USDA Forest Service in 2007 for the use of release and translocation sites in the Apache-Sitgreaves National Forests determined that while “wolves prey on elk, deer, and occasionally on small mammals such as squirrelsdue to the limited scope of the project, there would be insignificant and discountable impacts to these species”. Therefore, the Forest Service concluded “there would be no change in Forest-wide population trends or habitat trends due to this project” (USDA Forest Service 2007).

Both the AGFD and the NMDGF have determined that current levels of predation by wolves on elk within the BRWRA have not measurably decreased the overall elk population of the BRWRA. A report published in October of 2008 included the following: “AGFD has not detected any significant reduction in deer or elk population levels since wolves have been reintroduced. Recent elk surveys indicate that current calf recruitment levels are good, i.e., 39 calves for every 100 cows surveyed in Game Management Units (GMU) 1 and 27” (AMOC and IFT 2008). A white paper published by AGFD in 2012 included the following “An analysis comparing elk calf recruitment in Game Management Units (GMU) 1 and 27 in the BRWRA before (pre-1998) and after Mexican wolves were established in Arizona has not shown a negative impact on the number of elk calves that survive though early fall time periods. Likewise, an analysis comparing mule deer fawn recruitment in GMU 1 and 27 in the BRWRA before (pre-1998) and after Mexican wolves were established in Arizona has not shown a negative impact on the number of fawns that survive though early winter periods” (AGFD 2013). Cow:calf and doe:fawn ratios could be affected by both a decline in the number of cows or does as well as the level of reproduction, such that reproduction is remaining the same on a per animal basis but the absolute number of cows and does are decreasing. However, decline in other measurements (hunter success, number of tags, population counts) would be predicted to occur if this was the case. Neither AGFD nor NMDGF have observed these trends (AGFD 2013, NMDGF unpublished data).

A recent tribal perspectives report (2014) states that there have been no significant impacts to overall big game populations on the FAIR: “no significant impacts to overall big game population numbers (per yearly surveys, animals have been moved by wolves, but also rotate back to areas)” (MWRT Tribal Subgroup 2014).

At Statewide scales, wolves are expected to have little or no effect on the abundance of elk and deer across most of Arizona and New Mexico where elk and deer abundance is stable, or above population objectives. Predation on adult pronghorn is unlikely as pronghorn are an open grassland and prairie species, and have the ability to outrun wolves on flat open terrain. However, in the Trans-Pecos region of Texas, coyotes have been observed herding pronghorn to fences to facilitate capture. While there is a potential for wolves to kill pronghorn in this manner, wolves are unlikely to occupy the same grassland habitat as pronghorn throughout most areas of the MWEPA.

The abundance of elk, deer, and other ungulates could decline in localized areas where wolves become numerous. The presence of wolves could alter the habitat use, and hence local distributions of elk, deer, and pronghorn in some areas as they attempt to avoid direct interactions with wolves. As with other predators, wolf predation has the potential to threaten some small populations of prey. Examples of such populations potentially could include certain herds of reintroduced desert bighorn sheep and pronghorn in southern Arizona.

Sheep and Lambs

As presented in Chapter 3, in 2012 there were 64,473 sheep and lambs within the five counties that constitute the BRWRA (of which the overall vast majority were located in Apache County, which has a significant portion of its boundaries lying outside of the BRWRA). Since Mexican wolves have been reintroduced into the BRWRA there have been only eleven documented sheep depredations. The majority of these ($n = 8$) occurred during 2007 on a single sheep allotment within the BRWRA. In subsequent years, the IFT worked with the sheep producer to implement proactive measures (night penning sheep in turbo fladry) to reduce the potential interaction. Sheep and wolves continued to occupy the same area through 2011 (with only one additional sheep depredation). In addition, only once did wolves kill more than a single sheep during predation attempts, and in that instance there were two sheep. Our experience in the BRWRA was limited to this one sheep allotment, but we did not observe the large number of sheep killed or injured that has occurred in the northern Rocky Mountain area. Accordingly, we do not expect situations where a large number of sheep are killed in one night in the MWEPA. However, we do expect wolf depredations to occur in areas where wolves occupy land grazed by sheep. Considering this pattern and the limited number of sheep depredations that have occurred in the BRWRA, we do not anticipate large numbers of sheep to be killed by Mexican wolves annually. While we expect no significant economic impact from wolf depredations on sheep, the low number of sheep in the BRWRA combined with limited depredation events does not allow for any reasonable prediction of economic impacts on sheep ranches at this time.

4.4.2 Impacts on Big Game (Elk) Hunting Activities

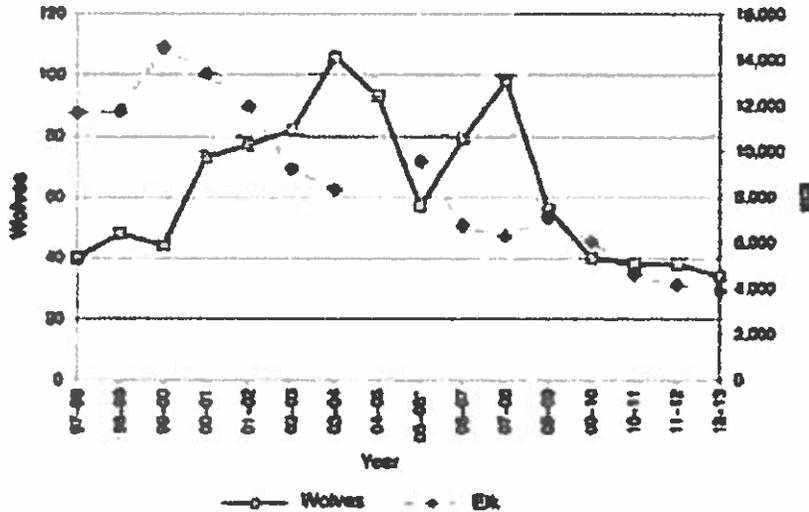
The AGFD conducted a review on the impact that Mexican wolves had on deer and elk populations. The review period was for the years 1998 through 2012 (AGFD 2013). The review found that while Mexican wolves do target elk as their primary prey source, including elk calves during the spring and summer season, there was no discernable impact on the number of elk calves that survive through early fall periods. A similar finding was made for mule deer. The review also reported that the number of elk permits authorized in GMU 1 and 27 by AGFD has varied since wolves were reintroduced into Arizona. The review reports that the variation is attributable to a variety of management-related objectives. Elk tags in Unit 1 declined from over 1,800 in 2003 to approximately 700 in 2007 and have since steadily risen back to nearly 1,800 in 2013. Elk availability for hunters, however, was not the reason for the decline.

Under cooperative management agreement with the WMAT Mexican wolves have occupied the Fort Apache Indian Reservation since 2001. The White Mountain Apache Tribe has stated, “So far, there have been no significant impacts to overall big game population numbers (per yearly surveys, animals have been moved by wolves, but also rotate back to areas)” due to wolf presence on the FAIR (MWRT Tribal Subgroup 2014).

There have been many more studies looking at the effect that the reintroduction of the gray wolf has had on elk hunting in the northern Rocky Mountains in contrast to the limited number of studies looking at the effect of Mexican wolves on elk populations and their movement patterns. Since 1996 the Yellowstone Wolf Project has annually published a report documenting how gray wolves are functioning within the Park (Smith 2013). In 2012, wolves were documented to have killed 159 elk, 32 bison, 13 mule deer, and other species. Elk constituted 62 percent of their diet. The composition of the elk kills was 40 percent cows, 28 percent calves, 21 percent bulls with the remainder yearlings or unknowns. Bison kills have been increasing over the years as the number of elk in the Park has decreased (Smith 2013).

Since wolves were reintroduced into Yellowstone National Park, elk population numbers in the northern range of the park have declined by over 50 percent (Figure 4-5). However to what extent wolves have played in this decline remains unclear. Over the past five years both the number of wolves and the

number of elk have declined at similar rates. Other factors affecting elk populations include other predators, management of elk outside of the Park, and the effect that weather has on forage (i.e., drought) (Smith 2013).



Source: Yellowstone Wolf Project, Annual Report 2012.

Figure 4-5. Yellowstone National Park northern range elk and wolf counts, 1995–2012.

One study looked at both the effects of hunting and wolf predation on reproductive female elk over time (Wright, et al. 2006) (Figure 4-6). They found that wolves tended to prey on unproductive elk such as calves and older cows. Specifically the authors report that the average age of a cow elk killed by wolves in the Northern Yellowstone area was 13.9 years while the average age of cow elk harvested by hunters was 6.5 years. In general, wolves harvested adult cows that were beyond productive, reproductive age while hunters tended to harvest elk cows with high reproductive potential. The authors conclude that the combined pressures of hunters targeting prime reproductive elk along with wolf predation on calves and overall depredations from other predators (e.g. grizzly bears) would lead to a decline in the future elk population.

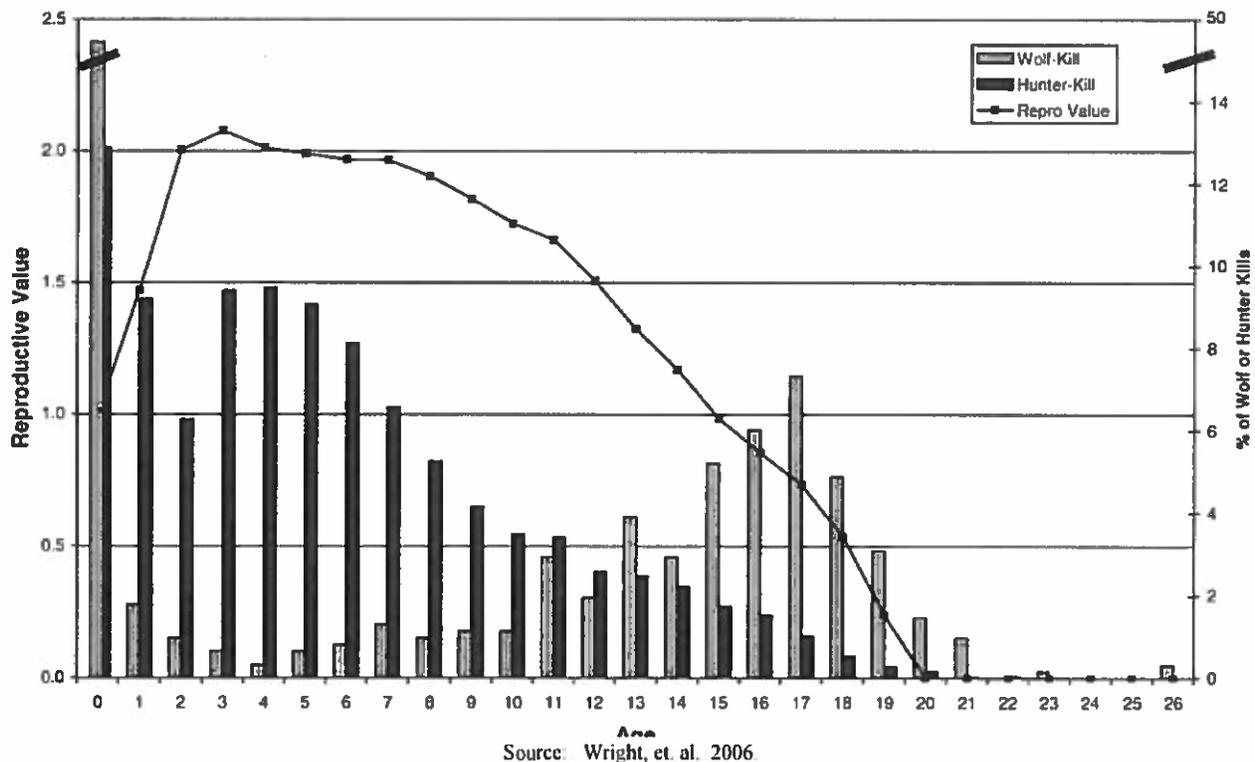


Figure 4-6. Reproductive values of female northern Yellowstone elk and age distributions of hunter (Gardiner Late Hunt, 1996–2001) and wolf-killed females (1995– 2001)

Middleton et al. (2013) looked at whether the presence of wolves affected elk herds indirectly through changes in behavior, body fat, or pregnancy. The authors found that when wolves approached elk herds the herd response was to increase their rates of movement, displacement, and vigilance and that such encounters only occurred once every nine days in the high-risk areas. The authors conclude that while wolves have a direct effect on herd members through predation that their presence has little to no indirect effects.

At the moment it is difficult to identify a measurable effect that the reintroduction of Mexican wolves has had on big game hunting. Table 4-13 summarizes the rationale for this conclusion for the concerns identified at the beginning of this section. Although less than significant impacts to wild ungulates (elk) are predicted by our biological resources analysis for Alternatives One and Two, we recognize that these alternatives include the proposed rule’s definition for “unacceptable impact to a wild ungulate herd” and related take provision. In addition, the proposed rule specifies that tribal governments can request the removal of wolves from tribal trust land for any reason, which could include impacts to trophy game hunting. Therefore, we conclude that any hunting impacts that would occur could be mitigated down to no impact for these two alternatives. Therefore, we predict no significant direct or indirect adverse impact to big game hunting from Alternatives One and Two for Zones 1, 2, and 3. For Alternative Three, the definition of “unacceptable impact to a wild ungulate herd” and the related take provision are not included. Both Alternative Three and Alternative Four (for which we predict less than significant impacts to wild ungulates (elk) in our biological resources analysis), would rely on the definition and related take provision in the 1998 Final Rule for mitigation, “Impact on game populations in ways which may inhibit further wolf recovery”. This provision is less responsive to impacts to wild ungulate populations (and therefore big game hunting entities) than the proposed rule. Based on the biological resources analysis and the lesser mitigation measure available under the 1998 Final Rule as compared to the proposed rule,

we predict that a less than significant indirect adverse effect to hunting activity would occur in Zones 1 and 2 of Alternative Three and in the BRWRA for the No Action (Alternative Four) Alternative. We predict no impact in Zone 3 of Alternative Three due to no or very low wolf presence.

Table 4-13. Mexican Wolf Effects on Elk Hunting in the BRWRA - Summary of Conclusions

Concerns	Conclusion	Rationale
Big Game Population Effects	No discernable effect	Lack of scientific literature finding correlation between wolves and elk numbers. Other literature suggests changes in herd sizes more likely influenced by hunter harvest management objectives and natural forage conditions.
Effects of Hunter Visitation to the Region	No discernable effect	Licensed hunters have increased since 2007.
Hunting Success Effects	No discernable effect	Overall hunting success have not declined in the BRWRA for elk.
Lost Income/Costs to Outfitters	No discernable effect	Licensed hunter numbers in the BRWRA have not decreased.
Regional Economic Effects	No discernable effect	Regional economic effects would only occur should there be a significant reduction in hunting-related expenditures.

4.4.3 Tourism

If Mexican wolf reintroduction results in increased forest visits, these visits in turn would generate an increase in visitation and visitor expenditures in the local communities surrounding the National Forests. Proponents of reintroduction believe that an increase in tourism and associated expenditures would benefit souvenir shops, gas stations, restaurants, and lodging facilities (IEc 2005). Many of these proponents note how the reintroduction of gray wolves into Yellowstone National Park resulted in a stimulus of visits specifically to see wolves.

Anecdotally, the 2012 Yellowstone Wolf Project Annual Report (Smith et. al., 2013) reported a minimum estimate of 27,500 people observing wolves and 17,978 visitor contacts by wolf project staff. Compared to the total number of Yellowstone Park visitors in 2012 (3.45 million), the percentage of visitors observing wolves constituted less than one percent.

It should be noted however, that there exists a significant difference in topography between Yellowstone National Park and the BRWRA. In Yellowstone, wolves have tended to locate in the Lamar Valley portion of the Park. In contrast to other areas of the Park, the Lamar Valley is characterized as having wide-open views making it easier to spot wolves from roadsides and turnouts. In contrast the BRWRA is characterized as forested, mountainous area with limited views for readily spotting wildlife.

Both the Apache-Sitgreaves and Gila National Forests require all commercial outfitters to obtain a permit in order to conduct their business on National Forest property. To date neither the Apache-Sitgreaves or Gila National Forests have received any applications from outfitters or guides to conduct Mexican wolf tourism-related operations (John Baumberger, Gila National Forest, pers. comm. 6/25/2014; Tom Olsen,

4.5 HUMAN HEALTH/PUBLIC SAFETY

The wolf has been historically viewed as a predator dangerous to both livestock and humans (Jenness 1985). Intolerance for wolves and the efforts to eradicate them in the United States were rooted in the same “conflict, competition, cultural beliefs and fears” that led to their extermination in much of northern and central Europe (Boitani 2003, Linnell et al. 2002). Human antipathy towards large carnivores (including wolves) stems from depredation on domestic livestock, competition with human hunters for wild ungulate prey, and the possibility of being injured or killed in an attack (Fritts et al. 2003, Linnell et al. 2002). Despite historically negative attitudes toward wolves, surveys now show that the majority of the general population has a positive attitude toward wolves and wolf restoration (Williams et al. 2002). Farmers, ranchers, and people living in rural areas that have a higher potential for direct interaction with wolves tend to have attitudes that are more negative. These attitudes may be influenced by the belief that wolves may affect their economic interests or because wolf reintroduction is representative of urban outsiders (e.g. national) dominance over rural (e.g. local and state) interests (Williams et al. 2002). In the United States attitudes toward large carnivores in general and the debate about wolf recovery, wolf management and the risk that wolves may pose to human safety is overlaid with wide differences in belief systems, larger political issues and the strong emotions that wolves evoke in people (Rutherford and Clark 2005). On one end of the polarized debate are those who idealize the wolf as a noble, mystical animal whose return to wild will restore the natural balance in damaged ecosystems. For these people the wolf may also serve as a “symbol of wilderness unspoiled by humans” (Wilmot and Clark 2005). On the other end of the spectrum are those who vilify the wolf as a vicious predator that kills and maims for pleasure and for whom “the only good wolf is a dead wolf”. For these people the wolf may also serve as a symbol of “ecological imperialism” (Wilmot and Clark 2005). How a wolf-human interaction is interpreted is therefore inextricably linked to, and filtered by, the observer’s own belief system and emotions and the wolf’s perceived intent, rather than its actual behavior, is often reported in that context (Walsh 2013, Rutherford and Clark 2005, Carnes 2004). In particular, the perception of the threat a wolf actually does, or does not, present during an encounter can be based not only on the person’s level of experience and knowledge of wild animals, but also influenced by their belief system and emotions. Some people may perceive an encounter in which a wolf demonstrates curious and inquisitive behavior as “playful” and a powerful bonding experience between human and wild animal. Other people may perceive a wolf sighting, regardless of location, proximity and whether the animal merely continued on its way, as a serious threat to their personal safety. The account of either of these incidents will very likely reflect the person’s own biases so that in the first instance the person may not recognize a potentially habituated wolf to which the most appropriate management action may be hazing, aversive conditioning and possible removal. And in the second instance the person may report a wolf that presented a threat or “stalked them” when the wolf’s actual behavior may have been neither investigative nor aggressive. The analysis of the potential impact to human health and public safety from the proposed action and alternatives must therefore recognize the possibility of bias in the accounts of wolf-human encounters while addressing a two part question:

- Do wolves pose a credible threat to humans (both to inflict physical injury/death and as vectors of zoonotic disease); and
- if the threat is indeed credible, then what is the risk (probability) of an encounter with a wolf to result in physical injury or death to a human, or the transmission of disease from wolf to human?

4.5.1 Public Safety

Wolves’ reactions to humans include a range of non-aggressive to aggressive behaviors and the manner in which a wolf reacts to human presence may depend on their prior experience with people (Fritts et al. 2003). Before addressing the risk for a wolf to attack a human the question of whether a wolf poses a credible threat (i.e. does it have the capacity to cause physical injury or death) should be addressed.

Wolves, whether acting as a pack or alone, are able to kill wild prey that is much larger (i.e. moose, elk and bison) and better able to defend themselves than an unarmed human (Bangs et al. 2005). Wolves are large, powerful predators, and as such, like many other predators such as black bear, grizzly bear or cougar, are potentially dangerous (Butler et al. 2011, Mech 1998). Wolves therefore have the capacity to inflict serious injury or to kill a human and in a review of the accounts of wolf attacks on humans worldwide Linnell et al. (2002) determined that “there is good evidence that people have been attacked and killed by both healthy and rabid wolves”.

With the understanding that wolves do in fact pose a credible threat to human safety the question of the risk of an attack occurring can be addressed. From the data they collected Linnell et al. (2002) conclude that:

- the majority of attacks concern wolves with rabies;
- predatory attacks are aimed mainly at children;
- attacks in general are unusual but episodic; and
- humans are not part of wolves’ normal prey (Linnell et al. 2002).

Reviews of the history of wolf-human encounters in North America have found that documented aggressive attacks by non-rabid wolves on humans are extremely rare, even in Canada and Alaska where there are large wolf populations (Mech 1970, Young 1944, Rutter and Pimlott 1968, Fritts et al. 2003, McNay 2002a and 2002b). Young (1944) uses the records of early trappers, explorers and traders to provide a detailed review of pre-1900 accounts of wolf attacks on humans. He prefaces the section entitled “Attacks on Man” by stating: “Whether these stories are products of the fertile imaginations, or are truth, is difficult to determine”. Young (1944) found few accounts that “assert that persons were actually killed by wolves in unprovoked attacks” and notes that in the 25 years in which the U.S. Fish and Wildlife Service (formerly the Bureau of Biological Survey) had conducted wolf control no incidents of “unprovoked attack on man” by wolves had come to the attention of the Service. Young concludes that while his review of accounts in the wolf literature “...seem to leave little doubt that wolves have at times made unprovoked attacks on humans...the extent to which this has been caused by the disease rabies, or by famine, is difficult to determine” (Young 1944).

The rarity of aggressive wolf-human encounters in 20th century North America may reflect the fact that wolves were virtually extirpated in the lower 48 states and southern Canada and were subject to effective government-sponsored control programs in Alaska and northern Canada (McNay 2002b). Fritts et al. (2003) suggest that an increase in wolf-human interactions and incidents of aggressive behavior in wolves toward humans from the 1970’s through the early 2000’s are likely due to increasing wolf populations and increasing visitor use of parks and other remote areas. McNay (2002b) reported the incidence of aggression as very low but increasing in recent years. He documents only one case of unprovoked wolf aggression between 1900 and 1969 compared to 18 cases of unprovoked aggression toward people between 1969 and 2000 (McNay 2002a, 2002b). Most of the recent documented cases of wolf aggression occurred in areas where wolves were protected such as national, state or provincial parks, or near large industrial sites, such as mines, oil fields, and logging camps, located in remote wilderness areas (ADFG 2008). Neither McNay (2002a, 2002b) nor Linnell et al. (2002) reported finding records of confirmed fatalities in North America as a result of wolf attacks on humans. However, since their publication in 2002 there has been one probable wolf attack in Canada and one confirmed wolf attack in Alaska that resulted in human fatalities. The probable fatal attack by wolves occurred in 2005, when a 22 year old man was found killed and partially consumed by a predator in northern Saskatchewan, Canada. Evaluation of the evidence by multiple experts yielded conflicting conclusions of black bear or wolf being responsible for the attack. However, the official judicial inquest found that the student died from “injuries consistent to that of a wolf attack” (Jobin 2007) and after a review of the evidence McNay (2007) strongly

avored “the conclusion of predation and feeding by wolves, rather than by a black bear”. The confirmed fatal attack by wolves occurred in March, 2010, when a 32-year-old female jogger was found dead on the outskirts of the Village of Chignik Lake, Alaska (Murphy 2010). Wolves and wolf tracks were observed near the body and genetic analysis of several wolves that were lethally removed in the area subsequent to the incident confirmed their responsibility for the attack (Butler et al. 2011).

Aggression by wolves toward people was evident in 51 of 80 cases of wolf-human encounters in Alaska and Canada studied by McNay (2002a, 2002b). Twelve of those cases involved wolves known or suspected to be infected with rabies, fourteen involved wolves that acted aggressively in self-defense, or in defense of conspecifics, and six involved wolves that were aggressive toward people accompanied by dogs. The remaining 19 cases of aggression were considered by McNay (2002b) to be unprovoked and included threat displays, charges, or bites with agonism (e.g., *behavior* that includes elements of aggression, defense, and avoidance) or predation (McNay 2002a, 2002b). Of the 18 cases of unprovoked aggression documented after 1969, habituation contributed to unprovoked wolf aggression toward people in 11 cases and non-habituated wolves in remote areas displayed unprovoked aggression in seven cases (McNay 2002a, 2002b). All 11 cases of unprovoked aggressive behavior by habituated wolves resulted in bites while only two of seven cases of aggressive behavior by non-habituated wolves resulted in bites, none of them serious (McNay 2002a, 2002b). In his review Carnes (2004) found what he considered 28 reliable reports of human injuries caused by presumably healthy wild wolves in North America since 1900. He indicates that in 21 of 28 incidents (75%) habituation was a contributing factor and suggests that in many cases the habituation was a result of food conditioning (Carnes 2004). A recent wolf-human incident occurred in Minnesota in 2013 when a 16-year old boy’s head was grabbed by a wolf while sleeping in a sleeping bag outside of his tent at a developed campground. After a short struggle the wolf released the boy but not before inflicting puncture wounds and a 4.3 inch (11 centimeter) laceration on the boy’s scalp. Results from the necropsy show the wolf, estimated to be 1½ years old, suffered from a severe facial deformity, dental abnormalities and brain damage caused by infection. The day before the attack, the wolf had been seen in and around the campground where it bit into a tent, punctured an air mattress and stood on a picnic table (Dan Stark personal communication Sept 10, 2013, Smith M.L. 2013). There is overlap in the cases reviewed by both McNay (2002a, 2002b) and Carnes (2004). Both reviews conclude that habituated and food conditioned wolves pose a higher risk to human safety than wild, non-habituated wolves (Carnes 2004, McNay 2002b).

Graves (2007) presents translations from Russian writings, including a chapter on “Wolf Attacks on Humans” and an appendix presenting an excerpt from M.P. Pavlov’s *The Wolf in Game Management* entitled “The Danger of Wolves to Humans”. These sections catalogue multiple accounts of both rabid and non-rabid wolf attacks on humans in Russia and the former Soviet Union. Both Graves (2007) and Geist (2007) argue that “the experiences Russians and others have had with wolf attacks can be repeated with North American wolves - under similar circumstances” (Graves 2007). Mech (1998) and Van Ballenberge (personal communication, June 19, 2014) both point out that “individual wolves and packs are highly variable”. Some are shy, some are bold and some may have a propensity toward habituation or might demonstrate aggressive behavior under conditions where others might not (Van Ballenberge, personal communication, June 19, 2014, Mech 1998). The factors (circumstances and conditions) that increase the risk of aggressive behavior or an attack by a wolf include habituation and food conditioning, the presence of dogs, rabies and situations in which the wolf is defending itself.

Habituation and food conditioning

McNay (2002b) defines the term habituation when applied to wild animals as: “the loss of an animal’s fear response to people arising from frequent non-consequential encounters.” Food conditioning occurs in wolves and other wild animals when the animal learns to associate food with the presence of people (McNay 2002b). While habituation may occur without the involvement of food, food conditioned wild

animals are almost always habituated (Carnes 2004). A food conditioned wolf may seek out humans or human use areas and may demonstrate an agonistic lunge, charge or bite if the food reward that they seek is withheld (McNay 2002b). Food conditioning was a known or suspected factor in 16 cases of habituated behavior examined in McNay 2002a). Carnes (2004) determined that habituation of wolves to humans was a contributing factor in 75 percent of the reports of human injuries caused by presumably healthy wild wolves that he examined. McNay (2002b) determined that habituation contributed to 11 of 18 (61 percent) cases of unprovoked aggression toward people documented after 1969. The fatal attack in Saskatchewan, Canada in 2005 is attributed by McNay (2007) to food conditioned and habituated wolves. In parks and areas where wildlife is protected habituated wolves have demonstrated unprovoked aggressive behavior, most notably in Algonquin Provincial Park, Canada between 1987 and 1998 (McNay 2002a, 2002b, Carnes 2004). One of the incidents in the park involved a wolf which bit a 12-year old boy's face while the boy was sleeping in a sleeping bag on the ground in the open. The wolf dragged the boy a short distance before being driven off by the boy's father. The wolf had been previously seen by other campers in the area, had chewed and damaged camping gear and clothing, approached other people and was found to have human food and garbage in its stomach after it was lethally removed (McNay 2002a). This incident is very similar to the 2013 incident in Minnesota where a wolf grabbed and bit the head of a 16-year old boy sleeping in the open at a campsite, and to an incident on Vargas Island, Canada in 2000 where a man sleeping in the open was awakened by a wolf tugging on his sleeping bag, shouted and then was attacked and received serious lacerations from bites to the head. In all these incidents the wolves involved had been previously observed in the campsites and had investigated and damaged camping gear (McNay 2002a, Stark pers.comm 2013). None of these attacks were evaluated as demonstrating elements of predation. Instead, they seem to be examples of investigative search behavior by habituated wolves where the biting may have been initially exploratory (Carnes 2004) but culminated in an agonistic response and serious human injury when the victim reacted and struggled (McNay 2002a). In 2001 Denali National Park closed a campground because wolves had become a nuisance demonstrating fearless behavior and stealing campground items (NPS 2013). Because of the recognized increased risk of aggressive behavior toward humans by habituated wolves Yellowstone National Park has developed a *Habituated Wolf Management Plan* which details a strategy to address both human and wolf behavior with the goal not only to prevent prevent human injury from a habituated wolf but to prevent the habituation from occurring (NPS 2013).

Presence of dogs

Attacks on dogs are among the most commonly reported conflicts between wolves and humans (McNay 2002b). Wolves defend territories against other wolves and wolf mortality caused by other wolves is common (ADFG 2008). Wolves treat dogs as trespassers in their territory and will kill dogs wherever the two canids occur (Fritts et al. 2003). They will also prey on domestic dogs and other wild canids such as coyotes and foxes, and dogs may be an important food source for wolves in some areas (Carnes 2004, Fritts et al. 2003). A wolf-dog conflict can occur regardless of the presence of a human. Loose dogs running free are more vulnerable but incidents have also occurred where the dog was on a leash or being held by its owner (McNay 2002a). Dogs were involved in 3 of 28 of the incidents resulting in human injury reviewed by Carnes (2004). McNay (2002a) details six cases of aggression by nonhabituated wolves toward people in the presence of dogs. In many of these cases examined the wolf was focused on the dog and the human was injured in an attempt to intervene. In other cases the dog may have acted as the primary stimulant for aggression by the wolf which then, because of being in a heightened state of excitation acted aggressively toward the accompanying human (McNay 2002b).

Rabies

Wild animals infected with rabies exhibit a variety of symptoms including loss of fear of humans, frequent shifting of aggressive behavior from one object to another, biting the ground or other inanimate

objects, excessive salivation and lack of reflex response if struck by a thrown object (AGFD 2008). Diseased wolves may demonstrate fearless behavior (McNay 2002, Fritts et al. 2003) and the global review of wolf attacks by Linnell et al. (2002) concludes that rabies is “the most important factor explaining the incidence of present day and probably most historic wolf attacks”. Although the incidence of rabies in wolf populations is low, a wolf that is in the furious phase of the disease poses a high risk of attack on a human.

Self-Defense

Unlike bears which often react in a defensive attack when surprised, wolves rely upon their speed and quickness to avoid confrontations with potential enemies (ADFG 2008, McNay 2002b). Although many wolves will act passively when they are trapped or cornered a wolf may also act aggressively to defend itself when it feels it can't escape (ADFG 2008, McNay 2002b). Therefore, situations in which the risk of injury to a human from agonistic aggressive behavior by a wolf in self-defense can be considered high include capture and release operations (i.e. to fit a wolf with a radio telemetry collar), when a wolf is caught in a trap, when a wolf is injured and immobile, or when a wolf is pursued by aircraft or vehicle and then approached. Defense of an occupied wolf den may include threat displays where the adult wolves dash toward the human intruder then veer off and vocalize with short barks and snorts. The wolves may withdraw a short distance and howl and then dash at the intruder again in an attempt to drive them off. There are many accounts of wolf pups being handled or removed from a den without interference from the parents and there are no documented attacks resulting in human injury by wolves defending a den (ADFG 2008, Linnell et al. 2002). Similarly, wolves will demonstrate inhibited aggression and do not typically attack a human intruder to defend a kill site (i.e. the carcass of a wolf killed animal) (McNay 2002b). Instead, they may vocalize and dash at the intruder and then withdraw to wait for the human to leave (ADFG 2008).

Predatory Attacks

Although any attack by a wild animal, including wolves, on a human could be interpreted and initially reported as predaceous “there are frequently factors that contribute to the attack that may not be immediately obvious to the investigation team” (Butler et al. 2011). Linnell et al. (2002) concluded that humans are not a normal prey item for wolves. This may be that wolves’ perceive humans that walk upright and wear clothes as “unique in their environment” with behavioral patterns that do not suggest vulnerable prey (Fritts et al. 2003, Rutter and Pimlott 1968). Carnes (2004) suggests that the minor nature of the wounds inflicted in the majority of the incidents of human injury he examined, most of which consisted of a single bite, are indicative that they were not the result of “determined predatory attempts”.

McNay (2002a, 2002b) evaluates three incidents as containing elements of predation - all of them involving attack and injury to children. The first incident occurred circa 1900 when a wolf ran from cover to grab a toddler playing on the edge of the Koyukuk River in Alaska. The wolf was followed into the brush where it was shot and the child saved (Carnes 2004, McNay 2002a). The second incident occurred in 1998 in Algonquin Provincial Park, Canada when over the course of several months a habituated and possibly food conditioned wolf fought with and injured dogs, became increasingly bold in the presence of people, stalked a four year old girl walking with her parents, and then the following day entered a campground where it attacked a 19-month old boy who was sitting on the ground near his father (Carnes 2004, McNay 2002a). A third incident evaluated as a predatory attack on a child by McNay (2002a) happened in 2000 at an isolated logging camp in Icy Bay, Alaska. There, over the course of a year, a collared male wolf demonstrated increasingly bold behavior and was seen frequently around the logging camp and a nearby log sort yard (McNay and Mooney 2005). The attack on a six year old boy occurred after the wolf emerged from forest cover on the edge of the camp, reportedly growled/snarled/showed its teeth and then moved forward. As the boy and another boy ran from the wolf

a dog which had been in the vicinity intercepted and fought with the wolf before the wolf disengaged and attacked the younger boy. The boy was bitten on the back, legs and buttocks as the wolf attempted to lift and drag the boy toward the forest cover. The dog reengaged with the wolf, the wolf continued to focus on the boy, four adults responded to the boy's cries for help and succeeded in driving the wolf off and then subsequently killed it (McNay and Mooney 2005). McNay (2002a, 2002b), McNay and Mooney (2005) and Carnes (2004) agree that habituation, and possibly food conditioning was a contributing factor to the attack but disagree on the motivation of the wolf. McNay (2002a, 2002b) and McNay and Mooney (2005) suggest that various elements of the attack indicate a "highly aroused predation response" in the wolf while Carnes (2004) concludes that "this was an agonistic wolf-dog encounter in which the boy got entangled".

In their *Findings Related to the March 2010 Fatal Wolf Attack near Chignik Lake, Alaska*, Butler et al. (2011) confirmed through DNA evidence and evidence at the scene the involvement of from two to four wolves in the fatal attack on a 32-year old woman. They concluded that the cause of the fatality appeared to be an "aggressive, predatory attack that was relatively short in duration". In their investigation they determined that defensive behavior, habituation, and food attractants were not contributing factors and speculated that the small body size of the woman, that she was jogging alone, and the possibility that she may have fled when she sighted the wolves could have triggered a predatory response by the wolves.

McNay's (2007) review of the evidence related to the fatal attack on a 22-year old man in Saskatchewan, Canada in 2005 determined that the "environmental conditions, presence of animal tracks, patterns of feeding, position of the body, dragging of the body, removal of clothing (and) types of injuries" were consistent with wolf predation. In this incident wolves had been observed scavenging at a nearby garbage dump site over the previous several months and four days prior to the attack had acted aggressively toward other people. McNay (2007) concludes that the man was a victim of "predation and feeding by wolves" and that the "wolves involved in this case were conditioned to the use of human foods and were habituated to the presence of people".

Wolf attacks on humans in North America are rare and attacks evaluated as predatory in nature are even more uncommon. Therefore, data regarding the circumstances under which a predatory attack might occur is limited. Three of the five incidents described as predatory clearly involved habituated wolves and three of the five incidents were attacks on small children. Carnes (2004) and McNay (2002a) catalog multiple incidents in which habituation of wolves was contributory to agonistic or predatory aggression and McNay (2002b) suggests that because wolves are adept at determining prey vulnerability children are more likely to be the target of a predatory attack than adults. The majority of the predatory attacks in European countries, including Russia, described by Linnell et al. (2002) involved children as victims and they describe this pattern as consistent with wolves selecting "the weakest, and most easily captured category of prey" (Linnell et al. 2002). In India multiple well-documented cases of "child-lifting" predatory attacks are described in Linnell et al. (2002) and Krithivasan et al. (2009). In the Hamedan province of western Iran between 2001 and 2010, 47 incidents of wolf attack on people, 70 percent of which were on children, were reported (Behdarvand et al. 2014). Both Behdarvand et al. (2014) and Krithivasan et al. (2009) suggest that wolves came to opportunistically target children as prey in heavily human modified ecosystems lacking wild native prey and having scarce or well guarded livestock. Although wolves are generally believed to avoid populated regions Behdarvand et al. 2014 found that the probability of wolf attacks on humans increased in "agroecosystems" that had a higher proportion of irrigated farms and high human density. Factors contributing to wolf attacks on humans in these areas include the loss of almost all natural forests, replaced by crop fields which provide cover and water, and the loss of wild prey species, causing wolves to be attracted to human settlements with abundant food sources (e.g. garbage and livestock) (Behdarvand et al. 2014). Linnell et al. (2002) suggest that historical episodes of predatory attacks on people often occurred in heavily modified landscapes characterized by scarcity of wild prey species, forest clearance, introduction of domestic ungulates and

association of food sources (whether livestock or human garbage) with humans. The association of food sources with humans by habituated wolves may have been contributory to the 2005 fatal predatory attack in Saskatchewan, Canada (McNay 2007).

Summary

Wolf caused injuries to humans worldwide, but especially in North America, are exceptionally rare and incidents evaluated as a predatory attack by a wolf on a human are even rarer. However, “one can never say never when discussing the possibility of wolf attacks on humans” (Mech 1998) and under certain circumstances wolves can present risks to human safety (ADFG 2008, Carnes 2004, Linnell et al. 2002, McNay 2002b). Review of the case histories of wolf-human encounters and evaluation of the factors, circumstances and conditions that increase the risk of aggressive behavior by wolves lead to the conclusion that:

- the risk to human safety posed by healthy wild non-habituated wolves is extremely small;
- agonistic or predatory aggression toward humans is most likely to occur in habituated and food conditioned wolves;
- the presence of a domestic dog increases the risk of agonistic aggression by wolves;
- because known wolf behavioral patterns make incidents of aggressive behavior by wolves towards humans to a large degree predictable they are also preventable through proper management that includes not only wolf behavioral modification and wolf removal but also human behavioral modification and public education (McNay 2007, NPS 2003).

4.5.2 The Mexican Wolf Experimental Population: Human Health and Public Safety

In 2007 the Service conducted public scoping as part of the process to prepare a new EIS for contemplated changes to the Mexican Wolf Reintroduction Project. Concerns regarding human health and public safety were expressed in comments both during that scoping period and in comments received during the scoping that followed the publication of our Notice of Intent to Prepare an EIS (78 FR 47268) on August 5, 2013. Concerns brought forward by the public during scoping included:

- Risk of attack on humans by Mexican wolves;
- Potential for habituation of Mexican wolves to humans;
- Potential negative psychological effects to children from the presence of Mexican wolves; and
- Potential for Mexican wolves to carry/transmit disease.

Risk of attack by Mexican wolves

No human injuries from a wolf attempting to defend itself or from a wolf with rabies and no incidents of predatory behavior or prey testing directed at humans have been reported or documented in the Mexican wolf experimental population. Of the 108 wolf-human interactions/nuisance reports investigated, by the IFT (from 1998 through 2013), 91 (84 percent) were categorized as investigative searches and 13 (12 percent) were categorized as investigative approaches. Four incidents (~4 percent) were categorized as aggressive (agonistic) charges with three of those incidents involving dogs (75 percent). The fourth incident occurred in 2013 when a wolf ran toward a human who responded by yelling and waving hands at which point the animal veered off and ran away. The incident was categorized as an aggressive charge but it is unclear in the investigation as to whether the wolf was actually aware of the human presence or was focused on other stimuli, such as coyotes which were also present in the area. Of the 108 documented wolf-human incidents 42 occurred within three months of initial release or translocation (39 percent). From 1998 through 2013 fifteen wolves were removed for nuisance behavior.

While Mexican wolves, or any other large, powerful animals, can be dangerous if cornered, threatened or overly habituated to humans there is no evidence that wolves have posed an unusual risk to humans within the BRWRA (AMOC and IFT 2005). Mexican wolves have also been released and have occupied the FAIR since 2000 under agreement with the WMAT. No report of injury or serious threat by wolves on the Reservation has been reported and conflicts between wolves and pets have been infrequent with no deaths attributed to wolves reported (MWRT Tribal Sub-Group 2014). WMAT conclude that “while threats to people and pets are possible, it is felt that it is fairly unlikely per observations of wolves on the Reservation from the past 14 plus years” (MWRT Tribal Sub-Group 2014).

Potential for habituation of Mexican wolves to humans

Approximately 39 percent of the documented human-wolf interactions in the BRWRA have involved wolves recently released from captivity, suggesting that wolves released from captivity may be more prone to initial fearless behavior toward humans, despite appropriate captive management and selection criteria for release candidates (AMOC and IFT 2005). Wolves in captivity are managed and cared for in accordance with the guidelines set forth in the *Mexican Gray Wolf Husbandry Manual* (USFWS 2009). One of the primary goals of managing Mexican wolves in captivity is to “preserve the natural behaviors necessary for wolves that may eventually be reintroduced to the wild” (USFWS 2009). The animal caretakers and veterinarians that have contact with captive bred and reared wolves in the recovery program make every effort to prevent the wolves from becoming habituated to humans. While captive wolves are fed (once or twice weekly, depending on the season), caretakers make efforts to separate human contact from feeding. No “hand-feeding” occurs. Caretakers enter the pen to elicit a flight response from the wolves, and then leave food in an area not visible from the place where the wolves are hiding. Wolves typically flee to the furthest limit of their pen when operations within the pen are necessary, and exhibit extreme flight during activities that require human contact, such as vaccinations. Wolves that fail to exhibit fear of humans are actively hazed. In accordance with the *Husbandry Manual* guidelines, “Wolves that are potential candidates for release to the wild are evaluated based on a number of behavioral and physiological criteria including genetic makeup, age, reproductive performance, proven parental skills and appropriate social behavior, and aversion to humans (USFWS 2009). In selecting wolves for release the Reintroduction Project seeks those with fear of humans (AMOC and IFT 2005). Once selected, and prior to release, wolves are acclimated in USFWS-approved facilities. Pre-release facilities in New Mexico include the Ladder Ranch Wolf Management Facility, managed by the Turner Endangered Species Fund, and the Sevilleta Wolf Management Facility, managed by the USFWS at Sevilleta National Wildlife Refuge. In pre-release facilities, contact between wolves and humans is minimized. Carcasses of road-killed native prey species, primarily deer and elk, supplement the routine diet of processed carnivore logs supplied to wolves. Genetically and socially compatible breeding pairs are established and evaluated for physical, reproductive, and behavioral suitability for direct release into the wild. Single wolves are also evaluated for release and potential pairing with wolves in the wild. Prior to release, wolves may be adversely conditioned to food types (i.e., domestic livestock) and human presence. As close to release as possible, wolves may be subjected to taste aversion conditioning in efforts to deter their use of domestic livestock as a food source. Separately, or in addition to taste aversion conditioning, wolves in pre-release facilities may be hazed (purposefully harassed) prior to release in efforts to increase their avoidance of humans and/or inhabited areas. Wolves are released or translocated using either a soft release or a hard release method. The soft release method holds wolves at the release site for one day to several months to acclimate them to the specific area. Wolves generally self-release within a few days. A hard release is a direct release of a wolf (or wolves) from a crate into the wild or into an enclosure built of fladry (flagging hanging on a rope surrounding a small protected area; sometimes the fladry “fence-line” is electrified). All wolves released from captivity are fitted with radio-telemetry collars so that they can be tracked and management actions are taken when considered necessary to

increase the probability of the wolf successfully acclimatizing to the wild while minimizing the possibility of nuisance behavior, depredation or wolf-human interactions.

Psychological effects to children from fear of wolves

In the absence of direct experience based knowledge, myths and other culturally transmitted forms of knowledge will appear (Lescureux and Linnell 2010). Fear of wolves in European culture and history is related to both supernatural associations of the wolf as a symbol of the devil and to concerns for personal safety (Linnell et al. 2002). The dangerous wolf is the subject of folklore and fairy tales (e.g. “The Three Little Pigs”, “Little Red Riding Hood”, and “Peter and the Wolf”) and there are many examples in western literature describing the ferocious nature of the animal (Mech 1970, Jenness 1985).

The BRWRA is comprised of portions of Greenlee and Apache counties in Arizona and Catron, Sierra and Grant counties in New Mexico. The majority of residents in these counties live in small ranching and farming based communities. The elected representatives and the local county governments as well as stakeholder groups such as the Gila Livestock Growers Association have expressed long-standing and ongoing opposition to the reintroduction of Mexican wolves (Walsh 2013). Rancher attitudes as expressed at public hearings and comments during scoping, as well as reported in the media and recorded on various stakeholder websites and web blogs, are overwhelmingly critical of the reintroduction project and express strong opinions about what is regarded as an infringement on personal and property rights, federal government overreach, disregard of local authority and indifference to the threat that wolves present to the physical safety of people, in particular children (Walsh 2013). As discussed in Walsh (2013) documentary evidence (photos, video) illustrating “close encounters with wolves, bloody wounds to pets and livestock and mauled animal corpses” and representative anecdotes detailing accounts of wolves following children home from school, wolves surrounding a child in the woods, a wolf forcing a mother and her children to barricade themselves in their home, wolf-proof school bus stop shelters, and parents requiring a child to be armed when playing in the yard are recounted, repeated and circulated. This describes the rhetorical landscape through which information and communication about wolves and the reintroduction project are filtered (Walsh 2013, Walsh 2009). Seen through these “filters” an experiential report as represented by these anecdotes of the dangerous threat posed by wolves to people and children from “trusted insiders” carries more weight than scientific evidence presented by “outsiders” that wolves “simply do not constitute an appreciable (statistically significant) threat to human safety or health” (Walsh 2013, AMOC and IFT 2005).

No peer reviewed studies have been conducted, and there is no scientifically collected data available to make an evaluation as to whether the reintroduction of wolves into the BRWRA has, or has not, had a positive, neutral, or negative psychological effect on children living in the rural communities within or proximate to the recovery area. However, Catron County’s submission to the Department of the Interior in 2012 entitled *Problem Wolves in Catron County, New Mexico: A County in Crisis* provides an account of the negative effects of the reintroduction on county residents whose rights and lives are perceived to be “collateral damage” to the success of the project (Carey 2012). The report includes two studies which address symptoms of psychological stress and post-traumatic stress disorder (PTSD) in children and parents. Neither study purports to be scientifically conducted in its collection of data, its evaluation of the data or its findings. Both provide anecdotal accounts based on interviews with area residents of emotional distress and stress related disorders related to fear of a loss of income, damage to their way of life and wolf attack on livestock, pets and humans, especially small children (Martin 2007 and Thal 2006 in Carey 2012).

Potential for Mexican wolves to carry/transmit disease

Wolves are subject to diseases that affect all canines, including domestic dogs, coyotes and foxes, and can transmit such diseases within their populations and to some other species. Pathogens that wolves could potentially be exposed to in the wild include canine parvovirus, canine distemper, infectious canine

hepatitis, leptospirosis, intestinal and external parasites and rabies. Of these pathogens, intestinal parasites, leptospirosis and rabies are of concern for transmission to humans. No cases of leptospirosis or rabies have been documented in the Mexican wolf experimental population. While recent concerns regarding contagious tapeworm (*Echinococcus spp.*) have been raised regarding the wolf population in the northern Rocky Mountains (Foreyt et al. 2009), the *Echinococcus* parasite has not been found in the Mexican wolf experimental population. All released, translocated, and handled wolves are administered vaccine against the full spectrum of canine diseases including rabies, distemper, canine parvovirus, and infectious canine hepatitis viruses, and are dewormed for intestinal and external parasites. Captive wolves receive annual booster shots. Wild-born animals are vaccinated opportunistically whenever captured for other reasons such as radio-collaring. Given these precautions, the Mexican wolves in the experimental population are less likely to carry disease than other wild canids and are not likely to transmit parasites or disease-causing pathogens that are not already carried by other canids (USFWS 1996). Because of the comparatively (to other populations of wildlife, including other canids such as coyote and fox) small size of the experimental population of Mexican wolves, the active management and surveillance routinely conducted by the IFT and the vaccination protocol followed for captive, released and handled wolves the Mexican wolf's contribution to the overall parasite or pathogen load in the BRWRA is minimal. There is no reason to anticipate an increase in the risk of disease transmission to humans in the project study area from a larger experimental population of wolves distributed over a larger area.

4.5.3 Potential Environmental Impacts and Proposed Mitigation Measures

Alternative One (Proposed Action and Preferred Alternative)

Under this alternative we would adopt a phased management approach to minimize or avoid possible impacts to wild ungulate populations (specifically elk) in portions of western Arizona. In this alternative we intend to achieve a Mexican wolf experimental population objective of from 300 to 325 wolves within the entire MWEPA. We would allow the initial release of wolves in a larger area to be known as management Zone 1 and we would allow wolves to disperse into and occupy the MWEPA (proposed management Zones 1, 2 and 3). Under Alternative One the initial release and translocation of wolves and their natural dispersal and occupancy in portions of western Arizona in Zones 1 and 2 would be limited in accordance with the phased management described in section 2.3.1. Alternative One would implement changes to the take provisions authorized under the experimental population rule that would allow domestic animal owners or their agents to take (including kill or injure) any Mexican wolf that is in the act of biting, wounding or killing domestic animals on non-federal land anywhere within the MWEPA. This alternative would also allow the Service or designated agency to issue permits to allow domestic animal owners or their agents to take (including intentional harassment or kill) any Mexican wolf that is present on non-Federal land where specified in the permit.

Alternative One proposes to allow the initial release of Mexican wolves into release sites within, or adjacent to, the Aldo Leopold and Gila Wilderness areas of the Gila National Forest. These release sites are currently only available for use for the translocation of wolves. In the *Evaluation of Initial Release and Translocation Site Availability and Suitability* conducted by the IFT (IFT 2009), the majority of these ten release sites rate highly suitable in terms of their "human score", which evaluates the likelihood of human-wolf interaction based on the distance from human habitation. The additional areas of national forest proposed to be added to Zone 1 (the Sitgreaves National Forest, the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest) would increase the number of available potential release sites in remote locations, including additional wilderness areas. Implementation of this proposal would require the selection and evaluation of sites in the additional national forest areas using the same criteria, including the likelihood of human-wolf interaction, used for the evaluation of sites within the existing BRWRA. The absence of

that the use of release sites for the initial release of Mexican wolves in proposed management Zone 1 that are evaluated as highly suitable in terms of their “human score” will minimize human-wolf interactions and nuisance behaviors compared to the baseline condition represented by the No Action Alternative. During the period (up to 12 years from the effective date of the final 10(j) rule) that the phased management approach proposed in this alternative is in effect the initial release and translocation of wolves and their natural dispersal and occupancy in portions of western Arizona in Zones 1 and 2 would be limited. We expect that these limitations will avoid or minimize the possibility of human-wolf interactions and wolf nuisance behaviors in these areas.

Under the actions proposed in Alternative One we expect the experimental population of Mexican wolves to increase and to occupy a wider area of the MWEPA. Although, under this alternative we expect to release more wolves from captivity to support our need to improve the genetic variation within the experimental population, the majority of wolves in the experimental population will be wild born. Wolves born in the wild have a lower propensity to engage in nuisance behavior. We expect that the continuation and extension of a practical, responsive management program for the wider area which wolves would be allowed to occupy under this alternative, including use of pre and post-release management measures, aversive conditioning to promote avoidance behavior, and removal of problem wolves will minimize wolf-human interaction and nuisance behaviors. Through use of these management measures we expect to prevent to the maximum extent possible the development of habituated wolves which pose the greatest risk of acting in an aggressive manner toward humans. There have been no incidents of aggressive behavior towards humans by Mexican wolves indicative of predation, prey testing or self-defense. While the possibility exists that an incident of aggression by a healthy wild wolf in the experimental population could occur we consider the probability (risk) of such an occurrence to be extremely low. There are no peer reviewed studies or scientifically collected data available to make an evaluation as to whether implementation of Alternative One will have a significant adverse or beneficial psychological impact on children living in the project study area. There have been no documented cases of rabies in the Mexican wolf experimental population, no wolves have tested positive for *Echinococcus spp* or leptospirosis and no other common pathogens such as plague, tularemia, *Neospora*, anthrax, listeria, brucellosis, and tuberculosis have been detected. Under this alternative we would continue the active disease surveillance programs and health protocols already established for the Reintroduction Project. The Mexican wolf experimental population does not present a credible source of enzootic parasites or pathogens that are a risk to human health. We do not expect this to change under the proposals put forward under this alternative. For these reasons we expect no significant direct or indirect adverse or beneficial impacts to human health and public safety in any of the proposed management zones to result from the implementation of Alternative One (Proposed Action and Preferred Alternative).

Alternative Two

Under Alternative Two the area proposed for the initial release of wolves in the proposed management Zone 1 would be smaller (limited to the existing BRWRA) than under Alternative One. Under this alternative, additional areas of national forest would not be added to Zone 1. Therefore, fewer potential release sites in remote locations, including additional wilderness areas would be available for the initial release of wolves. Alternative Two would implement changes to the take provisions authorized under the experimental population rule that would allow domestic animal owners or their agents to take (including kill or injure) any Mexican wolf that is in the act of biting, wounding or killing domestic animals on non-federal land anywhere within the MWEPA. This alternative would also allow the Service or designated agency to issue permits to allow domestic animal owners or their agents to take (including intentional harassment or kill) any Mexican wolf that is present on non-federal land where specified in the permit.

Alternative Two proposes to allow the initial release of Mexican wolves into release sites within, or adjacent to, the Aldo Leopold and Gila Wilderness areas of the Gila National Forest. These release sites

EXHIBIT 2

Mexican Wolf Conservation Assessment

U.S. Fish and Wildlife Service
Southwest Region (Region 2)
Albuquerque, New Mexico
2010

In the Southwest, illegal shooting of wolves is the single greatest source of wolf mortality in the reintroduced population. Between 1998 and June 1, 2009, 31 of 68 deaths were due to illegal shooting of wild wolves. In several years, illegal shooting resulted in Blue Range population declines of close to or exceeding 10 percent.

In the Blue Range population, two hybridization events between Mexican wolves and dogs have been documented over the span of the reintroduction. Offspring from these events were humanely euthanized. No hybridization events between Mexican wolves and coyotes have been documented. Based on the number of occurrences, hybridization is not considered a threat to the Blue Range population.

The Mexican wolf captive and reintroduced populations are based on seven founders from three lineages (McBride, Aragon, and Ghost Ranch). The McBride lineage represents the original founders of the captive population; the other two lineages were added more recently and are thus less well-represented. Recent research on the effects of inbreeding on the probability of producing live pups, litter size, and pup survival has documented inbreeding depression in the captive and reintroduced Mexican wolf populations. Crosses between F1 wolves (the offspring of crosses between wolves of different lineages) produced 3.2 times more pups on average than contemporary crosses between the original McBride lineage wolves. In the Blue Range population, research documented that inbreeding depression has resulted in smaller litter sizes in packs producing pure McBride pups compared to those producing cross-lineage pups, demonstrating restored fitness in wolves with mixed ancestry (Fredrickson et al. 2007). Inbreeding is not considered a current threat to the captive population due to active management that minimizes the risk of inbreeding depression to the captive population, but has the potential to decrease the fitness, growth rate, and genetic variation of the Blue Range population unless the representation of Ghost Ranch and Aragon ancestry is increased.

The assessment has not identified any individual threats that are so severe as to put the population at immediate risk of extinction, although management and regulatory mechanisms, illegal shooting, and inbreeding are identified as threats that are hindering the growth and fitness of the Blue Range population. However, the population does not experience a single threat in absence of the others, but rather all threats simultaneously or at least within spatial or temporal proximity to one another. As a rule of thumb, an overall mortality rate of 0.34 (34 percent) has been estimated as the inflection point for wolf populations, with populations increasing naturally when mortality rates are below this average and decreasing when mortality rates are above it. Combined sources of mortality and removal are consistently resulting in failure rates at levels too high for unassisted population growth. The Mexican wolf is more susceptible to population decline at a given mortality rate than other gray wolf populations because of lower reproductive rates, smaller litter sizes, less genetic diversity, lack of immigration from other populations, and potential low pup recruitment. Thus the cumulative impact of identified threats to the Blue Range population, coupled with its biological attributes, is putting the population at risk of failure.

The Conservation Principles of Resiliency, Redundancy, and Representation

The principles of *resiliency*, *redundancy*, and *representation* are a recently popularized conceptualization of key elements of biological diversity conservation. They provide a useful framework for discussing scientific concepts relevant to gray wolf conservation and recovery in the Southwest, including demography, environmental variability, and genetics. The Service has invoked these principles to describe recovery efforts for the gray wolf in the Northern Rockies and Great Lakes, and for consistency, the conservation assessment uses these principles in similar fashion.

Resiliency

The principle of *resiliency* suggests that species that are more numerous and widespread are more likely to persist than those that are not. That is, a species represented by a small population faces a higher risk of extinction than a species that is widely and abundantly distributed due to the sensitivity of small populations to stochastic (that is, uncertain) demographic events. In small populations, including those with a positive growth rate, it is more likely that a wide negative deviation from average birth or survival rates could result in a decline toward extinction from which the population would not be able to recover. Thus, as a population grows larger and individual events tend to average out, the population becomes less susceptible to demographic stochasticity. There is not a single population size that will ensure persistence. Rather, populations of various sizes, vital rates, and biological and ecological characteristics will simply have different risks of extinction. At its current size, the Blue Range population is highly susceptible to stochastic demographic events.

A variety of methods are available for estimating a species' likelihood of persistence or extinction risk, ranging from complex theoretical or simulation models to simple observation of existing populations or best professional judgment. Viable wolf populations have been estimated in the scientific literature and previous gray wolf recovery plans as those that number in the hundreds to the thousands, depending on a number of factors. A current, complete, peer-reviewed viability analysis of the objective to establish a population of at least 100 wolves in the Southwest has not been conducted to determine the extinction risk faced by this population. No other population objective (i.e., recovery criteria) has been determined for the Southwest Region upon which to evaluate the degree to which the current reintroduced population establishes or contributes to regional *resiliency*.

Redundancy

Redundancy refers to the existence of redundant, or multiple, populations spread throughout a species' range. It advances the notion that a species' likelihood of persistence generally increases with an increase in the number of sites it inhabits because it allows for populations to exist under different abiotic and biotic conditions, thereby providing a margin of safety that random perturbation (or, variation) affects only one, or a few, but not all, populations.

Random variations in the environment that in turn affect the demography of a population are referred to as environmental stochasticity. Environmental stochasticity may take the form of variation in available resources (e.g., prey base), or in direct mortality (e.g., a disease epidemic). Extreme environmental events, referred to as catastrophic, including events such as wildfire, drought, or a disease epidemic, may result in drastic, rapid population declines.

regulatory inadequacies; specifically, their efforts include the quarterly meetings of the Adaptive Management Working Group, which includes AMOC and other State and County governments, to gather input and address issues of concern (AGFD 2008; a series of public meetings held in November and December, 2007, to consider modifications to the Final Rule (72 FR 44065-44069, August 7, 2007; and see USFWS 2009: Rule Modification); multiple attempted revisions of the 1982 Mexican Wolf Recovery Plan; and the development of a Mexican-wolf-specific incentives program and application of existing incentives available through State and non-governmental programs to address socioeconomic issues related to wolf conflicts. In spite of these efforts, the Service is still resolving identified regulatory and management mechanisms related to the biological progress of the Blue Range population.

(E) other natural or manmade factors affecting its continued existence.

Public opinion has long been recognized as a significant factor in the success of gray wolf recovery efforts. Considerable literature exists on this topic, e.g., see Primm and Clark 1996, Boitani 2003, Fritts et al. 2003, Rodriquez et al. 2003, Bangs et al. 2004. In the Southwest, extremes of public opinion vary between those who strongly support or object to the recovery effort. Support stems from such feelings as an appreciation of the wolf as an important part of nature and an interest in endangered species restoration, while opposition may stem from negative social or economic consequences of wolf reintroduction, general fear and dislike of wolves, or Federal land-use conflicts (Duda and Young 1995, Unsworth et al. 2005, Research and Polling 2008). Thirty-one illegal shootings of wild Mexican wolves between 1998 and June 1, 2009, (USFWS 2009: Population Statistics) demonstrate some degree of disregard for or dissent to the reintroduction project, but is an unreliable indicator of public opinion overall. Recent public polling in Arizona and New Mexico shows that the majority of respondents has positive feelings about wolves and supports the reintroduction of the Mexican wolf to public land (Research and Polling 2008). Thus, for the time being it appears that public opinion is adequate to continue to support implementation of the Mexican wolf reintroduction.

Summary statement: Although some residents currently do not support the reintroduction of the Mexican wolf to the wild, the majority of the public in Arizona and New Mexico does support the reintroduction. Therefore, public opinion is not considered a threat to the Blue Range population.

In the BRWRA, illegal shooting of wolves has been the biggest overall source of mortality since the reintroduction began in 1998, and the largest single source of mortality in six separate years. Out of 68 wild wolf mortalities documented over the course of the reintroduction, 31 deaths are attributed to illegal shooting (USFWS 2009: Population Statistics). Illegal shootings have ranged from zero to seven per year between 1998 and June 1, 2009, with one or more shootings occurring every year with the exception of 1999 (USFWS 2009: Population Statistics). Reasons for such shootings are typically unknown, but are likely attributed to dislike of wolves or mistaken identity of Mexican wolves as coyotes. Law enforcement investigates all illegal shootings.

As discussed under factor (A), the significance of a given level of mortality is relative to the

pure McBride pups compared to those producing cross-lineage pups, demonstrating restored fitness in wolves with mixed ancestry (Fredrickson et al. 2007). Based on the immediate fitness concerns related to inbreeding depression documented in the Blue Range population, as well as in support of maintaining the long-term adaptive potential of the Mexican wolf, it has been recommended that Ghost Ranch and Aragon ancestry be increased above 10 percent to as much as 25 percent by releasing more wolves with Ghost Ranch and Aragon ancestry to the Blue Range population while the population is still small, as the addition of just a few wolves into a small population will more significantly alter the ancestry represented than would those few releases into a large population (Fredrickson et al. 2007). The representation of the three lineages as of July 25, 2008, was 77.39 percent McBride, 8.43 percent Aragon, and 14.19 percent Ghost Ranch (Siminski and Spevak 2007). Rapid expansion of the population after these releases would further promote maintenance of genetic diversity (Fredrickson et al. 2007). Thus, documentation of the effect of inbreeding depression on litter size demonstrates that inbreeding has the potential to threaten, or at least hinder, the Blue Range population by negatively affecting the growth rate of the population. That is, the release of cross-lineage wolves has the potential to increase the fitness, growth rate, and genetic variation of the Blue Range population (Fredrickson et al. 2007). Results from the captive population, however, suggest that the fitness increase observed among F1 wolves may be largely lost in two to four generations.

The ability of management to address inbreeding depression in the Blue Range population is constrained by regulatory and discretionary management mechanisms that do not incorporate consideration of genetic issues yet result in limitation or alteration of the genetic diversity of the population. For example, initial releases of cross-lineage wolves may be constrained by lack of space (i.e., unoccupied territories) in the Primary Recovery Zone, and the high removal rate of wolves due to boundary violations results in an ever-changing degree of representation of the three lineages. The AZA Mexican Wolf SSP has recommended that until the representation of the Ghost Ranch and Aragon lineages has increased and demographic stability is achieved in the wild population, careful consideration of genetic diversity should be prioritized during decisions to permanently remove wolves (AZA 2008a). The Service has not developed any specific protocols to promote genetic fitness in the population in response to recent research and professional recommendations. However, it has recognized the importance of genetic considerations into management actions.

Summary statement: Inbreeding depression has recently been documented in the captive and reintroduced Mexican wolf populations. Inbreeding is not a current threat to the captive population based on active management that minimizes the risk of inbreeding depression, but has the potential to decrease the fitness, growth rate, and genetic variation of the Blue Range population unless addressed by appropriate management actions.

The assessment has not identified any individual threat that is so severe as to put the population at immediate risk of failure, although several management and regulatory mechanisms, illegal shooting, and inbreeding are identified as threats that are hindering the growth, fitness, and long-term success of the Blue Range population. But the population does not experience a single threat in absence of the others; rather all threats occur simultaneously or at least within spatial or temporal proximity to one another. Therefore, it

EXHIBIT 3

Developing Metapopulation Connectivity Criteria from Genetic and Habitat Data to Recover the Endangered Mexican Wolf

CARLOS CARROLL,* RICHARD J. FREDRICKSON,† AND ROBERT C. LACY‡

*Klamath Center for Conservation Research, P.O. Box 104, Orleans, CA 95556, U.S.A., email carlos@klamathconservation.org

†1310 Lower Lincoln Hills Drive, Missoula, MT 59812, U.S.A.

‡Chicago Zoological Society, Brookfield, IL 60513, U.S.A.

Abstract: Restoring connectivity between fragmented populations is an important tool for alleviating genetic threats to endangered species. Yet recovery plans typically lack quantitative criteria for ensuring such population connectivity. We demonstrate how models that integrate habitat, genetic, and demographic data can be used to develop connectivity criteria for the endangered Mexican wolf (*Canis lupus baileyi*), which is currently being restored to the wild from a captive population descended from 7 founders. We used population viability analysis that incorporated pedigree data to evaluate the relation between connectivity and persistence for a restored Mexican wolf metapopulation of 3 populations of equal size. Decreasing dispersal rates greatly increased extinction risk for small populations (<150–200), especially as dispersal rates dropped below 0.5 genetically effective migrants per generation. We compared observed migration rates in the Northern Rocky Mountains (NRM) wolf metapopulation to 2 habitat-based effective distance metrics, least-cost and resistance distance. We then used effective distance between potential primary core populations in a restored Mexican wolf metapopulation to evaluate potential dispersal rates. Although potential connectivity was lower in the Mexican wolf versus the NRM wolf metapopulation, a connectivity rate of >0.5 genetically effective migrants per generation may be achievable via natural dispersal under current landscape conditions. When sufficient data are available, these methods allow planners to move beyond general aspirational connectivity goals or rules of thumb to develop objective and measurable connectivity criteria that more effectively support species recovery. The shift from simple connectivity rules of thumb to species-specific analyses parallels the previous shift from general minimum-viable-population thresholds to detailed viability modeling in endangered species recovery planning.

Keywords: *Canis lupus baileyi*, circuit theory, conservation planning, Endangered Species Act, least-cost distance, metapopulations, population viability

Desarrollo de Criterios de Conectividad Metapoblacional a Partir de Datos Genéticos y de Hábitat para Recuperar al Lobo Mexicano en Peligro de Extinción

Resumen: Restaurar la conectividad entre poblaciones fragmentadas es una herramienta importante para aliviar las amenazas genéticas para las especies en peligro. A pesar de esto, los planes de recuperación típicamente carecen de criterios cuantitativos para asegurar la conectividad de dicha población. Demostramos cómo los modelos que integran los datos de hábitat, genéticos y demográficos pueden ser utilizados para desarrollar criterios de conectividad para el lobo mexicano (*Canis lupus baileyi*) que se encuentra en peligro y actualmente está siendo reintroducido a la vida silvestre a partir de poblaciones cautivas que descienden de 7 fundadores. Usamos el análisis de viabilidad poblacional, que incorporó datos del árbol genealógico, para evaluar la relación entre la conectividad y la persistencia para una metapoblación restaurada de lobo mexicano con 3 poblaciones de igual tamaño. La disminución de las tasas de dispersión aumentó el riesgo de extinción de poblaciones pequeñas (<150–200), especialmente cuando las tasas de dispersión bajaban más allá de 0.5 migrantes genéticamente efectivos por generación. Comparamos tasas de migración observadas en la metapoblación de lobos de las Montañas Rocallosas del Norte con 2 medidas efectivas de distancia

Paper submitted October 23, 2012; revised manuscript accepted May 29, 2013.

basadas en el hábitat, de menor costo y de distancia de resistencia. Después usamos la distancia efectiva entre dos poblaciones potenciales de núcleo primario en una metapoblación reintroducida de lobo mexicano para evaluar las tasas potenciales de dispersión. Aunque la conectividad potencial fue más baja en los lobos mexicanos frente a la metapoblación de lobos de las Rocallosas del Norte, una tasa de conectividad de >0.5 migrantes genéticamente efectivos por generación puede obtenerse por medio de dispersión natural bajo las actuales condiciones de paisaje. Cuando hay suficientes datos disponibles, estos métodos permiten a los planificadores moverse más allá de las metas de conectividad esperadas o de reglas generales para el desarrollo de criterios objetivos y medibles de conectividad que apoyen con mayor eficiencia la recuperación de la especie. El cambio de reglas generales de conectividad simple a análisis específicos de especies es similar al cambio previo de umbrales de mínimos generales de viabilidad de población a modelos detallados de viabilidad en la planificación de la recuperación de especies en peltgro.

Palabras Clave: Acta de Especies en Peligro, *Canis lupus baileyi*, distancia de menor costo, metapoblaciones, planificación de conservación, teoría de circuitos, viabilidad poblacional

Introduction

Efforts to recover endangered species increasingly involve measures to ensure population connectivity between core habitat areas to enhance population persistence and maintain evolutionary potential (Lowe & Allendorf 2010). The U.S. Endangered Species Act (ESA) requires that recovery plans define “objective and measurable” recovery criteria that comprehensively address the threats that led to listing of the taxa as threatened or endangered (16 U.S.C. §1533 [f][1][B][ii]). However, recovery plans that mention connectivity typically include only aspirational objectives or general rules of thumb (USFWS 1987). Here, we used a case study of recovery planning for the endangered Mexican wolf (*Canis lupus baileyi*) to demonstrate why quantitative connectivity criteria can form an important element of recovery plans and how such criteria can be developed and implemented.

As descendants of the first wave of colonization of North America by the gray wolf (*Canis lupus*), Mexican wolves represent the most genetically unique New World wolf lineage and one of the most endangered mammals in North America (Vonholdt et al. 2011; Wayne & Hedrick 2011). One population of approximately 75 individuals currently exists in the wild, with approximately 300 additional individuals maintained in captivity (Siminski 2012). Genetic threats are greater for the Mexican wolf than for other wolf subspecies because 7 wild founder individuals were the source of all wolves in both the captive and reintroduced populations (Hedrick & Fredrickson 2008). Negative effects of inbreeding on litter size are evident in captive and wild populations of Mexican wolves (Fredrickson et al. 2007). In other small and isolated wolf populations in Europe and North America, inbreeding accumulation has reduced litter size and increased incidence of skeletal defects (Liberg et al. 2005; Rääkkönen et al. 2009). Dispersal of even a single migrant into such inbred populations can dramatically affect genetic structure and population performance (Vilá et al. 2003).

Wolves are among the most vagile of all terrestrial mammals and can disperse over 800 km (Forbes & Boyd 1997). Wolves were historically present throughout their

range in the contiguous 48 states as a largely continuous population with some degree of genetic isolation by distance and additional heterogeneity reflecting ecological factors (Vonholdt et al. 2011). Due to habitat loss, over-exploitation, and other factors, future wolf distribution in the United States outside of Alaska is likely to consist of many relatively disjunct subpopulations, and these subpopulations will be small relative to historic population sizes ($>300,000$; Leonard et al. 2005). However, given the species' vagility, achieving connectivity via natural dispersal may be feasible within such a metapopulation. Rigorous assessment of the influence of connectivity as well as population size on viability is thus a necessary component in wolf recovery planning (Wayne & Hedrick 2011).

We demonstrate how results from population viability analyses can be combined with habitat data to develop quantitative recovery criteria for population connectivity. We used population viability analysis (PVA) that incorporated pedigree data to address the relation between connectivity and persistence for the species. Pedigree data for the existing wild population and for new populations founded by hypothetical captive pairings designed to minimize relatedness allowed us to realistically assess the effects of genetic management on restoration success. We then used habitat-based effective-distance metrics to determine the level of natural dispersal feasible given expected management and landscape characteristics. These models also allow identification of specific linkage areas in which connectivity conservation efforts can be focused. When sufficient data are available, these methods allow planners to move beyond general aspirational connectivity goals or rules of thumb to develop objective and measurable connectivity criteria that more effectively support species recovery.

Methods

Context of Case Study

We used information from previously published studies to determine what areas within the southwestern United States and northern Mexico contained sufficient habitat

to support populations of Mexican wolves. The majority of the subspecies' historic range occurred in Mexico (Leonard et al. 2005). However, high human-associated mortality risk and low prey density within potential core areas in Mexico suggests that these areas are unlikely to support populations of over 100 individuals (Araiza et al. 2006). Therefore, we also considered potential reintroduction areas in the southwestern United States that were outside the historic range of the Mexican wolf but within the historic zone of genetic intergradation between Mexican wolves and more northerly wolf populations (Leonard et al. 2005). Projections of increasing aridity in the southwestern United States due to climate change (Notaro et al. 2012) suggest that establishment of populations at or beyond the northern extreme of the historic range may be an appropriate strategy to increase metapopulation resilience.

We used a 2-stage process to evaluate potential recovery criteria for the Mexican wolf. Stage 1 consisted of a PVA in which population performance across a range of scenarios was compared with alternative population size and connectivity criteria. In stage 2, we used effective-distance metrics derived from habitat data to evaluate what rates of dispersal could be expected between the reintroduced populations. By combining information from these 2 stages, we were able to evaluate what combination of population size and connectivity criteria allowed recovery of a metapopulation of Mexican wolves given current habitat conditions.

PVA is a structured method of integrating information on diverse threats to a population's persistence. Due to the magnitude of genetic threats to the Mexican wolf, we used an individual-based population simulation model (Vortex) (Lacy 2000; Lacy & Pollak 2012) that allows exploration of how genetic threat factors vary with population size and metapopulation structure. We combined the Vortex results with data from a previously published model (Carroll et al. 2006) that evaluated the distribution of potential wolf habitat in the southwestern United States.

Carroll et al. (2006) used a spatially explicit population model that allowed detailed treatment of spatial population dynamics and habitat configuration but lacked consideration of genetic issues. Their results suggest that the southwestern United States has 3 core areas with long-term capacity to support populations of several hundred wolves each. These 3 areas, each of which contains a core area of public lands subject to conservation mandates, are in eastern Arizona and western New Mexico (i.e., Blue Range, the location of the current wild population), northern Arizona and southern Utah (Grand Canyon), and northern New Mexico and southern Colorado (Southern Rockies) (Carroll et al. 2006). Based on the number and location of potential core areas, we structured our analysis to evaluate performance of a metapopulation of 3 populations and varied population

size and connectivity across a range of plausible recovery criteria.

Vortex Simulations of Population Viability

The Vortex model simulates the effects of both deterministic forces and demographic, environmental, and genetic stochastic events on wildlife populations (Lacy 2000; Lacy & Pollak 2012). Vortex simulates a population by stepping through a series of events that describe an annual cycle of a sexually reproducing, diploid organism. Vortex tracks the sex, age, and parentage of each individual in the population as demographic events are simulated. Vortex allows the user to specify the pedigree of the starting population and uses the genetic relationships among founders to derive inbreeding coefficients and other genetic metrics in subsequent simulated generations. Vortex allows tracking of both demographic metrics (population size, time to extinction) and genetic metrics (heterozygosity, allelic diversity, and inbreeding coefficient).

We adapted the Vortex model structure to make it appropriate for analysis of connectivity effects for a species with a complex social breeding system. We incorporated into the model the persistent monopolization of breeding opportunities by male and female alpha individuals. Once an individual achieves alpha status it will generally retain that status until death. This aspect of the wolf social system reduces genetic effective population size (N_e) and thus may enhance inbreeding effects. We also modified Vortex to track the observed number of genetically effective migrants per generation (here termed *migrant* and defined as the total number of individuals from all other populations that produces at least one offspring in the recipient population). These results were used to assess the effects of dispersal on population persistence and inform development of a recovery criterion for population connectivity. Alternative recovery criteria for population size were evaluated by creating a numeric threshold above which a percentage (10–16%) (Table 1) of any surplus individuals were removed annually. Further details, metadata, and sample input files documenting model structure are provided in Supporting Information.

We parameterized Vortex with available information from the wild Mexican wolf population (Fredrickson et al. 2007), the Northern Rocky Mountains (NRM) metapopulation (Smith et al. 2010), and other wolf populations (Supporting Information). We did not base model parameterization solely on data from the existing wild Mexican wolf population for 2 reasons. First, we analyzed potential persistence of populations reintroduced to new areas whose demographic rates may not match those of any extant population. Second, the existing wild population remains heavily manipulated via management removals and re-releases. Human-caused wolf mortalities in the existing wild population constituted 81% of the

Table 1. Results of sensitivity analysis of Vortex population model assessed using standardized coefficients from logistic regression of parameter sets against probability of extinction and quasi extinction.

Parameter	Minimum	Maximum	<i>z</i> value for probability of		
			extinction	quasi-ex.-150	quasi-ex.-250 ^a
Adult mortality ^b	18.32	27.48	167.46	162.48	111.15
Percentage of females in breeding pool	40	60	-160.67	-156.80	-104.49
Population size threshold	50	350	-158.63	-136.53	-72.03
Strength of inbreeding depression ^c	6.586	9.789	152.81	141.54	92.90
Density dependent reproduction	categorical		-92.42	-54.95	-8.35
Effective migrants per generation	0.0	2.4	-88.13	-56.17	-35.49
Average number of years between disease events	4	6	76.54	81.23	41.31
Pup mortality ^b	19.52	29.28	75.37	60.22	43.56
Variation between existing and new populations ^d	categorical		-34.12	-32.62	-24.79
Carrying capacity buffer ^e	1.07	1.60	-5.44	-51.50	-52.47
Harvest efficiency ^f	6.4	9.6	-3.86	-2.44	-12.65

^aQuasi-extinction occurs when the 8-year running mean population size falls below 150 or 250. All regressions are based on 1000 scenarios derived from randomized parameter sets, with 100 replicate runs per scenario. Standardized regression coefficients (*z* values), created by dividing a regression coefficient by its standard error, are unitless values whose magnitude indicates the relative importance of a parameter in the model.

^bFrom Smith et al. (2010) for Greater Yellowstone Area wolf population.

^cSlope parameter in equation of Fredrickson et al. (2007) relating litter size to inbreeding coefficient.

^dVariation in population performance arising from contrasts between populations in initial pedigree.

^eRatio of ecological carrying capacity to the population size threshold parameter.

^fReciprocal of proportion of the population above the population-size threshold that is removed annually.

mortalities with known causes from 1998 to 2011, primarily due to illegal shooting (43%), vehicle collisions (14%), and lethal management removals (12%) (Turnbull et al. 2013). However, since 2009, when revised management protocols restricted management removals, the wild population has shown positive demographic trends, growing from 42 to 75 individuals (USFWS 2012). Demographic rates in the wild population, particularly survival rate, thus remain highly contingent on management policy regarding removals. Our goal here was not to review the current status of the existing wild Mexican wolf population, but to assess what conditions would allow recovery of the subspecies as a whole.

Analysis of the potential effects of stochastic factors on viability requires the assumption that demographic rates alone will not cause deterministic population decline. However, demographic data collected over the last decade for the wild Mexican wolf population imply an intrinsic population growth rate of <1 (USFWS 2012). We therefore used mortality rates from the wolf population in the Greater Yellowstone Ecosystem (GYE) because mortality rates there (24.4% and 22.9% for pups and nonpups [yearlings and adults], respectively [Smith et al. 2010]) are intermediate among the 3 NRM core populations and represent a plausible goal for mortality rates after recovery actions are implemented but before delisting (Smith et al. 2010). Our baseline demographic parameter set resulted in a deterministic lambda of 1.23, which is similar to that used in previous Mexican wolf PVAs (Seal 1990; IUCN 1996). We evaluated the effect of alternate assumptions concerning mortality rates as part of the sensitivity analysis described below.

All simulated populations were started with wolves produced from the existing Mexican wolf pedigree (Siminski 2012). Founders of the existing wild (Blue Range) population were based on the known 2013 composition of the population projected forward 9 years to a starting population of 122 wolves (Supporting Information). The 2 other simulated populations were founded by assuming 2 pairs would be released each year from 2018 through 2022 into each population. We selected individuals for release from a hypothetical new generation of captive-born wolves that were minimally related and collectively represented genetic variation in the existing captive and wild populations. Released individuals produced offspring and experienced mortality after release, and surviving founders and offspring formed new pairs such that at the start of 2022 each of the 2 new populations contained 50 wolves and 10 pairs (Supporting Information).

Sensitivity Analysis

Although wolves are among the best studied of large mammals, substantial uncertainty exists on how to appropriately parameterize demographic models. We performed a global sensitivity analysis by generating 1000 sets of parameters in which values for 9 key parameters were drawn from a random uniform distribution with a range equal to $\pm 20\%$ of the mean value ("relative sensitivity analysis" [Cross & Beissinger 2001]) from their best estimates (Table 1). We also varied target population size and connectivity rates across a uniform distribution spanning a range of recovery criteria values (Table 1).

Each of the 1000 parameter sets was evaluated based on 100 replicate simulations of 100 years each.

We used a relative sensitivity analysis because several parameters were either aspects of model structure for which empirical distributions do not exist (carrying-capacity buffer [i.e., the proportion by which ecological carrying capacity exceeds the population size parameter] and harvest efficiency [i.e., proportion of the population above the population size parameter that is removed in a particular year]) or would be difficult to derive from the literature (Seal 1990; IUCN 1996) (see Supporting Information for references for demographic parameters in Table 1).

We used standardized coefficients from logistic regression of parameters against extinction and quasi-extinction outcomes to rank the effect of parameters on outcomes (Cross & Beissinger 2001). Dividing a regression coefficient by its standard error results in a standardized regression coefficient or z value, which expresses the unique contribution of that parameter scaled by the variability of the parameter (Cross & Beissinger 2001). The resulting z values (Table 1) are unitless and interpretable only in comparison with other z values in the same model. Significance tests and associated P values would be uninformative because the large number of scenarios considered (1000) arbitrarily inflates sample size.

Following the global sensitivity analysis, we generated 1000 scenarios of parameters in which population size and connectivity rates were again drawn from a random uniform distribution but other parameters were fixed at their mean values (Table 1). We used locally weighted regression (loess) (Cleveland & Devlin 1988) to evaluate in more detail the relation of extinction and quasi extinction to population size and connectivity rate.

Endangered and Threatened Status under the ESA

The ESA defines an endangered species as “at risk of extinction throughout all or a significant portion of its range” (16 U.S.C. §1532(3.6)) and a threatened species as “likely to become endangered in the foreseeable future” (16 U.S.C. §1532[20]). The statute does not provide a quantitative definition of *at risk of extinction*. Recovery plans typically include risk thresholds of 1% to 10% over periods ranging from several decades to a century. There is less agreement over interpretation of the statute’s definition of threatened status. Angliss et al. (2002) proposed that, to be consistent with the statute, criteria for threatened status should be defined by reference to the criteria for endangered status rather than directly in terms of extinction risk. This approach was subsequently incorporated into recovery plans for species such as the fin whale (*Balaenoptera physalus*), which will be removed from the list of threatened species when it “has less than a 10% probability of becoming endangered (has more than a 1% chance of extinction in 100 years) in 20 years”

(NMFS 2010). We used a time frame for the foreseeable future of 100 rather than 20 years because we analyzed genetic threats that require decades to accumulate to deleterious levels.

Incorporating Multiple Persistence Thresholds

To illustrate how tiered thresholds for endangered and threatened status might be informed by quasi-extinction metrics, we selected a population threshold (150 individuals) that corresponded to adequately low extinction risk (<10%) in exploratory analyses with baseline demographic rates. We then measured the proportion of simulations with a population size criteria of >150 in which, after the initial 30 years of population establishment, the 8-year (2 generation) running mean of population size drops below 150. As with extinction probability, the metrics report the mean quasi-extinction probability across the 3 populations.

Populations of most species continue to increase under state-level management after recovery and removal (delisting) from the federal list of threatened species. However, because wolves can negatively affect other resources (livestock, wild ungulates), state agencies may seek to manage delisted wolf populations at the lowest level consistent with maintaining recovered status. Due to genetic and other issues, long-term management of populations to a harvest-imposed ceiling may result in deterioration in vital rates (Mills 2012). Population thresholds implemented by the states after federal delisting are analogously related to threatened status in that they must ensure an adequately low probability of becoming threatened in the foreseeable future. This risk can be measured by a second quasi-extinction metric based on the probability of population size dropping below the threshold dividing endangered and threatened status (which was developed as described above). Under the ESA’s framework, the thresholds that distinguish extinct, endangered, threatened, and recovered species are thus interrelated and can be quantitatively assessed with a unified set of PVA-based metrics.

Feasibility of Alternative Connectivity Criteria

We assessed what rate of natural dispersal between potential core populations could be achieved given the distribution of habitat. We projected connectivity rates between primary core populations in the Mexican wolf metapopulation by relating observed connectivity rates in the NRM metapopulation (Vonholdt et al. 2010) to habitat-based effective distance between populations in both the NRM and the southwestern United States. Because published data on effective migration rate in the NRM are insufficient to build a predictive model, this extrapolation is necessarily qualitative, but nonetheless informative in this planning context. We also compared

habitat-based distances between the Mexican wolf and NRM metapopulation with the distances within those metapopulations to evaluate potential dispersal rates between the 2 metapopulations.

We compared results from 2 contrasting effective-distance metrics based on least-cost (shortest-path) distance and resistance (current flow) distance, respectively (Carroll et al. 2012) in order to assess the robustness of conclusions to choice of connectivity metric. Both least-cost distance and resistance distance have been correlated with gene flow in several species (McRae et al. 2008). Habitat suitability index values from a previously published study (Carroll et al. 2006) were assumed to be proportional to movement cost and conductance (see supplementary material S2 for description of habitat model). Least-cost distance, calculated using the Linkage Mapper software (McRae & Kavanagh 2011), represents cost of movement as distance, and identifies the single optimal path between two predetermined endpoints that has the shortest total distance (least total cost). In contrast to least-cost distance, resistance (current flow) distance integrates the contributions of all possible pathways across a landscape or network. We used Circuitscape software to calculate a resistance distance statistic that summarizes overall connectivity between each pair of core areas (McRae et al. 2008). Additionally, Circuitscape produced maps of current flow that can help planners direct conservation measures toward areas important for connectivity.

Results

Effects of Population Size and Connectivity on Extinction and Endangerment

Population size and dispersal rate interacted to influence probability of extinction and quasi extinction (Table 1, Figs. 1 & 2). Dispersal rate strongly affected extinction probability at population criteria below 200 but decreased in importance at larger population sizes (Fig. 1a). Dispersal rates of <0.5 migrants greatly increased extinction risk (Fig. 1b). Extinction risk continued to decrease at rates between 0.5 and 1 migrants for populations of <150, but there was less effect of increased dispersal on persistence for larger population sizes (Fig. 1b).

Dispersal rate had less effect on probability of endangerment (defined here by a quasi-extinction threshold of 150) than on probability of extinction (Table 1). Higher dispersal rates reduced the probability of endangerment in 2 ways. First, and most importantly, higher dispersal rates reduced the population size threshold corresponding to an extinction probability that was adequately low to merit downlisting (Fig. 1a). Second, higher dispersal rates reduced the probability of a downlisted population again dropping below that threshold and becoming en-

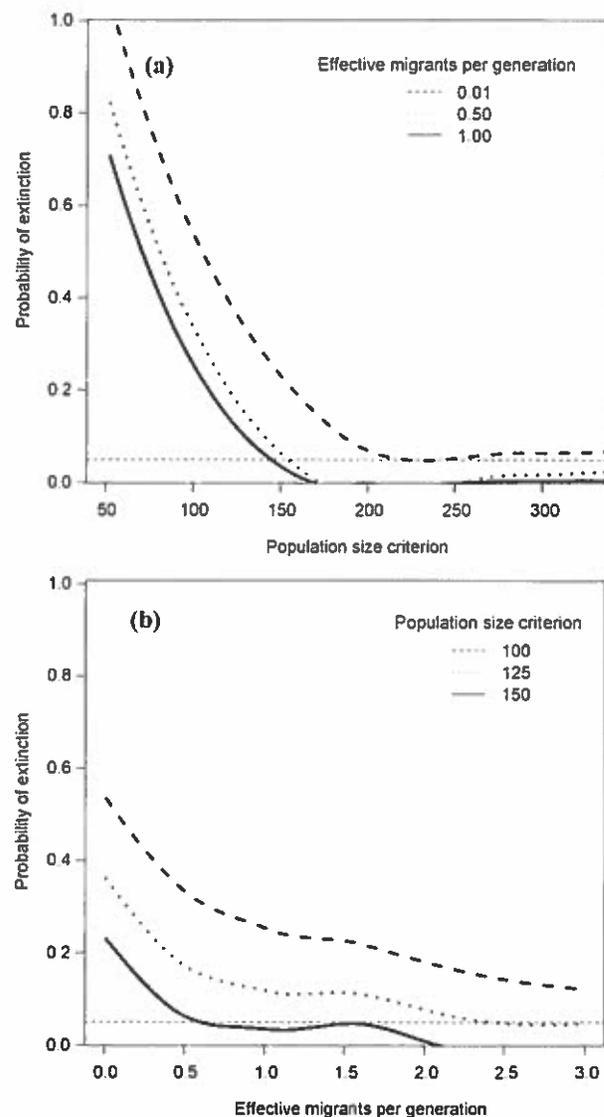


Figure 1. Relation of probability of extinction of Mexican wolf populations to (a) population size criterion and (b) dispersal rate (effective migrants per generation) on the basis of Vortex population simulations of a metapopulation of 3 subpopulations of the specified size. Sensitivity analysis is based on 1000 scenarios derived from randomized combinations of population size and dispersal rate, with 100 replicate runs per scenario. Continuous parameters are set at their mean value and results from categorical variables are averaged. Horizontal dotted line identifies a 5% population extinction-risk threshold commonly used in recovery plans.

dangered in the future (Fig. 2). Connectivity had less influence on persistence at the 250 quasi-extinction threshold (Table 1). Simulation results suggested that a buffer for each population of 50–100 individuals above the delisting threshold was needed to adequately reduce the risk that

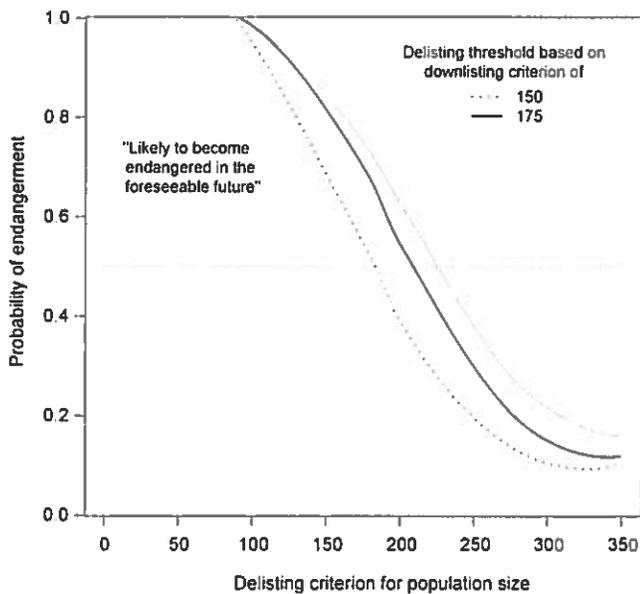


Figure 2. Relation of probability of endangerment (i.e., quasi extinction) to population-size criterion, as derived from the logistic regression of simulation results in the sensitivity analysis (black lines, results given dispersal of 1 effective migrant/generation; grey lines, dispersal of 0.5 effective migrants/generation). Probability of endangerment is based on the proportion of simulations in which the 8-year running mean of population size drops below a threshold based on analysis of extinction risk (Fig. 1) at any time after year 30 in the simulation. A population is classified as threatened when probability of endangerment exceeds a threshold (e.g., 50%, horizontal dotted line).

delisted populations would fall below that threshold in the foreseeable future.

Effects of Demographic Parameters on Persistence and Relisting

Results of the sensitivity analysis suggested that the most important parameters (absolute value of standardized coefficient > 100) were adult mortality, proportion of females in the breeding pool, and strength of inbreeding effects (Table 1). Parameters of intermediate importance (absolute value of standardized coefficient 70–100) were density-dependent reproduction, frequency of disease outbreaks, and pup mortality. Between-population variation was of lower importance. Carrying-capacity buffer and harvest efficiency were the least important parameters. Logistic regression of randomized parameter sets on probability of quasi extinction at either the 150 or 250 population thresholds yielded similar results, except that the effect of the carrying-capacity buffer increased and that of density-dependent reproduction de-

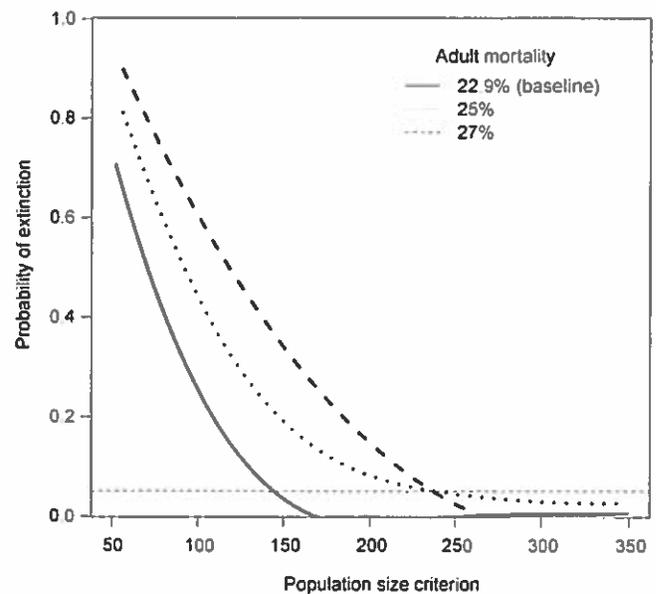


Figure 3. Relation of probability of extinction to population-size criterion under differing levels of adult mortality, as derived from the logistic regression of simulation results in the sensitivity analysis. Dispersal is assumed to be 1 effective migrant/generation. Horizontal dotted line identifies the 5% population extinction-risk threshold.

creased at these larger population thresholds (Table 1). The population-size criterion had as large an effect as the most influential demographic parameters on extinction and on quasi extinction at the 150 threshold but had lower effect at the 250 quasi-extinction threshold. The dispersal-rate criterion was of intermediate importance (Table 1). Conclusions regarding what population-size and connectivity criteria corresponded to a specific extinction risk were contingent on demographic parameters such as adult mortality, which had large z values in the sensitivity analysis (Fig. 3).

Determining Anappropriate Connectivity Criterion

Linkages between primary core populations were ranked similarly (Pearson correlation = 0.85, Spearman rank correlation = 0.72, $n = 9$) under both least-cost distance and resistance distance metrics (Supporting Information). For those linkages ranked more favorably based on resistance distance than based on least-cost distance, multiple linkages may allow more dispersal between those areas than expected based on their single shortest connection (Supporting Information). Projected connectivity between the Blue Range and both the Grand Canyon and Southern Rockies primary core populations was less than that of the 2 best NRM linkages (Supporting Information) but greater than that between the Grand Canyon and

Southern Rockies populations or between Yellowstone and northwestern Montana. When considered in the context of observed NRM migration rates (Hebblewhite et al. 2010; Vonholdt et al. 2010), this comparison suggests that it may be more difficult to achieve a connectivity criterion of 1 migrant/generation for the Mexican wolf in the southwest than for wolves in the NRM.

Because both distance metrics suggest that few direct migrants would be expected between the Grand Canyon and Southern Rockies, we structured the Vortex PVA to assume dispersal would occur along a chain of 3 populations rather than directly between all pairs of populations. This metapopulation structure provides the most dispersal to the centrally located Blue Range population, which otherwise would perform poorly relative to new populations derived from less-related individuals.

Least-cost and resistance distances between the Mexican wolf and NRM metapopulation were greater than any distances within those metapopulations. Mean intermetapopulation resistance distance was 1.23 and 1.34 that of intrametapopulation resistance distance for the NRM and Mexican wolf metapopulations, respectively. Mean intermetapopulation least-cost distance was 2.59 and 1.81 that of intrametapopulation resistance distance for the NRM and Mexican wolf metapopulations, respectively. Current maps suggest that a potential core area in northern Utah could serve as a key stepping stone to enhance connectivity between metapopulations (Fig. 4).

Discussion

Recovery plans for endangered species frequently include either aspirational objectives for maintaining connectivity or general rules of thumb rather than specific quantitative criteria (USFWS 1987). Results from our analysis demonstrate that, where sufficient data exists, quantitative connectivity criteria based on species-specific demographic and habitat data can form an objective and measurable component of recovery plans. Use of pedigree data for the existing wild population, as well as new populations founded by hypothetical captive pairings, allowed us to realistically incorporate genetic effects on restoration success. Results from recent advances in measurement of genetically effective migration rates (Vonholdt et al. 2010) were then integrated with habitat connectivity modeling to predict migration rates and target recovery actions at specific habitat linkages. The shift from simple connectivity rules of thumb to species-specific analyses parallels the previous shift from simple rules of thumb for minimum viable population size to detailed PVA modeling in endangered species recovery planning.

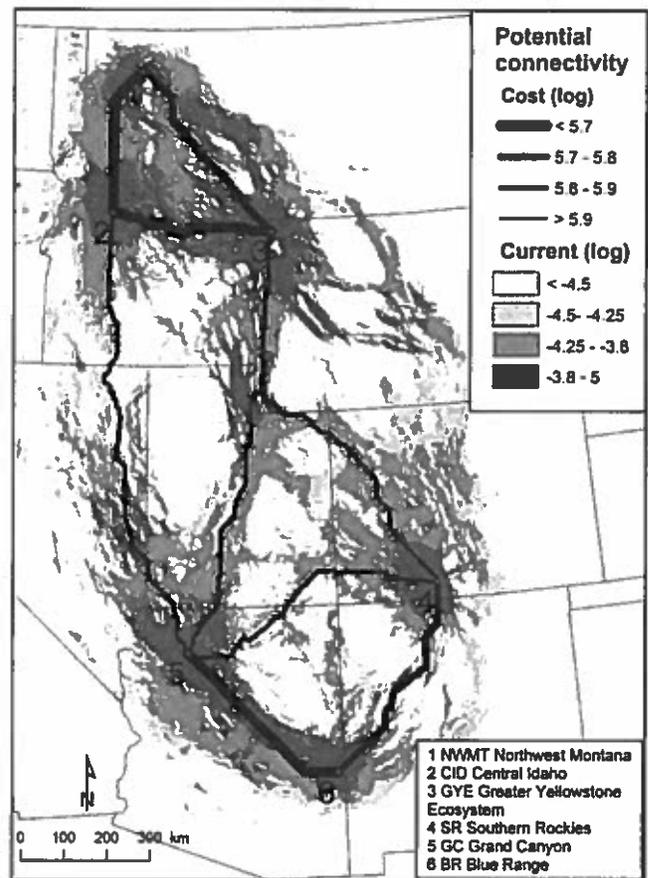


Figure 4. Potential habitat linkages between 6 existing or potential wolf-population core areas in the western United States (thickest lines, linkages with lowest least-cost distance; darkest gray shading, areas with highest importance for connectivity based on the resistance distance model; abbreviations for core areas correspond to labels in Appendix S3 in Supporting Information).

Importance of Connectivity Criteria

Population size had among the strongest influence on population persistence of any parameter evaluated in the sensitivity analysis (Table 1). Connectivity ranked among the moderately important parameters, suggesting that it also merits attention in recovery planning. The importance of connectivity suggested by our PVA results may be most relevant to other species that have been extirpated in the wild and subsequently recovered from a limited number of captive founders or to formerly widespread species that are now limited to small isolated populations. To avoid the genetic damage that may occur during demographic downturns associated with episodic events (e.g., drought, disease), a population derived from inbred and interrelated founders generally must have a larger census population size than a population derived from outbred and unrelated individuals (Allendorf et al.

2012). Similarly, a single effective migrant is more likely to increase persistence of inbred populations (Vilá et al. 2003).

Comparing general rules of thumb on adequate rates of connectivity with results from species-specific simulations can give context to PVA results. The most commonly proposed rule of thumb for connectivity states that one genetically effective migrant per generation into a population is sufficient to minimize the loss of polymorphism and heterozygosity within populations (Allendorf 1983). Our simulation results support use of this rule of thumb because population persistence declined more rapidly at rates below one migrant for smaller populations (<150) (Fig. 1b). Our results also suggest that ensuring lower but nonzero rates of connectivity (e.g., >0.5 migrants) remains important in cases where one migrant may not be achievable. The contrast between our results and previous reviews concluding that a rate of one migrant may be less than optimal for wild populations may be because in our model inbreeding affected persistence solely via effects on litter size, whereas previous reviews considered a broader suite of potential inbreeding effects (Mills & Allendorf 1996). Additionally, we did not consider what population and connectivity criteria would ensure maintenance of adaptive potential through a long-term balance between loss of alleles via genetic drift and new alleles produced by mutation (Franklin & Frankham 1998).

Although wolves are a relatively well-studied species, our simulations necessarily involved substantial uncertainty in both model parameters and structure (e.g., density dependence). Criteria such as population size and connectivity that primarily address stochastic factors remain important even when (as here) effects of deterministic factors and parameter uncertainty are large (Fig. 3). Our baseline parameters were based on the assumption that recovery actions would be effective in reducing the Blue Range population's currently high mortality rates. Alternate mortality-rate parameters would result in different population size and connectivity rates being required to achieve adequate population persistence (Fig. 3). Because metapopulations with adequate connectivity can better withstand less favorable demographic rates, inclusion of a connectivity criterion is precautionary and reduces uncertainty about the future status of a species.

In addition to evaluating extinction probability, we considered 2 quasi-extinction metrics related to probability of relisting as either endangered or threatened. The 2 metrics offered complementary insights regarding the resilience conferred by alternate recovery criteria. An exclusive focus on minimizing extinction might lead to criteria that result in a species persisting in a permanent state of endangerment, which is inconsistent with the intent of the ESA to recover self-sustaining populations (16 U.S.C. §1531[2][b], §1532 [3][3]). Use of multiple persistence metrics focuses attention on the often-ignored genetic

and other challenges inherent in managing wildlife populations to a fixed population ceiling (Mills 2012).

Mapping and Managing Population Connectivity

Previous recovery plans for wolves and other large carnivores such as grizzly bears (*Ursus arctos*) noted the importance of metapopulation connectivity but did not develop objective and measurable connectivity criteria (USFWS 1982, 1987). This may have been because at the time such plans were developed, there was less recognition of the synergistic effects of dispersal on genetic diversity and demographic performance of small populations. Due to recent advances in genetic assignment tests and other techniques that allow identification of genetically effective migrants, connectivity is increasingly measurable in wild populations (Vonholdt et al. 2010). When coupled with habitat-based connectivity models, these methods allow development of quantitative connectivity criteria and their incorporation into monitoring programs. Given evidence from other species for utility of effective-distance metrics in predicting gene flow (McRae et al. 2008), they are appropriate tools for informing wolf-recovery planning and demonstrate the utility of applying such methods to data gathered in future monitoring of reintroduced populations. Our results suggest that habitat-based metrics such as least-cost and resistance distance are useful for assessing expected migration rates, but that multiple metrics should be compared to provide a more-informative ranking of alternate linkages.

Differing levels of population connectivity imply qualitatively different genetic effects on populations. We focused primarily on recovery criteria relevant to inbreeding connectivity (Lowe & Allendorf 2010). In this context, our results suggest that viability of the existing wild population is uncertain unless additional populations can be created and linked by dispersal of >0.5 migrants/generation (Fig. 1). In contrast, adaptive connectivity (sensu Lowe & Allendorf 2010) requires only low levels of dispersal (>0.1 migrants) to spread advantageous alleles between populations. Although effective distance metrics suggest that dispersal between the NRM and Mexican wolf metapopulations may be low ($<<0.5$ migrants), this may be sufficient for maintenance of adaptive connectivity, with occasional dispersal maintaining a regional cline in genetic structure similar to historic conditions (Leonard et al. 2005). Recovery plans for formerly widely distributed species should consider how such broad-scale genetic structure can be restored via conservation of interregional linkages and stepping-stone habitat (Franklin & Frankham 1998).

An primary goal of the ESA in seeking to protect threatened and endangered species—as well as the ecosystems on which these species depend—is to recover these species to the point at which they are self-sustaining in

their natural habitat (U.S.C. §1531[2(b)]). Preservation of habitat connectivity and necessary levels of natural dispersal is analogous to preservation of the habitat that permits persistence of a wild population of any species. Absent a clear physical barrier to natural genetic exchange (such as a large urban area), achieving connectivity for highly vagile species such as the wolf via natural dispersal rather than artificial translocation is consistent with the intent of the ESA. Integrating PVA and connectivity models as we have done here allows planners to develop such criteria with species-specific PVA and to identify location-specific management actions necessary to meet these criteria and achieve recovery of self-sustaining populations.

Acknowledgments

We are grateful to J. Oakleaf and D. Smith for sharing unpublished data. P. Hedrick and B. Noon, and members of the Mexican Wolf Recovery Team Science and Planning Subgroup (K. Leong, M. Phillips, J. Servin, P. Siminski, D. Smith, and J. Vucetich) provided comments and reviews that improved the manuscript.

Supporting Information

A description of Vortex model structure and parameters (Appendix S1), description of habitat inputs and methods used in analysis of potential dispersal rates between populations (Appendix S2), plot of resistance distance versus least-cost distance between existing or potential wolf population core areas in the western United States (Appendix S3), and Vortex and connectivity analysis input files showing details of model structure used in simulations (Appendix S4) are available online. The authors are solely responsible for the content and functionality of these materials. Queries (other than absence of the material) should be directed to the corresponding author.

Literature Cited

- Allendorf, F. W. 1983. Isolation, gene flow, and genetic differentiation among populations. Pages 51–65 in C. M. Schonewald-Cox, S. M. Chambers, B. MacBryde, and L. Thomas, editors. *Genetics and conservation*. Benjamin/Cummings, Menlo Park, California.
- Allendorf, F. W., G. H. Luikart, and S. N. Aitken. 2012. *Conservation and the genetics of populations*. Wiley-Blackwell, Hoboken, New Jersey.
- Angliss, R. P., G. K. Silber, and R. Merrick. 2002. Report of a workshop on developing recovery criteria for large whale species. Technical memorandum NMFS-F/OPR-21. National Marine Fisheries Service, Silver Spring, Maryland.
- Ariza, M., L. Carrillo, R. List, P. Martínez, E. Martínez, O. Moctezuma, N. Sánchez, J. Servin. 2006. Taller para la Reintroducción del Lobo Mexicano (*Canis lupus baileyi*) en México. Reporte final. International Union for Conservation of Nature Species Survival Commission, Grupo Especialista en Conservación y Cría, Mexico City.
- Carroll, C., M. K. Phillips, C. A. Lopez-Gonzalez, and N. H. Schumaker. 2006. Defining recovery goals and strategies for endangered species: the wolf as a case study. *BioScience* 56:25–37.
- Carroll, C., B. McRae, and A. Brookes. 2012. Use of linkage mapping and centrality analysis across habitat gradients to conserve connectivity of gray wolf populations in western North America. *Conservation Biology* 26:78–87.
- Cleveland, W. S., and S. J. Devlin. 1988. Locally-weighted regression: an approach to regression analysis by local fitting. *Journal of the American Statistical Association* 83:596–610.
- Cross, P. C., and S. R. Beissinger. 2001. Using logistic regression to analyze the sensitivity of PVA models: a comparison of methods based on African wild dog models. *Conservation Biology*, 15:1335–1346.
- Forbes, S. H., and D. K. Boyd. 1997. Genetic structure and migration in native and reintroduced Rocky Mountain wolf populations. *Conservation Biology* 11:1226–1234.
- Franklin, I. R., and R. Frankham. 1998. How large must populations be to retain evolutionary potential? *Animal Conservation* 1:69–70.
- Fredrickson, R. J., P. Siminski, M. Woolf, and P. W. Hedrick. 2007. Genetic rescue and inbreeding depression in Mexican wolves. *Proceedings of the Royal Society B* 274:2365–2371.
- Hebblewhite, M., M. Musiani, and L. Scott Mills. 2010. Restoration of genetic connectivity among Northern Rockies wolf populations. *Molecular Ecology* 19:4383–4385.
- Hedrick, P. W., and R. J. Fredrickson. 2008. Captive breeding and the reintroduction of Mexican and red wolves. *Molecular Ecology* 17:344–350.
- IUCN (International Union for Conservation of Nature). 1996. Mexican wolf population viability analysis. IUCN Conservation Breeding Specialist Group, Apple Valley, Minnesota.
- Lacy, R. C. 2000. Structure of the VORTEX simulation model for population viability analysis. *Ecological Bulletins* 48:191–203.
- Lacy, R. C., and J. P. Pollak. 2012. Vortex: A stochastic simulation of the extinction process. Version 10.0. Chicago Zoological Society, Brookfield, Illinois. Available from <http://www.vortex10.org> (accessed June 2013).
- Leonard, J. A., C. Vilá, and R. K. Wayne. 2005. Legacy lost: genetic variability and population size of extirpated US grey wolves (*Canis lupus*). *Molecular Ecology* 14:9–17.
- Liberg, O., H. Andren, H. C. Pedersen, H. Sand, D. Sejberg, P. Wabakken, M. Åkesson, and S. Bensch. 2005. Severe inbreeding depression in a wild wolf (*Canis lupus*) population. *Biology Letters* 1:17–20.
- Lowe, W. H., and F. W. Allendorf. 2010. What can genetics tell us about population connectivity? *Molecular Ecology* 19:3038–3051.
- McRae, B. H., B. G. Dickson, T. H. Keitt, and V. B. Shah. 2008. Using circuit theory to model connectivity in ecology and conservation. *Ecology* 10:2712–2724.
- McRae, B. H., and D. M. Kavanagh. 2011. Linkage mapper connectivity analysis software. The Nature Conservancy, Seattle. Available from <http://code.google.com/p/linkage-mapper/> (accessed June 2013).
- Mills, L. S., and F. W. Allendorf. 1996. The one-migrant-per-generation rule in conservation and management. *Conservation Biology* 6:1509–1518.
- Mills, L. S. 2012. Population biology to guide sustainable harvest. Pages 251–268 in L. S. Mills, editor. *Conservation of wildlife populations: demography, genetics, and management*, 2nd edition. Wiley, Hoboken, New Jersey.
- NMFS (National Marine Fisheries Service). 2010. Recovery plan for the fin whale (*Balaenoptera physalus*). National Marine Fisheries Service, Silver Spring, Maryland.
- Notaro, M., A. Mauss, and J. W. Williams. 2012. Projected vegetation changes for the American Southwest: combined dynamic modeling and bioclimatic-envelope approach. *Ecological Applications* 22:1365–1388.

- Räikkönen, J., J. A. Vucetich, R. O. Peterson, and M. P. Nelson. 2009. Congenital bone deformities and the inbred wolves (*Canis lupus*) of Isle Royale. *Biological Conservation* 142:1025–1031.
- Seal, U. S. 1990. Mexican wolf population viability assessment: report of workshop, 22–24 October 1990. International Union for Conservation of Nature Conservation Breeding Specialist Group, Apple Valley, Minnesota.
- Siminski, D. P. 2012. Mexican Wolf, *Canis lupus baileyi*, international studbook, 2012. The Living Desert, Palm Desert, California, U.S.A. 119 pp.
- Smith, D. W., et al. 2010. Survival of colonizing wolves in the northern Rocky Mountains of the United States 1982–2004. *Journal of Wildlife Management* 74:620–634.
- Turnbull, T. T., J. W. Cain, and G. W. Roemer. 2013. Anthropogenic impacts to the recovery of the Mexican gray wolf with a focus on trapping-related incidents. *Wildlife Society Bulletin* 37:311–318.
- USFWS (U.S. Fish and Wildlife Service). 1982. Mexican wolf recovery plan. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.
- USFWS (U.S. Fish and Wildlife Service). 1987. Northern Rocky Mountain wolf recovery plan. Region 6, Denver, Colorado.
- USFWS (U.S. Fish and Wildlife Service). 2012. Annual reports on the Mexican gray wolf recovery program. USFWS, location. Available from <http://www.fws.gov/southwest/es/mexicanwolf/documents.cfm> (accessed June 2013).
- Vilá, C., et al. 2003. Rescue of a severely bottlenecked wolf (*Canis lupus*) population by a single immigrant. *Proceedings Royal Society London B* 270:91–97.
- Vonholdt, B. M., et al. 2010. A novel assessment of population structure and gene flow in grey wolf populations of the Northern Rocky Mountains of the United States. *Molecular Ecology*, 19:4412–4427.
- Vonholdt, B. M., et al. 2011. A genome-wide perspective on the evolutionary history of enigmatic wolf-like canids. *Genome Research* 21:1294–1305.
- Wayne, R., and P. Hedrick. 2011. Genetics and wolf conservation in the American West: lessons and challenges. *Heredity* 107:16–19.

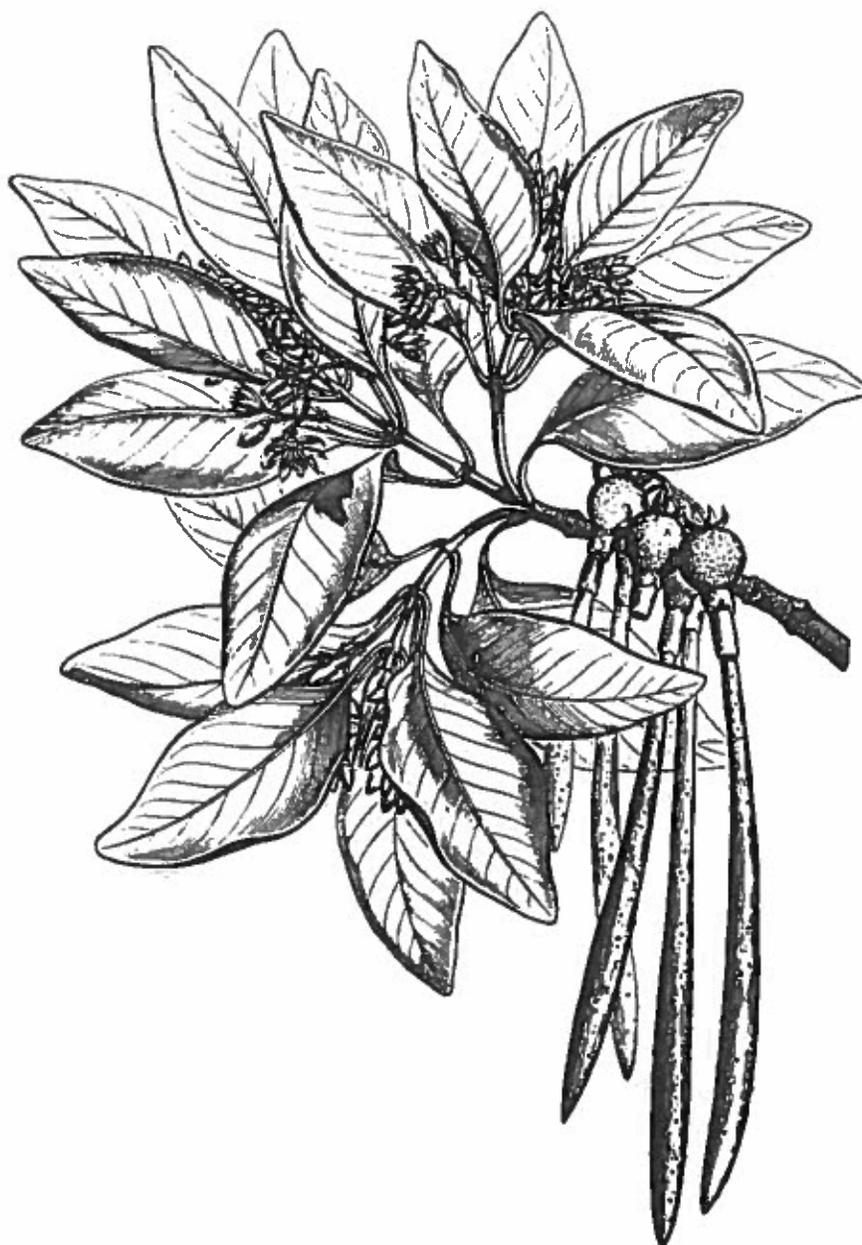


EXHIBIT 4

Defining Recovery Goals and Strategies for Endangered Species: The Wolf as a Case Study

CARLOS CARROLL, MICHAEL K. PHILLIPS, CARLOS A. LOPEZ-GONZALEZ, AND NATHAN H. SCHUMAKER

*We used a spatially explicit population model of wolves (*Canis lupus*) to propose a framework for defining rangewide recovery priorities and finer-scale strategies for regional reintroductions. The model predicts that Yellowstone and central Idaho, where wolves have recently been successfully reintroduced, hold the most secure core areas for wolves in the western United States, implying that future reintroductions will face greater challenges. However, these currently occupied sites, along with dispersal or reintroduction to several unoccupied but suitable core areas, could facilitate recovery of wolves to 49% of the area in the western United States that holds sufficient prey to support wolves. That percentage of the range with recovery potential could drop to 23% over the next few decades owing to landscape change, or increase to 66% owing to habitat restoration efforts such as the removal of some roads on public lands. Comprehensive habitat and viability assessments such as those presented here, by more rigorously defining the Endangered Species Act's concept of "significant portion of range," can clarify debate over goals for recovery of large carnivores that may conflict with human land uses.*

Keywords: *Canis lupus, conservation planning, Endangered Species Act, reintroduction, spatially explicit population model*

As human impacts on the biosphere increase, conservation biology must increasingly focus not only on preserving the current distribution of biodiversity but also on restoring species to areas from which they have been extirpated (figure 1). The success of restoration efforts depends in part on clarification of both the normative and the technical components of recovery goals (Breitenmoser et al. 2001). For example, the level of extinction risk tolerated or the extent of historic range to which recovery is desired are normative decisions guided by laws such as the US Endangered Species Act (ESA; 16 USC 1531–1540 [1988]). Once these normative aspects are resolved, conservation science can help identify which restoration strategy is most likely to ensure the desired level of recovery. Many of the species listed under the ESA are narrowly distributed endemics that can be protected by preserving a limited number of sites (Dobson et al. 1997). It is more difficult to define recovery goals for species such as the gray wolf (*Canis lupus*), which have large area requirements for viable populations, and whose protection may conflict with existing land uses such as livestock production. The scientific methodology used to define recovery goals and strategies for endangered species has not fully integrated recent technical advances in conservation biology, such as spatially explicit population models (SEPMs; Dunning et al. 1995). We present an example of such an analysis applied to the wolf, a high-profile endangered species whose proposed recovery goals (68 Federal Register 15804–15875) have recently been the subject of litigation (*Defenders of Wildlife v. Norton*, Civ. 03-1348-JO [2005]; *National Wildlife Federation v. Norton*, 03-

CV-340 [2005]), to demonstrate how these methods can introduce key scientific knowledge into the debate over recovery goals and facilitate the decisionmaking process by illustrating the efficacy of alternate management scenarios.

Although the ESA of 1973 was the third in a series of laws aimed at protecting imperiled species, it was the first to offer protection to any species in danger of extinction throughout all or a significant portion of its range. By including the phrase "significant portion of its range," Congress signaled its intent that listed species should not simply be saved from extinction, but rather recovered so that populations inhabit relatively large areas (i.e., significant portions) of suitable habitat within historic ranges. Case law (*Defenders of Wildlife v. Norton*, 258 F.3d 1136 [2001], 239 F. Supp. 2d 9 [2002], Civ. 03-1348-JO [2005]; *National Wildlife Federation v. Norton*, 03-CV-340 [2005]) and previous delisting actions by the US Fish and Wildlife Service (USFWS) are consistent with this intent, as the 15 taxa that have been declared recovered since passage of the ESA were generally widely distributed at the time of delisting. This expectation was buttressed when Con-

Carlos Carroll (e-mail: carlos@klamathconservation.org) is with the Klamath Center for Conservation Research, Orleans, CA 95556, and is conservation science advisor for the Wilburforce Foundation in Seattle. Michael K. Phillips is with the Turner Endangered Species Fund, 1123 Research Drive, Bozeman, MT 59718. Carlos A. Lopez-Gonzalez is with the Universidad Autonoma de Querétaro, Querétaro, Mexico 76010. Nathan H. Schumaker is with the US Environmental Protection Agency, Corvallis, OR 97333. © 2006 American Institute of Biological Sciences.



Figure 1. In 1995, M. K. P. (the second author) and others released the first wolves to inhabit Yellowstone National Park in 70 years. Endangered species recovery efforts often involve reintroduction of animals to unoccupied but potentially suitable habitat. However, the extent of historic range to which reintroduction is needed is a controversial issue for formerly widespread species such as the wolf whose restoration may conflict with human land uses, such as livestock grazing on public lands. Photograph: National Park Service/Jim Peaco.

gress defined the term “species” to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature” (ESA section 3[15]). The policy of recognizing distinct population segments (DPSs) allows for protective measures before the occurrence of large-scale declines that would necessitate listing a species or subspecies throughout its entire range (61 Federal Register 4722).

In the late 1950s, the number of gray wolves inhabiting the conterminous United States reached an all-time low, with fewer than 1000 wolves occupying less than 1% of the species’ historic range in northeastern Minnesota and the adjacent Isle Royale National Park (Phillips et al. 2004). Three decades after passage of the ESA, owing to the expansion of populations in Minnesota and Canada and to reintroduction efforts in the northern Rocky Mountains (USFWS 1994) and the southwestern United States (USFWS 1996), about 4500 wolves occupy about 5% of the species’ historic range in the conterminous United States (figure 2). In response to this improved conservation status, in April 2003 the USFWS published a reclassification rule that divided the lower 48 states into three DPSs (figure 2), retaining the experimental–nonessential population areas in the northern Rocky Mountains (USFWS 1994), but elsewhere downlisting the eastern and western gray wolf DPSs from endangered to threatened and indicating that recovery objectives for both had been met (68 Federal Register 15804–15875). However, in 2005, two federal court rulings vacated and enjoined the rule on the basis, in part, that it lacked comprehensive consideration of

the phrase “significant portion of range” and misapplied the DPS policy (*Defenders of Wildlife v. Norton*, Civ. 03-1348-JO [2005]; *National Wildlife Federation v. Norton*, 03-CV-340 [2005]). When considered with the two earlier rulings cited above, this indicates that future recovery plans for wolves and other listed species should be guided by a rangewide determination of habitat suitability and relevant principles of conservation planning. The three principles of representation (establishing populations across the full array of potential habitats), resiliency (protecting populations large enough to remain viable), and redundancy (saving enough different populations that some can be lost without a loss of the species) are widely invoked guidelines for ensuring conservation of threatened species, even in the face of geographically widespread threats such as climate change (Shaffer and Stein 2000). By broadening recovery criteria to encompass representation, these principles recognize that a single population may not represent species recovery, even if it is large enough to be significantly resilient to extinction. For wide-ranging species such as the wolf, the importance of connectivity (protecting linkage areas, especially those that enhance viability by connecting larger with smaller populations) may justify its addition as a fourth principle for defining recovery goals (Soulé and Terborgh 1999).

In the 2003 proposed rule, the USFWS conflated the concepts of population viability and recovery. The claim that the ESA mandates only maintaining a species’ viability (preventing extinction) rather than effecting recovery was first made in a 1986 revision to the regulations governing ESA

enforcement (50 CFR 402), but has been repeatedly rejected by the courts (Suckling and Taylor 2005). This distinction is especially important for species such as the wolf or grizzly bear (*Ursus arctos*) that currently occupy a small portion of their historic range, because ESA mechanisms for maintaining viability restrict only “take” of individuals or occupied habitat, whereas ESA mechanisms for effecting recovery may restrict the destruction of unoccupied but suitable habitat and call for proactive measures to promote population reestablishment (Suckling and Taylor 2005). Although the bulk of the ESA’s language addresses recovering individual species, Congress also included language that mandates the conservation of ecosystems on which listed species depend. Because of this, some researchers have proposed an additional guideline for recovery planning, the principle of ecological effectiveness (Soulé et al. 2005). An ecologically effective population contains enough individuals with a wide enough geographic distribution to reestablish the species’ role in ecosystems. The argument for reestablishing ecologically effective populations is most persuasive in the case of the wolf and other “keystone” species that strongly influence ecosystem function through interspecific interactions such as predation (figure 3). For example, the return of wolves to Yellowstone has triggered a cascade of top-down effects on that ecosystem (Smith et al. 2003). Wolf predation has reduced the ability of elk to concentrate browsing on preferred species such as aspen (*Populus tremuloides*), leading to the recovery of riparian vegetation and associated species (Ripple and Beschta 2004). Because the wolf is a keystone species that was historically widespread throughout the western United States, yet whose recovery may conflict with current land-use practices such as livestock grazing on public lands, it provides an ideal case study of the role of conservation science in clarifying species recovery goals. We first present an example of a rangewide analysis for the wolf in the western contiguous United States, and then describe the use of an SEPM to help define recovery goals and strategies at a finer scale for the southwestern DPS (SWDPS) for the gray wolf (figure 2).

Rangewide analysis for the western United States

We analyzed potential wolf habitat and population viability across the western contiguous United States, from the western edge of the Great Plains to the Pacific Ocean, an area of about 2,800,000 square kilometers (km²) (figure 2). The structure of the SEPM (PATCH, or program to assist in tracking critical habitat) and input habitat models used in this study are described in detail elsewhere (Schumaker 1998, Carroll et al. 2001a, 2001b, 2003a, 2003b) and summarized here (box 1). We calibrated habitat rankings to specific demographic values based on field studies from areas that showed similar habitat quality to the habitat classes in the SEPM input layers (Ballard et al. 1987, Fuller 1989, Hayes and Harestad 2000, Fuller et al. 2003, Smith et al. 2004). Because the analysis covers a large and ecologically diverse region, the geographic information system, or GIS, models for fecundity and survival

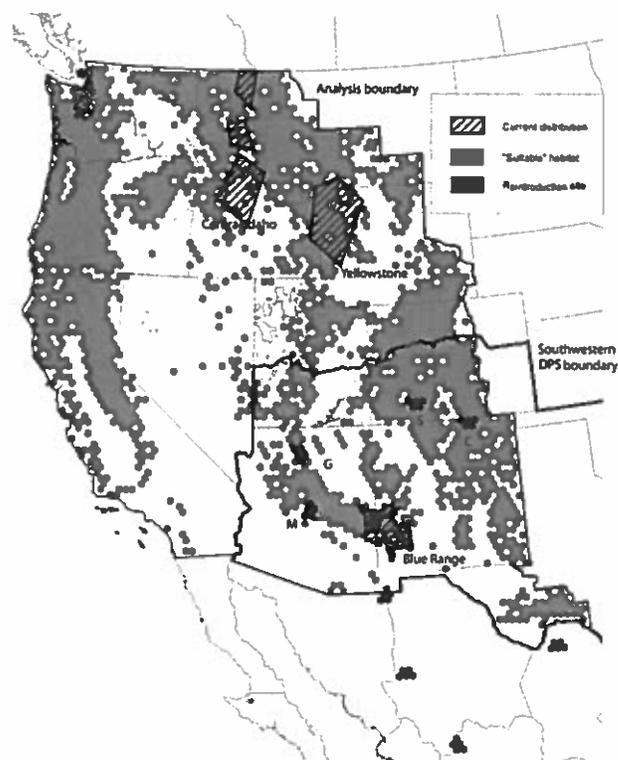


Figure 2. Map of the analysis area and the approximate location of wolf (*Canis lupus*) populations in the western United States, including the existing Yellowstone, central Idaho, and Blue Range reintroduction sites and the population in northwestern Montana established by dispersal from Canada. Nearly all of the area within the analysis boundary is within the historic geographic range boundary of the gray wolf, although more arid areas typically held few wolves. The extent of habitat defined as “suitable” in this analysis (meeting the productivity threshold that allows breeding in the PATCH model) is shown in gray. The boundaries of the southwestern distinct population segment, or DPS (as proposed by the US Fish and Wildlife Service [68 Federal Register 15804–15875]), are shown. Locations within the southwestern DPS evaluated as potential reintroduction sites in this study are shown in black. Abbreviations: C, Carson; G, Grand Canyon; M, Mogollon; S, San Juan Mountains.

must use general habitat data that are available in every state. This is a lesser problem for the survival input layer, because roads and human population have a similar negative effect on large carnivore survival in diverse habitats (Thiel 1985, Fuller et al. 2003). A metric combining road density, local human population density, and interpolated human population density (Merrill et al. 1999) predicted survival in the spatially explicit population modeling (figure 4b).

Estimating wolf fecundity (reproductive rates) across the western United States is more difficult. Abundance estimates of ungulate prey are not collected in some areas of the western United States, and where they do exist, they show strong



Figure 3. Wolves in Yellowstone have reduced the ability of elk to concentrate foraging on aspen, cottonwood, and other favored species, thus allowing the recovery of key riparian vegetation and its associated biota. Restoring such top-down ecosystem processes involving wolves and other keystone species may require ecologically effective populations (i.e., populations that are larger and more widespread than would be necessary to ensure viability of the species itself). Photograph: Bob Landis.

