

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department Legal Division

Agency or Division Name Arkansas Game & Fish Commission

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

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Name of Rule 01.00-R Administrative Hearing Procedure

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Location and Time of Public Meeting 2 Natural Resources Drive, Little Rock, AR 72205, 9:00 am

Proposed Code Amendments for AGFC Point System and Administrative License Suspension Process

01.00-K -- Point System For ~~Hunting, Fishing And Boating~~ Violations of Commission Regulations

A. The Commission has determined that certain violations of its regulations, or a series of violations, are so harmful to the fish and wildlife resources of the State that they warrant a suspension of an individual's hunting and fishing rights, privileges and related licenses. The Commission regards such action as a valid means of protecting the fish and wildlife resources of the State. Under subsection B of this Code, points are assigned for the various offenses. When a person cited for such an offense pleads guilty or no contest, forfeits an appearance bond, or otherwise is convicted by a court of competent jurisdiction, the Commission assesses the points on that person's hunting and fishing violation record. The accumulation of a certain number of points within the time specified can result in administrative suspension of hunting and fishing rights, privileges and related licenses for a specific period of time.

~~A.B.~~ The Commission shall assign violation points to:

1. A person convicted of violating a Commission ~~hunting, fishing or boating~~ regulation;
2. A person convicted of violating a federal wildlife law or regulation in Arkansas; and
3. In accordance with Code 01.00-Q, an Arkansas resident convicted of a wildlife offense in another state that is a member of the Interstate Wildlife Violator Compact.

Violation point values for Commission regulations are as follows:

- Class 1 Offense = 6 Points
- Class 2 Offense = 12 Points
- Class 3 Offense = 18 Points
- Class 4 Offense = 30 Points
- Class 5 Offense = 99 Points
- Unclassified Offense = 0 points

The violation point value for a federal wildlife law or regulation violation shall be equal to the violation point value for the most similar Commission regulation violation. If a court imposes an enhanced penalty pursuant to Code 01.00-J, the Commission shall assign corresponding violation points for the higher class of offense.

- C. For administration of this Point System, the Commission shall assign violation points as of the date of a person's conviction for an offense, and such convictions and ~~V~~violation points will remain on a person's AGFC violation record indefinitely. However, the ~~Commission will consider only~~ violation points associated with an offense for which a conviction resulted will expire 5 years after the date of conviction for that offense and shall not thereafter be considered by the

~~Commission accumulated within a 5-year period~~ for the purpose of determining a person's eligibility for suspension or revocation under Code 1.00-L.

01.00-L -- Denial, Suspension, Or Revocation Of Licenses, Permits, Tags, And Stamps

A. The Director of the Arkansas Game and Fish Commission, or his or her designated representative, is authorized to suspend or revoke the hunting and fishing rights and privileges and any Commission-issued license, permit, tag, or stamp of any person and to deny the application of any applicant in accordance with due process, upon reasonable cause or a showing through the Commission's records or other sufficient evidence that the person has met 1 or more of the following criteria:

1. Accumulated 18 or more violation points within the past 5 years for ~~hunting, fishing, or boating~~ violations of Commission regulations(~~Code 01.00-L~~);
2. Made a material misrepresentation or practiced fraud or deceit in an attempt to obtain or use a license, permit, tag, or stamp;
3. Permitted a fraudulent or unlawful use of his license, permit, tag, or stamp;
4. Under either federal law or another state's law, has received a lifetime revocation of his or her hunting or fishing rights or privileges or any related licenses, or been convicted within the past 5 years of a hunting or fishing violation, which, if the conviction had been pursuant to Arkansas law, would have been grounds for suspension or revocation;
5. Failed to comply with any term of a license, permit, tag or stamp;
6. Failed to comply with any term of a citation for a hunting or fishing violation (including, without limitation, failure to appear in court or to otherwise resolve the case such as by paying a fine); or
7. Has received a suspension or revocation of his or her hunting or fishing rights, privileges, or any related licenses by another state that is a member of the Interstate Wildlife Violator Compact Act Code 01.00-Q).

