

Use only for **FINAL** and **EMERGENCY RULES**



Revised 7/2015 to reflect new legislation passed in the 2015 Regular Session (Act 1258). This act changed the effective date from 30 days to 10 days after filing the rule.



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February 24, 2020

Ms. Kayla Sansom, Rules & Regulation Filing
Office of the Arkansas Secretary of State
500 Woodlane Drive, Room 26
Little Rock, AR 72201

RE: Arkansas Game and Fish Commission Regulations Adopted on February 20, 2020

Dear Ms. Sansom:

Enclosed please find hard copies of the Regulation Amendments for the AGFC Point System, Administrative License Suspension Process, and Statute of Limitations (AGFC Codes 01.00-E, 01.00-K, 01.00-L, and 01.00-R) that were approved as a combined package by the Arkansas Game and Fish Commission on February 20, 2020. Also included are the two Financial Impact Statements and the signed Minute Order. The Commission respectfully requests that these final regulations become effective ten (10) days from filing.

Notices for the proposed regulations were published in the Arkansas Democrat-Gazette on December 8, 9 and 10, 2019, and January 19, 20, and 21, 2020.

Kindly notify April Soman at april.soman@agfc.ar.gov to confirm receipt of the hard copies. Should you have any questions or concerns regarding this filing, please do not hesitate to contact me at (501) 223-6327 at your convenience.

Sincerely,

James F. Goodhart
General Counsel

JFG/as
Enclosures
cc: register@sos.arkansas.gov

01.00-R -- Administrative Hearing Procedure

Proposed Regulation

- 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 (/regulations/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 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.
 2. Any reduction granted shall be contingent upon the person successfully completing a Commission-approved hunter education course, boating education course, or both, 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.
- 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.

ARKANSAS GAME AND FISH COMMISSION
Little Rock, Arkansas

MINUTE ORDER NO:	<u>20-008</u>	SUBJECT:	<u>Code Amendments for AGFC Point</u>
DATE PASSED:	<u>February 20, 2020</u>		<u>System, Admin. License Suspension</u>
			<u>Process, and Statute of Limitations</u>
PAGE <u>1</u> of <u>2</u> PAGES		LOCATION:	<u>Statewide</u>

WHEREAS, the Arkansas Game and Fish Commission and its staff have proposed the attached AGFC Code amendments for the purpose of making improvements for the Agency's existing Point System and administrative license suspension process to provide greater efficiency, uniformity, and consistency; **and**

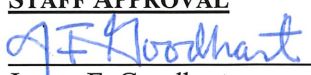
WHEREAS, additionally, the amendments codify into the AGFC Code of Regulations the existing statute of limitations applicable to certain violations of AGFC regulations, as set forth in Ark. Code Ann. § 5-1-109(b)(3)(B)(ii), which the Arkansas General Assembly adopted as Act 1009 of 2015 and has been in effect since July 22, 2015; **and**

WHEREAS, the attached amended regulations have been communicated through a variety of media avenues to sportsmen and the general public throughout the state for review and comment for at least the past 30 days; **and**

WHEREAS, after carefully considering the recommendations of the Director, Commission staff and the Regulations Committee, as well as comments received from the public, the Commission has determined that the attached regulations promote sound wildlife conservation and management and are consistent with Amendment 35 of the Arkansas Constitution, and that these regulations should now be approved for application statewide.


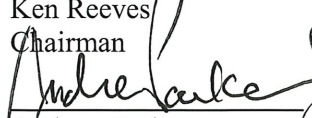

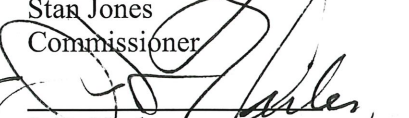
NOW, THEREFORE, BE IT ORDERED this 20th day of February 2020, that the Arkansas Game and Fish Commission hereby approves and adopts the attached regulations, which shall become effective immediately upon public filing or as soon thereafter as possible.

BE IT FURTHER ORDERED that the Commission staff is authorized to proceed with legally certifying and filing the attached regulations with the Secretary of State, State Library, and Bureau of Legislative Research, and incorporating them into the Commission Code Book and Addendum.

Submitted by: 
James F. Goodhart
General Counsel

Division: Legal

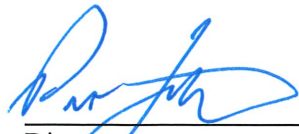
COMMISSION APPROVAL

 Ken Reeves Chairman  Andrew Parker Vice Chairman	 Stan Jones Commissioner  J. D. Neeley Commissioner
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MINUTE ORDER NO: I(f)


PAGE 2 of 2 PAGES

Approved:

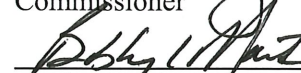

Director

Approved:


Fiscal


Joe Morgan
Commissioner


Anne Marie Doramus
Commissioner


Bobby Martin
Commissioner

PLEASE ANSWER ALL QUESTIONS COMPLETELY
(Attach additional pages if needed)

SHORT TITLE OF THIS RULE: Code Amendments for Statute of Limitations
Applicable to Commission Regulations

Effect on Party Subject to Rule: The periods of limitation set forth in Ark. Code Ann. § 5-1-109(b)(3)(B)(ii) was adopted by the Arkansas General

Assembly as Act 1009 of 2015, and has been in effect since July 22, 2015. This amendment is simply to codify the existing legal standard in the AGFC Code of Regulations. No additional costs to the regulated public are anticipated.

5. What is the total estimated cost by fiscal year to the **agency** to implement this rule? Explain the financial benefit to the agency from implementing this rule.

Current Fiscal Year: \$N/A

Next Fiscal Year: \$ N/A

Financial Benefit to Agency: N/A. The AGFC will continue to enforce the existing law without expectation of any additional cost.

6. Do alternative means exist for accomplishing the objectives of the rules that might be less burdensome to small business? Yes: No: X

Why were such alternatives not proposed: N/A

7. Compare this rule with federal and state counterparts: N/A