Box 1. Spatially explicit population models.

Conservation planners assess the distribution of wildlife habitat (including potentially suitable but currently unoccupied areas) with the aid of computer models of varying complexity. Broadly speaking, large carnivores such as the wolf can persist in areas where there is sufficient food and where persecution by humans is low (Fuller et al. 2003). A simple model of recovery potential could therefore highlight large roadless areas with sufficient productivity or extensive forest habitat. More complex spatially explicit population models (SEPMs) might also begin with data on road density and productivity, but would then integrate additional information on species characteristics such as demographic rates and dispersal behavior. For example, social carnivores, such as the wolf, often require larger territories than solitary species of similar size, and may thus be more vulnerable to landscape fragmentation (Carroll et al. 2003a). Unlike the simpler model, an SEPM can provide insights on the effects of population size and connectivity on viability and can help identify the locations of population sources and the degree of threat to those areas from landscape change (figure 4a; Carroll et al. 2003b).

PATCH (program to assist in tracking critical habitat), the SEPM used here, is designed for studying territorial vertebrates. It links the survival and fecundity of individual animals to geographic information system (GIS) data on mortality risk and habitat productivity at the scale of an individual or pack territory (Schumaker 1998). Territories are allocated by intersecting the GIS data with an array of hexagonal cells (figure 4c). The different habitat types in the GIS maps are assigned weights based on the relative levels of fecundity and survival expected in those habitat classes. Base survival and reproductive rates, derived from published field studies, are then supplied to the model as a population projection matrix (box 2; Caswell 2001). The model scales these base matrix values using the mean of the habitat weights within each hexagon, with lower means translating into lower survival rates or reproductive output (figure 4c). Each individual in the population is tracked through a yearly cycle of survival, fecundity, and dispersal events (figure 4a). Environmental stochasticity is incorporated by drawing each year's base population matrix from a randomized set of matrices whose elements were drawn from a beta (survival) or normal (fecundity) distribution (coefficients of variation given in box 2). Adult organisms are classified as either territorial or floaters. The movement of territorial individuals is governed by a parameter for site fidelity, but floaters must always search for available breeding sites. As pack size increases, pack members in the model have a greater tendency to disperse and search for new available breeding sites (Carroll et al. 2003a). Movement decisions use a directed random walk that combines varying proportions of randomness, correlation, and attraction to higher-quality habitat (Schumaker 1998).

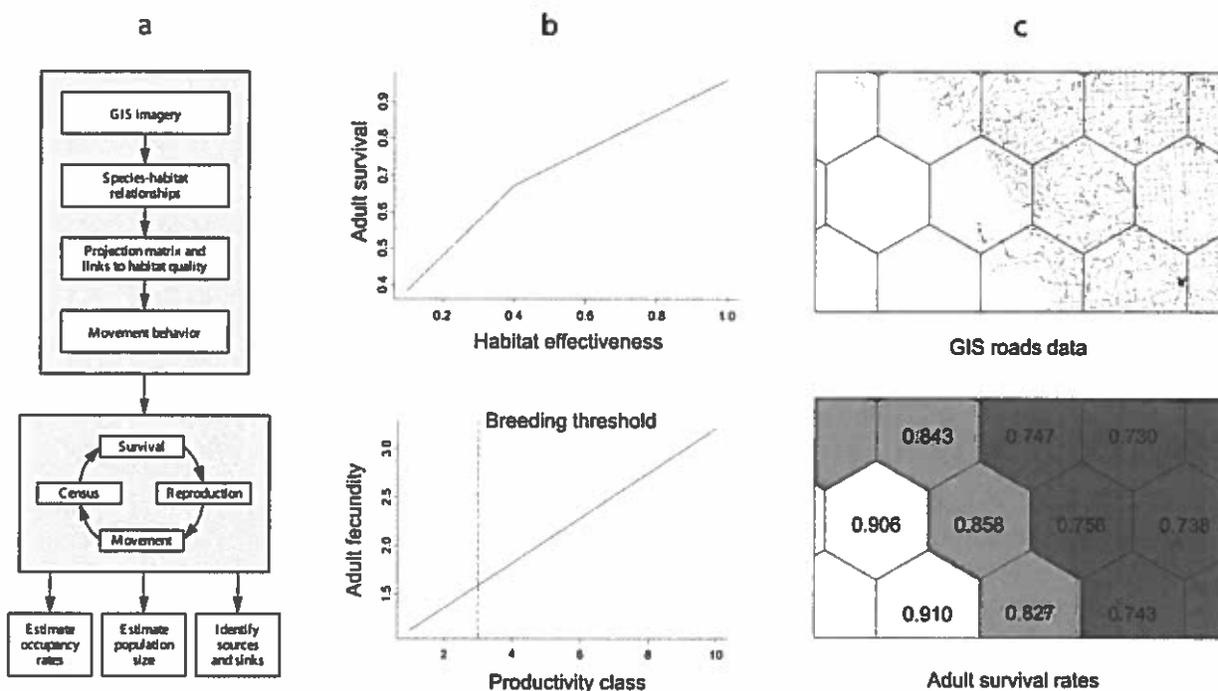


Figure 4. Spatially explicit population models (SEPMs) represent population processes by tracking the spatial location of individuals and landscape features. (a) A flowchart of the simulation process in PATCH, the SEPM used in this study. (b) Graphs of the relationship between GIS-based habitat values and demographic values for fecundity (given as females produced per pack) and survival for wolves. (c) Territories are allocated by overlaying an array of hexagonal cells on GIS habitat data. For the wolf, data on roads are used in combination with human population data to calculate the metric of habitat effectiveness used to scale wolf survival rates. Abbreviation: GIS, geographic information system.

inconsistencies across state boundaries. Therefore, as a surrogate for fecundity, we used tasseled-cap greenness (Crist and Cicone 1984), a metric derived from MODIS (Moderate Resolution Imaging Spectroradiometer) satellite imagery from mid-July 2003 and 2004 (Wharton and Myers 1997). "Pseudo-habitat" variables such as greenness that are derived directly from unclassified satellite imagery are correlated to varying degrees with ecological factors such as net primary productivity and green phytomass (Cihlar et al. 1991, Merrill et al. 1993, White et al. 1997), and thus with abundance of ungulate prey species, although this relationship is weakened by phenological variation between years and by spatial variation in the percentages of bare ground and of dry biomass (Merrill et al. 1993). Summer greenness values are strongly correlated with ungulate density in the northern Rocky Mountains and Pacific Northwest (Carroll et al. 2001b, 2003a), and with carnivore habitat in other regions (Mace et al. 1999, Carroll et al. 2001a). However, the link between greenness and prey abundance may be less general across the larger and more ecologically varied region addressed in this study than is the well-established link between prey abundance and wolf density (Fuller et al. 2003). Therefore, to avoid overestimation of prey abundance in nonforest habitats, we used data on vegetation type to rate forest habitat higher than shrubland habitat with similar greenness values. Nonnatural (agricul-

Box 2. Parameters used in the PATCH model of wolf population dynamics in the western United States.

Territory size: 504 square kilometers (km²)
 Maximum dispersal distance: 750–1500 km
 Survival rates (maximum):

- Young, year 0: 0.46
- Subadult, year 1: 0.86
- Adult, > 2 years: 0.96
- At senescence (year 8): 0.69

Fecundity rates (maximum number of female offspring per adult female or pack):

- Subadult, year 1: 0
- Adult, year 2: 2.29
- Adult, > 3 years: 3.21

Coefficient of variation in demographic rates:

- Fecundity: 30%
- Pup (year 0) mortality: 40%
- Adult mortality: 30%

tural and urban) habitat was given zero habitat value. Because wolves are coursing predators that avoid steep terrain, the wolf fecundity model also incorporated the negative effect of slope on prey vulnerability (Paquet et al. 1996, Carroll et al. 2001b).

The results of the PATCH model are generally more sensitive to the demographic parameters used, and to how these parameters were assigned to habitat classes, than to variation in other parameters, such as dispersal distance (Carroll et al. 2003b). The large body of published research on relationships between wolf demographics and habitat (e.g., as reviewed in Fuller et al. 2003) strengthens the power of conceptual models such as those used here. In previous studies, SEPM predictions of wolf distribution were strongly correlated with wolf distributions as recorded in regional-scale field surveys (Carroll et al. 2003a). This is most likely because large carnivore distribution is strongly limited by human influences, for which easily mapped attributes such as road density are good surrogates (Carroll et al. 2001a). Such "pattern-oriented" calibration of complex spatial models may in some cases reduce uncertainty due to poorly known demographic parameters (Wiegand et al. 2004).

The landscape-change scenarios we used estimated potential change in human-associated impact factors (e.g., roads and human population) by proportionately increasing road density and by increasing human population on the basis of current trends derived from a time series of human census data. Census data were available for the period 1990–2000 (USCB 1991). We predicted human population growth from 2000 to 2025 based on growth rates from 1990 to 2000, but adjusted the predicted 2025 population to match state-level predictions based on more complex socioeconomic models. Human population in the area of our analysis is predicted to grow 42%, from 62 million to 88 million, in the period 2000–2025. Because available road data are of varying dates, it is not possible to assemble a regional chronosequence of road distribution and determine county-level rates of increase in roads. Therefore, the road density parameters incorporate an increase of 1% per year (proportional to the current road density at the 1-km² scale) across the study area. We chose to use a rate (1% per year) that is half of that seen in the most rapidly growing portions of our study region (e.g., western Colorado; Theobald et al. 1996). Similarly, we used a simplified habitat restoration scenario that assessed the effects of removing 1% of the roads on public lands per year.

We treated human impacts within strictly protected areas (parks with no hunting or trapping) as less lethal than in other areas, because of the lack of incidental mortality from hunters in those areas. In the landscape-change analysis, we also treated all protected areas (includ-

ing those with hunting) differently from unprotected habitat in that we assumed no increase in road density over time. The simulations began with animals inhabiting all suitable habitat. We define "suitable habitat" as the areas with sufficient food resources to support reproduction (i.e., fecundity values above the threshold value for breeding; figure 2). The threshold determining the extent of suitable habitat was based on the historic distribution and abundance of wolves and their prey, which was low in semiarid, nonforested regions of the Great Basin and Sonoran Desert (Young and Goldman 1944). By the end of the 200-year simulations, animals persisted only in "occupiable" habitat, which we define as the areas with greater than 50% potential for long-term occupation despite the presence of human impacts (figure 5). Thus "current" predictions depict, not the number of animals now inhabiting an area, but the capacity of current habitat conditions to support a resident wolf population over the long term (200 years).

The five landscape scenarios examined (table 1) were as follows:

1. Scenario A: Current conditions (i.e., potential long-term viability given current habitat conditions).
2. Scenario B: Future conditions (with human population as of 2025), with increased road development on private lands only.
3. Scenario C: Future conditions (with human population as of 2025), with increased road development on both private and unprotected public lands.
4. Scenario D: Current conditions (with human population as of 2000), with decreased road development on public lands.
5. Scenario E: Future conditions (with human population as of 2025), with decreased road development on public lands and increased road development on private lands.

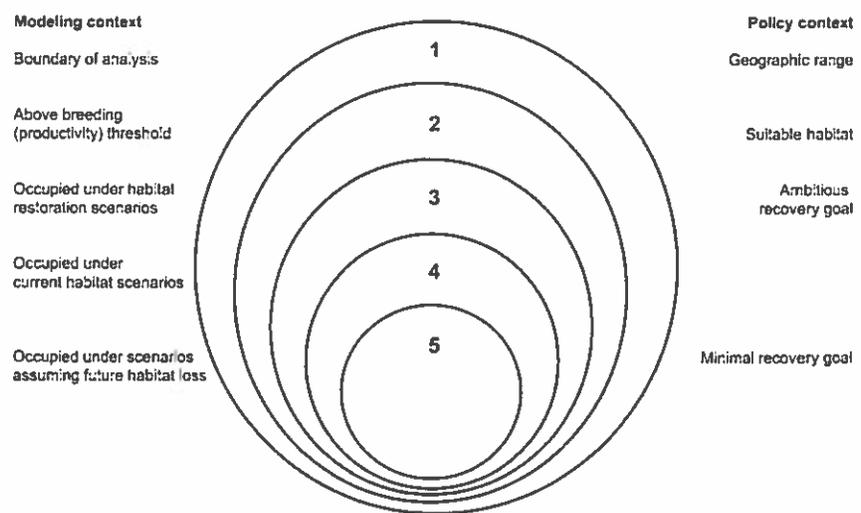


Figure 5. Conceptual diagram of the relationship between the various geographic levels of range occupancy as defined by the application of spatially explicit population models to evaluate recovery thresholds.

Table 1. Levels of human impacts used to parameterize wolf survival in alternate scenarios using the PATCH (program to assist in tracking critical habitat) model.

Scenario	Parameter		
	Human population	Roads on public land	Roads on private land
A	Current level (2000)	Current level (2000)	Current level (2000)
B	Predicted level (2025)	Current level (2000)	Predicted level (2025)
C	Predicted level (2025)	Predicted level (2025)	Predicted level (2025)
D	Current level (2000)	Potential level given road closure/removal on public lands ^a	Current level (2000)
E	Predicted level (2025)	Potential level given road closure/removal on public lands ^a	Predicted level (2025)

Note: Wolf survival was parameterized to vary inversely to levels of human population and road density.

a. Assumes closure or removal on 1% of public lands per year for 25 years.

Although any restoration of public lands would take place over time, we included scenario D to help separate the contrasting effects of this restoration of public lands and the continued degradation of private lands. Scenario E depicts a high-contrast landscape with restored core areas of public lands embedded in a generally unfavorable environment of heavily roaded private lands.

Analysis at the scale of a distinct population segment

We next evaluated restoration strategies at the scale of a DPS. The SWDPS encompasses the states of Arizona, New Mexico, southern Utah, southern Colorado, and western Texas and Oklahoma, as well as adjacent areas in northern Mexico that were part of the historic range of the Mexican wolf (*C. lupus baileyi*; figure 2). The Mexican wolf has been the focus of conservation concern due to its high level of genetic distinctiveness and the fact that it is extinct in the wild, with the exception of a small population reintroduced to the Blue Range of Arizona and New Mexico in 1998 (Brown and Parsons 2001). We used the SEPM to evaluate the adequacy of a recovery goal similar to that established for the gray wolf in the northern Rocky Mountains: the creation of three wolf populations of at least 100 individuals each (USFWS 1987). We compared the wolf distribution achieved by this goal with the extent of suitable habitat and ecoregions in the DPS. Ecoregions are commonly used as surrogates for biogeographic gradients (Groves 2003). These analyses, as in the earlier rangewide assessment, were based on the long-term potential of an area to support wolf populations, as predicted by the PATCH simulations. Because management actions to remove wolves often arise from livestock depredation, we added a scenario that incorporated data on levels of cattle grazing into the mortality risk metric for wolves. We also modeled specific reintroduction options to assess transient dynamics such as the probability of extinction and the probability of an area being colonized by dispersers from a specific reintroduction site (Carroll et al. 2003a). We evaluated the sensitivity of results to varying assumptions as to maximum dispersal

distance. We performed 1000 simulations of 200 years each for each reintroduction scenario.

We identified eight potential reintroduction sites, four in the United States and four in Mexico, based on the results of initial SEPM simulations. Here we discuss only the results for the US sites: Carson (northern New Mexico), the Grand Canyon (northern Arizona), the Mogollon Rim (central Arizona), and the San Juan Mountains (southwestern Colorado; figure 2). A fifth site in the Blue Range Wolf Recovery Area (BR-WRA; Arizona and New Mexico) was also included to provide comparability with current recovery program results.

Each of these sites was evaluated in detail by simulating the effects of releasing wolves at that site alone. Each reintroduction site comprised five adjacent potential wolf territories, totaling 2500 km². We approximated the standard reintroduction protocol (Bangs and Fritts 1996) by introducing five breeding-age females in the first year and setting survival for the first 5 years at close to 100% under the assumption that new animals would be released to replace mortality among the initial releases.

Results of rangewide analysis

The habitat quality threshold used in the SEPM simulations resulted in 44% of the western United States being judged suitable for breeding (i.e., having sufficient prey to support territorial wolves). The proportion of that "suitable" habitat likely (> 50% probability) to be occupied by wolves was 49% under current conditions (scenario A; figure 6a), 32% under future conditions without new roads on public lands (scenario B; a decrease of 35%), 23% under future conditions with development on public lands (scenario C; figure 6b; a decrease of 53%), 61% under current conditions with road closure or removal on some public lands (scenario D; figure 6c; an increase of 25%), and 45% under future conditions with road removal on public lands (scenario E; a decrease of 8%). The potential size of the wolf population in the western United States was predicted to be close to 7000 under current conditions, with a decrease of 29% under scenario B, a decrease of 44% under scenario C, an increase of 24% under scenario D, and a decrease of 6% under scenario E.

Under current conditions, the states of Montana, Colorado, Wyoming, and Idaho have the largest potential wolf populations, followed by Arizona, Utah, and New Mexico (figure 7). Rather than artificially dividing habitat by state lines, one can also identify distinct population centers from the SEPM results (figure 6a). The largest wolf populations could inhabit the Greater Yellowstone ecosystem (GYE) and central Idaho (figure 6), both areas in which wolf reintroduction has already achieved notable success (Phillips et al. 2004). Population centers of the second rank (smaller size) are found in north-

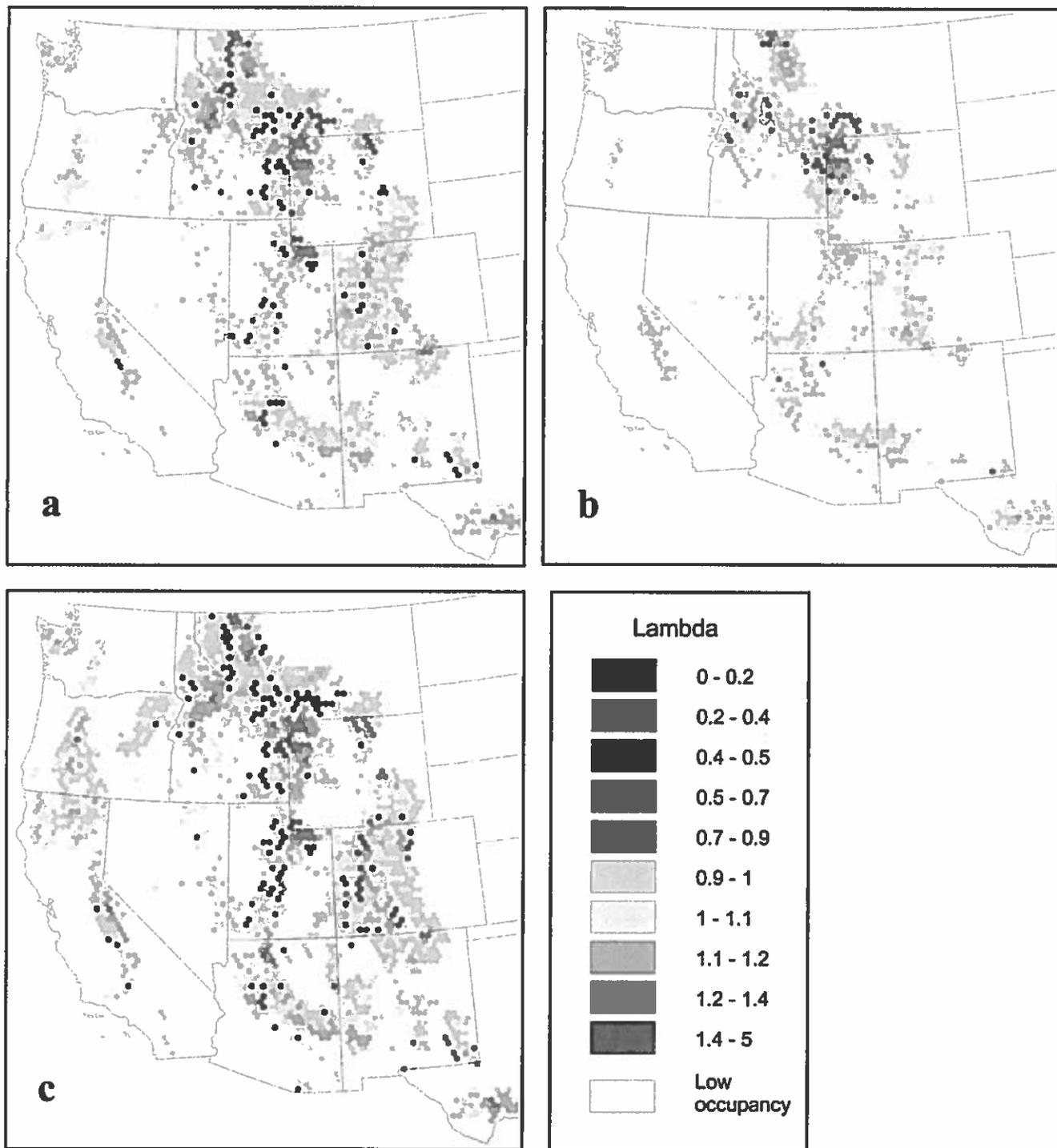


Figure 6. Potential distribution and demography of wolves as predicted by the PATCH model in the western United States under three landscape scenarios: (a) scenario A, current conditions (i.e., potential long-term viability given current habitat conditions); (b) scenario C, future conditions, with human population as of 2025, with increased road development on both private and unprotected public lands; and (c) scenario D, current conditions, with human population as of 2000, with restoration (reduction in roads) on public lands. Those areas with a predicted probability of occupancy of less than 25% are shown as "low occupancy." Some of these areas are infrequently occupied (i.e., between 25% and 50% of the simulations) but are shown to illustrate potential landscape linkages.

western Montana and western Colorado, of the third rank in the Blue Range and Utah's high plateaus region, and of the fourth rank in Oregon's Cascades. The populations most vulnerable to landscape change (as reflected by percentage decline from scenario A to scenario C) are those in Colorado and Oregon (figure 6). The New Mexico wolf population also declines dramatically under landscape change (figure 6b) but is supported by its connections to Colorado and Arizona populations. The populations that most benefit from road removal on public lands (scenarios D and E) are those in (a) western Oregon and northern California, (b) Colorado and New Mexico, and (c) western Montana (figures 6c, 7).

Results of analysis at the scale of a distinct population segment

In addition to the current reintroduced population in the Blue Range, the Grand Canyon reintroduction site showed a high probability of success (low extinction rates) and rapid geographic expansion (table 2). Several other reintroduction sites showed higher, but still relatively low, extinction rates. If we assumed that two additional reintroduction projects, in addition to the current Blue Range program, were conducted in the Grand Canyon and Carson sites, then three populations of 100 wolves each would occupy 5.24% of the SWDPS's suitable habitat, and 7.86% of its occupiable habitat (as defined above and in figure 5). Moreover, 5, or 38.5%, of the SWDPS's 13 ecoregions (Bailey 1995) would contain wolves (as a result of two reintroduction sites lying in more than one ecoregion). The probability that a reintroduction at a single site will fail (extinction probability) under scenario A ranges from near zero (0 of 1000 simulations) for the Blue Range and Grand Canyon sites to near 10% for the Mogollon Rim and San Juan Mountains sites (table 2). Under scenario C, the extinction probability for the Mogollon and San Juan Mountains sites increases to 16%–20%. The probability of extinction for the Blue Range, Grand Canyon, and Carson sites increases slightly but remains low (< 3%; table 2). Occupancy of the larger (10,000-km²) restoration zone surrounding each 2500-km² reintroduction site gives a sense of the extent of suitable habitat that might be important in the early stages of population establishment. The Blue Range restoration zone has the highest occupancy, at 72.5%, followed closely by the Carson and Grand Canyon zones (table 2). The Grand Canyon zone is more resilient to landscape change than the

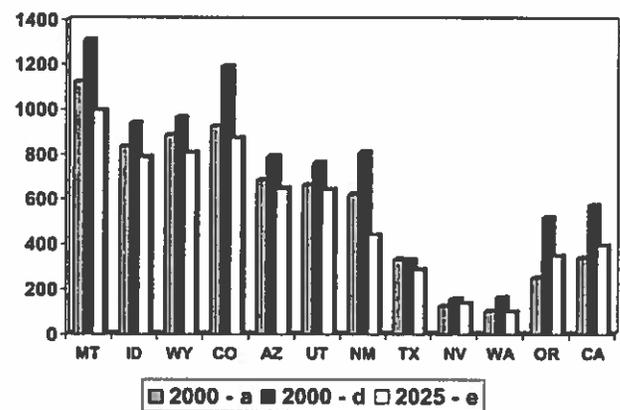
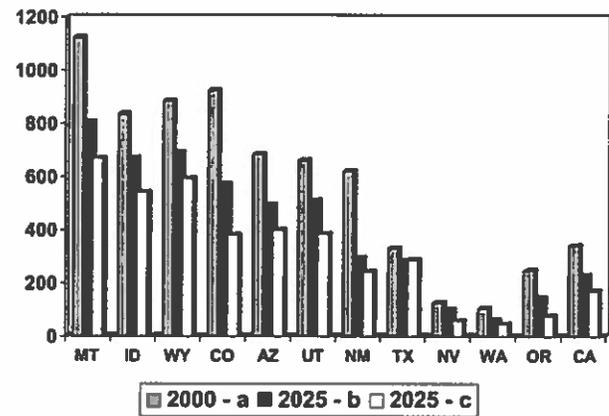


Figure 7. Potential wolf population size, by state, under one scenario for current conditions (2000a), two habitat degradation scenarios (above; 2025b, 2025c), and two habitat restoration scenarios (below; 2000d, 2025e) of the PATCH model, as shown in table 1.

Blue Range or Carson; thus, it shows the highest wolf population density among US restoration zones under scenario C (table 2). A scenario that incorporated cattle density as an additional mortality risk factor resulted in a similar ranking of restoration zones, except that the San Juan Mountains zone appeared less vulnerable, and thus only the Mogollon zone showed high relative extinction risk.

Table 2. Comparative summary of results of analysis of potential wolf restoration zones (areas of 10,000 square kilometers in size surrounding initial reintroduction sites) in the southwestern distinct population segment for the gray wolf.

Reintroduction site	Population		Occupancy (%), scenario A	Lambda, scenario A	Extinction risk (%)		Vulnerability, scenarios A–C/scenario A
	Scenario A	Scenario C			Scenario A	Scenario C	
Blue Range	92	67	72.5	1.04	0	1.4	27.2
Carson	84	66	68.2	1.04	0.8	2.7	21.4
Grand Canyon	91	79	68.5	1.06	0	0.4	13.2
Mogollon Rim	71	45	60.3	1.00	8.6	15.8	36.6
San Juan Mountains	79	51	63.6	1.04	10.5	19.6	35.4

Note: See the text for a definition of PATCH (program to assist in tracking critical habitat) scenarios A through C.

The regional population size achieved at the end of the SEPM reintroduction simulations (year 200) gives an indication of the ability of a particular reintroduction site to enhance the broader regional population, an ability that is due to factors such as ease of dispersal to other suitable habitat. The Grand Canyon site achieves the highest regional population within the US SWDPS. As a result of sink habitat and other barriers to population spread, the largest regional US population achieved from a single reintroduction is only 59.9% of the maximum population size achieved in the equilibrium scenario (scenario A) that began with all habitat occupied. However, a regional population of 89.3% of the maximum population size is eventually achieved by using three reintroduction sites (Blue Range, Grand Canyon, and Carson). At the end of the 200-year simulations, this reintroduced population occupied 54.3% to 57.5% (depending on assumptions about dispersal distance) of the US SWDPS's suitable habitat under scenario A, 26.3% to 26.6% under scenario C, and 100% of the region's ecoregions under both scenarios. Population predictions in peripheral areas with fragmented habitat were most sensitive to alternate assumptions about maximum dispersal distance (e.g., New Mexico, with 13% relative change), with most other areas showing less than 5% relative change. Extinction probability at individual reintroduction sites was not sensitive to dispersal parameterization, with a doubling of maximum dispersal distance from 750 to 1500 km generally producing changes in extinction risk of less than 0.5% (absolute percentage), with a maximum of 1.6% change.

Using model results to inform policy

Advances in conservation science since the passage of the ESA have provided scientists and managers with a better understanding of the factors, such as interpopulation connectivity, necessary for successful reintroductions and for the long-term viability of reintroduced populations (Breitenmoser et al. 2001). For example, a key element of the Northwest Forest Plan, designed to facilitate recovery of the northern spotted owl (*Strix occidentalis caurina*), was the recognition that the viability of any particular owl subpopulation was dependent on the successful establishment of territories by dispersing individuals, and hence on the size and connectivity of habitat patches across the landscape (Noon and McKelvey 1996). Such a regional-scale perspective on processes such as loss of connectivity has been difficult to achieve with simpler models of habitat suitability, but is now possible with SEPMs that combine spatial data such as satellite imagery with information from the field on how well animals survive and reproduce in different habitats. Because SEPMs such as the PATCH model (Schumaker 1998) can incorporate changes in landscapes over time, they are also more useful than simpler models in forecasting how species' populations might respond to alternative futures in which current trends either continue or instead are slowed or reversed through habitat protection and restoration.

Complex spatial viability models such as SEPMs may be more biologically realistic than simpler tools, but their realism has a cost: SEPM results may suffer from increased sensitivity to a lack of detailed demographic, habitat, and movement data (Kareiva et al. 1996). We found that population predictions in peripheral areas were most sensitive to alternate assumptions about maximum dispersal distance, and that extinction probability at individual reintroduction sites was not sensitive to dispersal parameterization. Nonetheless, it is important to assess which conservation questions can or cannot be answered with relative confidence in the face of model uncertainty. For example, the minimum threshold of food (prey) availability at which wolves can persist is poorly known (Fuller et al. 2003). Therefore, especially in semiarid areas of the West, the exact population estimates from PATCH, which are strongly affected by where this threshold is set, should be viewed with caution (Carroll et al. 2005). However, because we know more about habitat security thresholds for large carnivores, the proportion of this "suitable" habitat that the model predicts as occupied is more informative (figure 6). In general, population viability analysis tools such as SEPMs are more suitable for comparing alternative management options and suggesting qualitative insights about population structure and threat processes than for providing exact population estimates (McCarthy et al. 2003). As knowledge of wolf-habitat relationships is gathered through long-term field studies in areas such as Yellowstone (Smith et al. 2004), SEPM results can be updated to predict future population distribution more accurately.

For species for which demographic data are too sparse to parameterize SEPMs, simpler, static models of habitat suitability may still be useful for guiding recovery planning. Even for these species, SEPMs may be valuable as heuristic tools to generate hypotheses concerning limiting factors and regional population structure. Emergent characteristics of the regional landscape, such as interpopulation connectivity, are likely to be significant for wide-ranging species and poorly addressed by static models. Connectivity in SEPMs depends on both the strength of the source habitat and the permeability of the intervening landscape (Carroll forthcoming), and thus SEPMs more realistically portray factors fragmenting carnivore populations in the western United States. Wolves in threatened habitat patches, unlike those in the boreal "mainland" of their distribution, cannot expect a large rescue effect (Brown and Kodric-Brown 1977) from surrounding regions. Landscape change in the western United States thus can quickly result in a loss of connectivity. In our SEPM results, semi-isolated (e.g., Oregon) and fragmented (e.g., Colorado) wolf populations show greater threats than they would in a static model of habitat suitability (figure 6). Counterintuitively, landscape change has a greater negative impact on wolves (a 35% to 53% decrease in occupied habitat) than on grizzly bears (a 24% to 40% decrease) in the SEPM simulations. Although currently wolves can occupy a broader spectrum of the landscape than grizzly bears, more of this matrix is threatened by landscape change than are the core areas used

by grizzlies. The loss of such high proportions of potential wolf habitat as a result of landscape change in the western United States over the next quarter-century suggests that absent the protection of important habitat, many western landscapes will become unsuitable for the species, and possibly for other large carnivores as well.

The SEPM results can help planners evaluate the extent of currently “occupiable” and potentially restorable habitat across a species’ range. They reveal a potential wolf population structure that combines two highly resilient core areas (the GYE and central Idaho) and several smaller cores, with many peripheral areas that may be dependent on dispersal from core areas for their initial colonization, their continued demographic rescue, or both (Brown and Kodric-Brown 1977). An optimal strategy for establishing representative wolf populations might therefore be based on initial reintroductions to a geographically well-distributed set of core areas (e.g., the current reintroduction areas in the GYE, Idaho, and the Blue Range [figure 2], plus the Grand Canyon and western Colorado). This would seek to maximize the area of peripheral habitat affected by dispersal from the core reintroductions. Secondary targets for reintroductions, to achieve representation and buttress redundancy, would be regions that lack large core areas, but might be unlikely to be rapidly recolonized because of their distance from initial reintroduction sites (e.g., the Oregon Cascades). The high relative vulnerability to future threats and high potential benefit from restoration actions would justify more aggressive habitat protection in Colorado and Oregon, where protected public lands are fragmented and embedded in a rapidly developing matrix of private lands.

Because wolf habitat, as depicted in the SEPM results, is not distributed uniformly across the western United States, it makes sense to break the region into several subareas, each of which might support tightly interacting populations and be linked loosely with the other subareas by infrequent dispersal. Such areas include (a) the northern Rockies, (b) Colorado, (c) the Southwest (Arizona, New Mexico, and portions of Utah), and (d) the Pacific states (figures 2, 6a). These regions could serve as the basis for DPSs or multistate management coordination areas. Ecological barriers, such as expanses of unsuitable habitat, are more appropriate for delineating DPSs than geographic divisions, such as state boundaries (*National Wildlife Federation v. Norton*, 03-CV-340 [2005]). However, management decisions such as delisting proposals that affect a particular DPS should also take into account the broader rangewide context for recovery. For example, even infrequent dispersal between DPSs may be important for initial recolonization and subsequent genetic interchange. The SEPM results suggest that important areas for maintaining population connectivity, both within and among DPSs, include (a) linkages between the three northern Rockies populations (central Idaho, the GYE, and northwestern Montana), (b) linkages along an arc of mountainous habitat extending southward from the GYE to the Blue Range (Arizona and New Mexico) and southward into Mexico, and

(c) a linkage between Colorado and the Uintas of northern Utah (figure 6a). Connectivity between central Idaho and the Oregon Cascades is more tenuous but is strongly enhanced by road removal on public lands (figure 6c). Our results suggest that the potential still exists to recreate a metapopulation of wolves stretching from Canada to Mexico. Similar habitat analyses for adjacent regions of Mexico will allow binational coordination of recovery efforts (Carroll et al. 2005). Expanding analyses beyond the United States is difficult because of inconsistencies in habitat data. However, planners should be aware that truncating analysis at the US border may affect results for areas dependent on dispersal from source habitat outside the United States. For example, inclusion of Mexico and western Canada in the wolf analysis increases predicted occupancy in southern Arizona and northeastern Washington.

SEPM results such as those reported here are also relevant to planners at the DPS scale, in that they make it possible to consider recovery throughout the DPS, rather than constrained within artificially defined recovery areas. For example, current regulations require that wolves dispersing outside of the 17,546 km² BRWRA (figure 2) be recaptured, a policy that has severely impeded the success of the recovery program (Oakleaf et al. 2004). The inadequacy of the BRWRA alone to support a self-sustaining population, and the likelihood of high dispersal rates, could have been anticipated on the basis of SEPM results showing fragmented source habitat within the BRWRA but sufficient additional habitat northwest of the area (figure 6a). Our results suggest that at least two more reintroduction sites will be necessary to achieve recovery within the SWDPS, because of the more fragmented nature of regional wolf habitat there when compared with the northern Rockies. This fragmentation is due to the natural isolation of forest habitat on mountain ranges in this semiarid region, as well as other anthropogenic barriers to dispersal. Although all four candidate reintroduction sites have low enough extinction risk that they can be included in further planning for wolf recovery, the vulnerability to landscape change of the Mogollon Rim and San Juan Mountains sites, and the relative isolation of the Carson site from the bulk of wolf habitat in the region, may make it advisable to pair any of these three sites with a second site to ensure the establishment of a well-distributed, viable population.

Although it achieves viability (resiliency and redundancy) goals, the potential recovery goal of three populations of 100 wolves each achieves a relatively low level of representation in the short term. However, the eventual wolf distribution achieved from a three-site reintroduction approach appears adequate, at least under the assumption that current habitat conditions do not deteriorate. The central issue then becomes the role of federal versus state management of wildlife during the recovery process, and the appropriate stage for transfer of regulatory authority from the federal to the state level, given the ESA mandate to ensure that a recovered species occupies a significant portion of range. A state plan

sufficient to ensure this mandate would most likely be more precautionary than those approved by the USFWS to date.

In their efforts to restore imperiled species and ecosystems, planners must be both ambitious and realistic. Inadequacy and lack of rigor in current ESA recovery plan goals (Gerber and Hatch 2002) are due in part to a shifting-baseline effect (Jackson et al. 2001) that limits the "realistic" range of goals from considering the historic extent of suitable habitat. As Leonard and colleagues (2005) concluded on the basis of genetic analysis, "restoration goals for grey wolves in the western contiguous US include far less area and target vastly lower population sizes than existed historically." The population estimates from the SEPM scenarios reported here are far more ambitious than current recovery goals but at least an order of magnitude lower than historic population estimates (Leonard et al. 2005), and should thus fall within the range of options considered in recovery planning.

To clarify the debate over wolf recovery goals, suitable habitat might be divided into three categories: (1) areas that can be occupied by wolves despite current human impacts and anticipated habitat loss (figure 5, zone 5), (2) areas that are unlikely to support wolves even with substantial habitat restoration or policy change (figure 5, zone 2), and (3) intermediate areas where long-term wolf recovery might require proactive conservation measures (e.g., road removal and restriction of lethal control in response to livestock depredation) (figure 5, zones 3 and 4). While recovery goals must incorporate the ESA mandate concerning significant portion of range, beyond this threshold a normative decision must be made as to what level of biologically suitable habitat should be made occupiable by mitigating human impacts. Our results suggest that more ambitious recovery goals (up to about two-thirds of suitable habitat occupied) may be feasible. Closure or removal of roads on public lands greatly enhances wolf recovery in regions such as Colorado and Oregon that have high ecosystem productivity but currently lack large core areas. Although wolves could inhabit portions of these states without habitat restoration, their distribution might be too restricted to fulfill ESA mandates.

Ecological effectiveness is the most ambitious of the five guiding principles for recovery, as it speaks to abundance as well as distribution (Soulé et al. 2005). Unlike the concept of "significant portion of range," ecological effectiveness is only implicitly mandated by the ESA's charge to conserve the ecosystems on which endangered species depend. Although the role of wolves as keystone species presents a particularly strong argument for restoration of ecologically effective populations, conservation science has increasingly highlighted the high proportion of threatened species that may strongly influence ecosystem function (Soulé et al. 2005), and the high value to humankind of the services arising from functioning ecosystems (Daily 1997). The normative debate over recovery goals for wolves, although tied to the specific legal context of the ESA, thus illuminates a larger debate over the necessity for "rewilding," a reversal of the trend toward increasing human

domination of Earth's natural ecosystems (Vitousek et al. 1997, Soulé and Noss 1998).

Acknowledgments

This study was funded by the Wilburforce Foundation and the Turner Endangered Species Fund. The authors' understanding of the implications of Endangered Species Act language regarding "significant portion of range" benefited greatly from discussions with John Vucetich. Doug Smith, Tracy Scheffler, and three anonymous reviewers also provided helpful comments. The information in this document has been funded in part by the US Environmental Protection Agency. It has been subjected to review by the National Health and Environmental Effects Research Laboratory's Western Ecology Division and approved for publication. Approval does not signify that the contents reflect the views of the agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

References cited

- Bailey R. 1995. Descriptions of the Ecoregions of the United States. 2nd ed. Washington (DC): USDA Forest Service. Miscellaneous Publication 1391.
- Ballard WB, Whitman JS, Gardner CL. 1987. Ecology of an exploited wolf population in south-central Alaska. *Wildlife Monographs* 98: 1–54.
- Bangs EE, Fritts SH. 1996. Reintroducing the gray wolf to central Idaho and Yellowstone National Park. *Wildlife Society Bulletin* 24: 402–413.
- Breitenmoser U, Breitenmoser-Würsten C, Carbyn LN, Funk SM. 2001. Assessment of carnivore reintroductions. Pages 241–281 in Gittleman JL, Funk SM, MacDonald DW, Wayne RK, eds. *Carnivore Conservation*. Cambridge (United Kingdom): Cambridge University Press.
- Brown JH, Kodric-Brown A. 1977. Turnover rates in insular biogeography: Effect of immigration on extinction. *Ecology* 58: 445–449.
- Brown WM, Parsons DR. 2001. Restoring the Mexican gray wolf to the desert Southwest. Pages 169–186 in Maehr D, Noss RF, Larkin J, eds. *Large Mammal Restoration: Ecological and Sociological Challenges in the 21st Century*. Washington (DC): Island Press.
- Carroll C. Linking connectivity to viability: Insights from spatially-explicit population models of large carnivores. In Crooks K, Sanjayan MA, eds. *Connectivity Conservation*. Cambridge (United Kingdom): Cambridge University Press. Forthcoming.
- Carroll C, Noss RF, Paquet PC. 2001a. Carnivores as focal species for conservation planning in the Rocky Mountain region. *Ecological Applications* 11: 961–980.
- Carroll C, Noss RF, Schumaker NH, Paquet PC. 2001b. Is the return of the wolf, wolverine, and grizzly bear to Oregon and California biologically feasible? Pages 25–46 in Maehr D, Noss RF, Larkin J, eds. *Large Mammal Restoration: Ecological and Sociological Challenges in the 21st Century*. Washington (DC): Island Press.
- Carroll C, Phillips MK, Schumaker NH, Smith DW. 2003a. Impacts of landscape change on wolf restoration success: Planning a reintroduction program using dynamic spatial models. *Conservation Biology* 17: 536–548.
- Carroll C, Noss RF, Paquet PC, Schumaker NH. 2003b. Use of population viability analysis and reserve selection algorithms in regional conservation plans. *Ecological Applications* 13: 1773–1789.
- Carroll C, Phillips MK, Lopez Gonzalez CA. 2005. Spatial Analysis of Restoration Potential and Population Viability of the Wolf (*Canis lupus*) in the Southwestern United States and Northern Mexico. Orleans (CA): Klamath Center for Conservation Research. (2 December 2005; www.klamathconservation.org)
- Caswell H. 2001. *Matrix Population Models: Construction, Analysis, and Interpretation*. Boston: Sinauer.

- Cihlar J, St.-Laurent L, Dyer J. 1991. Relation between the normalized difference vegetation index and ecological variables. *Remote Sensing of the Environment* 35: 279–298.
- Crist EI, Cicone RC. 1984. Application of the tasseled cap concept to simulated thematic mapper data. *Photogrammetric Engineering and Remote Sensing* 50: 343–352.
- Daily G, ed. 1997. *Nature's Services: Societal Dependence on Natural Ecosystems*. Washington (DC): Island Press.
- Dobson AP, Rodriguez JP, Roberts WM, Wilcove DS. 1997. Geographic distribution of endangered species in the United States. *Science* 275: 550–553.
- Dunning JB, Stewart DJ, Danielson BJ, Noon BR, Root TL, Lamberson RH, Stevens EE. 1995. Spatially explicit population models: Current forms and future uses. *Ecological Applications* 5: 3–11.
- Fuller TK. 1989. Population dynamics of wolves in north-central Minnesota. *Wildlife Monographs* 105: 1–41.
- Fuller TK, Mech LD, Cochrane JJ. 2003. Wolf population dynamics. Pages 161–191 in Mech LD, Boitani L, eds. *Wolves: Behavior, Ecology, and Conservation*. Chicago: University of Chicago Press.
- Gerber LR, Hatch LT. 2002. Are we recovering? An evaluation of recovery criteria under the US Endangered Species Act. *Ecological Applications* 12: 668–673.
- Groves C. 2003. *Drafting a Conservation Blueprint: A Practitioner's Guide to Planning for Biodiversity*. Washington (DC): Island Press.
- Hayes RD, Harestad AS. 2000. Demography of a recovering wolf population in the Yukon. *Canadian Journal of Zoology* 78: 36–48.
- Jackson JBC, et al. 2001. Historical overfishing and the recent collapse of coastal ecosystems. *Science* 293: 629–63.
- Kareiva P, Skelly D, Ruckelshaus M. 1996. Reevaluating the use of models to predict the consequences of habitat loss and fragmentation. Pages 156–166 in Pickett STA, Ostfeld RS, Schachak M, Likens GE, eds. *The Ecological Basis of Conservation: Heterogeneity, Ecosystems, and Biodiversity*. New York: Chapman and Hall.
- Leonard JA, Vila C, Wayne RK. 2005. Legacy lost: Genetic variability and population size of extirpated US grey wolves (*Canis lupus*). *Molecular Ecology* 14: 9–17.
- Mace RD, Waller JS, Manley TL, Ake K, Wittinger WT. 1999. Landscape evaluation of grizzly bear habitat in western Montana. *Conservation Biology* 13: 367–377.
- McCarthy MA, Andelman SJ, Possingham HP. 2003. Reliability of relative predictions in population viability analysis. *Conservation Biology* 17: 982–989.
- Merrill EH, Bramble-Brodahl MK, Marrs RW, Boyce MS. 1993. Estimation of green herbaceous phytomass from Landsat MSS data in Yellowstone National Park. *Journal of Range Management* 46: 151–157.
- Merrill T, Mattson DJ, Wright RG, Quigley HB. 1999. Defining landscapes suitable for restoration of grizzly bears (*Ursus arctos*) in Idaho. *Biological Conservation* 87: 231–248.
- Noon BR, McKelvey KS. 1996. Management of the spotted owl: A case history in conservation biology. *Annual Review of Ecology and Systematics* 27: 135–162.
- Oakleaf JK, Stark D, Overy P, Smith N. 2004. Mexican wolf recovery: Technical component of the five-year program review and assessment. Albuquerque (NM): US Fish and Wildlife Service.
- Paquet PC, Wierchowski J, Callaghan C. 1996. Effects of human activity on gray wolves in the Bow River Valley, Banff National Park, Alberta. Chapter 7 in Green J, Pacas C, Bayley S, Cornwell L, eds. *A Cumulative Effects Assessment and Futures Outlook for the Banff Bow Valley*. Ottawa (Canada): Department of Canadian Heritage.
- Phillips MK, Bangs EE, Mech LD, Kelly BT, Fazio BB. 2004. Extirmination and recovery of the red wolf and grey wolf in the contiguous United States. Pages 297–309 in MacDonald DW, Sillero-Zubiri C, eds. *Biology and Conservation of Wild Canids*. New York: Oxford University Press.
- Ripple WJ, Beschta RL. 2004. Wolves and the ecology of fear: Can predation risk structure ecosystems? *BioScience* 54: 755–766.
- Schumaker NH. 1998. *A User's Guide to the PATCH Model*. Corvallis (OR): US Environmental Protection Agency. EPA/600/R-98/135.
- Shaffer ML, Stein B. 2000. Safeguarding our precious heritage. Pages 301–322 in Stein BA, Kutner LS, Adams JS, eds. *Precious Heritage: The Status of Biodiversity in the United States*. Oxford (United Kingdom): Oxford University Press.
- Smith DW, Peterson RO, Houston DB. 2003. Yellowstone after wolves. *BioScience* 53: 330–340.
- Smith DW, Stahler DR, Guernsey DS. 2004. *Yellowstone Wolf Project: Annual Report, 2003*. Yellowstone National Park (WY): National Park Service. YCR-NR-2004-04.
- Soulé M, Noss R. 1998. Rewilding and biodiversity: Complementary goals for continental conservation. *Wild Earth* 8: 18–28.
- Soulé ME, Terborgh J. 1999. *Continental Conservation: Scientific Foundations of Regional Reserve Networks*. Washington (DC): Island Press.
- Soulé ME, Estes JA, Miller B, Honnold DL. 2005. Strongly interacting species: Conservation policy, management, and ethics. *BioScience* 55: 168–176.
- Suckling KF, Taylor M. 2005. Critical habitat and recovery. In Goble DD, Scott JM, Davis JW, eds. *The Endangered Species Act at Thirty: Renewing the Conservation Commitment*. Washington (DC): Island Press.
- Theobald DM, Gosnell H, Riessman WE. 1996. Land use and landscape change in the Colorado mountains, II: A case study of the East River Valley, Colorado. *Mountain Research and Development* 16: 407–418.
- Thiel RP. 1985. Relationship between road densities and wolf habitat suitability in Wisconsin. *American Midland Naturalist* 113: 404.
- [USCB] US Census Bureau. 1991. *Census of the United States: 1990*. Washington (DC): USCB.
- [USFWS] US Fish and Wildlife Service. 1987. *Northern Rocky Mountain Wolf Recovery Plan*. Denver (CO): USFWS.
- . 1994. *The Reintroduction of Gray Wolves to Yellowstone National Park and Central Idaho: Final Environmental Impact Statement*. Denver (CO): USFWS.
- . 1996. *Reintroduction of the Mexican Wolf within Its Historic Range in the Southwestern United States: Final Environmental Impact Statement*. Albuquerque (NM): USFWS.
- Vitousek PM, Mooney HA, Lubchenco J, Melillo JM. 1997. Human domination of Earth's ecosystems. *Science* 277: 494–499.
- Wharton SW, Myers ME. 1997. *MTPE EOS Data Products Handbook, vol. 1. Greenbelt (MD): NASA Goddard Space Flight Center. Publication 902*.
- White JD, Running SW, Nemani R, Keane RE, Ryan KC. 1997. Measurement and remote sensing of LAI in Rocky Mountain montane ecosystems. *Canadian Journal of Forest Research* 27: 1714–1727.
- Wiegand T, Revilla E, Knauer F. 2004. Dealing with uncertainty in spatially explicit population models. *Biodiversity and Conservation* 13: 53–78.
- Young SP, Goldman EA. 1944. *Wolves of North America, pt. 2: Classification of Wolves*. Washington (DC): American Wildlife Institute.

EXHIBIT 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

Draft Mexican Wolf Revised Recovery Plan

5_07_2012
TEAM USE ONLY
NOT FOR DISTRIBUTION

DRAFT

U.S. Fish and Wildlife Service
Southwest Region (Region 2)
Albuquerque, New Mexico
20xx

1367 western US were to sites in the Greater Yellowstone Ecosystem and central Idaho which have
1368 both high prey abundance and low human impacts, they do not provide detailed guidance as to
1369 the relative strength of these two factors.

1370

1371 An effective strategy for wolf recovery involves establishing well-distributed source populations
1372 in core areas of highly suitable habitat and then allowing natural dispersal to re-establish a
1373 regional metapopulation. To merit attention as a potential reintroduction site, a 'core area of
1374 suitable habitat' would need to be both be relatively secure habitat and be well situated to
1375 facilitate growth of the regional wolf metapopulation. The several habitat suitability assessments
1376 that have been conducted over the last 20 years indicate that only three major core areas of
1377 suitable habitat exist in the area encompassing the Mexican wolf's historical range and adjacent
1378 areas in Arizona, New Mexico, southern Colorado and southern Utah that are capable of
1379 supporting Mexican wolf populations of sufficient size to contribute to recovery. The three core
1380 areas of suitable habitat are 1) the Blue Range Wolf Recovery Area and adjacent public lands, 2)
1381 the Grand Canyon and adjacent public lands in northern Arizona and southern Utah (as
1382 circumscribed by interstate highways 15 and 70), and 3) two linked areas of public lands and
1383 private lands with conservation management in northern New Mexico and southern Colorado (as
1384 circumscribed by interstate highways 70 and 25) (Table 1). We describe these areas using
1385 regional-scale habitat data, but a more detailed evaluation of local land ownership, land use, and
1386 prey abundance patterns would be necessary in subsequent stages of recovery (e.g., development
1387 of an Environmental Impact Statement before conducting reintroductions to restore populations
1388 that count toward recovery). An additional area in western Texas which has some attributes of
1389 suitable habitat is also described here.

1390

1391 All these areas are projected to become more distinct and separated as landscape change factors
1392 such as exurbanization continue (Carroll et al. 2006). All areas except western Texas include
1393 large tracts of public lands subject to conservation mandates (National Park, wilderness) where
1394 wolves are predicted to experience the lowest human-induced mortality. While the Grand
1395 Canyon and northern Arizona and southern Utah core area and northern New Mexico/southern
1396 Colorado core area are both located north of the Mexican wolf's historical range, in the recent
1397 past they each supported a closely related subspecies (*C. l. nubilus*) that has for over half a

EXHIBIT 6

From: [Oakleaf, John](#)
To: [Jim DeVos](#)
Subject: Call with Arizona
Date: Tuesday, August 26, 2014 5:52:49 PM

Jim,

I am trying to summarize our discussion and wanted to see if I have correctly summarized the conversation from your point of view:

There are three key components to the discussion:

(1) *Unacceptable impact on a wild ungulate herd* means the reduction of a herd of ungulates by 15% from population numbers at the time of the inaction of the rule (this is based on the midpoint of ranges, or single number estimates for populations numbers identified in the EIS

(note: to help justify the 15% level and have a discussion about this number, the Service needs to have the states help us understand the range of variabilities in past estimates.)

Another potential point could be 30 calves:100 cows, if the levels dropped below this measure then this would be considered an unacceptable impact for elk populations. This recognizes three important points: (1) 30 calves:100 cows is generally recognized as a stable population, (2) wolves select for calves and against cows relative to availability, such that impacts will first be seen in calf:cow ratios, and (3) counting of about 1000 elk generally stabilizes cow:calf ratios such that they are fairly accurate and have a smaller confidence interval than population estimates). Again, the Service would have to look at past estimates for cow:calf ratios for these populations.

*****Need a Metric that New Mexico and Arizona can agree to*****

(2) Geography I-17 to highway 89 (along the western boundary in AZ) and I-25 will be a "swinging gate", such that we will evaluate this boundary every 5 years based on population projections and the number and cost associated with removals across this line, such that if we fail to meet our goal of 10% population growth per year or remove in excess of 5-10 (open discussion) wolves from these areas (in a five year period), we will allow wolves to roam to the west of the I-17 highway 89 or to the East of I-25 and implement all other measures for Zone 2.

(3) Population numbers - cap vs. increased management. Service can put language to more aggressively manage wolves as the population increases or for goals in the preamble of the rule. But discussions will have to occur at a director level for a cap per se to be implemented. Cap is difficult for Service. Lack of a cap is a deal breaker for AGFD

Proposal to add this language to regulatory section of the rule:

"Any wolves greater than the population objective of 300 will be considered supplemental to the nonessential experimental population and can be translocated to any other population that has been established to assist that population at discretion of the Service or Designated Agency."

Mexican Wolf Management in Arizona and New Mexico:
A Cooperating Agencies Alternative
to the
U.S. Fish and Wildlife Service Proposed Preferred Alternative
in a
Draft Environmental Impact Statement on a Proposed Nonessential
Experimental Population Rule for the Mexican Wolf in the Southwest

Submitted by: Various EIS Cooperating Agencies

Final: April 15, 2014

This Alternative was submitted to the U.S. Fish and Wildlife Service (USFWS; Region 2, Albuquerque) on April 15, 2014 by various Cooperating Agencies for evaluation as an Alternative in the Draft Environmental Impact Statement (DEIS or EIS) on a Proposed Nonessential Experimental Population Rule (NEPR) for the Mexican Wolf in the Southwest. See accompanying cover letter for names of Cooperating Agencies submitting this Alternative.

In addition to the Cooperating Agencies, nongovernmental organizations and other stakeholders supporting this Alternative are identified in the accompanying cover letter.

INTRODUCTION

USFWS is developing a DEIS on a Proposed NEPR for the Mexican Wolf in the Southwest. The proposed rule would supersede the current (1998) Final NEPR. A coalition of Mexican wolf stakeholders (Coalition) previously submitted to USFWS its detailed concerns about (a) the processes USFWS is using to develop the DEIS and NEPR and (b) the substantive content of those proposals. In this document, agencies that have been participating in that coalition (and which are also Cooperating Agencies in the DEIS process) provide their preferred alternative to that which USFWS has drafted.

STATE AND TRIBAL ROLES

First and foremost, the Cooperating Agencies affirm their support for State and Tribal authorities for wildlife management on lands within their respective jurisdictions. The Cooperating Agencies have striven to respect those authorities in drafting this Alternative, which is intended to move Mexican wolf management in Arizona and New Mexico (AZ-NM) from the USFWS to State and Tribal implementation, with appropriate oversight by USFWS as is or will be detailed herein as this Alternative is crafted. Indeed, State and Tribal wildlife agencies have participated in the stakeholders coalition since August 2013 and have been actively engaged in discussion and development of the content of this document. Nevertheless, they are in no way responsible or accountable for the content of this document. Whether or not the affected State and Tribal authorities support this Alternative will be determined as their governing bodies consider and

statutorily mandated to manage wildlife populations. Such management is not static but rather is subject to influence by (among other factors) habitat conditions, short and long-term population trends and societal preferences.

- Adaptive management principles must be used in wolf management that enable and defer to State (or Tribal) wildlife commissions to make changes in wild ungulate population objectives that require shifts in Mexican wolf numbers. Adaptive management processes must be sufficiently well defined but also sufficiently flexible to enable managers to address unforeseen as well as predicted events, by defining methods of determination, analysis, documentation, selection and implementation of effective, efficient options.
- States and Tribes must use the best available science each year to define acceptable wolf densities that enable them to sustain populations of prey species and thus preserve associated hunting and trapping opportunity and maintain economic viability of State and Tribal wildlife agencies in AZ-NM.
- Any effort by USFWS to expand Mexican wolf presence in AZ-NM to a broader area or to greater numbers than are set forth in this Alternative may be aggressively litigated by one or more entities among the Cooperating Agencies and the supporting stakeholders.

AZ-NM MEXICAN WOLF MANAGEMENT PLAN

The State and Tribal wildlife agencies in AZ-NM will collectively develop a wolf management (conservation) plan (hereafter Plan) that identifies specific numbers of Mexican wolves (population objectives) and identifies the geographic areas or zones that wolves will be allowed to occupy and those from which they will be excluded. The Plan will also describe the specific management practices intended and allowed for each management zone. The population objectives and the attendant management practices must reflect acceptable occupation by wolves at population levels that are biologically, socially and economically sustainable on the AZ-NM landscape. The Plan should be the primary mechanism by which the States and Tribes continue to represent their interests in all areas of Mexican wolf conservation, including how reintroduction in AZ-NM relates to overall (rangeland) Mexican wolf recovery. The Plan must:

- Assume a revised NEPR allowing State and Tribal management of Mexican wolves under Service-approved management plans.
- Be supported by appropriate ESA Section 4(d) and/or Section 10(j) rules that define acceptable management practices that accord with the authorities conveyed to the States by their ESA Section 6 Cooperative Agreements.
- Be endorsed by USFWS under auspices of State and/or Tribal Memoranda of Agreement with the Secretary of the Interior and it must be endorsed by USFWS concomitantly with or prior to a Record of Decision on the EIS for the proposed revised Mexican wolf NEPR.

- Ensure that initial releases and planned translocations of Mexican wolves are vetted with the public; and
- Ensure that depredation incident investigations are timely and transparent.
- Ensure that wolf conservation efforts are appropriately balanced by on-the-ground interdiction, incentive and compensation measures that effectively offset impacts to the private sector;
- Ensure that appropriate federal funds are secured (appropriated) and directed to USDA-APHIS Wildlife Services to support wolf conservation (including necessary control and translocation actions) by providing interdiction incentives and measures, to include:
 - Productively engaging public lands grazing permittees and private lands livestock operators in voluntary, incentives-based Mexican wolf conservation measures;
 - Cooperating with any interdiction, incentives and compensation program that attempts to address the direct and indirect impacts of Mexican wolf reintroduction on the private sector and create incentives for enhanced conservation and stewardship; and
 - Cooperating with willing Native American Tribes within the newly-described MWEPA, particularly the White Mountain Apache Tribe, which has demonstrated its substantial commitment to wolf conservation over several years.

Key elements of the AZ-NM Mexican Wolf Management Plan should include but should not be limited to:

1. A statement of purpose and need to establish a Mexican wolf population that contributes to recovery with a clear understanding that recovery cannot be accomplished entirely within the United States.
2. Clarification that all Mexican wolf recovery efforts have to occur in historical range, which is described as: the area extending from the Sierra Madre Occidental in northwestern Mexico (i.e. Durango and Michoacán through Chihuahua and Sonora) to the highlands in the United States that lie south of Interstate 40 (I-40) in east-central AZ and west-central NM.
3. Provision for Federal approval of State and Tribal management of Mexican wolves, pursuant to USFWS-approved wolf management plans.
4. Definition of a bi-state Mexican Wolf Experimental Population Area (i.e. all of AZ and NM) that includes defined management zones as follows:
 - a. No wolves north of Interstate 40.
 - b. No wolves west of Highway 87 or I-19 in AZ or east of I-25 in NM.
 - c. A Permanent Occupancy Zone (POZ) described as the Blue Range Mexican Wolf Recovery Area (BRMWRA) that is the focal area for wolf conservation efforts.
 - d. A Dispersal Occupancy Zone (DOZ) that wolves will be allowed to occupy through natural dispersal or by translocation but within which agencies or other entities shall not be allowed to release wolves from captivity.
5. A population objective or goal of 100 – 150 Mexican wolves in AZ and 100 – 150 in NM (the 2-State total may not exceed 300), with all wolves occurring within the POZ and DOZ.

- a. When wolves reach the maximum acceptable population level of 150 in a State, removals will occur as necessary to reduce the State-wide population to no more than 150 wolves and a bi-State total of no more than 300 wolves.
 - b. Wolves removed from AZ-NM, in order to restore a Statewide population to no more than 150 individuals and the bi-State total to no more than 300 wolves, may be:
 - i. Provided to USFWS for the captive breeding program.
 - ii. Re-released in another State or Tribally-approved area.
 - iii. Provided to Mexico.
 - iv. Euthanized if captured alive.
 - v. Lethally removed.
 - c. If the wolf population in either AZ or NM decreases below 100, active management will be employed to restore the population to 100 – 150 wolves and the bi-State total to no more than 300 wolves.
6. An “escape clause” that provides for voluntary State and/or Tribal termination of wolf conservation efforts for cause, and an immediate return to the 1998 NEPR and its population objective of at least 100 Mexican wolves (defined as 100 to 125 individuals of all sex and age classes) in the currently defined BRWRA (i.e. including AZ and NM). Such causes must be defined in the new NEPR (as they are, in the attached draft).
 7. A description of genetic management strategies that provide for bidirectional management of wolves, whereby wolves from the wild can be returned for breeding in the captive program and captive wolves can be released in the wild to maintain or if possible enhance genetic diversity. The genetic management strategies must also include appropriate use of releases and translocations.
 8. Clearly defined limits on tolerance of nuisance behavior by wolves, including management actions that will remedy such problems when those limits have been reached.
 9. Clearly defined limits on tolerance of livestock depredation, viz. 3 confirmed depredation incidents within 12 months must require removal.
 10. A clearly defined upper limit of 15 percent for wolf impacts on ungulate populations. At that number, wolves shall be removed by any authorized method until excessive depredation has been terminated. State and Tribal wolf management plans must define how they will determine when that upper limit is being approached or has been reached and how they will determine when excessive depredation has ceased.

here is if you're working closely with NRCS we meet with NRCS, the districts meet with NRCS quite regularly. Basically on a day-to-day basis so do all the cooperators within our district.

Sherry Barrett: Okay.

Walt Meyer: So it seems to me that is the avenue that you need to start working on to get involved with what the districts do.

Sherry Barrett: I think that is an excellent idea. Yeah, and I really am going to have to run to the airport so –

Francie Meyer: I have to ask one final question?

Sherry Barrett: Sure.

Francie Meyer: We've tried to demonstrate to you today what the districts are and how we are actually legitimate government entities. Local government entities, Margaret has pointed out to you, your responsibility by law to coordinate with us from the beginning but yet I've heard from your mouth several times today that you're looking forward to our comments at least that were submitted yesterday or in other words, it appears that you're viewing us as the general public.

When you leave here today what weight will you be giving to the information that we have given you today as it compares to reviewing public comments?

Sherry Barrett: Well, keep in mind public comments also include comments that we are going to be receiving from other states, entities as well and federal agencies. We're going to be reviewing Arizona Game and Fish Department comments as well as those from New Mexico. We're going to be reviewing comments from the Forest Service and all the other federal agencies as well. So it's not public comments is a very broad term that includes federal, state, local agencies as well.

And so we would look at all of those as well as those from the general public and interested parties when we are making our decisions.

Patrick Bray: So to that point Sherry Barrett, Arizona Game and Fish raised some legitimate issues time and time again and it appears that you

are in discussions, negotiations with Arizona Game and Fish, are you not?

Sherry Barrett: We are.

Patrick Bray: So is the Service willing to enter into the same discussions and negotiations separately with the NRCs to discuss the issues that they have written?

Sherry Barrett: That's a decision that will be up to my regional director and so –

Male Speaker???: Who is that?

Sherry Barrett: Dr. Tuggle.

Bill Dunn: Dr. Tuggle.

Sherry Barrett: Yeah, so at this point. Like I said, I think you have valid interesting and useful information. I will be taking that back, discussing it with my agency; we will be on a very fast track to complete a final EIS in this process to meet the January deadline. And so like I said, I look forward to all the comments so that you also have provided yesterday not denigrating them to overall public comments, but recognizing they are –

Bill Dunn: Okay, we have some of the issues but obviously we're not going to be able to get to them. One short comment and then Margaret needs to finish.

Jim Chilton: You're paid by the United States government, we're the taxpayers. I find it insulting, insulting that you have a flight to get out, you can stay here, you can cancel your flight and go out this evening or tomorrow. We're here on our own dime. They are paying for your flight I just really am outraged that you're leaving. It's an old trick of federal government officials. I want that to be on the official record.

Sherry Barrett: I appreciate that but you know Bill Dunn and I did set up a time frame. So I set a flight. I do have personal issues as well. So I –

Lucinda Earven: Well, I think the record ought to reflect that you were late.

Sherry Barrett: And I'm going to be late leaving also. So I think we're balance



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

5000 W. CAREFREE HIGHWAY
 PHOENIX, AZ 85086-5000
 (602) 942-3000 • WWW.AZGFD.GOV

GOVERNOR
 JANICE K. BREWER
 COMMISSIONERS
 CHAIRMAN, ROBERT E. MANSELL, WINSLOW
 KURT R. DAVIS, PHOENIX
 EDWARD "PAT" MADDEN, FLAGSTAFF
 JAMES R. AMMONS, YUMA
 J.W. HARRIS, TUCSON
 DIRECTOR
 LARRY D. VOYLES
 DEPUTY DIRECTOR
 TY E. GRAY



September 30, 2014

To Concerned Conservationists:

The draft rule proposed by the U.S. Fish and Wildlife Service (Service) on the Mexican Wolf experimental population area (the 10(j) rule) poses great risk of harm to wildlife management and livestock producers in the Southwest. The Arizona Game and Fish Commission and Department's primary focus from the first notification of the proposed rule has to been to protect the future of all wildlife in the Southwest, with an emphasis on ungulates, and to strike a balance that protects all users of the landscape.

The Service's proposed 10(j) rule, if adopted, would be a disaster for the states and their interests. It does not contain the elements required to manage wolves in balance with ungulate populations and other land uses. The proposed rule:

- fails to define a cap on the number of wolves that will be allowed in the American Southwest
- fails to define the level of impact that would constitute unacceptable impacts to ungulates species
- fails to focus wolf management in areas that include suitable habitat and prey base
- is scheduled to be implemented in federal rule in January 2015

Without a cap on the wolf population, wolves are likely to reach unsustainable levels much more quickly than the Service projects in the proposed rule as demonstrated in other North American wolf populations (See Figure 1). The Service has chosen an unrealistic wolf population growth rate to estimate future populations. However, using *actual* growth rates from recent years, the Arizona Game and Fish Department projects the population will likely grow to more than 670

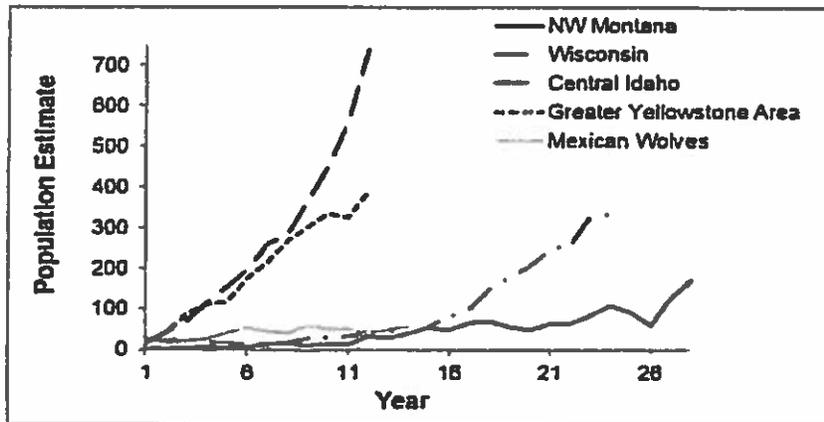
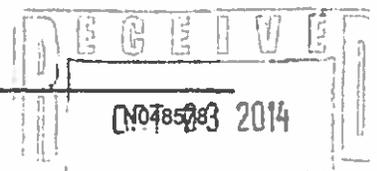


Figure 1. Growth rates from five wolf reintroduction programs in the United States.



wolves within the next 10 years and about 950 in 12 years (See Figure 2). The Commission supports a maximum of 300-325 wolves in Arizona and New Mexico and triggers for wolf removal when wolves reach that number. This population number is based on science-based evaluation of wolf predation rates and prey densities.

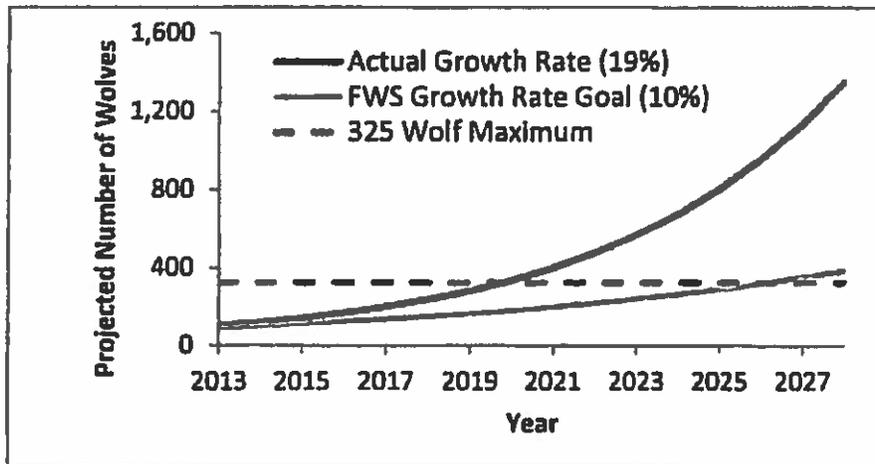


Figure 2. Projected Mexican wolf population growth rate with the Service's 10% annual growth rate and the actual growth rate based on the last four years of actual production data.

One of the primary concerns of the Commission and Department is that based on wolf reintroduction programs elsewhere, following an initial establishment period, the population will grow very rapidly and quickly exceed the Service's unrealistic population growth projection of 287 in 12 years. More importantly, the Mexican wolf population will exceed the capacity of the wildlife resources in the American Southwest to sustain a healthy wolf population.

The proposed rule lacks a definition of "unacceptable impacts" to ungulates. The lack of any objective criteria to determine unacceptable impacts will lead to a subjective interpretation. Any decision based on a subjective interpretation will undoubtedly lead to litigation with an uncertain outcome. While this issue is litigated, the Mexican wolf population will continue to grow at an unregulated rate, and will soon exceed the ungulate population's capacity to support the wolves themselves due to unchecked impacts to ungulates. Instead of the undefined term in the proposed rule, the Commission supports a defined 15 percent decline in an ungulate herd to trigger wolf management action.

The Service's proposal would allow wolves to disperse south of I-40 in Arizona and New Mexico allowing them to move into areas of unsuitable habitat with low prey density. For example, in Zone 1 in Arizona there is a total area 63,833 square miles but only about 1% or 881 square miles is deemed suitable habitat for Mexican wolves. The Service in the proposed rule acknowledges that this would likely result in the need for more active management as wolves wander in search of suitable habitat. Wolves would likely rapidly deplete ungulate populations in poor habitat areas. The Commission supports focusing wolf management in areas that can support robust ungulate populations without causing unacceptable decline of those populations. The Commission recommends a rigorous evaluation of wolf numbers and ungulate herd health and adverse human interactions with wolves to occur after the first five years and every three

years thereafter. The Commission recognizes that successful Mexican wolf recovery also depends on recovery in Mexico; recover cannot occur with U.S. recovery alone.

Refusal to engage in discussions with the Service or to expect litigation will halt the the Mexican wolf program will likely result in the Service's adoption of the flawed proposed rule. The Service has broad authority under the Endangered Species Act to use all methods and procedures to conserve the Mexican wolf including the release, translocation and propagation of experimental populations. Legal challenges alleging the Service has abused its discretion in reintroducing wolves and other species have not been overly successful in limiting the population size, dispersal area and impacts to prey populations. Despite assertions the Service has failed to obtain the approval of state wildlife agencies and affected landowners, the courts so far have not required that the Service reach an agreement before enacting experimental population rules.

At the direction of the Commission, the Department has continued to negotiate changes to the proposed rule that best protect state interests. Many of the changes to the proposed rule the Commission supports mirror the Cooperating Agencies Alternative that was developed by a broad-based coalition of interested parties. The Commission chose to adopt this Alternative recognizing that it represented the interests of the most effected stakeholders including sportsmen, livestock producers, recreationists and residents. It is the only approach that provides protections for both wildlife and livestock interests. No other viable approach has been offered by any other entity.

The Service does have a "no action" alternative that maintains the current 10(j) rule, however, maintaining the current 10(j) rule is not an option that the Service is likely to choose. The Service is obligated to choose the proposal that is most likely to lead to the successful reintroduction of Mexican wolves. Those that suggest that refusing to engage will lead to a better rule are misinformed.

The Commission has been sure to maintain its legal standing by actively participating in the discussions regarding the future of Mexican wolf management and providing constructive input at every opportunity. Parties that choose not to engage in the conversation waive their legal rights to challenge the final decision. The Commission is fully prepared and positioned to litigate the final rule and Environmental Impact Statement should it be necessary.

The Commission's recent action in support of the changes to the proposed rule provide a much stronger place for wolf management than that offered in the proposed 10(j); a position that clearly identifies target numbers and manageability for the Mexican wolf program. While some object to this approach, the Commission recognizes that the Service has a clear mandate to recover the Mexican wolf. Litigation or challenges to prevent reintroduction efforts have not proven effective in the Northern Rockies and it is not likely to modify the approach in Mexican

From: [Frazer, Gary](#)
To: [Paul Souza](#); [Jeff Newman](#); [Don Morgan](#); [Maricela Constantino](#)
Subject: Fwd: Wolf article - Az Cap Times 03 11 14 - heads up see ref to Cochise Co
Date: Wednesday, March 12, 2014 10:44:14 PM

FYI. I assume Benjamin's note is in reference to the Region's proposal to include an alternative in the EIS for the 10(j) rule that would extend the boundary of the 10(j) northward to the South Rim in AZ. Will confirm when I see Benjamin and let you know if that's not correct. -- GDF

----- Forwarded message -----

From: **Benjamin Tuggle** <benjamin_tuggle@fws.gov>
Date: Wednesday, March 12, 2014
Subject: Re: Wolf article - Az Cap Times 03 11 14 - heads up see ref to Cochise Co
To: Dan Ashe <d_m_ashe@fws.gov>
Cc: Gary Frazer <gary_frazer@fws.gov>

Dan I can certainly understand that, we will make sure that we fulfill the request that you made that we have absolute state concurrence. We will do our homework on this before we move forward with the proposals that we discussed.

BNT

Sent from my iPad

> On Mar 12, 2014, at 10:20 AM, Dan Ashe <d_m_ashe@fws.gov> wrote:

>

> Makes me wonder, again, about the notion of including wolf #s in our
> analysis, and especially, an alternative expanding the 10j zone up to
> the northern border.

>

> Dan Ashe
> Director, U.S. Fish and Wildlife Service

>

>

>

>> On Mar 12, 2014, at 8:04 AM, Benjamin Tuggle <benjamin_tuggle@fws.gov>
wrote:

>>

>> Hey Dan, here is an article that details the legislative "war on wolves" in
>> AZ, never a dull moment!

>>

>> BNT

>>

>> Sent from my iPhone

>>

>> Begin forwarded message:

>>

>> *From:* "Barrett, Sherry" <sherry_barrett@fws.gov>

>> *Date:* March 12, 2014 at 8:17:21 AM MDT

>> *To:* Elizabeth Jozwiak <Elizabeth_jozwiak@fws.gov>, Brady McGee <

EXHIBIT 7

The fear of wolves: A review of wolf attacks on humans

John D. C. Linnell
Reidar Andersen
Zanete Andersone
Linas Balciauskas
Juan Carlos Blanco
Luigi Boitani
Scott Brainerd
Urs Breitenmoser
Ilpo Kojola
Olof Liberg
Jonny Løe
Henryk Okarma
Hans C. Pedersen
Christoph Promberger
Håkan Sand
Erling J. Solberg
Harri Valdmann
Petter Wabakken



**A LARGE
CARNIVORE
INITIATIVE
FOR EUROPE**

NINA•NIKUs publikasjoner

NINA•NIKU utgir følgende faste publikasjoner:

NINA Fagrapport

NIKU Fagrapport

Her publiseres resultater av NINA og NIKUs eget forskningsarbeid, problemoversikter, kartlegging av kunnskapsnivået innen et emne, og litteraturstudier. Rapporter utgis også som et alternativ eller et supplement til internasjonal publisering, der tidsaspekt, materialets art, målgruppe m.m. gjør dette nødvendig.

Opplag: Normalt 300-500

NINA Oppdragsmelding

NIKU Oppdragsmelding

Dette er det minimum av rapportering som NINA og NIKU gir til oppdragsgiver etter fullført forsknings- eller utredningsprosjekt. I tillegg til de emner som dekkes av fagrapportene, vil oppdragsmeldingene også omfatte befaringsrapporter, seminar- og konferanseforedrag, års-rapporter fra overvåkningsprogrammer, o.a.

Opplaget er begrenset. (Normalt 50-100)

NINA•NIKU Project Report

Serien presenterer resultater fra begge instituttene prosjekter når resultatene må gjøres tilgjengelig på engelsk. Serien omfatter original egenforskning, litteraturstudier, analyser av spesielle problemer eller tema, etc.

Opplaget varierer avhengig av behov og målgrupper

Temahefter

Disse behandler spesielle tema og utarbeides etter behov bl.a. for å informere om viktige problemstillinger i samfunnet. Målgruppen er "allmennheten" eller særskilte grupper, f.eks. landbruket, fylkesmennenes miljøvern-avdelinger, turist- og friluftlivskretser o.l. De gis derfor en mer populærfaglig form og med mer bruk av illustrasjoner enn ovennevnte publikasjoner.

Opplag: Varierer

Fakta-ark

Hensikten med disse er å gjøre de viktigste resultatene av NINA og NIKUs faglige virksomhet, og som er publisert andre steder, tilgjengelig for et større publikum (presse, ideelle organisasjoner, naturforvaltningen på ulike nivåer, politikere og interesserte enkeltpersoner).

Opplag: 1200-1800

I tillegg publiserer NINA- og NIKU-ansatte sine forskningsresultater i internasjonale vitenskapelige journaler, gjennom populærfaglige tidsskrifter og aviser.

Linnell, J.D.C., Andersen, R., Andersone, Z., Balciauskas, L., Blanco, J.C., Boitani, L., Brainerd, S., Breitenmoser, U., Kojola, I., Liberg, O., Løe, J., Okarma, H., Pedersen, H.C., Promberger, C., Sand, H., Solberg, E.J., Valdmann, H. & Wabakken, P. 2002. The fear of wolves: A review of wolf attacks on humans. - NINA Oppdragsmelding: 731:1-65.

Trondheim, January 2002

ISSN 0802-4103

ISBN 82-426-1292-7

Forvaltningsområde:

Menneske – natur studier

Management area:

Human Dimension

Rettighetshaver ©:

NINA•NIKU

Stiftelsen for naturforskning og kulturminneforskning

Publikasjonen kan siteres fritt med kildeangivelse

Redaksjon:

Kjetil Bevanger og Lill Lorck Olden

Design og layout:

Lill Lorck Olden

Sats: NINA•NIKU

Kopiering: Norservice

Opplag: 200

Kontaktadresse:

NINA•NIKU

Tungasletta 2

N-7485 Trondheim

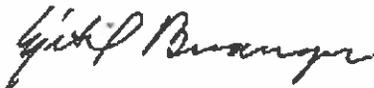
Telefon: 73 80 14 00

Telefax: 73 80 14 01

Tilgjengelighet: Åpen

Prosjekt nr.: 12454000

Ansvarlig signatur:



Oppdragsgiver:

Miljøverndepartementet

Foreword

This report was financed by the Ministry of the Environment with the purpose of providing a foundation for the process of reducing people's fear of wolves, and to make some management recommendations to reduce the risks of attacks. The goal was to compile existing literature and knowledge on wolf attacks on people from Scandinavia, continental Europe, Asia and North America, and to look for patterns in these cases.

In order to cover such a wide geographic area a number of colleagues from Europe were recruited as coauthors to summarise data from their country or region. We concentrated on areas where wolf populations have remained relatively abundant during the 20th century, i.e. the Baltic countries, Poland, Romania, Spain and Italy. Unfortunately we were not able to recruit a Russian expert as a coauthor, however our colleagues from Poland and the Baltics were able to provide assistance with Russian literature and we have had email discussions with Russian colleagues. Because this report was originally intended to be used in Norway, we also focused heavily on the Fennoscandian countries, despite the fact that they have relatively small wolf populations. In addition to recruiting coauthors we have availed of our combined contact network through the world, and had a large number of documents translated from their original languages. The result is not a full summary of all wolf attacks on people, and neither can we vouch for the accuracy of all historical records. However, we believe this is a good overview of the most reliable records that exist, and is at least sufficient to draw general patterns and conclusions. The authors are grateful to the many people and organisations that have made contributions to this report (many are listed in **Appendix 1**). In addition, Kristelle Fiche, Luigi Maiorano and Barbara Zimmermann provided helpful translation of documents. We are especially grateful to our colleagues in the Large Carnivore Initiative for Europe. Some of the results presented in this report may be controversial. However, we firmly believe that solid and objective facts should always form the basis for any long-term conservation activity, especially with species that come into conflict with human activities or human safety. As so much depends on mutual trust when dealing with conflicting interests, the old adage that "honesty is always the best policy" is especially true.

John Linnell
Project leader

Contents

Foreword.....	3
1 Introduction.....	7
2 The data.....	8
2.1 Data sources.....	8
2.2 Sources of error.....	9
2.3 Coverage.....	13
3 Rabies.....	14
3.1 The disease.....	14
3.2 Rabies in wolves.....	14
4 Types of wolf attack.....	16
4.1 Rabid attacks.....	16
4.2 Defensive / investigative attacks.....	16
4.3 Predatory.....	16
5 Europe.....	17
5.1 European wolf populations.....	17
5.1 Bulgaria.....	17
5.2 Croatia.....	17
5.3 Estonia.....	17
5.4 France.....	17
5.5 Georgia.....	20
5.6 Germany / Austria.....	20
5.7 Greece.....	20
5.8 Italy.....	20
5.9 Latvia.....	21
5.10 Lithuania.....	21
5.11 Poland (and Belarus).....	21
5.12 Romania.....	22
5.13 Slovakia.....	22
5.14 Slovenia.....	22
5.15 Spain.....	22
5.16 Sweden.....	23
5.17 Finland.....	23
5.18 Norway.....	24
6 Russia (and the former USSR).....	24
6.1 Russian wolves and attacks on humans.....	24
6.2 The rabies cases.....	24
6.3 Predatory attacks.....	25
6.4 Mantejfel commission.....	25
7 Asia (excluding the former USSR).....	26
7.1 Asian wolf populations.....	26
7.2 Indian subcontinent.....	26
7.3 Iran.....	26
7.4 Afghanistan.....	28
7.5 Israel.....	28
7.6 The Far East.....	28
8 North America.....	28
8.1 North American wolf populations.....	28
8.2 Wolf attacks in North America in the 20 th century.....	28
8.3 Early stories and other incidents.....	30
8.4 Threatening behaviour.....	31
9 Attacks and killings by domestic dogs, captive wolves and wolf-dog hybrids.....	32
9.1 Captive wolves and hybrids.....	32
9.2 Domestic dogs.....	32
10 Wolf attacks in context.....	33
10.1 Dingoes.....	33
10.2 Coyotes.....	33
10.3 Cougars.....	33
10.4 Brown bears.....	33
10.5 Other bears.....	34
10.6 Tigers.....	35
10.7 Lions.....	35
10.8 Leopards.....	35
10.7 Further perspective – other wildlife.....	35
11 Patterns and process.....	36

11.1	Putting wolf attacks into perspective.....	36
11.2	Factors associated with wolf attacks	36
11.2.1	Rabies.....	36
11.2.2	Habituation.....	36
11.2.3	Provocation.....	36
11.2.4	Extreme socio-environmental situations	36
11.2.5	Other factors.....	37
11.2.6	Why are there so few attacks from North America?.....	37
11.4	Patterns – age and sex of victims	37
11.5	Patterns – temporal changes in numbers of attacks..	37
11.6	Viewing the wolf as a wolf	39
12	Management planning	41
12.1	Reducing the chances that wolf attacks occur.....	41
12.2	Reaction planning.....	41
12.3	The human dimension.....	42
13	Literature cited	43
Appendix 1	.....	51
Appendix 2	.....	55
Appendix 3	.....	57
Appendix 4	.....	61
Appendix 5	.....	65

Summary

Because of the large scales at which large carnivores live, their conservation cannot occur only within protected areas. They must therefore be conserved within multi-use landscapes where conflicts with humans occur. Conflicts are diverse and include depredation on livestock and competition for wild ungulates. However, one of the most serious is the fear of being injured or killed by a large carnivore. Man-killing by tigers, lions, leopards, pumas and bears (brown bear, black bear, polar bear and sloth bear) occurs on a regular basis with hundreds of people being killed annually on a worldwide basis. Although the danger that wolves pose to human safety remains controversial, many people that live in wolf range report that they are afraid of wolves. This report attempts to examine the existing data about wolf attacks on humans during the last few hundred years around the world.

To locate data about wolf attacks we have examined the ecological, medical, veterinary and historical literature, and utilised a wide contact network of people that have worked with wolves throughout the world to try and identify unpublished cases from recent times. For historical cases we have only used episodes for which there is some form of contemporary written documentation, this excludes cases that only arise from the oral tradition. We have only included cases where there has been contact, injury or death resulting from a wolf-human encounter. Data concerning wolf attacks on humans is highly fragmented and of very variable quality. As a result it has been impossible to provide a total summary of the numbers of people killed by wolves during any given period. Rather we have compiled a set of case studies that we have judged to be reliable from various parts of North America and Eurasia. Because of the nature of the data, many records need to be treated with caution. We have looked for broad patterns associated with wolf attacks on people. From the data collected there appears to be no doubt that wolves have on rare occasions attacked and killed people. We identified three types of wolf attack, (1) attacks by rabid wolves, (2) predatory attacks where wolves appear to have regarded humans as prey, and (3) defensive attacks where a wolf has bitten a person in response to being cornered or provoked.

The majority of attacks concern wolves with rabies. Although wolves do not serve as a reservoir for rabies, they can catch it from other species. It appears that wolves develop an exceptionally severe "furious" phase and can bite a large number of people (>30) in a single attack. We have found records from Italy, France, Finland, Germany, Poland, Slovakia, Spain, the Baltic States, Russia, Iran, Kazakstan, Afghanistan, China, India and North America. The earliest record we found of such an attack was from 1557 in Germany, and the most recent was from Latvia in 2001. Up until the development of post-exposure treatments (first developed by Pasteur in the 1890's and refined in the 1950's) bites from rabid wolves were almost always fatal. Treatments are presently so good that the majority of victims now survive. However, the severity of attacks by rabid wolves is such that some victims are killed outright, or are bitten in the head so that post-exposure treatments do not have time to act

before the disease develops. As the incidence of rabies has been greatly reduced in both domestic dogs and wildlife throughout western Europe and North America, the incidence of attacks by rabid wolves has dropped. In the Middle East and Asia, there are still attacks each year.

The literature contains many examples of wolves being provoked (trapped, cornered, people entering their dens) without attacking humans. However, we have found a number of cases where provoked wolves have bitten people in an attempt to get away. In most cases these concerned shepherds attempting to defend their sheep and trying to kill wolves with a stick. In no case have the wolves directly killed anybody in such situations.

Unprovoked attacks by non-rabid wolves on people are very rare, and the vast majority of wolves do not regard people as being prey. However, we have found a number of incidents where predatory attacks have occurred. In Europe, the largest numbers of records come from pre 20th century France, Estonia and northern Italy, where historians have looked systematically for records of such events. The most famous event is from the Gevaudan area in France where historical records indicate that over 100 people were killed in the period 1764-1767. The wolves responsible were believed to be hybrids between wild wolves and large shepherd dogs. From these three regions several hundred people appear to have been killed from 1750 until 1900.

Additional records from the pre 20th century period come from Sweden, Finland and Norway. In Norway, there is a single record of a 6-year-old girl being killed in 1800. From Sweden there are records of 4 children being killed between 1727 and 1763, and 12 (11 children and one woman) being killed in 1820-1821. This latter episode (Gysinge episode) was believed to be due to a single wolf that had been raised in captivity before escaping. In Finland (and Russian Karelia) there have been a number of episodes during the 19th century where people have been killed. Most of these events occurred in 5 clusters Kaukola (1831 – 8 children and 1 woman killed), Kemio (1836 – 3 children killed), Kivennapa (1839-1859 – 20 children and 1 adult killed), Tammerfors (1877 – 9 children killed) and Åbo (1879-1882 between 22 and 35 children killed).

Predatory attacks from the 20th century are much rarer. There are reports of 5 children being killed in Poland (1937) and 4 children being killed in Spain (1957-1974). There are also controversial reports of 36 children being killed in the Kirov region of Russia (1944-1953). While these events remain unconfirmed, the details provided in the accounts make them credible. There are no documented cases of people being killed in predatory attacks by wolves in North America during the 20th century. However, there have been eight well-documented attacks, mainly in protected areas, where non-rabid wolves have injured people during the last 20 years.

People killed by wolves have been recorded in India since the 19th century. In the last 20 years there have been a number of scientific investigations in three regions, Uttar Pradesh, Bihar, and Andhra Pradesh. In these three regions there have a number

of episodes where at least 273 children are believed to have been killed by wolves.

The victims of predatory attacks tend to be mainly children, and to a lesser extent adult women, indicating that wolves are being selective. In contrast, victims of attacks by rabid wolves tended to be mainly adults, indicating that rabid wolves bite people at random. Attacks by rabid wolves cluster in the winter and spring, whereas predatory attacks are concentrated in the late summer.

We identified four factors that are associated with wolf attacks on humans.

- (1) **Rabies.** Rabies is involved in the majority of wolf attacks on people.
- (2) **Habituation.** When wolves lose their fear of humans, for example in some protected areas, there is an increased risk of attacks on humans occurring.
- (3) **Provocation.** This includes situations such as trying to kill a trapped or cornered wolf or entering a den with pups.
- (4) **Highly modified environments.** The majority of predatory attacks (pre 20th century Europe and present day India) have occurred in very artificial environments where a number of circumstances have occurred. These include; little or no natural prey, heavy use of garbage and livestock as food by wolves, children often unattended or used as shepherds, poverty among the human population, and limited availability of weapons among people so wolves might not be very shy. We do not believe that there was so little prey that wolves had to feed on children, it is just that the ecology of wolves in these situations brings them into very close contact with people, setting the scene for these rare predation events to occur. Once individual wolves become man-eaters, they tend to continue this behaviour until they are removed. In addition, we believe that the intensive persecution of wolves during the last few centuries may well have selected against wolves that were aggressive or were not shy of people.

In conclusion, we believe that there is good evidence that people have been killed by both healthy and rabid wolves during the last centuries. The incidence of attacks appears to have dropped dramatically during the 20th century. A fair summary of our results would be *"in those extremely rare cases where wolves have killed people, most attacks have been by rabid wolves, predatory attacks are aimed mainly children, attacks in general are unusual but episodic, and humans are not part of their normal prey"*. When the frequency of wolf attacks on people is compared to that from other large carnivores or wildlife in general it is obvious that wolves are among the least dangerous species for their size and predatory potential. Given the fact that wolves have posed a threat to human safety it is easy to understand why we have a "cultural fear" of wolves, which is reinforced through stories and mythology.

The risks of wolf attacks in Europe / Scandinavia (and also North America) today appear to be very low, as recent cases are rare, despite increasing numbers of wolves. There are currently an es-

estimated 10,000 – 20,000 wolves in Europe, 40,000 in Russia and 60,000 in North America. Even with these numbers of wolves we have managed to only find records of 4 people being killed in Europe, 4 in Russia and none in North America by non-rabid wolves during the last 50 years. Respective figures for rabies cases are 5, greater than 4 and zero. Clearly, the risks of wolf attacks under present circumstances are very, very low throughout Europe and North America. These low rates of attacks are probably due to the fact that the factors most often associated with wolf attacks are no longer common.

However, even if the risks of attacks are very low, we have made a number of management recommendations that should help to reduce the actual risks of wolf attacks occurring even further. (1) **Keep wolves wild.** Any wolves that appear to lose their fear for humans or act in an aggressive manner should be removed from the population. Carefully regulated hunting may be useful in maintaining shyness in some situations, and will in addition provide a feeling of local empowerment and control over the wolf situation. (2) **Prey.** The prey base available for wolves in most parts of Europe today can be described as very good. It will be important for game managers to ensure it remains this way even when they have to include wolf predation into management plans. (3) **Reaction planning.** Wildlife management agencies should establish reaction plans as to how to respond to wolves that act in an aggressive manner or lose their shyness. These plans should be co-ordinated with those for brown bears. (4) **Rabies.** Large parts of Western Europe are presently rabies free and the risks of it occurring appear to be very low. In other areas rabies control plans are underway. Reducing its incidence in domestic dogs and wildlife further will decrease the risk of attacks by rabid wolves.

Although the vast majority of wolves will probably never show any aggressive behaviour towards people, it is important to prepare management plans that cover wolves in *toto*, including the rabid, sick, fearless, hybrids and otherwise abnormal.

There is little doubt that a large part of the “fear of wolves” is a direct fear for personal safety, and the results reported above indicate that this is justified to some extent. It is therefore logical that we have developed an inbuilt genetic fear of large carnivores during our evolutionary past. However, it is apparent that much of the fear of wolves is also dependent on a person’s social and cultural situation. In other words, it is a fear of the wolf as a symbol of negative outside influences on local issues. Therefore, there is a clear need to consider the human-dimension as well as actual risk assessment in management planning.

John D. C. Linnell, Norwegian Institute for Nature Research, Tungasletta-2, NO-7485 Trondheim, Norway.

Reidar Andersen, Norwegian Institute for Nature Research, Tungasletta-2, NO-7485 Trondheim, Norway, and Zoology Institute, Norwegian University of Science and Technology, NO-7491 Trondheim, Norway.

Zanete Andersone, Kemeru National Park “Meza Maja”, Kemeru – Jurmala, LV-2012, Latvia.

Linas Balciuskas, Institute of Ecology, Akademijos 2, Vilnius 2600, Lithuania.

Juan Carlos Blanco, Wolf project, C/ Manuela Malasana 24, 28004 Madrid, Spain.

Luigi Boitani, Department of Animal & Human Biology, University of Rome, Viale Universita 32, 00185 - Rome, Italy.

Scott Brainerd, Norwegian Institute for Nature Research, Tungasletta-2, NO-7485 Trondheim, Norway.

Urs Breitenmoser, KORA, Thunstrasse 31, CH-3074 Muri, Switzerland.

Ilpo Kojola, Finnish Game and Fisheries Research Institute, Oulu Game and Fisheries Research, Tutkijantie 2, FIN-90570 Oulo, Finland.

Olof Liberg, Grimsö Wildlife Research Station, Department of Conservation Biology, Swedish University of Agricultural Sciences, 730 91 Riddarhyttan, Sweden.

Jonny Løe, Norwegian Institute for Nature Research, Tungasletta-2, NO-7485 Trondheim, Norway, and Zoology Institute, Norwegian University of Science and Technology, NO-7491 Trondheim, Norway.

Henryk Okarma, Institute of Nature Conservation, Polish Academy of Sciences, al. Mickiewicza 33, 30-120 Krakow, Poland.

Hans C. Pedersen, Norwegian Institute for Nature Research, Tungasletta-2, NO-7485 Trondheim, Norway.

Christoph Promberger, Carpathian Large Carnivore Project, Str. Dr. Ioan Senchea 162, RO 2223-Zarnesti, Romania.

Håkon Sand, Grimsö Wildlife Research Station, Department of Conservation Biology, Swedish University of Agricultural Sciences, 730 91 Riddarhyttan, Sweden.

Erling J. Solberg, Norwegian Institute for Nature Research, Tungasletta-2, NO-7485 Trondheim, Norway.

Harri Valdmann, Institute of Zoology and Hydrobiology, Tartu University, Vanemuise 46, 51014 Tartu, Estonia.

Petter Wabakken, Hedmark College, Evenstad, NO-2480 Kopang, Norway.

1 Introduction

Experience during recent decades has shown that the management, conservation and restoration of large carnivores in our modern world is as much a matter of solving and reducing conflicts with humans than of ecology (Mech 1995, 1996; Mech et al. 1996). The scales that large carnivores operate on (at both individual and population levels) are so large that there are no wilderness parks or reserves that can maintain significant populations without consideration of the surrounding areas (Woodroffe & Ginsberg 1998, 2000). In many parts of the world, such as Europe, the landscape is so modified, and human densities are so high, that large carnivores must be conserved in the multi-use landscape surrounding houses, farms, villages, and cities (Linnell et al. 2001a,b).

One of the main conflicts associated with large carnivores is due to their depredation on domestic livestock (Kaczensky 1996). During the 1990's there was much research focused on this conflict, which can be greatly reduced through careful management planning and the use of suitable husbandry practices (Linnell et al. 1996). Additional conflicts over perceived, and real, competition between hunters and carnivores for wild ungulates have been ongoing for decades (Orians et al. 1997; Mech & Nelson 2000). A great deal of research on this topic has been conducted during the last decades, and much is still ongoing. The result is an ever improving understanding of exactly how much wild predators impact their prey populations from many ecosystems around the world.

However, during the late 1990's much research focus has moved away from the ecology of the carnivores and their prey to the social aspects concerning human attitudes and behaviour. The emerging field of human dimensions has been increasingly focused on questions concerning conservation and natural resource management, including large carnivores (Bath 1996). The social issues concerning large carnivore conflicts are complex, and range from fundamental aspects of value systems and human rights, through loss of control, to the most visceral of all – fear for personal safety (Næss & Mysterud 1987; Kaltenborn et al. 1998, 1999; Bjerke et al. 2000, 2001). The importance of fear has become highlighted during recent years as wolf (*Canis lupus*) populations have begun to recover in Scandinavia (Wabakken et al. 2001; Zimmerman et al. 2001).

Fear of wolves has been widespread throughout European history. While historically a good deal of this fear appears to have been focused on the supernatural associations that surround wolves (were wolves as the symbol of the devil) (Boitani 1995; Pluskowski 2001; Pluskowski pers. comm.), there is little doubt that at least some of this fear has also been focused on the wolf as a real animal. Attitudes towards wolves have changed dramatically during the last 20-30 years, and conservation rather than extermination lies at the heart of national and international management programs (Boitani 2000; Linnell et al. 2001). However, even though the public apparently favours the wolf's right to exist, it appears that people are still afraid of it.

Studies throughout Europe (Norway, Spain, Croatia, United Kingdom), Asia (Japan) and North America have confirmed that significant numbers of people are afraid of wolves, and would adjust their behaviour if they knew wolves were present in an area (e.g. Kanzaki et al. 1996; Lohr et al. 1996; Bjerke & Kaltenborn 2000; Bath 2001; Bath & Farmer 2000; Bath & Madjic 2001).

The existence of this fear has ensured that public debates about wolf management and conservation have become highly emotional. Although bears (*Ursus* sp.) have long been known to kill and injure people on a regular basis (Swenson et al. 1996, 1999), the level of public fear is far less hysterical than that about wolves. At present there is no accessible overview of wolf attacks on humans. In the absence of knowledge, interest groups have been able to fill the vacuum with images of the wolf as a harmless, godlike animal on one side, and as a ferocious beast on the other. In a climate of denial and accusation there is little room for the informed debate that is necessary for rational wolf management to be achieved through democratic institutions (Schlickeisen 2001). This report aims to summarise what is known about wolf attacks on humans from both North America and Eurasia, from modern times and the last few centuries.

This project never aimed to quantify the total number of wolf attacks on people in Eurasia and North America. Neither is there any form of statistical sampling behind the data collection. Such a task would be clearly impossible. The data therefore consists of a potentially biased series of examples of varying quality. From these we can only draw the broadest of patterns. Our specific research questions have been;

- (1) Have wolf attacks on people occurred?
- (2) Are there any obvious patterns to wolf attacks?
- (3) Under what circumstances do wolf attacks occur?
- (4) Compare the relative frequency of wolf attacks to those from other large carnivores (assumes reporting bias is equal for all species).
- (5) What management procedures should be used to reduce the risks of attack, and what responses are appropriate

2 The data

2.1 Data sources

The oral traditions and written folk-tales of Eurasia and North America contain many accounts of wolves attacking and killing people. Some tales go back as far as Aristotle. However, the reliability of many of these stories is very questionable. For example, "Little Red Riding Hood" has existed in written formats since 1697, and has parallels in an Asian version of the story in which the role of the wolf is taken by a tiger (Dundes 1969). Nobody today believes that the story is actually based on a true event involving a talking wolf. However, many other folk tales are not so fantastic. For example, in Leksvik, Norway there is the tale of Anders Solli, a soldier. According to the story he was attacked by wolves on Christmas Eve, 1612. He killed one wolf with his sword and kept travelling. As soon as the pack had eaten their dead pack-mate they followed the soldier. When he tried to draw his sword he found that the blood from the dead wolf had frozen the blade into the scabbard. The wolves killed and ate him, leaving just the sword, skis and his right hand. This story was cited as a credible example of a wolf attack by Norwegian zoologist Sigurd Johnsen in 1957. The event is even marked with a monument and a poem. However, there are also versions of the exact same story from several other locations in Norway, Sweden and Finland (Melin 1992; Snerte 2000). Another common folk tale in Scandinavia, Finland and Russia refers to a family being chased by a pack of wolves while travelling on a horse-drawn sled in winter. In order to delay the wolves so they can escape to safety, they toss their youngest child out of the sled so the wolves stop to feed on it (Melin 1992; Snerte 2000). The fact that each fantastic tale is recounted detail for detail in many locations makes it very unlikely that all are true, although it cannot be ruled out that there is some real event at the origin of the story.

During the last 200 years a large number of stories concerning hunters and trappers from both Europe and North America have appeared in various magazines. These tales often contain accounts of the storyteller (or somebody he knew) being followed and attacked by bloodthirsty wolves. In most accounts the hero is lucky enough to have a gun and shoots his way out of the situation. Young & Goldmann (1944) recount several of the genre from North America, but were never able to substantiate them. The internet is also full of such stories.

Separating fact from fiction has been among the greatest challenges that this project has faced. We have not investigated wolf attacks in the field, and many of the reports come from times and places where modern forensic methods and standards of documentation do not exist. Neither have we checked original historical documents reporting wolf attacks. Many of the accounts have been filtered through several layers of recording and interpretation before we have found them. There is therefore always a certain degree of uncertainty around many of the cases presented here, especially for the cases from the 17th, 18th and 19th centuries. However, we have tried to retain those cases for which there are claims of some form of contemporary, writ-

ten documentation. In some few cases we also report events for which there is no written documentation, but where either we have directly interviewed people familiar with events, or where other authors have indicated that the events appear to be credible.

Because of the highly variable quality of data presented here it is difficult to rank each given case with a quality index. As an indication of quality we believe that it is most productive to consider cases according to the sources of information. Each source has its own associated problems and advantages. For each case it is important to consider two questions, (1) was the person actually attacked or killed, and (2) was it really a wolf that was responsible?

The main sources that we have examined include;

- (1) **Scientific, medical, and veterinary.** These cases that have been described by ecological, medical or veterinary professionals are those regarded as having the highest level of credibility. Such data is largely only available from the 20th century. In this category we include cases that are published, those that exist in official records and those that come from personal communications.
- (2) **Historical and administrative records.** Cause of death is generally recorded in parish registers kept by churches (extending back until at least the 16th century), and other administrative records. The parish registers are a particularly rich source of data that on a European basis include many cases of where "wolf attack" is written as the source of death. Examples include;

Villacortese [Northern Italy] 6th May 1654 "Pietro Maria, son of Giovanni Scazoso called Farè, aged 9 years and a half, killed by a wolf while returning from pasture with the cattle in the evening of the 17th, was buried the following day".

Gastrickland [Sweden] 1821 "Pehr, son of farmer Eric Pehrsson from Kråbäck, savaged by a wolf on the 28/1, buried 4/2, 6 ½ years old".

Given that being killed by a wolf is a very unusual event it is unlikely that it would be used in cases where the true cause of death was trying to be hidden (e.g. a suicide). In other words, priests and administrators would have little to gain by claiming that somebody was killed by a wolf when they weren't. These data sources are regarded as being relatively reliable. The only problem is that in some situations authors present summaries of their searches of administrative documents for periods covering several hundred years. This makes it difficult to evaluate the individual cases.

- (3) **Other sources.** Some cases are only reported in newspapers, non-technical literature and from interviews or personal communications. Some of these need to be treated with caution, because many that we have tried to find support for have proven to be impossible to verify. However, some cases are so well described from several independent

sources that they appear to be reliable. In many cases we have had to make a subjective evaluation of quality.

Only data from the first two categories should be regarded as being relatively secure. In order to make our task easier to manage we have defined attacks as cases in which there is violent contact (knocked over, scratched, bitten, killed) between a wolf and a person. These cases should be the most dramatic, and are also those for which there should be some physical evidence and documentation. The criteria of contact also makes interpretation less biased by the observer / victim. Close visual contact or an encounter with a wolf can be perceived in many ways (aggressive or benign), depending on the observer's personality and experience with wolves.

2.2 Sources of error

In any such study based on summarising historical records, newspaper and magazine accounts, traditional literature etc, there are many potential sources of error that appear. These errors can result from problems with translation, recording error, exaggeration ("journalistic license"), ignorance, or wilful distortion of the truth to cover up events. We illustrate some of these below.

Case 1. Problems with the oral tradition. There are many problems with using the oral tradition, as errors often enter the record, as the following examples illustrate.

- (1) In Alba village in Romania, villagers told interviewers a story about a postman being killed by wolves. It turns out that the postman in question is still alive and had merely once seen two wolves following him.
- (2) In Scotland a story was recorded in the 1800's about an attack that led to the deaths of two children in 1743. The problem is that wolves had been extinct in Britain since the 1660's (Yalden 1999).
- (3) Eles (1986) investigated two incidents of wolves killing children in southern Sweden in the 18th and 19th that were widely believed to be true locally. He could find no records of either event in parish registers for the period, indicating that it was unlikely that they had ever occurred.

Case 2. Faking an attack. In Poland in the 1950's there was a case of a young female teacher who was reported as being killed by wolves. Her shoes and purse were found with bite marks, together with fragments of her dress and lots of blood. Forty years later she returned to Poland, alive and well. It appears that her boyfriend had managed to smuggle her out of the country to Sweden, and they had used the ruse of being killed by wolves to prevent the government from punishing her family.

It is possible that murderers could try and cover their tracks by making it look like the victim had been killed by a large carnivore. In a recent case in British Columbia, Canada, a murder victim was initially believed to have been killed by a cougar (Cor-

bett pers. comm.). The result was that the murder site was not treated as a crime scene and the hunters and hounds that began the hunt for the non-existent cougar destroyed any evidence from the location. The autopsy documented that the victim had in fact been stabbed with a knife. The controversy surrounding the Chamberlin dingo case at Ayer's rock in Australia in the 1980's also illustrates the complexities of separating murder from a real carnivore attack (see [section 10.1](#)). However, because of the rarity of wolves killing people, this would only be possible during a period when real wolf attacks had occurred in the area.

Case 3. Confusion about names. In our questionnaire survey in Romania, 325 of 366 replies could be immediately discarded as they concerned dog bites. The confusion occurs because German Shepherd dogs are called "caine lup" (wolf dog) in Romanian, whereas wolves are called "lup".

Case 4. Direct and indirect mechanisms. In Iran, a scientist investigated a case of a shepherd who had been "killed by wolves". It turned out that wolves had attacked the shepherd's flock, but that the shepherds and their dogs had successfully defended their sheep without any of the shepherds being attacked. Immediately after the incident, one elderly shepherd sat down and died, perhaps from a heart attack. The event was recorded as a person killed by a wolf, even though the wolves never touched the shepherd (Joslin 1982).

It is not uncommon for people that receive a minor bite from domestic dogs to develop serious complications that can result in death. Examples include diverse infections and septicemia, rhabdomyolysis with renal failure, and pulmonary thromboembolism (Anveden et al. 1986; Holter et al. 1989; Hantson et al. 1991; Smith et al. 1999). Presumably such complications are also associated with wolf bites. It is therefore difficult to know if all historical cases of "death by wolf" actually involved the person being killed outright by the wolf, or involved subsequent death due to complications from a relatively minor bite.

Case 5. Killing vs scavenging. In many cases, the remains of people that have gone missing in the forest are found later, in a decomposed or partially consumed condition. Often wolves may have fed on the body, along with other scavengers. Although there is rarely any proof that wolves actually killed the person, they are often blamed for it in the press. These stories occur in many countries (e.g. Romania, Greece, Russia), and are especially frequent during times of war. One classic example comes from Alaska in 1933. A 60-year-old trapper, John Millovich from Fairbanks, failed to return to town when expected in May 1933. Some of his friends went to look for him, and found his partially consumed body and torn clothing lying 15m from his cabin. Wolf tracks were visible in the snow. In such a case it is impossible to determine if he was killed by the wolves, or if they had simply scavenged his body after he died of a stroke or heart attack while fetching water (Young & Goldman 1944).

Case 6. Euphemisms and superstition. In much of the older historical literature there is the risk of the expression "killed by

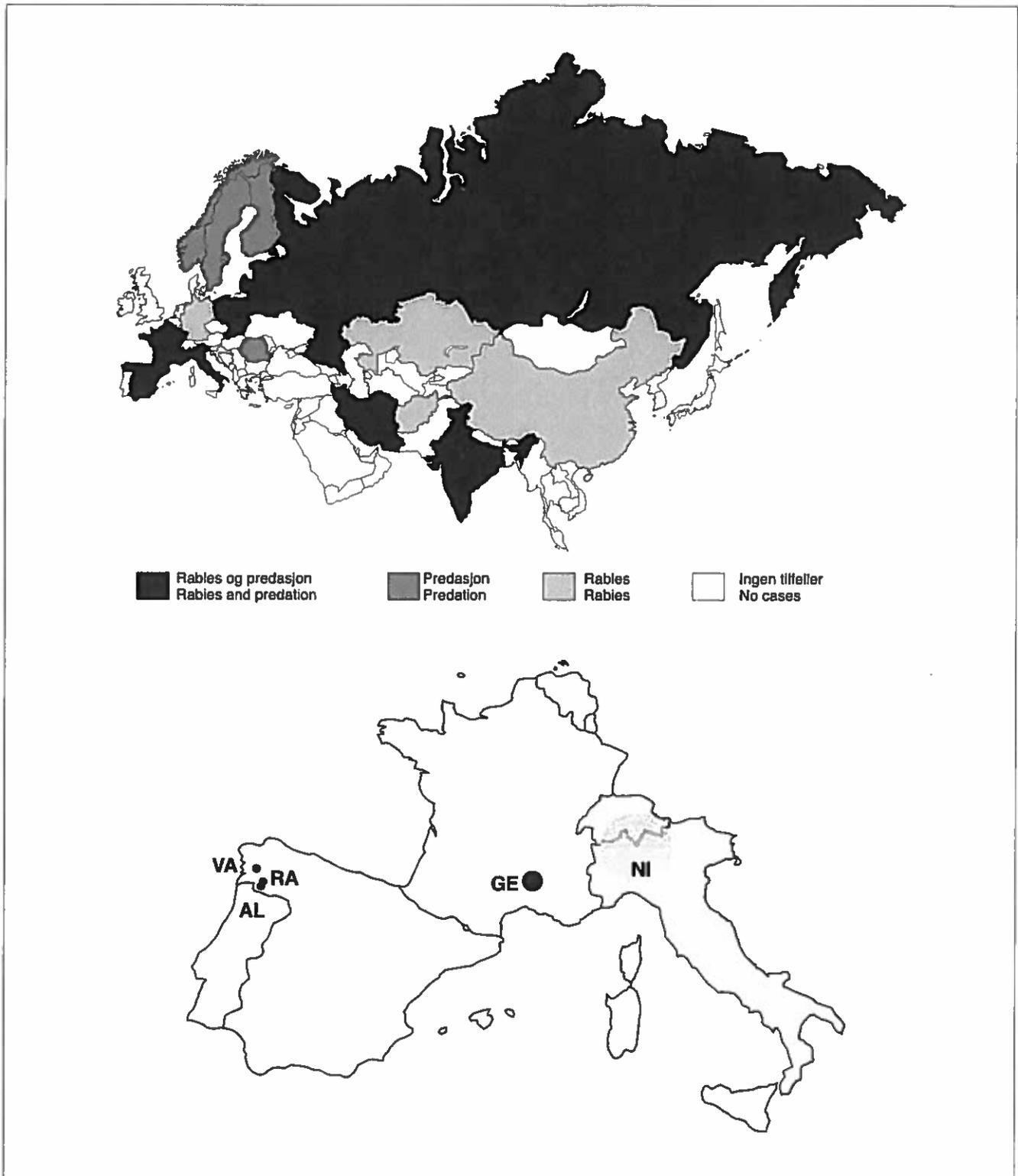


Figure 1 (top). Geographic distribution of areas covered by the report in relation to the types of wolf attacks found.
Figure 2 (lowest). Areas mentioned in the text where predatory attacks by wolves on humans have occurred in Spain, France and Italy.
 VI = Vimanzo, RA = Rante, AL = Allariz, GE = Gevaudan, NI = Northern Italy.



Figure 3 (top). Areas mentioned in the text where predatory attacks by wolves on humans have occurred in Fennoscandia (1800-1882). SØ = Sørum, Akershus, GA = Gastrikland / Dalarna, ÅB = Åbo, KA = Kaukola, KI = Kivennapa, KE = Kemiö, TA = Tammerfors
Figure 4 (lowest). Location of Kirov (KI) in central Russia where a number of predatory attacks on people are reported from the period 1944-1953.

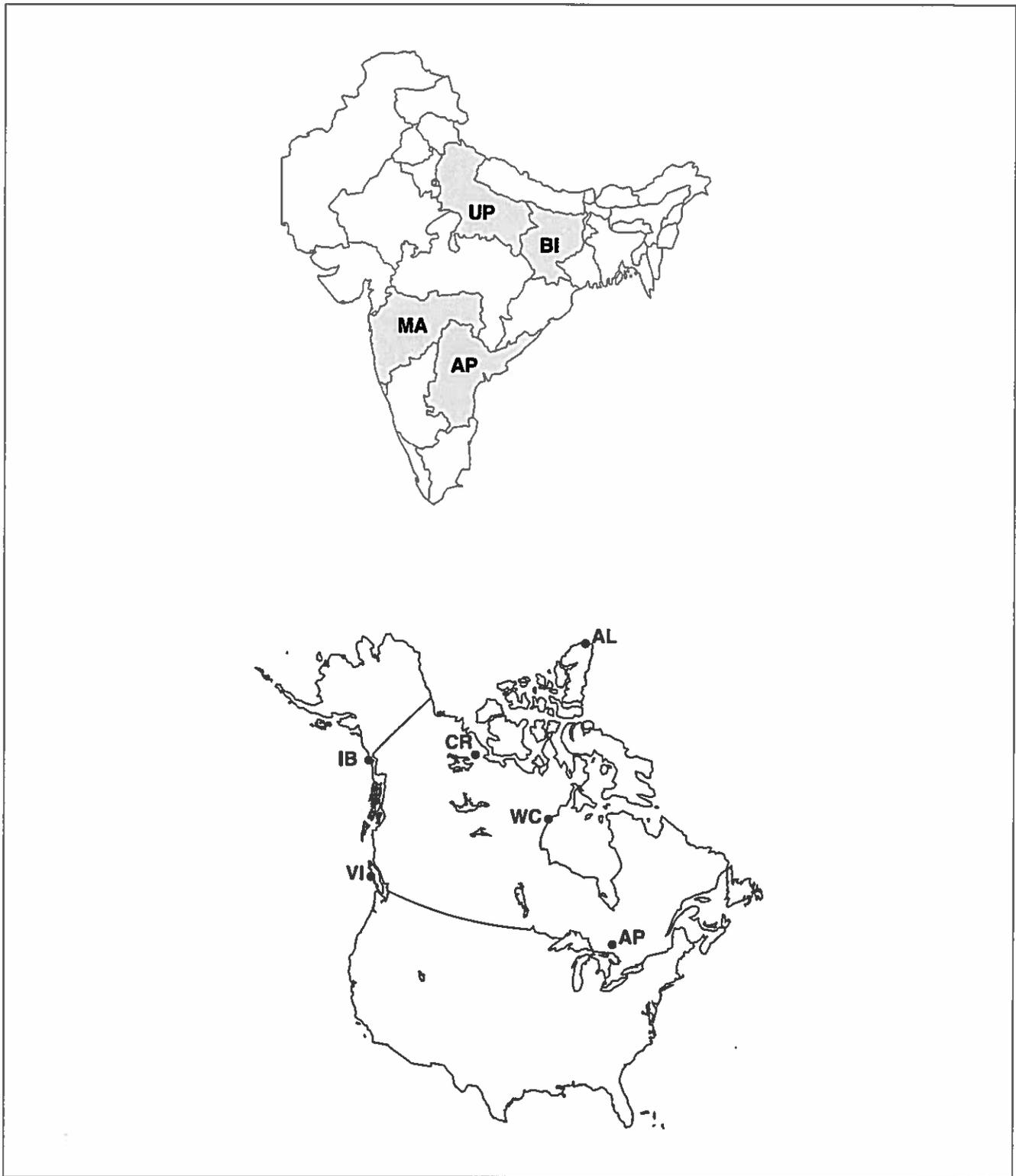


Figure 5 (top). Location of 3 states in India where predatory attacks on children have been reported and 1 where attacks by rabid wolves have been reported. BI = Bihar, UP = Uttar Pradesh, AP = Andhra Pradesh, MA = Maharashtra.

Figure 6 (lowest). Locations in North America where several attacks on people by rabid and non-rabid wolves have occurred during the 20th century. IB = Ice Bay (Yakutat), VI = Vargas Island, AP = Algonquin Provincial Park, AL = Alert, Ellesmere Island, WC = Whale Cove, CR = Coppermine River.

wolves” being used as a euphemism for other causes of death. For example in Germanic and Anglo-Saxon the words *warg*, *warc* and *verag* (wolf) were also used for outlaws, bandits and evil spirits. A similar situation existed in Sweden where the word “*varg*” (also used for everything that was wrong, including criminals) replaced the original term “*ulv*”. During the middle centuries of the last millennium it is important to remember that werewolves were believed to exist, and many murders may have been blamed on wolves or their supernatural incarnation. In addition, a large number of animals, including wolves, were tried in religious courts and executed for their “crimes” up until the late medieval period.

Case 7. Mistaken identity. It is also highly possible that a number of attacks attributed to wolves could be due to domestic or feral dogs, wolf-dog hybrids or similar species like jackals (*Canis aureus*) or coyotes (*Canis latrans*). The ability of people to identify the animal attacking them during the stress and shock of an attack may not always be accurate. Attacks by domestic dogs (both rabid and non-rabid) are far more common than attacks by wolves. Many dog races (German Shepherds, huskies, malamutes etc.) also resemble wolves. The existence of free-living hybrids between wolves and dogs further complicates the issue. Such hybrids have been described in several places in Norway, Eastern Europe and Russia (e.g. Rjabov 1980, 1985; Vila & Wayne 1999; Randi et al. 2000; Anderson et al. 2001). This potential error exists throughout the entire literature, and is impossible to correct for, with the exception of cases where the wolf has been shot or captured during, or following, the attack.

In Norway (in 2000), Finland (1990's), and France (in 2001) there have been cases reported in the media where people claimed to have been bitten by “a wolf”. In all these cases there were many details that were inconsistent, and the most likely explanation is that they were bitten by dogs.

Case 9. Rabies vaccination procedures. In many cases large numbers of people are given post-exposure treatment following exposure to a rabid wolf. However, in many cases this includes many people that may have handled or touched the dead wolf, and not just those that were attacked or bitten. Therefore, when this is reported as the number of people exposed to wolf rabies, it is not automatic that all were actually attacked by the wolf.

2.3 Coverage

In order to locate data for this report we have relied heavily on the contact networks of the authors. The authors of this report have many decades of accumulated experience working with wolves and other large carnivores throughout Europe, Asia (Figure 1) and North America. In addition, we have contacted many other wildlife professionals (scientists, wildlife managers) that have worked with wolves, other large carnivores, or in wolf range in North America and Eurasia. Furthermore, all the authors and their contacts have during their work been in contact with many hunters, foresters and other people that live in wolf range. In addition to this network, we have also written to a wide range of organisations (conservation, hunting, historical etc.) and used a number of email discussion groups asking for records

of wolf attacks. Through this wide contact net it is highly likely that unrecorded wolf attacks would have been mentioned had they occurred. We have a high degree of confidence in the extent to which we have covered the last 20-40 years – so that this is the period for which we believe that our coverage is relatively complete (at least for Europe and North America). In addition, we have conducted literature searches of technical literature databases and read through much literature not covered by databases. We have placed extra emphasis on countries in Europe where wolves are relatively abundant – this includes Italy, Spain, the three Baltic States, Poland and Romania. In Romania we sent students from a University wildlife management course to their homes with questionnaire surveys in an attempt to collect further unrecorded attacks.

It is quite possible that we have missed some cases of wolf attacks on people – that either have not been recorded, or where we have not found the records. The incidents described here are therefore just those examples of wolf attacks that we have been able to find, and believe are credible. However, we believe that we have not overlooked many from modern times given;

- (1) The sensational nature of a wolf attack.
- (2) The fact that large numbers of attacks by other carnivores such as tigers (*Panthera tigris*), bears (*Ursus* sp.) and cougars (*Puma concolor*) are extensively recorded from areas and periods where we have not found records of wolf attacks.
- (3) The large number of experienced people involved in the report.
- (4) The intense interest in wolf management issues among wildlife professionals and the public alike.

3 Rabies

3.1 The disease

The word rabies comes from the Sanskrit word *rabhar* – “to do violence” (MacDonald 1980). Rabies is a viral infection of the central nervous system. The primary mode of infection is from an animal's bite and occasionally by way of saliva contaminating mucous surfaces. Although rabies is highly infectious, not all bites from rabid animals automatically lead to the development of rabies, presumably because there is not enough virus transferred, or the bite was too shallow. The bite leads to a local infection with a very limited virus replication and a subsequent slow spread through the peripheral nerves to the central nervous system. The period of incubation can last from two weeks to several months. During the clinical phase of the disease, many victims develop the “furious” type, which consists of alternating bouts of hyperexcitability and lucid periods. Classical symptoms include excessive salivation and hydrophobia. Victims typically enter a coma and suffer multiple organ failure. Once the disease becomes established it is 100% fatal (King & Turner 1993, Jackson 2000). However, if treated immediately after exposure it is possible to prevent the development of the disease in most cases. The post-exposure treatment was first developed by Pasteur at the end of the 19th century and has been considerably improved during the 20th century (Baltazard & Ghodssi 1954, Bahmanyar et al. 1976, Selimov et al. 1978). The present treatment consists of a single injection of immunoglobulin (rabies antibodies grown in tissue culture) and multiple injections of rabies vaccine (Jackson 2000). Survival of patients treated is high, except in some cases where bites have been inflicted directly on the head and neck (Shah & Jaswal 1976; Fangtao et al. 1988). The result of these developments in treatment is that a disease that was invariably fatal before the 20th century is now mainly treatable.

Despite the development of effective post-exposure treatment, rabies is estimated to kill up to 50,000 people each year, worldwide. The main source of rabies infections in humans is the domestic dog, although wildlife reservoirs exist in all areas (MacDonald 1980). The main species serving as primary vectors varies from region to region. Arctic foxes (*Alopex lagopus*) are most common in arctic areas, jackals in Africa, red foxes (*Vulpes vulpes*) and racoon dogs (*Nyctereutes procyonoides*) in eastern Europe, and skunks (*Mephitis mephitis*) and racoons (*Procyon lotor*) in some parts of the United States (Linhart et al. 1997; Hanlon et al. 1999; Jackson 2000, Mørk & Prestrud 2001). However, in Western Europe and North America, rabies has been virtually eliminated in domestic dogs through widespread vaccination and dog control laws. The number of human cases has dramatically dropped accordingly. In these areas the wildlife reservoirs have taken on increased importance. Large-scale vaccination programs in Western Europe have been very successful at eradicating rabies in red foxes, with Switzerland becoming rabies free in 1998.

3.2 Rabies in wolves

Wolves appear to have always been involved in transmitting rabies to humans in Europe and Asia, with the earliest reports stemming from the 13th century (e.g. Butzeck 1987; Beran 1994). Rabies still occurs in wolves throughout North America, eastern Europe and Asia, however the number of cases is very low compared to other wildlife species (Tables 1 & 2). In most areas it is unlikely that wolves serve as a reservoir or primary host for the disease. It rather tends to appear as isolated incidents where a single wolf (McTaggart Cowan 1949), or a pack (Chapman 1978), become infected in a form of “spillover” from another animal species in which rabies is more common (Johnson 1995). In temperate and arctic areas this is likely to be either the red fox or arctic fox, while in more southern regions this is likely to be the golden jackal or domestic dogs. At least in northern North America it appears that rabies epidemics in arctic foxes appear periodically, and that the wolf cases tend to appear during a peak in the epidemic. When the large size of the North American wolf populations is taken into account, the number of rabies cases in wolves is remarkably low (review in Johnson 1995, Table 2) in comparison with Eurasia. In the eastern Mediterranean, Middle East, and central Asian region (especially Iran) wolf rabies appears to be far more common than elsewhere, reflecting the very high number of diagnosed cases and resultant large numbers of people being bitten. The exact reasons for this high regional prevalence of wolf rabies are unclear, but it may be due to the existence of jackals in the region. At least in Africa, where jackal rabies has been more widely studied, jackals are regarded as being a primary host for the disease (Linhart et al. 1997, Bingham et al. 1999, Loveridge & Macdonald 2001). In addition, rabies is widespread in domestic dogs in the region. It is therefore likely that wolf rabies was much more common in Europe before rabies was virtually eliminated from domestic dogs during the 19th and 20th centuries, and because wolves were more abundant in the past.

Wolves appear to develop the “furious” phase of rabies to a very high degree (Beran 1994). This results in the large numbers of people and livestock that are bitten in each attack, and in the distances that these wolves can travel during this short-lived phase of the disease. When the physical size, strength and speed of a wolf is considered, it is clear that a rabid wolf is probably the most dangerous rabid animal of all.

Table 1. Numbers of laboratory diagnosed cases of rabies in wolves in various Eurasian countries, 1990-99. Data are mainly from the WHO RabNet internet pages. No data was available from Ukraine, Armenia, China, Mongolia, the former Soviet Central Asian republics, Pakistan, India or Afghanistan. Rabies is not present in other wolf range states like Spain, Portugal, Italy, Switzerland, Norway, Sweden, Albania or Greece.

Country	1999	1998	1997	1996	1995	1994	1993	1992	1990
Belarus		1		0	0		0		
Bulgaria	0	0	0	0		0		0	
Croatia	0		1	1	0	0	0	1	0
Czech Rep.	0	0	0	0	0	0	0	0	0
Estonia	0	0	0	0	0	0	0	0	
Egypt		1	1	0					
Finland	0	0	0	0	0	0	0	0	0
France	0	0	0	0	0	0	0	0	0
Hungary	0	0	0	0	0	0	0	0	0
Iran	16		19	21	29	16	11	15	
Israel	1	1	6	9	9	2	0	0	0
Jordan	0	0	0	1	0	0	0	1	
Kazakstan					17				
Latvia		0	1	2	0	0	1	1	0
Lithuania	0	0	0	0	0	0	1	0	0
Moldova	0	0	0	0	0	0	0	0	0
Oman		1	0	0	0	0	0	3	0
Poland	1	0	0	0	0	1	2	1	0
Romania	1	1		0	0	1	2	1	
Russia	7	13	0	0	2	0	0		
Saudi Arabia					0	1	2		
Serbia	0						0		
Slovakia	1	1	0	0	0	1	0	0	0
Slovenia		0	0	0	0	0	0	0	
Syria			0						
Turkey	1		0					0	
Yugoslavia	0	0	0	0	0	0	0	0	0
Total	28	19	28	34	57	22	19	23	0

Table 2. Occurrence of rabies in wolves in North America.