~~B. The Director of the Arkansas Game and Fish Commission, or his designated representative, shall deny for a period of 3 years all applications for Commission permit hunts submitted by an applicant who has accumulated 12 or more violation points within a 3-year period from the date of the applicant's application. The 3-year ineligibility for a WMA Hunting Permit does not apply for hunting only on private inholdings.~~

~~C.B.~~ The Director of the Arkansas Game and Fish Commission, or his or her designated representative, shall suspend ~~or revoke~~ the hunting and fishing rights, privileges, and any related licenses of any person who has accumulated afor the accumulation of violation points count of 18 or more within a 5-year period. The length of the suspension shall be based on the point accumulation total as follows:

1. ~~18- to 29~~24 Points = 1 year suspension
2. ~~3025- to 3648~~ Points = 2 years suspension

3. ~~3749- to 7572~~ Points = 3 years suspension
4. ~~7673 to 98~~ Points ~~or more~~ = 5 years suspension
5. ~~99 Points or more = Lifetime revocation~~ 7 years suspension (if violation points accumulate from violation of a Class 5 offense)

Any person who receives a hunting suspension shall be ineligible to apply for any Commission permit hunts during the period of suspension; however, an owner of a private inholding (Code 02.02) having a hunting suspension shall be eligible to apply for WMA Hunting Permits for use only by persons who possess a valid hunting license.

~~D.C.~~ A suspension of hunting or fishing rights, privileges, or related licenses occurring for a 3rd time during an individual's lifetime shall result in the lifetime revocation of all hunting and fishing rights, privileges, and related licenses. All suspensions under this Code shall run consecutively.

~~E.D.~~ Prior to implementing a suspension or revocation of hunting and fishing rights, privileges, and any related licenses, the Director, or his or her designated representative, shall ~~send~~provide the person affected written notice of the Commission's intent to suspend or revoke hunting and fishing rights, privileges, and related licenses and allow an opportunity for a hearing for the limited purposes of confirming the identity of the person affected and the accuracy of that person's violation record and the violation points assigned under Code 01.00-L. ~~The Commission shall provide such notice within 3 years from the date of the most recent assignment of violation points. The notice shall state the length and scope of the suspension and include the following information for each offense that forms the basis of the suspension: AGFC Code number; date of conviction; and number of points assigned. The Commission shall provide notice by: delivering a copy to the person affected; or leaving a copy with any member of the person's family at least 18 years of age at a place where the person affected resides; or certified mail addressed to the person affected with a return-receipt requested and delivery restricted to the addressee or agent of the addressee. If, after diligent effort, the Commission is unable to make delivery of the notice upon the person affected, then the Commission may make service by warning order that is published weekly for 2 consecutive weeks: (i) in a newspaper of general circulation in the county where the person was last known to reside, and (ii) on the Commission's website.~~

~~F.E.~~ Except as stated otherwise herein, upon suspension or revocation of any license, permit, tag or stamp, denial of any application or rights and privileges attached thereto, the Director, or his or her designated representative, shall notify the person affected in writing. Such notification shall not be required if the person affected receives a notice of intent to suspend or revoke hunting and fishing rights, privileges, and related licenses and does not request an administrative hearing within the time allowed under Code 01.00-R.

01.00-R -- Administrative Hearing Procedure

- A. Any person whose hunting and fishing rights, privileges, or related licenses have been suspended or revoked by the Commission; who has been denied a Commission-issued license, permit, tag or stamp, or application or rights and privileges attached thereto; or who has received notice of intent to suspend, revoke, or deny the same may request an administrative

review hearing only by notifying the Commission in writing within 20 calendar days after receipt of the notice of suspension, revocation, denial, or notice of intent thereof. The request for a hearing must include a valid, current mailing address (or email address) at which the person will receive notice of the date and time of the hearing and any other notices, and the person must notify the Commission of any change of address during pendency of the hearing. The Commission will presume delivery of all notices correctly addressed and mailed to any address that is provided pursuant to a hearing request or, if none is provided, to the address to which the original notice was mailed. Otherwise, the suspension, revocation or denial shall, without further notice, become effective on the 21st calendar day after the receipt of the notice described herein.