Area	Cases	Reference
Canada	16 cases diagnosed in 1990-99 70 cases diagnosed in 1982-1992 3 cases diagnosed 1978-1984 6 of 57 radio-collared wolves died of rabies, 1987-1991 3 cases diagnosed in 1947	Rabnet Johnson 1995 Prins & Yates 1986 Theberge et al. 1994 McTaggart Cowan 1949
Alaska	1 case diagnosed in 1990-99 12 cases in Alaska 1981-1991 1 of 88 wolves tested from 1975-1982 5 of 26 radio-collared wolves died from rabies 1984-1985 4 (perhaps 11) of 86 radio-collared wolves died of rabies, 1987-1992 2 cases diagnosed, 1949-1957	Rabnet Johnson 1995 Zarnke & Ballard 1987 Weller et al. 1995 Ballard & Krausman 1997 Rausch 1958

4 Types of wolf attack

Herrero (1985) separated between two types of bear attacks on humans. The first and most common category was when a bear was surprised or felt threatened and attacked as a defensive action. The second category consists of predatory attacks where the bear perceives of the victim as prey. Separating between these two forms of attacks still forms the basis for the appropriate response recommended by North American national parks and management agencies.

In the case of wild wolves, it is necessary to differentiate between three different types of attack, (1) rabid, (2) defensive / investigative, and (3) predatory. The difference between attacks by rabid and non-rabid wolves appears to have been clearly recognised both by ordinary people in the areas where wolves occur (Baltazard & Ghodssi 1954) and by the historians that have summarised historical cases (de Beaufort 1987; Cagnolaro et al. 1992; Comincini et al. 1996; Roots 2001). However, it is not always possible to attribute single cases to one category or the other, especially in older literature. Today, classification is far easier when wolves can actually be tested in the laboratory for rabies.

A further category of attacks resulting from captive, and pet wolves or pet wolf-dog hybrids also exists. Although we briefly mention some of these cases in **section 9**, our primary focus is on wolves under free-ranging conditions. Likewise, we do not include cases of researchers handling drugged wolves in connection with radio-collaring, although we are aware of at least one case of a wolf biting a researcher in the leg (Victor Van Ballenberghe pers. comm.).

4.1 Rabid attacks

Throughout history there are accounts from Eurasia of single wolves rushing into a farmyard or village, biting wildly at people or livestock that stand in the way, before rushing off to the next village. Such stories span at least 400 years of recorded history.

The following example from Aurangabad District, India on the 3rd February 1973) is typical. Between 05:00 and 17:00 a rabid wolf ran through 6 villages, covering a distance of at least 23 km, biting 12 people, 2 pigs, 3 bulls and a dog. All three of the victims that were bitten on the head or face died of rabies, despite two of them receiving post-exposure treatment. The other victims that were bitten received post exposure treatment, and none died. One of the pigs died directly from his wounds, the second died from rabies 28 days later. A dog that fed on the body of the rabid pig also died of rabies. Two of the bulls that were bitten also died of rabies. A medical team (Shah & Jaswal 1976) investigated this event.

The pattern of rabid wolf attacks is remarkably consistent, with a single wolf often travelling over large distances, often biting a large number of people and domestic animals if it gets the chance. Some victims only receive a small bite to the hand or arm, while in other cases the attack can be sustained and the

victim can even be killed outright. An important aspect is that victims are not eaten, and that the attacks generally only occur on a single day (two at most).

4.2 Defensive / investigative attacks

There are historical and contemporary records of shepherds being bitten on the hand, arm or foot when they corner or confront a wolf trying to kill livestock or dogs, and try to kill it with a stick or hay fork. Other records exist of hunters digging out wolf pups from a den and being bitten by an adult wolf trying to defend the pups. These attacks can be interpreted as defensive bites by a scared and cornered animal. They generally consist of a single bite, usually to an extremity, and the wolf does not press the attack, but simply escapes if possible.

A number of cases exist from North America where wolves with no fear of humans (either from naivety or habituation) have bitten people after approaching them closely. In some cases it has been suspected that the wolves are "testing" or investigating the person as potential prey, which can result in close approach, being knocked over, or bites. In other cases it appears that the wolf has been trying to seize an object (in two cases the sleeping bag that the victim is sleeping in) and panics when the victim wakes up or surprises the wolf. This panic is often expressed as a bite or series of quick bites. As in defensive attacks, the wolf does not press the attack, and is easily scared away.

4.3 Predatory

Predatory attacks appear to usually involve single wolves, or single packs, that learn to exploit humans as prey. In these cases the victims are usually directly attacked around the neck and face in a sustained manner. The bodies are often dragged away and consumed unless the wolves are disturbed. Although single incidents have occurred, these predatory attacks tend to cluster in space and time, and continue until the wolf is killed.

5 Europe

5.1 European wolf populations

Wolves were once distributed across the entire European continent, from the Mediterranean to the Arctic, including Britain and Ireland. From the earliest times it appears that people strove to exterminate wolves. Records of royal decrees and bounties to stimulate hunting stretch back to before the medieval period. These efforts were most successful in western and northern Europe. Intensive hunting pressure plus the indirect effects of habitat clearance and destruction of the prey base soon took a toll on the populations. Britain exterminated its last wolves in the 17th century, with Ireland following in the 18th century. The pressure continued right through until the 1960's, resulting in either extinction or an all time low in population density and distribution (Boitani 1996, 2000; Yalden 1999; Linnell et al. 2001).

During the last 30-40 years, as the attitude towards wolves has gradually changed, the declines have stopped, and even been reversed in many countries. For example, reproductive units have re-established themselves in France and Scandinavia during the 1990's, with dispersing individuals arriving in Switzerland and Germany. **Table 3** summarises the approximate changes in wolf status in Europe through recent centuries.

Central and northern Europe exterminated their wolf populations in the 18th and 19th centuries. However, wolves have been continuously present in eastern and southern Europe, although their populations have often been reduced for shorter or longer periods (Blanco et al. 1992; Boitani 1992, 2000; Jedrzejewska et al. 1996). A common occurrence has been the recovery of wolf populations during wars, and other periods of social strife when control efforts were reduced or suspended. Therefore, Europeans have had plenty of experience of wolves (at least as much as North Americans), at various densities, throughout historic times extending to the present day.

It is important to note that the reduction or local extinction in wild prey populations, such as red deer, roe deer, moose and wild boar often preceded the reduction of wolf populations. Unregulated hunting from an increasing human population, widespread clearance of forest for farmland, very heavy grazing by domestic ungulates, and the ever increasing availability of weapons and firearms reduced most European wild ungulate populations to very low levels in the 18th and 19th centuries (Wotschikowsky 1998; Breitenmoser 1998; Yalden 1999). After the wild prey were gone, wolf populations apparently were able to persist for long periods on livestock and garbage – as the still do today in many areas (Meriggi et al. 1991; Meriggi & Lovari 1996; Vos 2000). The present wide distribution of wild ungulate populations (Gill 1990) is unprecedented in recent European history.

5.1 Bulgaria

There are two unconfirmed reports of wolves feeding on humans during world war two, although it is impossible to know if the wolves killed the people first, or fed on their bodies after they died of starvation or hypothermia. In early summer 2001, newspapers carried a story about two people (an old lady and a shepherd) being bitten by a wolf that apparently had rabies. It has been impossible to verify the truth of this report (Elena Tsingarska pers. comm.).

5.2 Croatia

There have been no substantiated reports of non-rabid wolves attacking people in Croatia during the post WW2 period (Djuro Huber pers. comm.). The European Wolf Newsletter carried an account of a farmer being bitten by a rabid wolf while he tried to kill it with a stick on April 13th, 1997.

5.3 Estonia

There are reports of rabid wolves attacking people during the period since 1980 – in one case in 1980 elderly woman died directly from her wounds, and several other people needed post-exposure vaccination (Kaal 1983). Otherwise there are no reported attacks during recent decades. During the same period there have been at least 6 documented cases of bears attacking people.

Historically there are a number of records of wolf attacks, especially during the 19th century. Rootsi (2001) has examined church and administrative records, correspondence and historical literature from Estonia for the 18th and 19th centuries. From this material he found 82 cases of people bitten by rabid wolves and 136 people killed in predatory attacks. The rabies cases occurred over a large area of Estonia. In contrast, the predatory attacks occurred in a very clumped pattern in space (85% of all cases occurred in Tartumaa county, in eastern Estonia) and time (several attacks occurring in a limited area during a short space of time), summarised in **Appendix 3**. It is believed that a combination of hybrids (both wild and captive born) and tame wolves that escaped from captivity were responsible for a proportion of these cases. In at least 2 cases wolves responsible for killing children were found to be wearing a collar when shot. Apparently it was common to keep wild wolves as exotic pets at the time, and some hybrids were produced to use as hunting dogs. Because the majority of cases occurred during late summer months, Rootsi (2001) believed that female wolves trying to feed their pups were also responsible for a number of the cases. However, the fact that children were generally working as shepherds during this season may also explain the seasonal peak.

5.4 France

Since wolves recolonised France in the late 1980's after almost a century of absence there have been no documented attacks on humans. However, the historical ecology of wolves in France has

Table 3. Changes in distribution and status of wolf populations in western Europe and North America during recent centuries. Data from Hayes & Gunson 1995, Stephenson et al. 1995, International Wolf Foundation, Boitani 2000, Iliopoulos 2000, Linnell et al. 2001.

Country	Wolf population status			
	18 th century	19 century	20 century	c. 2000
Albania	present	present	present	250
Austria	present	ext. 1880		0
Belarus	present	present	present	2000-2500
Belgium	present	ext. late 18 th century		0
Bosnia-Herzegovina	present	present	present	400?
Bulgaria	present	present	present	800-1000
Croatia	present	present	present	100-150
Czech Rep.	present	present	present	<20
Denmark	ext. 1772			0
Estonia	present	present	present	<100-300
Finland	present	present	present	100
France	present	present	ext. 1927 recolonised 1992	30-40
FYROM	present	present	present	1000
Germany	present	ext. between 1847 and 1899	recolonised late 1990's	1 pack
Georgia	present	present	present	2000
Greece	present	present	present	600-700
Hungary	present	present	ext. 1900 recolonised 1990's	15-25
Ireland	ext. 1770			0
Italy	present	present	present	400-500
Latvia	present	present	present	300-500
Lithuania	present	present	present	600
Moldova	present	present	present	<20
Netherlands	present	ext. 18 th century		0
Norway	present	present	functionally ext. early 20 th century – recolonised 1998	c. 30
Poland	present	present	present	600-700
Portugal	present	present	present	200-300
Romania	present	present	present	2500
Russia	present	present	present	40000
SFR – Yugoslavia	present	present	present	1000
Slovakia	present	present	present	350-400
Slovenia	present	present	present	30-50
Spain	present	present	present	2000
Sweden	present	present	functionally extinct mid 20 th century – recolonised 1980's	c. 70
Switzerland	present	extinction between 1850 and 1899		Transients
Ukraine	present	present	present	2000
United Kingdom	extinct since 1680's			0
Alaska	present	present	present	6000
Canada	present	present	present	52000
Minnesota	present	present	present	2500
Michigan	present	present	extinct recolonised 1970's	112
Wisconsin	present	present	extinct recolonised 1970's	148
NW Montana	present	present	extinct recolonised 1986	63
Idaho	present	present	extinct reintroduced 1995	>118
Yellowstone	present	present	extinct reintroduced 1995	177

been well researched, and records from the 18th and 19th centuries contain many references to people being attacked and killed by wolves. This includes both those with rabies and those that were predatory by nature.

The beast of Gévaudan. Between June 1764 and June 1767, wolves were reported to have killed over 100 people, many of which were partly eaten, in the Gévaudan region of southern France (Figure 2) (Carbone 1991). The exact number killed depends on the source, but de Beaufort (1987) tallied 210 attacks, resulting in 49 people wounded and 113 killed. Of those killed, 98 were at least partially consumed. The case has been documented by a range of authors including two abbots (Pourcher in 1889 and Fabré in 1901) and by historians de Bayac and de Beaufort (1987). These authors have examined a wide range of documents, including parish and church records, death certificates, official reports and private letters. Clarke (1971) has summarised the results in English. As a result this remains one of the best-documented historical episodes of wolf predation on humans.

It appears that the local population was familiar with rabid wolves attacking people, but from the outset of this episode it was clear that the wolves were not rabid, as the attacks persisted over a long period, and most of the victims were consumed. In addition, a number of people were bitten during attacks, but managed to drive the wolves away. None of these victims later died of rabies. If the wolves had been rabid it would have been inevitable that most of the victims would have gone on to develop rabies. Enormous resources were used to try and kill the wolves – including the army, several nobles and royal huntsmen. A large proportion of the local population was conscripted to take part in the hunt. Many wolves were killed, but the attacks continued until a wolf was killed in autumn 1765. This wolf was very large, and was identified as being that responsible for attacking people from a series of scars inflicted by people that had defended themselves. However, after a brief pause the attacks resumed again and continued until June 1767 when a second especially large wolf was killed, this time with human remains in the stomach. Both of the wolves that were believed to be responsible for the attacks were exceptionally large and had unusual coat coloration, leading several later authors to speculate that they were hybrids between wolves and some of the large shepherd dogs found in the region. Both of the wolves had mates, and one at least was part of a pack – however, only the two “exceptional” wolves were ever implicated in attacks by witnesses or survivors. No attack was suspected as being due to the whole pack acting in a co-ordinated manner. The attacks occurred within an area of 90 x 80 km.

There has always been controversy about the identity of the “beast”, especially if it was really wolves that were responsible for all the deaths. Alternative hypotheses have been raised that it was the work of a serial killer or another animal, perhaps a hyena that had escaped from a zoo. Many works of fiction, in both literature and film, (most recently the French film “Brotherhood of the wolf”) have embellished the tale. From our point of view it is impossible to be 100% certain. However, even if some of the cases may have been due to other agents than a

wolf, the historians that have examined the case believe there is a very high chance that a wolf or wolves were involved in many of the deaths.

Foret de Longechamp. Between 16th June 1817 and 26th June 1818 a number of attacks occurred in the Longechamp forest (Cote d’Or, near Lyon). A total of 17 people were attacked (1 adult women, 16 children). Of these 9 children were killed. These attacks occurred within an area of 250 km². In most attacks it was believed that a single wolf was responsible, but in several attacks, 2 and 3 wolves were observed to take part. The wolf that was responsible was finally killed, and was noted as being an exceptionally large individual.

Lorges Forest, France 25th April 1851. In 7 hours a rabid wolf travelled 45 km through 9 villages biting 41 people (10 adult men, 12 adult women and 19 children) and 96 animals (64 cattle, 14 horses, 8 sheep, 6 pigs, 3 goats and 1 dog). The deaths of 14 of the people from rabies was confirmed in records during the following 2 months, although it is highly likely that most died in view of the fact that rabies is highly infectious and 100% fatal. The account is based on historical records written by the mayor of Pleisdy, a statement from the local hospital, a police report and a letter from one of the government ministries (de Beaufort 1987).

Salernes, France. 31st July 1756 A rabid wolf ran into a village – during the course of the day it bit 12 people (mainly adults) and 1 pig. The bites ranged from a single bite on the ankle to “having all the face, head and neck torn off”. During the next 3 months at least 6 of those bitten were recorded as dying from rabies. Describing the death of two children the priest wrote, “The circumstances of these two children’s death are awful. Joseph Dauphin began to refuse eating and hate water, having occasional fits and tried to bite people, he warned them however and died in this state with no cure. Marie Anne Boudou was more furious, she also hated water, she was locked alone in her room where she broke her head and body while falling from time to time, and in these excitements, died with no remedy”. The town priest wrote this account after the event.

Other attacks. Several additional episodes where a sequence of predatory attacks occurred on more than 1 person within a limited area are summarised in Appendix 3. In addition, de Beaufort has found reports of many more isolated cases of wolves killing people from throughout France up until the 1920’s (Table 4). Many of these were described in detail as being due to rabid wolves. The possibility also exists that many of those not explicitly attributed to rabid wolves may have been due to rabid wolves. However, there appears little doubt that there were many other cases of human deaths in France being attributed to non-rabid wolves. The two most recent cases listed are an 8 year old girl and an old lady killed in 1914 and 1918 respectively (Teruelo & Valverde 1992). There are independent reports of two attacks by rabid wolves in France in the Spanish literature (Teruelo & Valverde 1992). In 1878, one of these resulted in 6 people being bitten and in 1839, another resulted in 18 people being bitten (12 of them died). Another describes 46 people being bitten by a rabid wolf in a single day in 1851 in Hue-an-

Gal (MacDonald 1980). MacDonald also reports 38 deaths of people after being bitten by rabid wolves in France in the period 1851-1877. In the same period 707 died after being bitten by rabid dogs.

when he stumbled upon a den with pups (Yorgos Ilopoulos pers. comm.).

Table 4. Numbers of cases of wolf attacks on people in France tabulated by de Beaufort (1987) from historical records. Note: the percentage of deaths resulting from attacks by rabid wolves is an underestimate because of a reporting bias against cases where a long time period occurred between being bitten by a rabid wolf and death. The discrepancy between total number of victims and numbers injured plus those killed is for cases where the fate of the victim was not given.

Period	Rabies				Non-rabies			
	Cases	Victims	Injury	Death	Cases	Victims	Injury	Death
20 th century	0	0			6	6	2	2
1875-1899	5	24	21	3	12	33	4	20
1850-1874	4	55	34	21	7	8	6	2
1825-1849	8	41	23	10	24	29	5	10
1800-1824	28	225	115	84	146	295	76	72
1775-1799	38	142	55	40	23	38	2	15
1750-1774	35	364	183	150	11	196	1	154
before 1750	18	187	69	118	52	477	54	408
Total	136	838	500	426	281	1082	150	683

5.5 Georgia

Our informant in Georgia was not aware of any cases of either rabid or non-rabid wolves attacking people in the recent past (Iamze Khutsishvili pers. comm.).

5.6 Germany / Austria

During the 17th centuries, after the 30-years war (1618-1648), there are a number of accounts in parish registers and historical documents of attacks by wolves in the eastern part of present day Germany (Butzeck 1987). Most of these appeared to mention attacks by rabid wolves (Appendix 4).

In a review of historical documents, books, old hunting magazines, hunting statistics and museum materials from Austria, Zedrosser (1996) found 92 mentions of wolf occurrence from 1800 to 1996. None of these were in association with aggressive interactions between people and wolves.

5.7 Greece

There are no confirmed cases of attacks by wolves in recent history. In winter 1999 there was a case of a young women being killed by wolves mentioned in the newspapers and TV. However, it turned out that she had frozen to death while attempting to illegally cross the border with Bulgaria, and her body had been scavenged by shepherd dogs. A further two unconfirmed reports describe a shepherd being bitten on his hand while defending his sheep from a wolf attack, and a young man who was bitten

5.8 Italy

There are no documented cases of wolves attacking or killing humans in Italy in the period after world war two. Italy has been free of dog rabies since c.1960, and has not had rabies in wildlife populations during recent centuries, so rabid wolves would not be expected to occur in recent times.

There is no complete overview of the historical situation in all Italy – however, a group of historians have summarised the historical data from the central Padania region of northern Italy (also includes part of present day Switzerland; Figure 2). The authors have examined both administrative and church records from the region. For the period covering the 15th to 19th centuries they found 440 attacks on people, distributed as follows 15th century = 40, 16th century = 30, 17th century = 167, 18th century = 103, 19th century = 112. The 19th century is the period with the most complete data. In effect this covers the period 1801 to June 1825, when the last documented attack on humans occurred in the region. During this period they found records of 112 attacks on humans, with 77 resulting in the death of the victim. Of these only 5 deaths were judged as being due to rabid wolves, the other 72 deaths were categorised as being predatory attacks. Of the victims of predatory attacks for which the age was known, all but 3 were children (mainly working as shepherds with their livestock during the summer). About half of the victims were reported as being consumed. In at least one incident it appears that a single wolf might have been responsible for a sequence of episodes in Pragalato municipality when 20 attacks occurred between 1710 and 1711. No more attacks were documented for the next 100 years in that area.

During this period, the landscapes of central Padania was being rapidly converted to agricultural land, with associated clearance of the forest and over-harvest of the wild ungulates. Wolves were being intensively hunted, with the encouragement of a high bounty, resulting in the local extinction during the 19th century. From the accounts and their knowledge of administrative procedures, the authors conclude that record keepers at the time were able to differentiate between wolves and feral dogs, and between rabid wolves and non-rabid wolves. In addition, because cases were generally described by multiple documents the cases are regarded as being authentic. (Cagnolaro et al. 1992; Comincini et al. 1996).

5.9 Latvia

Attacks by rabid wolves on people are known from the period spanning the last 200 years in Latvia. References exist to 10 people being killed in 1875 in Kurland (former administrative unit in western Latvia) and to 21 people being killed in the 19th century in Livland (former administrative unit of northern Latvia and southern Estonia) (Sabanejev 1988, Korytin 1990). Rabies is still widespread in Latvia (mainly in red foxes and racoon dogs, in addition to domestic dogs). Systematic data on rabid wolf attacks are not stored for more than 2 years by the National Veterinary Laboratory, however **Appendix 4** contains a number of episodes from the last few decades that were remembered or described in other sources. Data from the National Environmental Health Centre record that 72 people received post exposure treatment following attacks by rabid wolves in the period from 1992-2000. Not all of these people may have been actually attacked by the wolf, as it is normal to treat people that also had contact with the dead wolf and with livestock that the wolf had attacked.

Three recent attacks by non-rabid wolves had also been reported to the National Veterinary Laboratory.

Incident 1. Bauska district, southern Latvia, 5th December 2000. A wolf attacked an adult man walking along a forest road. Neighbours came to help and managed to kill the wolf, that tested negative for rabies.

Incident 2. Ludza district, eastern Latvia, 7th December 1998. An adult man heard his dogs barking and went to investigate. He saw a wolf and tried to scare it away, but the wolf attacked him biting his arm and ear. Another man came to his assistance and managed to kill the wolf with an axe. The wolf was tested and found to be negative for rabies.

Incident 3. Rezekne district, eastern Latvia, April 1998. No details exist beyond the fact that a wolf that did not have rabies attacked somebody.

5.10 Lithuania

Historical works make frequent reference to the problems that wolves caused for livestock and people in pre 20th century Lithuania, although no details of specific incidents are available.

However, some data are available for the periods 1900-1937 and 1989-2001.

In the period 1900-1937 there were many accounts and rumours of people having narrow escapes after being "attacked" or chased by wolves. In many cases the victims were rumoured to have escaped harm, by shouting, climbing trees, or shooting. Many of these stories were just based on rumour and may have an uncertain basis. However, there are also a number of specific cases where people were rumoured to have been bitten or killed by wolves, both with and without rabies. Eleven cases of people being killed and 5 of people being injured by wolves were mentioned with specific details allowing tabulation, without stating whether rabies was involved or not (**Appendix 4**). In addition, 19 people were specifically mentioned as being bitten by wolves with rabies. Of these it is not known how many survived or died. Finally there were a number of references to people being "attacked" without sufficient details to determine if they were killed, injured or merely threatened.

Attacks by rabid wolves on people have continued to the present day. From 1989 up until May 2001 there were reports of 22 people having been bitten by rabid wolves.

5.11 Poland (and Belarus)

The geographic borders of Poland have changed frequently during the last few centuries; so much of the historical information on wolf attacks corresponds to the area occupied by present-day Poland, Belarus and Lithuania. This turbulent history has also lead to a severe fragmentation of historical records. The existing data report cases of wolf attacks on people during the 19th and early 20th century. For example in Wagrow county 19 people were reported as being killed by wolves in 1819 alone. Between 1897 and 1914, 130 people were recorded by the Pasteur Department in Wilno (present day Vilnius) as being bitten by rabid wolves in seven counties in Poland. Of these 130 people, 25 died of rabies (Krawczak 1969). In addition, there is a written record of a 6-year-old boy being killed by a wolf in the village of Mszczaniec in the Bieszczady Mountains of south-eastern Poland on 31st May 1824 (Roman Gula pers. comm.).

Hunter magazines from the period between the world wars contain many accounts of attacks by wolves on humans, but the accuracy of these is questionable. However, in 1937 there appears to have been a series of predation attacks on children in the villages of Tymoszewicze and Hryniewicze (in present day Belarus). During July and August 1937, a total of 10 children were attacked by at least 2 wolves. The attacks occurred during daylight hours, on fields or close to houses. Of the 10 attacks, 5 resulted in the death of the children. These incidents are apparently well documented in police reports from the period (Kossak 1999).

In the period following the WW2 there are no known cases of people being killed by wolves within the present day borders of Poland (Okarma 1992). During this period wolf populations fluctuated widely, having increased during the war, government sponsored control actions led to a decrease during the 1950's

and 1960's (Jedrzejewska et al. 1996). There are presently estimated to be 600-700 wolves in Poland.

5.12 Romania

From a questionnaire survey in Romania, researchers have collected a total of 41 stories of people being attacked by wolves. Of these, 8 cases could be confirmed as being true. These are listed below.

From these cases, 2 occurred while hunting:

Case 1. In Colibaba (Suceava county), one wolf was wounded by a hunter and a beater tried to stop the wounded wolf with a stick. The wolf bit the beater before another hunter shot it.

Case 2. In Apold (Cluj county), a wolf was caught in a leg-hold trap. The trapper tried to kill the wolf with a stick and was bitten on his hand by the wolf.

The other six were all related to livestock attacks and the attempts of humans to kill the wolf:

Case 3. In Rod (Sibiu county), a wolf entered a barn. The farmer saw the wolf and tried to kill it with a hayfork. When he approached the wolf and tried to kill it, the wolf attacked and wounded the farmer.

Case 4. The same situation happened in Bradesti (Harghita county).

Case 5. In Intorsura (Covasna county), a wolf was cornered by the livestock guarding dogs at a sheep camp. A shepherd tried to kill the wolf with a stick and was bitten by the wolf.

Case 6. The same thing happened in Sfintu Ana (Covasna county).

Case 7. In Turda (Cluj county), a wolf got stuck in a wooden sheep fence. It struggled to free itself and when the shepherds came running and tried to kill it, the wolf bit one of them in the hand.

Case 8. In Vidra (Arges county), a wolf was caught inside a barn and cornered by the livestock guarding dogs and the shepherds. The shepherds tried to kill the wolf, which bit one of the shepherds in the leg.

Romania presently has the largest wolf population in Europe, with an estimated 2500 to 3000 wolves living in the Carpathian Mountains.

5.13 Slovakia

Wolves with rabies have been often documented in Slovakia. There are published accounts of a four people being bitten by rabid wolves during WW2 (2 died), and a man dying from rabies after being bitten by a rabid wolf in 1961 (Matouch & Jaros 1999; Hell 2001). An old shepherd and a horse were also bitten by a rabid wolf in Svidnik, eastern Slovakia in July 1997 (Slavomir Findo pers. comm.). Findo also describes an incidence where a shepherd attempted to chase a wolf that was attacking his cows. The wolf apparently attacked him, although he was finally able to kill the wolf. It tested negative for rabies.

5.14 Slovenia

There are no known cases of wolves attacking people in the post world war two period in Slovenia (Miha Adamic pers. comm.).

5.15 Spain

There are three episodes from Spain where predatory attacks by wolves have occurred on humans. All occurred in Galicia (Northwestern Spain) in an agricultural environment, where there are few wild prey, wolves are abundant, and subsist mainly by feeding on garbage and livestock (**Figure 2**). Details are provided in Teruelo & Valverde (1992) and are based on investigations by Valverde.

Vimianzo episode 1957-1959. In this episode, three children were attacked, two of which died. The first attack occurred on 25th June 1957 in the village of Vilare in Castrelo municipality. A wolf attacked two 5-year-old boys that were walking along a road. One boy escaped, but the wolf killed the other (Luis Vazquez Perez). After killing the first boy, the wolf chased the second boy and approached a 15-year-old girl before being chased away by adults. The body of Luis Perez was located one hour later, hidden in brush with bite marks on his head, chest and legs. People who saw the wolf believe it was a female (they claim to have seen distended teats).

The second attack occurred in the nearby village of Tines during the next summer. On 22nd July 1958. A wolf (again believed to be a lactating female) attacked two boys playing alone. It grabbed 5 year old Manuel Suarez by the head and dragged him 15m, before adults working nearby arrived and chased the wolf away. The child was taken to hospital in critical condition, but survived following treatment.

The third attack occurred in the village of Trasufre on 21st June 1959. A wolf attacked two four-year-old boys playing alone. The wolf bit Manuel Sar Pazos in the back, before chasing the second child. An adult arrived and was able to chase away the wolf. Sar Pazos died soon afterwards.

In August 1959, two wolves were killed in the area and no more attacks occurred.

Rante episode 1974. In this episode four people were attacked, 2 of which died. The first attack occurred on 3rd July 1974 when a wolf approached a 13-year-old girl working beside a 59-year-old woman in a field. The wolf bit the girl in the chest and the woman on the hand before being driven away.

On 4th July 1974 a wolf picked up an 11-month-old boy (Jose Tomas Martinez Perez) from a field where he was lying close to some adults and older children that were working. The adults chased the wolf, and later found the dying baby in some scrub.

On 10th July 1974 a wolf grabbed a 3-year-old boy (Javier Iglesias Balbin) from beside an elderly women. She chased the wolf, but it threatened her, and ran away with the young boy. His dead

body was found in a patch of woodland 250m away. The eyewitness declared that the wolf was a lactating female with obvious teats.

On July 14th the body of a lactating wolf was found where it had died after eating poisoned bait. The attacks had occurred within 6 km of a den containing 2 pups. Scats at the den contained chicken remains, and all attacks had occurred close to chicken farms. The wolf was not rabid, but had a severe parasite infestation. The attacks ceased after the death of this wolf.

Allariz episode 1975. On 2nd June 1975 a 3-year-old boy was grabbed by a wolf from an allotment where he was playing beside his grandfather. The grandfather chased the wolf away, and the boy only suffered some slight wounds to one leg. The attack occurred only 2 km from an active den where two wolves were subsequently killed.

There are a number of cases where wolves have attacked or threatened adults in self-defence.

Case 1. Trabazos, Leon, Spain 1983. A shepherd and 2 dogs were attempting to dig pups out of a wolf den. The dogs attacked and cornered the female wolf. The shepherd tried to kill the wolf by throwing rocks at her, but she jumped at the shepherd, bit him on the cheek and ran away.

Case 2. Palacios del Sil, Leon, Spain 1997. A park ranger was walking past a donkey carcass on which a wolf was feeding. When he was 100m away from the carcass, the wolf walked parallel to the ranger, snarling and did not run when the ranger shouted.

Rabies. Finally, there are a number of reported cases of rabid wolves biting people between 1720 and 1949 (Teruelo & Valverde 1992) summarised in **Appendix 4**. During this period, rabies was only endemic among domestic dogs. Rabies never became established in wildlife in Iberia, and was eradicated in domestic dogs by the 1970's.

5.16 Sweden

Gysinge episode. There is one well-documented episode of wolf predation on humans from central Sweden from the 19th century (Persson & Sand 1998). Pousette (2000) has compiled an enormous amount of documentation, including records of deaths in parish registers, private and administrative correspondence, historical accounts, and diaries concerning a series of wolf attacks on people on the border between Gästrikland and Dalarna counties in the years 1820-1821 (**Figure 3**). The series of attacks started on 30th December 1820 and continued until 27th March 1821. During this 3-month period 31 people were attacked, resulting in 12 deaths and 15 injuries. Most of those killed were children between the ages of 3½ and 15, with the exception of an 19-year-old women. The injured were also mostly children, with the exception of an 18-year-old man. In many of the cases the victim was partially consumed after being killed. The series of attacks stopped when a wolf was killed on 27th April 1821. It appears that the wolf had been captured as a pup in 1817, and held captive for several years before escaping (Pousette 2000).

Other cases. Four other cases where "killed by a wolf" is cited as the cause of death for children in Swedish parish registers have been found (Eles 1986, Håkon Eles pers. comm.).

Case 1. Boda parish, Värmland county, 17th December 1727 – 4.5 year old boy, Jon Svensson – "mauled by wolf and mostly consumed"

Case 2. Boda parish, Värmland county, 6th January 1728 – 9 year old boy Jon Ersson – "mauled by wolf"

Case 3. Steneby parish, Dalsland county, 3rd August 1731- 12 year old girl, Borta Johansdotter was killed by a wolf.

Case 4. Hova parish, Västergötland, January 1763 – 8 year old boy, Nils Nilsson – "bitten to death by a wolf".

Considering the proximity in space and time, it is probable that cases 1 and 2 are due to the same wolf. Only the Värmland cases are due to systematic searching, so it is possible that other cases are written down in parish registers from 18th and 19th century Sweden that have yet to be discovered.

5.17 Finland

A number of episodes of predatory attacks by wolves on people are known from 19th century Finland (note that some parts that were in Finland in the 19th century are presently in the Russian part of Karelia; **Figure 3**). These episodes were extensively described by contemporary scientists, administrators (e.g. Godenhjelm 1891) and newspapers, and were issues of national importance, prompting high bounties and special control operations. There is therefore little doubt that the events actually occurred, and they have been accepted by 20th century scientists (summarised in Pulliainen (1975) and Mäensyrjä (1974)). The exact number of cases may be a little less certain as once a sequence of attacks had begun, it is possible that some cases of children that were lost without being found would be attributed to the wolf attacks. These cases have been recently summarised by Pousette (2000).

Episode 1. Kaukola (presently in the Russian part of Karelia). Between January 1831 and summer 1832 a total of 8 children and 1 adult women were killed by what was presumed to be a single wolf.

Episode 2. Kemiö (southwest Finland). In 1836, 3 children were killed by a wolf or wolves.

Episode 3. Kivennapa (presently in the Russian part of Karelia). Between 1839 and 1850 a total of 20 children and 1 adult were killed by what was presumed to be the same wolf. Full details of most victims are unknown, however for 4 victims for which age is known, all were between 6 and 8 years of age.

Episode 4. Tammerfors (southwest Finland). In 1877, a total of 10 children were attacked by wolves, 9 of which died.

Episode 5. Åbo (southwest Finland). In the period 1879-1882 a pair of wolves killed a large number of children within a limited area covering 11 parishes. Early accounts (Godenhjelm 1891) described 22 children as being killed (**Appendix 3**). However, further examination of records (Pousette 2000) has apparently revealed a further 13 cases, bringing the total to 35. Not all at-

tacks were equally well documented, and some are based on rumours. In addition, the involvement of a wolf was only inferred in some cases (Måensyrjä 1974). However, there appears to be little doubt that wolves were involved in a majority of the incidents. The victims were apparently all children. As the attacks progressed there was an ever-increasing effort expended on hunting the wolves that were believed to be responsible. The local and national governments became involved, sending for help from Russian and Lithuanian hunters, and even calling for the involvement of the army. In January 1882 an old bitch with worn teeth was shot, and 12 days later an adult male was poisoned. After these two wolves died there were no further attacks.

In addition, there are newspaper reports of 3 other attacks (2 fatal, 1 injured). A 12 year old girl was killed in Eurajoki, south-west Finland in 1859, a 8 year old boy was killed in Uusikrikko, Karelia in 1880, and a boy was attacked in Sortavala, Karelia in 1882. The accuracy of these reports is unknown.

Although there is no direct evidence that these wolves were tame (as in the case of the Gysinge wolf from Sweden), Pousette (2000) indicates that the possibility cannot be ruled out. Apparently during this period the bounty paid for wolf pups during summer was only half that of the bounty paid during winter. Accordingly, many hunters would capture wolf pups in summer at den-sites, and keep them caged until mid-winter. At this time they got the full-bounty and a valuable fur. In this type of situation it is quite possible that a wolf could have escaped, after having lost its fear of people.

Finally, there are additional reports of some few attacks by rabid wolves in 1844, 1856 and 1881, although details are not available (Teperi 1977).

5.18 Norway

There is only a single case of a human being killed by a wolf in Norway where written contemporary documentation exists. This concerns a 6-year-old girl, killed in Sørum, Akershus county (Figure 3) on 28 December 1800. This case is reported in both the parish register and a newspaper (Norske Intelligens Sedler). However, there has never been a systematic examination of Norwegian parish registers or administrative documents so it is always possible that there are more records that have not yet been discovered (Unsgård & Vigerstøl 1998).

There are many other stories of people being attacked and even killed by wolves that have been passed down through the oral tradition and have been written down during the 20th century (Appendix 2). Snerte (2000) has collected many stories from other written sources (mainly regional historical association annuals). However, there is presently no firm evidence at this time that the stories are true. Searches of the parish registers or other historical documents from these areas and periods would be of great interest, and should confirm or deny the stories.

6 Russia (and the former USSR)

6.1 Russian wolves and attacks on humans

The Russian wolf population is probably the largest in the world. Wolves have been, and still are distributed across most of the land area of both Russia and the former Soviet Union, from the high arctic through to the semi-deserts of the Central Asian Republics. Throughout this area, intensive wolf control has been exercised during the last few centuries, with the size of wolf populations fluctuating in accordance to the control effort. Wars, such as world war two led to reduction in control efforts and short term increases in the wolf populations. There are currently an estimated 40,000 wolves in Russia (Ovsyanikov et al. 1998).

The extent of wolf attacks on people within the former USSR has been much debated, both by Russian and western scientists and conservationists (Bibikov 1990). Central to the controversy has been a book by Michail Pavlov called "The wolf" published in 1982. Several chapters, including one called "The danger wolves pose to humans" were translated into Norwegian in 1978 (Pålsson 1987). For a variety of administrative reasons, the distribution of the report was halted after publication. This provoked a 22-year debate about the quality of Pavlov's work, the truth of the data presented, and whether the Norwegian government was attempting a cover-up (e.g. Ree 2000).

The data presented by Pavlov fall into two categories. Firstly, he cites data from the Russian scientific, game management and historic literature concerning the numbers of people killed by wolves throughout Russia – by his own admission these mainly concern attacks by rabid wolves. Secondly, he describes a series of predatory attacks by wolves on children in the Kirov area (500 km northeast of Moscow) in the period 1944-53.

6.2 The rabies cases

The data presented by Pavlov cover the period 1847 to 1978 and are by no means meant to be exhaustive. Rather they are snap-shots from periods where he found data to present. Some of the numbers from periods like 1849-51, 1875 and 1896-97 appear to be very high (Appendix 4). However, when viewed in the context of the other figures from western Europe in the 19th century, and even against 20th century figures for countries where rabies occurs (like Iran or India) they may not be impossible, especially when the size of Russia is considered. Additionally, an independent search of 19th century Russian records has indicated even higher figures for the period 1843 to 1890 (Appendix 4; I. Rootsi pers. comm.). For the more recent data, especially in the 1970's, it is possible to calibrate Pavlov's figures against those from the medical literature. The figures of 2 deaths among 33 people being bitten by rabid wolves (1972-78) cited from Kazakhstan correspond exactly to those in the original

publication (Yanshin et al. 1982) and are also cited in Cherkasskiy (1988). Although the exact numbers and place names presented by Pavlov for the period 1972-76 do not correspond exactly to those from Selimov et al. (1978, 1982) and Cherkasskiy (1988) for the same period, the differences are minor (**Appendix 4**). From their combined sources it appears at least 69 people were bitten by rabid wolves in the period 1972-78. An example of a rabies case from the medical literature is provided below.

Arkadak, Saratov region, Russia. 23rd May 1974. During a single morning a rabid wolf ran around the streets of the village, biting 10 people. One 77-year-old woman died the next day directly from her injuries (extensive bites to head, face and extremities). The other 9 survived having received post-exposure treatment. A medical team documented the incident. The wolf was shot and rabies was diagnosed in the laboratory (Selimov et al. 1978).

Data available from the World Health Organisation (RabNet) also confirm that rabies occurs among Russian wolves, and that wolves are still an occasional source of contact for humans receiving rabies treatment. Kuzmin (2001) lists 8 cases of human rabies with wolves as the source for the period 1980-1998 within the Russian Federation, during which time 85 cases of rabies in wolves were diagnosed. So at least for the 20th century the figures presented in Pavlov concerning rabid wolves appear to be reasonable (**Appendix 4**).

6.3 Predatory attacks

The most controversial aspects of Pavlov's work concern three post WW2 episodes where wolves were believed to have attacked children in areas around Kirov (**Appendix 3; Figure 4**).

Kirov episode. Between 1944 and 1950, 22 children between the ages of 3 and 17 were killed by wolves. Three more children were attacked, but escaped.

Oritji episode. Between 1951 and 1953, 4 children were killed. Four more were attacked but were rescued.

Vladimir episode. Between 1945 and 1947 there were 10 fatal attacks, mainly on children.

Both these latter sequences apparently ended following the shooting of local wolves. For the Kirov and the Oritji sequence Pavlov provides details of the names and ages of the victims, and the place and circumstances where the attacks occurred, making the descriptions credible. However, because of the almost unprecedented nature of these attacks in the wolf literature, many researchers and conservationists have cast doubt on their truth. Pavlov was a hunter / game manager rather than a scientist, and it is obvious from his chapters on the effects of wolves on game populations that his attitude towards wolves was clearly that they were unwanted vermin that had no place in the modern world. The tone of the work is almost one of a personal crusade on his part to tell "the truth about wolves" i.e. that they are dangerous to humans. These factors do not indicate that Pavlov was an objective and unbiased observer. However, Pavlov himself admits that circumstances during this post-war period where unusual with high wolf populations (control exercises where suspended during the war and post war recovery years), low

prey populations and extreme social conditions (the war had just ended, and Stalin's pogroms were ongoing). Therefore, even if the events Pavlov relates are true, they are the only such incidents that he was apparently able to find from Russia. This would indicate that they must be regarded as being unusual events, occurring in a limited area, during a limited time period with special socio-economic and ecological conditions (Nikiti Ovyssanikov pers. comm.). The fact that they occurred after the war, when wolf hunting was probably greatly reduced (adult men were fighting, firearms were not as available) must also be considered. The potential effect of this is that wolf populations could have increased, and that hunting mediated shyness was not reinforced in several wolf generations.

Other Russian authors of the period also indicate that although they viewed wolves as undesirable, it was rabid individuals that mainly, but not exclusively, posed the danger to humans. For example "The wolf attacks humans very rarely. Rabid wolves are extremely dangerous. Control of wolves is a national duty" (Stroganov 1969) and "The danger of direct attack by even the large carnivores on man is usually greatly exaggerated..... Rabid animals which lose all sense of caution are extremely dangerous. Sometimes man-eating tendencies become manifest in individual tigers, wolves, bears and other large predators" (Novikov 1962). Stroganov (1969) and Krusjinskij (1980) have also made similar statements. Korytin (1986) also describes an incident when 2 hunters were attacked by a wolf when they tried to remove pups from a den.

Pavlov (1982) cites historical documents from the 19th century where hundreds of people were reported as being attacked by wolves. However from the citations it is not clear if these cases concerned rabid or non-rabid wolves, and if people died or not. Independently, Korytin (1997) has examined administrative records from Russia from the period 1840-1861. During this period he found reports of 273 attacks by wolves on people, resulting in 169 deaths (162 children and 7 adults). He explicitly states that these were not due to rabid wolves. Judging by the level of detail reported in the documents he believed that the cases were reliable. Rootsi (pers. comm.) has also extended his analysis of the Estonian records from the 19th century (5.3) to Russia. Preliminary results indicate that there are hundreds of reports of people killed or attacked by wolves from this period.

6.4 Mantejfel commission

Pavlov (1982) also states that a government commission investigated reports of wolf attacks on people during the period before and during world war two. Apparently the commission found evidence for 12 events in which up to 80 people (mostly children) were eaten or killed – however it is not clear whether this refers to attacks by rabid wolves, predatory attacks, or simply cases of wolves feeding on human corpses. It is also important to consider that this period was one of massive internal political and social unrest within the former USSR, as it covers the revolution, the civil war and world war two. Given this background, it is impossible to evaluate the quality of the data from this period, and we have not considered the cases further.

7 Asia (excluding the former USSR)

7.1 Asian wolf populations

The status and distribution of wolf populations is very poorly known throughout Asia. Historically their distribution extended from the eastern Mediterranean region (Turkey, Israel, eastern Egypt, Jordan) through the Middle East (Arabian Peninsula, Iran, Iraq, Afghanistan) and the Indian subcontinent (Pakistan, India) to Mongolia, Tibet, China and Japan. Wolves are still found throughout most of this range, with the exception of Japan where wolves were hunted to extinction around 1900. Their present densities are very poorly known (e.g. Ginsberg & MacDonald 1990; Nader 1996; Wenjun et al. 1996; Li et al. 1996).

7.2 Indian subcontinent

Accounts of wolf attacks on humans in India go back to the official records of the British colonial administration in the late 19th century, and continue throughout most of the 20th century. In these early records it is not possible to differentiate between attacks by rabid or non-rabid wolves. However, in the last 30 years there are more reliable accounts that reliably demonstrate that both types of attacks occur. Rabies is endemic in India with an estimated 25,000 people dying each year from the disease (Dutta & Dutta 1994). Transmission is from bites of both wild and domestic animals, although domestic dogs are by far the most important vector (Mitmoonpitak et al. 2000). Although our review is by no means exhaustive (no figures for animal rabies in India are listed on the WHO internet pages), 2 case studies from Maharashtra State (Figure 5) reported in the medical literature illustrate the extent of the problem (Shah & Jaswal 1976; Rathod et al. 1997). In both these incidents, rabid wolves bit 12-36 people. In the case of the 12 victims, it was clearly a single wolf that bit the people on the same day, requiring that it cover at least 23 km in the process. Post-exposure treatment with vaccine and immunoglobulin saved most of the victim's lives, except for some few who were bitten on the head and face (Table 5).

There have also been a large number of predatory attacks on humans by non-rabid wolves in at least 3 Indian states (Figure 5) during the last decades. These situations have been relatively well documented by trained biologists and constitute some of the best records that exist of non-rabid wolf attacks on humans. Evidence of the identity of the animal responsible for the attacks as being a wolf has included; (1) the absence of other large carnivore species, (2) examination of tracks, (3) measurement and examination of bite wounds, (4) electronmicrographs of hairs found at scene, (5) the finding of human remains at wolf dens, and (6) eyewitness and survivors accounts. The extent of events has been greatest in the Hazaribagh region of Bihar state where at least 200 children were reported as being killed, in addition to many more that were attacked by wolves between 1980 and 1995 (Shahi 1982, Rajpurohit 1999). The geographical extent of the attacks and the long time period over which attacks have occurred indicate that it is several packs that have

been involved, rather than a single individual. Almost all the victims were children under 16 years of age. Observations also exist of wolves feeding on partially cremated human remains from burial sites in the region (Shahi 1982). This is also a region where reports of wolves killing humans extend back into the early 20th century.

A second well-studied area with attacks is in the eastern region of Uttar Pradesh State. In the course of 8 months in 1996, 76 attacks on children (50 of which were fatal) were recorded from 50 villages within a 1390 km² area. At the time it was believed that the spate of attacks was due to a single wolf (Jhala & Sharma 1997), however the fact that further attacks have occurred throughout the 1996-99 period indicates that this is unlikely to be the case (Jhala 2000).

A third, but less well documented area is the Anantpur region of Andhra Pradesh state where 9 children were killed and 12 injured within a 750 km² area during a 6 month period in 1980-81 (Shahi 1982).

These events are characterised by the fact that they are associated with a relatively clearly defined area for a period of at least several months to several years. Rabid wolf attacks in contrast tend to be single day events as the period of aggressive behaviour ("furious phase") for wolves, like all rabid animals, tends to be very short before paralysis sets in. In addition, all victims were partially or totally consumed which never occurs in the case of rabies attacks.

These cases need to be placed into context against the habitat of the area and the general high rates of wild animal mediated deaths in the regions. Most of these areas of India where wolf attacks have been reported are deforested agricultural habitats with a very poor prey base and a very high human population density (>600 km⁻²) living in poor conditions. In a series of transects in Uttar Pradesh, unaccompanied children were the most common potential "prey" available to wolves, as wild prey were very rare and all livestock were guarded by shepherds and dogs (Jhala & Sharma 1997). In the Hazaribagh study, during the 6-year period when 90 children were killed by wolves, another 242 people were killed by wild elephants, 50 by sloth bears, 4 by leopards, 2 by tigers and 2 by hyenas (Rajpurohit 1999).

7.3 Iran

Iran and its wolves are well known in medical circles for the pioneering work conducted there by the WHO in developing post-exposure anti-rabies treatments. Prior to 1955, people bitten by rabid animals received post-exposure treatment in the form of injections of a vaccine. While this method worked well for people receiving minor bites from rabid dogs, it was relatively ineffective in patients that had been bitten by wolves. This was largely due to the fact that rabid wolves often inflict more severe bites, often on the head and neck, which accelerates the progression of the disease. In 1955 attempts were made to combine injections of both vaccine and immunoglobulin - resulting in far better survival of patients (Baltazard & Bahmanyar 1955). Modifications of this approach are still used today.

Table 5. Records of attacks on humans by rabid and non-rabid wolves in India.

Period	Area	Details	Reference
< 1890	Dumoh District, Madhya Pradesh	Several children carried off	Blanford 1891 in Shahi 1982 (p498-499)
1910 - 1915	Hazaribagh District, Bihar	115 killed	Lister 1917 in Shahi 1982 (p 499)
1930's	Hazaribagh village, Bihar	"the wolves were notorious for their man-killing propensities"	Pocock 1939 in Shahi 1982 (p499)
1981 (i to viii)	Hazaribagh village, Bihar	13 children killed (ages 4 to 10 years) plus 13 others were attacked	Shahi 1982 (p499)
1980 (ii 15)	Hazaribagh village, Bihar	Boy was attacked but was rescued and wolf was killed.	Shahi 1982 (p499)
1981 (xii 21)	Hazaribagh village, Bihar	7 year old boy (14.5 kg) attacked and carried away (200m), but was rescued	Shahi 1982 (p499)
1981 (vi 4)	Hazaribagh village, Bihar	Five wolves observed feeding on human remains in cemetery	Shahi 1982 (p498)
1980 (x) to 1981 (iii)	Anantpur, Andhra Pradesh	9 children killed and 12 injured within an area of 25km x 30 km. Ages 8 - 12.	Shahi 1982 (p499)
1973 (ii 3)	Aurangabad District, Maharashtra	Rabid (assumed) wolf attacked 12 humans (9 adults and 3 children) and 6 animals (2 pigs, 1 dog, 3 bulls). Attacks were spaced out by 2, 9, 12 km). 3 victims died of rabies (1 untreated) - all had facial injuries.	Shah & Jaswal 1976
1989 (iv) to 1995 (iii)	Hazaribagh & Koderma, Bihar	92 children killed - all lifted from settlements / houses - 78 of killings occurred in a 2 year period - up to 3 packs involved	Rajpurohit 1999
1980-1986	Hazaribagh, Bihar	122 children lifted by wolves	cited in Rajpurohit 1999
1878	Utar Pradesh	624 killed	cited in Rajpurohit 1999
1878	Bengal	14 killed	cited in Rajpurohit 1999
1996 (iii - x)	Utar Pradseh	76 attacks on children (50 lethal) within 1390 km ² in 50 villages - believed to be one wolf. Ages 4 months to 9 years.	Jhala & Sharma 1996
1997-1999	Utar Pradesh	"Spoardic fatal attacks on children"	Jhala 2000
1995 (x)	Jalgaon District, Maharashtra	28 people treated after being bitten by rabid wolf	Rathod et al. 1997
1996 (vi 15 to 18)	Jalgaon District, Maharashtra	36 people bitten by rabid wolves (26 adults and 10 children). 2 victims died of rabies (both treated) - all had facial injuries	Rathod et al. 1997
1991	Solapur District, Maharashtra	Shepherd bitten by rabid wolf dies of rabies	Kumar & Rahmani 1997

From the numbers presented in **Appendix 4** it is apparent that wolf attacks are still common. Baltazard & Ghodssi (1954) believed that the pre-1955 numbers represented an underestimate of the true number of people bitten by wolves because people were familiar with the signs of rabies in wolves, and would not bother to seek treatment from bites obviously caused by non-rabid wolves. Just to put the figures into some form of context, in 1996 when 329 were given post-exposure rabies treatment after being bitten by wolves, over 48,000 were given similar treatment after being bitten by dogs.

While we have not found any details of predatory attacks by non-rabid wolves from Iran, Baltazard & Ghodssi (1954) indicate that such attacks have occurred. Joslin (1982) investigated a number of reported attacks and was unable to confirm any. One report of a shepherd being killed by wolves turned out to be a case where immediately after defending a sheep flock from a wolf pack, a shepherd sat down and died (apparently from heart failure) - but was never actually attacked by the wolves. However, a widely circulated newspaper, but unconfirmed, report reported a case of a wolf seizing and consuming a 4-year-old boy in Dushab village in central Iran in December 1997.

7.4 Afghanistan

Due to the last 20 years of political instability it is not surprising that there is no official or scientific data available from Afghanistan. However, we have received one report from a Norwegian health worker, who worked in a clinic in the central Hindu Kush from 1972-74 (Arne Bergsaker pers. comm.). Apparently there was an incident in the autumn of the previous year (1971) when a rabid wolf bit 18 men that were sleeping in fields to guard their crops. All 18 men died of rabies in the clinic because there was no post-exposure treatment available.

7.5 Israel

Despite intensive efforts to vaccinate domestic animals, and trials with wildlife vaccination (Linhart et al. 1997), rabies is still present in Israel, with red foxes and jackals being the main wildlife hosts. Cases of wolf rabies have been diagnosed in recent years (Yakobson et al. 1998; David et al. 2000; Table 1). In 1997-98, three people died from rabies after being bitten in their sleep in separate incidents. In some reports the species of animal responsible was stated as "unknown". However, Prof. Mendelsohn (Department of Zoology, Tel Aviv University) stated in a letter to the International Wolf Federation (dated 11th August 1997) that there had been a recent case (July 1997) where "a rabid wolf had bitten several people". It has not been possible to establish if these events are connected.

7.6 The Far East

On the whole there is very little ecological or medical data available from the Far East.

China. In an article on rabies Fangtao et al. (1988) mention 31 people being bitten by rabid wolves in the Ochang region in 1981, and 27 people being bitten by "wolf dogs" in the Fuyang region in 1982. Of the 31 people bitten by wolves, 4 died. Three because of the severe wounds hastening the development of the disease, and 1 because of improper administration of the post exposure vaccine. Li et al. (1996) also mention that wolves attack people, but do not provide any numbers or explain if this is due to rabies wolves only, or if it concerns predatory attacks.

Mongolia. Batsukh (unpublished report) makes passing mention to some attacks on people, but does not elaborate on numbers or the involvement of rabies.

Japan. Although wolves became extinct in Japan at the end of the 19th century, there are some historical records concerning their previous behaviour and distribution. A number of passing references are made to attacks on humans (Maruyama et al. 1996) – although quantification is impossible.

8 North America

8.1 North American wolf populations

Wolves occurred across most of the North American continent when European settlers first arrived (Young & Goldman 1944, Mech 1970). Intensive wolf control was part of the process of settlement, and wolf extermination followed in the wake of the human population as it expanded westwards (Woodroffe 2000). By the mid 20th century wolves were extinct in the continuous lower-48 states of the US with the exception of northeastern Minnesota. They remained widespread in Canada and Alaska. During the last 30 years wolf populations have expanded. The Minnesota population has expanded to most of the state, plus to neighbouring Michigan, Wisconsin and the Dakotas. A natural expansion from Canada had begun into the northern Rocky Mountains of Montana. In addition wolves have been reintroduced into Idaho, Wyoming (Yellowstone), Arizona and New Mexico. There are presently an estimated 60,000 wolves in North America (Table 3).

8.2 Wolf attacks in North America in the 20th century

By far the vast majority of global wolf research has occurred in North America, so that it should be expected that wolf attacks on people should be particularly well documented from this region. However, it appears that there have been relatively few wolf attacks. In order to search for previously unreported cases we have gone to great lengths to find new cases. We have taken direct contact with wolf scientists that have worked in the field, and national parks with records stretching for many years. In addition, we have utilised a number of North American wildlife biologist / wildlife management email lists and discussion groups, and contacted people associated with wildlife in the region. The result of this entire enquiry has been the edition of only 1 minor incident (Whale Cove, 1989 incident). The fact that individual aggressive encounters with wolves (even without injury, e.g. Scott et al. 1985) are considered worthy of publication in the scientific literature is an indication of the rarity of such events. In addition, North American scientists have conducted their own reviews of the known events following the Ice Bay attack in Alaska (Mark McNay in prep.). The most persuasive argument for the rarity of wolf attacks on people is that good statistics exist for attacks by black bears, grizzly bears, coyote and mountain lions (Herrero 1985, Carbyn 1989, Beier 1991, Conover 2001, Fitzhugh unpublished). It is unlikely that a high profile species like the wolf will have a greater reporting bias than these other species.

Because of their low numbers, and relatively well-documented nature we will describe each of the North American incidents individually below.

Whale Cove, Northwest Territories, December 1989 (Figure 6).

Robert Mulders, a biologist with the territorial Department of Natural Resources and a technician were radio-collaring a caribou on the tundra that they had just net-gunned from a helicopter. They had just landed and were removing the net from the caribou close to the helicopter, which was parked with the motor running. A single wolf walked within 10m of the helicopter and approached the team. Moulder approached the wolf, waving his arms and shouting. The wolf bit his left leg below the knee and held on, despite Moulder hitting it on the head with his fists. The technician came to help, and knocked the wolf unconscious with a blow from the radio-collar. They killed the wolf with a knife and transported it back to base. Later testing showed that it was a young healthy female, weighing around 27 kg and that it was not rabid. Moulder only received a tear in his clothing and minor bite wounds / abrasions. (Robert Moulder pers. comm.). Inuit hunters hunt, kill and butcher around 10,000 caribou in this region every year and have never heard of a similar incident (Robert Moulder pers. comm., David Kritterlik pers. comm.).

Ellesmere Island, Nunavut, June 1977 (Figure 6).

Two scientists (Mary Dawson and Howard Hutchison) were sitting near a fjord edge when a pack of 6 wolves approached to within 5m. The scientists backed away, shouting and threw some clods of mud at the wolves. The wolves followed and attempted to surround the scientists. One approached to within 2m, and leaped at Dawson who jumped back, the wolf grazed her cheek in passing. The pack of wolves then retreated and allowed the scientists to return to camp. From their behaviour it was assumed that the wolves were not rabid. (Munthe & Hutchison 1978).

Coppermine River, Northwest Territories, February 1915 (Figure 6).

A scientific expedition consisting of 5 people was camped on the tundra. While in the tent eating breakfast they heard their sled dogs growling and snarling. The men rushed out of the tent, saw a wolf close to the dogs and tried to drive it away. The wolf rushed at one member (Diamond Jenness) attempting to bite his leg. Jenness grabbed the wolf by the back of the neck – the wolf turned his head and bit into his right arm. After Jenness attempted to choke it with his left arm, the wolf let go, and was shot. Jenness' arm healed within a week, which would indicate that the wolf was not rabid. The wolf was a healthy adult female. (Jenness 1985).

Poulin, Ontario, December 1942.

A railway worker (Mike Dusiak) was travelling alone on a speeder at about 15 kmph when he was hit from behind by an attacking wolf. The blow knocked both, him and his speeder from the track. The wolf made repeated attacks on him for about 10 minutes. During this time, Dusiak was able to defend himself with two axes, hitting the wolf many times. Finally, a passing train stopped and the two engineers helped him to club the wolf to death. Dusiak was not injured or bitten by the wolf, but this was likely due to his active self-defence, as it appears that the wolf made repeated and persistent attacks. Although

rabies was not mentioned in the original account (Peterson 1947), it seems likely that the wolf was rabid when judged from the description of its behaviour (Rutter & Pimlott 1968, cited in Jenness 1985).

Vargas Island, British Columbia, July 2000 (Figure 6).

A group of eight kayakers were camping on Vargas Island (near Vancouver Island). During the night, one camper (Scott Langevin, 23 years old) who was sleeping outside his tent by the campfire awoke to find a wolf dragging him and his sleeping bag away from the fire. He yelled and tried to crawl away. The wolf attacked and began to bite his hand and his head. His shouts awoke his friends who managed to frighten the wolf away. As a result he began to lose blood and was evacuated to hospital. The head wound required 50 stitches. During the previous weeks wolves had been repeatedly seen around the campsite, begging food and apparently showing little fear of humans. In one incident a camper had been chased by one of the wolves, while another had their sleeping mat stolen. Two healthy adult wolves were shot close to the campsite immediately after the attack (Anonymous 2000a,b,c), and were not found to have rabies.

Ice Bay (Yakutat), Alaska, April 2000 (Figure 6).

Two children, John Stenglein (age 6-years) and Keith Thompson (age 9-years) were playing on the edge of the forest close to a logging camp (about 150 m from their trailer home) together with a golden retriever. They observed a wolf approaching them to within a few metres. The boys screamed and ran at the same time as the dog intervened and attacked the wolf. The wolf ran past the dog and attacked the youngest boy, biting him on the back, buttocks and legs, resulting in 15 puncture wounds. The noise attracted the attention of adults who were able to drive the wolf away. The boy's father later shot it. The wolf had been radio-collared 3 years earlier. The wolf was found not to have rabies, and was judged as being in "average" body condition. The wolf had been seen around logging camps in the area during the previous years, may have been exploiting garbage as a food source, and was reported as not being frightened of humans. The boy received stitches to close the wounds, but later infection required hospitalisation and intravenous delivery of antibiotics.

Algonquin Provincial Park, Ontario 1987-1998 (Figure 6).

Incident 1. 1987. A 16-year-old girl was bitten on the arm by a wolf after shining a torch into its eyes at close range. The bite resulted in two scratches. The wolf did not press the attack and was then chased away. The wolf was shot the next day and tested negative for rabies. The wolf had been seen often in the campsite during previous weeks and was reported as not being frightened of people.

Incidents 2 & 3. 1994. A wolf had been seen repeatedly in and around campsites during the summer, and showed no fear of people. In two separate incidents it bit two people in campsites. One 9-year-old boy received a single puncture wound and a skin tear on August 3rd, and an adult woman received a single bite to her leg on September 1st. The wolf did not press either attack and when shot 8 days later was found to be rabies negative.

Incident 4. 1996. A wolf apparently made an attempt to drag a sleeping bag containing a 12-year-old boy who was sleeping outside a tent in a camp-site. It resulted in the wolf biting the boy on the head and dragging him 2 m. The wolf was driven away by the boy's father. The boy received a broken nose and 6 lacerations on his face that required 80 stitches and plastic surgery. This wolf had also been seen close to, and inside, campsites during the previous weeks, and apparently had made several attempts to grab clothing and camping equipment.

Incident 5. 1998. During the summer, a wolf had been showing a lack of fear of people around campsites. On three occasions it had attacked dogs in campsites. On September 25th it apparently approached and circled a family with a 4-year-old girl. The father sprayed the wolf with pepper spray and carried his daughter back to the car. The next day the wolf attacked a fourth dog. On September 27th it approached a family having a picnic, grabbed their 19-month-old baby that was sitting on the ground 6m from its parents by the chest and tossed him a metre. The family was able to chase the wolf away. It was shot that afternoon and found to be a healthy male wolf that tested negative for rabies. The baby required two stitches. All information from Strickland (1999) and Theberge & Theberge (2000).

It is important to note that there is some discussion about the genetic / taxonomic identity of the wolves inhabiting Algonquin Park. While they are currently regarded as being *Canis lupus*, recent genetic analysis has provided some indication that they should be called *Canis lycaon* (Theberge & Theberge 2000, Wilson et al. 2000).

Alert, Ellesmere Island, Nunavut. 1995 (Figure 6).

The Canadian military maintain a base and weather station at Alert in northeastern Ellesmere Island. Wolves have been resident in the vicinity of the base for at least 30 years and have become habituated to humans, taking food from people and from the base's garbage dump. In extreme cases, wolves approached people to lick their faces. There had been a long series of low intensity interactions where wolves followed people in a threatening manner, or refused to allow people to leave buildings. Attempts to scare wolves resulted in snarling and growling. In one incident a wolf snatched a glove from a worker's hand. In 1994 a British commando unit shot two wolves when they felt they were threatened. On April 15th, 1995 there were three attacks on people. One person was knocked down, but not bitten. Another person received a shallow bite, and a third received a hard bite to the knee. The responsible wolf was shot and tested positive for rabies (Gray 1995).

Minnesota. An adult male logger and his dog saw two wolves attacking a deer. The dog became frightened so the logger picked the dog up. One of the wolves charged at the man, tearing his shirt in the process. The wolf did not press the attack. (Mech 1998).

Minnesota. A 19-year-old hunter, wearing a jacket covered in buck-scent, was knocked over and scratched by a wolf attacking from behind. The hunter fired his gun and the wolf ran away. (Mech 1998).

Spence Bay, Nunavut 1991. A 23-year-old male Inuit hunter (Gideon Nanook) was out with his sled dog team when a wolf began to attack his dogs, and then attacked the hunter, biting into his parka. The hunter managed to knock the wolf out with his rifle butt and kill it with a knife. The wolf tested positive for rabies. (Anonymous 1991; McNay pers. comm.)

Haul road to Prudhoe Bay, Alaska, 1970's. A number of cases have been mentioned of wolves being fed by truckers along the haul road leading to the arctic coast oil-field at Prudhoe Bay. Some of these habituated wolves apparently inflicted minor bites on truckers during the 1970's (Victor Van Ballenberghe pers. comm.).

In addition, there are some other cases of people being attacked, killed or exposed to rabies through wolves.

Noorvik, Alaska, 1942. An Inuit hunter was bitten by a rabid wolf, developed rabies, and died (Rausch 1958).

Wainwright, Alaska, 1943. An Inuit boy was bitten by a rabid wolf, developed rabies, and died (Johnson 1995).

Anaktuvuk Pass, Alaska, 1945. A rabid wolf attacked an Inuit hunter (Rausch 1958).

Canada, 1970-1985. Prins & Yates 1986 list 9 cases of wolves "with human contact" being tested for rabies. Only 2 of the 9 had rabies. They do not explain what "human contact" means. It could mean attacks, or it could also cover cases where trappers had contact with a dead wolf.

8.3 Early stories and other incidents

Young & Goldman (1944) attempted to review wolf attacks on humans from the early days of settlement in North America. They found many tales from trappers and hunters who were "attacked" or had close encounters with wolves acting aggressively – however none of these attacks led to human injury and their accuracy is very hard to determine. In addition, it is hard to determine how many of these attacks were the results of wolves approaching out of curiosity rather than attacking. They did discover one incident from a trapper regarded as being a reliable witness in British Columbia in the early 20th century. The trapper, Ralph Edwards, had been tending to his horses grazing on a winter pasture and was walking home through the forest when four wolves approached him aggressively to within 10m. Edwards judged that they were about to attack him. He shot two and the rest ran away. Other stories included tales of wolves eating the bodies of Indians that died during smallpox outbreaks, and even of wolves killing those that were too weak to defend themselves. Again the accuracy of these tales is impossible to determine. Other reliable cases include;

Snake River, Colorado, 1881. The most reliable account of an attack concerns an 18-year-old woman in Colorado in 1881. She had just left the family cabin to bring the cows in for the evening. She saw a wolf sitting close to the trail and threw a stone at it. The wolf attacked her, biting her on the shoulder, legs and arms. Her screams attracted her brother who shot the wolf, which turned out to be a young animal. The fact that the woman survived indicates that the wolf was not rabid (Young & Goldman 1944).

Green River, Wyoming, 1833. A rabid wolf attacked two camps, biting several people. Accounts of the number that were bitten vary, with Allen (1979) reporting 3, and Lopez (1978), Rehnmark (2000) and Pousette (2000) reporting 13 victims.

Fort Larned, Kansas, 1870's. A rabid wolf bit 3 soldiers and a dog. One soldier and the dog died of rabies within 5 weeks of the bite. The wolf's identity was confirmed as it was shot during the attack (Dodge 1876 in Casey and Clark 1996).

The "north". Young & Goldman (1944) report rumours of attacks on Inuit in northern Canada and Alaska, for which no details were available. In more recent studies of traditional ecological knowledge among the Nunamit hunters of the Brooks Range in northern Alaska it has been confirmed that the hunters were only really afraid of "the occasional rabid animal". However, there were "a few accounts of wolves attacking Nunamit travelling alone or in small groups prior to the introduction of firearms in the late 1800's" in their oral tradition (Stephenson & Ahgook 1975). In addition, there are a number of cases when rabid wolves have attacked sled dogs in northern Alaska and northern Canada (McTaggart Cowan 1949, Rausch 1958). From our email survey of scientists and wildlife managers in northern Canada we have received a number of unconfirmed rumours of Inuit being attacked by wolves (probably rabid) during recent decades.

For the first half of the 20th century, Young & Goldman (1944) were not able to find any documented attacks of wolves attacking and causing injury to humans. This included the experience of all of the operatives of the US Fish and Wildlife Service that were engaged in wolf control activities during that period. However, they conclude by stating "... the accounts to be found throughout the wolf literature seem to leave little doubt that wolves have at times made unprovoked attacks on humans. The extent to which this has been caused by the disease rabies, or by famine, is difficult to determine."

Silas Calborn Turnbo collected folk tales from Arkansas during his life (1844-1925). These are available both in print, and on the internet (<http://198.209.8.166/turnbo/Table%20of%20Contents.html>).

He describes a number of aggressive encounters between people and wolves, however it is not sure that the wolves he describes are *Canis lupus*, as the area was within the historic range of the red wolf *Canis rufus* (Young and Goldman 1944). Because of the origin of the tales and the taxonomic uncertainty we have not considered these cases in our analysis.

8.4 Threatening behaviour

Such is the rarity of wolf attacks on people in North America that even cases of wolves acting aggressively towards people have entered the scientific literature. For example;

- (1) A wolf biologist, Chapman, was apparently charged by an aggressive wolf. He shot it when it approached to within 3m. Later examination showed that it was rabid (cited in Munthe & Hutchison 1978).
- (2) Tompa (1983) relates a case of a forest engineer being chased into a tree by a wolf pack.

- (3) Scott et al. (1985) relate an incident from Churchill, Manitoba. Three scientists (Peter Scott, Catherin Bentley, Jeffery Warren) were hiking across forested tundra. They stopped to rest and heard something crashing towards them in the vegetation. A wolf was observed rushing towards them, but turned at 6m distance in response to shouting and arm waving. A second wolf rushed to within 1 m, but turned following use of a foghorn. The three men used the pause to climb trees and remained there for 4 hours, with at least three wolves periodically checking them. After a period when they did not see wolves for 15 minutes, the men came down from the trees and left the area. They believed that they had accidentally walked into a rendezvous site close to a den.

Additional episodes of aggressive behaviour have been recorded;

- (4) In 2001, a number of campsites in Denali National Park, Alaska were closed because the wolves had begun to demonstrate "fearless" behaviour, approaching people and grabbing objects from campers.
- (5) One of this report's authors, Scott Brainerd, together with another biologist, David James, approached a wolf rendezvous site in August on the tundra in northwest Alaska to collect scats. They had crawled close, but when they stood up one of the wolves approached them to within 5 m, snarling and howling. This wolf followed them back to their camp and remained there for a number of hours.

9 Attacks and killings by domestic dogs, captive wolves and wolf-dog hybrids

9.1 Captive wolves and hybrids

A number of cases exist in North America where wolves and wolf-dog hybrids kept as pets or in captivity have attacked and killed people. Although these cases are not the primary focus of this report, a number of points are illustrative.

Between 1981 and 1999 there were 14 killings (13 by hybrids, 1 by a wolf) and 43 severe attacks (38 by hybrids, 5 by wolves). Of these, 3 of the wolf attacks were within zoos or animal parks. All the victims were children, with ages ranging from 1 week to 12 years (Sacks et al. 1996, 2000).

One of the most commonly cited cases involving captive wolves is from Ontario in 1996. An established pack of 5 wolves that had lived their entire lives in captivity was transported from a Michigan reserve to a larger enclosure in Ontario in October 1993. The only contact that the pack had with their human handlers was a brief sighting of people at feeding times, and the wolves were described as being not socialised with humans. On the evening of April 18th 1996 a newly hired 24-year-old female caretaker (Patricia Wyman) entered the enclosure. She was later found dead. The body had been severely bitten and fed upon. The wolves were shot, but tested negative for both rabies and distemper. From the wolves dentition it was possible to reconstruct which wolf had bitten the various parts of the victim. It appeared that it was the alpha pair that had been responsible for most bites, although most of the wolves appeared to have taken part in the killing (Klinghammer 1996; Wong et al. 1999).

In addition, there are a number of newspaper reports of captive wolves escaping from zoos or circuses and biting or killing people. These include a case from Belgium (Reuters 1997) and one from Hungary (Szemethy Laszlo pers. comm.). There are also a number of cases of children being bitten by wolves in zoos. For example, there are at least 3 known cases of captive wolves biting children in Norwegian zoos (2 cases in the Polar Zoo in Bardu and 1 case in Langedrag).

9.2 Domestic dogs

Domestic dogs bite an estimated 1 million people per year in the United States, 60-70% of which are children (Mathews & Lattal 1994). Of these bites, approximately 16-18 per year are fatal (Langley & Morrow 1997; Avis 1999), again mainly to children. While over 25 breeds of dog (including wolf-dog hybrids) have been involved in fatal attacks, Rottweilers and pit-bull type dogs are responsible for around 60% of fatal attacks. 59% of attacks involve the family dog on the owner's property (Sacks et al. 1996). 92% of attacks involve single dogs (Sacks et al. 1996),

although pack-attacks by multiple dogs do occur, as the following example illustrates.

Newfoundland, 1990's. A family of four (father 49-years-old, mother 44-years-old, 2 male children ages 10 and 8) visited an island to pick berries. The island was inhabited by 8 husky sled dogs that had been placed there for the summer (in an unsupervised free-ranging state). The mother wandered off alone. When the other 3 found her again the pack of dogs had killed her. The family drove the dogs away, but the eldest child ran back to the boat to get matches so they could build a fire to try and keep the dogs off the mother's body while they went for help. The dogs followed the child, killed him, and began feeding on his body. Eventually the father and surviving child escaped. When they returned with rescuers, they shot the dogs. Four were sent for autopsy, all were found to contain human remains in their stomachs and tested negative for rabies (Avis 1999)

Cases of severe bites and fatal attacks by domestic dogs are not confined to the United States, but appear to be a world-wide phenomena (Gottlieb & Misfeldt 1992; Kneafsey & Condon 1995; Reuhl et al. 1998; Falconieri et al. 1999). For example, 788 dog bites were treated in the casualty departments in Oslo's hospitals during a two-year period (Dahl 1998). Although fatal dog attacks are rare in Norway, husky-type (Greenlandic) dogs killed a 6-year-old boy in 1994, and a 7-year-old boy was recently killed in 2002. There are also cases from Norway and Sweden of people developing lethal infections following dog bites (Anveden et al. 1986; Holter et al. 1989).

It should also be remembered that domestic dogs are by far the single most important vector involved in the transmission of rabies to humans (Ali et al. 1977; Beran 1994; Mitmoonpitak et al. 2000; Moore et al. 2000).

10 Wolf attacks in context

In order to put these wolf attacks into context, it is necessary to consider how they compare to attacks by other large carnivore species. Attacks by bears and cougars on people are somehow more familiar, as they are better known, and better covered in the media than wolf attacks. The magnitude of attacks by other species can also serve as a control on the quality of our wolf data, as we believe that the reporting / documentation bias is likely to be equal for all large carnivore species.

10.1 Dingoes

The taxonomic status of the dingo is somewhat uncertain, with some authors placing it as a subspecies of wolf (*Canis lupus dingo*) while other regard it as being a subspecies of the domestic dog (*Canis familiaris dingo*). Either way, its ecology and behaviour are very similar to that of Eurasian or North American wolves (Corbett 1995). There have been a number of episodes in the last decades that are relevant for this discussion.

The most famous case was that of 10-week old Azaria Chamberlain who was reportedly dragged out of a tent and killed by a dingo on August 17th, 1980 at Uluru (Ayer's Rock) in central Australia. Her remains were never found, and there was debate about if it was really dingoes that had killed the baby or not. The mother was actually charged and found guilty of murdering the baby, but was later released after several appeals.

All other reported attacks are from 1670 km² Fraser Island, off the coast of eastern Queensland (Anon 2001). The majority of the island's area is a national park, and dingoes are protected from hunting and control. During the last 10 years the dingoes have become habituated to people and have begun to take food handouts from tourists, and steal from campsites and picnic areas. Feeding dingoes to provide photographers with good views has also become widespread. As a consequence there have been an increasing number of aggressive incidents between dingoes and people. Between 1996 and 2001, there were 224 incidents where people were actually bitten that required some form of medical treatment. During this period over 40 dingoes were shot following these incidents. Events came to a peak on 17th May 2001 when dingoes killed a 9-year-old boy.

Apparently the boy and his 7-year-old brother were walking close to the beach when they were approached by a dingo. The boys became scared and ran away. The oldest boy tripped and the dingo caught up and killed him. The 7-year-old escaped and fetched their father. By the time they reached the oldest boy, he was dead. The father sent the 7-year-old for help, but on his way the boy was attacked and injured by the dingo. It turned out that the dingo had been feeding for weeks on a bait placed out by a guide to aid photographers, and had harassed people during previous days.

10.2 Coyotes

There have been a number of documented coyote attacks on people in North America during recent decades (Carbyn 1989; Bounds & Shaw 1994; Conover et al. 1995; Hsu 1996; Conover 2001). The victims are generally small children under the age of 10, although some adults, including adult men, have also been bitten. Most of the documented cases arise from protected areas or urban settings implying that the individual coyotes have become partly habituated to humans. Carbyn (1989) regarded many of the attacks on small children as being predatory in nature. Very few of the attacks are fatal, although some of the attacks on young children have been so serious that they required up to 200 stitches to close the wounds. None of the cases described appear to be due to coyotes with rabies.

10.3 Cougars

Cougar (also known as puma or mountain lion) attacks on people in North America have been reported and reviewed by a succession of authors (Barnes 1960; Fitzhugh & Gorenzel 1986; Beier 1991; Conrad 1992). This overview is based on unpublished data from Lee Fitzhugh, and extends until early 2001 (**Table 6**).

Rabies does occur in cougars, but rarely. A few of these attacks have been judged as being due to cougars with rabies, but the vast majority appear to have been predatory in nature. Considering only those attacks that have been verified, Fitzhugh's data indicates that from 1890 to 2001 there have been 17 fatal attacks and 72 non-fatal attacks (**Table 6**). The non-fatal attacks counted here are only those where the cougar has caused injury to the victim. The distribution of these attacks in time is; 1890-1970, 4 fatal and 18 non-fatal; 1971-1980, 4 fatal and 11 non-fatal; 1981-1990, 2 fatal and 16 non-fatal; 1991-2000, 6 fatal and 27 non-fatal; 2001, 1 fatal attack. It is not clear if the increasing trend is real, or simply an artifact of improved chances of documentation.

10.4 Brown bears

Swenson et al. (1996, 1999) have summarised data on fatal attacks by brown (and grizzly) bears (*Ursus arctos*) on people from North America and Eurasia up until 1995. Attacks by rabid bears are virtually unknown. Therefore, the vast majority of these cases must be considered as either defensive or predatory in nature (Herrero 1985). Extrapolating from periods (all from the 20th century) for which data exists, Swenson et al. calculated the expected number of deaths per century as being in the order of 950 for Eurasia and North America combined (**Table 6**). This overall figure, hides much regional variation, with European bears being less dangerous than North American or Asian bears (**Table 6**). There are some local temporal patterns and clusters caused by changing management regimes (Herrero & Fleck 1990). However, the overall pattern is one with bear attacks widely spread throughout the 20th century. Conover (2001) estimated that there were an average of 4 grizzly bear attacks per year in North America, of which 1 was fatal every second year.

Table 6. Records of the extent of predation on humans by brown bears, pumas, tigers, lions and leopards.

Area	Period	People killed	Attacks per annum	Reference
Brown / Grizzly bear				
Europe	20 th century	36 (12)	0.12 (0.02)	Swenson et al. 1996
Asia	20 th century	206	2.0	Swenson et al. 1996
North America	20 th century	71	0.71	Swenson et al. 1996
Tiger				
India	1877	798	798	McDougal 1987
United Provinces, India	1902-1910		851	McDougal 1987
United Provinces, India	1922	1603	1603	McDougal 1987
United Provinces, India	1927	1033	1033	McDougal 1987
Malay	1930	15	15	
Bangladesh Sundarbans	1945-1985	814	20	Khan 1987
Indian Sundarbans	1975-1981	318	45	Sanyal 1987
Bangladeshi & Indian Sundarbans	1912-1939	360	13	Khan 1987
Bangladeshi & Indian Sundarbans	1930-1947	280	16	Khan 1987
Uttar Pradesh, India	1978-1984	128	18	McDougal 1987
Sumatra	1996-1997	8	4	Nyhus et al. 1999
Chitwan, Nepal	1979-2001	52	2.2	McDougal 1987
Bardia, Nepal	1981-2001	7	3	McDougal et al. 2001
Lion				
Gir reserve, India	1901-1904	66	17	Saberwal et al. 1994
Gir reserve, India	1977-1991	28	2	
Uganda	1923-1994	206	3	Treves & Naughton-Treves 1999
Luangwa Valley, Zambia	1991	3	3	Yamazaki & Bwalya 1999
Puma				
North America	1890-2001	17	0.15	Beier 1991; Fitzhugh unpublished
North America	1890-2001	72 (injured)	(0.65)	Beier 1991; Fitzhugh unpublished
Leopard				
Rudraprayag, India	1918-1926	125	15.6	Corbett 1944
Uttar Pradesh, India	1990-1994	16	4	Mohan 1997
Pauri Garhwal, India	1987-2000	158	11.3	Goyal et al. 2000, Goyal 2001
Uganda	1923-1994	37	0.5	Treves & Naughton-Treves 1999

Numbers in parenthesis exclude Roman a which is an outlier. Data has been updated after Swenson et al. 1996 to include an extended data set

10.5 Other bears

Black bears (*Ursus americanus*) are associated with many more injuries than brown / grizzly bears in North America. This is mainly due to the fact that their populations are far larger, and that they inhabit areas with higher human densities than brown bears. Herreo (1985) documented over 500 attacks on people by black bears from 1960 to 1980. Most of these attacks were minor, although there were 25 documented human deaths between 1900 and 1989 (Herrero & Fleck 1990). Conover (2001) estimated 25 black bear attacks per year with one being fatal every third year.

Polar bears (*Ursus maritimus*) are rarely involved in attacks on humans, but this is not surprising considering their limited over-

lap with areas of human habitation. On Svalbard, there have been 4 attacks leading to injury and 4 fatal attacks in the period from 1971-1998 (Derocher et al. 1998). In northern Canada, there have been 14 people injured and 6 killed in the period 1965-85 (Fleck & Herrero 1989), while only 1 person appears to have been injured in Alaska in the period 1900-95 (Middaugh 1987; Floyd 1999).

Sloth bears (*Melursus ursinus*) attacks have been studied in the Madhya Pradesh area of India where the bears occupy a highly modified habitat, with high human density (Rajpurohit & Krausman 2000). During a 5 year period, a total of 735 attacks on people were recorded, 48 of which were fatal. When adding attacks from other regions in central India, an average of 188 sloth bear attacks on people occur every year. Just taking the

Madyhya Pradesh data indicates that 10 deaths per year can be expected from that region alone.

10.6 Tigers

The frequency of tiger attacks on humans varies greatly throughout their range. In areas such as Iran (before their extinction), Burma, Thailand, Malay and Sumatra, attacks occur at a relatively low frequency. However, in areas such as India, South China, and Singapore attacks have been occurring at high frequency during the entire 20th century (McDougal 1987). Data from given periods and areas are presented in Table 6. The scale of the attacks on people is clearly far higher than for any other large carnivores. In some years during the early 20th century over 1000 people per year were killed by tigers. Most of the attacks have been predatory in nature, with both habitual “man-eaters” and “opportunistic killers” responsible (Khan 1987; McDougal 1987; Sanyal 1987; McDougal et al. 2001). Some of the most infamous man-eaters appear to have killed an extreme number of people before being killed. For example, the “Champawat tigress” was credited with killing 436 people during an eight year period in the early 20th century (Corbett 1944)

10.7 Lions

Data from lions (*Panthera leo*) has not been so systematically collected, so that we only have access to a few snap-shots from some populations and periods (Table 6). Based on the poor data available lions appear to be less dangerous than tigers, with only a few people being killed each year on average (Durrheim & Leggat 1999; Yamazaki & Bwalya 1999). However, there have been some exceptional events such as the “man-eaters of Tsavo” who killed 130 workers on a railway line in Kenya. Lion attacks appear to have occurred for a wide-variety of reasons including predation on people, and lions defending their kills from people trying to steal them (Treves & Naughton-Treves 1999).

10.8 Leopards

Less data exist for leopards (*Panthera pardus*), however, there have been attacks every few years in areas such as Uganda and India (Table 6). It appears that most attacks are predatory in nature, and that habitual man-eaters can occur under some circumstances.

10.7 Further perspective – other wildlife

Despite the low numbers of wolf attacks documented in North America, being bitten by wildlife is a relatively common event. Because attacks by smaller animals are not so dramatic, they rarely receive the same media attention. Conover (2001) presents the following annual averages for the US; 27000 bites by rodents, 750 by skunks, and 500 by foxes.

Reptiles are also involved in attacks on humans. Venomous snakes bite 8000 Americans each year, and an estimated 55 Americans die each year from venomous snakes, spiders, scorpions

and reactions to bee, wasp and hornet stings (Langley & Morrow 1997). It is estimated that snake-bites kill 40000 people worldwide each year. Of 236 attacks by alligators (*Alligator mississippiensis*) during the 20th century, 8 have been fatal, and there is evidence that the number is increasing. This increase is due to an increase in alligator numbers, better reporting of attacks, and increased habituation to humans following protection in the 1970's (Conover 2001). Shark attacks occur worldwide – with an average of 50 attacks per year, seven of which are fatal (Conover 2001).

Insects are also responsible for the deaths of people on a regular basis. Cases of people being killed by wasp and bee stings are common (for example 20 people in Sweden died in a ten-year period, Johansson et al. 1991). One of the animals that poses a threat to the health of humans that venture outdoors in Europe and North America is the tick (genus *Ixodes*). These can transmit a variety of bacterial and viral diseases, including Lyme disease (borreliosis), human granulocytic ehrlichiosis – HGE, and tick-borne encephalitis (Dickinson & Battle 2000, Granström 2000; Stuen 2001). Although rarely fatal, these can all produce chronic symptoms in some patients. The incidence of all these diseases is increasing, at least in part due to climate change (Steere 1994, Lindgren 1998). In the core of their European distribution their incidence can be very high, for example Germany and Austria have a combined total of over 30,000 cases of Lyme disease per year (data from WHO). The diseases are also expanding their range into new areas, such as Norway, where they have formerly been rare. These diseases are especially dangerous in new areas where people are not used to taking precautions and doctors are not used to recognising the symptoms. The annual number of cases of Lyme disease in Norway has increased to between 100-400 each year during the 1990's (Eldøen et al. 2001). Only 2 cases of tick-borne encephalitis are known from Norway (Ormaasen et al. 2001), although Sweden has over 100 cases per year (Lindgren 1998). In addition, human granulocytic ehrlichiosis has also been diagnosed in Norway for the first time in recent years (Kristiansen et al. 2001).

Finally, we should not forget the attacks by herbivores such as elephants, moose and bison. In Yellowstone National Park the number of injuries due to bison (*Bison bison*) exceed those due to bears – between 1978 and 1992 only 12 people were injured by black and grizzly bears whereas 56 were injured by bison (Conrad & Balison 1994). Many more people are injured and killed by ungulates when they are involved in vehicle collisions. In the US, Conover (2001) estimates that 29000 people are injured, and 200 killed each year in vehicle collisions with deer (genus *Odocoileus*).

11 Patterns and process

11.1 Putting wolf attacks into perspective

Eles (1996) provides a good summary of the wolf attack data "wolves have killed people, it has been mainly children, it is unusual, people are not part of their normal prey". Despite the cases that we have presented here, it must be remembered that wolf attacks on people are, and have always been, a relatively rare and unusual event. We have covered North America and Eurasia over a period of 400 years. During this period billions of people have died from other causes than wolf attacks. It is clear that people do not appear as regular items of wolf prey. The episodes where wolves do prey on people are widely scattered through history. In areas where they have occurred (e.g. India, Finland, France) it is interesting that local people have regarded the events as being due to an evil spirit. This indicates that predatory wolf attacks were not regarded as normal behaviour for wolves. Attacking and preying on humans is much more a part of the "normal" behaviour of other large carnivores (bears, cougars, tigers) than that of wolves. The risks of being attacked by a wolf are not zero, but are clearly so low that they are virtually impossible to quantify, especially when compared to the other background risks associated with living. However, the challenge is to learn as much as possible from these rare past events about the ecology of wolf attacks on humans, and place it into the context of the modern situation.

11.2 Factors associated with wolf attacks

This report has presented a large number of cases (Table 7), with a variable quality of documentation, which indicate that wolf attacks on humans have occurred on humans during recent centuries, especially in Eurasia. As we underlined in section 2, this is not a full overview, just a summary of those that we were able to find. The experience of different countries, and different centuries indicates a highly variable incidence of wolf attacks. It is therefore logical to look for the factors that explain this variation. We have been able to identify four factors that are associated with the vast majority of the reported cases.

11.2.1 Rabies

The most important factor explaining the incidence of present day, and probably most historic, wolf attacks is the presence of rabies. Although wolves do not serve as a reservoir for the disease, it appears that they are susceptible to spill-over from domestic dogs and jackals (and arctic foxes in northern areas). As the examples indicate, the consequences can be dramatic. Of the cases that we present here, rabies accounts for most of the attacks on humans. This is especially evident for the last 25 years, where rabies explains the vast majority of all attacks outside India.

11.2.2 Habituation

Many of the North American cases (Algonquin, Vargas Island, Ice Bay) were due to wolves that had lost much of their fear of humans, and had even begun to associate humans with food. The dangerous consequences of this habituation in bears are well known (Herrero 1985), and it appears that the same occurs in wolves on rare occasions. The extreme consequences of the loss of fear in wolves appear in the 19th century cases from Sweden and Estonia where wolves that have escaped from captivity have killed many people. The cases of pet and captive wolves killing people further underlines the dangerous potential of habituation / familiarity taken to extreme situations. In addition, it is suspected that free-living hybrids will have less fear of humans than wild wolves (Ryabov 1980, 1985)— circumstances that could have led to the events in Gévaudan in France in the 18th century. However, the evidence for this is somewhat limited.

To set things in perspective, it is important to remember that there are many captive wolf packs in zoos and parks around the world that are totally habituated to humans where there have been no records of people being attacked or killed. The case in the Ontario wolf park from 1996 (section 9.1) is an extreme situation. In addition, at any given moment there are thousands of wolves in North American national parks that maintain their shyness of humans. Our data here do not show that habituated wolves will attack people, just that they can do so on rare occasions.

11.2.3 Provocation

The report contains cases where wolves that have been cornered or provoked have attacked people. To put this into perspective it still appears to be a minority of wolves that attack, even when cornered and threatened. The historic literature is full of descriptions of trappers approaching a trapped wolf and killing it with a club to save bullets without being bitten or even attacked. Many authors have also described cases where they have handles or removed wolf pups from dens, without reaction from the parents (Young & Goldman 1944; Mech 1992; Casey & Clark 1996).

11.2.4 Extreme socio-environmental situations

The worst historical episodes of predatory attacks on people (e.g. France, Estonia, northern Italy and Finland during the 19th century) appear to stem from periods and places where landscapes were very heavily modified. These landscapes are characterised by a number of features, making it hard to isolate which is the most important. Firstly, wild prey species were scarce, or even absent after centuries of unregulated hunting, forest clearance, and intensive grazing of domestic ungulates. The only abundant food sources were domestic livestock and garbage. The only barriers between wolves and this livestock were usually children that were commonly used as shepherds throughout Europe during that period. Whether the wolves were feeding on livestock or garbage, they would have become used to exploiting food sources associated with humans. In addition, children would have spent a lot of time in the forest unattended herding

livestock, collecting berries, mushrooms and firewood. Finally, these periods were often associated with relative poverty among the rural population, creating behavioural patterns and situations that would expose people to a greater degree. It is not the fact that the wolves were generally so hungry that they had to feed on children which underlies the mechanisms in these attacks. If this had been the case the number of deaths would have been dramatically higher. It is just that wolf ecology from the period brought them into very close contact with humans and their livestock, setting the scene for these rare incidents to occur.

McDougal (1987) speculated that man-eater tigers in India developed when wild prey became rare, resulting in tigers preying on livestock. This would bring them into close contact with man, with which the tigers would become familiar, up to the point when they became regarded as alternative prey. This process where only certain individuals begin to regard humans as prey is a classic demonstration of the existence of problem individuals (Linnell et al. 1999).

A modern parallel to the wolf situation in pre-20th century Europe still exists in India. Wild prey are rare, and the livestock are often well guarded by adults, leaving unattended young children as a vulnerable "prey". This picture for wolves is also supported by data from other large carnivores. In India, many hundred people are injured or die each year from attacks by wildlife. For example, during a 5 year period in a single Indian state (Madhya Pradesh) the number of attacks (injuries and deaths) was; 735 by sloth bears, 138 by leopards, 121 by tigers, 34 by elephants, 29 by wild boar, 21 by gaur, 13 by wolves and 3 by hyenas (Rajpurohit 1999; Rajpurohit & Krausman 2000). In Africa, the picture is the same, with lions, leopards and hyenas attacking people, and many other being killed by elephants, hippopotami, buffalo, and even chimpanzees and baboons (Treves & Naughton Treves 1999). One other factor common to these situations is the fact that the people in these areas are often poorly armed, implying that they only have a limited potential to kill predators. Thus, the selection against "fearless" individuals is likely to be weak.

11.2.5 Other factors

Wolves regularly kill domestic dogs. This includes both hunting dogs, sledge dogs and dogs tied up in farmyards. It is therefore possible that the presence of a dog may attract a wolf, and lead the wolf to act in an aggressive manner. Potentially, a human trying to defend a dog may provoke a wolf into making a defensive attack. Surprisingly, the presence of a dog does not appear in many of the cases that we have examined here, apart from a few cases where a wolf attacked sledge dogs. It remains a factor that should be considered.

There are many descriptions of wolves feeding on human bodies, including those that have died on the battlefield, from epidemics, or poorly cremated remains in graveyards (Shahi 1982; Casey & Clark 1996; Snerte 2000). It is often speculated that wolves that have fed on human bodies might make the change to killing people. While the idea is attractive there is little data to

support it. Attempts to use aversive conditioning on individual carnivores by creating a negative stimulus when feeding on a livestock carcass have often failed to prevent those individuals from killing live livestock. This indicates that the perception of a live prey is very different from that of a carcass (Smith et al. 2000).

11.2.6 Why are there so few attacks from North America?

There were clear seasonal differences in the occurrence of wolf attacks. However, these differed significantly between attacks by rabid wolves and predatory attacks. **Table 7** only shows data from Europe and Russia, excluding data from central Asia and India because these regions have different patterns of environmental seasonality. Most attacks by rabid wolves occurred during spring, with 45% occurring in the 3 month period from March to May, and a second smaller peak in late autumn. Very few attacks during late summer mid winter. This pattern has also been reported in other studies (Yankin et al. 1982, Rootsli 2001). This seasonal pattern is also seen in studies of red fox rabies in both western Europe and eastern Canada (Macdonald & Voight 1985). Predatory attacks occurred in all months of the year, with a clear peak in June to August (50%). The reasons for these seasonal patterns are not clear, but two different explanations have been raised for the peak of predatory attacks during winter. Firstly, there are more potential victims in the forests during summer, herding livestock and collecting berries, mushrooms and nuts. Secondly, wolves raising pups will be experiencing increased food stress during this period (Rootsli 2001). There is therefore no support for the popular image of hungry wolves attacking people during the depths of winter.

11.4 Patterns – age and sex of victims

There were clear differences between the age of victims attacked by rabid and non-rabid wolves respectively (**Table 8**). The vast majority of those attacked by rabid wolves were adults, and mainly men (also supported by Yankin et al. 1982; Korytin 1997). This reflects the expected pattern of those that work outdoors, in agricultural and forestry activities. Rabid wolves apparently choose their victims at random, just biting the people and animals they encounter during the furious phase. Therefore, it is not expected to find any evidence for selection for any specific age or sex category among the victims. In contrast, the victims of predatory attacks by wolves are mainly (90%) children under the age of 18, and especially under the age of 10. In the rare incidents where adults are killed, they are almost always women. This pattern is consistent with the wolves selecting the weakest, and most easily captured category of prey.

11.5 Patterns – temporal changes in numbers of attacks

There is a clear pattern for the number of documented and reported wolf attacks to decrease in Europe during the 20th century (**Table 9**). This is the opposite of what would be expected

Table 7. Age and sex specific nature of attacks by rabid wolves and predatory attacks on humans (%). Cases marked with an asterix include both victims that were attacked and survived and those that were killed. Otherwise the data contains fatal attacks only.

Area	Period	N	Male			Female			Unknown sex		
			0-9	10-18	>18	0-9	10-18	>18	0-9	10-18	>18
Predatory											
Norway / Sweden	1727-1821	16	44	6	0	19	25	6			
Finland	1879-1882	19	48	11	0	32	11	0			
Spain	1957-1974	7	72	0	0	0	14	14			
Russia*	1944-1950	19	11	16	0	26	47	0			
France	1764-1767	65	9	25	0	11	29	26			
France*	1817-1818	18	40	22	0	17	17	6			
Italy	1801-1825	67							43	43	13
Finland	1831-1877	43							48	47	5
Poland	1937	10							50	50	0
Russia*	1840-1861	273							54	27	19
Russia	1945-1953	14							72	28	0
India*	1993-1995	80							71	29	0
India*	1980-1986	118							87	13	0
Estonia	1801-1855	108							49	49	2
Total / mean%		857	37	13	0	18	24	9	60	36	4
Rabies											
France*	1756	13	0	8	38	0	23	31			
France*	1851	41	15	15	24	9	9	29			
Iran*	1975	9	11	11	55	0	0	22			
India*	1996	36	6	6	50	17	6	17			
India*	1973	12	8	0	50	0	25	17			
Germany*	17 th century	11	0	0	46	0	8	46			
Spain	1900-1950	15	0	20	67	0	0	13			
USSR*	1972-1976	39							0	5	95
USSR*	1978	25							16	16	68
Total / mean%		201	6	9	47	4	10	25	8	10	82

Age has only been given as "child". We have therefore allocated ages equally into the two categories.

when the improved record keeping and investigation of recent decades is considered. Clearly, there has been a dramatic reduction in the numbers and distribution of wolves during the last centuries (Mech 1995), together with a mass movement of people from rural to urban areas. These two changes would naturally decrease the chances of wolves and people meeting. But a number of other factors must also be considered.

- (1) Children are rarely used as shepherds today.
- (2) Wild prey populations have increased dramatically in most areas.
- (3) Rabies in domestic dogs has been greatly reduced through vaccination and dog control laws.
- (4) The practice of keeping tame wolves and hybrids does not appear to be so common – at least where they occur, the situation is changed and the chances of them escaping are far less.
- (5) Wolves have been so heavily persecuted during the last century that it is highly likely that there has been intense selec-

tion against "fearless" wolves or those that are not very shy of humans. In countries where wolves are hunted (legally and illegally) it is unlikely that any will live long once they begin to develop "fearless" behaviour. However, in countries where wolves are protected, management may need to consider response actions (see section 12).

Despite the centuries of persecution wolves have survived in many areas in large numbers and have begun to return to many places from which they were exterminated. A modern perspective on the rarity of wolf attacks can be provided by examining the number of wolf attacks relative to the numbers of wolves in various countries / states during the last decade (Tables 3 and 7). There are currently an estimated 10,000 – 20,000 wolves in Europe, 40,000 in Russia and 60,000 in North America. Even with these numbers we have managed to only find records of 4 people being killed in Europe, 4 in Russia and none in North America by non-rabid wolves during the last 50 years. Respective figures for rabies cases are 5, 4 and zero. Clearly, the risks of

wolf attacks under present circumstances are very, very low throughout Europe and North America.

11.6 Viewing the wolf as a wolf

This report documents that wolves have killed and attacked people throughout recent centuries. It is easy to see from where our cultural fear of wolves comes from. The records from past and present times of rabid wolves going amok, and of these occasional episodes of wolves preying on children are dramatic. Their dramatic nature is clear even from the perspective of our modern enlightened times. When viewed from the 18th and 19th centuries they must have been terrifying. It is therefore not surprising that the wolf of all the large carnivores became such a negative symbol (Boitani 1995; Rehnmark 2000) throughout European history.

The results of this report may seem surprising to many, given the modern positive image of the wolf as an almost harmless carnivore. Many have read or heard statements such as "...there is no record of an unprovoked, non-rabid wolf in North America seriously injuring a person" (Mech 1991). From our review we cannot disprove this statement, although this depends on how you interpret "seriously injured" and "record". It is also important to underline the conditions in the statement. The "in North America" condition is the most important of all. In North America, people have been killed by rabid wolves, and elsewhere people have been bitten by healthy wolves. North American authors have been aware of stories of wolf attacks from Eurasia – but until recently they have not had access to a review as the language barrier has clearly hindered the flow of information.

Table 8. Seasonal distribution of wolf attacks on humans, separated into predatory attacks by healthy wolves and attacks by rabid wolves. Cases show numbers of people killed unless otherwise indicated (* = killed and injured, † = injured only). Some episodes of predatory attacks may include a few rabid cases (‡).

Area	Period	N	Jan.	Feb	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
Predatory														
Norway	1800	1												1
Sweden	1727-1763	4	2							1				1
Sweden*	1820-1821	31	16	9	5									1
Russia*	1840-1861	273	5	6	14	15	36	41	75	55	12	7	4	2
Russia*	1944-1952	33				2	2	1	9	10	5		4	
Estonia	1762-1855	136	5	14	6	10	15	14	28	23	9	2	3	7
Finland (Åbo)	1878-1882	22	1			2	2	2	2	4	1	3	2	3
Finland	1848-1882	10	2			4	1		1	1				1
France*	1764-1767	106	13	6	15	14	15	10	3	4	9	9	2	6
France*	1817-1818	18			1			4	5	5	3			
Latvia†	1998-2000	3				1								2
Poland*	1937	10							5	5				
Poland	1824	1					1							
Spain*	1957-1975	8						3	5					
Italy‡	1500-1825	377	17	22	18	27	24	69	99	31	17	14	28	11
North America†	1977-2000	8				1		1	1	2	2			1
Total		1041	61	57	59	76	96	145	233	141	58	35	43	36
%		100	6	5	5	7	9	14	22	14	5	3	4	3
Rabies														
Germany	1641-1674	6		2	1	2				1				
Latvia	1979-2001	2					1				1			
Lithuania	2001	1					1							
Estonia	1980	1					1							
Spain	1720-1949	5	2		1	1							1	
Russia	1972-1978	9	1		2	2	1	1				1	1	
Iran	1975	2										1	1	
Croatia	1997	1				1								
France	1756/1851	2				1			1					
Slovakia	1997	1							1					
North America	1833-1942	5	1			1			1	1				1
Total		35	4	2	4	8	4	1	3	2	1	2	3	1
%		100	11	6	11	23	11	3	9	6	3	6	9	3

The problem is that in the absence of a full global review many people have attempted to extrapolate the North American experience to the rest of the world. From our review it is clear that the North American experience is not typical and that when considering wolf management and the risk to human safety we need to consider the wolf in *toto*. This means that all attacks by wolves that are rabid, habituated, sick, hybrid, escaped from captivity, or provoked are just as important as those attacks that are made by healthy, wild, unprovoked and non-habituated

wolves. The need to look at attacks in *toto* is because wolf management will need to focus on all possible situations that can occur, and the public's attitude will be formed by the sum of experience. In many cases the exceptional events will be even more influential than the normal.

Various interest groups have long held up the wolf as either a devil like symbol, or as that of a benign god like animal. Admitting that wolves have killed people may change the image that

Table 9. Summary of wolf attacks on humans. Only the most reliable cases have been included in this table. Numbers do not represent total numbers, but merely those for which we have found records. The period and regions covered within each time period vary greatly. The numbers that die following rabies attacks is often underestimated as the long term fates of victims are rarely reported in historic documents. Where authors have only reported numbers killed, we use this number as a minimum estimate of the total number attacked (indicated with a "+").

Area	18 th century		19 th century		1900-1949		1950-2000	
	Total attacks	Killed	Total attacks	Killed	Total attacks	Killed	Total attacks	Killed
Rabies								
Croatia							1	0
Estonia			84+	84			1	1
France	693	308	345	118				
Germany								
Italy			5+	5				
Latvia			10+	10			12	3
Lithuania					19	?	22	0
Poland			19+	19	130	25		
Slovakia					4	2	2	1
Spain	40	?	14+	14	29	>10		
Europe total	733		477		182		38	5
India							77	5
Afghanistan							18	10
Iran					325	60	474	22
China							31	4
Russia / USSR			403	?	20	10	159	4
North America			16	?	4	2	2	0
Non-rabies								
Estonia	21+	21	111+	111				
Finland			79	78				
France	711	577	365	104	6	2		
Italy	107	?	112	72				
Latvia							3	0
Lithuania					16	11		
Norway			1	1				
Poland			1	1	10	5		
Slovakia							1	0
Spain							8	4
Sweden	4	4	31	12				
Europe total	839	>602	700	379	32	18	21	4
India			639+	639	115+	115	311	273
Russia / USSR			273	169	35	32	8	4
North America			1	0	1	0	11	0

These cases were reported by Pavlov (1982) from the period 1861-1893 and do not separate between rabies and non-rabies.
 These cases from 1840-1861 are reported by Korytin (1997) who indicates specifically that they are not from rabid wolves. Because of possible double reporting we do not report figures from Pavlov (1982) cited from this period.

some (many?) people have of the wolf. When we consider that a wolf is a highly adaptable large carnivore found from the Arabian deserts to the arctic tundra, capable of killing adult moose weighting many hundreds of kilograms it should not be surprising that wolves, like most other large carnivores, have on occasion killed humans. In many ways it is surprising that wolves have not killed more people during the course of time. The main symbolic conclusion that comes from this study is that it is time to stop viewing the wolf as a devil or a god. A wolf is a wolf. As a species we cannot expect them to not eat humans (an easy and abundant prey) on principle. We should just be glad that they avoid us as much as they do, and manage them to keep it that way.

12 Management planning

Based on the patterns presented above it appears that the risks of wolf attacks on people are currently very, very low in Europe (and North America) today. The factors associated with increased risks of wolf attacks are not presently common (section 11.5), and are unlikely to increase in the future. However, it is important to prepare for all eventualities, even those that are very unlikely.

12.1 Reducing the chances that wolf attacks occur

Based on the analysis of factors associated with wolf attacks there are three ways in which the risk of wolf attacks occurring can be reduced even further.

- (1) **Combat rabies.** As rabies is associated with a large proportion of wolf attacks, it would be desirable to reduce the risk of wolves contracting rabies. As domestic dogs appear to have been the main source of rabies in wolves it should be relatively easy to continue the ongoing efforts to vaccinate and control dogs, at least in the western world. Furthermore, the ongoing efforts to vaccinate wildlife populations against rabies that have been successful in western Europe will further reduce the risk of wolves contracting rabies. In Asia this task may be very difficult in the short term.
- (2) **Habitat and prey management.** Managing and restoring prey populations and their habitat, and using effective methods to protect livestock so that wolves are not dependent on human food sources will reduce both the wolf-human encounter rate, and the risk of habituation. This should again reduce the chances of wolf attacks on humans.
- (3) **Keeping wolves wild.** Habituated wolves have been responsible for a number of attacks, as have habituated dingoes and coyotes. Keeping wolves wild, so that they do not associate humans with food, and maintain a certain level of fear of humans, should greatly reduce the risk of attacks. In areas where wolves are hunted, emphasis should be placed on methods where the packs learn to associate humans with negative consequences. Drive hunts may achieve this goal more than sit-and-wait hunts, for example. Where wolf hunting is not appropriate, efforts should be made to stop wolves from associating humans with food, and the use of harassment measures should be considered where needed.

12.2 Reaction planning

Despite the low probability of wolf attacks on humans occurring, the risk is not zero, and wildlife management reaction procedures should be put in place before such incidents occur, in the

hope that they are never needed. Given that the risk of attacks from other large carnivores (bears, pumas, tigers etc) is much higher, wolf attack response protocols can be incorporated into those for the other species. Two potential situations that require reaction can occur. It is essential that reaction protocols are in place before such events occur.

- (1) **"Fearless wolves"**. Individual wolves may begin to behave in a way where they are not showing the appropriate level of fear of humans. There should be a management protocol in place to deal with this eventuality. For example, in 2001 Denali National Park in Alaska closed several campsites because the resident wolves had begun to show "fearless" behaviour, approaching campers and stealing food and other objects.

Central to such a protocol is an understanding of what constitutes normal and abnormal wolf behaviour. For example, wolves living in mixed farmland-forest habitats will generally tolerate a very high degree of human activity and human infrastructure. They may even approach houses and kill dogs. Such behaviour must be regarded as "normal" wolf behaviour. Management protocols that define limits for normal behaviour will therefore need to be developed in close consultation with experts on wolf behaviour.

- (2) **Wolf attacks**. Management protocols are needed for circumstances where a person claims to have been attacked by wolves, or if a body is found where wolves are suspected to have been involved. In such events it is important to confirm the identity of the attacker as a wolf, because the chances of it having been a dog or other agent are far higher. In British Columbia where fatal attacks from pumas and bears occur, all deaths are treated as crime scenes with the emphasis on preserving evidence. The ability of forensic science to use DNA methodology to identify the identity of the attacking animal should also be investigated (Savolainen & Lundeberg 1999).

12.3 The human dimension

It is important to realise that much of the fear that is expressed towards wolves may be directed at the wolf as a symbol, rather than actual fear for physical risk (Midgley 2001). In the modern context this symbolism is likely to be associated with a loss of control of local affairs in the face of outside intervention by central authorities and large urban populations (Bjerke et al. 2000; Skogen & Haaland 2001). Measures which increase local involvement in wildlife management, and open for dialogue between local people, researchers and managers will also assist. Carefully regulated hunting of wolves in which local people can take part may be an effective step towards local empowerment in some situations (Skogen & Haaland 2001, Bjerke et al. 2001).

The attitude that people have towards wolves is also influenced by their confidence in different sources of knowledge (scientific knowledge versus lay knowledge). Those with confidence in scientific knowledge are likely to be more positive towards wolves, however large segments of rural communities have low confi-

dence in this source of knowledge. There has been a conflict between lay knowledge and scientific knowledge with regards to the danger wolves pose to human safety. Since scientific knowledge holds a hegemonic position to lay knowledge, the contestation of claims that wolves are harmless may be an element in a struggle against the dominance of this form of knowledge. However, the claim that wolves are harmless is not actually a result of scientific investigation as this is the first serious attempt to review the topic. The results of this review that documents that wolves can present risks to human safety under certain conditions should hopefully go a long way to reconciliation between lay and scientific knowledge on this topic (Bjerke et al. 2001). An honest presentation of facts about wolves (including the negative aspects) is vital to build up trust among different interest groups (Schlickeisen 2001).

Finally, it is important that the public receive information on how to act when confronted with a wolf they believe is acting aggressively, in the same manner that visitors to North American national parks are given information about bear safety. An example of the information provided by the British Columbia National Parks Service is provided in **Appendix 5**.

13 Literature cited

- Ali, W., Khan, F. K., Doulah, S. & Majumdar, J. U. 1977. Surveillance of rabies in Dacca. - *Bangladesh Medical Research Council Bulletin* 3: 117-123.
- Allen, D. L. 1979. *Wolves of Minong: Isle Royale's wild community*. - University of Michigan Press, Ann Arbor.
- Andersone, Z., Lucchini, V., Randi, E. & Ozolins, J. 2001. Hybridisation between wolves and dogs in Latvia as documented using mitochondrial and microsatellite DNA markers. - *Zeitschrift für Säugetierkunde* 67: in press.
- Anonymous 2000. Wolf bites camper. - *Wolf! Magazine* 2000: 21-22.
- Anonymous 2001. Risk assessment: risk to humans posed by the dingo population on Fraser Island. - Queensland Environmental Protection Agency www.env.qld.gov.au/cgi-bin/w3-msql/environment/park/fraser/msqwelcome.html?page=dingo_risk.pdf.
- Anonymous. 1991. Hunter escapes injury after fighting off wolf. - *News North* 1991.
- Anonymous. 1999. Minnesota Wolf Management Plan. - Minnesota Department of Natural Resources Report.
- Anonymous. 2000. Man attacked by wolf in British Columbia. - *Associated Press* July 5.
- Anonymous. 2000. Man needs 50 stitches after rare attack by wolf. - *Seattle Post-Intelligencer* Tuesday July 4.
- Anonymous. 2000. Wolf bites camper. - *Wolf! Magazine* 2000: 21-22.
- Anveden, P. A., Bjork, J., Fritz, H. & Josefsson, K. 1986. The first fatal Swedish case report of dog bite contaminated by a new bacterium. - *Lagartidningen* 83: 1387-1388.
- Avis, S. P. 1999. Dog pack attack: hunting humans. - *American Journal of Forensic Medicine and Pathology* 20: 243-246.
- Bahmanyar, M., Fayaz, A., Nour-Salehi, S., Mohammadi, M. & Koprowski, H. 1976. Successful protection of humans exposed to rabies infection. - *Journal of the American Medical Association* 236: 2751-2754.
- Ballard, W. B. & Krausman, P. R. 1997. Occurrence of rabies in wolves in Alaska. - *Journal of Wildlife Diseases* 33: 242-245.
- Baltazard, M. & Bahmanyar, M. 1955. Essai pratique du serum antirabique chez les mordus par loups enragés. - *Bulletin of the World Health Organisation* 13: 747-772.
- Baltazard, M. & Ghodssi, M. 1954. Prevention of human rabies: treatment of persons bitten by rabid wolves in Iran. - *Bulletin of the World Health Organisation* 10: 797-803.
- Bath, A. J. 1996. Increasing the applicability of human dimensions research to large predators. - *Journal of Wildlife Research* 1: 215-220.
- Bath, A. J. 2001. Human dimensions in wolf management in Savoie and Des Alpes Maritimes, France: Results targeted toward designing a more effective communication campaign and building better public awareness materials. - Large Carnivore Initiative for Europe www.large-carnivores-lcie.org.
- Bath, A. J. & Farmer, L. 2000. Europe's carnivores: a survey of children's attitudes towards wolves, bears and otters. - Large Carnivore Initiative www.large-carnivores-lcie.org.
- Bath, A. J. & Majic, A. 2001. Human dimensions in wolf management in Croatia: understanding attitudes and beliefs of residents in Gorski kotar, Lika and Dalmatia towards wolves and wolf management. - Large Carnivore Initiative for Europe www.large-carnivores-lcie.org.
- Beier, P. 1991. Cougar attacks on humans in the United States and Canada. - *Wildlife Society Bulletin* 19: 403-412.
- Beran, G. W. 1994. Rabies and infections by rabies related viruses. - In Beran, G. W., ed. *Handbook of zoonoses*. 2nd edition. Section V: Viral. CRC Press, London. Pp. 307-358.
- Bibikov, D. 1980. [Wolves and people: a relevant problem]. - *Povedenie volka*. Akademija nauk SSSR, Moscow.
- Bibikov, D. I. 1990. Large predators and man in the USSR. - *Proceedings of the International Union of Game Biologists Congress* 19: 558-561.
- Bingham, J., Foggin, C. M., Wandeler, A. I. & Hill, F. W. G. 1999. The epidemiology of rabies in Zimbabwe. 2. Rabies in jackals (*Canis adustus* and *Canis mesomelas*). - *Onderstepoort Journal of Veterinary Research* 66: 11-12.
- Bjerke, T., Vittersø, J. & Kaltenborn, B. P. 2000. Locus of control and attitudes toward large carnivores. - *Psychological Reports* 86: 37-46.
- Bjerke, T. & Kaltenborn, B. P. 2000. Holdninger til ulv. En undersøkelse i Hedmark, Østfold, Oslo og Akershus. - Norwegian Institute for Nature Research Oppdragsmelding 671: 1-34.
- Bjerke, T., Kaltenborn, B. P. & Thrane, C. 2001. Sociodemographic correlates of fear-related attitudes toward the wolf (*Canis lupus lupus*). A survey in southeastern Norway. - *Fauna Norvegica* 21: 25-3.
- Blanco, J. C., Reig, S. & Cuesta, L. 1992. Distribution, status and conservation problems of the wolf *Canis lupus* in Spain. - *Biological Conservation* 60: 73-80.
- Boitani, L. 1992. Wolf research and conservation in Italy. - *Biological Conservation* 61: 125-132.
- Boitani, L. 1995. Ecological and cultural diversities in the evolution of wolf human relationships. - In Carbyn, L. N., Fritts, S. H. & Seip, D. R., eds. *Ecology and conservation of wolves in a changing world*. Canadian Circumpolar Institute, Alberta, Canada. Pp. 3-12.
- Boitani, L. 2000. Action plan for the conservation of the wolves (*Canis lupus*) in Europe. - *Nature and Environment, Council of Europe Publishing* 113: 1-86.
- Bounds, D. L. & Shaw, W. W. 1994. Managing coyotes in US national parks: human-coyote interactions. - *Natural Areas Journal* 14: 280-284.
- Bourhy, H., Kissi, B., Audry, L., Smreczak, M., Sadkowska-Todys, M., Kulonen, K., Tordo, N., Zmudzinski, J. F. & Homes, E. C. 1999. Ecology and evolution of rabies virus in Europe. - *Journal of General Virology* 80: 2545-2557.
- Breitenmoser, U. 1998. Large predators in the Alps: the fall and rise of man's competitors. - *Biological Conservation* 83: 279-289.

- Butzeck, S. 1987. [The *Canis lupus* L. wolf as a mediator of rabies to the German population in the 16th and 17th century. - *Zeitschrift für Gesamte Hygiene* 33: 666-669.
- Cagnolaro, L., Comincini, M., Martinoli, A. & Oriani, A. 1992. [Historical data on the presence of the wolf and on cases of anthrophagi in the central Padania]. - In Cecere, F., ed. *Proceedings of the Conference "Dalla Parte del Lupo"*. P. Atti & Studi del WWF Italia. Pp. 83-99.
- Carbone, G. 1991. La peur du loup. - Kapp Lahore, Jombart.
- Carbyn, L. N. 1989. Coyote attacks on children in western North America. - *Wildlife Society Bulletin* 17: 444-446.
- Casey, D. & Clark, T. W. 1996. *Tales of the wolf: fifty-one stories of wolf encounters in the wild*. - Homestead Publishing, Moose, Wyoming.
- Chapman, R. C. 1978. Rabies: decimation of a wolf pack in arctic Alaska. - *Science* 201: 365-367.
- Cherkasskiy, B. L. 1988. Roles of the wolf and the racoon dog in the ecology and epidemiology of rabies in the USSR. - *Reviews of Infectious Diseases* 10: S634-636.
- Clarke, C. H. D. 1971. The beast of Gévaudan. - *Natural History* 80: 44-51, 66-73.
- Comincini, M., Martinoli, A. & Oriani, A. 1996. Wolves in Lombardia: historical data and biological notes. - *Natura* 87: 83-90.
- Conover, M. R. 2001. *Resolving human-wildlife conflicts: the science of wildlife damage management*. - CRC Press, Boca Raton, Florida.
- Conover, M. R., Pitt, W. C., Kessler, K. K., DuBow, T. J. & Sanborn, W. A. 1995. Review of human injuries, illnesses and economic losses caused by wildlife in the United States. - *Wildlife Society Bulletin* 23: 407-414.
- Conrad, L. 1992. Cougar attack: case report of a fatality. - *Journal of Wilderness Medicine* 3: 387-396.
- Conrad, L. & Balison, J. 1994. Bison goring injuries: penetrating and blunt trauma. - *Journal of Wilderness Medicine* 5: 371-381.
- Corbett, J. 1944. *Man-eaters of Kumaon*. - Oxford University Press, London.
- Corbett, L. 1995. *The dingo in Australia and Asia*. - Cornell University Press, London.
- Dahl, E. 1998. Animal bites at the casualty department of the Oslo City Council. - *Tidsskrift for den Norske Lægeforening* 118: 2614-2617.
- David, D., Jakobson, B., Smith, J. S. & Stram, Y. 2000. Molecular epidemiology of rabies virus isolated from Israel and other Middle- and Near-Eastern countries. - *Journal of Clinical Microbiology* 38: 755-762.
- de Beaufort, F. G. 1988. [Historical ecology of wolves, *Canis lupus* L.1758, in France]. - PhD Thesis University of Paris.
- Derocher, A. E., Wiig, Ø., Gjertz, I., Bøkseth, K. & Scheie, J. O. 1998. Status of polar bears in Norway 1993-96. - In Derocher, A. E., Garner, G. W., J., L. N. & Wiig, Ø., eds. *Polar bears: Proceedings of the 12th working meeting of the IUCN/SSC polar bear specialist group, 3-7 February 1997, Oslo, Norway*. IUCN Publications, Gland, Switzerland. Pp. 101-112.
- Dickinson, F. O. & Battle, M. C. 2000. Lyme borreliosis. - *Infectious Disease Review* 2: 23-26.
- Dundes, A. e. 1989. *Little Red Riding Hood: a casebook*. - University of Wisconsin Press, Madison, Wisconsin.
- Durrheim, D. N. & Leggat, P. A. 1999. Risk to tourists posed by wild mammals in South Africa. - *Journal of Travel Medicine* 6: 172-179.
- Dutta, J. K. & Dutta, T. K. 1994. Rabies in endemic countries. - *British Medical Journal* 308: 488-489.
- Eldøen, G., Samdal Vik, I. S., Vik, E. & Midgard, R. 2001. Lyme-nevroboreliose i Møre og Romsdal. - *Tidsskrift for den Norske Lægeforening* 121: 2008-2011.
- Eles, H. 1986. *Vargen i kyrkbockerna*. - Vargen: Varmland forr och nu. Årsbok från Varmlands museum, AB Ystads Centraltryckeri, Ystad.
- Fabré, A. 1901. *La Bete du Gévaudan*. - Impr. H. Boubonnelle, Saint-Flour.
- Falconieri, G., Zanella, M. & Malannino, S. 1999. Pulmonary thromboembolism following calf cellulitis: report of an unusual complication of dog bite. - *American Journal of Forensic Medicine and Pathology* 20: 240-242.
- Fangtao, L., Shubeng, C., Yinzhon, W., Chenzhe, S., Fanzhen, Z. & Guanfu, W. 1988. Use of serum and vaccine in combination for Prophylaxis following exposure to rabies. - *Reviews of Infectious Diseases* 10: S766-S770.
- Fleck, S. & Herrero, S. 1989. Polar bear conflicts with humans. - In Bromley, M., ed. *Bear-people conflicts: proceedings of a symposium on management strategies*. Northwest Territories Department of Renewable Resources, Yellowknife, Northwest Territories. Pp. 201-202.
- Floyd, T. 1999. Bear-inflicted human injury and fatality. - *Wilderness and Environmental Medicine* 10: 75-87.
- Garcia, V. F. 1997. Animal bites and *Pasturella* infections. - *Pediatrics Review* 18: 127-130.
- Gill, R. 1990. Monitoring the status of European and North American cervids. - *Global Environment Monitoring System Information Series No. 8*, Nairobi: UNEP.
- Ginsberg, J. R. & Macdonald, D. W. 1990. *Foxes, wolves, jackals, and dogs: An action plan for the conservation of canids*. - IUCN, Gland, Switzerland.
- Godenhjelm, U. 1891. *Minnen från vargären i Åbo län 1880-1882*. - J. Simelii Arfvingars Boktryckeri-Aktiebolag, Helsinki.
- Gottlieb, J. O. & Misfeldt, J. C. 1992. Dog bites in the sledge-dog districts of Greenland. - *Ugeskrift for Læger* 154: 2824-2827.
- Granström, M. 2000. Human "tick-borne diseases" in Europe. - *Infectious Disease Review* 2: 88-90.
- Gray, D. R. 1995. *The wolves of Alert*. - Unpublished report to Ellesmere Island National Park Reserve: 1-30.
- Hanlon, C. A., Childs, J. E. & Nettles, V. F. 1999. Recommendations of a national working group on prevention and control of rabies in the United States: article III: rabies in wildlife. - *Journal of the American Veterinary Medicine Association* 215: 1612-1619.
- Hantson, P., Gautier, P. E., Vekemans, M. C., Fievez, P., Evrard, P., Wauters, G. & Mahieu, P. 1991. Fatal *Capnocytophaga canimorsus* septicemia in a previously healthy woman. - *Annales of Emergency Medicine* 20: 93-94.
- Hayes, R. D. & Gunson, J. R. 1995. Status and management of wolves in Canada. - In Carbyn, L. N., Fritts, S. H. & Seip,

- D. R., eds. Ecology and conservation of wolves in a changing world. Canadian Circumpolar Institute, Alberta, Canada. Pp. 21-34.
- Hell, P. 2001. [Wolf in the Slovak Carpathians]. - Parpress, Bratislava.
- Herrero, S. 1985. Bear attacks: their causes and avoidance. - Nick Lyons Books, New York.
- Herrero, S. & Fleck, S. 1990. Injury to people inflicted by black, grizzly or polar bears: recent trends and new insights. - International Conference on Bear Research and Management 8: 25-32.
- Holter, J., Gundersen, R. O., Natas, O., Haavik, P. E. & Hoel, T. 1989. Fatal infection after a dog bite. Septicemia caused by *Dysgonic fermenter 2* bacteria. - Tidsskrift for den Norske Lægeforening 109: 693-694.
- Hsu, S. S. & Hallagan, L. F. 1996. Case report of a coyote attack in Yellowstone National Park. - Wilderness and Environmental Medicine 2: 170-172.
- Iliopoulos, Y. (2000). Notes and comments for the "Final Draft Plan for the Conservation of Wolves in Europe"- LCIE. Report Project LIFE "LYCOS" NAT97 GR. 04249: Conservation of the wolf (*Canis lupus L.*) and its habitats in Central Greece. ARCTUROS, Thessaloniki, unpublished.
- Jackson, A. C. 2000. Rabies. - Canadian Journal of Neurological Sciences 27: 278-283.
- Jedrzejska, B., Jedrzejski, W., Bunevich, A. N., Milkowski, L. & Okarma, H. 1996. Population dynamics of wolves *Canis lupus* in Bialowieza Primeval Forest (Poland and Belarus) in relation to hunting by humans, 1847-1993. - Mammal Review 26: 103-126.
- Jenness, S. E. 1985. Arctic wolf attacks scientist - a unique Canadian incident. - Arctic 38: 129-132.
- Jhala, Y. V. 2000. Human-wolf conflicts in India. - Abstracts from Beyond 2000: Realities of Global Wolf Restoration, Conference held at Duluth, Minnesota 23-26 February 2000: 26-27.
- Jhala, Y. V. & Sharma, D. K. 1997. Childlifting by wolves in eastern Uttar Pradesh, India. - Journal of Wildlife Research 2: 94-101.
- Johansson, B., Eriksson, A. & Ornehult, L. 1991. Human fatalities caused by wasp and bee stings in Sweden. - International Journal of Legal Medicine 104: 99-103.
- Johnsen, S. 1957. Rovdyrene. Norges Dyr. - J. W. Cappelen's Forlag, Oslo.
- Johnson, M. R. Rabies in wolves and its potential role in a Yellowstone population. - In Carbyn, L. N., Fritts, S. H. & Seip, D. R., eds. Ecology and conservation of wolves in a changing world. Alberta, Canada. 1995. Pp. 431-440.
- Joslin, P. 1982. Status, growth and other facets of the Iranian wolf. - In Harrington, F. H. & Paquet, P. C., eds. Wolves of the world: perspectives of behavior, ecology, and conservation. Noyes Publications, Park Ridge, New Jersey, USA. Pp. 196-203.
- Kaczensky, P. 1996. Livestock-carnivore conflicts in Europe. - Munich Wildlife Society.
- Kaal, M. 1983 [Wolf] Valgus, Tallinn.
- Kaltenborn, B. P., Bjerke, T. & Strumse, E. 1998. Diverging attitudes towards predators: do environmental beliefs play a part? - Research in Human Ecology 5: 1-9.
- Kaltenborn, B. P., Bjerke, T. & Vittersø, J. 1999. Attitudes towards large carnivores among sheep farmers, wildlife managers, and research biologists in Norway. - Human Dimensions of Wildlife 4: 57-63.
- Kanzaki, N., Maruyama, N. & Inue, T. 1996. Japanese attitudes towards wolves and its recovery. - Journal of Wildlife Research 1: 268-271.
- Khan, M. A. R. The problem tiger of Bangladesh. - In Tilson, R. L. & Seal, U. S., eds. Tigers of the world: the biology, biopolitics, management, and conservation of an endangered species. New Jersey. 1987. Pp. 92-96.
- King, A. A. & Turner, G. S. 1993. Rabies: a review. - Journal of Comparative Pathology 108: 1-39.
- Klinghammer, E. 1996. Captive non-human socialized wolves kill caretaker in a Canadian forest and wildlife reserve. - Wolf! Magazine.
- Kneafsey, B. & Condon, K. C. 1995. Severe dog-bite injuries, introducing the concept of pack attack: a literature review and seven case reports. - Injury 26: 37-41.
- Korytin, S. A. 1986. [Habits of wild animals]. - Agropromizdat, Moscow.
- Korytin, S. 1990. [On homicide by wolves]. *Ohota i ohotnichje khozjaistvo*, 7: 12-14.
- Korytin, S. A. 1997 [Sex and age structure of people attacked by wolves in different seasons]. Proceedings of the scientific conference [Issues of applied ecology, game management and fur farming], 27-28 May 1997, Kirov, p - 143-146.
- Kossak, S. 1999 [Threats to coexistence of people and wolves] I "Wilk - zagrożenia i przyszłość" *Suprasl*, czerwiec 1999: 31-39.
- Krawczak, C. 1969 [Hunting of wolves in the Great Duchy of Poznan], *Lowiec Polski* 4:12.
- Kristiansen, B. E., Jenkins, A., Tveten, Y., Karsten, B., Line, Ø. & Bjørnsdorff, A. 2001. Human granulocytær ehrlichiose i Norge. - Tidsskrift for den Norske Lægeforening 121: 805-806.
- Krusjinskij, L. 1980. [Wolf behaviour]. -. *Povedenie volka*. Akademija nauk SSSR, Moscow.
- Kumar, S. & Rahmani, A. R. 1997. Status of Indian grey wolf *Canis lupus pallipes* and its conservation in marginal agricultural areas of Solapur District, Maharashtra. - Journal of the Bombay Natural History Society 94: 466-472.
- Kuzmin, I. 2001. Rabies in Russia 1960-1998. - RABNET www.who.int/emc/diseases/zoo/Russia_data/russiarabies_index.html.
- Langley, R. L. & Morrow, W. E. 1997. Deaths resulting from animal attacks in the United States. - Wilderness and Environmental Medicine 8: 8-16.
- Li, W., KFuller, T. K., Garshelis, D. L. & Quigley, H. B. 1996. The status of large carnivores in China. - Journal of Wildlife Research 1: 202-209.
- Lindgren, E. 1998. Climate and tickborne encephalitis. - Conservation Ecology [online] 2: <http://www.consecol.org/vol2/iss1/art5>.
- Linhardt, S. B., King, R., Zamir, S., Naveh, U., Davidson, M. & Perl, S. 1997. Oral rabies vaccination of red foxes and golden jackals in Israel: preliminary bait evaluation. - *Revue Sci-*

- entifique et Technique de l'Office International des Epizooties 16: 874-880.
- Linnell, J. D. C., Andrén, H., Odden, J., Liberg, O., Andersen, R., Moa, P. & Kvam, T. 2001. Home range size and choice of management strategy for lynx in Scandinavia. - *Environmental Management* 27: 869-879.
- Linnell, J. D. C., Odden, J., Smith, M. E., Aanes, R. & Swenson, J. E. 1999. Large carnivores that kill livestock: do "problem individuals" really exist? - *Wildlife Society Bulletin* 27: 698-705.
- Linnell, J. D. C., Smith, M. E., Odden, J., Kaczensky, P. & Swenson, J. E. 1996. Strategies for the reduction of carnivore - livestock conflicts: a review. - *Norwegian Institute for Nature Research Oppdragsmelding* 443: 1-118.
- Linnell, J. D. C., Swenson, J. & Andersen, R. 2001. Predators and people: conservation of large carnivores is possible at high human densities if management policy is favourable. - *Animal Conservation* 4: 345-350.
- Lohr, C., Ballard, W. B. & Bath, A. 1996. Attitudes toward gray wolf reintroduction to New Brunswick. - *Wildlife Society Bulletin* 24: 414-420.
- Lopez, B. H. 1978. Of wolves and men. - Charles Scribner's Sons, New York.
- Loveridge, A. J. & Macdonald, D. W. 2001. Seasonality in spatial organization and dispersal of sympatric jackals (*Canis mesomelas* and *C. adustus*): implications for rabies management. - *Journal of Zoology, London* 253: 101-111.
- Macdonald, D. W. 1980. Rabies and wildlife: a biologist's perspective. - Oxford University Press, Oxford.
- Macdonald, D. W. & Voight, D. 1985. The biological basis of rabies models. - In Bacon, P. J., ed. *Population dynamics of rabies in wildlife*. Academic Press, London. Pp. 71-108.
- Maruyama, N., Kaji, K. & Kanzaki, N. 1996. Review of the extirpation of wolves in Japan. - *Journal of Wildlife Research* 1: 199-201.
- Mathews, J. R. & Lattal, K. A. 1994. A behavioral analysis of dog bites to children. - *Developmental and Behavioral Pediatrics* 15: 44-52.
- Matouch, O. & Jaros, J. 1999. Rabies - epizootiological situation and control in the Czech Republic up to 1998. - State Veterinary Administration of the Czech Republic, National Reference Laboratory for Rabies, Information Bulletin 8a/99: 1-10.
- McDougal, C. The man eating tiger in geographical and historical perspective. - In Tilson, R. L. & Seal, U. S., eds. *Tigers of the world: the biology, biopolitics, management, and conservation of an endangered species*. New Jersey. 1987. Pp. 435-448.
- McDougal, C., Cotton, M., Barlow, A., Kumal, S. & Tamang, D. B. 2001. Tigers claim more human victims in Nepal. - *Cat News* 35: 2-3.
- McTaggart Cowan, I. 1949. Rabies as a possible population control of arctic canidae. - *Journal of Mammalogy* 30: 396-398.
- Mech, L. D. 1970. The wolf: the ecology and behavior of an endangered species. - American Museum of Natural History, New York.
- Mech, L. D. 1991. The way of the wolf. - Swan Hill Press, Shrewsbury, England.
- Mech, L. D. 1992. Wolves of the high arctic. - Voyageur Press, Stillwater, Minnesota.
- Mech, L. D. 1995. The challenge and opportunity of recovering wolf populations. - *Conservation Biology* 9: 270-278.
- Mech, L. D. 1996. A new era for carnivore conservation. - *Wildlife Society Bulletin* 24: 397-401.
- Mech, L. D. 1998. Who's afraid of the big bad wolf? - revisited. - *International Wolf* 8.
- Mech, L. D., Fritts, S. H. & Nelson, M. E. 1996. Wolf management in the 21st century: from public input to sterilization. - *Journal of Wildlife Research* 1: 195-198.
- Mech, L. D. & Nelson, M. E. 2000. Do wolves affect white-tailed buck harvest in northeastern Minnesota? - *Journal of Wildlife Management* 64: 129-136.
- Melin, S. A. 1992. Vargen forr och nu. - Bokforlaget Settern, Orkellunga.
- Meriggi, A. & Lovari, S. 1996. A review of wolf predation in southern Europe: does the wolf prefer wild prey to livestock. - *Journal of Applied Ecology* 33: 1561-1571.
- Meriggi, A., Rosa, P., Brangi, A. & Matteucci, C. 1991. Habitat use and diet of the wolf in northern Italy. - *Acta Theorologica* 36: 141-151.
- Middaugh, J. P. 1987. Human injury from bear attacks in Alaska, 1900-1985. - *Alaska Medicine* 29: 121-126.
- Midgley, M. 2001. The problems of living with wildness. - In Sharpe, V., Norton, B. & Donnelley, S., eds. *Wolves and human communities: biology, politics, and ethics*. Island Press, Washington D. C. Pp. 179-190.
- Mitmoonpitak, C., Tepsumethanon, V., Raksaket, S., Nayuthaya, A. B. & Wilde, H. 2000. Dog-bite injuries at the animal bite clinic of the Thai Red Cross Society in Bangkok. - *Journal of the Medical Association of Thailand* 83: 1458-1462.
- Moore, D. A., Sischo, W. M., Hunter, A. & Miles, T. 2000. Animal bite epidemiology and surveillance for rabies postexposure prophylaxis. - *Journal of the American Veterinary Medicine Association* 217: 190-194.
- Munthe, K. & Hutchison, J. H. 1978. A wolf-human encounter on Ellesmere Island, Canada. - *Journal of Mammalogy* 59: 876-878.
- Myrberget, S. 1967. Bjørn og ulv angriper sjeldent mennesker. - Skogeieren.
- Mäensyrjä, P. 1974. Hukka huutaa. - Arvi A. Karisto Osakeyhtiön kirjapaino, Hämeenlinna.
- Mørk, T. & Prestrud, P. 2001. Rabies i arktiske områder, aktualitet for Norge. - *Norsk Veterinærtidsskrift* 113: 361-367.
- Nader, I. A. 1996. Distribution and status of five predators in Saudi Arabia. - *Journal of Wildlife Research* 1: 210-214.
- Naess, A. & Mysterud, I. 1987. Philosophy of wolf policies I: general principles and preliminary exploration of selected norms. - *Conservation Biology* 1: 22-34.
- Novikov, G. A. 1962. Carnivorous mammals of the fauna of the USSR. - Israel Program for Scientific Translations, Jerusalem.
- Nyhus, P., Sumianto & Tilson, R. L. 1999. The tiger-human dimension in southeast Sumatra. - In Seidensticker, J., Jackson, P. & Christie, S., eds. *Riding the tiger: tiger conservation in human-dominated landscapes*. Cambridge University Press, Cambridge. Pp. 144-145.

- Okarma, H. [The wolf – a monograph of the species] – Bia-lowieza.
- Orians, G. H., Cochran, P. A., Duffield, J. W., Fuller, T. K., Gu-tierrez, R. J., Haneman, W. M., James, F. C., Kareiva, P., Kellert, S. R., Klein, D., McLellan, B. N., Olson, P. D. & Yaska, G. 1997. Wolves, bears, and their prey in Alaska: biological and social challenges in wildlife management. - National Research Council, Washington DC.
- Ormaasen, V., Brantssæter, A. B. & Moen, E. W. 2001. Flåttbåren encefalitt i Norge. - Tidsskrift for den Norske Lægerforening 121: 807-809.
- Ovsyanikov, N. G., Bibikov, D. I. & Bologov, V. 1998. Battling with wolves: Russia's decades-old struggle to manage its fluctuating wolf population. - International Wolf.
- Pavlov, M. 1982. [Wolf], Moscow.
- Persson, J. & Sand, H. 1998. Vargen: viltet, ekologin och man-niskan. - Svenska Jagareförbundet, Uppsala.
- Peterson, R. L. 1947. A record of a timber wolf attacking a man. - Journal of Mammalogy 28: 294-295.
- Pluskowski, A. 2001. En mørk fiende? Om truende villdyr i nor-deuropeisk middelalder. - Spor 16: 14-16.
- Pourcher, A. 1889. Historie de la Bete du Geavudan, vertitable fleau de Dieu, d'apres les documents enedits et authen-tiques, Saint-Martin de Boubaux.
- Pousette, E. 2000. De måanniskoåtande vargarna. - Bjørkelan-gen Bok & Papir, Bjørkelangen, Norge.
- Prins, L. & Yates, W. D. G. 1986. Rabies in Canada, 1978-1984. - Canadian Veterinary Journal 27: 164-169.
- Pulliainen, E. 1975. Wolf ecology in northern Europe. - In Fox, M. W., ed. The wild canids: their systematics, behavioral ecology and evolution. Van Nostrand Reinhold Company, New York. Pp. 292-299.
- Pålsson, E. 1987. Ulvers næringssøk og mennesket. Translation from M. Pavlovs book [The wolf], Moskva 1982. - Ar-beidsrapport fra rovviltprosjektet 30: 1-61.
- RABNET. <http://oms.b3e.jussieu.fr/rabnet/>
- Rajpurohit, K. S. 1999. Child lifting: wolves in Hazaribagh, India. - Ambio 28: 162-166.
- Rajpurohit, K. S. & Krausman, P. R. 2000. Human-sloth bear conflicts in Madhya Pradesh, India. - Wildlife Society Bul-letin 28: 393-399.
- Randi, E., Lucchini, V., Christensen, M. F., Mucci, N., Funk, S. M., Dolf, G. & Loeschke, V. 2000. Mitochondrial DNA variability in Italian and East European wolves: detecting the consequences of small population size and hybridiza-tion. - Conservation Biology 14: 464-473.
- Rathod, N. J., Salunke, S. & Bawiskar, V. R. 1997. Clinical profile of wolf bite cases in Jalgaon District. - Journal of the As-sociation of Physicians of India 45: 866-867.
- Rausch, R. 1958. Some observations on rabies in Alaska, with special reference to wild canidae. - Journal of Wildlife Management 22: 246-260.
- Ree, V. 2000. Ny runde med "Rapport 30-skandalen". 13 år gamle nyheter blir som nye i norsk presse våren 2000. - Våre Rovdyr 14: 20-25.
- Rehnmark, E. L. 2000. Neither god nor devil: rethinking our per-ception of wolves. - Pomegranate Communications Inc., California.
- Reuhl, J., Bratzke, H., Feddersen-Petersen, D. U., Lutz, F. U. & Willnat, M. 1998. Death caused by "attack dog" bites. A contribution to current discussion. - Archives Kriminol 202: 140-151.
- Rootsi, I. 2001. Man-eater wolves in the 19th century Estonia. - Proceedings of the Baltic Large Carnivore Initiative Sym-posium "Human dimensions of large carnivores in Baltic Countries": 77-91.
- Rjabov, L. 1980. [Behaviour of stray and feral dogs, and wolf-dog hybrids]. - Povedenie volka. Akademija nauk SSSR, Moscow.
- Rjabov, L. S. 1985. [Results of wolf population disturbances]. In: [The wolf. History, Systematics, Morphology, Ecology]. Bibikov, D. I., ed.. Nauka Publishers, Moscow: 51-63.
- Sabanejev, L. P. 1988. [Game animals]. Fizkultura i sport, Mo-skva.
- Saberwal, V. K., Gibbs, J. P., Chellam, R. & Johnsingh, A. J. T. 1994. Lion-human conflict in the Gir Forest, India. - Con-servation Biology 8: 501-507.
- Sacks, J. J., Lockwood, R., Hornreich, J. & Sattin, R. W. 1996. Fatal dog attacks, 1989-1994. - Pediatrics 97: 891-895.
- Sacks, J. J., Sinclair, L., Gilchrist, J., Golab, G. C. & Lockwood, R. 2000. Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998. - Journal of the American Veterinary Medicine Association 217: 836-840.
- Sanyal, P. Managing the man-eaters in the Sunarbans tiger re-serve of India - a case study. - In Tilson, R. L. & Seal, U. S., eds. Tigers of the world: the biology, biopolitics, man-agement, and conservation of an endangered species. New Jersey. 1987. Pp. 427-434.
- Savolainen, P. & Lundeberg, J. 1999. Forensic evidence based on mtDNA from dog and wolf hairs. - Journal of Forensic Sciences 44: 77-81.
- Schlickeisen, R. 2001. Overcoming cultural barriers to wolf rein-troduction. - In Sharpe, V., Norton, B. & Donnelley, S., eds. Wolves and human communities: biology, politics, and ethics. Island Press, Washington D. C. Pp. 61-74.
- Scott, P. A., Bentley, C. V. & Warren, J. J. 1985. Aggressive be-havior by wolves toward humans. - Journal of Mam-malogy 66: 807-809.
- Selimov, M. A. & al., e. 1981. [Treatment of people bitten by rabid wolves]. - Sovetskaja medicina 9: 109-113.
- Selimov, M. A., Klyueva, E. V., Aksenova, T. A., Lebedeva, I. R. & Gribencha, L. F. 1978. Treatment of patients bitten by rabid or suspected rabid wolves with inactivated tissue culture rabies vaccine and rabies gammaglobulin. - In IABS, W., ed. Symposium on the standardization of ra-bies vaccines for human use produced in tissue cultures (rabies III). S. Karger, Basel. Pp. 141-146.
- Shah, U. & Jaswal, G. S. 1976. Victims of a rabid wolf in India: effect of severity and location of bites on development of rabies. - Journal of Infectious Diseases 134: 25-29.
- Shahi, S. P. 1982. Status of the grey wolf (Canis lupus pallipes Sykes) in India - a preliminary survey. - Journal of the Bombay Natural History Society 79: 493-502.
- Skogen, K. & Haaland, H. 2001. En ulvehistorie fra Østfold: sa-marbeid og konflikter mellom forvaltning, forskning og

- lokalbefolkning. - Norsk Institutt for Naturforskning Fagrapport 52: 1-51.
- Smith, C. D., Moir, C., R. & Mucha, P. 1991. Rhabdomyolysis and renal failure following a wolf attack: case report. - *Journal of Trauma* 31: 423-425.
- Smith, M. E., Linnell, J. D. C., Odden, J. & E., S. J. 2000. Methods for reducing livestock losses to predators: B. Aversive conditioning, deterrents and repellents. - *Acta Agriculturae Scandinavica* 50: 304-315.
- Snerte, K. 2000. Ulvehistorier. - Samlaget, Oslo.
- Steere, A. C. 1994. Lyme disease: a growing threat to urban populations. - *Proceedings of the National Academy of Science of the United States of America* 91: 2378-2383.
- Stephenson, R. O. & Ahgook, R. T. 1975. The eskimo hunter's view of wolf ecology and behavior. - In Fox, M. W., ed. *The wild canids: their systematics, behavioral ecology and evolution*. Van Nostrand Reinhold Company, New York. Pp. 286-291.
- Stephenson, R. O., Ballard, W. B., Smith, C. A. & Richardson, K. 1995. Wolf biology and management in Alaska, 1981-1992. - In Carbyn, L. N., Fritts, S. H. & Seip, D. R., eds. *Ecology and conservation of wolves in a changing world*. Canadian Circumpolar Institute, Alberta.
- Strickland, D. 1999. Algonquin Park struggles with "fearless wolves". - *Wolf Magazine* 1999: 6-9.
- Stroganov, S. U. 1969. Carnivorous mammals of Siberia. - Israel Program for Scientific Translation, Jerusalem.
- Stuen, S. 2001. Nytt om Bartonella, Ehrlichia (Anaplasma) og andre flåttbårne sykdommer, med hovedvekt på genogruppe Ehrlichia (Anaplasma) phagocytophila. - *Norsk Veterinærtidsskrift* 113: 786-789.
- Swenson, J. E., Sandegren, F., Heim, M., Brunberg, S., Sørensen, O. J., Söderberg, A., Bjärvall, A., Franzén, R., Wikan, S., Wabakken, P. & Overskaug, K. 1996. Er den skandinaviske bjørnen farlig? - *NINA Oppdragsmelding* 404: 1-26.
- Swenson, J. E., Sandegren, F., Soderberg, A., Heim, M., Sørensen, O. J., Bjarvall, A., Franzen, R., Wikan, S. & Wabakken, P. 1999. Interactions between brown bears and humans in Scandinavia. - *Biosphere Conservation* 2: 1-9.
- Saab, M., Corcoran, J. P., Southworth, S. A. & Randall, P. E. 1998. Fatal septicaemia in a previously healthy man following a dog bite. - *International Journal of Clinical Practitioners* 52: 205.
- Teperi, J. 1977. Sudet Suomen rintamaiden ihmisten uhkana 1800-luvulla. - Suomen Historiallinen Seura, Helsinki.
- Teruelo, S. & Valverde, J. A. 1992. Los lobos de Morla. - *Circulo de Bibliofilia Venatoria*, Madrid.
- Theberge, J. B., Forbes, G. J., Barker, I. K. & Bollinger, T. 1994. Rabies in wolves of the Great Lakes Region. - *Journal of Wildlife Diseases* 30: 563-566.
- Theberge, J. B. & Theberge, M. 2000. Wolf country: 11 years tracking the Algonquin wolves. - McClelland & Stewart.
- Tompa, F. S. 1983. Problem wolf management in British Columbia: conflict and program evaluation. - In Carbyn, L. N., ed. *Wolves in Canada and Alaska*. Canadian Wildlife Service Report Series Number 45, Edmonton. Pp. 112-119.
- Treves, A. & Naughton-Treves, L. 1999. Risk and opportunity for humans coexisting with large carnivores. - *Journal of Human Evolution* 36: 275-282.
- Unsgård, J. & Vigerstøl, N. P. 1998. Ulv i Norge. - Landbruksforlaget, Oslo.
- Vanags, J. (ed.) 1989. [Hunting year]. Rga, Avots: 173-175.
- Vilà, C. & Wayne, R. K. 1999. Hybridization between wolves and dogs. - *Conservation Biology* 13: 195-198.
- Vos, J. 2000. Food habits and livestock depredation of two Iberian wolf packs (*Canis lupus signatus*) in the north of Portugal. - *Journal of Zoology, London* 251: 457-462.
- Wabakken, P., Sand, H., Liberg, O. & Bjärvall, A. 2001. The recovery, distribution, and population dynamics of wolves on the Scandinavian peninsula, 1978-1998. - *Canadian Journal of Zoology* 79: 710-725.
- Weller, G. J., Garner, G. W. & Ritter, D. G. 1995. Occurrence of rabies in a wolf population in northeastern Alaska. - *Journal of Wildlife Diseases* 31: 79-82.
- Wenjun, L., Fuller, T. K., Garshelis, D. L. & Quigley, H. B. 1996. The status of large carnivores in China. - *Journal of Wildlife Research* 1: 202-209.
- Wilson, P. J., Grewal, S., Lawford, I. D., Heal, J. N. M., Granacki, A. G., Pennock, D., Theberge, J. B., Theberge, M. T., Voigt, D. R., Waddell, W., Chambers, R. E., Paquet, P. C., Goulet, G., Cluff, D. & White, B. N. 2000. DNA profiles of the eastern Canadian wolf and the red wolf provide evidence for a common evolutionary history independent of the gray wolf. - *Canadian Journal of Zoology* 78: 2156-2166.
- Wong, J. K., Blenkinsop, B., Sweet, J. & Wood, R. E. 1999. A comparison of bite mark injuries between fatal wolf and domestic dog attacks. - *Journal of Forensic Odontostomatology* 17: 10-15.
- Woodroffe, R. 2000. Predators and people: using human densities to interpret declines of large carnivores. - *Animal Conservation* 3: 165-173.
- Woodroffe, R. & Ginsberg, J. R. 1998. Edge effects and the extinction of populations inside protected areas. - *Science* 280: 2126-2128.
- Woodroffe, R. & Ginsberg, J. R. 2000. Ranging behaviour and vulnerability to extinction in carnivores. - In Gosling, L. M. & Sutherland, W. J., eds. *Behaviour and conservation*. Cambridge University Press, Cambridge, United Kingdom. Pp. 125-140.
- Wotschikowsky, U. 1998. Lynx and prey relationships in the Alps during the past two centuries. - *Environmental Encounters* 38: 51-54.
- Yakobson, B., Manalo, D. L., Bader, K., Perl, S., Haber, A., Shahimov, B., Shechat, N. & Orgad, U. 1998. An epidemiological retrospective study of rabies diagnosis and control in Israel, 1948-1997. - *Israel Journal of Veterinary Medicine* 53: 114-127.
- Yalden, D. W. 1999. The history of British mammals. - Poyser, London.
- Yamazaki, K. & Bwalya, T. 1999. Fatal lion attacks on local people in the Luangwa Valley, Eastern Zambia. - *South African Journal of Wildlife Research* 29: 19-21.

- Yanshin, Y. M, Komissarov, L. V. & Unabayer, E. Z. 1982. [Prevention of hydrophobia in people bitten by rabid wolves]. - Kazakstan Health Care 1: 66-68.
- Young, S. P. & Goldman, E. A. 1944. The wolves of North America: part 1. - Dover Publications Inc., New York.
- Zarnke, R. L. & Ballard, W. B. 1987. Serologic survey for selected microbial pathogens of wolves in Alaska, 1975-1982. - Journal of Wildlife Diseases 23: 77-85.
- Zedrosser, A. 1996. Der wolf (Canis lupus) in Österreich. Historische entwicklung und zukunftsansichten. - Unpublished report from WWF-Austria: 43pp.
- Zeynali, M., Fayaz, A. & Nadim, A. 1999. Animal bites and rabies: situation in Iran. - Archives of Iranian Medicine 2.
- Zimmermann, B., Wabakken, P. & Dötterer, M. 2001. Human-carnivore interactions in Norway: how does the re-appearance of large carnivores affect people's attitudes and levels of fear? - Forest Snow and Landscape Research 76: in press.

Appendix 1

List of people who have made direct contributions to the report, by supplying data on attacks by wolves or other carnivores (or the absence of such attacks) from their area of experience.

Name	Affiliation	Area of Experience
Arne Bergsaker	Former aid worker, Norway	Afghanistan
Dick Shideler	Alaska Department of Fish & Game	Alaska
Mark McNay	Alaska Department of Fish and Game	Alaska
Steven Kovach	Yukon Delta National Wildlife Refuge	Alaska
Vic Van Ballenberghe		Alaska
Warren Ballard	Department of Range, Wildlife and Fisheries Management, Texas Tech University	Alaska / Canada
Ian Ross	Arc Wildlife Services Ltd.	Alberta / Canada
R. Watt	Waterton Lakes National Park	Alberta / Canada
Wes Bradford	Jasper National Park	Alberta / Canada
Robert Gertsch	WWF-Austria	Austria
Jim Corbett	Ministry of Environment, Lands & Parks British Columbia	British Columbia
Matt Austin	Ministry of Environment, Lands & Parks British Columbia	British Columbia
John Flaa	Glacier National Park	Canada
Elena Tsingarska	BALKANI Wildlife Society, Bulgaria	Bulgaria
Damien Joly	Department of Biology, University of Saskatchewan	Canada
Greg Lundie	Wapusk National Park	Canada
Jean Langlois	CPAWS - Ottawa Valley Chapter	Canada
Paul Paquet	Canada	Canada
Rhonda Markel	Vuntut National Park	Canada
Tang Qing	Institute of Epidemiology and Microbiology, Chinese Academy of Preventive Medicine.	China
Dr. Qing Tang	Institute of Epidemiology and Microbiology, Chinese Academy of Preventive Medicine.	China
Djuro Huber	University of Zagreb, Croatia	Croatia / Former Yugoslavia
Francois Van Meulebeke	International Wolf Federation Belgium	Europe
Oliver Matla	German Wolf Association	Europe
Richard Morley	The Wolf Society of Great Britain	Europe
Alistair Bath	Memorial University, Newfoundland	Europe / Canada
Benoit Lequette	Mecantour National Park, France	France
Florent Favier	Programme Life – Loup, France	France
Guillaume Chapron	L'aboratoire d'Ecologie, CNRS, Ecole Normale Supérieure, Paris	France
Christophe Duchamp	Office National de la Chasse et de la Faune, France	France
Michel Raynal		France
François Moutou		France
Iamze Khutsishvili	NACRES, Georgia (CIS)	Georgia
Steffen Butzeck	Spreewald Biosphere Reserve, Brandenburg, Germany	Germany
Szemethy Laszlo	Department of Wildlife Biology and Management, St. Stephen University, Hungary	Hungary
Biswajit Mohanty	Wildlife Society of Orissa, India	India
Vasant Saberwal		India

Name	Affiliation	Area of Experience
David Saltz	Jacob Blaustein Institute for Desert Research Ben Gurion University of the Negev, Israel	Israel
Simon Nemtzov	Israel Nature & Parks Authority	Israel
Yoram Yorn-Tov	Department of Zoology, Tel Aviv University, Israel	Israel
Piero Genovesi	Istituto Nazionale per la Fauna Selvatica, Italy	Italy
Koichi Kaji	Hokkaido Institute of Environmental Sciences, Japan	Japan
Irina Lucenko	National Environmental Health Centre, Latvia	Latvia
Jānis Geste	Pope Forestry District, Latvia	Latvia
Jānis Ozolins	State Forest Service, Latvia	Latvia
Maija Kiece	Animal Disease Diagnostics Department, National Veterinary Laboratory, Latvia	Latvia
Sanita Vanaga	Head of Virology Department, National Veterinary Laboratory, Latvia	Latvia
Daiva Razmuvienė	Centre for Communicable Diseases Prevention and Control, Lithuania	Lithuania
Ken Kingdom	Riding Mountain National Park	Manitoba / Canada
Lu Carbyn	Canadian Forestry Service	Manitoba / Northwest Territories / Canada
Rolf Peterson		Michigan / Alaska / North America
Eric Gese	Fisheries & Wildlife Department	Minnesota
Diane Boyd	Teller Wildlife Refuge	Montana / North America
Madan Oli		Nepal
Rich Beausoleil	New Mexico Department of Game and Fish	New Mexico / Arizona
Michael Conover		North America
E L Fitzhugh	Wildlife, Fish, and Conservation Biology University of California	North America
Steve Hererro	University of Calgary	North America
Steve Kendrot	USDA - Wildlife Services	North America
Martin Smith	Defenders of Wildlife	North America / Europe
Aleks Pluskowski	Department of Archaeology, University of Cambridge	Northern Europe
David Kritterlik	Whale Cove, Northwest Territories	Northwest Territories
John Nagy	Department of Natural Resources Government of the Northwest Territories	Northwest Territories / Canada
Ray Breneman	Kluane National Park and Reserve	Northwest Territories / Canada
Robert Moulders	Department of Natural Resources Government of the Northwest Territories	Northwest Territories / Canada
Olav Hjeljord	Agricultural University of Norway	Norway
Vidar Holthe	Norwegian Forest Owner's Association	Norway
Joe Tigullaraq	Nunavut	Nunavut / Canada
Mike Ferguson	Nunavut Wildlife Service	Nunavut / Canada
Monty Yank	Quttinirpaaq National Park	Nunavut / Canada
Robert Eno	Dept. of Sustainable Development, Government of Nunavut	Nunavut / Canada
Lyle Walton	Ontario Ministry of Natural Resources	Ontario / Canada
Krzysztof Schmidt	Mammal Research Institute, Polish Academy of Sciences	Poland
Roman Gula	ICE PAS, Poland	Poland
Roberet Lyle	Retired zoologist, Portugal	Portugal

Name	Affiliation	Area of Experience
Luis Miguel Moreira		Portugal
Michel Crête	Société de la faune et des parc du Québec	Quebec / Canada
Ovidiu Ionescu	Forestry Faculty, University of Transylvania, Bra-sov, Romania	Romania
Ulrich Wotzchikowsky	Vicuna, Germany	Romania / Poland / Italy / Germany
Ivan Kuzmin	Institute for Natural Foci Infections, Russia	Russia
Nikita Ovsyanikov	Wrangel island State Nature Reserve, IUCN Wolf Specialist Group	Russia
Andrei Poyarkov	Institute of Problems of Ecology, Russian Acad-emy of Sciences,	Russia
Vladimir Bologov	Central Forest Biosphere Nature Reserve	Russia
Viktor Bologov	Central Forest Biosphere Nature Reserve	Russia
Iacopo Sinibaldi		Saudi Arabia
Slavomir Findo	Carpathian Wildlife Society, Slovakia	Slovakia / Carpathians
Petra Kaczensky	Germany	Slovenia
Miha Adamic	University of Ljubana, Slovenia	Slovenia / Former Yugoslavia
Vicente Urios		Spain
Antonio Vega		Spain
Håkon Eles	Sweden	Sweden
Jean-Marc Landry	Swiss Wolf Project, KORA	Switzerland / Europe
Viktor Lukarevskiy		Turkmenistan

Appendix 2

Accounts from the oral tradition of people being killed or injured by wolves in Norway. All of the events were rumoured to have occurred in the pre 20th century era, but were not written down until the 20th century. It is likely that some of the accounts refer to the same event (for example the stories of the soldier killed in Leksvik and that in Randalen are identical). At present there is no evidence that any of these events occurred.

1	c. 1300. An adult women was killed. Between Suldal and Bykle, Aust Agder	Frøstrup & Vigerstøl 1994 p 124. Snerte 2000 p 84.
2	1612 (24 xii). An adult man, Anders Solli, was killed. Leksvik, Nord-Trøndelag	Steen 1973. Johnsen 1957 p 298. Snerte 2000 p 125-127.
4	1789. A 17 year old boy was killed. Høland, Akershus.	Evensen 1992. Snerte 2000 p 14.
5	18 th century (xii) A child was killed and eaten. Near Rødnessjøen, Østfold.	Myhrvold 1962 p737. Snerte 2000 p. 11-12.
6	18 th century. A boy was killed. Telemark.	Berge 1944 p 386. Snerte, 2000 p 84.
7	c. 1770. Two boys were killed and eaten. Varpet, Valdres, Oppland	NAF Veibok. 1992 p 214.
9	1800. A boy was killed and eaten. Slideråsen, Valdres, Oppland.	Hermunstad 1964. Snerte 2000 p 41-42.
11	1826. A five-year-old girl was killed. Skogsrud, Hedmark	Rautin 1985. Snerte 2000 p 15-16.
12	19 th century. A 15 year old boy was killed. Hole, Buskerud.	Myrberget 1967 Snerte 2000 p 17.
13	c. 1850. A girl was killed and eaten. Kile, Hægeland, Vest-Agder.	Myrberget 1967 Barth 1957 p 111-174.
14	19 th century. An 11-year-old girl was killed and eaten.	Løken 1909 Snerte 2000 p 125.
15	Adult man was injured. Odnebjørg, Agder.	Woll 1918 p 6-18. Snerte 2000 p 97-104.
16	A child was killed. Herasbygda in Østerdalen, Hedmark.	Fjellstad 1945 p 34-35. Snerte 2000 p 49-50.
17	A girl was killed and eaten. Føsseis-Fuglei, Valdres, Oppland.	Hermundstad 1955 p 163-164. Snerte 2000 p 47-48.
18	A girl was killed. Røn in Valdres, Oppland.	Hermundstad 1955 p 163-164. Snerte 2000 p 47-48.
19	A boy was injured. Between Fossheim and Fasle in Valdres, Oppland.	Hermunstad 1964. Snerte 2000 p 41-42.
20	A man was killed and eaten. Midtre Hegge, Valdres, Oppland.	Hermunstad 1964. Snerte 2000 p41-42.
21	A girl was killed and eaten. Dæli, Valdres, Oppland.	Hermunstad 1964. Snerte 2000 p41-42.
22	A soldier was killed by a wolf. Randalen, Nordland.	Årbok for Helgeland 1981, p 59.
23	A boy was injured. Meløy, Nordland.	Bang 1984 p 101. Snerte 2000 p 140-141.
24	A women was killed. Kjerringdalen, Valdres, Oppland.	Hermundstad 1985 p 114. Snerte 2000 p 61-62.
25	A man was killed. Rausteinløe, Hallingdal, Buskerud.	Flaten 1994 p 111. Snerte 2000 p 42.
26	A women was killed. Tørsetlin, Hallingdal, Buskerud.	Flaten 1994 p 111. Snerte 2000 p 42.

References

- Bang, K. 1984. Årbok for Helgeland. S. 101
- Berge, R. 1944. Vinje og Rauland II. Dreyers Grafiske Anstalt, Stavanger. Pp 386
- Bussæus, A. Dagsregister til Fredrik 4. Historie.
- Evensen, S. 1992. Artikkel i Akershus Blad 03.01. 1992.
- Fjellstad, L.M. 1945. Gammalt frå Elvrom. Norsk Folkeminnelag, Oslo. Pp 34-35.
- Flaten, H. 1994. Følkeminne fraa Hemsedal. Hemsedal mållag i samarbeid med Busk-Mål A/S. Pp 111.
- Frøstrup, J.C. & Vigerstøl, N.P. 1994. Veiderliv II – glimt fra Agders jakt- og fiskehistorie. Friluftsførlaget. Pp 124.
- Hermundstad, K. 1955. I kveldseta. Gamal Valdres-kultur VI. Norsk Folkeminnelag, Oslo. Pp 163-164.
- Hermundstad, K. 1985. Truer om dyr. Norsk Folkeminnelag. I samarbeid med Aschehoug & Co, Oslo. Pp 114.
- Hermundstad, K. 1964. Valdres bygdebok V, 1964.
- Johnsen, S. 1947. Rovdyrene. Norges Dyreliv I. Oslo. Pp 247-419.
- Løken, A. 1909. Fortellinger om dyr.
- Myhrvold, R.E. 1962. Rødenes gårdshistorie, Pp 737.
- Myrberget, S. 1967. Skogeieren 4. Pp 18-19,43.
- NAF Veibok. 1992. Pp 214.
- Rautin, I.N. 1985. Løten historielag.
- Rise, O.J. 1947. Oppdalsboka. Forlaget av Johan Grundt Tanum, Oslo. Pp 161.
- Snerte, K. 2000. Ulvehistorier. Det Norske Samlaget..
- Steen, A. 1973. Leksvik bygdebok.
- Woll, J. 1918. Nedenessagn. Forlaget av Erik Gunleikson, Risør. Pp 6-18.
- Årbok for Helgeland 1981, Pp 59.

Appendix 3

Details of predatory attacks by wolves on people from Europe and Russia.

Predatory wolf attacks on people in Estonia during the 18th and 19th centuries (Rootsi 2001).

Years	Area	Number of people killed
1762-1767	Kambja parish	12
1792-1793	Sangaste parish	5
1799-1800	Aksi parish	4
1801-1805		3
1806-1810	6 parishes	56 (54 of these occurred in 1809-1810)
1811-1815	6 parishes	10
1816-1820		4
1821-1825		6
1826-1830		1
1831-1835		3
1836-1840		1
1841-1845		1
1846-1850	9 parishes	23 (16 of these occurred in 1846)
1851-1855		3
Totalt		132

Episodes in French history where predatory attacks have occurred on more than a single victim. These are presumed to be non-rabid wolves. It is not always clear from the total of victims if they were killed or only wounded. Data are from de Beaufort (1983).

Year	Area	Victims
1450	Paris	"Several children"
1633	Chartres	c. 30 children
1651	Etampes	"Women and children"
1692	Monthlery	"Children"
1692	Orleans	c. 100 women and children
1698	Lyons-la-Foret	3 children
1712	Orleans	c. 100 women and children
1730	Montoire-sur.Loire	"Several women and children"
1731-1734	Auxerre	c. 12 children
1745-1750	Soissons	?
1745-1750	Versailles	?
1751	Foret de l'Epine	c. 30 children and youths
1764-1767	Gevaudan	210 attacked, 113 killed, women and children
1801	Varzy	17 children
1809-1811	Saone-et-Loire	5 children
1809-1812	Gard	>10 victims
1814	Loiret	8 women and children
1817-1818	Foret de Longchamp	17 attacked, 9 killed, children
1824	Charente	3 children

Overview of 22 victims of wolf attacks in the Åbo region of Finland, 1878-1882 (Godenhjelm 1891, Mäensyrjä 1974, Pousette 2000).

Date	Age and sex of victim	Details
1878 (xii 12 ¹)	9 years girl	Walking home from neighbour when a wolf bit her on the neck and dragged her into forest and covered her body snow. Somebody heard her screams but she was dead when found.
1880 (i 19 ¹)	8 years boy	2 wolves attacked at midnight. Only the head, right hand and left foot were found.
1880 (iv)	7 years girl	3 children were walking home when a wolf attacked from forest. A 12 year boy carried the youngest child in his arms, but the wolf grabbed the girl. Found only skirt and shoe.
1880 (iv)	2.5 year girl	The girl was taken while playing with her 6 year sister, close to house around 15:00. Found her head and some bones, clothes and shoes some 100m in forest.
1880 (v 15 ¹)	3 year girl	1 wolf attacked the girl at 18:00 when she was alone close to a house. They found some clothing. A wolf had approached another group of children earlier that night, but was chased away by adults.
1880 (viii)	10 year girl	A wolf attacked 2 girls bringing cattle home from the forest. A 15-year-old girl ran away but the 10-year-old was killed. Found her body the next day.
1880 (x)	small child	Taken from close to house. Searchers found its badly injured body without the feet.
1880 (x)	3-4 year girl	1 wolf had eaten her guts and run away.
1880 (xii)	11 year boy	The boy was walking from the house to an outer building close to the house. A wolf attacked him and dragged him into forest. The boy grabbed a fence post, and screamed. Somebody came from house and wolf released the boy and ran away. But the boy died from injuries.
1881 (v)	5 year girl	Only a story from travelling people about 1 or 2 children being killed by wolves.
1881(vi 20 ¹)	9 year boy	The boy was bring a horse from the forest to the farm, but did not come back. The parents went out to look, and found only a wooden shoe, and some bloody clothing.
1881 (vi 29 ¹)	4 year boy	The boy was with his sister near a house. A wolf came from the forest and grabbed the boy. Searchers later found his body in a swamp.
1881(vii 15 ¹)	7 year boy	While walking towards his mother the boy was attacked. They found his head and torso, and somebody saw a wolf nearby.
1881 (vii 27 ¹)	9 year boy	Boy was picking berries with younger brother.
1881 (viii)	2 year child	Taken from house porch.
1881 (viii 15 ¹)	5 year boy	Taken from front of house from in front of his mother. Found no remains.
1881 (viii 25 ¹)	10 year boy	Rumour of 10 year son vanished when bringing horses back
1881 (ix)	9 year boy	Shepherd boy was taken by a single wolf. His body was found with upper part eaten, and lower part was injured. The killing provoked a debate that people did not value human life enough when they sent such young boys into forest as shepherds.
1881 (x)	8 year boy	Taken close to house, in front of mother's eyes.
1881 (xi 9 ¹)	5 year boy	Body was found in late evening some 100m from house. The mid part of his body was bitten through, but rest was intact. Speculation that shooting and noise scared the wolf away.
1881 (xi 9 ¹)	12 year girl	Wolf attacked a girl but she was saved
1881 (xii)	3 year child	Disappeared same day as wolves were seen nearby.

Details of children reported as being attacked and killed in area around Kirov, Russia in 1944-1953 (Pavlov 1982).

Date	Age and sex of victim	Fate
Kirov District		
1944 (ix)	1.5 year	Rescued
1944 (ix)	12 year, girl	Rescued
1944 (xi 6 th)	8 years, girl	Killed
1944 (xi 12 th)	14 years, girl	Killed
1944 (xi 19 th)	16 years, girl	Killed
1944 (ix 21 th)	13 years, girl	Killed
1945 (iv 29 th)	17 years, girl	Survived
1945 (v 1 st)	7 years, boy	Survived
1945 (v 8 th)	5 years, girl	Killed
1948 (vii – viii)	9 children (7 to 12 years)	Killed
1950 (vii – viii)	4 children (3 to 6 years)	Killed
1948 (xi 17 th)	8 years, girl	Killed
1947 (viii – ix)	young girl 13 years, boy 16 years, girl	Killed Killed Killed
Oritiji District		
1951 (iv 29 th)	10 years, girl	Killed
1952 (vi 12 th)	11 and 15 years, girls	Survived
1952 (vii, 11 th)	5 years, boy	Killed
1952 (vii)	8 years, girl	Killed
1952 (viii 12 th)	6 years, girl	Killed
1952 (viii 17 th)	13 years, boy	Survived
1952 (viii 16 th)	12 years, boy	Survived
1953 (spring)	girl	Survived
1953 (summer)	boy	Survived
Vladimir District		
1945-47	10 children	Killed



October 20, 2016

Celeste Cook, Rules and Policy Manager
Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, AZ 85086

Via Email to ccook@azgfd.gov and Rulemaking@azgfd.gov

Re: Amended Comments of Sierra Club et al. on Proposed Rulemaking Amending R 12-4-402

Dear Ms. Cook,

On behalf of the Grand Canyon Chapter of the Sierra Club, Center for Biological Diversity, Western Watersheds Project, the Southwest Environmental Center, Western Wildlife Conservancy, The Wolf Conservation Center, and the Grand Canyon Wolf Recovery Project, and pursuant to § 41-1023.B of the Arizona Administrative Procedure Act (APA), I submit the following amended comments in response to the Arizona Game and Fish Commission's (AGFC) proposal to amend R 12-4-402. Our amended comments withdraw our point that the notice of proposed rulemaking did not include the full text of the rule and they add the Rio Grande Chapter of the Sierra Club to the comments, per an email sent to you on October 16, 2016 by Sandy Bahr of the Grand Canyon Chapter of the Sierra Club; otherwise, the substance of these comments are the same as those we submitted on October 14, 2017.

A description of the proposed rule was published in the Arizona Administrative Register on September 16, 2016. 22 A.A.R. 2559-2560. If promulgated, the rule would require federal agencies to obtain state permits before releasing wildlife. Id. at 2559.

The AGFC has apparently proposed the rule to thwart the release of additional Mexican gray wolves into the wild by attempting to impose an ill-considered administrative barrier to such releases.¹ We highlight the circumstances surrounding the Mexican gray wolf and its perilous plight to explain why both the process and the substance of the rule are fatally flawed,

¹ While we use the Mexican gray wolf to highlight the shortcomings of the proposed rule, the comments offered here apply to any situation in which the proposed rule were utilized to interfere with federal agencies that deemed wildlife releases necessary to fulfill their federal conservation mandate under the Endangered Species Act or other federal laws.

and why AGFC should either remand the rule for further proceedings in compliance with the Arizona Administrative Procedure Act or simply decline to adopt it.

In compliance with the Rules of the Arizona Game and Fish Commission, R12-4-602, we provide the following information concerning the signatories to these comments:

The Grand Canyon Chapter of the Sierra Club is headquartered in Phoenix, Arizona and has more than 11,000 paid members and an additional 34,000 supporters who receive information from the Chapter and take action in support of the Chapter's conservation goals. All 11,000 of the paid members and the 34,000 supporters are located in Arizona. These comments represent the official position of the Grand Canyon Chapter.

The Center for Biological Diversity is headquartered in Tucson, Arizona and has approximately 48,575 members, 2,267 of which are located in Arizona. These comments represent the official position of the Center for Biological Diversity.

Western Watersheds Project is based in Hailey, Idaho and has an office in Tucson, Arizona; it has approximately 50 members located in Arizona. These comments represent the official position of Western Watersheds Project.

The Southwest Environmental Center is headquartered in Las Cruces, New Mexico and has approximately 2,000 paid members and an additional 7,000 supporters who receive information from SWEC and take action in support of SWEC's conservation goals. Although the majority of the Center's supporters live in New Mexico, many are located in Arizona. All of the Center's supporters are concerned about the continued survival of the Mexican gray wolf in Arizona. These comments represent the official position of the Southwest Environmental Center.

Western Wildlife Conservancy is a non-profit wildlife conservation organization located in Salt Lake City. It was founded in 1996. WWC is not membership-based, but has numerous supporters in the West. These comments represent the official position of the Western Wildlife Conservancy.

The Wolf Conservation Center (WCC) is a 501(c)(3) not-for-profit environmental education organization headquartered in New York. The WCC participates in the federal Species Survival Plans for the Mexican gray wolf and has played a critical role in preserving and protecting Mexican gray wolves through carefully managed breeding, research, and reintroduction since 2003. The WCC is not membership-based, but has thousands of supporters from the southwest and over 3 million supporters on social media. These comments represent the official position of the WCC.

The Grand Canyon Wolf Recovery Project is a non-profit organization based in Flagstaff, representing over 2,000 Arizona wolf supporters. The Grand Canyon Wolf Recovery Project is dedicated to bringing back wolves to help restore ecological health in the Grand Canyon region. These comments represent the official position of the Grand Canyon Wolf Recovery Project.

The Rio Grande Chapter of the Sierra Club is headquartered in Albuquerque, New Mexico, with an additional staff office in Santa Fe, New Mexico. The chapter has approximately 7,500 members located throughout New Mexico and in the El Paso, Texas area. The Sierra Club was founded in 1892 and is the oldest and largest conservation organization in the country, with over 2.4 million members and supporters nationally. These comments represent the official position of the Rio Grande Chapter of the Sierra Club.

I. BACKGROUND

With only 97 individuals in the wild, the Mexican gray wolf is one of the most—if not the most—endangered mammal in North America, and it requires immediate and effective intervention, including additional releases into the wild, to ensure its survival. We highlight the serious plight of the wolf, the urgency of recovery measures, and the U.S. Fish and Wildlife Service’s (FWS) mandatory duty to recover the wolf in the wild to provide context for the proposed rule and for our position that the rule and the assumptions on which it is based are fundamentally flawed. In short, the proposed rule unnecessarily risks putting AGFD on a collision course with FWS as FWS discharges its mandatory recovery duties under the Endangered Species Act (ESA). Accordingly, we strongly recommend that AGFD decline to finalize the rule and continue to cooperate with the FWS regarding the management of threatened and endangered species.

Mexican gray wolves average 50 to 90 pounds and typically stand 25 to 32 inches tall. See Endangered and Threatened Wildlife and Plants; Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, 80 Fed. Reg. 2512, 2514 (Jan. 16, 2015) (10(j) Rule). Mexican gray wolves are generally believed to have historically inhabited the southwestern United States and Mexico. Id. At the northern limits of their historic range, Mexican wolves ranged north into the southern Rocky Mountains and Grand Canyon regions of present-day northern Arizona and New Mexico and southern Utah and Colorado. Id. at 2538.

Once numbering in the thousands, the Mexican wolf population declined rapidly in the early and mid-1900s due to a federal, state, and private campaign that employed poisons and unlimited hunting and trapping to kill wolves and other predators. Ex. 1, Ch. 1 at 13 (excerpts from the Final Environmental Impact Statement for the Proposed Revision to the Regulation for the Nonessential Experimental Population of the Mexican Wolf (2014) (EIS)).² These efforts eradicated the species from the United States by the early 1970s, leaving only a small population in Mexico. Id. FWS listed the Mexican wolf as endangered under the ESA in 1976, triggering mandatory obligations ultimately to recover the wolves in the wild.

By 1980 Mexican gray wolves were extirpated in Mexico as well. However, between 1977 and 1980, the United States and Mexico initiated a program to capture the last known wild Mexican gray wolves in Mexico, supplement that population with Mexican gray wolves held in captivity in both countries, and establish a captive-breeding program to prevent the subspecies’

² Exhibits to this comment letter are denoted with “Ex.,” followed by the exhibit number and the cited page. Citations to the EIS excerpts are to both chapter and page number.

extinction and to provide Mexican gray wolves for reintroduction into the wild. 80 Fed. Reg. at 2515. Just seven wolves held in that captive-breeding program constitute the founding genetic stock for every Mexican wolf alive today. *Id.* Thus, efforts to enhance the captive population for purposes of release and recovery of the subspecies in the wild, have been going for well over three decades.³

A. The Mexican Gray Wolf Recovery Program

FWS in 1982 issued a document styled as a “recovery plan” for the Mexican gray wolf that FWS admitted was incomplete and failed to establish any benchmark for full subspecies recovery. Instead, it set forth a stopgap objective of re-establishing a viable, self-sustaining population of at least 100 Mexican wolves in the wild within the subspecies’ historic range.

To implement that stopgap measure, FWS in 1998 released 11 captive Mexican gray wolves into the wild in a designated Blue Range Wolf Recovery Area straddling the Arizona-New Mexico border pursuant to ESA section 10(j)’s experimental population provision, which authorizes modification of the Act’s otherwise applicable prohibitions to facilitate such reintroductions. 16 U.S.C. § 1539(j). Contemporaneous with initiation of this reintroduction program, FWS promulgated a rule in 1998 under section 10(j) to guide management of the reintroduced population. Over the ensuing years, FWS released additional Mexican wolves into the Recovery Area. *See* 80 Fed. Reg. at 2516.

FWS expected the reintroduced population to reach the initial 100-wolf objective by 2006, but the population numbered only 83 wolves as of 2013. Ex. 1, Ch. 1 at 18. Further, as FWS itself has stated, “even at the 1982 Recovery Plan objective of ‘at least 100 wolves,’” “the experimental population is considered small, genetically impoverished, and significantly below estimates of viability appearing in the scientific literature.” *Id.* at 22. As this suggests, the population is neither “viable nor self-sustaining.” 80 Fed. Reg. at 2551

B. Longstanding Obstacles to Mexican Gray Wolf Recovery

Numerous factors have contributed to the precarious plight of the Mexican gray wolf including insufficient releases of captive wolves into the wild to improve the wild population’s numbers and genetic diversity.

1. Genetic Imperilment

³ The FWS’s recovery efforts, including its releases of Mexican gray wolves into the wild, are more fully described in the Final Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*) (Nov. 2014), available at https://www.fws.gov/southwest/es/mexicanwolf/pdf/EIS_for_the_Proposed_Revision_to_the_Regulations_for_the_Nonessential_Experimental_Population_of_the_Mexican_Wolf.pdf.

First, the small number of individual wolves that founded the captive and reintroduced populations, along with subsequent failure to capitalize on the full genetic potential represented by those founders, has led to inbreeding and loss of genetic diversity. The Mexican wolf captive-breeding program “was not managed to retain genetic variation until several years into the effort.” As a result, FWS estimates that the captive population retains only three founder genome equivalents—i.e., more than half of the genetic diversity of the seven original founders has been lost from the population. See Ex. 1, Ch. 1 at 20; see also Ex. 2 at 11, 60 (2010 Mexican Wolf Conservation Assessment, excerpts).

The reintroduced wild population is in even worse shape, with 33 percent less representation of the genetic diversity of the seven founders than the captive population. Ex. 1, Ch. 1 at 21. On average, the wolves in the reintroduced population “are as related to one another as outbred full siblings are related to each other.” Id. As a result, the sole Mexican wolves existing in the wild suffer from inbreeding depression, including reduced litter sizes, “and without management action to improve [their] genetic composition, inbreeding will accumulate and [genetic diversity] will be lost much faster than in the captive population.” Id.

Addressing the Mexican wolf’s genetic imperilment requires an active program of releasing more genetically diverse wolves into the wild to capitalize on the remaining genetic potential available in the captive population before it is further depleted as captive wolves grow old and die. Thus, to satisfy its duty to recovery the wolf, FWS must release more wolves into the wild and it must do so despite the proposed imposition of a state permit.

2. Excessive Removals and Mortality

These genetic threats are compounded by excessive levels of Mexican gray wolf removals and mortalities. Since the inception of the reintroduction program, illegal killing has been the largest overall source of mortality. Additionally, FWS has supplemented that unlawful mortality with its own removal of 160 wolves from the reintroduced population since 1998 through killing or capture. Ex. 1, Ch. 1 at 14-15, 18. As FWS’s 2010 assessment of the reintroduction program observed, although some such non-lethal removals were theoretically temporary, they “have the same practical effect on the wolf population as mortality if the wolf is permanently removed (as opposed to translocated)—that is, the population has one less wolf.” Id. Accordingly, the agency concluded, “[c]ombined sources of mortality and removal are consistently resulting in failure rates at levels too high for unassisted population growth.” Ex. 2 at 11.

3. Insufficient Room to Roam

FWS and recognized experts in wolf biology recognize that “[t]he recovery and long-term conservation of the Mexican wolf in the southwestern United States and northern Mexico is likely to depend on establishment of a metapopulation or several semi-disjunct populations spanning a significant portion of its historic range in the region.” 80 Fed. Reg. at 2551. Such a metapopulation—a group of distinct, spatially separated populations that are connected by

dispersal—is important to species survival because it facilitates “the maintenance of genetic diversity” and “because it allows for populations to exist under different abiotic and biotic conditions, thereby providing a margin of safety that random perturbation (or, variation) affects only one, or a few, but not all, populations.” Ex. 2 at 12.

Peer-reviewed, published scientific information also provides a roadmap for establishing such a Mexican wolf metapopulation. A key study extensively relied upon by FWS, Carroll, *et al.* (2014), stated that the southwestern United States has three areas with long-term capacity to support populations of several hundred wolves each. Ex. 3 at 78 (Carroll 2014). These three areas, each of which contains a core area of public lands subject to conservation mandates, are in eastern Arizona and western New Mexico (i.e., Blue Range, the location of the current wild population), northern Arizona and southern Utah (Grand Canyon), and northern New Mexico and southern Colorado (Southern Rockies). *Id.*; *see generally* Ex. 4 (Carroll 2006). FWS’s own selected science team echoed this conclusion in 2012 during the agency’s most recent Mexican wolf recovery planning effort. That blue-ribbon science team produced a draft recovery plan in 2012 based on rigorous population modeling that echoed the peer-reviewed scientific literature’s call for a metapopulation of 750 wolves comprising three core populations of 200 to 300 each. Scientific studies on which the draft plan was based identified suitable habitat for such a metapopulation in the Blue Range, Grand Canyon and Southern Rockies regions. Ex. 5 (2012 Draft Recovery Plan, excerpt).

C. The U.S. Fish and Wildlife Service’s 2015 10(j) Rule:

The FWS updated its 1998 10(j) rule in 2015. The record for the FWS’s new 10(j) rule demonstrates that FWS closely coordinated with AGFC during the rulemaking process and adopted AGFC demands in the final 10(j) it published in 2015, even where those demands were at odds with the recommendations of recognized wolf experts and peer-reviewed studies. For example, FWS decided to limit Mexican gray wolf to a single population capped at 300 to 325 individuals, all located south of Interstate 40, and further stated that removal and “translocation to other Mexican wolf populations” would be the preferred method of enforcing the population cap, but “all management options”—apparently including killing—may be exercised.

FWS’s decision to limit the area in which Mexican wolves may range to lands in Arizona and New Mexico south of Interstate 40, precluded Mexican wolf access to needed recovery habitat in the Grand Canyon and Southern Rockies regions. *See* 80 Fed. Reg. at 2540. In support of this limitation, FWS on May 6, 2015, issued itself a permit under ESA section 10(a)(1)(A), which authorizes otherwise prohibited “takings” of listed species, allowing for the capture of any Mexican wolf that establishes a territory north of Interstate 40. 16 U.S.C. § 1532(19) (defining “take” under ESA).

The 10(j) rule that FWS promulgated in 2015 further adopted a number of new authorizations for the “taking” of Mexican wolves even in the designated experimental population area south of Interstate 40, including the new provision requested by Arizona for taking Mexican wolves determined to have an “unacceptable impact” on a wild game herd—a condition to be determined by a state game agency based upon “ungulate management goals, or a

15 percent decline in an ungulate herd as documented by a State game and fish agency.” 80 Fed. Reg. at 2558.

Finally, FWS adopted Arizona’s requested phased approach for the release of Mexican wolves in Arizona west of Highway 87, which delays the initial release and dispersal of wolves into an area encompassing half of the suitable wolf habitat identified by FWS on non-tribal land in Arizona south of Interstate 40. Id. at 2563

The 10(j) rulemaking for the Mexican gray wolf is just one example of a long history of communication and coordination between AGFD and FWS concerning threatened and endangered species in Arizona. This documented history raises legitimate questions about the need for the proposed rule, questions that are particularly appropriate given that the notice of rulemaking provides no more than a vague, unsubstantiated concern that FWS may not cooperate in the future. This free-floating concern, untethered to documented facts, does not amount to rational decision making and would violate the APA.

II. THE PROPOSED RULE AMENDMENT IS BOTH PROCEDURALLY AND SUBSTANTIVELY FLAWED AND MUST BE REMANDED OR REJECTED

As explained below, the proposed rule suffers from a number of fatal flaws, including the fact that its use as an impediment to necessary future Mexican gray wolf releases (or necessary releases of any other species listed under the ESA) would conflict with the Supremacy Clause of the U.S. Constitution; that the absence of facts or studies substantiating the need for the proposed rule renders it arbitrary and capricious; and that the notice of proposed rulemaking did not include all of the required information. Finally, the proposed rule invites unnecessary administrative complication, uncertainty and even litigation risk, all of which increase costs and burdens to Arizona taxpayers. It is simply bad public policy and should be rejected.

A. Interfering with the FWS’s Mandatory Duty to Recover the Wolf Violates the Supremacy Clause of the U.S. Constitution

The purpose for the proposed rule is not clearly stated, but its impetus appears to be AGFC’s desire to impede further releases of Mexican gray wolves in the state. However, as noted above, the wolf is listed as “endangered” under the ESA, which triggers FWS’s mandatory duty to conserve, i.e., recover, the wolf in the wild. As explained above, the 10(j) rule that governs FWS’s management and recovery of the wolf, as well as the peer-reviewed studies of recognized wolf experts, specifically recognize the critical need for additional wolf releases to address the genetic poverty of the existing wild population and, accordingly, provides for additional releases. See 80 Fed. Reg. at 2512. Arizona’s attempt to impede these necessary releases by erecting unnecessary administrative barriers would violate the Supremacy Clause.⁴

⁴ Moreover, the proposed rule serves no real purpose. While federal regulations require federal agencies, including FWS, to consult with the states and observe state permitting requirements, FWS need not obtain a state permit if “the Secretary of the Interior determines that such compliance would prevent him from carrying out his statutory responsibilities.” 43 C.F.R. § 24.4(i)(5)(i). FWS can exercise this exemption, and indeed must exercise it as necessary to

The Supreme Court has long held that in matters related to wildlife management, state law must bow to the requirements of federal law under the Supremacy Clause of the U.S. Constitution. For example, in Kleppe v. New Mexico, 426 U.S. 529, 543–46 (1976), the court rejected the state’s challenge to the constitutionality of the federal Wild-free Roaming Horses and Burros Act, which allowed BLM to prohibit the state from enforcing state law and removing wild horses from federal lands. The Court explained:

Unquestionably the States have broad trustee and police powers over wild animals within their jurisdictions. But . . . those powers exist only in so far as (their) exercise may be not incompatible with, or restrained by, the rights conveyed to the federal government by the constitution. No doubt it is true that as between a State and its inhabitants the State may regulate the killing and sale of (wildlife), but it does not follow that its authority is exclusive of paramount powers. Thus, the Privileges and Immunities Clause, precludes a State from imposing prohibitory licensing fees on nonresidents shrimping in its waters, the Treaty Clause, permits Congress to enter into and enforce a treaty to protect migratory birds despite state objections, and the Property Clause gives Congress the power to thin overpopulated herds of deer on federal lands contrary to state law. We hold today that the Property Clause also gives Congress the power to protect wildlife on the public lands, state law notwithstanding.

Kleppe, 426 U.S. at 543–46. Accord Hancock v. Train, 426 U.S. 167, 167 (1976) (holding that Kentucky could not forbid a federal facility from operating without a state air quality permit because “prohibiting operation of the air contaminant sources for which the State seeks to require permits . . . is tantamount to prohibiting operation of the federal installations on which they are located) (citations and quotations omitted).

A long line of federal circuit court opinions recognizes the supremacy of federal laws over state laws in the context of federal enforcement of the ESA. See, e.g. Nat’l Audubon Soc’y, Inc. v. Davis, 307 F.3d 835, 851–52 (9th Cir. 2002), opinion amended on denial of reh’g, 312 F.3d 416 (holding that “to the extent [a state law banning certain methods of trapping wildlife that prey on endangered species] prevents federal agencies from protecting ESA-listed species, it is preempted by the ESA[,]” because “[t]he Supremacy Clause of the Constitution, Art. VI, cl. 2, invalidates state laws that ‘interfere with, or are contrary to,’ federal law”).

In Gibbs v. Babbitt, 214 F.3d 483, 499 (4th Cir. 2000), the court rejected a challenge to a FWS regulation forbidding the “take” of red wolves and explained the constitutional source of federal authority over wildlife:

We are cognizant that states play a most important role in regulating wildlife—many comprehensive state hunting and fishing laws attest to it. State control over wildlife, however, is circumscribed by federal regulatory power. In Minnesota v.

fulfill its ESA duties, leaving AGFD in the same situation it is now – devoid of the legal authority to preclude the release of wolves or other ESA-listed species.

Mille Lacs Band of Chippewa Indians, the Supreme Court recently reiterated that ‘[a]lthough States have important interests in regulating wildlife and natural resources within their borders, this authority is shared with the Federal Government when the Federal Government exercises one of its enumerated constitutional powers.’ 526 U.S. 172, 204 (1999). In Mille Lacs, the Court upheld Chippewa Indian rights under an 1837 treaty that allowed the Chippewa to hunt, fish, and gather free of territorial, and later state, regulation. Id. These Indian treaty rights were found to be ‘reconcilable with state sovereignty over natural resources.’ Id. at 205.

In light of Mille Lacs and Hughes, the activity regulated by § 17.84(c)—the taking of red wolves on private property—is not an area in which the states may assert an exclusive and traditional prerogative in derogation of an enumerated federal power.

Gibbs, 214 F.3d at 499–500; see also Wyoming v. Livingston, 443 F.3d 1211, 1227 (10th Cir. 2006) (overturning state trespass prosecution of federal wildlife officers engaged in wolf monitoring under the doctrine of Supremacy Clause immunity, and noting that “Supremacy Clause immunity does not require that federal law explicitly authorize a violation of state law.”); Strahan v. Coxe, 127 F.3d 155, 168 (1st Cir. 1997) (“By including the states in the group of actors subject to the Act’s prohibitions, Congress implicitly intended to preempt any action of a state inconsistent with and in violation of the ESA.”); United States v. Brown, 552 F.2d 817, 823 (8th Cir. 1977) (upholding defendant’s conviction for unlawful hunting in Voyageurs National Park, despite defendant’s valid state hunting license, because “[u]nder the Supremacy Clause the federal law overrides the conflicting state law allowing hunting within the park.”). Arizona state courts also recognize that there is no dispute about the federal preemption of state law. Defs. of Wildlife v. Hull, 18 P.3d 722, 737 (Ariz. Ct. App. 2001) (“[f]ederal preemption is found where the state law is an obstacle to the accomplishment and execution of the full objectives of Congress”) (citations and quotations omitted).

This long line of authority contradicts the Commission’s working assumption that it can impose a permit system on the FWS to impede further releases of Mexican gray wolves—or any other listed species—where such releases into the wild are necessary to ensure the species’ recovery. Using the proposed rule in this way would be a futile effort to extend AGFC’s authority beyond its reach and intrude on federal sovereignty in violation of the Supremacy Clause. The Commission should reject the rule and instead continue to work with FWS cooperatively, within the lawful scope of its authority.

III. THE PROPOSED RULE VIOLATES THE ARIZONA ADMINISTRATIVE PROCEDURE ACT

The Arizona Administrative Procedure Act constrains the boundaries of state agencies’ regulatory action. As the Arizona Court of Appeals explained in Samaritan

Health Sys. v. Arizona Health Care Cost Containment Sys. Admin., No. 1 CA-CV 12-0031, 2013 WL 326012, at *4 (Ariz. Ct. App. Jan. 29, 2013) (unpublished):

An agency acts arbitrarily and capriciously when it does not examine ‘the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.’ Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (quotation omitted). In the context of a federal agency regulation, a rule is arbitrary and capricious if ‘the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.’ Id.

Under the APA, “[t]he court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.” Ariz. Rev. Stat. § 12-910(E). See also Ariz. State Univ. ex rel. Ariz. Bd. of Regents v. Ariz. State Ret. Sys., 349 P.3d 220, 227–28 (Ariz. Ct. App. 2015) (noting that “[a] rule is invalid unless it is made and approved in substantial compliance with the [APA’s procedures], unless otherwise provided by law.”) Of course, an agency may not engage in rulemaking in area over which it has not authority to act, for example, where it intrudes on areas within the authority of federal agencies. A.R.S. § 41-1030.C.1; see also discussion in Point II, above, regarding the Supremacy Clause.

A. The Commission Failed to Demonstrate the Requisite Rational Connection Between the Facts and the Rule

As initial matter, the Commission has failed to provide a purpose for the proposed rule, leaving the rule’s goal or anticipated result unclear. Not only does this omission leave questions about the fundamental need for the proposed rule, but it undermines efforts to determine whether even the limited conclusory statements in support of the proposed rule meet the rule’s purpose. This lack of clarity makes it impossible to discern a “rational connection” between the facts found and the choice made (initiation of a new permit system) exists, a flaw which renders the proposed rule arbitrary and capricious.

To the extent the purpose of the proposed rule can be inferred from other text in the notice, the AGFC may have intended that the proposed rule would encourage enhanced cooperation between AGFC or the Arizona Game and Fish Department (AGFD) and FWS. See 22 A.A.R. at 2559 (“Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposed to strengthen its rules . . .”). If this is the intent, a better approach that avoids the constitutional violation would be to propose reasonable rules that directly facilitate such cooperation, or pursue nonregulatory measures to address any perceived shortcomings in AGFC’s relationship with FWS, neither of which AGFC apparently examined. Instead, the proposed rule overshoots the purported problem with excessive regulation and unnecessarily raises a host of costs, complications and risk of litigation.

At any rate, if the purpose of the rule is to encourage consultation between the FWS and AGFD, it is a solution in search of a problem. FWS has long consulted with AGFD about management of threatened and endangered species. In the case of the Mexican gray wolf, FWS even incorporated AGFD's management recommendations, including recommendations it had earlier rejected as detrimental to the wolf's recovery, in the 2015 10(j) rule.

More specifically, after issuance of the proposed 10(j) rule and draft environmental impact statement—and during the public comment period—FWS entered into extended discussions with Arizona state officials about the terms of its final rule. Ex. 6 (collecting correspondence between AGFD and FWS, including FWS-Arizona Aug. 26, 2014 email correspondence; Arizona Proposed EIS Alternative (Apr. 2014); Sept. 24, 2014 public meeting transcript where FWS admits to being in “negotiations with Arizona Game and Fish” over rule; Arizona letter of Sept. 30, 2014 stating that it “has continued to negotiate changes to the proposed rule that best protect state interests.”; March 2014 email from Ben Tuggle, FWS Regional Director, to Dan Ashe, FWS Director, noting that FWS will ensure “absolute state concurrence” before proposing alternative to expand boundary north of Interstate 40.)

The discussions between AGFD and FWS ultimately led to FWS's inclusion in the 10(j) rule of a population cap of 300 wolves; a provision allowing the state to take Mexican gray wolves that, in AZGFD's view, negatively impact game such as deer and elk; and also a phased approach to limit dispersal of wolves in Arizona to areas west of Highway 87 based on similar concerns about impacts on elk hunting

Thus, the Commission's apparent concern about FWS's failure to consult with AGFD regarding management of threatened and endangered species is belied by this recent example of FWS's repeated consultation with AGFD and adoption of AGFD recommendations, even where evidence indicated that such measures were harmful to the wolf. The Commission cites no factual basis for any concern that “federal agencies may become more resistant to cooperating with the states,” 22 A.A.R. at 2559, and given this example, it is hard to see how it could lodge such a complaint.

B. The Proposed Rule Fails the “Substantial Evidence” Test

The proposed rule does not meet the APA's “substantial evidence” test. A.R.S. § 12-910(E). In fact, the notice of proposed rulemaking appears to be entirely free of evidence. It admits that the Commission “did not rely on any study in its evaluation of or justification for the rules.” Additionally, the “preliminary summary” of the economic and other impacts contains only conclusory statements that not only fail to cite support but are contrary to the facts – in some cases they even contradict prior statements by ADWR itself. See 22 A.A.R. at 2559.

First, the notice asserts that the proposed rule “protects native wildlife in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.” 22 A.A.R. at 2559. Yet AGFC has provided no evidence for public review that wildlife released by federal agencies has caused

any of these alleged harms. Indeed, with respect to the 18-year-old Mexican gray wolf reintroduction program, AGFD has concluded that the wolves have had little impact on “management of ungulate herds for a harvestable surplus by members of the public,” that available evidence identifies “no discernible impact” from Mexican wolf predation on elk, the wolves’ principal prey, in the Blue Range since reintroduction, and that hunter visitation and success rates in the reintroduction area are stable or increasing. See Ex. 1, Ch. 4 at 49-52.

Likewise, AGFC provided no evidence that wildlife released by federal agencies may threaten public health or safety. With respect to the Mexican gray wolf, AGFC provided no evidence that the wolves had harmed members of the public or posed a health or safety threat. Indeed, there have been no documented cases of wolves killing people in North America in the twentieth century. As one researcher has concluded, the risk of wolf attacks in North America is “very low, as recent cases are rare, despite increasing numbers of wolves.” Ex. 7 (Linnell study). Further, “[w]hen the frequency of wolf attacks on people is compared to that from other large carnivores or wildlife in general it is obvious that wolves are among the least dangerous species for the size and predatory potential.” Id. Additionally, the environmental impact statement for the 10(j) rule concluded that “[n]o human injuries from a wolf . . . and no incidents of predatory behavior or prey testing directed at humans have been reported or documented in the Mexican wolf experimental population.” Ex. 1, Ch. 4 at 66-69 (concluding also that the risk of wolves transmitting disease is low).

Second, the notice also asserts that the proposed rule “will benefit the Department by ensuring the Commission maintains sovereignty over Arizona’s wildlife.” 22 A.A.R. at 2559. However, as explained above, the extent of Arizona’s sovereignty over wildlife within its borders, and the supremacy of federal law in some circumstances, is a matter of longstanding and well-established law. The proposed rulemaking neither changes that law nor contributes to its application or interpretation, much less “ensure” the state’s sovereignty.

Third, AGFC “determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking” and that “there are no costs associated with the rulemaking.” Id. The Commission, however, fails to support this conclusion with the requisite explanation or evidence, and it is contrary to fact. If, as may be the case, the purpose of the rule is to encourage better coordination with FWS, AGFC should have proposed rules that directly facilitated such cooperation – an option that would not impermissibly intrude on FWS’s sovereignty to manage threatened and endangered wildlife. Alternatively, as noted above, it could have sought nonregulatory means to address whatever concerns the Commission has. Finally, AGFC’s conclusion that the establishment and administration of an entirely new permit system for wildlife releases would be cost free strains credibility and smacks of irrational decision making. Indeed, AGFC has offered no evidence that it has even examined the cost of permit administration or presented the facts on which it based its determination.

C. Additional Substantive Flaws Taint the Proposed Rule

At least two additional flaws undermine the proposed rule. First, while the proposed rule would create, and require AGFD to administer, a new permit system for wildlife releases, it fails to specify any standards for granting or denying a permit. The absence of such standards

virtually guarantees the arbitrary and capricious implementation of the proposed rule, should it be finalized. Similarly, the proposed rule provides no administrative mechanism or process for administering the new permit system. AGFC must provide further detail about the standards and processes by which AGFD would administer the proposed rule, which, among other things, would be a basic factor in a full assessment of the costs associated with implementation of the proposed rule.

IV. THE PROPOSED RULE IS PROCEDURALLY FLAWED

The Notice of Proposed Rulemaking demonstrates that the proposed rulemaking relies on inaccurate information and conclusions. These inaccuracies undermine both the public's ability to understand the proposed rule and its impacts, and to provide informed comment – the fundamental prerequisites to rulemaking. Accordingly, the administrative process for the proposed rule is fatally flawed and AGFC must reinstate the rulemaking process with the required information pursuant to A.R.S. § 41-1022.E (noting that substantial changes to proposed rule require supplemental notice and additional public comment period); see also A.R.S. § 41-1030.A (“[a] rule is invalid unless it is made and approved in substantial compliance with,” among other provisions, A.R.S. § 41-1022.A).

The notice of rulemaking includes a question about “[w]hether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law.” In response, AGFC erroneously claims that “[f]ederal law is not directly applicable to the subject of the rule.” 22 A.A.R. at 2560. In fact, the proposed rule focuses entirely on Arizona’s authority to manage wildlife in the face of federal agencies’ discharge of their mandatory duties under federal law, in particular, the ESA. The rule also purports to impose administrative hurdles that would place more stringent requirements on wildlife releases than required by federal law, i.e., the necessity of obtaining a permit from AGFD, and it directly implicates the Supremacy Clause of the U.S. Constitution, under which federal law preempts conflicting state laws. The Commission’s failure to respond to this question accurately and to disclose the intertwined relationship and inevitable conflict with federal law is misleading and undermines the public’s ability to fully understand and comment on the proposed rule.

Further, the notice’s preliminary summary of the economic, small business and consumer impact of the rule falls so far short of the requirements of the Governor’s Regulatory Review Commission that it should be supplemented as part of a reinstatement of the rulemaking process instead of proceeding to what may ultimately be rejection by the Council. See A.R.S. § 41-1052.D (stating that the Council “shall not approve the rule” unless it complies with the detailed requirements of government the economic, small business and consumer impact statement).

The APA provides specific requirements for the impact analysis. Pursuant to A.R.S. § 41-1055.A, the impact statement *summary* must include the following information, none of which appears in the notice of rulemaking:

- (a) the conduct and its frequency of occurrence that the rule is designed to change.

- (b) The harm resulting from the conduct that the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.
- (c) The estimated change in frequency of the targeted conduct expected from the rule change.

A.R.S. § 41-1055.B.1-7 requires even more detailed information in the statement itself, yet none of this information is presented in the notice for public review and comment. This omission is more than a technical error. If AGFC had accurately provided the required information, it would have exposed the rule's inevitable conflict with federal law and the lack of need for the rule, among other things, and facilitated the public assessment of AGFC's conclusions. Absence of data is no excuse for failure to complete the required assessment; instead the agency must explain "the limitations of the data and the methods that were employed in the attempt to obtain the data" and a characterization of "the probably impacts in qualitative terms. A.R.S. § 41-1055.C. AGFC has failed to provide this information as well.

Finally, A.R.S. § 41-1052.D1-10 includes ten requirements that must be met before the Council can approve the rule. The final rule must include, among other things, a comprehensive and accurate impact statement; a demonstration that the probable benefits of the rule outweigh its probable costs, and that the agency has selected the alternative that imposes the least burden and costs; that the rule is written in a manner that is "clear, concise and understandable to the general public;" and that the rule is not more stringent than a corresponding federal law. AGFC has yet to address the ten requirements of the rule, and to the extent it did so in response to a specific query in the notice about the applicability of federal law to the rule, its statement is erroneous. See discussion above.

V. THE PROPOSED RULE REPERESENTS ILL-CONSIDERED PUBLIC POLICY AND UNNECESSARILY INCREASES THE RISK OF COSTLY LITIGATION

The notice of proposed rulemaking fails to document any studies or facts that support the necessity for this rule. Instead, it appears that the proposed rule is a symbolic attempt to increase political pressure on FWS and to influence the way that FWS carries out its mandatory duties under the ESA. Rulemaking toward this end, however, is excessive, arbitrary and ultimately futile given the supremacy of the ESA recovery mandate. In the end, it will likely lead to further conflict, negatively impact the existing and future working relationship between FWS and AGFD (and AGFC), and increase the risk of costly litigation.

In fact, a similar permit provision promulgated by the state of New Mexico has sparked litigation in both the federal District of New Mexico and the Tenth Circuit Court of Appeals. New Mexico Dep't of Game and Fish v. U.S. Dep't of Interior, Case No. CV 16-00462 WJ/KBM. One of the issues in that case is whether the state wildlife agency has the authority to block the FWS's release Mexican gray wolves pursuant to the state permit requirement. We suggest that, at a minimum, AGFC await the outcome of the New Mexico litigation before promulgating a rule that may well mire it in the same kind of costly litigation in which New Mexico is now embroiled.

Finally, the rule is also contrary to the mission of the agency: “*To conserve Arizona’s diverse wildlife resources. . .*” AGFC has not demonstrated that the proposed rule will result in its conservation or facilitate the maintenance of diverse wildlife resources; indeed, it has not even addressed the issue.

Thank you for the opportunity to comment on the proposed rule, and we looking forward to engaging in the process moving forward.

Sincerely,

/s/
Heidi McIntosh
Managing Attorney



November 30, 2016

Celeste Cook, Rules and Policy Manager
Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, AZ 85086

Via Email to ccook@azgfd.gov and Rulemaking@azgfd.gov

Re: Supplemental Comments of Sierra Club et al. on Proposed Rulemaking Amending R 12-4-402

Dear Ms. Cook,

On behalf of the Grand Canyon Chapter of the Sierra Club, Center for Biological Diversity, Western Watersheds Project, the Southwest Environmental Center, Western Wildlife Conservancy, The Wolf Conservation Center, the Rio Grande Chapter of the Sierra Club, and the Grand Canyon Wolf Recovery Project, and pursuant to § 41-1023.B of the Arizona Administrative Procedure Act (APA), I submit the following supplemental information regarding the Arizona Game and Fish Commission's (AGFC) proposal to amend R 12-4-402. Attached hereto is an amicus curiae brief filed on behalf of the state of Arizona on November 1, 2016 in Safari Club Int'l v. Jewell, Case No. CV-16-00094-TUC-JGZ (D. Ariz.), with excerpts from a final environmental impact statement cited in the brief. The brief is relevant to this rulemaking because it undermines the stated rationale for the proposed amendment.

AGFC's rationale for the amendment is based on unsubstantiated "concerns that federal agencies may become more resistant to cooperating with the states" before federal agencies engage in wildlife releases – a statement clearly aimed at the U.S. Fish and Wildlife Service (FWS). 22 A.A.R. 2558, 2559 (Sept. 16, 2016) (emphasis added).¹ However, any notion that the FWS is resistant to cooperating with the Arizona Game and Fish Department (AGFD) is put to rest by the state of Arizona's amicus brief, which paints an entirely different picture.

In the lawsuit in which the amicus brief was filed, Safari Club International challenged certain provisions of a revised FWS rule governing Mexican gray wolves – provisions which

¹ AGFC also cites, without identifying any corroborating background information, "agencies other than the Service refusing to cooperate with the State prior to the reintroducing or removing wildlife." 22 A.A.R. at 2559. Without substantiation, the rationale appears to be arbitrary and capricious.

FWS largely adopted at the behest of AGFD. In its brief, the state of Arizona defends the provisions and lauds the FWS for its collaborative working relationship with AGFD:

AGFD was instrumental in working with the FWS to provide data and analysis on the effects the Revised Rule could have on wild ungulates and the economic impact associated with hunting in Arizona. AGFD's input led to an agreement with the FWS on the role of the state wildlife agencies in determining when wolves are causing a decline to ungulate herds and when wolf removal is appropriate.

Amicus brief at 2.

As described in Arizona's brief, the cooperative relationship between AGFD and FWS led to the development of a rule that opens the door to the killing or removal of wolves when AGFD deems wolf predation to have an unacceptable impact on ungulate populations. Id. at 2-3. This proposal did not originate with FWS; instead, AGFD convinced FWS to accept the provision, even in the face of evidence that it would have an adverse effect on wolf recovery. As the state of Arizona explained in its brief,

The Revised Rule's provisions for unacceptable impacts to ungulates is a result of direct coordination with Arizona and New Mexico wildlife agencies, in which the FWS consulted with these agencies in developing the Revised Rule and included many state recommendations into the Revised Rule, including much of the unacceptable impacts provision.

Id. at 4 (citing 80 Fed. Reg. 2512, 2534 (Jan. 16, 2015))(emphasis added).

Importantly, in response to the Safari Club's argument that FWS will nonetheless impede the wolf removals allowed by the revised rule, the state of Arizona emphasized that "AGFD . . . has no reason to believe that FWS will not authorize wolf removal . . ." Id. at 4.²

The FWS is charged with the duty to ensure the recovery of threatened and endangered species. However, the history of collaboration between the FWS and AGFD belies any concern that FWS "may become more resistant to cooperating with" AGFD. Thus, the basis for the proposed amendment to R 12-4-402 is unfounded and AGFC's adoption of the amendment in the face of this history would be arbitrary, capricious, and contrary to the record.

² To the extent the proposed rule amendment is based on the need to protect hunting opportunities in the face of federal wildlife releases, it is likely motivated by the prospect of Mexican gray wolf releases by the FWS. However, the state of Arizona's brief also rejects the notion that the FWS's revised rule would harm hunting opportunities or ungulate populations, noting that "wolves have not had a measurable impact on the number of elk calves and deer fawns that survive through fall and winter periods." Id. at 6. Nor has the rate of hunter success declined. Id. Arizona also predicts that ungulate populations will not be harmed even with additional wolf releases due to the expanded area in which releases are planned. Id.

Thank you again for the opportunity to comment on the proposed rule.

Sincerely,

/s/
Heidi McIntosh
Managing Attorney

MARK BRNOVICH
Arizona Attorney General
Firm Bar #14000
James F. Odenkirk, SBA # 0013992
Assistant Attorney General
Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007-2926
Telephone: (602) 542-7787
James.Odenkirk@azag.gov
Attorneys for the State of Arizona

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Safari Club International, et al.,

Plaintiffs,

v.

Sally Jewell, et al.,

Defendants,

State of Arizona,

Amicus Curiae Applicant.

Case No. CV-16-00094-TUC-JGZ

**STATE OF ARIZONA'S AMICUS
CURIAE BRIEF**

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

I. INTRODUCTION..... 1

II. INTEREST OF AMICUS CURIAE..... 1

III. ARGUMENT 2

 A. The Criteria and Procedures in the Revised Rule for Determining Unacceptable Impacts to Wild Ungulate Herds Will Ensure an Effective and Timely Response to a Documented Decline in an Ungulate Population 2

 B. Mitigation for Future Impacts to Wild Ungulate Herds Was Not Required, and Any Alleged Error Associated with Mitigation Was Harmless..... 5

IV. CONCLUSION 10

TABLE OF AUTHORITIES

Cases

Gifford Pinochet Task Force v. U.S. Fish & Wildlife Serv.,
378 F.3d 1059 (9th Cir. 2004)..... 9

Greer Coal., Inc. v. U.S. Forest Serv.,
470 Fed. Appx. 630 (9th Cir. 2012) 9

Idaho Wool Growers Ass’n v. Vilsack,
816 F.3d 1095 (9th Cir. 2016)..... 8, 9

Shinseki v. Sanders,
556 U.S. 396 (2009) 8, 9

South Fork Band Council of W. Shoshone of Nev. v. U.S. Dep’t of Interior,
588 F.3d 718 (9th Cir. 2009)..... 5

Western Watersheds Project v. BLM,
552 F.Supp.2d 1113 (D.Nev. 2008) 7

Statutes

Endangered Species Act (“ESA”) § 10(j) 3

Rules

*Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf
in Arizona and New Mexico*, 63 Fed. Reg. 1752 (Jan. 12, 1998)..... 3

*Revision to the Regulations for the Nonessential Experimental Population of the
Mexican Wolf* (Final Rule), 80 Fed. Reg. 2512 (Jan. 16, 2015)..... 3, 4, 5

Other

*Final Environmental Impact Statement for the Proposed Revision to the Regulations
For the Nonessential Experimental Population of the Mexican Wolf*,
(Nov. 14, 2014)..... 6, 7, 8, 9

I. INTRODUCTION

Safari Club International (“SCI”) has brought this action against Secretary Jewell and the U.S. Fish and Wildlife Service (“FWS”) seeking judicial review of the FWS’s proposed mitigation measures intended to address an unacceptable decline to a wild ungulate herd. Specific to this amicus brief, SCI alleges the FWS has violated the National Environmental Policy Act (“NEPA”) because the discussion of proposed mitigation in the Final Environmental Impact Statement (“FEIS”) to address unacceptable impacts to ungulates is insufficient to avoid or minimize adverse impacts. (Pl.’s Mem. Supp. Summ. J. 34, ECF No. 69.) The State of Arizona on behalf of the Arizona Game and Fish Department (“AGFD”) submits this amicus brief in support of the proposed mitigation and raises arguments not included in the parties’ motions.

II. INTEREST OF AMICUS CURIAE

AGFD has substantial interest in conserving all wildlife within the State of Arizona. The provisions set forth in the Revised Rule for the Mexican wolf experimental population establishing criteria and procedures to determine when wolves are having an unacceptable impact on wild ungulates are intended to protect both the Mexican wolf population and wild ungulate herds. Without a mechanism to respond when wolves cause a decline in the ungulate population not only threatens the prey population, but likewise harms the wolf population because wolves depend on a sustainable and healthy prey population.

AGFD was instrumental in working with the FWS to provide data and analysis on the effects the Revised Rule could have on wild ungulates and the economic impact associated with hunting in Arizona. AGFD's input led to an agreement with the FWS on the role of the state wildlife agencies in determining when wolves are causing a decline to ungulate herds and when wolf removal is appropriate. SCI's contention that the procedures and criteria in the Revised Rule do not avoid or minimize the impacts to ungulates is inaccurate and attempts to eliminate an important tool to maintain the appropriate balance between wolf and prey populations. Arizona does not submit this amicus brief to respond to arguments already raised by the parties, but to elaborate on the importance of the mitigation measures to AGFD and to address legal issues not included in the parties' motions.

III. ARGUMENT

A. The Criteria and Procedures in the Revised Rule for Determining Unacceptable Impacts to Wild Ungulate Herds Will Ensure an Effective and Timely Response to a Documented Decline in an Ungulate Population.

The provision in the Revised Rule establishing the criteria and procedures to respond when wolves have an unacceptable impact to ungulates is scientifically defensible and will ensure effective and timely decision-making in response to unacceptable levels of wolf depredation on wild ungulate herds. The Revised Rule triggers a response when wolves cause an ungulate herd to drop below a state's defined management goals or a 15 percent decline. The Revised Rule requires a rigorous methodology to document that wolves are causing a decline to an ungulate herd, and this

process is subject to peer review and public comment. Despite the arduous process, AGFD routinely and actively monitors both ungulate and wolf populations, and the agency is confident it will have adequate field data to meet the criteria in the rule and respond quickly to a decline. *See Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf* (Final Rule), 80 Fed. Reg. 2512, 2558 (Jan. 16, 2015).

The original 1998 10(j) Rule establishing the Mexican wolf experimental population also included a provision to determine when wolves were having an unacceptable impact to ungulates. The 1998 Rule permitted wolves to be moved when a state wildlife agency documented a cumulative 35 percent decline in a herd over two consecutive years, and wolves were responsible for 50 percent of the decline. *See Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico*, 63 Fed. Reg. 1752, 1771 (Jan. 12, 1998). By the time the ungulate population declined by this percentage, irrespective of the cause, the level of decline could be catastrophic and send the population into a freefall. Even if the wildlife agency was able to document the decline, the agency would have faced a difficult task reversing the decline, and the 1998 Rule failed to provide a clear process to request wolf removal to stem the decline.¹

¹Ironically, with SCI asking the Court to vacate the Rule Revision or enjoin implementation of the Rule Revision, this would likely have the effect of restoring the unacceptable impacts provision from the 1998 Rule.

Contrary to SCI's argument, the process required in the Revised Rule is not onerous or infeasible, but is the type of scientific rigor state wildlife agencies are accustomed to and support. The process required will produce credible results from field data, which is the best scientific approach to determine the level of wolf impacts to ungulates. Determining unacceptable impacts based on a state's ungulate management plan or a 15 percent decline in a herd is a more effective and efficient approach because the states are already measuring trends in data and can respond quickly to an adverse impact with objective criteria. Unlike the 1998 Rule, the threshold level of impact in the Revised Rule is not so substantial that an observed decline will be precipitous. Because the states are well positioned to quickly discover a decline in the ungulate populations, the procedures and criteria in the Revised Rule will not prevent the timely response to a decline. SCI fears that if the data supports wolf removal the FWS will not authorize such action. (Pl.'s Mem. Supp. Summ. J. 37-38.) AGFD, however, has no reason to believe the FWS will not authorize wolf removal because a decline in the ungulate population may ultimately inhibit wolf recovery.

The Revised Rule's provisions for unacceptable impacts to ungulates is a result of direct coordination with Arizona and New Mexico wildlife agencies, in which the FWS consulted with these agencies in developing the Revised Rule and included many state recommendations into the Revised Rule, including much of the unacceptable impacts provision. 80 Fed. Reg. at 2534. AGFD, with the concurrence of New Mexico, proposed that the state wildlife agency will determine unacceptable impacts based on the agency's

ungulate management goals or a 15 percent decline and consistent with the wildlife agency's documentation. *Id.* at 2526. Using a wildlife agency's preferred methodology such as "evidence from bull to cow ratios, cow to calf ratios, hunter days and/or elk population estimates," the agency will be able to demonstrate when Mexican wolves have influenced the decline in the prey population after evaluating other potential causes of decline. *Id.* at 2526, 2531. The changes from the 1998 Rule provide a clear stepwise process for either state to demonstrate in a timely manner that impacts have occurred to an ungulate herd. Moreover, having decisions based on field data that are subject to peer review makes any eventual decision to remove wolves far more defensible if challenged.

B. Mitigation for Future Impacts to Wild Ungulate Herds Was Not Required, and any Alleged Error Associated with Mitigation Was Harmless.

SCI alleges the measures to mitigate unacceptable impacts to ungulates are insufficient and violate NEPA because the mitigation will not avoid or minimize impacts. (Pl.'s Mem. Supp. Summ. J. 35.) Whether the mitigation measures SCI challenges are sufficient is immaterial because the potential future impacts to ungulates are uncertain, and the FWS is only required to discuss mitigation for "reasonably likely impacts at the outset." *South Fork Band Council of W. Shoshone of Nev. v. U.S. Dep't of Interior*, 588 F.3d 718, 727 (9th Cir. 2009).

Nothing in the discussion in the FEIS for the Revised Rule concludes that adverse impacts to an ungulate herd are reasonably likely at the outset. According to the FEIS, both AGFD and the New Mexico Department of Game and Fish have stated "that

current levels of predation by wolves on elk within the BRWRA have not measurably decreased the overall elk population of the BRWRA.” *Final Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf*, Ch. 4 at 14 (Nov. 14, 2014). Studies in Arizona have shown that Mexican wolves have not had a measurable impact on the number of elk calves and deer fawns that survive through fall and winter periods. *Id.* Under the Revised Rule, the wolf population is projected to grow to a population objective of 300-325 wolves, but the area of dispersal increases more significantly. *Id.* Ch. 2 at 12-13. Accordingly, the wolf to elk ratio under the Revised Rule is likely to remain comparable to the wolf to elk ratio that occurred in the BRWRA under the 1998 Rule. *Id.* Ch. 3 at 49. In 2013, the wolf to elk ratio in the BRWRA was 2.56 wolves per 1000 elk. *Id.* The projected ratio under the Revised Rule as the wolf disperses within the larger Mexican Wolf Experimental Population Area (“MWEPA”) is not anticipated to reach 2.56 wolves per 1000 elk until year seven. *Id.* App. D at 7. In 2012, the wolf density within the BRWRA was 4.3 to 4.8 wolves per 1000 km² and under the Revised Rule the wolf density will be initially less but once the wolf population reaches the population objective the density will be comparable. *Id.* Ch. 3 at 68; App. D at 4.

In addition, the number of licensed hunters for deer and elk has increased since 2007 in the hunt management units within the BRWRA, and the overall hunting success in the BRWRA has not declined during this period. *Id.* Ch. 3 at 79-83. The FWS

determined that despite wolves preying on elk and deer, the Revised Rule is not expected to have any discernable impact on big game hunting. *Id.* Ch. 4 at 52.

Because the wolf density and wolf to elk ratio under the 1998 Rule and the Revised Rule will be similar, and the wolf population under the 1998 Rule has had no measurable effect on deer and elk populations and hunter participation and success, “[a]t Statewide scales, wolves are expected to have little or no effect on the abundance of elk and deer across most of Arizona and New Mexico where elk and deer abundance is stable, or above population objectives.” *Id.* Ch. 4 at 14.

In determining what impact the Revised Rule will have on ungulate populations, the FEIS must consider the anticipated future change in environmental conditions from the current conditions. *See Western Watersheds Project. v. BLM*, 552 F.Supp.2d 1113, 1126-29 (D.Nev. 2008) (explaining that an EIS must consider the environmental impact that will occur from a change in the environmental baseline conditions that presently exist at the time of the EIS). Because the wolf density and wolf to elk ratios between the environmental baseline condition and the projected future wolf population are comparable, and the Final EIS explained that under the environmental baseline wolves have had no measurable impact on deer and elk populations, the FEIS properly concluded that impacts to ungulates under the Revised Rule will have little to no impact. FEIS, Ch. 4 at 14. With the FEIS projecting no increase in the rate of depredation on wild ungulates under the Revised Rule or change in hunting, no reasonably likely impacts exist at this time, so the FWS was under no duty to discuss mitigation in the FEIS.

Although the mitigation measures discussed in the FEIS are intended to respond to impacts to specific elk and deer herds rather than general population levels, the FEIS nevertheless does not conclude, for instance, that a 15 percent decline in any herd is reasonably likely at the outset. The FEIS states that elk and deer abundance “could decline” in areas where wolves become numerous, but the FEIS does not say that such impacts are likely. Hence, the proposed mitigation was provided only as a “conservative approach” in response to an ungulate decline and not as a necessary one. *Id.* Ch. 4 at 15. Simply saying that an impact is possible and offering mitigation measures in response as a conservative approach does not mean the impacts are reasonably likely at the outset. The FEIS offers no support that adverse effects on any elk or deer population is reasonably likely, and in fact, localized impacts to elk or deer populations is unlikely given the 1998 Rule also included measures to respond to unacceptable impacts to ungulates but such measures were never needed from 1998 to 2015.

Because the FWS has not at the outset projected that wolves under the Revised Rule are reasonably likely to cause a measurable decline in an elk or deer herd, the FWS had no responsibility to discuss mitigation in this case. The fact that the FEIS discussed mitigation that is not required is immaterial, and assuming, *arguendo*, SCI is correct that the mitigation will not avoid or minimize impacts, the alleged error is harmless if the FWS was not required to discuss mitigation anyways. *See Shinseki v. Sanders*, 556 U.S. 396, 406 (2009) (explaining that directive to courts in § 706 of the APA to give due account of the “rule of prejudicial error” is a harmless error rule); *Idaho Wool Growers*

Ass'n v. Vilsack, 816 F.3d 1095; 1104 (9th Cir. 2016) (applying harmless error to NEPA challenge); *Gifford Pinochet Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1071 (9th Cir. 2004) (stating that the alleged error must “clearly” have had “no bearing on. . . the substance of decision reached”) (citations omitted) (internal quotation marks omitted).

In this case, because the FWS indicated the mitigation was a “conservative approach” and mitigation was not required, the absence of mitigation could not have made a difference on the FWS’s decision to adopt the substantive provisions in the Revised Rule. *See Vilsack*, 816 F.3d at 1104 (stating that harmless error applies when the alleged NEPA error does not “otherwise materially affect[] the substance of the agency’s decision”); *Greer Coal., Inc., v. U.S. Forest Serv.*, 470 Fed. Appx. 630, 634 (9th Cir. 2012) (finding that an agency’s erroneous estimate was offset by conservative estimates and clearly had no bearing on the substance of the decision reached). The FEIS noted that the mitigation measures were provided to take a conservative approach to uncertain impacts because other provisions in the Revised Rule, such as the population objective and the phased approach to the initial area of release and translocation, will lessen the impact of wolf predation on ungulates. Ch. 4 at 15. SCI cannot show that without the discussion of mitigation measures the FWS would have altered the substance of its decisions or its conclusions, nor can SCI claim harm in an alleged flawed analysis that the FWS was not obligated to undertake. *Shinseki.*, 556 U.S. at 409-10 (holding that a party attacking an agency action has the burden of showing that an error was harmful).

IV. CONCLUSION

The State of Arizona requests that the Court give due consideration to AGFD's wildlife conservation concerns in preserving the provision in the Revised Rule for unacceptable impacts, as well as due consideration to the legal arguments not raised by the other parties.

RESPECTFULLY SUBMITTED this 21st day of October, 2016.

MARK BRNOVICH
Attorney General

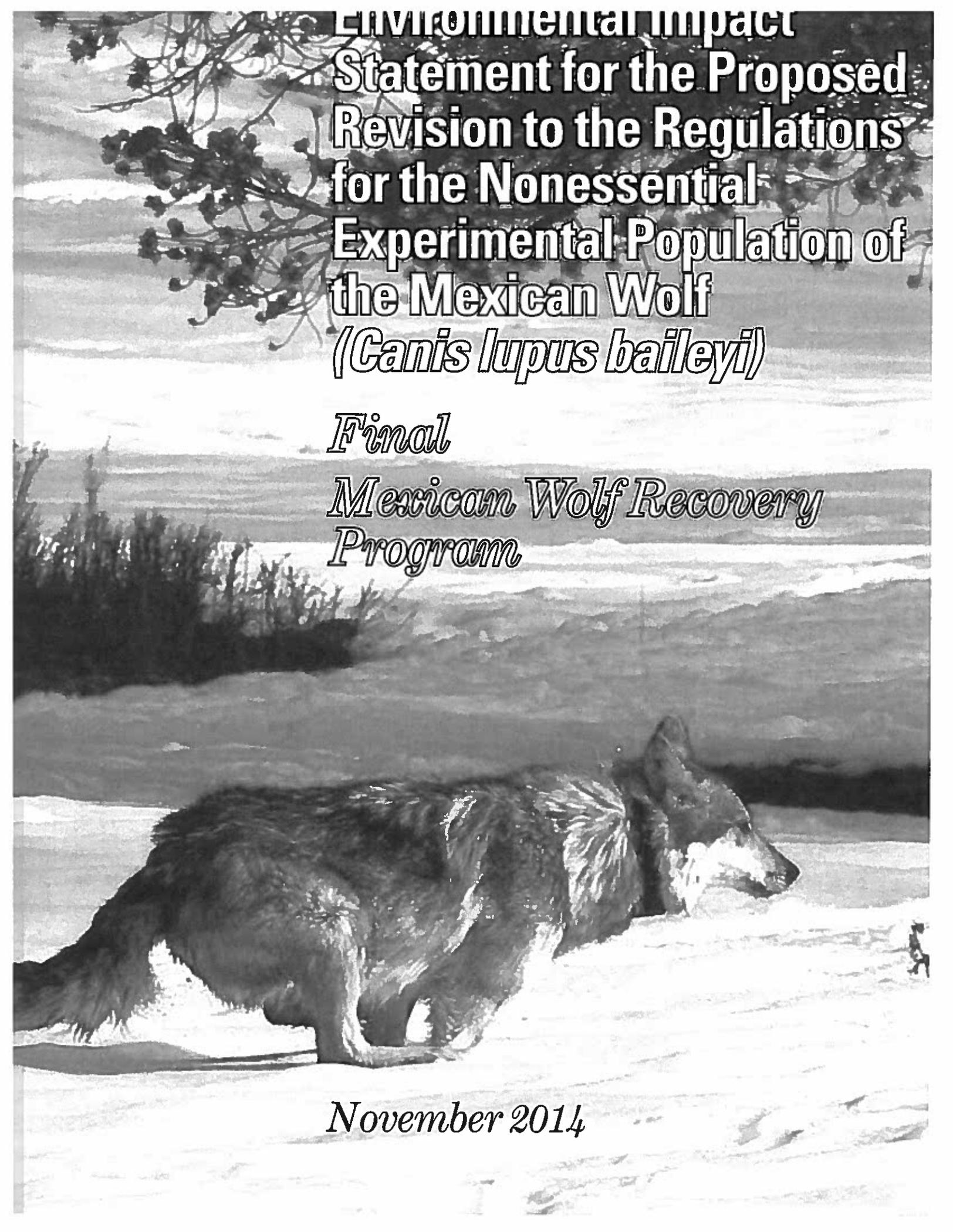
/s/James F. Odenkirk
James F. Odenkirk
Assistant Attorney General
Attorneys for the State of Arizona

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2016, I electronically transmitted the attached State of Arizona's Amicus Curiae Brief with the Clerk of the Court of the United States District Court by using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing.

MARK BRNOVICH
Attorney General

/s/James F. Odenkirk
James F. Odenkirk
Assistant Attorney General
Attorneys for State of Arizona



**Environmental Impact
Statement for the Proposed
Revision to the Regulations
for the Nonessential
Experimental Population of
the Mexican Wolf
(*Canis lupus baileyi*)**

Final

*Mexican Wolf Recovery
Program*

November 2014

There is one large elk herd in southeastern New Mexico located in the Sacramento Mountains. Elk located in GMU 34 are considered part of the Sacramento herd while elk in GMU 36 are considered the Ruidoso herd. These two herds are considered separately because they are separated by the Mescalero Apache Reservation (GMU 35). Elk on the Lincoln National Forest are a management indicator species, and include the Sacramento and Ruidoso herds. On the Mescalero Apache Reservation, the elk population remains stable (J. Smith, BIA, pers. comm. 2014). Based on surveys the Sacramento herd population size is estimated at 4,400 – 5,800 animals and the 6-year trend suggests the population may be increasing. The average bull to cow to calf ratios are 49:100:46. The Ruidoso herd population size is estimated at 2,600 – 3,900 and appears to be stable with bull to cow to calf ratios of 58:100:43.

To the north of the Ruidoso herd, the smaller Capitan herd is located in the Capitan Mountains. Surveys to monitor population size and age and sex ratios are infrequent. The herd is roughly estimated at between 700-1000 animals. This herd is generally considered to have been relatively stable over the last five years.

Elk are present on Laguna Pueblo in New Mexico. The Pueblo Natural Resources Program conducts annual aerial game surveys by helicopter. These surveys are used to provide a gauge for population trends rather than an absolute census. Until 2013, population trends were generally positive and elk and deer were considered to be fairly well dispersed throughout the Pueblo; however, severe droughts over the past two years appear to have shifted elk migration patterns, and may have also impacted recruitment, resulting in a significant decrease in the number of animals observed on the survey (Adam Ringia, Pueblo of Laguna, pers. comm. 2014).

The 2013 elk population in the BRWRA, not including the Fort Apache Indian Reservation, was estimated at between 29,276 and 33,276 animals (average elk density 1.76/ km², using the BRWRA area of 6,850 mi² (17,740 km²)). The 2013 estimate was derived using pre-hunt data from September 2013. This included an estimate of 12,276 elk in the Arizona portion of the BRWRA, not including GMU 2b and 2c, and 17,000 to 21,000 elk in the New Mexico portion of the BRWRA, including GMU 16E.

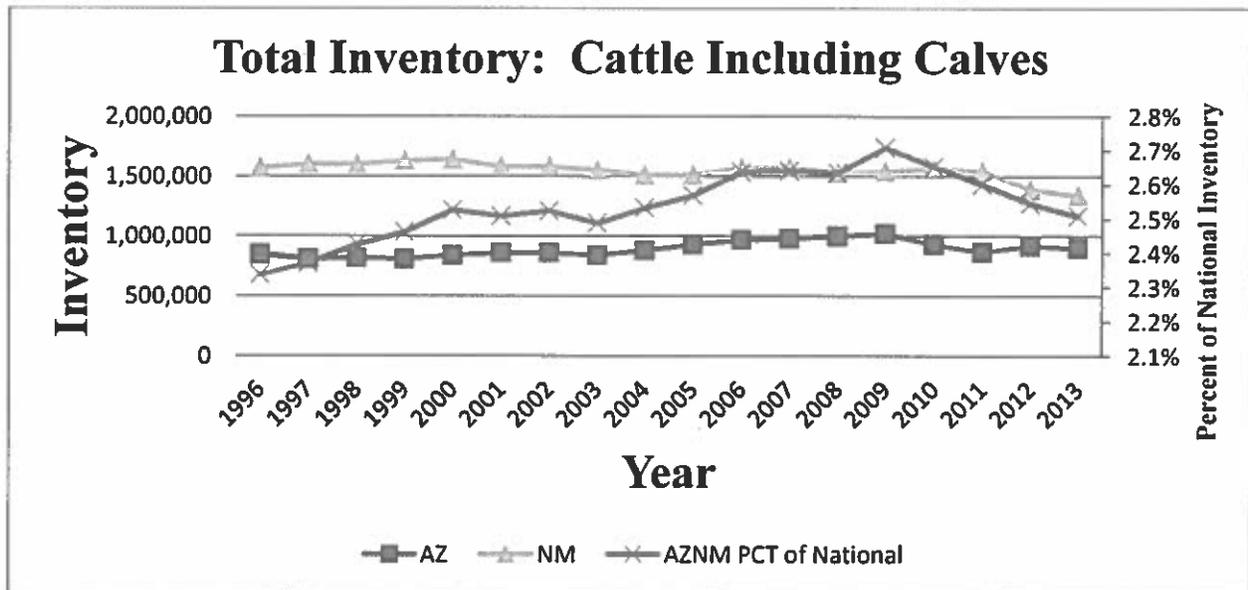
The wolf to elk ratio, an indicator of predation pressure, for the BRWRA (not including Fort Apache Indian Reservation) in 2013 was 2.56 wolves per 1,000 elk, based on a wolf population in the BRWRA of 80 animals. This population estimate was derived using the 2013 population count (83 animals), and includes a 10% correction factor for wolves missed during the population census (8 animals) and excludes wolves exclusively using the Fort Apache Indian Reservation (11 animals) since an estimate for elk density on the FAIR was not provided.

Several large, landscape-level wildfires in recent history have affected elk populations in Arizona and New Mexico, including the BRWRA area. In 2002, the 460,000 acre Rodeo–Chediski Fire in east-central Arizona burned the southern portion of Unit 3C. After the fire, antlerless elk harvest was increased by AGFD in response to increases in the elk population and to aid in the recovery of the habitat. On May 29, 2011, the Wallow Fire began in Arizona and spread to over 538,000 acres (217,721 ha) by the end of June (Inciweb: www.inciweb.org/incident/2262). The Wallow Fire burned through approximately 11 percent of the BRWRA (in Units 1 and 27). The fire perimeter covered most of the summer elk habitat in Unit 27 and most of the summer elk habitat in Unit 1, south of Highway 260. In addition, some portion of the elk winter-range burned in both units at varying intensities. While there were areas of severe fire intensity, the area experienced substantial green-up immediately after the fire as monsoon rains fell across the region. The burned area has experienced a flush of browse, including aspen regrowth, and increased grass and forb production. The Wallow Fire Rapid Assessment Team's post-fire assessment hypothesized that elk and deer abundance will respond with increased recruitment as vegetation recovers, due to decreased competition of forage and browse with fire-killed conifers (Dorum 2011, AGFD 2012). On May 16, 2012, the Whitewater–Baldy Complex fire was ignited by lightning strikes. It burned at least 297,845 acres (Inciweb: www.inciweb.org/incident/2870), including an additional (to the Wallow Fire) 7 percent of the BRWRA. Although large scale high intensity fires may not result in the landscape

of the Treaty of Guadalupe Hidalgo between the U.S. and Mexican governments in 1848, many ranchers had to reapply to the U.S. government for a recognized land title. This was an expensive process and required copies of many supporting documents related to the original land grants issued by Spanish and Mexican governments. Many ranchers lost access to community grazing lands and even their own properties due to lost documents, vaguely defined boundaries, and speculators.

During this period Anglo ranchers moved into the area and began large-scale ranching operations funded by outside investors. The growing population of the United States fueled an increased demand for beef and the arrival of railroads made it economically and technically feasible to raise larger numbers of cattle and sheep in the Southwest and be able to supply the Eastern market. The race for profits and returns on investments correlated with overgrazing of grasslands and a subsequent crash of the number of sheep and cattle that were raised on the American Southwest grasslands in the late 1800s. These degraded lands were often obtained by the U.S. government and ultimately became part of the National Forest system. Thus, in the end, many of the National Forests contain land that initially constituted the community rangelands of the original Spanish ranchers. Today over 30 percent of the land area in Arizona and New Mexico is owned by the federal government mainly in the form of BLM or Forest Service lands, while an additional 8 percent is held in trust by the U.S. government for the benefit of Native American tribes.

Figure 3-17 shows the total inventory for cattle and calves in Arizona and New Mexico since 1996. In 1996 the States had an estimated 2.4 million head of cattle. By 2013 the head count dropped nearly 200,000 to an estimated 2.2 million. The year 2009 was a peak year for cattle inventories (2.56 million) and 2013 was the year with the least amount of inventory. The Department of Agriculture reported a national estimate of 89.3 million cattle and calves in 2013, which implies that together, Arizona and New Mexico contribute approximately 2.5 percent to the overall national supply (NASS: <http://quickstats.nass.usda.gov>).



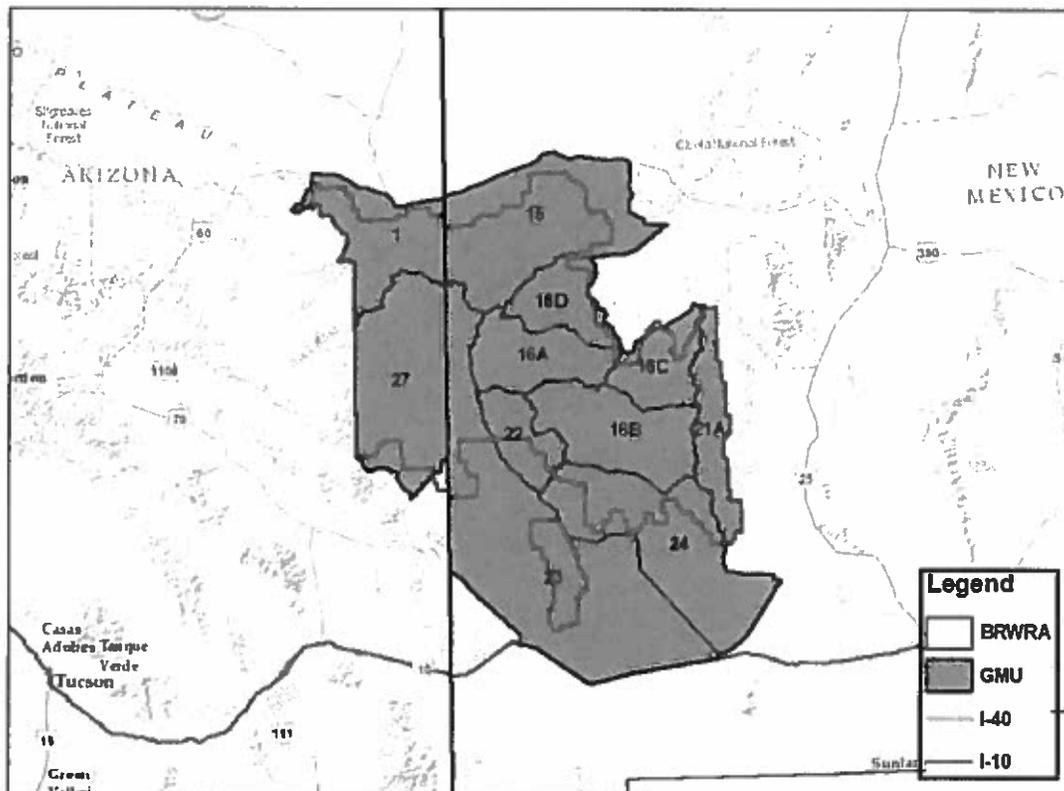
(Credit: NASS, <http://quickstats.nass.usda.gov>)

Figure 3-17. Total Inventory: Cattle Including Calves.

The total value of cattle and calf sales for Arizona and New Mexico has increased over time. In 1998 the total sales for Arizona cattlemen was \$4.5 million and for New Mexico \$7.3 million. By 2012 sales

The State Game and Fish Agencies in New Mexico and Arizona are responsible for managing game resources within the States, on both public and private land. The majority of lands within the BRWRA are divided into nine Game Management Units. Apache National Forest, which is on the Arizona side of the BRWRA is divided into Arizona Game Management Units (GMUs) 1 and 27. The majority of lands in the Gila National Forest, which is on the New Mexico side of the BRWRA, is comprised of seven principle GMU's: 15, 16A, 16B, 16C, 16D, 21A, and 23. These units provide habitat for the Greater Gila elk herd (see Biological Resources for estimates of herd sizes). Other game species found in these units include mule deer, white-tailed deer, and wild turkey. Secondary game species include antelope, javelina, and Rocky Mountain bighorn sheep. While the State tracks harvest numbers for other game species taken in the area, population estimates are not provided. Figure 3-26 presents the GMUs in the BRWRA.

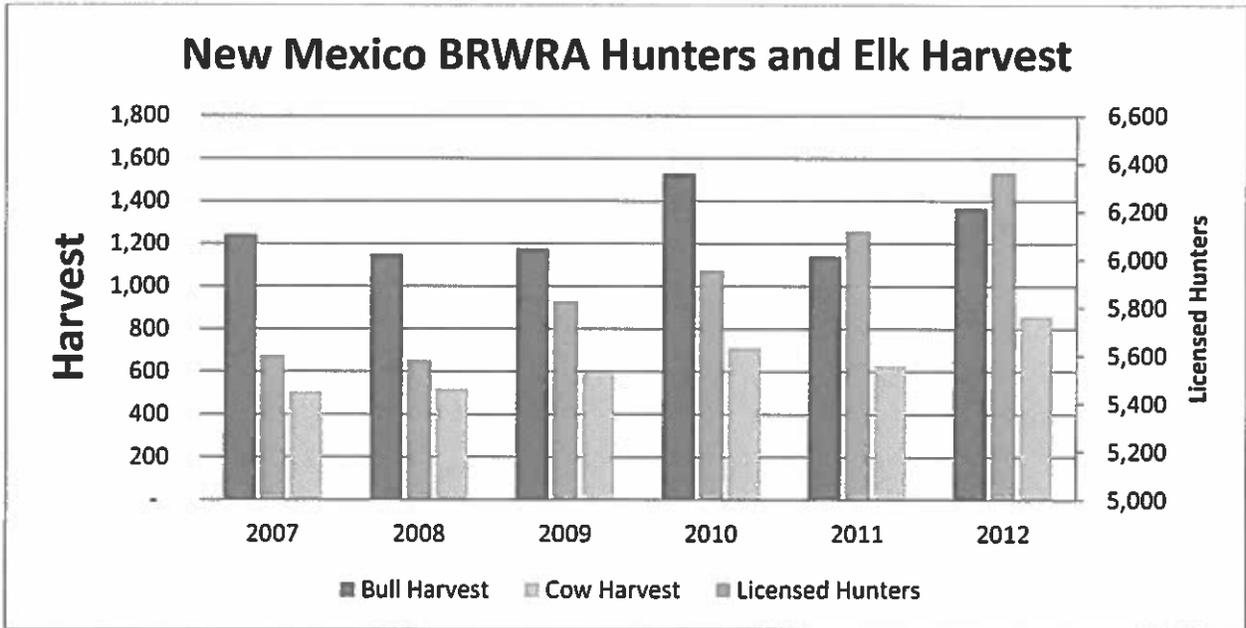
Blue Range Wolf Recovery Area Game Management Units



Credit: U.S. Fish and Wildlife Service, Division of Economics.

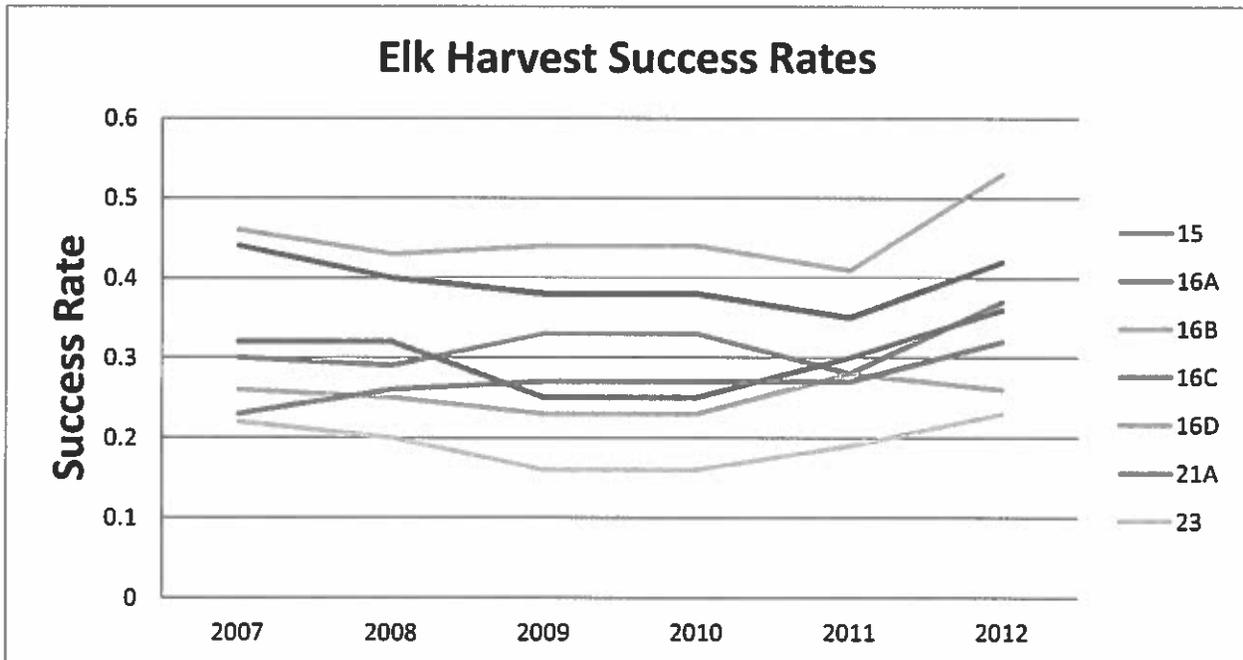
Figure 3-26. Blue Range Wolf Recovery Area Game Management Units.

Both States manage elk and deer herds by tracking hunter harvest reports, which help to provide managers with estimates of the health and size of the herds. In New Mexico the number of licensed elk hunters in the BRWRA ranged from a low of 5,580 in 2008 to a high of 6,364 in 2012. Since 2007 the number of licensed hunters has increased by about 2.5 percent a year. During the period 2007 through 2012 hunters harvested a total of 11,418 elk. Nearly 70 percent of the harvest (7,600) was for bull elk. Annual total harvest (both bull and cow) ranged from a low of 1,668 in 2008 to a high of 2,241 in 2010. In general, the total harvest grew about 6.5 percent each year with the bull elk harvest growing about 4.0 percent annually and the cow elk harvest growing about 12.0 percent. Figure 3-27 shows the trend in the number of hunters and harvest for the BRWRA within New Mexico.



Source: Division of Economics, US FWS and New Mexico Department of Game and Fish

Figure 3-27. New Mexico BRWRA Hunters and Elk Harvest.



Source: New Mexico Department of Game and Fish.

Figure 3-28. New Mexico BRWRA Annual Elk Harvest Success Rate.

Figure 3-28 illustrates the overall success rate for elk hunters during the years 2007 through 2012 for the New Mexico portion of the BRWRA. The success rate is calculated as the number of harvested elk divided by the number of licensed hunters. The figure shows the success rate for the primary GMUs.

Between 2007 and 2012 only GMU 16A showed a decrease in hunter success, dropping by about five percent. GMU 21A showed the greatest increase between 2007 and 2012, increasing by 39 percent.

Table 3-11 shows success rates for each of the principle GMUs in New Mexico BRWRA for the years 2007 through 2012. While success rates fluctuated for all the GMUs from year to year only GMU 16A experienced an overall decline between the year 2007 and 2012.

Table 3-11. Overall Elk Hunting Success Rates – Year Over Year Change, New Mexico BRWRA GMUs: New Mexico Game and Fish Department, unpublished data.

Year	New Mexico Game Management Units						
	15	16A	16B	16C	16D	21A	23
2007	-	-	-	-	-	-	-
2008	-3.3%	-9.1%	-3.8%	0.0%	-6.5%	13.0%	-9.1%
2009	13.8%	-5.0%	-8.0%	-21.9%	2.3%	3.8%	-20.0%
2010	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
2011	-15.2%	-7.9%	21.7%	20.0%	-6.8%	0.0%	18.8%
2012	32.1%	20.0%	-7.1%	20.0%	29.3%	18.5%	21.1%
Percent Change 2007 - 2012	23.3%	-4.5%	0.0%	12.5%	15.2%	39.1%	4.5%

Note: NM Game and Fish changed their methodology for estimating hunter and harvest data in 2007 resulting in practical difficulties in making comparisons to earlier years.

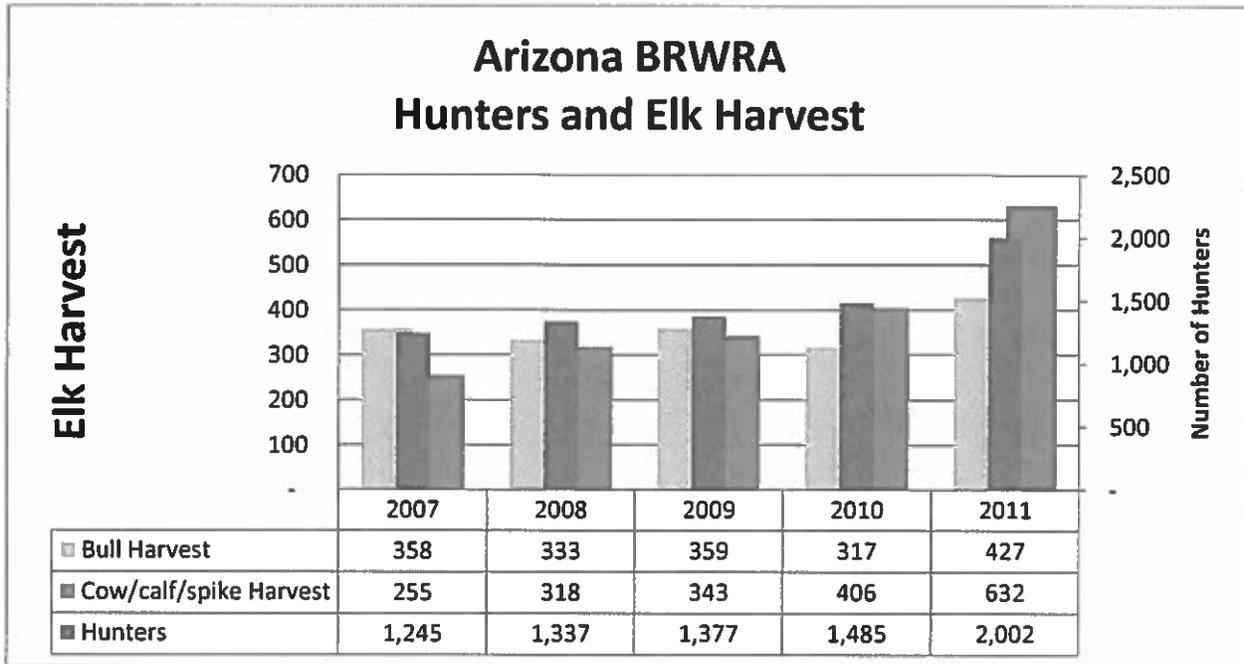
Table 3-12 shows the annual number of hunters, harvest, and success rate for the years 2007 through 2012 in Table Dornat for the New Mexico portion of the BRWRA. Overall, participation and harvest of elk in the New Mexico portion of the BRWRA has experienced a slight increase over this time period. In 2007 there were 5,601 licensed elk hunters that harvested a total of 1,747 elk. In 2012 the number of licensed hunters increased to 6,364 as well as the harvest to 2,227. Correspondingly, the number of bull elk harvested increased from 1,241 in 2007 to 1,366 in 2012.

Table 3-12. State of New Mexico – BRWRA Elk Hunting Statistics.

	2007	2008	2009	2010	2011	2012
Licensed Hunters	5,601	5,580	5,825	5,955	6,118	6,364
Bull Harvest	1,241	1,149	1,176	1,529	1,139	1,366
Cow Harvest	506	519	592	712	628	861
Total Harvest	1,747	1,668	1,768	2,241	1,767	2,227
Elk Harvest Success Rate	31.2%	29.9%	30.4%	37.6%	28.9%	35.0%
Bull Elk Success	22.2%	20.6%	20.2%	25.7%	18.6%	21.5%
Cow Elk Success	9.0%	9.3%	10.2%	12.0%	10.3%	13.5%

(Source: New Mexico Department of Game and Fish, Stewart Liley.) Note: NM Game and Fish changed their methodology for estimating hunter and harvest data in 2007 resulting in practical difficulties in making comparisons to earlier years.

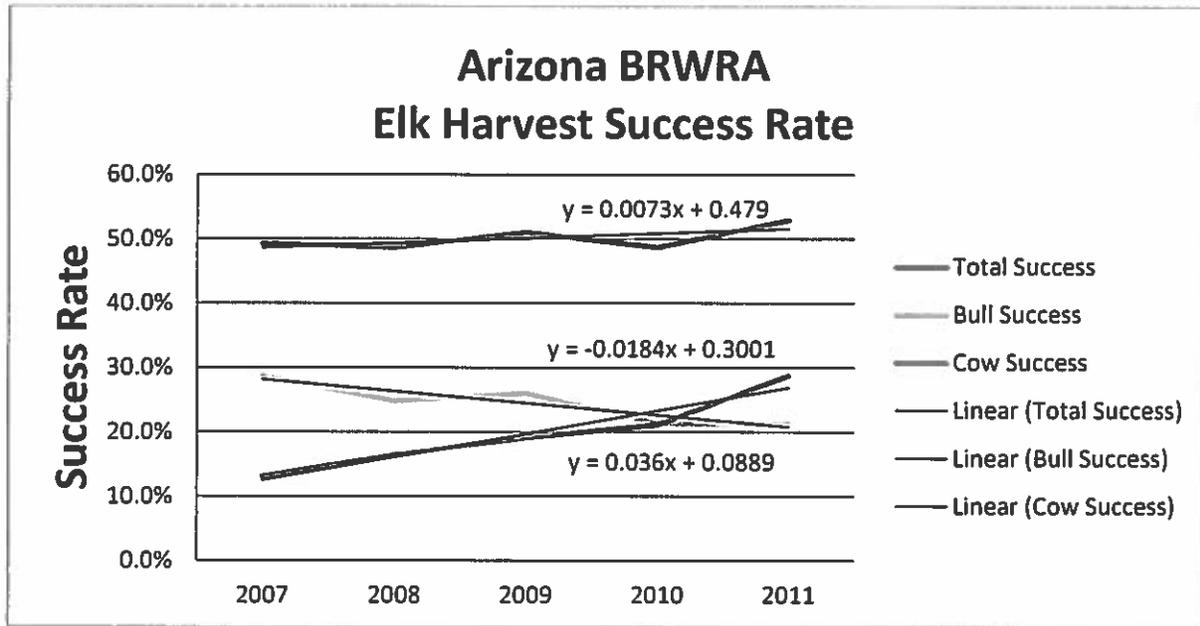
Figure 3-29 below shows the total number of hunters and bull elk and other elk harvest for Arizona game management units 1 and 27 (i.e., the BRWRA) for the years 2007 through 2011. The exhibit shows the total number of hunters steadily increasing over the period from 1,245 in 2007 to 2,002 in 2011. Corresponding elk harvest ranged from 613 in 2007 to 1,059 in 2011. While the harvest numbers for both bull and cow elk increased over this time period, the increase in cow elk harvest was much more significant.



Source: Hunt Arizona, 2012.

Figure 3-29. Arizona BRWRA Hunters and Elk Harvest.

Success rates for harvesting Arizona elk in the BRWRA have been increasing moderately since 2007 (Figure 3-30). Underlying this trend however is the steady increase in the success rate for harvesting a cow elk compared to the declining success rate for harvesting a bull elk. While the actual number of bull elk harvests have not declined significantly over time the decline in the overall success rate is attributable to the steadily increasing number of hunters over the years. Between the year 2007 and 2011 the number of hunters has increased by 60 percent.



Credit: Hunt Arizona 2012. Success rates calculated by the U.S. Fish and Wildlife Service Division of Economics.

Figure 3-30. Arizona BRWRA Elk Harvest Success Rate.

A factor affecting the recent rise in the number of Arizona hunters in the BRWRA may be correlated to the management objectives of the Arizona Game and Fish Department. The elk herd in GMU 1 represents a very large proportion of the State’s entire game herd. Maintaining an appropriate balance between a very large game herd and adverse effects on local communities can be complicated. As herds increase in size they end up competing for forage with other animals including cattle. Nuisance complaints from community members in Springerville, Eagar, Nutrioso, and Alpine have increased with herd size. In 2012 the Game and Fish Department aimed to reduce the overall herd size by 10 percent to better balance habitat availability and suitability with other demands. To achieve this objective the Department has been increasing the number of authorized elk permits each year. As noted above the number of hunters has increased by 60 percent while the number of hunter days has increased by 140 percent. Correspondingly the average number of hunting days per hunter has increased from 2.64 days in 2007 to 3.94 days in 2011. These figures are summarized in Table 3-13.