- B. Upon timely receipt of the hearing request, the Commission shall appoint a hearing officer and notify the person requesting the hearing (at the address provided or, if none was provided, to the address to which the original notice was mailed) of the date, time, location, and nature of the hearing. Hearing requests received after the deadline for receipt shall be denied unless the person requesting the hearing can show good cause in writing for the untimeliness of the hearing request, in which case the Commission shall appoint a hearing officer and notify the person requesting the hearing of the date, time, location, and nature of a hearing for the limited purpose of determining the person's eligibility for an administrative review hearing. If the hearing officer determines that the hearing request was timely or was untimely but for good cause, the requested hearing shall be held immediately thereafter.
- C. All hearings shall be conducted in-person at the Commission's main headquarters unless the hearing officer determines an exception is necessary for compelling reasons demonstrated in writing at the time the request for hearing is submitted. The Commission shall cause a record to be made of the proceedings.
- D. Hearings shall be conducted in an informal manner and without necessity of adherence to the rules of evidence required in judicial proceedings. Both the Commission and the person requesting the hearing shall have the right to be represented by counsel, to submit evidence in open hearing, compel the attendance of witnesses and to cross-examine any witness at the hearing. Irrelevant, immaterial or unduly repetitious evidence shall be excluded by the hearing officer. Notice may be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge, and the Commission's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.
- E. Except as stated otherwise herein, the hearing officer shall suspend hunting and fishing licenses, rights, and privileges as set forth in Code 01.00-L beginning on the date specified in the hearing officer's final decision.
 - 1. The hearing officer may reduce the suspension term by up to 1/2 if, after consideration of the person's violation record and evidence admitted at the hearing, the hearing officer makes all of the following findings of fact:
 - i. The person's hunting or fishing rights, privileges, or any related licenses have ~~never~~not been suspended or revoked by the Commission or a court of competent jurisdiction within the previous 15 years; and

- ii. ~~The person's suspension is not based on any Class 5 offense~~~~has accumulated less than 530 violation points in the past five years.~~
- 2. Any reduction granted shall be contingent upon the person successfully completing a Commission-approved hunter education course, ~~and a boating education course, or both of which are approved by the Commission,~~ and submitting written proof of the same to the Commission no later than 120 calendar days after suspension. The suspension reduction shall not become effective unless and until the Commission has received proof of completion of the courses.
- 3. The hearing officer may modify the suspension to allow the person to retain licenses, rights, and privileges to (a) hunt, if no hunting-related offenses formed the basis of the suspension or (b) fish, if no fishing-related offenses formed the basis of the suspension, provided that the person's hunting and fishing licenses, rights, and privileges have never been suspended or revoked by the Commission or a court of competent jurisdiction for fishing- or hunting-related offenses. The hearing officer is not required to suspend or revoke a person's fishing rights, privileges, and related licenses if, after consideration of the person's violation record and evidence admitted at the hearing, the hearing officer finds that none of the violation points forming the basis of the suspension or revocation are related to fishing violations and the person's hunting or fishing rights, privileges, or related licenses have never been suspended or revoked by the Commission or a court of competent jurisdiction. Likewise, the hearing officer is not required to suspend or revoke a person's hunting rights, privileges, and related licenses if, after consideration of the person's violation record and evidence admitted at the hearing, the hearing officer finds that none of the violation points forming the basis of the suspension or revocation are related to hunting violations and the person's hunting or fishing rights, privileges, or related licenses have never been suspended or revoked by the Commission or a court of competent jurisdiction.
- F. In matters not concerning the suspension or revocation of hunting and fishing rights, privileges, and related licenses, the hearing officer shall affirm, rescind, or modify the suspension or revocation of the license, permit, tag or stamp, or the denial of the application based upon the evidence admitted in the record of the proceedings.
- G. Decisions of the hearing officer shall be final and shall include findings of fact, conclusions of law, and a final decision. The parties shall be served either personally or by mail delivery to the address used to mail the hearing notice (or to any updated address a party provided during the hearing) with a copy of the final decision, which shall become effective immediately upon delivery.
- H. Any aggrieved party may, within 30 days after service of the final decision, file a petition for review in the circuit court of Pulaski County or the county in which they reside if they reside in Arkansas. Unless ordered by a court of competent jurisdiction, the Commission shall not stay implementation of the final decision during the pendency of any appeal of that decision.