Table 3-13. Arizona Hunter and Harvest in the BRWRA (2007 – 2011). Source: Hunt Arizona

Year	Permits Authorized	1st Choice Applicants	Permits Issued	Hunters	Hunter Days	Harvest				
						Bull	Spike	Cow	Calf	Total
2007	1,290	12,093	1,283	1,245	3,291	358	72	163	20	613
2008	1,420	7,033	1,420	1,337	5,516	333	77	219	22	651
2009	2,163	7,771	994	1,377	5,536	359	51	263	29	702
2010	1,580	6,660	1,580	1,485	5,967	317	74	313	19	723
2011	2,150	9,749	2,146	2,002	7,880	427	36	575	21	1,059

Source: Hunt Arizona

absent, carrion abundance was significantly higher in late winter/early spring (due to wintertime die off of weak and stressed animals) and in the fall due to human hunting (Wilmers et al. 2003). Because of milder winters, fewer winter-killed ungulates are observed in the Arizona/New Mexico higher elevation habitats and “sky island” mountain ranges of southern Arizona/New Mexico than in the northern Rocky Mountains. This could elevate the importance of the use of wolf-killed carcasses by scavengers because it is unlikely that late winter/early spring pulses will occur in the proposed management zones 1, 2 and 3.

The rate and extent that wolves might disperse into the three proposed management zones is unknown, however under the phased management approach in Alternative One, wolf densities in Scenario A in years 1 through 11 would be highest, and therefore the associated impacts would be more concentrated within a smaller area defined by Phase 1 compared to the larger area as defined by Phase 3. Over the broader landscape of each proposed management zone we do not expect significant reductions in ungulate population and density from the re-establishment of wolf packs in areas of suitable habitat with adequate wild ungulate prey base. While it is possible that at some future point in time wolves in some areas may achieve the ecologically effective density needed to initiate a trophic cascade in localized areas, we assess the possibility of trophic cascades that might affect vegetation over the broader landscape of each proposed management zone as unlikely.

We predict no significant direct or indirect adverse impact to vegetation from implementation of the phased approach of Alternative 1 in zones 1, 2, and 3 for the Proposed Action because of the likely overriding impacts of anthropogenic effects across the majority of our area and lack of predicted impacts to ungulate populations of a sufficient intensity and scale to initiate a trophic cascade (Mech 2012, Kaufman et al. 2010).

Ungulates

Ungulates are the primary food of wolves throughout their geographic range. Wolves tend to concentrate on species that are easier to capture or offer greater reward for the amount of capture effort expended, rather than on species that are most common. Diet can vary greatly among locations in the same region or even among packs living in the same vicinity, or in response to spatial differences in prey populations, seasonality, weather conditions, the presence of other predators, levels of human harvest, and other factors (e.g., Kunkel et al. 2004, Smith et al. 2004). In the central and northern Rocky Mountains of the United States and Canada, wolves commonly rely on elk as their primary prey, but deer and moose are more important in some areas.

Wolves are selective hunters and usually choose more vulnerable and less fit prey. Young-of-the-year, especially in larger prey like elk and moose (Kunkel and Pletscher 1999, Boertje et al. 2009), older animals, and diseased and injured animals are taken in greater proportion than healthy, prime-aged individuals (Mech 1970, 2007, Kunkel et al. 1999, Mech and Peterson 2003, Smith et al. 2004, Sand et al. 2008, Hamlin and Cunningham 2009). Hunting success of wolves can be influenced by many factors, including pack size, terrain, habitat features, snow and other weather conditions, time of day, prey species, age and condition of prey, season, and experience (Mech and Peterson 2003, Hebblewhite 2005, Kauffman et al. 2007).

The direct impacts of wolves on prey abundance have been, and continue to be, widely debated (see Boutin 1992, Vucetich et al. 2005). Wolf-prey systems are inherently complex and simple assertions or conclusions about wolf-prey relationships and interactions ignore the complexity and unique features of real-world ecosystems in which a wide range of wolf-prey systems function. For example, Garrott et al. (2005) states that the effects of wolf predation on ungulate populations in the Greater Yellowstone ecosystem continues to remain unclear, and cautions resource managers against making generalizations based upon a single study. The effects of wolves on the Northern Yellowstone elk population have been scientifically debated with some (Eberhardt et al. 2003, White and Garrott 2005, Hamlin and Cunningham 2009) stating higher wolf impacts than others (Smith et al. 2003 and 2004, Vucetich et al. 2005).

A number of studies indicate that wolf predation can limit ungulate prey populations. Population-level effects result primarily through predation on young-of-the-year and are frequently enhanced when occurring in combination with other predators (e.g., bears, mountain lions, coyotes; Mech and Peterson 2003, Larsen et al. 1989, Barber-Meyer et al. 2008, Boertje et al. 2009). Along with the direct effect of predation, elk declines in the greater Yellowstone ecosystem may result partially from the threat of wolf predation rather than actual wolf predation (Creel et al. 2009). In this case, female elk may respond to the presence of wolves by spending less time feeding and more time travelling to safer habitats of poorer nutritional quality, resulting in reduced nutrition and lowered calf production (but see Hamlin et al. 2009).

Wolf predation may have indirect benefits on ungulates as well. Wolves can suppress disease emergence in ungulates, or possibly limit prevalence, in part by reducing density and group sizes of elk and deer thereby reducing or eliminating the spread of brucellosis and chronic wasting disease (Hobbs 2006, Wild et al. 2011). Wolves scavenge carcasses, such as aborted elk calves. By consuming them, wolves may reduce the spread of Brucellosis to other elk. Creel and Winnie (2005) state that wolves may cause elk to congregate in smaller groups. This behavior could potentially slow the spread of ungulate diseases that persist among high density populations of ungulates.

In the absence of predation, prey populations increase to the carrying capacity of their environment. At carrying capacity prey population density is high, and the population growth rate is limited by resource scarcity (i.e. lack of forage) resulting in poor nutrition. Harvesting of prey, whether by humans, wolves, or other predators reduces populations to below carrying capacity, allowing for a positive annual increase to the population. Generally, a linear correlation between wolf density and prey abundance can be found (Keith 1981, Fuller 1989, Fuller et al. 2003, McRoberts and Mech 2014, but see Cariappa et al. 2011 and Cubaynes et al. 2014 for changes in this relationship at high wolf and ungulate densities) but this correlation cannot be assumed to occur for every wolf-prey relationship, particularly in complex, multi-prey systems (Mech and Peterson 2003).

Predation rates are driven by the number of wolves present and their per capita kill rate. At low prey densities, the total kill is usually small because wolves are scarce. Theoretically, as prey density increases, the number killed by wolves increases disproportionately faster. In this manner wolf predation may be said to limit, not regulate prey populations (Mech and Peterson 2003). For some prey populations at carrying capacity, predation may be compensatory (the mortality would occur due to some other cause if not predation) rather than additive (the mortality would be additive to base-line mortality) and would not have an effect on a population level. However, if populations are small and below carrying capacity, predation can become additive mortality and may influence population levels.

Eberhardt et al. (2007) states that predation by wolves likely has a much lower overall impact on ungulate populations than does antlerless harvest by hunters. Wolves primarily prey on young of the year and older individuals beyond their prime, both of which have lower reproductive value, whereas antlerless removals by hunters are concentrated on adult females of prime age (Wright et al. 2006). Thus, wolf predation may have considerably less of an effect on reproductive rates and growth of populations. Eberhardt et al. (2007) also remarked that conservative harvests of females are needed to maintain ungulate populations exposed to hunting and predation by multiple species of large carnivores at or near carrying capacity. However, because of the wide variance in calf survival versus female survival, population growth may be better explained by calf survival measurements than female survival (Raithel et al. 2007). Thus, despite selection of calves by wolves relative to hunters (Wright et al. 2006), this predation may still drive calf survival and thus the population growth of an elk herd.

Potential native prey of Mexican wolves include elk, white-tailed and mule deer, and to a lesser extent, pronghorn (*Antilocapra americana*), javelina (*Tayassu tajacu*), and Rocky Mountain bighorn sheep (*Ovis canadensis*) (Parsons 1996). All observations of reintroduced Mexican wolves to date, however, suggest

that elk is their preferred prey species and constitutes the majority of their diet (Paquet et al. 2001, AMOC and IFT 2005, Reed et al. 2006, Merkle et al. 2009).

Current and predicted wolf impacts to ungulates

The 1996 FEIS concluded that, “while uncertainty exists, (reintroduced) wolves likely will not severely impact prey populations” in the BRWRA (USFWS 1996).

The Biological Assessment and Evaluation (BAE) completed by the USDA Forest Service in 2007 for the use of release and translocation sites in the Apache-Sitgreaves National Forests determined that while “wolves prey on elk, deer, and occasionally on small mammals such as squirrelsdue to the limited scope of the project, there would be insignificant and discountable impacts to these species”. Therefore, the Forest Service concluded “there would be no change in Forest-wide population trends or habitat trends due to this project” (USDA Forest Service 2007).

Both the AGFD and the NMDGF have determined that current levels of predation by wolves on elk within the BRWRA have not measurably decreased the overall elk population of the BRWRA. A report published in October of 2008 included the following: “AGFD has not detected any significant reduction in deer or elk population levels since wolves have been reintroduced. Recent elk surveys indicate that current calf recruitment levels are good, i.e., 39 calves for every 100 cows surveyed in Game Management Units (GMU) 1 and 27” (AMOC and IFT 2008). A white paper published by AGFD in 2012 included the following “An analysis comparing elk calf recruitment in Game Management Units (GMU) 1 and 27 in the BRWRA before (pre-1998) and after Mexican wolves were established in Arizona has not shown a negative impact on the number of elk calves that survive though early fall time periods. Likewise, an analysis comparing mule deer fawn recruitment in GMU 1 and 27 in the BRWRA before (pre-1998) and after Mexican wolves were established in Arizona has not shown a negative impact on the number of fawns that survive though early winter periods” (AGFD 2013). Cow:calf and doe:fawn ratios could be affected by both a decline in the number of cows or does as well as the level of reproduction, such that reproduction is remaining the same on a per animal basis but the absolute number of cows and does are decreasing. However, decline in other measurements (hunter success, number of tags, population counts) would be predicted to occur if this was the case. Neither AGFD nor NMDGF have observed these trends (AGFD 2013, NMDGF unpublished data).

A recent tribal perspectives report (2014) states that there have been no significant impacts to overall big game populations on the FAIR: “no significant impacts to overall big game population numbers (per yearly surveys, animals have been moved by wolves, but also rotate back to areas)” (MWRT Tribal Subgroup 2014).

At Statewide scales, wolves are expected to have little or no effect on the abundance of elk and deer across most of Arizona and New Mexico where elk and deer abundance is stable, or above population objectives. Predation on adult pronghorn is unlikely as pronghorn are an open grassland and prairie species, and have the ability to outrun wolves on flat open terrain. However, in the Trans-Pecos region of Texas, coyotes have been observed herding pronghorn to fences to facilitate capture. While there is a potential for wolves to kill pronghorn in this manner, wolves are unlikely to occupy the same grassland habitat as pronghorn throughout most areas of the MWEPA.

The abundance of elk, deer, and other ungulates could decline in localized areas where wolves become numerous. The presence of wolves could alter the habitat use, and hence local distributions of elk, deer, and pronghorn in some areas as they attempt to avoid direct interactions with wolves. As with other predators, wolf predation has the potential to threaten some small populations of prey. Examples of such populations potentially could include certain herds of reintroduced desert bighorn sheep and pronghorn in southern Arizona.

we predict that a less than significant indirect adverse effect to hunting activity would occur in Zones 1 and 2 of Alternative Three and in the BRWRA for the No Action (Alternative Four) Alternative. We predict no impact in Zone 3 of Alternative Three due to no or very low wolf presence.

Table 4-13. Mexican Wolf Effects on Elk Hunting in the BRWRA - Summary of Conclusions

Concerns	Conclusion	Rationale
Big Game Population Effects	No discernable effect	Lack of scientific literature finding correlation between wolves and elk numbers. Other literature suggests changes in herd sizes more likely influenced by hunter harvest management objectives and natural forage conditions.
Effects of Hunter Visitation to the Region	No discernable effect	Licensed hunters have increased since 2007.
Hunting Success Effects	No discernable effect	Overall hunting success have not declined in the BRWRA for elk.
Lost Income/Costs to Outfitters	No discernable effect	Licensed hunter numbers in the BRWRA have not decreased.
Regional Economic Effects	No discernable effect	Regional economic effects would only occur should there be a significant reduction in hunting-related expenditures.

4.4.3 Tourism

If Mexican wolf reintroduction results in increased forest visits, these visits in turn would generate an increase in visitation and visitor expenditures in the local communities surrounding the National Forests. Proponents of reintroduction believe that an increase in tourism and associated expenditures would benefit souvenir shops, gas stations, restaurants, and lodging facilities (IEc 2005). Many of these proponents note how the reintroduction of gray wolves into Yellowstone National Park resulted in a stimulus of visits specifically to see wolves.

Anecdotally, the 2012 Yellowstone Wolf Project Annual Report (Smith et. al., 2013) reported a minimum estimate of 27,500 people observing wolves and 17,978 visitor contacts by wolf project staff. Compared to the total number of Yellowstone Park visitors in 2012 (3.45 million), the percentage of visitors observing wolves constituted less than one percent.

It should be noted however, that there exists a significant difference in topography between Yellowstone National Park and the BRWRA. In Yellowstone, wolves have tended to locate in the Lamar Valley portion of the Park. In contrast to other areas of the Park, the Lamar Valley is characterized as having wide-open views making it easier to spot wolves from roadsides and turnouts. In contrast the BRWRA is characterized as forested, mountainous area with limited views for readily spotting wildlife.

Both the Apache-Sitgreaves and Gila National Forests require all commercial outfitters to obtain a permit in order to conduct their business on National Forest property. To date neither the Apache-Sitgreaves or Gila National Forests have received any applications from outfitters or guides to conduct Mexican wolf tourism-related operations (John Baumberger, Gila National Forest, pers. comm. 6/25/2014; Tom Olsen,



October 14, 2016

Celeste Cook, Rules and Policy Manager
Arizona Game & Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

Submitted via email to ccook@azgfd.gov and rulemaking@azgfd.gov and via certified mail to Celeste Cook, Rules and Policy Manager for the Arizona Game & fish Department, at the address above.

RE: Public Comment on Notice of Proposed Rulemaking Title 12. Natural Resources, Chapter 4. Game and Fish Commission, R12-4-402. Live Wildlife; Unlawful Acts

Dear Ms. Cook,

Please accept the following comments for consideration by the Arizona Game and Fish Commission ("Commission") and inclusion in the formal record regarding the Commission's Notice of Proposed Rulemaking Title 12. Natural Resources, Chapter 4. Game and Fish Commission, R12-4-402. Live Wildlife; Unlawful Acts ("Proposed Rule").¹

WildEarth Guardians is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. We operate an office in Tucson, Arizona, have one category of members, and have 201 members and over 4,000 supporters in the state. We also have over 168,000 members and supporters nationwide, many who visit Arizona. WildEarth Guardians has an organizational interest in the proper and lawful management of wildlife in Arizona and across the American West. Our members, staff, and board members have significant aesthetic, recreational, scientific, inspirational, educational, and other interests in the conservation, recovery and restoration of wildlife in Arizona.

Wildlands Network is a non-profit organization dedicated to ensuring a healthy future for nature and people in North America by scientifically and strategically supporting networks of people protecting networks of connected wildlands. Wildlands Network has staff in Tucson, Portal, and Flagstaff, Arizona, and the organization, staff, members, and board all have significant aesthetic, recreational, scientific, inspirational, educational, and other interests in the management, conservation, recovery and restoration of wildlife in Arizona. Wildlands Network has over 14,064

¹ Notice of Proposed Rulemaking Title 12. Natural Resources, Chapter 4. Game and Fish Commission, R12-4-402. Live Wildlife; Unlawful Acts, 22 Ariz. Admin. Reg. 2558 (Sept. 16, 2016)[hereinafter "Proposed Rule"] *available at* http://apps.azsos.gov/public_services/register/2016/38/contents.pdf; *also available at* <https://portal.azgfd.state.az.gov/PortallImages/files/rules/R12-4-402%20NPRM.pdf>.

members, with 284 members that reside in Arizona, all of which are general members, which is the only category of individual membership for Wildlands Network.

We appreciate your consideration of the following comments on the Proposed Rule, submitted on behalf of WildEarth Guardians and Wildlands Network. The views expressed are the official position of WildEarth Guardians. Likewise, the views expressed are the official position of Wildlands Network.

INTRODUCTION

The Commission's proposal seeks to amend Arizona's existing wildlife importation permitting law and is being proposed under the auspices of ensuring the Department's continuing control over management of the state's wildlife resources.² However, the Proposed Rule may have potentially devastating impacts upon recovery efforts for many of the state's most critically imperiled species of wildlife, including, for example, the recovery and reintroduction of federally protected Mexican wolves³ in Arizona.

Arizona's existing rule states, in pertinent part:

- A. An individual shall not perform any of the following activities with live wildlife^[4] unless authorized by this Chapter^[5] or A.R.S. Title 3, Chapter 16:
1. Import any live wildlife into the state;
 2. Export any live wildlife from the state;
 3. Conduct any of the following activities with live wildlife within the state:
 - a. Display,
 - b. Exhibit,

² "The Game and Fish Commission (Commission) proposes to amend its rules that authorize the release of wildlife in Arizona without a state permit, provided the release is accompanied by a federal permit. The Commission is concerned the current rule language could be construed as authorizing a federal agency to release or reintroduce threatened or endangered species in Arizona without first obtaining a state permit. The Commission intends to clarify this rule to make it inapplicable to federal agencies.... The Commission expects federal agencies to obtain state permits to release wildlife, and wants to eliminate any ambiguity in its regulations that a federal agency may bypass state permit requirements if federal law authorizes release of wildlife. Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposes to strengthen its rules to avoid any unintended outcome that a federal agency can avoid state permits before releasing or removing wildlife." Proposed Rule at 2559.

³ See Endangered Status for the Mexican Wolf, Dep't of the Interior, Fish & Wildlife Serv., 80 Fed. Reg. 2488 (Jan. 16, 2015) (listing the Mexican wolf as 'endangered' under the Endangered Species Act), available at http://www.fws.gov/southwest/es/mexicanwolf/pdf/Mx_wolf_listing_final_rule_to_OFR.pdf; Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, Dep't of the Interior, Fish & Wildlife Serv., 80 Fed. Reg. 2512 (Jan. 16, 2015) (promulgating rule to allow experimental Mexican wolf population to be reintroduced into Arizona and New Mexico), available at http://www.fws.gov/southwest/es/mexicanwolf/pdf/Mx_wolf_10t_final_rule_to_OFR.pdf.

⁴ ARIZ. REV. STAT. § 17-101(A)(24) ("Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn," which includes Mexican wolves).

⁵ See e.g. ARIZ. REV. STAT. § 17-306(A) ("No person shall import or transport into this state or sell, trade or release within this state or have in the person's possession any live wildlife except as authorized by the commission or as defined in title 3, chapter 16."); ARIZ. REV. STAT. § 17-306(B) ("It is unlawful for a person to knowingly and without lawful authority under state or federal law import and transport into this state and release within this state a species of wildlife that is listed as a threatened, endangered or candidate species under the endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 through 1544).").

- c. Give away,
 - d. Lease,
 - e. Offer for sale,
 - f. Possess,
 - g. Propagate,
 - h. Purchase,
 - i. Release,
 - j. Rent,
 - k. Sell,
 - l. Sell as live bait,
 - m. Stock,
 - n. Trade,
 - o. Transport; or
4. Kill any captive live wildlife.⁶

With this rulemaking, the Commission is considering adding the following provision to the existing language: “D. Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.”⁷

The Proposed Rule thereby seeks to codify in state law a requirement that federal agencies, such as the U.S. Fish and Wildlife Service (“Service”), and their employees, must obtain Commission approval via the wildlife permitting requirements of the Arizona Administrative Code and Arizona Revised Statutes before carrying out their duties under federal laws, such as the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.* The Proposed Rule’s approach is legally deficient. First, the Proposed Rule violates the doctrine of preemption. Second, the Commission’s reliance on New Mexico’s analogous approach to requiring federal agencies to obtain state wildlife permits is in error. Finally, we note that the Commission has violated the Arizona Administrative Procedure Act (“APA”) with regards to the promulgation of the Proposed Rule, and that the Commission’s actions therefore cannot serve as the foundation for the promulgation of a valid rule. Accordingly, we request the Commission withdraw the Proposed Rule.

I. Preemption

The Proposed Rule would interfere with the Service’s ability to carry out its statutory responsibilities under the ESA. As a result, the Proposed Rule violates our nation’s foundational legal doctrine of preemption.

A. Overview of Federal Preemptive Authority

The doctrine of preemption⁸ is a longstanding legal concept rooted in the Supremacy Clause of the U.S. Constitution, which states that “[t]his Constitution, and the laws of the United States . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything

⁶ ARIZ. ADMIN. CODE § R12-4-402 (Dec. 31, 2014).

⁷ Proposed Rule ARIZ. ADMIN. CODE § 12-4-402 *available at* <https://portal.azgfd.stagingaz.gov/PortalImages/files/rules/R12-4-402%20NPRM.pdf>.

⁸ Preemption is defined as “[t]he principle (derived from the Supremacy Clause) that a federal law can supersede or supplant any inconsistent state law or regulation.” Black’s Law Dictionary (9th ed. 2013).

in the Constitution or laws of any State to the contrary notwithstanding.”⁹ The Supreme Court has interpreted this provision to mean that “the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.”¹⁰

A federal law may preempt state law in three ways.¹¹ First, Congress may expressly preempt state law by enacting a federal law that “explicitly define[s] the extent to which it intends to preempt state law.”¹² Second, “Congress may indicate an intent to occupy an entire field of regulation, in which the States must leave all regulatory activity in that area to the Federal Government.”¹³ Third, “if Congress has not displaced state regulation entirely, it may nonetheless preempt state law to the extent that the state law actually conflicts with federal law.”¹⁴ Such a conflict may arise “when compliance with both state and federal law is impossible,” or “when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”¹⁵

Of primary relevance to the Proposed Rule at issue here are the first and third methods of preemption. Although wildlife management has traditionally been a subject of great state importance, the U.S. Court of Appeals for the Fourth Circuit has noted that “[s]tate control over wildlife . . . is circumscribed by federal regulatory power.”¹⁶ Thus, a state law that is either (1) expressly preempted by a federal statute, (2) in direct conflict with a federal statute, or (3) prohibitive of the accomplishment of a federally mandated objective, must fall to the “supreme law of the land,” as implemented by the federal government.

B. The ESA’s Express Preemption Provision

While the ESA does not prohibit state regulation in the importation of wildlife outright, the ESA does directly preempt state laws and regulations addressing importation or exportation of ESA-listed species that conflict with the ESA.¹⁷ Section 1535(f) states:

*Any state law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this chapter or by any regulation which implements this chapter, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter.*¹⁸

⁹ U.S. Const. Art. VI, Cl. 2.

¹⁰ *McCulloch v. Maryland*, 17 U.S. 316, 436 (1819).

¹¹ See e.g. *Michigan Canners & Freezers Ass’n, Inc. v. Ag. Mktg. & Bargaining Bd.*, 467 U.S. 461, 469 (1984).

¹² *Id.* (citing e.g., *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95–96 (1983)).

¹³ *Id.* (citing e.g., *Fidelity Fed. Savings & Loan Ass’n v. De la Cuesta*, 458 U.S. 141, 153 (1982)).

¹⁴ *Id.*

¹⁵ *Id.* (internal citations and quotations omitted).

¹⁶ *Gibbs v. Babbitt*, 214 F.3d 483, 499 (4th Cir. 2000) (“[T]he Supreme Court recently reiterated that ‘although States have important interests in regulating wildlife and natural resources within their borders, this authority is shared with the Federal Government when the Federal Government exercises one of its enumerated constitutional powers.’” (quoting *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 204 (1999))).

¹⁷ *Man Hing Ivory and Imports, Inc. v. Deukmejian*, 702 F.2d 760, 763 (9th Cir. 1983).

¹⁸ Endangered Species Act, 16 U.S.C. § 1535(f) (2012) (emphasis added).

The U.S. Court of Appeals for the Ninth Circuit has interpreted this provision as not entirely forbidding state wildlife statutes, “[r]ather, it allows full implementation of [state law] so long as the [state] statute does not prohibit what the federal statute or its implementing regulations permit.”¹⁹

C. ESA § 1535(f) as Applied to Potential Commission Permit Denials and the Application of the Proposed Rule’s Amendment Adding Section (D)

The Commission must recognize that ESA section 1535(f) prohibits, on preemption grounds, what the Proposed Rule attempts to achieve. First, the ESA’s express preemption provision preempts the Proposed Rule as written. Second, the provision preempts potential Commission permit denials against federal agencies, such as the Service, under the Proposed Rule as applied.

1. The ESA Preempts the Proposed Rule’s Addition of Section (D)

The ESA preempts, and voids, any state law or regulation concerning the importation of endangered species that prohibits that which is authorized under the Act.²⁰ Section 1539(j) authorizes the “release (and related transportation) of any population . . . of an endangered species . . . if the Secretary [of the Department of the Interior] determines that such release will further the conservation of the species.”²¹ The Secretary determined that the release of the endangered Mexican wolf²² under the experimental population provision of the ESA will further the conservation and recovery of the species.²³ Thus, if a state law or regulation prohibits the importation of endangered Mexican wolves into a state, and thus interferes with the release of experimental Mexican wolf populations, the ESA will supersede that state regulation.

The Proposed Rule adds a provision to the existing Arizona Administrative Code section R12-4-402 clarifying that “[p]erforming activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.”²⁴ This revision is in direct conflict with section 1535(f) of the ESA. The Proposed Rule, as applied in the context of Mexican wolves, regards the importation of an endangered species and could prohibit or hamper the Mexican wolf reintroduction program authorized by section 1539(j) and the Mexican wolf experimental population rule. “It is well settled that ‘when Congress legislated within the scope of its constitutionally granted powers, that legislation may displace state law.’”²⁵ “The plain meaning of [the ESA’s] preemption provision is that the ESA . . . displaces those state laws regulating ‘the importation or exportation of, or interstate or foreign commerce in’ endangered species.”²⁶ The Ninth Circuit Court of Appeals has held the ESA preempts a state law where it would prohibit a

¹⁹ *Man Hing Ivory and Imports, Inc.*, 702 F.2d at 763.

²⁰ 16 U.S.C. § 1535(f).

²¹ 16 U.S.C. § 1539(j).

²² 80 Fed. Reg. 2488 (listing the Mexican wolf as endangered under the ESA).

²³ 80 Fed. Reg. 2512 (promulgating rule to allow experimental Mexican wolf population to be reintroduced into Arizona and New Mexico).

²⁴ Proposed Rule AAC R12-4-402(D).

²⁵ *Pinto v. Connecticut Dep’t of Env’tl. Prot.*, 1988 WL 47899, *8 (D. Conn. 1988) (quoting *Wardair Canada, Inc. v. Florida Dep’t of Revenue*, 477 U.S. 1, 6 (1986)).

²⁶ *Id.* at *10.

federally authorized activity being carried out in accordance with the ESA.²⁷ Congress made its preemptive authority clear in the ESA, and a state may not impose regulations to supersede a federal program concerning endangered species.²⁸

Thus, the Proposed Rule is preempted at the outset considering the plain language of ESA section 1535(f).

2. *The ESA Preempts Potential Commission Permit Denials Rendered in Accordance with the Proposed Rule*

In addition to the added language of the Proposed Rule being preempted by the ESA in its own right, the Proposed Rule is preempted by the ESA as applied as well. For example, if the Commission were to use the Proposed Rule as justification to prohibit the importation of endangered species authorized under the ESA's experimental population rule, the State would effectively be directly impeding an authorized federal program. In the context of Mexican wolves, for example, this would result in the direct inhibition of a federally approved reintroduction program. A state law must fall where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."²⁹ As such, any future Commission permit denials under the Proposed Rule would be expressly preempted by section 1535(f) because they would effectively (1) prohibit that which is authorized under the Act,³⁰ and (2) serve to impede a federally mandated program.³¹

The Department of the Interior's ("Interior") "Fish and Wildlife Policy," which describes Interior's approach to state-federal relationships with respect to all wildlife laws (including the ESA) for all Interior agencies (including the Service), is not to the contrary. 43 C.F.R. Part 24. This policy recognizes that "Congress has charged the Secretary of the Interior with responsibilities for the management of certain fish and wildlife resources, e.g., endangered and threatened species." *Id.* § 24.3(c). However, "Federal authority exists for specified purposes while State authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law." *Id.* § 24.1(a). Importantly, though the policy states that, in carrying out "programs involving reintroduction of fish and wildlife," the Service "shall" "[c]onsult with the States and comply with State permit requirements in connection with [reintroduction programs]," the policy explicitly provides that the Secretary of the Interior need not comply with state permit requirements "in instances where [she] determines that such compliance would prevent [her] from carrying out [her] statutory responsibilities." *Id.* § 24.4(i)(5)(i). As a result, though this policy shows a preference for complying with state permits, that preference is inapplicable where it

²⁷ *Man Hing Ivory and Imports, Inc.*, 702 F.2d at 764 ("The pertinent language of 6(f) states, '[a]ny state law . . . is void to the extent that it may effectively . . . (2) prohibit what is authorized pursuant to an exemption or permit provided for . . . in any regulation which implements this chapter.' 16 U.S.C. § 1535(f)(1976). This language, together with the provisions of 50 C.F.R. 17.40(e), preclude California's enforcement of [the CA law at issue] where it would prohibit federally authorized trade in African elephant products. *Pacific Legal Found. v. State Energy Res. Council*, 659 F.2d 903, 919 (9th Cir. 1981)(state statute invalid where it actually conflicts with or impedes full implementation of a Congressional enactment)).

²⁸ *Man Hing Ivory and Imports, Inc.*, 702 F.2d at 765 ("To read the condition more broadly . . . would open the way for states to impose regulation to supersede federal regulation of trade in endangered species or their export or interstate commerce, a form of state preemption clearly contrary to the intent of Congress in passing the [ESA].").

²⁹ *Pacific Legal Found.*, 659 F.2d at 919 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (internal quotations omitted)).

³⁰ 16 U.S.C. § 1535(f).

³¹ *Man Hing Ivory and Imports, Inc.*, 702 F.2d at 764; *Pacific Legal Found.*, 659 F.2d at 919.

conflicts with the federal law at issue. Because the Proposed Rule as written would conflict with the ESA, there is no preference, and certainly no requirement, that the Service comply with state permitting requirements.

Accordingly, the Commission should withdraw the Proposed Rule on preemption grounds.

II. Error to Follow in New Mexico's Misguided Footsteps

The Commission states that the impetus for the Proposed Rule is the ongoing litigation concerning analogous wildlife importation permitting regulations applied to the Service's Mexican wolf reintroduction and recovery program in the State of New Mexico.³² However, the Commission's reliance on New Mexico's intermediary success in obtaining a preliminary injunction in that case is in error.³³ Notably, the decision is on appeal to the U.S. Court of Appeals for the Tenth Circuit. Additionally, the Service and intervenors in the case (including WildEarth Guardians) have compelling arguments for why the preliminary injunction was rendered in error. We caution the Commission to avoid following in New Mexico's footsteps in this regard, as New Mexico is unlikely to prevail on the merits.

First, as discussed above, the Commission cannot ignore that Interior's policy providing a preference for compliance with state permitting requirements contains an important exception for instances where compliance would "prevent" the Interior agencies from "carrying out" their "statutory responsibilities."³⁴ The ESA requires the Service to recover Mexican wolves. However, if the Commission denies the Service state wildlife permits under the Proposed Rule, the State would effectively be preventing the Service from carrying out the very actions the Service has determined are essential to recover the Mexican wolf.³⁵ Among other things, wolf releases in Arizona are necessary in order to improve the dwindling genetic diversity in the wild population. Without

³² Proposed Rule at 2559 ("The issue of state permits has become more significant in response to a recent lawsuit in New Mexico where the New Mexico Game and Fish Department obtained a preliminary injunction prohibiting the Service from releasing Mexican wolves in New Mexico without first obtaining state permits. Previously, the Service obtained permits in New Mexico and Arizona to release wolves. The situation in New Mexico, however, many indicate a shift in the federal position on state permit, and Arizona Game and Fish has also found agencies other than the Service refusing to cooperate with the State prior to the reintroducing or removing wildlife. The Commission expects federal agencies to obtain state permits to release wildlife, and wants to eliminate any ambiguity in its regulations that a federal agency may bypass state permit requirements if federal law authorizes release of wildlife. Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposes to strengthen its rules to avoid any unintended outcome that a federal agency can avoid state permits before releasing or removing wildlife. The rule is amended to clearly state that a permit or license issued by the Department or the Department of Agriculture is required when conducting any activity listed under R12-4-402(A) with live wildlife to ensure the Department maintains sovereignty over Arizona's wildlife and wildlife habitat.").

³³ See *New Mexico Dep't of Game & Fish v. U.S. Dep't of the Interior*, No. CV 16-00462 WJ/KBM, Mem. Op. and Order Granting Petr's Mot. for Prelim. Inj. and Order for Proposed Order of Inj. (D.N.M. June 6, 2016) (granting New Mexico preliminary injunction obstructing the Service from releasing Mexican wolves absent compliance with state permitting requirements).

³⁴ 43 C.F.R. § 24.4(i)(5)(i).

³⁵ See 80 Fed. Reg. at 2515 (noting that successful recovery of the Mexican wolf depends entirely on the implementation of a successful reintroduction program and that the Service has "focused our recovery efforts on the establishment of Mexican wolves as an experimental population . . . in Arizona and New Mexico.").

additional successful releases, the effects of inbreeding will increase and the population may not be able to survive.³⁶

Second, and as also discussed above, the Commission cannot ignore the plain language of the ESA in an attempt to circumscribe federal prerogatives here. In carrying out its duties under the ESA, the Service is charged with cooperating with the states to the “maximum extent practicable.”³⁷ The ESA does not allow states to exercise veto authority over the Service’s implementation of the Act. Interior’s “Fish and Wildlife Policy” is not to the contrary, and, even if it ostensibly were, 43 C.F.R. §24.4(i)(5)(i) must be read consistently with the provisions of the ESA and its implementing regulations, which make this lack of a state veto clear.³⁸ As such, the Proposed Rule is an inappropriate attempt to exercise power over a federal agency that the State simply does not have.

In short, the Commission’s reliance on New Mexico’s recent attempts to obstruct the federal government from releasing critically imperiled Mexican wolves into that state in order to justify the Proposed Rule is in error and is highly vulnerable to a legal challenge.

III. Violations of the APA

As discussed above, the Proposed Rule is in excess of the State’s authority to act as a matter of federal law. However, it is also in violation of the APA. The APA “distinguishes between claims that a rule lacks conformity with an agency’s statutory authority and claims that an agency failed to follow required procedures when promulgating a rule.” *Samaritan Health Sys. v. Ariz. Health Care Cost Containment Sys. Admin.*, 11 P.3d 1072, 1076 (Ariz. Ct. App. 2000). While APA section 41–1034 provides for the right to seek declaratory judgments regarding the substantive legal validity of rules, APA section 41–1030(A) provides that a rule is invalid unless it is promulgated in substantial compliance with the procedures required by the APA. *See id.*; *see also, e.g.*, ARIZ. REV. STAT. § 41-1034; ARIZ. REV. STAT. § 41-1030(A); *Ariz. State Univ. ex rel. Ariz. Bd. of Regents v. Ariz. State Ret. Sys.*, 349 P.3d 220, 227–28 (Ariz. Ct. App. 2015). The Proposed Rule represents both types of violations because it is in excess of the Commission’s authority and because it is not being promulgated in compliance with the procedures required by the APA.

First, for the same reasons that the Proposed Rule is in violation of the federal prohibition against preemption, it is also in excess of the Commission’s authority to promulgate this rule. This indicates that the Proposed Rule is also in violation of the substantive provisions of the APA barring agencies from engaging in rulemaking outside the legislature’s grant of authority. *See* ARIZ. REV. STAT. § 41-1030(C) (forbidding agencies from promulgating rules “under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute authorizing the rule.”); ARIZ. REV. STAT. § 41-1001.01(A)(8) (stating in the “Regulatory bill of rights” section of the APA that a person “[i]s entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute.”). The legislature could not, and in fact did not, provide the Commission with a grant of authority that

³⁶ *See* 80 Fed. Reg. at 2506 (concluding that if the Service does not take additional management actions, such as releasing more wolves into the wild, the “inbreeding will accumulate” and genetic diversity will continue to decline more quickly than in the captive population).

³⁷ 15 U.S.C. § 1535(a).

³⁸ *See Hamm v. Ameriquest Mortgage Co.*, 506 F. 3d 525, 530 (7th Cir. 2007) (“[a] statute and its implementing regulations should be read as a whole, and, where possible, afforded a harmonious interpretation.” (citation omitted)).

would allow it to preempt the relevant provisions of the ESA. Therefore, in promulgating a rule that does just that, the Commission is acting in excess of its authority. As a result, even if the Commission does finalize the Proposed Rule, the Governor's Regulatory Review Council will have to strike the Proposed Rule down because it violates the Supremacy Clause. *See* ARIZ. REV. STAT. § 41-1052(D)(9) ("The council shall not approve the rule unless: ... The rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.").

With regard to the procedural violations, the Commission did not adequately provide published notice of "[t]he time during which written submissions may be made" in the Notice of Rulemaking Docket Opening. *See* ARIZ. REV. STAT. § 41-1021(b)(5); *see also* ARIZ. ADMIN. CODE § R1-1-205(B)(7) (requiring that the notice of rulemaking docket opening provide "[t]he time-frame the agency will accept written comments."). The Notice of Rulemaking Docket Opening only provides that comments will be accepted "Monday through Friday from 8:00 a.m. until 5:00 p.m." 22 Ariz. Admin. Reg. 2569 (Sept. 16, 2016). This does not provide the date by which comments must be received, a crucial piece of information if individuals wish to have their comments considered by the Commission. This failure is a serious violation of the terms of the APA that could not be cured by the Proposed Rule, but we also point out that this information was not included in the Proposed Rule either. Therefore, the Commission left interested parties entirely unaware of the period during which they could provide comments on the Proposed Rule in violation of both the text and the purpose of the APA. *See* ARIZ. REV. STAT. § 41-1001.01 (outlining the APA's "regulatory bill of rights" that provides any person with the right to provide "written comments or testimony on proposed rules to an agency [and have] the agency adequately address those comments."); *Ariz. Dep't of Revenue v. Care Computer Sys., Inc.*, 4 P.3d 469, 475-76 (N.M. Ct. App. 2000) (discussing public involvement purpose of the APA); *Carondelet Health Servs., Inc. v. Ariz. Health Care Cost Containment Sys. Admin.*, 895 P.2d 133, 138, 141 (N.M. Ct. App. 1994) (same). The minimum time period for comments from the APA cannot cure this deficiency as it only provides a minimum time, "at least thirty days," and not an automatic, or even a presumptive, time limit. ARIZ. REV. STAT. § 41-1023(B); ARIZ. REV. STAT. § 41-1022(D). Furthermore, reading the "at least thirty days" language as obviating the need to provide a specific time period in the Notice of Rulemaking Docket Opening would read the express requirement that the time period be included in the Notice of Rulemaking Docket Opening out of both Arizona Revised Statutes section 41-1021(b)(5) and Arizona Administrative Code section R1-1-205(B)(7). Therefore, the failure to include a time by which all comments must be received is a serious violation of the APA.

As a result of these shortcomings, both the procedure used in the promulgation of the Proposed Rule and its substance are in violation of the APA, and the Proposed Rule is illegal for these reasons as well.

CONCLUSION

In sum, we respectfully urge the Commission to withdraw the Proposed Rule and allow essential wildlife recovery programs to proceed in the State.

Sincerely,

Kelly E. Nokes

Kelly Nokes, JD
Carnivore Campaign Lead
WildEarth Guardians
knokes@wildearthguardians.org
(406) 209-9545

/s/ Stuart Wilcox
Staff Attorney
WildEarth Guardians
swilcox@wildearthguardians.org
(720) 331-0385

/s/ Katie Davis
Public Lands Advocate
Wildlands Network
k.davis@wildlandsnetwork.org
(801) 560-2414



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Post Office Box 1306
Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/RD/064314

OCT 14 2016

Celeste Cook, Rules and Policy Manager
Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, Arizona 85086

Dear Ms. Cook:

The U.S. Fish and Wildlife Service (Service) appreciates the continued partnership of the Arizona Game and Fish Department in the conservation and recovery of a number of our trust resources. For example, our agencies have a long history of working together on migratory birds, fisheries, National Wildlife Refuges, NRDA, and Mexican wolf recovery, and we expect to continue this collaborative relationship into the future. We are fortunate in our association with the Arizona Game and Fish Department in that when we have had differences of opinion regarding resource management issues, we have collaborated to find amiable solutions to our differences.

The proposed rule, R12-4-402, that is being considered by the Arizona Game and Fish Commission would amend the current regulation which authorizes a federal agency to release wildlife in the State of Arizona without a state permit, provided the release is accompanied by a federal permit. We would find it difficult to support the proposed rule change specifically because the proposed change could lead to limitations on the timing and number of releases that may be necessary for the management and ultimate recovery of the Mexican wolf. The Service has the statutory responsibility to recover the Mexican wolf pursuant to the ESA and the regulations for the Nonessential Experimental Population of the Mexican wolf (80 Federal Register 2512, Jan. 16, 2015).

We believe the Service and the Department's work regarding recovery of Mexican wolves, as well as other species, has been exemplary without the proposed changes contemplated in R12040402. We fully intend to continue our praiseworthy State/Federal collaboration on natural resource management issues. However, we feel that we cannot support the proposed rule as drafted to the extent that it may limit our Federal statutory responsibilities. We appreciate the opportunity to comment and look forward to continuing our collaborative working relationship with you. If you have any questions please feel free to call me at 505-248-6282.

Sincerely,



Regional Director



United States Department of the Interior

OFFICE OF THE SOLICITOR

Santa Fe Field Office
1100 Old Santa Fe Trail
Santa Fe, NM 87505
Telephone: (505) 988-6721
Facsimile: (505) 988-6217

December 1, 2016

Celeste Cook, Rules and Policy Manager
Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, Arizona 85086

Dear Ms. Cook:

On behalf of the U.S. Fish and Wildlife Service ("Service"), this office offers this supplement to the Service's October 14, 2016 comments on proposed rule R12-4-402. R12-4-402 would amend the current regulation which authorizes a federal agency to release wildlife in Arizona without a state permit provided the release is accompanied by a federal permit.

The amendment would "clearly state that a permit or license issued by the Department [Arizona Game and Fish Department] or the Department of Agriculture is required when conducting any activity listed under R12-4-402(A) with live wildlife to ensure the Department maintains sovereignty over Arizona's wildlife and wildlife habitat." We wish to clarify that the Service has authority, pursuant to Federal statutes and regulations, to engage in all activities regarding the reintroduction of the Mexican wolf in Arizona. Pursuant to this authority, the Service may import, export, hold and transfer Mexican wolves in the State of Arizona; and release Mexican wolves on federal lands in Arizona without a State permit. These actions are intended to fulfill the Service's statutory responsibility to recover the Mexican wolf pursuant to the Endangered Species Act (ESA) and the regulations for the Nonessential Experimental Population of the Mexican Wolf (80 Federal Register 2512, Jan. 16, 2015).

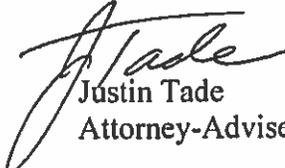
DOI's policy on state-federal relations (43 C.F.R. 24.4(i)(5)(i)) contemplates that the FWS will comply with State permit requirements when "carrying out research programs involving the taking or possession of fish and wildlife or programs involving reintroduction of fish and wildlife," "except in instances where the Secretary of the Interior determines that such compliance would prevent him from carrying out his statutory responsibilities." This policy strikes a balance, recognizing a State's broad trustee and police powers over wildlife within its borders while at the same time reflecting the fundamental principle that the federal government retains ultimate responsibility for management of wildlife on public lands. Further, the Endangered Species Act (ESA) confers on the federal government wildlife management

responsibilities for listed species that preempt contrary state regulation. Of course, once a species is delisted, management responsibilities return to the States except where federal law provides federal agencies responsibility for management on public lands.

The Service will not be able to carry out its responsibilities under the ESA if it is precluded from taking actions to promote the conservation of Mexican wolves because Arizona has not issued a permit. Based on the best available scientific information, the Service needs to improve the genetic diversity and reduce the kinship of the Mexican wolves in the wild to achieve recovery. The Service is unable to address these genetic concerns without the ability to release wolves from captivity in the Mexican Wolf Experimental Area in both New Mexico and Arizona. If R12-4-402 is passed, and the Service is denied a permit from Arizona pursuant to R12-4-402, we believe the Service could continue to move forward with wolf recovery efforts.

Thank you for your consideration of these comments. The Service appreciates the working relationship it enjoys with the Arizona Game and Fish Department and looks forward to working together to continue promoting the conservation of Mexican wolves in Arizona.

Sincerely,



Justin Tade
Attorney-Adviser



Wolfwatcher

@wolfwatcher.org

Home

About

Shop our Store

Photos

FundRazr

Subscribe

Videos

Pinterest

Likes

Events

Posts

Join us on Twitter

Poll

Notes

Help Freely

Like Message Share More



Wolfwatcher

Yesterday at 9:03am

Action Alert: Arizona Game and Fish Propose Rule Change-Makes Recovery For Mexican Wolf Harder

<http://bit.ly/2dVpmQs>

The Arizona Game and Fish Commission has proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The change in the rule requires the USFWS the get states permission before releasing any more wolves into the wild.

It would become harder for the lobos to recover and the US Fish and Wildlife will have a harder job to facilitate the release of the wolves to increase the numbers of wild wolves.

Politics is being used to drive the Mexican lobo nearer to extinction.

ACT NOW,

Send a written comment on R12-4-402 before 11:59 p.m. CDT, October 16, 2016 by email

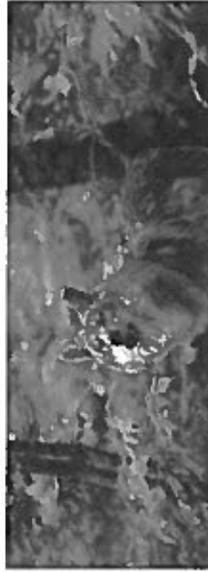
Arizona has decided to step forward and follow New Mexico's actions.

Release of wolves is critical to their recovery.

The message that needs to be sent to Arizona it's necessary to

use scientific information not the constant political meddling.

Photo: Endangered Wolf Center



News - Events

- Wolf News
- Events Calendar
- Special Events
- Echo - The Grand Canyon Wolf

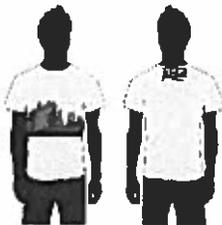
Take Action

Southwest News & Events



Click the image for more news from MountainParks.org

Lobo Marketplace!



Paseo del Lobo Shirts

October 16th



The Arizona Game and Fish Commission has proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require the U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover

lobos.

Act Now!

Send a written comment on R12-4-402 before 11:59 p.m. CDT, October 16, 2016 by email: rulemaking@azgfd.gov

Plan to give oral testimony at the Commission meeting in Phoenix on December 2, 2016
8 a.m. to 5 p.m., 5000 W. Carefree Highway, Phoenix, AZ

You may also provide oral testimony via live telecast from one of the AZ Game and Fish Department regional offices on the day of the meeting.

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Arizona Game and Fish Commission that what the lobos need is science-based recovery, not political meddling.

Don't let politics slow wolf releases, please urge the Commission to abandon this rule change.

Search...

News Archive

2010 News (105)

2015 News (210)

2014 News (179)

2013 News (313)

2012 News (250)

2011 News (245)

2010 News (190)

2009 News (52)

What You Can Do

Lobo Activist Toolkit

Join Our Email List

E-Mail Officials

Write Letters to Editors

Get Involved With a Group Near You

[Return to List](#)

Action Alert: Arizona Game and Fish Commission Proposed Rule Change Threatens Mexican Wolf Recovery

Comments needed by October 15, 2016

Comments due soon to Arizona Game and Fish Commission!

The Arizona Game and Fish Commission has proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require the U.S. Fish and Wildlife Service to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos.

Don't let politics slow wolf releases, please urge the Commission to abandon this rule change.



Act Now!

Send a written comment on R12-4-402 before 11:59 p.m. CDT, October 16, 2016 by email or mail to:
 Arizona Game & Fish Attn DORR, 5000 W. Carefree Hwy, Phoenix, AZ, 85086

**Plan to give oral testimony at the Commission meeting in Phoenix on December 2, 2016
 8 a.m. to 5 p.m., 5000 W. Carefree Highway, Phoenix, AZ**

The U.S. Fish and Wildlife Service is required by federal law, under the Endangered Species Act, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted lobo recovery pending a court challenge to their

LOBOS OF THE SOUTHWEST

News and Events

In the News: Reader View - protecting wildlife diversity is essential
Santa Fe New Mexican - October 8, 2019 - Your letters are needed

**Action Alert: Arizona Game and Fish Commission Proposed Rule Change
Threatens Mexican Wolf Recovery**
Comments needed by October 10, 2018

In the News: Biologists involved for rare Mexican gray wolves
Abolique Journal - October 4, 2018

**Action Alert: Stop Anti-Wolf Legislation - Take Action to Keep Wolves
Protected**
Over a dozen bills and riders currently in Congress will harm wolves

In the News: Wildlife foundation takes sides in Mexican gray wolf lawsuit
Santa Fe New Mexican - September 24, 2018 - Your Letters are Needed

In the News: America's Wildlife Party Count!
New York Times - September 17, 2018

[More News >](#)

[Home](#) | [News](#) | [About](#) | [Act Now](#) | [Donate](#)

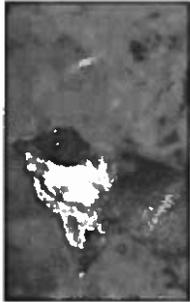
[About Wolves](#) | [Brush With Extinction](#) | [The Wild Blue Yonder](#) | [Meet an Mexican Wolves](#)



Arizona Zoological Society

Meet the Mexican Gray Wolf

Act Now! Speak Up For Endangered Mexican Gray Wolves!



The Arizona Game and Fish Commission has proposed a new rule change that would further threaten the Mexican gray wolf. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing any additional wolves into the wild. Scientists have recommended that more wolves be released sooner, rather than later, to address genetic fitness of the wolf population in the wild. The state has already erected a number of barriers to wolf recovery; this would be yet another hurdle for the species and the federal government.

The U.S. Fish and Wildlife Service is required by law to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule is another example of a state hostile to wolf recovery using politics to drive the lobo to extinction. Arizona has been emboldened by similar rules in New Mexico that have temporarily halted wolf recovery pending a court challenge to their legality.

We need to send a clear message to the Arizona Game and Fish Commission that Mexican gray wolves need science-based recovery, not political meddling!

Your Information

Title First Name Last Name

Street Address City

State Zip

Email Phone

By taking action, you will also receive periodic communications from the Sierra Club. You can unsubscribe at any time.

Your Message

Subject

Please Oppose R12-4-402 - Reject impediments to endangered species recovery

Message

I urge the Arizona Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into Arizona.

Send My Message

From: [KnowWho Services](#)
To: [Rulemaking](#)
Subject: Please Oppose R12-4-402 - Reject impediments to endangered species recovery
Date: Thursday, October 13, 2016 1:32:01 PM

Dear Celeste Cook,

I urge the Arizona Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population.

What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Please reject this proposed rule. Thank you.

Sincerely,

Noel Crim
13249 W Keystone Dr
Sun City West, AZ 85375
chednlc@gmail.com
6237489745

! ☆ □ @	From	Subject	Received	Size	Categories	▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼
📧	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 10/13/2016...	4 KB		▼

From: [Sandy Bahr, Sierra Club Grand Canyon Chapter](#)
To: [Celeste Cook](#)
Subject: Canyon Echoes - Now is the Time to Get Involved
Date: Thursday, December 01, 2016 7:02:18 AM



***"Nobody made a bigger mistake than he who did nothing because he could do only a little."
~Edmund Burke***

In this issue:

- [Take Action! Arizona's Wolves Need You](#)
- [Take Action! Support Solar in Arizona](#)
- [Get Involved! Volunteer Lobby/Advocacy Workshop](#)
- [Looking for More Ways to Engage with Sierra Club?](#)
- [Check Out a Local Gathering](#)
- [Please Support Our Work!](#)

Wolves are essential!



Take Action: Arizona's Wolves Need You!

The State of Arizona is attempting to erect yet another barrier to recovery of Mexican gray wolves. The Arizona Game and Fish Commission has proposed a rule change that would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into the wild or releasing any endangered species, although wolves are clearly the target.

Similar rules were implemented in New Mexico, and they have temporarily halted wolf recovery pending a court challenge to their legality. The U.S. Fish and Wildlife Service is required by law to recover Mexican gray wolves, and scientists have determined that further releases are needed to improve genetic diversity in the wild population.

Please give oral testimony at the upcoming Commission meeting!

Arizona Game and Fish Commission Meeting

Saturday, December 3, 8 a.m.

AGFD HQ

5000 W. Carefree Hwy, Phoenix ([map](#))



Not able to make the meeting? Please send a message before December 3 to the Arizona Game and Fish Commission.

You can learn more online or by contacting Sandy Bahr at (602) 253-8633 or sandy.bahr@sierraclub.org.

[\(back to top\)](#)

Take Action! Support Solar in Arizona

Solar energy is valuable. You know it. We know it. Unfortunately, Arizona utilities and some members of the Arizona Corporation Commission just don't get it.

The Arizona Corporation Commission (ACC), the entity responsible for overseeing regulated utilities such as Arizona Public Service (APS) and Tucson Electric Power (TEP), is seeking public input on rooftop solar programs to help inform how it will move forward regarding this important resource. Arizona has not been very friendly toward rooftop solar lately -- in fact, it's been downright hostile. We need your help to make policymakers know just how valuable solar is for our state.

[Please join us in speaking up for solar! Write a message to the ACC encouraging it to evaluate the true benefits of solar in its decision-making.](#)

We also strongly encourage you to participate in the ACC's public meeting on this issue on December 19 at 10 a.m. at 1200 W. Washington St., Phoenix ([map](#)).

For more information or talking points, contact Sandy Bahr at (602) 253-8633 or sandy.bahr@sierraclub.org.

[Send a message today!](#)

Tiffany_Solar_300px



[\(back to top\)](#)



Get Involved! Volunteer Lobby/Advocacy Workshop

Make a difference at the Arizona Legislature and more!

Are you ready to make a difference? Interested in helping to protect Arizona's air, land, and water? Promote clean energy? Please join us for this informative and fun workshop. Arizona needs more advocates who are willing to meet with legislators, city council people, county supervisors, and other

officials who have enormous impact on our future and on what kind of legacy we leave for the next generation.

The workshop runs two hours and covers the basics on the Arizona Legislature, how a bill becomes a law, how a bill really becomes a law, and Dos and Don'ts of Advocacy at the Legislature. We will also have light refreshments and drinks as we know this is during dinner time for many.

Volunteer Lobby/Advocacy Workshop

Tuesday, December 20

6-8 p.m.

Tempe Transit Center, Don Cassano Room
200 E. 5th St., Tempe ([map](#))

RSVP or learn more by contacting Sandy Bahr at (602) 253-8633 or sandy.bahr@sierraclub.org.

[\(back to top\)](#)

Looking for More Ways to Engage with Sierra Club?

Are you looking for more ways to get involved with Sierra Club and protection of Arizona's environment? Opportunities abound for you to learn more while making a difference for Arizona's people and environment!

Opportunities range from helping with field projects, assisting in the office, joining us at the Arizona Legislature or Arizona Corporation Commission, affecting policy decisions, and much more! We encourage you to get involved, whether it's for a single project or for a long-term experience. [You can see examples of volunteer opportunities online.](#)

[Please check out our calendar to learn about upcoming events.](#)

Learn more by contacting Sandy Bahr at (602) 253-8633 or sandy.bahr@sierraclub.org.

[\(back to top\)](#)

Volunteer_Picnic_2016_slb



Check Out a Local Gathering

Phoenix

Tonto For Future Generations

Thursday, December 15, 6:30 p.m.

Join us to learn about Tonto For Future Generations, which seems to diminish negative impacts of recreational uses on the forest's wildlife. For information, please [visit our MeetUp page](#) or contact Mike Brady at (480) 990-9165 or pvg_chair@gmail.com. Located at ASU Downtown, 411 N. Central Ave, Phoenix ([map](#)).

Tucson

Land Management and Ecological Monitoring

Thursday, December 8

Julia Fonseca will discuss Pima County's Multi-Species Conservation Plan, which addresses local compliance with the Endangered Species Act. For more information, contact Keith Bagwell at (520) 623-0269 or kbagwell50@gmail.com. Located at Tucson City Council Ward 3 office, 1510 E. Grant Rd., Tucson ([map](#)).

Flagstaff

For information about activities in the Flagstaff area, please contact Joe Shannon at (928) 527-3116 or jshannon278@gmail.com.

North Phoenix

Breakfast meeting

Saturday, December 3

Join us for a quick social breakfast followed by a hike on Marcus Landslide Trail in Scottsdale. For more information, contact Sally Howland at (602) 663-2889 or sally_howland@yahoo.com. Located at Grotto Cafe, 6501 E. Cave Creek Rd., Cave Creek ([map](#)).

Sedona-Verde Valley

For information about activities in the Sedona/Verde Valley area, please contact Brian Myers at (928)

204-1703 or ibisalliance@gmail.com.

Prescott

Executive Committee meeting

Wednesday, December 7

Members are welcome and urged to attend and participate in these monthly meetings. For information, please contact Gary Beverly at (928) 308-1003 or gbverde@cableone.net. Located at Yavapai Title Agency, 1235 E. Gurley St., Prescott ([map](#)).

[\(back to top\)](#)

Donate now!



Please Support Our Work!

Our work depends on the support of people like you. Please consider making a donation to further our efforts to protect Arizona's wild lands, wildlife, people, and places. Thank you so much!

This email was sent to: ccook@azgfd.gov

This email was sent by the [Sierra Club Grand Canyon Chapter](#)
514 W Roosevelt St Phoenix, AZ 85003

[Unsubscribe](#) | [Manage Preferences](#) | [View as Web Page](#)

! ☰ @	From	Subject	Received	Size	Categories	▼
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1
	KnowWho Se...	Please Oppose R12-4-402 - Reject impediments to endangered species re...	Thu 12/1/2016 7...	4 KB		1

DEPARTMENT OF ADMINISTRATION (F-17-0201)

Title 2, Chapter 1, Article 9, Reimbursement For Public Or Private Transportation



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-1

TO: Members of the Governor's Regulatory Review Council ("Council")
FROM: Seth U. Nwosu, BA, CP, Paralegal Project Specialist
DATE : January 24, 2017
SUBJECT: **DEPARTMENT OF ADMINISTRATION (F-17-0201)**
Title 2, Chapter 1, Article 9, Reimbursement for Van Pool Transportation

INTRODUCTION

Purpose of the Agency and Number of Rules in the Report

This five-year-review report from the Arizona Department of Administration (Department) covers five (5) rules in A.A.C. Title 2, Chapter 1, related to reimbursement for vanpool transportation. R2-1-901 through R2-1-905 were adopted in 1994.

Article 9, sets forth: (1) definitions; (2) eligibility; and (3) procedures as it pertains to reimbursement of state employee costs for van pool transportation.

Proposed Action

The agency plans to amend R2-1-901 to remove the reference to a repealed statute and associated language. Subject to the rulemaking moratorium, the agency anticipates submitting a final rulemaking by December 2017. R2-1-902 through R2-1-905 remain effective, and no repeal or amendments are projected.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that the rules are generally effective, with the following exceptions:

- Under Section (3), the Department indicates that “there is no data available to support the effectiveness of this rule.”

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

No.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. The Department relies upon A.R.S. § 41-703(3) for general authority; and A.R.S. § 41-710.01 for specific authority for the Director to adopt rules to provide for the reimbursement of vanpool transportation costs for state employees.

5. Has the agency analyzed the rules’ consistency with statutes and other rules?

Yes. The Department indicates that the rules are generally consistent with statutes and other rules, with the following exceptions:

- In Council staff’s view, under Section (4)(a), the Department has not concisely analyzed the consistency between state and federal statutes, as required by A.A.C. R1-6-301(A)(4).

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department’s Office of Travel Reduction Programs has enforced the rules consistently during the past five years.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that the rules are generally clear, concise, and understandable, with the following exceptions:

- The definitions, as listed, under A.R.S. § 49-581(5) as it pertains to “van pools” could cause confusion with R2-1-901(9), as the statute talks about two or more persons making up a carpool or vanpool, while the rules talk about seven or more persons making a vanpool.

8. **Stringency of the Rules:**

a. **Are the rules more stringent than corresponding federal law?**

No. The Department indicates that no federal laws directly correspond to vanpool reimbursement.

b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable, as the rules were adopted prior to July 29, 2010.

b. **If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?**

Not applicable.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. The agency plans to amend R2-1-901 to remove the reference to a repealed statute and associated language. Subject to the rulemaking moratorium, the agency anticipates submitting a final rulemaking by December 2017. R2-1-902 through R2-1-905 remain effective, and no repeal or amendments are projected.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. As noted above, the Department expects to submit a final rulemaking to the Council in December 2017. This analyst recommends that the report be held for further review pending compliance required by R1-6-301(A)(4).



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-1

TO: Members of the Governor's Regulatory Review Council (Council)
FROM: GRRC Economic Team
DATE : January 24, 2017
SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION (F-17-0201)**
Title 2, Chapter 1, Article 9, Reimbursement for Van Pool Transportation

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

Economic, small business, and consumer impact statements from the most recent rulemakings were available for the Article 9 rules contained in the five-year-review report. The rules establish a program and procedures to reimburse state employees who participate in a vanpool in certain areas of Maricopa, Pinal, Yavapai and Pima counties. There were 49 active users in 2016.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules in Article 9 are mostly effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety. The agency anticipates amending one of the rules in Article 9 to remove a reference to a repealed statute.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Douglas A. Ducey
Governor



Craig C. Brown
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

OFFICE OF THE DIRECTOR

100 NORTH FIFTEENTH AVENUE · SUITE 401
PHOENIX, ARIZONA 85007
(602) 542-1500

July 19, 2016

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 402
Phoenix, Arizona 85007

RE: Arizona Department of Administration; Five-year Review Report
Arizona Administrative Code (A.A.C.) Title 2, Chapter 1
Article 9, Reimbursement for Van Pool Transportation

Dear Ms. Ong:

In compliance with A.R.S. §41-1056, the Arizona Department of Administration, Human Resources Division submits a report of its five-year review of Title 2, Chapter 1, Article 9 of the Arizona Administrative Code. This Article contains rules that require the department to establish a program to reimburse state employees, who participate in a van pool to reduce commuter miles driven in areas of Maricopa and Pima counties, for the cost of the van pool. In addition, I certify that the Department is in compliance with A.R.S. §41-1091.

If you have any questions regarding this five-year review report or need additional information, please contact Christine Bronson, Human Resources Division, by phone at (602) 542-1423 or by email at christine.bronson@azdoa.gov, or Fred Burk, Human Resources Division, by phone at (602) 542-1220 or by email at fred.burk@azdoa.gov. Ms. Bronson, Mr. Burk, and a Travel Reduction Programs representative will be present at the Study Session and the Council meeting to answer any questions that the Council members may have about this five-year review report.

Sincerely,

Craig C. Brown
Director

cc: Elizabeth Thorson, Human Resources Director
Christine Bronson, HRD Policy and Legislative Services Section Manager
Suesan Nordman, HRD Travel Reduction Programs

FIVE YEAR REVIEW REPORT

TITLE 2. ADMINISTRATION CHAPTER 1. DEPARTMENT OF ADMINISTRATION ARTICLE 9. REIMBURSEMENT FOR VAN POOL TRANSPORTATION

INTRODUCTION AND BACKGROUND

The Arizona Department of Administration (ADOA) Office of Travel Reduction Programs is responsible for the education, motivation, and implementation of alternate commute options for state employees. In accordance with current laws, the State of Arizona is required, as an employer, to have a program whereby employees are encouraged to reduce their commute.

The Office of Travel Reduction Programs (program) is comprised of three main sections: Capitol Rideshare, State of Arizona Telework Program, and Agency Liaison Services. Working together with a variety of stakeholders, the program assists state agencies in meeting travel reduction goals. Additionally, the program designs and implements the State of Arizona Travel Reduction Plan for Maricopa County in accordance with A.R.S. §49-588.

Title 2, Chapter 1, Article 9 – Reimbursement for Van Pool Transportation, is the set of rules that require the ADOA Director to establish a program and procedures to reimburse state employees who participate in a vanpool in certain areas of Maricopa, Pinal, Yavapai and Pima counties. This article includes definitions of terms used in the rules, eligibility requirements for a reimbursement subsidy, reimbursement subsidy amounts, and subsidy reimbursement procedures. These rules were adopted in 1994 and include R2-1-901 through R2-5-905, inclusive.

The agency's 2011 Five-year Review of the rules in Title 2, Chapter 1, Article 9 was approved by the Governor's Regulatory Review Council (GRRRC) in September 2011. Although the review generally found the rules to be satisfactory, the agency had proposed to amend one of the definitions to correct a rule reference change.

During the past five years, none of the rules in Title 2, Chapter 1, Article 9 have been repealed, adopted or amended. In lieu of conducting a rulemaking, the agency contacted the Secretary of State and requested, through the correction of errors provision in A.A.C. R1-1-109, a correction to the outdated rule reference, which has been incorporated in Code Supplement 14-2.

The agency anticipates amending one of the rules in Article 9 to remove a reference to a repealed statute. However, any proposed action may be subject to change should any federal or state regulations be amended prior to the submission of a final rulemaking.

REVIEW PROCEDURES

Article 9 was reviewed by a group consisting of Travel Reduction staff and other Human Resources Division staff.

The group reviewed all existing rules, held discussions, and determined that rulemaking would be necessary for one of the rules in this Article. Related changes to laws, best practices and internal agency procedures were taken into consideration.

Rule recommendations were based upon the findings and discussions of the Human Resources staff. The results are reflected in this report under item #14. Changes identified will be promulgated subject to review of the ADOA Director, the Human Resources Director, and the Travel Reduction staff.

ANALYSIS THAT IS IDENTICAL FOR ALL OF THE RULES

As provided by Arizona Administrative Code (A.A.C.) R1-6-301(B), the following information is the same for all of the rules in this report:

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

A.R.S. §41-703(3) provides general authority. A.R.S. §41-710.01 provides specific authority for the Director to adopt rules to provide for the reimbursement of transportation costs for state employees who participate in a vanpool.

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

The overall objective of the rules is to improve air quality by reducing the number of commuter miles driven by state employees to state offices. The objectives of the specific rules are as follows:

- R2-1-901: objective is to define the terms used in Title 2, Chapter 1, Article 9.
- R2-1-902: objective is to outline the vanpool subsidy eligibility requirements.
- R2-1-903: objective is to describe the authority of the ADOA Director in determining the amount of any subsidy.
- R2-1-904: objective is to provide the procedures for vanpool subsidy payments.
- R2-1-905: objective is to establish the requirements for employee participation in a reduced cost subsidized vanpool.

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

Because the agency has not received any comments, criticisms or questions from persons subject to these rules, the agency believes the rules are effective in achieving the intended objectives. There is no data available to support the effectiveness of this rule.

4. Consistency of the rules 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:

a. Consistency with federal statutes

The rules are consistent with applicable federal law. The federal law used in determining the consistency is listed below:

- The Clean Air Act (42 U.S.C Sec. 7401 et seq. (1970)), which sets limits on certain air pollutants and gives the Environmental Protection Agency authority to limit emissions of air pollutants from various sources; state, local and tribal governments have the responsibility of developing a State Implementation Plan (SIP) that outlines how each state will control air pollution under the Clean Air Act.

b. Consistency with state statutes

The rules are consistent with state laws; however, Rule R2-1-901 contains a reference to a statute that was repealed in 2013. The state laws used in determining consistency include, but are not limited to:

- A.R.S. §41-101.03, State employee travel reduction program; designated state agency; fund, which governs the designation of an appropriate state agency to establish, administer, and operate a travel reduction program for the transportation of state employees between their residences and their places of work.
- A.R.S. §41-703, Duties of the [ADOA] director, which grants general authority to the ADOA Director for the agency's activities and operations.
- A.R.S. §41-710.01, Reimbursement of transportation and telecommuting costs; definitions, which provides the ADOA Director with specific rulemaking authority related to reimbursement of transportation costs for state employees.
- A.R.S. §49-541, Definitions, which set forth definitions of applicable areas in Maricopa, Pima, Pinal and Yavapai counties that are covered by the requirements set forth in A.R.S. §49-588.
- A.R.S. §49-581, [Travel Reduction Programs] Definitions, which defines common terms used throughout the travel reduction programs statutes.
- A.R.S. §49-588, Requirements for major employers, which outlines the various requirements major employers must follow related to the establishment and administration of travel reduction programs. Subsection (A)(3)(c) includes suggested measures for an employer's trip reduction plan. One such measure is subsidized vanpooling.

c. Consistency with other rules made by the agency

The rules are consistent with other rules made by the agency. The rules used in determining the consistency include, but are not limited to:

- 1 A.A.C. 6, Governor's Regulatory Review Council
- 2 A.A.C. 1, Department of Administration
- 2 A.A.C. 5, Department of Administration – State Personnel System
- 2 A.A.C. 6, Department of Administration – Benefit Services Division
- 2 A.A.C. 7, Department of Administration – State Procurement Office
- 2 A.A.C. 10, Department of Administration – Risk Management Division
- 2 A.A.C. 11, Department of Administration – Public Buildings Maintenance
- 2 A.A.C. 15, Department of Administration – General Services Division

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

The rules have been enforced consistently during the past five years by the Office of Travel Reduction Programs. According to the Office, approximately 49 state employees are participating in the vanpool reimbursement subsidy program.

6. Clarity, conciseness and understandability of the rule:

The agency considers the language of the rules to be clear, concise and understandable.

7. Summary of the written criticisms of the rules 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 valid scientific or reliable principles or methods, and written allegations made in litigation or 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 result of the litigation or administrative proceedings:

During the five years immediately preceding this five-year review report, the agency has not received any written criticisms, reports or other analyses questioning whether the rule is based on valid scientific or reliable principles or methods. In addition, the agency has not been party to any litigation or administrative proceedings in which written allegations were presented alleging the rule to be discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency.

8. A comparison of the current 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 economic impact of the rules has not differed significantly from that projected in the economic impact statement (EIS) submitted with the last rulemaking effective February 2008 (copy attached). In that report, it was anticipated that costs associated with administration of these rules would be minimal. As mentioned previously, approximately 49 state employees participate in this program. Currently, the State subsidizes these employees at the rate of \$20 per month. The rules directly affect state agencies and employees and not small businesses or consumers.

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

No such analysis was submitted to the agency regarding the impact of the rules on business competitiveness.

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

In the previous Five-year Review Report, the agency stated it would amend R2-1-901 to revise the definition of “pay status.” However, the agency delayed the amendment of this rule to allow for the implementation of the new State Personnel System rules adopted effective September 29, 2012. In July 2015, the agency submitted a letter to the Secretary of State to request a correction to the outdated rule reference. The correction has been incorporated in the 14-2 Code Supplement, posted in June 2016.

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:

After analysis the agency believes that the rules contained in this report impose the least burden and costs to persons regulated by the rules. These rules do not impose a regulatory burden on participants, and provide for the payment of a subsidy. The participants in the program receive a twenty-dollar payment which on average results in a 30% reduction in their commuting costs.

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

Not applicable; there is no corresponding federal law pertaining to vanpool reimbursement. The federal Clean Air Act authorizes the Environmental Protection Agency (EPA) to establish air quality standards to protect public health and welfare. States are responsible for developing state implementation plans to meet the standards. The requirement for the provision of reimbursing state employees for participating in a vanpool to reduce commuter miles driven and improve air quality is a state requirement only.

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

Not applicable. The rules were adopted prior to July 29, 2010, and do not require issuance of a regulatory permit, license or agency authorization.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new 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 agency plans to amend R2-1-901 to remove the reference to a repealed statute and associated language. Subject to the rulemaking moratorium, the agency anticipates submitting a final rulemaking by December 2017. Rules R2-1-902, R2-1-903, R2-1-904, and R2-1-905 remain effective, and no repeal or amendments are projected.

ARTICLE 9. REIMBURSEMENT FOR VAN POOL TRANSPORTATION

R2-1-901. Definitions

In this Article, unless otherwise specified, the following terms apply:

1. “Commute” means travel to and from an employee’s place of employment.
2. “Director” means the chief executive officer of the Department of Administration or the Director’s designee.
3. “Eligible employee” means an individual who is employed by the state of Arizona, in pay status, and lives or works in a vehicle emissions control area, as defined in A.R.S. § 49-541, except a university employee or an employee of the State Compensation Fund under A.R.S. § 23-981.01.
4. “Pay status” has the meaning in R2-5A-101.
5. “Reduced cost” means an eligible employee’s share of the total cost of vanpool transportation that remains after the reimbursement subsidy is paid.
6. “Reimbursement subsidy” means the portion of the total cost of vanpool transportation that is paid, on behalf of an eligible employee, to a regional transit authority or state agency through a contract with the state of Arizona.
7. “Regional transit authority” means a regional transportation authority established under A.R.S. § 48-5302 or regional public transportation authority established under A.R.S. § 48-5102 that operates or licenses a vanpool program.
8. “State agency” means an agency that administers a vanpool program in an area not served by a regional transit authority.
9. “Vanpool” means seven or more persons who commute in a van sponsored by a regional transit authority or in a van that is part of a vanpool administered by a state agency.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 10, effective February 5, 2008 (Supp. 07-4). Corrected rule reference to R2-5A-101 in subsection (4) due to Personnel Reform rules made in 2012, correction letter M15-192 filed by agency (Supp. 14-2).

R2-1-902. Vanpool Reimbursement Subsidy Eligibility

The Department shall pay to a regional transit authority or a state agency on behalf of an eligible employee in a pay status who:

1. Commutes in a vanpool operated by the regional transit authority or administered by a state agency, and
2. Has completed the vanpool transportation subsidy application form.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 10, effective February 5, 2008 (Supp. 07-4).

R2-1-903. Vanpool Reimbursement Subsidy Amount

The Director shall determine the amount of reimbursement subsidy, up to 100% of the actual cost of vanpool transportation, according to the following: the number of eligible employees participating in the program, the cost of vanpooled transportation, and the amount of state funds appropriated by the legislature for reimbursement subsidy purposes. The Director shall notify employees of the initial percentage of subsidy prior to enrollment of the employee in the program and of any change in that percentage prior to the change taking effect.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3).

R2-1-904. Vanpool Reimbursement Subsidy Procedure

The regional transit authority or state agency shall submit to the Director an invoice that itemizes each eligible employee and the eligible employee’s monthly vanpool reimbursement subsidy amount. The Director shall pay the reimbursement subsidy amount upon receipt of the invoice from the regional transit authority or the state agency. The employee shall pay the reduced cost to the regional transit authority or the state agency.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3).

R2-1-905. Vanpool Reduced Cost Procedure

An eligible employee seeking to pay a reduced cost shall complete the vanpool transportation subsidy application form and submit it to the Department of Administration Travel Reduction Program. The application form shall contain the following:

1. The employee’s name and employee identification number,
2. The name and mailing address of the state agency compensating the employee, and
3. The employee’s signature.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 10, effective February 5, 2008 (Supp. 07-4).

41-101.03. State employee travel reduction program; designated state agency; fund

A. The governor shall designate an appropriate state agency to establish, administer and operate a travel reduction program for the transportation of state employees between their residences and their place of work. The designated agency shall establish the travel reduction program for the voluntary participation by state employees in any area of this state where a sufficiently large number of state employees reside and where the costs of administering a travel reduction program would not be excessive.

B. There is established the state employee travel reduction fund which consists of monies appropriated by the legislature, unrestricted private grants, gifts, contributions and devises, federal funds, and fees. The state agency designated by the governor pursuant to this section shall administer the fund and may disburse monies from the fund only in direct support of the travel reduction program established by this section. Monies in the fund appropriated by the legislature are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.
2. Provide assistance to the governor and legislature as requested.
3. Adopt rules the director deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.
8. Accept and disburse grants, gifts, donations, matching monies and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
9. Establish and maintain separate financial accounts as required by federal law or regulations.
10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

41-710.01. Reimbursement of transportation and telecommuting costs; definition

A. The director shall adopt rules to provide for the reimbursement of up to one hundred per cent of the cost to state employees of either:

1. Public transportation, vanpool or private bus service to and from their place of employment.
2. Telecommuting connectivity.

B. For the purposes of this section, "public transportation" means local transportation of passengers by means of a public conveyance operated or licensed by an incorporated city or town or a regional public transportation authority.

49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east
Township 7 north, range 2 west through range 5 east
Township 6 north, range 5 west through range 6 east
Township 5 north, range 5 west through range 7 east
Township 4 north, range 5 west through range 8 east
Township 3 north, range 5 west through range 8 east
Township 2 north, range 5 west through range 8 east
Township 1 north, range 5 west through range 7 east
Township 1 south, range 5 west through range 7 east
Township 2 south, range 5 west through range 7 east
Township 3 south, range 5 west through range 1 east
Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east
Township 1 south, range 8 east and range 9 east
Township 2 south, range 8 east and range 9 east
Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west
Township 6 north, range 1 east and range 1 west

2. "Area B" means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of section 49-546 and has passed inspection.

4. "Certificate of waiver" means a uniquely numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.

5. "Conditioning mode" means either a fast idle test or a loaded test.

6. "Curb idle test" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.

7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.

8. "Fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.

9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.

11. "Gross weight" has the same meaning prescribed in section 28-5431.

12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to section 49-545.

13. "Loaded test" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.

14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.

15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.

16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.

17. "Vehicle emissions control area" means area A or area B.

49-581. Definitions

In this article, unless the context otherwise requires:

1. "Alternate mode" means any mode of commute transportation other than the single occupancy motor vehicle.
2. "Approvable travel reduction plan" means a plan that is submitted by a major employer and that meets the requirements set forth in section 49-588.
3. "Area A" has the same meaning prescribed in section 49-541.
4. "Board" means the board of supervisors of a county with a population of more than one million two hundred thousand persons according to the most recent United States decennial census.
5. "Carpool" or "vanpool" means two or more persons traveling in an automobile, truck or van to or from work.
6. "Commute trip" means a trip taken by an employee to or from a work site located within the county.
7. "Commuter matching service" means a system, whether it uses computer or manual methods, which assists in matching employees for the purpose of sharing rides to reduce the drive alone travel.
8. "Employer" means any sole proprietor, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, either public or private, that employs workers.
9. "Full-time employee" means an employee who works at or reports to a single work site during any twenty-four hour period for at least three days per week during at least six months of the year.
10. "Full-time student" means a driving-aged high school, community college or university student commuting to school three or more days of the week during any regular school term.
11. "Major employer" means an employer with one hundred or more employees working at or reporting to a single work site during any twenty-four hour period for at least three days per week during at least six months of the year, except that in area A the threshold is fifty employees.
12. "Mode" means the type of conveyance used in transportation, including single occupancy motor vehicle, rideshare vehicles, transit, bicycle and walking.
13. "Motor vehicle" means any self-propelled vehicle including a car, van, bus or motorcycle and all other motorized vehicles.
14. "Political subdivision" means a city, town or county of this state.
15. "Public interest group" means any nonprofit group whose purpose is to further the welfare of the community.
16. "Reduced emission vehicle" means a motor vehicle that is certified by the task force as being substantially lower emitting in actual use than vehicles generally purchased in the area and that shall be counted as less than a single motor vehicle for travel reduction plan purposes.
17. "Reduced emission vehicle factor" means a factor that is applied to the single occupancy vehicle count and the motor vehicle miles traveled count pursuant to section 49-588 to allow a reduced emission vehicle to receive less than the full count of a regular motor vehicle or a mile traveled by a regular motor vehicle.
18. "Regional" means an area which encompasses or overlaps territory within the jurisdiction of two or more political subdivisions of this state.
19. "Regional program" means the combination of all implemented plans within area A which program shall begin in January, 1989.
20. "Ridesharing" means transportation of more than one person for commute purposes in a motor vehicle, with or without the assistance of a commuter matching service.

21. "Staff" means the county staff assigned to the task force.
22. "Task force" means the travel reduction program regional task force in area A which is designated by the board as the responsible agency to implement and enforce this article.
23. "Transit" means a bus or other public conveyance system.
24. "Transportation coordinator" means a person designated by an employer, property manager or transportation management association as the lead person in developing and implementing a travel reduction plan.
25. "Transportation management association" means a group of employers or associations formally organized to seek solutions for transportation problems experienced by the group.
26. "Travel reduction plan" means a written report outlining travel reduction measures.
27. "Travel reduction program" means a program that implements a travel reduction plan by an employer and is designed to achieve a predetermined level of travel reduction through various incentives and disincentives.
28. "Vehicle miles traveled" means the number of miles traveled by a motor vehicle for commute trips. A mile traveled by a reduced emission vehicle shall be counted as less than a full vehicle mile traveled for travel reduction plan purposes.
29. "Vehicle occupancy" means the number of occupants in a motor vehicle including the driver.
30. "Voluntary participant" means an employer that is not included in the definition of major employer and chooses to participate in a travel reduction program.
31. "Work site" means a building and any grouping of buildings which are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way and which are owned or operated by the same employer.

49-588. Requirements for major employers

A. In each year of the regional program each major employer shall:

1. Provide each regular employee with information on alternate mode options and travel reduction measures. This information shall also be provided to new employees at the time of hiring.
2. Participate in a survey and reporting effort as directed by the task force and as scheduled by the staff. The results of this survey shall form a baseline against which attainment of the targets in subsection D of this section shall be measured as follows:
 - (a) The baseline for participation in alternative modes of transportation shall be based on the proportion of employees commuting by single occupancy vehicles.
 - (b) The baseline for vehicle miles traveled shall be the average vehicle miles traveled from place of residence to work per employee for employees not residing on the work site.
3. Prepare and submit a travel reduction plan for submittal to the staff and presentation to the task force. The staff shall assist in preparing the plan. Major employers shall submit plans within nine weeks after they receive survey data results. The plan shall contain the following elements:
 - (a) The name of the designated transportation coordinator.
 - (b) A description of employee information programs and other travel reduction measures which have been completed in the previous year.
 - (c) A description of additional travel reduction measures to be undertaken by the major employer in the coming year. The following measures may be included:
 - (i) A commuter matching service to facilitate employee ridesharing for work trips.
 - (ii) Provision of vans for vanpooling.
 - (iii) Subsidized carpooling or vanpooling which may include payment for fuel, insurance or parking.
 - (iv) Use of company vehicles for carpooling.
 - (v) Provision for preferential parking for carpool or vanpool users which may include close-in parking or covered parking facilities.
 - (vi) Cooperation with other transportation providers to provide additional regular or express service buses to the work site.
 - (vii) Subsidized bus fares.
 - (viii) Construction of special loading and unloading facilities for transit and carpool and vanpool users.
 - (ix) Cooperation with political subdivisions to construct walkways or bicycle routes to the work site.
 - (x) Provision of bicycle racks, lockers and showers for employees who walk or bicycle to and from work.
 - (xi) Provision of a special information center where information on alternate modes and other travel reduction measures is available.
 - (xii) Establishment of a full-time or part-time work at home program for employees.
 - (xiii) Establishment of a program of adjusted work hours which may include telecommuting, compressed workweeks or staggered work hours. Work hour adjustments should not interfere with or discourage the use of ridesharing and transit.
 - (xiv) Establishment of a program of parking incentives such as a rebate for employees who do not use the parking facility.
 - (xv) Incentives to encourage employees to live closer to work.
 - (xvi) Implementation of other measures designed to reduce commute trips such as the provision of day care facilities or emergency taxi services.
 - (xvii) Incentives for use of reduced emission vehicles and alternative fuel vehicle refueling facilities.

B. All employers in area A with one hundred or more employees at a single work site shall notify their employees of the employees' duty to comply with the requirements of section 49-542. The travel reduction program regional task force shall prepare and make available a standard information form for use by all employees of those employers.

C. Except as provided in subsection F of this section, an approvable travel reduction plan shall meet all of the following criteria:

1. The plan shall designate a transportation coordinator.
2. The plan shall describe a mechanism for regular distribution of alternate mode transportation information to employees.
3. For employers that in any year meet or exceed annual regional targets for travel reduction, the plan shall accurately and completely describe current and planned travel reduction measures.
4. For employers that, in any year, fall below the regional targets for travel reduction, the plan shall include commitments to implement:

(a) At least two specific travel reduction measures in the first year of the regional program.

(b) At least three specific travel reduction measures in the second year of the regional program.

D. After the second year, the task force shall review the travel reduction programs for employers not meeting regional targets and may recommend additional measures.

E. Employers shall implement all travel reduction measures they consider necessary to attain the following reduction in the proportion of employees commuting by single occupancy vehicles or commuter trip vehicle miles travel reductions per regulated work site:

1. Five per cent reduction in the proportion of employees commuting by single occupancy vehicles as determined in the annual survey in the first year, except that in area A the reduction shall be ten per cent.
2. In the second, third, fourth and fifth years, an additional five per cent reduction in the proportion of employees commuting by single occupancy vehicles as determined in the annual survey, except that in area A the reduction shall be ten per cent. If the percentage of employees commuting in single occupancy vehicles is sixty per cent or less, additional reductions are not required.

F. Notwithstanding any other requirements, a major employer may be in compliance with the requirements of subsections A, C and E of this section by submitting a plan that demonstrates achievement of emissions reductions equivalent to those that would have been obtained through compliance with the requirements of subsection E of this section. Emissions reductions achieved for the purpose of compliance with this subsection shall be in addition to any other emissions reductions that are otherwise required by law, rule, ordinance or permit. The plan may contain any of the following measures to achieve emissions reductions:

1. Voluntary polluting vehicle trade-outs only if both of the following conditions are met:
 - (a) Vehicles are not crushed.
 - (b) The program applies only to vehicles owned by the major employer or its employees.
2. Use of clean on-road vehicles.
3. Use of clean off-road mobile equipment.
4. Remote sensing.
5. Other mobile source emissions reductions.
6. Emissions reductions from stationary sources.
7. Peak commute trip reductions.
8. Other work-related trip reductions.
9. Vehicle miles traveled reduction programs.

10. Fuel additives which have been shown to reduce hydrocarbon, carbon monoxide or particulate matter emissions of significant polluting on-road vehicles, off-road mobile sources or area sources by twenty per cent or more.

DEPARTMENT OF ECONOMIC SECURITY (R-17-0202)

Title 6, Chapter 12, Article 1, General Provisions; Article 2, Application Process and Procedures; Article 3, Non-Financial Eligibility Criteria; Article 4, Financial Eligibility: Resources; Article 5, Financial Eligibility: Income; Article 6, Special CA Circumstances; Article 7, Determining Eligibility and Benefit Payment Amount; Article 8, Payments; Article 9, Changes; Adverse Action; Article 10, Appeals; Article 11, Overpayments; Article 12, Intentional Program Violation; Article 13, JOBSTART; Article 14, Grant Diversion



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-2

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Shama Thathi, Staff Attorney

DATE : January 24, 2017

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (F-17-0202)

Title 6, Chapter 12, Article 1, General Provisions; Article 2, Application Process and Procedures; Article 3, Non-Financial Eligibility Criteria; Article 4, Financial Eligibility: Resources; Article 5, Financial Eligibility: Income; Article 6, Special CA Circumstances; Article 7, Determining Eligibility and Benefit Payment Amount; Article 8, Payments; Article 9, Changes; Adverse Action; Article 10, Appeals; Article 11, Overpayments; Article 12, Intentional Program Violation; Article 13, Jobstart; Article 14, Grant Diversion

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Economic Security (Department) is "to provide social services, welfare programs, vocational rehabilitation and employment services...." Laws 2008, Ch. 104, § 3.

This five-year-review report from the Department covers 111 rules in A.A.C. Title 6, Chapter 12, related to the Temporary Assistance for Needy Families (TANF) Cash Assistance (CA) Program. The rules, as written, became effective at various times between 1995 and 2013.

Article Contents

Article 1 contains four rules addressing general provisions, including definitions, confidentiality, case records, and manuals. Article 2 contains eleven rules addressing application process and procedures. Article 3 contains 21 rules addressing non-financial eligibility criteria. Article 4 contains six rules addressing financial eligibility criteria regarding treatment of resources. Article 5 contains nine rules addressing financial eligibility criteria regarding income. Article 6 contains seven rules addressing special CA circumstances, including subjects such as dependents of foster children, minor parents, and a two-parent employment program (TPEP).

Article 7 contains six rules addressing provisions for determining eligibility and benefit payment amount. Article 8 contains five rules addressing procedures for making benefit payments. Article 9 contains eight rules addressing changes in income, resources or other circumstances, as well as adverse action by the Department. Article 10 contains fifteen rules addressing appeals. Article 11 contains three rules addressing overpayments. Article 12 contains six rules addressing intentional program violation, including disqualification proceedings, disqualification sanctions, and the right to appeal the Department's decision. Article 13 contains six rules addressing JOBSTART, which is a wage subsidy program. Article 14 contains four rules addressing grant diversion.

Proposed Action

The Department indicates most of the rules need to be amended to improve effectiveness, consistency with other statutes and rules, and to make the rules more clear, concise, and understandable. The Department plans to submit a Notice of Final Rulemaking to the Council by July 2017.

Exemption or Request and Approval for Exception from the Moratorium

The Governor's Office granted an approval for an exception from the moratorium on March 7, 2016.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that the rules can be made more effective in the following ways:

- In R6-12-101, definitions should be amended, deleted, or added to conform to current policy and practice.
- R6-12-102 should be amended to conform to the provisions of A.R.S. § 8-451, which created the Arizona Department of Child Safety (DCS). The responsibilities and authority of Child Protective Services (CPS) were transferred to DCS.
- R6-12-104 should be revised to conform to current practice. The Department no longer maintains the manuals in a local office, rather they are available to the public via the Department's website.

- R6-12-201 contains an outdated application process. In addition, the rule should be updated to reflect that an application for CA is not automatically treated as an application for Arizona Health Care Cost Containment System (AHCCCS) medical benefits.
- R6-12-202 should be updated to reflect that the application process for “Child only case” is different from the other procedures described in this rule. Additionally, the rule should clarify that a child, who is in custody of a Legal Permanent Guardian and for whom the Guardian is receiving Guardianship Subsidy payments from DCS, is not eligible for CA.
- R6-12-203 should be revised to conform to current interview practices.
- R6-12-204 should be amended to remove the reference to a District Medical Consultant. The Department no longer employs a District Medical Consultant as part of the disability determination process.
- R6-12-205 should be revised to conform to changes in the verification processes.
- In R6-12-209, subsection (D) should be removed because an application for CA is not automatically treated as an application for AHCCCS medical benefits.
- R6-12-210 should reflect the different time frames in which a case is subject to an eligibility review. The time frames depend on the type of CA case.
- R6-12-211 contains an outdated policy in regards to reinstatement of benefits.
- R6-12-302 should be updated to reflect the new time frame for reporting a change. In addition, the name change from the Division of Child Support Enforcement (DCSE) to the Division of Child Support Services (DCSS) should be reflected in the rule.
- R6-12-304 should contain the “Temporary Absence” requirements and procedures, which are currently located in R6-12-309.
- R6-12-305 should clarify that the person’s alien registration number and other related information shall be submitted to the U.S. Citizenship and Immigration Services (USCIS), instead of U.S. Immigration and Naturalization Services (INS), for verification of the person’s current immigration status. INS no longer exists, as it was replaced by USCIS.
- R6-12-306(B) should clarify that when assistance is not requested for an otherwise mandatory member of the assistance unit or a mandatory member of the assistance unit is disqualified from CA, the countable income and resources of the mandatory member are considered available to the assistance unit. In addition, cross-references to R6-12-402(B) and R6-12-502(B) should be added to provide greater clarity.
- R6-12-308(F) should be amended to clarify that a CA recipient is not automatically eligible for AHCCCS medical benefits.
- R6-12-310 should be revised to update the “continued absence” requirements. Also, the “unemployed” requirement should be expanded to include “underemployed.”
- R6-12-311 should address the Department’s requirement that an applicant who is included in the cash grant must cooperate with DCSS prior to approval of the application.
- R6-12-312(J) contains an incorrect reference to a “six-month review” because not all cases are reviewed every six months. Also, references to DCSE should be changed to DCSS.
- R6-12-313 should be expanded to include all persons who meet the definition of “Work Eligible Individual,” which will be defined in R6-12-101. The rule should also address the Department’s requirement that all “Work Eligible Individuals” must complete a Jobs

Program Preliminary Orientation (JPPO) as a condition of eligibility for the assistance unit.

- R6-12-321(A) should note that determination of disability by the Social Security Administration is acceptable disability verification.
- R6-12-404 should modify “Food Stamp Program benefits” to “Nutrition Assistance Program benefits.”
- R6-12-501 should include the Self Employment Income Standard Deduction method by which the Department determines the countable gross income from self-employment.
- In R6-12-503, references to the Department’s Division of Children, Youth and Families should be changed to DCS.
- In R6-12-604, references to CPS should be changed to DCS. Also, subsections (E)(1) and (E)(4) should be removed as these provisions no longer apply.
- R6-12-605(A) should be revised to include the concept of an “underemployed parent.”
- R6-12-801 should be updated to reflect that benefit payments are made solely through electronic benefit transfer (EBT).
- R6-12-901 should be amended to reflect new change reporting requirements, new time frames for reporting changes, and additional methods by which to report a change.
- R6-12-902 should be updated to clarify that withdrawal of a unit member can result in termination of benefits.
- R6-12-903 should be updated to reflect a changed time frame for adding or removing a member.
- R6-12-904(B) contains an incorrect reference to a “six-month review” because not all cases are reviewed every six months. This rule should also include information about how the Department will process changes that result in a benefit reduction or termination.
- R6-12-905 and R6-12-906 should be updated to reflect a change in the ineligibility date.
- R6-12-907 should be updated to reflect the Department’s practice of providing notices to the assistance unit via email. In addition, references to AHCCCS medical eligibility in the CA adverse action notice should be removed from this rule.
- In R6-12-908, a reference to “forgery of a signature on a cashed warrant” should be removed.
- Article 10 should be updated to conform to current policies, procedures, and practices used by the Department’s Office of Appeals.
- R6-12-1102 should be revised to indicate that the Department will pursue collection from individuals in a specified order and that it will only seek collection from adult members of the assistance unit.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

No. The Department has received no written criticisms of these rules during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. As general authority, the Department cites to A.R.S. § 41-1954(A)(3), which requires the Department to “[a]dopt rules it deems necessary or desirable to further the objectives and programs of the [D]epartment.” The Department also cites to applicable specific authority in the report.

5. Has the agency analyzed the rules’ consistency with other rules and statutes?

Yes. The Department indicates that the rules are consistent with other rules and statutes, with the following exceptions:

- R6-12-211, R6-12-318, R6-12-319, and R6-12-1004 should be revised to comply with the changes made to A.R.S. § 46-294. Effective July 1, 2016, A.R.S. § 46-294 reduced the CA state time limit to 12 months.
- R6-12-308 should be amended to comply with the changes made to A.R.S. § 46-292. In 2016, the Legislature removed the Family Benefit Cap for currently disqualified children under specific circumstances.
- R6-12-310 contains an incorrect citation to R6-12-609.
- R6-12-313 should be modified to reflect the amendment to 45 CFR 261.2, TANF regulations.
- R6-12-604 contains incorrect statutory references.
- R6-12-808 should be amended to remove the requirement to issue an identification card, since CA benefits are issued solely via EBT.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are enforced as written to the extent they do not conflict with state and federal law and program policy. In particular, the following rules are not enforced, as written, due to changes in law, regulation, or program policy: R6-12-104, R6-12-201, R6-12-203, R6-12-204, R6-12-210, R6-12-211, R6-12-302, R6-12-308, R6-12-310, R6-12-313, R6-12-318, R6-12-319, R6-12-501, R6-12-604, R6-12-605, R6-12-801, R6-12-808, R6-12-901, R6-12-905, R6-12-906, R6-12-907, R6-12-908, R6-12-1002, R6-12-1004, R6-12-1005, R6-12-1006, R6-12-1007, R6-12-1008, R6-12-1010, R6-12-1011, R6-12-1012.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that, with the exception of the aforementioned effectiveness and consistency issues, the rules are generally clear, concise, and understandable.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that R6-12-308, R6-12-315, and R6-12-318 are more stringent than corresponding federal law.

b. There is statutory authority to exceed the requirements of federal law?

Yes. The Department has provided the following applicable statutory authority to exceed the requirements of federal law:

- R6-12-308 specifies the circumstances under which a child is excluded from CA due to the Family Benefit Cap. A.R.S. § 46-292 excludes an otherwise eligible child who was born during a parent's Family Benefit Cap period from the CA program. This exclusion is not required in federal TANF law.
- R6-12-315 promotes the health and safety of dependent children by requiring children to be immunized. A.R.S. § 36-672 requires a child to be immunized in accordance with the schedule of immunizations pursuant to A.R.S. § 36-672. This is not a requirement in federal TANF law.
- R6-12-318 establishes a state time limit for eligibility in the CA program. According to federal law, 42 USC § 608, certain assistance units may not be provided cash benefits, funded from the TANF block grant, for more than 5 years. However, A.R.S. § 46-294 restricts cash assistance to no more than twelve months for every family except unlicensed foster care providers in a Child Only case, and except in hardship situations.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Not applicable, as the rules do not require an issuance of a regulatory permit, license or agency authorization.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department indicates that, in its 2011 five-year-review report, it planned to submit a Notice of Final Rulemaking with the amendments identified in the report, to the Council by June 30, 2013. However, in 2012, significant statutory changes impacted the CA program's regulatory framework and the Department's workload priorities.

In May 2013, the Department submitted a Notice of Final Rulemaking for Article 14, Grant Diversion, to the Council. The rulemaking was approved and became effective on August 4, 2013.

11. Has the agency included a proposed course of action?

Yes. As mentioned above, the Department has received an exception from the moratorium to proceed with a rulemaking to make the amendments identified in this report. The Department is working with the Attorney General's Office and plans to submit a rulemaking to the Council by July 2017.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends that the report be approved.



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-2

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : January 24, 2017

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (F-17-0202)

Title 6, Chapter 12, Article 1, General Provisions; Article 2, Application Process and Procedures; Article 3, Non-Financial Eligibility Criteria; Article 4, Financial Eligibility: Resources; Article 5, Financial Eligibility: Income; Article 6, Special CA Circumstances; Article 7, Determining Eligibility and Benefit Payment Amount; Article 8, Payments; Article 9, Changes; Adverse Action; Article 10, Appeals; Article 11, Overpayments; Article 12, Intentional Program Violation; Article 13, Jobstart; Article 14, Grant Diversion

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

The economic, small business, and consumer impact statement (EIS) from the most recent Department rulemaking completed in 1995 was not available for Articles 1-14.

The Chapter 12 rules reviewed address procedures involved in administering the Cash Assistance (CA) program as part of the Temporary Assistance for Needy Families (TANF) program. CA helps the neediest families in Arizona by providing temporary cash payments. TANF is a federal block grant program that is administered by each individual state. Key stakeholders that are impacted are the Department, CA beneficiaries, and taxpayers.

The Department's FY 2016 CA activities include:

- \$24,692,940 in CA paid to eligible households
- 45,270 recipients of CA
 - 33,038 children
 - 12,232 adults
- 79,120 initial applications for CA
 - 11,994 approvals
 - 69,439 denials

Some initial dispositions made in FY 2016 were initial applications in FY 2015. The sum of approvals and denials is not the same as the quantity of initial applications.

The Department concludes that the economic impact has generally been as predicted in the prior EIS for the rules.

2. **Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?**

The Department determines that there are several rules in Chapter 12 that need revision in order to be consistent with current state law. The Department has already received an exemption from the moratorium, and it intends to submit a rulemaking in July of 2017. Once the rulemaking is completed, the amended rules will impose the least burden and costs to those regulated by the rules.

3. **Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?**

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. **Conclusion**

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



DEPARTMENT OF ECONOMIC SECURITY

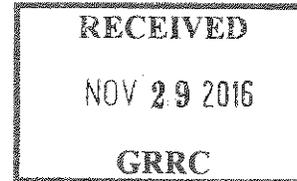
Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Henry R. Darwin
Interim Director

NOV 29 2016

Nicole A. Ong, Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007



Dear Ms. Ong,

Enclosed is the Arizona Department of Economic Security's Five-year Review Report on A.A.C. Title 6, Chapter 12, Cash Assistance Program. Included with the report are copies of the authorizing statutes, rules, and the economic impact statement associated with these rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report. If you have any questions, or require more information, please contact Robert Hobbs, Lead Rules Analyst, at (602) 542-6555.

Sincerely,

Henry R. Darwin
Interim Director

Enclosure: Five-year Review Report for A.A.C. Title 6, Chapter 12, Cash Assistance Program

Arizona Department of Economic Security

5-Year Review Report

Title 6. Economic Security

Chapter 12. Cash Assistance Program

ARTICLE 1. General Provisions

ARTICLE 2. Application Process and Procedures

ARTICLE 3. Non-Financial Eligibility Criteria

ARTICLE 4. Financial Eligibility: Resources

ARTICLE 5. Financial Eligibility: Income

ARTICLE 6. Special CA Circumstances

ARTICLE 7. Determining Eligibility And Benefit Payment Amount

ARTICLE 8. Payments

ARTICLE 9. Changes; Adverse Action

ARTICLE 10. Appeals

ARTICLE 11. Overpayments

ARTICLE 12. Intentional Program Violation

ARTICLE 13. JOBSTART

ARTICLE 14. Grant Diversion

November 30, 2016

I. INTRODUCTION

The Temporary Assistance for Needy Families (TANF) Cash Assistance (CA) program provides temporary cash benefits and supportive services to the neediest of Arizona's children and their families. The program helps these families meet their basic needs for well-being and safety and serves as their bridge back to self-sufficiency. Eligibility is based on citizenship or qualified noncitizen resident status, Arizona residency and limits on resources and monthly income.

Adults receiving cash benefits are required to complete and sign a Personal Responsibility Agreement. This agreement specifies their willingness to engage in work activities that will lead to employment and to comply with child support enforcement activities, if applicable.

II. ANALYSIS OF RULES

A. STATUTORY AUTHORITY

The Arizona Department of Economic Security's general authority to make rules derives from A.R.S. § 41-1954(A)(3). The specific statutory authority for the development of the rules in Title 6, Chapter 12 is found at A.R.S. §§ 46-134(A)(10) and 46-292.

B. OBJECTIVES

ARTICLE 1. GENERAL PROVISIONS

R6-12-101. Definitions

The objective of this rule is to promote and ensure uniform understanding of the terminology used by the Department. The purpose of this rule is to define the terms used in A.A.C. Title 6, Chapter 12.

R6-12-102. Confidentiality

The objective of this rule is to ensure that confidential information is protected. The purpose of the rule is to define "personally identifiable information," and explain the Department's policies for the release of information.

R6-12-103. Case Records

The objective of this rule is to ensure that the Department retains eligibility information regarding applicants and recipients. The purpose of the rule is to specify the length of time for which these records are retained and to specify what information shall be retained.

R6-12-104. Manuals

The objective of this rule is to inform the public that the CA program manual is available for inspection and copying. The purpose of the rule is to require each Family Assistance Administration office to make this service available.

ARTICLE 2. APPLICATION PROCESS AND PROCEDURES

R6-12-201. Application

The objective of this rule is to explain application procedures and requirements. The purpose of the rule is to specify the methods by which an application may be submitted and the information that is required to be on the application in order for it to be accepted and registered.

R6-12-202. Request for Benefits; Composition of the Assistance Unit

The objective of this rule is to explain who is included in an assistance unit. The purpose of the rule is to specify which individuals in the household are potentially eligible for assistance.

R6-12-203. Initial Eligibility Interview

The objective of this rule is to explain the procedures for an eligibility interview.

The purpose of the rule is to explain the responsibilities of both the Department and the applicant during the eligibility interview process to ensure that a timely and accurate eligibility determination is completed.

R6-12-204. Disability Determination

The objective of this rule is to explain the procedures for verifying the existence of a disability. The purpose of the rule is to specify the Department's responsibilities and the applicant's responsibilities when establishing that a household member is disabled.

R6-12-205. Verification of Eligibility Information

The objective of this rule is to explain the procedures for verifying eligibility information.

The purpose of the rule is to specify the Department's responsibilities and the applicant's responsibilities for requesting, obtaining, and providing such information when necessary to determine eligibility or benefit level.

R6-12-206. Home Visits

The objective of this rule is to provide an in-home interview for homebound applicants or recipients. The purpose of the rule is to specify the circumstances under which the Department will schedule a home visit for an applicant or recipient, and the notification procedures the Department shall use.

R6-12-207. Withdrawal of Application

The objective of this rule is to explain the procedures for withdrawing an application.

The purpose of the rule is to specify the Department's responsibilities and the applicant's responsibilities when making and processing such a request.

R6-12-208. Death of an Applicant

The objective of this rule is ensure that the Department does not approve a pending application in the event that an applicant dies. The purpose of the rule is to specify the Department's responsibilities to deny the application and to inform the new caretaker of the children of the availability of assistance for the children if they choose to apply.

R6-12-209. Processing the Application; Denials; Approval

The objective of this rule is to explain the time frame for the Department to complete an eligibility determination. The purpose of the rule is to specify how an application will be denied, and what happens when an application is approved.

R6-12-210. Six-month Review

The objective of this rule is to require a periodic review of continued eligibility. The purpose of the rule is to explain the Department's responsibilities and procedures and the recipient's requirements during the eligibility review.

R6-12-211. Reinstatement of Benefits

The objective of this rule is to require the Department to reinstate benefits under certain circumstances. The purpose of the rule is to specify the circumstances, the requirements, and the procedures for reinstating benefits.

ARTICLE 3. NON-FINANCIAL ELIGIBILITY CRITERIA

R6-12-301. Non-financial Eligibility Criteria

The objective of this rule is to establish that there are non-financial eligibility factors that will be considered in determining whether a household or an individual may be included in the program. The purpose of the rule is to require individuals to satisfy the criteria in Article 3 in order to be eligible for CA.

R6-12-302. Applicant and Recipient Responsibility

The objective of this rule is to require an applicant or recipient to cooperate with the Department as a condition of initial and continuing eligibility. The purpose of the rule is to specify the requirements which require applicant or recipient cooperation.

R6-12-303. Application for Other Potential Benefits

The objective of this rule is to explain the requirement that a person must apply for all other benefits for which they may be eligible in order to be eligible for CA. The purpose of the rule is to specify the types which must be applied for.

R6-12-304. Residency

The objective of this rule is to ensure that benefits are paid only to qualifying Arizona residents. The purpose of the rule is to detail the circumstances in which Arizona residency requirements are met.

R6-12-305. Citizenship and Alienage

The objective of this rule is to ensure that benefits are paid only to U.S. citizens and non-citizens who meet the “qualified non-citizen” requirement. The purpose of this rule is to specify the non-citizen eligibility criteria and to specify the Department’s responsibility to verify such status.

R6-12-306. Eligible Persons

The objective of this rule is to ensure that benefits are paid only to individuals who are potentially eligible to be included in an assistance grant. The purpose of the rule is to specify which members of a family who either may be included in the CA program or are required to be included in the assistance unit.

R6-12-307. Social Security Number

The objective of this rule is to ensure that only persons who have been issued, or who have applied for, a Social Security Number are included in the assistance grant. The purpose of the rule is to specify the applicant’s requirement to obtain and provide the Social Security Number and the Department’s responsibility to verify that the Social Security Number is legitimate.

R6-12-308. Family Benefit Cap

The objective of this rule is to explain the Family Benefit Cap exclusion. The purpose of the rule is to specify the circumstances in which a child will be excluded from C.A. due

to the Family Benefit Cap and to specify the circumstances in which the Family Benefit Cap exclusion will be waived by the Department.

R6-12-309. Relationship

The objective of this rule is to limit participation in the program to individuals who are related to each other. The purpose of the rule is to specify the familial relationships that individuals are required to have in order to qualify for CA and to specify the limited exceptions to this requirement.

R6-12-310. Deprivation

The objective of this rule is to require a dependent child to be deprived of parental support in order for assistance to be provided on behalf of the child. The purpose of the rule is to specify the circumstances that constitute deprivation of parental support.

R6-12-311. Assignment of Support Rights; Cooperation

The objective of this rule is to explain the requirement that an applicant for CA must assign to the Department all rights to spousal or child support. The purpose of the rule is to specify the applicant's responsibilities in meeting this requirement and the Department's responsibilities for assisting the applicant in this matter.

R6-12-312. Good Cause for Non-cooperation with Child Support Enforcement

The objective of this rule is to exempt the applicant from the requirements in R6-12-311 when good cause for non-cooperation exists. The purpose of the rule is to specify the circumstances in which good cause exists and the applicant's and the Department's responsibilities in verifying such circumstances.

R6-12-313. Participation in JOBS; Exemptions; Good Cause Exceptions

The objective of this rule is to promote self sufficiency by requiring work eligible persons to participate in the TANF work program, called the Jobs Program. The purpose of this rule is to specify the Jobs program requirement and to identify persons who are exempt from this requirement.

R6-12-314. School Attendance

The objective of this rule is to promote personal responsibility by requiring parents and other no-parent heads of household to register school age children in school. The purpose of the rule is to specify the actions that must be taken in order to be in compliance with this requirement.

R6-12-315. Immunization

The objective of this rule is to promote the health and safety of dependent children by requiring children to be immunized. The purpose of the rule is to specify the actions that must be taken in order to be in compliance with this requirement.

R6-12-316. Sanctions for Noncompliance

The objective of this rule is to enforce the requirements in the Personal Responsibility Agreement that the applicant signs with the Department when establishing eligibility for assistance. The purpose of the rule is to specify the circumstances in which there is noncompliance with the Personal Responsibility Agreement and to specify the sanction actions that the Department's imposes each instance of noncompliance.

R6-12-317. Voluntary Quit/Reduction in Work Effort

The objective of this rule is to require the applicant or recipient to maintain employment or work efforts. The purpose of the rule is to specify when a person is considered to have voluntarily quit a job or reduced work effort, the consequences of voluntary termination

or reduction in work effort, and circumstances in which good cause for voluntary termination or reduction in work effort exists.

R6-12-318. Duration of Assistance - 36-month Time Limit

The objective of this rule is to establish a state time limit for eligibility in the program.

The purpose of the rule is to specify the length of the state time limit, to specify which households are subject to the state time limit, and to specify the months which are considered to be countable toward the state time limit.

R6-12-319. Extension of Time Limited Assistance

The objective of this rule is to permit an otherwise eligible household an extension to the state and federal time limits when a qualifying hardship condition exists. The purpose of the rule is to specify the conditions for and circumstances under which an extension of the time limit due to hardship may exist, the responsibilities of the family when requesting a hardship extension, and the responsibilities of the Department when processing a hardship extension request.

R6-12-320. Duration of Assistance - Federal 60-month Time Limit

The objective of this rule is to limit receipt of assistance to no more than the 60-month time limit contained in federal law and TANF program regulations. The purpose of the rule is to specify which households are subject to the federal time limit and to specify the months which are considered to be countable toward the federal time limit.

R6-12-321. Hardship Verification Requirements

The objective of this rule is to permit an otherwise eligible household an extension to the state and federal time limits when a qualifying hardship condition is verified. The

purpose of the rule is to specify the methods in which each hardship condition must be verified.

ARTICLE 4. FINANCIAL ELIGIBILITY; RESOURCES

R6-12-401. Treatment of Resources; Limitations

The objective of this rule is to establish a limit on the amount of financial assets that an assistance unit may own or have access to when establishing eligibility for a cash grant. The purpose of the rule is to specify the asset limit amount and to specify which assets will be counted toward that limit.

R6-12-402. Treatment of Resources by Ownership Status; Availability

The objective of this rule is to require the Department to only consider the assets of certain persons when determining the countable asset amount. The purpose of the rule is to specify which individuals will be considered in the countable asset limit and to specify whether an asset will be considered available or unavailable based on the sole or joint ownership of the asset.

R6-12-403. Treatment of Resources; Exclusions

The objective of this rule is to require the Department to exclude certain types of assets when determining the countable asset limit of an assistance unit. The purpose of the rule is to specify each type of asset that is excluded from the countable asset limit.

R6-12-404. Individual Development Accounts

The objective of this rule is to allow applicants and recipients to establish an Individual Development Account (IDA) in order to save money for specific purposes. The purpose of the rule is to specify the methods in which the IDA may be initiated, the purposes for

which the IDA may be used, and the limits on the amount in the IDA which will be excluded from the countable asset limit.

R6-12-405. Resource Transfers; Limitations

The objective of this rule is to prohibit C.A. eligibility when ownership of a resource has been transferred with the intent to qualify or attempt to qualify for CA. The purpose of the rule is to specify the limitations on transfer of resources, the methods which the Department will use to determine whether a resource transfer affects eligibility for CA, and the penalties for an improper transfer of resources.

R6-12-406. Resource Verification

The objective of this rule is to ensure that the value of countable resources is verified. The purpose of the rule is to specify that the Department is required to verify all resources before determining income eligibility and benefit amount.

ARTICLE 5. FINANCIAL ELIGIBILITY; INCOME

R6-12-501. Treatment of Income; In General

The objective of this rule is to establish that all income of both the family and the assistance unit will be considered when determining eligibility for CA and a cash grant amount. The purpose of this rule is to specify what types of income the Department shall consider as gross income when determining financial eligibility.

R6-12-502. Income Available to the Assistance Unit

The objective of this rule is to require the Department to only consider the income of certain persons when determining the cash grant amount for an assistance unit. The purpose of the rule is to specify which individuals will be considered as having income available to the assistance unit for the purpose of determining a cash benefit amount.

R6-12-503. Income Exclusions

The objective of this rule is to require the Department to exclude certain types of income when determining both the countable income of a family and the countable income of an assistance unit. The purpose of the rule is to specify each type of income that is excluded when determining income available to a family when determining income eligibility, and to an assistance unit when determining a cash benefit amount.

R6-12-504. Special Income Provisions: Child Support, Alimony, or Spousal Maintenance

The objective of this rule is to require the Department to apply special rules to the receipt of child support, alimony, or spousal maintenance. The purpose of this rule is to specify the budgeting methods the Department shall use for the receipt of child support, alimony, or spousal maintenance and to specify the penalties that shall be imposed when the receipt of such income is not submitted to the Department after the eligibility approval date.

R6-12-505. Special Income Provisions; Nonrecurring Lump Sum Income

The objective of this rule is to require the Department to apply special rules to the receipt of a nonrecurring lump sum payment. The purpose of this rule is to specify that a nonrecurring lump sum payment is considered a resource if it is received by an assistance unit member or person whose income is considered available to the assistance unit.

R6-12-506. Special Income Provisions: Sponsored Noncitizens

The objective of this rule is to require the Department to apply special rules for the budgeting of the income of a sponsored noncitizen's Sponsor. The purpose of this rule is to specify when the income of a Sponsor will be considered available to the sponsored

noncitizen, to specify the budgeting methods the Department shall use to determine the amount of the Sponsor's income that will be countable when determining CA eligibility, and to specify the responsibilities of both the sponsored noncitizen and the Department when verifying the income of the sponsor, and the consequences for not complying with the income verification requirement.

R6-12-507. Determining Monthly Income

The objective of this rule is to require the Department to determine a countable monthly income amount for both a family, when determining income eligibility, and an assistance unit, when determining a cash grant amount. The purpose of this rule is to specify the method in which the Department shall determine a monthly countable income amount.

R6-12-508. Methods to Determine Projected Monthly Income

The objective of this rule is to require the Department to determine a projected monthly income amount to be budgeted for ongoing eligibility for both a family, when determining income eligibility, and an assistance unit, when determining a cash grant amount. The objective of this rule is to specify the methods the Department will determine a projected monthly income amount.

R6-12-509. Income Verification

The objective of this rule is to ensure that the amount of countable income is verified. The purpose of the rule is to specify that the Department is required to verify all income before determining income eligibility and a cash grant amount.

ARTICLE 6. SPECIAL CA CIRCUMSTANCES

R6-12-601. Caretaker Relative of SSI or Foster Child

The objective of this rule is to allow eligibility for households in which the applicant is the caretaker relative of children who are excluded from CA due to the receipt of SSI or Foster Care Child income. The purpose of the rule is to specify the budgeting methods the Department shall apply for these households when determining income eligibility and a cash grant amount.

R6-12-602. Strikers

The objective of this rule is to restrict the eligibility of households that contain a member who is on strike. The purpose of the rule is to specify the budgeting methods the Department shall apply for these households when determining income eligibility and a cash grant amount.

R6-12-603. Dependents of Foster Children

The objective of this rule is to allow eligibility for households in which the applicant is excluded from CA due to the receipt of Foster Care Child income and is requesting assistance for their dependent child. The purpose of the rule is to specify the budgeting methods the Department shall apply for these households when determining income eligibility and a cash grant amount for the foster child's dependent child.

R6-12-604. Minor Parents

The objective of this rule is to restrict eligibility for minor parent heads of household. The purpose of the rule is to specify when a parent under the age of 18 is considered to be a minor parent, to specify the special eligibility rules that apply to minor parents, and to specify the circumstances in which the Department shall file a report with the Arizona Department of Child Safety.

R6-12-605. Unemployed Parents in a Two-parent Household (TPEP)

The objective of this rule is to allow CA eligibility for households in which both parents of a dependent child reside. The purpose of the rule is to specify the CA provisions that apply to unemployed parents in a two-parent household (TPEP).

R6-12-606. TPEP: Education and Employment Requirements; Good Cause for Nonparticipation

The objective of this rule is to require both parents to participate in the Jobs program. The purpose of this rule is to specify the Jobs program requirements for both parents in the TPEP component and to specify circumstances in which good cause for nonparticipation in Jobs exist.

R6-12-607. TPEP: Duration

The objective of this rule is to restrict the receipt of benefits in the TPEP component to no more than 6 months in a 12 month period. The purpose of this rule is to specify the duration of TPEP benefits and to specify the circumstances for requesting an extension of benefits.

ARTICLE 7. DETERMINING ELIGIBILITY AND BENEFIT PAYMENT

AMOUNT

R6-12-701. Income Limitations for a Family

The objective of this rule is to restrict CA eligibility to only assistance units that reside in a Needy Family. The purpose of the rule is to specify the income limits for a family and to specify that these income limits do not apply to households in which the only dependent child for whom assistance is requested is in unlicensed foster care placement with the applicant (a child only case).

R6-12-702. Eligibility for an Assistance Unit

The objective of this rule is to restrict CA eligibility to only assistance units that satisfy the non-financial and financial eligibility requirements. The purpose of this rule is to specify under what circumstances an assistance unit is eligible for CA.

R6-12-703. Earned Income Disregards

The objective of this rule is to allow deductions to be made from the earned income of a family member when determining income eligibility for a family and a CA benefit amount for an assistance unit. The purpose of the rule is to specify what the earned income deductions are and any limitations on the amount of those deductions.

R6-12-704. Disqualification from Earnings Disregards; Good Cause

The objective of this rule is to disallow deductions to be made from the earned income of a family member under certain circumstances. The purpose of the rule is to specify the circumstances under which an assistance unit member, or a person whose income is considered available to the assistance unit, may be disqualified from having earned income disregards deducted from their earned income, and identifies good cause reasons that will excuse the person from such disqualification.

R6-12-705. Determining Benefit Payment Amount

The objective of this rule is require the Department to determine a benefit payment based on a percentage of the 1992 federal poverty level as specified in state law. The purpose of this rule is to specify the method the Department uses when determining the amount of a cash grant.

R6-12-706. Notice of Eligibility Determination

The objective of this rule is to ensure that an applicant is notified by the Department of the results of an eligibility determination. The purpose of this rule is to specify the

Department's responsibilities when informing an applicant of the results of an eligibility determination, including the information required in a denial notice.

ARTICLE 8. PAYMENTS

R6-12-801. Benefit Payments

The objective of this rule is to explain under what circumstances benefits will be paid to an eligible assistance unit member, and to whom the benefits will be paid. The purpose of this rule is to specify the Department's responsibilities in the benefit payment process.

R6-12-803. Supplemental Payments

The objective of this rule is to ensure that a recipient receives the full amount of benefits for which they are eligible. The purpose of this rule is to specify the Department's responsibility to correct an underpayment of benefits by issuing the assistance unit a supplemental payment, regardless of whether the individual who was underpaid is eligible on the date the supplemental payment is issued.

R6-12-806. Protective Payee

The objective of this rule is to ensure that the benefit payment is being used to provide for the basic needs of the household when the head-of-household is not fulfilling that responsibility. The purpose of this rule is to specify the circumstances in which the Department will designate a person other than the head-of-household to have access to the CA benefit, to specify what persons may not be named as the Protective Payee, and the circumstances in which a protective payee will no longer be needed by the household.

R6-12-807. Emergency Payee

The objective of this rule is to allow CA benefits to continue to be provided on behalf of eligible dependent children when the head-of-household is not available or able to take

care of those needs. The purpose of this rule is to specify the circumstances in which the Department may pay benefits to an emergency payee and to specify the length of time that benefits may be provided to the Emergency Payee.

R6-12-808. Identification Card

The objective of this rule is to ensure that recipients have access to their CA benefit which is issued via an Electronic Benefit Transfer (EBT) card. The purpose of this rule is to specify the Department's responsibility to issue an identification card or an EBT card when such card is requested by the recipient.

ARTICLE 9. CHANGES; ADVERSE ACTION

R6-12-901. Reporting Changes

The objective of this rule is to ensure that CA benefits are issued only to eligible assistance units and that the benefit amount is accurate based on the assistance unit's current circumstances. The purpose of this rule is to specify the recipient's responsibility to timely report all changes and to specify the time frame in which a change must be reported.

R6-12-902. Withdrawing a Member from the Assistance Unit

The objective of this rule is to ensure that the Department efficiently processes a reported change in household composition. The purpose of this rule is to specify the actions that the Department shall take when a request to remove a household member is received from the head-of-household.

R6-12-903. Determining Benefits When Adding or Removing a Member

The objective of this rule is to ensure that the Department efficiently processes a reported change in household composition and authorizes an accurate benefit payment based on

the change in household circumstances. The purpose of this rule is to specify the methods in which the Department shall re-determined a CA benefit amount when a member is added to, or removed from, an assistance unit.

R6-12-904. Benefit Reduction or Termination

The objective of this rule is to ensure that benefits are authorized based on the current circumstances of the assistance unit and that benefits will be decreased or stopped based on those circumstances. The purpose of the rule is to specify that the Department will decrease or terminate benefits, when appropriate, based on an assistance unit's reported changes or failure to comply with review requirements.

R6-12-905. Ineligibility Date for an Assistance Unit

The objective of this rule is to ensure that benefits do not continue to be provided to an ineligible assistance unit. The purpose of the rule is to specify the different timeframes in which ineligibility begins and the circumstances for each of those timeframes.

R6-12-906. Ineligibility Date for an Individual Member of an Assistance Unit

The objective of this rule is to ensure that benefits do not continue to be provided on behalf of an ineligible person within an eligible assistance unit. The purpose of this rule is to specify the timeframe in which ineligibility begins for that person.

R6-12-907. Notice of Adverse Action

The objective of this rule is to ensure that an assistance unit is timely notified by the Department of a decrease or termination of assistance. The purpose of the rule is to specify the timeframes within which an assistance unit must be notified of an adverse action and the circumstances that determine the appropriate timeframe for the adverse action notice.

R6-12-908. Referral for Investigation

The objective of this rule is to require the Department to maintain the integrity of the CA program by referring suspected fraudulent activity to the Office of Special Investigations.

The purpose of the rule is to specify the circumstances that require the FAA to refer a case for investigation by the Office of Special Investigations.

ARTICLE 10. APPEALS

R6-12-1001. Entitlement to a Hearing

The objective of this rule is to indicate the opportunity for applicants and recipients to obtain a hearing to challenge adverse actions and to specify actions that are not appealable. The purpose of this rule is to convey appeal rights and clarify which Department actions have no associated appeal rights.

R6-12-1002. Request for Hearing; Form; Time Limits

The objective of this rule is to specify the time period and the formal and procedural requirements for filing an appeal, and the circumstances that will excuse the late filing of an appeal. The purpose of this rule is to clearly convey what constitutes a timely and proper appeal and to set forth requirements for an appellant to establish good cause for an otherwise late-filed appeal to be considered timely.

R6-12-1003. Hearing Requests; Preparation and Processing

The objective of this rule is to ensure that the Department prepares and processes a hearing request expeditiously. The purpose of the rule is to specify the Department's responsibilities for preparing required forms within set time frames and to specify the actions the Department will take to provide the appellant with information about available legal resources they may access.

R6-12-1004. Stay of Adverse Action Pending Appeal; Exceptions

The objective of this rule is to allow an appellant to continue to receive assistance throughout the time their appeal of adverse action is being conducted. The purpose of the rule is to specify the time frames in which a request to continue benefits must be submitted and to specify the circumstances in which benefits may not be continued during the appeals process.

R6-12-1005. Hearing Officer; Qualifications; Duties; Subpoenas

The objective of this rule is to specify the qualifications and the duties of the hearing officer. The purpose of this rule is to assure that all hearing officers are duly qualified for that role and that each performs consistent functions in the course of any proceeding before him or her.

R6-12-1006. Hearings: Location; Notice; Time

The objective of this rule is to specify when hearings are to be scheduled, the contents of the hearing notice and when the notice of hearing is to be sent to the parties. The purpose of this rule is to establish guidelines and time frames for the scheduling of hearings and to assure the parties have sufficient and proper notice of the hearing issue(s) and the circumstances under which the hearing will be held.

R6-12-1007. Rescheduling the Hearing

The objective of this rule is to specify the manner of requesting postponements, the grounds for granting postponements, and the procedures and time frames that apply to rescheduled hearings. The purpose of this rule is to provide guidance to the parties on the process for requesting a hearing postponement, the grounds under which such a request would be granted, and to specify how and when the hearing would be rescheduled.

R6-12-1008. Hearings Concerning Disability Determinations

The objective of this rule is to provide an appellant with the opportunity to have a new medical examination when the issue of the appeal is whether the appellant is disabled.

The purpose of the rule is to specify the Department's responsibility in providing a medical appointment for the appellant and to specify the hearing officer's responsibilities and options when deciding the disability appeal.

R6-12-1009. Group Hearings

The objective of this rule is to allow the Department the option of conducting a group hearing rather than separate, individual hearings. The purpose of the rule is to specify under what circumstances a group hearing may be conducted.

R6-12-1010. Withdrawal of Appeal; Default

The objective of this rule is to specify the procedure for requesting and processing the withdrawal of an appeal. The purpose of this rule is to inform parties of their right to withdraw any appeal, how to do so, and that the matter will be dismissed.

R6-12-1011. Hearing Proceedings

The objective of this rule is to specify procedures applying to a variety of hearing related matters including burden of proof, admissibility of evidence, the hearing record, and closing and opening statements by the parties. The purpose of this rule is to clarify the procedures used in appeal hearings to assist parties to properly prepare for and to fully participate in the process.

R6-12-1012. Hearing Decision; Time Limits; Form; Contents; Finality

The objective of this rule is to specify time frames for the issuance of the hearing officer's decision, the required contents of the decision, and the procedures for delivering

the decision to the parties. The purpose of this rule is to inform the parties of the time and method for receiving a decision, and the necessary information which must be included in that decision.

R6-12-1013. Implementation of the Decision

The objective of this rule is to specify when a decision adverse to the appellant shall be effective. The purpose of this rule is to clarify when the Department may act upon the decision of the hearing officer if the adverse action is affirmed and what the Department must do if the adverse action is reversed.

R6-12-1014. Further Appeal and Review of Hearing Decisions; Stay of Adverse Action

The objective of this rule is to specify procedures for appeal of a hearing officer decision to the DES Appeals Board. The purpose of this rule is to set forth the procedures and time frames which a party must follow to have the hearing officer's decision reviewed by the Appeals Board.

R6-12-1015. Appeals Board Proceedings and Decision

The objective of this rule is to specify procedures for review of hearing officer decisions before the Appeals Board. The purpose of this rule is to clarify the responsibilities and processes of the Appeals Board with respect to any further appeals filed from a hearing officer's decision.

ARTICLE 11. OVERPAYMENTS

R6-12-1101. Overpayments: Date of Discovery; Collection; Exceptions

The objective of this rule is to require the Department to recover overpayments of benefits. The purpose of the rule is to specify the timeframes used to determine the

overpayment period and to specify the time frame in which the Department shall initiate the overpayment referral.

R6-12-1102. Overpayments: Persons Liable

The objective of this rule is to require certain persons in an assistance unit to repay the Department an overpayment of benefits. The purpose of the rule is to specify the persons who are liable for an overpayment, and to specify the order of those persons from which the Department will seek recovery.

R6-12-1103. Methods of Collection and Recoupment

The objective of this rule is to provide a variety of means by which a person can repay an overpayment to the Department. The purpose of the rule is to specify the methods which may be utilized to repay an overpayment.

ARTICLE 12. INTENTIONAL PROGRAM VIOLATION

R6-12-1201. Intentional Program Violation (IPV); Defined

The objective of this rule is to clarify the circumstances in which an IPV exists, or potentially exists. The purpose of this rule is to define what an IPV is and to specify the circumstances in which an IPV disqualification may be imposed by the Department.

R6-12-1202. IPV Disqualification Proceedings; Hearing Waiver

The objective of this rule is to require the Department to initiate an administrative disqualification proceeding, or a referral for prosecution, when sufficient documentary evidence exists. The purpose of the rule is to specify the Department's responsibilities when informing a recipient of an IPV action and to specify the information that must be provided to that person in the written notification notice.

R6-12-1203. Disqualification Proceedings; Hearing

The objective of this rule is to require the Office of Appeals to proceed with an IPV Disqualification Hearing when the recipient does not waive their right to a hearing. The purpose of the rule is to specify the responsibilities of the Office of Appeals when notifying the recipient of the hearing and when conducting the hearing.

R6-12-1204. Disqualification Sanctions; Notice

The objective of this rule is to require the Department to impose a sanction on a recipient found guilty of committing an IPV. The purpose of the rule is to specify the terms and length of the sanction, to specify the Department's notification requirements, and to specify the manner in which the income of the convicted member will be treated by the Department when determining eligibility and a cash grant amount for the remaining assistance unit members.

R6-12-1205. Disqualification Hearings; Appeal

The objective of this rule is to specify that the person found guilty of an IPV may appeal the decision to the DES Appeals Board. The purpose of this rule is to set forth the procedures and time frames which a party must follow to have the hearing officer's decision reviewed by the Appeals Board and to specify that an appeal may not be requested when the right to a disqualification hearing was waived by the recipient.

R6-12-1206. Honoring Out-of-state IPV Determinations and Sanctions

The objective of this rule is to require the Department to honor sanctions imposed against an applicant or recipient by Title IV-A agencies of other states. The purpose of the rule is to specify the Department's use of other states' IPV sanction periods when imposing a new sanction for an IPV conviction in Arizona.

ARTICLE 13. JOBSTART

R6-12-1301. Scope

The objective of this rule is to require the Department to operate a JOBSTART component in the CA program. The purpose of the rule is to specify that the JOBSTART component will be operated on a statewide basis.

R6-12-1302. Definitions

The objective of this rule is to promote and ensure uniform understanding of the terminology used by the Department. The purpose of this rule is to define the terms used in Article 13.

R6-12-1303. Diversion of Benefits to Wage Pool

The objective of this rule is to require the Family Assistance Administration (FAA) to divert the CA and Nutrition Assistance benefits to a Wage Pool specific to this component. The purpose of the rule is to specify the FAA responsibilities when calculating the amount of benefits to be diverted and the start date of the benefit diversion process.

R6-12-1304. Treatment of Income

The objective of this rule is to require the Department to exclude the wages received from the JOBSTART participant's subsidized employment. The purpose of this rule is to specify the special budgeting process that the FAA will utilize when determining the amount of a JOBSTART participant's CA benefits.

R6-12-1305. Supplemental Payments

The objective of this rule is to ensure that the income that the JOBSTART participant receives from the subsidized employment is not less than the amount of CA and Nutrition Assistance benefits that the recipient would receive if not participating in JOBSTART.

The purpose of the rule is to specify the methods the Department shall utilize to determine whether the recipient will be issued a CA supplemental payment and to specify the type of supplemental payment that will be provided.

R6-12-1306. Sanctions

The objective of this rule is to enforce the requirements in the Personal Responsibility Agreement that the JOBSTART participant signed with the Department when establishing eligibility for assistance. The purpose of the rule is to specify the circumstances in which there is noncompliance with the JOBSTART component requirements and to specify the sanction actions that the Department's imposes for each instance of noncompliance.

ARTICLE 14. GRANT DIVERSION

R6-12-1401. Definitions

The objective of this rule is to promote and ensure uniform understanding of the terminology used by the Department. The purpose of this rule is to define the terms used in Article 14.

R6-12-1402. Eligibility for Grant Diversion

The objective of this rule is to establish that there are non-financial and financial eligibility factors that will be considered in determining whether a household may be offered the Grant Diversion option. The purpose of the rule is to specify all of the financial and non-financial factors that must be satisfied in order for the Grant Diversion option to be offered to the applicant and to specify the applicant's responsibilities in the Grant Diversion option.

R6-12-1403. Amount of the Grant Diversion Cash Benefit

The objective of this rule is to establish the amount of assistance that will be provided to an eligible assistance unit in the Grant Diversion option. The purpose of the rule is to specify that frequency of a Grant Diversion option payment and the method the Department shall use to determine the amount of the Grant Diversion option payment.

R6-12-1404. Treatment of Changes During the Grant Diversion Payment Period

The objective of this rule is to require the Department to redetermine the Grant Diversion option benefit amount when the assistance unit reports the addition of an eligible member. The purpose of the rule is to specify the change reporting responsibilities of the assistance unit, to specify the manner in which a new member will be added to the Grant diversion assistance unit, and to specify the circumstances when a supplemental payment will be made.

C. EFFECTIVENESS

With the exception of the changes identified as necessary below, the Department believes that the rules in Title 6, Chapter 12, are effective in meeting their objectives.

R6-12-101. Definitions

The following definitions are either no longer accurate and should be revised to make this rule more effective, be removed entirely, or should be added to the rule as new definitions:

- The state time limit has changed from 36 months to 12 months. This change requires a revision to the definition of “Countable Payment”.
- The definition “District Medical Consultant” should be removed as the Department no longer employs a licensed physician in this capacity.

- The definition “JTPA” or “Job Training Partnership Act” should be removed as this federal program has been repealed and replaced.
- The Department should add a definition of “Qualified Alien,” since only aliens that meet that definition are eligible for CA.
- The definition of "TPEP" or "Two-parent Employment Program" should be revised to include an underemployed parent, and not solely an unemployed parent.
- The definition “warrant” should be removed, because all payments are made solely by Electronic Benefit Transfer.
- A definition of “Electronic Benefit Transfer (EBT)” should be added.
- “Case Record” should be defined, since the record maintenance and retention is done in both electronic and paper formats.
- A definition of “Work Eligible Individual” should be added.

R6-12-102. Confidentiality

The rule would be more effective when updated to make changes to conform to the provisions of A.R.S. § 8-451 that created the Arizona Department of Child Safety (DCS) to which the responsibilities and authority of Child Protective Services (CPS) were transferred.

R6-12-104. Manuals

The rule would be more effective when updated, because manuals are no longer maintained in the Local Office and are not available in paper format to be reviewed or copied. The FAA Policy manual is available to the public online via the Department’s website.

R6-12-201. Application

- This rule would be more effective when updated to reflect that the methods for submitting an application have changed. Applications may be submitted through online transmittal and FAX, and electronic signatures are now also accepted.
- Also, this rule should be updated to reflect that an application for CA is not automatically treated as an application for AHCCCS medical benefits.

R6-12-202. Request for Benefits; Composition of the Assistance Unit

- This rule would be more effective when updated to reflect that the ARS § 8-514.04 requirements for processing an application for a case that meets the new statutory definition of “Child only case,” in A.R.S. § 46-101, is different from the other procedures described in this rule.
- This rule would be more effective when updated to reflect that a child who is in the custody of a Legal Permanent Guardian and for whom the guardian is receiving Guardianship Subsidy payments from the Department of Child Safety is not eligible for CA.

R6-12-203. Initial Eligibility Interview

This rule would be more effective when the following changes are made:

- Revise the interview scheduling procedures to include telephone interviews.
- Revise the Department’s responsibilities during the interview, since they will vary depending on the method of interview.
- Remove the requirement to photograph the applicant.
- Add the A.R.S. § 46-217 Finger Imaging requirement.

R6-12-204. Disability Determination

This rule would be more effective when revised to remove the provision that a “District Medical Consultant shall determine incapacity” under certain circumstances. The Department no longer employs a District Medical Consultant as part of the disability determination process.

R6-12-205. Verification of Eligibility Information

This rule would be more effective when amended because the new automated eligibility system, HEAplus, will provide the Department with real-time access to a number of automated databases that will provide verification of several eligibility factors. This rule will be revised to include the change in verification processes.

R6-12-209. Processing the Application; Denials; Approval

This rule would be more effective when the following changes are made:

- Subsection (D) should be removed from this rule, because an application for CA is not automatically treated as an application for AHCCCS medical benefits.
- A new section on denial of applications without an interview, for applications that are clearly ineligible or for which no potential eligibility exists, will be added to this rule.

R6-12-210. Six-month Review

This rule would be more effective when revised to reflect that there are now different timeframes in which a case is subject to an eligibility review, depending on the type of CA case. Not all cases are reviewed every 6 months.

R6-12-211. Reinstatement of Benefits

This rule would be more effective when the following changes are made:

- The state time limit has changed to 12 months requiring a revision to subsection B (3).
- Also, Department policy has changed to allow continuance of benefits when a request for a fair hearing is received at any time prior to the effective date of the termination and not only within 10 days of the termination notice.

R6-12-302. Applicant and Recipient Responsibility

This rule would be more effective when revised to reflect the following changes:

- The time frame for reporting a change has changed to the 10th day of the month following the month the change occurred.
- There are now two different change reporting requirements, and the changes that must be reported depend on which of the two reporting requirements the case has been assigned.
- The A.R.S. § 46-299 requirement to sign a Personal Responsibility Agreement has changed depending on what type of CA case is being processed.
- To reflect the name change from the Division of Child Support Enforcement to the Division of Child Support Services.

R6-12-304. Residency

This rule would be more effective if the Department moved the “Temporary Absence” requirements and procedures from R6-12-309 to this rule.

R6-12-305. Citizenship and Alienage

To be more effective, in this rule, the Department should change “U.S. Immigration and Naturalization Service (INS)” to “U.S. Citizenship and Immigration Services (USCIS)”.

This rule will also be revised to state that the person's alien registration number and other related information shall be submitted to the U.S. Citizenship and Immigration Services (USCIS) for verification of the person's current immigration status.

R6-12-306. Eligible Persons

The following changes should be made to this rule to increase effectiveness:

- The composition of an assistance unit for a case that meets the new statutory definition of "Child only case" in A.R.S. § 46-101 is different from the requirements for other assistance units as described in this rule.
- The Department should include additional information in subsection (B), to clarify that when assistance is not requested for an otherwise mandatory member of the assistance unit or a mandatory member of the assistance unit is disqualified from CA, the countable income and resources of the mandatory member are considered available to the assistance unit. A cross-reference to R6-12-402(B) and R6-12-502(B) should be added.

R6-12-308. Family Benefit Cap

The following changes should be made to this rule to increase effectiveness:

- The rule will be revised to include implementation of the provisions in 2016 HB 2452 (52nd Legislature, Second Regular Session, Chapter 133), which removes the Benefit Cap from children who are currently excluded from Cash Assistance under certain circumstances.
- The Department should revise subsection (F) to clarify that a CA recipient is not automatically eligible for AHCCCS medical benefits.

R6-12-310. Deprivation

To be more effective, the following changes should be made to update this rule:

- Revise the “continued absence” requirements, because “30 days” is no longer needed.
- Expand the “unemployed” requirement to include “underemployed.”
- Change an incorrect citation from R6-12-609 to R6-12-605.

R6-12-311. Assignment of Support Rights; Cooperation

To be more effective, the following changes should be made to update this rule:

- The Department should update this rule to reflect the name change from the Division of Child Support Enforcement to the Division of Child Support Services, to update definitions, and to make the rule clear, concise, and understandable.
- The rule should be further revised to add the Department requirement that an applicant who is included in the cash grant must cooperate with DCSS prior to approval of the application; failure to comply results in denial of the application.

R6-12-312. Good Cause for Non-cooperation with Child Support Enforcement

To be more effective, the Department should update this rule by removing the “6 month” reference in subsection (J), because not all cases are reviewed every 6 months. Also the rules will be revised to include the name change from the Division of Child Support Enforcement to the Division of Child Support Services

R6-12-313. Participation in JOBS; Exemptions; Good Cause Exceptions

To be more effective, the following changes should be made to update this rule:

- In R6-12-313, the Department should expand the requirement to include all persons who meet the definition of “Work Eligible Individual,” which will be defined at R6-12-101, because this person may or may not be a CA recipient.

- The rule should be further revised to add the Department requirement that all persons who meet the definition of “Work Eligible Individual” must complete a Jobs Program Preliminary Orientation (JPPO) as a condition of eligibility for the assistance unit.

R6-12-318. Duration of Assistance - 36-month Time Limit

To be more effective and to reflect statutory changes to the program, the Department should change all occurrences of “36 months” to “12 months.”

R6-12-319. Extension of Time Limited Assistance

To be more effective, the Department should revise the time frame for having started an educational/job training program, since the state time limit has been reduced to 12 months.

R6-12-321. Hardship Verification Requirements

This rule will be more effective when revised to include that determination of disability by the Social Security Administration evidenced by the receipt of federal SSI benefits is acceptable disability verification in subsection A.

R6-12-404. Individual Development Accounts

This rule will be more effective when revised to change “Food Stamp Program benefits” to “Nutrition Assistance Program benefits.”

R6-12-501. Treatment of Income; In General

This rule will be more effective when revised to include the Self Employment Income Standard Deduction method by which the Department determines the countable gross income from self employment. In addition to the earned income disregards, self-employed family members may be eligible to receive a standard deduction of 40 percent of the

countable gross self-employment income. The self-employment standard deduction is applied prior to calculating the earned income disregards. The self-employed family member must provide verification of at least one allowable expense to receive the deduction.

R6-12-503. Income Exclusions

This rule will be more effective when revised to change references to the DES Division of Children, Youth and Families to the Department of Child Safety.

R6-12-604. Minor Parents

To be more effective, the following changes should be made to update this rule:

- Subsection C should be revised to correct the statutory reference; A.R.S. § 8-201 now contains definitions of “abuse” and “neglect.” The statute currently cited in this rule has been repealed.
- References to Child Protective Services (CPS) will be changed to the Department of Child Safety.
- Subsection (E) will be revised to remove (1) and (4) as these provisions no longer apply.

R6-12-605. Unemployed Parents in a Two-parent Household (TPEP)

Subsection (A) of this rule will be more effective when revised to include an underemployed parent, and not solely an unemployed parent.

R6-12-801. Benefit Payments

To be more effective, this rule needs to be revised in its entirety, because benefit payments are made solely through Electronic Benefit Transfer (EBT).

The revised rule will also include the policy on the prohibited use of the Cash Assistance EBT card at prohibited businesses. To comply with 42 U.S.C. 608(a)(12), Arizona

enacted A.R.S. § 46-297, to prohibit the use of a Cash Assistance EBT card at certain businesses.

R6-12-808. Identification Card

This rule will be more effective when updated to reflect current practices related to EBT cards.

R6-12-901. Reporting Changes

This rule will be more effective when revised to reflect new change reporting requirements, new time frames for reporting changes, and additional methods by which to report a change:

- The Department has aligned the change reporting requirements in TANF with those used in the Nutrition Assistance (SNAP) program. SNAP regulations, found at 7 CFR 273.12, allow state agencies several options, including a “simplified change reporting option,” which the Department has chosen to implement in both SNAP and TANF.
- The method for reporting a change in the current rule refers specifically to a “mailing date.” There are several methods by which to report a change in addition to reporting by mail, such as by telephone, electronic transmittal, and in person.
- A new section will also be added to this rule that will contain the Cash Assistance drug testing policy and procedure required in state law. A Cash Assistance adult recipient is required to complete a drug test when the Department determines that reasonable cause to require such a test exists.

R6-12-902. Withdrawing a Member from the Assistance Unit

This rule will be more effective when amended to clarify that if the member requested to be withdrawn is a mandatory member of the assistance unit, the Department shall notify the applicant that removing this person from the assistance unit will result in a termination of benefits, and that the applicant will be allowed to withdraw their request to withdraw the member.

R6-12-903. Determining Benefits When Adding or Removing a Member

This rule will be more effective when revised to reflect that the time frame for effecting these changes has changed. The Department has aligned the timeframes for effecting reported changes in TANF with those used in the Nutrition Assistance (SNAP) program. SNAP regulations, found at 7 CFR 273.12, contain those requirements.

R6-12-904. Benefit Reduction or Termination

This rule will be more effective when revised to remove the “6 month” reference in subsection (B), because not all cases are reviewed every 6 months. It also needs to include information about how the Department will process changes that result in a benefit reduction or termination of benefits.

R6-12-905. Ineligibility Date for an Assistance Unit

This rule will be more effective when amended to reflect a change in the ineligibility date, resulting from the change in the time frame for reporting a change.

R6-12-906. Ineligibility Date for an Individual Member of an Assistance Unit

This rule will be more effective when amended to reflect a change in the ineligibility date, resulting from the change in the time frame for reporting a change.

R6-12-907. Notice of Adverse Action

This rule will be more effective when the following changes are made:

- The Department is now allowed to provide notices to the assistance unit via email in addition to a traditional mailing. This will be included in this rule, though the Department is still in the process of developing policies and procedures for implementation of this new method.
- Reference to AHCCCS medical eligibility in the CA adverse action notice will be removed from this rule. A separate notice is sent for any change to AHCCCS eligibility.

R6-12-908. Referral for Investigation

The rule will be more effective when revised to remove the reference to “forgery of a signature on a cashed warrant”.

ARTICLE 10. APPEALS

To be more effective, the Department needs to update Article 10, rules R6-12-1001 through R6-12-1015 to conform to current policies, procedures, and practices used by the DES Office of Appeals.

R6-12-1102. Overpayments: Persons Liable

The rule will be more effective when revised to indicate the Department will pursue collection from individuals in a specified order and that it will only seek collection from adult members of the assistance unit.

D. CONSISTENCY

Except for the rules identified below, the rules in Chapter 12 are consistent with federal and state law and regulations and do not conflict with other Arizona Administrative Code rules.

The enactment of Laws 2015, Chapter 18, passed by the fifty second legislature – first regular session – revised A.R.S. §46-294 to reduce the Cash Assistance state time limit to 12 months, effective July 1, 2016. This change in state law requires the following rules to be revised to comply with the new 12 month benefit limit:

- **R6-12-211.** Reinstatement of Benefits
- **R6-12-318.** Duration of Assistance – 36-month Time Limit
- **R6-12-319.** Extension of Time Limited Assistance
- **R6-12-1004.** Stay of Adverse Action Pending Appeal; Exceptions

R6-12-308. Family Benefit Cap. The enactment of Laws 2016, Chapter 133, passed by the fifty second legislature – second regular session – revised A.R.S. §46-292 to remove the Family Benefit Cap for currently disqualified children under specific circumstances. The rule will be revised to add those provisions.

R6-12-313. Participation in JOBS; Exemptions; Good Cause Exceptions. Federal TANF regulations at 45 CFR 261.2 define a “work-eligible individual” as an adult (or minor head-of-household) receiving assistance or a parent living with a child receiving assistance even if the parent is not. The regulation excludes some parents who are not receiving TANF assistance from this definition. The CA rule specifies that “a recipient of CA” shall participate in the Jobs program. The revised federal regulation expands the requirement to include all persons who meet the definition of “Work Eligible Individual,” which will be defined at R6-12-101, because this person may or may not be a CA recipient.

R6-12-604. Minor Parents. Subsections (C)(3)(a)(i) & (ii) cite to A.R.S. § 8-546 that has been repealed. A.R.S. § 8-201 now contains the definitions of “abuse” and “neglect.”

R6-12-808. Identification Card. A.R.S. § 46-601 removed the requirement to issue an identification card when the financial assistance is issued by means of an electronic benefits transfer (EBT) card. Since Cash Assistance benefits are issued solely via EBT, identification cards are no longer required to be issued by the Department.

E. ENFORCEMENT

The CA rules are enforced to the extent that they are consistent with state and federal law and program policy. The following rules are not enforced, partially or in full, as currently written resulting from changes in law, regulation, or program policy:

R6-12-104. Manuals. This rule specifies that a CA program manual will be maintained and available in the FAA Local offices. A separate CA program manual is no longer maintained in the Local Office and is not available in paper format to be reviewed or copied. The FAA Policy manual which contains the CA program policies and procedures in addition to those of other assistance programs is available to the public online via the Department's website. A client is provided access to the online FAA Policy manual at a Local Office upon request.

R6-12-201. Application. This rule specifies that an application for CA is automatically treated as an application for AHCCCS medical benefits. This provision is no longer current; AHCCCS medical benefits must be specifically requested by an applicant. Also, in addition to filing a CA application either in person or by mail, an applicant may now also file an application via FAX transmittal or electronically via the HEAplus online application process.

R6-12-203. Initial Eligibility Interview. One provision in this rule is to require the eligibility worker to "Photograph the applicant for identification purposes". Taking a

photograph of the applicant for identification purposes is no longer required as part of the eligibility interview process. A photograph is taken at the time an applicant or recipient completes the fingerprint imaging requirement.

R6-12-204. Disability Determination. One provision in this rule is to require that a “District Medical Consultant shall determine incapacity” under certain circumstances.

The Department no longer employs a District Medical Consultant as part of the disability determination process. Disability is determined through the methods specified in subsections B and C of this rule.

R6-12-210. Six-month Review. This rule specifies that an eligibility review will be completed at least once every six months. There are now different timeframes in which a case is subject to an eligibility review, depending on the component of CA in which benefits are being provided, such as Kinship Care or Kinship Foster Care. Not all cases are reviewed every 6 months.

R6-12-211. Reinstatement of Benefits. The rule provides for the continuance of CA benefits when “the recipient files a request for fair hearing as provided in R6-12-1002 within 10 days of the notice date of the termination notice”. Department policy has changed to allow continuance of benefits when a request for a fair hearing is received at any time prior to the effective date of the termination and not only within 10 days of the termination notice.

R6-12-302. Applicant and Recipient Responsibility.

The rule requires the recipient to report a change within 10 days from the date the change becomes known. The time frame for reporting a change has changed in Department policy to the 10th day of the month following the month the change occurred. Also, there

are now two different change reporting requirements, and the changes that must be reported depend on which of the two reporting requirements the case has been assigned.

R6-12-305. Citizenship and Alienage. The rule provides for two methods of verifying whether a noncitizen meets the federal definition of “Qualified Alien” for purposes of receiving public benefits. The Department now completes this verification solely by submitting the noncitizen’s Alien Registration Number issued by the U.S. Citizenship and Immigration Services, or its predecessor the Immigration and Naturalization Services, to the Department of Homeland Security for verification via the online Systematic Alien Verification for Entitlements (SAVE) Program.

R6-12-308. Family Benefit Cap. This rule excludes children from CA when born during a parent’s Family Benefit Cap period. State law was revised in 2016 to remove this exclusion under certain circumstances. The effective date of the change was August 6, 2016 and the revised rule will include this change.

R6-12-310. Deprivation. The rule specifies that one of the factors for deprivation of parental support due to the “continued absence” of a parent is that the parent has left the household for a minimum of 30 days. Department policy has removed the 30 day requirement.

R6-12-313. Participation in JOBS; Exemptions; Good Cause Exceptions. The rule specifies that “a recipient of CA” shall participate in the Jobs program. The revised federal TANF regulation expands the requirement to include all persons who meet the definition of “Work Eligible Individual,” which will be defined at R6-12-101, because this person may or may not be a CA recipient.

R6-12-318. Duration of Assistance – 36-month Time Limit. The rule specifies that the Department shall not authorize cash benefits for a needy family, except in case of hardship, when the head-of-household or their spouse has received 36 countable months of cash benefits in the Arizona CA program for an eligible dependent child. As explained in Section D of this report, the state time limit is now 12 months.

R6-12-319. Extension of Time Limited Assistance. The rule requires that to be potentially eligible for a hardship extension due to educational needs, “The member must have started participation in the educational or training program prior to the member receiving 30 countable months of CA.” Due to a change in the time limit, the time frame for having started an educational/job training program is now 6 countable months.

R6-12-501. Treatment of Income; In General. In this rule, a gross income amount for self-employed persons is calculated as “the sum of gross business receipts minus business expenses.” Department policy is to now use a Self Employment Income Standard Deduction. In addition to the CA earned income disregards, self-employed family members may be eligible to receive a standard deduction of 40 percent of the countable gross self-employment income. The self-employment standard deduction is applied prior to calculating the earned income disregards. The self-employed family member must provide verification of at least one allowable expense to receive the deduction.

R6-12-604. Minor Parents. The rule contains a reference to A.R.S. § 8- 546, which has been repealed. A.R.S. § 8-201 now contains definitions of “abuse” and “neglect.”

R6-12-605. Unemployed Parents in a Two-parent Household (TPEP). The rule specifies that deprivation of parental support exists in these households when the Primary Wage Earning Parent is unemployed. Department policy has been revised to also include the underemployment of the Primary Wage Earning Parent as an allowable deprivation

factor, as the parent may be employed but their income is under the amount that would disqualify the family from receiving assistance.

R6-12-801. Benefit Payments. The rule states that benefit payments shall be made in the form of a state warrant. All benefit payments are now made electronically in the form of a deposit made into the recipient's Electronic Benefit Transfer (EBT) account.

Recipients are issued an EBT card which is used in the same manner as a bank debit card to access benefits and make purchases at allowable retailers.

R6-12-808. Identification Card. The rule requires the Department to issue the recipient an identification card or an electronic benefit transfer card at no cost. The Department no longer issues identification cards since the recipient accesses benefits via an EBT card which requires the recipient to select a Personal identification Number (PIN) which is the only identification that is needed when using the card. Also, Department policy has changed to require the recipient to pay for a replacement card under certain circumstances. The initial EBT card is issued at no cost to the recipient.

R6-12-901. Reporting Changes. This rule requires an assistance unit to report all changes within 10 days from the date the change becomes known. Department policy has changed to now require changes to be reported no later than the 10th day of the month following the month the change occurred. Also, the Department has aligned the change reporting requirements in Cash Assistance with those used in the Nutrition Assistance (SNAP) program. SNAP regulations, found at 7 CFR 273.12, allow state agencies several options, including a "simplified change reporting option," which the Department has chosen to implement in both Nutrition Assistance and Cash Assistance.

R6-12-903. Determining Benefits When Adding or Removing a Member. This rule specifies that a new member will be added to the assistance unit, when eligible, effective the date the Department receives the request to add the member. The Department now adds a new member effective the first day of the month following the month the change was reported and verified.

R6-12-905. Ineligibility Date for an Assistance Unit. The rule specifies that an assistance unit will be ineligible on the first day of the same month in which certain changes occur. Because changes are not required to be reported until the 10th day of the month following the month the change occurred, the ineligibility date is now the first day of the first month following the date the department processes the change and determines ineligibility, allowing for timely notice of adverse action.

R6-12-906. Ineligibility Date for an Individual Member of an Assistance Unit. The rule specifies that an individual will be ineligible on the first day of the same month in which ineligibility occurred. Because changes are not required to be reported until the 10th day of the month following the month the change occurred, the ineligibility date is now the first day of the first month following the date the department processes the change and determines ineligibility, allowing for timely notice of adverse action.

R6-12-907. Notice of Adverse Action. This rule specifies that an adverse action notice for Cash Assistance will also include notification of “Any effect the intended action may have on the unit members’ AHCCCS medical eligibility.” Department policy has changed to require a separate adverse action notice for all Medical Assistance (AHCCCS) program adverse actions. Also, the rule specifies that the method for providing the adverse action notice to the household will be by first class mail; though not yet

implemented, the department will also be implementing an email notification option for those households that choose to be notified in that manner when the rule is revised.

R6-12-908. Referral for Investigation. One of the circumstances specified in the rule for the department to initiate an investigation by the Department’s Office of Special Investigations is when “An applicant or recipient refuses to sign a statement attesting to forgery of a signature on a cashed warrant.” Because all benefits are now provided via the EBT method, warrants are no longer issued. This will be removed from the rule.

R6-12-1002. Request for Hearing; Form; Time Limits. The rule specifies that “A person who wishes to appeal an adverse action shall file a written request for a fair hearing with a local FAA office, within 20 days of the adverse action notice date.” Department policy has changed to allow a request to be made either verbally or in writing. Also, the 20 day timeframe for requesting a fair hearing has been expanded to 30 days.

R6-12-1004. Stay of Adverse Action Pending Appeal; Exceptions. The rule allows the Department to continue a recipient’s benefits at their current level only when the fair hearing request is received within 10 days of the notice of adverse action being sent. Department policy has changed to allow a continuation of benefits at the current level when the fair hearing request is received at any time prior to the effective date of the adverse action or within 10 days of the date of the adverse action notice.

R6-12-1005. Hearing Officer; Qualifications; Duties; Subpoenas. One provision in this rule specifies that “An appellant may request a change in hearing officer if the appellant so requests at least 10 days prior to the hearing.” Department policy has

changed to allow an affidavit for change of hearing officer to be filed at least 5 days prior to the hearing.

R6-12-1006. Hearings: Location; Notice; Time. The rule requires the Office of Appeals to “schedule the hearing at the office location most convenient to the interested parties.” The Department now also allows hearings to be conducted by telephone upon request. The rule also requires the Office of Appeals to “issue all interested parties a notice of the first hearing at least 10 calendar days before the hearing.” This time frame has changed to at least 20 calendar days prior to the hearing.

R6-12-1007. Rescheduling the Hearing. The rule specifies that the appellant may request a continuance of the hearing provided that the Office of Appeals receives the request at least 5 work days before the scheduled hearing date. The 5 work day requirement is no longer current. The rule will be revised to state that the household may request and is entitled to receive a postponement of the scheduled hearing, the postponement shall not exceed 30 days, and the time limit for action on the decision may be extended for as many days as the hearing is postponed.

R6-12-1008. Hearings Concerning Disability Determinations. There is a provision in the rule that “At any time prior to issuing a decision, the hearing officer may ask the District Medical Consultant to schedule the appellant for a special diagnostic evaluation by a specialist.” The Department no longer employs a District Medical Consultant and this provision will be removed from the rule.

R6-12-1010. Withdrawal of Appeal; Default. The rule stipulates that “An appellant may voluntarily withdraw an appeal at any time prior to the scheduled hearing by signing a written statement expressing the intent to withdraw.” Department policy has changed

to permit the withdrawal request to be made either verbally or in writing. The rule also specifies that when an appellant fails to attend the scheduled hearing and requests within 10 days that the hearing be reopened, the Department may do so if the appellant had good cause for not attending. Good cause is defined in the rule. The Department has expanded the “good cause” definition to also include “excusable neglect” as that term is used in Arizona Rules of Civil Procedure, Rule 60(c).

R6-12-1011. Hearing Proceedings. The rule specifies that “If the record is transcribed, the appellant is entitled to receive a copy at no charge.” This policy has changed; the Office of Appeals charges a fee of 15¢ per page for providing a transcript. However, a party may obtain a waiver of the fee by submitting an affidavit stating that the party cannot afford to pay for the transcript.

R6-12-1012. Hearing Decision; Time Limits; Form; Contents; Finality. The rule states, in part, “No later than 90 days after the date the appellant files a request for appeal, the hearing officer shall render a written decision”. Department policy has changed to require a decision within 60 days. The 60-day time limit is extended for any delay necessary to accommodate hearing continuances or extensions, or postponements requested by a party.

F. CLEAR, CONCISE, AND UNDERSTANDABLE

The Department believes that the issues identified in subsection (C) of this report also adversely impact the clarity, conciseness, and understandability of the listed rules. Other than those issues previously identified, the Department believes the rules in Chapter 12 are clear, concise, and understandable.

G. WRITTEN CRITICISMS

The Department has not received any written criticisms of the rules contained in this review.

H. ECONOMIC IMPACT COMPARISON

The Department prepared an Economic Impact Statement for the 1995 rulemaking in Title 6, Chapter 12. The economic impact anticipated at that time has proven to be substantially accurate.

The remaining rules in Chapter 12 were adopted under exemptions from the Administrative Procedure Act. The 1997 rulemaking was adopted using session law exemption language at Laws 1997, Ch.300, Section 74(A). The 2010 rulemaking was adopted using session law exemption language at Laws 2010, 7th S.S., Ch. 11, Section 11. The Department did not prepare Economic Impact Statements for either of those rulemakings.

The current economic impact of the program is provided below.

Case/Client Data:

The Department received 79,120 initial applications for CA during the year ending June 30, 2016, averaging 6,953 per month. During that same fiscal year 11,994 initial applications were approved and 69,439 applications were denied. Also, in that 12-month period, \$24,692,940 in CA was paid to eligible households.

There were 45,270 unduplicated recipients of CA during the state fiscal year 2016, comprised of 33,038 children and 12,232 adults. Approximately 2,649 children per month were subject to the benefit cap provisions of A.R.S § 46-292(H); therefore, those

households did not receive an incremental increase in the cash grant otherwise applicable to eligible dependent children. The resulting savings was approximately \$1,670,384.

In 2010, there were three major eligibility changes to the program, resulting from HB 2011, passed in the Seventh Special Session of the Legislature. Effective June 15, 2010, pregnant women in their third trimester who had no eligible dependent children residing with them were no longer eligible for CA. Also, in order for a non-parent relative or a legal guardian to receive CA only for a dependent child in their care, the income of the family cannot exceed 130% of the federal poverty level. For all other families, the income of the family cannot exceed 100% of the federal poverty level. These new “needy family” income restrictions do not apply when the non-parent relative is an unlicensed foster care provider requesting assistance only on behalf of a dependent child who is in the legal custody of the Department. In July 2010, a state benefit time limit of 36 months was implemented. This state benefit time limit was further reduced to 24 months in August 2011, and again reduced to 12 months in July 2016. The state benefit time limit applies to all CA households except those in which the non-parent relative is an unlicensed foster care provider requesting or receiving assistance only on behalf of a dependent child who is in the legal custody of the Department.

The total initial application approvals from SFY 2015 to SFY 2016 decreased 11% or 1,424.

Employee Data:

There were approximately 149 FTE evaluator, administrative and support staff managing the intake process and case dispositions for the CA program during SFY 2016.

Funding:

The Division incurred \$11,512,325 in operating expenses during SFY 2016. The funding to operate the CA program is provided from a mix of federal and state funds.

Economic Impact of Rules Identified as Needing Amendment:

The Department has identified several rules in Chapter 12 that require amendment, and has obtained an exception from the regulatory moratorium to proceed with developing the necessary amendments. These changes will not increase regulatory cost or burden, but will ease regulatory burden by making CA regulations consistent with current state law for the program. Regulations that are consistent with current state law are easier for program participants and other stakeholders to understand, and also provide the necessary legal framework to operate the program, effectively handling inquiries, grievances, and appeals.

The need for the rules to be updated negatively impacts stakeholders of this program, by causing confusion. An update to these rules is in progress, and will ease regulatory burden by providing regulations that are consistent with state law and program procedures.

I. BUSINESS COMPETITIVENESS ANALYSIS

The Department has not received any analysis by another person comparing the impact of the rules reviewed in this report on this state's business competitiveness to the impact on business in other states.

J. COURSE OF ACTION FROM PREVIOUS 5-YEAR REVIEW REPORT

In the previous 5-year Review Report, the Department indicated that it had received an exception under the regulatory moratorium on February 10, 2012 to proceed with developing a Notice of Proposed Rulemaking to make the amendments identified in the report and anticipated submitting a Notice of Final Rulemaking to Council by June 30, 2013. The Department made progress in drafting the rulemaking. Subsequent regulatory moratoriums beginning in July 2012 and statutory changes significantly impacted the CA program's regulatory framework and regulatory workload priorities.

On December 28, 2012, the Department received approval from the Governor's Office to file a Notice of Proposed Rulemaking specific to promulgating Article 14, Grant Diversion. The Grant Diversion cash benefit is a nonrecurring short term benefit intended to provide financial assistance to meet the critical needs of the household for a three calendar month period, which includes the initial month of Grant Diversion eligibility and the two months immediately following, in order for an adult household member to attempt to secure employment and support for the assistance unit. The rulemaking for Article 14 was submitted to the Governor's Regulatory Review Council for review on May 29, 2013, was approved, and became effective on August 4, 2013.

On March 7, 2016, The Department received approval from the Governor's Office to engage in further rulemaking regarding the CA program. The Department is currently drafting rulemaking to address the matters identified in the report.

K. DETERMINATION OF BURDEN AND COSTS

With the amendments proposed in this report, the Department believes that the rules would impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

L. CORRESPONDING FEDERAL LAW

The following rules contain provisions that are more restrictive than federal law applicable to the Temporary Assistance for Needy Families (TANF) program:

R6-12-318. Duration of Assistance – 36-month Time Limit. Federal law, 42 USC § 608, provides that certain assistance units may not be provided cash benefits, funded in whole or in part from the federal TANF block grant, for more than 5 years, except in state defined hardship situations. State law at A.R.S. § 46-294 restricts cash benefits received in the Arizona Cash Assistance program to no more than 12 months for every family except unlicensed foster care providers in a Child Only case, and except in hardship situations.

R6-12-308. Family Benefit Cap. State law at A.R.S. § 46-292 excludes an otherwise eligible child who is born during a parent's Family Benefit Cap Period from participating in the program. This exclusion is not required in federal TANF law.

R6-12-315. Immunization. State law at A.R.S. § 46-292 requires a child to be immunized in accordance with the schedule of immunizations pursuant to A.R.S. § 36-672. This requirement is not contained in federal TANF law.

M. COMPLIANCE WITH A.R.S. § 41-1037

The Department has determined that A.R.S. § 41-1037 does not apply to these rules, because the Department is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization.

N. PROPOSED ACTION

On March 7, 2016, the Department received an exception under the regulatory moratorium to proceed with developing a rulemaking to make the amendments identified as necessary in this report. The Department has been in consultation with the Office of Attorney General regarding legal questions attendant to the rulemaking and is following a work plan that anticipates transmittal of the rulemaking to Council by July 2017.

Department of Economic Security - Cash Assistance Program

TITLE 6. ECONOMIC SECURITY

**CHAPTER 12. DEPARTMENT OF ECONOMIC SECURITY
CASH ASSISTANCE PROGRAM**

Editor's Note: The Office prints all Chapters on white paper regardless of an exemption (Supp. 13-2).

Editor's Note: Article headings and Sections of this Chapter were amended, renumbered, repealed, and adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). The Chapter heading was also changed under this exemption. Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on these rules. Under Laws 1997, Ch. 300, § 74(B), the Department is required to institute the formal rulemaking process on these Sections on or before December 31, 1997. Because these rules are exempt from the regular rulemaking process, the Chapter is being printed on blue paper.

6 A.A.C. 12, consisting of Article 1, Sections R6-12-101 through R6-12-105; Article 2, Sections R6-12-201 through R6-12-111; Article 3, Sections R6-12-301 through R6-12-317; Article 4, Sections R6-12-401 through R6-12-406; Article 5, Sections R6-12-501 through R6-12-508; Article 6, Sections R6-12-601 through R6-12-617; Article 7, Sections R6-12-701 through 706; Article 8, Sections R6-12-801 through R6-12-807; Article 9, Sections R6-12-901 through R6-12-908; Article 10, Sections R6-12-1001 through R6-12-1015; Article 11, Sections R6-12-1101 through R6-12-1103; Article 12, Sections R6-12-1201 through R6-12-1206; and Article 13, Sections R6-12-1301 through R6-12-1307, adopted effective November 9, 1995 (Supp. 95-4).

ARTICLE 1. GENERAL PROVISIONS

Section

- R6-12-101. Definitions
- R6-12-102. Confidentiality
- R6-12-103. Case Records
- R6-12-104. Manuals
- R6-12-105. Repealed

ARTICLE 2. APPLICATION PROCESS AND PROCEDURES

Section

- R6-12-201. Application
- R6-12-202. Request for Benefits; Composition of the Assistance Unit
- R6-12-203. Initial Eligibility Interview
- R6-12-204. Disability Determination
- R6-12-205. Verification of Eligibility Information
- R6-12-206. Home Visits
- R6-12-207. Withdrawal of Application
- R6-12-208. Death of an Applicant
- R6-12-209. Processing the Application; Denials; Approval
- R6-12-210. Six-month Review
- R6-12-211. Reinstatement of Benefits

ARTICLE 3. NON-FINANCIAL ELIGIBILITY CRITERIA

Section

- R6-12-301. Non-financial Eligibility Criteria
- R6-12-302. Applicant and Recipient Responsibility
- R6-12-303. Application for Other Potential Benefits
- R6-12-304. Residency
- R6-12-305. Citizenship and Alienage
- R6-12-306. Eligible Persons
- R6-12-307. Social Security Number
- R6-12-308. Family Benefit Cap
- R6-12-309. Relationship
- R6-12-310. Deprivation
- R6-12-311. Assignment of Support Rights; Cooperation
- R6-12-312. Good Cause for Non-cooperation with Child Support Enforcement
- R6-12-313. Participation in JOBS; Exemptions; Good Cause Exceptions
- R6-12-314. School Attendance
- R6-12-315. Immunization

Title 6, Ch. 12*Arizona*

Code

Department of Economic Security - Cash Assistance Program

- R6-12-316. Sanctions for Noncompliance
- R6-12-317. Voluntary Quit/Reduction in Work Effort
- R6-12-318. Duration of Assistance – 36-month Time Limit
- R6-12-319. Extension of Time Limited Assistance
- R6-12-320. Duration of Assistance – Federal 60-month Time Limit
- R6-12-321. Hardship Verification Requirements

ARTICLE 4. FINANCIAL ELIGIBILITY: RESOURCES

Section

- R6-12-401. Treatment of Resources; Limitations
- R6-12-402. Treatment of Resources by Ownership Status; Availability
- R6-12-403. Treatment of Resources; Exclusions
- R6-12-404. Individual Development Accounts
- R6-12-405. Resource Transfers; Limitations
- R6-12-406. Resource Verification

ARTICLE 5. FINANCIAL ELIGIBILITY: INCOME

Section

- R6-12-501. Treatment of Income; In General
- R6-12-502. Income Available to the Assistance Unit
- R6-12-503. Income Exclusions
- R6-12-504. Special Income Provisions: Child Support, Alimony, or Spousal Maintenance
- R6-12-505. Special Income Provisions; Nonrecurring Lump Sum Income
- R6-12-506. Special Income Provisions: Sponsored Noncitizens
- R6-12-507. Determining Monthly Income
- R6-12-508. Methods to Determine Projected Monthly Income
- R6-12-509. Income Verification

ARTICLE 6. SPECIAL CA CIRCUMSTANCES

Section

- R6-12-601. Caretaker Relative of SSI or Foster Child
- R6-12-602. Strikers
- R6-12-603. Dependents of Foster Children
- R6-12-604. Minor Parents
- R6-12-605. Unemployed Parents in a Two-parent Household (TPEP)
- R6-12-606. TPEP: Education and Employment Requirements; Good Cause for Nonparticipation
- R6-12-607. TPEP: Duration
- R6-12-608. Expired
- R6-12-609. Expired
- R6-12-610. Expired
- R6-12-611. Expired
- R6-12-612. Expired
- R6-12-613. Renumbered
- R6-12-614. Repealed
- R6-12-615. Renumbered
- R6-12-616. Renumbered
- R6-12-617. Renumbered

ARTICLE 7. DETERMINING ELIGIBILITY AND BENEFIT PAYMENT AMOUNT

Section

- R6-12-701. Income Limitations for a Family
- R6-12-702. Eligibility for an Assistance Unit
- R6-12-703. Earned Income Disregards
- R6-12-704. Disqualification from Earnings Disregards; Good Cause
- R6-12-705. Determining Benefit Payment Amount
- R6-12-706. Notice of Eligibility Determination

ARTICLE 8. PAYMENTS

Section

- R6-12-801. Benefit Payments
- R6-12-802. Expired

Arizona
Code

Department of Economic Security - Cash Assistance Program

- R6-12-803. Supplemental Payments
- R6-12-804. Expired
- R6-12-805. Expired
- R6-12-806. Protective Payee
- R6-12-807. Emergency Payee
- R6-12-808. Identification Card

ARTICLE 9. CHANGES; ADVERSE ACTION

Section

- R6-12-901. Reporting Changes
- R6-12-902. Withdrawing a Member from the Assistance Unit
- R6-12-903. Determining Benefits When Adding or Removing a Member
- R6-12-904. Benefit Reduction or Termination
- R6-12-905. Ineligibility Date for an Assistance Unit
- R6-12-906. Ineligibility Date for an Individual Member of an Assistance Unit
- R6-12-907. Notice of Adverse Action
- R6-12-908. Referral for Investigation

ARTICLE 10. APPEALS

Section

- R6-12-1001. Entitlement to a Hearing
- R6-12-1002. Request for Hearing; Form; Time Limits
- R6-12-1003. Hearing Requests; Preparation and Processing
- R6-12-1004. Stay of Adverse Action Pending Appeal; Exceptions
- R6-12-1005. Hearing Officer; Qualifications; Duties; Subpoenas
- R6-12-1006. Hearings: Location; Notice; Time
- R6-12-1007. Rescheduling the Hearing
- R6-12-1008. Hearings Concerning Disability Determinations
- R6-12-1009. Group Hearings
- R6-12-1010. Withdrawal of Appeal; Default
- R6-12-1011. Hearing Proceedings
- R6-12-1012. Hearing Decision; Time Limits; Form; Contents; Finality
- R6-12-1013. Implementation of the Decision
- R6-12-1014. Further Appeal and Review of Hearing Decisions; Stay of Adverse Action
- R6-12-1015. Appeals Board Proceedings and Decision

ARTICLE 11. OVERPAYMENTS

Section

- R6-12-1101. Overpayments: Date of Discovery; Collection; Exceptions
- R6-12-1102. Overpayments: Persons Liable
- R6-12-1103. Methods of Collection and Recoupment

ARTICLE 12. INTENTIONAL PROGRAM VIOLATION

Section

- R6-12-1201. Intentional Program Violation (IPV); Defined
- R6-12-1202. IPV Disqualification Proceedings; Hearing Waiver
- R6-12-1203. Disqualification Proceedings; Hearing
- R6-12-1204. Disqualification Sanctions; Notice
- R6-12-1205. Disqualification Hearings; Appeal
- R6-12-1206. Honoring Out-of-state IPV Determinations and Sanctions

ARTICLE 13. JOBSTART

Section

- R6-12-1301. Scope
- R6-12-1302. Definitions
- R6-12-1303. Diversion of Benefits to Wage Pool
- R6-12-1304. Treatment of Income
- R6-12-1305. Supplemental Payments
- R6-12-1306. Sanctions
- R6-12-1307. Renumbered

Department of Economic Security - Cash Assistance Program
ARTICLE 14. GRANT DIVERSION

Section

- R6-12-1401. Definitions
- R6-12-1402. Eligibility for Grant Diversion
- R6-12-1403. Amount of the Grant Diversion Cash Benefit
- R6-12-1404. Treatment of Changes During the Grant Diversion Payment Period

ARTICLE 1. GENERAL PROVISIONS

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-101. Definitions

The following definitions apply to this Chapter:

1. "Acceptable medical source" means a registered nurse practitioner or a licensed physician, including a medical or osteopathic doctor; licensed psychologist; licensed optometrist; and licensed podiatrist, as applicable for the particular medical impairment.
2. "Adequate notice" means a notice which explains the action the Department intends to take, the reason for the action, the specific authority for the action, the recipient's appeal rights, and right to benefits pending appeal, and which is mailed before the effective date of the action.
3. "Adequate and timely notice" means a written notice which contains the information required for an adequate notice and is sent within the time-frame provided for a timely notice.
4. "Adverse action" means one of the Department actions described in R6-12-1001(A), including action to terminate or reduce a benefit or assistance grant, or change the manner or form in which benefits are paid.
5. "AHCCCS" or "Arizona Health Care Cost Containment System" means a system established pursuant to A.R.S. § 36-2901 et seq. which consists of contracts with providers for the provision of hospitalization and medical care coverage to members.
6. "AHCCCSA" or "The Arizona Health Care Cost Containment System Administration" means the Arizona state government agency which administers the AHCCCS program.
7. "Appellant" means an applicant or recipient of assistance who is appealing an adverse action by the Department.
8. "Applicant" means a person who has directly, or through an authorized representative or responsible person, filed an application for CA with the Department.
9. "Assistance unit" means those members of a needy family, or a child only case, that meet the non-financial eligibility criteria for Cash Assistance and whose needs, income, resources, and other circumstances are considered as a whole to determine a Cash Assistance benefit amount.
10. "Available income" means income that is actually available to the family or the assistance unit, and income in which the family or the assistance unit has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When an assistance unit includes a dependent child who resides with a parent or a minor sibling, the Department shall consider the income of the parent and minor sibling as available income to the assistance unit.
11. "Available resources" means resources that are actually available to the assistance unit, and resources in which the assistance unit has a legal interest. Resources include a liquidated sum in which the assistance unit has the legal ability to make such sum available for support and maintenance. When an assistance unit includes a dependent child who resides with a parent or a minor sibling, the Department shall consider the resources of the parent and minor sibling as available resources to the assistance unit.
12. "Benefit month" means the calendar month for which benefits are paid based upon the assistance unit's projected income and anticipated circumstances for that same month.
13. "Benefit" or "cash benefit" means a monetary amount that the Department pays to an assistance unit for a particular benefit month.
14. "Bona fide funeral agreement" means a prepaid plan that specifically covers only funeral-related expenses as evidenced by a written contract.
15. "Burial plot" means a space reserved in a cemetery, crypt, vault, or mausoleum for the remains of a deceased person.
16. "CA" means Cash Assistance, a program administered by the Department that provides assistance to needy families with dependent children and to child only cases under 42 U.S.C. 601 et seq.
17. "Calendar quarter" means one of the four consecutive three-month periods of a calendar year beginning with either January 1, April 1, July 1, or October 1.
18. "Calendar year" means a period of 12 consecutive months beginning with January 1 and ending with December 31.
19. "Caretaker relative" means a parent or a non-parent relative (Non-parent Caretaker Relative or NPCR), whether related by blood or adoption, who maintains a family setting for a dependent child and who exercises responsibility for the day-to-day physical care, guidance, and support of that child.
20. "Child only case" means a case in which the eligible dependent child is in the legal custody of the Department and placed in foster care as defined in A.R.S. § 8-501, with an unrelated adult, or a nonparent relative who is not receiving Cash Assistance. A.R.S. § 46-101(7).

Department of Economic Security - Cash Assistance Program

21. "Child welfare agency" means any agency or institution as defined at A.R.S. § 8-501(A)(1).
22. "Collateral contact" means an individual, agency, or organization the Department contacts to confirm information provided by the applicant or recipient.
23. "Countable income" means income from every source minus income excluded under R6-12-503.
24. "Countable payment" means a cash benefit paid to or for an assistance unit in the Arizona CA program on or after October 1, 2002, but does not include cash benefits that are not countable toward the 36-month time limit under R6-12-318(E).
25. "Crime" means any unlawful act against a head of household, the spouse of the head of household, or any member of an assistance unit that creates a hardship.
26. "Current federal poverty level" means the federal Department of Health and Human Services poverty guidelines published annually in the *Federal Register*.
27. "Day" means a calendar day unless otherwise specified.
28. "Department" means the Arizona Department of Economic Security.
29. "Dependent child" means a child as defined at A.R.S. § 46-101(8).
30. "Disregards" means those income deductions that the Department applies to the family's or the assistance unit's gross earned income to determine eligibility and benefit amount.
31. "District Medical Consultant" means a licensed physician whom the Department employs to review medical records for the purpose of determining physical or mental incapacity.
32. "Earned income" means any monetary gain to the family or the assistance unit as defined in 45 CFR 233.20(a)(6)(iii) through (viii) (October 1994) which is incorporated by reference and on file with the Office of the Secretary of State and not including any later amendments or editions, and in Article 5 of this Chapter.
33. "Eligibility determination date" means the date the Department makes the decision described in R6-12-706 and issues the eligibility decision notice.
34. "Encumbrance" means a legal debt.
35. "Equity value" means fair market value minus encumbrances.
36. "FAA" or "Family Assistance Administration" means the administration within the Department's Division of Benefits and Medical Eligibility with responsibility for providing financial and food stamp assistance to eligible persons and determining medical eligibility.
37. "Fair consideration" means an amount which reasonably represents the fair market value of transferred property.
38. "Fair market value" means the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts.
39. "Family" means the following individuals living in the same home with:
 - a. A head of household caretaker relative:
 - i. A dependent child,
 - ii. Parent or parents of the dependent child,
 - iii. Spouse of the parent or parents of the dependent child,
 - iv. The head of household caretaker relative,
 - v. The spouse of the head of household caretaker relative,
 - vi. Minor siblings of the dependent child,
 - vii. Minor children of the head of household caretaker relative, and
 - viii. Minor children of the spouse of the head of household caretaker relative, or
 - b. A minor parent requesting CA under R6-12-608:
 - i. The minor parent or parents,
 - ii. The minor parent's child,
 - iii. The minor parent's adult caretaker relative,
 - iv. The spouse of the minor parent's adult caretaker relative,
 - v. Minor parent's minor siblings or step-siblings,
 - vi. Minor children of the adult caretaker relative, and
 - vii. Minor children of the spouse of adult caretaker relative.
40. "Foster care maintenance payment" means a monetary amount which the Department pays to a foster parent for the expenses of a child in foster care.
41. "Foster child" means a child placed in a foster home or a child welfare agency.
42. "Gross Income" means countable income available to a family and an assistance unit for the purpose of computing the net income amount that is used to determine the income eligibility of a family and the cash benefit amount for an assistance unit.
43. "Hardship" means a situation that causes suffering or distress through the deprivation or loss of basic needs. The hardship must prevent an adult assistance unit member, the caretaker relative head of household, the spouse of the caretaker relative head of household, or the minor parent head of household from working or engaging in work activities to a degree that such person is prevented from financially supporting the eligible dependent child in the assistance unit, independent of CA.
44. "*Head of household*" means a dependent child's parent or the spouse of the parent, or the dependent child's nonparent relative or spouse of the nonparent relative, who receives Cash Assistance for him (or her)self and on behalf of the dependent child or only on behalf of the dependent child. A.R.S. § 46-101(13).
45. "Homebound" means a person who is confined to the home because of physical or mental incapacity.
46. "Homeless" means all assistance unit members meet either of the following criteria:

Department of Economic Security - Cash Assistance Program

- a. They do not have a fixed or regular nighttime residence.
 - b. They have as their primary nighttime residence one of the following:
 - i. A supervised shelter designed to provide temporary shelter to homeless persons;
 - ii. A half-way house or similar institution that provides temporary residence;
 - iii. A rent-free accommodation in the residence of another person for not more than 90 days; or
 - iv. A place not designed, or ordinarily used, for sleeping. This includes the following:
 - (1) Car,
 - (2) Bus station,
 - (3) Hallway,
 - (4) Park, or
 - (5) Sidewalk.
47. "Homestead property" means a home owned and occupied by an applicant or recipient, or which is co-owned and occupied by a separated or divorced spouse of an applicant or recipient.
48. "Income" means earned and unearned income available to a family or an assistance unit.
49. "JOBS" or "Job Opportunities and Basic Skills Training Program" means the program authorized by 42 U.S.C. 681 - 687 and A.R.S. § 46-299, which assists CA recipients to prepare for, obtain, and retain employment.
50. "Job Corps" means the program authorized by 29 U.S.C. 1691 et seq. which provides education, training, intensive counseling, and related assistance to economically disadvantaged young men and women.
51. "JTPA" or "Job Training Partnership Act" means the program authorized by 29 U.S.C. 1501 et seq. which prepares youth and unskilled adults for entry into the labor force and affords special job training.
52. "Lawful Permanent Resident" means a noncitizen who has been granted authorization by the United States Citizen and Immigration Service to live and work in the United States on a permanent basis.
53. "Liquid asset" means cash or another financial instrument which is readily convertible to cash.
54. "Local office" means a FAA office which is designated as the office in which CA applications and other documents are filed with the Department and in which eligibility and benefit amounts are determined.
55. "Lump sum income" means a single payment of earned or unearned income, such as retroactive monthly benefits, non-recurring pay adjustments or bonuses, inheritances, lottery winnings, or personal injury and workers' compensation awards.
56. "Mailing date," when used in reference to a document sent first class, postage prepaid, through the United States mail, means the date:
 - a. Shown on the postmark;
 - b. Shown on the postage meter mark of the envelope, if there is no postmark; or
 - c. Entered on the document as the date of its completion, if there is no legible postmark or postage meter mark.
57. "Need standard" means the money value the state assigns to the basic and special needs deemed essential for an assistance unit.
58. "Needy family" means the same as A.R.S. § 46-101(16).
59. "Net income" means gross income, minus the monthly earned income disregards under R6-12-703. Net income is used to determine the income eligibility of a family and a cash benefit amount for an assistance unit.
60. "*Non-parent relative*" means a dependent child's grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, niece, nephew, or cousin and includes a permanent guardian who is appointed pursuant to A.R.S. § 8-872. A.R.S. § 46-101(17).
61. "Noncitizen" means a person who is not a United States citizen.
62. "Noncitizen sponsor," which is sometimes referred to as a "sponsor," means an organization which, or a person who, has executed an affidavit of support or similar agreement on behalf of a noncitizen who is not the child or spouse of the sponsor, as a condition of the noncitizen's entry into the United States.
63. "Notice date" means the date which appears as the official date of issuance on a document or official written notice the Department sends or gives to an applicant or recipient.
64. "OSI" or "Office of Special Investigations" means the Department office to which FAA refers cases for investigation of certain eligibility information, investigation and preparation of fraud charges, coordination and cooperation with law enforcement agencies, and other similar functions.
65. "Overpayment" means a financial assistance payment received by or for an assistance unit for a benefit month and which exceeds the amount to which the unit was lawfully entitled.
66. "Parent" means the lawful mother or father of a dependent child and includes only a birth or adoptive parent and excludes a stepparent.
67. "Participating in a strike" means engaging in any activity as defined at 29 U.S.C. 142(2), as amended through June 23, 1947, which is incorporated by reference and on file with the Office of the Secretary of State and not including any later amendments or editions.
68. "Party" means the Department and the applicant or recipient.
69. "Payment standard" means the amount of money from which net income is subtracted to calculate the monthly benefit amount.
70. "Physical or mental incapacity" means a physical or mental impairment which substantially precludes a parent from providing for the support or care of the parent's child.
71. "PI" means the Primary Informant, who is the individual who signs the Application for Assistance; in TPEP assistance units the PI is the PWEF.

Department of Economic Security - Cash Assistance Program

72. "PRA" means the Personal Responsibility Agreement, which is a document listing the obligations of a household that applies for and receives CA.
73. "Projected income" means an estimate of income that a family or an assistance unit reasonably expects to receive in a specific month, the actual amount of which is unknown but which is estimated from available and reliable information.
74. "Prospective eligibility" means an eligibility determination for a benefit month based on income and other circumstances as they actually exist, and are anticipated to exist, in that same month.
75. "Putative father" means a male person whom a birth mother has named as father of her child, but whose paternity has not been established as a matter of law.
76. "Prospective budgeting" means the computation of a benefit amount for a particular benefit month based on the Department's projected income and circumstances as they actually exist and are anticipated to exist for that same month.
77. "PRWORA" means the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193).
78. "PWEPE" or "Primary wage earning parent" means the parent in a two-parent family who earned the greater amount of income in the 24-month period immediately preceding the month in which an application for benefits is filed.
79. "Request for hearing" means a clear written expression by an applicant or recipient, or such person's representative, indicating a desire to present the case or issue to a higher authority.
80. "Resources" means real and personal property available to an assistance unit.
81. "Review" means a review of all factors affecting an assistance unit's eligibility and benefit amount.
82. "Spendthrift restriction" means a legal restriction on the use of a resource which prevents a payee or beneficiary from alienating the resource.
83. "Sponsored noncitizen" means a noncitizen whose entry into the United States was sponsored by a person who, or an organization which, executed an affidavit of support or similar agreement on behalf of the noncitizen alien, who is not a child or spouse of the sponsor.
84. "Student" means a person who is attending a school, college, or university, or who is enrolled in a course of vocational or technical training designed to prepare the trainee for gainful employment, and includes a participant in Job Corps.
85. "Suitable work" means work in a recognized occupation for which a person is reasonably qualified.
86. "Support" means child support, alimony, spousal maintenance, or medical support.
87. "Supportive Services unit" means an assistance unit which is eligible for all benefits, except a monthly cash amount, that a CA assistance unit receives.
88. "SVES" means the State Verification and Exchange System which is a system through which the Department exchanges income and benefit information with the Internal Revenue Service, Social Security Administration, State Wage, and Unemployment Insurance Benefit data files.
89. "TANF" means Temporary Assistance for Needy Families, which is a program administered by the Department to provide assistance to needy families with dependent children and child only cases under 42 U.S.C. 601 et seq.
90. "Timely notice" means a notice which the Department mails at least 10 days before the date on which the action described in the notice will occur or take effect or, in circumstances of probable fraud, at least five calendar days in advance of the date such action is effective.
91. "Title IV-A of the Social Security Act" means 42 U.S.C. 601 - 617, the statutes establishing the CA program.
92. "Title IV-E of the Social Security Act" means 42 U.S.C. 670 - 679, the statutes establishing the foster care and adoption assistance programs.
93. "TPEP" or "Two-parent Employment Program" means the CA program that provides assistance for dependent children residing in a needy family who are deprived of parental support because the primary wage-earning parent is unemployed.
94. "Underpayment" means a monthly benefit payment which is less than the amount for which the assistance unit is eligible, or the failure to issue a benefit payment when such payment should have been issued.
95. "Vendor payment" means a payment that a person or organization who is not a member of the family or the assistance unit makes to a third-party vendor to cover family or assistance unit expenses.
96. "Violence" means battery or extreme cruelty inflicted on a head of household or any member of an assistance unit. Battery or extreme cruelty includes any of the following:
 - a. Physical acts that threatened or resulted in physical injury;
 - b. Threats of, or attempts at, physical or sexual abuse;
 - c. Sexual activity involving a child;
 - d. Being forced as the caretaker of a child to engage in non-consensual sexual acts or activities;
 - e. Mental or emotional abuse; and
 - f. Neglect or deprivation of basic necessities such as food or medical care.
97. "Voluntary Quit/Reduction in Work Effort" is an action to willingly quit a job or reduce work effort without good cause.
98. "Warrant" means a payment instrument drawn on the Arizona State Treasury authorizing payment of a particular sum of money to an CA recipient.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed

Department of Economic Security - Cash Assistance Program

rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-102. Confidentiality

- A.** Personally identifiable information.
1. All personally identifiable information concerning an applicant, recipient, or member of a family in the possession of the Department is confidential and not subject to public inspection, except as otherwise specified in A.R.S. § 41-1959 and this Section.
 2. Personally identifiable information includes:
 - a. Name, address, and telephone number;
 - b. Social Security number and date of birth;
 - c. Unique identifying numbers such as a driver's license number;
 - d. Photographs;
 - e. Information related to social and economic conditions or circumstances;
 - f. Medical data, including diagnosis and past history of disease or disability; and
 - g. Any other information which is reasonably likely to permit another person to readily identify the subject of the information.
- B.** Release of information to applicants and recipients.
1. An applicant or recipient may review the contents of his or her own eligibility file at any time during the Department's regular business hours, provided that a Department employee is present during the review.
 2. A dependent child may review a case file in which the child is included as a recipient, only with the written permission of the child's parent, or legal guardian or custodian.
 3. The Department may withhold medical information which, if released, may cause physical or mental harm to the person requesting the information, until the Department contacts the person's physician and obtains an opinion that the Department can safely release the information.
- C.** Release of information to authorized persons and representatives. An applicant or recipient may permit the release of information from the applicant or recipient's eligibility file to another person or representative by executing a release form containing the following information:
1. The specific information the Department is authorized to release;
 2. The name of the person to whom the Department may release information;
 3. The duration of the release, if limited; and
 4. Signature and date.
- D.** Release to persons and agencies for official purposes.
1. An official purpose is one directly related to the administration of a public assistance program and includes:
 - a. Establishing eligibility;
 - b. Determining the amount of an assistance grant;
 - c. Providing services to applicants and recipients, including child support enforcement services;
 - d. Investigating or prosecuting civil or criminal proceedings related to an assistance program; and
 - e. Evaluating, analyzing, overseeing, and auditing program operations.
 2. The Department may release confidential information to the following persons and agencies to the extent required for official purposes:
 - a. Department employees;
 - b. Employees of the Social Security Administration;
 - c. Public assistance agencies of any other state;
 - d. Persons connected with the administration of child support enforcement activities;
 - e. Arizona Attorney General's Office;
 - f. Persons connected with the administration of federal or federally assisted programs which provide assistance, in cash or in-kind, or services directly to individuals on the basis of need;
 - g. Government auditors when the audits are conducted in connection with the administration of any assistance program by a governmental entity which is authorized by law to conduct such audits;
 - h. AHCCCSA, for eligibility purposes;
 - i. Law enforcement officials for an investigation, prosecution, or civil or criminal proceedings conducted by or on behalf of the Department or a federal public assistance agency in connection with the administration of a public assistance program; and
 - j. The Internal Revenue Service for the purpose of identifying improperly claimed tax exemptions by the absent parent of a child supported by CA.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-103. Case Record

- A.** The Department shall maintain a case record for every applicant for or recipient of assistance.

**Arizona
Code**

Department of Economic Security - Cash Assistance Program

- B. Except as otherwise provided in subsections (C) and (D) below, the Department shall retain the case record for a period of 3 years after the last date on which the applicant received an adverse determination of eligibility or the recipient last received a benefit payment.
- C. The Department shall retain a case record which contains an unpaid overpayment until:
 - 1. The overpayment is paid in full, or
 - 2. The assistance unit is no longer obligated to repay the overpayment.
- D. The Department shall retain a case record which includes a person determined to have committed an intentional program violation pursuant to Article 12 until:
 - 1. The overpayment is paid in full, and
 - 2. The disqualification sanction is satisfied.
- E. The case record shall contain all documentation collected or prepared by the Department in evaluating and determining eligibility and benefit amount.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-104. Manuals

Each FAA office shall maintain and keep available for public inspection and copying during regular business hours, a copy of the CA program manual.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-105. Repealed

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed by final rulemaking at 16 A.A.R. 815, effective April 22, 2010 (Supp. 10-2).

ARTICLE 2. APPLICATION PROCESS AND PROCEDURES

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-201. Application

- A. Any person may apply for CA by filing, either in person or by mail, a Department-approved application form with any FAA office.
- B. The application file date is the date any FAA office receives an identifiable application. An identifiable application is 1 which contains, at a minimum, the following information:
 - 1. The legible name and address of the person requesting assistance; and
 - 2. The signature, under penalty of perjury, of the applicant or the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone legally authorized to act on behalf of the applicant.
- C. In addition to the identifiable information described in subsection (B), a completed application shall contain:
 - 1. The names of all persons living in the applicant's dwelling and the relationship of such persons to the applicant,
 - 2. A request to receive cash benefits which complies with the requirements of R6-12-202, and
 - 3. All other financial and non-financial eligibility information requested on the application form.
- D. An application for CA is automatically treated as an application for AHCCCS medical benefits.

Department of Economic Security - Cash Assistance Program

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-202. Request for Benefits; Composition of the Assistance Unit

- A. An applicant may receive CA for any eligible dependent child, and the parents, siblings, and nonparent relatives of the eligible dependent child residing in the applicant's home who meet the CA financial and nonfinancial eligibility criteria.
- B. A parent or sibling in a family with an eligible dependent child:
 - 1. Shall be part of the assistance unit with the dependent child when the parent or sibling:
 - a. Requests CA, and
 - b. Meets all nonfinancial CA eligibility criteria, or
 - 2. Shall not be part of the assistance unit if the parent or sibling does not meet the requirements of subsection (B)(1), but the Department shall consider their income and resources available to the assistance unit for the purpose of determining the amount of the cash benefit.
- C. An applicant who is the non-parent caretaker relative (NPCR) of a dependent child and who meets the requirements of R6-12-306(A)(4) may also ask to be included in the cash benefit.
- D. When one NPCR cares for step-siblings or children who lack any sibling relationship, the NPCR and the children shall be included in the same cash benefit.
- E. Notwithstanding any other provision of this Chapter, no person shall receive CA in more than one assistance unit in Arizona in any calendar month.
- F. If a person is required to be included in more than one assistance unit, the Department shall consolidate the assistance units.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-203. Initial Eligibility Interview

- A. Upon receipt of an identifiable application, the Department shall schedule an initial eligibility interview for the applicant at a location which assures a reasonable amount of privacy. Upon request, the Department shall conduct the interview at the residence of a person who is homebound.
- B. The applicant shall attend the interview. A person of the applicant's choosing may also attend the interview.
- C. During the interview, a Department representative shall:
 - 1. Assist the applicant in completing the application form;
 - 2. Witness the signature of the applicant or the applicant's authorized representative;
 - 3. Discuss how the applicant and the other assistance unit members previously met their needs, and why they now need financial assistance;
 - 4. Provide the applicant with written information explaining:
 - a. The terms, conditions, and obligations of the CA program, including the requirement that the applicant obtain and provide a Social Security number to the Department;
 - b. Any additional verification information as prescribed in R6-12-205(A) which the applicant must provide for the Department to conclude the eligibility evaluation;
 - c. The Department's practice of exchanging eligibility and income information through the State Verification and Exchange System (SVES);
 - d. The coverage and scope of the CA program, and related services which may be available to the applicant, including child care benefits;
 - e. The applicant's rights, including the right to appeal adverse action;
 - f. The AHCCCS enrollment process;
 - g. The requirement to report all changes within 10 calendar days from the date the change becomes known;
 - h. The family planning services available through AHCCCS health plans;
 - 5. Review the penalties for perjury and fraud, as printed on the application;
 - 6. Explain to the applicant:

Department of Economic Security - Cash Assistance Program

- a. Who shall be included in the family for the purpose of determining whether the assistance unit resides in a needy family,
 - b. Which family members may be included in the assistance unit,
 - c. Which family member's income and resources shall be considered available to the assistance unit, and
 - d. Which family member the applicant may include as an optional member of the assistance unit.
7. Review any verification information already provided;
 8. Explain the applicant's duties to:
 - a. Cooperate with the Division of Child Support Enforcement (DCSE) in establishing paternity and enforcing support obligations, unless the applicant can show good cause for not doing so;
 - b. Transmit to the Department any support payments the applicant receives after the date the applicant is approved to receive CA; and
 - c. Participate in the Job Opportunities and Basic Skills Training (JOBS) program, unless the applicant or recipient is determined to be exempt from such participation;
 9. Photograph the applicant for identification purposes;
 10. Review all ongoing reporting requirements, and the potential sanctions for failure to make timely reports, including loss of disregard; and
 11. Inform the applicant of the opportunity to set aside funds in an individual development account as prescribed in R6-12-404 for educational or training purposes.
- D.** When the applicant misses a scheduled appointment for an interview, the Department shall schedule a second interview for later that same day, or for another day, only if the applicant so requests before close of business on the day of the missed appointment.
- E.** The Department shall deny the application when the applicant fails to request a second appointment as provided in subsection (D) or when the applicant misses a second scheduled appointment.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-204. Disability Determination

- A.** When an assistance unit is requesting CA due to the mental or physical incapacity of a parent, as provided in R6-12-310(G), the Department shall verify the existence of the disability.
- B.** The assistance unit shall demonstrate incapacity of a parent by providing a medical statement from a licensed physician. The statement shall include:
1. A diagnosis of the person,
 2. A finding that the person has a physical or mental condition which prevents the person from working, and
 3. An opinion concerning the duration of unemployment or a date for re-evaluation of unemployment.
- C.** The local FAA office shall find disability, without further medical verification, when the applicant provides evidence that:
1. The Social Security Administration (SSA) has determined that the person is eligible for Retirement, Survivors, Disability Insurance (RSDI) benefits due to blindness or disability;
 2. The SSA has determined that the person is eligible for Supplemental Security Income (SSI) due to blindness or disability;
 3. The Veteran's Administration has determined that the person has at least a 100% disability;
 4. The person's physician has released the person from the hospital and imposed work restrictions for a specified recuperation period;
 5. The person's employer or physician has required the person to terminate employment due to the onset of a disability and the physician has specified a recuperation period;
 6. The person's physician has determined that the person is capable of employment only in a sheltered workshop, for a specified period of time, and the person is so employed; or
 7. A prior certification of disability is in the person's case record and is still valid to cover the period in which assistance is requested and will be received.
- D.** The District Medical Consultant shall determine incapacity for all persons not covered under subsections (B) or (C).

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules

Department of Economic Security - Cash Assistance Program

to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-205. Verification of Eligibility Information

- A. The Department shall obtain independent verification or corroboration of information provided by the applicant, recipient, or family member when required by law, or when necessary to determine eligibility or benefit level.
- B. The Department may verify or corroborate information by any reasonable means including:
 - 1. Contacting third parties such as employers;
 - 2. Making home visits as provided in R6-12-206;
 - 3. Asking the applicant, recipient, or family member to provide written documentation, such as billing statements or pay stubs; and
 - 4. Conducting a computer data match through SVES.
- C. The applicant, recipient, or family member has the primary responsibility for providing all required verification. The Department shall offer to assist an applicant, recipient, or family member who has difficulty in obtaining the verification and requests help.
- D. An applicant, recipient, or family member shall provide the Department with all requested verification within 10 calendar days from the notice date of a written request for such information. When an applicant, recipient, or family member does not timely comply with a request for information, the Department shall deny the application as provided in R6-12-209(B).
- E. The application form shall contain a notice to advise the applicant that the Department may contact third parties for information. The applicant's signature on an application is deemed consent to such contact.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-206. Home Visits

- A. The Department shall schedule a home visit:
 - 1. When it reasonably believes that such a visit will avoid an eligibility determination error, or
 - 2. To conduct an initial interview or an eligibility review when a homebound applicant or recipient so requests.
- B. The Department shall mail the applicant or recipient written notice of a scheduled home visit at least 7 days before the date of the visit.
- C. The Department may deny or terminate benefits if the applicant or recipient is not home for a scheduled visit for:
 - 1. An initial interview and has not timely rescheduled the visit pursuant to R6-12-203(D), or
 - 2. A 6-month review interview and has not timely rescheduled the visit pursuant to R6-12-210(D).
- D. The Department may conduct unscheduled visits to gather information or to verify information previously provided by an applicant or recipient. The Department shall not deny an application or terminate assistance if the applicant or recipient is not home for an unscheduled visit.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-207. Withdrawal of Application

- A. An applicant may withdraw an application at any time before the Department completes an eligibility determination by requesting a withdrawal from the Department either orally or in writing.
- B. If an applicant orally asks to withdraw an application the Department shall:
 - 1. Document the names of persons and type of benefits or services the applicant wishes to withdraw, and
 - 2. Deny the application and notify the applicant.
- C. A withdrawal is effective as of the date of application.
- D. When an application is withdrawn, an applicant must file a new application to restart the application process.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-208. Death of an Applicant

- A. If an applicant dies while the application is pending, the Department shall deny the application and inform the person responsible for the dependent child that a new application may be filed.
- B. If the new application is filed within 45 days from the date of the original application, and the child is found eligible, the Department shall pay benefits for the child from the date of the original application. If eligible, the new applicant shall receive benefits from the date of the new application.

Department of Economic Security - Cash Assistance Program

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-209. Processing the Application; Denials; Approval

- A. The Department shall complete the eligibility determination within 45 calendar days of the application file date, unless:
 - 1. The application is withdrawn,
 - 2. The application is rendered moot because the applicant has died or cannot be located, or
 - 3. There is a delay resulting from a Department request for additional verification information as provided in R6-12-205(D).
- B. The Department shall deny an application when the applicant fails to:
 - 1. Complete the application and an eligibility interview, as described in R6-12-203;
 - 2. Submit all required verification information within 10 days of the notice date of a written request for such verification; or
 - 3. Cooperate during the application process as required by R6-12-302.
- C. When an assistance unit satisfies all eligibility criteria, the Department shall compute a benefit amount, approve the application, and send the applicant an approval notice. The approval notice shall include the amount of assistance and an explanation of the assistance unit's appeal rights.
- D. The Department shall process an application for the purpose of determining medical assistance eligibility pursuant to R9-22-101 *et seq.*

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-210. Six-month Review

- A. The Department shall complete a review of all eligibility factors for each assistance unit at least once every six months, beginning with the sixth month following the first month of CA eligibility.
- B. At least 30 days prior to the six-month review date, the Department shall mail the recipient a notice advising of the need for a review. In response to such notice, the recipient shall file a request for a six-month review and interview by the date specified on the notice.
- C. The Department shall schedule and conduct a review interview in the same manner as an initial interview.
- D. When the recipient misses a scheduled appointment for a six-month review interview, the Department shall schedule a second interview if the recipient so requests within 10 days of the missed appointment.
- E. The Department shall terminate benefits when the recipient fails to request a second appointment as prescribed in subsection (D), or when the recipient misses a second scheduled appointment without good cause. Good cause shall include the following circumstances:
 - 1. Lack of transportation on the day of the appointment,
 - 2. Illness, or
 - 3. Serious injury or accident involving an assistance unit member.
- F. The Department shall verify the income of the needy family and the assistance unit's resources and income and any eligibility factors that have changed or are subject to change. The Department may verify other factors if Department experience suggests the need for additional verification.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-211. Reinstatement of Benefits

- A. If the Department has terminated payment of benefits to an assistance unit, the Department shall not reinstate benefits unless the recipient files a new application and has a new interview.
- B. Notwithstanding subsection (A), the Department shall reinstate benefits within 10 calendar days when:
 - 1. Termination was due to Department error;
 - 2. The Department receives a court order or administrative hearing decision mandating reinstatement; or
 - 3. The recipient files a request for fair hearing as provided in R6-12-1002 within 10 days of the notice date of the termination notice, unless the request is for continuance of benefits past the 36-month limit in R6-12-318, the 60-month limit in R6-12-320, or the six-month limit in R6-12-611.
- C. When the Department reinstates benefits to a recipient who missed a six-month review due to the termination of benefits, the Department shall conduct the review at the earliest opportunity following reinstatement.

Department of Economic Security - Cash Assistance Program

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

ARTICLE 3. NON-FINANCIAL ELIGIBILITY CRITERIA

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-301. Non-financial Eligibility Criteria

To qualify for CA, a person shall satisfy all applicable criteria set forth in this Article.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-302. Applicant and Recipient Responsibility

- A.** An applicant for or recipient of assistance shall cooperate with the Department as a condition of initial and continuing eligibility. The applicant or recipient shall:
 - 1. Give the Department complete and truthful information;
 - 2. Inform the Department of all changes in income, assets, or other circumstances of the assistance unit affecting eligibility or the amount of the assistance payment within 10 days from the date the change becomes known; and
 - 3. Comply with all the Department's procedural requirements.
- B.** The Department may deny an application for assistance, reduce or terminate benefits, or change the manner of payment, if the applicant or recipient fails or refuses to cooperate without good cause. However, the Department shall not impose such sanctions for failure to comply with a procedural requirement about which the Department has not advised the applicant or recipient in writing.
- C.** As a condition of eligibility, except in a child only case, the Department shall require the parent or NPCR to sign a Personal Responsibility Agreement when the parent or NPCR applies for benefits for a dependent child.
- D.** The Department shall inform the parent or NPCR that the signature acknowledges that:
 - 1. The parent or NPCR is aware of and agrees to the statements in the Personal Responsibility Agreement regarding:
 - a. Preparing for and accepting employment to achieve self-sufficiency;
 - b. Ensuring school attendance by all school-age children;
 - c. Maintaining current immunizations for all dependent children; and
 - d. Cooperating with all rules and requirements of the Family Assistance, JOBS, and Child Care Administrations and of the Division of Child Support Enforcement.
 - 2. The parent or NPCR agrees to the statement of personal responsibility on behalf of all other current and future members of the assistance unit.
- E.** The Department shall inform the parent or NPCR at the interview that failure to sign the Personal Responsibility Agreement will result in denial of CA benefits.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-303. Application for Other Potential Benefits

As a condition of eligibility, an assistance unit member and any person whose income is considered available to the assistance unit shall apply for all other cash benefits for which the person may be eligible, except SSI.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules

Department of Economic Security - Cash Assistance Program

to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-304. Residency

- A. To qualify for CA, a person shall be an Arizona resident.
- B. An Arizona resident is a person who:
 - 1. Voluntarily resides and intends to make a permanent home in Arizona,
 - 2. Lives in Arizona at the time of making application, and
 - 3. Is not receiving public assistance from another state.
- C. A person terminates Arizona residency by:
 - 1. Leaving Arizona for more than 30 consecutive days, or
 - 2. Leaving Arizona with the intent to live elsewhere.
- D. The dependent child of a caretaker relative who is an Arizona resident is deemed an Arizona resident.
- E. The Department shall verify Arizona residency.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-305. Citizenship and Alienage

- A. To qualify for CA, an assistance unit member shall be a United States citizen or a noncitizen legal alien who satisfies the requirements of PRWORA Section 431 and who meets eligibility requirements of PRWORA Section 402, not including any later amendments or editions, which are incorporated by reference and are available for inspection at the Department of Economic Security, 1789 West Jefferson, Phoenix, Arizona, and the Office of the Secretary of State, 1700 West Washington, Phoenix, Arizona.
- B. The Department shall verify legal alienage of assistance unit members for whom CA is requested by obtaining a person's alien registration documentation, or other proof of immigration registration, from the U.S. Immigration and Naturalization Service (INS), or by submitting a person's alien registration number and other related information to the INS.
- C. A sponsor's income and resources shall not be included when determining income eligibility for a family or a cash benefit amount for the assistance unit when a lawful permanent resident noncitizen member of an assistance unit and any lawful permanent resident noncitizen whose income is considered available to the assistance unit verifies 40 quarters of employment history.
- D. An ineligible noncitizen may serve as payee for the eligible members of an assistance unit, but the Department shall exclude the needs of the ineligible noncitizen from the assistance grant.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-306. Eligible Persons

- A. To qualify for CA, an otherwise eligible person shall be:
 - 1. A dependent child under 18 years of age;
 - 2. A dependent child age 18 and, as provided in R6-12-314, who is a full time student in a secondary school, or the equivalent level of vocational or technical training school, and is reasonably expected to complete such education or training before turning age 19;
 - 3. The parent of an eligible CA child; or
 - 4. A non-parent caretaker relative of an eligible CA child when:
 - a. The parent of the dependent child:
 - i. Does not live in the NPCR's home,
 - ii. Lives with the NPCR but is also a dependent child, or
 - iii. Lives with the NPCR but cannot function as a parent due to a physical or mental impairment;
 - b. The NPCR provides the dependent child with physical care, support, guidance, and control; and
 - c. The dependent child resides with the NPCR.

Title 6, Ch. 12 *Arizona*

Code

Department of Economic Security - Cash Assistance Program

- B.** If otherwise eligible, the CA assistance unit shall include the following persons who are related to a dependent child for whom the applicant requests assistance:
1. Any natural or adoptive parent, and
 2. Any natural or adopted brother or sister.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-307. Social Security Number

- A.** To qualify for CA, an assistance unit member shall furnish an Social Security number (SSN). If a member of an assistance unit lacks an SSN, the Department shall assist the person in applying for an SSN through procedures established between the Department and the United States Social Security Administration (SSA).
- B.** The Department shall obtain verification of Social Security numbers through contact with the SSA.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Former Section renumbered to R7-12-314; new Section R6-12-307 renumbered from R6-12-314 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-308. Family Benefit Cap

- A.** The Department shall not provide CA to a child except as provided in subsection (C), born during a month when:
1. The parent or non-parent caretaker relative is receiving CA or supportive services, or
 2. The child is born to a parent who is ineligible for CA benefits due to noncompliance or failure to meet an eligibility requirement.
- B.** A child born during any period of time specified in subsection (A) is ineligible for CA for a 60-consecutive-calendar-month period.
- C.** An assistance unit may receive CA benefits for a child that would otherwise be excluded under subsection (A) if:
1. The child is born within 10 calendar months of an initial CA eligibility determination;
 2. The parent has not received CA or supportive services for a minimum of 12 consecutive months, and the child is born:
 - a. No earlier than the 22nd month after the parent left CA, and
 - b. No later than the end of the 10th month after the parent returns to CA;
 3. The child is the firstborn of a dependent child who is included in a CA or supportive services assistance unit; or
 4. The child is born as a result of an act of sexual assault or incest and the applicant or recipient meets the following requirements:
 - a. The applicant or recipient shall file a written statement with the Department to certify that a child was conceived as a result of sexual assault or incest and shall provide supporting verification.
 - b. Acceptable verification includes:
 - i. Medical or law enforcement records in cases of sexual assault or incest, or
 - ii. Birth certificate or Bureau of Vital Statistics Records in cases of incest.
 - c. The Department shall accept the written statement of the applicant or recipient as verification of sexual assault or incest when the applicant or recipient is unable to provide evidence to support the claim of sexual assault or incest.
 - d. The FAA shall report allegations of sexual assault or incest to the Office of Special Investigations and, if the parent is a minor, to Child Protective Services. The Department shall not disclose the name, address, and any information concerning the sexual assault or incest to any person except those persons who require the information to investigate the allegations.
- D.** An assistance unit or family that includes a child who is ineligible due to the provisions of this Section may earn income up to the incremental benefit increase the assistance unit would otherwise receive for the ineligible child without any adverse affect on the amount of countable income that is used to determine income eligibility or the cash benefit amount. The Department shall disregard such income.
1. The disregard shall equal the difference between the benefit amount with the needs of the ineligible child included in the benefit computation and the benefit amount with the needs of the ineligible child excluded from the benefit computation.
 2. The Department shall apply the disregard after all other earned income disregards specified at R6-12-703 are first deducted.
- E.** The Department shall not include a child who is ineligible for CA due to the provisions of this Section in the assistance unit's standard of need and shall not count the income and resources of the ineligible child available to the assistance unit.

Department of Economic Security - Cash Assistance Program

- F. A child who is ineligible for CA due solely to the provisions of this Section may receive the following services, if otherwise eligible:
 - 1. AHCCCS,
 - 2. JOBS,
 - 3. Child care, and
 - 4. Any other program or service for which CA recipients categorically qualify.
- G. A parent or NPCR may receive CA for himself or herself when the only dependent child in the home is ineligible for assistance due to the provisions of this Section.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-309. Relationship

- A. To qualify for CA, a dependent child shall reside with at least one of the following specified relatives:
 - 1. A parent;
 - 2. A stepmother, stepfather, stepbrother, or stepsister;
 - 3. A person who is within the fifth degree of kinship to the dependent child, including: grandmother, grandfather, brother, sister, uncle, aunt, first cousin, nephew, niece, persons of preceding generations as denoted by prefixes "grand," "great," or "great-great," great-great-great grandparents, and first cousins once removed;
 - 4. A spouse of any person named in the above groups, even if the marriage has been terminated by death;
 - 5. A legal permanent guardian who is appointed pursuant to A.R.S. § 8-872; or
 - 6. An unrelated adult only when the child is in the legal custody of the Department and placed in a foster home or with the unrelated adult.
- B. The Department shall not determine a child or NPCR ineligible solely for any of the following reasons:
 - 1. The dependent child is under the jurisdiction of a court;
 - 2. An agency or individual unrelated to the child has legal custody of the child;
 - 3. The dependent child, or the child's parent or NPCR, is temporarily absent from the child's home because:
 - a. The child is making a court-ordered visit to a non-custodial parent for a period not to exceed three consecutive months;
 - b. The child is visiting a parent who has a legal order awarding joint custody of the child, and the child resides with the parent who is part of the child's assistance unit for the entire calendar month;
 - c. The child is living in a Department-licensed shelter which does not receive funding under Title IV-A or IV-E of the Social Security Act, and the child is expected to return to the home within 30 days of issuance of the first benefit payment;
 - d. During the month for which benefits are sought, the child is entering or leaving foster care funded by other than Title IV-E of the Social Security Act;
 - e. The child is temporarily hospitalized;
 - f. The child is visiting friends or other relatives for a period not to exceed three consecutive months; or
 - g. The child is attending school but returns home at least once a year.
- C. The Department shall verify the requisite degree of relationship between the child and the child's parent or NPCR.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-310. Deprivation

- A. No child shall receive CA unless the child is deprived of parental support or care due to the continued absence, death, incapacity, or unemployment of the child's parent.
- B. A child suffers deprivation by continued absence when the following 3 conditions are met:
 - 1. The child's natural or adoptive parent is out of the home for a minimum of 30 continuous days;
 - 2. The absence interrupts or terminates the parent's ability to provide maintenance, physical care, or guidance to the child; and
 - 3. The duration of the absence prevents the child from relying on the absent parent for support or care.
- C. When the conditions listed in subsection (B) are met, the situations listed in this subsection may constitute deprivation by continued absence.

Department of Economic Security - Cash Assistance Program

1. A parent is absent due to involuntary hospitalization, incarceration, or deportation.
 2. A parent is a convicted offender who is living in the home while serving a sentence of unpaid public or community service; however, such parent shall not be considered part of the assistance unit for computation of the grant. The Department shall consider the parent to be out of the home for the purpose of deprivation.
 3. A single parent has adopted a child.
 4. The child's mother and putative father both dispute paternity, and there is no documentation to substantiate paternity.
 5. The parents have joint legal or physical custody of the child, but the child resides with 1 parent more than 50% of the time.
- D.** When a child satisfies the conditions set forth in subsection (B), the following circumstances shall not automatically preclude a finding of deprivation:
1. A stepparent, substitute parent, parental co-habitant, or person other than the child's parent resides in the child's home;
 2. The child's home is considered unsuitable because of neglect, abuse, or exploitation;
 3. The parent or NPCR refuses to cooperate with the Department regarding child support enforcement or collection activities;
 4. The absent parent visits the child; or
 5. The mother and father of the child have some form of on-going contact or relationship.
- E.** The circumstances listed in this subsection do not constitute deprivation by continued absence.
1. The parent is voluntarily absent to visit friends or relatives, to seek employment, to maintain a job, to attend school or training, so long as the parent in the home and the absent parent do not regard themselves as separated.
 2. The parent is absent solely to serve active military duty.
 3. The parents maintain separate dwellings but consider themselves part of a single home or family unit.
 4. One parent is deliberately absent from home in order to qualify the remaining family members for benefits.
- F.** A child is deprived if either parent of the child is deceased and the child has not been adopted. The applicant or recipient shall provide the Department with documentation verifying a death.
- G.** A child is deprived if either parent has a physical or mental defect, illness, or impairment that:
1. Substantially decreases or eliminates the parent's ability to support or care for the child, and
 2. Is expected to last for a minimum of 30 continuous days.
- H.** A child is deprived when the primary wage earning parent is unemployed if the assistance unit meets all the requirements set forth in R6-12-609.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-311. Assignment of Support Rights; Cooperation

- A.** To qualify for CA, an applicant shall assign to the Department all rights to a support obligation from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving CA, including any unpaid support obligation or support debt which has accrued at the time the assignment is made.
- B.** A refusal to execute such an assignment is a refusal to complete the application and shall result in denial of the CA application.
- C.** An applicant or recipient shall cooperate with the Department to obtain support owing to the applicant or recipient, unless there is good cause for noncooperation, as described in R6-12-312.
- D.** After being approved for CA, the recipient shall transmit all monetary support received to the Department.
- E.** At the time of the initial interview and at all review interviews, the Department shall explain:
1. The applicant's duty of cooperation,
 2. Good cause and how to establish it,
 3. The duty to send the Department any support the assistance unit members receive, and
 4. The consequences for breach of the duties set forth in this Section.
- F.** Cooperation shall include the actions listed in this subsection.
1. Identifying and locating the parent of a child for whom CA is requested.
 2. Establishing the paternity of a child born out-of-wedlock, for whom CA is requested.
 - a. The applicant shall sign and complete an affidavit of paternity.
 - b. The mother and father of a child may voluntarily acknowledge paternity in a signed, notarized statement.
 3. Obtaining support payments, or other payments or property due the applicant or recipient for the benefit of the child.
 4. Appearing at a child support enforcement office when requested, to provide oral or written information or documentary evidence known to, possessed by, or reasonably obtainable by the applicant or recipient.
 5. Appearing as a witness at a judicial or administrative hearing or proceeding when requested.
 6. Providing information, or attesting to the lack of information, when requested.
 7. Paying to the Department any support payments received from the absent parent after the assignment of rights pursuant to subsection (A) has been made.

Department of Economic Security - Cash Assistance Program

- G. If the applicant or recipient fails to cooperate as required by subsection (F) without good cause, the Department shall impose the penalties provided under R6-12-316.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-312. Good Cause for Non-cooperation with Child Support Enforcement

- A. An applicant or recipient may establish good cause for non-cooperation with the Department. Good cause shall exist when:
1. Cooperation is reasonably likely to result in physical or emotional harm to the dependent child, parent in the home, or the NPCR, based on the factors identified in subsection (B);
 2. Legal proceedings for adoption of the dependent child are pending before a court;
 3. A public or private adoption entity is counseling the applicant regarding release of the dependent child for adoption, and such counseling has occurred for less than 3 months; or
 4. The dependent child was conceived as a result of incest or rape.
- B. As used in subsection (A)(1):
1. Physical harm means an impairment of the human body of a serious nature.
 2. Emotional harm means an impairment that substantially affects the individual's ability to function.
- C. In determining whether emotional harm will result for the purpose of subsection (A)(1), the Department shall consider:
1. The emotional state and psychological history of the person likely to suffer emotional harm,
 2. The degree of cooperation required,
 3. The extent of the individual's involvement in any cooperative efforts, and
 4. The intensity and probable duration of the emotional impairment.
- D. An applicant or recipient shall provide evidence to verify good cause within 20 days of filing a claim of good cause, or upon approval of the application, whichever last occurs. If the applicant or recipient can establish difficulty in obtaining verification, the Department may extend this time limit for up to 30 days or longer.
- E. Acceptable verification shall be documentation which establishes the claim of good cause by a preponderance of evidence and may include:
1. Birth certificate or Bureau of Vital Statistics Records in cases of incest;
 2. Medical or law enforcement records in cases of sexual assault or incest;
 3. Court records or other legal documents in cases of pending adoptions;
 4. A written statement from a private or public adoption entity in cases of adoption counseling;
 5. Court, medical, criminal, Child Protective Services, psychological, social services, or law enforcement records, in cases of physical or emotional harm; and
 6. Sworn statements from friends, neighbors, clergy, or other persons with personal knowledge of circumstances that would substantiate a claim of good cause.
- F. If the applicant or recipient is unable to provide the verification specified in subsection (E) above, the applicant or recipient shall furnish information which permits the Department's Office of Special Investigations to investigate the good cause circumstances.
- G. The Department shall not deny, delay, or discontinue assistance pending a determination of good cause.
- H. The Department shall determine whether or not good cause exists within 45 days from the date the applicant or recipient makes the good cause claim. The Department may extend this time limit if additional time is required to verify the claim.
- I. If the Department finds that good cause does not exist, the applicant or recipient shall cooperate with the requirements of R6-12-311(F) within 10 days following the date the Department notifies the applicant or recipient of the good cause decision.
- J. The Department shall redetermine a claim of good cause;
1. At each six-month review, and
 2. When circumstances change such that good cause no longer exists.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

Department of Economic Security - Cash Assistance Program

R6-12-313. Participation in JOBS; Exemptions; Good Cause Exceptions

- A. As a condition of eligibility, a recipient of CA shall participate in the Job Opportunities and Basic Skills Training Program (JOBS) as prescribed in A.A.C. R6-10-101 through R6-10-121, unless FAA determines that the person is exempt.
- B. The following persons are exempt from participation:
 - 1. A child who is under age 16, except for a custodial parent or pregnant girl age 13 through age 15 who lacks a high school diploma, or its equivalent, and is not enrolled in high school or an equivalent course of instruction;
 - 2. A child who is age 16 or age 17, or age 18 if reasonably expected to complete school before reaching age 19, and a full-time student at an elementary, secondary, vocational or technical school, so long as the educational or training program was not assigned as a JOBS activity;
 - 3. A person who is currently employed at least 30 hours per week in unsubsidized employment which pays at least the federal minimum wage and which is expected to last at least 30 days; any interruption in such employment shall not exceed 10 days; and
 - 4. A Native American tribal member who resides in an area covered by a Tribal JOBS program.
- C. Exempt status shall terminate when the condition giving rise to the exemption terminates.
- D. If a person fails or refuses to participate in JOBS without good cause, the Department shall impose the penalties specified in R6-12-316.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-314. School Attendance

- A. As used in R6-12-306(A)(2), full-time school attendance means:
 - 1. For high school, attendance which the school defines as full time;
 - 2. For a trade or technical school involving shop practice, 30 hours per week; and
 - 3. For a trade or technical school involving no shop practice, 25 hours per week.
- B. The Department shall verify school attendance through school records establishing full-time status and, for 18-year olds, expected date of graduation.
- C. The Department shall require each parent or NPCR to verify either full-time school attendance by the child or full-time home schooling of the child when the parent or NPCR applies for or receives CA on behalf of a dependent child.
- D. Acceptable verification shall include:
 - 1. The parent or NPCR's written statement,
 - 2. A statement from the school, or
 - 3. A statement from the County Department of Education.
- E. If a parent or NPCR fails to verify compliance with the school attendance requirements in this subsection, the Department shall impose the penalties specified in R6-12-316.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Former Section R6-12-314 renumbered to R7-12-307; new Section R7-12-314 renumbered from R7-12-307 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and a new Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-315. Immunization

- A. The Department shall require each parent or NPCR to verify that the child is immunized, when the parent or NPCR applies for or receives CA on behalf of a dependent child.
- B. The Department shall require this verification at the initial interview and at each review. Acceptable verification shall include:
 - 1. The parent or NPCR's written statement; or
 - 2. A written statement from a physician, hospital, or clinic.
- C. When the parent or NPCR is unable to verify the child's immunizations at the initial interview, the Department shall inform the parent or NPCR that verification of the child's immunization will be required at the next review.
- D. When a parent or NPCR is unable to verify the child's immunization at the review, the Department shall impose the progressive sanction penalties as specified in R6-12-316.

Department of Economic Security - Cash Assistance Program

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-315 renumbered to R6-12-318; new Section R6-12-315 adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and a new Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-316. Sanctions for Noncompliance

- A. The Department shall notify the assistance unit of benefit reduction or case closure when:
1. Benefits will be reduced or the case closed because of noncompliance with the requirements of R6-12-311, R6-12-312, R6-12-313(C), and R6-12-314; and
 2. The assistance unit's benefits are not currently reduced because of sanctions.
- B. The notice shall include the following information:
1. A brief statement of the progressive sanction policy as follows:
 - a. For the first sanction, the Department will reduce cash benefits by 25% for at least one month;
 - b. Unless all members are in compliance by the end of the sanction month, the Department will impose another sanction.
 - c. For the second sanction, the Department will reduce cash benefits by 50% for at least one month.
 - d. For the third and subsequent sanctions, the Department will close the case and it must remain closed for at least one month;
 2. The month the sanction will be effective; and
 3. The name and telephone number of the person to contact for information on what the noncompliant member must do to comply.
- C. The Department shall impose the sanction effective for the first possible benefit month, allowing for 10-day notice of adverse action.
- D. The Department shall not impose the above penalties on TPEP assistance units but shall follow the steps below:
1. The Department shall notify the TPEP assistance unit of benefit withholding or case closure when:
 - a. Benefits will be withheld or the case closed because of noncompliance with the requirements of R6-12-311, R6-12-312, R6-12-313(C), and R6-12-314; and
 - b. The assistance unit's benefits are not currently being withheld.
 2. The Department shall notify the Assistance unit that:
 - a. The TPEP benefit checks will be withheld until the noncompliant person has completed a new work cycle in compliance;
 - b. The name and telephone number of the person to contact for information on how to comply;
 - c. That when three checks have been withheld in any six-month period, the Department will close the TPEP case.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-316 renumbered to R6-12-319; new Section R6-12-316 adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following new Section was renumbered and a new Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-317. Voluntary Quit/Reduction in Work Effort

- A. The Department shall disqualify the member of the assistance unit or the assistance unit as described in subsections (B) and (C) when a member of an assistance unit, or the parent of a dependent child whose income is considered available to the assistance unit, within 60 days prior to the date of the application or any time thereafter, voluntarily and without good cause:
1. Terminates employment from a job in which the individual was:
 - a. Employed at least 20 hours a week,
 - b. Earning weekly income equal to the then current minimum wage multiplied by 20;
 2. Reduces the number of hours worked each week from 30 or more to less than 30; or
 3. Participates in a strike against the government, when the member is an employee of the local, state, or federal government.
- B. When the member is the PI of the assistance unit, the Department shall close the case. The assistance unit of which the member remains the PI is ineligible for CA benefits for the minimum period specified in subsection (D) or until the assistance unit reapplies, whichever is longer.
- C. When the member is not the PI of the assistance unit, the Department in determining eligibility and benefit level for the assistance unit for the minimum period specified in subsection (D) or until the assistance unit reapplies, whichever is longer, shall:
1. Exclude the needs of the member; and
 2. Include the otherwise countable income, resources, and expenses of the member.
- D. The minimum disqualification periods are:
1. For the first offense, one month;

Title 6, Ch. 12 *Arizona*

Code

Department of Economic Security - Cash Assistance Program

2. For the second offense, three months; and
 3. For the third and subsequent offenses, six months.
- E.** The Voluntary Quit/Reduction in Work Effort disqualification provisions shall apply to all members of the assistance unit who are not exempt from JOBS participation, as provided in R6-12-313. A member who is exempt from participation in JOBS because of employment is not exempt from the Voluntary Quit/Reduction of Work Effort provisions due to JOBS employment.
- F.** Good cause for voluntarily quitting a job or reducing the number of hours worked includes:
1. Circumstances beyond the member's control, such as illness of another assistance unit member requiring the presence of the member, unavailability of transportation, unanticipated emergency, unsuitability of work, or the lack of adequate child care for individuals responsible for the care of children under 12 years old;
 2. The member's inability to write or speak English;
 3. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;
 4. Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;
 5. Resignation by a member under age 60 who is recognized by the employer as retired;
 6. Employment which becomes unsuitable by not meeting the suitability of work criteria listed in subsection (F)(9) after the acceptance of employment;
 7. Acceptance of new employment of comparable hours and salary to the job which was quit, which, through no fault of the member, subsequently:
 - a. Does not materialize,
 - b. Results in a lay off,
 - c. Results in employment of less than 20 hours a week, or
 - d. Results in weekly earnings of less than the federal minimum wage multiplied by 20 hours;
 8. Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work;
 9. Employment that is unsuitable. Employment is unsuitable when the following conditions apply:
 - a. The wage offered is less than the higher of:
 - i. The federal minimum wage or the training wage, when applicable, if the employment is covered by federal regulations; or
 - ii. Eighty percent of the federal minimum wage when the employment is not covered by federal regulations;
 - b. The employment offered is on a piece-rate basis, and the average hourly yield which the employee can reasonably be expected to earn is less than the applicable hourly wage as specified above;
 - c. As a condition of employment, the employee is required to join, resign from, or refrain from joining any legitimate labor organization;
 - d. The work offered is at a site subject to strike or lockout, unless the strike has been enjoined under the Taft-Hartley Act (Section 208 of the Labor Management Relations Act, (29 U.S.C. 178)) or an injunction issued under section 10 of the Railway Labor Act (45 U.S.C. 160). A striker who belongs to a union may not refuse work solely because the job offered is a nonunion job;
 10. An employment opportunity is unsuitable when an individual can demonstrate, or the Department finds that:
 - a. The degree of risk to the individual's health and safety is unreasonable;
 - b. The individual is physically or mentally incapable of performing the assigned tasks of employment as documented by medical evidence or reliable information obtained from other sources;
 - c. The distance of employment from the member's place of residence is unreasonable, with respect to the expected wage and the time and cost of commuting;
 - i. Employment is unsuitable if the commuting time exceeds two hours per day, exclusive of time required to transport a child to and from a child care facility.
 - ii. Employment is unsuitable when the distance prohibits walking, and neither public nor private transportation is available.
 - d. The working hours or type of employment interferes with the individual's religious observances, convictions, or beliefs.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-317 renumbered to R6-12-320; new Section R6-12-317 adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-318. Duration of Assistance – 36-month Time Limit

- A.** The Department shall not authorize cash benefits for a needy family, except in case of hardship, when any of the following apply:

**Arizona
Code**

Department of Economic Security - Cash Assistance Program

1. The needy family includes a head of household or the spouse of the head of household who has received 36 countable months of cash benefits in the Arizona CA program for himself or herself.
 2. The needy family includes an ineligible parent or the spouse of the ineligible parent who has received 36 countable months of cash benefits in the Arizona CA program for an eligible dependent child.
 3. The needy family includes an adult non-parent relative head of household or the spouse of the non-parent relative head of household who has received 36 countable months of cash benefits in the Arizona CA program for an eligible dependent child.
- B.** Time limited assistance shall not apply to a child only case.
- C.** The Department shall count each payment month, regardless of the source of funding for the program, until a limit of 36 countable months is reached. The 36 countable months are not required to be consecutive.
- D.** The Department shall begin counting the 36 months beginning with the first countable payment received in the Arizona CA program on or after October 1, 2002.
- E.** The Department shall not count the following months toward the 36-month time limit:
1. A month in which CA was received in a child only case;
 2. A month in which CA was received by an assistance unit while residing on an Indian reservation that has a 50% or higher unemployment rate;
 3. A month in which the CA payment amount was less than a full benefit month payment due to the date of an initial application;
 4. A month in which the head of household or the spouse of the head of household or an ineligible parent or the spouse of the ineligible parent received CA as a minor child who was not the head of household or the spouse of the head of household;
 5. Any month in which the assistance unit receives a payment in the CA Grant Diversion option. This includes each of the months for which the Grant Diversion payment is intended to cover;
 6. Any month in which the assistance unit was totally ineligible for a cash benefit payment due to an overpayment of benefits that must be repaid to the Department;
- F.** Under no circumstances, except as provided in R6-12-319, shall the Department authorize CA beyond the federal 60-month time limit under R6-12-320.

Historical Note

New Section renumbered from R6-12-315 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-319. Extension of Time Limited Assistance

- A.** The Department shall authorize cash benefits to an assistance unit that is ineligible due to the time limited restrictions in R6-12-318 or R6-12-320 when:
1. An assistance unit or the caretaker relative head of household who receives CA only for an eligible dependent child, requests an extension due to hardship;
 2. The assistance unit meets all financial and non-financial eligibility criteria; and
 3. The assistance unit or the caretaker relative head of household verifies that at least one of the hardship reasons in this Section exists. The claimed hardship shall be valid only when the hardship circumstances prevent the adult assistance unit member, the minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household from working or engaging in work activities to a degree that such person is prevented from financially supporting the eligible dependent child in the assistance unit, independent of CA.
- B.** Hardship may exist in any of the following situations:
1. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household has a physical or mental impairment that is expected to continue for more than 30 days and that prevents that person from working or engaging in work activities.
 2. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household is required to be a full-time caregiver, as verified by an acceptable medical source, and all of the following apply:
 - a. The caregiver is providing services to one of the following disabled family members:
 - i. A dependent child or a disabled adult child,
 - ii. A parent, or
 - iii. A spouse or domestic partner.
 - b. The caregiver does not receive respite care for more than 20 hours each week,
 - c. No other person is available to be the full-time caregiver to the disabled family member, and
 - d. The disabled family member does not attend school or vocational rehabilitation for more than 20 hours each week.

Department of Economic Security - Cash Assistance Program

3. An assistance unit member or any member of the needy family is a victim of one of the following that prevents an adult assistance unit member, the minor parent head of household, a caretaker relative head of household, or the spouse of the caretaker relative head of household from working or engaging in work activities:
 - a. Violence,
 - b. Crime, or
 - c. Domestic violence.
4. The assistance unit or the needy family is homeless.
5. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household is participating full-time in one of the activities listed in subsection (B)(5)(a), is complying with the requirements listed in subsection (B)(5)(b), and is unable to complete the activity without continuing to receive CA.
 - a. Activities:
 - i. A postsecondary education program offered by a university, college, or community college, that will result in an associate's or bachelor's degree;
 - ii. A program offered by a vocational, technical, or recognized school that will result in a diploma or certificate for a job skill directly related to obtaining self-supporting employment in a recognized occupation;
 - iii. A job training or employment activity assigned by the JOBS Program as part of the member's employability plan.
 - b. Requirements:
 - i. The member must have started participation in the educational or training program prior to the member receiving 30 countable months of CA.
 - ii. The member shall demonstrate successful progress toward completion of the educational or training program. Successful progress includes meeting a reasonable time limit for completion of the educational or training program.
 - iii. The member shall consistently sustain a passing grade or acceptable grade point average, as determined by the educational or training program.
6. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household is prevented from working or engaging in work activities due to either of the following:
 - a. Childcare is unavailable or unaffordable, or
 - b. Transportation is not readily available or affordable.
7. The adult assistance unit member or the caretaker relative head of household is both of the following:
 - a. A non-parent caretaker relative to the minor dependent child receiving CA, and
 - b. Age 60 or older.
8. When the assistance unit or the caretaker relative head of household claims that hardship exists for a reason other than one contained in this Section, the Department shall assess the situation and determine whether the claim of hardship is valid based on verification provided by the assistance unit or the caretaker relative head of household and may grant an extension based on those circumstances.

Historical Note

New Section renumbered from R6-12-316 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-320. Duration of Assistance – Federal 60-month Time Limit

- A. The Department shall not authorize cash benefits to the assistance unit when the head of household or the spouse of the head of household has received 60 countable months of cash benefits for himself or herself, funded in whole or in part by the Temporary Assistance for Needy Families block grant in Arizona or any other state or United States territory or from a tribal Temporary Assistance for Needy Families CA program, unless the assistance unit is eligible for a hardship extension under R6-12-319.
- B. The Department shall count each payment month until a limit of 60 months is reached. The 60 countable months are not required to be consecutive.
- C. The Department shall begin counting the 60 months beginning with the first payment received on or after October 1, 2002.
- D. The Department shall not include the following months toward the 60-month time limit:
 1. Any month before October 1, 2002 in which the recipient received CA in Arizona or in any other state;
 2. Any month before October 1, 2002, in which the recipient received CA in a tribal TANF program in any state other than Arizona;
 3. Any month before October 1, 2002, in which the recipient received CA in an Arizona tribal TANF program when that month was not countable toward the 60-month time limit in that tribal TANF program;
 4. Any month in which the recipient resides on an Indian reservation that has a 50% or higher unemployment rate based on the Bureau of Indian Affairs (B.I.A.) Market Information Report;
 5. A month when the assistance unit is eligible but receives no CA payment because the benefit is less than \$10;

Department of Economic Security - Cash Assistance Program

6. A month when the assistance unit is ineligible due to an overpayment;
7. Any month in which the assistance unit receives a payment in the Grant Diversion option. This includes each of the months for which the Grant Diversion payment is intended to cover.

Historical Note

New Section renumbered from R6-12-317 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new Section made by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-321. Hardship Verification Requirements

- A. Hardship due to a physical or mental impairment.**
1. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household that claims hardship as specified in R6-12-319(B)(1) shall provide one of the following items:
 - a. A signed statement from a treatment provider or acceptable medical source;
 - b. Disability verification from the Veterans Administration;
 - c. Vocational Rehabilitation documents, examinations, or evaluations signed by a treatment provider.
 2. The verification items specified in subsection (A)(1) shall include all of the following information:
 - a. A statement indicating that the individual's physical or mental condition prevents working or engaging in work activities,
 - b. The duration of the disability,
 - c. A prognosis of recovery, and
 - d. The signature of the treatment provider or acceptable medical source.
 3. When the assistance unit member is a current JOBS program participant whose participation is deferred due to disability, no further verification of disability is required.
- B. Hardship due to being a full-time caregiver.**
1. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(2) shall provide a signed statement from a treatment provider, verifying the member is needed as a full-time caregiver of their disabled child, parent, spouse, or domestic partner.
 2. An adult assistance unit member, minor parent head of household, caretaker relative head of household, or spouse of the caretaker relative head of household who receives respite care services shall provide verification of these services from the respite care provider. The verification shall indicate the number of hours per week that the person receives these services.
 3. When a disabled individual is attending school, the individual shall provide verification from the school or vocational rehabilitation program of the number of hours per week the individual is in attendance.
- C. Hardship due to violence, crime, or domestic violence.**
1. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(3) shall provide verification from at least one of the following sources:
 - a. Court records;
 - b. Police reports;
 - c. Law Enforcement records;
 - d. Restraining Orders or Orders of Protection against the perpetrator or abuser;
 - e. Statements by attorneys or other legal professionals providing services to the victim of abuse or violence;
 - f. Child Protective Services records;
 - g. Written statements by medical professionals including physicians, psychologists, psychiatrists, counselors, or other treatment providers;
 - h. Written statements by domestic violence shelter staff;
 - i. Statements by clergy;
 - j. Statements by a third person with knowledge of the abuse or violence, such as a friend or relative to whom the member or assistance unit has fled to escape or avoid abuse or violence;
 - k. Receipt of Victims of Crime Act (VCA) benefits.
 2. Any other evidence that supports the claim that the assistance unit member or family member is a victim of abuse or violence.
 3. When the assistance unit member is a current JOBS program participant and is deferred from participating due to domestic violence, no further verification is required.
- D. Hardship due to Homelessness.** An adult assistance unit member, a minor parent head of household, or the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(4) shall provide verification from at least one of the following sources:
1. A written statement by staff at a shelter, halfway house, or similar facility that provides temporary residence to homeless individuals or families verifying that the assistance unit, minor parent head of household, or caretaker relative head of household is a resident of the facility;
 2. A written statement by the assistance unit member, minor parent head of household, or caretaker relative head of household that includes a description of where the household is residing when it does not have a fixed or regular nighttime residence;

Department of Economic Security - Cash Assistance Program

3. A written statement by the assistance unit member, minor parent head of household, or caretaker relative head of household when the household is temporarily living with others. The statement must indicate that the residential situation is temporary and the date the assistance unit, minor parent head of household, or caretaker relative head of household expects to have its own residence;
 4. Any other verification that reasonably supports the assistance unit member's, minor parent head of household's, or caretaker relative's head of household's claim of homelessness.
- E.** Hardship due to Educational or Training Program Completion. An adult assistance unit member, minor parent head of household, caretaker relative head of household, or spouse of a caretaker relative head of household who claims hardship as specified in R6-12-319(B)(5) shall provide the following verification:
1. A statement from the educational or training program that includes the following:
 - a. The enrollment status of the individual,
 - b. The date that the individual began participation in the program and the anticipated completion date, and
 - c. Verification that the individual is making satisfactory progress toward completion of the program.
 2. A statement from the assistance unit member or caretaker relative head of household that explains the need for additional CA benefits in order for the individual to successfully complete the Educational or Training program.
- F.** Hardship due to Childcare or Transportation being Unavailable or Unaffordable.
1. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(6)(a) shall provide the following items:
 - a. A statement by the assistance unit member or caretaker relative head of household explaining the reasons the individual has been unable to find or afford childcare, including the availability of affordable childcare in their area; and
 - b. Documents that demonstrate the individual's efforts to find or afford childcare.
 2. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household or the spouse of the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(6)(b) shall provide a statement explaining the reasons that transportation is not readily available or affordable, including the availability of affordable public and private transportation in their area.
- G.** Hardship due to other reasons. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household or the spouse of the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(8) shall provide a statement that explains the hardship circumstance and the need for additional CA benefits. The individual shall provide any documentary verification of the hardship circumstance that is requested by the Department in order to determine the need for additional CA benefits.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

ARTICLE 4. FINANCIAL ELIGIBILITY: RESOURCES

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-401. Treatment of Resources; Limitations

- A.** In determining eligibility for a cash benefit, the Department shall include all resources available to the assistance unit, unless excluded by applicable law.
- B.** An assistance unit is ineligible for CA for any month in which the unit's resources exceed \$2,000, after application of all available exclusions.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4) Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-402. Treatment of Resources by Ownership Status; Availability

- A.** The Department shall consider the resources belonging to an assistance unit member available to the assistance unit.
- B.** The Department shall consider the resources of the following individuals available to the assistance unit:
 1. A dependent child's parent and minor sibling, when residing with a dependent child in an assistance unit, even when the parent or minor sibling:

Department of Economic Security - Cash Assistance Program

- a. Has not requested CA;
 - b. Is ineligible for CA for failure to comply with an eligibility requirement; or
 - c. Is ineligible for CA due to disqualification for Intentional Program Violation, as provided in Article 12;
2. A stepparent, when residing with a dependent child in an assistance unit and the dependent child's parent, who makes resources available to the assistance unit or the dependent child's parent.
- C. The Department shall consider the resources belonging to the sponsor of a noncitizen, as provided in R6-12-506, available to the assistance unit.
- D. The Department shall consider the resources of the persons listed in this subsection unavailable to the assistance unit.
1. A non-parent relative who is not included in the assistance unit;
 2. An SSI recipient, as to resources held as sole and separate property, or counted in the determination of SSI eligibility;
 3. A dependent child for whom deprivation does not exist;
 4. A dependent child who is not included in the assistance unit due to receipt of adoption assistance or foster care payments under Title IV-E of the Social Security Act or who is ineligible for CA due to the family benefit cap.
- E. The Department shall consider ownership in determining availability of the resources to the assistance unit.
1. The sole and separate property of one spouse is deemed unavailable to the other spouse, unless the owner spouse makes the property available to the other spouse.
 2. Jointly owned resources, with ownership records containing the words "and" or "and/or" between the owners' names, are deemed available when all owners can be located and consent to disposal of the resource, except that such consent is not required if all owners are members of the assistance unit.
 3. Jointly owned resources, with ownership records containing the word "or" between the owners' names, are deemed available in full to each owner. When more than one owner is a member of an assistance unit, the equity value of the resource is counted only once.
- F. The Department shall consider the following resources unavailable to the assistance unit and to any other person whose resources are considered available to the assistance unit:
1. Property subject to a spendthrift restriction. Such property may include:
 - a. Irrevocable trust funds that are prohibited by a court from being disbursed to the beneficiary who is an assistance unit member or to any other person whose resources are considered available to the assistance unit. When such funds may be disbursed by court order, the beneficiary or appropriate assistance unit member shall petition the court for disbursement of the funds;
 - b. Accounts established by the Social Security Administration, Veteran's Administration, or some other entity, which mandate that the funds in the account be used for the benefit of a person not residing with the assistance unit.
 2. Resources being disputed in divorce proceedings or in probate matters.
 3. Real property situated on a Native American reservation.
 4. Resources belonging to a member of the needy family except as to those family members listed in subsections (A), (B), and (C).

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-403. Treatment of Resources; Exclusions

The Department shall exclude the equity value of the resources listed below, as provided in this Section. These resource exclusions shall also apply to a person whose resources are considered available to an assistance unit.

1. The usual residence of the assistance unit members;
2. One burial plot for each member of the assistance unit;
3. Household furnishings used by the assistance unit members in their usual place of residence, and personal effects essential to day-to-day living;
4. Up to \$1500 of the value of one bona fide funeral agreement, for each member of the assistance unit. The funeral agreement or burial plan must cover only funeral-related expenses, as evidenced by a written contract;
5. The value of all motor vehicles, including recreational vehicles.
6. When an assistance unit member owns real property, other than the usual residence described in subsection (A)(1) above, and is making a good faith effort to dispose of it, the equity value shall be excluded for six months, subject to the conditions listed in this subsection:
 - a. The assistance unit member shall sign an agreement to:
 - i. Dispose of the property; and
 - ii. Repay the Department, from the net proceeds of disposal, the amount of any assistance the unit receives during the period of time the unit would otherwise have been ineligible because the property value exceeded resource limitations;
 - b. The amount repaid shall not exceed the net proceeds of disposal;
 - c. If the assistance unit member does not dispose of the property within six months, the Department shall write an overpayment and the assistance unit shall repay any assistance received during that period;
7. A financial account that is used only for a self-employment business;
8. Funds in the following types of retirement accounts or retirement plans, established by employers in accordance with federal Internal Revenue Services regulations:
 - a. A 401A or 401K plan,

Department of Economic Security - Cash Assistance Program

- b. A 457 or 457(b) plan,
 - c. A Federal Employees Thrift Savings Plan,
 - d. An Irrevocable Annuity plan,
 - e. A KEOGH plan that involves a contract with a person who is not an assistance unit member,
 - f. A Section 403(a) or 403(b) plan,
 - g. A Section 408 or 408A plan,
 - h. A Section 501(c)(18) or 501(g)(18) plan;
9. Funds in the following educational savings accounts operated by a state or educational institution in accordance with federal Internal Revenue Services regulations:
 - a. A 529 account,
 - b. A 530 account;
 10. Educational grants issued under programs administered by the U.S. Commissioner of Education, when the assistance is made available for school attendance costs, including the following:
 - a. BEOG\PELL, SEOG and NDSL grants;
 - b. Work Study programs;
 - c. Assistance provided by the Carl D. Perkins Vocational and Applied Technology Education Act;
 11. Any grant, scholarship, educational loan, or other award that is not administered by the U.S. Commissioner of Education, when such assistance covers the costs of items not included in the CA need standard;
 12. The cash value of a grazing permit issued by a tribal or other governmental authority, when the land used for the grazing permit is adjoining a permit holder's homestead;
 13. Any amount up to \$2000 received from the following American Indian claims or funds:
 - a. Alaska Native Claims Settlement Act payments received under the Sac and Fox Indian claims agreement as specified in Public Law 92-203, Section 21(a);
 - b. Per capita payments from judgment funds awarded by the Indian Claims Commission of the U.S. Court of Federal Claims as specified in Public Law 97-458 for the Colorado River Indians;
 - c. Individual Indian's interests in trust or restricted lands and payments from these interests as specified in Public Law 103-66. Interests include the Indian's right to or legal share of the trust or restricted land and any income accrued;
 - d. The Indian Gaming Industry per capita disbursement funds placed in an inaccessible trust by the tribe as specified in Public Law 98-64;
 - e. Payments made to members of Indian tribes in settlement for land as specified in Public Law 100-580;
 14. Money loaned to the assistance unit from any source and for any purpose;
 15. Funds received from the Navajo Nation Needy Children's Fund;
 16. Payments made by the Federal Emergency Management Agency (FEMA) or Federal Disaster Relief Act for any of the following:
 - a. Federal major disaster;
 - b. Natural catastrophe;
 - c. Emergency assistance;
 - d. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations;
 17. When self-employment from farming is terminated, farm property, including land, equipment and supplies shall be excluded as a resource for 12 months. This period of exclusion begins on the date the self employment from farming stops;
 18. Funds available from sources of excluded income contained in R6-12-503(8), (13), (15), (22), (38), (39), (40), (41), (42), and (43);
 19. Any other resource specifically excluded by state or federal law.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-404. Individual Development Accounts

- A. An individual development account (IDA) is a special savings account which allows a recipient of both CA and Food Stamp Program benefits to accumulate funds to achieve educational or training goals.
- B. Financial institutions licensed by the Arizona State Banking Department shall administer IDAs.
 1. IDAs shall earn the same interest rate as is offered to other bank customers for like accounts.
 2. A financial institution may prescribe such terms and conditions relating to IDAs as are permissible under the laws of this state and federal banking law.
- C. A member of an assistance unit that receives both CA and food stamp benefits may establish an IDA.
 1. No assistance unit shall hold more than 1 IDA.

**Arizona
Code**

Department of Economic Security - Cash Assistance Program

2. A person found to have committed an intentional program violation or fraud related to the CA, food stamp, or AHCCCS programs shall not hold an IDA.
- D.** An assistance unit member who establishes an IDA shall sign a document authorizing the financial institution to release account information to the Department.
- E.** The following persons can make deposits into an IDA:
 1. The account holder;
 2. A member of the account holder's assistance unit;
 3. A person who is not a member of the account holder's assistance unit; or
 4. A non-profit organization with a recognized tax exempt status under 26 U.S.C. 501(c)(3) or A.R.S. § 43-1201. A non-profit organization making deposits into an IDA:
 - a. Shall designate that such funds are intended solely for educational or training purposes, and
 - b. May set other terms and conditions regarding the withdrawal or use of the funds.
- F.** An applicant for assistance shall not place countable income or resources into an IDA for the purpose of qualifying for CA or Food Stamp Program benefits. Any money so deposited counts as a resource.
- G.** The Department shall exclude from the resource limitation set forth at R6-12-401(B) the balance held in an IDA which at any 1 time is \$9,000 or less, except that any cumulative deposits over the life of an IDA which exceed \$12,000 shall count against the resource limitation.
- H.** The Department shall disregard as countable income:
 1. Fifty percent of any earned income of the assistance unit which is deposited into an IDA, except that the Department shall not disregard more than \$100 per month of earned income; and
 2. All interest earned on an IDA.
- I.** An assistance unit which holds an IDA shall:
 1. Report to the Department all income which is deposited into an IDA or withdrawn from an IDA; and
 2. Submit account statements to the Department at each eligibility redetermination.
- J.** A recipient of both CA and food stamp benefits may withdraw funds from an IDA for:
 1. Educational costs at an accredited institution of higher education; or
 2. Training costs for an accredited, licensed, or certified training program.
- K.** As used in subsection (J), above:
 1. Educational and training costs are limited to:
 - a. Tuition and other mandatory fees charged to all students, or to all students within a certain curriculum;
 - b. Books;
 - c. Transportation; and
 - d. Miscellaneous personal expenses necessary to pursue education or training.
 2. An institution of higher education means a public or private educational institution defined at A.R.S. § 23-618.02.
 3. A training program means a course of study offered by a vocational, technical, or recognized proprietary school which will result in a diploma or certificate for a job skill which is directly related to obtaining useful employment in a recognized occupation.
- L.** Withdrawals from an IDA for purposes other than those described in subsection (K) shall count as income to the assistance unit in the month of withdrawal, unless the money was previously counted as income to the assistance unit at the time of receipt.
- M.** If there is a break in CA or food stamp benefits of at least 1 full month, upon reapplication the Department shall consider any remaining monies in an IDA as countable resources and shall not disregard any future deposits into an IDA.
- N.** The Department's Office of Special Investigations shall investigate allegations of fraud or abuse involving IDAs, including situations where there is evidence or reason to believe that a deposit to an IDA was made from:
 1. Income which was available to the assistance unit but was not reported to the Department;
 2. Individual contributions which should have been counted as income or child support; or
 3. Proceeds from illegal activities.
- O.** The Department shall not disregard as income or resources any deposit made into an IDA from income sources described in subsection (N), or any deposit which is otherwise contrary to the provisions of this Section. The Department shall establish any resulting overpayment.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-405. Resource Transfers; Limitations

- A.** An assistance unit member or the parent of a dependent child in the assistance unit shall not transfer a resource with the intent to qualify or attempt to qualify for CA within one year prior to application or while receiving assistance, unless fair consideration was received.

Department of Economic Security - Cash Assistance Program

- B. Except as otherwise provided in this Section, when an assistance unit member or the parent of a dependent child in the assistance unit does not receive fair consideration for a transferred resource (an improper transfer), the assistance unit shall be ineligible for CA.
 - 1. The period of ineligibility shall begin in the month in which the transaction occurred.
 - 2. The Department shall compute the duration of ineligibility by subtracting the consideration actually received, from the equity value of the transferred resource, and dividing that sum by the monthly need standard for the assistance unit. The resulting number shall be the number of months the unit is ineligible.
- C. An improper transfer shall not affect eligibility when the equity value of the transferred resource, plus the value of the unit's other available resources, does not exceed the resource limitation.
- D. The improper transfer of homestead property shall not affect eligibility if the property was transferred because the person cannot continue residing in the home for health reasons, as determined by a competent medical authority.
- E. If an assistance unit member or the parent of a dependent child in the assistance unit disposes of homestead property, the Department shall count, as a resource, all proceeds of the sale not reinvested in homestead property, when the assistance unit member:
 - 1. Invests the proceeds in a resource other than homestead property,
 - 2. Advises the Department that such proceeds will not be reinvested in other homestead property, or
 - 3. Fails to purchase new homestead property within 90 days of the date of sale.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-406. Resource Verification

The Department shall verify all resources before determining an assistance unit's eligibility for a cash grant and benefit amount.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

ARTICLE 5. FINANCIAL ELIGIBILITY: INCOME

R6-12-501. Treatment of Income; In General

- A. In determining the income eligibility of the family and benefit amount for the assistance unit, the Department shall treat all income in accordance with the provisions of this Article.
- B. "Gross income" shall include the following, when actually received by the family in order to determine whether the family is needy, or by the assistance unit in order to determine a cash benefit amount:
 - 1. Earned income from public or private employment, including in-kind income, before deductions;
 - 2. For self-employed persons, the sum of gross business receipts minus business expenses; and
 - 3. Unearned income, such as benefits or assistance grants, minus any deductions to repay prior overpayments or attorneys' fees.
 - 4. Minus those types of income excluded under R6-12-503.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-502. Income Available to the Assistance Unit

- A. The Department shall consider the income of an assistance unit member available to the assistance unit for the purpose of determining a cash benefit amount.
- B. The Department shall consider the income of a parent and minor sibling of a dependent child in an assistance unit as available to the assistance unit for the purpose of determining a cash benefit amount when those persons reside with the dependent child. The income shall be considered available even when the parent or minor sibling:
 - 1. Has not requested CA;
 - 2. Is ineligible for CA for failure to comply with an eligibility requirement; or
 - 3. Is ineligible for CA due to disqualification for Intentional Program Violation, as provided in Article 12;
- C. The Department shall consider the income belonging to the sponsor of a noncitizen, as provided in R6-12-506, available to the assistance unit for the purpose of determining a cash benefit amount.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Department of Economic Security - Cash Assistance Program

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-503. Income Exclusions

The Department shall not count the types of income listed in this Section when determining the income of a family and the income of an assistance unit. These income exclusions shall also apply to a parent or minor sibling of a dependent child in an assistance unit when the parent or minor sibling resides with the assistance unit but is not an assistance unit member, and the income type listed in this Section belongs to the parent or minor sibling.

1. Loans;
2. The following types of assistance provided for educational purposes:
 - a. Bureau of Indian Affairs (B.I.A.) Allowances for Educational Expenses paid to the participant from Title XIII that directly relates to school expenses;
 - b. Grants, scholarships, and loans, as provided by Title IV or Title XIII of the Higher Education Act;
 - c. Guaranteed loans, and other loans, not funded by the Title IV or Title XIII of the Higher Education Act;
 - d. Student loans (SGL) that are funded solely by a state and are not federally guaranteed;
 - e. Income paid to the member as a Tribal Loan for educational purposes under Title XIII of the Indian Higher Education Program;
 - f. The Montgomery GI bill Chapter 30 and other income paid to the member by the Veteran's Administration for educational purposes;
 - g. Educational income (earnings and living allowances) from Workforce Investment Act related Summer Component Programs and Job Corps;
 - h. Earnings received from participation in college work study programs funded by Title IV of the Higher Education Act or Title XIII of the Indian Higher Education Program.
3. Income tax refunds, including any earned income tax credit;
4. Non-recurring cash gifts which do not exceed \$30, per person in any calendar quarter;
5. Cash contributions from other agencies or organizations so long as the contributions are not intended to cover items which CA is intended to cover, specifically:
 - a. Food;
 - b. Shelter, including only rent or mortgage payments;
 - c. Utilities;
 - d. Household supplies, including bedding, towels, laundry, cleaning, and paper supplies;
 - e. Public transportation fares for personal use;
 - f. Basic clothing or diapers; or
 - g. Personal care and hygiene items, such as soap, toothpaste, shaving cream, and deodorant;
6. The face value of Nutrition Assistance benefits;
7. The value of governmental rent and housing subsidies;
8. The value of energy assistance that is provided:
 - a. Either in cash or in kind by a government agency or municipal utility, or
 - b. In kind by a private non-profit organization;
9. Vendor payments;
10. Vocational rehabilitation program payments made as reimbursements for training-related expenses, subsistence and maintenance allowances, and incentive payments which are not intended as wages;
11. All income, both earned and unearned, received from programs and services authorized by the Workforce Investment Act, including earnings received from on-the-job training programs;
12. Reimbursements for JOBS Program training-related expenses, including Fair Labor Standards Act supplements and Unpaid Work Experience supplements;
13. Payments from any fund established in connection with settling liability claims concerning Agent Orange death or disabilities as specified in Public Law 101-102;
14. Burial benefits which are dispersed solely for burial expenses;
15. Disaster assistance provided by the Federal Disaster Relief Act, or comparable assistance provided by state or local governments, or disaster assistance organizations;
16. Foster care payments;
17. Radiation exposure compensation payments;
18. Income received from VISTA which does not exceed the state or federal minimum wage;
19. Benefits from the Special Supplemental Food Program for Women, Infants, and Children (WIC);
20. Reimbursements for work-related expenses that do not exceed the actual expense amount;
21. Earned income of minor family members and dependent children who are students enrolled and attending school at least half-time as defined by the institution;
22. Income received from the Americorp Network Program;
23. Earned Income Tax Credit payments received as a monthly advance with the member's regular wages;

Department of Economic Security - Cash Assistance Program

24. Child care payments made to a member as a result of Title IV-A of the Social Security Act, when the payment is a reimbursement. The exclusion applies even when the payment exceeds actual child care expenses as specified in Public Law 100-485;
25. Payments from the Child Care Food Program made to a member who is self-employed as a child care provider;
26. The earned or unearned income of an SSI recipient;
27. Subsidy payments provided by the Department's Guardianship Subsidy Program for children who are placed in the care of a Legal Permanent Guardian;
28. Adoption Subsidy payments made by a federal, state, or local governmental entity;
29. Dividends, interest, and royalty payments left on deposit or converted into additional securities;
30. Federal Relocation Assistance payments made to a member to relocate because their property was acquired by a federal or federally assisted program;
31. Stipends received by grandparents in the Foster Grandparent Program for past or future expenses;
32. Money given to the family or the assistance unit from a roommate for rent or other shelter expenses that does not exceed the family's or assistance unit's rent or shelter expense obligation;
33. Allowances, income, and reimbursements received in the Summer Component Program;
34. The amount designated as attorney fees that is deducted from a member's Workman's Compensation payment;
35. 50% of earned income, up to a maximum of \$100, deposited into an Individual Development Account (IDA) per month;
36. Combat zone pay received while serving in the military in a combat zone;
37. Income received while participating in a program authorized by Title I and II of the Domestic Volunteer Services Act of 1973 including the following:
 - a. University Year for Action,
 - b. Urban Crime Prevention Program,
 - c. Retired Senior Volunteer Program,
 - d. Foster Grandparents Program,
 - e. Senior Companion Program;
38. Funds made available to a member on a gift card;
39. A one-time reimbursement of up to \$300 and any monthly payments provided by the Department's Grandparent Kinship Care Support Service program and disbursed by an Area Council on Aging contracted service provider;
40. Hemophilia Relief Fund Settlement payments made to hemophiliacs infected with HIV as a result of class action lawsuits;
41. TANF Survey Incentive Payments made by Mathematica, Inc. or other consulting firms as an incentive for participating in a survey to collect statistical information;
42. Funds received from a Public Housing Authority and deposited in a Public Housing Family Self Sufficiency (FSS) escrow account, and any of these funds received prior to completion of the FSS program;
43. Payments made directly to a member to fund an account for the fulfillment of a Plan for Achieving Self Support (PASS) under Title XVI of the Social Security Act;
44. Any other income specifically excluded by applicable state or federal law.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-504. Special Income Provisions: Child Support, Alimony, or Spousal Maintenance

- A.** The Department shall count child support, alimony, or spousal maintenance, received by a member of the family or the assistance unit or a parent or minor sibling of a dependent child in an assistance unit, before the initial eligibility determination date, as income in the month received.
- B.** After the eligibility determination date, and if the application is approved, the Department shall count current child support, alimony, or spousal maintenance received on behalf of an assistance unit member as income to determine the cash benefit amount, when the following conditions are met:
 1. Current child support, alimony, or spousal maintenance is received by the Department's Division of Child Support Enforcement (DCSE), on behalf of an assistance unit member, a person whose income is considered available to the assistance unit, or a private collection agency; and
 2. DCSE has passed the support money on to the assistance unit or a person whose income is considered available to the assistance unit.
- C.** After the eligibility approval date, if an assistance unit member or a parent or minor sibling whose income is considered available to the assistance unit receives child support, alimony, spousal maintenance, or medical support after assigning to the Department the right to such support, and the member fails to turn over the support to the Department, the Department shall:
 1. Count the support received by the assistance unit, as provided above in subsection (A); and
 2. Sanction the assistance unit as provided in R6-12-316.

Department of Economic Security - Cash Assistance Program

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-505. Special Income Provisions: Nonrecurring Lump Sum Income

When an assistance unit member or a person whose income is considered available to the assistance unit receives a nonrecurring lump sum payment, the Department shall consider the lump sum payment as a resource in accordance with Article 4.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-506. Special Income Provisions: Sponsored Noncitizens

- A.** For purposes of determining whether a sponsor's income and resources shall be used when determining the countable income for an assistance unit that includes a sponsored noncitizen member or for a sponsored noncitizen person whose income is considered available to the assistance unit, the following requirements apply:
1. The sponsored noncitizen member shall:
 - a. Be a Lawful Permanent Resident who meets the eligible noncitizen criteria; and
 - b. Have applied for or been granted Lawful Permanent Resident status on or after December 19, 1997.
 2. The sponsor shall:
 - a. Be an individual and not an organization or group; and
 - b. Have signed an Affidavit of Support (United States Citizen and Immigration Services Form I-864 or I-864A) on behalf of the sponsored noncitizen member on or after December 19, 1997.
 3. When the sponsor's spouse resides with the sponsor, and has also signed the Affidavit of Support (United States Citizen and Immigration Services Form I-864 or I-864A) on behalf of the sponsored noncitizen member on or after December 19, 1997, the income and resources of the spouse shall also be included for any purpose in this Chapter that requires the income and resources of the sponsor.
- B.** The assistance unit shall be exempt from the sponsor income and resource deeming requirement when any of the following apply:
1. The sponsored noncitizen is credited with at least 40 countable quarters of employment as provided in 8 U.S.C. 1183(a).
 2. The sponsored noncitizen is a victim of domestic violence or extreme cruelty by a member of the family.
 3. The sponsored noncitizen is a victim of a severe form of trafficking.
 4. The sponsored noncitizen becomes a naturalized United States citizen.
 5. The sponsored noncitizen is age 17 or younger.
 6. The sponsor is deceased.
- C.** When the assistance unit is not exempt from the sponsor income and resource deeming requirement, the Department shall determine whether the assistance unit is indigent. To determine indigent status, the Department shall determine the countable income of the assistance unit and a cash grant.
1. When determining the amount of unearned income that shall be included in its calculation, the Department shall include:
 - a. The actual amount of cash contributions received from the sponsor;
 - b. The cash value of food, clothing, shelter, and utilities provided by the sponsor; and
 - c. The cash value of vendor payments made by the sponsor.
 2. When the countable income is at least 1¢ less than 36% of the 1992 federal poverty level for the assistance unit size, the assistance unit is considered indigent.
 3. When the assistance unit is determined to be indigent, the sponsor's income and resource deeming requirement shall not apply. The Department shall use only the actual amount of cash contributions received from the sponsor as countable income available to the assistance unit when determining a cash grant amount.
- D.** When the assistance unit is not exempt from the sponsor income and resource deeming requirement and is not indigent, the Department shall count the income of the sponsor as follows:
1. Determine the countable gross monthly income of the sponsor:
 - a. Calculate a monthly gross earned income amount and deduct 20 percent from that amount,
 - b. Calculate a monthly gross unearned income amount, and
 - c. Add the amounts in subsections (D)(1)(a) and (b).
 2. Calculate the number of persons living in the home who the sponsor claims or could claim as a dependent for federal income tax purposes, including the sponsor and the spouse of the sponsor.
 3. Deduct an amount equal to 100% of the federal poverty level adjusted for the family size in subsection (D)(2) from the countable gross monthly income calculated in subsection (D)(1)(c).

Department of Economic Security - Cash Assistance Program

4. When the sponsor has signed more than one Affidavit of Support (United States Citizen and Immigration Services Form I-864 or I-864A) forms, divide the amount calculated in subsections(D)(1) through (3) by the number of I-864 or I-864A forms that have been signed by the sponsor.
5. After deducting the amount prescribed in subsection (D)(3) from the gross income calculated in subsection (D)(1)(c) and dividing that amount by the number of Affidavits of Support executed by the sponsor, the Department shall include the remaining income amount as countable unearned income available to the assistance unit.
- E. When the assistance unit is not exempt from the sponsor income and resource deeming requirement and is not indigent, the Department shall consider the resources of the sponsor as available to the assistance unit. When calculating the value of the sponsor's resources, the Department shall:
 1. Apply all rules and procedures to the sponsor's resources in the same manner as is applied to the assistance unit, and
 2. Deduct \$1500 from the calculated value of the sponsor's resources. The resulting amount shall be added to the value of the assistance unit's resources when determining whether the assistance unit meets the resource limitations.
- F. When an assistance unit includes both a sponsored noncitizen and other members, and the provisions of this Section render the assistance unit ineligible, the Department shall:
 1. Disqualify the sponsored noncitizen and determine eligibility of the other members of the assistance unit without considering the income and resources of the sponsor, and
 2. Compute a cash benefit amount with the needs of the sponsored noncitizen member excluded from the computation.
- G. Verification and Cooperation
 1. The Department shall assist the assistance unit in obtaining any verification of the sponsor's income, resources, or other information.
 2. When the sponsor verification is not obtainable, the Department shall exempt the assistance unit from the sponsor income and resource deeming requirement and complete the eligibility determination.
 3. When the assistance unit refuses to provide information needed to determine the income and resources of the sponsor:
 - a. All sponsored noncitizens in the assistance unit shall be ineligible for assistance.
 - b. The other members of the assistance unit may be eligible if they meet all other eligibility factors.
- H. In addition to the change reporting requirements contained in Article 8 of this Chapter, the assistance unit shall be required to report the following:
 1. A change in sponsor or a change in the residence of the sponsor's spouse when the spouse is no longer residing with the sponsor.
 2. A change in the employment of the sponsor.
 3. The death of the sponsor.
- I. Overpayments. The sponsor and the noncitizen are jointly liable for any overpayment caused by the provision of incorrect or incomplete information, unless the sponsor had good cause that would make the noncitizen solely liable. Good cause includes:
 1. The Department failed to inform the assistance unit or the sponsor that the information was necessary, or
 2. Extenuating personal circumstances prevented the sponsor from providing necessary information.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Former R6-12-506 renumbered to R6-12-507; new Section made by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-507. Determining Monthly Income

- A. For each family and assistance unit, the Department shall calculate monthly income using the methods described in R6-12-508.
- B. The projected income shall include income that the family and assistance unit, or a person whose income is considered available to the assistance unit, has received and reasonably expects to receive in a benefit month, and shall be based on the Department's reasonable expectation and knowledge of the current, past, and future circumstances of the family, assistance unit, or person whose income is considered available to the assistance unit.
- C. The Department shall include in its calculation all gross income from every source available to the family and assistance unit unless specifically excluded in this Article, by the federal Social Security Act or other applicable state or federal law.
- D. The Department shall convert income received more frequently than monthly into a monthly amount as follows:
 1. Multiply weekly amounts by 4.3,
 2. Multiply bi-weekly amounts by 2.15,
 3. Multiply semi-monthly amounts by two.
- E. The Department shall determine a new calculation of projected income:
 1. At each review for the needy family and the assistance unit, and
 2. When there is a change in countable income of an assistance unit member or a person whose income is considered available to the assistance unit.

Department of Economic Security - Cash Assistance Program

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-507 renumbered to R6-12-508; new R6-12-507 renumbered from R6-12-506 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-508. Methods to Determine Projected Monthly Income

- A.** The Department shall determine projected monthly income for a family and an assistance unit by the methods described in this Section.
- B.** Averaging income.
1. When using this method, the Department shall add together income from a representative number of weeks or months and then divide the resulting sum by the same number of weeks or months.
 2. The Department shall average income for a family, to determine income eligibility, and an assistance unit, to determine a cash benefit amount, who receives income:
 - a. Irregularly; or
 - b. Regularly, but from sources or in amounts which vary.
- C.** Prorating income.
1. When using this method, the Department shall average income over the period of time the income is intended to cover.
 2. The Department shall prorate income for a family, to determine income eligibility, and an assistance unit, to determine a cash benefit amount, who receives income that is intended to cover a fixed period of time. When a person receives income pursuant to a fixed-term employment contract:
 - a. Income shall be counted in the month received, if received monthly or more often, throughout all months of the contract;
 - b. Income shall be prorated over the number of months in the contract if payment is received before or during the time work is performed, but not as specified in subsection (C)(2)(a);
 - c. Income shall be prorated over the number of months in the contract if payment is received upon completion of the work;
 - d. For CA cases which fall within subsection (C)(2)(c), applicable earned income disregards shall apply as if the prorated amounts were received in each month of the contract. The resulting amounts for each month shall then be totaled and counted in the month received as a lump sum pursuant to R6-12-504(C).
- D.** Actual income.
1. When using this method, the Department shall use the actual amount of income received in a month and shall not convert the income to a monthly amount pursuant to R6-12-506(D).
 2. The Department shall use actual income for a family, to determine income eligibility, and an assistance unit, to determine a cash benefit amount, who:
 - a. Receives or reasonably expects to receive less than a full month's income from a new source,
 - b. Has lost a source of income, or
 - c. Is paid daily.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Former R6-12-508 renumbered to R6-12-509; new R6-12-508 renumbered from R6-12-507 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-509. Income Verification

The Department shall verify all income before determining eligibility and cash benefit amount.

Historical Note

New Section R6-12-509 renumbered from R6-12-508 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Article heading was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit this change to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this change.

ARTICLE 6. SPECIAL CA CIRCUMSTANCES

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-601. Caretaker Relative of SSI or Foster Child

- A.** A parent or NPCR with only a SSI recipient child, or a child who is receiving federal, state, or local foster care maintenance payments, may be eligible for CA upon meeting the eligibility criteria specified in this Chapter, except as otherwise provided in this Section.

Title 6, Ch. 12Arizona

Code

Department of Economic Security - Cash Assistance Program

- B. The Department shall consider the SSI recipient child, or foster care recipient child, as an assistance unit member for purposes of qualifying the unit for CA based on need.
- C. If the assistance unit qualifies for CA pursuant to subsection (B), the Department shall not count the needs, resources, and income of the SSI recipient child, or foster care recipient child, when determining the benefit amount.
- D. Notwithstanding the provisions of R6-12-311, the parent or NPCR of a SSI recipient child, or a foster care recipient child, need not assign to the Department any rights to child support but shall assign any right to receive alimony or spousal maintenance.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new R6-12-601 renumbered from R6-12-602 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section heading corrected at request of the Department, Office File No. M10-246, filed June 29, 2010 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-602. Strikers

The Department shall determine CA income eligibility for the family, and a benefit amount for the assistance unit during a strike period for an assistance unit member, a person whose income is considered available to the assistance unit, or a family member on strike using the striker's prestrike monthly income.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-602 renumbered to R6-12-601; new R6-12-602 renumbered from R6-12-604 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-603. Dependents of Foster Children

- A. The dependent child of an ineligible foster child residing in a needy family may be eligible for CA.
- B. To determine a cash benefit amount, the Department shall count all income and resources of the foster child and the dependent child, other than the foster care payment, as otherwise provided in this Chapter.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new R6-12-603 renumbered from R6-12-606 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-604. Minor Parents

- A. A minor parent means a person who:
 - 1. Is less than 18 years of age,
 - 2. Has never married, and
 - 3. Is the natural parent of a dependent child living in the same household.
- B. An assistance unit headed by a minor parent is not eligible for CA, except as provided in subsection (C).
- C. A minor parent may receive assistance when:
 - 1. The minor parent has no living or locatable:
 - a. Parent,
 - b. Legal custodian who is related to the minor parent to the degree specified at R6-12-309(A), or
 - c. Legal guardian.
 - 2. The minor parent is legally emancipated.

Department of Economic Security - Cash Assistance Program

- a. A minor parent is emancipated if the minor parent's parent, adult specified relative as defined in R6-12-309(A), or legal guardian has relinquished all control and authority over the minor parent, and no longer provides financial support to the minor parent.
 - b. A minor parent shall qualify as an emancipated person if the minor parent:
 - i. Has lived apart from the parent, adult specified relative, or legal guardian for at least one year before the application for CA;
 - ii. Has demonstrated financial independence from the parent, adult specified relative, or legal guardian for at least one year before the application for CA; and
 - iii. Has not received CA benefits for each of the 12 consecutive months immediately preceding the month the minor parent applies for CA.
 - c. The minor parent shall provide evidence to establish emancipation. Acceptable verification may include:
 - i. Rent receipts or other living arrangement statements which establish independent living apart from the parent, adult specified relative, or legal guardian;
 - ii. Income statements or income tax records which establish financial independence from the parent, adult specified relative, or legal guardian; or
 - iii. Written statements from a parent, relative, or guardian which establish the independent status of the minor parent.
 3. The physical or emotional health or safety of the minor parent, or the minor parent's child, would be at risk if the minor parent and the minor parent's child resided in the home of the minor parent's parent, legal custodian who is related to the minor parent to the degree specified in R6-12-309(A), or legal guardian.
 - a. The minor parent shall file a written statement of abuse or neglect with the Department.
 - i. Abuse means any behavior defined at A.R.S. § 8-546(A)(2).
 - ii. Neglect means any behavior defined at A.R.S. § 8-546(A)(6).
 - b. The written statement shall include the following information regarding the allegations of abuse or neglect:
 - i. The name of the victim;
 - ii. The name of the perpetrator;
 - iii. The dates of the alleged abuse or neglect;
 - iv. The nature of the alleged abuse or neglect; and
 - v. Whether or not other children living in the home are subject to the abuse or neglect.
 - c. The FAA shall report all allegations of abuse or neglect to Child Protective Services.
 - d. The FAA shall accept the minor parent's written statement of abuse or neglect as sufficient evidence that the health or safety of the minor parent, or minor parent's child, would be at risk pending the outcome of a Child Protective Services assessment, unless evidence to the contrary exists.
 - e. If Child Protective Services determines the allegation of abuse or neglect is valid, the minor parent and the minor parent's child may receive CA if otherwise eligible under this Chapter.
 - f. If Child Protective Services is unable to confirm or refute the allegation of abuse or neglect, the minor parent shall remain eligible based on the minor parent's written statement.
 - g. If Child Protective Services determines the allegation of abuse or neglect is invalid:
 - i. The Department shall inform the minor parent of the determination and allow the minor parent 60 days to return to the home of the parent, custodian, or legal guardian;
 - ii. The Department shall terminate CA effective the first month following expiration of the 60-day period; and
 - iii. No overpayment shall result for assistance paid based on the minor parent's written statement of alleged abuse or neglect.
 4. The minor parent lives in a needy family that includes one of the following:
 - a. The minor parent's parent,
 - b. An adult non-parent caretaker relative, or
 - c. The minor parent's legal guardian.
 5. When the minor parent lives with a parent or adult non-parent caretaker relative who has CA eligible children, the Department shall combine all eligible children into one assistance unit. The parent, non-parent caretaker relative, or legal guardian shall serve as the payee.
- D.** A minor parent who does not live with a parent, adult non-parent caretaker relative, or legal guardian must meet the needy family income eligibility requirements.
- E.** A minor parent, and the minor parent's child, who are ineligible for CA solely due to the provisions of this Section, may receive the following services, if otherwise eligible:
1. AHCCCS,
 2. JOBS,
 3. Child Care, and
 4. Any other program or service for which CA recipients categorically qualify.
- F.** The provisions of this Section shall not apply to a parent who is under 18 years of age ("an underage parent") and who is married or has been married.

Department of Economic Security - Cash Assistance Program

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-604 renumbered to R6-12-602; new R6-12-604 renumbered from R6-12-608 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-605. Unemployed Parents in a Two-parent Household (TPEP)

- A. An assistance unit with a needy child deprived of parental support because the primary wage-earning parent (PWEP) is unemployed shall receive CA through the Two-parent Employment Program (TPEP) if the assistance unit meets the eligibility criteria listed in R6-12-609, R6-12-610, R6-12-611, and all other applicable CA eligibility criteria.
- B. The child's mother and father shall both reside with the child.
- C. Neither parent shall have a physical or mental defect, illness, or impairment that:
 - 1. Substantially decreases or eliminates the parent's ability to support or care for the child, and
 - 2. Is expected to last for a minimum of 30 continuous days.
- D. The PWEP shall not refuse a bona fide offer of employment or training for employment without good cause, within 30 days prior to application. Good cause for refusal is limited to the following circumstances:
 - 1. The offered wage was less than minimum wage;
 - 2. The parent lacked the physical or mental ability to do the work;
 - 3. The parent's lack of public or private transportation prevented the parent from reporting to the job;
 - 4. The parent lacked suitable day care;
 - 5. The parent was personally providing care for a child under the age of 2 at the time of the refusal;
 - 6. The working conditions would involve undue risk to the parent's health or safety;
 - 7. The work lacked workers' compensation protection;
 - 8. The commuting time to and from work would normally exceed two hours, round trip;
 - 9. The parent could not accept the job due to illness of the parent or another family member;
 - 10. The offered position was vacant due to a labor strike or lockout;
 - 11. The parent was incarcerated or making a required court appearance;
 - 12. Inclement weather prevented the parent from accepting the job or reporting for work; or
 - 13. The parent was laid off but is expected to return to the prior place of employment within 30 days of the date of the job offer.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new R6-12-605 renumbered from R6-12-609 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-606. TPEP: Education and Employment Requirements; Good Cause for Nonparticipation

Each TPEP parent shall participate in an education, training, or employment activity, unless such the parent is exempt because the parent:

- 1. Is under 18 and is:
 - a. 13-15 years old, pregnant or an unwed custodial parent, lacking a high school diploma/GED, and attending full time a secondary, vocational, or technical school or high school equivalency course; or
 - b. 16 or 17 (or 18 when reasonably expected to complete school before reaching 19), the custodial parent of a minor child, and attending full time a secondary, vocational, or technical school or a high school equivalency course;
- 2. Is an enrolled tribal member residing within the tribe's specified Tribal JOBS geographic area;
- 3. Is working an average of 30 hours or more per week in unsubsidized employment which pays at least minimum wage and shall last at least 30 days.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-606 renumbered to R6-12-603; new R6-12-606 renumbered from R6-12-610 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed

Department of Economic Security - Cash Assistance Program

rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-607. TPEP: Duration

No assistance unit may receive TPEP benefits for longer than six months in a 12-month period, except that a TPEP unit may be granted a three-month extension when the JOBS administration requests the extension based on a JOBS determination that there is good cause for the extension. The good cause reasons for JOBS to request an extension are:

1. A parent is enrolled in a vocational educational training program which was approved by JOBS and which can be completed within the three-month extension period,
2. A parent has a bona fide offer of employment that is to begin within the three-month extension period,
3. One parent did not participate in JOBS for one or more months during the six-month period and the JOBS Administration has determined good cause existed as prescribed in R6-10-122, or
4. A parent is in an unpaid work experience activity and JOBS expects the parent to be hired within the three-month extension period.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new R6-12-607 renumbered from R6-12-611 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-608. Expired

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-608 renumbered to R6-12-604; new R6-12-608 renumbered from R6-12-612 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-609. Expired

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-609 renumbered to R6-12-605; new R6-12-609 renumbered from R6-12-613 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-610. Expired

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-610 renumbered to R6-12-606; new R6-12-610 renumbered from R6-12-615 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules

Title 6, Ch. 12
Arizona
Code

Department of Economic Security - Cash Assistance Program

to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-611. Expired

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-611 renumbered to R6-12-607; new R6-12-611 renumbered from R6-12-616 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-612. Expired

Historical Note

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-612 renumbered to R6-12-608; new R6-12-612 renumbered from R6-12-617 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-613. Renumbered

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-613 renumbered to R6-12-609 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-614. Repealed

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-615. Renumbered

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Former R6-12-615 renumbered to R6-12-610 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-616. Renumbered

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Former R6-12-616 renumbered to R6-12-611 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-617. Renumbered

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-617 renumbered to R6-12-612 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

ARTICLE 7. DETERMINING ELIGIBILITY AND BENEFIT PAYMENT AMOUNT

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-701. Income Limitations for a Family

- A. A family whose net monthly income does not exceed the income limitations in subsection (C) or (D) shall be considered a needy family for purposes of determining income eligibility for an assistance unit.
- B. To determine income eligibility, the Department shall calculate the net monthly income of the family using the methods listed in R6-12-508.
- C. When the net monthly income of the family exceeds 100% of the federal poverty level for the number of persons in the family, the assistance unit is ineligible for CA.
- D. When the net monthly income of a family in which the head of household is a non-parent caretaker relative who is requesting CA only for a dependent child exceeds 130% of the federal poverty level for the number of persons in the family, the assistance unit is ineligible for CA.
- E. The income limitations in subsections (C) and (D) shall not apply to a child only case.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new Section made by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-702. Eligibility for an Assistance Unit

- A. The Department shall determine eligibility for a specific benefit month based on its best estimate of all non-financial, resource, and financial criteria that exist, and are expected to exist, for that month.
- B. An assistance unit is eligible for CA when the Department finds that the unit:
 1. Satisfies the nonfinancial eligibility criteria described in this Chapter,
 2. Does not exceed the resource limits described in Article 4, and
 3. Resides in a needy family.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-703. Earned Income Disregards

For the purpose of determining the net monthly income of a family as provided in R6-12-701(C) and (D) for eligibility purposes, and for an assistance unit to determine a benefit amount, the Department shall deduct the following earned income disregards:

1. A \$90 work expense allowance for each employed person in the family to determine income eligibility, and for employed assistance unit members or an employed parent of a dependent child whose income and resources are considered available to the assistance unit, to determine a cash benefit amount;

Department of Economic Security - Cash Assistance Program

2. For each wage earning member of the family, to determine income eligibility; and for each assistance unit, or employed parent of a dependent child whose income and resources are considered available to the assistance unit, to determine a cash benefit amount: 30% of any earned income not already disregarded; and
3. The billed expenses for the care of each dependent child or incapacitated adult member of the family, to determine income eligibility, and of the assistance unit, to determine a cash benefit amount.
 - a. The monthly amount of earned income disregarded as a billed expense for the care of a dependent shall not exceed:
 - i. \$200 for a child under the age of 2 years, and
 - ii. \$175 for a child age 2 or older and for an incapacitated adult.
 - b. Acceptable verification shall include:
 - i. A written statement from the individual or business providing the care for the amount billed; or
 - ii. Collateral contact, when documents are not available.
4. For an assistance unit with a child who is excluded from the assistance unit pursuant to R6-12-308, an amount equal to the difference between the benefit amount with the needs of the ineligible child included in the computation and the benefit amount with the needs of the ineligible child excluded from the computation.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-704. Disqualification from Earnings Disregards; Good Cause

- A. The Department shall not apply the earned income disregards set forth at R6-12-703(1) through (3) to the earned income of an assistance unit member, or an employed parent of a dependent child whose income and resources are considered available to the assistance unit, when the assistance unit member or parent, without good cause:
 1. Terminates employment or reduces the hours of employment within the 30 days preceding the benefit month;
 2. Refuses to accept a bona fide offer of employment offered through JOBS, or by any other employer, within the 30 days preceding the benefit month; or
 3. Fails to make a timely report of income pursuant to R6-12-901.
- B. Good cause.
 1. For circumstances applicable to subsections (A)(1) or (2), good cause is limited to:
 - a. The circumstances described at A.A.C. R6-10-119(B); or
 - b. The circumstances described at A.A.C. R6-10-120(A) and (C), if the person is a TPEP parent.
 2. For circumstances applicable to subsection (A)(3), good cause is limited to the following:
 - a. The assistance unit reports and verifies that sickness, accident, or other hardship prevented the unit from reporting timely; or
 - b. The mailing date of the change report is timely as prescribed in R6-12-901.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-705. Determining Benefit Payment Amount

- A. The Department shall determine the amount of the cash benefit by subtracting the monthly net income of the assistance unit, from 36% of the 1992 federal poverty level for the number of persons in the assistance unit, and rounding down the resulting figure to the next whole dollar in any of the following circumstances:
 1. The assistance unit or parent of a dependent child whose income and resources are considered available to the assistance unit pays, or is obligated to pay, all or part of the shelter costs for the place in which assistance unit members reside. Shelter costs include:
 - a. Rent,
 - b. Mortgage,
 - c. Property taxes,
 - d. Mobile home space or taxes,
 - e. Homeowner association fees and taxes, or
 - f. The household shelter cost obligation is in foreclosure action and the mortgage company will accept back payments;
 2. The assistance unit members reside in subsidized public housing;
 3. A member of the assistance unit or parent of a dependent child whose income and resources are considered available to the assistance unit works in exchange for rent;

Department of Economic Security - Cash Assistance Program

4. The assistance unit is composed only of a dependent child for whom benefits were requested by a non-parent caretaker relative head of household; or
 5. Assistance is paid in a child only case.
- B.** For all circumstances not covered under subsections (A)(1) through (5), including those when shelter costs are paid for three consecutive months or longer by a person who is not a member of the assistance unit, or by a parent of a dependent child whose income and resources are considered available to the assistance unit, the Department shall determine the amount of the assistance grant by subtracting the monthly net income of the assistance unit from 23% of the 1992 federal poverty level for the number of persons in the assistance unit, and rounding down the resulting figure to the next whole dollar.
- C.** If the benefit amount is less than \$10, the Department shall not pay benefits; the assistance unit remains eligible for CA for all other purposes.
- D.** The Department shall pay benefits for the month of application only from the filing date of the application. The benefit amount is prorated based on the number of days remaining in the month after the date of application.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-706. Notice of Eligibility Determination

- A.** If the Department finds that the unit satisfies all eligibility criteria as specified in this Chapter, the Department shall approve the assistance grant and send notice of approval to the applicant.
- B.** If the Department finds that the unit does not satisfy 1 or more of the eligibility criteria specified in this Chapter, the Department shall send a denial notice to the applicant's last known address. The notice shall describe the action taken, the specific authority for the action, and the individual's right to request a hearing to challenge the action.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

ARTICLE 8. PAYMENTS

R6-12-801. Benefit Payments

- A.** The Department shall pay benefits to an eligible assistance unit only during a month for which the unit is eligible for a payment.
- B.** The Department shall make benefit payments in the form of a state warrant, payable directly to the eligible recipient, or to a protective payee, emergency payee, legal guardian, or vendor.
- C.** The warrant shall bear a statement which shall require the payee to confirm continuing eligibility for benefits when endorsing the warrant for payment.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-802. Expired

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

R6-12-803. Supplemental Payments

- A.** The Department shall correct underpayments by issuing the assistance unit a supplemental payment, regardless of whether the individual who was underpaid is eligible on the date the supplemental payment is issued.
- B.** The Department shall not count such supplemental payments as a resource or as income.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-804. Expired

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

R6-12-805. Expired

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules

Department of Economic Security - Cash Assistance Program

to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-806. Protective Payee

- A. The Department shall pay benefits to a protective payee who is not a member of the assistance unit:
 - 1. On behalf of all unit members when a state or tribal protective service agency notifies FAA that the recipient is mismanaging or misappropriating benefits; or
 - 2. On behalf of all unit members other than the designated recipient when the recipient is disqualified for IPV or fraud.
- B. The Department, with the assistance of the recipient, shall select a protective payee, who may be any adult other than the following:
 - 1. The Department's director,
 - 2. A Department eligibility interviewer,
 - 3. An employee in the Department's Office of Special Investigations,
 - 4. A Department employee who handles fiscal processes related to the CA program, and
 - 5. A vendor of goods or services who deals directly with the recipient.
- C. Except in cases of mismanagement, the Department shall continue paying benefits to the recipient if the Department cannot locate a suitable payee, after exhausting reasonable efforts to do so.
- D. Protective payments shall terminate:
 - 1. In cases of mismanagement, upon a determination by the protective services agency that such payments are no longer required to avoid further mismanagement; and
 - 2. In all other cases, when the recipient cooperates with the requirement that caused the onset of protective payments.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-807. Emergency Payee

- A. The Department may pay benefits to a person acting as representative for, or on behalf of, a caretaker relative who was receiving benefits for a dependent child, when the relative:
 - 1. Dies,
 - 2. Abandons or deserts the child,
 - 3. Is incarcerated, or
 - 4. Is committed to a hospital for the mentally ill.
- B. The Department can make payments to the emergency payee for 90 days, or until a case plan is developed for the dependent child, whichever first occurs.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-808. Identification Card

Upon request by a recipient, the Department shall issue the recipient an identification card or an electronic benefit transfer card at no cost. The Department shall keep a photograph of the recipient in the recipient's file after issuing an identification card or an electronic benefit transfer card.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

ARTICLE 9. CHANGES; ADVERSE ACTION

R6-12-901. Reporting Changes

- A. As a condition of eligibility, the assistance unit shall advise the Department of all changes in income, resources, or other circumstances which may affect eligibility or benefit amount, within 10 days from the date the change becomes known.
- B. A change report is considered timely if the mailing date is the tenth day from the date the change becomes known.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-902. Withdrawing a Member from the Assistance Unit

- A. A caretaker relative may request that an assistance unit member be removed from the unit by filing, with the Department, a written request which shall identify the member to be withdrawn, the reason for the request, and the date the request is effective.

Department of Economic Security - Cash Assistance Program

- B. The Department shall acknowledge receipt of a withdrawal request and advise the unit in writing within 10 days of receipt of the withdrawal request of the effect of the request, as specified below.
- C. If the request does not identify a specific member, the Department shall apply the request to the entire assistance unit and terminate benefits.
- D. If the person being withdrawn is a mandatory member of the assistance unit, the Department shall deem the entire assistance unit ineligible and terminate benefits.
- E. If the person being withdrawn is not a mandatory member of the assistance unit, the Department shall redetermine eligibility and benefits in accordance with the provisions of this Chapter.
- F. If the request does not specify an effective date, the Department shall take appropriate action effective the 1st month after the month in which the Department receives the request.
- G. Department action taken in response to a request for withdrawal of a member does not require a notice of adverse action but does require adequate notice and is appealable.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-903. Determining Benefits When Adding or Removing a Member

- A. When the Department receives a request to add a member to the assistance unit, or is required to add a mandatory member, the Department shall redetermine eligibility including the added member.
 - 1. If the new member renders the unit ineligible and is not a mandatory member, the Department shall advise the unit of the consequences and permit the unit to withdraw its request to include the new member.
 - 2. If the new member renders the unit ineligible and is a mandatory member, the unit is ineligible. The Department shall provide adequate and timely notice.
 - 3. If the unit remains eligible, the Department shall add the new member, effective the date the Department receives the request to add the member, and shall include the new member's income in the budget.
- B. In the month a new member is added, the assistance unit may be eligible for an additional benefit amount or liable for an overpayment. To determine the unit's entitlement or liability, the Department shall:
 - 1. Recalculate the unit's benefit amount with the new member, as provided in R6-12-704;
 - 2. Subtract the current benefit amount (without the new member) from the new benefit amount; and
 - 3. Take the resulting amount;
 - a. If above 0, prorate it, as provided in R6-12-704(C), to determine the benefit amount due the unit;
 - b. If 0, pay no benefit; or
 - c. If below 0;
 - i. Write an overpayment for the month of application, if the member is mandatory; or
 - ii. If the member is not mandatory, allow the unit to add the member the following month, so as to avoid an overpayment for the current month.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-904. Benefit Reduction or Termination

- A. Any change in any factor which the Department considers when determining eligibility or benefit amount may result in reduction or termination of benefits, consistent with the provisions of this Chapter.
- B. The Department shall terminate benefits if the assistance unit fails to complete the 6-month review required by R6-12-210.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-905. Ineligibility Date for an Assistance Unit

An assistance unit's ineligibility begins at the time described below:

- 1. On the first day of the same month in which any of the following events occurs:
 - a. Acquisition of resources in excess of the resource limitations specified in Article 4,

Department of Economic Security - Cash Assistance Program

- b. Receipt of lump sum income as set forth in R6-12-505, or
 - c. A new assistance unit member or a person whose income and resources are considered available to the assistance unit moves into the home and renders the assistance unit ineligible for a cash benefit.
2. On the first day of the first month benefits can be terminated following timely notice of adverse action for failure to comply with a six-month eligibility review.
 3. On the first day of the first month in which the assistance unit is not eligible on the date CA benefits are paid when the unit is rendered ineligible for reasons not specified in subsections (1) or (2).

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-906. Ineligibility Date for an Individual Member of an Assistance Unit

Ineligibility for an individual member of an assistance unit begins on the 1st day of the 1st month in which the member is not eligible on the date CA benefits are paid when the member is rendered ineligible for any reason.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-907. Notice of Adverse Action

- A. When the Department plans to take adverse action against an assistance unit, the Department shall provide the unit with adequate and timely notice, except as provided in subsection (C).
- B. The Department shall mail such notice, 1st class, postage prepaid, to the last known residential address for the unit, or other designated address for the unit as allowed pursuant to R6-12-802(A).
- C. In addition to the information listed in R6-12-101(1), the notice shall contain the following information:
 1. The date the adverse action is effective;
 2. The names of the eligible and ineligible persons in the unit, if changed by the intended action; and
 3. Any effect the intended action may have on the unit members' AHCCCS medical eligibility.
- D. The Department may dispense with timely notice but shall provide adequate notice of adverse action when:
 1. A recipient or payee dies and no emergency payee is available;
 2. A recipient makes a written request for termination;
 3. A recipient is ineligible due to incarceration, hospitalization, or institutionalization in a skilled nursing care or intermediate care facility;
 4. The recipient's address is unknown;
 5. The Department has verified that the recipient has been accepted for assistance in another state;
 6. A CA child is legally removed from home or voluntarily placed in foster care by the child's parent or legal guardian; or
 7. The recipient furnishes information which results in reduction or termination of assistance and indicates in writing an understanding of the consequences that may result from furnishing such information.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-908. Referral for Investigation

FAA shall refer a case to OSI for investigation when:

1. An applicant or recipient refuses to cooperate as required pursuant to R6-12-302;

Department of Economic Security - Cash Assistance Program

2. An applicant or recipient refuses to sign a statement attesting to forgery of a signature on a cashed warrant;
3. The Department has valid reason to suspect that an act has been committed for the purpose of deception, misrepresentation, or concealment of information relevant to a determination of eligibility or the form or amount of a benefit payment; or
4. The FAA suspects the commission of theft or fraud related to CA or any conduct listed in A.R.S. § 46-215.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

ARTICLE 10. APPEALS

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1001. Entitlement to a Hearing

- A. An applicant for or recipient of CA is entitled to a hearing to contest the following Department actions:
 1. Denial of the right to apply for assistance;
 2. Complete or partial denial of an application for assistance or for supplemental benefits;
 3. Failure to make an eligibility determination on an application within 45 days of the application date;
 4. Suspension, termination, reduction, or withholding of benefits except as provided in subsection (B).
 5. The existence or amount of an overpayment attributed to the unit or the terms of a plan to repay the overpayment;
 6. Changing the manner or form of payment including naming a protective payee to receive the benefit payment; or
 7. Denial or termination of child care benefits.
- B. Applicants and recipients are not entitled to a hearing to challenge benefit adjustments made automatically as a result of changes in federal or state law, unless the Department has incorrectly applied such law to the individual seeking the hearing.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-1002. Request for Hearing; Form; Time Limits

- A. A person who wishes to appeal an adverse action shall file a written request for a fair hearing with a local FAA office, within 20 days of the adverse action notice date.
- B. A request for a hearing is deemed filed:
 1. On the date it is mailed, if transmittal via the United States Postal Service or its successor. The mailing date is as follows:
 - a. As shown by the postmark;
 - b. As shown by the postage meter mark of the envelope in which it is received, if there is no postmark; or
 - c. The date entered on the document as the date of its completion, if there is no postmark, or no postage meter mark, or if the mark is illegible.
 2. On the date actually received by the Department, if not sent through the mail as provided in subsection (B)(1).
- C. The submission of any document shall be considered timely if the appellant proves that delay in submission was due to Department error or misinformation, or to delay caused by the U.S. Postal Service or its successor.
- D. Any document mailed by the Department shall be considered as having been given to the addressee on the date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date shown on the document, unless otherwise indicated by the facts. Computation of time shall be made in accordance with Rule 6(a) of the Rules of Civil Procedure.
- E. The Office of Appeals shall deny any request that is not timely filed. A party may request an appeal on the timeliness of an appeal.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1003. Hearing Requests; Preparation and Processing

- A. The Department shall advise the appellant of any free legal services available to assist the appellant in completing the request for appeal. If the appellant so requests, the Department shall assist the appellant in preparing the request.
- B. Within 2 working days of receiving a request for appeal, the local FAA office shall notify the Office of Appeals of the hearing request.

Title 6, Ch. 12*Arizona*

Code

Department of Economic Security - Cash Assistance Program

- C. Within 10 days of receiving a request for appeal, the local FAA office shall prepare and forward to the Office of Appeals a prehearing summary which shall include:
 - 1. The appellant's name (and case name, if different);
 - 2. The appellant's SSN (or case number, if different);
 - 3. The local office responsible for the appellant's case;
 - 4. A brief summary of the facts surrounding, and the grounds supporting, the adverse action;
 - 5. Citations to the specific provisions of the Department's CA manual which support the Department's action; and
 - 6. The decision notice and any other documents relating to the appeal.
- D. The local office shall mail the appellant a copy of the summary.
- E. Upon receipt of a hearing request, the Office of Appeals shall schedule the hearing as prescribed in R6-12-1006.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-1004. Stay of Adverse Action Pending Appeal; Exceptions

- A. If an appellant files a request for appeal within 10 calendar days of the adverse action notice date, the Department shall stay imposition of the adverse action and continue benefits at the current level unless:
 - 1. The appellant specifically waives continuation of current benefits;
 - 2. The appeal results from a change in federal or state law which mandates an automatic grant adjustment for all classes of recipients and does not involve a misapplication of the law;
 - 3. The appellant is requesting continuation of TPEP benefits for longer than 6 months within a 12-month period; or
 - 4. The appellant is requesting continuation of benefits for longer than 24 months within any consecutive 60-month period.
- B. The adverse action shall be stayed until receipt of an official written decision in favor of the Department, except in the following circumstances:
 - 1. At the hearing and on the record, the hearing officer finds that: the sole issue involves application of law, and the Department properly applied the law and computed the benefits due the appellant;
 - 2. A change in eligibility or benefit amount occurs for reasons other than those being appealed, and the assistance unit receives and fails to timely appeal a notice of adverse action concerning such change;
 - 3. Federal or state law mandates an automatic grant adjustment for classes of recipients;
 - 4. The appellant withdraws the request for hearing; or
 - 5. The appellant fails to appear for a scheduled hearing without prior notice to the Office of Appeals, and the hearing officer does not rule in favor of the appellant based upon the record.
- C. Upon receipt of decision in favor of the Department, the Department shall write an overpayment for the amount of any benefits the unit received in excess of the correct benefit amount, while the stay was in effect.
- D. If the appellant files a request for appeal more than 10 days after, but within 20 days of, the adverse action notice date, the Department may take the adverse action while the appeal is pending. If the Office of Appeals then rules in favor of the appellant, the Department shall issue a supplemental payment to the appellant to cure any underpayment within 10 days from the date of the hearing decision.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1005. Hearing Officer; Qualifications; Duties; Subpoenas

- A. An impartial hearing officer in the Department's Office of Appeals shall conduct all hearings.
- B. The hearing officer shall:
 - 1. Administer oaths and affirmations;
 - 2. Regulate and conduct the hearing in an orderly and dignified manner, which avoids undue repetition and affords due process to all participants;
 - 3. Ensure that all relevant issues are considered;
 - 4. Exclude irrelevant evidence from the record;
 - 5. Request, receive, and incorporate into the record all relevant evidence;
 - 6. Order, when relevant and useful to a resolution of the issue in a case, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the Department;
 - 7. Upon compliance with the requirements of subsection (C), subpoena witnesses or documents needed for the hearing;
 - 8. Open, conduct, and close the hearing;
 - 9. Rule on the admissibility of evidence at a hearing;
 - 10. Direct the order of proof at the hearing;
 - 11. For good cause shown, and upon the request of an interested party, or on the hearing officer's own motion, take such action as the hearing officer deems necessary to the proper disposition of an appeal, including, without limitation, the following:
 - a. Recuse or disqualify himself from the case;
 - b. Continue the hearing to a future time or date;
 - c. Prior to entry of a final decision, reopen the hearing to take additional evidence;
 - d. Deny or dismiss the appeal or request for hearing in accordance with the provisions of this Article;
 - e. Exclude non-party witnesses from the hearing room; and

Department of Economic Security - Cash Assistance Program

12. Issue a written decision deciding the appeal.
- C. Subpoenas.
 1. A party who wishes to subpoena a witness, document, or other physical evidence shall make a written request which shall describe:
 - a. The case name and number;
 - b. The party requesting the subpoena;
 - c. The name and address of any person to be subpoenaed, with a description of the subject matter of the witness's anticipated testimony; and
 - d. A description of any documents or physical evidence to be subpoenaed, and the name and address of the custodian of the document or physical evidence.
 2. The party requesting the subpoena shall make the request at least 5 work days before the scheduled hearing date.
 3. The hearing officer shall deny the request if the witness's proposed testimony is not relevant to the issues in the hearing.
 4. The Office of Appeals shall prepare all subpoenas and serve them by certified mail, return receipt requested.
- D. An appellant may request a change in hearing officer if the appellant so requests at least 10 days prior to the hearing. The appellant is limited to 1 request.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1006. Hearings: Location; Notice; Time

- A. The Office of Appeals shall schedule the hearing at the office location most convenient to the interested parties.
- B. The Office of Appeals shall issue all interested parties a notice of the first hearing at least 10 calendar days before the hearing. The appellant may waive the 10-day notice period or request a continuance.
- C. The notice of hearing shall be in writing and shall include the following information:
 1. The date, time, and place of the hearing;
 2. The name of the hearing officer;
 3. The issues involved in the case;
 4. A statement listing the appellant's rights, as follows:
 - a. To appear in person or by telephone;
 - b. To have a representative present the case;
 - c. To copy, at a reasonable time prior to the hearing or during the hearing, any documents in the appellant's case file which are relevant to the issues being heard, and all documents the Department may use at the hearing;
 - d. To obtain assistance from the local FAA office to prepare for the hearing; and
 - e. To obtain, from the local FAA office, information on available community legal resources who may be able to represent the appellant.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended by final rulemaking at 16 A.A.R. 815, effective April 22, 2010 (Supp. 10-2).

R6-12-1007. Rescheduling the Hearing

- A. An appellant may request a continuance of the hearing by calling or writing the Office of Appeals and providing good cause as to why the hearing should be postponed.
- B. The Office of Appeals must receive the request at least 5 work days before the scheduled hearing date and may deny an untimely request or a request which fails to establish good cause.
- C. When a hearing is rescheduled, the Office of Appeals shall provide appropriate notice to all interested parties.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1008. Hearings Concerning Disability Determinations

- A. A person who appeals an adverse determination of disability may ask to receive another medical examination before the hearing.
- B. Upon receipt of such a request, the FAA local office shall schedule the examination with a licensed physician, psychologist, or psychiatrist. If the appellant does not designate a particular examiner, the Department may choose.
- C. At any time prior to issuing a decision, the hearing officer may ask the District Medical Consultant to schedule the appellant for a special diagnostic evaluation by a specialist.
- D. Upon receipt of a report on the special evaluation, the hearing officer may, but is not required to, have the District Medical Consultant evaluate the report and render an opinion on the appellant's disability and employability.
- E. The hearing officer may consider, but is not bound by, the Medical Consultant's opinion, which shall qualify as an expert medical opinion.
- F. In deciding the appeal of a disability determination, the hearing officer shall consider:
 1. All medical, social, and vocational reports which are relevant to the issue of disability; and
 2. The appellant's testimony as to the appellant's physical and medical condition or symptomatology.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Department of Economic Security - Cash Assistance Program

R6-12-1009. Group Hearings

The Department may conduct a single group hearing on individual requests for a hearing, under the following circumstances:

1. The sole issue in each case is interpretation of the same question of federal or state law or policy,
2. Each appellant may present or have an authorized representative present his or her own case,
3. Any appellant may withdraw from the group hearing and obtain an individual hearing.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1010. Withdrawal of Appeal; Default

- A.** An appellant may voluntarily withdraw an appeal at any time prior to the scheduled hearing by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose.
- B.** An appellant may involuntarily withdraw an appeal by failing to appear at the scheduled hearing.
 1. Except as provided in subsection (C), the hearing officer may enter a default decision dismissing the appeal if the appellant fails to appear at a scheduled hearing.
 2. When the appellee fails to appear at the hearing, the hearing officer may rule summarily on the available record or may adjourn the hearing to a later date and time.
 3. If, within 10 days of the scheduled hearing date at which the appellant failed to appear, the appellant files a written request to reopen the proceedings and establishes good cause for non-appearance, the hearing officer shall reopen the proceedings and re-schedule the hearing with notice to all interested parties.
 4. Good cause, for the purpose of reopening a hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party.
- C.** The hearing officer shall not enter a default if the appellant gives notice, prior to the scheduled time of hearing, that the appellant is unable to attend the hearing, due to good cause, and still wishes the hearing or to have the matter considered on the available record.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1011. Hearing Proceedings

- A.** Standard of review and burden of proof.
 1. The hearing is a de novo proceeding. To prevail on appeal, the appellant must prove eligibility or entitlement to benefits by a preponderance of the evidence.
 2. The Department has the initial burden of going forward with presentation of the evidence.
- B.** Appearance by parties and representatives.
 1. An appellant may appear by telephone or submit a written statement under oath, instead of appearing personally at the hearing. The appellant shall file the personal statement with all other witness statements and documents the appellant wishes to offer in evidence, with the Office of Appeals before the time of the hearing.
 2. The FAA worker, FAA supervisor, or FAA hearing specialist, or another appropriate person may testify for the Department at the hearing.
- C.** Evidence and argument.
 1. The appellant may testify, present evidence, cross-examine witnesses, and present arguments.
 2. The hearing officer shall exclude from the record any irrelevant evidence.
- D.** The record.
 1. The hearing officer shall keep a full and complete record of all proceedings in connection with an appeal. The appellant or the appellant's designated representative may inspect the record on appeal at any reasonable time.
 2. The Department need not transcribe the record unless it is required for further proceedings.
 3. If the record is transcribed, the appellant is entitled to receive a copy at no charge.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1012. Hearing Decision; Time Limits; Form; Contents; Finality

- A.** No later than 90 days after the date the appellant files a request for appeal, the hearing officer shall render a written decision based solely on the evidence and testimony produced at the hearing and applicable federal and state law. The time limit is extended for any delay caused by the appellant.
- B.** The decision shall include:
 1. Findings of facts pertinent to the issue;
 2. Citations to the law and authority applicable to the case;
 3. A statement of conclusions derived from the controlling facts and law, and the reasons for the conclusions; and
 4. A statement of further appeal rights available to the appellant and the time period for exercising those rights.
- C.** The Office of Appeals shall mail or deliver a copy of the decision to each interested party or such party's attorney of record.
- D.** The hearing officer's decision is the final decision of the Department, unless a party files a timely request for reconsideration or further appeal.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Department of Economic Security - Cash Assistance Program

R6-12-1013. Implementation of the Decision

- A. If the decision requires a local office to take further action, such action shall occur within 10 calendar days of the date of the decision.
- B. All decisions in favor of the appellant apply retroactively to the date of the action being appealed or the date stated by the hearing officer in the written decision.
- C. If the decision affirms the Department's decision to take adverse action, the Department shall treat any resulting overpayment as a client-caused, non-fraud overpayment.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1014. Further Appeal and Review of Hearing Decisions; Stay of Adverse Action

- A. A party may appeal an adverse hearing decision to the Department's Appeals Board.
 - 1. The party shall file a written petition for review with the Office of Appeals within 15 calendar days of the mailing date of the hearing officer's decision.
 - 2. The petition shall state the grounds for review and be signed and dated.
 - 3. The petition is deemed filed:
 - a. On the date it is mailed, if transmittal via the United States Postal Service or its successor. The mailing date is as follows:
 - i. As shown by the postmark;
 - ii. As shown by the postage meter mark of the envelope in which it is received, if there is no postmark; or
 - iii. The date entered on the document as the date of its completion, if there is no postmark, or no postage meter mark, or if the mark is illegible.
 - b. On the date it is hand-delivered to the Office of Appeals.
- B. When a party timely appeals a hearing decision, the Department shall stay implementation of the adverse action until the Appeals Board issues a decision and treat any resulting overpayment as a client-caused, non-fraud overpayment.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1015. Appeals Board Proceedings and Decision

- A. Upon receipt of a request for further review, the Office of Appeals shall transcribe the record of hearing and transfer the record to the Appeals Board.
- B. The Appeals Board may decide the appeal based solely on the record of proceedings before the hearing officer or, if the Board is unable to decide the appeal on the available record, the Board may remand the case for rehearing, specifying the nature of any additional evidence required or any further issues for consideration, or conduct a hearing at the Appeals Board to take additional evidence.
- C. The Appeals Board shall issue, and mail to all parties, a final written decision affirming, reversing, or modifying the hearing decision and specifying the parties' right to seek further review.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

ARTICLE 11. OVERPAYMENTS

R6-12-1101. Overpayments: Date of Discovery; Collection; Exceptions

- A. Except as provided in subsection (E), the Department shall pursue collection of all overpayments.
- B. The Department discovers an overpayment on the date the Department determines that an overpayment exists.
- C. The Department shall write an overpayment report within 90 days of the discovery date.
- D. If the FAA office suspects that an overpayment was caused by fraudulent activity, it shall refer the overpayment report to the Department's Office of Special Investigations for potential prosecution.
- E. The Department shall not attempt to recover an overpayment from a person who is not a current recipient when the overpayment was not the result of an intentional program violation or fraud, and:
 - 1. The total overpayment is less than \$35, or
 - 2. The Department has exhausted reasonable efforts to collect an overpayment of \$35 or more and has determined that it is no longer cost-effective to pursue the claim.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1102. Overpayments: Persons Liable

- A. The Department shall pursue collection of an overpayment from:
 - 1. The assistance unit which was overpaid;
 - 2. Any assistance unit of which a member of the overpaid unit has subsequently become a member; or
 - 3. Any individual member of the overpaid assistance unit, even if that member is not currently receiving benefits.
- B. The Department shall seek recovery from the caretaker relative, or the caretaker relative's current assistance unit, first. If the caretaker relative is unavailable due to death or disappearance, or was not a member of the overpaid assistance unit, the Department shall seek recovery from the other members of the overpaid assistance unit, or the other members' current assistance units.

Department of Economic Security - Cash Assistance Program
Historical Note
Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1103. Methods of Collection and Recoupment

- A. When an overpaid assistance unit is currently receiving benefits, the Department shall permit the unit to choose 1 of the following repayment methods:
 - 1. Offset against any underpayment due the unit;
 - 2. Cash payments;
 - 3. Reduction in current benefits, in an amount not to exceed 10% of the unit's monthly payment, unless the unit desires a larger reduction;
 - 4. A combination of the above methods.
- B. If the repayment reduces the unit's benefits to 0, the unit shall remain eligible for CA for all other purposes.
- C. If the assistance unit is not receiving benefits, the Department shall pursue recovery by appropriate action under state law.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

ARTICLE 12. INTENTIONAL PROGRAM VIOLATION

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1201. Intentional Program Violations (IPV); Defined

- A. An intentional program violation (IPV) is an action by an individual, for the purpose of establishing or maintaining the family's eligibility for CA or for increasing or preventing a reduction in the amount of the grant, which is intentionally:
 - 1. A false or misleading statement or misrepresentation, concealment, or withholding of facts; or
 - 2. Any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.
- B. For the purpose of imposing sanctions as prescribed in R6-12-1204, a person is considered to have committed an IPV if:
 - 1. The person signs a waiver of an administrative disqualification hearing,
 - 2. The person is found to have committed an IPV by an administrative disqualification hearing, or
 - 3. The person is convicted of IPV or fraud in a court of law.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-1202. IPV Disqualification Proceedings; Hearing Waiver

- A. The Department shall initiate an administrative disqualification proceeding, or a referral for prosecution, upon receipt of sufficient documentary evidence substantiating that an assistance unit member has committed an IPV.
- B. When the Department initiates a disqualification proceeding, the Department shall mail the assistance unit member suspected of an IPV written notice of the right to waive the disqualification hearing.
- C. The waiver notice shall include the following information:
 - 1. The charges against the suspected violator and a description of the evidence supporting the charges;
 - 2. An explanation of the disqualification sanctions imposed for intentional program violations;
 - 3. A warning that the administrative proceeding does not preclude other civil or criminal court action;
 - 4. The date that the signed waiver notice must be received by the Department should the suspected violator wish to avoid the hearing;
 - 5. Signature lines for the suspected violator and the suspected violator's current caretaker relative if the suspected violator is not the caretaker relative;
 - 6. A statement that the caretaker relative must also sign the waiver if the suspected violator is not the caretaker relative;
 - 7. A statement of the suspected violator's right to remain silent concerning the charge;
 - 8. A warning that anything said, written, or signed by the suspected violator concerning the charge may be used against him or her in administrative proceedings or a court of law;

Department of Economic Security - Cash Assistance Program

9. A warning that any waiver of the hearing establishes an IPV, eliminates the right to further administrative appeal, and will result in disqualification and a reduction in benefits for other assistance unit members for the period of disqualification;
 10. Statements providing the suspected violator an opportunity to admit to the facts supporting disqualification or waive the hearing without admitting to the facts;
 11. The name, address, and telephone number of a Department representative whom the suspected violator may contact for further information;
 12. A list of persons or organizations which may provide the suspected violator with free legal advice regarding the IPV; and
 13. A warning that the Department shall hold any remaining household members responsible for repayment of any overpayment arising from the IPV.
- D. For the purpose of imposing sanctions as prescribed in R6-12-1204, a signed waiver notice shall have the same effect as an administrative adjudication that an IPV occurred.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1203. Disqualification Proceedings; Hearing

- A. If the suspected violator does not sign and return the waiver notice by the return date set in the waiver notice, the Office of Appeals shall send the suspected violator a notice of hearing. The Office of Appeals shall send the notice by certified mail, return receipt requested, no later than 30 days before the scheduled hearing date.
- B. The notice of hearing shall include the following information:
 1. The date, time, and place of the hearing;
 2. The charges against the suspected violator;
 3. A summary of the evidence supporting the charges;
 4. The location where the suspected violator may examine the supporting evidence before the hearing;
 5. A warning that the hearing officer shall render a decision based solely on the evidence which the Department offers if the suspected violator does not appear for the hearing;
 6. An explanation of the suspected violator's right to show good cause for a failure to appear at the hearing and the procedure for doing so;
 7. An explanation of the sanctions the Department shall impose if the hearing officer finds that the suspected violator committed an IPV;
 8. A listing of the suspected violator's procedural rights;
 9. A warning that the pending administrative hearing does not preclude other civil or criminal court action;
 10. A statement advising of any free legal advice which may be available;
 11. A statement explaining how to obtain a copy of the Department's published hearing procedures; and
 12. A statement that the suspected violator may have the hearing postponed by contacting the hearing officer at least 10 days before the hearing date and asking for a postponement.
- C. The hearing officer shall postpone a hearing for up to 30 days if the suspected violator files a written request for postponement with the hearing official no later than 10 days before the scheduled hearing date. Any such postponement days shall increase the time by which the hearing officer shall issue a decision, as provided in subsection (G) below.
- D. At the start of the disqualification hearing, the hearing officer shall advise the suspected violator or representative of the right to remain silent during the hearing and the consequences of exercising that right.
- E. A hearing officer, as prescribed in R6-12-1005, shall conduct the disqualification hearing pursuant to the procedures set forth in R6-12-1006, R6-12-1007, and R6-12-1011, except as prescribed in this subsection.
 1. The suspected violator does not need to request a hearing as prescribed in R6-12-1006(B).
 2. The standard of proof is clear and convincing.
 3. So long as the Department sent an advance notice of hearing as provided in subsections (A) and (B) above, the hearing officer shall conduct the disqualification hearing even if the suspected violator or representative cannot be located or fails to appear at the hearing without good cause.
- F. The Department shall prove by clear and convincing evidence that the household member committed an IPV.
- G. No later than 90 days from the date of the notice of hearing, as increased by any postponement days, the hearing officer shall send to the suspected violator a written decision which shall conform to the requirements of R6-12-1012 and shall include the information described at R6-12-1204(C).

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1204. Disqualification Sanctions; Notice

- A. A person found to have committed an IPV is disqualified from program participation for 6 months for the 1st violation; 12 months for the 2nd violation; and permanently for the 3rd violation.
- B. The Department shall not include the needs of the disqualified person in the assistance unit but shall count the income and resources of the disqualified person available to the unit.
- C. Upon a determination of IPV, the Department shall notify the violator of the pending disqualification. The notice shall:
 1. Inform the violator of the decision and the reasons for the decision;

Title 6, Ch. 12 *Arizona*

Code

Department of Economic Security - Cash Assistance Program

2. Provide the beginning date and duration of the disqualification, including an explanation of any deferment of disqualification; and
3. Explain the consequences of the disqualification on household members other than the violator.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1205. Disqualification Hearings; Appeal

- A. A person found to have committed an IPV through an administrative disqualification hearing may appeal the decision to the Department's Appeals Board as prescribed in R6-12-1014.
- B. Upon a determination of IPV through a signed waiver of a disqualification hearing, the violator has no right to further administrative appeal.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1206. Honoring Out-of-state IPV Determinations and Sanctions

The Department shall honor sanctions imposed against an applicant or recipient by the Title IV-A agency of another state and shall consider prior violations committed in another state when determining the appropriate sanction.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

ARTICLE 13. JOBSTART

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1301. Scope

The Department shall operate a wage subsidy program entitled JOBSTART on a statewide basis.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective May 15, 1997 (Supp. 97-2). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1302. Definitions

The following definitions apply to this Article:

1. "Adjusted gross monthly wages" means the gross monthly wages a person receives from a JOBSTART-subsidized placement after deductions for federal and state income taxes and Federal Insurance Contributions Act (FICA) contributions.
2. Subsidized placement means a job with a public or private sector employer for which the Department reimburses the employer monthly for the wages paid to the participant the lesser of:
 - a. A fixed subsidy amount determined by the Department pursuant to the contract with the employer, or
 - b. The gross wages paid by the employer.
3. Wage pool means a pool of diverted CA and Food Stamp Program benefits which are used to reimburse an employer for the monthly wages paid to a participant.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective May 15, 1997 (Supp. 97-2). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was repealed and the new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

Department of Economic Security - Cash Assistance Program

R6-12-1303. Diversion of Benefits to Wage Pool

- A. When JOBS notifies FAA that JOBS has assigned a recipient to a JOBSTART-subsidized placement, FAA shall redirect the recipient's CA and Food Stamp Program benefits to the JOBSTART wage pool to reimburse the participant's employer for wages paid to the participant.
- B. The reimbursement shall not exceed the lesser of:
 - 1. The recipient's gross monthly earnings from the JOBSTART-subsidized placement, calculated as total hours worked times the participant's hourly wage rate; or
 - 2. A fixed subsidy amount determined by the Department pursuant to the contract with the employer. The reimbursement shall not exceed 40 hours per week at the federal minimum wage.
- C. The Department shall divert the CA and Food Stamp Program benefits to the wage pool beginning with the calendar month following the month the participant 1st receives wages from the subsidized placement and shall continue diverting the benefits until the participant stops holding a subsidized placement.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-1303 repealed; new Section renumbered from R6-12-1304 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and a new Section renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1304. Treatment of Income

The Department shall exclude as income the participant's gross monthly wages received from the subsidized job placement. Income from other sources shall count pursuant to Article 4.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-1304 renumbered to R6-12-1303; new Section renumbered from R6-12-1305 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and a new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1305. Supplemental Payments

- A. Advance supplemental payments.
 - 1. The Department shall provide an advance supplemental payment to a JOBSTART participant if the adjusted gross wages the participant is expected to receive in a benefit month are less than the combined cash value of the CA and Food Stamp Program benefits which the participant is eligible to receive for that month.
 - 2. Each month the Department shall determine the need for a supplemental payment, and the amount of the payment, using prospective budgeting based on anticipated family composition and wages of 40 hours per week during the month at the adjusted gross monthly wage the participant is expected to receive.
 - 3. The supplemental payment shall equal the cash value of the combined CA and Food Stamp Program benefits the participant is eligible to receive for the month minus the anticipated adjusted gross monthly wages from the subsidized placement.
- B. Emergency supplemental payments. The Department shall provide an emergency supplemental payment to a JOBSTART participant if the adjusted gross wages the participant is expected to receive in a benefit month, plus any supplemental payments already made for that month, are less than the cash value of the monthly food stamp allotment for the participant's household. The Department shall provide an emergency payment no later than 10 days after the date:
 - 1. The participant requests an emergency payment, or
 - 2. The Department receives information from the employer which indicates the need for an emergency payment.
- C. Reconciliation supplemental payments.
 - 1. The Department shall provide a reconciliation supplemental payment to a JOBSTART participant who receives less in adjusted gross wages in a benefit month than the cash value of the combined CA and Food Stamp Program benefits which the participant is eligible to receive for that month due to a reduction in available work hours by the employer.
 - 2. The Department shall issue the reconciliation supplemental payment no later than the 10th day of the month following the benefit month.
 - 3. The reconciliation supplemental payment, plus the adjusted gross wages and any other supplemental payments already received for the benefit month, shall not exceed the cash value of the combined CA and Food Stamp Program benefits the participant was eligible to receive for the benefit month.

Department of Economic Security - Cash Assistance Program

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-1305 renumbered to R6-12-1304; new Section renumbered from R6-12-1306 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and a new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1306. Sanctions

- A. If a recipient fails or refuses to comply with JOBSTART participation requirements without good cause the Department shall decrease the CA grant using the progressive sanction process described in R6-12-316.
- B. Good cause is limited to the following circumstances:
 - 1. The participant has been referred to a job or employment which is the subject of a strike, lockout, work stoppage, or other bona fide labor dispute;
 - 2. The job requires the participant to join a company union or to resign or refrain from joining a bona fide labor organization;
 - 3. The participant was incarcerated or ordered to make a court appearance;
 - 4. Severe weather conditions prevented the participant and other persons similarly situated from traveling to or participating in the employment activity;
 - 5. The participant or the participant's dependent child suffers a debilitating illness or incapacity; or
 - 6. The participant has a family crisis, such as:
 - a. Catastrophic loss of home to fire, flood, or other natural disaster; or
 - b. Death of an immediate family member.
- C. JOBS shall determine if good cause exists.
- D. The Department shall apply the appropriate progressive sanction reduction against the monthly CA benefit amount the assistance unit is entitled to receive for the month the sanction is applied.
- E. The progressive sanction benefit reduction shall continue for a minimum of 1 month and until the person complies with JOBS requirements or becomes exempt from JOBS participation.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-1306 renumbered to R6-12-1305; new Section renumbered from R6-12-1307 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit this change to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this change.

R6-12-1307. Renumbered

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-1307 renumbered to R6-12-1306 effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

ARTICLE 14. GRANT DIVERSION

R6-12-1401. Definitions

"Grant Diversion Payment Period" means the time period that begins the first day of the first eligible month and ends the last day of the third eligible month.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1638, effective August 4, 2013 (Supp. 13-2).

R6 -12-1402. Eligibility for Grant Diversion

The Department shall offer a Cash Assistance applicant the option of receiving a lump sum Grant Diversion cash benefit when the applicant satisfies all of the following eligibility criteria:

- 1. The assistance unit includes an adult parent or non-parent caretaker relative;
- 2. The assistance unit meets all CA financial and non-financial eligibility criteria, except that the adult parent or nonparent caretaker relative is exempt from the following:
 - a. The child support requirements in R6-12-311;

Department of Economic Security - Cash Assistance Program

- b. The Jobs program participation requirements in R6-12-313;
 - c. The Personal Responsibility Agreement in R6-12-302; and
 - d. The TPEP employment and education requirements in R6-12-606;
3. The assistance unit is eligible for a CA cash benefit of at least one dollar in either the month of application or either of the two months following the month of application;
 4. An adult assistance unit member is immediately available for full-time employment and the adult satisfies at least one of the following requirements:
 - a. Was employed in the month the application was received or in at least one of the 12 months preceding the month that the application was received;
 - b. Has a verified offer of full-time employment that will begin within the three month Grant Diversion payment period; or
 - c. Has successfully completed an educational, vocational, or job training program in the month the application was received or in one of the six months preceding the month that the application was received;
 5. An adult parent or non-parent caretaker relative in the assistance unit completes and signs the Grant Diversion Applicant Agreement form, which includes the adult's agreement that the short term Grant Diversion cash benefit shall assist and support the adult in securing full-time employment within 90 days of the application date in order to enable the assistance unit to become self-sufficient;
 6. The assistance unit has not received a Grant Diversion cash benefit in the 12 months preceding the month that the application was received; and
 7. The assistance unit is not currently being sanctioned under R6-12-316.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1638, effective August 4, 2013 (Supp. 13-2).

R6-12-1403. Amount of the Grant Diversion Cash Benefit

The Department shall provide an eligible assistance unit a nonrecurring lump sum cash benefit in an amount equal to three times the maximum monthly cash benefit for which the assistance unit would be eligible in the Cash Assistance program, based on zero countable income. The Department shall provide the cash benefit to financially assist an adult assistance unit member in securing full-time employment within the three month Grant Diversion payment period.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1638, effective August 4, 2013 (Supp. 13-2).

R6-12-1404. Treatment of Changes During the Grant Diversion Payment Period

- A. The Department shall exempt the assistance unit from the change reporting requirements in R6-12-901 during the three month Grant Diversion payment period.
- B. When the Department receives a request to add a member to the assistance unit during the three month Grant Diversion payment period, the Department shall comply with subsections (B)(1) through (B)(3).
 1. The Department shall redetermine eligibility including the added member. The Department shall add the new member, effective the date the request is received, only when the assistance unit remains eligible.
 2. When the assistance unit remains eligible, the Department shall add the new member, effective the date the Department receives the request to add the member, and recalculate the assistance unit's Grant Diversion benefit amount. The Department shall issue the assistance unit a supplemental payment when the amount of the recalculated cash benefit amount exceeds the amount of the cash benefit that was issued to the assistance unit. The supplemental payment shall be a prorated amount from the date the Department received the request to add the member through the end of the three-month Grant diversion payment period.
 3. When the recalculated Grant Diversion cash benefit amount is less than the cash benefit that was issued to the assistance unit, the Department shall not add the member to the assistance unit and shall not write an overpayment.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1638, effective August 4, 2013 (Supp. 13-2).

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, which shall include manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, which shall include categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, which shall include vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, which shall include the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, which shall include a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, which shall include the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, Public Law 91-517, and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.
11. Establish and maintain separate financial accounts as required by federal law or regulations.
12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.
13. Have an official seal that shall be judicially noticed.
14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.
15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.
16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.
17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in Arizona and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

- (d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.
- (e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.
- (f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.
- (g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to such child.

Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use such monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.
4. On termination of the department's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:
 - (a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.
2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the tiered per diem rates and outpatient cost-to-charge ratios established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection H.
2. The department's liability for a hospital claim under this subsection is subject to availability of funds.
3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine per cent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate plus a fee of one per cent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection H, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the

department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.
2. State and local tax and revenue records, including information on residence address, employer, income and assets.
3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities and cable television companies.
2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of the state and after considering each of the following factors:

1. The obligor's financial resources.
2. The cost of further enforcement action.
3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.
2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.
3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.
4. Act as agent of the federal government in furtherance of any functions of the state department.
5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.
6. Cooperate with the superior court in cases of delinquency and related problems.
7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.
8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.
9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.

10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.

11. Administer any additional welfare functions required by law.

12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.

13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.

14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

46-292. Eligibility for assistance

A. A family without a dependent child in the household may not receive cash assistance.

B. Cash assistance may be given under this title to any dependent child and member of a needy family:

1. Who has established residence in Arizona at the time of application and is either:

(a) A citizen by birth or naturalization.

(b) A qualified alien who entered the United States on or before August 21, 1996.

(c) A qualified alien who entered the United States as a member of one of the exception groups under Public Law 104-193, section 412, in which case the person shall be determined eligible in accordance with Public Law 104-193.

(d) Defined as a qualified alien by the attorney general of the United States under the authority of Public Law 104-208, section 501.

For the purposes of subdivisions (b) and (c) of this paragraph, "qualified alien" means a person who is defined as a qualified alien under Public Law 104-193, section 431.

2. If the parent or parents of the dependent child or the nonparent relative head of household receiving assistance, if employable, does not refuse to accept available employment. The department shall assess the applicant's employability at the time of initial application for assistance to establish a self-sufficiency diversion option, if appropriate, before benefit issuance. The determination of employability and the conditions under which employment shall be required shall be determined by the state department, except that claimed unemployability because of physical or mental incapacity shall be determined by the state department in accordance with this title.

3. If the parent or parents of the dependent child or the nonparent head of household in a needy family has not, within one year prior to application, or while a recipient, transferred or assigned real or personal property with the intent to evade federal or state eligibility requirements. Transfer of property with retention of a life estate for the purpose of qualifying for assistance is prohibited. Where fair consideration for the property was received, no inquiry into motive is necessary. A person found ineligible under this section shall be ineligible for such time as the state department determines.

4. Who meets the requirements of this section and department rule to qualify as part of the assistance unit.

C. Qualified aliens entering the United States after August 21, 1996 are ineligible for benefits for a period of five years beginning on their date of entry, except for Cuban and Haitian entrants as defined in section 501(e)(2) of the refugee education assistance act of 1980 and exceptions provided under Public Law 104-193 (personal responsibility and work opportunity reconciliation act of 1996) and Public Law 105-32 (balanced budget act of 1997).

D. A parent or any other relative who applies for or receives cash assistance under this title on behalf of a child shall cooperate with the department by taking the following actions:

1. Providing information regarding the identity of the child's father and mother and other pertinent information including their names, social security numbers and current addresses or a

sworn statement that attests to the lack of this information and that is accompanied by facts supporting the asserted lack of information.

2. Appearing at interviews, hearings and legal proceedings.
3. Submitting and having the child submit to genetic testing.
4. Signing authorizations for third parties to release information concerning the applicant or the child, or both.
5. In cases in which parentage has not been established, providing a sworn statement alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties.
6. Supplying additional information the department requires.

E. The department shall sanction a recipient who, without good cause as prescribed in subsection F of this section, fails to cooperate with child support enforcement efforts according to the sanction provisions of section 46-300.

F. One or more of the following circumstances constitute good cause for failure to cooperate with child support enforcement efforts:

1. Cooperation may result in physical or emotional harm to the parent, child for whom support is sought or caretaker relative with whom the child is living.
2. Legal proceedings for adoption of the child for whom support is sought are pending before a court.
3. The participant has been working, for less than ninety days, with a public or licensed private social agency on the issue of whether to allow the child for whom support is sought to be adopted.
4. The child for whom support is sought was conceived as a result of sexual assault pursuant to section 13-1406 or incest.

G. A person claiming good cause has twenty days from the date the good cause claim is provided to the agency to supply evidence supporting the claim. When determining whether the parent or relative is cooperating with the agency as provided in subsection D of this section, the agency shall require:

1. If the good cause exception in subsection F, paragraph 1 of this section is claimed, law enforcement, court, medical, criminal, psychological, social service or governmental records or sworn statements from persons with personal knowledge of the circumstances that indicate that the alleged parent or obligor might inflict physical harm on the parent, child or caretaker relative.
2. If the good cause exception in subsection F, paragraph 2 of this section is claimed, court documents that indicate that legal proceedings for adoption are pending before a court of competent jurisdiction.
3. If the good cause exception in subsection F, paragraph 3 of this section is claimed, records from a public or licensed private social services agency showing that placing the child for whom support is sought is under consideration.
4. If the good cause exception in subsection F, paragraph 4 of this section is claimed, law enforcement, court, medical, criminal, psychological, social service or governmental records or sworn statements from persons with personal knowledge of the circumstances surrounding the conception of the child that indicate the child was conceived as a result of sexual assault pursuant to section 13-1406 or incest.

H. Notwithstanding subsection B of this section and except as provided in subsection I of this section, a dependent child or children who are born during one of the following time periods are not eligible for assistance under this title:

1. The period in which the parent or other relative is receiving assistance benefits.
2. The temporary period in which the parent or other relative is ineligible pursuant to a penalty imposed by the department for failure to comply with benefit eligibility requirements, after which the parent or other relative is eligible for a continuation of benefits.

3. Any period after November 1, 1995 that is less than sixty months between a voluntary withdrawal from program benefits or a period of ineligibility for program benefits which immediately followed a period during which program benefits were received and a subsequent reapplication and eligibility approval for benefits.

I. The following exceptions apply to subsection H of this section:

1. The department shall allow an increase in cash assistance under the program for a dependent child or children born as a result of an act of sexual assault as prescribed in section 13-1406 or incest. The department shall ensure that the proper law enforcement authorities are notified of allegations of sexual assault or incest made pursuant to this paragraph. For the purposes of this paragraph, "an act of sexual assault" includes sexual assault of a spouse if the offense was committed before August 12, 2005.

2. For those parents or other relatives who are currently authorized for cash assistance the department shall allow an increase in cash assistance under the program as a result of the birth of a child or children to the parent or other relative only if the birth occurred within ten months of the initial eligible month. The department may use only the additional child or children who are born from the pregnancies covered in this subsection in computing the additional benefit.

3. The department shall allow an increase in cash assistance for any dependent child born to a parent who has not received cash assistance under this title for at least twelve consecutive months if the child is born within the period beginning ten months after the twelve consecutive month period and ending ten months after the parent resumes receiving cash assistance.

4. A dependent child or children who were born during a period in which the custodial parent received cash assistance through the Arizona works program shall be eligible to receive assistance under this title.

5. A dependent child or children who were born within ten months after the custodial parent received cash assistance through the Arizona works program shall be eligible to receive assistance under this title.

J. The department shall calculate the sixty-month time period referenced in subsection H, paragraph 3 of this section in the following manner:

1. For persons who are receiving cash assistance on November 1, 1995, the sixty-month time period begins on November 1, 1995. A subsequent sixty-month time period begins immediately after the previous period ends if the person is receiving cash assistance through two sixty-month periods. If the individual is not receiving cash assistance at the end of the previous sixty-month period, any subsequent sixty-month time period begins on the date when cash assistance became effective again, regardless of when the person received an actual payment.

2. For persons who begin receiving cash assistance after November 1, 1995, the sixty-month time period begins on the date cash assistance becomes effective, regardless of when the person received an actual payment. A subsequent sixty-month period begins as provided in paragraph 1 of this subsection.

K. In calculating a parent's or any other relative's benefit increase that arises from any general increase that has been approved for all program recipients, the department shall not consider a child or children born under the time periods listed in subsection H of this section.

L. For the parents or other relatives who have additional children for whom they receive no cash assistance payment under subsection H of this section, the department shall make any necessary program amendments or request any necessary federal waivers to allow the parents or other relatives to earn income in an amount equal to the disallowed cash assistance payment without affecting their eligibility for assistance.

M. The director shall adopt rules:

1. To implement this section, including rules to define the investigatory steps that must be taken to confirm that an act of sexual assault or incest led to the birth of a dependent child or children.

2. That require the department to inform both verbally and in writing the parents and other relatives who are receiving assistance under this article of the specific family planning services

that are available to them while they are enrolled as eligible persons in the Arizona health care cost containment system.

N. Nothing in this section shall be construed to prevent an otherwise eligible child who is not included in the family's calculation of benefits under this article from being eligible for coverage under title 36, chapter 29 or for any services that are directly linked to eligibility for the temporary assistance for needy families program.

O. Assistance shall not be denied or terminated under this article because the principal wage earner works one hundred or more hours per month.

P. Except as provided in paragraph 2 of this subsection, all members of a needy family, including stepparents, must meet the same financial eligibility criteria established in this title, by department rule and as follows:

1. The department shall include all income from every source available to a needy family requesting cash assistance, except income that is required to be disregarded by this subsection and as determined by the department in rules. For the amount of income that is received from employment, each month every employed person is entitled to receive an earned income disregard of ninety dollars plus an additional thirty per cent of the remaining earned income. A needy family that includes an employed person is entitled to an earned income disregard equal to the actual amount billed to the household for the care of an adult or child dependent household member, up to two hundred dollars a month for a child under two years of age and up to one hundred seventy-five dollars a month for each other dependent. This dependent care disregard is allowed only if the expense is necessary to allow the household member to become or remain employed or to attend postsecondary training or education that is preparatory to employment.

2. The total gross countable income of a needy family that includes a nonparent relative head of household who is not applying for or receiving cash assistance and who is requesting cash assistance only for a dependent child shall not exceed one hundred thirty per cent of the federal poverty guidelines.

Q. If the total gross countable income in subsection P, paragraph 2 of this section does not exceed one hundred thirty per cent of the federal poverty guidelines, in determining benefit amount, the department shall exclude the income of all members of the needy family except for the income of the eligible dependent child for whom cash assistance is requested.

R. For the purposes of eligibility and benefit amount, only the income of the dependent child is considered for a child only case.

S. Any parent or other relative who applies for or receives cash assistance under this article on behalf of a dependent child who is between six and sixteen years of age shall ensure that the child is enrolled in and attending school. An initial applicant is ineligible for benefits until the applicant's dependent children are verified to be enrolled in and attending an educational program. The department of education shall assist the department of economic security in obtaining verification of school enrollment and attendance. The director of the department of economic security may adopt rules for granting good cause exceptions from this subsection. The department of economic security shall sanction a recipient who fails, without good cause, to ensure school enrollment and attendance according to section 46-300.

T. Any parent or other relative who applies for or receives cash assistance under this section on behalf of a dependent child shall ensure that the child is immunized in accordance with the schedule of immunizations pursuant to section 36-672. The director of the department of economic security may adopt rules for granting good cause exceptions from this subsection. The department of economic security shall sanction a recipient, in accordance with section 46-300, who fails, without good cause, to obtain the required immunizations for a dependent child unless the recipient submits to the department of economic security the documentation described in section 15-873.

DEPARTMENT OF HEALTH SERVICES (F-17-0207)

Title 9, Chapter 2, Article 1, Smoke-Free Arizona



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-3

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Shama Thathi, Staff Attorney

DATE : January 24, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-17-0207)
Title 9, Chapter 2, Article 1, Smoke-Free Arizona

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Health Services (Department) is "to protect the physical and mental health of the people of this state and to promote the highest standards for licensed health care institutions, emergency services, and care facilities for adults and children." Laws 2010, Ch. 8, § 3.

This five-year-review report covers twelve rules in A.A.C. Title 9, Chapter 2, Article 1, related to the Smoke-Free Arizona Act. The rules establish a "reasonable distance" around ventilation systems, windows, and entrances where smoking is prohibited to prevent smoke from entering a public place or non-vehicle place of employment. Additionally, the rules specify individual and proprietor responsibilities, signage requirements, requirements for retail tobacco stores and outdoor patios where smoking is permitted, conditions under which smoking is prohibited in private residences, and rules related to enforcement.

Year that Each Rule was Last Amended or Newly Made

All of the rules were made by exempt rulemaking on May 1, 2007.

Proposed Action

The Department does not plan to amend the rules unless substantive issues arise.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Department has certified that it is in compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that the rules are effective in achieving their objectives with the exception of R9-2-108 and R9-2-110. R9-2-108 could be made more effective by clarifying how the limits of an outdoor patio should be delineated to distinguish the outdoor patio area from outdoor space that is not subject to the rule. Lastly, R9-2-110 should be amended to maintain consistency among subsections (1), (3), and (4).

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

No. The Department indicates that it has not received any written criticisms of the rules during the last five years. However, the Department has received several written concerns about smoke infiltrating apartments through other apartments in multi-family dwellings.¹ Private residences are exempt from requirements in A.R.S. § 36-601.01 and are not covered under the rules being reviewed in this report.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to A.R.S. §§ 36-132(A)(7) and 36-136(F) as general authority. Under A.R.S. § 36-136(F), the Department "may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health."

As for specific statutory authority, the Department cites to A.R.S. § 36-601.01, which states that the Department "may promulgate rules for the implementation and enforcement of the [Smoke-Free Arizona Act]."

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Department indicates that the rules are consistent with other rules and statutes.

¹ The written comments have been included as an attachment to the five-year-review report.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicate that the rules are enforced as written by the Department and county health departments or environmental health departments.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that the rules are clear, concise, and understandable with one exception. In R9-2-101, the definition of “private residence” should be amended to clarify that a hotel or motel room is not a private residence even though, like a health care institution, an individual may live and sleep there for an extensive period of time.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that the rules are consistent with federal law.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Not applicable. The rules were adopted before July 29, 2010.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. In the five-year-review report approved in 2012, the Department stated that it did not plan to amend the rules unless substantive issues arise. No substantive issues have arisen, so the Department has adhered to the plan.

Conclusion

The Department does not plan to amend the rules unless substantive issues arise. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-3

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : January 24, 2017

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-17-0207)**
Title 9, Chapter 2, Article 1, Smoke-Free Arizona

I have reviewed the five-year-review report for the Arizona Department of Health Services (Department) A.A.C. Title 9, Chapter 2, Article 1.

An economic, small business, and consumer impact statement was not prepared as part of the 2007 rulemaking package, but the W.P Carey School of Business at Arizona State University (ASU) conducted an economic effect study at the Department's request in 2006. The five-year review reflected on this analysis. The following includes comments on the analysis provided for compliance with A.R.S. § 41-1056.

1. Economic Impact Comparison

9 A.A.C. 2, Article 1 was created to specify requirements to implement and enforce a statewide smoking ban in most public places and places of employment as set by Proposition 201 in November of 2006. The rules went into effect May 1st, 2007. Specifically, the rules establish a "reasonable distance" from entrances, windows, and ventilation systems where smoking is prohibited. It also specifies a prohibition against smoking in or near public places or non-vehicle places of employment, in addition to specifying when smoking is prohibited in private residences. The rule further clarifies requirements for retail tobacco and outdoor patios where smoking is permitted. Finally, the rules specify means for enforcement of these rules.

The rules were created by exempt rulemaking and were published effective May 1, 2007. The act proposing the smoking ban was approved by the majority of Arizona voters in November of 2006, implying that these voters believed that the benefits to the health and safety of Arizonans outweighed the costs. An economic study was submitted by ASU in 2008 on the economic effect of the smoking ban on the restaurant and bar industry in Arizona. At the time, the report stated that the smoking ban "did not result in any distinguishable large-scale economic effect on the restaurant or bar industry in the state." Survey data used also stated that the ban seemed to have a "negative effect on some businesses and a positive effect on others."

Since the rules became effective in May 2007, the Department has compiled nine annual reports on the implementation of the program. This review shows a greater acceptance of the smoking ban over time. The Department states that the reduced number of violations (from eighteen in 2010-2011 to two in 2015-2016) and an increase in the number of complaints (up to 1,425 in 2015-2016) shows that the public is in acceptance of the smoking ban.

On the basis of the studies, the Department estimates that the actual costs and benefits are generally consistent with the costs and benefits considered when developing the rules.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department believes the rules as written impose the least burden and costs when meeting their objectives.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was received by the Department that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

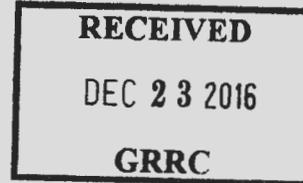
After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



ARIZONA DEPARTMENT
OF HEALTH SERVICES

December 21, 2016

Nicole A. Ong, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007



RE: Report for A.A.C. Title 9, Chapter 2, Article 1, Smoke-Free Arizona

Dear Ms. Ong:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 2, Article 1 is due to the Council no later than May 31, 2017. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 2, Article 1, and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and the 2008 Economic Effect Report are included in the package. As described in the report, the Department does not plan to amend the rules in 9 A.A.C. 2, Article 1 at this time.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES

TOBACCO-RELATED PROGRAMS

ARTICLE 1. SMOKE-FREE ARIZONA

December 2016

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 2. DEPARTMENT OF HEALTH SERVICES
TOBACCO-RELATED PROGRAMS
ARTICLE 1. SMOKE-FREE ARIZONA

TABLE OF CONTENTS

1.	FIVE-YEAR-REVIEW SUMMARY	Page 3
2.	INFORMATION THAT IS IDENTICAL FOR ALL OF THE RULES	Page 4
3.	INFORMATION FOR INDIVIDUAL RULES	Page 7
4.	CURRENT RULES	Attachment A
5.	GENERAL AND SPECIFIC AUTHORITY	Attachment B
6.	2008 ECONOMIC EFFECT REPORT	Attachment C
7.	WRITTEN CONCERNS ABOUT A.R.S. § 36-601.01	Attachment D

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-601.01(G)(11) requires the Arizona Department of Health Services (Department) to implement and enforce A.R.S. § 36-601.01, which was enacted as part of the Smoke-Free Arizona Act, and authorizes the Department to make rules for that purpose. A.R.S. § 36-601.01(G)(11) gave the Department exempt rulemaking authority until May 1, 2007 to adopt rules to implement and enforce a statewide smoking ban in most public places and places of employment under A.R.S. § 36-601.01. The Department has adopted these rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 2, Article 1, which became effective on May 1, 2007. The rules establish a “reasonable distance” around entrances, windows, and ventilation systems where smoking is prohibited to prevent smoke from entering a public place or non-vehicle place of employment. The rules also specify individual and proprietor responsibilities, signage requirements, conditions under which smoking is prohibited in private residences, requirements for retail tobacco stores and outdoor patios where smoking is permitted, and rules related to enforcement.

The Department delegates the authority to respond to a complaint regarding compliance with A.R.S. § 36-601.01 or 9 A.A.C. 2, Article 1 to the health departments or environmental health departments of all but one of Arizona’s counties. After an analysis of the rules in 9 A.A.C. 2, Article 1, the Department has determined that the rules are effective; consistent with state and federal statutes and rules; enforced; and clear, concise, and understandable. Although the Department has received several written concerns about smoking in areas that are not covered under A.R.S. § 36-601.01, the Department has received no written criticism of the rules. The Department does not plan to amend the rules in 9 A.A.C. 2, Article 1 until substantive issues arise.

INFORMATION THAT IS IDENTICAL FOR ALL OF THE RULES

1. Authorization of the rule by existing statutes

The general statutory authority for the rules in 9 A.A.C. 2, Article 1 are A.R.S. §§ 36-136(A)(7) and 36-136(F).

The specific statutory authority for the rules in 9 A.A.C. 2, Article 1 is A.R.S. § 36-601.01.

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 2, Article 1 is to specify requirements necessary to implement and enforce a statewide smoking ban in most public places and places of employment.

3. Analysis of effectiveness in achieving the objective

The rules in 9 A.A.C. 2, Article 1 are effective in achieving their respective objectives, although R9-2-108 and R9-2-110 could be improved as described under Information for Individual Rules.

4. Analysis of consistency with state and federal statutes and rules

The rules in 9 A.A.C. 2, Article 1 are consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rules in 9 A.A.C. 2, Article 1 are enforced without difficulty by the Department and county health departments or environmental health departments.

6. Analysis of clarity, conciseness, and understandability

The rules in 9 A.A.C. 2, Article 1 are clear, concise, and understandable, although R9-2-101 could be improved as described under Information for Individual Rules.

7. Summary of the written criticisms of the rule received within the last five years

The Department has received several written concerns about smoke infiltrating apartments from other apartments in multi-family dwellings, as shown in Attachment D. However, private residences are exempt from requirements in A.R.S. § 36-601.01, according to A.R.S. § 36-601.01(B)(1), and are not covered under the rules in 9 A.A.C. 2, Article 1. The Department did not receive any written criticisms of the rules in the past five years.

8. Economic, small business, and consumer impact comparison

The rules in 9 A.A.C. 2, Article 1 were made by exempt rulemaking and published in the *Arizona Administrative Register* (A.A.R.) at 13 A.A.R. 1512, effective May 1, 2007. Although an economic, small business, and consumer impact statement was not prepared as part of the rulemaking package, the W. P. Carey School of Business in the Arizona State University conducted a study of the economic effect of the Smoke-Free Arizona Act in December 2006 at the Department's request. This report (Attachment C) was submitted to the Department in August 2008 and compared the economic effect of the smoking ban on the restaurant and bar

industry in Arizona. The report stated that the smoking ban “did not result in any distinguishable large-scale economic effect on the restaurant or bar industry in the state.” This conclusion was based on an analysis of aggregate sales data from the beginning of 1986 through the second quarter of 2008. Two surveys of businesses in Arizona at which food or drinks are served (restaurants, bars, microbreweries, veterans and fraternal clubs, and government facilities) were also conducted, the first just prior to the implementation of the Smoke-Free Arizona Act (in February through April 2007) and a second in July and early August 2008. On the basis of these surveys, the report stated that “the ban appears to have had a negative effect on some businesses and a positive effect on others.” In communities that had a comprehensive smoking ban before the implementation of the Smoke-Free Arizona Act, A.R.S. § 36-601.01 had little to no effect. According to the report, some businesses with only indoor seating lost income to businesses with both indoor seating, in which smoking was prohibited, and outdoor patio seating, in which smoking was permitted.

Since A.R.S. § 36-601.01 became effective in May 2007, the Department has prepared and published nine annual reports describing the implementation of the program. The 2016 Smoke-Free Arizona Annual Report is available at <http://azdhs.gov/documents/preparedness/epidemiology-disease-control/smoke-free-arizona/reports/sfa-annual-report-2016.pdf>.

Each report shows greater acceptance of the smoking ban and more compliance. In the 2016 Annual Report, the Department reported that a total of 25,833 educational visits, consultations, and on-site visits were conducted between May 1, 2015 and April 30, 2016. A total of 1,425 complaints were received during that period, most related to people smoking outside within 20 feet of an entrance or ashtrays located within 20 feet of an entrance. After the first year of implementation, the number of complaints received has remained fairly level. The number of notices of violation has decreased since the 2012 Annual Report. A total of 18 were issued statewide between May 1, 2010 and April 30, 2011, while only two were issued between May 1, 2015 and April 30, 2016. Most of these notices of violation were issued to proprietors who allowed employees, customers, or visitors to smoke inside public places or places of employment. According to the 2016 Annual Report, the proprietors that were issued these notices of violation corrected violations observed and did not face any civil money penalties.

Persons affected by the rules in 9 A.A.C. 2, Article 1, include state and local government entities, businesses of all types, the owners or proprietors of those businesses, and the public. According to the Preamble of the Notice of Exempt Rulemaking, the costs associated with the rulemaking resulted from the Smoke-Free Arizona Act, which was approved by the majority of

those voting in November 2006, implying that these voters believed that the benefits to the health and safety welfare of Arizonans resulting from Smoke-Free Arizona Act outweighed the costs. The Department solicited and received more than 2,200 written comments while developing these rules and used these comments in making the rules that were adopted. On the basis of the studies described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

In the 2012 Five-Year-Review Report, the Department stated that the Department did not plan to amend the rules in 9 A.A.C. 2, Article 1 until substantive issues arise. No substantive issue has arisen, so the Department has adhered to the plan.

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

The Department has determined that the rules in 9 A.A.C. 2, Article 1 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, despite the minor improvements that may be made to the rules.

12. Analysis of stringency compared to federal laws

The rules in 9 A.A.C. 2, Article 1 are consistent with federal laws.

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

The rules were adopted before July 29, 2010.

14. Proposed course of action

The Department does not plan to amend the rules in 9 A.A.C. 2, Article 1 until substantive issues arise.

INFORMATION FOR INDIVIDUAL RULES

R9-2-101. Definitions

2. Objective of the rule

The objective of the rule is to define terms and phrases used in the Article to enable the reader to clearly understand the requirements of the Article and allow for consistent interpretation.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable but could be improved by revising the definition of “private residence.” The definition of “private residence” could clarify that a hotel or motel room is not a private residence even though, like a health care institution, an individual may live and sleep in a hotel or motel room for a time. Specific requirements for hotel and motel rooms are contained in A.R.S. § 36-601.01(B)(2).

R9-2-102. Reasonable Distance

2. Objective of the rule

The objective of the rule is to provide the specific distance from an entrance, window, or ventilation system where smoking is not permitted and into which a proprietor shall not allow smoke to drift.

R9-2-103. Individual Responsibilities

2. Objective of the rule

The objective of the rule is to establish an individual’s responsibility not to smoke in an area where smoking is not permitted under A.R.S. § 36-601.01 or R9-2-102 and to stop smoking immediately when requested to do so by a proprietor.

R9-2-104. Proprietor Responsibilities

2. Objective of the rule

The objective of the rule is to establish a proprietor’s responsibilities under A.R.S. § 36-601.01 and this Article, including how responsibility is allocated when a building or facility is under the control of multiple proprietors, and to specify that a proprietor may declare that smoking is prohibited in an entire establishment, facility, or outdoor area.

R9-2-105. Sign Requirements

2. Objective of the rule

The objective of the rule is to specify the size, content, and posting requirements for signs to comply with A.R.S. § 36-601.01(E).

R9-2-106. Private Residence

2. Objective of the rule

The objective of the rule is to specify that, although A.R.S. § 36-601.01 does not apply to the private residence of an individual receiving services from a health care professional in the individual's private residence, smoking is not permitted in:

- a. A health care professional's private residence, in an area where the health care professional provides services to an individual, while the health care professional is providing services; or
- b. A private residence or parts thereof licensed or certified by the Department as an adult day care, a child care facility, or a child care group home.

R9-2-107. Retail Tobacco Store

2. Objective of the rule

The objective of the rule is to establish the responsibilities of a proprietor of a retail tobacco store under A.R.S. § 36-601.01 and this Article, including preparing an affidavit stating the proprietor's contention that the business is a retail tobacco store, maintaining the affidavit on the premises, and providing to the Department or the Department's designee upon request documents supporting the proprietor's contention that the business is a retail tobacco store.

R9-2-108. Outdoor Patio

2. Objective of the rule

The objective of the rule is to establish the conditions under which a proprietor may designate an area as an outdoor patio where smoking is permitted.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective, but the rule may be improved by clarifying how the limits of an outdoor patio should be delineated to distinguish the outdoor patio area from outdoor space that is not an outdoor patio and not subject to this rule.

R9-2-109. Complaint; Observation; Notification; Inspection

2. Objective of the rule

The objective of the rule is to specify:

- a. The information a complaint must contain,
- b. The circumstances under which a complaint is required to be filed, and
- c. The actions the Department or the Department's designee is required to take in response to a complaint.

R9-2-110. Determination of Violation

2. Objective of the rule

The objective of the rule is to specify the factors the Department or the Department's designee is required to consider in determining whether a violation of A.R.S. § 36-601.01 has occurred.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective but could be improved by making the wording of subsection (3) consistent with the wording in subsections (1) and (4).

R9-2-111. Notice of Violation; Notice of Assessment

2. Objective of the rule

The objective of the rule is to specify:

- a. That the Department or the Department's designee may issue a notice of violation to a proprietor after determining that a violation of A.R.S. § 36-601.01 has occurred;
- b. The information a notice of violation must contain, including a notice of assessment if a civil penalty is being assessed; and
- c. How the person to whom the notice of violation or notice of assessment has been issued may appeal the determination that a violation occurred or the assessment.

R9-2-112. Criteria for Issuing a Notice of Violation or Notice of Assessment

2. Objective of the rule

The objective of the rule is to specify the factors the Department or the Department's designee is required to consider in determining whether to issue a notice of violation, whether to issue a notice of assessment, or the amount of a civil penalty to be assessed.

ATTACHMENT D

SmokeFreeArizona

From: vintagemgr <vintagemgr@gardencommunitiesca.com>
Sent: Thursday, February 11, 2016 1:46 PM
To: SmokeFreeArizona
Subject: VAS Question

Categories: ADHS

Good Afternoon,

I am curious of the smoke free law in Arizona. I just moved here from California and I wanted to make sure on something:

I am the property at Vintage at Scottsdale apartments and we are looking at making our property smoke free. I read from this law that we cannot force this on residents inside of their apartments since it is consider their residents. However are we allowed to make the amenities such as pool, gym, and office area smoke free?

Is there anyway that we can make any apartment smoke free?

Are we allowed to charge back the resident if there is extra treatment over the regular wear and tear due to the smoke in the apartment?

Thank You,

Joseph Gurfinkiel

Se Habla Español

Property Manager | Vintage at Scottsdale

14545 N. Frank Lloyd Wright Blvd.

Scottsdale, AZ 85260

T: (480) 767-1266 | F: (480) 767-1268

E: vintagemgr@gardencommunitiesca.com | Website: [Vintage at Scottsdale](#)



Apply: [Application](#)

SmokeFreeArizona

From: Laura Juergens <lbj8@nau.edu>
Sent: Tuesday, February 09, 2016 9:17 AM
To: SmokeFreeArizona
Subject: Second-hand smoke

Categories: ADHS

I am writing in response to an issue I'm having regarding second-hand smoke that has recently begun infiltrating my apartment. I've complained to the leasing office of my apartment complex on several occasions and they have pretty much said that their hands are tied - and from what I have read on your website and others, it seems it is true.

I've been given alternatives - one of which is moving to another apartment within the complex. Why should I have to expend my time and money moving when it seems like it's my rights that are being violated? Why do I, as a non-smoker, have to carry the burden of 'petitioning' for a healthy living environment?

During the course of my research on the subject of second-hand smoke and its inherent health risks, non-smokers who reside in multi-family housing such as apartments and condominiums have little to no rights when it comes to having reasonable expectations of breathing healthy air both inside and outside of their residence, whereas common areas such as pools, leasing offices, gyms (and the like) are protected by law. In my opinion, why are non-smokers only protected from second-hand smoke in common areas, but not in their own homes?

According to your website "*The Act does not address the issue of smoke entering from outside, through a ventilation system, or from a neighboring residence.*" What would you suggest as my best line of defense to change current legislation and, at the very least, being able to live in a smoke-free environment (aside from moving - which I don't have the means or desire to do so)?

Thank you for your time and consideration of this matter, as I am eager to hear your input on this topic

Laura Juergens

SmokeFreeArizona

From: Sigrid Egan <segan2434@cox.net>
Sent: Saturday, August 01, 2015 10:24 AM
To: SmokeFreeArizona
Subject: Scottsdale Shadows Condominions

Categories: ADHS

Good Morning!

We live in the above mentioned condominiums and are owners as is the majority of the residents.

We understand that there is no state law (yet) that prohibits smoking in someone's own residence. However, our building # 26 has a particular problem.

- 1) Our ventilation system is a common one and odors, especially smoke, enters our units from other residences through the A/C vents.
- 2) We have one owner who pollutes our hallway and most units next to him and below through his incessant smoking day and night and this has become a health issue for some residents.
- 3) Smoking on balconies is an equal problem for those residing above and a constant nuisance.

Several residents have been sending complaints to our Community Service.

However, there is little to do. Our lawfirm has issued a cease and desist order, not pertaining to the smoking but more or less to the "nuisance" and "breach of quiet enjoyment of ones' living quarters" common laws.

All this may or may not work. Our question today is:

- 1) How have other multi-family condominium properties been able to make them a smoke-free residence inside and on patios and balconies.?
- 2) Does the AZ Dep. of Health Services have any suggestion, how to start petitions and ultimately get these onto a bill for the AZ House of Reps to place for a vote by the people of Arizona?
- 3) Would a stipulation for non-smoking residences in our CC&Rs, By-Laws, Rules and Regulations (the HOA's) be valid, even though the State Laws are different?

Thank you very much in advance for your reply.

Sigrid Egan
Denis Egan
Glenn Ashton
Joan Size
Ross Size
others are currently absent from their residences

Thom Wilson

From: Adrienne Felix <adriennefelix14@gmail.com>
Sent: Wednesday, November 30, 2016 1:49 PM
To: SmokeFreeArizona
Subject: Please help our family

Hello,

I am writing because I am gravely concerned about the health of my unborn baby (I am 6 months pregnant). We live in an apartment complex and we are getting second-hand smoke through our AC/Heating units. The smokers below us smoke indoors all night so we can not have our heat running in this cold winter. I am devastated because I have researched the effects of second hand smoke including the increased risk of still-birth and birth defects.

We would like to be let out of our lease, but our landlords are claiming they can not let us out of our lease or create a smoke-free building for us. Unfortunately, on my disabled husband's VA benefits, we can not afford to pay the \$1900.00 penalty to break it.

Is there anything I can do? Is there anyone who can help?

Thank you,
Adrienne Felix
214-973-6971

SmokeFreeArizona

From: celeste Hartman <hartmanceleste@gmail.com>
Sent: Monday, November 21, 2016 6:32 PM
To: SmokeFreeArizona
Subject: Do I have a case
Attachments: 20161121_174654.jpg; 20161121_174708.jpg; 20161121_174703.jpg

Categories: ADHS

Hi my name is Celeste Hartman. I am currently living at La Terraza Apartments at 5333 E. Thomas Rd. Phoenix AZ, 85018

I am currently 28 weeks pregnant and have asthma. There is severe second hand smoke from my other neighbors that is coming into my home on a daily basis that has been causing me to have asthma attacks that have put me in the ER. I have made two complaints to my leasing office, one through the phone and one of them being a letter. All they told me was that people are allowed to smoke in their apartments. I contacted you guys and was told to search for signs that stated smoking is not allowed and did find three up. Does that put the leasing office employees in violation since they are refusing to do anything, and is there anything that I can do as far as my rights go? Here are the photos of the signs found.

SmokeFreeArizona

From: Michael Marinello <mimarinello1@gmail.com>
Sent: Tuesday, November 15, 2016 12:16 AM
To: SmokeFreeArizona
Subject: Dangerous upstairs neighbor

Categories: ADHS

My female upstairs neighbor smokes, throws her cigarette butts onto my patio, and whole chunks of ashes also land on my wooden furniture.

I know some tenants disconnect their smoke detectors, not sure if she does.

Sometimes my smoke detector alarms because of the second hand smoke creeps in through the doorway which is not sealed very well. I use a lot of duct tape and it still gets through.

The city of Tucson banned outdoor grilling and propane tanks stored in apartment complexes. Every year outdoor grilling causes 100 injuries and 10 deaths. The whole US.
http://www.pfa.org/firesafe/CFSC_facts.pdf

Cigarettes are the leading cause of home fire fatalities in the United States, killing 700 to 900 people - smokers and nonsmokers alike - per year
<http://www.iii.org/article/grilling-safely>

I don't use my patio and have to fight the smoke (cough).

Reality is, your smoking ban has done very little. Going to the grocery use to be smoke free because employees smoked in the break-room. Now they smoke outside the front entrance (cough).

Well thank you pal (John Belushi). Methinks I am at a higher risk to become a second-hand-smoke-dead-innocent-victim-of-circumstances.

You know the IRS and State of Arizona could offer a tax incentive to smoke free communities.

Any thoughts? Damn I hate when that happens (cough).

Michael Marinello
4201 E Monte Vista Dr. K102
Tucson, AZ. 85712
520-240-2455
or
268-442-6343 (Cough an Die) (268-gha-ndie)

SmokeFreeArizona

From: Rosanna Gonzales <ogspeedygonzales@gmail.com>
Sent: Friday, November 11, 2016 6:23 PM
To: SmokeFreeArizona; Rosanna G
Subject: Residential Smokeing

Categories: ADHS

Dear Phoenix Health Services,

I live in a single family home in the Ahwatukee area of Phoenix. I have neighbors who smokes on their patio. They own the home. Unfortunately, my living space is adjacent to their patio and the cigarette smoke enters my home several times daily. He is not a reasonable man and will never comply with any issues I have with him (parties etc), which I have had to get the police involved several times. I am disabled, have health issues, issues with cigarette smoke, allergies, and I have grandchildren who come over several times a week. I cannot have my windows open in my own home due to his smoking.

Please is there something that can be done? Are there any ordinances where he doesn't have the right to disturb me in my home? Or a smoking ordinance? Anything you can do is deeply appreciated.

Thank you for your time.

Rosanna Gonzales
16645 S 28th Place
Phoenix, AZ 85048

SmokeFreeArizona

From: Luann Musser <musser@pharmacy.arizona.edu>
Sent: Tuesday, October 25, 2016 8:28 AM
To: SmokeFreeArizona
Subject: Smoke

Categories: ADHS

Hi there,

I live at South Bank Apartments in Tempe. The neighbor that lives directly across from me smokes. We both have two doors and the security doors are partially metal screen. The neighbor quite often leave his security door open to air out his apartment. When I open my door, the stench of smoke is disgusting. When I walk to my door, the nasty smoke can be smelled well before the doorway. Honestly, it makes me want to vomit. I asked the apartment manager if there is anything to be done and she said no. I asked the neighbor about it and he just said thank you for letting me know. Nothing has been done. Do I have any type of rights in this matter? I don't appreciate being subjected to the stench of second hand smoke.

Best Regards,

Luann

Luann Musser
Coordinator, Administrative Services
The University of Arizona
College of Pharmacy
Phoenix Biomedical Campus
650 East Van Buren Street
Phoenix, AZ 85004-2222
Office: 602.827.2426
Fax: 602.827.2490
musser@pharmacy.arizona.edu

ATTACHMENT A

ARTICLE 1. SMOKE-FREE ARIZONA

R9-2-101. Definitions

In addition to the definitions in A.R.S. § 36-601.01(A), the following definitions apply in this Article unless otherwise specified:

1. "Adult day care" means "adult day health care facility" as defined in A.R.S. § 36-401.
2. "Ashtray" means any receptacle that is designed for disposing of the debris from smoking materials such as ash, cigarette butts or filters, or cigar stubs.
3. "Calendar quarter" means a period from:
 - a. January 1 through March 31,
 - b. April 1 through June 30,
 - c. July 1 through September 30, or
 - d. October 1 through December 31.
4. "Child care facility" has the meaning in A.R.S. § 36-881.
5. "Child care group home" has the meaning in A.R.S. § 36-897.
6. "Complaint" means a written or oral statement of a possible violation of A.R.S. § 36-601.01.
7. "Contiguous area" means a place that:
 - a. Is physically attached to a public place or non-vehicle place of employment; or
 - b. Is separated from the public place or non-vehicle place of employment only by other places controlled by the proprietor of the public place or non-vehicle place of employment.
8. "Controlled" means under the authority and responsibility of a proprietor.
9. "Department" means the Arizona Department of Health Services.
10. "Department's designee" means a state agency or political subdivision to which the Department delegates any functions, powers, or duties under A.R.S. § 36-601.01.
11. "Drift" means the physical movement of tobacco smoke, regardless of cause, into any area where smoking is prohibited by A.R.S. § 36-601.01.
12. "Emergency exit" means a doorway in a building or facility used for egress to the outdoors only when there is an immediate threat to the health or safety of an individual.
13. "Entering" means an individual going into or leaving a building or facility.
14. "Entrance" means a doorway in a building or facility that:
 - a. Is used by an individual for ingress from the outdoors or egress to the outdoors, and
 - b. Excludes:
 - i. An emergency exit, and
 - ii. A doorway for outdoor patio patrons.
15. "Health care institution" means a building or facility regulated under A.R.S. Title 36, Chapter 4.
16. "Health care professional" means one of the following individuals regulated under A.R.S. Title 32 or A.R.S. Title 36, Chapter 6, Article 7 or Chapter 17, including:
 - a. A podiatrist;
 - b. A doctor of chiropractic or chiropractic assistant;
 - c. A dentist, dental consultant, dental hygienist, or denturist;
 - d. A doctor of medicine;
 - e. A doctor of naturopathic medicine or naturopathic medical assistant;
 - f. A registered nurse practitioner, registered nurse, practical nurse, registered or practical nurse licensed by a state other than Arizona and practicing in Arizona according to the Nurse Licensure Compact, A.R.S. § 32-1668, or nursing assistant;
 - g. A dispensing optician;
 - h. An optometrist;
 - i. A doctor of osteopathic medicine;
 - j. A pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee;
 - k. A physical therapist or physical therapist assistant;
 - l. A psychologist;

- m. A veterinarian or veterinary technician;
 - n. A physician assistant;
 - o. A radiologic technologist, including a practical radiologic technologist in podiatry, unlimited practical radiologic technologist, nuclear medicine technologist, or practical technologist in bone densitometry;
 - p. A homeopathic physician or a medical assistant employed by a homeopathic physician;
 - q. A behavioral health professional, including a baccalaureate social worker, master social worker, clinical social worker, professional counselor, associate counselor, marriage and family therapist, associate marriage and family therapist, associate substance abuse counselor, independent substance abuse counselor, or substance abuse technician;
 - r. An occupational therapist or occupational therapy assistant;
 - s. A respiratory therapist or respiratory therapy technician;
 - t. An acupuncturist;
 - u. An athletic trainer;
 - v. A massage therapist;
 - w. A midwife;
 - x. A hearing aid dispenser;
 - y. An audiologist; or
 - z. A speech-language pathologist or speech-language pathology assistant
17. "Open to the general public" means when the proprietor of a veterans or fraternal club permits an individual who is not a member, an employee, or a bona fide guest as defined in A R S § 4-101 to be present in the veterans or fraternal club.
 18. "Outdoor patio" means an area designated by a proprietor according to R9-2-108(A).
 19. "Outdoor patio patron" means an individual who is occupying an outdoor patio.
 20. "Permeable" means permitting tobacco smoke to pass through.
 21. "Private residence" means a structure, other than a health care institution, where an individual lives and sleeps.
 22. "Proprietor" means an owner, operator, manager or other person in control of a public place or a place of employment.
 23. "Reasonable distance" means the distance that meets the requirements in R9-2-102(A).
 24. "Tobacco products and accessories" means:
 - a. Smoking materials such as cigars, cigarettes, or pipe tobacco; and
 - b. Smoking-related materials such as lighters, humidors, pipes, or cigarette cases.
 25. "Vehicle" means motor vehicle as defined in A R.S. § 28-101.
 26. "Ventilation system" means the natural or mechanical means of supplying air to, or removing air from a space

R9-2-102. Reasonable Distance

- A. Except as permitted in R9-2-108(D) or R9-2-108(E), a public place or non-vehicle place of employment shall have a distance where outside smoking is prohibited of at least 20 feet in all directions measured from each outer edge of an entrance, an open window, or a ventilation system.
- B. A proprietor of a public place or non-vehicle place of employment shall not permit tobacco smoke to drift into the area where smoking is prohibited as described in subsection (A).

R9-2-103. Individual Responsibilities

- A. An individual shall not smoke tobacco in an area of a public place or place of employment where smoking is prohibited by A. R S. § 36-601 01 or R9-2-102(A).
- B. An individual in an area of a public place or place of employment where smoking is prohibited by A R S. § 36-601.01 or R9-2-102(A) shall stop smoking immediately when requested to stop smoking by the proprietor of the public place or a place of employment

R9-2-104. Proprietor Responsibilities

A. A proprietor shall:

1. Not permit smoking in a public place, a place of employment, or within the distance required in R9-2-102(A) except according to this Article and the exceptions listed in A.R.S. § 36-601.01(B);
2. Not permit tobacco smoke to drift into a building or facility through an entrance, a window, a ventilation system, or other means;
3. Post signs according to A.R.S. § 36-601.01(E)(1) and R9-2-105;
4. Remove all ashtrays from all areas where smoking is prohibited; and
5. Communicate that smoking is prohibited in places of employment to:
 - a. All existing employees by the effective date of this Article, and
 - b. An applicant for employment at the time of the application for employment

B. If a building or facility that is controlled by a proprietor contains several places of employment or public places that are controlled by other proprietors:

1. The proprietor of the entire building or facility shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the entire building or facility, and
2. The proprietor of each place of employment or public place shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the place of employment or public place.

C. If an individual in an area controlled by a proprietor is smoking in violation of A.R.S. § 36-601.01, the proprietor shall:

1. Inform the individual that the individual is in violation of A.R.S. § 36-601.01, and
2. Request that the individual stop smoking immediately.

D. A proprietor of a veterans or fraternal club shall not permit smoking in an area of the veterans or fraternal club that is open to the general public.

E. A proprietor of a retail tobacco store where smoking is permitted shall comply with R9-2-107

F. A proprietor of an outdoor patio where smoking is permitted shall comply with R9-2-108.

G. A proprietor may declare that smoking is prohibited in an entire establishment, facility, or outdoor area.

H. In a vehicle owned and operated by a proprietor during working hours, the proprietor shall:

1. Not permit smoking in the vehicle when:
 - a. More than one individual occupies the vehicle, and
 - b. The vehicle is used for business purposes; and
2. Post signs according to A.R.S. § 36-601.01(E)(1), A.R.S. § 36-601.01(E)(2), and R9-2-105(C).

R9-2-105. Sign Requirements

A. To meet the requirements of A.R.S. §§ 36-601.01(E)(1) and 36-601.01(E)(2), a proprietor of a public place or non-vehicle place of employment shall post signs that:

1. Are no smaller than four inches by six inches; and
2. Contain:
 - a. The international no smoking symbol or the words "No Smoking";
 - b. The telephone number designated by the Department for making complaints;
 - c. The web site address designated by the Department for making complaints; and
 - d. Letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of five feet; and
3. Include a citation to A.R.S. § 36-601.01.

B. A proprietor of a public place or non-vehicle place of employment shall post a sign that meets the requirements in subsection (A):

1. At every entrance,
2. At a height and location easily seen by an individual entering the public place or non-vehicle place of employment, and
3. So that the sign is not obscured in any way.

- C. A proprietor of a vehicle described in A.R.S. § 36-601 01(A)(7) shall:
1. Post at least one sign that:
 - a. Is no smaller than two inches by three inches;
 - b. Meets the requirements in subsections (A)(2)(a) through (A)(2)(c); and
 - c. Contains letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of three feet;
 2. Include a citation to A.R.S. § 36-601 01 on the sign; and
 3. Firmly affix the sign to:
 - a. A vehicle door window,
 - b. The vehicle dashboard, or
 - c. Another area in the vehicle that is visible to each occupant in the vehicle

R9-2-106. Private Residence

- A. Smoking is prohibited in a private residence licensed or certified by the Department or in areas of a private residence licensed or certified by the Department as:
1. An adult day care,
 2. A child care facility,
 3. A child care group home, or
 4. A health care institution other than an adult day care.
- B. Smoking is prohibited in a health care professional's private residence:
1. In an area where the health care professional provides services to an individual, and
 2. When the health care professional is providing services to an individual
- C. A.R.S. § 36-601.01 does not apply to the private residence of an individual who is receiving services from a health care professional in the individual's private residence.

R9-2-107. Retail Tobacco Store

- A. A proprietor may permit smoking in a retail tobacco store only if the retail tobacco store meets the definition in A.R.S. § 36-601 01(A)(10) and the requirements in A.R.S. § 36-601 01(B)(3) and this Section.
- B. The proprietor of a retail tobacco store where smoking is permitted and that begins operating after January 1 of a calendar year shall complete, by the retail tobacco store's first day of operation, an affidavit that contains:
1. The name of the proprietor of the retail tobacco store,
 2. The name and address of the retail tobacco store,
 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
 4. A statement that the retail tobacco store expects to derive at least 51 percent of its gross income during each calendar year from the sale of tobacco products and accessories as required by A.R.S. § 36-601 01,
 5. A statement describing the documents that contain the facts supporting the statement in subsection (B)(4),
 6. The signature of the proprietor of the retail tobacco store,
 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
 8. The date of the Arizona notary's signature.
- C. The proprietor of a retail tobacco store where smoking is permitted and that has been in operation for at least an entire calendar year shall complete, by January 31 of each year, an affidavit that contains:
1. The name of the proprietor of the retail tobacco store,
 2. The name and address of the retail tobacco store,

3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
 4. A statement that the retail tobacco store derived at least 51 percent of its gross income during the previous calendar year from the sale of tobacco products and accessories,
 5. A statement describing the documents that contain the facts supporting the statement in subsection (C)(4),
 6. The signature of the proprietor of the retail tobacco store,
 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
 8. The date of the Arizona notary's signature
- D. If the Department or the Department's designee receives a complaint under R9-2-109(A) about a retail tobacco store where smoking is permitted, the proprietor of the retail tobacco store shall provide to the Department or the Department's designee:
1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
 2. Documents that enable the Department or the Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories:
 - a. For the calendar quarter immediately preceding the date of the complaint; or
 - b. If the retail tobacco store was not in operation for the entire calendar quarter immediately preceding the date of the complaint, for the period beginning on the date the retail tobacco store opened and ending on the date of the complaint.
- E. The proprietor of a retail tobacco store where smoking is permitted shall retain on the premises of the retail tobacco store and make available to the Department or the Department's designee upon request:
1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
 2. The documents:
 - a. Identified under subsection (B)(5) or subsection (C)(5), whichever is appropriate; and
 - b. Required under subsection (D)(2).

R9-2-108. Outdoor Patio

- A. A proprietor may designate an area as an outdoor patio where smoking is permitted only if the area:
1. Is a contiguous area of a place of employment or public place;
 2. Is controlled by the proprietor of the place of employment or public place; and
 3. Has:
 - a. At least one side that consists of:
 - i. Open space;
 - ii. Permeable material;
 - iii. A combination of open space and permeable material; or
 - iv. A combination of open space, permeable material, and a non-permeable wall that is not higher than three and one-half feet or the minimum height required by an applicable local ordinance or building code, whichever is greater; or
 - b. No overhead covering or an overhead covering that consists of:
 - i. Permeable material, or
 - ii. A combination of open space and permeable material.
- B. If an outdoor patio where smoking is permitted has a doorway for outdoor patio patrons and does not have a wall that prevents individuals from entering the outdoor patio, the proprietor shall:
1. Inform individuals that the doorway:
 - a. Is not an entrance, and
 - b. Is a doorway for outdoor patio patrons; and
 2. Direct individuals who are not outdoor patio patrons to an entrance.

- C. If a proprietor designates an area as an outdoor patio where smoking is permitted, the proprietor shall not permit tobacco smoke to drift into areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.
- D. The reasonable distance required in R9-2-102(A) does not apply to a doorway for outdoor patio patrons, a window, or a ventilation system located in an area designated as an outdoor patio where smoking is permitted.
- E. If an outdoor patio is located less than 20 feet from any entrance of a public place or non-vehicle place of employment, a proprietor may permit smoking on the outdoor patio only if the proprietor uses a method that:
 - 1. Permits an individual to avoid breathing tobacco smoke when using the entrance at the public place or non-vehicle place of employment, and
 - 2. Does not permit tobacco smoke to drift into the public place or non-vehicle place of employment through entrances, open windows, ventilation systems, or other means.
- F. A proprietor may designate an outdoor patio as an area where smoking is prohibited.

R9-2-109. Complaint; Observation; Notification; Inspection

- A. When a person makes a complaint to the Department or the Department's designee under A.R.S. § 36-601.01, the complaint shall include:
 - 1. The name and address of the public place or place of employment that is the subject of the complaint;
 - 2. The date and approximate time of the occurrence that gave rise to the complaint;
 - 3. A description of the occurrence that gave rise to the complaint; and
 - 4. Any other information relevant to the occurrence that gave rise to the complaint
- B. An individual shall make a complaint according to subsection (A) if the individual:
 - 1. Conducted an inspection pursuant to:
 - a. A.R.S. Title 36, Chapter 4 or Chapter 7 1; or
 - b. A.R.S. § 36-136(D) and 9 A.A.C. 8; and
 - 2. During the inspection, observed a possible violation of A.R.S. § 36-601.01.
- C. Within 15 days after receipt of a complaint made according to subsection (A), the Department or the Department's designee shall:
 - 1. Notify the proprietor at the public place or place of employment about the complaint; or
 - 2. Conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment.
- D. If a complaint made according to subsection (A) is not resolved under subsection (C)(1), the Department or the Department's designee shall conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment that is the subject of the complaint.

R9-2-110. Determination of Violation

In determining whether a violation of A.R.S. § 36-601.01 has occurred, the Department or the Department's designee shall consider the following:

- 1. The presence of an ashtray in an area where smoking is prohibited;
- 2. The lack of a sign that is required under A.R.S. § 36-601.01(E) or the presence of a sign that does not meet the requirements of R9-2-105;
- 3. The presence of smoking;
- 4. The presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;
- 5. The presence of tobacco smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means; and
- 6. Except as provided in R9-2-108(D) and R9-2-108(E), the presence of tobacco smoke within a reasonable distance from entrances, open windows, or ventilation systems.

R9-2-111. Notice of Violation; Notice of Assessment

- A After the Department or the Department's designee determines that a violation of A.R.S. § 36-601.01 has occurred, and based on the criteria in R9-2-112, the Department or the Department's designee may send to the proprietor at the place of employment or public place a written notice of violation that includes:
- 1 The nature of the violation;
 - 2 The date and time that the violation occurred;
 - 3 The name, telephone number, and e-mail address of the Department contact person or the contact person of the Department's designee; and
 - 4 If a civil penalty is being assessed, a notice of assessment.
- B If the Department or the Department's designee issues a notice of violation or a notice of assessment, a person to whom the notice is issued may appeal the determination that a violation has occurred or assessment of a civil penalty:
- 1 According to A.R.S. Title 41, Chapter 6, Article 10, if the Department made the determination or assessment; or
 - 2 According to procedures of the Department's designee that are consistent with A.R.S. Title 41, Chapter 6, Article 10, if the Department's designee made the determination or assessment.

R9-2-112. Criteria for Issuing a Notice of Violation or Notice of Assessment

In determining whether to issue a notice of violation under A.R.S. § 36-601.01(G)(5), whether to issue a notice of assessment under A.R.S. § 36-601.01(G)(6), or the amount of a civil penalty that is being assessed, the Department or the Department's designee shall consider:

- 1 The seriousness of the violation;
- 2 Any economic benefit that results from the violation;
- 3 The duration of the violation;
- 4 The previous violations of A.R.S. § 36-601.01 at the place of employment or public place, including:
 - a. The type and severity of any previous violation,
 - b. The number of individuals affected by the previous violations,
 - c. The total number of previous violations, and
 - d. The length of time from the first violation to the current violation;
- 5 Any good faith efforts to comply with the requirements of A.R.S. § 36-601.01, including:
 - a. Reporting violations to the Department or the Department's designee; and
 - b. Meeting the requirements of A.R.S. § 36-601.01(I) by:
 - i. Informing an individual who is smoking that smoking is illegal, and
 - ii. Requesting that the individual immediately stop the illegal smoking; and
- 6 Other factors affecting the public health and safety the Department or the Department's designee deems relevant.

ATTACHMENT B

36-601.01. Smoke-free Arizona act

(Caution: 1998 Prop. 105 applies.)

A. Definitions. The following words and phrases, whenever used in this section, shall be construed as defined in this section:

1. "Employee" means any person who performs any service on a full-time, part-time or contracted basis whether or not the person is denominated an employee, independent contractor or otherwise and whether or not the person is compensated or is a volunteer.
2. "Employer" means a person, business, partnership, association, the state of Arizona and its political subdivisions, corporations, including a municipal corporations, trust, or non-profit entity that employs the services of one or more individual persons.
3. "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling. Enclosed area includes a reasonable distance from any entrances, windows and ventilation systems so that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and so that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means.
4. "Health care facility" means any enclosed area utilized by any health care institution licensed according to title 36 chapter 4, chapter 6 article 7, or chapter 17, or any health care professional licensed according to title 32 chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41, or 42.
5. "Person" means an individual, partnership, corporation, limited liability company, entity, association, governmental subdivision or unit of a governmental subdivision, or a public or private organization of any character.
6. "Physically separated" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageway) and independently ventilated from smoke-free areas, so that air within permitted smoking areas does not drift or get vented into smoke-free areas.
7. "Places of employment" means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including office buildings, work areas, auditoriums, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, hallways, stairs, elevators, health care facilities, private offices and vehicles owned and operated by the employer during working hours when the vehicle is occupied by more than one person. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
8. "Veteran and fraternal clubs" means a club as defined in A.R.S. 4-101(7)(a)(b) or (c).
9. "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including airports, banks, bars, common areas of apartment buildings, condominiums or other multifamily housing facilities, educational facilities, entertainment facilities or venues, health care facilities, hotel and motel common areas, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports facilities, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
10. "Retail tobacco store" means a retail store that derives the majority of its sales from tobacco products and accessories.
11. "Smoking" means inhaling, exhaling, burning, or carrying or possessing any lighted tobacco product, including cigars, cigarettes, pipe tobacco and any other lighted tobacco product.

- 12 "Sports facilities" means enclosed areas of sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, billiard halls, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sporting events.
- B. Smoking is prohibited in all public places and places of employment within the state of Arizona, except the following:
1. Private residences, except when used as a licensed child care, adult day care, or health care facility.
 2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than fifty percent of rooms rented to guests in a hotel or motel are so designated.
 3. Retail tobacco stores that are physically separated so that smoke from retail tobacco stores does not infiltrate into areas where smoking is prohibited under the provisions of this section.
 4. Veterans and fraternal clubs when they are not open to the general public.
 5. Smoking when associated with a religious ceremony practiced pursuant to the American Indian religious freedom act of 1978.
 6. Outdoor patios so long as tobacco smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.
 7. A theatrical performance upon a stage or in the course of a film or television production if the smoking is part of the performance or production.
- C. The prohibition on smoking in places of employment shall be communicated to all existing employees by the effective date of this section and to all prospective employees upon their application for employment.
- D. Notwithstanding any other provision of this section, an owner, operator, manager, or other person or entity in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.
- E. Posting of signs and ashtray removal.
1. "No smoking" signs or the international "no smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted by the owner, operator, manager, or other person in control of that place identifying where smoking is prohibited by this section and where complaints regarding violations may be registered.
 2. Every public place and place of employment where smoking is prohibited by this section shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
 3. All ashtrays shall be removed from any area where smoking is prohibited by this section by the owner, operator, manager, or other person having control of the area.
- F. No employer may discharge or retaliate against an employee because that employee exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.
- G. The law shall be implemented and enforced by the department of health services as follows:
1. The department shall design and implement a program, including the establishment of an internet website, to educate the public regarding the provisions of this law.
 2. The department shall inform persons who own, manage, operate or otherwise control a public place or place of employment of the requirements of this law and how to comply with its provisions including making information available and providing a toll-free telephone number and e-mail address to be used exclusively for this purpose.
 3. Any member of the public may report a violation of this law to the department. The department shall accept oral and written reports of violation and establish an e-mail

- address(es) and toll-free telephone number(s) to be used exclusively for the purpose of reporting violations. A person shall not be required to disclose the person's identity when reporting a violation.
4. If the department has reason to believe a violation of this law exists, the department may enter upon and into any public place or place of employment for purposes of determining compliance with this law. However, the department may inspect public places where food or alcohol is served at any time to determine compliance with this law.
 5. If the department determines that a violation of this law exists at a public place or place of employment, the department shall issue a notice of violation to the person who owns, manages, operates or otherwise controls the public place or place of employment. The notice shall include the nature of each violation, date and time each violation occurred, and department contact person.
 6. The department shall impose a civil penalty on the person in an amount of not less than \$100, but not more than \$500 for each violation. In considering whether to impose a fine and the amount of the fine, the department may consider whether the person has been cited previously and what efforts the person has taken to prevent or cure the violation including reporting the violation or taking action under subsection J. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. A person may appeal the assessment of a civil penalty by requesting a hearing. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.
 7. If a civil penalty imposed by this section is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.
 8. The department may apply for injunctive relief to enforce these provisions in the superior court in the county in which the violation occurred. The court may impose appropriate injunctive relief and impose a penalty of not less than \$100 but not more than \$500 for each violation. Each day that a violation occurs constitutes a separate violation. If the superior court finds the violations are willful or evidence a pattern of noncompliance, the court may impose a fine up to \$5000 per violation.
 9. The department may contract with a third party to determine compliance with this law.
 10. The department may delegate to a state agency or political subdivision of this state any functions, powers or duties under this law.
 11. The director of the department may promulgate rules for the implementation and enforcement of this law. The department is exempt from the rulemaking procedures in A.R.S. § title 41, chapter 6 except the department shall publish draft rules and thereafter take public input including hold at least two public hearings prior to implementing the rules. This exemption expires May 1, 2007.
- H. Beginning on June 1, 2008 and every other June 1 thereafter, the director of the Arizona department of health services shall issue a report analyzing its activities to enforce this law, including the activities of all of the state agencies or political subdivisions to whom the department has delegated responsibility under this law.
- I. An owner, manager, operator or employee of place regulated by this law shall inform any person who is smoking in violation of this law that smoking is illegal and request that the illegal smoking stop immediately.
- J. This law does not create any new private right of action nor does it extinguish any existing common law causes of action.

- K. A person who smokes where smoking is prohibited is guilty of a petty offense with a fine of not less than fifty dollars and not more than three hundred dollars.
- L. Smoke-free Arizona fund
 - 1. The smoke-free Arizona fund is established consisting of all revenues deposited in the fund pursuant to §42-3251.02 and interest earned on those monies. The Arizona department of health services shall administer the fund. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by §35-313 and monies earned from investment shall be credited to the fund.
 - 2. All money in the smoke-free Arizona fund shall be used to enforce the provisions of this section provided however that if there is money remaining after the department has met its enforcement obligations, that remaining money shall be deposited in the tobacco products tax fund and used for education programs to reduce and eliminate tobacco use and for no other purpose.
 - 3. Monies in this fund are continuously appropriated, are not subject to further approval, do not revert to the general fund and are exempt from the provisions of §36-190 relating to the lapsing of appropriations.
- M. This section does not prevent a political subdivision of the state from adopting ordinances or regulations that are more restrictive than this section nor does this section repeal any existing ordinance or regulation that is more restrictive than this section.
- N. Tribal sovereignty - this section has no application on Indian reservations as defined in ARS 42-3301(2).

DEPARTMENT OF HEALTH SERVICES (F17-0208)
Title 9, Chapter 8, Article 6, Camp Grounds



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-4

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Chris Kleminich, Staff Attorney

DATE : January 24, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-17-0208)
Title 9, Chapter 8, Article 6, Camp Grounds

This five-year-review report from the Arizona Department of Health Services (Department) covers seven rules in A.A.C. Title 9, Chapter 8, related to food, recreational, and institutional sanitation. The rules were established at some point prior to November 1, 1976, and have not been amended since.

The Department indicates that the rules are intended to set standards for the safe and sanitary operation of camp grounds. The rules establish minimum requirements for management, water supply, fire protection, sewage and refuse disposal, clean and sanitary toilets, and construction and maintenance of buildings.

Proposed Action

The Department acknowledges that the rules are antiquated but indicates that local health departments and the Department can interpret the requirements for present-day industry practices. As such, the Department believes that the rules are necessary, effective, and sufficient to protect public health. Nevertheless, to address issues identified in the report, the Department indicates that it plans to amend the rules prior to the due date of the next five-year-review report, February 2022.

Substantive or Procedural Concerns

In accordance with Governor Ducey's call for agencies to eliminate and improve outdated regulations, Council staff strongly encourages the Department to take action on these antiquated rules well in advance of February 2022 target date proposed in the report.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that the rules are effective, despite being antiquated, because of the expertise of local health departments and the Department in interpreting requirements for present-day industry practices and facilities. While Council staff does not believe the Department's broad interpretation of the word "effective" should be held against it, it is the opinion of this analyst that antiquated rules should not be deemed effective rules.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. The Department indicates that it has not received any written criticisms of the rules during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. A.R.S. § 36-136(H)(8) requires the Department to enact rules "concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels."

5. Has the agency analyzed the rules' consistency with statutes and other rules?

Yes. The Department indicates that the rules are consistent with statutes and other rules, with the following exceptions:

- **Section 611:** In accordance with Laws 2016, Ch. 200, the rule does not provide an exemption from regulation for "primitive camp and picnic grounds."
- **Section 613:** Subsection (A) contains a reference to the "water supply system" which has since been recodified to A.A.C. Title 18, Chapter 4, Article 2. For purposes of enforcing the rule, local health departments are aware of the recodification.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that it has delegated its inspection and abatement authority to the local health departments having jurisdiction over their respective camp grounds. The rules are enforced by local health departments and the Department through interpretations of the requirements for present-day industry practices and facilities.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. Because the rules are antiquated, they are not generally clear, concise, and understandable.

8. **Stringency of the Rules:**

a. **Are the rules more stringent than corresponding federal law?**

No. The Department indicates that no federal laws directly correspond to these rules.

b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable, as the rules were adopted prior to July 29, 2010.

b. **If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?**

Not applicable.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. In 2012, the Department indicated its intent to amend the rules by July 2015. Due to competing Department priorities, the Department did not complete the course of action identified in the report.

Conclusion

As noted above, the Department intends to amend the rules by February 2022. While staff believes that it is in the best interests of the state for the Department to take action on these rules well in advance of that date, the report meets the requirements of A.R.S. § 41-1056 and R1-6-301, and as such, this analyst recommends that the report be approved.



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-4

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE : January 24, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-17-0208)
Title 9, Chapter 8, Article 6, Camp Grounds

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 6 rules contained in the five-year-review report.

The rules provide measures concerning sewage and excreta disposal; garbage and trash collection, storage and disposal; and water supply for non-primitive camp grounds in Arizona.

Specifically, the rules set out minimum standards to ensure that camp grounds are built, operated, and maintained in a safe and sanitary manner, including standards for:

- Management of the grounds;
- Water supply;
- Protections against fires;
- Sewage and refuse disposal;
- Clean and sanitary toilets; and
- Construction and maintenance of buildings.

As of July 2016, there were 22 camp grounds on Arizona state land. Local county health departments completed 25 inspections over FY 2016.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules in Article 6 are effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is

minimal and necessary to protect public health and safety. The Department does not plan to amend the rules at this time.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

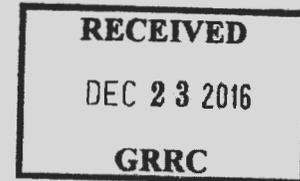
After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



ARIZONA DEPARTMENT
OF HEALTH SERVICES

December 23, 2016

Nicole A. Ong, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007



RE: Report for A.A.C. Title 9, Chapter 8, Article 6, Camp Grounds

Dear Ms. Ong:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 8, Article 5 is due to the Council no later than February 28, 2017. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 8, Article 6, and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, and the general and specific authority are included in the package. As described in the report, the Department does not plan to amend the rules in 9 A.A.C. 8, Article 6 at this time.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director's Designee

RL:mjb
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 6. CAMP GROUNDS

December 2016

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION
ARTICLE 6. CAMP GROUNDS
TABLE OF CONTENTS

1.	FIVE-YEAR-REVIEW SUMMARY	Page 3
2.	INFORMATION THAT IS IDENTICAL FOR ALL THE RULES	Page 4
3.	INFORMATION FOR INDIVIDUAL RULES	Page 7
4.	CURRENT RULES	Attachment A
5.	GENERAL AND SPECIFIC STATUTES	Attachment B

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statute (A.R.S.) § 36-136(F) provides the Director of the Arizona Department of Health Services (Director) the authority to “make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.” Section 36-136(H)(8) specifically requires the Arizona Department of Health Services (Department) to promulgate rules prescribing reasonably necessary measures concerning sewage and excreta disposal; garbage and trash collection, storage and disposal; and water supply for non-primitive¹ camp grounds in Arizona. Section 36-136(H)(8) also provides for inspection of camp ground premises and for abatement as public nuisances² of any camp ground premises or facilities that do not comply with the rules.

The seven rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 8, Article 6 set out minimum standards to ensure that camp grounds are built, operated, and maintained in a safe and sanitary manner, including standards for:

- Management of the grounds;
- Water supply;
- Protection against fires;
- Sewage and refuse disposal;
- Clean and sanitary toilets; and
- Construction and maintenance of buildings.

For reasons discussed in this 5-Year-Review Report, the Department anticipates amending the rules in 9 A.A.C. 8, Article 6 before the next 5-Year-Review Report is due.

¹ Pursuant to Laws 2016, Ch. 200, “primitive camp and picnic grounds” offered by a state or political subdivision of the state are exempt from these rules. *See* A.R.S. § 36-136(H)(8). “[P]rimitive camp and picnic grounds’ means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.” *Id.*

² Section 36-601(A) defines public nuisances that are under the Department’s control as those that are dangerous to public health. Section 36-601(B) provides that based on reasonable cause the Director may serve a cease and desist order capable of leading to a camp ground’s abatement as a public nuisance.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Authorization of the rule by existing statutes

The general statutory authority for the rules in 9 A.A.C. 8, Article 6 is A.R.S. §§ 36-132(F) and 36-601(A)(B). The specific statutory authority for the rules in 9 A.A.C. 8, Article 6 is A.R.S. § 36-136(H)(8).

2. The purpose of the rules

The purpose of the rules in 9 A.A.C. 8, Article 6 is to ensure that camp grounds in Arizona are constructed, operated, and maintained in a sanitary manner, thus protecting public health

3. Analysis of effectiveness in achieving the objectives

The rules are effective in achieving their respective objectives.

4. Analysis of consistency with state and federal statutes and rules

Except for R9-8-611 and R9-8-613, the rules are consistent with state and federal statutes and rules. Additional specific comments regarding consistency with state statutes and rules appear in the information for R9-8-611 and R9-8-613.

5. Status of enforcement of the rules

The Department has delegated its inspection and abatement authority under A.R.S. § 36-136(H)(8) to the local health departments having jurisdiction over the respective camp grounds. *See* A.R.S. § 36-136(D). The rules are antiquated, but are nonetheless effective in achieving their individual objectives because of the expertise of local health departments and the Department in interpreting requirements for present-day industry practices and facilities.

6. Analysis of clarity, conciseness, and understandability

All of the rules are understandable. However, all the rules fail to meet current rulemaking and style requirements published by the Office of the Secretary of State and therefore may not be as clear as they could be if these standards were employed. All of the rules contain undefined or ambiguous language affecting the clarity and conciseness of the rules, which is discussed in the section for each individual rule.

7. Summary of the written criticisms of the rule received within the last five years

The Department has not received any written criticism of the rules in the last five years.

8. Economic, small business, and consumer impact comparison

According to Arizona Administrative Rules and Regulations (copyright 1975), the first filing of the camp ground rulemaking occurred prior to 1976 and was approved by regular rulemaking. The Arizona Administrative Code does not include an effective date for the rules in the Article, and there is no economic impact statement on file.

The Department delegates its inspection and abatement authority to the local health departments having jurisdiction over the respective camp grounds. *See* A.R.S. § 36-136(D). As of July 2016, there are 22 camp grounds on Arizona state land, and local county health departments have completed 25 inspections over fiscal year 2016. Because the Department delegates its inspection and abatement authority to local health departments, the Department has not inspected any camp grounds.

The Department has determined³ that:

- The Department incurs minimal costs to administer the rules.
- The local health departments incur moderate cost for providing inspections and abatement.
- The camp ground owners and operators incur a minimal cost as a result of the rules.
- The public incurs a minimal cost as a result of the rules.
- The public health benefits of having the rules outweigh the costs of the rules to the Department, local health departments, camp ground owners and operators, and the public.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

In the 2012 Five-Year-Review Report, the Department anticipated submitting a Notice of Final Rulemaking to the Governor’s Regulatory Review Council by July 2015, subject to change based on the length of the Governor’s rulemaking moratorium and the Department’s priorities and staffing. That course of action was not completed due to continuation of the rulemaking moratorium and competing Department priorities, as well as the fact that the rules, although antiquated, were enforced through the expertise of local health departments and the Department by interpreting the requirements for present-day industry practices.

³ The cost is minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

11. **A determination 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 rules are designed to prevent conditions that would negatively affect public health. *See* A.R.S. § 36-601(A) (defining conditions that are deemed “public nuisances dangerous to the public health”). The Department and local health departments continue to use the rules without increased cost or burden. For these reasons, the Department has determined that the rules provide the least burden and cost to the Department and persons regulated by the rules.

12. **Analysis of stringency compared to federal laws**

The rules are not related to federal laws.

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

The rules were adopted before July 29, 2010.

14. **Proposed course of action**

The rules in 9 A.A.C. 8, Article 6 are antiquated, but nonetheless necessary and effective, and sufficient to protect the public health due to the expertise of local health departments and the Department in interpreting the requirements for present-day industry practices. *See* A.R.S. § 36-136((H)(8) (requiring the Department to prescribe by rule certain minimum standards for camp grounds). To address issues discussed in this 5-Year-Review Report, the Department anticipates amending these rules before the next 5-Year-Review Report is due. This course of action is subject to change based on the Governor’s rulemaking moratorium and the Department’s priorities.

INFORMATION FOR INDIVIDUAL RULES

R9-8-611. Scope

2. Objective

The objective of the rule is to identify who is required to comply with 9 A.A.C. 8, Article 6, Camp Grounds.

4. Analysis of consistency with state and federal statutes and rules

The rule does not provide an exemption from regulation to “primitive camp and picnic grounds,” as provided in Laws 2016, Ch. 200.

6. Analysis of clarity, conciseness, and understandability

The rule is understandable but could be more clear if it distinguished “primitive camp and picnic grounds,” as defined in A.R.S. § 36-136(H)(8), as being exempt from the rule. The definition of, and exemption for, “primitive camp and picnic grounds” is, however, provided in A.R.S. § 36-136(H)(8)⁴.

R9-8-612. Supervision

2. Objective

The objective of the rule is to establish requirements for operating and maintaining a camp ground in a sanitary manner and requires that camp ground management be directly accountable to keep grounds and equipment in a clean and sanitary condition.

6. Analysis of clarity, conciseness, and understandability

The rule is understandable but could be more clear if undefined language such as “management,” “equipment,” “good repair,” and “sanitary appliances” was defined.

R9-8-613. Water Supply

2. Objective

The objective of the rule is to establish requirements to ensure that a camp ground’s water supply is clean, easy to access, properly maintained, and sufficient to supply the maximum number of persons occupying the camp ground.

4. Analysis of consistency with state and federal statutes and rules

Subsection (A) contains a reference to Article 2 of the Chapter regarding the “water supply system.” However, the information regarding “water supply system” has since been recodified to A.A.C. Title 18, Chapter 4, Article 2, State Drinking Water Regulations. In enforcing this rule,

⁴ “[P]rimitive camp and picnic grounds” means “grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.” A.R.S. § 36-136(H)(8).

county health departments are aware of the correct location of the rules relating to the water supply system.

6. Analysis of clarity, conciseness, and understandability

The rule is understandable but could be more clear if words and phrases such as “ample quantity,” “pipe distribution system,” “above-ground source,” “covered properly,” “open pipe or faucet,” “dipping,” “seeps,” “unsafe for human consumption,” “eliminated,” and “purified” were defined.

R9-8-614. Protection against fires

2. Objective

The objective of the rule is to establish requirements to ensure proper management of fires made by persons occupying a camp ground by limiting the location at which a fire may be made and requiring that a person continuously observe the fire and extinguish the fire before leaving the camp ground.

6. Analysis of clarity, conciseness, and understandability

The rule is understandable but could be more clear if phrases such as “other property,” and “completely extinguished” were defined.

R9-8-615. Sewage and refuse disposal

2. Objective

The objective of the rule is to establish sewage and refuse disposal requirements to ensure the camp ground is maintained in a sanitary manner. The rule provides standards and locations for sewage and refuse-disposal equipment, and the criteria to determine appropriate sewage and refuse-disposal method.

6. Analysis of clarity, conciseness, and understandability

The rule is understandable but could be more clear if words and phrases such as “unsightly,” “final sewage or refuse disposal,” “sufficient number,” “iron hoppers,” “sewerage system,” and “domestic waste waters” were defined.

R9-8-616. Toilets

2. Objective

The objective of the rule is to establish requirements to provide and maintain for camp ground toilets, including disposing of human waste in a manner that is sanitary and convenient.

6. Analysis of clarity, conciseness, and understandability

The rule is understandable but could be more clear if phrases such as “fly-tight privies,” “clean and sanitary condition,” and “plainly indicated” were defined.

R9-8-617. Construction and maintenance of buildings

2. Objective

The objective of the rule is to establish construction and maintenance standards for structures used for human habitation, including requirements for:

- Interior floors and walls to ensure they are clean and vermin free.
- Adequate air space in rooms used for sleeping.
- Kitchens to be separate from sleeping rooms and equipped to ensure sanitary conditions are maintained.
- Disposing of waste in a manner to ensure sanitary conditions are maintained.
- Daily cleaning to ensure the structures provide a healthy environment.

6. Analysis of clarity, conciseness, and understandability

The rule is understandable but could be more clear if phrases such as “open and free,” “surfaced lumber,” “easily be kept clean,” “always be kept,” and “thoroughly clean condition” were defined.

ATTACHMENT

A

ARTICLE 6. CAMP GROUNDS

R9-8-601. Reserved

R9-8-602. Reserved

R9-8-603. Reserved

R9-8-604. Reserved

R9-8-605. Reserved

R9-8-606. Reserved

R9-8-607. Reserved

R9-8-608. Reserved

R9-8-609. Reserved

R9-8-610. Reserved

R9-8-611. Scope

The regulations in this Article shall apply to any city, county, city and county, village, community, institution, person, firm or corporation operating, maintaining or offering for public use within the state of Arizona any tract of land on which persons may camp or picnic either free of charge or by payment of a fee. Each and every owner and lessee of any public camp or picnic ground shall be held responsible for full compliance with these regulations.

R9-8-612. Supervision

- A. The management of every public camp or picnic ground shall assume responsibility for maintaining in good repair all sanitary appliances on said ground and shall promptly bring such action as may be necessary to prosecute or eject from such ground any person who willfully or maliciously damages such appliances or any person who in any way fails to comply with these regulations.
- B. At least one caretaker shall be employed by the management to visit said camp or picnic ground every day that campers or picnickers occupy said ground. Such caretaker shall do whatever may be necessary to keep said ground and its equipment in a clean and sanitary condition.
- C. Each camping party shall be allotted usable space of not less than 350 square feet.

R9-8-613. Water supply

- A. The water supply system shall be in accordance with Article 2 of this Chapter and shall be provided in ample quantity to meet all requirements of the maximum number of persons using such ground at any time. Said water supply shall be easily obtained from its source or on a pipe distribution system from faucets which shall be located not more than 300 feet from a camp or picnic spot within such ground. If water supply is obtained direct from above-ground source, said source must be covered properly and water withdrawn by means of open pipe or faucet as approved by the Department. In no case can dipping from open springs, seeps or wells be permitted.
- B. Any water considered unsafe for human consumption in the vicinity of such ground, to which campers or picnickers may have access, shall be either eliminated or purified or shall be kept posted with placards definitely warning persons against its use.

R9-8-614. Protection against fires

No fires shall at any time be so located as to endanger automobiles or other property in the camp ground. No fires shall be left unattended at any time, and all fires shall be completely extinguished before leaving.

R9-8-615. Sewage and refuse disposal

- A. Supervision and equipment: Supervision and equipment sufficient to prevent littering of the ground with rubbish, garbage or other refuse shall be provided and maintained. Fly-tight depositories for such materials shall be provided and conspicuously located. Each and every camp or picnic spot on said ground shall be within a distance of not over 200 feet from such a depository. These depositories shall not be permitted to become foul smelling or unsightly or breeding places for flies.
- B. The method of final sewage or refuse disposal utilized in connection with the operation of any camp or picnic ground shall be such as to create no nuisance.
- C. Basins: A sufficient number of basins, iron hoppers or sinks shall be provided and each shall be connected with a sewerage system; these are to be used for the disposal of domestic waste waters.

R9-8-616. Toilets

Fly-tight privies or water-flushed toilets shall be provided and shall be maintained in a clean and sanitary condition. Separate toilets for men and women shall be provided, one for each 25 men and one for each 25 women or fraction thereof of the maximum number of persons occupying such ground at any time. No camp or picnic spot within such ground shall be at a greater distance than 400 feet from both a women's and men's toilet. The location of all toilets shall be plainly indicated by signs.

R9-8-617. Construction and maintenance of buildings

If cottages, cabins, tent houses, dwelling houses or other structures to be used for human habitation are erected in any public camping ground, the following requirements in their construction shall be observed: (Note: All local building ordinances must be complied with in addition to observing the following requirements.)

1. All wood floors shall be raised at least 18 inches above the ground and space underneath such floors shall be left open and free from obstruction on at least two opposite sides. All floors shall be constructed of tongue and groove material.
2. Interior walls shall be of surfaced lumber or other material that may easily be kept clean and shall be constructed so that they may always be kept in a thoroughly clean condition.
3. No room for sleeping purposes shall have less than 500 cubic feet of air space for each occupant.
4. The area of window space in each sleeping room shall be equal to at least one-eighth of the floor area of the room.
5. Windows of sleeping rooms shall be so constructed that at least half of each window can be opened.
6. Cooking, including the preparation and storing of food must not be allowed in any room used for sleeping. Partitions and doors between cooking and sleeping rooms must be tight.
7. If kitchen is provided, it must be equipped with running water and a sink connected with a sewerage system or septic tank. Kitchen must be screened against flies and mosquitoes.
8. If inside toilet is provided it must be water flushed and connected with a sewerage system or septic tank. Room containing such toilets must have window opening to the outside air. Bath and lavatory must be connected with sewerage system or septic tank.
10. Covered metal garbage containers must be provided, at least one for every two buildings.
11. Buildings shall be cleaned daily and after each occupancy shall be thoroughly cleaned. If bedding is provided it must be kept in a clean condition.

ATTACHMENT

B

36-132. Department of health services; functions; contracts

A. The department shall, in addition to other powers and duties vested in it by law:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for the developmentally disabled. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state.

When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to assure the accomplishment of recognized local public health activities and delegated

functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

E. The compensation of all personnel shall be as determined pursuant to section 38-611.

F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

H. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to assure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event that takes place at a workplace, such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous and that is displayed in an area of less than ten linear feet.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for developmentally disabled individuals, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

5. Prescribe reasonably necessary measures to assure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to assure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to assure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for

abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

J. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

K. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (b) of this section, a kitchen in a private home that is used as a cooking school and that prepares and offers food to students is exempt from the rules prescribed in subsection H of this section if all of the following are true:

1. Only one cooking school meal per day is prepared and served.
2. The meal is served to not more than fifteen cooking school students.
3. The students are informed by a statement contained in a published advertisement, mailed brochure and placard posted at the cooking school's registration that the food is prepared in a kitchen that is not regulated and inspected by the department or by a local health authority.

36-601. Public nuisances dangerous to public health

- A. The following conditions are specifically declared public nuisances dangerous to the public health:
1. Any condition or place in populous areas that constitutes a breeding place for flies, rodents, mosquitoes and other insects that are capable of carrying and transmitting disease-causing organisms to any person or persons or any condition or place that constitutes a feral colony of honeybees that is not currently maintained by a beekeeper and that poses a health or safety hazard to the public.
 2. Any spoiled or contaminated food or drink intended for human consumption.
 3. Any restaurant, food market, bakery or other place of business or any vehicle where food is prepared, packed, processed, stored, transported, sold or served to the public that is not constantly maintained in a sanitary condition.
 4. Any place, condition or building that is controlled or operated by any governmental agency and that is not maintained in a sanitary condition.
 5. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.
 6. Any vehicle or container that is used in the transportation of garbage, human excreta or other organic material and that is defective and allows leakage or spillage of contents.
 7. The presence of ectoparasites such as bedbugs, lice, mites and others in any place where sleeping accommodations are offered to the public.
 8. The maintenance of any overflowing septic tank or cesspool, the contents of which may be accessible to flies.
 9. The pollution or contamination of any domestic waters.
 10. The use of the so-called common drinking cup used for drinking purposes by more than one person. This paragraph does not apply to receptacles properly washed and sanitized after each service.
 11. The presence of common towels for use of the public in any public or semipublic place unless properly washed and sanitized following each use.
 12. Buildings or any parts of buildings that are in a filthy condition and that may endanger the health of persons living in the vicinity.
 13. Spitting or urinating on sidewalks, or floors or walls of a public building or buildings used for public assemblage, or a building used for manufacturing or industrial purposes, or on the floors or platforms or any part of a railroad or other public conveyance.
 14. The use of the contents of privies, cesspools or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.
 15. The maintenance of public assemblage or places of assemblage without providing adequate sanitary facilities. Open surface privies are adequate sanitary facilities if they are outside populous areas and meet reasonable health requirements.
 16. Hotels, tourist courts and other lodging establishments that are not kept in a clean and sanitary condition or for which suitable and adequate toilet facilities are not provided.
 17. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law.
 18. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, that is sold to the public, distributed to the public or used in production, processing, storing, handling,

servicing or transportation of food and drink and that is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease causing substances or organisms.

19. The emission of mercaptan in a concentration level that causes endangerment to the health or safety of any considerable number of persons of a neighborhood or community.

20. The operation of an environmental laboratory in violation of chapter 4.3, article 1 of this title.

B. If the director has reasonable cause to believe from information furnished to the director or from investigation made by the director that any person is maintaining a nuisance or engaging in any practice contrary to the health laws of this state, the director shall promptly serve on that person by certified mail a cease and desist order requiring the person, on receipt of the order, promptly to cease and desist from that act. Within fifteen days after receipt of the order, the person to whom it is directed may request the director to hold a hearing. The director, as soon as practicable, shall hold a hearing, and if the director determines the order is reasonable and just and that the practice engaged in is contrary to the health laws of this state, the director shall order the person to comply with the cease and desist order.

C. If a person fails or refuses to comply with the order of the director, or if a person to whom the order is directed does not request a hearing and fails or refuses to comply with the cease and desist order served by mail under subsection B, the director may file an action in the superior court in the county in which a violation occurred, restraining and enjoining the person from engaging in further acts. The court shall proceed as in other actions for injunctions.

D. Notwithstanding subsection A, paragraph 19, the emission of mercaptan as a by-product of a pesticide is not a nuisance if applied according to state and federal restrictions.

E. Notwithstanding subsection A, paragraph 3, a restaurant that uses sawdust on the floors of its dining areas is not in violation of this section or local health department sanitary rules if the restaurant replaces the sawdust each day with clean sawdust and complies with applicable standards for fire safety.

ARTICLE 6. CAMP GROUNDS**R9-8-601. Reserved****R9-8-602. Reserved****R9-8-603. Reserved****R9-8-604. Reserved****R9-8-605. Reserved****R9-8-606. Reserved****R9-8-607. Reserved****R9-8-608. Reserved****R9-8-609. Reserved****R9-8-610. Reserved****R9-8-611. Scope**

The regulations in this Article shall apply to any city, county, city and county, village, community, institution, person, firm or corporation operating, maintaining or offering for public use within the state of Arizona any tract of land on which persons may camp or picnic either free of charge or by payment of a fee. Each and every owner and lessee of any public camp or picnic ground shall be held responsible for full compliance with these regulations.

R9-8-612. Supervision

- A. The management of every public camp or picnic ground shall assume responsibility for maintaining in good repair all sanitary appliances on said ground and shall promptly bring such action as may be necessary to prosecute or eject from such ground any person who willfully or maliciously damages such appliances or any person who in any way fails to comply with these regulations.
- B. At least one caretaker shall be employed by the management to visit said camp or picnic ground every day that campers or picnickers occupy said ground. Such caretaker shall do whatever may be necessary to keep said ground and its equipment in a clean and sanitary condition.
- C. Each camping party shall be allotted usable space of not less than 350 square feet.

R9-8-613. Water supply

- A. The water supply system shall be in accordance with Article 2 of this Chapter and shall be provided in ample quantity to meet all requirements of the maximum number of persons using such ground at any time. Said water supply shall be easily obtained from its source or on a pipe distribution system from faucets which shall be located not more than 300 feet from a camp or picnic spot within such ground. If water supply is obtained direct from above-ground source, said source must be covered properly and water withdrawn by means of open pipe or faucet as approved by the Department. In no case can dipping from open springs, seeps or wells be permitted.
- B. Any water considered unsafe for human consumption in the vicinity of such ground, to which campers or picnickers may have access, shall be either eliminated or purified or shall be kept posted with placards definitely warning persons against its use.

R9-8-614. Protection against fires

No fires shall at any time be so located as to endanger automobiles or other property in the camp ground. No fires shall be left unattended at any time, and all fires shall be completely extinguished before leaving.

R9-8-615. Sewage and refuse disposal

- A. Supervision and equipment: Supervision and equipment sufficient to prevent littering of the ground with rubbish, garbage or other refuse shall be provided and maintained. Fly-tight depositories for such materials shall be provided and conspicuously located. Each and every camp or picnic spot on said ground shall be within a distance of not over 200 feet from such a depository. These depositories shall not be permitted to become foul smelling or unsightly or breeding places for flies.
- B. The method of final sewage or refuse disposal utilized in connection with the operation of any camp or picnic ground shall be such as to create no nuisance.
- C. Basins: A sufficient number of basins, iron hoppers or sinks shall be provided and each shall be connected with a sewerage system; these are to be used for the disposal of domestic waste waters.

R9-8-616. Toilets

Fly-tight privies or water-flushed toilets shall be provided and shall be maintained in a clean and sanitary condition. Separate toilets for men and women shall be provided, one for each 25 men and one for each 25 women or fraction thereof of the maximum number of persons occupying such ground at any time. No camp or picnic spot within such ground shall be at a greater distance than 400 feet from both a women's and men's toilet. The location of all toilets shall be plainly indicated by signs.

R9-8-617. Construction and maintenance of buildings

If cottages, cabins, tent houses, dwelling houses or other structures to be used for human habitation are erected in any public camping ground, the following requirements in their construction shall be observed: (Note: All local building ordinances must be complied with in addition to observing the following requirements.)

Title 9, Ch. 8 *Arizona*
Code

Department of Health Services – Food, Recreational, and Institutional Sanitation

1. All wood floors shall be raised at least 18 inches above the ground and space underneath such floors shall be left open and free from obstruction on at least two opposite sides. All floors shall be constructed of tongue and groove material.
2. Interior walls shall be of surfaced lumber or other material that may easily be kept clean and shall be constructed so that they may always be kept in a thoroughly clean condition.
3. No room for sleeping purposes shall have less than 500 cubic feet of air space for each occupant.
4. The area of window space in each sleeping room shall be equal to at least one-eighth of the floor area of the room.
5. Windows of sleeping rooms shall be so constructed that at least half of each window can be opened.
6. Cooking, including the preparation and storing of food must not be allowed in any room used for sleeping. Partitions and doors between cooking and sleeping rooms must be tight.
7. If kitchen is provided, it must be equipped with running water and a sink connected with a sewerage system or septic tank. Kitchen must be screened against flies and mosquitoes.
8. If inside toilet is provided it must be water flushed and connected with a sewerage system or septic tank. Room containing such toilets must have window opening to the outside air. Bath and lavatory must be connected with sewerage system or septic tank.
10. Covered metal garbage containers must be provided, at least one for every two buildings.
11. Buildings shall be cleaned daily and after each occupancy shall be thoroughly cleaned. If bedding is provided it must be kept in a clean condition.

36-132. Department of health services; functions; contracts

A. The department shall, in addition to other powers and duties vested in it by law:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The

department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

E. The compensation of all personnel shall be as determined pursuant to section 38-611.

F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

H. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political

subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

J. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

K. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a

pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection H of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

N. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection H of this section.

36-601. Public nuisances dangerous to public health

A. The following conditions are specifically declared public nuisances dangerous to the public health:

1. Any condition or place in populous areas that constitutes a breeding place for flies, rodents, mosquitoes and other insects that are capable of carrying and transmitting disease-causing organisms to any person or persons or any condition or place that constitutes a feral colony of honeybees that is not currently maintained by a beekeeper and that poses a health or safety hazard to the public.
2. Any spoiled or contaminated food or drink intended for human consumption.
3. Any restaurant, food market, bakery or other place of business or any vehicle where food is prepared, packed, processed, stored, transported, sold or served to the public that is not constantly maintained in a sanitary condition.
4. Any place, condition or building that is controlled or operated by any governmental agency and that is not maintained in a sanitary condition.
5. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.
6. Any vehicle or container that is used in the transportation of garbage, human excreta or other organic material and that is defective and allows leakage or spillage of contents.
7. The presence of ectoparasites such as bedbugs, lice, mites and others in any place where sleeping accommodations are offered to the public.

8. The maintenance of any overflowing septic tank or cesspool, the contents of which may be accessible to flies.
9. The pollution or contamination of any domestic waters.
10. The use of the so-called common drinking cup used for drinking purposes by more than one person. This paragraph does not apply to receptacles properly washed and sanitized after each service.
11. The presence of common towels for use of the public in any public or semipublic place unless properly washed and sanitized following each use.
12. Buildings or any parts of buildings that are in a filthy condition and that may endanger the health of persons living in the vicinity.
13. Spitting or urinating on sidewalks, or floors or walls of a public building or buildings used for public assemblage, or a building used for manufacturing or industrial purposes, or on the floors or platforms or any part of a railroad or other public conveyance.
14. The use of the contents of privies, cesspools or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.
15. The maintenance of public assemblage or places of assemblage without providing adequate sanitary facilities. Open surface privies are adequate sanitary facilities if they are outside populous areas and meet reasonable health requirements.
16. Hotels, tourist courts and other lodging establishments that are not kept in a clean and sanitary condition or for which suitable and adequate toilet facilities are not provided.
17. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law.
18. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, that is sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink and that is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease causing substances or organisms.
19. The emission of mercaptan in a concentration level that causes endangerment to the health or safety of any considerable number of persons of a neighborhood or community.
20. The operation of an environmental laboratory in violation of chapter 4.3, article 1 of this title.

B. If the director has reasonable cause to believe from information furnished to the director or from investigation made by the director that any person is maintaining a nuisance or engaging in any practice contrary to the health laws of this state, the director shall promptly serve on that person by certified mail a cease and desist order requiring the person, on receipt of the order, promptly to cease and desist from that act. Within fifteen days after receipt of the order, the person to whom it is directed may request the director to hold a hearing. The director, as soon as practicable, shall hold a hearing, and if the director determines the order is reasonable and just and that the practice

engaged in is contrary to the health laws of this state, the director shall order the person to comply with the cease and desist order.

C. If a person fails or refuses to comply with the order of the director, or if a person to whom the order is directed does not request a hearing and fails or refuses to comply with the cease and desist order served by mail under subsection B, the director may file an action in the superior court in the county in which a violation occurred, restraining and enjoining the person from engaging in further acts. The court shall proceed as in other actions for injunctions.

D. Notwithstanding subsection A, paragraph 19, the emission of mercaptan as a by-product of a pesticide is not a nuisance if applied according to state and federal restrictions.

E. Notwithstanding subsection A, paragraph 3, a restaurant that uses sawdust on the floors of its dining areas is not in violation of this section or local health department sanitary rules if the restaurant replaces the sawdust each day with clean sawdust and complies with applicable standards for fire safety.

DEPARTMENT OF HEALTH SERVICES (F-17-0209)
Title 9, Chapter 8, Article 13, Hotels, and Tourist Courts



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-5

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Chris Kleminich, Staff Attorney

DATE : January 24, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-17-0209)
Title 9, Chapter 8, Article 13, Hotels, Motels, and Tourist Courts

This five-year-review report from the Arizona Department of Health Services (Department) covers 12 rules in A.A.C. Title 9, Chapter 8, related to food, recreational, and institutional sanitation. The rules were established at some point prior to November 1, 1976, and have not been amended since.

The Department indicates that the rules are intended to set standards for the safe and sanitary building, operation, and maintenance of hotels, motels, and tourist courts. The rules establish minimum requirements for dwelling units, grounds, bedding, food service, drinking water, ice, refuse, water supply, toilets, lavatories, sewage disposal, and plumbing.

Proposed Action

The Department acknowledges that the rules are antiquated but indicates that local health departments and the Department can interpret the requirements for present-day industry practices. As such, the Department believes that the rules are necessary, effective, and sufficient to protect public health. Nevertheless, to address issues identified in the report, the Department indicates that it plans to amend the rules prior to the due date of the next five-year-review report, February 2022.

Substantive or Procedural Concerns

In accordance with Governor Ducey's call for agencies to eliminate and improve outdated regulations, Council staff strongly encourages the Department to take action on these antiquated rules well in advance of February 2022 target date proposed in the report.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that the rules are effective, despite being antiquated, because of the expertise of local health departments and the Department in interpreting requirements for present-day industry practices and facilities. While Council staff does not believe the Department's broad interpretation of the word "effective" should be held against it, it is the opinion of this analyst that antiquated rules should not be deemed effective rules.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. The Department indicates that it has not received any written criticisms of the rules during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. A.R.S. § 36-136(H)(8) requires the Department to enact rules "concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels."

5. Has the agency analyzed the rules' consistency with statutes and other rules?

Yes. The Department indicates that the rules are consistent with statutes and other rules.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that it has delegated its inspection and abatement authority to the local health departments having jurisdiction over their respective hotels, motels, and tourist courts. The rules are enforced by local health departments and the Department through interpretations of the requirements for present-day industry practices and facilities.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. Because the rules are antiquated, they are not generally clear, concise, and understandable.

8. **Stringency of the Rules:**

a. **Are the rules more stringent than corresponding federal law?**

No. The Department indicates that no federal laws directly correspond to these rules.

b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable, as the rules were adopted prior to July 29, 2010.

b. **If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?**

Not applicable.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. In 2012, the Department indicated its intent to amend the rules by December 31, 2016, but described the rulemaking as low priority. Evidently, the rulemaking remained a low priority, and the Department did not complete the course of action identified in the report.

Conclusion

As noted above, the Department intends to amend the rules by February 2022. While staff believes that it is in the best interests of the state for the Department to take action on these rules well in advance of that date, the report meets the requirements of A.R.S. § 41-1056 and R1-6-301, and as such, this analyst recommends that the report be approved.



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-5

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE : January 24, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-17-0209)
Title 9, Chapter 8, Article 13, Hotels, Motels, and Tourist Courts

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 13 rules contained in the five-year-review report.

The rules provide standards to ensure that hotels, motels, and tourist courts are built, operated, and maintained in a safe a sanitary manner, including authority for inspections and standards for dwelling units, grounds, bedding, food service, drinking water, ice, refuse, water supply, toilets, lavatories, sewage disposal, and plumbing.

In FY 2015, there were 1,262 hotels, motels, and trailer courts located in Arizona. Local health departments performed 1,278 regular inspections, 288 complaint-based inspections, and 19 enforcement actions in these facilities.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules in Article 13 are mostly effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7). The Department does not plan to amend the rules at this time.

4. Conclusion

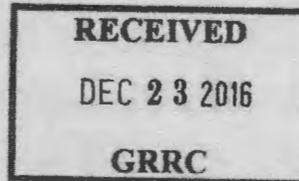
After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



ARIZONA DEPARTMENT
OF HEALTH SERVICES

December 23, 2016

Nicole A. Ong, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007



RE: Report for A.A.C. Title 9, Chapter 8, Article 13, Hotels, Motels, and Tourist Courts

Dear Ms. Ong:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 8, Article 13 is due to the Council no later than February 28, 2017. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 8, Article 13, and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, and the general and specific authority are included in the package. As described in the report, the Department does not plan to amend the rules in 9 A.A.C. 8, Article 13 at this time.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director's Designee

RL:mjb
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 13. HOTELS, MOTELS, AND TOURIST COURTS

December 2016

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION
ARTICLE 13. HOTELS, MOTELS, AND TOURIST COURTS
TABLE OF CONTENTS

1.	FIVE-YEAR-REVIEW SUMMARY	Page 3
2.	INFORMATION THAT IS IDENTICAL FOR ALL THE RULES	Page 4
3.	INFORMATION FOR INDIVIDUAL RULES	Page 7
4.	CURRENT RULES	Attachment A
5.	GENERAL AND SPECIFIC STATUTES	Attachment B
6.	HISTORICAL RULES	Attachment C

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-136(F) provides the Director of the Arizona Department of Health Services (Director) the authority to “make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.” Section 36-136(H)(8) specifically directs the Arizona Department of Health Services (Department) to promulgate rules prescribing reasonably necessary measures concerning sewage and excreta disposal; garbage and trash collection, storage and disposal; and water supply for hotels, motels, and tourist courts in Arizona. Section 36-136(H)(8) further provides for inspection and for abatement as public nuisances¹ of premises or facilities that do not comply with the rules.

The 12 rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 8, Article 13 set minimum standards to ensure that hotels, motels, and tourist courts are built, operated, and maintained in a safe and sanitary manner, including authority for inspections and standards for dwelling units, grounds, bedding, food service, drinking water, ice, refuse, water supply, toilets, lavatories, sewage disposal, and plumbing.

For reasons discussed in this 5-Year-Review Report, the Department anticipates amending the rules in 9 A.A.C. 8, Article 13 before the next 5-Year-Review Report is due.

¹ Section 36-601(A) defines public nuisances that are under Department control as those that are dangerous to public health. Section 36-601(B) provides that based on reasonable cause the Director may serve a cease and desist order capable of leading to abatement as a public nuisance.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. **Authorization of the rule by existing statutes**

The general statutory authority for the rules in 9 A.A.C. 8, Article 13 is A.R.S. §§ 36-132(A), 36-136(F), and 36-601. The specific statutory authority for the rules in 9 A.A.C. 8, Article 13 is A.R.S. § 36-136(H)(8).

2. **The purpose of the rules**

The purpose of the rules in 9 A.A.C. 8, Article 13 is to ensure public health by regulating sanitation in hotels, motels, and tourist courts.

3. **Analysis of effectiveness in achieving the objectives**

The Department has delegated its inspection and abatement authority under A.R.S. § 36-136(H)(8) to the local health departments having jurisdiction over the respective hotels, motels, and tourist courts. *See* A.R.S. § 36-136(D). The rules are antiquated, but are nonetheless effective in achieving their individual objectives because of the expertise of local health departments and the Department in interpreting requirements for present-day industry practices and facilities.

4. **Analysis of consistency with state and federal statutes and rules**

The rules are consistent with state and federal statutes and rules.

5. **Status of enforcement of the rules**

The Department has delegated its inspection and abatement authority to the local health departments having jurisdiction over their respective hotels, motels, and tourist courts, in accordance with A.R.S. § 36-136(D). Because the rules are antiquated, they are enforced by virtue of the expertise of local health departments and the Department, interpreting the requirements for present-day industry practices and facilities.

6. **Analysis of clarity, conciseness, and understandability**

Although antiquated, all of the rules are understandable in meeting their individual objectives due to the expertise of local health department and Department staff who interpret the requirements for present-day industry practices and facilities. All the rules fail to meet current rulemaking and style requirements published by the Office of the Secretary of State and could be more clear and concise if these current standards were met. Some of the rules contain ambiguous language affecting the clarity and conciseness of the rules. Additional specific comments regarding the clarity and conciseness of the rules appear in the information for individual rules.

7. **Summary of the written criticisms of the rule received within the last five years**

The Department has not received any written criticism of the rules.

8. **Economic, small business, and consumer impact comparison**

These rules were promulgated before November 1, 1976, and there is no economic impact statement on file

In fiscal year 2015, there were 1,262 hotels, motels, and trailer courts located in Arizona. Local health departments performed 1,278 regular inspections, 288 complaint-based inspections, and 19 enforcement actions in these facilities. Because the Department has delegated its inspection and abatement authority to local health departments, the Department did not perform any inspections.

- The Department incurs a minimal² annual cost to administer the rules.
- A local health department incurs a moderate-to-substantial annual cost, depending on the number and size of hotels, motels, and tourist courts in a given county, to inspect and perform enforcement. This cost may be partially or wholly defrayed by fees or assessments, which vary by jurisdiction.
- An entity operating a hotel, motel, or tourist court incurs a minimal-to-moderate annual cost to comply with the rules, depending on the size of the hotel, motel, or tourist court and the age of its facilities and other structures.
- The public incurs a none-to-minimal annual cost as a result of hotels, motels, and tourist courts passing on the cost to comply with the rules to the public in the form of higher lodging prices.
- The public experiences a significant current and ongoing benefit from the rules by being assured that the hotels, motels, and tourist courts they visit are safe, sanitary, and in good repair.

9. **Summary of business competitiveness analyses of the rules**

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. **Status of the completion of action indicated in the previous five-year-review report**

In the 2012 Five-Year-Review Report, the Department described a rulemaking as low priority, but noted its intent to amend the rules and submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by December 31, 2016. The Department was unable to fulfill this

² Costs are minimal when less than \$1,000; moderate when \$1,000 to \$10,000; and substantial when greater than \$10,000.

intention based upon the continuing rulemaking moratorium and Department rulemaking priorities, and the fact that the rules, although antiquated, were being enforced through the expertise of local health departments and the Department in interpreting requirements for present-day industry practices and facilities.

11. **A determination 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 rules are designed to prevent conditions that would negatively affect public health. *See* A.R.S. § 36-601(A) (defining conditions that are deemed “public nuisances dangerous to the public health”). The Department and local health departments continue to use the rules without an increase in cost or burden. For these reasons, the Department has determined that the rules provide the least burden and cost to achieve the underlying regulatory objective.

12. **Analysis of stringency compared to federal laws**

The rules are not related to federal laws.

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

The rules were adopted before July 29, 2010.

14. **Proposed course of action**

The Department has determined that the rules are necessary and effective, and sufficient to protect public health due to the expertise of local health departments and the Department in interpreting the requirements for present-day industry practices. *See* A.R.S. § 36-136((H)(8) (requiring the Department to prescribe by rule certain minimum standards for hotels, motels, and tourist courts). To address issues discussed in this 5-Year-Review Report, the Department anticipates amending these rules before the next 5-Year-Review Report is due. This course of action is subject to change based on the Governor’s rulemaking moratorium and the Department’s priorities.

INFORMATION FOR INDIVIDUAL RULES

R9-8-1312. Definitions

2. Objective

The objective of the rule is to define terms used in the Article so a reader can consistently interpret requirements in the Article.

6. Analysis of clarity, conciseness, and understandability

The rule could be more clear and concise if it defined ambiguous language such as “temporary occupancy,” “temporary basis,” and “semi-permanent basis,” and the language describing “[t]ransient dwelling establishment[s]” was updated to remove antiquated language such as “tourist court,” “tourist camp,” “rooming house,” and “boarding house.” Any negative consequence of this antiquated language is mitigated by the expertise of local health departments and the Department in interpreting requirements for present-day industry practices and facilities.

R9-8-1314. Inspection

2. Objectives

The objectives of the rule are to:

- a. Establish inspection requirements for hotels, motels, and tourist courts;
- b. Require that an entity operating a hotel, motel, or tourist court be furnished a copy of an inspection report; and
- c. Notify an entity operating a hotel, motel, or tourist court of the consequences of failure to comply with the requirements in the Article.

R9-8-1321. Dwelling units

2. Objective

The objective of the rule is to establish minimum standards for dwelling units in a hotel, motel, or tourist court for:

- a. Square footage;
- b. Construction, cleanliness, and repair of floors;
- c. Construction, cleanliness, and repair of walls;
- d. Window areas;
- e. Window opening and screening;
- f. Cleanliness and repair of furniture, drapes, carpets, and other accessories;
- g. Freedom from insects, rodents, and other vermin; and

- h. Gas appliances.
- 6. **Analysis of clarity, conciseness, and understandability**
The rule could be more clear and concise if it defined ambiguous language such as “ample,” “good repair,” and “satisfactory means.”

R9-8-1322. **Grounds**

- 2. **Objective**
The objective of the rule is to establish minimum standards for the grounds of a hotel, motel, or tourist court for:
 - a. Grading and drainage; and
 - b. Cleanliness and freedom from infestation.

R9-8-1331. **Bedding**

- 2. **Objective**
The objective of the rule is to establish minimum standards for the beds in a hotel, motel, or tourist court for:
 - a. Cleanliness, repair, and storage of beds and bedclothes;
 - b. Use of sheets and pillowcases; and
 - c. Replacement of bedclothes both periodically and upon lodging of a new guest.
- 6. **Analysis of clarity, conciseness, and understandability**
The rule could be more clear and concise if it defined ambiguous language such as “good repair,” “other sleeping place,” and “properly stored.”

R9-8-1332. **Food service**

- 2. **Objective**
The objective of the rule is to require that hotels, motels, and tourist courts follow the requirements in 9 A.A.C. 8, Article 1 (Food and Drink).

R9-8-1333. **Drinking water; ice**

- 2. **Objective**
The objective of the rule is to establish minimum standards for:
 - a. Construction and configuration of drinking fountains;
 - b. Cleanliness of glasses and utensils, and prohibition against the use of a common drinking cup; and

- c. Sourcing, handling, and storage of ice.
- 6. **Analysis of clarity, conciseness, and understandability**
The rule could be more clear and concise if it defined ambiguous language such as “orifice,” “easily cleanable material,” approved manner,” “suitable dispenser,” “common drinking cup,” and “approved source.”

R9-8-1334. **Refuse**

- 2. **Objective**
The objective of the rule is to establish minimum standards in hotels, motels, and tourist courts for:
 - a. Disposal of refuse; and
 - b. Cleanliness and repair of garbage cans and other containers.
- 4. **Analysis of consistency with listed state and federal statutes and rules**
Subsection (A) contains a reference to Article 4 of the Chapter, which at the time the rule was adopted concerned "Refuse and other objectionable wastes." Article 4 currently contains rules on another subject (children's camps). Accordingly, the reference is outdated. The remainder of the rule is consistent.
- 6. **Analysis of clarity, conciseness, and understandability**
The rule could be more clear if the outdated reference discussed in section 4 was corrected.

R9-8-1335. **Water supply**

- 2. **Objective**
The objective of the rule is to establish minimum standards in a hotel, motel, and tourist court for:
 - a. Adequate and safe water supply from an approved source;
 - b. Obtaining prior approval from the Department before changing a water source; and
 - c. Construction and operation of a water supply system.
- 4. **Analysis of consistency with listed state and federal statutes and rules**
The rule contains a reference to Article 2 of the Chapter, which at the time the rule was adopted concerned "Public or semi-public water supply systems." Article 2 currently contains rules on another subject (bottled water). Information regarding the “water supply system” has since been recodified to A.A.C. Title 18, Chapter 4, Article 2, State Drinking Water Regulations. In enforcing this rule, the county health departments are aware of the correct location of the water supply rules.
- 6. **Analysis of clarity, conciseness, and understandability**

The rule could be more clear if the outdated reference discussed in section 4 was corrected.

R9-8-1336. **Toilet; lavatory**

2. **Objective**

The objective of the rule is to establish minimum standards for:

- a. Adequate and convenient toilet, lavatory, and bathing facilities to be available to guests at all times;
- b. Central or common restrooms when private toilet rooms are not available;
- c. The provision of hot and cold water, soap, and towels;
- d. Lighting and ventilation of restrooms;
- e. Construction, cleanliness, repair, and drainage of restroom floors; and
- f. Construction, cleanliness, and repair of restroom walls.

R9-8-1337. **Sewage disposal**

2. **Objective**

The objective of the rule is to establish the following minimum standards for sewage disposal at hotels, motels, tourist courts:

- a. That wastes be discharged into sewage systems in accordance with applicable local ordinances, or into a separate sewage disposal facility as approved by the Department in circumstances where no public sewer connection is practicable;
- b. That the design, construction, and operation of a separate sewage disposal system be in accordance with Article 3 of this Chapter, and that plans and specifications for the system be approved by the Department; and
- c. That sewage or wastewater may not be deposited on the surface of the ground except as approved by the Department.

4. **Analysis of consistency with listed state and federal statutes and rules**

The rule contains a reference to Article 3 of the Chapter, which at the time the rule was adopted concerned "Sewerage systems and treatment works." Article 3 currently contains rules on another subject (public toilet facilities). Accordingly, the reference is outdated. The remainder of the rule is consistent. In enforcing this rule, the county health departments are aware of the incorrect citation.

6. **Analysis of clarity, conciseness, and understandability**

The rule could be more clear if the outdated reference discussed in section 4 was corrected.

R9-8-1338.

Plumbing

2. **Objective**

The objective of the rule is to require that hotels, motels, and tourist courts follow local ordinances and codes with respect to plumbing installation, or where such authority is not available, the requirements in A.A.C. R9-1-412.

4. **Analysis of consistency with listed state and federal statutes and rules**

The rule contains a reference to "R9-1-412(D)." The reference is outdated because subsection (D) no longer exists in A.A.C. R9-1-412. The plumbing codes adopted by reference appear instead in R9-1-412(A). The remainder of the rule is consistent. In enforcing this rule, the county health departments are aware of the correct location of the plumbing code rules.

6. **Analysis of clarity, conciseness, and understandability**

The rule could be more clear if the outdated reference discussed in section 4 was corrected.

ATTACHMENT

A

ATTACHMENT

B

ATTACHMENT

C

ARTICLE 13. HOTELS, MOTELS, AND TOURIST COURTS

- R9-8-1301. Reserved**
- R9-8-1302. Reserved**
- R9-8-1303. Reserved**
- R9-8-1304. Reserved**
- R9-8-1305. Reserved**
- R9-8-1306. Reserved**
- R9-8-1307. Reserved**
- R9-8-1308. Reserved**
- R9-8-1309. Reserved**
- R9-8-1310. Reserved**
- R9-8-1311. Expired**

Historical Note

Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3256, effective June 17, 2002 (Supp. 02-3).

R9-8-1312. Definitions

- A.** “Approved” means acceptable to the Department.
- B.** “Department” means the Arizona Department of Health Services or a local health department designated by the Arizona Department of Health Services.
- C.** “Dwelling unit” means any suite, room, cottage, bedroom, or other unit established or maintained by a transient dwelling establishment for temporary occupancy.
- D.** “Person” means the state, a municipality, district, or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, or individual.
- E.** “Plumbing or plumbing system” means and includes the water supply distributing pipes; the fixtures and fixture traps; the soil, waste, and vent pipes; and the building drains with their devices, appurtenances and connections either within or adjacent to the transient dwelling establishment.
- F.** “Transient” means any member of the public who occupies a dwelling unit on a temporary basis in a transient dwelling establishment as defined above.
- G.** “Transient dwelling establishment” means and includes any place where sleeping accommodations are available to transients or tourists on a temporary basis such as a hotel, motel, motor hotel, tourist court, tourist camp, rooming house, boarding house, inn, and similar facilities by whatever name called, consisting of two or more dwelling units; provided, however, that the term shall not be construed to include apartments, clubs, boarding houses, rooming houses, and similar facilities where occupancy of all dwelling units is on a permanent or semi-permanent basis.

R9-8-1313. Expired**Historical Note**

Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 2930, effective June 30, 2007 (Supp. 07-3).

R9-8-1314. Inspection

Representatives of the local health department shall make such inspections of any transient dwelling establishment as are necessary to assure compliance with these regulations, but not less than once each year. A copy of the report of the inspection shall be furnished the owner, lessee, or operator of the transient dwelling establishment indicating the degree of compliance or non-compliance with the provisions of these regulations. Failure to correct any discrepancies noticed within the time limit specified shall be cause for denial, revocation, or suspension of the permit to operate.

R9-8-1315. Expired**Historical Note**

Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3256, effective June 17, 2002 (Supp. 02-3).

- R9-8-1316. Reserved**
- R9-8-1317. Reserved**
- R9-8-1318. Reserved**
- R9-8-1319. Reserved**
- R9-8-1320. Reserved**

Department of Health Services – Food, Recreational, and Institutional Sanitation

R9-8-1321. Dwelling units

- A. Dwelling units shall be of sufficient size to afford ample circulation of air and freedom of movement, but not less than 100 square feet of floor area shall be provided for each unit, exclusive of bathrooms, closets, kitchens, and similar ancillary facilities.
- B. Floors of all rooms shall be of such construction as to be easily cleaned and shall be kept clean and in good repair.
- C. The walls and ceilings of all rooms shall be of a finish that will permit easy cleaning and shall be kept clean and in good repair.
- D. Where windows are relied on to provide light and ventilation, the area of the windows for each dwelling unit shall be equal to at least 20% of the floor area.
- E. Not less than 25% of the window area furnished shall be capable of being opened unless other satisfactory means of ventilation is provided. Windows capable of being opened shall be effectively screened.
- F. Furniture, drapes, carpets, and other accessories shall be kept clean and in good repair.
- G. Dwelling units shall be maintained free of insects, rodents, and other vermin.
- H. The provisions of A.R.S. Title 36, Chapter 13, Article 2 relating to gas appliances shall be met.

R9-8-1322. Grounds

- A. Grounds of a transient dwelling establishment shall be properly graded and drained.
- B. Grounds shall be kept clean and free of accumulations of refuse and other debris. There shall be no evidence of fly, mosquito, or rodent breeding or infestation.

R9-8-1323. Reserved

R9-8-1324. Reserved

R9-8-1325. Reserved

R9-8-1326. Reserved

R9-8-1327. Reserved

R9-8-1328. Reserved

R9-8-1329. Reserved

R9-8-1330. Reserved

R9-8-1331. Bedding

- A. The beds, mattresses, pillows, and bed linen, including sheets, pillow slips, blankets, etc., used in all transient dwelling establishments shall be maintained in good repair, shall be kept clean and free of vermin, and shall be properly stored when not in use.
- B. Each bed, bunk, cot, or other sleeping place shall be provided with pillow slips, under and top sheets for the use of guests. Sheets and pillow slips shall be adequately sized to completely cover the mattress and pillow.
- C. Clean linen shall be provided to each new guest and shall be changed at least once each week when occupancy exceeds this period.

R9-8-1332. Food service

The storage, preparation and serving of food and drink shall comply with the requirements of Article 1 of this Chapter.

R9-8-1333. Drinking water; ice

- A. Where drinking fountains are provided, the fountain shall be constructed so that the drinking is from a free jet projected at an angle from the vertical and provided with a guard to prevent the mouth being placed directly against the orifice. There shall be no possibility of the orifice becoming submerged. The fountain bowl shall be constructed of nonabsorbent, easily cleanable material.
- B. All glasses and other multi-use utensils furnished to each dwelling unit shall be cleaned and sanitized in an approved manner after each occupancy. Single-service paper cups with suitable dispenser may be substituted for glasses.
- C. The use of a common drinking cup is prohibited.
- D. Ice shall be obtained from an approved source and shall be stored and handled in such a manner as to prevent contamination.

R9-8-1334. Refuse

- A. All refuse shall be stored and disposed of in accordance with Article 4 of these regulations.
- B. Garbage cans shall be thoroughly washed after emptying and shall be maintained free of odors and other objectionable conditions.
- C. All containers for rubbish shall be cleaned as often as necessary to prevent a nuisance.
- D. All refuse containers shall be maintained in good repair.

R9-8-1335. Water supply

Each transient dwelling establishment shall be provided with an adequate and safe water supply from an approved source. Whenever a transient dwelling establishment finds it necessary to develop a source or sources of supply, complete plans and specifications of the proposed water system shall be submitted to the Department and approval received prior to the start of construction. The design, construction, and operation of all such water supply systems shall comply with Article 2 of this Chapter.

R9-8-1336. Toilet; lavatory

- A. Adequate and convenient toilet, lavatory, and bathing facilities shall be provided at all transient dwelling establishments and shall be available to the guests at all times.
- B. Where private or connecting toilet rooms are not available for each dwelling unit, separate and plainly marked central toilet rooms for each sex shall be provided, located within 200 feet of such units.

Department of Health Services – Food, Recreational, and Institutional Sanitation

- C. Central toilet rooms shall provide not less than one toilet, one lavatory, and one tub or shower for each sex for each 10 dwelling units, or major fraction thereof, not having private or connecting baths. At least one urinal shall be provided in each central toilet room designated for men.
- D. Hot and cold water and soap shall be provided in all toilet rooms. Clean, individual sanitary towels shall be furnished for each guest.
- E. Toilet rooms shall be well lighted and ventilated. Where gravity or mechanical ventilation is provided, the ventilation ducts for the toilet rooms shall not be connected into ventilation ducts from or to any dwelling unit.
- F. Floors of all toilet rooms shall be of easily cleanable construction, shall be kept clean and in good repair, and where necessary shall slope to properly located drains.
- G. Walls and ceilings of all toilet rooms shall be of easily cleanable construction and shall be kept clean and in good repair.

R9-8-1337. Sewage disposal

- A. The liquid wastes from all transient dwelling establishments shall be discharged into a public sewer system in compliance with applicable local ordinances or codes or into separate sewage disposal facilities approved by the Department.
- B. Separate sewage disposal facilities will not be approved where in the opinion of the Department connection to a public sewer is practicable.
- C. Where separate sewage disposal facilities are proposed the design, construction and operation of such systems shall be in accordance with Article 3 of this Chapter. Plans and specifications for such systems shall be submitted to the Department and approval received prior to the start of construction.
- D. Recommendations are found in the Engineering Bulletins of the Department to assist in compliance with these regulations regarding the design of sewage disposal systems. Copies of these Bulletins may be obtained from the Department.
- E. No sewage treatment effluent or other wastewater shall be deposited on the surface of the ground except in a manner approved by the Department.

R9-8-1338. Plumbing

All plumbing shall be installed in accordance with any local ordinance or code. Where a local ordinance or code does not exist, plumbing shall be installed in accordance with the requirements adopted by reference in R9-1-412(D).

36-132. Department of health services; functions; contracts

A. The department shall, in addition to other powers and duties vested in it by law:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The

department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

E. The compensation of all personnel shall be as determined pursuant to section 38-611.

F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

H. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political

subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

J. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

K. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a

pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection H of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

N. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection H of this section.

36-601. Public nuisances dangerous to public health.

A. The following conditions are specifically declared public nuisances dangerous to the public health:

1. Any condition or place in populous areas that constitutes a breeding place for flies, rodents, mosquitoes and other insects that are capable of carrying and transmitting disease-causing organisms to any person or persons or any condition or place that constitutes a feral colony of honeybees that is not currently maintained by a beekeeper and that poses a health or safety hazard to the public.
2. Any spoiled or contaminated food or drink intended for human consumption.
3. Any restaurant, food market, bakery or other place of business or any vehicle where food is prepared, packed, processed, stored, transported, sold or served to the public that is not constantly maintained in a sanitary condition.
4. Any place, condition or building that is controlled or operated by any governmental agency and that is not maintained in a sanitary condition.
5. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.
6. Any vehicle or container that is used in the transportation of garbage, human excreta or other organic material and that is defective and allows leakage or spillage of contents.
7. The presence of ectoparasites such as bedbugs, lice, mites and others in any place where sleeping accommodations are offered to the public.

8. The maintenance of any overflowing septic tank or cesspool, the contents of which may be accessible to flies.
9. The pollution or contamination of any domestic waters.
10. The use of the so-called common drinking cup used for drinking purposes by more than one person. This paragraph does not apply to receptacles properly washed and sanitized after each service.
11. The presence of common towels for use of the public in any public or semipublic place unless properly washed and sanitized following each use.
12. Buildings or any parts of buildings that are in a filthy condition and that may endanger the health of persons living in the vicinity.
13. Spitting or urinating on sidewalks, or floors or walls of a public building or buildings used for public assemblage, or a building used for manufacturing or industrial purposes, or on the floors or platforms or any part of a railroad or other public conveyance.
14. The use of the contents of privies, cesspools or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.
15. The maintenance of public assemblage or places of assemblage without providing adequate sanitary facilities. Open surface privies are adequate sanitary facilities if they are outside populous areas and meet reasonable health requirements.
16. Hotels, tourist courts and other lodging establishments that are not kept in a clean and sanitary condition or for which suitable and adequate toilet facilities are not provided.
17. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law.
18. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, that is sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink and that is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease causing substances or organisms.
19. The emission of mercaptan in a concentration level that causes endangerment to the health or safety of any considerable number of persons of a neighborhood or community.
20. The operation of an environmental laboratory in violation of chapter 4.3, article 1 of this title.

B. If the director has reasonable cause to believe from information furnished to the director or from investigation made by the director that any person is maintaining a nuisance or engaging in any practice contrary to the health laws of this state, the director shall promptly serve on that person by certified mail a cease and desist order requiring the person, on receipt of the order, promptly to cease and desist from that act. Within fifteen days after receipt of the order, the person to whom it is directed may request the director to hold a hearing. The director, as soon as practicable, shall hold a hearing, and if the director determines the order is reasonable and just and that the practice

engaged in is contrary to the health laws of this state, the director shall order the person to comply with the cease and desist order.

C. If a person fails or refuses to comply with the order of the director, or if a person to whom the order is directed does not request a hearing and fails or refuses to comply with the cease and desist order served by mail under subsection B, the director may file an action in the superior court in the county in which a violation occurred, restraining and enjoining the person from engaging in further acts. The court shall proceed as in other actions for injunctions.

D. Notwithstanding subsection A, paragraph 19, the emission of mercaptan as a by-product of a pesticide is not a nuisance if applied according to state and federal restrictions.

E. Notwithstanding subsection A, paragraph 3, a restaurant that uses sawdust on the floors of its dining areas is not in violation of this section or local health department sanitary rules if the restaurant replaces the sawdust each day with clean sawdust and complies with applicable standards for fire safety.

DEPARTMENT OF HEALTH SERVICES (F-17-0210)

Title 9, Chapter 22, Article 1, Licensure Requirements; Article 2, Group Home Requirements



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: February 7, 2017

AGENDA ITEM: E-6

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Daniel Schwiebert, Legal Intern

DATE : January 24, 2017

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-17-0210)**
Title 9, Chapter 33, Article 1, Licensure Requirements;
Article 2, Group Home Requirements.

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Summary of the Scope of the Report and the Purpose of the Rules

This five-year-review report from the Arizona Department of Health Services (Department) covers fifteen rules in A.A.C. Title 9, Chapter 33, related to licensing and regulating group homes for the developmentally disabled.

Article 1 contains nine rules and provides general provisions, including definitions; requirements for issuance, renewal and changes to a license; and investigation and enforcement.

Article 2 contains six rules, which establish requirement standards for the health and safety of the group home facilities.

Summary of Rulemaking History

The rules were last amended by final rulemaking effective February 2013. They were amended following changes in the group home industry, input from stakeholders, a five-year-review report conducted in 2007, and a concurrent five-year-review report conducted in 2012. The amendments reduced economic burdens on stakeholders and minimized potential non-compliance issues. The amendments include specifications regarding who can sign applications, the information to be provided in applications, and the notifications to be made in the event of a circumstantial change. They also include additions to fire safety and first aid requirements, and minor technical and grammatical changes to conform to the format and style requirements of the Council and the Secretary of State. In 1997, the legislature transferred administration of the licensing and regulating of group home facilities from the Department of Economic Security to the Department.

Proposed Action

The Department plans to take no action at this time because the Department indicates it recently underwent a rulemaking with stakeholder input. The Department identifies for future rulemaking rules that could be improved for clarity and conciseness.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Department has certified that is in compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that the rules are effective in meeting their respective objectives.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

No. The Department indicates that it has received no written criticisms of the rules.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. A.R.S. § 36-591(B) states, "Group homes . . . shall be licensed for health and safety by the department of health services pursuant to § 36-132." A.R.S. § 36-132(A)(1) states, "The department shall . . . license and regulate the health and safety of group homes for persons with developmental disabilities." A.R.S. § 36-136(F) states, "The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health." A.R.S. § 36-104(3) states, "The director shall make rules and regulations for the organization and proper and efficient operation of the department."

5. Has the agency analyzed the rules' consistency with statutes and other rules?

Yes. The Department indicates that the rules are consistent with statutes and other rules.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that it enforces the rules as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that, except for two rules, the rules are clear, concise, and understandable. R9-33-101 contains redundancies in the definitions of “Administrative completeness review time-frame,” “Overall time-frame” and “Substantive review time-frame,” which all refer to definitions in A.R.S. § 41-1072. R9-33-108 refers to A.R.S. § 41-1072 again, which may be redundant. R9-33-206 contains an inconsistency in the requirements for fences around group home swimming pools. The rule requires “rigid” fences, but also allows fences to be made of “wire mesh.” The rule is inconsistent because “wire mesh” is generally a non-rigid material.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Department indicates there are no specific federal laws related to the rules.

b. If so, is there statutory authority to exceed the requirements of federal law?

N/A

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Yes. The Department’s rules were last amended after July 29, 2010 and require issuance of a license.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Yes. The Department indicates that the rules comply with A.R.S. § 41-1037(A)(2), since the issuance of the license is specifically authorized by state statute.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department indicates that the course of action proposed in the last five-year-review report was completed by the rulemaking made effective in February 2013.

Conclusion

The Department plans to take no action at this time because the Department indicates it recently underwent a rulemaking with stakeholder input. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends that the report be approved.



GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: February 7, 2017

AGENDA ITEM: E-6

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE : January 24, 2017

SUBJECT: ARIZONA DEPARTMENT OF HEALTH SERVICES (F-17-0210)
Title 9, Chapter 33, Article 1, Licensure Requirements;
Article 2, Group Home Requirements.

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

The rules identify oversight obligations for the Department including licensing and regulating health and safety for group homes for individuals with a developmental disability. Programmatic oversight is conducted by the Arizona Department of Economic Security (DES). The Department's role focuses on the licensing of group home facilities, while DES licenses the group home services.

The Department has provided the economic, small business, and consumer impact statement (EIS) from the Department's 2012 rulemaking. The Department indicates that the economic impact of the rules is consistent with the impact projected in the EIS.

In 2015, the Department licensed 1,110 group homes, including 1,080 group homes with two-year licenses and 30 group homes with three-year licenses. In 2015, the Department received 293 new applications including 45 initial licenses and 248 renewal licenses. In the same period, the Department revoked one license.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department indicates that the overall regulatory scheme does not impose the least burden and costs on the regulated community. Group homes currently have to maintain compliance with two regulatory authorities, the Department and DES. This may cause an undue burden on group homes. The Department believes that they could oversee compliance of group

homes since as they already license and certify both programmatic and facility health and safety elements for other residential care settings, such as assisted living homes, child care group homes, and behavioral health homes.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

The Department does not indicate whether the agency received an analysis that compared the rules' impact on the state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

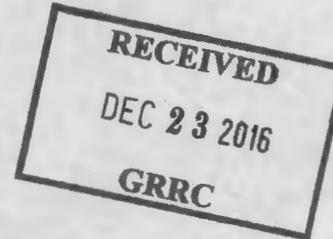
After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



ARIZONA DEPARTMENT
OF HEALTH SERVICES

December 23, 2016

Nicole A. Ong, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007



RE: Report for A.A.C. Title 9, Chapter 33, Group Homes for Individuals with a
Developmental Disability

Dear Ms. Ong:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 33 is due to the Council no later than February 28, 2017. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 33 and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and the 2012 Economic, Small Business, and Consumer Impact Statement are included in the package. As described in the report, the Department does not plan to amend the rules in 9 A.A.C. 33 at this time.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

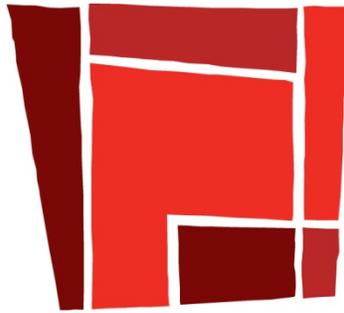
If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director's Designee

RL:ltf
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

**FIVE-YEAR-REVIEW-REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 33. DEPARTMENT OF HEALTH SERVICES
GROUP HOMES FOR INDIVIDUALS WITH
A DEVELOPMENTAL DISABILITY**

December 2016

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 33. DEPARTMENT OF HEALTH SERVICES
GROUP HOMES FOR INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY

TABLE OF CONTENTS

1.	FIVE-YEAR-REVIEW SUMMARY	Page 3
2.	INFORMATION THAT IS IDENTICAL FOR ALL THE RULES	Page 4
3.	INFORMATION FOR INDIVIDUAL RULES	Page 6
4.	CURRENT RULES	Attachment A
5.	GENERAL AND SPECIFIC STATUTES	Attachment B
6.	PREVIOUS ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT	Attachment C

FIVE-YEAR-REVIEW SUMMARY
CHAPTER 33. DEPARTMENT OF HEALTH SERVICES
GROUP HOMES FOR INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY

Arizona Revised Statutes (A.R.S.) §§ 36-132(A)(21) and 36-591 require the Arizona Department of Health Services (Department) to license and regulate the health and safety of group homes for the developmentally disabled (group homes). The programmatic oversight of group homes is vested in the Arizona Department of Economic Security, Division of Developmental Disabilities (Division) in A.R.S. §§ 36-591 through 36-595.03. Put simply, the Department licenses group home facilities, while the Division licenses group home services.

Arizona Administrative Code (A.A.C.) Title 9, Chapter 33 contains the 16 rules for the licensing of group home facilities. The rules include definitions; a requirement for licensure; application for, issuance of, renewal of, and changes to a license; investigation and enforcement; and health and safety requirements for group home facilities. The rules were adopted December 31, 2012.

During calendar year 2015, the Department licensed 1,110 group homes, of which 1,080 held a two-year license and 30 held a three-year license. During 2015, the Department received 293 new applications, of which 45 were initial licenses and 248 of which were renewal licenses. During 2015, the Department revoked one group home license.

Overall, the rules in Chapter 33 are effective, enforced as written, and clear, concise, and understandable. The Department does not plan to amend the rules at this time, but will continue to track items that could be improved for future rulemakings.

INFORMATION IDENTICAL FOR ALL THE RULES

1. **Authorization of the rule by existing statutes**
General: A.R.S. §§ 36-104, 36-132(A) and 36-136(F)
Implementing (specific): A.R.S. §§ 36-132(A)(21), 36-591(B), and 36-595(C) and (D)
2. **The purpose of the rule**
The purpose of the rules is to specify the requirements for obtaining a license from the Department to operate a facility as a group home as defined in A.R.S. § 36-551.
3. **Analysis of effectiveness in achieving the objective**
The rules are effective in achieving their objectives.
4. **Analysis of consistency with state and federal statutes and rules**
The rules are consistent with state statutes and any applicable federal statutes and rules.
5. **Status of enforcement of the rule**
The Department enforces the rules as written.
6. **Analysis of clarity, conciseness, and understandability**
Except for R9-33-101 and R9-33-206, the rules are clear, concise, and understandable.
7. **Summary of the written criticisms of the rule received within the last five years**
No written criticisms have been received.
8. **Economic, small business, and consumer impact comparison**
The economic impact of the rule is consistent with the economic, small business, and consumer impact statement submitted in 2012 with the previous rulemaking.
10. **Status of the completion of action indicated in the previous five-year-review report**
In the 2012 five-year review report, the Department indicated that the rules could be amended to reduce the cost of compliance for many stakeholders and that it was in the process of amending Chapter 33 accordingly. The Department completed that rulemaking in 2012, with the amended rules taking effect December 31, 2012.
11. **A determination that the probable benefits of the rule outweigh within this state 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 rules impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
12. **Analysis of stringency compared to federal laws**
There are no specific federal laws related to the rules.

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

The rules establish group home facility licensing requirements that comply with A.R.S. § 41-1037(A)(2).

14. Proposed course of action

Because the rules are effective as written, recently underwent a rulemaking process with stakeholder input, and pose no threat to health and safety, the Department plans to take no action at this time.

INFORMATION FOR INDIVIDUAL RULES

R9-33-101. **Definitions**

2. **Objectives**

The objective in this rule is to define terms used in 9 A.A.C. 33 so that a reader can consistently interpret requirements in the Chapter.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable, but could be improved by removing redundancies in the definitions of “Administrative completeness review time-frame,” “Overall time-frame,” and “Substantive review time-frame.” These definitions all refer to A.R.S. § 41-1072, but A.R.S. § 41-1072 is referred to again in R9-33-108.

R9-33-102. **Requirement for Licensure**

2. **Objectives**

The objectives of the rule are to:

- a. Require an entity operating a group home to be licensed by the Department; and
- b. Indicate that the license is restricted to the place, person, and time listed on the license.

R9-33-103. **Individuals to Act for Applicant or Licensee**

2. **Objectives**

The objective of this rule is to establish who may act for an applicant or licensee.

R9-33-104. **Application and Inspection**

2. **Objectives**

The objectives of the rule are to:

- a. Require an applicant to submit an application to the Department in order to be licensed to operate a group home;
- b. Describe the application;
- c. Establish the process by which the Department issues a license to an applicant who meets the requirements in this Chapter, including applicable time-frames; and
- d. Establish that an applicant or licensee shall allow the Department immediate access to inspect the premises.

R9-33-105. **License Renewal**

2. **Objectives**

The objectives of the rule are to:

- a. Require a licensee to submit an application to the Department in order to renew the licensee's license to operate a group home; and
- b. Establish the process by which the Department issues a renewal to a licensee who meets the requirements in this Chapter.

R9-33-106. **Changes Affecting a License**

2. **Objective**

The objective of the rule is to establish requirements for a licensee to notify the Department if the licensee's operation of a group home or service provider contract with the Division is going to be terminated.

R9-33-107. **Investigation of Complaints**

2. **Objectives**

The objectives of the rule are to:

- a. Establish the process by which the Department investigates complaints at group homes or information suggesting that a group home may not be in compliance with applicable laws and rules; and
- b. Require a licensee to correct deficiencies listed on a plan of correction within 30 days from the date of the plan of correction.

R9-33-108. **Time-frames**

2. **Objectives**

The objective of the rule is to establish time-frames for processing applications.

R9-33-109. **Denial, Revocation, or Suspension of a License**

2. **Objectives**

The objectives of the rule are to:

- a. Establish the conditions under which the Department may deny, revoke, or suspend a license to operate a group home;
- b. Notify applicants and licensees of their statutory right of appeal; and

- c. Require the Department to notify the Division of a denial, revocation, or suspension under this Chapter.

R9-33-201. **Emergency Procedures and Evacuation Drills**

2. **Objectives**

The objectives of the rule are to establish requirements for:

- a. Developing and implementing of a group home's emergency plan;
- b. Maintaining proper address signage at the group home;
- c. Ensuring safety measures related to ingress and egress from the group home; and
- d. Conducting evacuation drills.

R9-33-202. **Fire Safety Requirements**

2. **Objectives**

The objectives of the rule are to:

- a. Establish which fire safety requirements apply to a group home at each of the two fire risk prevention levels;
- b. Require licensees to obtain fire inspections; and
- c. Require licensees to have and maintain fire extinguishers, smoke detectors, and other appropriate fire safety fixtures, procedures, and equipment.

R9-33-203. **Physical Plant Requirements**

2. **Objectives**

The objectives of the rule are to require licensees to:

- a. Ensure that a group home is in compliance with applicable disability laws;
- b. Maintain a safe air and water temperature range;
- c. Maintain adequate ventilation and appliances for cooking and cooling food; and
- d. Maintain safe and working electrical and plumbing systems.

R9-33-204. **Environmental Requirements**

2. **Objectives**

The objectives of the rule are to require licensees to:

- a. Maintain a facility free from garbage, refuse, insects, and vermin;
- b. Keep the facility free of hazards; and
- c. Not use unsafe space heaters.

R9-33-205. Vehicle Safety

2. Objectives

The objectives of the rule are to:

- a. Require licensees to ensure that a vehicle used to transport a resident is properly equipped and maintained to be safe and in good repair; and
- b. Establish documentation requirements for a vehicle used to transport a resident.

R9-33-206. Swimming Pool Requirements

2. Objectives

The objective of the rule is to establish requirements for a private residential swimming pool and a spa at a group home.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable, but could be further improved by removing a possible inconsistency between the requirement of a “rigid” fence and the allowance of a “wire mesh fence.”

Attachment A

TITLE 9. HEALTH SERVICES

CHAPTER 33. DEPARTMENT OF HEALTH SERVICES

GROUP HOMES FOR INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY

Editor's Note: 9 A.A.C. 33, consisting of Articles 1 and 2, made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1).

ARTICLE 1. LICENSURE REQUIREMENTS

Article 1, consisting of Sections R9-33-101 through R9-33-107, made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1).

Section

R9-33-101.	Definitions
R9-33-102.	Requirement for Licensure
R9-33-103.	Individuals to Act for Applicant or Licensee
R9-33-104.	Application and Inspection
R9-33-105.	License Renewal
R9-33-106.	Changes Affecting a License
R9-33-107.	Investigation of Complaints
R9-33-108.	Time-frames
R9-33-109.	Denial, Revocation, or Suspension of a License
Table 1.1	Time-frames (in days)

ARTICLE 2. GROUP HOME REQUIREMENTS

Article 2, consisting of Sections R9-33-201 through R9-33-207, made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1).

Section

R9-33-201.	Emergency Procedures and Evacuation Drills
R9-33-202.	Fire Safety Requirements
R9-33-203.	Physical Plant Requirements
R9-33-204.	Environmental Requirements
R9-33-205.	Vehicle Safety Requirements
R9-33-206.	Swimming Pool Requirements
R9-33-207.	Repealed

ARTICLE 1. LICENSURE REQUIREMENTS

R9-33-101. Definitions

In addition to the definitions in A.R.S. § 36-551, the following definitions apply in this Chapter unless otherwise specified:

1. "Accreditation" means recognition as having met the operating standards and criteria of a nationally recognized accreditation organization.
2. "Administrative completeness review time-frame" means the same as in A.R.S. § 41-1072.
3. "Applicant" means an individual or business organization requesting a license under R9-33-104 to open a group home.
4. "Application packet" means the forms, documents, and additional information the Department requires to be submitted by an applicant.
5. "Business organization" means the same as "entity" in A.R.S. § 10-140.
6. "Controlling person" means a person who, with respect to a business organization:
 - a. Through ownership, has the power to vote at least 10% of the outstanding voting securities of the business organization;
 - b. If the business organization is a partnership, is a general partner or is a limited partner who holds at least 10% of the voting rights of the partnership;
 - c. If the business organization is a corporation, association, or limited liability company, is the president, the chief executive officer, the incorporator, an agent, or any person who owns or controls at least 10% of the voting securities; or
- d. Holds a beneficial interest in 10% or more of the liabilities of the business organization.
7. "Day" means a calendar day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or state holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday.
8. "Department" means the Arizona Department of Health Services.
9. "Documentation" means information in written, photographic, electronic, or other permanent form.
10. "Facility" means the building or buildings used for operating a group home.
11. "Fire risk prevention level" means a designation applied to a group home by the Division based on a formula aggregating safety factors existing at the group home.
12. "Hazard" means an object, equipment, situation, or condition that may result in physical injury or illness to an individual.
13. "Licensee" means the individual or business organization to which the Department has issued a license to operate a group home.
14. "Modification" means the substantial improvement, enlargement, reduction, alteration, or other substantial change in the facility or another structure on the premises at a group home.
15. "Overall time-frame" means the same as in A.R.S. § 41-1072.
16. "Plumbing system" means fixtures, pipes, and related parts, including a septic apparatus, assembled to carry clean water into a structure and to carry sewage out of a structure.
17. "Premises" means:
 - a. A facility; and
 - b. The grounds surrounding the facility that are owned, leased, or controlled by the licensee, including other structures.
18. "Private residential swimming pool" means the same as in A.A.C. R18-5-201.
19. "Resident" means an individual who is accepted by a licensee under the terms of a contract with the Division to live at the licensee's group home.
20. "Safety-approved" means tested and designated as meeting applicable safety standards by one or more of the following organizations:
 - a. Underwriters Laboratories,
 - b. Canadian Standards Association, or
 - c. Factory Mutual Insurance Company Global.
21. "Service provider contract" means the entirety of an applicant's or licensee's qualified vendor agreement with the Division.
22. "Spa" means the same as in A.A.C. R18-5-201.
23. "Staff" means the employees or volunteers who provide habilitation to residents at a group home.
24. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-102. Requirement for Licensure

- A. An applicant shall obtain a license to operate a group home from the Department before providing supervision or habilitation to an individual with a developmental disability in a group home.
- B. A license to operate a group home is valid for the following, as indicated on the license:
1. Address of the group home;
 2. Name of the licensee;
 3. Name of the group home, if applicable;
 4. Fire risk prevention level; and
 5. Licensing period for the group home.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-103. Individuals to Act for Applicant or Licensee

When an applicant or licensee is required by this Chapter to provide information on or sign an application form or other document, the following shall satisfy the requirement on behalf of the applicant or licensee:

1. If the applicant or licensee is an individual, the individual; and
2. If the applicant or licensee is a business organization, the individual who the business organization has designated to act on the business organization's behalf for purposes of this Chapter and who:
 - a. Is a controlling person of the business organization,
 - b. Is a U.S. citizen or legal resident, and
 - c. Has an Arizona address.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). R9-33-103 renumbered to R9-33-104; new R9-33-103 made by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-104. Application and Inspection

- A. For a license to operate a group home, an applicant shall submit to the Department a completed application packet that contains:
1. An application form provided by the Department that includes:
 - a. The applicant's name;
 - b. The proposed group home's name, if any;
 - c. The address and telephone number of the proposed group home;
 - d. The applicant's address and telephone number, if different from the address or telephone number of the proposed group home;
 - e. The applicant's e-mail address;
 - f. The name and contact information of an individual acting on behalf of the applicant according to R9-33-103, if applicable;
 - g. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-33-108(C)(3);
 - h. Whether the applicant is a current service provider or intends to become a service provider;

- i. The fire risk prevention level at which the applicant anticipates operating the group home; and
 - j. The applicant's signature and the date signed;
2. A copy of the applicant's:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status;
 3. A copy of the applicant's:
 - a. Current service provider contract with the Division indicating that services are to be provided at the address of the proposed group home; or
 - b. Documentation from the Division demonstrating that the applicant has a service provider contract pending for providing services at the address of the proposed group home; and
 4. A copy of the applicant's accreditation report issued by a nationally recognized accreditation organization, if applicable.
- B. An applicant or licensee shall allow the Department immediate access to all areas of the premises, a resident, record, or vehicle used to transport a resident, according to A.R.S. § 41-1009.
- C. Upon receipt of the application packet in subsection (A), the Department shall issue or deny a license to an applicant as provided in R9-33-108.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). R9-33-104 renumbered to R9-33-105; new R9-33-104 renumbered from R9-33-103 and amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-105. License Renewal

- A. At least 60 days before the expiration date indicated on a license to operate a group home, for renewal of the license to operate a group home, a licensee shall submit to the Department an application packet that contains the information and documents in R9-33-104(A)(1), R9-33-104(A)(3)(a), and R9-33-104(A)(4).
- B. The Department shall renew a license to operate a group home:
1. If, after conducting an onsite inspection, the Department determines that the licensee is in compliance with the applicable requirements in this Chapter; and
 2. According to the time-frames in R9-33-108.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). R9-33-105 renumbered to R9-33-106; new R9-33-105 renumbered from R9-33-104 and amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-106. Changes Affecting a License

- A. A licensee shall notify the Department in writing at least 30 days before the effective date of:
1. Termination of operation of a group home;
 2. Termination of a service provider contract with the Division;
 3. A change in the ownership of the group home;
 4. A change in the name of the group home;
 5. If the licensee is an individual, a legal change of the licensee's name;
 6. Construction or modification of the facility or another structure on the premises other than construction or modification undertaken in accordance with R9-33-203(A); or

Department of Health Services - Group Homes for Individuals Who are Developmentally Disabled

7. If approved by the Division, a change in the group home's fire risk prevention level.
- B. If the Department receives the notification in subsection (A)(1), the Department shall void the licensee's license to operate a group home as of the termination date specified by the licensee.
- C. If the Department receives the notification in subsection (A)(2), the Department shall take the applicable action in R9-33-109.
- D. If the Department receives the notification in subsection (A)(3), the Department shall void the licensee's license to operate a group home upon issuance of a new license to operate a group home to the entity assuming ownership of the group home.
- E. If the Department receives the notification in subsection (A)(4) or (5), the Department shall issue to the licensee an amended license that incorporates the change but retains the expiration date of the existing license.
- F. If the Department receives the notification in subsection (A)(6) or (7), the Department shall conduct an inspection of the premises as indicated in R9-33-104(B) and, if the group home is in compliance with A.R.S. Title 36, Chapter 5.1 and this Chapter, if applicable, issue to the licensee an amended license that incorporates the change but retains the expiration date of the existing license.
- G. An individual or business organization planning to assume operation of an existing group home shall obtain a new license as required in R9-33-102(A) before beginning operation of the group home.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). R9-33-106 renumbered to R9-33-107; new R9-33-106 renumbered from R9-33-105 and amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-107. Investigation of Complaints

- A. Upon receipt of a complaint or information indicating that a group home may not be in compliance with A.R.S. Title 36, Chapter 5.1 or this Chapter, the Department shall:
 1. Investigate the complaint or information about noncompliance within 30 days after receipt of the complaint or information about noncompliance;
 2. Develop a written report documenting the investigation;
 3. Provide the licensee with the written report in subsection (A)(2); and
 4. If the complaint or information about noncompliance was substantiated, notify the Division of the outcome of the investigation.
- B. If the Department substantiates a complaint or information about noncompliance at a group home, the licensee of the group home shall:
 1. Establish a plan of correction, if applicable, for correction of a deficiency;
 2. Agree to carry out the plan of correction by signing the written report in subsection (A)(2); and
 3. Ensure that a deficiency listed on the plan of correction is corrected within 30 days after the date of the plan of correction or within a time period the Department and the licensee agree upon in writing.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). R9-33-107 renumbered to R9-33-109; new R9-33-107 renumbered from R9-33-106 and amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-108. Time-frames

- A. The overall time-frame described in A.R.S. § 41-1072 for a license granted by the Department under this Chapter is set forth in Table 1.1. The applicant or licensee and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for a license granted by the Department under this Chapter is set forth in Table 1.1 and begins on the date that the Department receives an application packet.
 1. The Department shall send a notice of administrative completeness or deficiencies to the applicant or licensee within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application.
 - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is sent until the date that the Department receives all of the missing information or items from the applicant or licensee.
 - c. If an applicant or licensee fails to submit to the Department all of the information or items listed in the notice of deficiencies within 120 days after the date that the Department sent the notice of deficiencies or within a time period the applicant or licensee and the Department agree upon in writing, the Department shall consider the application withdrawn.
 2. If the Department issues a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is set forth in Table 1.1 and begins on the date of the notice of administrative completeness.
 1. As part of the substantive review of an application for a license, the Department shall conduct an inspection that may require more than one visit to the group home.
 2. The Department shall send a license or a written notice of denial of a license within the substantive review time-frame.
 3. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the applicant or licensee has agreed in writing to allow the Department to submit supplemental requests for information.
 - a. If the Department determines that an applicant or licensee, a group home, or the premises are not in substantial compliance with A.R.S. Title 36, Chapter 5.1 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
 - b. An applicant or licensee shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of the corrections required in a statement of deficiencies, within 30 days after the date of the comprehensive written request for additional information or the supplement-

- c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including, if applicable, documentation of corrections required in a statement of deficiencies.
- d. If an applicant or licensee fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of corrections required in a statement of deficiencies, within the time prescribed in subsection (C)(3)(b), the Department shall deny the application.
- 4. The Department shall issue a license if the Department determines that the applicant or licensee and the group home, including the premises, are in substantial compliance with A.R.S. Title 36, Chapter 5.1 and this Chapter.
- 5. If the Department denies a license, the Department shall send to the applicant or licensee a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-109. Denial, Revocation, or Suspension of a License

- A. The Department may deny an application or suspend or revoke a license to operate a group home if:
 - 1. An applicant or licensee does not meet the application requirements contained in R9-33-104 or R9-33-105(A);
 - 2. A licensee is not a service provider for the duration of one licensure period;
 - 3. A licensee does not correct the deficiencies according to the plan of correction contained in R9-33-107 by the time stated in the plan of correction; or
 - 4. The nature or number of violations revealed by any type of inspection or investigation of a group home poses a direct risk to the life, health, or safety of a resident.
- B. An applicant or licensee may appeal the Department's determination in subsection (A) according to A.R.S. Title 41, Chapter 6, Article 10.
- C. The Department shall immediately notify the Division when an application is denied and when a license to operate a group home is suspended or revoked.

Historical Note

New Section renumbered from R9-33-107 and amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

Table 1.1 Time-frames (in days)

Type of approval	Statutory authority	Overall time-frame	Administrative completeness review time-frame	Substantive review time-frame
Application for a license under R9-33-104	A.R.S. § 36-132(A)(21)	120	60	60
Renewal of a license under R9-33-105	A.R.S. § 36-132(A)(21)	60	30	30

Historical Note

Table 1.1 made by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

ARTICLE 2. GROUP HOME REQUIREMENTS

R9-33-201. Emergency Procedures and Evacuation Drills

- A. A licensee shall ensure that a written plan for emergencies:
 - 1. Is developed and implemented;
 - 2. Is available and accessible to staff and each resident at the facility;
 - 3. Contains procedures for responding to fire, emergency, severe weather conditions, and other disasters, including:
 - a. Routes of evacuation, location of firefighting equipment, and evacuation devices identified on a floor plan of the facility;
 - b. Instructions on the use of fire alarm systems, firefighting equipment, and evacuation devices;
 - c. Procedures for evacuating each resident, including a resident who is not capable of self-preservation or who has a mobility, sensory, or other physical impairment; and
 - d. Procedures for notifying an emergency response team, law enforcement, and the licensee or the licensee's designee; and
 - 4. Includes procedures for when a resident is missing from the premises.
- B. A licensee shall ensure that:

- 1. The facility's street address is painted or posted against a contrasting background so that the group home's street address is visible from the street; or
- 2. The local emergency response team, such as the local fire department, is notified of the location of the facility in writing at least once every 12 months. The licensee shall make the written notification available for review at the facility for at least two years from the date of the notification.
- C. A licensee shall ensure that:
 - 1. Except as described in subsection (D), an evacuation drill that includes all residents, except any residents otherwise specifically excluded from evacuation drills as indicated on documentation provided by the Division for the resident, is conducted at least once every six months on each shift; and
 - 2. Documentation of an evacuation drill is available for review at the facility for at least two years after the date of the evacuation drill that includes:
 - a. The date and time of the evacuation drill;
 - b. The length of time to evacuate or simulate the evacuation of all residents from the facility;
 - c. A summary of the evacuation drill, including a list of the residents and staff who were present at the time of the drill, how the drill was performed, how

Department of Health Services - Group Homes for Individuals Who are Developmentally Disabled

- long the drill took to complete, and, if applicable, a list of residents for whom evacuation was simulated; and
- d. Except as provided in subsection (D)(2), if the length of time to evacuate all residents from the facility exceeds three minutes, a plan of correction to bring the evacuation time to three minutes or less in case of an actual emergency requiring evacuation.
- D.** If a group home provides services to a resident whom the Division has identified, through the assessment process used to determine the group home's fire risk prevention level, as having a condition that could cause a resident to be harmed if the resident participated in an evacuation drill, a licensee shall ensure that:
1. An evacuation drill:
 - a. Does not include the resident, and
 - b. Simulates the evacuation of the resident according to the plan required in subsection (A)(3)(c), and
 2. The documentation of an evacuation drill required in subsection (C)(2) also includes, if the length of time to evacuate or simulate the evacuation of all residents exceeds five minutes, a plan of correction to bring the evacuation time to five minutes or less in case of an actual emergency requiring evacuation.
- E.** A licensee shall ensure that:
1. A first aid kit is available in the facility that has the following items in a quantity sufficient to meet the needs of residents and staff:
 - a. Adhesive sterile bandages of assorted sizes,
 - b. Sterile gauze pads,
 - c. Sterile gauze rolls,
 - d. Adhesive or self-adhering tape,
 - e. Antiseptic solution or sealed antiseptic wipes,
 - f. Re-closable plastic bags of at least one-gallon size,
 - g. Single-use non-porous gloves,
 - h. Scissors,
 - i. Tweezers, and
 - j. A cardiopulmonary resuscitation mouth guard or mouth shield;
 2. All stairways, hallways, walkways, and other routes of evacuation are free of any obstacle that may prevent evacuation of a resident in an emergency;
 3. If a window or door contains locks, bars, grills, or other devices that obstruct evacuation, each device contains a release mechanism that is operable from the inside of a facility and that does not require the use of a key, special knowledge, or special effort;
 4. Each facility contains a working non-cellular telephone that is available and accessible to staff and each resident at all times; and
 5. The following are posted at the location of a facility's telephone:
 - a. Instructions to dial 911 or the telephone number of another local emergency response team, and
 - b. The address and telephone number of the group home.
- Historical Note**
- New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).
- R9-33-202. Fire Safety Requirements**
- A.** The Department shall issue to an applicant or licensee:
1. A fire risk prevention level 1 group home license if the group home meets the requirements in subsections (B) through (G); and
 2. A fire risk prevention level 2 group home license if the group home meets the requirements in subsections (B) through (H).
- B.** A licensee shall ensure that the premises are in compliance with all applicable state and local fire safety regulations and that:
1. Before a license is issued or renewed, a fire inspection is conducted by the local fire department, the Department, or an entity authorized by the Department;
 2. Any repair or correction stated in a fire inspection report is made or corrected according to the requirements and time in the fire inspection report; and
 3. A current fire inspection report is available for review at the group home.
- C.** A licensee shall ensure that the facility has at least one working, portable, all-purpose fire extinguisher labeled as rated at least 2A-10-BC by Underwriters Laboratories, or two co-located working, portable, all-purpose fire extinguishers labeled as rated at least 1A-10-BC by Underwriters Laboratories, installed and maintained in the facility as prescribed by the manufacturer or the fire authority having jurisdiction.
- D.** A licensee shall ensure that a fire extinguisher:
1. Is either:
 - a. Disposable and has a charge indicator showing green or "ready" status; or
 - b. Serviced at least once every 12 months by a fire extinguisher technician certified by the National Fire Protection Agency, the International Code Council, or Compliance Services and Assessments; and
 2. If serviced, is tagged specifying:
 - a. The date of purchase or the date of recharging, whichever is more recent; and
 - b. The name of the organization performing the service, if applicable.
- E.** A licensee shall ensure that smoke detectors are:
1. Working and audible at a level of 75db from the location of each bed used by a resident in the facility;
 2. Capable of alerting all residents in the facility, including a resident with a mobility or sensory impairment;
 3. Installed according to the manufacturer's instructions;
 4. Located in at least the following areas:
 - a. Each bedroom;
 - b. Each room or hallway adjacent to a bedroom, except a bathroom or a laundry room; and
 - c. Each room or hallway adjacent to the kitchen, except a bathroom, a pantry, or a laundry room; and
 5. If the licensee has been cited more than once in the previous four years under subsections (E)(1) through (4), either:
 - a. Hard-wired to the electrical system of the group home with a battery backup; or
 - b. Connected to an early-warning fire detection system required in subsection (H)(2), if applicable.
- F.** A licensee shall ensure that each bedroom has at least one openable window or door to the outside for use as an emergency exit.
- G.** A licensee shall ensure that:
1. A usable fireplace is covered by a protective screen or covering at all times; and
 2. Combustible or flammable materials are not stored within three feet of a furnace, heater, water heater, or usable fireplace.

- H. A licensee of a fire risk prevention level 2 group home shall ensure that:
1. The facility contains an emergency lighting system that:
 - a. Works without in-house electrical power,
 - b. Illuminates the path of evacuation, and
 - c. Is inspected at least once every 12 months by the manufacturer or an entity that installs and repairs emergency lighting systems;
 2. The facility has an early-warning fire detection system that:
 - a. Is safety-approved;
 - b. Is hard-wired or connected wirelessly, with battery back-up;
 - c. Sounds every alarm in the facility when smoke is detected;
 - d. Is installed in each bedroom, each room or each hallway adjacent to a bedroom, and each room or each hallway adjacent to a kitchen; and
 - e. Is inspected at least once every 12 months by the manufacturer or by an entity that installs and repairs early-warning fire detection systems;
 3. The facility has one of the following:
 - a. Sufficient staff on duty to evacuate all residents present at the facility within three minutes or, if applicable under R9-33-201(D), within five minutes; or
 - b. An automatic sprinkler system installed according to the applicable standard incorporated by reference in A.A.C. R9-1-412 and installed according to NFPA 13, NFPA 13R, or NFPA 13D, as applicable, that:
 - i. Covers every room in the facility; and
 - ii. Is inspected at least once every 12 months by the manufacturer or by an entity that installs and repairs automatic sprinkler systems; and
 4. Documentation is available at the facility for two years after the date of an inspection:
 - a. For:
 - i. The emergency lighting system inspection required in subsection (H)(1)(c);
 - ii. The early-warning fire detection system inspection required in subsection (H)(2)(e); and
 - iii. If applicable, the automatic sprinkler system required in subsection (H)(3)(b)(ii); and
 - b. That includes:
 - i. The date of the inspection,
 - ii. The name of the entity performing the inspection,
 - iii. A tag on the system or a written report of the results of the inspection, and
 - iv. A description of any repairs made to the system as a result of the inspection.
- b. Identifies modifications, if any, needed to the premises to ensure that the premises are accessible to and usable by the resident;
3. The premises have been modified as identified by the Division in subsection (A)(2)(b);
 4. Ramps, stairs, or steps on the premises are secured firmly to the ground or a permanent structure and have slip-resistant surfaces; and
 5. If handrails and grab bars are installed in a facility, handrails and grab bars are securely attached and stationary.
- B. A licensee shall ensure that:
1. A method of heating and cooling maintains the facility between 65° F and 85° F in areas of the facility occupied by residents;
 2. Ventilation is provided by an openable window, air conditioning, or other mechanical device;
 3. Working, safe appliances for cooling and cooking food are provided in the facility that:
 - a. Are safety-approved;
 - b. If used to refrigerate food, maintain the food at a temperature of 40° F or below at all times; and
 - c. If used to freeze food, maintain the food at a temperature of 0° F or below at all times;
 4. Hot water temperatures in the facility are maintained between 95° F and 120° F; and
 5. Bathtubs and showers contain slip-resistant strips, rubber bath mats, or slip-resistant surfaces.
- C. A licensee shall ensure that:
1. Electrical lighting is contained in each room in the facility;
 2. Electrical devices and equipment on the premises are safety-approved, safe, and in working order;
 3. Electrical outlets on the premises are safe, covered with a faceplate, and installed in accordance with the requirements of the local jurisdiction;
 4. If the facility was built or modified on or after the effective date of this Chapter, any electrical outlet located within 3 feet of a water source includes a ground fault circuit interrupt (GFCI);
 5. An appliance, light, or other device with a frayed or spliced electrical cord is not used on the premises; and
 6. An electrical cord, including an extension cord, on the premises is not:
 - a. Used as a substitute for permanent wiring,
 - b. Run under a rug or carpeting,
 - c. Run over a nail, or
 - d. Run from one room to another.
- D. A licensee shall ensure that:
1. A facility contains a safe, working plumbing system;
 2. If a facility's plumbing system is connected to a non-municipal sewage disposal system, the plumbing system and connective piping are free of visible leakage; and
 3. The premises do not contain unfenced or uncovered wells, ditches, or holes into which an individual may step or fall.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-203. Physical Plant Requirements

- A. A licensee shall ensure that:
1. A group home is in compliance with applicable federal and state disability laws;
 2. If a group home has a resident with a mobility, sensory, or other physical impairment, documentation is available for review at the group home that:
 - a. Is provided by the Division; and

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-204. Environmental Requirements

- A. A licensee shall ensure that:
1. The premises are free of accumulations of garbage or refuse;
 2. Garbage and refuse in the facility are:

Department of Health Services - Group Homes for Individuals Who are Developmentally Disabled

- a. Stored in cleanable containers or in sealable plastic bags; and
- b. Removed from the facility at least once every seven days;
- 3. Cleaning compounds and toxic substances are maintained in labeled containers that:
 - a. Are stored to prevent a hazard;
 - b. Are appropriate to the contents of each container;
 - c. If appropriate based on a resident's disability, are locked; and
 - d. Are stored in a separate location from food or medicine;
- 4. Unused furniture, equipment, fabrics, or devices are removed from the facility or maintained in a covered area on the premises that is designated by the licensee for storage in a manner that does not create a hazard; and
- 5. There are no firearms or ammunition on the premises;
- B. A licensee shall ensure that:
 - 1. The facility is maintained free of insects and vermin;
 - 2. The premises and its structures and furnishings are:
 - a. In a clean condition,
 - b. Free of odors, such as urine or rotting food; and
 - c. In sufficiently good repair that no object, equipment, or condition present constitutes a hazard; and
 - 3. Standing water is not allowed to accumulate on the premises, except in an area or vessel the purpose of which is to hold standing water.
- C. A licensee shall ensure that:
 - 1. An unvented space heater or open-flame space heater is not used on the premises;
 - 2. An electric portable heater or electric radiant heater is not used on the premises unless the electric portable heater or electric radiant heater:
 - a. Has:
 - i. Either a non-porous casing or a grill with a mesh small enough to prevent cloth or a child's finger from entering the casing,
 - ii. A tilt switch that shuts off power to the electric portable heater if the electric portable heater tips over,
 - iii. An automatic shutoff control to prevent overheating, and
 - iv. A thermostat control; and
 - b. Is plugged directly into a wall outlet; and
 - 3. A vented space heater used on the premises is:
 - a. Safety-approved;
 - b. Professionally installed in accordance with the requirements of the local jurisdiction; and
 - c. Mounted as a permanent fixture in a wall, floor, or ceiling.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). Section repealed; new Section renumbered from R9-33-205 and amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-205. Vehicle Safety Requirements

- A. A licensee shall ensure that a vehicle used to transport a resident:
 - 1. Is maintained in safe and working order; and
 - 2. Is equipped with:
 - a. A working heating and air conditioning system;
 - b. A first aid kit that meets the requirements in R9-33-201(E)(1);

- c. Working seat belts for the driver and each passenger; and
- d. Floor mounted seat belts and wheel chair lock-down devices for each wheel chair passenger transported, if the vehicle is used to transport a passenger in a wheelchair.
- B. A licensee shall ensure that documentation of each maintenance or repair of a vehicle used to transport a resident is available for review at the facility for at least two years after the date of the maintenance or repair.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). Section renumbered to R9-33-204; new Section renumbered from R-33-206 and amended by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-206. Swimming Pool Requirements

- A. Except as provided in subsection (B), a licensee shall ensure that a private residential swimming pool on the premises:
 - 1. If filled with water, is surrounded by a fence or enclosure constructed of rigid material that:
 - a. Is at least 5 feet high;
 - b. Is free of an opening that exceeds 4 inches or, if a wire mesh fence, is free of an opening that exceeds 1 3/4 inches;
 - c. Is free of openings for handholds or footholds on the exterior of the fence or enclosure;
 - d. Is at least 20 inches from the edge of the private residential swimming pool;
 - e. Is clear of objects out to a distance of 30 inches on either side of the fence or enclosure from the level of the ground to a height of 5 feet above the fence or enclosure;
 - f. Has at least one gate that:
 - i. Opens outward from the private residential swimming pool,
 - ii. Has a self-closing latch attached no less than 54 inches above ground level as measured from the exterior side of the fence or enclosure, and
 - iii. Is locked when the private residential swimming pool is not in use;
 - g. Is secured perpendicular to level ground; and
 - h. Is located at least 54 inches from the exterior wall of the facility to allow evacuation without entering the private residential swimming pool area;
 - 2. Is not located in the path of an emergency exit;
 - 3. If filled with water, is equipped with the following:
 - a. An operational water circulation system that clarifies the swimming pool water,
 - b. An operational vacuum cleaning system that maintains the sides and bottom of the pool free of dirt and debris,
 - c. A shepherd's crook that is attached to its own pole, and
 - d. A ring buoy with an attached rope that is at least 10 feet long plus the distance from the edge to the middle of the private residential swimming pool; and
 - 4. If not filled with water, is covered completely by a covering that:
 - a. Is permitted by the local jurisdiction,
 - b. Is free of an opening that exceeds 1 inch,
 - c. Withstands weight of at least 495 pounds per square foot on all parts of the covering without any distortion or compression, and

- d. Has at least one access hatch that is locked so that a resident cannot open it.
- B. The requirements in subsection (A) do not apply to a group home if the Division provides to the Department written documentation indicating that the Division has determined that the private residential swimming pool is safe, based upon the functional level of the residents:
 - 1. At the time of initial licensure,
 - 2. At the time of license renewal, and
 - 3. Upon the placement of a resident at the group home.
- C. A licensee shall ensure that a spa:
 - 1. Except as specified in subsection (C)(2), is covered and locked when not in use, with a mechanism that a resident cannot open; and

- 2. If a resident is under 6 years of age, is enclosed by a fence specified in subsection (A)(1).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). Section renumbered to R9-33-205; new Section made by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

R9-33-207. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 910, effective February 11, 2002 (Supp. 02-1). Repealed by final rulemaking at 18 A.A.R. 3295, effective February 3, 2013 (Supp. 12-4).

Attachment B

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds utilized by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.
3. Make rules and regulations for the organization and proper and efficient operation of the department.
4. Determine when a health care emergency or medical emergency situation exists or occurs within the state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.
5. Provide a system of unified and coordinated health services and programs between the state and county governmental health units at all levels of government.
6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.
10. Establish and maintain separate financial accounts as required by federal law or regulations.
11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
12. Take appropriate steps to reduce or contain costs in the field of health services.
13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
14. Encourage an effective use of available federal resources in this state.
15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
16. Promote the effective utilization of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are no lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

36-132. Department of health services; functions; contracts

A. The department shall, in addition to other powers and duties vested in it by law:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that

no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-591. Adult developmental homes; child developmental homes; licensing; applicability

A. An adult developmental home or child developmental home shall be licensed pursuant to this article.

B. Group homes, except for those described in subsection E of this section, shall be licensed for health and safety by the department of health services pursuant to section 36-132.

C. The division shall notify the department of health services of:

1. Service providers who enter into contracts with the division for group homes.
2. Any violation of health and safety standards observed during monitoring visits.

D. The department of health services shall immediately notify the division:

1. When a group home license has been denied, suspended or revoked.
2. Of any other licensing action taken on a group home by the department of health services.
3. Of substantiated complaints regarding health and safety.

E. The division shall ensure that state-operated residential settings that are owned or leased facilities operated by the division meet the same standards as group homes unless they are certified as intermediate care facilities for persons with an intellectual disability pursuant to 42 Code of Federal Regulations section 483.400. An intermediate care facility for persons with an intellectual disability that is operated by the division or a private entity is not required to be licensed under this section if the facility is certified pursuant to 42 Code of Federal Regulations section 483.400.

F. The department shall visit each adult developmental home and child developmental home and inspect the premises used for the care of children or vulnerable adults for sanitation, fire and other actual and potential hazards. The department shall take any action it deems necessary to carry out the duties imposed by this section, including the denial of the application for licensure and the suspension or revocation of the home's license.

36-595. Programmatic and contractual monitoring; deemed status

A. The department of economic security shall perform programmatic and contractual monitoring of the services it provides or for which it contracts.

B. The department shall promulgate rules that provide for deemed status. The department shall grant deemed status to a service provider that presents evidence that it maintains a current accreditation from a nationally recognized agency that the department determines maintains accreditation standards that meet the standards established by the department. On determination by the department that there is reasonable cause to believe a service provider is not adhering to the programmatic or contractual requirements of the department, the department and any duly designated employee or agent of the department may enter on and into the premises at any reasonable time for the purpose of determining the state of compliance with the programmatic or contractual requirements of the department. The department may revoke deemed status based on the findings of programmatic and contractual monitoring.

C. The department of health services may deny, suspend or revoke a license for a violation of this article or department rules. At least thirty days before the department denies, revokes or suspends a license it shall mail the applicant or licensee a notice of that person's right to a hearing. The department shall issue this notice by certified mail, return receipt requested. The notice shall state the hearing date and the facts constituting the reasons for the department's action and shall cite the specific statute or rule violated.

D. If the person does not respond to the written notice, the department of health services, at the expiration of the time fixed in the notice, shall take the action prescribed in the notice. If the person, within the period fixed in the notice, conforms the application or the operation of the facility to the applicable statute or rule, the department may grant the license or withdraw the notice of suspension or revocation.

Attachment C



**TITLE 9. HEALTH SERVICES
CHAPTER 33. DEPARTMENT OF HEALTH SERVICES
GROUP HOMES FOR INDIVIDUALS
WITH A DEVELOPMENTAL DISABILITY
2012 FINAL RULEMAKING**

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 33. DEPARTMENT OF HEALTH SERVICES

GROUP HOMES FOR INDIVIDUALS

WITH A DEVELOPMENTAL DISABILITY

1. An identification of the rulemaking

Since the rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 33 were last revised in 2002, several changes within the industry have occurred that have made unnecessary some of the costs that stakeholders currently incur to achieve compliance. Additionally, the Department's Five-year-review Report approved by the Governor's Regulatory Review Council on April 3, 2012 identified several substantive and technical issues with the rules. The Department received an exception from the Governor's rulemaking moratorium, established by Executive Order 2011-05, and is proposing to amend the rules in 9 A.A.C. 33 to allow stakeholders to achieve cost savings in applicable cases and to address the issues identified in the Five-year-review Report.

In calendar year 2011, the Department licensed 975 group homes, of which 951 held a two-year license and 24 held a three-year license. During 2011, the Department received 67 new applications, of which all were approved and issued licenses. During 2011, the Department renewed 402 licenses, denied no license renewals, and has a further 18 license renewals still pending. During 2011, the Department received 32 complaints, of which 17 were substantiated. Enforcement typically results in citation and a plan of correction under R9-33-106, which occurred for each substantiated complaint. In one instance, a settlement agreement in lieu of revocation was necessary as a further enforcement action. There were no other suspensions, revocations, or denials of group home licenses in 2011.

a. The conduct and its frequency of occurrence that the rule is designed to change:

The rules establish minimum health and safety standards for the licensing of group homes. Licensees are required by the rules to meet prescribed minimum health and safety standards at all times. The Department believes that some degree of non-compliance by licensees may result from aspects of the rules that could be clarified, streamlined, or simplified. With this rulemaking, the Department hopes to minimize or eliminate non-compliance, if there is any, resulting from these factors.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Any failure of a licensee to meet the minimum health and safety standards prescribed by rule poses a threat to the welfare of a resident, and residents of group homes are members of a vulnerable population of individuals with developmental disabilities. To the extent that any licensee non-compliance with minimum health and safety standards results from an aspect of the rules that could be clarified, streamlined, or simplified, the Department believes that forgoing rulemaking will result in such non-compliance continuing to occur.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

To the extent that any licensee non-compliance with minimum health and safety standards results from an aspect of the rules that could be clarified, streamlined, or simplified, the Department believes that so amending the rules will make such non-compliance less frequent and thus better protect the health and safety of the vulnerable population of residents of group homes.

2. A brief summary of the information contained in the economic, small business, and consumer impact statement:

This rulemaking amends all the rules for format, structure, clarity, conciseness, and understandability, and among the amendments are several substantive changes that have potential economic implications. None of the amendments are expected to impose new costs or increase existing costs for licensees in compliance with the rules or for other stakeholders. In general, the amendments are expected to cause monetary or other benefits to stakeholders.

3. The agency's contact person who can answer questions about or provide data from the economic, small business, and consumer impact statement:

Name: Rohno Geppert, Office Chief
Address: Arizona Department of Health Services
Office of Special Licensing
150 N. 18th Avenue, Suite 460
Phoenix, AZ 85007
Telephone: (602) 364-3048
Fax: (602) 364-4769
E-mail: Rohno.Geppert@azdhs.gov

or
Name: Thomas Salow, Manager
Address: Department of Health Services
Office of Administrative Counsel and Rules
1740 W. Adams St., Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Thomas.Salow@azdhs.gov

4. Persons who will incur direct costs or experience direct benefits from the rulemaking:

This economic, small business, and consumer impact statement identifies as stakeholders:

- The Department,
- The Division,
- Individuals and entities that operate group homes, and
- Individuals with a developmental disability who are residents of group homes.

None of the amendments are expected to impose new costs or increase existing costs for licensees in compliance with the rules or for other stakeholders. In general, the amendments are expected to cause monetary or other benefits to stakeholders. See cost/benefit analysis in paragraph (5).

5. Cost/benefit analysis:

As used in this summary, annual costs/revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

Only the economic, small business, and consumer impact directly attributable to this rulemaking, rather than the impact imposed by the statute, is considered. For example, A.R.S. § 41-1080, effective May 1, 2008 and most recently updated in 2011, requires an applicant or licensee to demonstrate citizenship by submitting appropriate documents to the Department at the time of initial licensing or renewal. The Department is amending R9-33-104 to conform to A.R.S. § 41-1080. The updated requirements impose costs on applicants and licensees, but the increased costs are solely attributable to statutory requirements.

Description of affected groups	Description of effect	Increased cost/ decreased revenue	Decreased cost/ increased revenue
A. State and local government agencies			
The Department	Streamlining, reorganization, and clarification of requirements in all Sections. Includes corrections to cross-references and other technical changes with no additional economic implications other than the benefit of making the rules clearer and easier to use and thus reducing the difficulty of compliance.	None	Significant
	Expanding R9-33-106 to include more scenarios in which a licensee can make changes to its license without requiring issuance of a new license.	None	Minimal-to-moderate -- The cost and time required to change an existing license is less than the cost and time required for issuance of a new license.
	Adding to R9-33-201 new subsection (D) providing instructions on how licensees simulate the evacuation of bedridden residents instead of moving them, which would often be medically inadvisable.	None	Significant – Due to medical necessity, the Department had already been implementing this workaround with licensees, and having it in the rule gives licensees all the information needed for compliance without requiring them to turn to the Department for technical assistance or to attempt to move bedridden residents.
	In accordance with A.R.S. § 41-1055, the Department estimates that no additional employees are expected to be needed as a result of this rulemaking.	N/A	N/A
The Division	Streamlining, reorganization, and clarification of requirements in all Sections. Includes corrections to cross-references and other technical changes with no additional economic implications other than the benefit of making the rules clearer and easier to use and thus reducing the difficulty of compliance.	None	Significant

B. Privately owned businesses

<p>Individuals and entities that operate group homes</p>	<p>Streamlining, reorganization, and clarification of requirements in all Sections. Includes corrections to cross-references and other technical changes with no additional economic implications other than the benefit of making the rules clearer and easier to use and thus reducing the difficulty of compliance.</p>	<p>None</p>	<p>Significant – There are multiple instances in which explicit requirements have been added to clarify the meaning of a previous requirement under which they were encompassed. For example, R9-33-203 contains new language in subsections (C)(3) through (C)(6). However, these are not new requirements. In the previous rules, R9-33-205(B)(1) required that a group home facility be in good repair and not contain a hazard. All of the conditions listed in the new R9-33-203(C)(3) through (C)(6) constitute hazards. A licensee failing to meet those requirements would have been cited under the previous rules under R9-33-205(B)(1). In an effort to improve compliance and reduce hazards that threaten the health and safety of residents, the Department has added clarifying language in this rulemaking throughout Article 2 that more explicitly identifies many common hazards that licensees must abate. This clarification also helps licensees feel that they are treated fairly and equally, and that a Department inspector citing a hazard is acting according to rule and not making a subjective judgment.</p>
	<p>Expanding R9-33-106 to include more scenarios in which a licensee can make changes to its license without requiring relicensure.</p>	<p>None</p>	<p>Minimal-to-moderate – The cost and time to change an existing license is less than the cost and time to apply for and be issued a new license.</p>
	<p>Amending R9-33-107(A)(2) to reflect that the Department may revoke or suspend a license if a licensee is not a service provider for the duration of one licensure period.</p>	<p>None</p>	<p>Significant – The previous wording allowed the Department discretion to revoke or suspend a license immediately upon the licensee not meeting the statutory definition of “service provider,” but the new wording reduces the burden on licensees that may only temporarily be without a resident placement from the Division by preconditioning the Department’s discretion to revoke or suspend a license under subsection (A)(2) on one full licensure period having elapsed without the licensee being a service provider.</p>
	<p>Adding to R9-33-201 new subsection (D) providing instructions on how licensees simulate the evacuation of bedridden residents instead of moving them, which would often be medically inadvisable.</p>	<p>None</p>	<p>Significant – Due to medical necessity, the Department had already been implementing this workaround with licensees, and having it in the rule gives licensees all the information needed for compliance without requiring them to turn to the Department for technical assistance or to attempt to move bedridden residents.</p>

Removing from the first-aid kit requirements in R9-33-201(E) (formerly R9-33-207(A)) the requirement for a triangle bandage for use as a sling in a group home's first aid kit and modernizing other first aid kit requirements.	None	Minimal -- the new requirements reflect the typical contents of first aid kits sold at retail in 2012. Licensees may experience savings as a result of needing no additional purchases to stock a first aid kit appropriately to protect the health and safety of residents.
Amending R9-33-202(C) to allow licensees to use two co-located 1A-10-BC fire extinguishers instead of a 2A-10-BC fire extinguisher.	None	Minimal -- The 2A-10-BC fire extinguisher is more common in commercial use than in residential use and costs \$40-\$180, depending on manufacturer and whether the extinguisher is disposable or rechargeable. The 1A-10-BC fire extinguisher is common and available for as little as \$15 from retail stores.
Amending R9-33-202(D) to allow the use of disposable fire extinguishers instead of requiring rechargeable fire extinguishers.	None	Minimal -- A 2A-10-BC disposable fire extinguisher can cost as much as \$100 less than a rechargeable model. Additionally, the cheaper 1A-10-BC fire extinguishers are almost always disposable, so this change was necessary to allow licensees to realize the cost savings intended by the amendment to R9-33-202(C).
Amending R9-33-202(E)(5) so that a licensee who is cited more than once for having an inoperable smoke detector under subsection (E) must either hard-wire the smoke detector to the facility's electrical system with battery backup or connect it to the facility's alarm system in subsection (H), if applicable.	None or minimal – A licensee in compliance with R9-33-202 incurs no cost from this change. A licensee not in compliance with R9-33-202 jeopardizes the health and safety of residents, and could experience minimal costs if the licensee does not already have an alarm system in the facility.	None or significant – Licensees can help to ensure the health and safety of residents by maintaining working smoke detectors.
Amending R9-33-202(I) to allow the use of an alarm system that utilizes a wireless connection to its monitoring apparatus.	None	None or minimal-to-moderate -- Since the previous rules were adopted in 2002, wireless alarm systems have attained industry ubiquity. A wireless alarm system can cost up to \$1000 less than a wired alarm system depending on the facility, avoiding \$50-\$150 in labor costs per technician-hour to install wiring throughout a residential building and a variable cost of materials for wire and fixtures. Licensees who already have wired alarm systems are unaffected.

C. Private persons and consumers			
Individuals with a developmental disability who are residents of group homes	Streamlining, reorganization, and clarification of requirements in all Sections. Includes corrections to cross-references and other technical changes with no additional economic implications other than the benefit of making the rules clearer and easier to use and thus reducing the difficulty of compliance.	None	Significant
	Adding to R9-33-201 new subsection (D) providing instructions on how licensees simulate the evacuation of bedridden residents instead of moving them, which would often be medically inadvisable.	None	Significant – Due to medical necessity, the Department had already been implementing this workaround with licensees, and having it in the rule is added assurance for bedridden residents that they will not incur health risks by being moved unnecessarily due to an evacuation drill.
	Amending R9-33-202(E)(5) so that a licensee who is cited more than once for having an inoperable smoke detector under subsection (E) must either hard-wire the smoke detector to the facility’s electrical system with battery backup or connect it to the facility’s alarm system in subsection (H), if applicable.	None	Significant – Residents of group homes benefit from not being in jeopardy of their health and safety from inoperable smoke detectors in case of a fire.

6. A general description of the probable impact on public and private employment:

There is no direct effect on public or private employment from the rulemaking. Indirectly, if reduced costs help licensees to realize greater revenue, licensees may be able to expand their businesses and thus employ more individuals to serve the needs of group home residents.

7. The probable impact of the rulemaking on small businesses:

a. An identification of small businesses subject to the rulemaking:

The Department believes that all, or nearly all, licensees are either individual proprietors or small businesses as defined in A.R.S. § 41-1001. Because of local zoning ordinances and the requirements of insurers, even licensees who are individual proprietors will often be organized as charitable trusts or limited liability companies.

b. The administrative and other costs required for compliance with the rulemaking:

The rulemaking imposes no additional administrative or other costs on stakeholders.

c. A description of the methods that the agency may use to reduce the impact on small businesses:

i. Establish less costly or less stringent compliance or reporting requirements:

Group homes are expected to maintain minimum standards for the health and safety of residents at all times. The compliance and reporting requirements in rule are established accordingly, and apply to all licensees, the majority of which are believed to be small businesses, equally. The Department does not believe that any further reduction in the cost or stringency of compliance or reporting is possible at this time.

ii. Establish less costly schedules or less stringent deadlines for compliance:

Group homes are expected to maintain minimum standards for the health and safety of residents at all times. There are no schedules or deadlines for compliance in this respect as this is an ongoing requirement.

iii. Consolidate or simplify compliance or reporting requirements:

This rulemaking does consolidate and simplify compliance and reporting requirements throughout the amendments proposed, and these consolidated and simplified compliance and reporting requirements apply to all licensees, the majority of which are believed to be small businesses, equally. The Department does not believe that any further consolidation or simplification beyond what is presented in this rulemaking is possible at this time.

iv. Establish separate performance standards:

As described in paragraph (7)(a), virtually all licensees are either small businesses or other entities organized in an effectively equivalent form. Accordingly, the rules and the Department's administration and enforcement of the rules are oriented primarily toward small businesses, and the Department does not believe that establishing separate performance standards for small businesses would be appropriate to ensure the health and safety of residents of group homes.

v. Exempt small businesses from any or all requirements:

As described in paragraph (7)(a), virtually all licensees are either small businesses or other entities organized in an effectively equivalent form. Accordingly, the rules and the Department's administration and enforcement of the rules are oriented primarily toward small businesses, and the Department does not believe that exempting small businesses from any or all requirements would be appropriate to ensure the health and safety of residents of group homes.

8. The probable cost and benefit to private persons and consumers who are directly affected by the rulemaking:

The probable benefit to private persons and consumers is given in the cost/benefit analysis in paragraph (5). This rulemaking is expected to impose no costs on private persons or consumers.

9. The probable effect on state revenues:

The rulemaking does not impose any fees or charges that would be deposited to, or establish any payments that would be disbursed from, the general fund or any other state account, and so has no direct effect on state revenues.

10. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:

Under A.R.S. § 36-132(A)(21), the Department licenses group homes and performs administrative and enforcement actions related to facility health and safety. However, as of 1997, A.R.S. Title 36, Chapter 5.1 authorizes the Division to administer the placement of individuals with a developmental disability at group homes and perform contract monitoring for those placements. The Division maintains programmatic rules for group homes at 6 A.A.C. 6, Article 8, Programmatic Standards and Contract Monitoring for Community Residential Settings. A licensee, therefore, must maintain compliance with two regulatory authorities: the Division for programmatic elements, and the Department for facility health and safety elements. The Department already licenses or certifies both programmatic and facility health and safety elements of other residential care settings, such as assisted living homes, child care group homes, and behavioral health homes, and the Department believes it could do the same for group homes for individuals with a developmental disability. However, for this to happen, legislation to that effect would have to be enacted.

a. Monetizing of the costs and benefits for each option:

The Department does not collect data sufficient to articulate a monetary cost for having group homes subject to regulatory oversight by two separate agencies, but believes that such cost, by definition, must be more than if group homes were subject to regulatory oversight by a single agency.

b. Rationale for not using non-selected alternatives:

The Department is limited by its current statutory authority over group homes of licensing and performing administrative and enforcement actions related to facility health and safety. For the Department to promulgate rules on programmatic matters related to group homes, legislation to that effect would have to be enacted.